**Revisiting the Behavioral Code from a Voluntary Compliance** **Perspective**

Let me start this book review, with full disclosure, I am a fan of Benjamin and Adam' work and has been their partner in establishing ComplianceNet. The Behavior Code written by Benjamin and Adam is characterized by their intellectual prowess and boundless curiosity, which spills from its pages. Despite being an unlikely pair, consisting of an anthropologist who studied China and an experimental developmental psychologist, their collaboration results in a combination of a comprehensive review as well as a thought-provoking work. The net cast by their combined expertise captures both quantitative and qualitative literature, resulting in a comprehensive and nuanced exploration of the impact of law on behavior in a much broader perspective than that which is available today.

## Praise for the book

A book review needs to start with some praises on the book, and in this case, it is quite easy. This incredible book that offers a fresh perspective on a wide range of fields and disciplines which are needed to understand compliance. The author's unique ability to seamlessly integrate various disciplines, from economics to psychology, is truly remarkable and sets this book apart from others. One of the things that sets this book apart is the incredible storytelling that accompanies the amazing and memorable examples. Despite the fantastic illustrations of their points, the authors never undermines the care they take in presenting the scientific basis for the theories demonstrated in each example and in each field.

Indeed, compliance is a challenging field that is often overlooked or misunderstood, but this book takes the subject of compliance and legal impact to the next level. With a fresh perspective and a holistic approach, the authors demonstrate the importance of compliance in both legal and ethical terms. They show how understanding the antecedent of compliance is important for individuals, organizations, and society as a whole. Furthermore, what really unique about this book, relative to other recent books is that it is not just about praising one concept such nudges or incentives. But rather they take a holistic approach that takes into account the many different factors that influence compliance behavior and decision-making. The authors don't try to take ownership of one main concept, but rather presents a range of concepts, mostly developed by others and how they are interconnected across different contexts.

## Some reflections on the book

Reflecting on the main theme of the book, create a challenge as to how to account for both individual and institutional context in compliance research. For instance, the measure of self-efficacy[[1]](#footnote-1), which is a behavioral measure, is highly dependent upon the institutional contexts in which people operate. This make some of the separation in the book between the behavioral and the institutional contexts as artificial. People will need to feel that what they do is relevant and would have a positive effect, which usually dependent on the existence of functioning institutions.

Moreover, when attempting to address this challenge, it is crucial to focus not only on what works but also on what is not working. However, the problem with null effects is also present in field studies, which highlights the extent of our knowledge gaps. To fill these gaps, a holistic approach is necessary to facilitate a meaningful discussion of trade-offs, which is missing in most current works. We have to account not just for what we know but also on what we don't know.

The behavioral code draws among other literature on the Behavioral Public Policy line of research, which acknowledges that people's compliance cannot be achieved solely by price-based incentives. As suggested above, this literature has expanded the range of regulatory options available to policymakers, including nudges, framing, and pledges, among others, which aim to influence behavior without coercion. While this increased array of tools complicates the choice of instruments, it also enables concrete, quantitative evaluations and comparisons of their effectiveness.[[2]](#footnote-2)

For example, the nudge approach, based on the influential work of Thaler and Sunstein,[[3]](#footnote-3) represents an important addition to the regulatory choice dilemma, leading numerous scholars to examine when nudges can be relied upon to replace more mandatory rules.[[4]](#footnote-4) While nudges are perceived as a tool that maintains people’s freedom of choice, the fact that they are employed with limited awareness by the public could potentially lead to their being viewed as a more sophisticated form of coercion.[[5]](#footnote-5) The salience of this literature in the context of this project is that it unravels many of the dichotomies usually seen in the regulation literature, whereby government either attempts to focus on external factors, such as prices, or on internal factors, such as morality.[[6]](#footnote-6)

Another challenge faced by those who call upon a behaviorally based regulatory approach to change behavior is to understand not just what is having an inadvertent effect, but also when do different tools harm each other simply by undermining of other legal tool which might create a crowding out effect. The crowding out effect, which is widely discussed in the behavioral code, suggests how complicated is our ability to understand when will certain regulatory tools work together in a positive way or rather against each other.

## Challenges to the Behavioral Aode Approach

It is possible to demonstrate the challenges the behavioral code creates at two levels:

First, descriptively, understanding the prediction of different regulatory interventions is challenging, making it difficult to determine the effectiveness of such interventions, especially when attempting to account for what is not working. Hence, not just that we need to understand what regulatory tool work better, we need to know how they interact with each other.

On a second normative level, even if the effect of a regulatory intervention on a given behavior is known, determining the right balance of different approaches is not clear. Thus, it is crucial to consider how to combine different regulatory approaches to achieve optimal outcomes. In later parts of this short paper will utilize the trade-off approach developed in joint work with Lobel[[7]](#footnote-7) as well as in chapter 11 of the law of good people[[8]](#footnote-8) to allow a way to deal with the uncertainty associated with the existence of so many regulatory approaches and the fact that many of them in a given context can create damage.

## Can we predict theoretically what will work and when and is it a problem?

Part of the rational of the behavioral code is related to the pluralism in adopting regulatory interventions. The challenge, discussed in my ' Should States Trust the Public' forthcoming book[[9]](#footnote-9) is with the inability of researchers to predict the effectiveness of a particular regulatory instrument. One notable illustration of the need for a trial-and-error approach is Milkman's study, which compared numerous interventions targeting various behaviors. In her recent research on vaccination, Milkman conducted a mega-study involving 689,693 Walmart pharmacy customers, which revealed that text-based reminders could effectively encourage pharmacy vaccination, and identified the most effective types of messages. Specifically, Milkman tested 22 different text reminders that used various behavioral science principles to nudge flu vaccination, and found that reminder texts boosted vaccination rates by 6.8%) compared to a business-as-usual control condition. The best-performing messages were those that reminded patients that a flu shot was waiting for them and sent reminders on multiple days. Interestingly Milkman reports that none the experts were able to predict which intervention will be most effective and that they even perform worse than laypeople.

This might suggest the tragedy of regulatory design in the behavioral age if expert can' predict what will work, it suggests that we constantly need to collect data? But it is not clear that this is feasible. Proposed road map of behavioral code is to be basically cautious and collect data, which is nice but is it realistic? Is it the case that we can always collect data? Is there a way for us to know in advance whether a law is going to work or not? Are there proxies, which could help us know how to predict what would work? What are some of the limitations of attempting to predict what type of laws would work?

## Should States Trust the Public? The Promise and Perils of Voluntary Compliance

In the following paragraph, I will present how the main argument of my forthcoming book could be used to offer a roadmap to continue the important work the behavioral code ends with. In short, the book attempt to examine competing relevant literatures on compliance, behavioral public policy, regulatory theory, trust, behavioral ethics, and cooperation concepts and their antecedents in a comparative way. Any democratic state should aspire to convince its citizens that the state should be obeyed voluntarily; hence, any legal instrument that aims to maximize voluntary behavior will be preferred. From a normative perspective, we might need to evaluate critically the costs of encouraging the public to cooperate voluntarily. In this book I am trying to raise the bar, and examine not just what types of law would work, but also what are the broader impacts of the law on behavior, resilience, spillovers on other domains. What I propose in my book and could be integrated with the behavioral code approach suggests that we need to be able to answer a series of question according to this paradigm to know what regulatory tools to employ. Not just what work but also, to what end? What is it that we want to achieve, what Variation across people doctrines and culture; Do we need the compliance to work in the long run; Do we need the quality of compliance relative to quantity of compliance ; Is it realistic that people will have intrinsic motivation with regard to that behavior we are trying to change which might increase the likelihood of crowding out effect happening. what are the short term and costs of extrinsic interventions?

The emphasis on heterogeneity and the distributive consequences of law, for instance, shows that groups in the population with lower levels of education and privilege may be more likely to change their views in response to an influencing campaign. The long-term impacts of such interventions on how individuals may feel about whether they trust their government are related to another moral effect that is related to the distributive effect that we shall analyze. Policymakers are faced with the difficulty of striking the correct balance between focusing on the internal drive to obey the law and avoiding fostering more legal evasion, given the growing knowledge that enhancing intrinsic motivation is likely to lead to improved compliance[[10]](#footnote-10).

In a similar vein to the two books, we need to provide legal policy maker with a broad array of regulatory tools, what's important is to understand how extrinsic and intrinsic measures interact. Every time we rely upon extrinsic measures, understanding how it affect intrinsic motivation will be helpful, in determining the net overall gain of the connection between the regulatory effect and the direction of the behavioral change and its quality. Such analysis could relay on existing research on the interplay between extrinsic and intrinsic motivation.[[11]](#footnote-11)

An area to which the behavioral code focus less attention is how to cause people not just to behave without coercion, as discussed in seat belt example, but also how do people come to internalize and become intrinsically motivated to obey these specific laws[[12]](#footnote-12). Is it happening only with regard to the seat belt laws or could it be generalized also to laws in general. Furthermore according to the behavioral code, is it the case that Intrinsic motivation is the sense of morality inherent within the individual, whereas extrinsic motivation relies on incentives and rewards.[[13]](#footnote-13) For example, it could very well be the case that people vary in their internal level of commitment to ethical behavior.[[14]](#footnote-14) How this variation is being taken into account in their existing research is also subject to much discussion. Furthermore, another aspect that needs to be taken into account is to what extent the discussion of intrinsic motivation in compliance literature could be equated with the kind of research that we see in psychology. In psychology, the definition of intrinsic motivation is related to self-determination[[15]](#footnote-15) and behaviors which increase peoples’ autonomy, enjoyment, and competence benefit from behaving in a certain way, that is when the behavior in itself is somewhat rewarding for the individual.[[16]](#footnote-16) Extrinsic motivation is defined as behavior performed for external rather than internal reasons. Traditionally, the focus of motivation research has been on what is the internal source of motivation and how it relates to the self, rather than on an entity like the law, which is, by definition, external to the person.

Indeed in the the regulation literature, and research of law and economics scholars such as Robert Cooter[[17]](#footnote-17) on intrinsic motivation,[[18]](#footnote-18) there is a broader definition of intrinsic motivation, where one is discussing the lack of need for external monitoring for the behavior to happen.

The difference between these two views, which continues the behavioral code agenda, might be related to the question of how to treat factors such as fairness legitimacy, and morality which in the legal literature are seen as part of the intrinsic motivation, but in pure psychological definition of scholars like Deci,[[19]](#footnote-19) might not be seen as such as they are not related to the activity itself but to questions such as whether the social institutions that require it are just and accepted by others. Some of the differences might be related to the question that when speaking about compliance the behavior itself is in many cases not driven by the individual choice but imposed upon it and in some cases, it might be internalized by the individual.

## **The Complication to the regulatory tool box created by crowding out.**

In general, the crowding-out literature proposes that when individuals attribute their behavior to external rewards, they devalue any moral consideration behind their actions, resulting in a reduction in the perceived impact of intrinsic motivation. This theory can be applied to regulatory incentives, as it predicts that using monetary rewards or punishments as external incentives may have a negative impact on intrinsic motivations to comply[[20]](#footnote-20) For instance, paying people in return for donating their blood might lead donors to view the event as a transaction rather than a charitable act, thereby reducing the number of altruistic blood donations.[[21]](#footnote-21)

Bowles has provided a summary of many of the studies on the crowding-out effect of incentives and on enforcement, but here are some notable examples.[[22]](#footnote-22) Deci found that tangible rewards undermine intrinsic motivation for a range of activities.[[23]](#footnote-23) Following the “W effect” described by Frey et al.[[24]](#footnote-24) with regard to change in magnitude of the crowding out effect, it is likely that, with varying levels of intrinsic motivations among individuals, various sums of money will have correspondingly different effects on each subgroup. In a previous work with Lobel on how to incentivize whistle-blowers[[25]](#footnote-25) we demonstrated that those who were intrinsically motivated were not significantly affected by the framing of Monetary incentives, whereas those who were low on intrinsic motivation were affected by it. Similarly, in my study with Perez, we found a direct relationship between the perception of incentives and intrinsic motivation levels: those who were low on intrinsic motivation were more likely to prefer deposits to fines, whereas the opposite was true for those who had high levels of intrinsic motivation[[26]](#footnote-26).

Hence, rather than collecting data prior to any policy move, another way to deal better with the difficulty of predicting how the law will affect behavior is related to creating an elaborated trade off which will allow policy makers to be aware of the pros and cons of each approach, even in cases where the actual effects are limited.

When making regulatory trade-offs, it's crucial to consider various factors. One of these factors is whether the decision needs to be made with long-term consequences in mind. Another factor to consider is the quality of the decision and the potential impact it may have. It's also important to ask whether people will have intrinsic motivation to comply with the regulation, or if it's necessary to create this motivation. Additionally, the costs of implementing extrinsic interventions must be weighed against potential benefits. It's also worth considering the amount of information available to inform the decision and how much information is necessary. Finally, the level of certainty around the decision must be assessed to ensure it's the most effective and sustainable option. By accounting for these factors, regulatory trade-offs can be made more effectively.

# TAXONOMIES

Based on the behavioral tradeoffs and enforcement dilemmas just reviewed, this section offers some preliminaries taxonomies that will facilitate the use of psychological and cognitive factors in the design, implementation, and enforcement of legal policy. Use of this taxonomy will make it easier to match legal policy to what we know about the behaviors, cognitions, and motivations of individuals to which it is addressed.[[27]](#footnote-27)

A taxonomy for regulatory initiatives should include the following relevant factors: type of regulated behavior, desired durability of the behavioral change, proportion of the target population whose cooperation is required for successful implementation of the mechanism, cost of enforcement, and cost of noncompliance. Let us examine each factor in turn.

### Nature of the Regulated Behavior



The first question that we need to address is what type of behavior we are looking to change. Is it the kind of behavior in which we need to rely on intrinsic motivation for people to perform well or is sustainability of key importance, given the high cost of enforcement? Do we want to increase the quantitative aspects of the regulated behavior—the extent to which one engages in it—as in recycling?[[28]](#footnote-28) Or is the qualitative nature of the behavior more important, as in whistle-blowing or even blood donation(where we need people to be truthful about their health history) , where the level of commitment to the action is critical? In the latter types of behaviors, we might give more weight to the decision process than the outcome. Furthermore, in legal contexts where 'extra-role' activity, which is beyond what’s needed I nthe the law, is desired, the likelihood of reducing intrinsic motivation increases, and one should be more cautious in introducing extrinsic motives or nudges that may crowd out internal motivation.

### Durability of the Behavioral Change

Whether the sought-after behavior requires a one-time decision or choices repeated over time will help determine the appropriate type of regulatory mechanism. In contexts such as enrolling in or choosing a pension plan, people are less likely to reverse their decision once they have made it. Sustainability is less important, and hence getting people to make the right choice (outcome, being the dominant focus) is more important than in areas like health or nutrition, where choices need to be reaffirmed on a daily basis.

### What Proportion of the Target Population Needs to Cooperate

In designing legal policy one of the most important factors to take into account is whether the population is likely to have high levels of intrinsic motivation to comply with the regulated behavior. This is naturally more challenging when not much is known about the target population or when their level of intrinsic motivation is heterogeneous. When a large proportion of the population has high levels of intrinsic motivation, policy makers can rely on noncoercive explicit measures or on softer types of implicit intervention such as nudges. When Van Rooij and Fine ask what policies might work, and I examine what regulatory intervention are likely to lead to book outlines the variation between the literature in accounting for the proportion of honest citizens, cooperators, or compliers. The proportion question is important because it allows us to know. We will further discuss from a normative perspective what are the proportion of cooperators needed with each doctrine and what regulatory tools are needed to obtain that level of cooperation. For example, in the context of wearing masks or getting the vaccine, obtaining a majority might be enough. However, in quarantine, a few non-cooperators might cause the pandemic to spread. In the environmental context, we will also use the accumulated data across various numbers of domains to understand what proportion of cooperators is need for VC to work.

Costs of NonCompliance



My earlier work has focused on divulging trade secrets, whistle-blowing and recycling. This section illustrates the costs of compliance in these three behavioral contexts.

In the area of trade secrets, everyone needs to be motivated to keep information confidential for the secret not to be disclosed, because if only a few people will be subject to legal consequences for disclosure, keeping company knowledge proprietary may be a futile endeavor.[[29]](#footnote-29) Regulation should be designed to facilitate the cooperation of 100% of the target population, from those with the highest level of intrinsic motivation to those with the lowest level. In that context, policy should focus on the lowest common denominator, meaning those with the lowest level of intrinsic motivation to be loyal to the company. Since having a low level of motivations is likely to increase the chance of making "self-serving mistakes" and mistakes are costly, a greater emphasis should be placed on obtaining, at the very least, minimal compliance. Therefore, the price of harming the intrinsic motivation of committed employees might be secondary to making sure that even those without intrinsic motivation will be loyal to their employers.

The context of whistle-blowing is the exact opposite, where we only need the cooperation of some of the employees, who will go forward when some illegal activity occurs within the organization. Therefore, we mainly care about those who are high on intrinsic motivation.[[30]](#footnote-30) We might not even want to incentivize those without intrinsic motivation, for fear of generating false reports from bounty hunters, who are only interested in any rewards they might receive from exposing wrongdoing,

Finally, in the context of recycling, we are interested in long-term aggregate outcomes or a situation where as many people as possible will recycle as much as possible. In that context, there is no preference for either high or low intrinsically motivated individuals, and therefore, the balancing consideration made by the policy maker is whether or not to use extrinsic motivation and through which types of incentives. In addition, though the ultimate goal may be to move as many people as possible toward environmentally responsible behaviors, the costs of non-compliance of one individual are not very high. In other words, in this context, the failure of a regulation to increase recycling is not costly since the goal is to increase the average level of recycling among the population.

## Conclusion

These categories are just an example for the kind of factors regulators need to take into account when attempting to decide which regulatory tool to use. With higher costs of mistakes and need for more people to cooperate, we will need to resort to the type of regulations which are less likely to be built on trust. With higher level of intrinsic motivation and greater support for a given law, regulators might be feel that they can more easily rely on trust based regulations. Further emrpical and normative research is needed to determine the best regulatory tool given the particulars of every specific behavior. For mask wearing covid, we need everyone to wear and we care for the quality of how well people put the masks on their noses. This is not the case when it comes to vaccination where one only need to get it few times and the quality of shot, is not dependent on the individual. In addition, in vaccination we don't need everyone to get the vaccine. Hence, on one hand, we don't need intrinsic motivation and extrinsic measures such as incentives or mandates be enough. On the other hand, we don't need a vaccination of 100 % as is the case with regard to mask wearing. This is just a short example for the kind of analysis we need to do when we want to decide what regulatory tools to use.

The crowding out of intrinsic motivation is a good demonstration of the descriptive challenges of a holistic approach such as that of the behavioral code.

In psychology, the definition of intrinsic motivation is related to self-determination[[31]](#footnote-31) and behaviors which increase peoples’ autonomy, enjoyment, and competence benefit from behaving in a certain way, that is when the behavior in itself is somewhat rewarding for the individual.[[32]](#footnote-32) Extrinsic motivation is seen as such when the behavior is being done for external rather than internal reasons. Traditionally in motivation research, the focus is mostly on what is the internal source of motivation and how it relates to the self, and less so with regard to an entity like the law, which be definition is external to the person.

However, in the regulation literature, and research of scholars such as Robert Cooter[[33]](#footnote-33) on intrinsic motivation,[[34]](#footnote-34) there is a broader definition of intrinsic motivation, where one is discussing the lack of need for external monitoring for the behavior to happen.

The difference between these two views, might be related to the question of how to treat factors such as fairness legitimacy, and morality which in the legal literature are seen as part of the intrinsic motivation, but in pure psychological definition of scholars like Deci,[[35]](#footnote-35) might not be seen as such as they are not related to the activity itself but to questions such as whether the social institutions that require it are just and accepted by others. Some of the differences might be related to the question that when speaking about compliance the behavior itself is in many cases not driven by the individual choice but imposed upon it and in some cases, it might be internalized by the individual.

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