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Consequences of Tit-for-Tat Enforcement Toward a Hippocratic Principle of Regulatory Implementation

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ABSTRACT:

The article discusses when tit-for-tat enforcement, an important strategy in responsive regulation theory, may generate intended reactions in communities of regulatees. Combining insights from compliance motivation theory, responsive regulation theory, and ethnographic studies of compliance, the author hypothesizes that tit-for-tat enforcement's probability of success depends on regulators' institutionalized capacity to promote law–morality correspondence. Building such institutionalized capacity – called embeddedness – simultaneously increases requirements for inspectorates' competence. The article addresses three forms of law–morality correspondence: moral support for the law's content, the legislator's authority, and harmony between legal and moral guilt criteria.

Keywords: enforcement, compliance, responsive regulation, tit-for-tat, embeddedness

THE QUESTION OF CIVIL SOCIETY'S REACTIONS TO REGULATORY ENFORCEMENT

Ayres and Braithwaite's (1992) model of tit-for-tat (TFT) enforcement is arguably recent years' most influential model of regulatory enforcement (e.g. Mascini 2013; Nielsen 2006; Nielsen and Parker 2009; Parker 2013). This model prescribes responsive use of so-called enforcement pyramids. Enforcement pyramids are sanction ladders having coercion as the last resort. Enforcement always begins at the bottom (i.e. the largest part) of the pyramid, which typically consists of soft, discursive enforcement styles that appeal to citizens' social responsibility. If such persuasion fails, inspectorates move up the pyramid toward tougher sanctions.

The simple yet powerful insight behind this enforcement model is that public authorities do not inject regulations into moral vacuums: Citizens are often compliant when convinced of the rightfulness of law. The model thus assumes that, in most cases, a communicative potential exists between citizens and inspectorates. Successful communication motivates citizens to regulate themselves, which yields high compliance at low public enforcement costs. Correspondingly, unnecessary use of force may provoke resistance. Therefore, enforcement agencies should not undermine a communicative potential by using force toward citizens who are receptive to persuasion (Ayres and Braithwaite 1992; Braithwaite 2002, 2011).

Ayres and Braithwaite (1992) argue that inspectorates should apply what game theorists call a tit-for-tat (TFT) strategy to enforcement pyramids. TFT enforcement entails that inspectorates begin at the bottom of the enforcement pyramid and subsequently respond similarly to how regulatees respond: When regulatees display willingness to comply, inspectorates continue using soft responses; when regulatees do not show willingness to comply, inspectorates move up the pyramid toward tougher responses. Important is that TFT is not only retaliatory, but also forgiving. Once a reluctant business begins to comply, inspectors return to a softer, more cooperative response. Thereby, inspectorates seek to use civil society's self-regulating capacity as much as possible at all times (Ayres and Braithwaite 1992).

This article discusses how and when TFT applied in enforcement pyramids may promote willingness in regulatee communities to pursue compliance with legal obligations. I focus on enforcement systems constructed to prevent acts legally defined

as blameworthy, in contrast to, for example, reward systems constructed to promote acts defined as desirable (Braithwaite, Makkai, and Braithwaite 2007; Braithwaite 2008). The article thus contributes to the broader discussion about reactions to violations of legal obligations.

I argue that TFT's probability of success is greatest when law and civil morality correspond. Consequently, regulators need institutionalized capacity to promote law–morality correspondence. Such institutionalized capacity simultaneously increases requirements for inspectorates' competence.

This article addresses enforcement's interplay mainly with normative regulators of behavior. Many studies, covering very different fields of regulation, have shown that civil morality and civil social control have major effects on regulatory compliance (Braithwaite 2002; Gezelius and Hauck 2011; Gray and Scholz 1993; Gunningham and Kagan 2005; Kagan, Gunningham, and Thornton 2003; Kagan and Scholz 1984; Kirchler, Kogler, and Muehlbacher 2014; May 2004; Parker 2006; Paternoster and Simpson 1996). Simple utilitarian accounts of compliance, focusing only on actors' perceived costs and rewards (e.g. Becker 1968), have mostly been refuted, or at least strongly modified, by empirical research (e.g. Hofmann et al. 2014; Murphy 2016; Scholz 1997). Even economics has in recent years acknowledged morality's effects on behavior (Bó and Bó 2014; Croson and Konow 2009; Kogut 2012). Rather than being a pure product of utilitarian considerations, regulatory compliance typically stems from a mix of utilitarian and normative motivations, whereof utilitarian motivations often relate to morality indirectly through people's fear of being condemned by peers (Gezelius 2002, 2003). Regulators' ability to stimulate, and adapt to, civil morality is thus crucial to their regulatory capacity (Ayres and Braithwaite 1992; Braithwaite 1989; Gray and Scholz 1993; May 2004).

The regulatory enforcement literature has been concerned with normative compliance motivations for years. This article adds to that literature by connecting the enforcement style discourse to the development discourse. Whereas previous literature has used actor-centered typologies to highlight motivational characteristics of different types of *individuals* (e.g. Braithwaite, Murphy, and Reinhart 2007; Hawkins 1984; Kagan and Scholz 1984; Murphy 2016), this article uses a *state* typology to highlight motivational characteristics of different types of *societies*. Thereby, this article

addresses the morality of compliance, not as personal characteristics, but as collective, cultural phenomena facilitated by governance institutions. I argue that different institutional settings foster different *types* of normative compliance motivation, each affecting regulators' ability to use TFT enforcement successfully. This argument builds on Gezelius and Hauck's (2011) typologies of states and compliance motivations, thus extending their compliance theory into the field of regulatory enforcement. I argue that these typologies may contribute to studies of non-state regulators, too.

This article's main hypothesis is that, when TFT is applied to enforcement pyramids, TFT's probability of success increases with regulators' institutionalized capacity to promote law–morality correspondence. This argument is developed in three steps. First, I clarify the notion of law–morality correspondence by outlining characteristics of law, morality, and guilt. Second, I employ Gezelius and Hauck's (2011) typology of states to discuss institutional preconditions for law–morality correspondence. Third, I discuss how law–morality correspondence affects TFT's chances of success.

STEP ONE: CORRESPONDENCE BETWEEN NORMATIVE REGULATORS OF BEHAVIOR: LAW, MORALITY, AND CRITERIA OF GUILT

Many criminal laws are formalized versions of civil moral norms, such as norms against violence. Civil social control thus prevents many forms of crime in the absence of policing (e.g. Braithwaite 1989, 2002; Grasmick and Green 1980; Gunningham and Kagan 2005; Kagan and Scholz 1984; Parker 2006; Tyler 1990). However, unlike traditional criminal law, business regulations typically spring from governments' shifting needs to protect public and private interests, not from civil morality *per se* (Lynch 1997). Therefore, business regulations often lack the self-evident agreement with civil morality that characterizes other criminal law (Hawkins 1984; Kagan 1984). Implementation of business regulations is thus relatively dependent on regulators' capacity to promote law–morality correspondence.

To understand the challenge of promoting law–morality correspondence, we must understand the nature of such correspondence. I thus address the concepts of “law,” “morality,” and the implication of violating these two: “guilt.”

Hart’s (1961 [1997]) classic distinction between primary and secondary rules illuminates the difference between law and morality. Primary rules are rules about actions: rules that require people to do or not do certain things. Secondary rules are rules that determine the validity of rules. Secondary rules define, for example, which procedures are appropriate for making or changing primary rules, and for deciding when rules are violated. Validation by secondary rules is law’s defining characteristic. We may thus understand law as rules (both primary and secondary) validated by secondary rules. In contrast, moral rules are primary behavioral rules that are not necessarily validated by secondary rules, but that exist merely in the attitudes of a social group (see Hart 1961 [1997]).¹

Moral rules are often vague and subject to ongoing negotiation. Conflicting moral rules can often be employed in the same situation (e.g. Gezelius 2002). Also criteria determining the violation of moral rules are often vague. Hart (1961 [1997]) thus regards legal systems as societies’ attempts to overcome morality’s typical vagueness by way of secondary rules. However, these attempts come at a cost: validation by secondary rules makes law somewhat independent of the spontaneous, intersubjective experience of ordinary citizens (see Hart 1961 [1997]).² Citizens may thus, in some cases, feel they lack moral reasons for obeying laws. Business regulations are, as we have seen, especially prone to produce such feelings (Hawkins 1984).

Moral obligations characteristically justify expressions of blame against transgressors (Skorupski 2000). *Moral guilt* is thus a condition where citizens subjectively experience expressions of blame, that is, negative sanctions, as justified. Citizens may often consider an indefinite number of potentially conflicting moral norms when assessing blameworthiness (Gezelius 2004; Hart 1968). Because morality typically generates ambiguity and dilemmas, moral guilt often depends on perspective (e.g. Forsyth, Gramling, and Wooddell 1998; Gezelius 2003). Although assessments of *legal guilt* to some extent have such characteristics too (e.g. Hutter 1997; Kagan 1978), assessments of legal guilt are governed by secondary rules that prescribe when negative sanctions should be used. For example, shared secondary rules guide legal reasoning

regarding the applicabilities and meanings of intentionality, due care, excusability, and mitigation (Hart 1968). In addition, legal systems typically strive for consistency, that is, that nothing required by one law be prohibited by another. Thereby, legal systems pursue guilt criteria that correspond to bureaucratic ideals of predictability and equal treatment (Kagan 1978; Tyler 1990; Westerman 2013). Consequently (and paradoxically), secondary rules, created to secure procedural legitimacy, may establish legal guilt in the absence of experienced moral blameworthiness (see Hart 1968). Because citizens rely on moral reasoning, their guilt criteria may differ from those applied by enforcement agencies, even when regulations *per se* emerge as morally justified (see Ewick and Silbey 1991; Lynch 1997; Silbey 2005).

Regulatory enforcement is thus sensitive territory. Enforcing regulation without creating indignant resistance among citizens may be difficult (e.g. Ayres and Braithwaite 1992). Therefore, step two of this analysis, which follows next, addresses the question of how states may facilitate law–morality correspondence and, thereby, promote citizens’ moral acceptance of punishment.

STEP TWO: SOCIAL PRECONDITIONS FOR LAW–MORALITY CORRESPONDENCE

Moral guilt results from what citizens perceive as a violation of moral obligation, whereas legal guilt results from what courts perceive as a violation of criminal law. Moral and legal guilt alike justify negative sanctions. In that respect, moral obligation is civil society’s equivalent to criminal law. Regulators’ capacity to implement law thus depends on the extent to which citizens perceive law-abidingness as morally obligatory (Gezelius 2009). An important question, therefore, is how regulators may promote moral obligation to obey the law. In this second step of the discussion, I thus address preconditions for promoting such obligation. I employ the concept of “state embeddedness” to describe these preconditions.

In institutionalist development theory, “state embeddedness” signifies those institutionalized procedures and arenas through which civil society and the state negotiate goals and policies. State embeddedness thus signifies the inclusion of civil actors in governance (Evans 1995).³ Gezelius and Hauck (2011) applied this concept to

compliance theory, emphasizing that the concept in regulatory compliance theory should denote citizens' actual, but also their perceived, role in governance.

Gezelius and Hauck divided the embeddedness concept into two main components, each component affecting its respective compliance motivation. The first component is citizens' empowerment, which is defined as "the existence of institutions that guarantee that the power of those affected by management decisions is great enough to ensure that those decisions promote – rather than violate – their basic needs and perceived fundamental rights" (Gezelius and Hauck 2011, 443). By empowering their citizens, states may promote correspondence between the law's content and citizens' morality and thereby ensure that citizens believe that laws pursue justified aims in justified ways. Thereby, empowerment promotes a compliance motivation called "moral support for the law's content" (Gezelius and Hauck 2011, 443).

The second component of state embeddedness is civic identity (Gezelius and Hauck 2011). Whereas "empowerment" refers to citizens' actual and perceived role in governance, "civic identity" refers to a perception among citizens that the state is "one of us." Civic identity is thus a form of what Tajfel and Turner (1986) call social identity. Civic identity means that membership in the state is part of citizens' self image. Civic identity thus creates a sense of community between civil society and the state (e.g. Huo et al. 1996; Huo 2003; Murphy, Sargeant, and Cherney 2015).

Gezelius and Hauck (2011) argue that civic identity through its collective image of "the good citizen" facilitates a relationship between citizens and the state in which citizens experience a moral obligation to obey the law even if they might personally disagree with the law's content (see also Lynch 1997, 46; Murphy, Sargeant, and Cherney 2015). This content-independent moral compliance motivation is referred to as the "legislator's authority" (Gezelius 2009). Compared to moral support for the law's content, the legislator's authority implies a deeper level of law–morality correspondence, a level on which citizens grant states the ability to impose new moral obligations on them. By promoting the legislator's authority, civic identity may thus give states very high governing capacity. Figure 1 illustrates, in highly simplified form, how these causal relationships connect to our research problem.

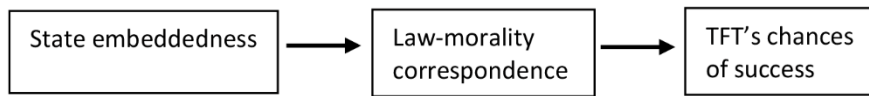


Fig. 1. Main causal relationships discussed

The argument above implies that so-called unembedded states – states whose citizens lack empowerment and civic identity – lack effective means of promoting moral compliance motivations. Unembedded states are characterized by having coercive law enforcement as their only means of regulating citizens (Gezelius and Hauck 2011).

The two components of state embeddedness (empowerment and civic identity) characterize each their level in states' development of regulatory capacity. In Table 1, these levels of regulatory capacity are described for each of the three ideal types of states, as outlined by Gezelius and Hauck (2011). Unembedded states, which are on the first level of development, can motivate compliance only by deterrence. Semi-embedded states, which are on the second level, can motivate not only by deterrence, but also by promoting moral support for the law's content because these states have institutions that empower affected citizens. When using such institutions successfully in nation building, semi-embedded states may become fully embedded ones (Gezelius and Hauck 2011).⁴ Embedded states, which are on the third level, can motivate compliance not only by deterrence and by promoting moral support for the law's content, but also by the legislator's authority because they have succeeded in building civic identity (see also Huo et al. 1996; Huo 2003; Lee 2008; Mansbach and Rhodes 2007; Murphy, Tyler, and Curtis 2009; Murphy, Sargeant, and Cherney 2015; Silbey 2005).

The three ideal types thus guide this article's development of hypotheses. Adequate discussion and testing of these hypotheses requires keeping the epistemological status of ideal types in mind. Ideal types are conceptual tools against which scholars can compare real-life cases and thereby highlight selected aspects of a complex reality. Ideal types never claim to be complete descriptions of reality. They are not means of rigid classification, but means of comparative and context-sensitive analysis (see Weber and Shils 1949). Rarely will a state fit one ideal type perfectly in relation to all citizens in all situations (e.g. Börzel and Risse 2016; Krasner and Risse 2014). In real-life states, regulator/regulated relationships may vary among communities

and regulatory domains. Consequently, describing variety within a state may require using more than one ideal type. The article's hypotheses describe causal relationships we expect to become stronger the more the regulator/regulated relationship resembles the ideal type(s) that produced the hypothesis.

Table 1. The regulatory capacity of three ideal types of states

Ideal type of state	The state's means of promoting compliance	Achievable compliance motivations
<i>Unembedded state</i>	Enforcement	Deterrence
<i>Semi-embedded state</i>	Enforcement	Deterrence
	Empowerment	Moral support for the law's content
<i>Embedded state</i>	Enforcement	Deterrence
	Empowerment	Moral support for the law's content
	Civic identity	Legislator's authority

The three compliance motivations described at the bottom-right of Table 1 are outlined in detail in Figure 2, which thus illustrates paths (symbolized by multiple arrows) through which regulation may govern behavior among citizens in embedded states. The two normative compliance motivations – moral support for the law's content and the legislator's authority – operate through civil society's mechanisms for socialization and social control, thus regulating citizens through moral conviction and peer pressure (see Grasmick and Green 1980; Gunningham and Kagan 2005; Jagers, Berlin, and Jentoft 2012; Paternoster and Simpson 1996; Scholz and Lubell 1998). The absence of such moral motivations may promote cultures of non-compliance (e.g. Schulz 2015). We may thus hypothesize that states' governing capacity depends on states' embeddedness because such embeddedness determines the number of achievable compliance motivations (Gezelius and Hauck 2011).

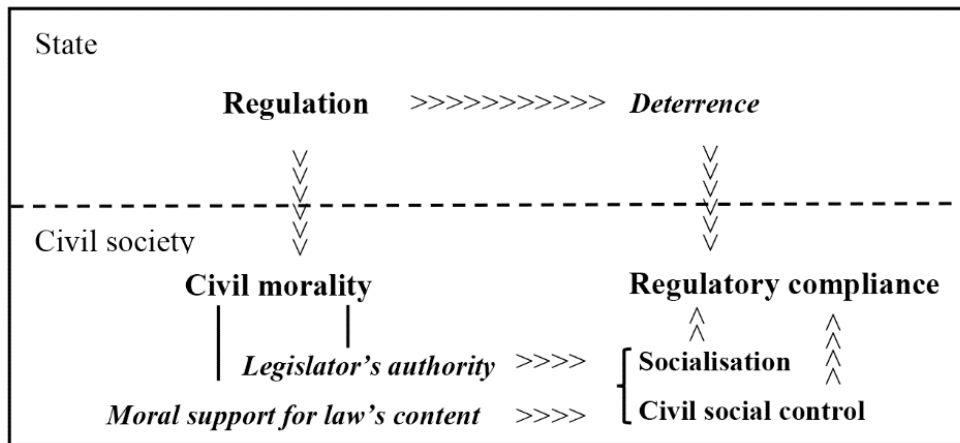


Fig. 2. Paths from regulation to compliance in embedded states

TFT enforcement seeks to utilize law–morality correspondence wherever such correspondence exists. The embeddedness theory of compliance lends itself to the hypothesis that embeddedness increases TFT enforcement chances of success because embeddedness promotes law-morality correspondence. In the third step of the analysis, I discuss this proposition in greater depth.

STEP THREE: HOW TFT ENFORCEMENT'S CHANCES OF SUCCESS DEPEND ON STATE EMBEDDEDNESS

In step two of this analysis, I described ideal types of states whose ability to promote law–morality correspondence resulted from their embeddedness. In step three, I discuss logical implications of these ideal types and supplement these implications with analyses of ethnographic, secondary data from compliance motivation studies, to outline grounded hypotheses regarding embeddedness's effects on TFT enforcement's chances of success. Naturally, further study is required to test these hypotheses (e.g. Kelle 2014).

Much of the following discussion draws on studies of compliance in rural economies characterized by non-capitalistic production and strong ties between economic life and other social life. These economies typically display strong informal social control and are thus suited to studies of professionals' collective moral codes (e.g.

Acheson 1975). Additionally, these economies are often small-scale and partly subsistence-oriented, which tends to decrease citizens' moral receptiveness to external regulation (Gezelius 2004). Despite the particular characteristics of these economies, this article's argument relies on the same simple assumption as Ayres and Braithwaite's (1992) enforcement pyramid does: that regulatees' willingness to comply depend on their perceived moral reasonableness of regulatory enforcement (see also Tyler 1990). Indeed, empirical studies show that perceptions of unfair enforcement may foster resistance, not only in communities of small-scale businesses, but in large, capitalist enterprises too (Bardach and Kagan 1982 [2017]; Hawkins 1984). Collective structures of practice appear quite generally to be effects, as well as causes, of individuals' interpretations and choices (see Berger and Luckman 1967). In light of existent data and theory, then, we may hypothesize that social mechanisms observed in the communities described here exist also in larger, more formalized organizations. However, further study is required to understand how formal corporate structure (such as standard operating procedures and authority) may moderate, cement, or hamper social mechanisms outlined here.

In what follows, I use the ideal types described above to structure the argument regarding how TFT's chances of success depend on state embeddedness.

WHY TFT ENFORCEMENT IS RISKY IN UNEMBEDDED STATES

I begin this third step of the analysis by discussing the state type with the lowest governing capacity: the unembedded state. In unembedded states, regulatees are not sufficiently empowered to ensure that regulation does not violate their basic needs and perceived moral rights. Typical unembedded states have unempowered citizens, poorly organized civil societies, defective (or no) democracy, high levels of corruption, and divisive national identities. Unembedded states thus lack institutions for promoting law–morality correspondence. Consequently, law–morality correspondence is uncertain and coincidental in unembedded states. Such states are thus poorly equipped to govern through moral compliance motivation. Consequently, inspectorates lack an institutional basis for moral persuasion of regulatees: Regulatees are likely to find inspectors' arguments morally invalid, are likely to distrust inspectors, and may detest inspectors too much to listen even to their more reasonable advice. Only the compliance

motivation of deterrence – fear of the state’s punishment – is regularly within reach of the unembedded state (Gezelius and Hauck 2011).

TFT implies that failure to produce compliance at the bottom of the enforcement pyramid triggers movement up the pyramid toward tougher sanctions. It follows, seemingly, that unembedded states should be prepared to rely on coercive enforcement because they have no other feasible option. However, in unembedded states, coercive enforcement typically lacks the element of moral support that feeds the functionality of such enforcement in embedded states. Whereas in embedded states, many affected citizens may accept coercive enforcement because they think the state has the right to perform such enforcement, citizens in unembedded states typically experience coercive enforcement as unjustified violence. Therefore, such enforcement may destroy what possibility there is for building trusting state/civil society relations in the long run (Gezelius and Hauck 2011).

For example, studies of South African fishermen showed that, after having been politically and economically marginalized by the state for decades, colored people in many coastal communities believed that fisheries regulations violated their moral rights (Hauck 2008, 2009). Some people thus confirmed their social identity by, and took personal pride in, defying what they perceived as morally illegitimate regulation (Schulz 2015). Consequently, coastal residents met law enforcement with strong, sometimes violent, resistance (Hauck 1999). Simultaneously, deep-rooted mistrust toward the state and its enforcement agencies blocked attempts at persuasion (Schulz 2015). Illegal fishing was thus widespread, socially accepted, and very difficult to prevent (Hauck 2008, 2009; Schulz 2015).

There are at least two reasons why enforcement pyramids and TFT cannot fully compensate for lacking institutions for empowerment: First, unlike empowerment, enforcement can do little to change illegitimate regulations. Enforcement’s capacity in this regard is limited to rule interpretation, prioritization, and discretion. Second, in the absence of citizens’ empowerment, TFT typically leads inspectors up the pyramid because moral compliance motivations are lacking. TFT thus easily leads to situations with no room for negotiation between regulators and regulatees. At stages in the enforcement pyramid where negotiations are still possible, for example when inspectors warn about future sanctions, these negotiations must typically appeal to utilitarian,

rather than to moral, compliance motivations. Consequently, non-compliance may flourish once inspectors turn their backs.

By promoting law–morality correspondence, institutions for empowerment facilitate both persuasion and civil acceptance of sanctions against notorious transgressors. Institutions for empowerment also inform legislators about the extent of law-morality correspondence and, thereby, facilitate rational selection of implementation means.

Braithwaite (2006) has presented credible arguments advocating responsiveness as a democratic ideal in developing countries. It could be added to these arguments that using the state’s “big stick” (Braithwaite 2006, 884) *before* building effective institutions for empowerment may trigger resistance that subverts the state’s chances of persuading citizens in the future (Gezelius and Hauck 2011). Softer enforcement styles may be less risky, but their effects are likely to remain weak and unpredictable in the absence of institutions for empowerment. Only when affected citizens are sufficiently empowered to protect their basic needs and rights, can we expect regulatory enforcement to work reliably.

As Hauck (2008, 2009) argues, public promotion of regulatory compliance in developing states may be most effective when addressing the power structures that shape legislation (see also Silbey 2005). Once states have empowered their citizens, the odds of TFT’s success are likely to improve. The next section, therefore, addresses TFT enforcement in semi-embedded states.

WHY TFT MAY SUCCEED IN SEMI-EMBEDDED STATES, IF APPLIED SELECTIVELY BY COMPETENT INSPECTORATES

Unlike unembedded states, semi-embedded states have established institutions that empower citizens so that these citizens can protect their basic needs and rights. Semi-embedded states are thus institutionally able to promote moral support for the law’s content (Gezelius and Hauck 2011). Semi-embedded states empower themselves by empowering their citizens.

Semi-embedded states are characterized by organized civil interest groups and institutionalized arenas for negotiations between these groups and the state (see Evans 1995). The state no longer appears to citizens merely as a superior force, but as a partner

in policymaking. However, semi-embedded states have yet to develop the civic identity that characterizes embedded states and that facilitates the legislator's authority.

Although institutions for empowerment promote moral support for the law's content, such institutions seldom guarantee that all regulatees support all regulations all the time: Regulations may reflect compromise, majority interests, or international obligations. Consequently, some groups of regulatees may sometimes oppose regulation, and thus lack moral compliance motivation, in semi-embedded states.

The potential, but uneven, presence of moral compliance motivation in semi-embedded states implies that TFT enforcement may be productive in some cases and unproductive in others. Consequently, using enforcement pyramids competently is important. In what follows, I use ethnographic compliance motivation studies to illustrate the challenge.

A study of Newfoundland fishers' compliance with Canada's Atlantic cod moratorium described a case that resembles the ideal type of the semi-embedded state (Gezelius 2003; Gezelius and Hauck 2011): Fishers were well organized and had access to public hearings and public advisory boards, but their political culture was characterized by distrust of federal politicians and by a sense of dual Newfoundland/Canadian identity (see also Hiller 1987; Matthews 1993). These fishers perceived the state as a legitimate actor in regulation, but not as "one of us." Fishers believed that the federal government had needed to close the commercial cod fisheries to save the fish stock. Additionally, the government compensated economically fishers who had lost their livelihoods. Most fishers thus regarded compliance with the ban on commercial cod fishing as a moral obligation (Gezelius 2003; Ommer 1998). Consequently, the government had broad support in fishing communities when it brought to court fishers who poached on a commercial basis (Gezelius 2003). We may hypothesize that TFT enforcement is suited to such cases, where people morally support regulations' content.

Further considering the Newfoundland case, we may also hypothesize that TFT does not always work as intended in semi-embedded states: The absence of the legislator's authority entailed that fishers tended to accept violations of rules they disagreed with. Similarly, people's distrust of the government (particularly government scientists) reduced the government's ability to persuade dissenting communities

(Gezelius 2003; Matthews 1993). For example, although Newfoundland fishing communities supported the prohibition against commercial fishing, they collectively disagreed with the prohibition against subsistence fishing. Consequently, illegal subsistence fishing was socially accepted and widespread.⁵

In such cases, where governments are unable to change dissenters' minds, TFT leads inspectorates up the enforcement pyramid toward tougher sanctions. Such escalation follows naturally from a failure to achieve law–morality correspondence. Lynch (1997) has argued from a legal viewpoint that such escalation is unfortunate because states should convict of crime only those widely perceived to have committed serious moral offenses (see also Hawkins 1984). Regarding TFT, Lynch's position may translate into a defense of keeping to the bottom of the pyramid when law–morality correspondence is lacking. For example, Newfoundland fishing communities reacted with collective indignation, downright fury, when the government punished subsistence poachers (which it typically did when detecting them). The tough penal sanctions that the state used against subsistence poachers offended not only those penalized, but entire communities that sympathized with these poachers. Thereby, a culture of resistance emerged. In the late 1990s, poached codfish was a special medium of interaction among coastal residents: Poached codfish was used as gifts among trusting neighbors, and hints about personal subsistence poaching were a source of humorous intimacy among trusting colleagues (Gezelius 2003). Punitive responses had thus turned illegal subsistence fishing into a symbol of shared morality, trust, and personal courage. Punishment had increased the social value of illegal subsistence fishing.

Because the legislator in semi-embedded states lacks authority, such states can promote moral compliance motivations only through persuasion on a rule-to-rule basis. When such persuasion fails, the retaliatory responses that inevitably result from TFT strike not only small outgroups of “immoral” individuals, but large groups of citizens who believe they have a moral right to break the law. Consequently, TFT enforcement may stimulate cultures of non-compliance (see also Parker 2006).

If TFT's success depends on law–morality correspondence, what should semi-embedded states do when such correspondence is lacking? One option is to allow competent inspectors to use not only legal, but also moral discretion when deciding about retaliation. Forsyth, Gramling, and Wooddell (1998) describe such use of moral

discretion in a study of game poachers and game wardens in Louisiana. Similar to the Newfoundland case, subsistence poaching appeared to be relatively accepted, compared to commercial poaching, among Louisiana citizens. Correspondingly, wardens were lenient toward subsistence poachers, while retaliating against people who sold their catch.

The study by Forsyth, Gramling, and Wooddell highlights how inspectors may operate at the interface of law and civil morality. Regardless of how clear regulations look on paper, inspectors face civil moral interpretations when working in the field (e.g. Hawkins 1984; Parker 2006). These moral interpretations typically guide citizens' actions. Knowing that retaliation may fuel civil resistance and impede future persuasion, inspectors may apply TFT only when some civil moral support for retaliation is within reach (see Hawkins 1984; Lynch 1995). When such moral support is out of reach, inspectorates may wisely abandon TFT in favor of responses that keep to the bottom of the pyramid, even when facing persistent unwillingness to comply.

The kind of moral discretion described in Forsyth, Gramling, and Wooddell's study raises important questions of capture (Ayres and Braithwaite 1992) and appropriate bureaucratic procedure (e.g. May and Winter 2000; Tyler 1990). Sometimes there is a fine line between trust keeping and lack of principle (Kagan 1978; Silbey 1984). Walking this line requires procedures and training regarding how to use discretion, and it requires the ability of personnel to be cognizant of their professional role at all times (Hawkins 1984; Kagan 1978; Piore 2011).

Table 2 outlines four competences required by functional inspectorates in semi-embedded and – as will be illustrated below – embedded states. Whereas legalistic, punitive enforcement requires only legal and professional competence, the enforcement pyramid and TFT additionally require instrumental competence – skill in using a variety of implementation means. Finally, using enforcement pyramids and TFT with proper discretion requires understanding the lives and moral interpretations of regulatees, as exemplified by the game wardens in Forsyth, Gramling, and Wooddell's (1998) study (see also Lynch 1997).⁶ Inspired by Silbey, Huising, and Coslovsky's (2009, 207) notion of “sociological citizenship,” I call this fourth type *sociological competence*.

Sociological competence fosters, and is fostered by, what Huising and Silbey (2011, 7–8) call “relational regulation”: inspection practices characterized by inquiry

into, and pragmatic adaptation to, the relationships and needs of regulated people (see also Silbey 2011). Relational regulation, performed with proper sociological competence, may promote law–morality correspondence, both by reducing resistance against the law’s content and by increasing correspondence between legal and moral guilt criteria.

Table 2. Competences required by inspectorates in embedded and semi-embedded states

Types of competence	Nature of competence	Purpose of competence	Source of competence
<i>Legal</i>	Knowledge of law and jurisprudence	Apply law correctly	Education and institutionalized guilt criteria
<i>Professional</i>	Knowledge of and loyalty to one’s professional role	Keeping in sight the purpose of one’s professional conduct	A culture of administrative loyalty
<i>Instrumental</i>	Control of various implementation means	Ability to handle a variety of situations	Training in discretion use
<i>Sociological</i>	Understanding regulated activities and people	Ability to identify the best possible response in each case	Long-term interaction with regulatees

Scholars have for years argued that proper discretion requires being familiar with the relevant facts of each case (Hawkins 1984; Kagan 1978). I want to stress regarding sociological competence that “relevant facts” include not only facts defined as relevant by law, but also facts defined as morally relevant by communities of regulatees (see also Nielsen and Parker 2009). Arguably, an inspector, operating at the border between law and civil morality, needs to be part lawyer, part ethnographer to create cultures of compliance instead of resistance. Building sociological competence thus requires both presence in the field (see Hawkins 1984) and continuity of manning. Consequently, rapidly rotating enforcement personnel to secure arms-length enforcement, for example, may impede the functionality of TFT (see Bardach and Kagan 1982 [2017]; Makkai and Braithwaite 1994).

The next section addresses the chances of TFT's success in embedded states and these chances' dependence on competences outlined in Table 2.

WHY TFT MAY SUCCEED IN EMBEDDED STATES, PROVIDED THAT MORAL AND LEGAL GUILT CRITERIA CORRESPOND

Law–morality correspondence and guilt perceptions in embedded states

Embedded states have the same characteristics as semi-embedded states have, but additionally, embedded states have successfully used democratic institutions in nation building, thereby making political membership in the state a part of citizens' social identity. Such so-called civic identity typically goes with political trust and a coherent, taken-for-granted nation that uses legal institutions – such as constitutions and parliaments – as national symbols. Civic identity promotes the legislator's authority: a perceived moral obligation to obey the law, even among groups that may disagree with the law's content (Gezelius and Hauck 2011; see also Kirchler, Kogler, and Muehlbacher 2014).

Unlike other compliance motivations, the legislator's authority makes law-abidingness a moral obligation in its own right: it thus creates a generalized sense of law–morality correspondence (Gezelius 2009). Civil society itself constructs and maintains this authority: parents teach their children to become law-abiding citizens; being regarded a bona fide business implies being regarded as law-abiding. The legislator's authority is thus a moral path that feeds regulations into citizens' moral conscience (see also Silbey 2005; Silbey and Cavicchi 2005).

We may thus hypothesize that TFT enforcement is more likely to yield desired results in embedded states than in other state types: In embedded states, citizens are comparatively receptive to the idea that punishing repeated lawbreakers is justified.⁷

Although embeddedness, according to my hypothesis, improves TFT's chances of success, embeddedness does not guarantee TFT's success. Statistical data indeed suggest that TFT enforcement may have diverse outcomes in a developed state setting (Nielsen and Parker 2009). Nielsen and Parker (2009) propose that the nature of discretion use, among other things, may cause such diversity. Further to their proposition, we may hypothesize that TFT's outcomes in embedded states depend on

the degree of correspondence between moral and legal guilt criteria, because such correspondence cannot be taken for granted, even in embedded states. Believing in the legislator's authority does not necessarily imply accepting legal interpretations of guilt: Citizens' perceptions of law, even in embedded states, are imbued with moral rather than legal reasoning, and what constitutes law-abidingness is always subject to moral interpretation (Ewick and Silbey 1991; Fairman and Yapp 2005; Parker 2006; Silbey 2005). Although citizens in embedded states may perceive law-abidingness as a moral obligation, they may interpret law-abidingness differently than inspectorates and courts do (see Fairman and Yapp 2005). When TFT enforcement relies on legal guilt criteria only, citizens may experience accusations of guilt as unfair. As the procedural justice literature has shown, perceived unfairness may subvert citizens' cooperativeness (e.g. Murphy, Tyler, and Curtis 2009; Murphy, Mazerolle, and Bennet 2013; Murphy, Sargeant, and Cherney 2015; Sunshine and Tyler 2003; Tyler 1990). In what follows, I discuss how such subversion may work.

The enforcement clack valve: Conflict escalation when legal and moral guilt criteria conflict in embedded states

The observation that unjustified use of force provokes resistance instead of compliance has been one of the main reasons for using TFT in enforcement pyramids (Ayres and Braithwaite 1992). I argue in this section that TFT enforcement is non-provocative in embedded states only when moral and legal guilt criteria correspond. When these criteria conflict, inspectors may be unable to return to softer responses after having climbed the enforcement pyramid. I refer to this inability as "the enforcement clack valve."

The legislator's authority entails, by definition, that collectivities of citizens regard the question of law-abidingness as a question of morality. Thereby, in embedded states accusations of illegality become accusations of immorality. When legal guilt criteria conflict with moral guilt criteria, citizens may perceive *de jure* criminal liability as a false accusation of immorality. Few acts violate principles of deference – the display of social recognition that enables fluent face-to-face interaction (Goffman 1967 [2003]) – more than false accusations of immorality do. Consequently, discrepancy

between moral and legal guilt criteria may destroy citizens' receptiveness to persuasion and motivate resistance.

It is characteristic of embedded states that questions of criminal liability are morally sensitive,⁸ both regarding the fairness of penalties and regarding pride and social standing. Whereas enforcement in other state types requires being sensitive to moral dissent regarding the law's content, enforcement in embedded states requires being particularly sensitive to how citizens interpret questions of guilt.⁹

Studies from Norwegian fisheries have shown that fishermen's moral perceptions of guilt may differ significantly from legal conceptions, even when fishermen believe in the legislator's authority. For example, logbook-regulation enforcement borders on a practice of strict criminal liability (Dahl 2002), and this enforcement relies on scales information that is inaccessible to fishermen at sea. Thereby fishermen who perceive themselves as law-abiding professionals feel they are unjustly criminalized for acts committed without criminal intent or genuine carelessness (Gezelius 2003; Gezelius 2006). Similarly, the technical nature of many regulations promotes conflict between moral and legal guilt criteria. Whereas citizens are usually capable of knowing if they break traditional criminal law, they often lack information or competence to assess whether they violate technical regulations (e.g. Ayres and Braithwaite 1992). Moreover, enforcing technical regulations often requires interpretation by technical expertise (see Kagan 1978; Hawkins 1984; Hutter 1997). For example, observational and interview data, generated among inspectors and animal transporters in an ongoing mixed methods study of Norway's implementation of animal welfare regulations,¹⁰ showed that inspectors, who were trained veterinarians, sometimes detected and assessed wounds using knowledge inaccessible to transporters, while also displaying significant differences of professional opinion. Consequently, transporters experienced that inspectors determined their guilt using a) superior and inaccessible knowledge when interpreting the legality of their actions and b) disputable personal expert opinion. Consequently, some transporters perceived inspectors' guilt criteria as unjust.

The nature of expert knowledge – conceptual depth and complexity – favors discretion by autonomous personnel. Therefore, institutionalizing fully predictable and morally legitimate guilt criteria may be difficult for expertise-reliant inspectorates.

Moreover, expert knowledge is by nature inaccessible to most regulatees. Guilt assessment may thus lack the perceived predictability that legitimacy relies on. Consequently, expertise-reliant inspectorates may be better suited to discursive than to penal enforcement styles. Such inspectorates may wisely abstain from penalizing regulatees except when able to define guilt criteria that regulatees perceive as predictable and morally just. The argument that inspectorates should use penalizing abilities mainly to increase regulatees' receptiveness to persuasion (Ayres and Braithwaite 1992; Hawkins 1984) may thus be particularly valid to expertise-reliant inspectorates.

When inspectorates are unable, or unwilling, to define predictable, morally legitimate guilt criteria, TFT may lead to punishment having a questionable moral foundation and to gross violations of principles of deference, both of which may impede future persuasion. For example, Hawkins (1984) showed that prosecuting regulatees who did not share the inspector's interpretation of the regulatee's actions reduced that inspector's ability to persuade (see also Bardach and Kagan 1982 [2017]; Leviner 2008; Mascini 2013; Murphy, Tyler, and Curtis 2009; Murphy, Mazerolle, and Bennett 2013; Murphy, Sargeant, and Cherney 2015).

We may hypothesize that TFT is prone to generate irreversible conflict escalation when legal and moral guilt criteria conflict. Such escalation constitutes a clack-valve effect in enforcement pyramids: When TFT leads inspectorates up the pyramid, they find their road of return blocked.

To understand the nature of the enforcement clack valve, we may regard the enforcement pyramid as a set of communication thresholds, the return across which may be difficult when legal and moral guilt criteria conflict. As Table 3 illustrates, at the bottom of the enforcement pyramid is discursive guidance (explanation and justification of rules and of how to comply) which typically implies deference because guidance signals that inspectors regard regulatees as conscientious, reasonable, and autonomous. From the regulatees' viewpoint, accepting guidance may serve as a symbol of recognition that they give inspectors in return (see Braithwaite 2002). Thereby, rituals of deference facilitate persuasion. It follows that regulatees may be most receptive to persuasion when inspectors acknowledge the competence and integrity of regulatees.

When inspectors merely state regulatees' legal obligations, inspectors pass the first communication threshold outlined in Table 3. Inspectors now resort to giving orders, thus altering the inspector–regulatee relationship: Inspectors now signal that regulatees are subordinates without acknowledged qualifications or rights to choose for themselves. It is characteristic of embedded states, unlike the other state types, that citizens are receptive to such relative degradation by inspectors. Being reminded of one's legal duty does not conflict with the self image of citizens who believe in the legislator's authority, provided inspectors do not insinuate criminal intent. Therefore, making polite reminders about legal duty would not prevent inspectors from successfully returning to discursive guidance in embedded states.

Table 3. The enforcement pyramid regarded as communication thresholds in embedded states

Inspectors' response	Inspectors' role	Inspectors' signaled perception of citizen	Targeted compliance motivation
<i>Penalty</i>	Hostile force	Amoral citizen	Deterrence
<i>Warning</i>	Suspicious force	Amoral citizen	Deterrence
<i>Declaration of legal duty</i>	Authoritarian superior	Obedient moral citizen	Legislator's authority
<i>Discursive persuasion</i>	Competent guide	Thinking moral citizen	Support for laws' content

Passing the next threshold in the pyramid is different. When law enforcers respond by way of warnings or punishment, they no longer appeal to norms but to citizens' self interest (Braithwaite 1989). Consequently, citizens may perceive this response as an allegation of their lacking moral integrity. When legal and moral guilt criteria conflict, citizens may perceive such allegations as false. Such perceptions of falseness may trigger at least three clack-valve effects: *spirals of mutual retaliation*, *citizens' impression management*, and *secondary deviance*.

Spirals of mutual retaliation may emerge when inspectorates violate moralities of deference and reciprocity by threatening or punishing citizens who believe they make reasonable efforts to obey the law, thus provoking citizens to retaliate by not cooperating (see Bardach and Kagan 1982 [2017]; Murphy, Sargeant, and Cherney 2015). TFT thus becomes the strategy of *both* inspectorates and regulatees. Since TFT instructs inspectors to meet regulatees' retaliation with escalated sanctions, spiraling conflict arises instead of compliance. TFT cannot break this spiral because TFT prescribes a return to cooperation only when the other party has begun cooperating. Spirals of mutual retaliation can be broken only if at least one of the parties abandons TFT in favor of unconditionally forgiving strategies.

The second clack valve effect, citizens' impression management (borrowing Goffman's term (1959)), emerges when regulatees struggle to defend their civic identities against attacks by law enforcement. Such struggle emerges when: (a) regulatees perceive themselves as law-abiding citizens; (b) law enforcement signals (implicitly or explicitly) that it does not perceive these regulatees as law-abiding; (c) regulatees' self image remains intact after those accusations have been made. Citizens who feel unjustly stigmatized may thus show off their moral integrity, seeking to restore their pride and reputations, by acting demonstratively uncompromisingly toward the "unjust" inspectorate. Such citizens want to demonstrate that they were always in their right, that they can stand up against injustice, and that the inspectorate was wrong all along. In cases like these, citizens may prefer to fight to restore their reputations, through demonstrative resistance, rather than to reduce conflict. Citizens' strategies of impression management may thus render TFT-reliant inspectorates unable to return to softer responses. Inspectorates may face the options of either giving in, thus accepting citizens' interpretations of law-abidingness, or of climbing further up the pyramid.

When citizens' impression management provokes inspectors to respond with tougher penalties, discrepancy between moral and legal guilt criteria may generate feelings not only of being unjustly labeled but of being the victim of a miscarriage of justice (e.g. Leviner 2008). Such feelings may erode the social basis for effective bottom-of-the-pyramid enforcement.¹¹

Whereas citizens may accept retaliation that is morally grounded (Etienne 2013), rebuilding dialogue may be difficult once citizens experience retaliation as immoral

(e.g. Hawkins 1984). When citizens in embedded states perceive the inspectorate's retaliation as immoral, they may regard resistance as a way of defending the moral values that underlie the state's authority: Their resistance becomes a moral project aimed at restoring legitimate governance. In such cases, citizens pursue goals other than to minimize conflict, which may tie TFT-reliant inspectorates to the top of the pyramid.

The third and strongest clack valve effect emerges when citizens change their identities in response to law enforcement. Labeling theorists describe this mechanism as secondary deviance (Lemert 1972): Citizens labeled criminals eventually start identifying themselves as such, thereby forming subcultures that reject moralities of law-abidingness (Becker 1966). Thereby, law enforcement produces crime by what Merton (1968) calls self-fulfilling prophecies: Citizens treated as unscrupulous opportunists eventually start behaving like ones, thus willingly confirming the interpretations of law enforcement (see Braithwaite 1989; Makkai and Braithwaite 1994). Labeling theory implies that telling citizens who perceive themselves as law-abiding that they are criminals is a very counterproductive enforcement strategy.

When legal and moral guilt criteria correspond, so regulatees believe that retaliation is justified, punished regulatees are likely to pursue impression management and/or restoration of moral order by demonstrating improvement, not by resisting the inspectorate. Therefore, they will be receptive to persuasion after having met retaliation. We may thus hypothesize that *the forgiving aspect of TFT is most applicable when legal and moral guilt criteria correspond*.

Using moral guilt criteria in law enforcement is easier said than done: Moral criteria are often ambiguous and subject to ongoing negotiation in communities of regulatees (e.g. Gezelius 2002, 2003). The challenge posed by such ambiguity may not be overwhelming to sociologically competent inspectorates, however. Clack-valve effects typically emerge when conflict between moral and legal guilt criteria is undisputed and strong: Clack-valve effects can be predicted. Moreover, moral ambiguity may enable competent, trusted inspectors to influence citizens' moral judgement and thereby prevent clack-valve effects.

I have argued that TFT enforcement in embedded states is most likely to succeed when inspectorates have the competences (see Table 2) required to adapt to citizens' moral guilt criteria. Adapting to moral guilt criteria requires knowing how regulatees

perceive themselves and their actions. It also requires, as several authors advise, that inspectors take their time with possible transgressors to let them present their side of the story (Leviner 2008; Murphy, Tyler, and Curtis 2009; Murphy, Mazerolle, and Bennett 2013). Consequently, functional use of TFT in embedded states requires, as in semi-embedded states, competence acquired through frequent interaction with regulatees (see also Baldwin and Black 2008; Huising and Silbey 2011; Pires 2011).

Given the enforcement clack valves and the competence required to avoid them, one may ask if the most functional route in embedded states is to remove regulatory enforcement altogether. If civil communities believe in the legislator's authority, they produce law-abidingness regardless of enforcement, do they not? If they do, embedded states may implement regulations by merely informing citizens about regulations. The next section explains why this assumption is mistaken.

The indispensability of regulatory enforcement in embedded states

Studies of compliance in Norwegian fisheries showed that fishing communities that believed in the legislator's authority condemned violation of only those regulations they believed law enforcement cared about (Gezelius 2003, 2007). Consequently, if fishermen knew the inspectorate did not enforce a given regulation, fishermen would regard violating that regulation as morally acceptable. In contrast, if they knew the inspectorate enforced a regulation, they would typically regard law-abidingness as morally obligatory (see also Fairman and Yapp 2005).

Moral compliance motivation's dependence on formal enforcement was conspicuous in cases where formal enforcement, because of inspectors' inability to take fishermen by surprise, had no deterrent effect. In those cases, formal enforcement promoted compliance only by triggering informal social control among fishermen. Formal enforcement triggered such social control by signaling to civil society that regulations were bona fide. Thereby, formal enforcement made the legislator's authority relevant to the fishermen (Gezelius 2003, 2007).

It may not be sufficient, therefore, even in embedded states, to produce regulations and simply expect law-abiding citizens to comply. The legislator's authority is effective only when the legislator signals that it means what it says. Enforcement is the embedded state's way of signaling this (see also Lynch 1997).

Law enforcement is thus more than persuasion and deterrence. Enforcement is symbolic action that signals the sincerity of law. In embedded states, citizens are likely to perceive that signal as a moral message (Gezelius 2007).¹² As the fisheries studies showed, such signals can be effective without massive investments in surveillance, and without any perceived risk of being hit by a “big stick” at the top of the pyramid. Compliance in embedded states may drop dramatically, however, once law enforcement drops from little to nothing (Gezelius 2003).

Enforcement’s symbolic effects regulate only citizens who are receptive to social control by groups who believe in the legislator’s authority. Relying only on symbolic enforcement entails giving up control of actors who are unreceptive to the social control of such groups. States, even embedded ones, may need to motivate compliance by assuring law-abiding communities that free riders are dealt with (e.g. Gunningham and Kagan 2005; Murphy, Sargeant, and Cherney 2015; Ostrom 1990). Consequently, state embeddedness does not make deterrence irrelevant (e.g. Scholz 1997). Noteworthy also is that purely symbolic enforcement does not include efforts to guide regulatees and to justify regulations, efforts that appeal to citizens’ moral support for the law’s content (e.g. Gray and Scholz 1993; May 2004).

CONCLUSION: A HIPPOCRATIC PRINCIPLE OF REGULATORY IMPLEMENTATION

I began this article by asking how and when TFT enforcement may generate intended reactions in communities of regulatees. I subsequently derived from ideal types and ethnographic studies hypotheses regarding institutional preconditions for TFT’s success. The article’s focus on states is, in some respects, natural because of states’ predominance in regulation and civic identity construction. However, actors other than states regulate, too. Regulatees’ (lack of) influence on, and (lack of) identification with, non-state regulators may affect TFT’s effectiveness similarly as they do in states. For example, law-morality correspondence and embeddedness may affect the functionality of TFT in communities that serve as functional equivalents to states (see Börzel and Risse 2016). The same may be true for TFT performed by external governments (e.g. Börzel and Risse 2010; Krasner and Risse 2014) or by supranational authorities (e.g. Smismans 2016) whenever these try to govern citizens directly.¹³ We

may thus generalize several of this article's hypotheses to include any regulator who interacts with communities of citizens:

1. When TFT is applied to enforcement pyramids, its probability of success increases with increasing law–morality correspondence.
2. Law–morality correspondence is more probable the more embedded a regulator is.
3. TFT's probability of success, therefore, increases with increasing regulator embeddedness.
4. When large groups of affected citizens oppose regulation, enforcement's probability of success increases when inspectorates abandon TFT in favor of a consistently discursive enforcement style.
5. When regulators have authority in communities of regulatees, TFT's probability of success, including the applicability of forgiving responses, increases with increasing correspondence between legal and moral guilt criteria.
6. Law–morality correspondence and, consequently, TFT's probability of success increases with inspectors' sociological competence.

These hypotheses imply that the lower the degree of law–morality correspondence, and the lower the inspectorates' competence, the more likely it becomes that TFT-reliant inspectorates will fuel civil resistance and undermine future persuasion. TFT may thus be either very constructive or very subversive depending on the degree of embeddedness and the degree of competence and caution with which TFT is applied.

The hypotheses thus amount to a Hippocratic principle of “first do no harm” to citizens' moral compliance motivations in regulatory implementation. This Hippocratic principle of implementation prescribes that inspectorates should above all avoid morally illegitimate use of penalties.

To employ TFT enforcement productively, regulators must be able to adapt to the moralities of regulated communities in ways that promote long-term receptiveness to persuasion. Regulators should thus pursue embeddedness, but also treat inspection as a high-competence profession, supported by training that builds, among other things,

sociological competence. Like all powerful tools, TFT enforcement may work best when handled with care.

Finally, the article modifies, for embedded regulators, this call for caution in regulatory implementation: authority is effective only when the regulator, through visible responses, symbolizes the genuineness of law. For embedded regulators, therefore, doing little may be far more effective than doing nothing.

NOTES

¹ I thus apply a sociological, empiricist notion of morality. “Morality” refers to what actual groups of citizens collectively believe to be right or wrong.

² The extent of this independence is debated (Gerstein 1970). Hart’s original definition of law suits this article because this definition clearly distinguishes positive law from citizens’ reasons for compliance.

³ This notion of “embeddedness” should thus not be confused with the one used in economic sociology and that refers to non-economic institutions’ control of economic life (see Polanyi (1944 [2001])).

⁴ Semi-embeddedness thus emerges as a necessary, although not sufficient, step toward full embeddedness. The ideal type of the unembedded state contains nothing that implies development to other levels.

⁵ Comparative data show that regulating subsistence activities may be difficult even in cases that resemble the embedded state, but the relative intensity of resistance in Newfoundland communities is conspicuous and can be explained by their weak identification with the state (Gezelius 2003).

⁶ Apparently, some inspectors in Forsyth, Gramling, and Wooddell’s (1998) study operated close to what Kagan (1978, 95–96) calls “unauthorized discretion.” Persuasion and guidance could thus have been a more advisable response than ignoring subsistence poaching would have been.

⁷ Balliet and Van Lange’s (2013) cross-national study showed that the ability of punishment to create cooperation is contingent on cultures of trust. Their study addressed punishment by peers, not punishment by authorities. Consequently, their finding does not provide direct support of this article’s claims, but may reflect social mechanisms parallel to those shaping relations between rulers and ruled.

⁸ This mechanism may explain why perceptions of procedural justice appear to be most effective among those who identify strongly with the authority (see Huo et al. 1996). It may also explain why a separatist identity appears to make criminal liability less of a moral question, thus weakening perceived procedural justice’s effect on citizens’ cooperativeness toward the police (see Murphy, Sargeant, and Cherney 2015).

⁹ Etienne (2013) has argued that inspector–regulatee relationships may be ambiguous because these can be simultaneously interpreted as, for example, legality relationships (focused on legal rules) or judgement

relationships (focused on moral values). The legislator's authority may be especially prone to produce such ambiguity because authority automatically turns questions of legality into questions of morality.

¹⁰ This example is from an ongoing study funded by the Research Council of Norway, and performed by researchers at the Norwegian Institute of Bioeconomy Research, the University of Southeast Norway, Oslo Metropolitan University, and Centre for Rural Research.

¹¹ An example from Norway may illustrate such erosion in embedded states. The civil web forum "No trust in the food safety authority" (my translation) criticizes the inspectorate for morally illegitimate use of force, among other things (<http://www.ikketillittilmattilsynet.com/> accessed April 8, 2016.). The forum describes, for example, the inspectorate's on-the-spot killing of an old farmer's herd, following allegations of persistent violation of animal welfare regulations. According to local media (*Agder* 2015; Klippenberg 2015; *Stavanger Aftenblad* 2015a,b), other farmers' outrage against the inspectorate's demeanor, resulted in a meeting between farmers and the inspectorate that only escalated the conflict, bringing it to a political level.

¹² When enforcement is symbolically framed as a purely utilitarian rather than a moral message, enforcement may reduce compliance motivation (Tenbrunsel and Messick 1999; see also Baldwin and Black 2008).

¹³ Regarding external regulators, we may note the risk of "illocutionary misfire" (Austin 1962 [1975], 14–16): People tend to reject any attempt to command, regardless of the attempted command's content, by someone who is not perceived to be in a social position to command (Gezelius 2009).

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