Legal Education and Professional Training Re Compliance and Ethics

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EDITORIAL

LEGAL EDUCATION AND PROFESSIONAL TRAINING RE COMPLIANCE AND ETHICS

We are pleased to present the latest issue of the Compliance Elliance Journal (CEJ).

In this edition, we will focus on legal education and professional training re compliance and ethics.

This edition begins with a piece called "Rethinking Compliance – Essential Corner-Stones For More Effectiveness In Compliance Management," written by Prof. Dr. Stephan Grüninger and Lisa Schöttl. In the light of how companies dealt with Compliance Management in the past, the two authors critically examine a more effective way of Compliance. They call it „Compliance Management 2.0". As they consider neutralization techniques to be often linked with non-compliant behavior, they underline the meaning of ethical principles. Moreover they point out some further indispensable points when it comes to questions round about effectiveness of Compliance Management Systems. Without giving too much away: moral foundation, attainable goals and the role model function of top managers play an essential role according to the authors.

In the subsequent article „Cognitive Dissonance As A Prevention Strategy" Prof. Dr. Hendrik Schneider takes up in depth the just mentioned problem of neutralization strategies. He demonstrates the connection between techniques of neutralization and applied economic criminology. In doing so he creates a link between Michael Walter's statements of the perpetrator to the offense based on the theory of techniques of neutralization and well structured compliance programs. The author emphasizes the meaning of in-depth programs, in order to guarantee internally prevention measures. According to the author, the "tone from the top" should not be underestimated when it comes to neutralization strategies.

Thereafter, Dr. Rita Shackel turns to various potential sources of conflicts of interest in decision-making by professionals in her essay titled "The Role Of Intellectual Beliefs And Professional Culture As A Source Of Potential Conflicts Of Interest". The author underlines the need for more open and honest cross-disciplinary conversations regarding the way conflicts of interest are constructed and navigated in different scholarly and professional contexts. In doing so potential conflicts of interest could be uncovered.

This edition then turns to an article about Integrity Management. Dr. Daniel Dietzfelbinger sees Integrity Management from a different angle. In his piece "Integrity Cultures As A Forward-Looking Success Factor: A Practical Example" he exposes Integrity Management as a proactive control factor of support in the implementation of strategic goals. On the basis of a practical example he shows the path about how Integrity Management becomes a fundamental module in implementing the strategy.

Finally, Tiezheng Li provides some insights into the world of Compliance Management and Compliance Training in China. Starting from the previous understanding of compliance, he shows the wind of change regarding the meaning of Compliance Management in China. According to Li a growing awareness of compliance can be recognized among Chinese domestic non-financial companies. In addition, he points out the importance of Compliance Training within the scope of an effective Compliance Management System. In doing so the author also takes the opportunity to discuss some typical culture challenges, which occurred during Compliance Trainings for Chinese companies.

We hope you enjoy our fall edition!

With our best regards,

Michele DeStefano & Dr. Hendrik Schneider
Founders and Content Curators of CEJ

RETHINKING COMPLIANCE – ESSENTIAL CORNERSTONES FOR MORE EFFECTIVENESS IN COMPLIANCE MANAGEMENT*

Stephan Grüninger & Lisa Schöttl

AUTHOR

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Lisa Schöttl is a Senior Consultant in the Risk Consulting unit at PwC. She wrote her doctoral thesis on the topic of Integrity Management in business. Lisa Schöttl completed her studies in Political Science, Management and Business Ethics at the universities of Konstanz, Jena (Germany) and Berkeley (California). From 2013 to 2016 she worked as Project and Institute Manager with Prof Stephan Grüninger at the Center for Business Compliance & Integrity (CBCI) and the Konstanz Institute of Corporate Governance (KICG) in the area of Governance, Compliance & Integrity Management.

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* *This article is a revised and extended version of the German article "So geht das nicht – Compliance muss neu gedacht werden: Sechs Thesen für mehr Ernsthaftigkeit und Glaubwürdigkeit im Compliance-Management" by Stephan Grüninger which was published in Compliance Manager 1/2016.*

ABSTRACT

In the past Compliance Management has often failed, the Volkswagen emissions scandal just being one prominent example. Not everything has to be reinvented, and not everything that companies have done in the past regarding Compliance is wrong. But it is about time to think Compliance in new ways. What does "Compliance Management 2.0" really depend on? The following article aims at laying out the cornerstones for enduring effective Compliance which amongst others comprises sincerity and credibility and a moral foundation. Furthermore, the commitment and role model behavior of top managers and the training of line managers are crucial for the effectiveness of any Compliance Management System (CMS). Ultimately, for Compliance to function efficiently the efforts must be adequate for the respective company and realistic regarding the achievable goals.

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I. INTRODUCTION: COMPLIANCE 1.0 DID NOT WORK UND CANNOT WORK

Several past and recent real-life cases illustrate that non-Compliance can often not be prevented despite the existence of professional wide-spread corporate Compliance programs in the respective organizations. Already the textbook-case number one regarding bad corporate governance and corporate ethics, Enron, which was uncovered in October 2001 is a prime example for excessive accounting fraud. It exemplifies that common Compliance programs do not seem to be able to prevent misbehavior in and by companies: „Enron had an extensive and award-winning code of ethics and corporate governance structure. [...] The problem was failure to follow these policies and to develop an ethical, law-Compliance culture within the company."[1]

A not less startling case is the Siemens corruption scandal. It was uncovered in December 2006 and resulted in about € 1.3 billion of paid bribe money, until today an estimated financial damage of € 3 billion for fines and penalties as well as fees for consultants and lawyers and further costs for the internal investigation. This does not even include the so called "management attention", that is the costs for the time of managers and employees invested in interrogations, in revising the Compliance system (Compliance remediation) and applying it to their daily work. "When I started working at Siemens, I analyzed the existing Compliance structure at first. In fact all relevant rules were existent on the enterprise level, but they were not broken down sufficiently in the operational areas", said Dr. Andreas Pohlmann at the beginning of 2008 at a conference – more than one year after uncovering the until then biggest (known) corruption scandal in the economic history. "The ethics rules lay in the drawer, Compliance was a lip service."

Not least Volkswagen (VW) must be mentioned as the company did already have to deal with a veritable corruption case in 2005 and the following years, besides the recently uncovered emissions scandal. As is known, the issue at that time was that work council members had received illegal benefits which included luxury travels and services from prostitutes as well as illegitimate bonuses to the chairman of the work council which had been authorized by the chief human resources officer and labor director (member of the executive board). The momentous decision in the engine development at the headquarters of the company in Wolfsburg was made just at the same time. This then led to the so called "Volkswagen emissions scandal" ten years later. The implemented Compliance structures and measures following the scandal in 2005 were apparently not of a kind that they could prevent committing offenses of environmental laws respectively uncover this misbehavior which is now shaking to the very foundations of VW. Instead in 2013 VW was still listed as a leading company regarding the completeness of their emission state-

1 FREDERICK D LIPMAN & L. KEITH LIPMAN, CORPORATE GOVERNANCE BEST PRACTICES – STRATEGIES FOR PUBLIC, PRIVATE, AND NOT-FOR-PROFIT ORGANIZATIONS 198 (2006).

ments and their climate protection efforts.[2] So far the VW case is not even slightly clarified, also not what the failure of the CMS or the Compliance organisation exactly was. Nevertheless, it is likely that here too there existed a Compliance system that didn't work. According to reports voices that laws were broken were numerously raised, but they didn't get through to the Chief Compliance Officer or the management board. Or did they?

Anyway, all three cases show more than clearly that companies can get into difficult situations when outdated Compliance 1.0-structures[3] are in place. Enron had implemented a code of conduct and Compliance-structures that were even award-winning, Siemens too had "all necessary Compliance rules" (which is not self-evident at the turn of the millennium) and probably one of the best CMS of big industry in Germany. And in a phase of setting up Compliance structures after a veritable Compliance crisis in 2005 the Volkswagen group even managed to provide for the conditions that led to the VW emissions scandal one decade later – this can be called "maximum credible Compliance accident" without exaggeration.

One could have also chosen ThyssenKrupp (corruption and cartels scandal), Deutsche Bank (money laundering, Libor/Euribor manipulation, fraud in the business of mortgage loans, violation against sanctions etc.) or HSBC (money laundering, assistance in tax evasion etc.) and many more companies as examples. They all have in common that the misbehavior was mostly "systematic misbehavior". But this is exactly what Compliance systems should make impossible. This also makes clear that Compliance Management Systems will never be designed in a way that every single case can be prevented or uncovered, but there definitely are ways to foster the effectiveness of Compliance. These aim at establishing sincere and credible corporate Compliance efforts which are better suited to prevent systematic misbehavior than the old Compliance 1.0 systems.

II. CORNERSTONES FOR ENDURING EFFECTIVE COMPLIANCE

A. Sincerity and Credibility

Compliance 1.0 systems did not work in many cases in the past, i.e. systematic misbehavior couldn't be prevented respectively revealed. So far, so bad. But why did or rather why do Compliance systems not function so often in practice? The reasons obviously vary from case to case. Yet the negative empirical indications suggest a lack of sincerity

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2 Carbon Disclosure Project: Global 500 Climate Change Report 8 (2013) (https://www.cdp.net/cdpresults/cdp-global-500-climate-change-report-2013.pdf).

3 For the difference between „Compliance 1.0" and „Compliance 2.0" also see an interview with Donna Boehme, *US-Expertin zu Dieselgate: Compliance bei VW ist veraltet*, JUVE Verlag für juristische Information GmbH (Oct. 26 2015), http://www.juve.de/nachrichten/namenundnachrichten/2015/10/us-expertin-zu-dieselgate-Compliance-bei-vw-ist-veraltet.

and credibility as a cause for the failure of Compliance Management. Both factors, sincerity and credibility, are – as is shown – connected and depend on each other.
The term sincerity refers to an attitude, a disposition with which something is done. Sincerity is threatened by carelessness, superficialness and occasionally also by dilettantism. If one is "sincere", then for the area of Compliance Management this certainly means that measures are only chosen in such a manner that the goal aimed at – the prevention of systematic misbehavior (plus revealing and stopping individual violations) – can potentially be reached. Technically spoken this concerns the appropriateness and functional effectiveness of Compliance systems. Whether Compliance measures are accepted, implemented or followed, whether one has trust in them or not, depends on whether they are being seen as credible. The spectrum of stakeholders who do or don't assign credibility can reach from the own employees (Compliance with a guideline or a business process), over the auditors that examine the CMS as well as customers and business partners up to government agencies (e. g. public prosecution department). If credibility is not transported, stakeholders might get the impression that the Compliance rules and measures are hypocritical, that the company is just pretending its sincerity regarding Compliance.

The consciously ineffective design of a CMS by the management is just one possibility which presupposes sound knowledge of the "criteria of sincerity" on the part of the decision-makers (management board). After all it is possible that this knowledge is not present or is incomplete – the wrong decisions regarding the design of the CMS are made in good faith in their effective implementation. If one thus delimits the "scope of failure" in this still young management topic, then, at one end, it is conceivable that a management board knows exactly what the Compliance risks are and how to mitigate them, but makes decisions concerning the CMS that guarantee its failure. Or – that would be the other end of the scope – an ethically motivated, but bad informed management board makes similarly inapplicable decisions that likewise result in failure of the CMS. Motives and competences, hence wanting and knowing how, play a crucial role here and are not only imaginable, but probably also empirically existent in every possible mix ratio.

A well designed, thus sincerely implemented and therefore credible CMS focuses on promoting the motivation for ethical and legal behavior while at the same time training the competences of the organization and its members. The realization of workshops with managers on the topic of "Compliance & Integrity", in which ethical or Compliance-oriented conflicts or dilemmas are integrated, is essential for enabling decision-makers to handle such conflicts. The training should be designed in a way that participants would have to work on real-life cases for which possible solution strategies have to be found and presented. The discussion of such cases should concentrate less on concrete solutions but focus more on sharpening the attention for moral topics in business and training the decision-making process. The individual's capacity to balance arguments and reasons and judge in appropriate and morally sound ways should be strengthened, also by learning how to integrate different points of view on a topic. In this context Werhane and Moriarty speak of moral imagination which is needed for creatively solving such cases and should be fostered in business: „Moral imagination

enables managers to recognize a set of options that may not be obvious from within the overarching organizational framework; evaluate these options from a moral point of view; and actualize them."[4] Such competences should be trained in regular workshops, but of course also by good leadership.

In daily business, relevant information concerning compliant behavior is often – consciously or unconsciously – overlooked, especially if it serves the interests of the respective person to stay ignorant about certain facts. Such "motivated blindness"[5] can be prevented when leaders consciously use moral language and speak of fairness or honesty in business decisions which stimulates ethical reflection of the situation.[6] The strengthening of ethically sound principles and decision-making frameworks is especially important since research has shown that non-compliant behavior is very often coupled with neutralizing strategies on part of the agent which aim at justifying a certain illegitimate or illegal behavior.[7] In the corporate context such neutralizing techniques such as pointing to a higher authority or to more valuable goals in order to legitimize the own misbehavior is especially dangerous if such a rationale is adopted collectively in a department or the whole company.[8] Compliance workshops where the problem of neutralizing strategies is discussed by using cases taken from the working context of the personnel to be trained can help destabilize such mindsets and rationales.[9] Ultimately, this is a major leadership task which has to be supported by corporate culture in general in order to lead to the desired results.

The positive effect of such Compliance trainings is, on the one hand, that it enhances the competences of ethical-normative reflection and sound decision-making in conflict situations. On the other hand, it "forces" managers to position themselves (in the best case up to the management board and the supervisory board). The managers have to "put their cards on the table" and thereby automatically reveal their true motivation; if they cheat and just pretend their integrity in the training situation, they will be exposed as "noncredible" in foreseeable time and lose their authority as leaders. Of course, such trainings can ultimately only be successful if the strategies and principles to deal with ethically challenging situations are systematically integrated into daily business. As Paine states in her book Value Shift: "Validation occurs through practice and over time as the

4 PATRICIA H. WERHANE & BRIAN MORIARTY, MORAL IMAGINATION AND MANAGEMENT DECISION MAKING 3 (2011).

5 Max H. Bazerman & Ann E. Tenbrunsel, *Ethical Breakdowns. Good people often let bad things happen. Why?,* April, HARVARD BUSINESS REVIEW 59, 61 (2011).

6 LINDA K. TREVIÑO & KATHERINE A. NELSON, MANAGING BUSINESS ETHICS – STRAIGHT TALK ABOUT HOW TO DO IT RIGHT 101 (1999).

7 This phenomenon can be traced back to Festinger's theory of cognitive dissonance; LEON FESTINGER, A THEORY OF COGNITIVE DISSONANCE (1957).

8 Hendrik Schneider, *Cognitive Dissonance As A Prevention Strategy – Considerations on the Prospects of Neutralizing the Techniques of Neutralization,* COMPLIANCE ELLIANCE JOURNAL 18, 29 (Vol.3 No. 2 2017).

9 Ibid, 206.

principle is seen to be an integral and operative force in the organization's activities."[10]

A further example for fostering sincerity and credibility of the Compliance endeavors is the use of an "Integrity Barometer" for measuring the state and quality of the implementation of a CMS and the ethical climate in a company. It should include questions on the role model behavior of managers, the credibility of the management board regarding Compliance activities etc. Such a measuring tool shall not be misunderstood as an exact method for objectively detecting the state of a company concerning Compliance at a certain point in time, but as a dynamic technique that shows trends and developments and gives indications to special problems and to methods of their resolution. An "Integrity Barometer" should focus on questions regarding the implemented management system and the corresponding behavior in the company (see fig. 1).[11]

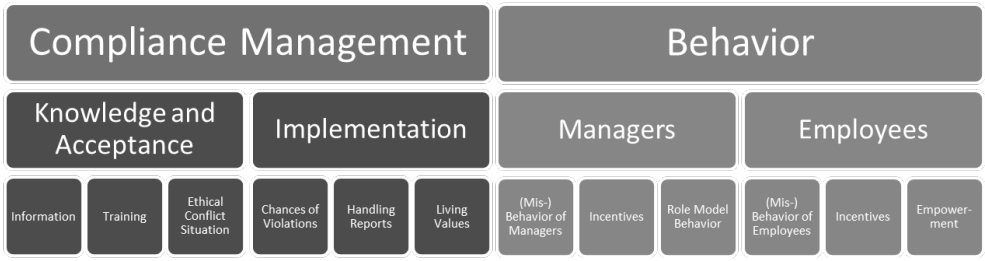

Fig. 1: „Integrity Barometer"

Already the courage of executive management to question managers and employees anonymously testifies their sincerity in this regard – provided that at least some knowledgability on the part of the decision-makers is given and the posed questions are relevant. After all one has to anticipate that the feedback will also illuminate critical points in the corporate and employee behavior and thus consequences have to be drawn. By professionally implementing an "Integrity Barometer" the company respectively the management board communicates that one is sincerely striving towards a successful Compliance Management. This signalized sincerity produces credibility on the part of the stakeholders. Such a recursive relationship between sincerity and credibility also applies to a further important Compliance instrument, the whistleblower system. Companies that commit themselves to implementing, communicating and monitoring such a system signal and actualize sincerity and receive credibility – because and insofar as they have to follow reports on grievances and uncover and stop possible misbehavior. A whistleblower system that is designed and implemented by every trick in the book takes

[10] LYNN S. PAINE, VALUE SHIFT – WHY COMPANIES MUST MERGE SOCIAL AND FINANCIAL IMPERATIVES TO ACHIEVE SUPERIOR PERFORMANCE 177 (2003).

[11] The Center for Business Compliance & Integrity (CBCI) has developed an approach for an "Integrity Barometer" in cooperation with COMFORMIS (a brand of digitalspirit GmbH). Also known is the so called "Integrity Thermometer" of Prof. Muel Kaptein.

the management board the possibility or at least makes it much more difficult to refuse knowledge of certain behaviors that could bring the company illegal advantages, like business contracts (e. g. by bribing end customers through sales agents) or higher profit margins (e. g. illegal price fixing of retailers). The management will more likely come to know such misbehavior that might provide the company with illegal benefits and therefore has to deal with it.

The appointment of the Chief Compliance Officer (CCO) may serve as a last example regarding its effects on credibility. Is a highly competent, in the company and from business partners respected and to some extent "powerful" person appointed and is she equipped with extensive authority and resources? Or is someone appointed as CCO for whom one could not find a suitable position for quite a while and who is considered as "harmless"? Is it someone who shall "form" Compliance at the fourth or fifth level in the organization and as a start has to request his journey for a "Compliance Check" of a business partner from his supervisor? Even if these questions describe extremes this does not change the fact that the appointment of the CCO is connected with the sincerity and credibility of Compliance Management in the above described manner: A weak CCO cannot manage an (intended) strong CMS. An (intended) weak Compliance Management doesn't tolerate a strong CCO. By appointing a strong CCO the management board signalizes that Compliance Management has priority and shall succeed. This signalized self-enforcement in turn creates credibility inwards (employees) and outwards (external stakeholders). The CCO should directly take care of a certain subset of all Compliance topics with regards to content (as far as possible the high-risk topics which in many companies will often be found in the areas of anti-bribery and corruption as well as anti-trust). Other Compliance topics will only be coordinated by him and possibly consolidated in terms of reporting. Certainly some tasks, competences and responsibilities of the CCO should be defined in written form. But it is more important that it is made clear that "Compliance" is an independent sphere of competence. A good lawyer is not automatically a good Compliance Manager. Also a non-lawyer can be a good Compliance Manager. Selecting the right person is supposedly one of the most significant premises for successful Compliance 2.0.

One can sum up that wherever the step to initiating self-enforcement in Compliance Management is dared, sincerity can be shown internally and externally and credibility is established. Wherever this step is avoided, affected stakeholders may interpret this as a sign of carelessness, superficialness, dilettantism and hypocrisy.

If one accepts the mentioned Compliance measures as examples for certain "criteria of sincerity"[12] and one takes a look at the company landscape, then one can assert that

- high-quality Compliance workshops for managers with dilemma trainings are still an exception; instead one can find instructions on legislation and more or less successful web-based trainings;

[12] High-quality empirical field studies regarding the mentioned "criteria of sincerity" are desirable.

- appropriate, anonymous manager and employee surveys regarding Compliance & Integrity are only conducted in very few cases;
- anonymous whistleblower systems in general are not widespread so far and, if they are installed, are implemented insufficiently (especially regarding communication, training and motivation of relevant stakeholders to use them);
- the position of the CCO is not firmly integrated into the corporate structure. Everything can be found, from the management board to some subordinated middle management position. Corporate flexibility in view of the necessity (e. g. because of uncovered systematic misbehavior), the corporate structure and size, the general risk exposure and internationality is certainly important and correct. But without a respected person with authority Compliance cannot be successful.

B. Moral Foundation of Compliance

"Compliance" refers to conformity with a rule. The verb "to comply [with]" means amongst others "following", "adhering to sth.", "acting on sth.". Hence, Compliance constitutes a restriction and always has to become concrete on the norm which shall be acted upon. The desired behavior is mainly triggered by external pressure. The central question is which behavior can (still) be accepted or is allowed. Posing this question is certainly relevant for Compliance Management, but it is not sufficient for a CMS to function effectively and reliable. Instead, a moral foundation is needed, for example by striving for integrity which refers to the consistency of values and principles, motivation and action.[13] Integrity is tightly connected to honesty and truthfulness and can be understood as the contrary to hypocrisy. It can individually be considered as a "virtue of inner consistency" since the action of the agent has to be consistent with her corresponding inner attitude. In the context of ethics integrity is regarded as an independent moral quality which is defined as acting according to morally sound values and principles out of inner conviction.[14] The right behavior is governed by *recognizing* that it is morally right and because the agent is intrinsically motivated to acting correctly, she cannot avoid acting accordingly. She also asks what is permissible, but especially which behavior is (morally) right. On the basis of this reflection of her behavior she can give good reasons as to why it is right to act this way. Justice and law are also important references for questions of integrity, but not the only ones. In the corporate context integrity rather means that a company commits itself consciously not only to legal, but also to moral behavior. This is realized by consistently acting on morally sound corporate values and principles in daily business.

This can be illustrated with one example: Bribing in order to win a contract in foreign business is prosecuted criminally since quite a while. If one adds to this the – in various

[13] See e. g. DAVID BAUMAN, INTEGRITY, IDENTITY, AND WHY MORAL EXEMPLARS DO WHAT IS RIGHT 14 (2011).

[14] Cf. RICHARD T. DE GEORGE, COMPETING WITH INTEGRITY IN INTERNATIONAL BUSINESS 6 (1993).

countries certainly different – investigative pressure, there is sufficient pressure that companies and their employees comply with anti-bribery and corruption rules. In addition, the intrinsically motivated and reflected person will understand and acknowledge that bribery and corruption undermines the (ethically legitimated) principle of competition by which the most productive respectively the cheapest will receive a contract. Corruption hence prevents innovation and undermines the development of the rule of law and democracy especially in developing and emerging nations. These are all *good reasons* to understand that corruption is bad. By this insight (some) people are intrinsically motivated to act in a way that leads to the "right behavior" even in an environment of weak law enforcement, thus continuous effectiveness can be attained. Compliance properly understood as responsible behavior cannot be achieved without a moral foundation of the Compliance rules and measures – also because otherwise every inaccuracy of a Compliance rule and every gap in the legal framework will probably lead to misbehavior.

C. Seizure of results of company-internal investigations

It is crucial to understand that the management board should regularly make strategic and operational decisions which prove the commitment to Compliance and Integrity. The management board and the (top) managers should thus be informed and competent on the topic of Compliance and Integrity. They should know the fundamental Compliance risks in the regions, business divisions and business processes. It is their responsibility to personally inform themselves in conversation with their corresponding managers about the implementation of the CMS and possible conflict situations or ethical dilemmas. The significant Compliance risks and the commitment to Compliance must be addressed regularly inside and outside the company by the management board and the (top) managers (town hall meetings, management meetings, discussions with customers, conferences etc.). An essential condition is that the existing incentives in the company in no case hinder following Compliance rules or even make exactly that impossible. Ensuring this is a management task. For (top) managers it should be checked whether reasonable goals regarding Compliance Management can be found (implementation of the CMS in the own sphere of responsibility, handling revealed cases, bottom-up feedback regarding behavior, values, Compliance commitment). These could be integrated in an existing regular target agreement where appropriate. Misbehavior must be sanctioned according to its severity (financial damage, reputational harm, criminal penalties etc.) irrespective of the person concerned. Summed up, the much quoted "tone from the top" is important, but the "tone at the top" is even more important.

Distinctive incentives to reward Compliance to the law are not required, but appreciating especially moral behavior in the company can be endorsed. This could comprise financial and non-financial benefits but should especially include visible acknowledgment of the model behavior in order to encourage imitation and reinforce ethical behav-

ior.[15] In the same way as it is important to increase the costs for non-Compliance by implementing sanctions it is advisable to lower the individual costs for acting compliant and (morally) right by promoting such decisions, e. g. with a Compliance Scorecard which is taken into account for premiums and promotions.[16]

Albeit the right behavior of top managers is an essential condition for successful Compliance, implementation of Compliance in the company is carried out by line managers, that is the normal hierarchy is obtained. Thus, every manager must ensure Compliance in his own range of command. The Compliance function (the CCO) should support line management in implementing the CMS in daily business and has a consulting role regarding business decisions and transactions (possibly together with further positions, e. g. the legal department). This also points out that Compliance understood like that can only function if line managers (purchasing, sales, production, R&D etc.) are thoroughly trained. As outlined above these trainings have to include practicing ethical decision-making. Then managers will be able to reach independent, well-informed decisions in conflict situations. Furthermore, then they can pass on their knowledge and give orientation. They will be enabled to implement the CMS in their sphere of responsibility, fill it with life and make it a part of business processes. Only those who are able to speak will speak. That means managers trained in such a way will be able to contribute much more to fostering the much-evoked "speak-up culture". This mechanism can be strengthened further when top managers (at least the management board, possibly also the supervisory board) participate in such trainings as well and position themselves clearly to business-based dilemmas.

III. CMS IMPLEMNENTATION GUIDANCE

The question of the effectiveness of a CMS[17] is much discussed. An armada of requirements and standards has been developed in the past years, as e. g. ISO 19600 and IDW PS 980 (for an incomplete listing see fig. 2). But in most cases the standards do not address the specific conditions of companies and the context they act in when giving suggestions on how a CMS should be implemented.

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15 Cf. Muel Kaptein, *Understanding Unethical Behavior by Unraveling Ethical Culture*, 64, HUMAN RELATIONS 843, 851 (2011).

16 Hendrik Schneider, *Cognitive Dissonance As A Prevention Strategy – Considerations on the Prospects of Neutralizing the Techniques of Neutralization*, COMPLIANCE ELLIANCE JOURNAL 18, 32 (Vol.3 No. 2 2017).

17 See Stephan Grüninger & Maximilian Jantz, *Möglichkeiten und Grenzen der Prüfung von Compliance-Management-Systemen – Gestaltung interner oder externer Wirksamkeits und Umsetzungsprüfungen*, ZEITSCHRIFT FÜR CORPORATE GOVERNANCE 131 (2013).

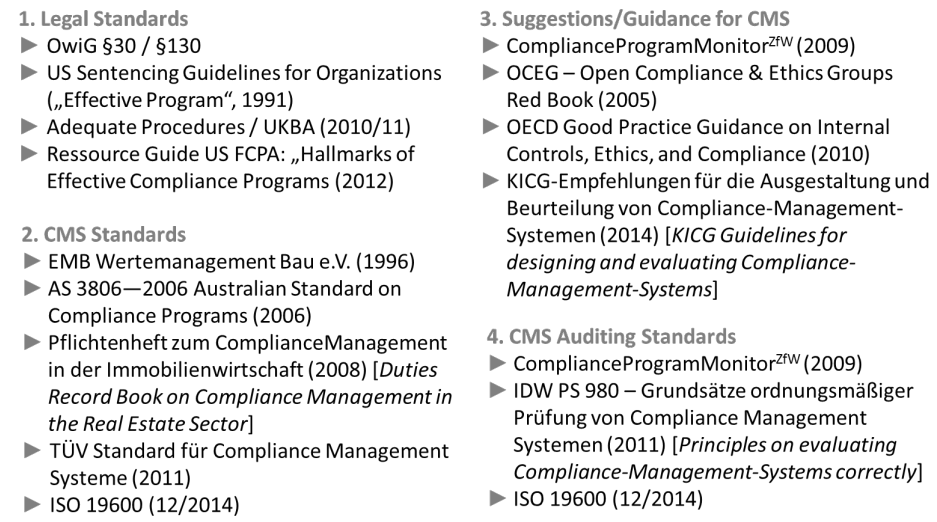

Fig. 2: Requirements of CMS

A project that aimed at addressing the specific questions companies of different size and structure have when implementing a Compliance Management System is the development of the "KICG-Guidelines" which were released in 2014. These represent the first attempt to describe suggestions for the appropriateness of CMS for companies of different levels of Compliance complexity (size, internationality, risk exposure) in detail.[18] Several stakeholder groups participated in this project (representatives of companies of different levels of Compliance complexity, lawyers, accountants/specialists in forensic services). In a follow-up project these project results are verified with members of judicial authorities, scientists, representatives of NGOs etc. in order to achieve a higher degree of reliability[19] and thus an incentive, especially for medium-sized companies, to address the topic of Compliance and invest in prevention. It is likewise important to see that the KICG-Guidelines were developed to give suggestions for both design and evaluation of a CMS and do not intend to establish a new standard (contrary to the intention of e. g. ISO 19600). This project was so important and is mentioned here because the "CMS Best Practice Standard" established in very big companies (e. g. DAX 30) does not fit to medium-sized companies and would completely overburden them. A CMS is ultimately measured at its effectiveness – regardless of whether it is the CMS of a very big or a comparably small company. In view of the question of an "adequate design"

18 STEPHAN GRÜNINGER, MAXIMILIAN JANTZ, CHRISTINE SCHWEIKERT & ROLAND STEINMEYER, EMPFEHLUNGEN FÜR DIE AUSGESTALTUNG UND BEURTEILUNG VON COMPLIANCE-MANAGEMENT-SYSTEMEN (Konstanz Institut für Corporate Governance 2014); STEPHAN GRÜNINGER ET AL., KICG COMPLIANCE ESSENTIALS (Konstanz Institut für Corporate Governance 2017).

19 Reliability regarding the (official) expectations about the appropriateness of corporate Compliance measures.

there exist in fact major differences as the project results show.[20]

In spite of or even because of the many standards and recommendations it is probably necessary that legislators in Germany and all over Europe define general requirements of CMS and incorporate them into positive law. They should specify concisely what is expected from companies and other organizations regarding Compliance. A specification of the OWiG[21], as proposed from different sides[22], would be a viable path for Germany. Guidelines such as the ones from KICG or standards like the IDW PS 980 or ISO 19600 could serve as references for the implementation.

Furthermore, it is essential for companies and can only be decided there that the functioning of CMS measures is ensured in an efficient, that means also cost-efficient, manner. The approach "Compliance as a line function" helps here because it avoids excessive installing of resources in the central Compliance function and prefers a decentral organization instead. For measures in the area of Compliance to work it is important to achieve acceptance. Also for this purpose the manager workshops outlined before are an appropriate approach. The Compliance function has the task to call attention to risks and mitigate these together with line management. But independent controls and process analysis too are important to identify gaps and weaknesses in the implementation of the CMS. As with other central topics in the company it should not only rely on the understanding of the managers and trust in their personal integrity and competences, but should also complement these as necessary by (external) professional expertise in order to guarantee the functioning of the CMS.

Compliance should be limited regarding content and with respect to business relationships. This means that a company pays attention to not promising anything in the code of conduct or other normative texts it cannot hold respectively whose Compliance cannot be controlled. In some code of conduct one can find the statement that "all UN conventions are being followed" which naturally sounds good – at least nobody would want to claim the opposite. But then one should also precisely know to content of all UN conventions. By all means adhering to human rights in the value chain is anything but trivial for globally operating companies. In many countries human rights are not respected at all, violations have an incidence rate of one. One may say that one respects human rights wherever it is in the sphere of influence of the company, but one should also point to the problems and to the limits of the scope of responsibility. In this con-

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20 See *Anforderungen an ein effektives Compliance-Management*, Konstanz Institut für Corporate Governance – KICG (Aug.2, 2017), http://www.htwg-konstanz.de/Compliance-Pflichten.6958.0.html.

21 Regulatory Offences Act (German: Ordnungswidrigkeitengesetz)

22 See Bundesverband der Unternehmensjuristen e. V, *Gesetzgebungsvorschlag für eine Änderung der §§ 30, 130 des Ordnungswidrigkeitengesetzes (OWiG)*, Frankfurt am Main, 2014; Deutschen Instituts für Compliance – DICO e.V, *Compliance-Anreiz-Gesetz. Ein Vorschlag für den Entwurf eines Gesetzes zur Schaffung von Anreizen für Compliance-Maßnahmen in Betrieben und Unternehmen*, Berlin, 2014.

text, the widely accepted UN Guiding Principles on Business and Human Rights[23] might serve as guidance. They oblige states to protect human rights („State Duty to Protect") and ascribe companies a responsibility to respect human rights („Corporate Responsibility to Respect") which is accompanied by "due diligence". By consciously delimiting and forming the own sphere of responsibility it will become evident whether Compliance is designed sincerely and credibly – or whether the diverse stakeholder demands are adopted without further thought and reflection about how to meet them. Also regarding the prevention of bribery and corruption it should be stated more clearly where the boundaries of Compliance Management in sales and distribution lie. No matter how perfectly a business partner due diligence is managed, a residual risk that the agent bribes the end customer will remain. As of today nobody can tell a company which due diligence standard is adequate for exculpating an incident. Thus, it is even more important that companies clarify what they do and where they see the limits of a thorough due diligence process, also financially.

The Compliance department and especially the CCO should be established as „trusted advisors" who offer a clear additional benefit to the operational business units. This benefit basically consists in locally developing and maintaining the competence of all business units to approach generally risky business with the highest possible degree of legal security and integrity. This naturally includes that some business dealings cannot be done. A Compliance department which merely sets and communicates rules, but runs off when conflicts arise, will not survive in the long run or will lose itself in insignificance. This also points out that Compliance Management should focus on "top risks". Regarding Compliance companies like to deal with the topic of "gifts and hospitality". As interesting as this may be, the real problems lie somewhere else: bribing to acquire business contracts, offenses of environmental law, cartels, avoiding export sanctions, product liability etc. – those are topics that companies have to work on, in fact worldwide, in order to have an effective CMS. The ultimately relevant Compliance risks of a company can only be mitigated if a CMS can give orientation on the topics mentioned. Only then potentially existence-threatening Compliance breaches might be prevented. Only then Compliance is really serving business.

[23] See United Nations Human Rights – Office of the high Commissioner, *Guiding Principles on Business and Human Rights* (2011), http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

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COGNITIVE DISSONANCE AS A PREVENTION STRATEGY

Considerations on the Prospects of Neutralizing the Techniques of Neutralization

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ABSTRACT

In the light of Michael Walters's declarations on the relationship of the perpetrator to the offense based on the theory of techniques of neutralization the article sets its sights on the structuring of in-house compliance programs in order to ensure internally prevention measures. In doing so the author states that those compliance programs should primarily rely on creating an atmosphere in which common neutralization strategies are not accepted. In order to be successful the companies need in-depth programs, which are goal-oriented. But there has to be a company interest in compliance as well. The "tone from the top" plays an important role when it comes to neutralization strategies. The essay shows the meaning of techniques of neutralization within the area of applied economic criminology.

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I. NEUTRALIZATION TECHNIQUES AND COGNITIVE DISSONANCE — THE APPROACH OF MICHAEL WALTER

In the commemorative publication for Hans-Dieter Schwind, Michael Walter explained and exemplified, in a noteworthy approach, the relationship of the perpetrator to the offense based on the theory of techniques of neutralization.[1] An innovative, key concept that Walter develops in the article lies in linking the well-known "techniques of neutralization" of Sykes & Matza[2] with the theory of cognitive dissonance of Leon Festinger. With impressive formulations and based on content analyses of specific works of creative literature and autobiographies of terrorists, Walter demonstrates that criminal offenses beyond a petty level trigger in the perpetrator an "internal pressure for justification" (p. 1165). Neutralization techniques then allow him to once again "smooth out" the "inner disturbance" inside himself and "accordingly remake and stabilize himself" (p. 1157). These techniques shield one from the "voices of the conscience or the negative judgments of others" (p. 1158), and "sedate" the "internal monitoring of norms" (p. 1158).

Within the framework of an "interdisciplinary approach to the phenomenon of neutralization" (p. 1159 ff.), Walter then refers to the psychological basic assumption of a need for harmony in humans that strives for "normative consonance" (p. 1161) and that does not tolerate "cognitively experienced conflicts" very well. Against this backdrop, and in line with Leon Festinger, he describes as cognitive dissonance the "bad feelings" of the offender (p. 1161) that precede the techniques of neutralization.[3] Consequently, techniques of neutralization represent a certain group of possible strategies to reduce dissonance, which are characterized by assimilating new cognitive elements. Walter uses the example of a smoker to elucidate this thought process. If the smoker categorizes the habit of smoking as dangerous and damaging to health, this triggers cognitive dissonance. This can be reduced either by changing individual thoughts (for example, "I do not smoke frequently and only few cigarettes") or the recourse to new cognitive elements ("Due to my excellent physical condition, I belong to the group that will reach a very old age despite smoking", p. 1161). There is also a new assimilation of cognitive elements in the techniques of neutralization described by Sykes & Matza. If, for instance, cognitive dissonance arises by virtue of the offender's friction with certain conformity values to which he is "in principle" obligated, the neutralization strategy identified by

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1 Michael Walter, *Wie kann ein Mensch so etwas tun? in* Festschrift für Hans-Dieter Schwind 1155 ff. (Thomas Feltes & Christian Pfeiffer & Gernot Steinhilper, 2006). For the purpose of better readability, source references from this article will only be cited by stating the page number.

2 DAVID MATZA GRESHAM M. SYKES, TECHNIQUES OF NEUTRALIZATION: A THEORY OF DELINQUENCY, 664 ff. (1957).

3 Foundational: LEON FESTINGER, THEORY OF COGNITIVE DISSONANCE (1957).

Sykes & Matza of "the appeal to higher loyalties"[4] aids one in resolving the inner-psychic stress. Michael Walter identifies as an example the pledge of the former Federal Chancellor Helmut Kohl, who refused to divulge the identity of the donors in the so-called CDU donations scandal. Kohl justified this violation of a legal duty to himself and towards third parties thereby in that he asserted he had assured the donors of absolute confidentiality: "But ladies and gentlemen, I have given my word to the donors [...] and I will keep to my word, and that is very important for me"[5] Walter aptly summarizes the consciousness processes underlying such cognitions and statements as follows (interim assessment on p. 1162):

> "A person seeks, as emerges from Festinger's dissonance theory, ways to get around these disharmonies. The neutralization mechanisms contain appropriate new cognitive aspects that possess a mediating effect, assuage living in the conflict and at the same time improve one's external performance."

Michael Walter's work involves the first publication in which the significance of the techniques of neutralization are psychologically reconstructed based on the theory of cognitive dissonance.[6] The present paper ties into the question also posed by him in the commemorative publication for Hans-Dieter Schwind from 2006 of the practical application for criminological theories and in particular, the concepts of neutralization and cognitive dissonance. The objective is to further develop the integration of both theoretical constructs[7] and to illustrate the "capacity" (p. 1155) of the insights attained for pre-

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4 DAVID MATZA GRESHAM M. SYKES, TECHNIQUES OF NEUTRALIZATION: A THEORY OF DELINQUENCY, 669 (1957).

5 Helmut Kohl, *address at the New Year's reception of the Bremen CDU*, broadcast on television (Jan. 21, 2000), (http://www.youtube.com/watch?v=4gpYZftwlMw).

6 Walter's reasoning was addressed in the dissertation of Laura Claassen (LAURA CLASSEN, NEUTRALISIERUNGSTECHNIKEN UND KOGNITIVE DISSONANZ – EIN BEITRAG ZUR PRÄVENTION VON WIRTSCHAFTSKRIMINALITÄT (2013)) which was supervised by the author of this paper.

7 In so doing it is certainly debatable and (despite the subtitle of the work by Sykes & Matza) as yet unclear whether the neutralization techniques are a criminological theory at all. In German criminology, they are mostly featured without detailed explanation in the theories (MICHAEL BOCK, KRIMINOLOGIE, 54f. (3rd ed., 2007); ULRICH EISENBERG, KRIMINOLOGIE, 21f. (6th ed., 2005); HANS GÖPPINGER, KRIMINOLOGIE, 150 (6th ed., 2008); GÜNTHER KAISER & HEINZ SCHÖCH, KRIMINOLOGIE, JUGENDSTRAFRECHT, STRAFVOLLZUG, 11 (7th ed., 2010); KARL-LUDWIG KUNZ, KRIMINOLOGIE, 115 (6th ed., 2011); Klaus Lüderssen, Kriminologie: Eine Einführung in die Probleme, 139 (1st ed., 1984); BERND-DIETER MEIER, KRIMINOLOGIE, 59ff. (4th ed., 2010); ARMAND MERGEN, DIE KRIMINOLOGIE, EINE SYSTEMATISCHE DARSTELLUNG, 123 (3rd ed., 1995); FRANK NEUBACHER, KRIMINOLOGIE, 85 (1st ed., 2011); HANS JOACHIM SCHNEIDER, KRIMINOLOGIE, 516ff. (1st ed., 1987), p. 516ff.). Only Schwind situates the neutralization techniques in victimology (HANS-DIETER SCHWIND, KRIMINOLOGIE: EINE PRAXISORIETIERTE EINFÜHRUNG MIT BEISPIELEN, 406f. (21st ed., 2011)). In addition, reference is made to neutralization techniques in integration models (thus, already DAVID MATZA, DELIQUENCY AND DRIFT, 184 (1st ed., 1964); also, James Coleman, *Toward an integrated Theory of White-Collar Crime*, 2, AMERICAN JOURNAL OF SOCIOLOGY 93, 406 (Sep., 1987); Hendrik Schneider, *Das Leipziger Verlaufsmodell wirtschaftskriminellen Handelns*, NEUE ZEITSCHRIFT FÜR STRAFRECHT 555ff. (2007), ibid. 135 ff. (2008), ibid. 4 ff. (2009)). Other authors, in particular Robert Agnew, *Neutralizing the Impact of Crime*, 12, CRIMINAL JUSTICE AND BEHAVIOUR 221, 227ff. (1985), p. 227ff. make reference to specific neutralization strategies of the victims of crime, which have the function of reducing the anxiety of further victimization (Denial of Injury, Denial of Vulnerability, Belief in a Just World). If

vention, in particular for the prevention of economic crimes.

II. CONVERGENCES AND DIVERGENCES BETWEEN THE TECHNIQUES OF NEUTRALIZATION OF SYKES & MATZA AND FESTINGER'S THEORY OF COGNITIVE DISSONANCE

A. Central arguments of both approaches

As an initial matter, it is notable that both approaches were developed at the same time without the authors recognizably taking notice or influencing one another.[8] Festinger's theory was published for the first time in 1957. At that time, the author taught psychology at Stanford University in California. In the same year, the article of Sykes & Matza was published, which is apparently inspired by an earlier work (not utilized by Festinger) of the criminologist Cressey.

Cressey, a student of Sutherland, had already made reference to—in the monograph published in 1953 "Other People's Money" in connection with a qualitative investigation of the causes and manifestations of embezzlement the significance of so-called "rationalizations"[9] or "vocabularies of adjustment"[10] that allow perpetrators to justify to themselves an abuse of the trust placed in them by their subsequent victims. In Cressey's view, the exonerating argumentation strategies ("I was only borrowing the money", "I did what is ordinary business") already intervene prior to committing the act[11] and are an indicator for an effort to belong in a world in which criminality is rejected. They consequently help the perpetrator in the process of making the unlawful conduct compatible with the self-image of a trustworthy person.

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one (with Sykes & Matza) assumes that neutralization techniques are learned, this suggests that the theory of neutralization techniques are to be filed in the category of learning theories.

8 To date, there has been no transdisciplinary analysis of both approaches, although both theories were broadly received in their respective disciplines. LAURA CLASSEN, NEUTRALISIERUNGSTECHNIKEN UND KOGNITIVE DISSONANZ – EIN BEITRAG ZUR PRÄVENTION VON WIRTSCHAFTSKRIMINALITÄT (2013) reports, with reference to Shadd Maruna & Heith Copes, *What Have we Learned from five Decades of Neutralization Resaerch?*, 32 , CRIME AND JUSTICE, 700 (2005)works of international criminology in which the theory of neutralization strategies is cited. Furthermore, there is an array of studies on the neutralization techniques that have a qualitative and quantitative research design. In the field of psychology, the Theory of Cognitive Dissonance is counted among the pioneering efforts of so-called social psychology, cf. on this, comprehensively, LAURA CLASSEN, NEUTRALISIERUNGSTECHNIKEN UND KOGNITIVE DISSONANZ – EINBEITRAG ZUR PRÄVENTION VON WIRTSCHAFTSKRIMINALITÄT (2013).

9 DONALD RAY CRESSEY, OTHER PEOPLE'S MONEY: A STUDY IN THE SOCIAL PSYCHOLOGY OF EMBEZZLEMENT, 34 (1953).

10 DONALD RAY CRESSEY, OTHER PEOPLE'S MONEY: A STUDY IN THE SOCIAL PSYCHOLOGY OF EMBEZZLEMENT, 93 ff. (1953).

11 DONALD RAY CRESSEY, OTHER PEOPLE'S MONEY: A STUDY IN THE SOCIAL PSYCHOLOGY OF EMBEZZLEMENT, 94 (1953): "In the cases of trust violation encountered significant rationalizations were always present before the criminal act took place, and in fact, after the act had taken place the rationalization often was abandoned."

In Sykes' & Matza's much shorter treatment, the "rationalizations" are called "techniques of neutralization"[12] for the first time, although they also speak of rationalizations or justifications without a recognizable difference in terms of their content. The differences between both approaches are minimal. Both Cressey and also Sykes & Matza summarize arguments under the respectively applied umbrella terms with which the citizen obligated to comply with the law can allow himself a violation of the norm and avert injury to his self-image. However, in this respect Sykes & Matza make it clear that the techniques of neutralization can occur both before and also after committing the offense. Accordingly, they clear the path into criminality ("they precede deviant behavior and make deviant behavior possible"[13]) and in addition, have the function of excusing the crime towards oneself and others after the fact[14] ("protecting the individual from self-blame and the blame of others after the act"[15]).

For Festinger it is not a question of explaining delinquency or conformity, but rather in general, the consonance or dissonance of two cognitions. He conceives under the term cognitions, "any knowledge, opinion or belief about the environment, oneself or one's own behavior".[16] Multiple cognitions can be related to one another, but it is not required. Consistent cognitions lead to consonance; inconsistent cognitions produce dissonance. Festinger describes dissonance as "psychological discomfort"[17] that provokes a desire in the individual, with the goal of reducing this, to return to a consonant relationship in cognitions. Dissonant cognitions develop especially in decision situations,[18] because weighing between two alternative courses of action always also entails the decision for one and against the other cognition. If the dissonance-triggering decision cannot be undone, the dissonance reduction strategies of modifying the attractiveness of the alternatives involved in the decision and/or creating a so-called "cognitive overlap" of both

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12 DAVID MATZA GRESHAM M. SYKES, TECHNIQUES OF NEUTRALIZATION: A THEORY OF DELINQUENCY, 667 (1957).

13 DAVID MATZA GRESHAM M. SYKES, TECHNIQUES OF NEUTRALIZATION: A THEORY OF DELINQUENCY, 666 (1957).

14 On the problem of timing with regard to when the neutralization strategies step in, compare also Michael L. Benson, *Denying the Guilty Mind: Accounting for Involvment in White Collar Crime*, 23, CRIMINOLOGY, 583ff., 604 (1985), and Nicole Leeper Piquero & Stephen G. Tibbetts & Michael Blankenship, *Examining the Role of Differential Association and Techniques of Neutralization in Explaining Corporate Crime*, 26, DEVIANT BEHAVIOR, 159ff. (2005) A criminal etiological theory can only then be derived from the theory of neutralization techniques if these intervene prior to the offense, and therefore, cause (share in causing) the offense, and/or pave the way into delinquency. In the theory of cognitive dissonance, Festinger (LEON FESTINGER, THEORY OF COGNITIVE DISSONANCE, 49 (1978)) assumes that dissonance arises after a decision, not necessarily initially after carrying out an action. According to another conception, one must distinguish between the final decision and the intermediate decisions that precede this. Already preliminary decisions and their underlying assessment processes could allow for cognitive dissonance to emerge, cf. MARTIN IRLE & VOLKER MÖNTMANN, THEORIE DER KOGNITIVEN DISSONANZ, 317ff. (1978).

15 DAVID MATZA GRESHAM M. SYKES, TECHNIQUES OF NEUTRALIZATION: A THEORY OF DELINQUENCY, 666 (1957).

16 LEON FESTINGER, THEORY OF COGNITIVE DISSONANCE, 17 (1978).

17 LEON FESTINGER, THEORY OF COGNITIVE DISSONANCE, 16 (1978).

18 LEON FESTINGER, THEORY OF COGNITIVE DISSONANCE, 19 ff. (1978).

cognitions come into question. In the case of modifying the attractiveness of a course of action, the actor frequently draws upon new cognitions that assist him in increasing the attractiveness of the selected course of action, and reducing that of the alternative not selected. To be classified in this category of dissonance reduction strategies are, for example, the neutralization strategies of "appeal to higher loyalties" and "rejection of penal provisions".[19] If the perpetrator invokes a value of greater significance (such as for example, H. Kohl in the word of honor case), he highlights the importance and correctness of his conduct, and consequently, reduces the cognitive dissonance by increasing the attractiveness of the decision he made (in the word of honor case: non-disclosure of the names of the donors). A comparable strategy also exists if the offender argues that it would be appropriate to break the law because it was in any case flawed (example: "the law I broke was just 'governmental intervention on the free market"; "It's just 'that the government wastes the taxes collected'"[20]). From the perspective of the actor, who labels himself as an informed insider who is aware of the true laws of the market, it was accordingly only logical to not follow the law.

Creating cognitive overlapping is involved if, through a measure of abstraction, as many commonalities as possible between both courses of action are sought. This is the case in so-called crisis criminality[21] when the perpetrator justifies the violation of the law with the reasoning that he acted for the good, that is to say, for example, retained jobs or served the shareholders.[22] This not only increases the attractiveness of the delinquent conduct (see above), but rather also pursues, (just as conformity with the law), a morally valuable, altruistic purpose from the perspective of the actor.

Techniques of neutralization therefore apparently represent dissonance reduction strategies within the meaning of Festinger's theory. They smooth the way into criminality, starting with the decision situation for or against the action, all the way through emotional stabilization after the crime when it comes to justifying the action to oneself and others. The combination of both approaches not only facilitates criminology in a psychological reconstruction of the importance of neutralization techniques, and therefore, contributes to a better understanding of this approach, but also opens up additional

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19 James Coleman, *Toward an integrated Theory of White-Collar Crime*, 2, AMERICAN JOURNAL OF SOCIOLOGY 93, 411 (Sep., 1987).

20 Orly Turgeman-Goldschmidt, *Between Hackers and White-Collar Crime Offenders*, *in* Corporate Hacking and Technology-Driven Crime: Social Dynamics and Implications 28 (Thomas J. Holt & Bernadette H. Schell, 2011).

21 Cf. on this Hendrik Schneider & Dieter John, *Der Wirtschaftsstraftäter in seinen sozialen Bezügen. Empirische Befunde und Konsequenzen für die Unternehmenspraxis, in* Wirtschaftskriminalität 159 ff. (Britta Bannenberg & Jörg-Martin Jehle, 1st ed. 2010) and HENDRIK SCHNEIDER, DER WIRTSCHAFTSSTRAFTÄTER IN SEINEN SOZIALEN BEZÜGEN. AKTUELLE FORSCHUNGSERGEBNISSE UND KONSEQUENZEN FÜR DIE UNTERNEHMENSPRAXIS, 4 ff. (2009): In particular, techniques of neutralization could be demonstrated for the crisis offender type.

22 Cf. on this Joseph Heath, *Business Ethics and Moral Motivation: A Criminological Perspective*, 83, JOURNAL OF BUISINESS ETHICS, 595, 608 (2008): "I did it for my family", "I did it for the sake of Enron"; "we did it for the shareholders".

perspectives that can be made productive for criminological single-case analysis and prevention. A main area of application of the theory of neutralization techniques as expanded by Festinger's approach is the decision for or against an economic crime.[23] In particular, in the area of Economic Criminology, the techniques of neutralization are particularly frequently called upon today as an explanatory approach for the generally, at least in principle, lawfully oriented offender.[24]

B. Dissonance strength and its significance for successful neutralization

Given that both Cressey and also Sykes & Matza are exclusively concerned with dissonance reduction and not the phenomenon of dissonance as such, they obscure the fact that dissonance can occur in various degrees.[25] By contrast, Festinger is of the view that a certain dissonance would be inherent in all decision situations because for almost every cognition a conflicting cognition would exist. But a "strong" dissonance would only then emerge if both cognitions are especially important for the individual:

> "If two elements are dissonant with each other, the magnitude of the dissonance is a function of the importance of the elements. The more important or valuable these elements are for the person, the greater is the magnitude of the dissonant relationship between them."[26]

Insofar as an assessment for or against a crime is involved, the two determinative cognitions are on the one hand, the non-delinquent self-image of the actor and his orientation towards conformity values, and on the other hand, the respective profit or benefit that follows from committing the crime. Dissonance follows then if both elements are important for the perpetrator. The more important they are, the greater the dissonance.
According to Festinger, dissonance explains the pressure to reduce dissonance. In this respect, it is possible to distinguish three ideal-typical adaptation mechanisms from one another, which vary according to the magnitude of the dissonant relationship:

– Type 1: Avoiding the dissonance-producing cognitions. In the case of particu-

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[23] Cf. already the placement of techniques of neutralization in the Leipziger Progression Model of White-collar Crime (Hendrik Schneider, *Das Leipziger Verlaufsmodell wirtschaftskriminellen Handelns*, NEUE ZEITSCHRIFT FÜR STRAFRECHT 555 ff. (2007); ibid. 135 ff. (2008), as developed by the author.

[24] James Coleman, *Toward an integrated Theory of White-Collar Crime*, 2, AMERICAN JOURNAL OF SOCIOLOGY 93, 406 ff. (Sep., 1987); Michael L. Benson, *Denying the Guilty Mind: Accounting for Involvment in White Collar Crime*, 23, CRIMINOLOGY 583ff. (1985); Tomson H. Nguyen & Henry N. Pontel, *Mortage origination fraud and and the global economic crisis. A criminal analysis*, 9, CRIMINOLOGY & PUBLIC POLICY 591 ff. (2010); Scott M. Kieffer & John J.Sloan, *Overcoming moral hurdles: Using techniques of Neutralization by White-Collar Crime. Suspects as an Interrogation Tool*, 22, SECURITY JOURNAL 1 ff. (2008).

[25] The topic of dissonance magnitude is at most implied. For example, Sykes/Matza recognize that techniques of neutralization cannot always completely shield the individual from feelings of guilt (DAVID MATZA GRESHAM M. SYKES, TECHNIQUES OF NEUTRALIZATION: A THEORY OF DELINQUENCY 669 (1957)). In other cases, neutralization strategies would not be necessary because the juvenile offender was isolated from the "world of conformity".

[26] LEON FESTINGER, THEORY OF COGNITIVE DISSONANCE 28 (1978).

larly pronounced dissonance—Festinger speaks in this respect of the "fear of dissonance"[27]—it is conceivable that one does not succeed through neutralization strategies to completely eliminate the "psychological discomfort"[28]. Rather, in the case of great pressure, the individual would attempt from the outset to avoid the dissonance-generating cognitions as such[29], or the decision for the crime would not be implemented ("withdrawal of the decision"[30]). Therefore, from a criminological point of view, pronounced dissonance can be interpreted as a relevant resilience factor. In this respect, it suggests itself for example, that reference be made to the research results concerning the connection between value orientation and delinquency.[31] People who are compelled by traditional values according to Festinger's observations are thus possibly less prone to the temptations of advantageous opportunities to commit an offense because the idea of violating a norm elicits such a strong cognitive dissonance that it cannot be calmed. Therefore, the individual striving for consonant cognitions, rather blocks out the advantageous opportunities to commit an offense, increases the attractiveness of conduct in conformity with the law through cognitions that support this conduct, or surrounds themselves with persons who are committed to the same ideals and values. The conflict of nevertheless wishing to achieve economic profit can be resolved by taking advantage of legitimate sources of income and by expanding spheres of activity at the expense of free time.

– Type 2: Dissonance reduction through neutralization. Below the threshold of the "fear of dissonance", neutralization techniques in the sense of dissonance reduction strategies are engaged to reduce the pressure and establish consonance. Distinct neutralization strategies are in this case an indicator for a socially-conforming value orientation. They point to a basic desire for societal inclusion. In particular, in the area of economic criminality, which represents a group of cases in criminality that is otherwise socially inconspicuous, the perpetrator consequently attaches importance to emphasizing that he has not done anything unusual, that is to say, nothing out of the ordinary. On this backdrop, it is comprehensible that they stress in interviews or before a court that they only did what everyone else also does ("anybody could've done it", "everybody does it", "it's the values of competitiveness and achievement in Western socie-

27 LEON FESTINGER, THEORY OF COGNITIVE DISSONANCE 41 (1978).

28 LEON FESTINGER, THEORY OF COGNITIVE DISSONANCE 16 (1978).

29 LEON FESTINGER, THEORY OF COGNITIVE DISSONANCE 41 (1978).

30 LEON FESTINGER, THEORY OF COGNITIVE DISSONANCE 52 (1978).

31 Alexander Schlegel, *Werthaltungen inhaftierter Wirtschaftsdelinquenten*, *in* Wirtschaftskriminalität und Werte 113 ff. (2003); Judith M. Collins & Frank L. Schmidt, *Personality, Integrity, and White Collar Crime: A Construct validity study*, 46, PERSONNEL PSYCHOLOGY 295 ff. (1993).

ties that are to blame"[32]). From the perspective of prevention this therefore does not require re-socialization, but rather (only) "neutralizing the techniques of neutralization" (see more detail on this below under III).

– Type 3: Withdrawal into an autonomous sphere of values of a workplace-related subculture. If there are no apparent neutralization strategies, this suggests that conformity values no longer produce any friction and no guilty conscience. The value of abiding by the law does not occur in the offender's cognitions, and hence, there does not follow any dissonance that would have to be reduced. In this case, which forms the opposite pole to Type 1, the perpetrator accordingly is moving at least in part in an autonomous sphere of values. In the law related to economic offenses, this is a specific feature of workplace-related subcultures to the extent that these are accompanied by a breakdown in the "work-life-balance" and the associated loss of external control by persons outside of the work environment.[33] An indicator for this are argumentation strategies with which the perpetrator explains after the fact that he no longer noticed the illegal actions: "price-fixing had become so common and gone for so many years that we lost sight of the fact that it was illegal."[34]

C. Dissonance in the case of conduct in conformity with the law

Festinger's theory furthermore demonstrates that techniques of neutralization are not only needed in choosing the alternative that is a criminal course of action, but also in choosing the course of action that is in conformity with the law. If the individual is exposed to an advantageous opportunity to commit a crime and he recognizes this, he has the choice to seize the opportunity or ignore it.[35] Whereas the criminological literature to date only focused on the cognitive dissonance resulting from a decision to commit the offense and against compliance, Festinger's theory provides space for the problem of cognitive dissonance due to missing the advantageous opportunity to commit a crime, which is connected with the cognition of losing the yields of a crime.

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32 Orly Turgeman-Goldschmidt, *Between Hackers and White-Collar Crime Offenders*, *in* Corporate Hacking and Technology-Driven Crime: Social Dynamics and Implications 28 (Thomas J. Holt & Bernadette H. Schell, 2011).

33 HENDRIK SCHNEIDER, DER WIRTSCHAFTSSTRAFTÄTER IN SEINEN SOZIALEN BEZÜGEN. AKTUELLE FORSCHUNGSERGEBNISSE UND KONSEQUENZEN FÜR DIE UNTERNEHMENSPRAXIS 4 ff. (2009); Hendrik Schneider & Dieter John, *Der Wirtschaftsstraftäter in seinen sozialen Bezügen. Empirische Befunde und Konsequenzen für die Unternehmenspraxis, in* Wirtschaftskriminalität 159 ff. (Britta Bannenberg & Jörg-Martin Jehle, 1st ed. 2010).

34 STUART L. HILLS, CORPORATE VIOLENCE: INJURY AND DEATH FOR PROFIT 191 (1987).

35 Basic assumption of the Leipziger Progression Model of White-collar Crime: Schneider (Hendrik Schneider, *Das Leipziger Verlaufsmodell wirtschaftskriminellen Handelns*, NEUE ZEITSCHRIFT FÜR STRAFRECHT 555ff. (2007) and ibid. 135 ff. (2008)). a similar approach in the Choice Theory of White Collar Crime (NEAL SHOVER & PETER GRABOSKY, WHITE-COLLAR CRIME AND THE GREAT RECESSION 429 ff. (2010); ibid. 641 ff. (2010); NEAL SHOVER & ANDREW HOCHSTETLER, CHOOSING WHITE-COLLAR CRIME 114 ff. (2007); ibid. (2006); also, John Braithwaite, *Diagnostics of white-collar crime prevention*, 23, CRIMINOLOGY & PUBLIC POLICY 621 ff. (2010)).

This aspect can admittedly not be made fruitful for criminal etiology, but certainly for resilience research and prevention. Whereas within the framework of prevention, neutralization strategies that pave the path into criminality are to be neutralized to the greatest extent possible,[36] we very much welcome those that ease the sense of loss of having passed over an advantageous opportunity. According to this, one must fundamentally distinguish between "negative" (crimino-valent) and "positive" (crimino-resistant) neutralization strategies[37]. Criminology has so far only concentrated on one side of this. Neutralization strategies that are to be assessed as positive and supportive of compliance with the law would have to as yet be formulated. Research results in economic victimology[38] suggest that there is also in this respect an appeal to higher loyalties. Employees in victimized companies report that they also cooperated in uncovering and clearing up criminal acts against the company because they had perceived this as the "hour of reckoning". In addition, they apparently felt a lower tolerance level with respect to navigating in a company gray zone than other colleagues. Thus, in this respect, it was not only a question for them of compliance with the law in and of itself, but rather also that of higher-level ideals of fairness and transparency, therefore, cognitions through which conduct in conformity with the law can gain in its appeal as compared to criminality (or not intervening vis-à-vis criminality). An increase in the attractiveness of conduct in compliance with the law or an incentive to return to legality would also be conceivable by means of relevant monetary or non-monetary incentive systems (see more detail on this under III in prevention strategies).

D. Dissonance in group processes

More clearly than in the criminological works on neutralization techniques, there is also a focus with Festinger on the relevance of group processes. To be sure, Sykes & Matza already emphasize (in differentiating from Sutherland's Theory of Differential Association), that neutralization strategies can be learned in contact with others. However, in addition, Festinger also makes reference to "social support" in the process of dissonance reduction.[39]

Mutual social support in reducing dissonance then occurs if multiple persons perceive the same dissonance and must subsequently deal with the identical discomfort. According to Festinger, the mutual social support in "collective dissonance" can even go so far that "a large group of people succeed in continuing to adhere to a belief or opinion alt-

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[36] Joseph Heath, *Business Ethics and Moral Motivation: A Criminological Perspective*, 83, JOURNAL OF BUISINESS ETHICS, 595, 611 (2008): "The goal [...] would be to neutralize neutralizations".

[37] Cf. on these basic terms of applied criminology: HANS GÖPPINGER, KRIMINOLOGIE, 218 ff. (6th ed., 2008).

[38] HENDRIK SCHNEIDER & DIETER JOHN, DAS UNTERNEHMEN ALS OPFER VON WIRTSCHAFTSKRIMINALITÄT – EINE VIKTIMOLOGISCHE UNTERSUCHUNG: PUBLIC AND PRIVATE SECTOR IM VERGLEICH (2013).

[39] LEON FESTINGER, THEORY OF COGNITIVE DISSONANCE, 177 (1978).

hough clear evidence to the contrary is constantly becoming apparent[40]: [...] If everyone believes it, it must be true without a doubt".[41] Thus, a "UFO cult" studied by Festinger managed to still cling to a prophecy of an apocalypse even then as the first predicted date of world destruction passed without incident.[42] In this case, the only members of the cult who turned away in disappointment from the ideas of an imminent apocalypse (and the salvation of a select few by aliens) were those that did not exchange views with other cult members. Insofar as the error concerning the exact date of the apocalypse was collectively confronted, a reinforcement of group cohesion was even apparent.

Consequently, group processes influence not only the appeal and the belief in the correctness of certain cognitions, but also assist with marginalizing and rejecting dissonant cognitions.[43] From an economic criminology perspective, in this respect for instance, the recognizable neutralization strategies of management personnel and established employees are relevant for the employees of a company. If the necessity of lawful conduct is only then recognized by management personnel and experienced colleagues if a specific risk of discovery exists, and the norm violation is otherwise consistently neutralized, contagion effects are obvious. Therefore, techniques of neutralization are passed on in the company hierarchy from the top to the bottom and dissenters are collectively and successfully defamed and/or neutralized as "killjoys" or "naysayers". This applies, as the results of the research project "Corporate Compliance – Legal Limits and the Empirical Effects of a New Form of Company Organization"[44] of Leipzig University makes apparent, in many companies, even to the individual compliance officer. They speak of—also with regard to their superiors—serious problems with being accepted: "I am perceived as a killjoy" or "I once again needed an investigative proceeding so that anyone listened to me".

The rejection of persons with a different opinion—for example, from the legal department or the compliance office—can go so far that the cognitions of dissidents that are in conflict with certain cognitions are no longer even perceived. Under these circumstances, dissonance no longer occurs and consequently, it also does not require neutralization

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40 LEON FESTINGER, THEORY OF COGNITIVE DISSONANCE 196 (1978).

41 LEON FESTINGER, THEORY OF COGNITIVE DISSONANCE 198 (1978).

42 LEON FESTINGER & HENRY RIECKEN & STANLEY SCHACHTER, WHEN PROPHECY FAILS: A SOCIAL AND PSYCHOLOGICAL STUDY OF MORDERN GROUP THAT PREDICTED THE DESTRUCTION OF THE WORLD (1964).

43 LEON FESTINGER, THEORY OF COGNITIVE DISSONANCE 182 (1978).

44 Hendrik Schneider & Kevin Grau & Kristin Kießling, *„Der Schock von Berlin saß tief!" – Ergebnisse eines empirischen Forschungsvorhabens zu Compliance im Gesundheitswesen und in der Pharmaindustrie*, 2, CORPORATE COMPLIANCE ZEITSCHRIFT 48 ff. (2013); Hendrik Schneider & Kristin Kißling, *Compliance im Unternehmen – Wo steht die Pharmaindustrie? Ergebnisse eines empirischen Forschungsvorhabens zur Verbreitung und Wirkung von Compliance Instrumenten in deutschen Unternehmen*, 6, ARZNEIMITTEL & RECHT, 261 ff. (2012); Hendrik Schneider & Burkhard Boemke & Kevin Grau & Kristin Kießling, *Evidenzbasierte Kriminalprävention im Unternehmen. Wirksamkeit von Compliance Maßnahmen in der deutschen Wirtschaft – Ein empirisches Forschungsvorhaben*, 9, DENKSTRÖME, JOURNAL DER SÄCHSISCHEN AKADEMIE DER WISSENSCHAFT 79 ff. (2012).

by means of relevant dissonance reduction strategies. This is demonstrated once again in particular in workplace-related subcultures. Where there is long-term and ongoing entanglement in the workplace-related subculture, the signs of normality and deviance are reversed and breaking the law is no longer reflected in the cognitions of the actors. The reasons for this are, for example, the findings identified in the study "The Economic Offender in his Social Surroundings"[45], that in one case of significant criminal offenses perpetrated in the context of the workplace-related subculture, the order to the business-consulting firm to resolve the criminal circumstances within the company was issued personally by one of the principal offenders. This finding is also corroborated in other studies: "Membership in a deviant subgroup plays an important role in 'normalizing' this otherwise proscribed conduct. Without the supportive group, the 'sinning self threatens to overwhelm the working self'".[46]

III. KNOWLEDGE GAINED FOR COMPANY-INTERNAL PREVENTATIVE MEASURES

A. Strategies for neutralizing, techniques of neutralization

Consequently, in-house compliance programs should primarily rely on creating an atmosphere or corporate culture[47] in which common neutralization strategies are not accepted. Evolved cultures of collective neutralization strategies (compare from the area of cooperation in health care, for example, the arguments for ensuring acceptance of certain problematical practices in "pharma marketing")[48] should be made a subject of discussion and deliberated.

As stated, the techniques of neutralization involve relatively fragile lines of argumentation that are amenable to a change in group processes. Just as they can be subsequently stabilized by group processes, they may be destabilized and delegitimized by group processes and a corresponding reflection. Compliance workshops in which the target group is made aware of the neutralization strategies and the problem of cognitive dissonance

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45 HENDRIK SCHNEIDER, DER WIRTSCHAFTSSTRAFTÄTER IN SEINEN SOZIALEN BEZÜGEN. AKTUELLE FORSCHUNGSERGEBNISSE UND KONSEQUENZEN FÜR DIE UNTERNEHMENSPRAXIS 4 ff. (2009); Hendrik Schneider & Dieter John, *Der Wirtschaftsstraftäter in seinen sozialen Bezügen. Empirische Befunde und Konsequenzen für die Unternehmenspraxis, in* Wirtschaftskriminalität 159 ff. (Britta Bannenberg & Jörg-Martin Jehle, 1st ed. 2010).

46 GERALD MARS, CHEATS AT WORK. AN ANTHROPOLOGY OF WORKPLACE CRIME (1982).

47 GERALD MARS, CHEATS AT WORK. AN ANTHROPOLOGY OF WORKPLACE CRIME (1982).

48 GERALD MARS, CHEATS AT WORK. AN ANTHROPOLOGY OF WORKPLACE CRIME 48 (1982); In more detail: Hendrik Schneider & Kevin Grau & Kristin Kießling, *„Der Schock von Berlin saß tief!" – Ergebnisse eines empirischen Forschungsvorhabens zu Compliance im Gesundheitswesen und in der Pharmaindustrie*, 2, CORPORATE COMPLIANCE ZEITSCHRIFT 48 ff. (2013); Hendrik Schneider & Kristin Kißling, *Compliance im Unternehmen – Wo steht die Pharmaindustrie? Ergebnisse eines empirischen Forschungsvorhabens zur Verbreitung und Wirkung von Compliance Instrumenten in deutschen Unternehmen*, 6, ARZNEIMITTEL & RECHT 261 ff. (2012).

are suitable for this purpose. For example, an introduction can rely on hypothetical dilemma situations that are taken from the respective markets in the work environment of the employees to be trained. In discussions concerning such situations and the possible courses of action, neutralization strategies can be made apparent and thus brought to a level of critical reflection. Already the identification of dissonance-generating cognitions and the reconstruction of common neutralization techniques had (according to the insights gained in our study of the effectiveness of compliance instruments) positive effects with regard to awareness vis-à-vis certain established mindsets and argumentation patterns.[49]

Promising are furthermore programs that not only illustrate the content of relevant norms, but also their objectives and legal policy significance.[50] In this respect, the goal is to undermine and neutralize the neutralization strategies of "appeal to higher loyalties" and the "rejection of penal provisions". Decisive in the sense of consolidating the insights attained is furthermore that holding onto the common structures and established dissonance reduction strategies is no longer tolerated by the top management (so-called "tone from the top").

B. Stabilizing and supporting desirable dissonance reduction strategies

Within the framework of prevention, it must also be taken into consideration that a decision for lawful behavior can produce dissonance. In this sense, the company can rely on a double strategy in which compliance is consistently rewarded and non-compliance is consistently rejected. If there are odds for the employee that compliance will be rewarded, this reduces the cognitive dissonance in the event of missing out on a promising opportunity. The employee will ease his sense of loss over the missed profit opportunity with the argument that he also has the possibility to earn, even by missing the promising opportunity, an "extra bonus" in the form of a monetary or non-monetary compensation component.

By contrast, in the case of a low fixed salary and high sales commission, for instance, there exists an incentive to also effectuate the conclusion of a contract for the product to

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[49] Cf. already the approach (Michael Walter, *Wie kann ein Mensch so etwas tun? in* Festschrift für Hans-Dieter Schwind 1155 ff. (Thomas Feltes & Christian Pfeiffer & Gernot Steinhilper, 2006)), who in this respect focuses on "Unmasking Illusory Legitimations".

[50] In more detail this Joseph Heath, *Business Ethics and Moral Motivation: A Criminological Perspective*, 83, JOURNAL OF BUISINESS ETHICS 595 ff.: Of course, the current developments in the law of economic offenses are not very favorable for the practice of respecting norms. Due to a lack of precise definition of specific criminal offenses and individual features of the elements of an offense, it is increasingly already difficult to clarify the content of the norm to the party to whom the norm is addressed. Added to this are conflicts in values and the lack of reasonability in certain decisions of the legislature and courts, which can encourage the neutralization strategies of rejecting penal provisions; see on this in detail based on examples, Hendrik Schneider, *Wachstumsbremse Wirtschaftsstrafrecht. Problematische Folgen überzogener Steuerungsansprüche und mangelnder Randschärfe in der wirtschaftsstrafrechtlichen Begriffsbildung*, 1, NEUE KRIMINALPOLITIK 30 ff. (2012).

be sold by improper means.[51] An employee who complies with the laws can therefore in case of doubt, clearly earn less than his colleague acting in a criminal manner. This also generates cognitive dissonance in the lawfully acting colleague for which the company—that does not wish to dispense with sales commissions—should provide a neutralization opportunity. Thus, for example, a compliance scorecard could be implemented and taken into consideration for promotions or the allowance of awards or bonuses. Furthermore, the risk of discovery of the criminal sales strategies could be increased by way of periodic compliance audits not bound to a specific occasion, and with this, the appeal of an opportunity for non-compliance reduced.

Of course, a prerequisite for such programs is that there is a genuine company interest in compliance, and that economic success through unlawful corporate activities is also frowned upon by top management. This stance and attitude towards compliance risks and the legal boundaries of economic success is definitely verifiable. According to the present insights about compliance in the German economy, it is not to be assumed that the relevant departments universally merely have a "fig leaf" function and should exclusively aim for a positive public perception.[52] Circumstances that are indicative of a serious interest in functional compliance are, for example, the qualifications profile apparent in job advertisements and the qualifications of the compliance officer, as well as the scope of reporting obligations that go all the way up to the supervisory board in companies that value compliance (so-called dotted reporting line) and therefore include monitoring of the board or managing directors by the compliance officer.[53]

III. CONCLUSION

The starting points illustrated by way of example here that are based on in-house measures for prevention make clear that the theory concerning techniques of neutralization developed by Sykes & Matza definitely has a "quantum leap potential", in particular, in the area of applied economic criminology, and enriches and expands our

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[51] Cf. on this the Strategies of Selling Property Loans, which resulted in the so-called subprime crisis, Neal Shover & Peter Grabosky, White-collar crime and the Great Recession 429 ff. (2010); ibid. 641 ff. (2010).

[52] Skeptical towards compliance as a measure for the prevention of corporate criminality: Bernd Schünemann, *Brennpunkte des Strafrechts in der entwickelten Industriegesellschaft, in* Empirische und dogmatische Fundamente kriminalpolitischer Impetus (Roland, Hefendehl, 2005), p. 369; Roland Hefendehl, *Corporate Governance und Business Ethics: Scheinberuhigung oder Alternativen bei der Bekämpfung der Wirtschaftskriminalität?*, JURISTEN ZEITUNG 125 (2006); William S. Laufer, *Corporate Liability, Pisk Shifting, and the Paradox of Compliance*,52, VANDERBIT LAW REVIEW 1343 ff. (1999).

[53] HENDRIK SCHNEIDER & DIETER JOHN, DAS UNTERNEHMEN ALS OPFER VON WIRTSCHAFTSKRIMINALITÄT – EINE VIKTIMOLOGISCHE UNTERSUCHUNG: PUBLIC AND PRIVATE SECTOR IM VERGLEICH (2013); Hendrik Schneider & Kristin Kißling, *Compliance im Unternehmen – Wo steht die Pharmaindustrie? Ergebnisse eines empirischen Forschungsvorhabens zur Verbreitung und Wirkung von Compliance Instrumenten in deutschen Unternehmen*, 6, ARZNEIMITTEL & RECHT 261 ff. (2012); Hendrik Schneider & Kevin Grau & Kristin Kießling, *„Der Schock von Berlin saß tief!" – Ergebnisse eines empirischen Forschungsvorhabens zu Compliance im Gesundheitswesen und in der Pharmaindustrie*, 2, CORPORATE COMPLIANCE ZEITSCHRIFT 48 ff. (2013).

knowledge of the origins of an offense and prevention of future offenses.
The "critical self-reflection" of the perpetrator with regard to the "legitimation representations of earlier actions" (p. 1170) (rightly presented by Walter with the example of the most severe criminal offenses) cannot happen however, (according to the view applied here) only after the offense within the context of a "new cognitive re-socialization", but rather ideally already before the initial delinquency in the sense of reflecting about the decision processes; and this self-reflection can be made productive for prevention. In this respect, and integrated into a compliance program, this involves measures of ensuring an internal company integrity structure in which adequate handling of cognitive dissonance is cultivated, and in which crimino-valent neutralization techniques are neutralized, and crimino-resistant neutralization strategies are reinforced.

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THE ROLE OF INTELLECTUAL BELIEFS AND PROFESSIONAL CULTURE AS A SOURCE OF POTENTIAL CONFLICTS OF INTEREST

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Rita Shackel is a graduate of The University of Sydney holding qualifications in law, science, psychology and education. Her doctoral work focused on evidentiary issues in the prosecution of child sexual assault cases. Her academic awards include the Jones Memorial University Medal for most outstanding academic and professional record. She has worked as a lawyer, advocate, policy adviser, researcher, academic and consultant in a range of settings including in academe, government and in non-governmental organisations. She has served on numerous government, institutional and professional committees, and delivered professional and capacity building training and continuing education programs to legal practitioners, judicial officers, police, and health and welfare professionals nationally and internationally. Currently she is a tenured professor at the University of Sydney Law School. She teaches legal ethics and is a Chair of the Human Research Ethics Committee at The University of Sydney.

ABSTRACT

This article explores the role of 'systems of beliefs' and disciplinary and professional norms and culture as a potential source of conflicts of interest in decision-making by professionals. In particular it argues that 'intellectual' views and professional values and agendas, may represent a potent source of potential conflicts of interest, which may not be readily recognised or fully understood across diverse disciplinary or professional settings, because of differing disciplinary/professional world-views, training and priorities. The article argues that there is a need for more open and honest cross-disciplinary conversations about how conflicts of interest are constructed and navigated in different scholarly and professional contexts. This is key to unmasking potential conflicts of interest that may unconsciously be sourced by particular intellectual views, positions and systems of beliefs, particularly when they are unquestioningly assumed to be beneficent. This discussion is important for decision-makers,

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such as university human research ethics committees and other cross-disciplinary institutional or organisational (corporate and non-corporate) decision-making or review bodies, for whom potential conflicts of interest are a core consideration in their activities and deliberations.

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I. INTRODUCTION

As Chair and member of an institutional Human Research Ethics Committee (HREC) I'm regularly provoked to think about potential conflicts of interest (COI) that might arise and impact on the research that is the subject of the HREC's review, as well as the potential COI that may arise in the ethical review process itself. An HREC is composed of a number of members from a wide range of professional, cultural and social backgrounds.[2] Some recent discussions around my HREC table have highlighted for me just how diverse committee members' understandings can be, of what constitutes a conflict of interest, and how potential COI may not even be considered relevant, due to a person's worldview or how they perceive and situate themselves politically, intellectually or professionally. Increasingly I have been alerted to how particular disciplinary backgrounds and professional training might influence people's assessment of whether a potential conflict of interest might be enlivened, its nature and its likely impact on decision-making. In particular, I have started to think about possible differences between the scientific and medical profession's conception of COI, and that of other disciplines and professions, such as the legal profession. And whether, such differences matter, and if so, how and why?

Against this backdrop, this article seeks to explore how COI are perceived, constructed and prioritised in different disciplinary and professional settings. This is an important discussion for institutional ethics committees and other similar boards and organisational bodies which are constituted by a diverse professional and lay membership (whether in a corporate, governmental or academic context) and whose core activities and decision-making involve identifying and thinking about the impact of potential conflicts of interest.

The purpose of this article is to highlight and remind us that potential COI may be interpreted and viewed in different ways by people from diverse backgrounds, and perhaps, that in certain settings, a more explicit discussion needs to occur around potential COI, so as to ensure that everyone is on the same page and that decisions are being made in an open and transparent way, and with common understanding. Sometimes, as decision-makers, we have to be prepared and equipped to more readily step outside our own worldview or professional lens, in order to honestly and genuinely engage with potential COI, and thereby avoid introducing unconscious bias and unfairness into our decisions, even if (and perhaps especially if) we are convinced that what we, or others are doing, is for the better 'good'.

II. WHAT IS THE CONFLICT OF INTEREST?

[2] Most institutional ethical review committees mandate inclusion of clinicians, lawyers, laypeople, pastors or spiritual leaders, and researchers.

As a point of departure we need to, at least generally, ask, what we understand as constituting a 'conflict of interest'. COI (also referred to as 'competing interests', 'dual commitments', and 'dual loyalties') describe circumstances in which a primary interest (matters of professional judgment) may be at risk of undue influence by secondary interests.[3] Alternatively, conflicts of interest can be framed as "a structure that carries an invitation":

> The structure is comprised of (1) a relationship featuring a strong obligation based on trust – for professions, a loyalty in which the provider places the beneficiary's interests above his or her own interests, and (2) an opportunity to act contrary to that obligation. The invitation arises when such an opportunity is sufficiently attractive that it poses a significant temptation to override the obligation.[4]

The distinction between primary and secondary interests is drawn by separating the requirements and obligations of an entity's (individual or group) particular professional activity or role (e.g. duties to clients and patients, conducting or reviewing research) from 'external' interests that are referable solely to their private benefit, involvement in other activities or their existing relationships.[5] These secondary interests can broadly be categorised as either being "financial" or "nonfinancial" in nature.

Financial COI can take a myriad of forms and may include: research grants and contracts; consultancies; employment opportunities; positions on committees and boards; stock ownership or options; honoraria; intellectual property (including patents, royalties, and licensing fees); paid expert testimony; and participation in speakers' bureaus or other professional forums or honours.

Non-financial COI (NFCOI) are more difficult to characterise. Most definitions of NFCOI describe such conflicts in the negative -encompassing all undue secondary interests that are not financial.[6] The three most commonly identified NFCOI, which are of particular concern to this essay, relate to 'systems of belief', professional objectives, and

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3 Pascal Probst et al., *Thirty Years of Disclosure of Conflict of Interest in Surgery Journals*, 157, SURGERY 627, 627 (2015); INTERNATIONAL COMMITTEE OF MEDICAL JOURNAL EDITORS (ICMJE), RECOMMENDATIONS FOR THE CONDUCT OF REPORTING, EDITING AND PUBLICATION OF SCHOLARLY WORK IN MEDICAL JOURNALS (2016); Bernard Lo & Marilyn J Field, *Conflict of Interest in Medical Research*, EDUCATION, AND PRACTICE (National Academies Press, 2009), https://www.ncbi.nlm.nih.gov/books/NBK22942/.

4 E Haavi Morreim, *Taking a Lesson from the Lawyers: Defining and Addressing Conflict of Interest,* 11 AMERICAN JOURNAL OF BIOETHICS 33 (2011).

5 Probst et al., supra at 627.

6 Richard S Saver, *Is It Really All About the Money? Reconsidering Non-Financial Interests in Medical Research,* 40 JOURNAL OF LAW, MEDICINE & ETHICS 467,468 (2012); Meera Viswanathan et al., *A Proposed Approach May Help Systematic Reviews Retain Needed Expertise While Minimizing Bias from Nonfinancial Conflicts of Interest*, 67 JOURNAL OF CLINICAL EPIDEMIOLOGY 1229, 1231 (2014).

personal relationships. [7]

Systems of belief, as a source of conflict, can be pervasive, encompassing intellectual, political, religious or professional beliefs, and may unwittingly result in bias in decision-making. 'Intellectual' COI refer to academic or scholarly "activities that create the potential for attachment to a specific point of view that could unduly influence an individual's judgement about a specific"[8] matter or recommendation. For researchers, it has been suggested that "preset beliefs in the likely outcome or a sincere conviction that a particular result is correct are more potent confounders of unbiased observation than financial interests" because of their potential to influence the entire research process, and especially the interpretation of evidence or data.[9] Similarly, researchers may possess "ambition to advance ... knowledge, investigative zeal, and intellectual passion" that might "undermine investigator objectivity and subject protection".[10] Such 'intellectual' COI may arise in many other academic or professional contexts beyond that of the 'researcher'. For example, it may apply to health or medical professionals involved in new cutting-edge therapies, lawyers pursuing justice for the disadvantaged or oppressed; indeed in any professional context where those involved may unquestioningly assume and pursue the beneficence of their activities. In the context of an institutional ethics committee or other similar review or organisational committee, the power of such intellectual COI may be amplified by the group membership and the collective force of the group's convictions. Members of an HREC, for example, are often deeply committed and passionate about the ethical conduct of research. Their perception and strong belief in the beneficence of ethical review and the legitimacy of the ethical review process, creates a particular intellectual prism through which decisions are made. This may unconsciously obscure and entrench potential conflicts of interest around the table, and influence the committee's deliberations and decision-making, perhaps through a strengthened collective conviction over time, as the group's identity and ideological unity is fortified.

Professional objectives (which are not unnecessarily unrelated to 'systems of beliefs') may also be a source of potential conflicts of interest. These may cover a wide range of second-

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7 ICMJE, supra at 3; Lo and Field, supra; Claire Johnson, *Conflict of Interest in Scientific Publications: A Historical Review and Update*, 33 JOURNAL OF MANIPULATIVE AND PHYSIOLOGICAL THERAPEUTICS 81 (2010); Ravi P Mahajan, *Conflicts of Interest in Medical Journals*, 41 COLOMBIAN JOURNAL OF ANESTHESIOLOGY 179 (2013).

8 David Lau, *Addressing Conflict of Interest and Bias in Research, Education and Clinical Practice*, 39 CANADIAN JOURNAL OF DIABETES 247, 248 (2015); Khaled Shawwa et al., *Requirements of Clinical Journals for Authors' Disclosure of Financial and Non-Financial Conflicts of Interest: A Cross Sectional Study*, 11 PLoS ONE 1 (2016); Elie A Akl et al., *Considering Intellectual, in Addition to Financial, Conflicts of Interest Proved Important in a Clinical Practice Guideline: A Descriptive Study*, 67 JOURNAL OF CLINICAL EPIDEMIOLOGY 1222 (2014).; see also Saver 2012, supra at 468, Viswanathan et al., supra at 1232.

9 Ross E McKinney Jr & Heather H Pierce, *Strategies for Addressing a Broader Definition of Conflicts of Interest,* 317 JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION 1727, 1727 (2017).

10 Saver, supra at 468.

ary interests and motivations, including career advancement (both for tenure and promotion), and recognition from peers (including honours and prestige) which take on a particular significance or importance in a particular disciplinary or professional context.[11] Professional drivers and established indicia or 'models' of success within a professional group may be a strong influencing force and source of COI. Such may be imbued in professional identity and notions of professional 'success' right from the beginning of their university study and training and thereafter reinforced through professional milestones and culture.[12]

Likewise personal relationships with the potential to influence professional behaviours or judgments and decisions can source a conflict of interest.[13] Relationships with institutions and other professional entities for example, may also have the potential to conflict with primary interests.[14] One area of growing attention is the ever expanding development of partnerships between organisations and institutions with corporate sponsors and funders, and the potential impact of such in normalising the 'demands of the market' and 'commercial interests' at the institutional or organisational level and thereby perhaps obscuring potential COI.[15]

Such potential COI grounded in professional objectives, institutional or organisational membership and roles, and personal or professional relationships are relevant to decisions or 'choices' made by researchers and other professionals in their professional and related activities. They may also, for example, play out in the decisions of HREC's and other similar committees or bodies that are charged with institutional or organisational related decisions. It may be difficult for such committees and bodies to readily appreciate how such specific potential conflicts of interest are manifesting for particular members, when the membership is varied, and to unpack these around the table. This is because some of these potential sources of COI may not be readily 'visible' or appreciated by all members who work outside the institution or organisation, or for those who have a different disciplinary or professional lens or focus, or are situated within a specific institutional or organisational quarter and are influenced by that particular (potentially insular) world view and understanding, and so are unable to identify even the need to interrogate the probity of such broader influences. Those within a particular profession on the other hand, may be blind to the impact of such influences on their own thinking and decision-making, because such influences may be so deeply entrenched in their own professional culture and

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11 Id. at 468; Viswanathan et al., supra at 1232.

12 Cruess et al., *A Schematic Representation of the Professional Identity Formation and Socialization of Medical Students and Residents: A Guide for Medical Educators*, 90 ACADEMIC MEDICINE 718 (2015); Christine Cerniglia Brown, *Professional Identity Formation: Working Backwards to Move the Profession Forward,* 61 LOYOLA LAW REVIEW 313, 320 (2015).

13 Viswanathan et al., supra at 1232.

14 Arthur L Caplan, *Is Industry Money the Root of All Conflicts of Interest in Biomedical Research?,* 59 ANNALS OF EMERGENCY MEDICINE 87 (2012); Id. at 1232.

15 Christopher Mayes et al., *Conflicts of Interest in Neoliberal times: Perspectives of Australian Medical Students*, 25 HEALTH SOCIOLOGY REVIEW 256 (2016).

identity that they are simply not ever brought into question. Furthermore the dominance of particular disciplines or professionals in some professional settings or on committees or in boardrooms may further serve to silence 'outsider' or 'marginal' voices and render such potential conflicts of interest even more opaque; preventing them from being scrutinised and unmasked.

III. CONFLICTS OF INTEREST AND HUMAN RESEARCH

Codes on ethical conduct in human research generally explicitly address and eschew conflicts of interest. For example, the Australian National Health and Medical Research Council (NHMRC) National Statement on Ethical Conduct in Human Research 2007 requires that institutions "establish transparent processes to identify and manage actual and potential conflicts of interest involving: a. the institution itself; b. researchers; or c. ethical review bodies, their members or advisors."[16] Statements of this kind address the vital policy objective of building public trust in the human research ethical review process which as a broad-based objective, includes four specific goals:

1. To protect the rights and welfare of human participants;
2. To promote social justice, especially in ensuring equitable subject selection and a fair distribution of the benefits and burdens of research;
3. To produce results that benefit society, especially in public health research;
4. To foster public trust in both the methods and results of research, in order to ensure funding and the recruitment of future subjects.[17]

If the full spectrum of potential COI are not recognised and carefully considered in ethical or other like review processes, they can impact and indeed compromise not only research processes but the ethical or other review processes themselves, and ultimately such important public policy interests and objectives. Potential conflicts of interest can impact every stage of research from the choice of research topic ("to choose a topic of research that has the potential for better funding or other financial benefits"), study design, data analysis and interpretation, through to data reporting and dissemination of findings.[18]

While many consequences of COI on research may be unintended or even perhaps unconscious, the pursuit of secondary interests, to the detriment of research integrity, has been observed and is well recorded. Berger, for example, refers to 'selective inertia' ("an unnatural selection of research methods based on which are most likely to establish the preferred conclusions, rather than on which are most valid") as a mechanism through

16 Section 5.4.1.

17 David B Resnik, *Public Trust as a Policy Goal for Research with Human Subjects*, 10 AMERICAN JOURNAL OF BIOETHICS 15, 16 (2010).

18 Lindsay Hampson & James Montie, *Conflict of Interest in Urology*, 187 JOURNAL OF UROLOGY 1971, 1974.

which researchers can consciously sway their research results in a biased or flawed way.[19] Other research has discovered active efforts on the part of researchers to alter or suppress data. For example, Martinson et al. and Carragee et al. reported that industry influence or funding led to pressure to suppress or underreport negative data.[20] Additionally, Martinson et al in a 2005 US federally-sponsored survey of 3,000 academic scientists, found that 15% of them admitted to altering study design or results based on pressure stemming from an external funding source. Conversely, it has been suggested that perhaps "the disclosure of conflicts of interest may exacerbate biases in the presentation of research by creating the impetus to compensate for the disclosure"[21] creating a reverse bias in presentation of findings against sponsor interest. Either way, such COI are potentially biasing research processes and its outcomes.

A. A Medical Research

The pre-eminence of considerations of COI in medical research has been primarily connected to the growing dependence of research on the financial contributions of industry (see, e.g., Brody, 2011), whether directly from a corporation itself or through organisations and government agencies that work with industry to promote particular devices or pharmaceuticals.[22] References to a "medical-industrial complex" date back to the 1980s; and it has been suggested that presence of an industry sponsor (especially one whose medical intervention is the subject of the research) is "the factor most likely to exert an inappropriate influence on investigator professionalism".[23] Strikingly today, two-thirds of biomedical research globally is supported by industry. Studies have also begun to investigate suggestions that the larger the size of financial incentives, the greater the COI concerns.[24]

Moreover, the ability to conduct human research in medical fields relies on the ability to source research subjects (often in large samples). However, in the field of pharmaceutical

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19 Vance W Berger, *Conflicts of Interest, Selective Inertia, and Research Malpractice in Randomized Clinical Trials: An Unholy Trinity,* 21 SCIENCE AND ENGINEERING ETHICS 857, 857 (2015).

20 Brian Martinson et al., *Scientists Behaving Badly*, 435 NATURE 737 (2005); Eugene Carragee et al., *A Critical Review of Recombinant Human Bone Morphogenetic Protein-2 Trials in Spinal Surgery: Emerging Safety Concerns and Lessons Learned,* 11 The SPINE JOURNAL 471 (2011).

21 AG Dunn et al., *Conflict of Interest Disclosure in Biomedical Research: A Review of Current Practices, Biases, and the Role of Public Registries in Improving Transparency*, 1 RESEARCH INTEGRITY AND PEER REVIEW 1, 2 (2016).

22 J Diels et al.*, Association of Financial or Professional Conflict of Interest to Research Outcomes on Health Risks or Nutritional Assessment Studies of Genetically Modified Products*, 36 FOOD POLICY 197, 198 (2011).

23 Probst et al., supra at 627; Dunn et al., supra at 1.

24 Justin Chakma et al., *Asia's Ascent – Global Trends in Biomedical R&D Expenditures*, 370, NEW ENGLAND JOURNAL OF MEDICINE 3, 3-6 (2014); see Bernard Lo & Deborah Grady, *Payments to Physicians: Does the Amount of Money Make a Difference?*, 317 JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION 1719 (2017).

development in particular, there has been increasing demand and competition for subjects due to "the spectacular increase in research activity over the last two decades, an increase in large part driven by growing commercial interests in research".[25] This is an area which has become rife with the influence of FCOIs. To attract referrals, industry engages in practices such as offering substantial payments to researchers and clinicians for referrals, invitations to make well-paid presentations of research findings or to participate in prestigious seminars, the appointment of researchers to lucrative positions on sponsors' scientific advisory boards and specialised committees, and paid consulting relationships.[26] In some industry-sponsored trials, there have even been reports of companies determining the authorship of study results on the basis of physicians' patient enrolment figures.[27]

In the US, the seeming ubiquity of this issue in the medical profession has even produced legislative intervention specifically targeting the profession and its industrial affiliates. The *Physical Payments Sunshine Act* (*PPSA*), signed into law in 2010 as part of *the Patient Protection and Affordable Care Act*, requires pharmaceutical, medical device, biological, and medical supply manufacturers to report to the Department of Health and Human Services any payments to physicians and teaching hospitals that exceed US$10; the payments are then made a matter of public record via a database.[28] Proposals have also been made to devise methods for operationalising FCOIs, especially in the scientific and medical communities, including through "FCOI scales" that express the nature and extent of FCOIs on research, with a numerical score correlating to descriptive terms for potential biases and sample conflicts.[29]

The presence of COIs in human research, especially FCOIs, may exert an influence over the process and results of the research. This influence may be subtle; researchers "might become more lenient with respect to informed consent procedures, they may convince themselves that research participation is in their patient's best interests, or they may be overly flexible with regard to the study inclusion and exclusion criteria".[30] In more measurable terms, there have been extensive academic attempts to measure the potential influence of COI on the results of medical and dental research (predominant clinical trials)

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25 TRUDO LEMMENS & PAUL B MILLER, THE HUMAN SUBJECTS TRADE: ETHICAL, LEGAL, AND REGULATORY REMEDIES TO DEAL WITH RECRUITMENT INCENTIVES AND TO PROTECT SCIENTIFIC INTEGRITY LAW AND ETHICS IN BIOMEDICAL RESEARCH, 135-136 (Trudo Lemmens & Duff Waring, 2017).

26 Id. at 135.

27 Id. at 141.

28 For further background, see Susan Chimonas, Frederica Stahl & David J Rothman, *Exposing Conflicts of Interest in Psychiatry: Does Transparency Matter*?, 35 INTERNATIONAL JOURNAL OF LAW AND PSYCHIATRY 490 (2012); Susan L Norris et al., *Characteristics of Physicians Receiving Large Payments from Pharmaceutical Companies and the Accuracy of Their Disclosures in Publications: An Observational Study,* 13 BMC MEDICAL ETHICS 24, 25 (2012).

29 S V M Maharaj, *A New Method for Scoring Financial Conflicts of Interest*, 21(1) INTERNATIONAL JOURNAL OF OCCUPATIONAL AND ENVIRONMENTAL HEALTH 49 (2015).

30 Supra at 139.

involving human subjects. The overwhelming, but not universal, consensus appears to be that the presence of COI, whether financial or non-financial and whether disclosed or not disclosed, are linked with the particular outcomes being measured.[31]

B. Non-medical Research

Despite a dominance of research into COI related to medical and health research, COI concerns have arisen, and are increasingly being discussed also in other disciplinary contexts. In the humanities and social sciences, research involving community-based participation can be affected by 'partnership tensions', both as a financial and nonfinancial source of conflict. Just as industry sponsors may have an influence on study design for medical studies, pressure from institutional partners may result, for example, in the expulsion of particular community participants in order to ensure the 'success' of the research:

Given the centrality of community participation to CBPR, deliberate expulsion and exclusion of community participants would not be a decision taken lightly and might be influenced by the researcher's perception of risk of non-compliance (with requirements of funding bodies, universities, service providers or government). We highlight the ethical challenge for researchers faced with institutional conflicts of interest who make the decision to exclude community members from CBPR for 'institutional self-protection'. To remain faithful to the emancipatory empowering paradigm would mean to avoid falling back on traditional conceptions of research and tokenistic participation when principles of CBPR, including community empowerment, threaten research success. Silencing can itself be detrimental to research results and interventions by missing the "authentic community voice".[32]

Other potential conflicts of interest may arise when professionals assume multiple roles in 'social' based research, for example, increasingly in higher education settings we see 'teachers' also engaged as 'pedagogical researchers'. A conflict may arise when the teacher wishes to use student-learning data, involve students as participants in their research, or

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31 E.g. Lotte E van Nierop et al., *Source of Funding in Experimental Studies of Mobile Phone Use on Health: Update of Systematic Review,* 11 COMPTES RENDUS PHYSIQUE 622 (2010); Diels et al., supra; Tatiana Lerner et al., *The Prevalence and Influence of Self-Reported Conflicts of Interest by Editorial Authors of Phase III Cancer Trials*, 33 CONTEMPORARY CLINICAL TRIALS 1019 (2012); Haris Riaz et al., *Conflicts of Interest and Outcomes of Cardiovascular Trials*, 117 AMERICAN JOURNAL OF CARDIOLOGY 858 (2016); Andreas Lundh et al., INDUSTRY SPONSORSHIP AND RESEARCH OUTCOME (Report, 2017); Elton Leite et al., *Trial Sponsorship and Self-Reported Conflicts of Interest in Breast Cancer Radiation Therapy: An Analysis of Prospective Clinical Trials*, 33 THE BREAST 29 (2017).

32 Community Based Participatory Research (CBPR) is generally understood as a collaborative approach to research that equitably involves all partners in the research process and in shared decision-making, in recognition of partner expertise and the unique strengths of each partner, see Elena Wilson, Amanda Kenny & Virginia Dickson-Swift, *Ethical Challenges of Community Based Participatory Research: Exploring Researchers' Experience*, INTERNATIONAL JOURNAL OF SOCIAL RESEARCH METHODOLOGY 1 (2017) doi: 10.1080/13645579.2017.1296714.

perhaps also other teaching staff.[33] Another example is provided by Lunt and Fouché, who note the potential conflict when social workers assume the dual roles of 'social worker practitioner' and 'practitioner researcher'.[34] This conflict materialises when the social worker wishes to undertake their own research and the primary respondents will be clients or staff, thereby affecting the practitioner's relationships. These types of COI may pose a challenge to duty of care issues in relation to clients or students, while separate challenges will arise in relation to the reporting of results and proper acknowledgement of colleagues' contributions. It may also affect clients', students' and colleagues' ability or willingness to exercise their right not to participate in (or to withdraw from) the research without fear of negative consequences. Institutions will usually have ethical rules in place to protect potential research subjects, but 'probing research interests', particularly where vulnerable or 'dependent' individuals are involved, may tempt researchers to breach their responsibility and do "more-than-least harm" to their subjects.[35]

This discussion so far has highlighted that research grounded in different disciplinary spheres may give rise to certain disciplinary specific potential conflicts of interest which may not translate to or equally prevail within other research fields or which may assume a different form and with different impact. Accordingly researchers working within different fields of research may not appreciate the full context and culture of potential conflicts of interest in other fields or may, based on their own disciplinary context and experience, misconstrue or misunderstand the ecology that may source potential conflicts of interest in other fields and contexts. This points to the imperative for open, ongoing, reflective and honest conversations across disciplinary lines to promote mutual understanding of such potential conflicts of interest in different research fields and contexts, and thereby enabling such to be interrogated as necessary to avoid the potential bias that might otherwise arise.

IV. CONFLICTS OF INTEREST IN PROFESSIONAL CONTEXTS

In this next part of the article I look at the nature of COI in two specific professional contexts – first, the medical professional setting and secondly, within the legal profession. The purpose of this discussion is to highlight potential differences in the way COI manifest within these different professional contexts and, by analogy, in other professional contexts as well. This discussion builds on the first part of the paper to show that different

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33 Albert F G Leentjens & James L Levenson, *Ethical Issues Concerning the Recruitment of University Students as Research Subjects*, 75 JOURNAL OF PSYCHOSOMATIC RESEARCH 394 (2013); Shirley K Comer, *The Ethics of Conducting Educational Research on Your Own Students*, 13 JOURNAL OF NURSING LAW 100 (2009); Emily M Bartholomay & Sarah K Sifers, *Student Perception of Pressure in Faculty-Led Research,* 50 LEARNING AND INDIVIDUAL DIFFERENCES 302 (2016).

34 Neil Lunt & Christa Fouché, *Practitioner Research, Ethics and Research Governance*, 4 ETHICS AND SOCIAL WELFARE 219, 227-228 (2010).

35 Nadia von Benzon & Lorraine van Blerk, *Research Relationships and Responsibilities: "Doing" Research with "Vulnerable" Participants*, SOCIAL & CULTURAL GEOGRAPHY 7 (2017) doi: 10.1080/14649365.2017.1346199.

disciplinary and professional contexts source different types of conflicts of interest that are potentially perceived and understood through quite different lenses depending on a person's intellectual and professional position and training. Accordingly it will infer that these differences influence the systems of belief and constructs that varied professionals utilise and draw on, when they are called to consider potential conflicts of interest outside their specific professional practice or setting.

B. Non-medical Research

For medical professionals,

> [t]he primary professional interest of each physician should be "to care for and protect the interests and wellbeing of patients to the best of that physician's abilities, while making sure her or his abilities are maintained as new discoveries are made."[36] Physicians assume a variety of roles as they pursue this primary interest, for example, patient care, research and innovation, education, guideline development, public and population health, administration, policy formulation, or advocacy. Each of these roles brings with it specific personal secondary interests, such as competition for patients and trainees, extramural research funding, or high-profile publications, and financial compensation. External relationships with for-profit businesses create additional secondary interests, for example, honorarium, royalties, equity, and sponsorship.[37]

It is clear that COI can variously manifest in the work of a medical professional and in the context of medical practice. However, there are two broad obligations and responsibilities for the medical professional that I will focus on which may often give rise to potential COI - ensuring patient care, and formulating clinical practice guidelines.

1. Anti-corruption campaign

Patients "rely on the independence and trustworthiness of doctors for any advice or treatment offered".[38] There is a fiduciary relationship between doctors and their patients, and the presence of COI could influence the practitioner to make decisions which adversely impact on patient well-being and outcomes, wastefully increase health care costs, or otherwise contribute to a loss of trust in the health care system.[39]

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36 William W Stead, *The Complex and Multifaceted Aspects of Conflicts of Interest*, 317 JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION 1765 (2017) citing Catherine D DeAngelis, *Medical Professionalism,* 313 JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION 1837 (2015).

37 Stead, supra at 1765.

38 Medical Board of Australia, GOOD MEDICAL PRACTICE: A CODE OF CONDUCT FOR DOCTORS IN AUSTRALIA 21 (Mar., 2014), http://www.medicalboard.gov.au/Codes-Guidelines-Policies/Code-of-conduct.aspx.

39 Christopher Robertson, Susannah Rose & Aaron S Kesselheim, *Effect of Financial Relationships on the Behaviour of Health Care Professionals: A Review of the Evidence*, 3 THE JOURNAL OF LAW, MEDICINE AND ETHICS 452 (2012).

One well-known source of COI for medical practitioners is links with the pharmaceutical industry, which invests billions annually on strategies to influence practitioners' prescription patterns.[40] Such strategies include gift-giving, free samples, funding for conference travel, funding for conference presentations and continuing education programs, honoraria, and marketing in both medical journals and the lay press. It is not only practising physicians, but also trainees, which are the subject of these overtures from industry.[41] The risk for patient care arises when the drug or device being prescribed is either expensive and ineffective, or (at worst) unsafe, resulting in the provision of care that is neither economically efficient nor in the patient's best interests.[42] Similarly, in some jurisdictions such as in the US, different fee structures for treating physicians, as well as the availability of self-referral to physician-owned or –affiliated businesses, can also result in the recommendation of unnecessary and expensive treatment for the patient.

In addition to the previously discussed human research dimension, medical practitioners' involvement in encouraging and facilitating patient participation in human research, where patients may be subjected to unproven and potentially dangerous therapies, is a prominent COI issue. The practitioner's interest is in fulfilling publication requirements, clinical service development by obtaining access to new technology prior to competitor hospitals, and research program development by generating the income associated with study conduct.[43] However, in the US and Canada, these secondary interests have led practitioners to "[engage] in excessive 'enrolment activities' in exchange for money ... [including] perpetrated fraud, falsifying their recruitment records in order to increase their profits. Others ignored exclusion criteria designed to ensure the safety of subjects and the validity of research results, referring their patients to research investigating treatments for conditions from which they did not suffer".[44] In such cases of wilful disregard for patient health and safety, the practitioners' breach of their obligations to ensure their patients receive the proper care is particularly egregious:

> The vulnerability of a doctor's own patients to become an experimental research subject because of their trust in their doctor, combined with the signing bonuses which the doctor pockets for the referral, sets up a toxic situation where some

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40 Neena Chappell et al., *Conflict of Interest in Pharmaceutical Policy Research: An Example from Canada*, 21 INTERNATIONAL JOURNAL OF HEALTH GOVERNANCE 66, 69 (2016); Moses Hamilton III et al., *The Anatomy of Medical Research: US and International Comparisons* 313 JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION 174 (2015).

41 Marissa King & Peter S Bearman, *Gifts and Influence: Conflicts of Interest Policies and Prescribing of Psychotropic Medications in the United States*, 172 SOCIAL SCIENCE & MEDICINE 153 (2017); Chappell et al, supra at 69 (2016); Id. at 45; Hampson & Montie, supra.

42 Robertson, supra.

43 Aine Donovan & Aaron V Kaplan, *Navigating Conflicts of Interest for the Medical Device Entrepreneur*, 55 PROGRESS IN CARDIOVASCULAR DISEASES 316, 318 (2012).

44 Lemmens & Miller, supra at 132.

> doctors are literally selling their own patients into human experiments.[45]

Lemmens and Miller noted another corollary of conflict between practitioners' financial interests and those of their patients in receiving timely medical care.

> Particularly when access to care is scarce and waiting lists are significant, finder's fees can greatly exacerbate access issues, overburdening those physicians who have chosen not to spend a large proportion of their time recruiting patients and filling out forms against considerable payment. The phenomenon raises justice concerns, both insofar as the financial interests hamper patient access to care, and insofar as the burdens of providing that care may become unequally distributed among members of the profession.
>
> [...]
>
> When waiting lists for treatment are long, the prospect of participation in research often becomes a tempting route to care for anxious patients. Physicians involved in remunerative recruitment may be tempted to suggest to patients that research participation will give them faster access to care. In such circumstances, one of the core principles of research ethics is compromised – nearly, that which requires research subjects' consent to participation to be free from undue influence or coercion.

However, studies into the attitudes of patients and the general public towards practitioners' COIs do not support the position that they universally, or even mostly, consider practitioners' COI unethical or unfavourable. DiPaola et al. (2014), Yi et al. (2015), and Yi et al. (2016) all found that participants were largely unconcerned about connections with industry, provided that the practitioner disclosed the conflict to his or her patients; in other words, participants considered disclosure the most important means of self-regulation and COI management. [46] Would the public or clients of other professional services take a similar view to such conflicts of interest that arise in other professional contexts, outside the medical profession? Or do public perceptions about doctors' COI of themselves point to an inherent imbalance in how society views medical professionals and the status doctors are accorded, which perhaps evidence a source of potential COI in societal relationships with doctors, worthy of greater recognition and recourse?

2. Clinical Practice Guidelines

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45 Id. at 138, citing U.S., National Institutes of Health, *Conference on Human Subject Protection and Financial Conflicts of Interest* (conference transcript) 45 (2000).

46 Christian P DiPaola et al., *Surgeon-Industry Conflict of Interest: Survey of North Americans' Opinions Regarding Surgeons Consulting with Industry* 14 THE SPINE JOURNAL 584 (2014); Paul H Yi et al., *Are Financial Conflicts of Interest for the Surgeon a Source of Concern for the Patient?*, JOURNAL OF ARTHROPLASTY 21(2015); Paul H Yi et al., *Patient Attitudes Toward Orthopedic Surgeon Ownership of Related Ancillary Businesses* 31 JOURNAL OF ARTHROPLASTY 1635 (2016).

The Institute of Medicine defines clinical practice guidelines as "systematically developed statements to assist practitioner and patient decisions about appropriate healthcare for specific clinical circumstances".[47] Such guidelines "are considered one of the most important services that medical societies provide. Guidelines serve a unique role to standardize care, define quality of care, and are used in malpractice cases".[48]

In the development of clinical practice guidelines, the influence of the intellectual COI of committee experts who work on the guidelines have been touted; however, industry also helps to define new diseases and determine 'best practices' for treating them, usually through their connections with the deciding experts.[49] Various studies have been conducted on the frequency of COI whether financial or nonfinancial, disclosed or undisclosed, amongst those on the relevant committees.[50] This research underscores that there is a strong connection between experts in medical fields highlighting that "[t]he lack of disclosure of COI raises significant issues regarding the transparency and validity of the guideline development process"[51] ... and more generally emphasises that "transparency regarding any untold influences is critical".[52]

B. Non-medical Research

The legal profession has arguably adopted a more clearly defined view of what constitutes a conflict of interest than has the medical profession. There is seemingly less interest in the legal professional context in distinguishing between different types of COI. This can generally be seen in the way that conflicts of interest are described and characterised in legal professional conduct rules and other legal professional statements across many jurisdictions.

Conflicts between the interests of clients, whether current or former, may prevent a lawyer from acting for one of the parties. In the case of former clients, this proscription against acting for a client in conflict with a former client's interests is mostly concerned

47 Lo and Field, supra.

48 Joseph D Feuerstein et al., *Systematic Analysis of the Quality of the Scientific Evidence and Conflicts of Interest in Osteoarthritis of the Hip and Knee Practice Guidelines*, 45 SEMINARS IN ARTHRITIS AND RHEUMATISM 379, 382 (2016); see also Lisa Cosgrove et al., *Conflict of Interest Policies and Industry Relationships of Guideline Development Group Members: A Cross-Sectional Study of Clinical Practice Guidelines for Depression*, 24 ACCOUNTABILITY IN RESEARCH 99 (2017).

49 Chappell et al., supra at 69; Akl supra.

50 Susan L Norris et al, *Authors' Specialty and Conflicts of Interest Contribute to Conflicting Guidelines for Screening Mammography*, 65 JOURNAL OF CLINICAL EPIDEMIOLOGY 725, 731 (2012); Feuerstein et al., supra; Cosgrove et al., supra.

51 Feuerstein et al., supra at 384.

52 Chappell et al., supra at 69; Akl supra.

with protecting their confidentiality, rather than constituting a continuing conflict of interest.[53] In large firms, where the former and current clients whose interests are in conflict are represented by different lawyers, 'information barriers' have been devised as an imperfect solution to quarantine information and prevent the former client's confidentiality from being compromised. [54]

Beyond these client-centric categories, lawyers have also long been recognised as having duties to the profession and society more broadly.[55] However, where these duties conflict with clients' interests, "appeals to one or more of these values can often be used to justify the violation of another"; specifically, "the importance of client confidentiality, attorney-client privilege, adherence to the wishes of their client, and the norm of zealous advocacy" may be used to override the laws of ethics.[56]

It has been suggested that legal professionals owe a higher duty of loyalty, including greater duties of avoidance and disclosure, than other professional groups. Theories have been proposed as to why this is appropriate; writing in the context of the modern American legal system, Witkin wrote:

> While doctors are entrusted with their patients' lives and psychologists are entrusted with their clients' deepest secrets, legal professionals are unique in that they assist one individual who is faced with the collective power of society embodied in the state. The clash between individual rights and such social regulation forges a unique relationship between legal professional and client. Serving one person against the collective whole demands a key virtue from legal professionals: loyalty. ... [W]orking in a system of rules that bind and potentially coerce the client demands an elevated duty of loyalty from the professional.
> [...]
> [A] system of binding laws poses a variety of practical reasons for its experts to promise undivided loyalty to clients. First, people with legal problems may act less on their understanding of the complicated structure of laws and procedures and more on a sense of fairness that is enhanced through the guidance of a loyal advocate. Next, experts in law represent individuals against adverse interests in society and must thereby address morally ambiguous situations. The simple ethic of loyalty to clients thereby allows legal experts to navigate these subjective dilemmas, provide uniform representation as part of a fair and balanced system, and rely on the adversarial court system to sort out truth and justice. Finally, the

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53 YSAIAH ROSS & PETER MACFARLANE, ETHICS, PROFESSIONAL RESPONSIBILITY AND LEGAL PRACTICE 346 (2017).

54 Id. at 357.

55 Nathan Witkin, *Dependent Advocacy: Alternatives to Independence between Attorneys,* 32 OHIO STATE JOURNAL ON DISPUTE RESOLUTION 111, 124 (2017).

56 Jennifer K Robbennolt, *Behavioural Ethics Meets Legal Ethics*, 11 ANNUAL REVIEW OF LAW AND SOCIAL SCIENCE 75, 78 (2015).

> promise of loyalty promotes the use and quality of legal services. While the same could be said for any service or business, the promise of loyalty is especially important in the context of binding legal systems because clients may be mistrustful of legal experts who work within a system that may exert coercive force over the client.[57]

There have been suggestions that the medical profession could (and should) adopt the legal profession's stricter approach towards outlining and proscribing certain COI. Specifically, this would involve recognising the "fundamental ethical principle" of loyalty and trust between practitioner and patient, and requiring both disclosure and the acquisition of informed consent before the practitioner is permitted to pursue the conflicting interest:

> Attorneys' focused conversations about conflict are a far cry from the "disclosures" we find in health care. An oblique reference in a consent form for treatment or research may say "Dr. X's research is funded by Company Y," or "Dr. A is part owner of this facility and you are free to use the facility of your choice," or "As a prospective patient of Y Medical Center, we are pleased to inform you that this hospital is partly owned by physicians." The patient is virtually never told that the ownership represents a conflict of interest, or that the conflict directly threatens his or her interests. Neither is he or she asked to provide a special consent expressly for the conflict of interest. [58]

At the very least this discussion has highlighted that medical and legal professional ethics and duties construct conflicts of interest in ways that give rise to points of divergence. This suggests that perhaps medical professionals will view potential conflicts of interest in different terms than lawyers; so then, when lawyers and doctors/clinicians are brought together on cross-disciplinary committees or boards and asked to make decisions that require consideration of conflicts of interest there is a real likelihood that they will do so from distinctly different points of reference. The implications of this needs careful consideration particularly when one professional voice is likely to dominate or mute the other due to unequal representation or influence in any given context. This applies equally to other professional groups represented on institutional and organisational cross-disciplinary and professional committees and boards.

V. POLITICAL CULTURE DIFFERENCE

Conflicts of interest may take a myriad of forms with far reaching potential to impact on

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[57] Witkin, supra at 119–20.

[58] Morreim, supra at 34.

professionally related decision-making. This article has highlighted that even highly qualified professionals trained in ethical decision-making and bound by professional ethical guidelines and frameworks, may not fully recognise the impact of potential conflicts of interest in their activities, particularly when such activities involve decision-making outside the confines of their actual professional practice or specific disciplinary context e.g. clinicians or legal practitioners who are engaged on institutional ethics committees or other organisational committees or boards may unwittingly harbour professional biases in their decisions.

The article has argued that conflicts of interest may indeed be rendered invisible by entrenched professional or disciplinary values and cultures that unquestionably accept the benevolence and status of a profession, its activities and ethics. Such conflicts of interests are arguably further rendered immune to identification and interrogation, as often those outside particular professional or disciplinary circles will not understand the nature of professional relationships, drivers, incentives and identity. Whilst the value of cross-disciplinary and professional committees, panels and boards is obvious, the potential for conflicts of interest to unconsciously influence decisions of such entities may be less apparent and needs to be vented. The very constituency and perhaps mosaic homogeneity and heterogeneity in the character of such groups, may perhaps perversely mask potential conflicts of interest and unwittingly reinforce bias in important decision-making, and thereby ironically be doing so under the guise of promoting ethical decision making and ethical practices.

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INTEGRITY CULTURE AS A FORWARD-LOOKING SUCCESS FACTOR: A PRACTICAL EXAMPLE

Daniel Dietzfelbinger

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ABSTRACT

Integrity Management is generally understood as a reaction to forensically relevant corporate situations of any kind whatsoever. A critical case occurs (corruption, cartel, and fraudulent transactions) and the call is made for compliance (for external control) and integrity (for internal cleansing).
The following article sees it from a different perspective: Integrity Management as a proactive control factor of support in the implementation of strategic goals.
Starting with a quick glance at historical positions of the ethical discussion and in conjunction with some pragmatic considerations on the topic of integrity, it will demonstrate, using a case from practical experience, how an organization uses Integrity Management to shape the culture and thus the character of the enterprise in such a way that Integrity Management becomes a fundamental component in implementing the strategy.

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I. INTRODUCTION

November 2006: 200 police officers make their way toward central Munich. Their goal: the head office of a large German DAX company. Their suspicion: corruption, bribery, deception. Suspicion quickly turns into certainty – the first detentions take place in December and in March 2007, an active executive board of a DAX Group is arrested for the first time. The investigations drag on, more and more responsible parties land in a swamp made up of bribery payments, corruption, and dirty transactions – more than a billion euros have disappeared into dark channels. The press writes about mafia-style situations, the company's image is damaged.
But the new top management of the Group wants to clean things up: a Compliance Officer is appointed, with more than 600 employees reporting to him, who are to expose and prevent statutory violations within the company. All is expected to be well again.

July 2017: once again, the Group hits the headlines. Some of the Group's products have turned up in an area where no products are allowed to be delivered due to the current political situation and imposed sanctions. Group management talks about having been "deceived", while others assert that Group management knew very well where the products were destined to go, but relied on the silence of the buyer.

An everyday case, which shows: the temptation is always there – the rules are clear, but the behavior still violates them. The motive: in this case, money.
Compliance means that companies and organizations fulfill their legal obligations and comply with internal standards. It thus becomes a matter of ensuring that all employees comply with the legal and commercial traffic regulations. Employee training, referrals to rights and regulations, and possible sanctions stand on the side of the potential implementation of regulations.
Time and again, revealed instances of rule violations at large companies end up catapulting the topic of compliance to the top of the agenda. Then – depending on the size of the company – a whole host of judges are appointed as compliance managers with the task of ensuring law and order in the actions of the company employees.
The idea behind the compliance approach is to strengthen control and intensify the penalties for violations, where applicable, so that the rule violation results in significant losses, which surpass the supposed benefit of the rule violation, such that the risk of such a rule violation is no longer lucrative. Such a perspective is extrinsically motivated.

Another point of view is the Integrity Perspective, prominently formulated by Lynn Sharp Paine back in the mid-90's, which has meanwhile been academically received and discussed many times. The Integrity Perspective posits a counterpoint: it takes the position that managers and employees are independently concerned with compliance due to inner convictions – because they live the spirit of standards due to their inner conviction. Integrity is based on one's inner attitude (Greek: ethos).
While one can conceivably assume with respect to Compliance Orientation that for the overwhelming majority the respective compliance with rules and standards can be conveyed through sanctions, in the case of integrity it pertains to the issue of whether ethos

as an inner attitude for a reflection of morals can be conveyed or whether it is an aimless undertaking, which is doomed to fail from the start, because humans are not receptive to it – to summarize this position: integrity is an attitude that one either has or does not have. It is molded in the first two decades of one's life, during which the inner attitude and the inner value structure slowly take shape.

II. COMPLIANCE AND INTEGRITY: AN ANCIENT DEBATE

The question is whether this argument can be supported. If it were true, it would have direct implications on the issue of whether employees at all hierarchy levels of a company are able to learn integrity in general, or whether the attempt can only be achieved on the extrinsically oriented compliance side, i.e. via (also positive) sanctioning.
Interestingly enough, this goes right back into the middle of an age-old debate, which describes the hour of birth of ethics: for the verifiable written history of ethics begins with Socrates (469 to 399 BC) and his student Plato (427 to 347 BC) – the fragments of the so-called Pre-Socratics are hardly systematic contributions to ethics. At the time of Socrates, there was a doctrinal conflict between himself and Plato on one hand, and the opinion leaders of philosophy at that time, the sophists, on the other hand. The point of contention was: can one teach virtue and morals as one teaches math and spelling – this would be the compliance approach today – or must this capacity for good actions derive spontaneously (of one's own accord) and from one's own knowledge – which today is known by the key word "integrity".
The sophists, roving migrant philosophers, approached the issue pragmatically: practical issues of ethics were a decisive factor for them. The sophists believed that one could easily teach people virtue, specifically to the degree they benefit from it. For they were convinced that there was no universally valid, objective virtue doctrine, but rather that virtue is always a subjective matter for each individual. According to the sophists, virtue was not an objective commodity, which one can approach with the aid of self-awareness, asceticism, theoretical debate or the like, but rather a teachable ability such as the art of speaking or mathematics. The sophists believed that no values or virtues were valid by nature, i.e. objectively valid. The sophists' thinking was therefore also characterized by relativism and skepticism.
They were skeptical to the extent that they did not believe in an absolute truth. Values and virtues arise based on the positing by man. They believed that virtues had a different validity at different times and at different places, depending on the agreement reached among people and as it is beneficial to them.

Socrates and Plato were of a different opinion: they assumed that there was an objective form of knowledge, in particular of [that which is] good. Goodness, therefore, and the capacity to act according to goodness cannot be taught, but one must instead come to an understanding of what is truly – and objectively – good from his own incentive, through reflection and contemplation, and act accordingly.
Socrates assumed being able to arrive at a good life by way of self-awareness. Socrates was convinced that every person has within himself the capacity to recognize good; according to Socrates, one can identify the hidden virtues through skillful questioning, for oneself, and for others, provided they can get involved in a philosophical discourse.

Socrates wanted to learn about the motif of an action from his dialog partners, and what values, conceptions and rules characterize the action.
These values must also be scrutinized again, says Socrates, and he was not satisfied with simple, superficial answers. If one continues to question, then one finds out that which is the true good, and how one implements it in the world.
Socrates perfected this process of continual self-awareness in the dialogues that his student Plato wrote down: in response to every statement of his dialogue partner, Socrates attaches a new question, pushing the stake of knowledge deeper and deeper into the mind of the counterpart. At the end of the dialogue, both dialogue partners have at times come a good step further, but sometimes not, and the readers at first lag behind in a state of confusion. But Socrates' questions in the dialogues are guided by interests, since the object of the dialogues is that the dialogue partners – and that means the readers – ultimately arrive at the knowledge of themselves – from their own incentive. Socrates serves as the midwife in the ever-new re-birth of self-awareness. That is why one speaks of maieutic in Socratic philosophy.
Once one has understood what virtuous action is, one can – according to Socrates – act in accordance with it. In other words: true self-awareness, according to Socrates, is the prerequisite for virtuous actions.

The idea of what is good is also the fundamental issue and guideline of Plato's philosophy as well. Plato's approach goes further than Socrates' does, he thought in more abstract terms: the idea of what is good forms the basis not only for his ethics, but also for his entire philosophy. Plato begins by conceiving of ethics theoretically, for he poses the question as to how the idea of what is good is acquired and how one can describe its repercussions on people's everyday life. The concrete actions of man are primarily secondary for him.
Plato arrives at the doctrine of virtue by way of doctrine of the soul. Plato perceives three parts to the soul of humankind: the actual divine, reason, and the two parts that refer to the perception of the world: the higher part, courage, residing in the chest, and the lower [part], desire, residing in the belly. Plato allocates one virtue to each of these three parts of the soul: to reason the virtue of wisdom, to courage the virtue of bravery, and to desire the virtue of moderation.
Plato places justice above these three virtues as the fourth cardinal virtue. Justice connects the first three and is at the same time the foundation and roof of the other three virtues. According to Plato, when all of the three other virtues are in balance with each other, man lives justly. In other words, none of the virtues may be over-emphasized, only through balance does one achieve a righteous life.

The Greek philosopher Aristotle (384 to 322 BC) represents an intermediate position in this dispute to a certain extent. To Aristotle, ethics is an academic discipline along with the doctrine of thought (logic) and the doctrine of nature (physics). Primarily in his books "Nicomachean Ethics" and "Politics", Aristotle develops ethics – corresponding to the state of discussion at the time – as the doctrine of virtue. Ethics is therefore part of a practical philosophy because it deals with the application of knowledge to everyday life. In this way, Aristotle travels a path of ethics closer to life, in contrast to Plato who applied himself primarily to ethical theorizing.

According to Aristotle, ethics differs from logical philosophy in that it does not strive toward knowledge for its own sake, but refers to the spirit and purpose in actual practice. By nature, states Aristotle, everyone strives toward Good, because it is there where he finds bliss.
Aristoteles distinguishes two types of virtues: one being the dianoetic (Greek for relating to reason) virtues, and the other being the ethical (Greek for relating to habit) virtues. According to Aristotle, the dianoetic virtues are perceptible through reason, while the ethical virtues can already be found in tradition, in political order, in togetherness. Man must grapple with them and practice them by means of familiarization (thus the name ethical!). In other words: there are virtues that are derived from knowledge and there are virtues that result from practicing certain actions.
To determine the ethical virtues one must be clear, according to Aristotle, as to the context in which one understands actions. It therefore deals with delimiting the actual framework within which people act and desist from action. Aristotle finds this concrete space for his ethics in the polis (Greek for city-state), the Athenian city-state at that time.
Fundamentally, Aristotle goes the way of the aurea mediocritas (Latin for the happy medium) in his doctrine of virtue, i.e. the middle path between the extremes. Virtues such as competence, strength and capability, as well as aptitude for good actions never reach imbalance according to Aristotle, but rather seek balance in the middle.

What results from this – granted very rough — description of positions?

1. The first position assumes that morals can be taught, that they can be "brought home" to people, to express it in modern terms, in the form of a service. The sophists were not only convinced of this, but they also earned money by means of it. Depending on the external rule, the internal attitude, virtue, adapts and does what complies with the rule. Expressed in modern terms: the internal attitude complies with the law – in a certain form of the antique compliance approach.

2. The second position purports that virtue and morals must come from man himself; while surely it is possible to further this self-awareness process through questions and suggestions, but it is not really teachable, says Socrates. That would be the puristic integrity approach, which at the same time would assert that correct behavior, correct attitude can only be achieved through inner attitude and conviction; training and instructions on it would thus also lose their significance, because the motivation is intrinsic, through and through.

3. The third position, Aristotle, in turn starts with the existence of virtues, which can be perceived with the head and the heart: to pursue the middle course, which presumes making an active decision, reflecting on the conduct of life, i.e. ethics. This can be learned through experience and reason, for everything by nature strives for Good. This approach appears to be a useful portal for leaving the two one-sided positions and resort to a reality-oriented middle course.

This third position can be used to put the compliance-integrity topic in a broader context,

because integrity culture can only be lived in an organization if it resorts to this middle course, without falling into one of the two extremes (solely compliance or solely integrity orientation). Furthermore: the theoretical approach behind it opens up a new perspective on the debate. That is because this debate on the integrity of an enterprise is in fact only pursued most eagerly if a company and/or decision makers in businesses and politics are caught in misconduct.

III. INTEGRITY CULTURE AS A PROACTIVE STRATEGY

Another method of approach is presented below. With the aid of a subsequently described practical example, the process as to how the integrity approach can be implemented within an organization as a basis for a forward-looking strategy is explained. Neither an offense nor an infringement need be the impetus for Integrity Management, but the integrity approach can help implement the strategic goals of company management. Development of an integrity culture need not be defined as a response to a misdemeanor or a catastrophic event of any kind, but rather offers the possibility of a proactive change process, which can help provide an enterprise with more market security and strategic orientation.

The starting point for thoughts on developing a proactive integrity strategy is the St. Gallen Management Triangle: in an organization, strategy needs structure and culture to support it. In competing for customers and talent, companies and organizations want to win the hearts of people with their products or services. To this end, it is important to know where the heart of the company or organization beats. Values and attitudes, the culture of an organization, are supporting pillars alongside the structure and organization, enabling strategic corporate goals to be implemented. Strategic goals and performances are only effective if the employees direct their activities, day after day, toward implementing the strategic goals and driving forward the strategy. It's about the character of the organization. This is where proactive Integrity Management begins.

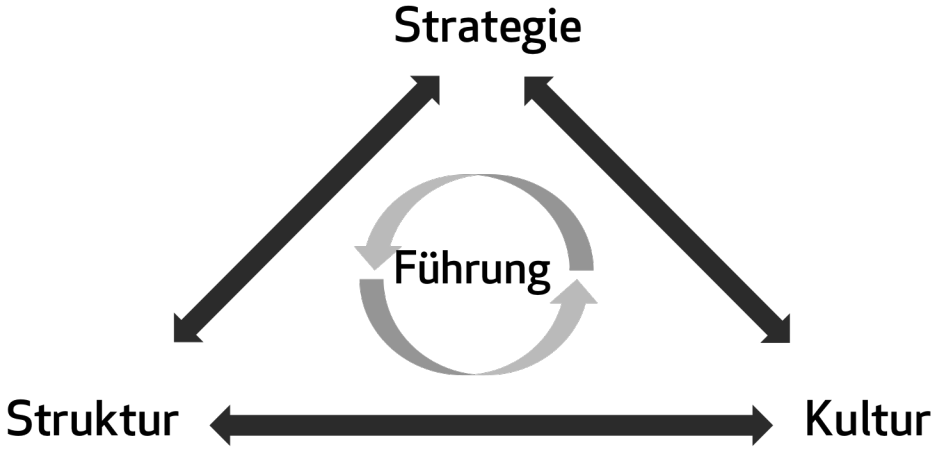

Fig. 1: „The St. Gallen Management Triangle"

To form culture and values within an organization, which are a component of solid Integrity Management, it is important to broaden one's view. For values go deeper into the character of an organization: when it comes to values – in the initial approach at least – it is necessary to distinguish between intangible assets (truth, trust, love, etc.) and tangible assets (money, house, etc.).
Ethically relevant values that a person brings with him/her depend on origin, education and character. They are a subjective commodity suitable to the times, the maintenance, care and outward explicitness of which always lie within the intrinsic motivation of the subject and in certain circumstances are not affected by external rules, measures or appeals. That is, in case of doubt it is possible that extraneous laws, appeals and rules within an organization may not even be perceived by individual employees in the organization, may not really get through to the attitude of this or that individual, because the inner attitude of the person does not hold the door open to receive them.

The goal of Integrity Management as a proactive strategy approach is that employees of all levels contribute to the overall value of the enterprise based on intrinsic motivation. It is therefore a question of linking economic values to intangible, ethical values; it is not a question of pitting them against each other.
Integrity Management defined as a proactive strategy factor strives to entrench intangible assets in the company, into the corporate strategy, and view them as an asset, as a positive value, with which the employees can identify. It pertains to the character of an organization, which distinguishes it from others - in times, in which VUKA characterizes the environment of organizations and the employees working there, a market advantage not to be underestimated!

IV. INTEGRITY MANAGEMENT AS A PROACTIVE STRATEGY FACTOR PAYS OFF IN THE MEDIUM TERM

Managerial and value-oriented, integrated behavior should mutually complement each other. They should be complementarily aligned and in this way contribute to the success of a company. Consultants and managers and their female counterparts often make a distinction between hard and soft success factors.
Hard success factors in this totally questionable explanation include measurable success figures such as market leadership, key strategy, strategy implementation and control, marketing, specialization, closeness to the customer, solid partnerships, high level of innovation, quality products and service, organizational structure, production technology, resource availability, etc.
By contrast, the so-called soft success factors are described as those, which at first glance cannot be measured in figures, such as employee identification and motivation, openness to innovations, listening to customers, corporate culture, time management, authentic leadership styles, management quality, mission statement, codes of conduct, etc.
According to this classic division, work on the integrity of an organization would be a so-called soft factor, since the topic has to do with mission statements, motivation and identification, and not with controlling, marketing or product management. At the same

time, the question arises as to whether the division into hard factors (because they are supposedly directly measurable) and soft factors (because they are supposedly not directly measureable) actually makes sense.
There are good reasons to abandon this classification, because the so-called hard factors depend on the soft factors and vice versa. Closeness to the Customer, quality assurance, and strategy pertain to how strongly employees identify with the company. Production processes on paper and optimally organized with the help of consultants will not cut it if the employees do not go along with them. The most stringent rules and controls, be they on the part of the state, or be they internal within the company, do not help at all if the employees do not wish to comply with them from within themselves – see also the example at the beginning, see also our individual behavior in road traffic for example: the rules here are happily transcended or stretched, because presumably one's subjective perception describes a different relationship than that which would objectively make more sense for all.
In other words, it is obvious that there are key figures and success factors, which are of an objective nature and can be quickly calculated based on formulas and specifications, which can then also be compared and show developments such as trends. Another obvious fact is that without culture, which helps carry these structures and strategies, it is simply impossible.
The service provider, a company with about 750 employees, had been through various changes at the management level in 2013, and even the chairperson of the board was newly appointed. The new leadership developed and completed a new future strategy in a relatively short period of time, as to how they wanted to position themselves as a market leader in the industry, although in a market that had become ever more competitive over the years. The strategy was initially developed internally, and then further developed during sparring with external consultants. The sparring with external consultants in particular led the company to a considerable re-sharpening of the strategic goals, since the external consultants consistently kept an eye on the internal implementation and could thus keep the strategy free of meaningless generalizations. At the end of this process, which lasted about a year, the strategy was complete with vision, mission statement, values of the organization and strategic departmental goals. Partial goals for the year 2014 were derived from these goals and put into effect.

It quickly became apparent to the leadership group, however, that the simple adoption and announcement of the strategy internally was not enough; for while the employees received the strategy delivered in a nice glossy format, and many reported that they had read it, no one knew exactly how much any individual employee had understood and internalized. It was assumed that in the beginning this was only true for a few employees, and not because the employees had not been intellectually capable of it, but rather because in the strategic goals of the company, the actual meaning and way to implement them in the everyday activities of each employee were not evident enough. The cultural anchoring was missing.
The strategy was firm, but what that meant for activities in the workplace of the employees in customer contact, in service, in internal administration, was not clear, because there was no intrinsic motivation to implement the strategic goals in the everyday activities of one's own accord.

After company management caught on to this realization, the culture of the enterprise was given a closer look. Central questions were:
To what extent does the internal culture support the new strategy and goals?
What type of attitude, what type of culture, what character do we need as an organization, so that the employees can actually go along with the strategy?
What do we need to do to get the internal culture to practice the strategic guidelines within the meaning of an integral attitude?

The fact that this is a profoundly corporate cultural issue was obvious to the management group, while it was also clear that culture and the intrinsic attitude of the employees of the organization cannot be decreed, but must develop from mutual cooperation. For this reason, company management turned the spotlight on a number of questions:
Where can the Integrity Management as an organization have access to resources?
In what direction should the Integrity Management be further developed in order to breathe life into the strategy?
Where does the organization need intrinsically motivated employees who also pay attention to compliance with the strategic guidelines, in order to advance the entire enterprise?

To that end, the company management, together with external consultants, established the process of „Strategy-oriented Culture Development (STOKE for short). With this strategy-oriented culture development, the organization struck a new path. The evolved culture of the organization should be consciously perceived and subsequently reflected how as an Integrity Management it supports the goals and strategy of the entire organization. It pertained to a conscious development of the intrinsic motivation for culture in terms of the strategy according to the St. Gallen Management Triangle: Integrity as a proactive strategy factor.

V. A PRACTICAL EXAMPLE: FRAMEWORK AND INITIAL SITUATION

The service provider, a company with about 750 employees, had been through various changes at the management level in 2013, and even the chairperson of the board was newly appointed. The new leadership developed and completed a new future strategy in a relatively short period of time, as to how they wanted to position themselves as a market leader in the industry, although in a market that had become ever more competitive over the years. The strategy was initially developed internally, and then further developed during sparring with external consultants. The sparring with external consultants in particular led the company to a considerable re-sharpening of the strategic goals, since the external consultants consistently kept an eye on the internal implementation and could thus keep the strategy free of meaningless generalizations. At the end of this process, which lasted about a year, the strategy was complete with vision, mission statement, values of the organization and strategic departmental goals. Partial goals for the year 2014 were derived from these goals and put into effect.

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VI. THE ROUGH FRAMEWORK: APPROACH, GOALS AND CONDITIONS

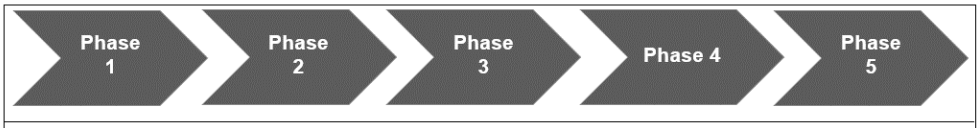
How was that tackled? First of all, the present culture was taken into consideration and analyzed. The objective was to clarify, which cultural values and attitudes support the new strategy of the entire organization and which ones stand in the way. Building upon this, a target culture was to be defined, with which the entire organization goes along. The target culture had a strong characteristic in reference to the integrity attitude of the employees. On that basis, certain measures were to implement the new culture into the organization. The goal was to reinforce a goal-based and reality-based culture, organized from the strategy itself, and breathe new life into it.

The following points were essential in order to establish the long-term cultural development within the organization for the medium term:

- Comprehensive inclusion and participation of managers and employees.
- Set an example from above, begin above and work across levels: executive board and managers as essential culture bearers, role models and ambassadors.
- Resource-saving approach: use existing formats, platforms and processes in the organization. Play on existing stages, with new ones only where truly necessary. This strengthens the intrinsic motivation as well as the individual employees (familiarity!)
- Emotional tangibility: interactive, illustrative and moving forms of communication are established.

Starting with these criteria, five phases were defined in view of the strategy-oriented culture development:

- Phase 1: Take measurements with responsible parties. Which detailed steps serve the purpose and fit with the organization?
- Phase 2: Analysis of the ACTUAL culture. Employees and managers discuss the existing culture with one another and summarize them in concrete examples, stories and images.
- Phase 3: Develop the TARGET culture. The company management gathers the results and sets the framework for STROKE, guided by the questions: which culture carries the strategy? Which cultural resources are available? What do we need more of, what less?
- Phase 4: Implementation of the TARGET culture. Alongside the strategy and in the everyday work, the organization reflects the cultural weaknesses and strengths and develops concepts on how the culture can be strengthened and developed.
- Phase 5: Transfer to the regulating processes of the company. Evaluation of the process completed to date.



Take measurements before the process	Analysis of the ACTUAL culture	Development of the TARGET culture	Implementation of the TARGET culture	Evaluation and transfer to the regulating processes, supplement with additional measures

Fig. 2: „Overview"

A. Phases 1 to 3 as inventories and new definition of the entrepreneurial character of the organization

The goals of *Phase 1* were to develop the process plan for STROKE in coordination with the leadership team of the organization and create acceptance of the process through communicative inclusion of the employees.
To this end, STROKE was presented at an employees' meeting. The external consultants explained how the relationship between strategy, structure, and culture is to be interpreted, and identified the initial goals of the process. The relationship between extrinsic and intrinsic motivation was made clear, in order to clarify for the employees that it does not only pertain to the role of management, but that the employees themselves are ultimately the deciding change agents and by means of their own methods of working and communication, contribute to the intrinsic motivation of the other employees as well. The strategic added value of a proactive integrity culture can be conveyed in this way.
After determining the individual actors and their respective responsibilities, the key actors within this context were defined (works council, supervisory boards, etc.) and respective options were developed for these actors to participate in the in the ongoing process. In addition, the maturity level of the organization for this upcoming process was analyzed. Following this, kick-off workshops were held with the various actors, during which initial process ideas were presented and discussed.

In *Phase 2* the analysis of the ACTUAL culture based on an existing survey was on the agenda. In 2013 the organization conducted a detailed employee survey through another external consulting institute. Building upon this employee survey, the actual status of the culture and the awareness level for Integrity Management was ascertained. In workshops for employees, which were offered on a voluntary basis, the Actual culture was analyzed. Storytelling was used to make this specific. Employees were to talk about typical everyday examples for the culture, first in small groups, then in plenum and subsequently explain why these stories, these examples, and these cases are expressions of the current culture.
During the process, some negative examples (but not only negative ones) came to light at

first, fully intentionally. This purging effect of the initial workshops is an important transitional phase for this type of process. That is because in order to detect what is working positively, and also detect what is not going so well, it is helpful to also take a look at the negative side and processes (but again, not exclusively!), which allegedly or actually are not going well.
Another stage of the workshops was to ask the employees to depict their current perception of the organization in the form of a painted picture. This phase produced a number of hand-painted pictures of the organization, which reflected the culture in all its facets. This unit, which extended beyond storytelling, served the twofold purpose of uncovering the resources and development options in view of the culture in the organization and identifying the focal topics.

In *Phase 3*, the goal was to develop the target culture. After the contours of the actual culture were clearly outlined, the point was to determine the orientation of culture development and make it plausible. Phase 3 gathered the resources of the present culture and tied to good present practices. In doing so, it was important to keep in mind that the target culture is based on the strategy and supports the formulated values/goals. Moreover, the target culture being defined is intended to link to examples and pictures from Phase 2 and likewise show in activities, pictures and examples what will be strengthened, deepened and further developed in the future. Included here were strategically relevant projects and departments of the organization, the topics of which render the culture development and outlines of a future culture and Integrity Management concrete and tangible.
First of all, in accordance with the hierarchy levels, management was questioned about the target culture in a workshop. This took place in an intensive discussion with examples and a history of the present, each referring to the strategic goals, in order to keep the nexus to the strategy current and present. These workshops were carried out across all levels of the organization. Invitations on a voluntary level reached approximately a third of the workforce. The results of each workshop were in charts and guiding principles, toward which the organization is expected to orient itself in the future with a view to strategy, brand, and culture.

B. Two-day closed-door meeting of the responsible parties and employees' as key points

A two-day closed-door meeting took place at the end of the workshop series, in which selected employees (a feedback group formed at the beginning of the process) as well as the management team participated. In the closed meeting, the point was to summarize the guiding principles from the workshops, check them regarding their relatedness to the strategy and connect them to positive future narratives.
This intensive work was one of the key points for redefining the integrity culture of the organization. The supposedly simple task of summarizing and correlating developed into a fundamental debate regarding the character and orientation of the organization.
Subsequent to the closed meeting, the guiding principles were copyedited and – starting from the strategic goals – put into sequence.
Two years from the beginning of the process with the initial announcement at the employees' meeting, another special event occurred in the summer of 2016. The goal of the

event was to present the guiding principles to all of the employees on one hand, and enable them right then and there to engage in an initial discussion of the guiding principles during a brief encounter. The particular feature of the event was that it was not management that presented the principles of the culture, but rather the employees who had followed the process for two years in a feedback group. That brought necessary authenticity boost regarding acceptance, because that made it clear: they are guiding principles from the employees of the organization for the employees of the organization.
After presenting the guiding principles, which were always highlighted with examples, all of the employees had the opportunity to discuss the guiding principles in an initial encounter in the form of a Woldcafé.

C. Phase 4: Implementation in the Everyday Work World

In *Phase 4*, finally implementation was to take effect: the objective was to once again give all employees an understanding of the guiding principles in a half-day workshop and to derive measures from them that signified concrete implementation of the guiding principles for the respective areas of responsibility. First of all, general conditions and objectives of the implementation phase were set out in a management circle with all managers of the organization. Following this, workshops of at least a half-day took place within the departments and teams in a cascade manner from top to bottom. The workshops were conceptually designed so that the employees first embrace the guiding principles in depth, and from there take a look at which guiding principles the group is well positioned for (Resource view). Then, with an eye toward implementation of the guiding principles in the respective unit, identify any deficits. From these deficits ("Where is room for improvements?") two or a maximum of three topics are extracted, which the group will ultimately work on. The focus and framework here should be for one's own arena ("mind your own business"), not the neighboring department or the neighboring team ("If they would only get on with it, then we could ..."). The assignment is to plan and name the actions that could be implemented in one's own team, in one's own department. To that end, target action plans were developed and responsible persons were designated for the actions in order to achieve sustained progress in the implementation.
Conducting the action workshops was recorded in the target agreements for managers, so that sustainability could be achieved by means of target control. Since there were approximately 70 workshops in total for the entire organization, the time period for execution was spread out over several months.

D. The status today and the upcoming steps

In the meantime, all units have conducted workshops and developed appropriate actions tailored to the units. The units are currently working out these actions, for which the time allotted is the end of 2017. This is also recorded in the target agreements for 2017, thus providing sustainability of implementation.
Various supporting workshops are being offered by the consultants, which bolster the responsible parties for actions during implementation, and for obtaining feedback on their own actions via collegial consulting.

VII. SUMMARY

In developing an Integrity Managements and supported by the external consultants, the organization links to the formulated strategy as well as to strengths and resources of the present culture. Awareness of examples of a developed culture already experienced results in an integral attitude for employees and therefore to an integrity orientation of the entire organization. In addition, the organization proceeds with a practical orientation: development and communication of the culture in workshops, in which constitutive examples from practice are adopted and reflected upon with an eye toward solutions, so as to clarify, strengthen and develop the culture.

This approach could catch on: Integrity Management not as a reaction to critical situations within an organization of any kind whatsoever, but rather as forward-looking strategic planning, which acknowledges Compliance Management as a necessary variable, but only a secondary controlling variable in corporate development.

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COMPLIANCE MANAGEMENT AND COMPLIANCE TRAINING IN CHINA

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ABSTRACT

This essay provides an overview of the compliance management and compliance training in China. It explains the factors behind a growing awareness of compliance management among Chinese domestic non-financial companies. It also discusses some typical culture challenges discovered during the compliance trainings for Chinese companies and their newly established compliance function.

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I. THE CHANGING LANDSCAPE OF COMPLIANCE MANAGEMENT IN CHINA

A. The old landscape

"Compliance" used to be a term that was mainly familiarized by managers and employees of foreign multinationals in China. People commonly understand the word "compliance" in the context of FCPA, which is the abbreviation of "Foreign Corrupt Practices Act" and the abbreviation itself has successfully entered the Chinese language.

FCPA compliance is the number one task for the compliance function of most foreign multinationals in China. The number of Chinese compliance professionals hired by foreign multinationals and the legal spending in compliance related investigations (both external and internal) have multiplied against the backdrop of heavy enforcement of US authorities since around 2008. According to the "Foreign Corrupt Practices Act Clearinghouse"[1], China is the location with the highest number of US FCPA enforcement actions between 2008 and 2017. 46 FCPA cases involves a bribery scheme inside China. In comparison, Gabon, the number two location on the list, has only 17 associated cases.

Aside from foreign multinationals, there is a distinctive Chinese domestic industry that has familiarized the term compliance the financial industry. Banking, insurance and securities are three subsets of Chinese financial industry. Each of the three has its own industry regulator, namely China Banking Regulatory Commission (CBRC), China Insurance Regulatory Commission (CIRC), and China Securities Regulatory Commission (CSRC). All three financial industry regulators have issued their "Guideline for Compliance Risk Management" for their respective sector[2], which set a mandatory requirement for any financial institutions in these three sectors to establish a compliance management program. The origin of the compliance requirement in the Chinese financial industry could be traced back to China's accession to the Basel Global banking regulatory committee. In 2005, Basel Committee on Banking Supervision issued a high-level paper on compliance risk and compliance function in banks.[3] Subsequently, CBRC, which is a member of the Basel Committee, adopted the concept and issued its compliance management guideline for Chinese banks. The core concept and wording of this guideline is largely in line with the Basel high level paper.

For most Chinese domestic companies that are not part of the financial industry, until very recently, "Compliance" was not a common word in their vocabulary. Chinese companies generally do not have a culture of compliance. Although Chinese central and local government as well as various ministries and government departments issued thousands of laws, regulations and guidelines, their enforcement are often selective. Chinese officials

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1 StanfordLawSchool, *Foreign Corrupt Practices Act Clearinghouse- a collaboration with Sullivan & Cromwell LLP* (Aug. 30, 2017), http://fcpa.stanford.edu.

2 China Banking Regulatory Commission, *Guideline for the compliance risk management of commercial banks* (Mar 1, 2005).

3 Basel Committee on Banking Supervision, *Compliance and the compliance function in banks* (2005).

have large discretion in the law enforcement and their power are merely challenged by the judiciary. Violation of laws and regulations may not meet consequences as long as the business owner obtains good relationship with government officials. As a result, courting the government officials and cultivating a good relationship is more effective than the often too costly compliance management effort.

B. The growing awareness of compliance

There is however a sense of changing attitude towards compliance in the last few years. Chinese business leaders and government officials spoke out in many occasions on the importance of compliance. This growing awareness could be tied to a joint force of the change of political environment, intensified regulatory action, growing international expansion of Chinese companies, and strong advocacy from Chinese government.

1. Anti-corruption campaign

A far reaching anti-corruption campaign began in China following Chinese president Xi JingPing coming to power in late 2012. Over hundreds of high ranking government officials, including national political leaders, high-ranking military officers and senior executives of State Owned Enterprises (SOEs), have since been removed and charged with alleged corruption. A much larger number of government officials with less higher rank were disciplined and indicted. The campaign has affected across the country leaving no industry or government brunch intact.

The anti-corruption campaign has fundamentally changed the political environment in China. There is a general sense of insecurity among Chinese business leaders, as their powerful patrons may suddenly fall from grace. Business owners and senior executives of both state-owned and private companies started to question their long- cultivated relationship with government officials, which may now turn into a liability that will implicate them to corruption charges. It is now easier to convince the business leader to adopt a compliance program that could help to reduce their risk exposure to law enforcement action.

2. Growing legislative and enforcement effort

Growing legislative effort and enforcement actions in combating corporate wrongdoings is also an important factor. Chinese Anti-Monopoly Law was in effect in August 2008 and has been rigorously enforced after 2010s. One landmark case in 2013 involves two luxury liquor producers Maotai and Wuliangye for forming vertical monopoly agreement with their sales representatives. NDRC, China's top Anti-Monopoly Law enforcement agency, fined two liquor producers for 450 million RMB (roughly 65 million USD), which was 1% of their total annual revenue. Such hefty fine was unheard of in China before. The hefty fine plus the prominence of the two brand-names, helped the case to reach national-wide median attention.

Other notable legislative development includes the revised Consumer Protection Law in 2014, the revised Work Safety Law in 2014, the new Environment Protection Law in 2015. All the revisions and the newly drafted legislation aimed to increase the consequences for Chinese corporation that does not comply with the regulations. In early 2015, the judicial

interpretation of the Supreme People's Court on the application of the China Civil Procedure Law was also an important milestone, as it has lowered the procedural requirement for Non-government organizations (NGOs) to bring a civil lawsuit against a corporation on behalf of a collective group. Most of such type of lawsuits are related to environmental and consumer protection. Although the Chinese procedure is very different to US class action litigation and no punitive damages will be rewarded, it is still an advancement of the interest of ordinary citizens against corporate wrongdoings.

3. International expansion

The recent period also witnessed Chinese companies' global expansion and new compliance challenges aroused from its global operation. Chinese home-grown multinationals were under intense scrutiny by the US regulators in the area of sanctions and export control as well as anti-money laundry. The ZTE case was widely cited as a wake-up call for Chinese multinationals to improve their global compliance management. ZTE was fined for over 800 million USD for violation of US export control regime in re-selling imported US equipment to Iran and North Korea. As part of the settlement agreement with DOC, ZTE agreed to establish a compliance program under the supervision of a court appointed monitor, who will report to the court on the progress made by ZTE for the next 3 years. Failure to build an effective compliance program in accordance of US requirements will result in an additional fine of 300 million USD.[4]
Another notable case is the 200 million USD fine to the New York brunch of China Agriculture Bank for inadequate effort in managing anti-money laundry compliance. The installment of a monitor and the requirement to improve its compliance program were also part of the settlement. In both ZTE and China Agriculture Bank cases, the attempt to cover up and non-cooperation with government authorities in their investigation has costed the companies extra hefty fines. Chinese companies are learning in a hard way the culture differences in dealing with US agencies and the US judiciary system and complying with legal requirements.

4. Government advocacy

Finally, Chinese government played a significant role in encouraging SOEs to build up a compliance management system similar to their western peers. China State Asset Administration and Supervision Commission (SAASC), the supervision agency of SOEs under the management of central government, advocated the idea of compliance management among central SOEs. Five large SOEs including Sinopec, China Mobile, were selected by

[4] Office of Public Affairs, *Secretary of Commerce Wilbur L. Ross, Jr. Announces $1.19 Billion Penalty for Chinese Company's Export Violations to Iran and North Korea,* DEPARTMENT OF COMMERCE – UNITED STATES OF AMERICA (Mar 7, 2017), https://www.commerce.gov/news/press-releases/2017/03/secretary-commerce-wilbur-l-ross-jr-announces-119-billion-penalty.

SAASC to start a pilot program to study and experiment building up compliance program in Chinese SOEs[5]. SAASC plans to issue a compliance management guideline for all central SOEs based on the experiences of these five companies.
The advocacy from SAASC is a response to the above listed recent developments. SOEs were in the epic center of the anti-corruption campaign. NDRC, a powerful regulator, did open anti-trust investigation against large SOE Telecom operators. The over 100 central SOEs have in total more than 8500 overseas brunches in 150 countries. Their total overseas asset has exceeded 5000 billion RMB[6]. Compliance management seems to be a solution to reduce the risk of hefty fine or allegation of corporate wrongdoings.

II. COMPLIANCE TRAINING IN CHINA: A GROWING INDUSTRY

A. Compliance training in China

Compliance training is an important element of an effective compliance management system. It helps company employees to familiarize with policies and procedures, convey tones from the top, and foster a culture of integrity. The growing awareness of Chinese local companies has created new demand for training programs.

B. Culture clashes in understanding compliance

Compliance and compliance training is quite a new thing for many Chinese domestic companies. Current compliance training programs are an excellent place to make observations on the clash of culture between foreign multinationals and Chinese domestic companies.

1. Legal culture difference

In the program, speakers from foreign multinationals often talk about a good culture of compliance that should encourage employee "adherence to the spirit and letter of the formal rules"[7]. But Chinese compliance officers participated in the program, who normally have a background in Chinese law, would often dispute the concept. They would rather like to understand the law as it is written in black letter.
It is easier to convince the company and its employee to comply, when a specific provision of the law forbids a very precise type of action. For instance, the Chinese Anti-Unfair Competition Law contains a requirement for the merchant that the maximum payment

5 State-owned Assets Supervision and Administration of the State Council, *2016 Report on the progress of rule of law in central SOEs*, (Mar 31, 2017) http://www.sasac.gov.cn/n1103/n12190709/n12281959/n12281991/c12568112/content.html.

6 Data from SAASC.

7 BEN W. HEINEMAN. JR., HIGH PERFORMANCE WITH HIGH INTEGRITY (2008).

in a raffle promotion should not exceed 5000 Yuan. 5000 Yuan is a very precise requirement, which makes employee easy to understand the standard of compliance.

Many government regulations, especially policies and guidelines from the industrial regulator, are writing in such a precise way. Oftentimes, it is designed to address a specific situation in a particular context. Chinese business people pay high attention to this type of micro-management of the government, which could be traced back to China's history of planned economy.

On the contrary, Chinese business people often ignore the "modern" statute like China anti-trust law (China Anti-Monopoly Law) and consumer protection law, as they are principle based and do not provide very precise guideline to their business activities. This may expose the company to greater risk.

The different understanding of the meaning of law highlights the importance of compliance training to an effective compliance program. In fact, the purpose of compliance training inside the company is for compliance function to have conversation with the business people on the practical application of the legal principles.

III. POLITICAL CULTURE DIFFERENCE

The lack of trust is also reflected in the discussion of whistle-blower program. Foreign multinationals see whistle-blowing as a channel for employees to raise their concerns. It is a duty for people with integrity to report any wrongdoings.

Many Chinese compliance officers believe most whistle blower, who turn in their colleagues, has very negative characters. They believe that once in place, the program would certainly be misused for office politics.

The different attitudes towards whistle blower seems to reveal a deep political culture difference. During the Chinese Culture Revolution, people were encouraged to spy on each other and turn in the friends and family members to the authority for alleged anti-revolutionary behavior. In many cases, it was a political witch hunt that created mistrust in the society.

It is still early to predict how the new trend of interest to compliance management may actually prepare Chinese companies to face their global regulatory challenges. Given the deep culture differences, compliance training in China has a very difficult task to change the mindset of many Chinese companies.