Compliance, Legitimacy and Offender Supervision

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- Robinson. G. and McNeill, F. (2008) Exploring the Dynamics of Compliance with Community Penalties, *Theoretical Criminology* 12(4): 431-449

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The problem

- In the USA, it is estimated that one half of all admissions to jails and one third of all admissions to (federal) prisons are for probation or parole violation/revocation (Klingele, 2013)
- As well as driving mass incarceration, this undermines the (external and internal) legitimacy of supervision (Wodahl, 2011)
- There are similar trends in some European states

Why is compliance with community supervision important?

- Community supervision relies on compliance to achieve positive effects (more so than prison)
- Supervision constructed as:
  - punishment/deprivation of liberty
  - control/incapacitation/surveillance
  - rehabilitation/change mechanism
- Compliance, legitimacy, effectiveness

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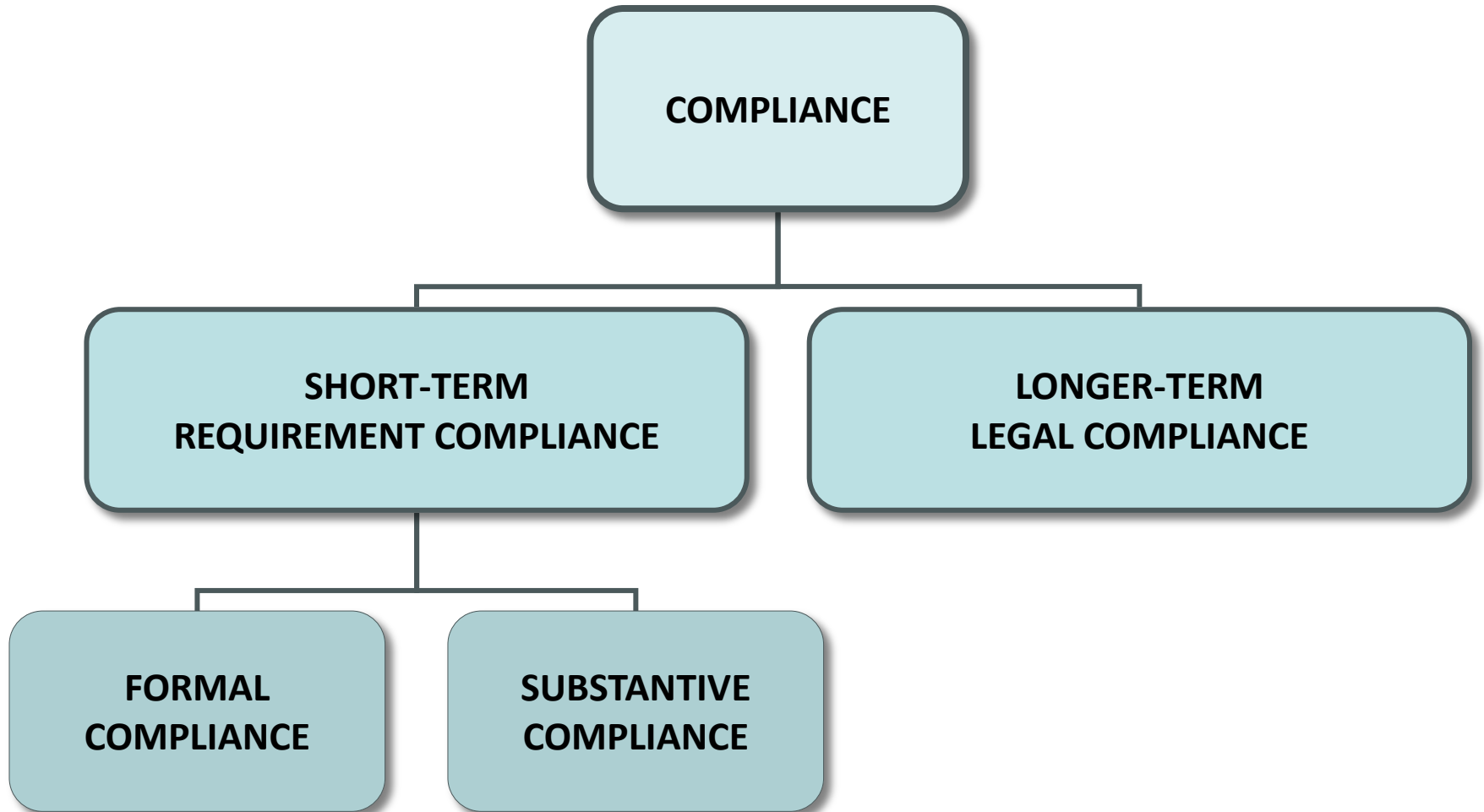
Definitions of compliance

Bottoms (2001)

– 'short-term requirement compliance'

e.g. "an offender given community service attends regularly at community service work sessions, and works hard and diligently during those sessions"

– 'longer-term legal compliance'

i.e. compliance with the criminal law; not reoffending

Dimensions of compliance (Robinson & McNeill 2008)

Constructions of compliance (Robinson 2013)

- What 'counts' as compliance is not static or objective

- Constructions vary across time and place(s)

- How compliance is constructed in policy has important consequences

Bottoms' revised typology

A. **Instrumental/Pruden tial Compliance**
   1. Response to incentives
   2. Response to disincentives
   3. "Game-playing"

B. **Compliance Based on Constraints and Enablement**
   1. Social-structural compliance
   2. Situational compliance

A. **Compliance Based on Normative Engagement**
   1. Acceptance of or belief in social norm
   2. Attachment leading to compliance
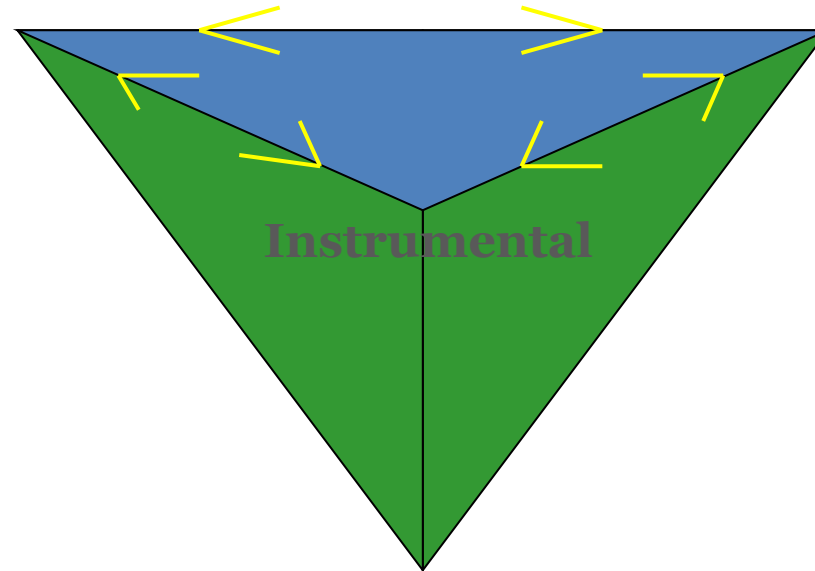   3. Response to normative cues
   4. Legitimacy

B. **Compliance Based on Habit or Routine**

A Visualization of the Suggested Mechanisms
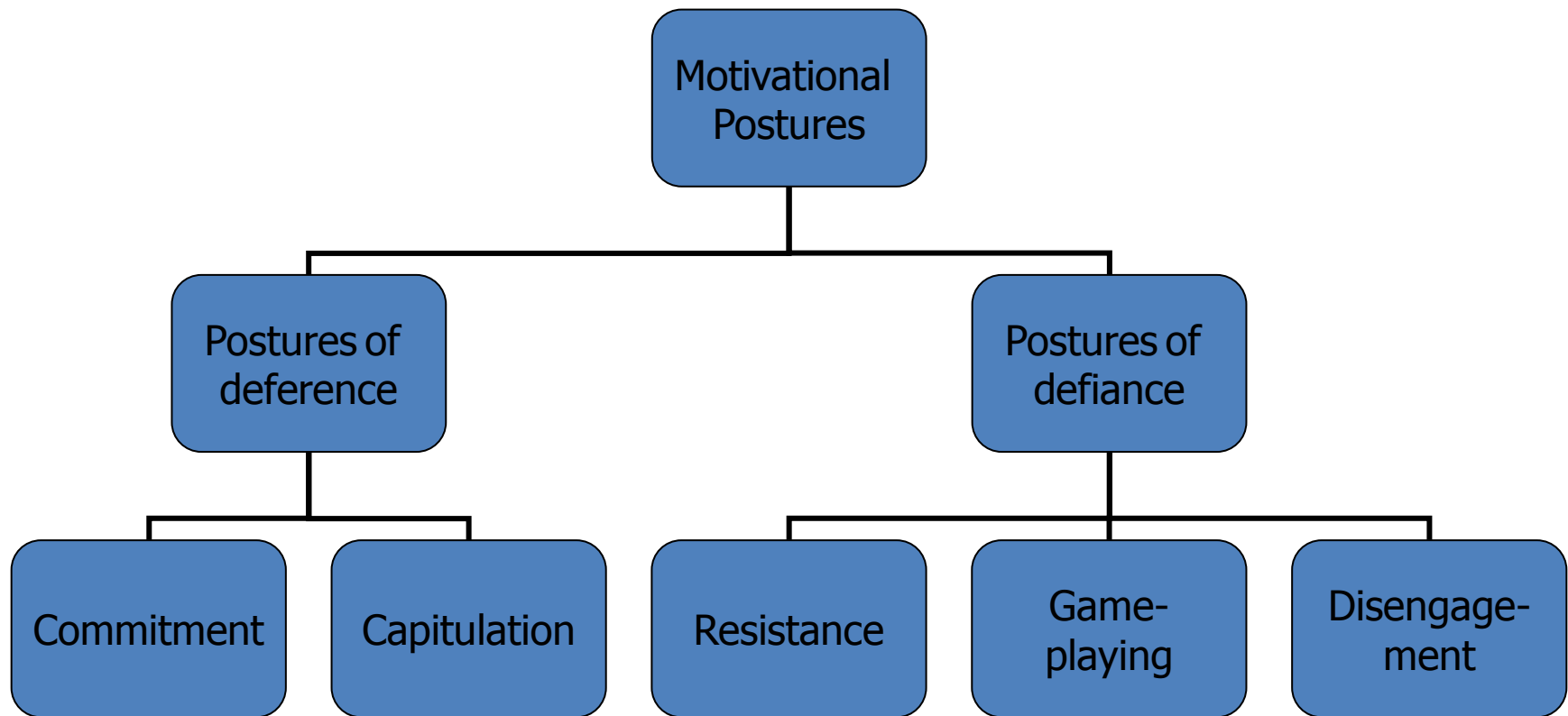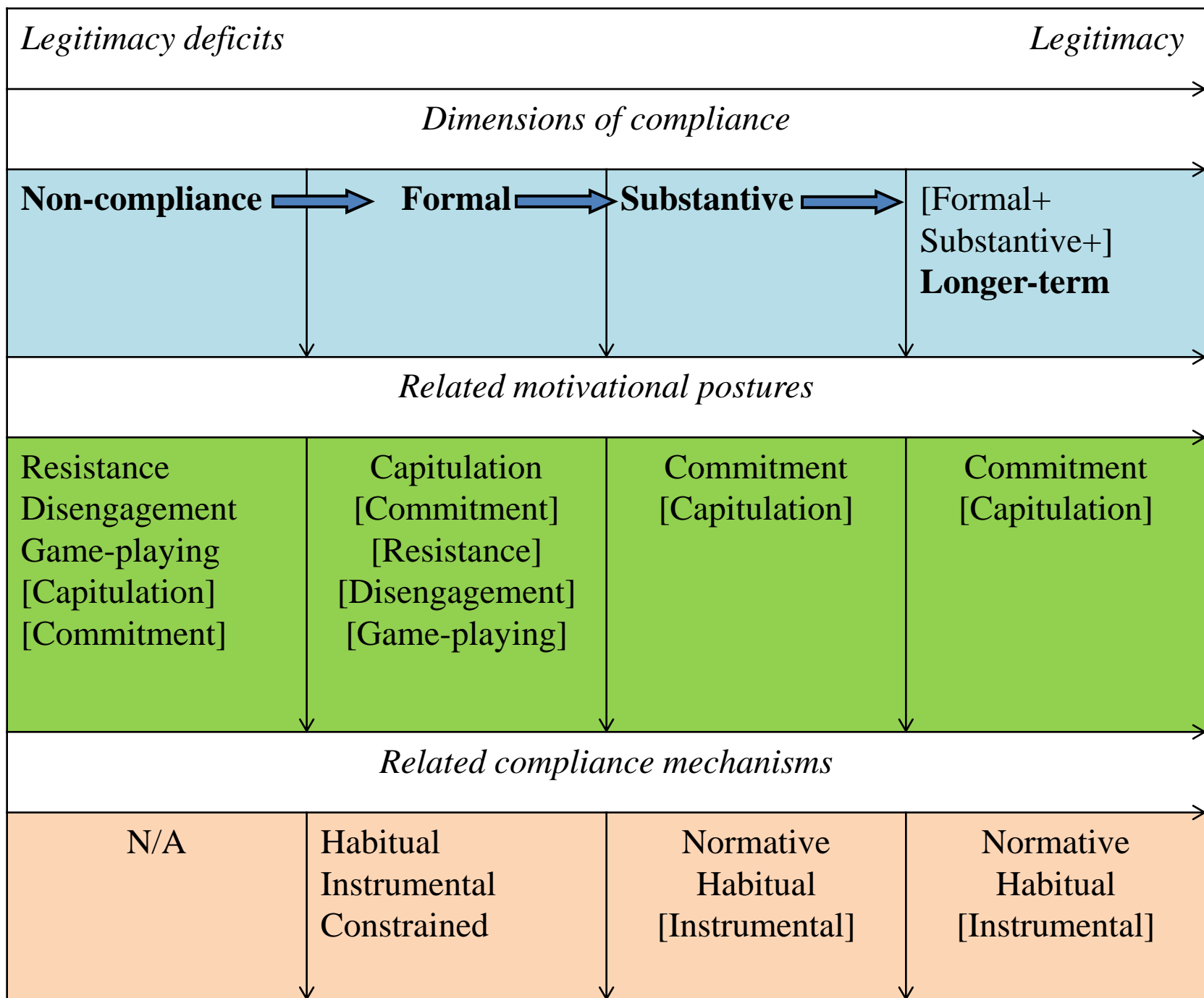
Explaining compliance

- Allows for interactions between mechanisms and individual differences, as well as changes over time

- Suggests the importance of interactions with regulator, supervisor, agency (cf. Braithwaite, 2003)

    – Legal versus psychological legitimacy

Motivational postures
of tax-payers (Braithwaite 2003)

Legitimacy deficits			Legitimacy
Dimensions of compliance			
Non-compliance →	**Formal** →	**Substantive** →	[Formal+ Substantive+] **Longer-term**
Related motivational postures			
Resistance Disengagement Game-playing [Capitulation] [Commitment]	Capitulation [Commitment] [Resistance] [Disengagement] [Game-playing]	Commitment [Capitulation]	Commitment [Capitulation]
Related compliance mechanisms			
N/A	Habitual Instrumental Constrained	Normative Habitual [Instrumental]	Normative Habitual [Instrumental]

Building legitimacy

- The ideal:
  - Formal and substantive compliance (cooperation), underpinned by psychological legitimacy, becoming 'bound in' to the relations of power, leading to long-term compliance
  - Voluntarism and consent (but sometimes absent and always constrained)
  - Requires clear communication of legitimate purposes (but note the invisibility of CSM; their opaque purposes; and the elasticity of compliance)

- A possible path to legitimacy:
  - Being helpful; being respectful; being human
  - Self-interest > instrumental-incentive mechanisms > attachments, relationships > normative mechanisms?

Threats to legitimacy

- Previous experiences of (in)justice
  - Within supervision, within criminal justice
- Multiple and shifting purposes, discourses, meanings
  - Cultural invisibility; unclear expectations
- Individual level (co-)construction of sanctions: opportunities and threats

Threats to legitimacy

- Misfits between perceptions of purposes and experiences of enforcement
    - Inflexible enforcement for external audiences (which form of legitimacy matters?)
    - Favouring formal compliance and 'punishing' formal non-compliance
    - The 'unfairness' of formal/technical enforcement in the face of substantive/long-term change efforts
    - Relational discontinuity in supervision
- Legitimacy deficits/de-legitimation effects

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The import of legitimacy

- When do legitimacy deficits and/or delegitimation (consent) matter?
  - Less when the intent is 'merely' punitive?
  - More when it is rehabilitative/reintegrative
- Calling forth change and relational legitimacy
- The contingent relationships between legitimacy and longer-term compliance
  - Desistance as spite towards formal authority
  - Desistance in spite of formal authority
  - Social (in)justice and legitimacy problems

Conclusion 1: Liquid legitimacy?

- Community sanctions are particularly dependent on both internal and external legitimacy (and hence Janus-faced)

- The pursuit of external legitimacy (in conditions of punitiveness/insecurity) may make it harder to build the internal legitimacy that may fuel compliance with CSM

- However, one pathway to internal legitimacy has been suggested; from incentives, through attachments, to normative mechanisms

Conclusion 2: Liquid legitimacy

- But community sanctions are 'leaky vessels'; the negotiability of community sanctions carries both opportunities for and threats to legitimacy (ebbs and flows)

- Legitimacy deficits really matter and can be very difficult to make good, especially where sanctions have rehabilitative intent and require substantive compliance. (Unattended leaks tend to get worse...)

- Longer term compliance with the law need not require formal or substantive compliance with sanctions, but if sanctions hope to promote longer term compliance, then those delivering them need to attend closely to questions of legitimacy

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And finally...

- Compliance, Legitimacy and the COST Action
  - The lived experience of il/legitimate supervision
  - The practice/praxis of il/legitimate supervision
  - Il/legitimate decision-making about supervision
- The path to (internal) legitimacy may suffer from its context
  - Organisational and institutional legitimacy deficits
  - Social and political legitimacy deficits