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The Behavioral Code: Four Behavioral Science Insights for Compliance and Enforcement

by [Benjamin van Rooij](#) and [Adam Fine](#)

With each new corporate scandal and case of major illegal corporate behavior or wrongdoing, regulators and prosecutors will face tougher questions about why they have not been able to prevent damages. Increasingly, this will mean that compliance and regulatory enforcement become [an ex-ante affair](#), where corporate managers and government officials seek to influence behavior before damage happens, rather than the ex-post model of assigning liability after the fact or defending the corporation against such liability.

This means that compliance management, risk regulation, and corporate prosecution have become about [behavioral change](#). Achieving behavioral change is highly complex as there are many factors that determine human and organizational conduct. When compliance and enforcement practice tries to intervene to improve behavior, it may all too easily be ineffective or at worst backfire. Successful behavioral change thus requires knowledge about the effects of different interventions. Here, fortunately there is a large body of behavioral science work that practice can build on. In our new book, [The Behavioral Code. The Hidden Ways The Law Makes us Better... Or Worse](#), we provide key insights from behavioral science, releasing them from the paywalls of academic journals and translating them into jargon-free and accessible narratives to show what works, what does not work, and where we are still unsure. By drawing on these scientific insights, enforcement and compliance practitioners can develop behavioral interventions that are more effective and less costly. Along those lines,

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below we detail four lessons discussed

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1. Stricter punishment alone is

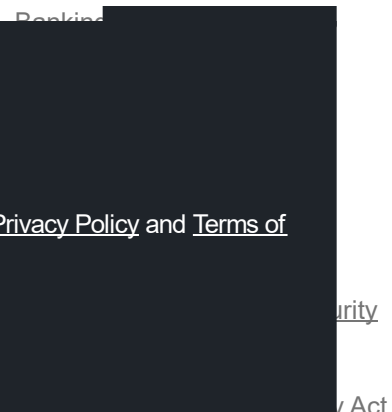
Punishment has been one of the primary tools for deterring damaging and unwanted behavior.

Research has provided mixed results about the effects of punishment (in [this study](#) and [this study](#)) on violent crime actual

[evidence](#) that stricter punishment deters criminal conduct. The research finds that the [certainty of punishment](#) is more important than its severity, and that punishment only deters if there is a [threshold level of certainty](#) of getting caught and punished. And it's not just violent crime. A large review of the empirical work comes to a similar conclusion for corporate misconduct: there is [no conclusive evidence that punishment deters corporate crime](#). Also, most people and organizations do not have a proper understanding of how the law is enforced, and thus there is a large [discrepancy](#) between objective and subjective deterrence, meaning that how the law is enforced in reality is not how it is experienced and understood by norm addressees. These insights have three implications for enforcement practice and for compliance systems that use sanctions: focus more on detecting violations than on stronger sanctions, communicate about law enforcement and surveillance work, and keep in mind that relying on tougher punishment alone is destined to fail.

2. Compliance follows social context.

A large body of psychological research has shown the immense power of social norms (what people consider to be normal or socially acceptable) on human behavior. On the one hand, existing social norms can be aligned with those of the law, where for instance bribe paying or money laundering is seen as very rare, abnormal, deviant behavior in which others do not engage and of which they disapprove. In this case, there are positive social norms. Compliance managers, regulators, and prosecutors must in all their communications show that such norms exist and try and activate them. From campaigns against [drunk driving](#) or [sexual assault](#) to interventions for [tax compliance](#), studies show how simply changing the wording of communications can be highly effective



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for reducing illegal and damaging behavior. Simultaneously, compliance and enforcement practitioners must ensure they do not erode or undermine such positive social norms when they do exist, for example by introducing incentives that could [crowd-out the intrinsic motivational power](#) of positive social norms. When there are negative social norms—when deviant, illegal, or damaging behavior has become normal and acceptable—enforcement and compliance must not activate these negative norms. This can happen all too easily, for instance when compliance management report that there has been a high number of rule violations. When they do so, they highlight how common illegal behavior is, which research has shown will [lead to more rule violation](#).

3. Organizations need support to follow the law.

Compliance is not just about motivation. Some people or organizations are less able to follow rules, as they may have less technological, financial, or other practical ability to do as the law demands. The practical capacity to comply with the law is a vital influence on rule following behavior, and one that forces us to look beyond motivation. A core example of such a capacity problem is legal knowledge. Empirical studies have demonstrated time and again that [people do not know the law](#). This is true for lay people who do not understand their basic rights in [employment](#), [family](#) and [criminal law](#). And even some professional experts, such as [doctors](#) or [school principals](#), do not know the rules that apply to their profession. Surely, not knowing the law is not an excuse to break it, but how can we expect people to follow rules they do not know? A chief insight here is that compliance and enforcement work should be about disseminating as broadly as possible the applicable rules. But even more important is the simplification and reduction of rules. By the early 1990s, when we have the last estimate, US corporations had to comply with [300,000 legal rules backed by criminal sanctions](#). How can we expect anyone, even with a team of legal advisors, to be able to cognitively understand and memorize such rules, let alone apply them throughout their business on a daily basis? Compliance and enforcement work should be not just about detecting and punishing offenders or setting the right norms, but also about supporting organizations and helping equip them to follow the law.

4. Better compliance requires reducing opportunities for

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violations.

A very effective way to increase compliance is by reducing opportunities for illegal and damaging behavior. [Speed bumps](#) obstruct speeding and ensure safety. Terrorists could no longer use liquids to detonate explosives on planes when [authorities restricted fluids in carry-on luggage](#). Better street lighting reduces [burglary, vandalism, vehicle crime](#), and [public urination](#). Or consider how firewalls and anti-virus software help to protect against [cybercrime](#). Adopting this highly effective approach starts with [investigating the opportunity structure](#) that allows the misbehavior to occur. It means shifting away from asking why the behavior occurs to analyzing how it takes place and what features enable it. An example of such a feature in corporate settings are weak internal controls and accounting policies that make it easier for employees to misreport finances, engage in embezzlement, and misappropriate funds for bribery. And once this is clear, organizations or their regulators can take steps to block the features enabling the damaging misconduct.

These four insights show that contemporary compliance officers and enforcement officials should take a holistic approach to preventing and deterring misconduct. That approach ideally should combine interventions that address incentives with those that bolster positive intrinsic motivation, activating people's own social and moral sense of acting properly, as well as those that increase organizations' capacity to comply or reduce opportunities for violations to occur. This approach requires a mastery of the behavioral code, the mechanisms that shape human and organizational conduct. Compliance and enforcement practitioners can gain much from the many insights of behavioral science, and from collaborating with behavioral researchers to more effectively address the complex issues that arise in the practices of corporate compliance and enforcement.

[Benjamin van Rooij](#), a professor of law and society at the University of Amsterdam and a global professor of law at the University of California, Irvine, and [Adam Fine](#), an assistant professor of criminology and criminal justice at Arizona State University, are the authors of the forthcoming book "[The Behavioral Code: The Hidden Ways the Law](#)

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