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合规

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全球公司发展新趋势
The New Development Trend of Global Companies

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前　言

最近几年,跨国公司强化企业责任的趋势出现了新的动向,强化合规经营成为跨国公司发展的新趋势。

"合规"一词是由英文"compliance"翻译而来。它通常包含以下三层含义:①遵守法规,即公司总部所在国和经营所在国的法律法规及监管规定;②遵守规制,即企业内部规章,包括企业的商业行为准则;③遵守规范,即职业操守和道德规范等。合规是一个企业走向规范经营的系统化过程。广义的"合规"泛指企业在经营活动的全流程各个环节中合规。狭义的"合规"则聚焦反对各种形式的商业腐败。

2008 年底,西门子公司因商业贿赂问题以 14 亿美元与美国和德国有关执法部门和解。这一事件是全球企业合规反腐的里程碑。我们通过调查和研究跨国公司在华经营中存在的合规问题,于 2009 年底撰写了《合规——企业的首要责任》一书。从那以来,全球企业合规反腐又有了新的发展。

最近两年,联合国、OECD 等国际组织以及美英等发达国家在全球范围加大企业合规反腐的力度。联合国全球契约组织设立了第十项原则专家组,每年开会推进全球企业合规反腐。OECD 理事会于 2009 年 12 月 26 日通过了《关于进一步打击国际商业交往中贿赂外国官员的建议》;2010 年 2 月 18 日,通过了《内控、道德与合规最佳行为指南》;2011 年 5 月底,又推出新修订版 OECD《跨国公司行为准则》,此次最重要的修改就是强化供应链合规管理。

美国 1977 年就制定了《反海外腐败法》(Foreign Corrupt Practices Act,以下简称 FCPA)。近两年来通过创新执法理念和执法手段,美国有关当局强化了查处力度。2011 年 7 月 1 日英国开始实施《反贿赂法》。该法案将与贿赂有关的罪名分为三类:一般贿赂犯罪(包括受贿罪与行贿罪)、贿赂外国公职人员罪、商业组织防止贿赂失职

Compliance: Understanding Legal and Social Approaches

Introduction

The quest for understanding compliance is not new, that is for sure. Leading thinkers over the ages have developed ideas about how and why legal norms shape human behavior. Perhaps best known is Jeremy Bentham who in 1789 proposed that once the costs outweigh the benefits of violation of law, compliance must ensure: "The profit of the crime is the force which urges man to delinquency: the pain of punishment is the force to retrain him from it. If the first is greater crime will be committed: if the second, the crime will not be committed. " [Bentham 1789 (Reprinted in 1973)] His ideas have been further developed nearly two hundred years later by Becker (Becker 1968) who won a Nobel Prize in economics for his mathematical expose of how sanction severity and probability produce compliance.

Compliance is a rich field of study. Consider the works of criminologists (i. e. Coleman 1987; Clinnard 1983; Punch 1996; Gramsick and Brusik 1990; Gibs 1968; Title 1969), social psychologists (i. e. Kim 1999; Bobek, Roberts, and Sweeney 2007; B · Ckenholt and Van der Heijden 2007; Braithwaite 2003; Braithwaite et al. 1994; Tyler 1990), tax lawyers (i. e. Bennett and Elman 2006; Armitage and Conner 2001), environmental lawyers (i. e. Vandenbergh 2003), economists (i. e. Becker 1968; Shavell 1991; Cohen 2000), sociologists of law (i. e. Hutter 1997, 1988, 1999; Hawkins 1984; Kagan and

Scholz 1984; Winter and May 2001; May 2004; Parker 2006; Parker and Nielsen 2009) and even anthropologists (i. e. Falk Moore 1973; Lange 1999;Heimer 1999).

At its core, compliance is the study of three interrelated concepts: 1. The causal relationship, between 2. legal norms, and 3. behavior regulated by such norms. The study of these three aspects have challenged scholars. Problems start with the legal norms, which can never be fully clear Hart 1961 and whose meaning is shaped by interpretation during the implementation processes (Lange 1999; Hutter 1997). This undermines simplistic comparison between behavior and legal norm, simply because the interpretation of the legal norm is a matter of context and often a reflection of the behavior itself (Hutter 1997; Lange 1999). Moreover scholarship is troubled by the methodological difficulty of ascertaining the regulated behavior itself, a necessary condition when analyzing whether it conforms to legal standards. Getting reliable and representative data on certain types of regulated behavior, especially in regulatory studies studying enterprise behavior, remains a challenge. And even if there is data about regulated behavior, studies still have to establish the causal relationship between legal norm and regulated behavior, which does not flow naturally from the fact that there is a coexistence or even correlation between the two. Challenges are only exacerbated when analyzing why compliance takes place, as many try to do. This requires an understanding of the even more complex causality between the influence of law on behavior on the one hand, and a multitude of factors of influence on this on the other. (Parker and Nielsen 2009).

At present the dominant paradigm about compliance is deterrence theory. This theory holds that compliance is a product of sufficient sanction probability and sanction height (Bentham 1789; Becker 1968). Currently, there is insufficient empirical evidence to fully sustain or falsify this amoral rational choice compliance model (Cohen 2000;Vandenbergh 2003), and it continues to be highly influential in our policy, legal and philosophical thinking. Meanwhile, there is a rich body of compliance research outside of the amoral deterrence domain that has over the last decades improved our understanding of the complexity of what shapes legal norm conformity, showing how capacity (Coleman 1987;Kagan and

Scholz 1984), moral (Vandenbergh 2003; Kagan and Scholz 1984), and social influences (B · Ckenholt and Van der Heijden 2007; Braithwaite 2003; Braithwaite et al. 1994) shape compliance, enriching and questioning assumptions of rational choice theorists. This body of work, however, does not form into a full – fledged alternative theory to deterrence itself. And there may actually be ways to bridge part of the divide between them through an o-verarching utility model.

This paper will summarize existing ideas about what compliance is, what influences it and how different factors of influence can be studied and understood in their interaction. The paper does so seeking to inform those interested in studying or influencing compliance. The paper will demonstrate that compliance is not merely a matter of law, legal awareness or legal punishment, and thus is much more than deterrence approaches cover. Compliance has just as much or even more to do with the social and personal norms of those legal norms are addressed to. Only a full broader view of what is compliance and what causes it can help aid innovative and creative ways to enhance compliance even in conditions where legal awareness is low, law enforcement is weak, and violation of the law is widespread.

The remainder of this paper will first discuss what is compliance and analyse how different definitions lead to different approaches and understandings. Second it will detail the different conditions that cause compliance. Finally the conclusion will argue for a processual and integrative social and legal approach to compliance.

What is compliance?

At its most basic form the concept of compliance links legal norms to behavior targeted by these norms. It addresses the causal relationship between legal norms (LN) and regulated behavior (RB): LN · RB. As such it has three core aspects: the legal norms, the regulated behavior and the causality between the two. As there are different ideas or assumptions about these three aspects as well as their combination there are different approaches to compliance.

Let us start by looking at the norms. The word compliance itself does not differentiate between legal norms or other norms, such as for instance social norms found in families or communities of people. In social psychology we thus find much research using the term compliance, not to indicate the conformity with legal rules but rather with social norms and commands. For our purposes here it is however logical to see compliance in terms of conformity with legal norms. This is not to say that social norms do not matter, they do very much as we shall see. They are important influences in the interaction between legal norms and regulated behavior (Cialdini and Trost 1998; Bicchieri and Xiao 2009; Biel and Thogerson 2007; Bobek, Roberts, and Sweeney 2007; Cialdini 2007; Goldstein, Cialdini, and Griskevicius 2008; Poutvaara and Siemers 2008; Schultz et al. 2007; Tayler and Bloomfield 2010; Thogerson 2008; Thornton, Kagan, and Gunningham 2009; Vandenbergh 2003).

The next point of contestation is what are the legal norms exactly that are complied with. The so – called endogenous approaches to compliance (Parker and Nielsen 2009), especially the work of Hutter (1988; 1997) and Lange (1999) have taught us that many regulatory legal norms provide discretion both to regulator and regulatee. Therefore, what exactly is the legal norm is made clear only in the regulatory process through interaction between the regulators and regulated firms. For these researchers then compliance is not so much a question of linking regulated behavior to a set norm, but rather the processes through which legal norms and regulated behavior influence one another: LN · RB. For others (called exogenous approaches to compliance, cf. Parker and Nielsen 2009) the legal norms are a given and compliance is studied by comparing regulatory behavior to a legal norm as interpreted and defined by the researcher involved. In this paper we hope to develop a way to look at compliance that includes both points of view, as we shall elaborate further in the section where we discuss the process view on compliance.

Different norms also lead to different ideas about what is compliance. Consider the example of criminal justice norms that forbid homicide, and compare them with a regulatory norm that forbids smoking in bars. The former can be seen as a codified norm that lays down

an age old rule and one could even say custom: that it is abnormal——to say the least——to kill another human being. As such the norm is close to most existing behavior. The latter, however, introduces a norm that is different from existing behavior and wishes to change the existing behavior. In regulatory reality most legal norms will be a mixture of both, but will include elements where they depart from existing behavior. For understanding compliance the two extremes produce different ideas. With homicide compliance has little meaning as most people will comply most of the time, without having to make much of an effort. Few scholars will ask why people comply with homicide norms, rather asking the opposite why there sometimes is non – compliance. With smoking rules we see the opposite, at the day of introducing the rule, the existing behavior must change completely in order to create compliance with the norms. Here compliance thus entails behavioral change. In the former the causal relation between the norm and behavior is not strong and difficult to establish even if it exists, whereas in the latter there is likely a *sine qua non* condition between norm and behavior, where without the norm people would continue to smoke. As we are interested in regulatory norms and how they shape behavior, our focus will be on norms that seek to change behavior and thus on types of compliance where behavior is likely only to change because of the legal norms. *enforced or non – enforced* (*Braithwaite* 2003 *see Vanderbergh* 2003)

If we turn to the behavior, first of all we must address the question of whose behavior is relevant for compliance. Much regulatory scholarship views compliance in terms of the compliance of the regulated firm. The individual approach to compliance, in contrast studies compliance by individuals. The latter approach is favored largely by scholars studying the general public's compliance with a variety of legal norms (i. e. Tyler 1990) or more particular tax scholars trying to understand tax compliance behavior (i. e. Braithwaite 2003; Feld and Frey 2007; Fisman and Wei 2001; Fjeldstad and Semboja 2001; Scholz and Pinney 1995). For those interested in the compliance of organizations, however the behavior of individuals in those organizations should be of interest. Ultimately, it is the combined behavior of the individuals in the organization that constitutes the organizational compliance. It cannot

be assumed that only decisions by organizational leaders directly influence the whole organization and thus its organizational compliance. This is well understood in business administration studies looking at how compliance mechanisms to implement legal and business norms within the firm can be designed and operated (i. e. Sparrow 2000).

Closely related to the differentiation between codified and regulatory norms, is a distinction between compliant behavior. One can distinguish compliance in terms of all behavior that abides by legal norms, or more narrow see compliance as only that behavior that has been directed by the legal norms to conform to these norms. So even if we are interested in regulatory norms that seek to change existing behavior, there is a difference between directed compliance (by the legal norms and their implementation) and non – directed compliance. Non – directed compliance with regulatory norms can exist because the behavior of certain enterprises already confirmed to the legal norms introduced, and thus does not originate from the introduction of new norms. Non – directed compliance may also occur because the behavior confirms to legal norms, but was influenced by other reasons than the introduction and implementation of these norms. Depending on the reasons for studying compliance a choice between directed, or broader directed and non – directed compliance can be made.

Turning to the causal relationship then, which is central in our view of directed compliance, we can distinguish between the final outcome of the influence of legal norms on regulated behavior, or we can, as we propose to do here look at the processes through which this causation takes place. Once we focus on these causal processes, we can further distinguish between the processes that are conscious, and those that are not conscious. A whole field of regulatory studies on compliance motivations has tried to understand compliance by studying the motivations of key actors involved in the processes. As such they have focused on the conscious aspects of compliance (i. e. May 2004, 2005a, 2005b). We can however also look at unconscious compliance processes where actors obey legal rules without making a conscious decision to do so, copying behavior of others (Cialdini 1990, 2007; Cialdini and Goldstein 2004; Cialdini and Trost 1998; G · Ckeritz et al. 2010; Goldstein, Cialdini, and Griskevicius 2008; Schultz et al. 2007), doing so out of habit (cf. Bourdieu

1977), or because the situation they are in forces them to (cf. Aarts, Dijksterhuis, and Custers 2003).

Finally we can also look at the level of compliance. Some studies look at compliance in binary terms, while others try and scale compliance. Obviously the latter makes sense, as especially in regulatory studies with the immense amounts of regulatory rules, as well as the complexity of regulated behavior, a fully compliant or non – compliant situation seem ideal – typical rather than factual situations. Perhaps more meaningful is to make a distinction between shallow compliance deep compliance, and ultra – deep compliance, and as such analyze the depth of compliance. Simply put shallow compliance is a compliance process where the legal norm reaches the key receptors in the regulated actor who in turn affect the behavior there, however without institutionalizing it into a social norm. Such shallow compliance process lacks continuity and demands continued pressure from external regulators as well as key receptors in the regulated firm to ensure behavior in accordance with the legal norms. Deep compliance in contrast means that an institutionalization of legal norms into the social norms of the regulated actor has taken place, and that the behavior of the regulated actor is shaped by the social norm that reflects the legal norm. Ultra – deep compliance is when legal norms actually become internalized into the morals of the individuals who work there. (cf. Vandenbergh 2003), and legal norms are complied with regardless of whether there are legal or social pressures or incentives to do so. The deeper the compliance the less external action is needed to sustain the behavioral change sought and the less need there will be even for the legal norms to exist. For our purposes understanding the depth of compliance is more important than the level of compliance, and we shall seek to evaluate how the compliance processes produce more or less depth.

What causes compliance?

There are three broad approaches to understand why people obey the law (cf. Kagan and Scholz 1984):

一、*Amoral rational – choice*: the costs and benefits of abiding and breaking legal rules

二、*Capacity*: the amount of knowledge and resources people have that enable them to abide by legal rules.

三、*Legitimacy*: the legitimacy of the legal system as a whole, the way it functions, and the legal rules.

A more detailed view of these three approaches shows that there are nine conditions that shape compliance behaviour. Figure one below shows these conditions. The outer ring depicts the conditions that shape compliance, ranging from rational – choice elements such as deterrence and utility, to factual factors such as the capacity to comply, to social norms and morals. Generally we can say that the more these conditions exist, the more compliance.
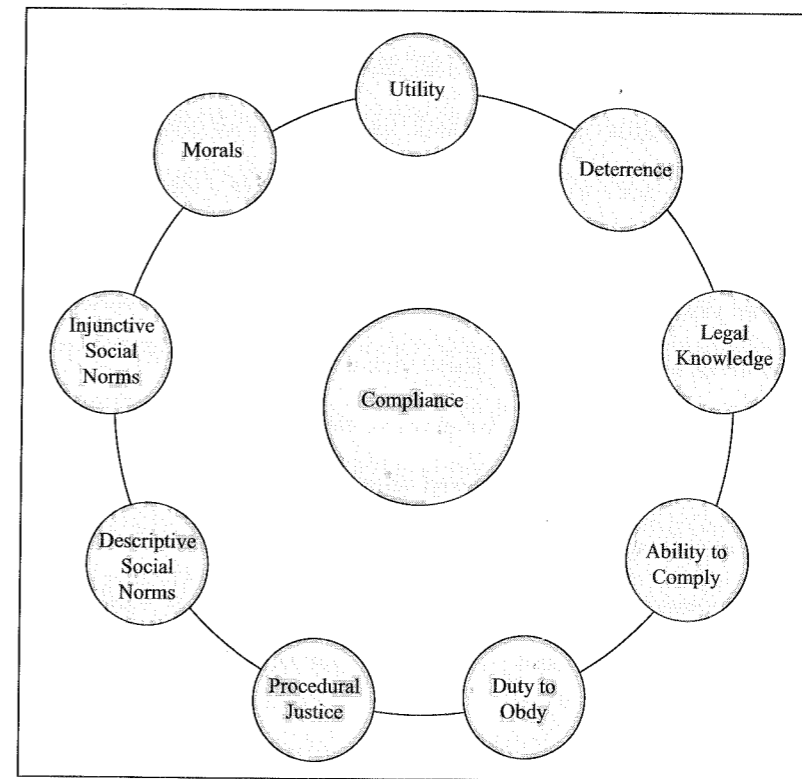

Figure 1   Compliance Conditions

Deterrence and Utility

Deterrence theory argues that the following factors matter for compliance: perceived sanction probability (also known as sanction certainty) and perceived sanction height (also known as severity)[1] (Becker 1968; Cohen 2000; Thornton, Gunningham, and Kagan 2005; Nagin 1978; Bar – Gill and Harel 2001; Braithwaite and Makkai 1991; Cook 1980; Geerken and Gove 1975; Gibbs 1986; Hawkins 1983; Kuperan and Sutinen 1999; Phyne 1992; Scholz 1984; Williams and Hawkins 1986). Perception is key, as "There can be no direct relationship between sanctions and criminal action; the two must be linked through the intervening variable of subjective perceptions of the risks and rewards of committing a crime" (Decker, Wright, and Logie 1993: 135). Deterrence is not just about the threat of sanctions from state institutions, but also from other non – state actors such as co – workers, superiors, customers, public media, or stock holders. Thus we see that the first condition deterrence, overlaps to some extent with the sixth (injunctive social norms). The measurement is different however, where here in deterrence the perceived chances of being caught and punished for violating legal norms is measured, where later the measurement is about the perception about what others *think* about violating legal norms. [2]

Deterrence, in the sense of fear for negative consequences , originates from a broader idea that compliance arises from a perceived utility in obeying legal norms, with the cost – benefits ratio of compliance being favorable over non – compliance (Becker 1968). Compliance then can also result from lower costs or higher benefits to obey legal norms, as well as from low benefits of violating norms, all of which are normally not studied in deterrence,

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① as well as the perception of costs and benefits of confirming to the law and violating the law

② Finally, the utility approach to compliance has been broadened beyond the amoral domain. Utility originally revolved around the the costs and benefits as felt through any kind of pain or pleasure. As such utility is neither solely financial, as often implied by economic modeling of utility and its application to compliance, nor is it solely amoral, as pleasure and pain can also originate from moral or social settings, as we will discuss in more detail when looking at the social and moral compliance theories.

which is focused chiefly about costs of non – compliance. This means that compliance can also be achieved by changing the cost – benefit ration by making compliance less costly and more beneficial, as well as by decreasing the income from non – compliance. This means that apart from measuring perceptions about the expected negative consequences of non – compliance we also need to measure at least the expected costs and benefits from compliance, as well as the benefits from non – compliance.

Deterrence and utility calculation also does not occur in a singular fashion. There are different ways in which regulated actors calculate costs and benefits of compliance and violation. These differ on the types of regulated actors as well as the context in which they exist. Scholarship distinguishes the short – term perspective and the long – term perspective. Short – term oriented actors will violate a rule if this is provides a direct benefit, without looking at the possible costs of violation in the long run. Long – term oriented actors will look at the total costs and benefits of their behavior in the long run, which are more likely to include the costs of violation such as having to pay for sanctions or image loss. Another distinction is that between profit maximization and loss minimization. The former means that a regulated actor will violate the law if it brings any profit, and the latter means that violation will only occur if compliance leads to losses. Law and economics scholarship further distinguishes between risk preferring and risk averse actors; the latter can be influenced to comply with the law with less probable costs of violation that those preferring risks.

Deterrence can be measured by adapting questions from the extensive deterrence literature. One can do so (cf. Thornton, Gunningham, and Kagan 2005; Grasmick and Green 1980) first by asking respondents to assume that a company similar to the one they work in regularly engages in illegal behavior. They are then asked estimate the chances that certain violating behavior will be discovered by selected state and non – state regulators(certainty). And second in order to measure severity, respondents are asked to assume that the company is caught and that the selected (state or non – state) takes action against such a violation. Then they are asked how much impact such action will have against the people directly responsible for the violation. Utility can be measured directly by asking whether compliance

is deemed costlier than violation.

Ability to Comply

Coleman(1987)argues that norm violation and compliance is the result of opportunity and motivation. While most theorists have, as we shall look at further below focused on the motivational aspect of compliance, capacity for compliance and for non – compliance are often overlooked. Kagan and Scholz have argued clearly that instances of non – compliance may not necessarily arise out of a calculation about deterrence or utility, but because of the impossibility to obey legal norms. The third condition for compliance is thus that the regulated actor has the ability to obey the norms of the law[cf. (Winter and May 2001) (Kagan and Scholz 1984; Coleman 1987)]. Such capacity results from forth the norms themselves and their feasibility[cf. (Van Rooij 2006)], as well as from the regulated actor and his ability to obey such norms. The ability to obey the law is linked to the the regulated actor's ability to monitor and adapt his behavior in accordance with the law. At its most basic level this means that actors lacking the (financial, technical, informational and human) resources necessary for compliance will be more likely to violate(Huisman 2001:171). Compliance with regulatory law often costs money, however even if regulated actors have sufficient financial resources, they may still not be able to. Regulated actors may lack trained personnel to comply with norms demanding a high level of technical expertise; or they may not know or understand the law's norms. Dasgupta et al.'s study of pollution compliance in Mexico found for example that worker education contributes significantly to higher compliance rates (World Bank 2000:91 Dasgupta, Lucas, and Wheeler 1998).

Legal Knowledge

Closely related to the ability to obey the law is knowledge of the law [1]. If regulated actors do not know the law they are unable to adjust their behavior to legal norms, which at least for directed compliance is a necessary element. Kim's work shows how even in the US knowledge of the law, even amongst specialists and even for highly basic norms is limited(Kim 1999). Legal norms, Hutter and Lange teach, are often not fully clear and their content and meaning is often constructed through interactions between the regulator and the regulated ((Lange 1999; Hutter 1997). As such knowledge of regulatory norms is obtained through regulatory interaction . What we can learn from this is that the norms that ultimately guide behavior of regulated actors may not be the same as the original legal norms, and that such constructed norms may even be the ones that regulators use as working definitions to measure compliance. For our purposes, whoever, we shall still look at the extent to which regulated actors have knowledge of the law as the more such knowledge there is the more likely that the final behavior confirms to the law itself. To measure the level of knowledge about legal norms amongst respondents, one can adapt questions originally developed by Kim in her study of legal knowledge about labor regulation.

Procedural Justice and Duty to Obey

Another compliance condition is that of perceived procedural justice. Based on Tom Tyler's work this means that people are more likely to obey the law if they believe to be treated fairly by legal institutions. Here it is interesting to note his findings that such fairness

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[1] Legal knowledge also indirectly influences compliance behavior as knowledge of norms may influence patterns of thought and the way an actor perceives the world and his own behavior. This may shape his behavior. See Witteveen 2005 The present study will however not focus on this element as it cannot be tested properly with the methods used here, nor can it be controlled for.

is not so much the result of whether the legal institutions supported the position of the norm addressee, but rather whether the procedure they used was fair (Braithwaite 2003; Tyler 1990; Tyler 1997, 2006). Tom Tyler developed this idea as well as the data supporting it empirically in the context of compliance with general legal norms by ordinary citizens and not regulatory compliance. However because the idea seems to apply to ordinary citizens it is likely to apply to them as well in their working occupation as managers or employees in regulated enterprises.

When applied to regulatory compliance instead of measuring the perception of the fairness of police and courts, one can ask respondents to inform us about their perception about the fairness of selected regulators. Questions can be adapted directly from Tyler's original work staying as close as possible to the original operationalization of fairness.

A related factor that stimulates compliance mentioned in the literature is the so – called duty to obey(Vandenbergh 2003). Such duty to obey implies a moral view that one should obey legal norms simply because they are the law, and regardless of the circumstances at hand, including the costs and benefits of compliance, fairness of regulators, the capacity for compliance, or what one self or others think about these norms. Thus one can measure the perception that one must always follow legal rules regardless of the content of the rules and the circumstances at hand.

Morals and Social Norms

Compliance, existing literature teaches has a moral and social side, beyond the just mere costs and benefits, capacity and procedural justice and perceived general duty to o-bey. Actors are more likely to comply with legal norms they morally agree with, as well as with norms they believe others should be complied with, or those that they believe others adhere to. Social – psychology has time and again shown the importance of how morals and social norms shape human behavior (REFS). As such morals and social norms are intermediaries in compliance with legal norms. Their influence is not clear cut, as social norms and

morals may, depending on the circumstances both strengthen legal compliance, as well as undermine it.

A first aspect of this are morals (or as some call them personal norms). Legal norms that are in accordance with one's personal beliefs and values are more likely to be complied with than those that are not. In addition one could say that the higher the level of moral development(Kuperan and Sutinen 1999) the more influential morals will be. Legal norms that become or are internalized into morals will produce the deepest form of compliance, simply because violating such norms means violating one's own morals(Vandenbergh 2003; Grasmick and Bursik 1990). We shall test morals by asking questions about how important selected legal norms are in terms of the respondent's values, and whether violation of selected norms would be seen as a moral problem.

A second aspect are so – called injunctive social norms(Cialdini and Goldstein 2004; G · Ckeritz et al. 2010; Thogerson 2008). These are norms based on what one perceives that others think is the correct way to behave oneself. The higher such injunctive norms are in accordance with legal norms, the more likely there will be compliance with such legal norms. A crucial question for injunctive norms is how to define the others. For our purposes such others will be defined differently for each study, selecting from superiors, subordinates, friends, family, shareholders, clients etc depending on the study at hand. Injunctive norms can be measured by asking respondents about what important peers or superiors think about violation of norms studied.

A third aspect of morals and social norms are so – called descriptive social norms. In contrast to injunctive norms, here the behavior of others matters not so much what they think(Cialdini 1990, 2007; Cialdini and Goldstein 2004; Cialdini and Trost 1998). Cialdinini's work has demonstrated the importance of such descriptive norms on shaping behavior. He has shown in various studies that descriptive norms have more influence than injunctive norms. His work is yet to be applied to compliance with regulatory norms, but it is assumed here that it will apply. One can measure descriptive social norms by asking respondents to rate (frequent – non – frequent) various types of compliance and non – compliant be-

havior of selected others (see above under injunctive social norms).

Conclusion

In sum, we see clearly that what is compliance and what causes compliance are by no way simply questions with singular answers. Yet in most policy and legal documents, a rather simplistic view is dominant. This is the view that compliance is behaviour that is altered by legal rules through its deterrent effect, causing the costs of non – compliance to be higher than the costs of compliance. We can conclude that this view is overly simplistic and at times can even undermine efforts to enhance compliance.

First of all, compliance is not simply an outcome or a final situation that one can measure and look at what has caused it. Rather compliance should be seen as a process, where the interaction between legal rules, and social and personal norms effectuate a situation through learning, negotiation, verification, stimulation and institutionalization where economic behaviour and legal norms are less and less in discrepancy. In order to enhance compliance attention should be less on how much compliance or how much non – compliance there is, or on how non – compliance is punished, but rather on what processes are in place to ensure that economic actors learn about legal rules, that they verify their behaviour in relation to such rules, that they stimulate and are stimulated to obey such rules, and finally that they institutionalize behaviour in according with such rules into working processes that become social and even personal norms. As such compliance should be a processes seeking to move from shallow to deep behavioural compliance with the law.

Second, compliance is not chiefly a process that is driven by legal rules or action by legal enforcement authorities, as much of the deterrence and cost – benefit approaches would like us to believe. Compliance can just as much be the result of capacity and legitimacy of legal norms. Here especially the existence of social and personal norms are important. They are so especially in cases where a deterrence strategy is unlikely to be feasible, given persistent non – compliance and limited enforcement capacity. Here approaches that

tap into potentially latent social and personal norms, such as evidenced by experiments from social psychologists can be a fruitful alternative. Here regulators can turn to communication messages that active descriptive social norms (telling regulated actors that compliance is normal) and injunctive social norms (telling regulated actors that others think compliance is the best thing to do). Experiments conducted on illegal logging in national parks and re – using towels in hotels have shown how cost – effective and influential such simple devices can be.

In all of this much research is necessary to know exactly how compliance processes function in real life situations and how different actors involved respond to different compliance conditions. This can help governments and companies to better understand how in different regulatory contexts and different cultural, social and economic settings the most efficient and feasible approach to enhance compliance processes can be developed.

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