



RESOURCES FOR THE FUTURE LIBRARY COLLECTION

POLICY AND GOVERNANCE

Compliance & Public Authority

A Theory with International Applications

Oran R. Young

Compliance & Public Authority

A Theory with International Applications

Oran R. Young



Washington, DC • London

First published in 1979 by Resources for the Future

This edition first published in 2011 by RFF Press, an imprint of Earthscan

First edition © Resources for the Future 1979

This edition © Earthscan 1979, 2011

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, except as expressly permitted by law, without the prior, written permission of the publisher.

Earthscan LLC, 1616 P Street, NW, Washington, DC 20036, USA

Earthscan Ltd, Dunstan House, 14a St Cross Street, London EC1N 8XA, UK

Earthscan publishes in association with the International Institute for Environment and Development

For more information on RFF Press and Earthscan publications, see www.rffpress.org and www.earthscan.co.uk or write to earthinfo@earthscan.co.uk

ISBN: 978-1-61726-060-5 (Volume 14)

ISBN: 978-1-61726-007-0 (Policy and Governance set)

ISBN: 978-1-61726-000-1 (Resources for the Future Library Collection)

A catalogue record for this book is available from the British Library

Publisher's note

The publisher has made every effort to ensure the quality of this reprint, but points out that some imperfections in the original copies may be apparent.

At Earthscan we strive to minimize our environmental impacts and carbon footprint through reducing waste, recycling and offsetting our CO₂ emissions, including those created through publication of this book. For more details of our environmental policy, see www.earthscan.co.uk.

**RESOURCES FOR THE FUTURE LIBRARY COLLECTION
POLICY AND GOVERNANCE**

Volume 14

Compliance & Public Authority
A Theory with International Applications

COMPLIANCE AND PUBLIC AUTHORITY

Compliance and Public Authority

A theory with
international applications

ORAN R. YOUNG

Published for Resources for the Future
By The Johns Hopkins University Press
Baltimore and London

Copyright © 1979 Resources for the Future, Inc.
All rights reserved
Manufactured in the United States of America
Library of Congress Catalog Card Number 79-2193
ISBN 978-1-61726-060-5



RESOURCES FOR THE FUTURE, INC.

1755 Massachusetts Avenue, N.W., Washington, D.C. 20036

Board of Directors:

Gilbert F. White, *Chairman*, Irving Bluestone, Harrison Brown, Roberto de O. Campos, Anne P. Carter, Emery N. Castle, William T. Coleman, Jr., F. Kenneth Hare, Franklin A. Lindsay, Charles F. Luce, George C. McGhee, Ian MacGregor, Vincent E. McKelvey, Laurence I. Moss, Frank Pace, Jr., Stanley H. Ruttenberg, Lauren Soth, Janez Stanovnik, Russell E. Train, M. Gordon Wolman

Honorary Directors: Horace M. Albright, Erwin D. Canham, Edward J. Cleary, Hugh L. Keenleyside, Edward S. Mason, William S. Paley, John W. Vanderwilt

Officers:

President: Emery N. Castle

Secretary-Treasurer: John E. Herbert

Resources for the Future is a nonprofit organization for research and education in the development, conservation, and use of natural resources and the improvement of the quality of the environment. It was established in 1952 with the cooperation of the Ford Foundation. Grants for research are accepted from government and private sources only if they meet the conditions of a policy established by the Board of Directors of Resources for the Future. The policy states that RFF shall be solely responsible for the conduct of the research and free to make the research results available to the public. Part of the work of Resources for the Future is carried out by its resident staff; part is supported by grants to universities and other nonprofit organizations. Unless otherwise stated, interpretations and conclusions in RFF publications are those of the authors; the organization takes responsibility for the selection of significant subjects for study, the competence of the researchers, and their freedom of inquiry.

This book is a product of RFF's Quality of the Environment Division directed by Walter O. Spofford, Jr.

The book was edited by Joan R. Tron. The index was prepared by Sydney Schultz. The art was drawn by George F. Hager.

RFF editors: Joan R. Tron, Ruth B. Haas, Jo Hinkel, Sally A. Skillings

For Linda

Preface

The origins of this study lie in some serious doubts I have harbored for many years about several widely shared beliefs pertaining to international relations. Specifically, I have never felt comfortable either with the proposition that the fundamental problems of the international system are attributable to the absence of centralized international institutions of government or with the argument that international law is not really law at all because of the absence of formalized enforcement mechanisms. These doubts have induced me to think repeatedly about the nature of rules in international society as well as about the factors that determine whether individual actors comply with or violate these rules.

Considerations of this sort initiated a thought process that soon led me to broaden my focus. It was not long before I realized that international society is a member of the set of highly decentralized social systems, and that there might well be similarities among all the members of this set with respect to the problem of compliance. From here, it was only natural to take an additional step and to think about the problem of compliance as it arises in the whole class of social systems. As a theoretician, I had little hesitation in expanding the scope of my reflections in search of powerful generalizations about the problem of compliance.

As a result, I quickly found myself engaged in an effort to construct a theory of compliance at the most general level. This effort is reflected in the theoretical chapters of this monograph. Even as I began increasingly to think about compliance in general terms, however, I did not lose interest in the initial puzzles that precipitated my concern. I found that I retained a desire to sort out what struck me as serious confusions about the nature of the international system. Therefore, I have also made a concerted effort to apply my ideas about compliance to that specific case.

As always, it is a pleasure to express my gratitude for the help I have received from a number of institutions and individuals. Among institutions, the Rockefeller Foundation made the crucial contribution by awarding me a fellowship that freed me from teaching duties during the academic year 1975–1976. Resources for the Future added an additional grant that enabled me to finish up the project during 1977. Other institutions that supplied much appreciated logistical support include Tel-Aviv University, The Richardson Institute for Conflict and Peace Research, and the University of Maryland.

Among individuals, I owe a special debt to my good friend, Albert M. Chammah. He not only read the first draft of the manuscript and provided detailed comments, but also participated cheerfully in innumerable discussions dealing with various aspects of compliance. Other colleagues whose assistance has been especially helpful during the course of this study include Michael B. Nicholson, Joe A. Oppenheimer, Clifford S. Russell, and Saadia Touval. I am indebted to my assistant, Robert Warrington, who performed a wide range of tasks for me during the years 1976–1978. My editor, Joan Tron, helped me to eliminate numerous infelicities in the draft of this study. Needless to say, I alone am responsible for all remaining weaknesses and defects in the essay.

O.R.Y.
June 1978

Full list of titles in the set
POLICY AND GOVERNANCE

- Volume 1:** NEPA in the Courts
- Volume 2:** Representative Government and Environmental Management
- Volume 3:** The Governance of Common Property Resources
- Volume 4:** A Policy Approach to Political Representation
- Volume 5:** Science & Resources
- Volume 6:** Air Pollution and Human Health
- Volume 7:** The Invisible Resource
- Volume 8:** Rules in the Making
- Volume 9:** Regional Conflict and National Policy
- Volume 10:** The Future of Alaska
- Volume 11:** Collective Decision Making
- Volume 12:** Steel Production
- Volume 13:** Enforcing Pollution Control Laws
- Volume 14:** Compliance & Public Authority

Contents

Preface ix

1. The problem of compliance 1

PART I A SPECIAL THEORY OF COMPLIANCE

2. The calculus of the actor 15

3. Compliance in the international system 29

PART II APPLICATIONS TO INTERNATIONAL POLITICS

4. Compliance without organization:
the Partial Nuclear Test Ban Treaty 51

5. Decentralized institutions:
the International North Pacific Fisheries Convention 67

PART III TOWARD A MORE GENERAL THEORY OF COMPLIANCE

6. The problem of compliance reconsidered 97

7. The behavior of public authorities 111

8. Externalities of compliance mechanisms 135

Bibliographical note 148

Reference list 154

Index 162

The problem of compliance

The mere existence of a rule, a law, a moral standard, a social norm, or any other behavioral prescription does not guarantee that those subject to it will actually comply with it. It is evident that various forms of non-compliant behavior are common in most social systems. Even those who acknowledge the authoritativeness and generally favor the existence of specific behavioral prescriptions frequently find it advantageous to violate them in practice.¹ That is, the presence of incentives to cheat need not imply a desire to reject the authoritative force of the relevant behavioral prescriptions altogether. Similarly, the promulgation of a negotiated settlement, a contract, or a treaty does not mean that the participants will automatically conform to the behavioral standards set forth in their agreement. Actors quite frequently enter into agreements whose terms they are by no means determined to carry out.

The issue of compliance invariably poses problems of choice for those who are subject to specific behavioral prescriptions. This is so whether a given actor ultimately chooses to comply or not to comply, either on the basis of conscious calculations or of subconscious forces. Consequently, the phenomenon of compliance is amenable to analysis in terms of various theories of choice. It also constitutes a central concern in all discussions of "enforcement" in the theory of games and in analyses of bargaining and negotiation. Posed in this way, moreover, the problem of compliance comprises a classic theme of political theory. All this leads straight to the principal issues I wish to tackle in this essay. What are the factors that

¹ Similarly, Lucy Mair (1962, p. 35) refers to the frequent occurrence of situations in which "... the rules to which everyone subscribes in principle are broken in particular cases."

govern whether subjects (individuals or collective entities) abide by rules, laws, moral standards, social norms, agreements, and so forth? How will public authorities approach the problem of compliance and what options do they have in attempting to elicit compliant behavior from specified groups of subjects? These questions encompass a broad range of topics. But, as we shall see, they constitute only a subset of the entire collection of important issues pertaining to behavioral prescriptions and compliance.

I propose to tackle these questions at two distinct levels. In the first instance, I shall address the problem of compliance in general, theoretical terms. Compliance is not uniquely a matter of politics, unless we make it so by definition. On the contrary, issues pertaining to compliance arise in a great many realms. Thus, such issues are pervasive in economic, social, religious, and educational arenas as well as in political arenas more narrowly defined. Furthermore, they constitute a major human concern in situations ranging from highly specific interpersonal relationships to international activities involving large collective entities. Can we formulate any general statements about compliance which are relevant to all these situations? Necessarily, I shall approach the problem in abstract terms in this context and analyze the major features of this problem quite formally.

At the same time, I shall examine the special characteristics of the problem of compliance as it arises in social systems that are highly decentralized with respect to the distribution of power and authority. More specifically, I shall engage in a detailed investigation of compliance in the contemporary international system. In the course of this investigation, I hope to be able to lay to rest certain entrenched myths (for example, the idea that the presence of well-developed enforcement mechanisms constitutes a necessary condition for the achievement of high levels of compliance). Also, I plan to argue that the compliance problems of highly decentralized social systems, like the international system, are not always qualitatively more difficult to solve than the parallel problems arising in more centralized social systems. In this connection, I shall make use of several case studies. I am not, of course, under any illusion that it is possible to confirm generalizations through the use of case materials. Nevertheless, I believe that detailed case studies constitute a flexible device both for the empirical examination of theoretically derived propositions and for the development of new hypotheses within a well-defined conceptual framework.

CONCEPTS AND DEFINITIONS

A behavioral prescription is any well-defined standard setting forth actions (including prohibitions) that members of some specified subject group are expected to perform under appropriate circumstances.² A fully

² According to the dictionary, the term "rule" covers much the same ground that I associate with the concept "behavioral prescription." Thus, *Webster's Collegiate Dic-*

articulated behavioral prescription, therefore, must include a demarcation of the relevant subject group and the appropriate circumstances as well as a statement of the required action(s). Note also that behavioral prescriptions constitute normative standards in the sense that they specify behavior that actors *ought* to exhibit under the circumstances in question.³ This suggests questions concerning the nature of the authority underlying any given behavioral prescription and the reasons why members of the relevant subject group acknowledge it as authoritative. In this essay, I shall generally bypass these questions by assuming the existence of behavioral prescriptions that are widely acknowledged as authoritative.

The "domain" of a behavioral prescription refers to the subject group encompassed by the prescription. Some prescriptions are intended to be universal (for example, the moral prohibition against the taking of human life) while others are meant only to apply to some well-defined subset of the general population (for example, the rules pertaining to professional baseball). The "scope" of a behavioral prescription, by contrast, refers to the breadth of its coverage. Two dimensions of scope should be differentiated. Some prescriptions require far more extensive or costly actions than others. Thus, moral standards requiring certain individuals to provide substantial and continuous care for others are more extensive than laws demanding periodic performance of marginal acts (for example, having one's automobile inspected annually). Beyond this, however, the term scope applies to contextual limitations associated with behavioral prescriptions or to the appropriate circumstances in which the relevant actions are to be performed. Some prescriptions are broad with respect to scope in the sense that the required actions are to be carried out in virtually every situation (for example, there are relatively few contexts in which the taking of human life is morally or legally justifiable), whereas other prescriptions demand the performance of the appropriate actions only under highly restricted circumstances. Of course, there are also cases in which serious controversies arise precisely with regard to the proper contextual limitations to be associated with a particular behavioral prescription.⁴

A compliance system is a set of behavioral prescriptions designed to regulate an interdependent group of activities in a coherent fashion. Though boundaries are sometimes ambiguous and demarcation problems are common, human activities are typically divisible into relatively well-

tionary defines a rule as a prescribed guide for conduct or action. But a number of prominent writers have given the term different meanings in recent philosophical discussions. To avoid confusion with these meanings I have chosen to speak of behavioral prescriptions throughout this monograph. For comparison consider the discussions in Hart (1961, esp. chap. V); Rawls (1955), and Dworkin (1978, esp. chaps. 2 and 3).

³ Unlike laws of nature or general laws, therefore, behavioral prescriptions may remain valid even in situations where they are frequently violated.

⁴ There are parallels between this usage of the concepts "domain" and "scope" and the use of these concepts by Lasswell and Kaplan (1950) in their discussion of power.

defined groups or categories. And behavioral prescriptions are commonly organized into easily differentiable sets to bring order into specific groups of human activities. For example, there are well-developed systems of rules to govern sports like baseball and football; systems of laws to provide order for functional areas such as interstate commerce or regions such as states; and systems of ethics to regulate the behavior of specified groups such as lawyers or physicians. Ideally, a compliance system should be fully consistent internally in the sense that its component prescriptions should not call for contradictory actions or be impossible to fulfill simultaneously. In fact, however, compliance systems exhibit significant inconsistencies from time to time. Note also that there are ordinarily extensive interdependencies among the component elements of compliance systems. Consequently, subjects will often make decisions with respect to the whole set of behavioral prescriptions included in a given compliance system rather than making separate decisions concerning compliance with each component prescription.⁵

The subjects of behavioral prescriptions are the units that must ultimately choose whether or not to comply with any given prescription. In this connection, a subject or an actor is any entity that (1) possesses preferences concerning alternative states of the world and (2) is capable of engaging in choice behavior. An entity that does not possess preferences is not capable of making meaningful choices concerning whether or not to comply with specific behavioral prescriptions. A unit that has no capacity to choose at all must behave in accordance with the dictates of some genuine actor and need not be dealt with separately in any study of compliance.

It is also relevant to touch on the distinction between individuals as actors and collective entities as actors in assessing choice behavior in the realm of compliance. While it is possible to proceed on the assumption that collective entities behave as though they were integrated individuals, their actual choice behavior diverges significantly from that of individuals in many real-world situations. This is particularly true with respect to the behavior of the actors in the international system, a case of special interest in the context of this study (Allison, 1971). Accordingly, it will be important to engage in a careful examination of the nature of the actors and their behavioral attributes in analyzing the problem of compliance as it arises in the international system.

The term compliance refers to all behavior by subjects or actors that conforms to the requirements of behavioral prescriptions or compliance systems. Conversely, noncompliance (or violation) is behavior that fails

⁵ For example, when you agree to participate in a particular game, you ordinarily accept the entire set of rules of the game in question. Similarly, if you agree to operate within the framework of an existing parliamentary system, you generally accept the rules of that system as a set.