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Legal Compliance: Founding Elements of a Conception Based on Cultural Theory

Abstract

The state of research on legal compliance in socio-legal studies is limited and partially outdated. Like theories on coercion, recognition, or legitimacy, notions around compliance with the law appear plausible in themselves. However, each of them hold only part of the explanation and yet they cannot be reconciled due to theoretical incompatibilities. Legal sociologists therefore speak of a theory gap regarding legal compliance. The following article takes on this research desideratum and attempts to formulate an alternative concept of legal compliance based on an entirely new terminology without, however, completely renouncing the previous findings of legal sociology. Relying on the above-mentioned theory gap alongside the introduction of this new terminology, I argue that it is possible to analyze legal compliance while heuristically integrating all previous theoretical concepts of its. As a starting point, the article draws on Bourdieu's fragmentary sociology of law and, by extending it, proposes a larger practice and field-theory-based interpretation of compliance.

Keywords: Compliance; Cultural Theory; Cultural Sociology; Pierre Bourdieu; Socio-legal Studies.

SOCIOLOGY holds diverse assumptions, concepts and theories regarding the way in which social actors deviate from law. Regardless of one's views with respect to criminology, the causal explanations of deviance and delinquency even constitute an entire discipline of their own. Besides the critical strands within the discipline, criminology considers abnormality, e.g. in the form of property offences or violent crimes, as special cases that require explanation. For the most part, however, sociology sees things from a different perspective: through the analysis of deviance, its goal is to make statements about how conformity is produced. As every social order needs its opposite—the abnormal—to constitute itself, deviance and conformity are considered as two sides of the same coin. Already Durkheim [1982 (1897)] was aware of this and characterized

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delinquency not only as embedded historically, but also as a basic component of the social, carrying a decisive "regulating" force. He uses the example of law-abiding monks in a monastery to demonstrate that compliance and deviancy are relational: complete obediency to the cloister rules would not lead to a cleric world free from abnormalities. Rather, in order to contrast and define the normal, new prospects of what is abnormal would emerge and, in the case of disobediency, would be sanctioned. Unlike criminology, sociology assumes that the notion of crime as a special case only serves to conceal the idea that the exception already exists in the rule. But whether we choose to use Durkheim's model of the normal and the pathological, different strands on the Labeling Approach [Sack 2014: 164ff], or more recent perspectives on deviant behavior and social control stemming from cultural theory [Arrigo, Milovanovic and Schehr 2005], the observation that normality (and thus, what in consequence is defined as legal compliance) is generated thanks to deviance only roughly describes the mechanism through which legal compliance is constructed. The question of exactly *how* one can understand and explain the "translations" of written law into practice in fact remains unanswered.

The literature that reflects on the state of research on compliance within the proper sub-discipline—socio-legal studies—agrees on the fact that the latter is limited and partially outdated [Kretschmann 2016: 82pp.]: compliance theories within research on the conformity of law—which either highlight the role of coercion, recognition, or legitimacy—in itself are plausible. However, they each hold only part of the explanation [Friedman 1972: 220; García Villegas 2011: 287]. Because of their different social ontologies, they can only be combined with difficulty. Legal sociologists therefore speak of a theory gap regarding legal compliance [e.g. *ibid*.].

The following article takes on this research desideratum and attempts to formulate an alternative concept of compliance by drawing on a new terminology. For this purpose, the article considers approaches and concepts derived from cultural theory and praxeology—more precisely Pierre Bourdieu's theory of practice and of social fields [e.g. Bourdieu 1979]—but it also takes ideas from authors associated with Theodore Schatzki's more recent practice theory [Schatzki 1996; 2002], as well as ethnomethodological concepts [Habermas 2008]. Thus, the paper offers an interpretation of legal conformity based on practice and field theory, which takes its starting point from Bourdieu's fragmentary sociology of law and expands it further [Kretschmann 2019b]. Due to the highly integrative character of Bourdieu's thinking, the previous conceptions of compliance do not have to be discarded; instead they can be integrated.

At the same time, this allows for critical reviews of traditional action theories which is particularly relevant for the field of compliance research. These critiques argue that such theories hold a simplistic or rather a sociologically outdated conception of subject and action.

Such a research agenda assumes that compliance theories which have a background in social psychology rather than in sociology—namely procedural justice theories, which are slightly more lively than the sociological approaches [Bierbrauer, Gottwald and Birnbreier-Stahlberger 1995; Cunha, de Oliveira and de Oliveira Ramos 2013; Lind and Tyler 1988; Sunshine and Tyler 2003; Thibaut and Walker 1975; Tyler 2006]—are not sufficient to clarify compliance as a phenomenon. These approaches are not able to explain compliance from the indispensable angle of *society*—although they do complement societal perspectives. We therefore see a clear necessity to focus on this in further research. However, this article emphasizes the sociological perspective.

We will begin with a critical appreciation of the current state of research, and continue by explaining how compliance can be alternatively conceptualized using a cultural perspective, including a praxeological standpoint. Finally, we will heuristically weave the previous perspectives on compliance into this theoretical framework.

State of Research: Between Constraint, Recognition and Legitimacy

With regard to the question of why or how people conform to the law, the sociology of law offers different explanations drawn from various social theories. Deterrence theories in the rational choice approach are based on deterrent sanctions or incentives understood as essential means for compliance. Norm theories underlie recognition theories on a theoretical level. From this perspective, internalized norms, or norms set as external constraints, are considered essential for compliance. Legitimacy theories in the form of systems theories assume that compliant actions are obtained through procedural constraints.

Deterrence Theories

Becker locates the principle of deterrence theories by referring to criminal law: "Some persons become criminals not because their basic motivation differs from that of other persons, but because their benefits and costs differ" [1968: 176]. Whether dealing with rational choice theories

[Coleman 1990], the economic analysis of law [Becker 1968], or the New Political Economy [Kirsch 2004], deterrence theories all rely on Jeremy Bentham's [(1789) 1970] and John Stuart Mill's [(1861) 2004] utilitarian philosophy of action. Theoretically, they all build upon an economic perspective: benefits and costs alone induce certain behaviors in social actors that are purpose or pleasure-driven although still autonomous and rational. Therefore, it is not opinions or values that determine compliance to rules, but rather the (legal) restrictions. The rational choice approach consequently considers norms as individual preferences or sanctioned (social) expectations. The willingness to follow rules is analyzed in terms of formal and informal sanctions. Thus, for actions taken in conformity with the law, there is no need for an internalization of legal norms. Rather, economic approaches lead to deterrence theories because of their orientation on sanctions. Consequently, along with the influence of informal sanctions, the inherently enforced nature of the law is essential to compliance. In this view, an actor would, for example, compare the benefits of stealing goods with the costs of being caught, the latter including potential fines or imprisonment as well as a possible social stigmatization whereas the former could be entangled with the fulfillment of a desire. However, during the last decades, researchers of the rational choice tradition have admittedly weakened their axioms by broadening their core concepts of rationality, information and decision [Trasler 1993]. As a consequence, actual models do not gauge rationality according to "objective" criteria and they do not require any comprehensive information. They instead rely on subjective rationality and information corresponding to the actors' possibilities. In addition, lengthy reasoning is no longer needed for preference-based decisions in which spontaneous action is involved. When we come back to the actor mentioned in the above example, this means that he or she might prefer to deal with indiscriminate feelings than with conscious considerations about which side weighs more. When making a rational choice about a possible theft, the actor might do so in an ill-informed way (e.g. with regard to the actual sanctions) and in less than seconds.

Regarding legal compliance, deterrence theories currently represent the dominant explanatory model [García Villegas 2011: 265]. However, the literature points out that the rising complexity of empirical research linked to its broadening state makes this model as mentioned above, difficult to handle. More fundamentally, scientists criticize the rational choice model for its voluntarist character. It focuses on the use of legal rules but does not consider the background of the actions in depth, since it lacks a basis on which the preference-driven decisions

underlying the actions of agents or even entire collective bodies rest. Applying rational choice theory to the case of our actor in terms of theft fails to account for the basis on which the actor considers the risk of being caught as lower as benefitting from stealing the good. It therefore remains unclear how actions can make "sense" and remain steady over a certain space and period of time. Rational choice models could, in fact, explain individual actions but not collective action patterns. In this respect, they do not represent an adequate terminology for explaining compliance [Lind and Tyler 1988: 228ff.].

Recognition Theories

Unlike deterrence theories, recognition theories are less systematically wrought. They consist of "only isolated, though frequent, references" [García Villegas 2011: 265] and can be ascribed to classical authors such as Durkheim [(1897) 1982]] and Parsons [1971]. In this context, Weber [1922; (1921/1922) 1985] should also be mentioned, although he already stands out by attempting to include different concepts of compliance.

Recognition theories derive their explanation pattern from norm theories. Unlike an explanation centered on purposeful action that originates in a "subjective will", norm theories focus on internalized pressure and a "social ought" (*Soziales Sollen*). The action goals of rational choice approaches are supplanted by normatively understood systems of rules, that work—whether as an externalized or an internalized constraint—collectively and compellingly. Through the lens of recognition theories, an actor rejects a theft, for example, because he or she firmly believes that theft is wrong. That can be the case due to his or her socialization in a law-abiding milieu or due to his or her current social environment. Here, rules precept and prohibit. They specify which actions and action patterns actors "choose from".[1] Correspondingly, compliance with law is understood as a normative consensus linked with generalized, or rather socially internalized, norms: norms require observance, and norm pressure produces conformity. Therefore, conformity with the law is

[1] Among the norm-oriented approaches, one can distinguish two models which differentiate themselves through appreciating the concept of rule. The first approach conceptualizes rules as external, pressure-exerting social expectations, as in Durkheim's work: for him, "not only are these types of behavior and thinking external to the individual, but they are endued with a compelling and coercive power by virtue of which [...] they impose themselves upon him" [Durkheim (1897) 1982: 51]. The second model, which we can assign to Parsons, understands rules as internalized systems of values which are not influenced by social expectations and come into play, so to speak, as inner compulsion [Parsons 1971].

considered as the result of the recognition of the legal system, or of the fundamentals of the constitution.

It is critical to note that norm-theoretical approaches conceptualize actors as mere passive carriers of social structures. In addition, they associate compliance with phenomena of pure consciousness, whereby the internalization of norms is deferred to the field of psychology [see e.g. Geiger 1964: 341]. Thus, norm theoretical approaches do not fully provide a sociological vocabulary for internalized legal norms. More generally speaking, one can criticize norm-oriented perspectives as it seems highly unlikely that actions are exclusively orientated according to norms. It is obviously possible to imagine individual actions (or sequences of actions) aside from normative requirements without, however, questioning their meaningfulness and position inside organized structures. For example, we can think of an actor who despite the fact that he or she thinks that theft is wrong, consciously decides to steal due to the benefits he or she sees in it. From a jurisprudential point of view, scholars have also argued that the assumption of a consensus on values corresponding with the law does not reflect reality [Kelsen (1934) 1994: 15.]. Meaning, an actor might steal something and therefore behave in conflict with the legal norms because he or she has been internalizing other sets of norms, for example the Marxist idea that property is theft.

At this point it is worth noting that Weber raised this objection early on, and attempted to take it into account by interweaving deterrence and recognition theories. Weber is commonly cited as the counterpart of recognition theory, and a reference to him here seems counterintuitive. However, with regard to some of the literature, we can define his approach to conformity in a more complex way [Röhl 2013; Vismann 2012]. On the one hand, Weber considers compliance as determined by the possibility of compulsorily imposing rules: "absolutely massive motives of fear and hope—fear of the revenge of magical powers or the revenge of the ruler" [Weber (1921/1922) 2008: 157] prevent breaches of law. Compliance, on the other hand, can further be described as an internalization of norms. According to Weber, "compliance-based legitimacy is produced through forms of domination capable of representing themselves as legitimate" [Weber 1922: 446, transl. by the author]. Therefore, those who obey "do so because they themselves subjectively consider the power relation as 'binding'" (*ibid*., transl. by the author). What first seemed a plausible interweaving of both theories does not, in fact, extend beyond the norm-oriented approaches, as negative sanctions ultimately act as coercive normative rules. Meaning, for example, that an actor does not commit theft because he or she recognizes the

legal framework and its sanctions as legitimate. With Weber, the enforced nature of the law once again flows into sociological normative terms [Röhl 2013: 233].

Legitimacy Theories

However, Weber's approach proves to be instructive in another respect, since it contributes to a third explanant for legal conformity: theories of legitimacy. With his focus on legitimacy, Weber shifts the question of the willingness to accept legal consequences from the addressees of the law to the rulers [Vismann 2012: 7], a shift that was later followed by various social science authors. As the third explanatory approach for compliance within socio-legal studies, speaking in terms of social theory, legitimacy theories are based on systems theory. This is exemplified by Niklas Luhmann's concept of legitimation by procedure [2001 (1969)],[2] the most influential and advanced work within this strand, referring to elections as well as the fields of legislation, jurisdiction and administration. Unlike rational choice approaches or norm theories, theoretical approaches to legitimacy based on systems theory are not concerned with a calculated subjective will nor with social expectations. Instead, they rely much more on the conformity effects of the legal organizational structure. Here, Luhmann refers to Weber's belief in legality—that is the idea that compliance may stem from a subjectively belief in legitimacy of the legal order—but criticizes it for being extremely unspecific [Luhmann (1969) 2001: 28]. With Weber, Luhmann conceptualizes legitimacy as independent of a certain legal content. However, Luhmann drops Weber's normative justification inherent to the legitimacy concept. In his opinion, only procedures induce the disposition for compliance. Compliance is therefore not the result of a normative consensus, but rather the effect of binding decision making. It evolves with the course of the procedure in trial when the parties involved adapt roles. The purpose of assuming roles is to explain how actors overcome contingencies as roles restructure expectations according to the procedural logic and so oblige the actors to act appropriately. Thus, an integrative function of procedure exists, even when the parties involved criticize its process, its foundation and its contents. After all, Luhmann attributes obedience to the law neither

[2] Due to its normative character, this article will not develop Jürgen Habermas' legitimacy concept [1976] or refer to the procedural justice approach [Tyler 2006] as it is less sociological than social-psychologically oriented and based substantially on either instrumental or norm-oriented action.

to an inner nor to a substance-related equivalent [*ibid*.: 82]; for him, it is virtually "motiveless" [*ibid*.: 28, transl. by the author]. Accordingly, in front of a court, the behaviour of an actor accused of theft is channeled by the legal institution's procedure. Consequently, he or she is most likely to accept his or her role as well as the verdict, even though the actor might not believe in specific rules of the legal system (e.g. property laws) or in the legal order as such.

However, scientists hold a critical view when it comes to establishing compliant action without any link to norms or interests at all. It is certainly possible to imagine processes in which the parties involved conform themselves to rules of procedure (following internalized norms or their interests), or conversely ignore their assigned role and adopt deviant behavior [Luhmann (1969) 2001: 90; see also Habermas 1976: 41]. Looking back on history, one can find numerous examples in which the courtroom was deliberately used as a political arena, e.g. in the case of the Baader-Meinhof Group. Deducing compliant acts from systemic requirements alone—and thus from communication processes that are independent from the actor's conscience—does not, therefore, seem false, but insufficient. Else ways, we must stress an aspect that has a negative impact, particularly with regard to the question of compliance: within legitimacy theories, the disposition for compliance outside (juridical) processes remains under-conceptualized. How (legal) processes in everyday life assign certain roles to actors and as such prevent theft or rather allow for actors to steal is not represented in an adequate terminology to explain compliance.

Limits of the State of Research in Socio-Legal Studies

On the basis of the above, three different approaches can be distinguished. Simply put, these can be associated with three different theoretical paradigms. The first approach, which is economic-individualistic, falls into the paradigm of the *homo oeconomicus*, whereas the second corresponds to the *homo sociologicus* paradigm, and the third stems from systems theory. As such, they relate to two different lines of questioning: on the one hand, research on compliance carries out analyses of subjective interests and desires; on the other, it investigates collective norms or institutional procedural constraint. There is no doubt that these different approaches provide insight regarding the problem of compliance in socio-legal studies. At the same time, their juxtaposition points to the limits of the theoretical perspectives: rational choice individualism enables sociological understanding only at the price of an unsystematic

inclusion of collective structures. The law only becomes visible in the form of sanctions or incentives. Conversely, norm-theoretical approaches, by normatively idealizing actors—or rather, systems-theoretical approaches by fully assigning systemic functionalities to the subjects—only obtain sociological *Verstehen* at the expense of an undifferentiated view of actions and action sequences resulting from collective structures. Here, a seemingly homogenous effectiveness of law shifts into focus.

The respective limits of the sociological *Verstehen* clearly run along the lines of one of sociology's central problems: depending on theoretical positions, this has either been tackled as the relation between personal and social identity, individual and society, or agency and structure. If and how specific acts of the legal system and other structural factors determine the actions of individuals, and vice versa, thus remains vague. None of the perspectives outlined approach the level of societal reality where structure and action (respectively law and actor) meet using a sufficient conceptual framework. It remains unclear if and how concrete (legal) structural factors—as individually adapted by the actors—function as tangible guiding principles. In a nutshell, the entanglement of structure and acting individuals that the law addresses still forms a research gap.

In this context, one must stress that playing off the two lines of questioning is not a solution. Indeed, it has been shown that the approaches, when taken individually, provide plausible—although in no way conclusive—theoretical explanations for compliance. In García Villegas' words [2011: 287], "none of these perspectives can completely explain the phenomenon [...], although they all shed light on some of its basic aspects." Insofar as the perspectives relate in a complementary way, they can be seen as two or, rather, three sides of an analytical socio-legal project [Friedman 1972: 220]. The relevance of a relational socio-legal thinking was pointed out earlier on by authors such as von Ihering [(1884) 1965: 296] or Llewellyn [1967: 65, 85] and, last but not least, by Weber who attempted in various points of his work to not only focus on the perspective of obedience, belief or custom but also on the perspective of rule. When seeking to combine the different perspectives without allowing central theoretical issues to disappear, one first faces resistance, for the perspectives stand incommensurably against each other. The sociological terminologies at the core of each approach wholly differ so that the opposing lines of questioning are in an incompatible relationship.

Integrative Praxeology of Law

The chosen praxeological approach is not the only way to theoretically apprehend the issue outlined here. Nonetheless, theoretical explanations used in cultural sociology, and more specifically in the field of practice theory [Litowitz 2000] seem appropriate here, for these attempt to combine aspects of action and structural theory within one theoretical framework. Within the realm of research on compliance and by heuristically integrating the current state of its investigation, this contribution therefore intends to develop an *integrative praxeology of law*.

In light of the inconspicuous traditions that cultural theories within socio-legal studies and Bourdieu's fragmentary sociology of law have left behind, an explanation concerning the choice of theory seems necessary. The adaptation of more recent cultural theories (notably among which several are practice theories [Banakar and Travers 2005: xii], including Harold Garfinkel's ethnomethodology, Ludwig Wittgenstein's philosophy of language, Michel de Certeau's tactics of everyday life, the analysis of the self-techniques of the late Michel Foucault, Anthony Giddens' theory of structuring, Judith Butler's theory of performativity, approaches from science studies, and finally Bourdieu's work) to legal sociology is still in its early stages. Moreover, attempts to analyze compliance from a practice theory point of view are so rare that they almost constitute a void. The present study considers theories of cultural sociology to be particularly useful as they place the issue of the mediation of structure and action at the core of their reflection. This addresses aspects whose omission is deemed decisive for the existing difficulties of compliance research. On the basis of an advanced concept of the subject, they also point beyond conventional action theories by providing a complex concept of action. We will subsequently refer to praxeology since it focuses especially on action-theoretical considerations [Bourdieu 1977; Schatzki 2002]. As this perspective thus reformulates a classical question within socio-legal studies as developed e.g. by Ehrlich's "living law" [(1902) 1967] or Petrazycki's "intuitive law" [1955]—namely the role of law (re-)produced by non-state social actors with respect to positive (state) law—the article complements these classical works and differentiates their perspectives by applying a contemporary sociological vocabulary.

Firstly, we need to reflect on the theoretical dimension that different practice theories have obtained from social theory, namely the opposition of *homo oeconomicus* and *homo sociologicus* with *animal symbolicum* (Cassirer). Unlike rational choice or norm-oriented action theories,

praxeological approaches assume that action takes place exclusively within symbolic realities created by the actors who attribute sense according to their cultural repertoires of meaning. The starting point of this premise lies in the consideration that actions are not always led by interest or norms, but are necessarily related to the attribution of meaning. That is, the actors' social reality becomes manageable when they assign meaning to things, making some conceivable, and others unconceivable. Their constructions of reality have both an enabling and disabling nature, ultimately constituting action by the same means. The praxeological description and explanation of action rests upon the principle of cognition; however, this approach distinguishes itself from a psychological interpretation of cognition as capacity of consciousness. In line with cultural theory, it specifically assumes a symbolic creation of reality. Adapting J.R. Searle's concepts, one can therefore speak of "cognitive 'constitutive' rules of meaning attribution" which firstly replace the individualistic independent action goals that are part of the rational choice theories' instrumental action explanation. Secondly, they distance themselves from the "normative 'regulative' rules" of the norm-oriented approaches [Reckwitz 2000: 131, transl. by the author]. Then again, this does not mean that interests and norm-led actions are neglected by praxeological approaches; instead they are considered the products of individually-produced perception, reflection and action schemes. To anticipate at this point: an actor in his or her decision to steal something or not to steal something is guided by interests and norms, but this being guided is the result of the way he or she perceives the world around him. Such a theoretical foundation enables us, as developed hereafter, to combine deterrence, recognition and legitimation theories, as it allows a simultaneous combination of strategic action (on the basis of interests or as an external constraint), action on the basis of self-constraint, and action in the realm of "self-evident" routines as observed in procedures, and therefore, structures and actions. The praxeological approach thus provides us with a conceptual framework to understand why actors orient towards compliant action, without omitting the current concepts and research findings of compliance.

Bourdieu's "Socio-Legal Theory of Practice"

To outline a theoretical concept of compliance, we will specifically refer to Bourdieu's work. His studies provide an appropriate starting

point for a praxeological perspective on compliance, even though Bourdieu never systematically addressed law and his contributions to the sociology of law remain fragmentary [Kretschmann 2017; 2019b]. However, we can develop an integrative perspective on compliance that relates legal structural logics with the actions of the addressees of the law that revolves around two aspects of Bourdieu's work. These are namely his "praxeology" [Bourdieu 1979]—in which he uses the legal rule as a prototype for action-guiding collective criteria [Bourdieu 1979: 203ff.]—and his theory of social fields which he also loosely applies to law. Both concepts underlie Bourdieu's efforts to develop a social theory which focuses on the agents and their relation to social structures. He rejects the antagonistic logic of action and structure which is widespread within the social sciences, and combines structuralist and phenomenological perspectives instead. Drawing on structuralist thought, Bourdieu puts the "subjectivist" models of voluntaristic action inherent in action theory and interpretative approaches into perspective. Therefore, by means of interpretative approaches, he relativizes the "objectivist" structural determinism of structuralism in favor of a more strongly agent-related perspective [Bourdieu 1992: 135]. On this basis, Bourdieu understands the law from a difference theory point of view: it is a microcosm prompting subjects to act according to specific courses and logics of action, and as a cultural regulatory mechanism encoded in each subject. Simultaneously, legal structures historically emerge from individual agent's practices on the basis of their subjective structuring. Compliance is therefore relationally determinable by the convergence between the practices of the structures of the so-called *habitus* and the structures of the juridical field. Or, to stay with our example: whether or not an actor steals something therefore depends on the grade of similarity between the nature of the habitus and the nature of the law. This is elaborated hereafter with the development of Bourdieu's concept of action, or concept of the subject. We shall address his construction of the juridical field before analyzing and elaborating on his understanding of compliance.

Social Practice

Bourdieu's theory of action—or "praxeology"—stresses that "beside the expressed, explicit norm, or the rational calculation, there are other principles that generate practices" [1990: 76]. The question of "how behavior [can] be regulated without being the product of compliance to

rules" [1990: 65] forms the backbone of his research program. According to Bourdieu, social practice neither arises solely on the basis of explicit orders and conscious obedience but rather within the realm of the unspoken and implicit.

With "habitus"—understood as implicit "principles of the generation and structuring of practices" [Bourdieu 1977: 72]—Bourdieu develops a concept to elucidate these social regularities. He conceptualizes *habitus* as a mediating mechanism between structure and action which, in his own terms, is situated between the agent and the social field. Firstly, *habitus* is *opus operatum* or "structural structure"; i.e. it performs actions as a product of historical and social conditions and struggles which are deeply engrained and continue to have a lasting effect. However, *habitus* is also a *modus operandi*, i.e., "structuring structure": actions result from this on the basis of its socio-historical structuredness, encouraging yet other actions [*ibid*.: 164p.]. Whilst Bourdieu conceptualizes *habitus* as a product of collective structures in the shape of incorporated social constraints and thus recourses to structuralist concepts, *habitus* is also—through references to interpretative theories—a cognitive and productive principle. It can be seen as a complex of cognitive schemes or dispositions, upon which basis the agents perceive, assess, and classify objects and eventually carry out action [Bourdieu 1979: 148].

These schemes respective dispositions are what allow for the habituation of action patterns and provide repertoires of actions that enable social actors to react in a natural and analogous way to a random situation [Bourdieu 1979: 204]. However, Bourdieu does not understand them as being pre-conceived and given; instead, they must be acquired. Social actors appropriate these schemes by engaging with the objective conditions which are considered to be socially imparted. Absolutely central for Bourdieu is that the actors' capacity for subjective understanding should not be conceived as "mentalist". Instead, they have sensory and material foundations. Agents grasp the world they live in by means of incorporated schemes. Bourdieu thus speaks of *habitus* as a generator of incorporated "practical sense". It allows agents to deal with day-to-day situations without further thinking, and to cope with new situations [Bourdieu 1979: 204]. Practical sense is the key to understanding why agents are capable of assessing the social world and carrying out actions naturally, even though they may not always be able to anticipate its rules. To consider *habitus* to be a mechanistic principle would, however, be too simplistic since it provides possibilities for action resulting from the

individual modes of perception, judgment and classification of objects, each *specific and different*, on the basis of the *habitus* scheme.[3] Bourdieu therefore assumes a collective structure of meaning—existing prior to the subject and mentally rooted in the agent—which is considered as the product of social practices. The *habitus* thus reproduces its schemes; yet, as a "practice generator", it adapts these individually. Bourdieu explains the uniformity of practices over time and space by showing that the different incorporated *habitus* schemes correspond to the collective distribution of resources—they are, in a way, *specific to a social group* [Bourdieu 1982: 279]. However, agents belonging to the same social group or class will not necessarily act identically in the same situation: as mentioned above, the actions of agents are based on constructions of meaning which differ individually.

Following this argument, it becomes clear that Bourdieu's agents remain bound to their history of *having-become (Gewordensein)*, even when they perceive their own action as conscious. The *habitus* resembles a "black box" in the sense that it is a registering system inaccessible to the individual as well as an operationalizing instrument of one's perspective of the world. How social actors decide on their actions is neither spontaneous nor determined; rather, actions result from the conjuncture of *habitus* and objective events [Bourdieu 1979: 182]. Bourdieu's understanding of action thus differs from theories where agents are able to discern the conditions of their actions. Such a point of view does not exclude actions based on norms or purposes; even so, they need to be analyzed in light of *habitus* as being the driving force behind subjective goals. Bourdieu's agents have no genuine inner core per se; their social imputability is rather an effect of their specific cultural context. It is their personal knowledge of social schemes that allows the individual to become a subject.

[3] One must take into account that Bourdieu's concept of *habitus* is rightly criticized within the sociological literature for its strong basis in socialization processes and thus for not considering post-conventional learning processes enough. This aspect has so far been ignored within the literature in legal sociology. According to this critique, Bourdieu's concept of the habitus shows a conservative and persisting bias which makes it harder to take transformation and change into analytical consideration [Sewell 1992: 15]. In fact, Bourdieu has not reflected on the arbitrariness and innovative capacities of social practices—unlike works within the realm of practice theories following Theodore Schatzki [e.g. Schatzki 1996] which focus on the issue of the force of persistence but also on the mutability of the social [cf. referring to newer theories of practice, for a potential further elaboration see Kretschmann 2016].

Agents in the Juridical Field

Bourdieu develops his legal thinking following his theory of social fields [Kretschmann 2019a]. In contrast to legal science, this notion enables him to conceptualize law not as naturally given or based on reason, but as a cultural product which results from the practices of agents acting within a social field that enshrines parts of the dominant symbolic order [Bourdieu 1987: 819]. Following a difference theory perspective, Bourdieu attributes autonomy to the juridical field. This autonomy is, however, only relative insofar as it results from the actors' social practices. On a theoretical level, Bourdieu's legal thought therefore conceptualizes social practice as equal before the law: a combination of a structuralist and a phenomenological approach results in the conception of the juridical field as *relatively* autonomous.

Taking into account Bourdieu's field theory, how should this juridical field be apprehended? This concept considers the idea of the relative autonomy of "social facts" [Bourdieu 1992: 136]. Referring to Durkheim's hypothesis that modern societies are marked by a process of differentiation, Bourdieu assumes that within a society based on the division of labor, a set of microcosms has emerged, each having their own objectives and following their own questions and interests alongside their own *nomos*. According to Bourdieu, the juridical field's increasing autonomy materializes alongside the increasing complexity of legal practices caused by the specialization of jurists. Since then, law appears as an autonomous sphere which distinguishes itself from other fields by the way in which agents perceive the world in this context. Thus, the actors within this field recognize law as a regulating structure because it is surrounded by an aura of universal rationality [Bourdieu 1987].

The collective reproduction of the field through the actors is thereby central, even when the law—like every social field—antecedes the individuals. Bourdieu describes the different social subdomains in their autonomy as relative, and therefore as social spheres *which transform through the agent's practices*, without assuming that their direct influence can be reduced to their individual intentions or interactions. With regard to the reproduction of law, this means that legal institutions and social forces are equiprimordial: "We can no longer ask whether power comes from above or from below" [Bourdieu 1987: 841].

The way in which agents are capable of constituting and acting within the law only becomes comprehensible when we understand social fields with Bourdieu from a conflict theory point of view—considering them as arenas. Specific rules, along a particular *nomos*, reign in such

particular "playing fields'" where agents enter with precise stakes to obtain profits and thereby secure a good position within the field. This is why the accumulation of field-relevant resources is the agents' primary objective. According to Bourdieu, resources in the juridical field are mainly divided between two opposing groups: these include practitioners like lawyers, solicitors and magistrates—with their various interpretations of the law—and theorists (i.e. university professors). The struggles for a good position within the field do not take place arbitrarily; they are bound to certain rules since the social field as a unit of meaning compels the agents to gauge a "feel for the game"—to recognize it and, after determining their own position in the field, to act accordingly to it. To be able to participate in the field, social recognizability resulting from the adherence to field-specific rules is required. A certain degree of conformity with the legal field must be observed to either provide or replace the prevailing opinion with one's own legal interpretation. The "right" interpretation of law along the legal interpretation criteria therefore constitutes the struggle for the distribution of powers in the field. Law, in its specific socio-historical nature and operating principles, is the result of these struggles. Just like *habitus*, fields are black boxes of negative freedom: firstly, they create spaces of potential action; secondly, they rule out "unsuitable" actions.

Because agents enter the social field with different stakes, they have different means at their disposal by which to influence the structure of law. In Bourdieu's terms, this refers to the various degrees of power that the actors have over the different field-specific "types and sub-types of capital" [Bourdieu 1986: 242], or rather the social "resources" [*ibid*.: 243]. Following Marx, Bourdieu conceives capital and resources as "accumulated labor" [Bourdieu 1986], all the while not reducing Marx's materialism to economic exchanges but extending it to immaterial transaction. Contrary to Marx, field and action logics for Bourdieu extend beyond being simple derivatives of economy. Alongside their own currency, they build their own "economies." Bourdieu therefore recognizes a cultural, a social, and a symbolic capital alongside the economic one which each social field may contain to varying degrees [*ibid*.]. The constitution of agents in the juridical field is heterogeneous which causes the *status quo* to be the object of constant negotiations. In other words, hierarchies ensure that the law constantly evolves. The fact that agents in the social field each operate with different stakes also means that some groups within the juridical field benefit from the law more than others. Bourdieu's view concentrates especially on the dominant group's advantage, as the legal experts show social proximity to the political and

economic elite [Bourdieu 1987: 834, 842]. This also implies that changes in the field of power have an impact on the struggles in the field of law and thus also on who profits most from the law, since the legal field must constantly rebuild the credibility of law along those power shifts.

Hence the transpiring equiprimordiality of structure and practice, law and agent, remains asymmetrical insofar as laypeople are almost completely excluded from Bourdieu's game. Indeed, it is the jurists alone, who, according to him, acquire a legal *habitus* in the course of their vocational training. This *habitus* ensures that they behave intelligibly within the field and thus lawfully. Laypeople in the juridical field are considered as mere consumers; they exist solely as subjects of the law represented by legal agents [Bourdieu 1987: 834]. According to Bourdieu, only jurists acquire a juridical attitude. The competence of laypeople does not usually suffice to allow them to participate in the juridical field. As they have no "feel for the game", they are unable to transpose social issues onto juristic phenomena and therefore have no say in specialized legal discourse [Bourdieu 1991: 96]. When laypeople are involved in legal matters, they have to convert economic capital into legal capital, typically by employing an attorney.

Notwithstanding the fact that the juridical field, according to Bourdieu, remains closed to laypeople, the effective power of this field does not affect jurists alone. Bourdieu attributes a crucial importance to the law within the social, especially in comparison to other fields. According to him, the agents' point of view on the social world—in terms of how they think and perceive it—is significantly influenced by the law: "it would not be excessive to say that it [the law] creates the social world" [Bourdieu 1987: 839]. On a consumer level, the power of the juridical field also lies in the fact that it can guide laypeople's actions by means of categorization and ruling. Contrary to the much more diffuse *habitus,* law minimizes ambiguity [Bourdieu 1992: 104]. In this sense, legal rule—like any other rule—decreases the number of possibilities that agents, including laypeople, have for action [Bourdieu 1987: 826].

But how does Bourdieu conceptualize the effectivity of law in regard to laypeople? In accordance with his field theory, he formulates a concept of law which includes three levels: social positions, the law as a material fact, and the symbolic. The latter allows the legitimation of the legal order and, thus, the consolidation of domination. In this context, Bourdieu claims that "if the social world were reduced to its objective truth as a power structure, if it were not, to some extent, recognized as legitimate, it wouldn't work" [1993: 12]. Since he assumes, following conflict theory, that the social sphere is marked by constant conflict over the allocation of

resources and that social order must be conceived as fundamentally unstable, this step is a logical consequence. Bourdieu's concept of the social field as relations of power does not explain, however, the way in which agents develop an interest in orienting their actions according to the rules of the juridical field. In terms of praxeology, it is the convergence between habitual desire and field-specific requirements that preoccupies Bourdieu here. How, he wonders, do agents develop an interest in acting alongside the rules of a field without questioning them?

According to Bourdieu, this requires a structure of symbolic representations within the law which can be conceived of as a level of knowledge systems, a typification of rules and of the discourse. Following positions in cultural sociology, the symbolic field is not an epiphenomenon subordinated to the social level, but rather a proper reality which interacts with the social field. Bourdieu considers the symbolic field as homologous with the objective field [Bourdieu 1982: 286], meaning that there is a structural equality between both spheres of the juridical field. This determines the legal signs and the distribution patterns within the objective field as interdependent and convergent. Thus, Bourdieu answers the question of the convergence between habitual desires and field-specific demands within the law by following Weber: the legitimacy of the legal order is linked to the agents' belief in its capacity to make rational decisions. Unlike Weber, however, Bourdieu does not situate legitimacy in the form—and therefore not in procedures either—but places it in line with Durkheim in the power of symbols. He assumes that it is the symbolic representations of the objective field that cause the agents to unquestioningly recognize the respective system, as well as to "believe" in the meaningfulness of the game. According to this concept, the juridical can only elaborate its questions, objects and interests—or even continue to exist altogether—if "the law is socially recognized and meets with agreement, even if only tacit and partial" [Bourdieu 1987: 840]. A broad basis for reproduction is therefore typical for the symbolic field which, contrary to the objective field, is not to be equated solely with juridical practices. Instead, it is additionally reproduced by agents outside of the field.

It is thereby typical of the "symbolic quality of law" [Kretschmann 2016, transl. by the author] that the law is identified as the guarantee of rationality and predictability of its application through an independent third party. In this way, the law is seen as constituted beyond individual interest [Bourdieu 1987: 817] even though, as stated above, it develops in the course of social struggles and is preserved through hierarchies. Through codification, law acquires an aura of rationality, neutrality

and naturality [Bourdieu 1991: 96]: "Without accepting the notion of 'intrinsic force' which philosophers have sometimes attributed to a true idea, we must nonetheless grant social reality to the symbolic power that 'formally rational' law (to use Weber's language) owes to the specific effect of formalization itself" [Bourdieu 1987: 849]. Bourdieu describes this effect as "illusio" [1991: 96] and takes up aspects of the critique of ideology (which he criticizes elsewhere as, for him, it cannot be dissociated from the problematic concept of "false consciousness" [Bourdieu and Eagleton 1994: 267]). The representation of law as universal, rational, and natural conceals the fact that it results from historical struggles of interpretation permeated by specific interest groups. The law "thus legitimizes victories over the dominated, which are thereby converted into accepted facts" [Bourdieu 1987: 817]. In this sense, laypeople also adopt legal categories. Incidentally, the laypeople in Bourdieu's conception hardly differ from the jurists, who are also subject to a belief in law. In contrast to these, however, laypeople use legal categories in their everyday lives, and thus in a context which is beyond the juridical field. Due to this fact, the legal categories are transported into social contexts. To consider someone as a criminal offender is therefore not only relevant in the juridical field, but in the whole social world as this status triggers mechanisms of social boundaries and leads to exclusion [Bourdieu 1987: 846].

Voids in Bourdieu's Conceptualization of Laypeople's Legal Socialization

Regarding the issue of compliance, Bourdieu's concept of law as a structure as well as a practice highlights the relationship between the agent's *habitus* and the law. His praxeology stresses the constantly-needed translational work between the two structures as the "essence" of the legal and legally conceptualized agent [Bourdieu 1979: 203]. This is helpful in two ways: firstly, it tackles a theoretical conception of compliance which tries to integrate arguments from rather structuralist perspectives, as well as theoretical positions focusing on individual actions. Secondly, it is useful for the analysis of a socio-historically-shaped individual in the context of a specific socio-historically-structured law. Bourdieu's understanding of the symbolic reality of the law is particularly instructive as it allows an analytical comprehension of how agents build rights-based schemes of perception, thought patterns, and actions aside from direct interaction with legal institutions (which, in case of compliance, may be the rule). For example, whether an actor

commits a theft or not is obviously not decided in the courtroom, but in everyday life, i.e. in the families, in other institutions, in the milieus.

However, this understanding is not sufficient for the analysis of compliance. Bourdieu's particular concern with the reproduction of law as a relatively autonomous sphere leads him to describe how legal experts contribute to this reproduction by means of compliant actions. Laypeople's capability for actions regarding the law, and therefore, compliant action, still stands as a research gap. Indeed, Bourdieu offers only two levels of socialization for laypeople: law as an instrument for conflict resolution in legal procedures by means of representation through a lawyer and, as seen above, law as a symbol which becomes effective by generating truth, which in turn induces normalization. Even when the symbolic level of the law allows one to understand how a specific law becomes legitimate in the eyes of laypeople, it does not help to comprehend *how* they develop this practical sense or these social resources which enable them to implement their actions. Carrying out Bourdieu's division in an objective and a symbolic juridical field means that the affirmative reference to the law or to its contents—insofar as it is reflected in actions—requires at least a minimal practical sense, a minimal legal, incorporated capital for playing an "objective" game. The layperson who does not commit theft but pays for a product does so on the basis of certain legal competencies—to name the simplest example. Laypeople, however, also deal with far more complicated matters such as installing of an employment, as I have outlined elsewhere [Kretschmann 2016].

However, by positioning laypeople outside of the juridical field, Bourdieu wholly omits their legal socialization to the objective level. This coincides with criticism expressed within the socio-legal reception of Bourdieu's work which considers the interference and involvement of laypeople in the "objective" field to be underestimated [Trubek *et al.* 1994]. The example of the detainee who, in the eyes of the other prisoners, gains an expert status as a "jailhouse lawyer" by specializing in the composition of letters of complaint for other prisoners, shows that even socially marginalized persons possess a certain power within the legal field [McCahery and Picciotto 1995: 182]. Unlike Bourdieu, we therefore argue that the judicial procedure hardly represents the only criterion for the objective socialization of laypeople. It would be just as simplistic as to deduce a practical sense of institutional legal procedures from the laypeople's belief in the law.

In order to develop a concept of compliance that does not only include the practices of legal experts but also those of laypeople, we will therefore

widen—simultaneously with and against Bourdieu—his definition of laypeople by partially integrating the latter into the juridical field. We argue that both groups, experts and laypeople, share the struggle for what should be considered "right" and "wrong"—even though the scope of laypeople is significantly smaller. Similarly, McCahery and Picciotto, who for this reason position laypeople not outside but inside the juridical field, assert that "[s]ince social relations are reproduced partly through law, social actors are always already (partly) within the juridical field; but they possess varying degrees of skills, time, resources and inclination to monitor the legal professional" [1995: 182]. The authors' suggestion of introducing normal actors into the juridical field is subsequently taken up, though not without substantiating it in two ways. In this context, the question of how this should take place with and against Bourdieu will also be resolved.

It is particularly necessary here to reflect on why Bourdieu attributes little conceptual relevance to laypeople in the "objective" field. This results from Bourdieu's preference for the *legitimate representations* regarding the question of who belongs to the juridical field. If we take into consideration Bourdieu's general understanding of fields as relations between the actors' social positions which determine the structure of the field, the fixation on the legitimate representations appears to be problematic. Indeed, only conceptualizing inclusion in the juridical field according to relevant and proven professional occupations results in a simple role theory. Attributing alternating criteria to the limits of the field is one of the conceptual vaguenesses in Bourdieu's work. On the one hand, he refers—as in this case with regard to law—to the agents' social recognition in the field as a criterion for inclusion in the field; on the other hand, he refers to the effects of their actions. In one interview, he states that "[o]ne can say of an institution, a person, an actor, that he or it exists in a field, when he or it has an effect on it" [Bourdieu 2001: 33, transl. by the author]. Elsewhere, he writes that "it is one and the same thing to determine what the field is, where its limits lie, etc., and to determine what species of capital are active within it, in what limits, and so on…" [Bourdieu and Wacquant 1992: 98]. It is in this sense that Bongaerts also criticizes Bourdieu's criteria for inclusion in the field. He argues that "in the end, actors external to the field also have an effect on it, yet are not considered to be agents within the field by field theory. In this way, consumers affect the field when their expectations and their reception of the law contribute to define its structure" [Bongaerts 2008: 125, transl. by the author].

In order to integrate laypeople in the juridical field, we will first substantiate McCahery and Picciotto's attempt to follow Bongaert's question of who belongs to a field with reference to Weber. By definition, Weber links the different microcosms not with the characteristics of the agents but with their production of "ideational orders" (*ideeller Ordnungen*) [*ibid*.: 126f.]. The agent's actions can be matched to the "orientation towards a system of values" but remain independent from their actual impact on the field [*ibid*.; transl. by the author]. With respect to the integration of laypeople into the juridical field, we will refrain, in a second, substantiating step, from fully equalizing the two groups of agents. Rather, we will take into consideration the fact that laypeople are only indirectly involved in the codification of the law. As Bourdieu himself does in the cultural field, we will integrate the latter with the construction of sub-fields. Departing from McCahery and Picciotto, we can then distinguish within the juridical field a sub-field of interpretation in which all can participate from a sub-field of codification exclusively accessible to jurists. In this respect, there are strong structural convergences between the underlying understanding of lay and legal practice, even though a distinction is still made between the two parties: different forms of perception, thinking, and acting are (gradually) used by the different actors, each of which has a different scope for the autonomization of the field. In this way, law is set as a mechanism that circulates not only in the institutions but also in the micro-practices of everyday life [similarly Coombe 1989: 115].

Thanks to such a readjustment of the legal field's limits, we can hypothesize that the law for laypeople includes not only a symbolic but an objective effectiveness that goes beyond the socialization during legal proceedings. When seen in context with the broader appreciation of laypeople in the juridical field as outlined above, law materializes further in their day-to-day contact with the objective field—even when, in most cases, laypeople are unable to grasp the legal nature of the situation. As noted above, the theft is not decided in direct contact with legal institutions but in everyday life, for example through negotiations in the actors' social world. The integration of laypeople allows to conceptually link them to more or less conscious learning processes in the objective field, something Bourdieu, in his legal thought, concedes only to the jurists. In this context, we refer to the mechanisms of objective socialization developed by Bourdieu when we assume that laypeople also acquire a *sense juridique* through the participatory observation of specific legal practices and from the advice, instructions, and rebukes embedded therein. Then, the convergence of *habitus* and field not only results from the legal

symbolism as such but, by means of socialization, also from the transfer of the dispositional incorporated structures into assimilated field structures. It is only thanks to this "objective" legal socialization that agents can develop the capacity to navigate between the diverse legal contexts of action; only the practical sense provides them with a limited, embodied orientation within the legal sphere. This practical sense conveys what is necessary to navigate within the rules, as well as knowledge about leeways—for instance, when laws can be transgressed or when obedience to them can be open to interpretation or postponed, and thus (partially) bypassed [Bourdieu 1979: 217]. If we again take the theft as an example, the practical sense usually conveys norm conformity to the actor. The immediacy of the practical sense can be read easily from the physical reactions that the thought of theft or even accidental theft can cause: palpitations, flushed faces, etc.

Just as Bourdieu equalizes law and "juridical formalism" by placing them on the same level with social practices, the above outlined extension opposes the widespread perception within legal sociology that law only "comes to life" in the institutions [Kiesow 2008: 314, transl. by the author] by equalizing laypeople and jurists. The step taken here resembles ethnomethodological concepts for which the emanation of law from day-to-day practices is central. *Legal consciousness studies*, in particular, currently offer a number of indicators for the legal socialization of laypeople below the level of legal institutions[4]. Unlike this ethnomethodological perspective which, with its continuous observation of day-to-day practices fails to notice the prerequisite of the possibility of legal practices, the Bourdieusian perspective, by distinguishing word and object—or objective and symbolic reality—makes it possible to take into account the arbitrariness underlying the legal order [Bourdieu 1979: 147]. Nevertheless, considering that laypeople, to a small extent, "do law"[5], this happens without following the theoretical implications of ethnomethodology. García Villegas [2003: 393] formulated this convergence of structuralist and ethnomodological approaches as a research desideratum: "It would be a

[4] Taking into account that "law actually constitutes and produces social relations, that it is already operative within social categories before disputes break out" [Litowitz 2000: 218], they show us that legal concepts are also operative in day-to-day situations without necessarily being particularly conflictive or dominant [see, for instance, Ewick and Silbey 1992]. They further state that law is often less important than other aspects of the social, and that law forms through the interactions *between* laypeople. Therefore, their concept of the performativity of law in day-to-day situations not only takes routine into consideration, but also the arbitrariness of practices.

[5] We semantically draw here on historian Rebekka Habermas concept [2008] of "Doing law" with reference to the "Doing Gender" and the "Doing Culture" debates.

question of combining the symbolic vision of law, inherent in all constitutive social theories, and a theory of the symbolic as a political instrument, whether it be of domination or of social emancipation. But this task still lies ahead." To approach this research desideratum with regard to compliance is one of the main concerns of this article.

Compliance in a Praxeological Perspective

How, then, should we understand compliance from a praxeological and therefore cultural perspective? Following the theoretical readjustment of Bourdieu's conception of the juridical field, what he describes regarding jurists can now be applied to laypeople. Consequently, we can consider compliance—including that of laypeople—to depend on the interaction between the *habitus* and social resources, operations of the objective juridical field, and (also socially processed) symbolic violence. Hence, even for laypeople, law no longer comes into play as a mere symbol, but as an institution. Like any other rules, rules of law produce forms of *habitus* which "are capable of generating practices regulated without expressing regulation or any institutionalized call to order" [Bourdieu 1977: 17]. To unfold in the social sphere, they must, however, draw on the individual's experience. They are only efficient if they mirror and reinforce the collective dispositions of the *habitus* [Bourdieu 1979: 214]. As stated above: whether or not an actor steals something depends on the similarity of the structure of an actor's habitus and the law. Furthermore, we have to consider that law is oriented towards social issues, which is why, in the area of application of laws, the social position of law's addressees should be taken into account. References to law and law-relevant actions on the part of social agents must therefore be considered within the context of structural restrictions and legal guidelines, regarding this scope of application in the social world. Elsewhere, I have shown that actors' "motivations" for legal compliance differ with their social positions, as norms in the social environment, social control or fear of punishment play different roles [Kretschmann 2016]. In addition, the ability to acquire legal capital varies the possibility of acting illegally or in legal grey areas. The higher the capital, the greater the chance of a successful illegal act [Kretschmann 2017].

We can therefore describe compliance as an individual appropriation of structures or as an act of allocation of the juridical field, which is based on particular habitus schemes. As law and legal statutes are imperceptibly

internalized by the agents, the contingencies inherent to their options for action disappear and law-respecting actions come into existence. Following Bourdieu, Litowitz, in this regard, speaks of a process that merges the agent's *identities* with legal categories, which explains why breaking the legal norm is inhibited by the partial negation of one's own identity. To the agents, actions outside the legal framework therefore seem unrealistic, utopic or revolutionary [Litowitz 2000: 222]. "In other words", Litowitz writes, "people obey because the existing world appears to be the only possible world" [*ibid*.: 223]. Thus, it is likely that for the majority of society's members theft is clearly contrary to their self-image, e.g. because they think of themselves as law-abiding citizens [Kretschmann 2016: 153]. This is the case due to the convergence of their own dispositions and the rules of the law. Bourdieu laconically calls this the convergence of *habitus* and juridical field [1987: 840]. Theft might therefore be unthinkable in the sense that most people do not even think of it and, if they do so, they dismiss the notion instantly. The thought of a theft in the latter case may have similarities with the thought of jumping into the abyss when standing on a bridge or a high-rise building: both frightening and appealing as it is, it is present only to be rejected at the same moment.

Conversely, agents deviate from the law when *habitus* and legal rule come apart—for example, as a result of the agent's disappointed expectations. This can be the case, for example, if an actor expected more from a certain legal rule or the legal system as a whole: in the context of regulatory law, e.g. social legislation, this can be the expectation of changes of in everyday life; in the case of sanctioning law, e.g. penal law, this can be justice. Elsewhere I have shown how actors do not make use of a newly created legal rule because they consider it insufficient and therefore keep on acting disobediently [Kretschmann 2016: 225]. Nevertheless, we must also reflect upon the fact that the ability for compliant action is strongly linked to the agent's capital resources in the social space, insofar as we need to consider the social conditions for actions. If, for example, complicated procedures are necessary to behave legally, legal conformity is not always easy to achieve despite one's good will. Additionally, one must take into account that breaches of the law, depending on the social position of the norm breakers, are sanctioned to a legally and socially different extent, as the relevant leeway widens with higher-ranking social positioning [Bourdieu 2014: 121]: for example, when the theft by an elderly, wealthy and educated lady is dismissed as a one-time aberration, but that of the migratory youth is seen as a possible starting point for a criminal career. Among other things, the labeling of

the authorities is influenced by the fact that the old lady, due to her overall high cultural capital that she can transfer into legal capital, has a better strategy to take advantage of the law: she can better estimate how to argue with the police and when it is advisable to consult a lawyer. It is equally important to note that contradictions may arise when subjects deviate from incorporated routines as this requires *coping* strategies [Sykes and Matza 1968]. For instance, if the law is not obeyed—if for example an actor steals for existential reasons—but actually he or she considers this morally wrong.

To sum up, the compliance concept detailed here stands for a specific expression of legal subjectivity. This is, as relations of the agents to the law arise from the "interaction" between two more or less flexible structures—that of the individual and that of the law. Furthermore, following Bourdieu—and this must be particularly stressed—the aspect of the convergence of *habitus* and field should not be totalized as this would amount to an overestimation of the *force du droit*. According to Bourdieu, laypeople recognize law and justice only when they are able to link the latter with their needs and interests [1987: 840]. This is also shown empirically: if the law does not correspond at all to the requirements of reality, it is not followed *en masse* [Kretschmann 2016].

Praxeology of Law as an Integrative Approach

We pointed out that we do not conceive of compliant action primarily on the basis of autonomous and conscious calculations (as rational choice theories do). Nor do we assume that individuals merely express collective norms through compliant action as stated by norm-theoretical approaches. Unlike system theories, we do not base compliance on role adaptations induced by legal procedure, either. The relationship between legal norms and agents neither results from the individuals' comprehension of given norms, nor from collective structures that unfold autonomously. Referencing Bourdieu's praxeology allows us, however, to not fully reject the logic of interests, norms, and system differentiation but instead enables us to link it to a logic of practice. In other words, Bourdieu's praxeological perspective meets the requirements of a heuristic integration that links recognition, legitimacy and deterrence theories (although necessarily stripping these from details), by bringing together the assumptions of the conventional explanations on a comparable basis. Therefore, compliance which should be regarded as the effect

of an orientation towards rules, is first and foremost always linked to moral norm-orientation, secondly to field-specific procedures as determined by the rules of the game, and thirdly to unconscious or—in the case of a crisis—conscious purposive orientation. We will elaborate on this shortly.

Just like norm-theoretical approaches, the logic of practice highlights firstly how formal and informal rules coexist, and how they are closely intertwined and compete with each other [cf. Bourdieu 1992: 87], but without them being a mere reflection of social norms. The praxeological perspective considers that legal rules must rely on a moral foundation and require not only institutional, but also social sanctioning. Thus, social pressure through the public sphere is considered essential for compliance. Conversely, compliant behavior—following generally accepted rules—functions as a means for social distinction and integration [*ibid*.: 100]. Theft is thus also avoided because it is socially ostracized in most social contexts. To behave in conformity with the law in this respect prevents exclusion from one's own social environment. So-called "peccadilloes" are an exception to this rule—those deviations for which sanctions are legally provided, but which are not enforced because they are seen as harmful to society only to a small extent. In most cases, these are practices pursued by the mighty and the rich (e.g. in the form of white-collar crimes). On the other hand, it can increase the social integrity of an actor to report his or her own delinquent behaviour. In order to clarify the relation between law and agents, the praxeological perspective further integrates socio-structural features. In this way, social positions help to explain individual differences in the understanding of a specific law and the varying degree of compliance between different laws. The examples above showed, for instance, that there may be different motivations for the poor to steal than for the rich. However, the praxeological perspective exceeds norm-theoretical approaches insofar as it systematically takes into account the quality of law and legal statutes, including the measures to enforce them (for instance, the establishment of administrative services). It has already been suggested above that the nature of a law, just as law enforcement, can evoke either conformity or delinquency. Compliance therefore results from the more or less consciously adopted "recognition" of the legal norms arising from objective pressure in the social sphere but also from the individual inclinations of agents.

Similar to legitimacy theories, the logic of practice secondly imposes on the agents a particular way of acting and therefore, of obeying, devoid of any apparent motive—thus independent of the contents of a law—which results from the legitimacy that the legal order produces. With

regard to the effectiveness of law and legal statutes, Bourdieu goes much further than Luhmann when he assumes that the agents do not recognize the legal order only on a superficial level. While Luhmann's procedural rationality does not dispel the agents' resistance but makes its expression invisible, Bourdieu makes the legal game the only conceivable world. We remember the above example with the actor in the supermarket who does not even think about stealing an item: in this understanding, conformity with the law is part of the own identity, of the own practical sense, and it is embodied. As opposed to Luhmann's role models, conflicts here can yield new, alternative meanings. Empirical evidence shows that when actors disregard existing law *en masse*, this can lead to legal innovations in the form of changes to existing law or the introduction of new legislation [Kretschmann 2016]. To induce compliant action, the legal order in Bourdieu's concept thus requires a legitimizing force. Here, it is irrelevant to what social milieu the individuals belong and whether they are jurists or laypeople: the belief in the law is socially hegemonic and often unaffected by the actual effects of law, even if small groups in society completely reject the law, such as the "Reichsbürger" or "freeman" [Fuchs and Kretschmann 2020].

Thirdly, even if Bourdieu's conceptualization for compliant action significantly relies on the internalization of legal constraint, and even if he conceives of compliance as rather procedurally than along conscious meaning, he at least leaves space for the possibility of the effectiveness of coercion, as it is centrally set by deterrence theories. He writes that the normalizing power of law "complements the practical power of legal constraint" [Bourdieu 1987: 816, 846]. Thus the probability of being punished also plays a role when we think of theft. Bourdieu therefore leaves the most disputed question in legal sociology aside: to what extent negative sanctions may preventively influence the actions of the addressees of the law (*Generalprävention*)[6]. He is, however, convinced that symbolic realities are increasingly relevant for the production of social order within current tendencies of the democratization of societies [Bourdieu 1987: 844]. Nevertheless, this gap in theory does not represent an obstacle for this argumentation insofar as Bourdieu's definition of

[6] The main critique generally addressed to Bourdieu's sociology of power is that it misjudges the relevance of physical violence [Lash 1993: 200]. García Villegas [2011: 285] also appears to have noticed this, and redefines the issue of the efficiency of sanctions around the question of the subjectively perceived state authority or of the presence of institutions and thereby distinguishes them: "There is a contextual factor that particularly determines the degree of compliance with norms. I refer to the degree of institutional presence—or institutional capacity—that a particular social space has; in other words, the degree of institutionalization of that social space".

action allows us to conceptualize action on the basis of negative sanctions—specifically when *habitus* and field diverge and intentional actions occur. Along these lines, the constraint mechanism of law can be researched empirically[7].

Such a concept of compliance takes into account the socio-legal, empirically verified findings that laypeople maintain a relationship to the law that is diffuse and without reflection—and, according to Weber, that it rests upon habit. In this respect, notions such as a sense of justice, legal consciousness, legal knowledge, legal acceptance and legal ethics [Silbey 2005: 358-359] appear as relative effects of how the objective relationship between one agent's individual history and the legal structure—or a single legal content—is built, even though their definition is largely based upon a theory of consciousness and thus opposed to these findings.

As a preliminary conclusion, we can state that Bourdieu's praxeological approach and its extension to a legal socialization of laypeople allows us to develop a concept by which we can apprehend compliant action without putting aside the existing findings of legal sociology. To heuristically combine these perspectives we assume that the description and explanation of compliant behavior cannot be reduced to a unique variable but that norms, routine, legitimacies, and formal sanctions coexist [Friedman 1972; see also García Villegas 2011]. The conformist or thieving actor acts on the basis of internalized values or those of his social environment, but he also acts according to established habits. Likewise, his or her actions are not detached from the legitimacy of the law in society and it is also important how likely he or she is to be caught and punished by the authorities.

Following Bourdieu, there is a general theoretical preference for the routinized internalization of legal rules. Nevertheless, a study following a definition of compliance as developed above should not restrict itself to one particular explanatory model. It rather takes law into consideration both as a means to repress as well as a scope of possibilities. One must point out here that with Bourdieu, "the degree to which one can abandon oneself to the automatisms of practical sense obviously varies with the situation and area of activity but also with the position occupied in social space" [2000: 163]. According to him, socially well-positioned agents can rely on practical sense, whereas others are "forced to keep watching for themselves and consciously correct the

[7] For empirical research on compliance undertaken on praxeological terms in which negative sanctions partly play a role, see KRETSCHMANN 2016 and 2018.

'first movements' of a habitus that generates inappropriate or misplaced behaviours" [Bourdieu 2000: 163]. This refers to both, the enforcement of the law and the juridical capital. On the one hand, this concerns the socially privileged: in the juridical field, they swim like fish in water because the existing laws are more useful to them than to other members of society—their delinquencies are usually less heavily prosecuted, and in other matters, too, the law corresponds to their interests. On the other hand, it is about those actors who have legal competence: a lawyer, for example, who is privately involved in a legal matter, even if he or she is not familiar with the specific legal rules, can make better legal decisions than someone with less legal capital, which allows him or her to behave legally with maximum success.

Conclusion: Compliance as a Praxeology of Law, Between Ethnomethodology and Structuralism

In order to comprehend if and how people adapt to legal standards, it is crucial to understand if and how law acquires its authority and legitimacy—as every modern legal order is dependent on the readiness of its subjects to act according to the law [Weber 1964]. Austin Sarat sums this up by writing that "law without obedience is a contradiction in terms" [Sarat 1993: 647; cf. also Ewick and Silbey 1992: 738]. In this sense, the question raised here, which is the social effectiveness of law, spells out the law immediate existence. The question of compliance is therefore not a marginal problem within socio-legal studies but touches the core of it while asking for the stability of the legal order.

Socio-legal studies investigate compliant action from the perspective of individual interests, generalized structures or functional systems. This article, however, proposes a new perspective, which, with reference to Bourdieu's fragmentary conception of law, examines compliance as an effect of the transmission of practice and structure through *habitus*. A new perspective is necessary considering the criticism that has for decades been put forward against deterrence, recognition and legitimation theories. These may be considered relevant, yet they have too little explanatory power: we have shown that it is the wholly different underlying theoretical vocabularies that lead to the co-existence of incompatible explanatory parts and that their individually plausible findings therefore cannot be traced back to one another. To avoid the problem of a mere addition of different findings, legal sociologists suggest referring to

perspectives which draw on the interaction between society and the individual. We have taken up this position with a praxeological approach.

At the core of this analytical combination of collectivity and individuality, there is the conception of the agent acting as an individual which cannot be understood as a mere given end. Instead, we focus on an agent who conditions his construction as a legal subject to the extent that he or she appropriates the legal representations and procedures. Bearing this in mind, we have defined compliance as an effect of the appropriation of social intelligibility through the agents—more precisely, as a *relative* convergence of *habitus* and field. Following this, regulative legal norms become valid when objective and symbolic processes find a more or less *subjectively appropriated, incorporated* counterpart in the actor, which is able to develop in a practical sense of action. In this regard (and to make the socialization of laypeople plausible), not only with respect to the symbolic but also to the objective reality of law, we modified Bourdieu's criteria of the "belonging" to the juridical field and defined it as the orientation towards a sphere of meaning. It thereby became possible to also integrate ordinary actors in the microcosm of law.

Bourdieu's concept of action made it possible to consider legal conformity both in the context of unreflective routine actions and in the context of practical rule orientation, as they along norms emerge, and on the basis of legitimacy. Last but not least, the praxeological perspective allowed—to a limited extent—the integration of purpose-driven action. Our perspective on compliance combines the explanations of socio-theoretically incompatible conformity theories within a single sociological vocabulary. Through its complex notions of subject and action, however, it goes beyond these explanations. Ergo: through a praxeological conceptualization of compliance, which substantially relies on Bourdieu, it is possible to investigate compliant actions and action orientations in their collective aspect as well as in their singularity.

Legal compliance, as legal praxeology, is thus assigned a position between structuralism and ethnomethodology. This intermediate, and therefore decidedly cultural-sociological position, makes it possible to take into account the objective and symbolic reality of law, as well as the arbitrariness on which the legal order is based [Bourdieu 1979: 147]. Indeed, to take compliant action from a praxeological perspective means overcoming the opposition between structure and action by focusing on the tense relationship between individual and collective characteristics. The usual separation between agent and law is, to a certain extent, set aside in favor of a process of reciprocal constitution. This is also the case with the relocation of the legal strategies of agents in cultural practices

which, with their authority or/and legitimacy, produce the conditions of the factual validity of the law. The mobilization of compliant action can therefore be considered a "collective-individual production", and thus as a contradictory synergy effect of the institutional and individual requirements, in which the subjective desires of social recognition and the specific visions of a personal way of living blend into legal regimes of normality.

The text thus takes a sociological approach to the question of why people act in conformity. From this perspective, some empirical results are already available, as shown above; however, it would be useful to carry out further empirical research in order to address the questions raised in more detail. In addition, how the theoretical approach to legal conformity outlined here can be complemented by psychological and philosophical insights would be an important question to address in further research.

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Résumé

L'état de la recherche sur la conformité légale (*compliance*) dans les études socio-juridiques est limité et en partie obsolète. Les notions de respect de la loi semblent plausibles en elles-mêmes, à l'instar des théories sur la coercition, la reconnaissance ou la légitimité. Chacune de ces théories contient une partie de l'explication, mais elles sont mutuellement incompatibles. Les sociologues du droit parlent donc d'une lacune théorique concernant la conformité légale. L'article reprend ce desideratum de recherche et tente de formuler un concept alternatif de conformité juridique basé sur une terminologie nouvelle sans renoncer complètement aux découvertes antérieures de la sociologie du droit. En me fondant sur le vide théorique mentionné ci-dessus parallèlement à l'introduction de cette nouvelle terminologie, je soutiens qu'il est possible d'analyser la conformité juridique tout en intégrant de manière heuristique tous les concepts théoriques précédents de conformité. L'article s'inspire de la sociologie du droit de Bourdieu et, en l'étendant, propose une interprétation plus large de la conformité fondée sur la pratique et la théorie des champs.

Mots-clés: Compliance; Théorie de la culture; Sociologie de la culture; Pierre Bourdieu; Études socio-légales.

Zusammenfassung

Der Forschungsstand der Rechtssoziologie in Sachen Rechtsbefolgung *(compliance)* ist begrenzt und teilweise veraltet. Wie die Theorien bezüglich Zwang, Anerkennung oder Legitimität erscheinen auch die Vorstellungen rund um die Rechtsbefolgung für sich genommen plausibel. Jede dieser Theorien enthält einen Teil der Erklärung, miteinander jedoch sind sie unvereinbar. Rechtssoziolog- innen sehen daher bei der theoretischen Konzeption von *Legal Compliance* eine Theorielücke bestehen. Der folgende Beitrag greift dieses Forschungsdesiderat auf. Mittels einer neuen Terminologie formuliert er ein alternatives Konzept der Rechtsbefolgung, ohne dabei auf die bisherigen Erkenntnisse der Rechtssoziologie vollständig zu verzichten. Im Beitrag wird argumentiert, dass *legal compliance* unter heuristischer Einbindung aller bisherigen theoretischen Konzepte von Rechtsbefolgung analysiert werden kann. Als Ausgangspunkt greift der Artikel auf Bourdieus fragmentarische Rechtssoziologie zurück und schlägt durch Erweiterung eine dessen praxis- und feldtheoretische Interpretation von *Compliance* vor.

Schlüsselwörter: Compliance; Kulturtheorie; Kultursoziologie; Pierre Bourdieu; Rechtssoziologie, law and society.