

# 13

## Compliance: 14 questions

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### 1. Introduction

Political rhetoric often implies that regulation can be quickly implemented to achieve policy goals, but its effectiveness depends on the responses of individual citizens and businesses. Research in ‘compliance’, by contrast, directs attention to the complexities of implementation. The impact of regulation, compliance researchers show, depends on the responses of individual businesses and citizens.

The explanation and understanding of compliance in regulatory studies draw on a bewildering array of concepts from different disciplines. These include the psychology of individual motivation, organisational and institutional theories of the firm in its environment, criminological understandings of the causes of law-breaking and sociological and anthropological studies of the interaction of law with plural social orderings (see Braithwaite, Chapter 2; Murphy, Chapter 3; Harris, Chapter 4; and Forsyth, Chapter 14, this volume).

We begin this chapter by briefly setting out the range of meanings of compliance. We go on to synthesise the lessons of these different literatures into a holistic set of 14 compliance questions. We propose

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<sup>1</sup> We acknowledge the assistance of Dr Kym Sheehan, who helped the first author work up this material into an earlier version of this chapter for the purposes of a consultancy for Consumer Affairs Victoria in 2011.

these 14 questions as a set of prompts that policymakers, practitioners and applied researchers can use to identify and understand the many facets of behaviour and meaning that influence ‘compliance’ in each specific situation.

## 2. What is compliance?

In regulatory studies, ‘compliance’ refers to the panoply of behavioural and attitudinal responses that individuals and firms make to regulation. Parker and Nielsen (2011: 3–8) distinguish between ‘objectivist’ and ‘interpretivist’ approaches to compliance studies.

Objectivist approaches to compliance (Parker and Nielsen 2011: 3–6) identify and explain how, why and in what circumstances individuals and firms comply with regulation, and when and why they do not (for example, Simpson 2002). The core meaning of compliance in this context is behaviour that is obedient to a regulatory obligation. Objectivist compliance studies also seek to explain compliance and noncompliant individual intentions and attitudes, firm-level systems and management processes and the consequences of rule adherence for the accomplishment of policy goals (such as whether a policy goal, like pollution reduction, was actually achieved, as distinct from whether a firm complied with mandatory technology requirements). Many objectivist studies of compliance point out that rule adherence is often supported by commitment to the principles and values behind the rule (for example, Braithwaite 2009; Gunningham et al. 2003) and a democratic and fair process of regulatory rule-making and enforcement (for example, Tyler 2006).

Interpretivist approaches to compliance (Parker and Nielsen 2011: 3, 6–8) understand compliance to be a complex, ambiguous process in which the meaning of regulation is transformed as it is interpreted, implemented and negotiated in everyday life by those to whom it is addressed (for example, Edelman et al. 1999; Silbey 2011). Here compliance can refer to meanings and interpretations, social habits and practices and interactions and communications between different actors in the implementation process.

A broad and multifaceted understanding of compliance can help illuminate the complexities of regulatory implementation to achieve policy goals.

### 3. Background and origins of the 14 questions

Our 14 questions are based on the ‘Table of Eleven’ (T11) developed by Dr Dick Ruimschotel for and in collaboration with the Dutch Ministry of Justice to assist the government in determining whether new legislation could be enforced in a way that would lead to compliance (Law Enforcement Expertise Centre 2004). The table lists 11 factors that behavioural science research showed influenced compliance. The designers of the T11 recommend that it works best where single target groups and one or more very specific core obligations are assessed one at a time.

We have adjusted the original T11 by reference to Nielsen and Parker’s later review and synthesis of the interdisciplinary empirical literature explaining compliance (Nielsen and Parker 2012; Parker and Nielsen 2011).<sup>2</sup> The original T11 was particularly strong on delineating the different aspects of government enforcement that are relevant to compliance defined in the objectivist sense. In contrast, Nielsen and Parker’s ‘holistic compliance model’, shown in Figure 13.1, is particularly strong at seeking to understand how individuals’ and businesses’ everyday motivations, characteristics and business models interact to influence their perceptions of their regulatory obligations, enforcement and, ultimately, their compliance.

The Nielsen–Parker holistic compliance model emphasises the interaction between the different factors and the different actors that can enforce or encourage compliance. Some factors might have a short-run effect, while others might slowly build up (or eat away at) compliance, depending on their interaction with other factors.

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<sup>2</sup> A table comparing the original T11 with our model is available from the first author on request. We have added one dimension (number 8) to the original six ‘enforced’ compliance dimensions. We have reorganised the original five dimensions of ‘spontaneous’ compliance into seven dimensions in three subcategories informed by a more expansive understanding of compliance. Finally, we have reworked the questions and descriptions to emphasise the need to identify interactions between the various factors influencing compliance.

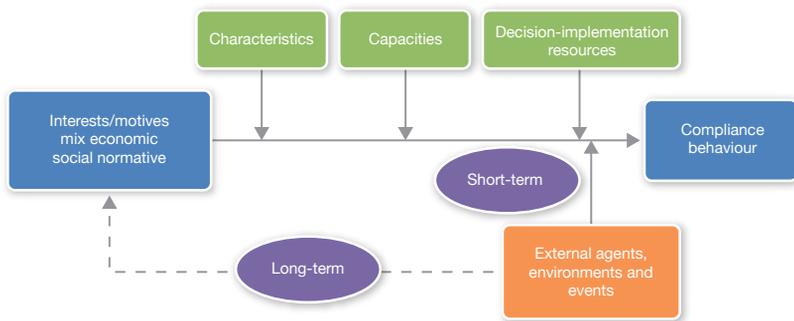


Figure 13.1 The Nielsen–Parker holistic compliance model

Source: Nielsen and Parker (2012).

## 4. Purpose and use of the 14 questions in practice

The purpose of the framework is to guide the collection of information about potential reasons why people do or do not comply with particular obligations. It can be used prospectively to help *design effective legislation*, to predict where there might be compliance issues in the future if new obligations are introduced and how policy purposes can most effectively be put into regulatory design to promote compliance. It can also be used during the *implementation* phase to help design and target effective regulatory education, compliance monitoring and enforcement strategies. At this stage, it can be a useful way of developing a *risk assessment of target populations* to help determine which regulatory strategies (education, monitoring, enforcement) should be used with which subgroups. Finally, it can be used in the post-implementation *monitoring and evaluation phases* to examine the impact of existing regulatory strategies. This might prompt ideas for changes in compliance and enforcement strategies, reforms to the regulation itself and strategic alliances with other parties to assist in improving compliance.

It is important to use all 14 factors to guide information gathering. The reasons people behave the way they do in society, including in relation to their regulatory obligations, are often complex and it is important to avoid overly simplistic explanations. The 14 questions are intended to be comprehensive and holistic enough to pick up all salient and significant issues.

Table 13.1 The 14 compliance questions

| Spontaneous compliance factors  | Enforced compliance factors  |
|---|--|
| <p><b>Economic, social and normative motives</b></p> <p><b>1. Social and economic costs and benefits</b><br/><i>Does the target group believe that it costs too much time, money and effort to comply? Does the target group believe that there are tangible advantages to be gained from breaking the rules? Does the target group see any advantage to them in complying with the rules?</i></p> <p><b>2. Degree of acceptance of this regulation</b><br/><i>Does the target group agree with the policy objectives and the principles that underpin the rules surrounding their licensed activity? Do they agree with how the policy and principles have been put into practice—for example, do they think particular obligations are unacceptable?</i></p> <p><b>3. Respect for the law in general</b><br/><i>Does the target group generally believe in abiding by the law; do they believe that complying with the law is a good thing to do regardless of whether they agree with a specific obligation?</i></p> <p><b>4. Existence of non-official influence over the targeted group's compliance</b><br/><i>Do industry groups and other regulatees, customers, investors, trading partners, local communities, industry groups, non-governmental organisations or other stakeholders facilitate compliance?</i></p> | <p><b>8. Respect for the regulator</b><br/><i>Does the target group respect the regulator and how it goes about its tasks? Do they have a relationship with the regulator? Do they respect the judgement of those responsible for law enforcement?</i></p>   |
| <p><b>Characteristics and capacities of members of the target population</b></p> <p><b>5. Business model</b><br/><i>Is compliance relevant to the target group's business model or is it an 'afterthought', or even irrelevant?</i></p> <p><b>6. Knowledge of the rules</b><br/><i>Is the target group aware of their obligations? Do they know the rules that govern the particular activity? Are the rules comprehensible or are they too complex to understand?</i></p> <p><b>7. Capacity to comply</b><br/><i>Does the target group have the capacity to comply with the rules? Or do they lack the money, time, education or expertise to become aware of their obligations, decide to comply and implement compliance? Do they have good enough management systems to implement compliance?</i></p>   | <p><b>Deterrence factors</b></p> <p><b>9. Risk that any violations of the rules will be reported to the authorities</b><br/><i>Is there a high risk of violations being reported to the authorities, either by members of the target group's community or by the public? Is the target group deterred from noncompliance because they fear they will be complained about or reported if they do not comply?</i></p> <p><b>10. Risk of inspection</b><br/><i>Is there a low risk of particular businesses being inspected by the regulator, either by a physical inspection or by a records inspection? Do members of the target group perceive themselves as likely to be subject to inspection?</i></p> <p><b>11. Risk of detection</b><br/><i>Is there a high risk of any violations of the rules being detected if there is an inspection or some other monitoring (such as an audit)? What is the impact of factors such as an inspection only selectively examining records, particular violations being difficult for inspectors to detect or the ease of falsification of records? How does the target group perceive the risk of detection?</i></p> <p><b>12. Selectivity of inspection and detection by the regulator</b><br/><i>Is the regulator selective in identifying and prioritising targets for inspection? Do some members of the target group perceive themselves as falling outside the priority targets for inspection? Are they aware of how the regulator 'screens' for breaches when inspecting or investigating?</i></p> <p><b>13. Risk of sanction</b><br/><i>Is there a major risk of a violation, once detected, being sanctioned? Does the regulator have a practice or policy of dismissing charges or not enforcing charges? Does the target group believe that the risk of being sanctioned is low even if they are caught and the breach can be proved?</i></p> <p><b>14. Severity of sanction</b><br/><i>Does the target group believe that the sanction they will face for a particular violation is severe, that it will be imposed quickly and will have other tangible disadvantages for the person concerned? For example: does the person suffer a loss of reputation from being sanctioned that has a negative impact on their business activities?</i></p> |

Source: Authors' work.

Not all 14 factors will be equally important in any particular situation. When these 14 dimensions are used to gather information, it will usually become obvious that a subset of factors (either individually or in interaction with each other) is of particular salience in explaining and understanding compliance and noncompliance. The 14 questions act as a checklist that expands thinking to ensure all potentially important issues are considered, and to determine which ones are of particular salience in relation to a particular target group and regulatory obligation. They are summarised in Table 13.1.

## 5. The 14 questions

### Spontaneous compliance dimensions

The spontaneous compliance dimensions are the factors that would influence people to comply even if no government education and assistance activities, complaints handling, monitoring, inspection and enforcement were in place.

#### Dimensions 1–3: Economic (material), social and normative motives

##### *1. Social and economic costs and benefits*

*Does the target group believe that it costs too much time, money and effort to comply? Does the target group believe that there are tangible advantages to be gained from breaking the rules? Does the target group see any advantage to them in complying with the rules?*

The costs and benefits of compliance relate to people's social and economic motives for compliance (see Braithwaite, Chapter 2, this volume).

How does compliance fit with a person's economic (material) motives—that is, their commitment to maximising their own economic or material utility? For example, to what extent is a regulated business or individual motivated by expanding the business, making (and selling) more products and services, earning more money and returning a greater profit to its owners? Does compliance fit well with those goals or derogate from them?

How does compliance fit with a person's social motives—that is, their commitment to earning the approval and respect of others? For example, to what extent is a regulated individual or business committed to earning the approval and respect of significant people with whom an actor interacts including other businesses, trading partners, employees, customers, local communities, the wider public, family and friends? To what extent do these other people value compliance or noncompliance?

This dimension will interact with the existence of social control over the target group (Dimension 7) since other parties are generally the ones who will control economic and social resources that motivate the target group. So, the extent to which the regulated individual or business perceives there to be costs and benefits to compliance and noncompliance depends on whether or not various other parties see compliance as relevant. For example, will some businesses or customers refuse to deal with another business that does not comply? Will peers stigmatise an individual who does not comply?

## *2. Degree of acceptance of this regulation*

*Does the target group agree with the policy objectives and the principles that underpin the rules surrounding their licensed activity? Do they agree with how the policy and principles have been put into practice—for example, do they think particular obligations are unacceptable?*

This relates to people's normative motives—that is, their commitment to obeying the law because doing so helps them realise their normative understanding of what it is to 'do the right thing'. This dimension is concerned with the extent to which the individual or business accepts the specific policy goal of the specific regulatory regime and obligation under consideration. That is, they can see that it is aimed at effectively addressing an issue that they agree would be a problem if it were not regulated.

There may be some interaction with knowledge of the rules (Dimension 5) since people who understand the rules might also have a better understanding of why the rules exist and therefore why they should support them. There might also be an interaction with social motives (Dimension 2) and social control to comply (Dimension 7) since, over time, people often come to accept and internalise the values of their peers and trading partners.

### 3. Respect for the law in general

*Does the target group generally believe in abiding by the law; do they believe that complying with the law is a good thing to do regardless of whether they agree with a specific obligation?*

This is another dimension of normative motives. Here the concern is whether the individual or firm is committed to obeying the law and respecting authority in general, regardless of whether they agree with the specific regulatory regime and obligation under consideration. Some people will want to obey the law and comply with official authorities regardless of whether they agree with the specific law because they have a high degree of trust in the legitimacy of the government and the law (see Tyler 2006; Murphy, Chapter 3, this volume).

### 4. Existence of non-official influence over the target group's compliance

*Do industry groups and other regulatees, customers, investors, trading partners, local communities, industry groups, non-governmental organisations (NGOs) or other stakeholders facilitate compliance?*

The Nielsen–Parker holistic compliance model shows that economic, social and normative motives to comply or not comply are ‘activated’ through the behaviour and attitudes of the many individuals, firms and organisations that surround each business or individual. Official regulators also activate these motives, as indicated by the ‘enforced’ compliance dimensions below.

Identifying and understanding the various parties that can exercise non-official influence over compliance require a detailed and sensitive inquiry into that individual's or firm's everyday social and business world (see Harris, Chapter 4, this volume). It involves asking about key parties who might influence them and key events where that influence could be or is regularly exercised. It might also involve asking about perceptions of the general social, economic and political environment and what the relevant individuals and firms perceive this to require of them in terms of compliance and noncompliance.

## Dimensions 5–7: Characteristics and capacities of members of the target population

### 5. Business model

*Is compliance relevant to the target group's business model or is it an ‘afterthought’, or even irrelevant?*

The ‘business model’ sums up the whole way an individual or business thinks about their everyday business life. It sums up what they are trying to achieve—that is, which motives or interests are most important to them and how they will try to achieve them; which stakeholders are important to them in terms of business dealings and reputation (for example, which customer segment do they target, how will they get investment into their business, who are the peers whom they want to respect them). How do they relate to their social, economic and regulatory environment?

The constraints of production and service provision are particularly relevant—that is, what does the trader have to do to actually make a living in their business and according to their business model? Does this leave enough time and resources for compliance with obligations? Does it put pressure on them to cut corners? Or does it make compliance with certain obligations a key to business success?

Thus, the ‘business model’ interacts with all the other spontaneous compliance dimensions. If a business’s regulatory obligations are irrelevant to its business model, it is less likely to always comply.

#### 6. Knowledge of the rules

*Is the target group aware of their obligations? Do they know the rules that govern the particular activity? Are the rules comprehensible or are they too complex to understand?*

People who are unaware of the rules may unintentionally violate them. This might be because they are unaware that there is a rule that applies to the situation or the rules may be too complex or inaccessible for them to understand how they apply to their own situation. Some members of target groups will not have the capacity to know and understand their regulatory obligations (Dimension 6), especially if there are complex and changing obligations.

People do not always need to know what the rules are to comply with them. Sometimes other parties might make sure that compliance is integrated into standard industry or organisation practice so that most people do not need to think about compliance explicitly—that is, knowledge of the rules can interact with social control over the target group (Dimension 7) through other parties and environments that make compliance natural and easy.

Often people become aware of rules and the need to know about their regulatory obligations only when they find out about enforcement action against peers or are the subject of enforcement action themselves (Dimensions 9–14). People are often capable of denying or rationalising away ignorance or incorrect knowledge until they are forced to confront enforcement against themselves or their peers (see Parker 2012).

### 7. Capacity to comply

*Does the target group have the capacity to comply with the rules? Or do they lack the money, time, education or expertise to become aware of their obligations, decide to comply and implement compliance? Do they have good enough management systems to implement compliance?*

It is well established that regulated firms vary in relation to fundamental characteristics such as economic resources, technical knowhow, managerial capacity and oversight and the personal and professional backgrounds of the people who make up the firm, and that these differences to a large degree explain differences in their compliance behaviour (Parker and Nielsen 2009). Similarly, an individual's capacity to comply with the law can be greatly influenced by their general cognitive capabilities, social capital and interpersonal relational skills. It is important to note that all these characteristics of a firm or individual can give them a greater potential capacity to know the law (Dimension 5), to decide whether it is in their interest to comply (Dimensions 1 and 4) or whether they value compliance for its own sake (Dimensions 2 and 3) and then be capable of putting the commitment to comply into practice through procedures and advice.

This can also give individuals and firms greater capacities to evade or game the law (see Braithwaite 2009; McBarnet 2003), and greater capacities to use their resources to fight or negotiate with regulators and law enforcement agencies to prevent enforcement of the law if they do not want to comply or disagree with the regulator's interpretation of the law (Edelman et al. 1999). Therefore, greater capacity and resources may or may not lead to greater compliance.

## Enforced compliance dimensions

The enforced compliance dimensions are the various government activities that influence compliance and noncompliance and how they are perceived by the obligation-holders. This includes compliance education and assistance activities and activities to deter noncompliance.

It is important to compare and contrast the objective and subjective (or perceptual) aspects of these dimensions—that is, a regulator might have sophisticated compliance education, monitoring and enforcement strategies, and an array of sanctions designed to educate and deter. However, these sophisticated tools and strategies will only make a difference to the behaviour of members of the target population if they are perceived in the right way. For example, the existence of heavy penalties will not make a difference if regulatees are not aware of them or if they perceive the chances of being caught in noncompliance as slight. Similarly, a comprehensive program of educational visits might not have the desired effect if the target population perceives them as heavy-handed and unnecessary ‘inspections’ (Waller 2007).

#### 8. *Respect for the regulator*

*Does the target group respect the regulator and how it goes about its tasks? Do they have a relationship with the regulator? Do they respect the judgement of those responsible for law enforcement?*

Whether the regulatee is aware of and respects the regulator will influence the way they perceive all the other dimensions of enforced compliance. Regulatees’ assessment of the legitimacy and procedural fairness with which the regulator goes about its task will influence their trust in the law and the regulatory process, their belief in whether the regulatory regime will meet appropriate objectives and, hence, their normative commitment to comply (Dimensions 2 and 3).

Moreover, regulatees will likely only pay attention to advice and guidance (Dimension 6) if they respect the expertise and bona fides of the person seeking to educate them.

Respect for the regulator will also influence the way regulatees’ perceive the seriousness and effectiveness of monitoring and enforcement efforts (Dimensions 9–14).

#### Dimensions 9–14: The deterrence dimensions

The remaining dimensions of ‘enforced’ compliance all relate to the various ways in which regulators seek to deter noncompliance through enforcement.

Deterrence theory proposes that people will be deterred from breaking the law when the legal penalty they would receive for a breach multiplied by the likelihood of swift detection and conviction outweighs the gain—

that is, they fear financial penalties, the loss of livelihood (for example, by losing a licence to trade or being put out of business because of a compliance scandal) and possibly imprisonment (if the offence is a criminal one for which jail sanctions are available). It is often the perception more than the objective risk of deterrence that influences regulatees.

Enforcement can activate social and normative motivations for compliance because it stigmatises and shames those who are caught in noncompliance and acts as a reminder to others that the general community values compliance. On the other hand, enforcement that is not effective, that is ignored by the community or that seems pointless can encourage noncompliance. Moreover, the targets' perceptions of the likelihood and severity of enforcement and of economic and social penalties are what are more likely to influence behaviour than the mere existence of penalties and enforcement that are disregarded.

#### 9. Risk that any violations of the rules will be reported to the authorities

*Is there a high risk of violations being reported to the authorities, either by members of the target group's community or by the public? Is the target group deterred from noncompliance because they fear they will be complained about or reported if they do not comply?*

#### 10. Risk of inspection

*Is there a low risk of particular businesses being inspected by the regulator, either by a physical inspection or by a records inspection? Do members of the target group perceive themselves as likely to be subject to inspection?*

#### 11. Risk of detection

*Is there a high risk of any violations of the rules being detected if there is an inspection or some other monitoring (such as an audit)? What is the impact of factors such as an inspection only selectively examining records, particular violations being difficult for inspectors to detect or the ease of falsification of records? How does the target group perceive the risk of detection?*

#### 12. Selectivity of inspection and detection by the regulator

*Is the regulator selective in identifying and prioritising targets for inspection? Do some members of the target group perceive themselves as falling outside the priority targets for inspection? Are they aware of how the regulator 'screens' for breaches when inspecting or investigating?*

### 13. Risk of sanction

*Is there a major risk of a violation, once detected, being sanctioned? Does the regulator have a practice or policy of dismissing charges or not enforcing charges? Does the target group believe that the risk of being sanctioned is low even if they are caught and the breach can be proved?*

### 14. Severity of sanction

*Does the target group believe that the sanction they will face for a particular violation is severe, that it will be imposed quickly and that it will have other tangible disadvantages for the person concerned? For example: does the person suffer a loss of reputation from being sanctioned that has a negative impact on their business activities?*

## 6. Collecting information about compliance using the 14 questions

The information used to make these assessments can be gathered in several different ways.

First, the 14 factors can be used to develop a set of questions for *qualitative in-depth interviews with the targets of regulation* to determine how they understand and work with the compliance in relation to a particular obligation. If an appropriate and sufficiently varied sample is chosen, this method provides deep insight into the nature of obstacles and opportunities for compliance. However, this method will not necessarily give a good indication of the absolute quantitative levels of these obstacles and opportunities for compliance.

Second, the 14 factors can be used to develop a *quantitative survey of a group targeted for regulation to gain information about the levels* of obstacles and opportunities for compliance among that group. Since it can be difficult to design a good and engaging survey that is also long enough to cover every factor that might be relevant to compliance, it will usually be more appropriate to do a pilot study first using in-depth interviews and then design a survey that gathers information from a large representative sample about the main issues identified in the qualitative interviews.

Third, this framework can be used as *a prompt for expert review of compliance obstacles and opportunities*. Here, rather than going directly to the target group to collect information about compliance, the researcher or policymaker can gather a group of experts in the area (such as inspectors, complaints handling staff, industry association representatives or consultants to the relevant industry) and use the framework as a basis for gathering together all the relevant information and insight about compliance that is available. This will be most valuable where representatives from as many different angles on the particular compliance issue are included in the conversation (for example, those from the relevant industry, regulators and professional advisers to the relevant industry). This may be done in person via interviews or a focus group/roundtable, or it might be done 'on the papers' simply by eliciting opinions and information from a range of experts.

## 7. Conclusion

The 14 questions do not set out a single unified model that explains compliance in every context and for every obligation. Rather, they form a checklist of potentially relevant factors that can enlarge one's view of compliance to comprehend the complexity of regulatory policy implementation. The 14 questions are the raw materials that can be used by regulators, policymakers and anyone interested in how regulation is implemented in everyday life to collect information and build models and understandings of how compliance works in their own field.

The 14 questions do not necessarily prescribe solutions to regulatory implementation problems. Rather, they prompt understanding and insight into the multifarious actors and mechanisms that interact with one another to influence and create compliance. It is foolhardy to assume that just because one or two factors have been addressed (for example, a comprehensive education campaign has been launched or penalties have been increased), compliance will automatically increase. There may be other factors (for example, a business model that does not allow time for keeping oneself updated on newsletters from the regulator; a perception that noncompliance will never be discovered by the regulator; or a social milieu in which messages from authority are disregarded in favour of messages from peers) that will influence compliance intentions, behaviours and outcomes. Our 14 questions prompt consideration of these different factors and the ways they interact. As other regulatory

studies scholars have pointed out, it is up to regulators to have the skill and ultimately the courage (Perez 2014) to craft solutions and alliances that are responsive to the complex social, economic and political contexts in which they work (Baldwin and Black 2008; Braithwaite 2013).

## Further reading

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