



Edited by
Christine Parker and
Vibeke Lehmann Nielsen

Explaining Compliance

Business Responses to Regulation



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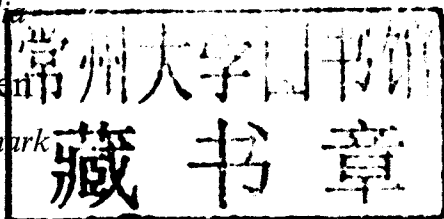
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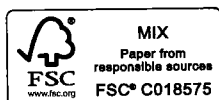
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Contents

<i>List of contributors</i>	vii
1 Introduction <i>Christine Parker and Vibeke Lehmann Nielsen</i>	1
PART I MOTIVES	
2 Fear, duty, and regulatory compliance: lessons from three research projects <i>Robert A. Kagan, Neil Gunningham and Dorothy Thornton</i>	37
3 Motivating compliance: economic and material motives for compliance <i>Sally S. Simpson and Melissa Rorie</i>	59
4 The psychology of self-regulation: normative motivations for compliance <i>Tom R. Tyler</i>	78
PART II ORGANIZATIONAL CAPACITIES AND CHARACTERISTICS	
5 To comply or not to comply – that isn't the question: how organizations construct the meaning of compliance <i>Lauren B. Edelman and Shauhin A. Talesh</i>	103
6 The other side of the compliance relationship <i>Garry C. Gray and Susan S. Silbey</i>	123
7 Beyond compliance: explaining business participation in voluntary environmental programs <i>Jonathan C. Borck and Cary Coglianese</i>	139
8 Internal corporate compliance management systems: structure, culture and agency <i>Christine Parker and Sharon Gilad</i>	170

PART III REGULATION AND ENFORCEMENT OF COMPLIANCE

- | | | |
|----|--|-----|
| 9 | Strategizing compliance and enforcement: responsive regulation and beyond
<i>Neil Gunningham</i> | 199 |
| 10 | Regulatory enforcement styles and compliance
<i>Peter J. May and Søren C. Winter</i> | 222 |
| 11 | Voluntary programs, regulatory compliance and the regulation dilemma
<i>Matthew Potoski and Aseem Prakash</i> | 245 |
| 12 | Individuals as enforcers: the design of employee reporting systems
<i>Yuval Feldman and Orly Lobel</i> | 263 |

PART IV SOCIAL AND ECONOMIC ENVIRONMENTS FOR REGULATION AND COMPLIANCE

- | | | |
|----|---|-----|
| 13 | Facing the compliance challenge: Hercules, Houdini or the Charge of the Light Brigade?
<i>Fiona Haines</i> | 287 |
| 14 | Negotiating social, economic and political environments: compliance with regulation within and beyond the state
<i>Bridget M. Hutter</i> | 305 |
| 15 | Naming and shaming in regulatory enforcement
<i>Judith van Erp</i> | 322 |
| 16 | The impact of private, industry and transnational civil society regulation and their interaction with official regulation
<i>Benjamin Cashore, Graeme Auld and Stefan Renckens</i> | 343 |
| | <i>Index</i> | 377 |

1. Introduction

Christine Parker and Vibeke Lehmann Nielsen*

INTRODUCTION: FROM REGULATION TO COMPLIANCE

The research collected in this book is concerned with a weighty social issue: the way that businesses respond to the multitude of efforts made to influence or 'regulate' their behaviour for the social and economic good. The activities of business – whether big or small – pervade most aspects of people's lives, the goods and services they consume, their employment and leisure, their experience of the natural environment and their access to the most basic necessities of life. Even in China and formerly Communist East Europe, business organizations (albeit often fully or partially owned by the state) are growing, and along with them there is increasing concern with regulating business in these countries.

At local, national, and increasingly global levels, governments and civil society seek to use regulation to promote social and economic goods.¹ 'Social regulation' is expected to help avert environmental catastrophe, prevent accidents and ill health in mines, factories, transport and food production systems, secure the delivery of a range of essential services (power, water, housing, communication) in an equitable way, achieve justice and social inclusion for the disadvantaged and keep people's assets and livelihoods safe from financial crisis. 'Economic regulation' is used extensively to curb monopoly, promote competition, and to set standards for prices and quality in industries where competition is thought to have failed. The focus of this volume is largely on social regulation.

Despite popular belief that regulation was abandoned when neoliberalism was adopted around the Western world in the 1980s, the evidence is that privatization, deregulation and the nurturing of markets under neoliberal governments in fact created even greater degrees of regulation (Levi-Faur, 2008: viii; Vogel, 1996). It has even been asserted that regulation is a natural governance response to the rise of industrialized capitalism and that the two are interdependent (Polanyi, 2001). Indeed, it is not only 'official' or 'state based regulation,' the legal rules authorized and

enforced by the state (Black, 2001), that is proliferating. Industry associations, civil society organizations and multinational enterprises are also increasingly using self-regulatory codes of conduct, voluntary or contract based labelling and certification schemes and internal corporate compliance and social responsibility systems (Bernstein and Cashore, 2007; McBarnet et al., 2007; Prakash and Potoski, 2006; Rees, 1997).

There is already a plethora of academic scholarship concerned with mapping, understanding and explaining the expansion of state, market and civil society based regulation at local, national and transnational levels (for example, Braithwaite, 2008; Braithwaite and Drahos, 2000; Cashore, 2002; Dilling et al., 2008; Jordana and Levi-Faur, 2004; Lobel, 2004; Majone, 1994; Solomon, 2008). This book however has a different purpose. Its focus is not on regulation but 'compliance,' not on regulators but business firms and their responses to and implementation of regulation. The political rhetoric of regulation implicitly relies on the assumption that business can be made to comply – that regulation will be effective at achieving its stated policy purposes (see Haines, chapter 13 in this volume). The empirical research studies reported in this book all critically examine the assumed link between regulation and compliance. Some chapters report studies that help explain how, why and in what circumstances firms come to comply with regulation, and when they do not. Others uncover the complexity, ambiguity and transformation of regulation as it is interpreted, implemented and negotiated by firms, their stakeholders and internal constituencies in everyday business life. All see 'the other side' (see Gray and Silbey, chapter 6) of the regulation–compliance relationship – the responses of firms and the individuals in them to regulation – as a worthwhile place to start research. There is a long history of law and society research being concerned with this question (Braithwaite, 1984; Geis, 1967; Handler, 1978; Selznick, 1969; Stone, 1975). In recent years however the policy application and relevance of the field has grown enormously. This collection is intended to contribute to the conceptual and theoretical development of the field.

This introductory chapter briefly reviews the field in order to showcase the vibrant plurality – and complementarity – of different contributions to compliance scholarship (and therefore also to this book). The two parts of this chapter examine two dimensions of plurality in compliance scholarship – different approaches to social enquiry and different substantive conceptual themes that are relevant to explaining compliance.

In the first half of this chapter we show how research from two quite different approaches to social science inquiry – objectivist and interpretivist – have been very helpful for the substantive conceptual and theoretical development of understandings and explanations of organizational 'compliance.'

The second half introduces the contributions of each individual chapter. We show how the plurality of compliance research represented in this book, and the compliance literature more broadly, have contributed to the development of four interrelated conceptual themes that are helpful in explaining compliance: (1) firms' and individuals' substantive motives to respond to regulation in different ways; (2) the internal characteristics and capacities of business firms as organizations to respond to regulation; (3) the influence of different regulatory enforcement strategies and styles on how firms respond to regulation; and (4) how regulation and responses to regulation emerge from regulators' and businesses' interactions with their broader social, economic and political environments. We further explain why each of these conceptual themes is important for explaining compliance, and how they interact in the second part of this chapter. We also identify some questions for further research.

PLURAL APPROACHES TO EXPLAINING COMPLIANCE

The field of empirical research on organizational responses to regulation is rich, diverse, and still ripe for theoretical development. As with all social science research, it includes plural methodological approaches that reflect different theoretical assumptions about the nature of the social world and seek answers to different, albeit related, research questions (see Blaikie, 2007 and 2009; Scherer, 2003). We see two main approaches towards empirical compliance research generating theoretical development within this field (see also Parker and Nielsen, 2009):²

The first is objectivist research aimed at building and testing theories identifying internal organizational characteristics (motives, capacities, resources) and external factors (the nature of the regulatory policy area, enforcement strategy and style, the level of attention by third party activists and stakeholders and so on) that are associated with compliance and non-compliance.³ Much of this research is implicitly or explicitly aimed at normative, policy-oriented evaluation and critique of regulatory design, implementation and enforcement: what 'produces' compliance?

The second is research aimed at interpretive understanding of organizational responses to regulation, and of the processes by which compliance is socially constructed. Much of this research has the effect of problematizing the very notion of 'compliance,' and challenging or complicating the clear specification of causally explanatory models of compliance.

In the field of compliance research, we do not see these alternative approaches rigidifying into warring factions – but rather entering into

creative dialogue. (Indeed many individual scholars use both styles of research, even within the one work.) Concepts are developed, shared, contested and complicated, clarified and measured, (and then perhaps contested and complicated again) in the back and forth of scholarship, and indeed policy development. Across these different approaches, we see a range of substantive concepts and variables that are relevant to understanding and explaining ‘compliance’ that are shared and developed in this way. Chief among these is the concept of ‘compliance.’ We discuss each briefly in turn below and show how they are interdependent in the ‘project’ of compliance research.

Objectivist Theory-testing Research

Objectivist theory-testing research is concerned with hypothesizing explanations for associations between concepts and deductively testing that theory. Typically, a certain type of business response to regulation (usually ‘compliance’ or ‘noncompliance’) will be the dependent variable (see for example, Baucus and Near, 1991; Prakash and Potoski, 2006: 132; Simpson, 1987). The dependent variable is to be explained by showing a temporal association between that variable and certain independent variables (typically various organizational characteristics, individual or organizational motivations, or the promulgation or enforcement of certain regulations). Alternative explanations should be eliminated. Deductive researchers also, of course, not only test existing theories but build their own theories and hypotheses which they test; and if data turn out not to back up hypotheses and theories, inductive researchers often suggest new theories for approaching and explaining the data.

In compliance studies, objectivist research typically includes research aimed at mapping and measuring compliance and noncompliance as well as research aimed at building and testing theories that provide explanations for the association between various concepts and compliance or noncompliance. Objectivist research that seeks to explain compliance is generally based on hypotheses about how and why regulation might ‘work’ to achieve compliance, or how and why it might fail to garner compliance. That is, compliance or noncompliance is seen as the ‘dependent variable’ that is to be explained, and a range of hypotheses are made about the factors (the ‘independent variables’) that are thought to influence compliance or noncompliance. These hypotheses are then tested and adjusted to build explanatory theories of compliance.

The second part of this chapter uses the contributions to this book to introduce a range of substantive factors, themes or independent variables that are generally thought to be relevant to explaining compliance