

ARTICOLE

**A CASE FOR DISCOUNTING THE BACKLASH AGAINST THE BAN ON SMOKING IN
PUBLIC PLACES. THE CASE OF ROMANIA**

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Abstract: *Earlier this year, the Romania Parliament has introduced a law banning smoking in public places. The law was received with a wide set of reactions, stirring a broad debate on the legitimacy of state's intervention, smokers' decisional autonomy and the effects on businesses. In this context, this paper will import behavioral law analysis on hedonic adaptation in order to argue that the backlash caused by the new Romanian law prohibiting smoking in public places will likely decrease as time passes by and should thus be discounted by legislators pressured to retract the law. After presenting the context, content and societal effects of the law (Part 1), it will introduce the concept of hedonic adaptation as a behavioral concept, as well as some of its applications in real life (Part 2). This phenomenon will be then studied in the context of the newly introduced legislative change, aiming to identify factors that would increase the likelihood of hedonic adaptation to occur in this particular case (Part 3). Lastly, the paper will look at the effects of acknowledging the occurrence of this phenomenon on the course of the legislative process, as well as on the society in itself, highlighting the need to back up the theoretical enquiry produced by this paper with some empirical data (Part 4). It will be concluded that the same patterns observed by researchers in the studies aimed at observing the phenomenon of hedonic adaptation can be applied in this case, and potentially in any other involving a significant change of law.*

Key words: *Behavioral Law and Economics; Hedonic Adaptation; Policy; Law-making; Ban on smoking; Romania*

Introduction

Introducing a ban on smoking in a country where one fourth of its citizens smoke¹ is something that can hardly be ignored, in spite of the ban being applicable only to public places. More likely, such a ban would rather create an unusually visible backlash, stirring significant discontent and leading to strong adverse reactions. This is the case of Romania, a country that has recently introduced a ban on smoking in public places in its attempt to align to European standards, with most European countries already having some form of ban on smoking². Despite being shaped as a law and supported by the coercion powers of the state, whether such a ban could be truly effective in Romania seems to remain a dilemma considering the large criticism it has been received with.

In this context, this paper will import behavioral law analysis on hedonic adaptation in order to argue that the backlash caused by the new Romanian law prohibiting smoking in public places will likely decrease as time passes by and should thus be discounted by legislators. After presenting the context, content and societal effects of the law (Part 1), it will introduce the concept of hedonic adaptation as a behavioralist concept, as well as some of its applications in real life (Part 2). This phenomenon will be then studied in the context of the newly introduced legislative change, aiming to identify factors that would increase the likelihood of hedonic adaptation to occur in this particular case (Part 3). Lastly, the paper will look at the effects of acknowledging the occurrence of this phenomenon on the course of the legislative process, as well as on the society in itself, highlighting the need to back up the theoretical enquiry produced by this paper with some empirical data (Part 4). It will be concluded that the same patterns observed by researchers in the studies aimed at observing the phenomenon of hedonic adaptation can be applied in this case, and potentially in any other involving a significant change of law. Admittedly, hedonic adaptation is not the only behavioralist phenomenon that can influence individuals' reactions: other phenomena such as status quo bias³ may interfere as well. This does not, however, decrease the relevance or legitimacy of this analysis, but should be seen as an inherent limitation.

1. The new Romanian law banning smoking in public places (2016)

The controversial banning-law has been adopted at the beginning of 2016⁴, amending Law 349/2002 which regulated the consumption and use of cigars and cigarettes. Though smoking was already prohibited in certain public spaces, such as hospitals of public institutions, the amending law extended the list significantly, with smoking now being forbidden in places such as bars, restaurants and coffee houses. This decision was taken after several years of back and forth on the matter, under the influence of the strong voice of the smoking population and tobacco companies, on the one side, with NGOs and the rest of the population, on the other.

The actual effect of the new law was the banning of smoking in all closed public spaces, with the exception of specially designed rooms in airports and prisons. The ban also concerns playgrounds, both indoor and outdoor. Breaking the law might bring sanctions of up to 500 lei (~120 euros) for individuals and between 5.000 and 150.000 lei (~1200 and 36000 euros) for clubs, bars and restaurants. It could also lead to suspension of their activity and even withdrawal of their license to function, which would basically mean shutting them down.

The ban was received with a lot of criticism coming from all over the country. Bars and restaurant owners complained that this measure will affect their profits, either with smokers not going out as much as before, or with a need of substantial investments in order to adapt the premises to smokers' needs (e.g. by building out-door terraces). Social media has also been overwhelmed with people complaining about the new law, denouncing a discrimination of treatment between smokers and non-smokers and accusing the new law of unduly restricting their right to self-determination.

Before promulgation, the law has been sent to the Constitutional Court at the request of a group of 33 members of parliament who claimed that the law was infringing upon individuals' rights, such as equality of rights (between smokers and non-smokers) and body ownership⁵. The Court ruled, however, that the law was constitutional, explaining that no constitutional right is infringed upon since no such right as a right to smoke is protected by the constitutional order⁶.

A group of members of parliament proposed a couple of amendments to the law reversing or at least mitigating its effects three days before the law entered into force⁷, alleging that the prospective law fails to properly define the concept of "public space" and that the law is too restrictive. An online petition demanding the amendment of the law in order to create separate spaces for smokers and non-smokers in bars and restaurants has started circulating soon after the law came into force on March 17 and has already gathered more than 22.000 signatures⁸.

The reactions were in fact similar to how other countries have received such a prohibition. A similar proposal dated back to 2015 from Harare, Zimbabwe led to some people complaining that the sanctions (fines of 500\$ or spending 6 months in jail) are too harsh, especially in a country where the poverty rates are quite high⁹. Others have criticized the economic rationale of the ban, arguing that such a measure will inevitably decrease the consumption rate and affect tobacco-producers' profits, which is highly problematic given that the country is a tobacco-producing one¹⁰.

Another ban, introduced in a university campus, has caused mixed reactions, with critics revolving around the difficulty of enforcing it, as well as the potentially harmful measures some may take in order to escape the rules¹¹.

The same mixed feedback was offered to a 2013 proposal to ban smoking in restaurants and bars in Ontario¹². While anti-smoking activists applauded the initiative, business owners expressed their concerns about the loss of clients, complaining that the government has never consulted them on the new drastic policy. A similar reaction was observed in Valley City and Barnes county, with bar owners accusing the newly introduced law of hurting their business¹³. The aforementioned effects seem to be confirmed by studies about consumers' reactions post-smoking bans, illustrating that hardcore smokers do attend less venues implementing the smoking ban, with these venues incurring some financial losses due to these bans¹⁴.

There are, however, studies that seem to contradict the hypothesis that smoking bans lead to a significant backlash from the population. When authors of a study examined the reactions of mental patients to a smoking ban introduced in the general psychiatry service, no significant change was noticed¹⁵. Similarly, when studying the effects of smoking bans in a community mental health center, only a slight decline in patient satisfaction was noticed¹⁶. However, no information has been provided on the number of smokers in these facilities, the rate of tobacco consumption, nor on the seriousness of the medical condition of patients. This means that the neutral results may be non-conclusive for the current hypothesis. In any case, what is certain is that *some* reaction does take place when individuals are confronted with a change in their usual situation.

2. The concept of *hedonic adaptation*

Researchers, philosophers and scientists have been trying for decades to understand human behavior and anticipate the outcome of individuals' choices and their effects in different fields of everyday life. This led to a multitude of approaches and theoretical frameworks concerning human behavior. Some researchers chose the empirical methodology, conducting numerous studies in order to observe how people actually think in practice. By observing and replicating patterns, this led in time to the emergence of a series of behavioral phenomena, which have eventually gained wide recognition.

Hedonic adaptation is just one of these many phenomena¹⁷ observed through empirical methods, which has so far been studied in a variety of circumstances in order to define its parameters and limitations. Despite the vast literature on it, the avenues for its research have not been exhausted. This can be explained potentially because of the innumerable applications this theory may have, with many of them unknown at the time being.

Hedonic adaptation has been defined in literature as *"any action, process, or mechanism that reduces the effects (perceptual, physiological, attentional, motivational, hedonic and so on) of a constant or repeated stimulus"*¹⁸. Other authors have found a different meaning, defining it as *"the perceptual process through which the heightened affective arousal resulting from a new experience returns to a baseline level after repeated exposure to the stimulus"*¹⁹. Some even connected it to the *utility* of an experience, arguing that the overall utility has a tendency to decrease until it reaches the level it had before the occurrence of that experience²⁰.

Beyond the more or less technical definitions given by scholars, the main idea behind the phenomenon of hedonic adaptation is that, first of all, people adapt to the consequences of any change that intervenes in their lives, and that, second of all, people tend to underestimate their capacity to adapt. Specifically, every event is likely to be perceived as having a much stronger and longer impact on one's being compared to its actual effects²¹. People simply cannot predict future emotional states²², possibly because of a failure to remember the extent of the effects each experience had on them and to recognize the incidence of hedonic adaptation²³. This has been derived from concrete studies conducted over years, such as analyses on the influence of cosmetic surgeries on individuals' well-being²⁴, their reactions to solitary confinement²⁵ or the willingness to settle²⁶.

Owing to its effects, hedonic adaptation has been called *"one of the most significant barriers to happiness"*²⁷, in the sense that happiness produced by a certain factor decreases over time, as one gets used to that factor being present in his/her life. One solution found to combat these effects has been the theory of *"giving up"*²⁸ or the one of *"interrupted consumption"*²⁹. Both these theories suggest that people need to constantly pause their enjoyment of something pleasurable in order to maintain a constant level of pleasure, as after every pause the level of pleasure is higher than before (though hedonic adaptation does occur, even then, slowly decreasing the level of satisfaction). Briefly put, the more such "breaks" someone takes, the higher levels of happiness that person will report overall.

Researchers do not know exactly what causes the phenomenon³⁰, but estimate that *"many of the processes involved in hedonic adaptation involve cognitive changes – in interests, values, goals, attention or characterization of a situation"*³¹. This implies that the phenomenon

can occur every time individuals are faced with changes in the status quo, internally or externally, physically or emotionally, at a cognitive level. This confers it an innumerable possibilities of applications in real life, taking into account that life in itself represents a sum of individual or group decisions that inevitably modify in one way or another the status quo.

As several authors point out, hedonic adaptation happens in case of both positive and negative experiences³², and regardless of its magnitude³³, suggesting that it is the *occurrence* of the change, not the *nature* of the change that matters. However, the extent to which people can adapt differs from person to person, as well as from event to event. One of the most important studies on hedonic adaptation³⁴ has chosen four cases of undesirable experiences (noise, incarceration, disability and disease and loss of someone beloved) together with four cases of desirable experiences (increase in income, cosmetic surgery, sexually arousing stimuli and foods) and, after comparing the manner in which hedonic adaptation occurs in each of these cases, concluded that the phenomenon is subject-specific (e.g. people adapt to prison but not to noise). The authors attempted to draw a general theory explaining the differences in the things people can and cannot adapt to hedonically (or at least the difference in variations), but admitted that more domain-specific research is needed in order to fully understand the phenomenon, which may be also influenced by domain-specific factors.

With these reservations, some general characteristics of relevance for the present undertaking could be drawn. First, hedonic adaptation *can* occur every time something happens in one's life that instantly leads to a change. Second, this adaptation does not differentiate between positive and negative events, though it may admittedly take place at different levels of time and intensity. Third, people are not aware of this adaptation at the time the event occurs which leads to them over- or under-estimating the medium and long-term impact it has on their lives, as well as to overreactions. Fourth and last, that this impact generally decreases as time passes by.

3. Hedonic adaptation applied to the case of the Romanian ban on smoking

So far, there seems to be no study attempting to analyze the impact of a ban on smoking in public places from the perspective of hedonic adaptation. However, this should not be considered necessarily an impediment: some theoretical conclusions could be easily drawn simply by comparing the cases that have already been studied with the circumstances in which a ban on smoking occurs.

Concretely, by means of **deduction**, this paper alleges that hedonic adaptation does occur in the case of a ban on smoking in public place, despite a lack of empirical evidence, primarily because the *same* type of change, over the same type of entities – *human beings* – occurs. Some further comments are necessary in order to fully understand the extent of the phenomenon.

Firstly, hedonic adaptation implies a *change* in the status quo: for smokers, they are no longer able to enjoy their vice when going out, unless they exit the premises deemed to be public space, which can be perceived as a loss. The same can be said about businesses, who

now have to suffer the potential loss of customers and profits. On the other hand, non-smokers are in a situation of win, given that they can now enjoy a better, cleaner air when entering public space premises. This change is not only wide-spread, but also substantial for all stakeholders involved considering that, one way or another, it directly affects their well-being.

Secondly, the consequences of hedonic adaptation stretch to a large group of people, impacting some positively (non-smokers), whilst others negatively (smokers³⁵), as described in the previous part. This leads to an immediate backlash against the change from the latter group, whose intensity should be proportionate to the magnitude of perceived loss. Nonetheless, because people adapt hedonically, this backlash is likely to decrease in time. The reality of this deduction is proven by statistical evidence.

A relevant example is represented by the cases of California and Florida. California enacted a smoking policy in 1994 and extended it to cover all public places by 1998. Florida, on the other hand, has introduced a smoking ban in workplaces since 1985, but has not been extended to public places until 2003³⁶. Statics show that California citizens seem to have gotten used to the public smoking ban, while many Florida citizens are still getting used to it, which may be explained by the discrepancy in the times when the general ban was introduced. Simply put, when compared to Florida, Californians had 5 years more to get used to the ban.

Moreover, a 2009 survey on Tobacco Conducted by The Gallup Organisation (Hungary) upon the request of Directorate General Health and Consumers³⁷ reinforces this conclusion. Analyzing the reactions of EU countries to smoking bans and comparing the levels of support, the organization found that support was highest in countries which have implemented clear smoking bans. Citizens of Italy, who banned smoking in 2003, are the most prone to accept smoking restrictions in bars, pubs and clubs (93% – 87% "totally in favor"). Italy is followed by Sweden, which introduced a smoking ban in 2005, and Ireland, that banned it in 2004 in workplaces³⁸ (including restaurants), with approximately eight out of 10 respondents supporting smoke-free bars, pubs and clubs (70% in both countries is totally in favor). This shows that countries that are the most supportive of a smoke-free environment are those that have already implemented (some) policies in this regard, which could be explained by the time their citizens had to adapt to the new smoke-free situation, now considering it the "normality".

Thirdly, given that the nature of the actors is the same, it can be easily assumed that their reactions to this particular intervening event have no reason to be different than the reactions they would have had as subjects in all the studies conducted in which hedonic adaptation has been observed.

Lastly, non-smokers seem to be more likely to support the ban than smokers, which is not surprising at all, given that it is the smokers that would be affected directly by such a ban. Regardless of their principles and beliefs, the fact that the change will burden them more is likely to irritate them more than non-smokers. However, these theoretical findings are not completely isolated. A 2010 study on US college students that examined 2260 individuals and several smokers focus groups found that, despite the general positive reaction supporting a smoke-free community, overall, "2-year college students and smokers (non-daily and daily) were less supportive of smoke-free policies"³⁹ in comparison with the non-smokers. Another

study, conducted in 2001, found that “Strong majorities of non-smokers supported the ban, while strong majorities of smokers expressed opposition”.⁴⁰

Relevance of the study. Implications for law-makers

The application of the general theory regarding hedonic adaptation to a ban on smoking in public places is consistent with the purpose⁴¹ of behavioral law and economics to explore the real implications of human behavior for laws⁴². By becoming *aware* of the occurrence of hedonic adaptation, the way in which legislators treat the backlash over a ban of smoking would be significantly impacted.

First and foremost, legislators should no longer leave space for the classical backlash argument, i.e. because a law creates enormous backlash, that law should not be adopted, as it would never be respected and therefore efficient. Hedonic adaptation clearly explains that people’s discontent with the law will eventually decrease in time and they will get used to it, in spite of their initial strong reaction. Similarly, the value that non-smokers derive from the non-smoking ban will decrease in time. This phenomenon also implies that such a strong initial reaction is quite normal, considering the amount of loss people perceive to suffer in light of their addictive habit.

Moreover, in their decision-making process, legislators should take under reservation any backlash from the society that appears during and after the debate, and rather focus on the ideological arguments behind a law and the effects it has. This would decrease the chances of passing populist legislation and would leave space for the more important, efficiency and policy-oriented arguments, leading to a presumably better and more efficient law-making and to better law overall.

Such an approach is not innovative at all. In fact, some authors have already recommended that “factors other than public opinion accounting for lagging policy adoption must be explored”⁴³, though, admittedly, based on a completely different type of arguments.

Lastly, individuals and businesses themselves should become aware of the occurrence of hedonic adaptation. This would influence the way in which they treat such a change in the first place, leading to a more accurate appreciation of the effects a ban on smoking would have on their lives.

Conclusions

This paper has shown that the results of studies exploring the phenomenon of hedonic adaptation can be extended to the matter of banning smoking in public places. This is possible because hedonic adaptation has been proved to be a wide-spread behavioral phenomenon which, despite of its heterogeneity, does occur to a certain extent every time there is a change of status quo, primarily because of human nature. It has also drawn upon some of the benefits legislators and the entire society may gain by acknowledging the incidence and effects of this phenomenon in their legislative processes.

In fact, this suggests that the conclusions drawn in this paper could find applicability even outside the sphere of ban on smoking and beyond the case of Romania, and could theoretically be used every time a legislative change is proposed and implemented. Nevertheless, such a finding would ideally need to be backed-up by (some) empirical data in order to gain more legitimacy.

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³ William Samuelson, Richard Zeckhauser, Status Quo Bias in Decision Making, *Journal of Risk and Uncertainty*, 1: 7-59, 1988, Kluwer Academic Publishing, Boston

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⁵ Digi24, CCR: *Legea antifumat, constituțională* (Romanian), translated by the authors as “The antismoking law, constitutional”, available at <<http://www.digi24.ro/Stiri/Digi24/Actualitate/Stiri/Legea+antifumat+discutata+de+judicatorii+Curtii+Constitutionale>> accessed on March 17, 2016

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