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**CRIMINALISATION AND DECRIMINALISATION OF
ACTIVE BRIBERY OF PUBLIC OFFICIALS IN
HUNGARY– AN EMPIRICAL ANALYSIS OF
KNOWLEDGE AND OPINIONS ABOUT PENAL LAW**

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Hungary– an empirical analysis of knowledge and opinions about penal
law****

1. Introduction

The primary aim of our three-year long research project was to map the legal consciousness of everyday people by means of a questionnaire-based survey with special regard to new regulations of criminal law.

The questions were related to 12 topics ranged from the age-limit of criminal responsibility for crimes against property, through cruelty to animals, to active bribery of public officials.

In line with the objective of the research project, in the first round we selected topics the regulation of which changed in the last decade(s). Within this, we favoured topics connected to everyday life and appear frequently in the media. Thirdly, we also took into consideration whether or not previous empirical research projects focused on the given topic. Therefore, we would be able to measure not only the level of legal awareness of new regulations, but also changes in legal knowledge.

In proportion to the complexity of the regulation, we used two to four well-defined cases related to each topic. One of the cases targeted the new element of the regulation. We also used one or more ‘control cases’ which were related to an element of the regulation remained unchanged. Respondents had to answer a pair of questions for each case. In one respect, they had to decide whether or not the act described was criminalized. Furthermore, they were also able to give an answer whether or not they would have declared the act as a criminal offence, if they were the legislators.

The questionnaire was conducted between 12 and 17 October 2018 on a nationwide sample representative of the adult Hungarian population with the involvement of the Median Public Opinion and Market Research Institute. The data collection took place at the respondents’ apartment, using a structured questionnaire, within the framework of omnibus data collection. The interview was conducted under the supervision and assistance of the interviewer, using a self-completion procedure on a sample of 1,200 people representing the adult population (over 18 years of age) in the country.¹

**2. FOLLOWING THE WAKE OF LEGAL CONSCIOUSNESS: A SHORT
LITERATURE REVIEW**

Two traditions of scientific analysis of legal consciousness may be distinguished: 1) the American conception, derived from Roscoe Pound, whose focus is on written law, even when

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¹ The sampling method was a multi-stage stratified random procedure. During data processing the minor biases in the sample resulting from the random procedure were corrected by four-dimensional weighting based on gender, age, education, and settlement type based on census data. The weighted data file was also used for the present analysis.

researching “law in action”. So the aspect belongs to the lawyer; 2) the European conception which is related to Eugen Ehrlich, and ‘this primary focus of this conception is: What do people experience as 'law'?’.²

Most empirical research until the 1970s was based on the fact that public knowledge and opinion about (primarily written) law were measurable, so their most commonly used method was the large-sample survey. This has come to be called the KOL (knowledge and opinion about law) literature. In contrast, in recent decades, researchers have assumed that legal systems are not simply 'social facts acting upon society' (law and society). Instead, law is the label given to a certain aspect of society (law in society). They focused primarily on what ideas people have about law and legal institutions. The methodology of these studies, in contrast to the KOL research, is characterized by descriptive ethnography.³

Engel distinguishes two alternative meanings of legal consciousness: 1) aptitude, competence or awareness of the law; and 2) perceptions or images of law.⁴ According to Hertogh, most studies on legal alienation focus on two basic questions: “Are people aware of the law?”, “Do people identify with the law?”⁵

Research on legal consciousness is not only suitable for comparing different societies and groups, but also for comparing different perceptions and understandings on different branches of law.⁶ The need for a narrower focus has already arisen in research on legal awareness: „Different substantive areas of law are associated with different perceptions, understandings and behaviours and must, therefore, be distinguished in research on legal consciousness”⁷

In Hungary, in the 1960s and 1970s, legal awareness surveys were conducted by Kálmán Kulcsár and András Sajó. These projects were designed to measure legal awareness with quantitative tools, usually on a national representative sample. These questionnaires used, *inter alia*, questions focused on criminal law,⁸ including a question related to active bribery of public officials.⁹ These analysis of the results of these researches touched the question whether data mirrors positive legal knowledge or simply the standards of moral norms or the influence of social practice.¹⁰

These KOL researches “created a tradition that can be continued today. This tradition offers an excellent starting point for comparative studies in terms of the empirical data, methodology and theoretical conceptions”.¹¹ Fekete and Gajduscek repeated partly a survey of Kulcsár to assess the “changes in knowledge about law in Hungary in the past half century”.¹²

After the change of regime in 1989/1990 surveys on legal knowledge became less common.¹³ Survey questions related to criminal law occurred sporadically,¹⁴ however, knowledge and opinions about active bribery was not included in these questionnaires.

3. REGULATIONS OF BRIBERY OF PUBLIC OFFICIALS

In this title, we review incriminations of Hungarian criminal law directed to active bribery of public officials. We reviewed not only the current regulation (in force in 2018 when the

² Hertogh (2004) 475.

³ Hertogh (2004) 461.

⁴ Engel (1998) 109–144.

⁵ Hertogh (2010) 15.

⁶ Hertogh (2018) 60.

⁷ Engel (1998) 140.

⁸ Kulcsár (1967); Sajó/Székelyi/Major (1977); Sajó (1983).

⁹ Kulcsár (1967). See, in details Title 0.

¹⁰ Sajó (1983) 149.

¹¹ Fekete/Szilagyi (2017) 356.

¹² Fekete/Gajduscek (2015) 620–636.

¹³ Kelemen László (2010).

¹⁴ Kelemen László (2010).

questionnaire was conducted), but the previous one (in force in 2008) and the regulation of the 1960s (when the research project of Kulcsár was conducted).

Hungarian Criminal Code of 1961 (HCC of 1961) criminalized if an advantage was given to a public official which may influence his or her official activities to the detriment of public interest.¹⁵ According to legal literature, this regulation may include, subject to certain conditions, remuneration for the performance of the official duty'.¹⁶ It was noted that 'a benefit given as a token of gratitude might have a detrimental effect on the public interest if the custom of presenting an official with a gift becomes well known among the persons concerned'.¹⁷

The original regulation of the Hungarian Criminal Code of 1978 (HCC of 1978) also provided for the punishment of 'any person who gives or promises unlawful advantage to a public official which may affect the official in his official capacity to the detriment of the public interest'.¹⁸ According to the legal literature, this offence description penalized even those cases in which the person granted the advantage has no pending (or prospective) case before the public official.¹⁹

Act CXXI of 2001 amended the regulations of HCC of 1978, it made punishable if 'any person gives or promises unlawful advantage to a public official'. This offence of active bribery could have been committed, inter alia, 'if the giving [...] of an advantage occurs after the case was completed by the public official, even without prospect of the opening of another case'.²⁰

Under Hungarian Criminal Code of 2012, active bribery of public officials may be committed by anyone who "attempts to influence a public official by giving or promising an unlawful advantage". Pursuant to the official reasoning attached to the proposal of the Criminal Code, 'the legislator thus indicates that [...] the purpose of the advantage is to influence the public official'.²¹ Therefore, the new offence description of active bribery of public officials includes a new element of *mens rea*, namely a special intent.²²

The Supreme Court also noticed that the regulation changed in its two aspects. On the one hand, the legislature supplemented the offence description with a new subjective element (namely »the purpose of influencing«) with a reference to the future. On the other, HCC of 2012 attaches importance to "temporality" and, contrary to the previous law [HCC of 1978], excluded the subsequent remuneration of the public official for an official act completed in the past. This regulation limited the scope of incrimination to advantages aiming at any current, consequently, ongoing, as well as future, consequently, prospective cases.²³

According to one part of the legal literature, the new regulation of active bribery should be abolished, and it would be wise to restore the former regulation of HCC of 1978. Undue advantages given subsequently may be detrimental to the trust in impartial public administration, and therefore should be criminalized.²⁴

Respondents were asked to answer the questions regarding the following two cases:

1. Someone presents a gift worth HUF 30,000 to a public official *when* he or she applies for permission from the government to run a buffet.
2. Someone presents a gift worth HUF 30,000 to a public official *after* he or she has received the permission from the government to run a buffet.

¹⁵ Hungarian Criminal Code of 1961, § 153, paragraph 1.

¹⁶ Wiener (1972) 303.

¹⁷ Wiener (1972) 287, 303.

¹⁸ Hungarian Criminal Code of 1978, § 253, paragraph 1.

¹⁹ Bócz (1986) 738-739.

²⁰ Vida (2005) 415.

²¹ Official reasoning attached to § 293 of the HCC 2012.

²² Sinku (2012) 435.

²³ Supreme Court of Hungary, Bhar. III. 396/2017., EH 2018. 13., [72].

²⁴ Hollán (2014) 81. o.

The second case concerns the regulatory novelty, i.e. according to the Hungarian Criminal Code it does no longer constitutes a criminal offence, if someone gives undue advantage to a public official after the case was completed (e.g. the permission to run a buffet was given).

4. RESEARCH QUESTIONS AND HYPOTHESES

Based on research history,²⁵ we presumed that average people have gaps in their knowledge on active bribery of public officials. Compared to other criminal law issues, we expected a lower level of knowledge, given that these criminalized acts are not inherently evil (*mala prohibita*). We presumed also that, similarly to other criminal law issues, the level of legal knowledge on active bribery would not really differ based on the usual socio-demographic variables (gender, age, education, type of settlement, occupation, religiosity, financial situation, household composition).

In harmony with our general research hypothesis, we also presumed, that older regulations on active bribery of public officials would be more well-known among people. Namely, in this respect, the respondent was more likely to have heard of the regulation or to have come into contact with it in some other way.

5. ANALYSIS OF THE RESULTS

5.1. Legal knowledge

5.1.1. In general

Considering unlawful advantages given in advance, nearly half of the respondents (47 %) answered (correctly) that this is criminalized under HCC of 2012. This is somewhat lower than the average rate of the correct answers (56 %) for all knowledge-based questions of the survey. In comparison with this, more respondents (58 %) knew (correctly) that it is not a criminal offence for someone to give a gift of HUF 30,000 to a public official after receiving the permission from the government. This corresponds to the average of the correct answers established for the whole questionnaire.

Table 1

Giving advantages before the case was completed. Is it criminalized? (%)	knowledge
<i>is criminalized</i>	47
is not criminalized	51
does not know	2

* without those who (N=29) did not answer any of the situational questions

Table 2

Giving advantages after the case was completed. Is it criminalized? (%)	knowledge
is criminalized	40
<i>is not criminalized</i>	58
does not know	2

* without those who did not answer any of the situational questions (N=29)

²⁵ Cf. title 2.

Only 11 % of respondents were fully informed about the content of incriminations on active bribery of public officials. Nearly half of the population (48 %) was of the opinion that none of the acts was penalized as a criminal offence. Conversely, the other large group, more than a third of the respondents (37 %), believed that both acts were criminal offences. It could be established then, that those who only answered one question correctly (85 % in total) actually followed a pattern: they either did not consider either case to be a criminal offence or regarded both as criminal offences.

Table 3

Giving advantages to a public official ...		after the case was completed	
		criminalized	not criminalized
before the case was completed	criminalized	37	11
	not criminalized	4	48

* without those who answered any of the questions like 'I do not know'.

Table 4

Different combinations of correct answers (%)

they only know that it is criminalized if someone gives a gift before the case was completed	37
they only know that it is not criminalized if someone gives an advantage after the case was completed	48
they answer both questions correctly	11
they do not answer either of them correctly	4
TOTAL	100

* without those who answered any of the questions like 'I do not know'.

Table 5

Number of correct answers (%)

	%
none	4
one	85
both	11
Total	100

Only 15 % of respondents think that it was criminalized differently if the undue advantage is given at the time of applying for a permit or after the permit has been granted. Therefore quite a few people is aware of the distinction ('temporality') on which the current Hungarian criminal legislation is based.

5.1.2. Knowledge of old and new elements of the regulation

More people answered correctly the question when it was connected to the novelty of the regulation (58 %), than to its unchanged element (47 %). However, this is presumably explained by the schematic nature of the responses, since four-fifths of those whose responses reflected regulatory novelty also said (erroneously) that the other situation would not be criminalized. More than one third of the respondents answered the questions in line with the old regulation (37 %), and only one-tenth of them followed the provisions of the new criminal code (11 %). However, this was not necessarily due to their actual knowledge of the older regulation. The proportion of those who believe that neither type of act is criminalized is even higher (48 %),

and this belief does not correspond to the regulation of either the current or the older criminal code.

5.2. OPINIONS about Criminalizations

Nearly three-quarters (73 %) of respondents would criminalize giving unlawful advantages in advance. Slightly less, two-thirds (67 %) of those surveyed would criminalize the same behaviour if the client gives the gift to the official after the permit was granted.

Table 6

Giving advantages before the case was completed. Should it be criminalized? (%)	opinion
criminalize	73
do not criminalize	25
does not know	2

* without those who (N=29) did not answer any of the situational questions

Table 7

<i>Giving advantages after the case was completed. Should it be criminalized? (%)</i>	opinion
criminalize	67
do not criminalize	31
does not know	2

* without those who (N=29) did not answer any of the situational questions

The majority of respondents (63 %) would criminalize giving of prior as well as subsequent advantages, so they agree with the former regulation. However, the proportion of those (22 %) who would not criminalize either act is not negligible, either. This also indicates that the temporality of giving an unlawful advantage as assessed by statutory law, is irrelevant to the majority (85 %) even in terms of their opinions. 11 % of the respondents would criminalize only if gifts given in advance, therefore the opinion of this one-tenth of the population is in full agreement with the current regulation.

Table 8

How many of the two acts would you criminalize? (%)

neither	22
one	15
both	63
total	100

Table 9

The different combinations of the opinions formed on criminalisation (%)

	opinion
they would only criminalize giving an advantage before the case was completed.	11

they would only criminalize giving a gift after the case was completed.	4
they would criminalize both cases	63
they would criminalize neither case	22
TOTAL	100

5.3. Relations of knowledge and opinions

5.3.1. Opinions and legal knowledge

In both cases, the majority knows the law according to their opinion (67 %). If there is a discrepancy between opinions and actual legal knowledge (the presumed regulation), it tends to influence towards criminalisation (30 % in both cases). Only a negligible (3 %) proportion say that the law punishes something they would not punish to their hearts.

Table 10

Pearson correlation between knowledge and opinions
(Each correlation was statistically significant at $p = 0.01$ (2-tailed).)

Giving advantages ...		before the case was completed		after the case was completed	
		knowledge	opinion	knowledge	opinion
before the adjudication of the case	knowledge	1	.419	.714	.263
	opinion	.419	1	.275	.645
after the adjudication of the case	knowledge	.714	.275	1	.430
	opinion	.263	.645	.430	1

There is a strong coincidence between knowledge and opinion, but the direction of this connection could not have been established by statistical analysis. According to our assumption, the respondents were guided by their opinions when they ascertained whether certain behaviours are punishable or not. It may be supported by the facts that opinions correlate most strongly with one another, then with the knowledge appertaining to the same case and then with the knowledge appertaining to the other case.

Table 11

Opinions on criminalisation compared to presumed regulation
(only among those who also reported on the knowledge of the given regulation and their opinion on it, %)

	Their opinion agrees with the <i>presumed</i> regulation	Would criminalize	Would decriminalize	TOTAL
Giving advantages before the case was completed	67	30	3	100
Giving advantages after the case was completed	67	30	3	100

5.3.2. Critical or conformist attitudes

Inspired by Hertogh's model,²⁶ we compare opinions not only with the presumed but also with the actual regulation. Based on this, we find a considerable difference between the two situations.

With regard to gifts given when the client applied for a permit, 30 % of respondents is critical, but uninformed. They consider it appropriate to criminalize this behaviour, but they (mistakenly) believe that it does not constitute a criminal offence according to our current law. Their attitude is, therefore, only critical to the law they presume, they actually agree with the actual regulation.

Table 12

Giving undue advantages before the case was completed. Is it criminalized? Should it be criminalized? (%)

	criminalize	do not criminalize
<i>is criminalized</i>	45	3
is not criminalized	30	22

* without those who answered any of the questions like 'I do not know'.

In terms of giving an undue advantage after the completion of the case, however, nearly one-third of the population (30 %) is critical, but informed. They consciously want to criminalize this type of act, that is, by being aware of it: it is not a criminal offence at the moment.

Table 13

Giving undue advantages after the case was completed. Is it criminalized? Should it be criminalized? (%)

	criminalize	do not criminalize
is criminalized	38	3
<i>is not criminalized</i>	30	29

* without those who answered any of the questions like 'I do not know'.

Just as many (11 %) consider an advantage given at the time of applying for a permit or after receiving a permit as differently as they know that this is how the law distinguishes between the two situations (11 %), but the two groups do not include the same respondents. Those who know the difference correctly would largely (57 %) treat the two situations differently themselves, but one-third (35 %) would also criminalize presenting the gift subsequently, while 8 % would not criminalize either case.

Table 14

Giving advantages. Should it be criminalized? (among those who correctly know the legal regulation of both situations, N = 115; %)

		after the case was completed	
		criminalize	do not criminalize
before the case was completed	criminalize	35	57
	do not criminalize	0	8

²⁶ Cf. title 2.

5.3.3. A multiple variable analysis

We used a multiple variable analysis to ascertain whether opinions or socio-demographic variables affected more strongly the level of legal awareness. The dependent variable of the binary logistic regression model was the Boolean, correct/incorrect response for each situation. Among the independent variables, in addition to typical socio-demographic variables, we included the knowledge about the regulation of the other case and the opinion about the given situation.²⁷

The model explained 63 % of the standard deviation in knowledge of the regulation of undue advantages given in advance (Nágelkerke $R^2=0.630$). The strongest influence was on the responses to the questions regarding knowledge of the regulation of subsequent gifts [exp (B)=38.138], as well as the opinions formed about simultaneous pecuniary advantages [exp (B)=11.070]. There were slightly more correct answers if there was a minor in the household [exp (B)=0.623], or with the advancement of the respondent in age [exp (B)=0.980].

The situation was similar for presenting a gift subsequently. The model explained 67 % of the standard deviation [Nágelkerke $R^2=0,673$]. The strongest influence in this case was also the answers given to the question about giving advantages in advance [exp (B)=45.138], as well as the opinions formed about presenting a pecuniary gift subsequently [exp (B)=11.103]. In this regard, the size of the settlement showed a significant ($p=0.05$) correlation [exp (B)=0.886]. The proportion of correct answers was slightly lower among those living in a larger settlement. There was also a weak relationship with education: the correct answer was somewhat more likely among those having better education [exp (B)=1.642].

This analysis, therefore, confirms that answers to knowledge-related questions are mostly influenced by two factors: the rather schematic legal knowledge of respondents, and their opinion whether the act is to be criminalized.

6. LEGAL CONSCIOUSNESS IN TRANSITION

It is worth comparing the results of our project with a similar research conducted by Kulcsár forty years ago. Therefore, we can draw conclusions not only about the awareness of new criminal law provisions, but also about changes in legal consciousness.

In his research, Kulcsár asked a single question on legal knowledge regarding active bribery of public officials, namely about subsequently given gifts. That question read as follows: ‘P.V. receives a housing allocation. *He sends a watch to the public official out of gratitude. Is presenting a gift allowed in such a case?*’²⁸ In this respect the modification of criminal law provisions gives rise to a particularly interesting comparison, since in 1965 this act was classified as a criminal offence, but it was no longer criminalized in 2018.²⁹

In 1965, nearly eight-tenths (78 %) of those surveyed knew (correctly at the time) that it was a criminal offence to give an advantage to a public officials after the case had been decided. By 2018, the proportion of those who think so has almost halved. Only 40 % of the population believes (incorrectly, but and in accordance with the previous legislation), that this behaviour

²⁷ The following independent variables were included in the analysis: Gender (1: male; 2: female); Financial situation (1: better; 2: about the same as; 3: worse than other Hungarian families) Size of settlement (less than 1: 1000 inhabitants; 8: more than 100,000 inhabitants, 9: Budapest) Do you go to church? (1: several times a week; 6: do not go to church or religious gatherings at all); Do you have a job? (1: full-time; 8: inactive earners); Size of family; Number of persons above 60; Number of children under 18; Per capita income; Age; Educational attainment; Do you watch the news on TV? (0: do not; 1: watch RTL or TV2 Híradó at least once a week); Were you involved in a criminal offence? (0: no; 1: yes); Do you read a daily newspaper? (1: no; 2: yes); Is presenting a gift subsequently criminalized? (1: is criminalized; is not criminalized); What do you think about presenting a gift in advance? (1: should be criminalized; should not be criminalized)

²⁸ Kulcsár (1967) 40. o.

²⁹ Cf. Title 3.

constitutes a criminal offence. However, the majority (58 %) – in accordance with the new regulations – knows that presenting a gift subsequently does not constitute a criminal offence. However, it would be premature to conclude from this that the change in legal consciousness would result from the knowledge of the regulations in force since 2013 onwards. Scilicet for, 48 % of respondents (namely four-fifths of the above mentioned 58 %) gave the same (schematic) answer (namely the act it is not criminalized) with regard to undue advantages given subsequently. That is, currently 48 % of respondents mistakenly think that presenting a gift to an official either simultaneously or subsequently is not a criminal offence.

Table 15
Assessment of active bribery of public officials in 1965³⁰ and in 2018 (%)

	1965 P.V. receives a housing allocation. He sends a watch to the public official out of gratitude. Is presenting a gift allowed in such a case?	2018 Someone presents a gift worth HUF 30,000 to a public official <i>after</i> he or she has received the permission from the government to run a buffet. Is it criminalized?
is criminalized	78	40
is not criminalized	17	58
does not know	5	2

7. RESULTS AND CONCLUSIONS

7.1. Summary of the results

With regard to active bribery of public officials, the level of legal knowledge of the Hungarian population is not really high. Very few (11 % of the total sample) knew correctly that giving undue advantages to public officials is criminalized only if it takes place before the conclusion of an administrative procedure. In contrast, nearly half of those surveyed (48 %) answered that an advantage given to a public official is not constitute a criminal offense irrespective of whether it is given subsequently or in advance. The other large group, more than a third of the respondents (37 %), believed that these acts are qualified as criminal offences, regardless of the time and purpose of giving the advantage.

The willingness of Hungarian people to criminalize active bribery of public officials is rather high. Two-thirds of respondents (63 %) would criminalize giving a gift to a public official even it takes place after the adjudication of the case. A significant proportion of respondents, therefore, do not agree with the current legislation, according to which it does not constitute a criminal offence if the gift given subsequently.

The opinion of two-thirds of the population (67 %) agrees with what they consider to be the content of the regulation. The majority of those who have a difference in this regard would support criminalization.

³⁰ Kulcsár(1967) Tables 53 and 66.

A significant number (30 %) of those who consider it right to penalise giving advantages in advance are uninformed, i.e. they (mistakenly) believe that it does not constitute a criminal offense under our current law. In contrast, nearly one-third of the population (30 %) is critical and also informed in terms of giving a gift subsequently to a public official. Consequently, they consciously want to criminalize this second type of act, even they are aware of its impunity under the current provisions of Hungarian criminal law.

In 1965, nearly eight-tenths (78 %) of those surveyed knew (correctly at the time) that it was a criminal offence to give a gift to a public official after the case was completed. By 2018, the proportion of those with such knowledge has nearly halved, namely 40 % of the population believes (incorrectly, but and in accordance with the previous legislation), that this behaviour constitutes a criminal offence. However, this is not primarily due to the real knowledge of the legal regulation modified in 2013. Currently 48 % of respondents still mistakenly think that presenting a gift to a public official either in advance or subsequently does not constitute a criminal offence.

7.2. Verification of our hypotheses

Our hypotheses were partially verified: firstly: The average person has fragmentary knowledge about legal regulations on active bribery. However, this is partly due to the fact that the respondents, in comparison to the differentiation of the legal regulation, usually have schematic knowledge on the subject. Most of them believes that all cases relating to giving advantages to public officials are either criminalized or remain unpunished in their full extent.

Secondly: We practically have not been able to relate the knowledge of regulations to any variable which reflects the socio-economic situation. Knowledge about the criminalization of active bribery was, however, much more influenced by respondents' opinions than by socio-demographic factors.

Thirdly: 3. More than one third of the respondents answered the questions in line with the old regulation (37 %), and only one-tenth of them followed the provisions of the new criminal code (11 %). However, this was not necessarily due to actual knowledge of the older regulation, since the proportion of those who believe that neither type of act is punishable is even higher (48 %) and this answer does not correspond to any actual regulation.

However, it works expressly against our hypotheses that the new component of the regulation on bribery of public officials is rightly known to more people (58 %) than its unchanged element (47 %). However, this is explained again by the schematic nature of the responses, since four-fifths of those whose responses reflected the regulatory novelty also said (erroneously) that the other situation is not punished.

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