
Motivations for Obeying and Breaking the Law: A Preliminary Study Focused on Labor Law and the Role of Non-Instrumental Motivations

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The purpose of this paper is to provide for a systematic analysis of illegal behavior in the area of labor and employment law, by drawing on insights from other fields of social science. This paper begins by setting out the various notions of our motivations for obeying the law, and classifies these motivations into two categories: instrumental motivations and non-instrumental motivations. It also establishes that although there is a tendency to pay too much attention to instrumental motivations when discussing desirable legal systems and policies, non-instrumental motivations actually play significant roles in our decision-making and behavior. We then examine conditions under which people tend to engage in illegal behavior, taking into consideration the characteristics of the situations that labor and employment law covers. “Altruistic illegal behavior” is particularly common in the workplace, and it is important to address how to deter or control such behavior. This paper concludes by suggesting that in order to prevent the vicious circle of violations and clamp-downs, it is necessary to adopt legal systems and policies that appropriately harness our non-instrumental motivations, rather than attempting to rely on direct sanctions alone.

I. Introduction

The process of enacting and enforcing legal regulations generates new cases of behavior and situations that are judged to be “illegal.” While one of the tasks of this paper is to analyze why illegal labor practices persistently occur, it is difficult to say whether a lack of decrease in illegal labor practices should be regarded as a negative or a positive trend.

To put it in extreme terms, if no legal regulations were enacted or enforced, there would be no “illegal” labor. However, it is hardly beneficial to have “zero” illegal labor in such a sense. Moreover, the fact that illegal behavior and situations are coming to light is evidence that the system for cracking down on such practices is functioning to a considerable extent. In the field of criminal law, it is thought that a complete absence of illegal behavior indicates that a society is in fact fraught with problems.

In the case of labor and employment law (particularly the Labor Standards Act) the circumstances are somewhat different, and it is not sufficient to simply apply the same arguments as those used when considering criminal law. It is particularly important to note that while in the field of criminal law cases of illegal behavior (crimes) are seen as anomalies, there are those who regard violations of labor and employment law as practically the norm.

This is well demonstrated by evidence such as the results of the on-site investigation

conducted by the Japanese Ministry of Health, Labour and Welfare (MHLW)¹—which revealed that a large majority of companies are violating the law—and the efforts to provide guidance and supervision that were subsequently conducted,² as well as the dismissive statements that some management executives have made regarding the Labor Standards Act.

There are some specific figures that reveal the fact that illegal behavior is deeply ingrained in workplaces. For instance, a common method used to estimate the number of hours of unpaid labor is to compare the working hours recorded in the Japanese Ministry of Internal Affairs and Communications' Labour Force Survey with the working hours recorded in the MHLW's Monthly Labour Survey. As the Labour Force Survey collects responses from workers, while the Monthly Labour Survey collects responses from companies and business establishments (reports of the overtime hours for which overtime pay was paid), the gap between the two is used as a rough indicator of the number of hours of unpaid labor.³

It has been noted that the working hours recorded in the Labour Force Survey and those recorded in the Monthly Labour Survey differ by around 300–350 hours per year for several decades (Morioka 2013).⁴ The MHLW responded in 2001 by formulating a set of standards that employers should follow in order to properly ascertain working hours, and followed this in 2003 by publishing a set of guidelines regarding measures that should be taken toward eliminating unpaid overtime, but these steps failed to have a notable effect. People's attitudes toward working unpaid overtime—commonly known as *sabisu zangyo* (literally “service overtime”; “service” referring to something provided for free)—do not change so easily, and employers also devise various tricks for slipping through the nets of the law or evading the eyes of the authorities. Examples of this include the abuse of the “deemed working hours systems” (*minashi rodojikansei*; systems by which workers are deemed to have worked a predetermined set of working hours regardless of the hours they actually work, such as the “discretionary work system” [*sairyo rodosei*]) or the abuse of the system of assigning workers to positions of supervision or management (positions to which Labor Standards Act provisions regarding working hours, etc. are not applied).

Here it is important to note that while the above examples of abuse of labor systems can be judged to be effectively illegal in the sense that they entail unpaid labor, some of them are not classed as illegal behavior according to formal criteria. In other words, such abuses of labor are often cases of “law evasion”—cases in which people take advantage of

¹ See press release materials available on the MHLW website. <http://www.mhlw.go.jp/stf/houdou/0000032425.html> (Japanese only).

² See MHLW website materials demonstrating the actual state of overtime work in 2015. <http://www.mhlw.go.jp/stf/houdou/0000115620.html> (Japanese only).

³ This method is not without its problems, because the Labour Force Survey and the Monthly Labour Survey not only survey different subjects, but also differ in aspects such as their sampling methods and the definitions of the items surveyed. Ogura and Sakaguchi (2004) provide details on the features of and differences between the two surveys.

⁴ This is noted in an article from the Tokyo Shimbun Newspaper, June 18, 2014.

the ambiguities and deficiencies of the systems to secure the same results as would be achieved through illegal behavior.

It is such law evasion—rather than illegal behavior that openly violates the law—that is forcing workers into extremely difficult circumstances. The majority of problematic behavior by employers—such as nonpayment of wages, “fraudulent subcontracting” (*giso ukeoi*; the practice of employing temporary agency workers, etc. under subcontracting or outsourcing agreements to avoid having to apply the legal regulations in place to protect such workers), and the use of “banishment rooms” (*oidashibeya*; departments where employees are given menial, mind-numbing tasks or unachievable assignments in an attempt to force them to leave the company voluntarily)—is being pursued within the gray area between what is legal and what is not. Therefore if action is only taken to tackle behavior that crosses the line into illegality, it will not be possible to improve the situations faced by workers, and the authorities may face an endless process of catching one perpetrator only for another to quickly appear elsewhere.

The aim of this paper is to draw on research from other fields of social science to provide insights into the reasons why law evasion and illegal behavior occur. The following section provides an overview of the kinds of arguments that are being set out regarding compliance with the law, and outlines people’s motivations for obeying the law. Section III then describes the conditions in which labor and employment-related laws and regulations tend to be broken, and Section IV sets out a few points that may be of help in guiding future approaches.

II. Overview of Discussions regarding Compliance with the Law

1. Reexamining the “Prevalence of Violations”

In the previous section I stated that “illegal behavior is deeply ingrained in workplaces,” but this is not to suggest that illegal behavior is *consistently* widespread. Naturally, while there are people who break the law, there are those who obey it.

The MHLW investigation touched on in the previous section was carried out as part of a month-long inspection campaign in September 2013 aimed principally at addressing potential cases of employees being subjected to overwork. The investigation found violations of the Labor Standards Act at 4,189 of the 5,111 workplaces investigated—namely, 82.0% of the workplaces investigated. As it was an on-site investigation specifically targeted at workplaces suspected of being “black companies” (*burakku kigyō*),⁵ this is thought to be an exaggerated estimate of the percentage of violating companies. That being said, it is a highly beneficial indicator of how much illegal labor that could be detected upon inspection

⁵ The term “black companies” refers to companies that “use up” workers, employing workers (particularly young workers) on low wages and forcing them to work long hours, etc. In its investigation, the MHLW describes such companies as “companies suspected of using young people as if they were expendable commodities.”

is being left ungoverned.

The main types of violations brought to light by the investigation were “illegal overtime work” (43.8%), “unpaid overtime” (23.9%), “failure to properly ascertain working hours” (23.6%) and “insufficient measures to prevent health hazards caused by overwork” (21.9%).

In contrast, the content of the free legal consultations provided by the MHLW in the same month gives a considerably different impression to the investigation results. The most common topic of consultation was “unpaid overtime” (53.6%), followed by “long working hours/overwork” (39.8%), and “power harassment (a senior employee taking advantage of their authority in order to harass subordinates)” (15.6%). There were also consultations on topics such as “dismissal/termination of employment contracts” and “bullying in the workplace.”

The following two points can be surmised from the investigation results alone. Firstly, there are a considerable number of cases of illegal labor that could be detected upon inspection but are being left unaddressed. The occurrence of illegal labor is partially due to the low probability of it being exposed, and it would surely be possible to decrease the amount of illegal labor to a certain extent by increasing the number of labor standards inspectors and thereby allowing for greater monitoring and more crackdowns.⁶

Secondly, it seems impossible to decrease the amount of illegal labor to an ideal level, even with an increase in the number of labor standards inspectors. As illegal labor includes both types that are likely to be brought to light and those that are not, the extent to which labor standards inspectors are able to defend workers against illegal labor practices is extremely narrowly limited from a legal point of view (Konno 2013). For instance, the various forms of harassment are types of illegal labor that are unlikely to surface, and there is very little that a labor standards inspector is able to do even in the event that a case of harassment is revealed. To begin with, nothing can be done without sufficient evidence.

In addition to the fact that illegal labor is unlikely to be exposed, labor and employment law has very little capacity to coerce compliance in comparison with criminal law. Given the low likelihood of illegal labor being exposed and the weakness of the potential penalties, it would hardly be surprising if illegal labor practices were far more prevalent.

The results of the MHLW investigation explained above can also be interpreted as indicating that “even among companies that are strongly suspected of being ‘black companies,’ around 20% of companies are following the law precisely.” Even the majority of the employers that were violating the law are not completely ignoring it. Naturally there are cases of malicious intent, but nearly all violations were cases such as partially falsifying figures, or failing to conduct the measures that are legally required due to negligence or lack

⁶ The number of labor standards inspectors in Japan was 3,181 as of FY 2012. This amounted to one labor standards inspector for every 16,400 workers, which is a large number of workers per inspector even by international standards; Japan is far from the International Labour Organization’s benchmark of one inspector per 10,000 workers.

of understanding.

The fact that illegal labor is prevalent does not necessarily mean that “the majority of people will break the law whenever they have the chance.” Employers surely have an enormous number of opportunities to violate the law. They often come across opportunities in which it is beneficial to break the law, and in which there is a sufficiently low probability of the violation being detected. However, only a low percentage of employers seek to use every opportunity to violate the law. Many employers try to obey the Labor Standards Act in one way or another. For this very reason, employers devise and adopt methods that evade the law but remain just within the realm of legality.

It is therefore necessary to start by considering the question of why people try to obey the law, and then draw on these insights to consider under what kinds of conditions people tend to engage in illegal behavior. This approach will surely be a more effective means of envisaging possible solutions than seeking to develop strategies that hedge employers and workers in with laws.

2. Instrumental Motivations: Compliance in Order to Avoid Sanctions

We do in fact have surprisingly little understanding of the kinds of cases in which people obey the law and the kinds of cases in which they break it. For a number of years there has been significant activity in both academic and practical settings to pursue the question of what motivations are behind people’s decisions to obey or violate the law. However, these discussions have not produced a common consensus, and there is a marked divergence between academic views and actual policies.

The simplest and most firmly-rooted theory regarding why people obey the law suggests that people do so because of its capacity to coerce. In this case, “the capacity to coerce” refers to the use of penalties and other such forceful measures by state organs or government bodies to ensure that the law is implemented. This includes imposing criminal penalties (such as imprisonment or pecuniary penalties), seeking compensation for damage, and utilizing government penalties and warnings of penalties for non-execution of duty under administrative law.

In other words, this is the concept that law is a tool for invoking sanctions and that people obey the law in order to avoid being subject to sanctions. This concept is underlined by the “rational choice model,” which suggests that people choose to engage in illegal behavior when the benefits of illegal behavior exceed the costs (the severity of penalties multiplied by the likelihood of being exposed).

The law does not only influence people’s behavior through direct sanctions. “Indirect sanctions” invoked by society also play an important role. There are at least two ways of how the power of society can help the law to influence people’s behavior. Firstly, if we engage in behavior that violates the law, we may be looked upon accusingly by others, and our social recognition or reputation may be adversely affected. If a drop in an employer’s recognition or reputation will have an impact on their interests, they will surely refrain from

pursuing illegal behavior.

Secondly, as changes in people's awareness of rights have led them to strongly assert their own rights, there is the possibility that employers will be forced to take some kind of measures, even when they have no legal obligation to do so.

Within the field of labor and employment law, indirect sanctions are playing a particularly significant role in the area of harassment. While it is difficult to regulate sexual harassment and power harassment with direct sanctions alone, people's awareness of and behavior in relation to harassment are changing steadily. It is the effect of pressure "from below" and concerns for one's recognition or reputation—rather than the result of regulation "from above"—that have ensured that employers refrain from engaging in harassing behavior and encouraged them to voluntarily pursue means of cracking down on such behavior.⁷

There are also cases in which indirect sanctions are incorporated in laws. A typical example of this is the practice of publicly announcing the names of perpetrating companies, a method that has been used in various settings in labor and employment law. For instance, even the Act on Employment Promotion for Persons with Physical Disabilities prior to 1976 (up until 1976 employers were only obliged to make a sincere effort to fulfil the legally prescribed percentage of persons with physical disabilities among employees) stipulated that the names of companies that failed to increase the percentage of persons with disabilities in their workforce would be released to the public.

In this paper, we will refer to efforts to obey the law in order to avoid direct or indirect sanctions as legal compliance that is based on "instrumental motivations" (Tyler 1990).

3. Non-Instrumental Motivations: Compliance Due to the Internalization of Rules

However, if laws are only able to influence people's behavior through instrumental motivations, they ultimately have no more than a superficial impact on human behavior. It is difficult to imagine that a law that is obeyed exclusively due to instrumental motivations could continue to have an effect on society. This brings us to the possibility that somewhere there are other motivations that lead people to obey the law, other than the instrumental motivations touched on above.

Over the years this question has been addressed by researchers from various academic fields. Approaches for investigating non-instrumental motivations can be broadly divided into two types: approaches that focus on legal legitimacy, and approaches that emphasize the links with personal morals and values.⁸

⁷ The interview survey results in Japan Institute for Labour Policy and Training (2012) show that the most common response from employers regarding why they had introduced measures to combat harassment was: "because we have been approached by employees or union members seeking advice regarding harassment, or have seen an increase in such cases of employees or union members seeking advice." Responses also included "because we value corporate image" and "because it allows the company to gain trust from society."

⁸ There are also cases in which people engage in behavior that conforms to the law simply due to habit or imitation (in reality such cases are perhaps the most common) but such cases will not be ad-

The term “legitimacy” has various meanings, but it is often used to refer to “properties which generate in people the feeling that they should voluntarily obey rules or comply with authority.” There is a long history of research on legitimacy, and Max Weber’s classifications of types of legitimate rule are well known in the field of sociology. Weber lists several reasons why a certain system comes to be considered to be legitimate, one of which is the “belief in the legality of positive law” (Weber 1922). It is also said that legitimacy applies “in cases where a consensus has been reached between the parties involved” and “in cases of leadership by a person recognized as legitimate.”

Similarly, in cases where people refer to “the legitimacy of the law,” they cite the following factors as the source of such legitimacy: (i) that procedural fairness has been guaranteed, and (ii) that the organization that enacts or declares the law (such as a national assembly or court) is recognized to be in a suitable position to establish or apply standards (Levi, Sacks, and Tyler 2009). According to a series of studies by psychologist Tom Tyler, people are more likely to obey a law if it fulfills both (i) and (ii) (Tyler 1990, 2011; Tyler and Huo 2002).

For example, people tend to comply with a law if the parties concerned have been guaranteed participation in the formulation process and it has been prescribed according to an appropriate procedure.⁹ Moreover, people who trust organizations that enforce the law (the police department and other government bodies), or courts and judges, tend to comply with the law. There are cases in which it is more effective—in terms of both the results and the costs involved—to encourage voluntary compliance using measures that increase legitimacy, rather than relying on sanctions alone.

On the other hand, people are more likely to comply with the law when its content is in line with their personal morals and values (Robinson and Darley 1995), and vice versa, laws that diverge from the morals and values of the general public tend to be broken.¹⁰ Laws unavoidably contain loopholes, but it is whether they are in line with people’s morals and values that influences whether people seek to engage in illegal behavior by taking advantage of such cracks in the law.

Of course, it can be said that in modern society many of the legal provisions are technical, and there is a decreasing proportion of areas in which the law is closely connected to morals. This is indeed the case, but it is also necessary to take account of the fact that there are cases in which even legal provisions that initially have almost no hint of influence from moral concepts gradually take on the hue of moral issues over the course of time (for instance, provisions such as traffic rules and rules regarding the management of personal

dressed in this paper.

⁹ Tyran and Feld (2006) use the public goods game to confirm that where a law has the support of the members of society, it will have an effect even if it entails only light sanctions.

¹⁰ There are also cases in which the law influences people’s values, subsequently causing their awareness to correspond with the content of the law, but such cases will not be addressed in this paper. See Bilz and Nadler (2014) for a review regarding this point.

Table 1. Types of Motivation for Complying with the Law

Instrumental motivations	Direct sanctions	Formal influence
	Indirect sanctions <ul style="list-style-type: none"> • Use of the law by individuals • Recognition or reputation 	
Non-instrumental motivations	Legitimacy <ul style="list-style-type: none"> • Procedural fairness • Trust in institutions that establish/enforce the law 	Informal influence
	Personal morals/values	

Note: In practice, it is not possible to draw a clear distinction between instrumental and non-instrumental motivations. For example, as the more behavior conflicts with people’s values, the stronger indirect sanctions become, there are cases in which even the person engaging in the behavior is unable to distinguish whether the motivations that influenced them were instrumental or non-instrumental. The categories in Table 1 should be seen as a simplified model that does not encompass such points.

information have progressively come to be addressed as moral issues). Furthermore, considering that there is a need to ensure that people understand rules intuitively, it is vital for rules to correspond with morals and values in some form or other.

The two factors addressed above—namely, “legitimacy” and “morals and values”—can both be grouped under the concept of the “internalization of rules,” and do in fact overlap in some aspects. At the same time, there are many cases in which the two clash, an example of this being situations in which there are meticulous provisions that unnecessarily restrict behavior.

4. Section Summary

It is unquestionable that the law is supported by direct sanctions. There is surely also no objection to the suggestion that pressure from various agents in society allows the content of laws to be put into practice.

However, there is more to the effects of the law than that. In addition to the aforementioned instrumental motivations, non-instrumental motivations play a substantial role as a factor behind people’s behavior.

At this point let us summarize the factors that encourage compliance with the law (see Table 1). The column furthest right shows the types of influence that arise from the respective motivations. Among the types of influence exerted by the law, importance tends to be attached to “formal influence.” Here “formal influence” refers to influence through the methods of control that are anticipated from a legal point of view, and includes both direct sanctions and a portion of the indirect sanctions.

On the other hand, compliance based on non-instrumental motivations falls under “informal influence.” “Informal influence” is influence that is generated through interaction between people in society, and overlaps with the scope of so-called “soft law.”

III. Conditions under Which Laws Tend to Be Broken

1. Violations in the Field of Labor and Employment Law

The arguments raised in Section II are mainly concerned with settings in which the national government, the police, and other such public bodies regulate people’s behavior by applying the law. In other words, they address regulation on the basis of public law, cases in which there is a clear relationship between those imposing and implementing the regulations (the regulators) and those who are subject to the regulations (the regulated entities).

In contrast, regulation on the basis of private law, including labor and employment law, is aimed at contracts between individuals and behavior conducted on the basis of said contracts—collaboration between multiple people. As such collaboration is often in the interests of both parties concerned, illegal behavior is particularly unlikely to be detected. Naturally there are also cases in which small rifts appear in the tacit understanding between the parties concerned, thereby allowing problems to surface, but in the whole scheme of things, the cases that are detected are just the tip of the iceberg.

Labor and employment law can be divided into (i) rules that regulate the (unilateral) behavior of employers and (ii) rules that regulate the bidirectional behavior between employers and workers (collaboration or collusion). In the case of type (i), the arguments regarding compliance set out in Section II seem to be applicable just as they are. However, in the case of type (ii), special consideration is required, because there is a tendency for illegal behavior to seep into the depths of society and organizations undetected.

2. Investigating Instrumental Motivations

Let us say that the regulated entities are engaging in behavior on the basis of instrumental motivations alone. In this case, their behavior is determined by the relative amount of benefit that can be gained from complying with the law in comparison with the benefit that can be gained from violating it.

On the one hand, as is clear from the rational choice model, if the sanctions that the regulated entity expects to face are small in scale, there are all the more situations in which violating the law will be to their benefit. In the event that it is difficult to monitor the regulated entities, or in the event that only light penalties have been stipulated, the anticipated scale of the direct sanctions decreases.

The anticipated scale of *indirect* sanctions decreases in the event that violating the law will not influence the company’s social recognition or reputation, and in the event that the person who suffered damage due to the violation is unlikely to complain.

On the other hand, the *costs* of complying with the law are also important. The more

elaborate the regulations, the higher the costs of complying with them. These costs include not only the costs generated in the process of producing goods and services (personnel expenditure, etc.), but also the “transaction costs” that arise in the negotiations between employers and workers. In the context of labor and employment law, the obligations to “clearly indicate working conditions” (Labor Standards Act, Article 15) and “draw up rules of employment” (Article 89) are examples of provisions that may increase the transaction costs entailed in entering into a labor contract.¹¹ Moreover, the transaction costs of each contract generally increase as forms of employment become more diverse, and the content of contracts and necessary procedures become more complex in turn.

Personnel expenditure is a point that surely does not need to be noted again. Executive managers incessantly bemoan the fact that following the law to the letter means greater personnel expenditure. There are therefore consultants and certified legal specialists in labor and social security that offer various kinds of advice to employers in the name of “optimizing personnel expenditure,” but such advice often includes suggestions that may entail infringement of the law.

There are also structural factors behind increases in the costs of complying with the law. A factor that is particularly frequently highlighted is the relationship with the intensification of market competition. Executive managers repeatedly insist that “in intensely competitive industries, companies that comply with the law will fall by the wayside,” and there certainly are companies that are willing to violate the law in order to decrease expenditure.

Industries in which companies that are complying with the law face difficulty operating as businesses are facing a form of “collective action problem” (Olson 1965). Specifically, if all companies within an industry were to shoulder the costs and comply with the law, it would surely be possible for the industry as a whole to pursue competition in the most preferable way. On the other hand, from the point of view of each individual company, engaging in law evasion or illegal behavior brings greater benefits and allows the company to outmaneuver competitors. At the same time, devising means of law evasion and illegal behavior and conceiving measures to deceive the eyes of the supervising authorities is merely an excessive cost that makes very little contribution to increasing social welfare. In order to avoid such waste, it is necessary to regulate the industry as a whole with legal regulations and other such means.

3. Investigating Non-Instrumental Motivations

It is possible to break laws that lack legitimacy without feeling much psychological resistance. Whether the psychological cost of violating the law decreases has a significant influence on to what extent illegal behavior will proliferate within society. The more frequently people witness the illegal behavior of others around them, the more their own psy-

¹¹ This is not to suggest that such provisions are not advisable because they increase the transaction costs. As clarifying labor conditions has the effect of mitigating the incompleteness of contracts, it may have benefits that exceed the transaction costs entailed in forming contracts.

chological costs of violating the law will also decrease. There is a possibility that cases of minor illegal behavior may influence each other and escalate (Nadler 2005).

In the case of labor-related laws and regulations, it is relatively easy to psychologically justify violations of the law. This can be attributed to the following reasons: (i) there are many technical provisions, (ii) there are provisions that reflect the benefits of only a portion of people, and lack a clear legislative purpose, and (iii) “altruistic behavior” tends to occur. As it is easy to see that (i) and (ii) are factors that lead to a decrease in the legitimacy of the law, let us look at factor (iii), including some specific examples.

Behavioral economist Dan Ariely and colleagues have been investigating the kinds of situations in which people engage in deception, and have conducted a number of experiments on this topic (Ariely 2012). Ariely and fellow researchers Francesca Gino and Shahal Ayal have carried out an experiment to ascertain in what way cheating occurs in an environment in which people engage in collaboration (the workplace is a typical example of such an environment) (Gino, Ayal, and Ariely 2013). In the experiment, subjects are instructed to solve certain problems, and are given a certain amount of money for each problem they solve correctly. When doing so, those conducting the experiment observe whether the number of correct answers differs depending on whether they check the answers, or whether the experiment subjects are made to assess the number of correct answers themselves. The experiment is implemented under various other conditions—for instance, there are cases in which subjects solve problems alone and cases where they solve them in groups—and comparisons are drawn between the results.

In these experiments, Ariely, Gino, and Ayal found that the average number of correct answers reported by the subjects themselves increases under conditions in which the subjects recognize that other persons in the group will benefit from their cheating. In other words, in cases in which one’s own cheating benefits others, *altruistic* cheating is likely to occur, as there are legitimate grounds for one’s behavior. Surprisingly, cases of cheating are more frequent under conditions in which only other people will enjoy the benefits, than under conditions in which both the person cheating and others will enjoy the benefits. This can be said to be a hidden aspect of people’s altruism.

A considerable number of people will willingly get involved in illegal behavior if it will benefit their company or someone who belongs to their company. Instrumental and non-instrumental motivations link with each other particularly in cases in which a company is struggling under the pressure of competition. Generally if the members of a group are closely connected and the group is highly cohesive, altruistic cheating tends to arise, and there is also sometimes a greater tendency for it to cause illegal behavior to occur (Janis 1982; Waytz and Epley 2012).

4. Environments That Promote Altruistic Illegal Behavior

Japan’s working and social environments contain elements that make them more likely to generate altruistic illegal behavior. As the Japanese employment system is struc-

tured around “‘membership-type’ employment contracts under which work duties are not specified” (Hamaguchi 2009, 2011), companies are like communities made up of regular employees (*seishain*). Companies seek to educate their employees—expecting them not only to engage in the vocational training required for their work but also to study diligently and cultivate their characters on a day-to-day basis—and ensure that they acclimatize themselves to the standards within the company.¹² In such environments, employers tend to choose to engage in illegal behavior or law evasion, and workers tend to accept such behavior as well.

A few years ago, it was reported that in a case in which an employee exposed their company’s violations of the Labor Standards Act, the president of the company told the employee that “there is no way the company would be able to operate if it were to obey the Labor Standards Act.”¹³ The fact that a company president would make such a statement to an employee, and that such a statement would exert pressure on an employee, is proof that both employers and workers see their company as an “indispensable community.”¹⁴

It is not only regular employees who see their company in this way. There are cases in which even non-regular workers—who are not permitted “membership” of the company—approach their work with the same frame of mind. Non-regular workers are said to have less loyalty to their company than regular workers, and there are empirical analyses by researchers outside of Japan that indicate that an increase in the number of non-regular workers diminishes the subjective attachment that regular workers feel to their companies (e.g., Pedulla 2013). However, the results of these empirical analyses do not seem to exactly apply in the case of Japanese workers. In Japan, it is not uncommon that even workers who in theory stand to gain no benefit at all from demonstrating their loyalty voluntarily work in a similar way to regular employees.¹⁵

There is a significant fear among Japanese workers of being dismissed from their company of employment. Recent data from the World Values Survey (Wave 6: 2010–2014) shows that in fact as much as 83.4% of full-time workers in Japan are either “very much” or “a great deal” worried about losing their jobs; in response to the question “To what degree are you worried about losing your job (or not finding a job)?” 51.7% of full-time workers responded that they are “very much” worried (incidentally, in the US, Germany, and the

¹² In Japan, people tend to be expected to accustom themselves to such environments from the stage of school education. Naito (2009) provides useful insights on this point.

¹³ Asahi Shimbun Newspaper, September 6, 2014.

¹⁴ We touched upon competitive pressure when addressing instrumental motivations, but it should be noted that as employment is based on ‘membership-type’ employment contracts, not only employers but also the workers corralled within the company are in a position in which they are squarely affected by the pressure of competition.

¹⁵ A sense of community, and the loyalty that it generates, often arises not only within the unit of a company as a whole but also within individual workplaces. It is perhaps due to such circumstances that there are cases in which workers in part-time or side jobs (*arubaito*) have the same mental approach to work as regular employees.

Netherlands, 20.9%, 13.5%, and 5.9% of full-time workers selected this response respectively), and 31.7% of full-time workers responded that they are “a great deal” worried about losing their job. These percentages are even higher in the case of part-time workers.¹⁶

It is not possible to say which comes first: loyalty to one’s company, or fear of dismissal. However, regardless of the fundamental cause, both regular workers and non-regular workers in Japan are going about their work with a strong sense of responsibility, against a background of pressure from both within and beyond the workplace. Amid such intense pressure, the feeling of tension in the workplace mounts, bringing about a labor environment in which people are forced to give consideration to others. Psychiatrist Satoshi Kato refers to such a tendency for the workplace to be governed by standards aimed at perfectionism and consideration for others as “the tendency for workplaces to cause the development of melancholic personality types” (Kato 2013).

Such excessive and unbalanced consideration for other people provides a hotbed for altruistic illegal behavior. There are generally various groups of “other people” who need to be considered, and the interests of the workplace or company are not necessarily always compatible with the interests of society as a whole. Even if a law contributes to the benefits of society as a whole, a person can easily justify violating that law on the basis of the interests of the people around them.

IV. Some Implications for Legal Systems and Policies

The previous sections have only discussed the factors that generate or encourage illegal behavior in general terms, without addressing each type of illegal behavior individually. As it is probably best to avoid hastily forming policy recommendations on the basis of such insights alone, I will simply set out some general guidelines that can be drawn from the arguments raised so far.

1. The Limitations of Direct Sanctions

There is no question that the coercion and threat that can be applied through direct sanctions are important means of regulating the behavior of entities pursuing benefits. However, conducting regulation solely through the use of direct sanctions will not be as efficacious as may be expected. This is due to the following three reasons.

Firstly, contracts and laws inevitably leave ambiguities and incompleteness. In other words, it is impossible to prescribe in advance an explicit and flawless set of provisions on working and contract arrangements, such as the kind of work the worker should carry out under what conditions, the amount of remuneration the employer should provide to the worker, or the measures that should be taken if the contract is violated. Labor contracts in

¹⁶ In the case of part-time workers, 55.3% are “very much” worried about losing their job, and 30.4% are “a great deal” worried about losing their jobs (that is, 85.7% of part-time workers are “very much” or “a great deal” afraid of losing their jobs).

Japan have a particularly strong tendency to be like “blank slates,” and aspects such as work content, conditions, and evaluation methods are hardly specified at all (Hamaguchi 2009). Contracts prescribe rights and obligations in a vague manner, and laws are open to interpretation. The greater the scope of this gray zone, the more difficult it becomes to use direct sanctions.

Secondly, there are vast costs involved in monitoring the behavior of the regulated entities. As far as can be seen from the low number of personnel affiliated with public bodies, it seems practically impossible to commit the labor standards inspectors and other personnel required to sufficiently control or deter illegal behavior. When it comes to invoking direct sanctions, it is necessary to provide evidence that can prove the facts, but it is questionable whether the regulators possess the capacity to be able to track down such evidence.

Thirdly, direct sanctions may generate adverse effects. Using a large amount of direct sanctions is the equivalent of sending out the message that people are pursuing behavior on the basis of instrumental motivations alone (Tyler 2011). Moreover, a legal system or policy that is constructed on the assumption that people engage in behavior on the basis of instrumental motivations alone may become a “self-fulfilling prophecy” (Stout 2011). Rules that rely too heavily on sanctions diminish non-instrumental motivations and tend to be broken due to instrumental motivations.

Using coercive laws to restrict people’s behavior may be an appealing method at first glance. However, it is necessary to take into account the fact that such restrictions alone may not solve everything, and may encourage a never-ending game of cat and mouse between the regulators and the regulated entities.

2. Use of Indirect Sanctions

As set out above, the “indirect sanctions” referred to in this paper can be broadly divided into two types: firstly, recognition or reputation, and secondly, the assertion or exercise of rights by individuals (workers).

The field of labor and employment law is said to entail a great amount of illegal behavior, but there are also a considerable number of employers that are afraid of attracting the reputation that they are engaging in illegal behavior or evasion of the law (Konno et al. 2014). For instance, if a company is thought to be a “black company,” this may lead to a decrease in the number of applicants for employment with that company, and may directly result in adverse effects on the image that consumers hold of that company.

Such information can now be easily gathered on the internet.¹⁷ Moreover, more data has now become available to allow people to form an idea of how enjoyable a company

¹⁷ As of 2016, there are webpages offering rankings and lists of “black companies,” and a large number of companies are listed on these sites, along with specific comments from people who have experienced working for them. Needless to say, many students refer to such sites when looking for employment. Moreover, negative information regarding companies is also rapidly disseminated through social networking sites.

may be to work for, such as information on employee retention rates, employee benefits and welfare, and corporate social responsibility initiatives. In some industries, there has been a dramatic increase in the opportunities for workplaces themselves to be exposed to appraisal from entities outside the company, and workplaces are ceasing to be closed environments.

There are still many industries in which these mechanisms based on concerns regarding recognition or reputations do not work, and illegal behavior and law evasion are seen as a matter of course. Particularly in industries in which the top-level managers and executives of the leading companies openly profess to violations of labor and employment law, indirect sanctions through recognition or reputation-based mechanisms will surely have little effect.

Even in such cases, workers have the option of persistently asserting and exercising their rights in order to appeal to their companies to change their approach. It is true that individual workers are merely weak entities, especially for large-scale companies. If it comes to a protracted struggle, companies have a greater likelihood of coming out on top, and have the capacity to solve issues financially when they do not. Furthermore, as employers face similar situations time and time again, they are better equipped to mobilize the various resources they need to contend with such challenges. As noted by legal sociologist Marc Galanter, legal systems tend to favor the “haves” (Galanter 1974).

However, such action by individual workers sometimes develops into a powerful surge enveloping various actors. With new informal connections gradually being formed in society at present, there are a surprisingly great number of situations in which indirect sanctions can have an effect.

3. Evoking Non-Instrumental Motivations

In the long term it will probably be most advisable for compliance to be conducted on the basis of non-instrumental motivations. Securing compliance on the basis of non-instrumental motivations will make it possible to significantly curb the costs of coercing compliance.

Psychologist Tom Tyler, whose studies we touched on in Section II, distinguishes between formal compliance and deference to the law, and emphasizes the necessity of policies that attach importance to the latter. “Compliance” refers to cases in which people perceive a law as a hurdle that restricts the scope within which they can choose the behavior they engage in, while “deference” is when people are prepared to voluntarily obey a law on the basis of its objectives. Such deference is brought about by non-instrumental motivations.

Laws related to labor and employment include both those that are similar to our intuitive ethics and morals, and those that are not necessarily close to those beliefs and ideas. Careful consideration needs to be given to the question of how to evoke non-instrumental motivations in the case of provisions that do not correspond with our sensibilities or notions, or provisions that are unrelated to our morals or values.¹⁸ However, at the least we can say

¹⁸ See Stout (2011), Killingsworth (2012), and Reynolds (2014) for recent sources from the field

that the situation can be remedied to a certain extent by ensuring that appropriate processes and procedures are used to enact laws and determine policies. Laws and other such social rules influence people not only depending on their content, but also depending on the way in which they are created.

Evoking non-instrumental motivations is essential for deterring behavior that evades the law in such a way that is not strictly classified as illegal but does run counter to the spirit of the law. However, it is rather difficult to evoke non-instrumental motivations using only policies “from above.”

4. Deterring or Controlling Altruistic Illegal Behavior

It is therefore better to prioritize efforts that seek to prevent the development of environments that tend to hinder the effects of non-instrumental motivations, rather than attempting to directly evoke non-instrumental motivations. In environments in which altruistic illegal behavior tends to occur, non-instrumental motivations may influence people in a different direction to that which the law anticipates to guide people in. Put differently, they may increase the frequency of cases in which people break the law with the aim of protecting the interests of the people around them and the workplace or company.

This leads to the creation of working environments in which engaging in illegal behavior (or law evasion that is very nearly illegal) is considered a matter of course, and illegal behavior is reproduced. If people become convinced that they cannot change an environment, the environment will in fact cease to change. At the same time, in Japan’s current labor society, individual workers are not being given the capacity they need to dispel such situations.

As mentioned above, many workers in Japan are highly afraid of losing their jobs, and find themselves in an exceedingly weak position in both their relationships with employers and their relationships with people and entities beyond the workplace (such as rival companies or customers). If we are going to seek to decrease the cases of illegal behavior or law evasion, we must consider questions such as how we can facilitate the development of desirable working environments by improving the position of workers who have no connection with the outside world and only their workplaces to rely on, and how we can find mutual interests between fellow workers who share the same awareness of issues despite being employed by different workplaces, and mutual interests between employers and workers, who may appear to have different concerns at first glance.¹⁹

There is one more point that should be noted before concluding this paper. The points discussed above are based on the assumption that the content of the law is such that it will bring greater benefits for society. However, there are many cases in which the law does not fit with the actual state of labor, and conversely leads to reduced benefits for society (in

of law on this point.

¹⁹ Mizumachi (2010) is a useful reference regarding the state of collective communication.

other words, cases in which the standards of the workplace stand more to reason than the law, and illegal behavior is in fact socially preferable). Laws that have been created with no regard for actual workplaces are unlikely to be obeyed on the basis of non-instrumental motivations. A decrease in such laws would allow for a significant reduction in “illegal behavior.”

V. Concluding Remarks

In this paper, we have divided the motivations upon which people obey the law into “instrumental” and “non-instrumental” motivations, and examined under what kinds of conditions laws tend to be broken. We have focused on non-instrumental motivations—a topic which is otherwise given little attention—and emphasized the importance of evoking and utilizing such motivations.

Where there are laws that attach too much importance to people’s instrumental motivations, and fail to take into account non-instrumental motivations, we must be prepared for a vicious circle of illegal behavior and clampdowns. This would not be an issue if public bodies were able to mobilize the human resources required to endure such a vicious circle, or if laws were sufficiently enforced through the actions of individuals, but neither of these conditions currently exist in Japan. Keeping non-instrumental motivations in consideration should open up greater options to make the workplace better through law.

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