

Explaining Compliance

Business Responses to Regulation

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5. To comply or not to comply – that isn't the question: how organizations construct the meaning of compliance

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INTRODUCTION

Most analyses of business compliance with legal regulation view law as exogenous to organizations; that is, they assume that law is formulated and defined outside of organizations and prior to reaching organizational domains. Furthermore, the extant literature tends to focus on organizations' strategic motivations for complying or not complying (Simpson, 1992, 1998; Vaughan, 1998), social and legal license pressures (Kagan and Scholz, 1984; Kagan et al., 2003) or moral value laden concerns (Tyler, 1990).

In contrast we argue that the nature of organizational compliance is best illustrated not by a compliance versus noncompliance dichotomy, but rather by a processual model in which organizations construct the meaning of both compliance and law. Further we argue that organizations must be understood as social actors that are influenced by widely institutionalized beliefs about legality, morality and rationality. We show how institutionalized conceptions of law and compliance first become widely accepted within the business community and eventually – as these conceptions become widely institutionalized – come to be seen as rational and legitimate by public legal actors and institutions and thus influence the very meaning of law.

We begin by articulating a theoretical framework for understanding compliance as a process and by specifying the institutional and political mechanisms through which organizations shape the content and meaning of law. We then discuss empirical work in the civil rights context, which shows how ambiguous civil rights legislation led employers to create a variety of symbolic forms of compliance that, despite being more attentive to managerial prerogatives than to legal ideals, were incorporated into judicial opinions interpreting civil rights law (Edelman, 1990, 1992;

Edelman et al., 1993; Edelman and Petterson, 1999; Edelman et al., 2001; Edelman, 2005; 2007; Edelman et al., 2011). Focusing primarily on judicial decision making, this work illustrates legal endogeneity in the judicial context, showing how forms of compliance that develop and become institutionalized within organizational fields are subsequently incorporated into judicial conceptions of compliance. Next we turn to empirical work in the consumer protection context, which shows that legal endogeneity also operates in the legislative and administrative processes. Just as judges incorporate institutionalized organizational practices into their decisions, this work shows how legislators incorporate institutionalized forms of dispute resolution into the law (Talesh, 2009). In both cases, organizations conceptualize compliance in ways that ultimately shape the meaning of law regulating organizations. The final section discusses the implications of organizational construction of law for studies of the relationship between business and law.

A NEO-INSTITUTIONAL THEORY OF COMPLIANCE

Neo-institutional organization theory emphasizes the process through which common systems of meaning, values and norms develop among the community of organizations that make up an organizational field (Meyer and Rowan, 1977; DiMaggio and Powell, 1983; Powell and DiMaggio, 1991; Scott, 2002). An 'organizational field' refers to the subset of the environment that is most closely relevant to a given organization – including suppliers, customers and competitors – as well as flows of influence, communication, and innovation (DiMaggio and Powell, 1983; Scott and Meyer, 1991; Scott et al., 2000, Scott, 2002). Neo-institutionalists argue that rationality is socially constructed by non-market factors (such as widely accepted norms and patterns of behavior) that come to be taken for granted and institutionalized within organizational fields (Meyer and Rowan, 1977; DiMaggio and Powell, 1983; Scott, 1983).¹

Just as organizations exist within broader organizational fields, legal organizations such as courts, legislatures, and administrative agencies exist within legal fields (Edelman et al., 2001; Edelman, 2005, 2007; Talesh, 2009). Legal fields are institutional environments within which ideas about law evolve, are exchanged and become institutionalized. Ideas about rational legal behavior – including compliance – tend to evolve and, in some cases, become institutionalized within legal fields.

Legal fields and organizational fields, moreover, are overlapping (Edelman and Suchman, 1999; Edelman et al., 2001; Edelman, 2005, 2007; Talesh, 2009). Organizations are the most frequent and most powerful

actors within legal fields (Galanter, 1974; Albiston, 1999). Lawyers engage in many roles that span the boundaries between organizational and legal fields, serving as interpreters, monitors, entrepreneurs, transformers, activists and catalysts (Edelman et al., 1992; Suchman and Cahill, 1996; Edelman et al., 1999; Talesh, 2009; Edelman et al., 2010). Previous work in the neo-institutional tradition shows how multiple and competing field logics produce institutional change (Friedland and Alford, 1991; Heimer, 1999; Stryker, 2000; Scott et al., 2000; Edelman et al., 2001; Schneiberg, 2002; Lounsbury et al., 2003; Schneiberg and Soule, 2004; Edelman 2007; Talesh, 2009) and how actors who span field boundaries can bring together disparate field logics in ways that invite or trigger institutional change (Leblebici and Salancik, 1982; Clemens, 1993, 1997; Campbell, 1997).

Elaborating on this work, we suggest that conceptions of law and compliance evolve through the flow of ideas across social fields (Edelman et al., 2001; Edelman, 2005, 2007; Talesh, 2009). Consequently, notions of rational and fair compliance that evolve within organizations and diffuse throughout organizational fields can easily come to influence the thinking of actors within legal fields and may ultimately influence the arguments of lawyers, notions of fairness among dispute handlers, the strategies of lobbyists, the laws passed by legislators, and the rulings of judges. To the extent that the meaning of law is determined by ideas that have become institutionalized within organizational fields, law becomes 'endogenous,' or 'given' by the social fields that it seeks to regulate (Edelman et al., 1999; Edelman, 2005, 2007). The potential for law to become endogenous originates in the ambiguity of most of the legal rules regulating organizations (Edelman, 1992). Although the degree of ambiguity varies across regulatory contexts, there is nearly always some degree of legal ambiguity in laws regulating organizations (Black, 1997). This legal ambiguity leaves a space for the social construction of the meaning of law through a blending of, and sometimes a contest between, the logics of legal and organizational fields (Edelman et al., 2001; Edelman and Stryker, 2005; Edelman, 2007; Talesh, 2009).

The primary logic of legal fields follows a liberal legal philosophy, one that emphasizes individual rights and imposes constraints on the arbitrary exercise of power (Selznick, 1969; Edelman, 2007). One of the most basic principles of a liberal legal regime is the notion of due process or fair treatment, which has historically been realized through conferring rights to appeal the actions of those in power. In contrast, the primary logic of organizational fields has traditionally been a business or managerial logic that emphasizes managerial discretion and authority as a means of achieving efficient and effective production or provision of services (Jacoby, 1985; Edelman et al., 2001).

The meaning of organizational compliance tends to evolve out of and through the disparate logics of organizational and legal fields. Organizations struggle to find rational modes of response to legal complexity and ambiguity and to devise strategies to preserve managerial discretion and authority while at the same time maximizing the appearance of compliance with legal principles (Edelman, 1990, 1992). The process through which organizational ideas about compliance evolve is sometimes given by cognitive ideas that become so strongly institutionalized that they are not widely challenged (Meyer and Rowan, 1977; Edelman, 1990, 1992). But as organizations struggle to define the meaning of compliance, that process may also be contested, both within organizational fields and as the logics of organizational and legal fields come into conflict (Friedland and Alford, 1991; Heimer, 1999; Stryker, 2000; Edelman et al., 2001; Schneiberg, 2002; Scott, 2002; Lounsbury et al., 2003; Pedriana and Stryker, 2004; Schneiberg and Soule, 2004; Edelman and Stryker, 2005; Edelman, 2007; Talesh, 2009). As disparate field logics intersect, actors who span field boundaries can highlight conflicting or contradictory logics in ways that invite or trigger institutional change (Leblebici and Salancik, 1982; Clemens, 1993, 1997; Campbell, 1997; Talesh, 2009).

Contests over the meaning of compliance are particularly likely where multiple interest groups have stakes in the meaning of compliance (Edelman and Stryker, 2005; Talesh, 2009). Political battles over legal meaning are particularly salient in the legislative and administrative contexts, where involved interest groups engage in overt battles regarding the meaning of compliance (Pedriana and Stryker 1997, 2004; Talesh, 2009). In the legislative, administrative, and judicial contexts, those forms of compliance that tend to acquire an aura of rationality in both organizational and legal fields are those that preserve managerial authority and discretion, while simultaneously realizing (or appearing to realize) the legal principle of due process. Importantly, the particular forms of compliance that come to be understood as legal and rational may vary across social contexts and legal jurisdictions (Talesh, 2009).

Thus, through some combination of institutional isomorphism (DiMaggio and Powell, 1983; Edelman, 1990) and political contest (Pedriana and Stryker 1997, 2004; Edelman and Stryker, 2005; Talesh, 2009; Edelman et al., 2010), the overlap between organizational and legal fields leads to a blurring of organizational and legal logics that complicates the meaning of organizational compliance, and leads to a process through which organizations introduce managerial logic into the meaning of compliance. Over time, these 'managerialized' or business-infused conceptions of law are incorporated into and legitimated by judicial and legislative constructions of law. The blurring of organizational and legal logics, then,

becomes another mechanism through which private organizational values infiltrate legal logic (Edelman and Suchman, 1999; Shamir, 2008, 2010; Talesh, 2009).

COMPLIANCE AS PROCEDURE IN JUDICIAL CONSTRUCTIONS OF EMPLOYMENT DISCRIMINATION

In this section we review research in the area of employment discrimination that documents the role of organizations in constructing judicial conceptions of compliance. Title VII of the Civil Rights Act of 1964 promises broad protection against employment discrimination, but fails to specify the meaning of discrimination, or precisely what organizations must do to avoid discrimination (Edelman, 1990, 1992). Judicial rulings interpreting ambiguous statutes also provide little practical guidance on how to translate legal standards into everyday organizational practice, focusing more on issues such as the allocation of burdens of proof or the availability of various types of relief. Similarly, administrative regulations that follow from statutes tend to emphasize 'good faith efforts' and symbolic indicia for compliance, rather than reaching substantive goals (Edelman et al., 1999).

Faced with legal ambiguity as to the meaning of compliance with anti-discrimination laws, employers turn to their 'legal environments' or law-related aspects of organizational fields for ideas about how to respond. An organization's legal environment refers to the broad set of rules, norms, routines and practices that shape not only employers' understandings of law and compliance, but also their notions of what is right, fair and proper (Edelman, 1990). With respect to civil rights law, institutional processes have proved quite useful in explaining the increasing legalization of organizational governance (Dobbin et al., 1988; Edelman, 1990, 1992; Dobbin et al., 1993; Sutton et al., 1994; Dobbin and Sutton, 1998; Edelman and Petterson, 1999; Edelman et al., 1999). Organizations often adopt legal practices and structures because their cultural environment constructs adoption as the legitimate or natural thing to do (DiMaggio and Powell, 1983; Edelman, 1990, 1992). Edelman (1990, 1992) shows how organizations have responded to new laws by creating new offices and developing written rules, procedures and policies in an attempt to achieve legal legitimacy, while simultaneously limiting law's impact on managerial power and unfettered discretion over employment decisions. In a sample of 346 organizations only 30 had created anti-discrimination guidelines by 1969, 118 instituted such rules in the 1970s, and 75 more followed suit in the 1980s. There was a sharp rise in other forms of legalization during the 1970s,

including the spread of special offices devoted to civil rights issues and special procedures for processing discrimination complaints. Once early adopters began creating these structures, they spread quickly throughout organizational fields (Edelman, 1990, 1992; Dobbin et al., 1993; Sutton et al., 1994; Edelman and Petterson, 1999; Edelman et al., 1999).

Anti-discrimination rules, civil rights offices, grievance procedures and other symbolic legal structures served as visible indicia of attention to law, which offered legitimacy benefits to the organizations that adopted them. These structures allowed for compliance in form, without requiring much substantive change in the workplace environment (Edelman, 1992; Edelman and Petterson, 1999; Edelman et al., 1999). Intraorganizational professionals such as in-house lawyers, human resource professionals and affirmative and diversity officers, helped to institutionalize these structures by claiming that structures such as grievance procedures and formal personnel offices could insulate organizations from lawsuits and legal liability (Edelman et al., 1999). Over time, these structures acquired an institutionalized status as 'rational' forms of compliance (Edelman, 1992; Edelman et al., 1999; Edelman and Suchman, 1997).

Research raises questions as to the extent to which the legalization of organizational fields achieves the goals of civil rights laws. Two empirical studies in the 1990s suggest that structures such as EEO (Equal Employment Opportunity) offices and rules have little impact on the workforce representation of women and minorities, and that some affirmative action plans may even adversely affect women (Baron et al., 1991; Edelman and Petterson, 1999).² Other research suggests that as rights are constructed, adjudicated and resolved by law-like organizational structures, understandings of and compliance with civil rights law tend to become 'managerialized,' or infused with managerial logic (Edelman et al., 1993; Edelman et al., 2001). For example, the Edelman et al. (1993) study of internal grievance complaint handlers for ten large organizations reveals that complaint handlers were often unconcerned with actual formal legal rights and outcomes, were not fully apprised of the law, and chose not to invoke legal principles when attempting to address employee complaints.³ Complaint managers typically chose to remedy employee grievances with managerial solutions such as training programs, transferring the grievant and providing counseling rather than formal recognition of legal rights violations (Edelman et al., 1993; Edelman and Cahill, 1998; Edelman and Suchman, 1999; Albiston, 2005).

Edelman et al. (2001) show that ideas about civil rights were transformed in the context of managerial rhetoric about diversity that reframed legal values in terms of traditional managerial goals. In particular managerial rhetoric helped to transform the notion of 'diversity' during the 1980s and

1990s so that it became disassociated from the legal ideal of equitable racial and gender representation, and instead transformed into a managerial ideal in which varying backgrounds and viewpoints in a workforce could be galvanized for productive purposes (Edelman et al., 2001). Managerialization also occurs as organizations build discretion into rules that are designed to implement law (Edelman et al., 1991; Edelman and Suchman, 1999) and when organizations create rules explicitly to evade fulfilling legal mandates (Edelman, 1992; Edelman and Suchman, 1999; Sutton and Dobbin, 1996). Thus, the managerialization of law can be subtle – as in the case of rhetorical changes in understandings of diversity – or overt – as when organizations rewrite their policies to escape the force of law.

The managerialization of law affects not only the form and content of law in organizational fields but also the construction of law in legal fields. Legal fields consist of courts, legislatures, administrative agencies and all legal actors, as well as the various parties that enter into the legal system on an occasional basis (Edelman et al., 2001; Edelman, 2007). The overlap, in both actors and institutions, between organizational and legal fields provides an outlet through which the ideas that become institutionalized in organizational fields eventually seep into legal fields. In particular, just as organizations exist within organizational fields, courts exist within legal fields (Edelman et al., 2001; Edelman, 2007). Because organizations and organizational actors are regular participants in the legal process, there is substantial overlap between organizational and legal fields (Edelman and Suchman, 1997, 1999). As organizations seek legal advice, enter into litigation or draw on legal constructs or categories when they devise their own policies and procedures, they come into contact with legal fields. It is through this interaction that the boundaries of these fields blur and the logics merge (Edelman et al., 2001; Edelman, 2007). As organizations increasingly ‘legalize’ themselves through the creation of law-like structures, these structures become a catalyst through which organizational logic is reintroduced into legal fields in a way that influences core legal actors such as lawyers and judges (Edelman et al., 2001; Edelman et al., 2011; Edelman, 2005, 2007). Couched as ‘forms’ of compliance, grievance procedures and anti-harassment policies that exude the markers of rational governance eventually seep into the logic of legal fields, through the interplay of organizational and legal actors.

Law is rendered endogenous as ideas about the meaning of law and compliance, which have been managerialized through organizational fields, shape and eventually become institutionalized within legal fields. Edelman et al. (1999) demonstrate that employment discrimination law is endogenous to the extent that judicial interpretations of anti-discrimination law come to incorporate the presence of institutionalized structures

as evidence of fair, non-discriminatory treatment. More recently Edelman and colleagues have shown that legal endogeneity increases over time, as organizational structures become increasingly institutionalized within both organizational and legal fields (Edelman et al., 2011).

In sum, research on the interplay of organizations and law in the employment context suggests that organizations initially respond to legal ambiguity by creating structures designed to symbolize attention to law. Once in place those structures engender struggles over the meaning of law as professionals and other organizational actors seek to implement law within organizations. Because of their training, experience and professional purview, organizational actors tend to construct law in ways that are consistent with traditional managerial logics and goals. As these constructions of law become institutionalized over time, they subtly and gradually affect how courts, and eventually larger society, understand the meaning of law and what constitutes rational compliance with law. Just as employers develop norms and practices in their legal environments, judges take their cues from norms and practices that become institutionalized within organizations. Judicial decision making is therefore as much about the legal fields within which judges live and work – which, of course, includes institutionalized organizational practices – as it is about applying legal precedent. Because legal fields overlap with organizational fields so much, judges (as well as other social actors such as employees and members of society generally) are prone to ideas about the rationality of organizational structures that become institutionalized within organizational fields (cf the contributions to this volume by Kagan, Gunningham and Thornton, Feldman and Lobel, and Hutter). As courts embrace managerial rhetoric and values into law, organizational constructions of law gain not only organizational, but also legal legitimacy. And so the meaning of law and compliance are shaped over time through a process in which organizations respond to legal ambiguity by creating symbolic structures, reconceptualize law through the lens of management, and help to institutionalize managerialized notions of what constitutes compliance. Law correspondingly becomes endogenous as courts incorporate managerialized conceptions of law and compliance into their decision making.

COMPLIANCE AS PROCEDURE IN LEGISLATIVE AND ADMINISTRATIVE CONSTRUCTIONS OF CONSUMER PROTECTION LAW

Recent work extends the idea of legal endogeneity from the judicial context to the process through which legislation and administrative law

are constructed. Most extant work on the relationship between business organizations and legislators and regulators understands organizations as rational actors. Analyses of interest group politics, mostly in political science, suggest that business interests often co-opt the legislative process through tactics such as lobbying, agenda setting and venue shopping (Bernstein, 1955; Stigler, 1971; Quirk, 1981; Kingdon, 1984; Baumgartner and Jones, 1993; Ayres and Braithwaite, 2001; Leech et al., 2002; Kamieniecki, 2006). With respect to administrative agencies, work in this vein points to the role of strategic organizations in 'capturing' regulatory agencies (Huntington, 1952; Bernstein, 1955; Stigler, 1971; Shapiro, 1988). In general the extant literature envisions regulation as a top-down process, whereby regulators try to coerce or in some cases encourage organizations to comply, while organizations engage in rational, strategic choices as to whether to comply (Jordana and Levi-Faur, 2004; Braithwaite, 2008).⁴ In this view law is exogenous to organizations in that it is imposed upon them, although it is open to their influence.

Talesh (2009) however draws on neo-institutional ideas of organizational fields and legal endogeneity to show how institutionalized logics operating among organizations play an important role in determining the form and structure of legislation and administrative processes. Focusing on the evolution of California's consumer protection laws, Talesh emphasizes how institutional and political forces come together to shape the meaning of compliance in the consumer protection context. Although political mobilization and contestation remain prevalent in the legislative process, the political frames used by organizations lobbying the legislature reflect logics that are derived from institutionalized norms and structures developed by and through the organizational field.

Talesh illustrates the endogeneity of law through an analytic history of consumer protection legislation. In 1970 California passed the first consumer warranty protection law in the US, the Song-Beverly Act, in order to limit manufacturers' ability to perpetuate social and economic advantage through the manufacturer-consumer relationship. The Song-Beverly Act specified that if manufacturers were unable to make repairs under warranties after being given a 'reasonable number of attempts,' consumers could seek relief in court and obtain full restitution or replacement, attorneys' fees, and a civil penalty. Despite granting consumers powerful legal weapons, the Song-Beverly Act did not specify the meaning of a 'reasonable number of attempts.'

In the early 1980s the California legislature attempted to curb any ambiguity in the warranty law by creating a 'lemon law' that established a 'legal presumption' as to what constitutes a 'reasonable number of attempts' to fix a problem that consumers could specifically invoke against automobile

manufacturers. During the legislative lawmaking process automobile manufacturers alerted the legislature that they (the manufacturers) had during the 1970s created dispute resolution structures to resolve automobile warranty disputes outside court. This institutional form of dispute resolution quickly spread, and by 1981 over 2000 automotive dealers across the US had jointly funded and controlled a third party dispute resolution process to resolve warranty complaints. Manufacturers eventually used such third party organizations to administer these programs in order to legitimize them.

As manufacturer advocacy coalitions lobbied the legislature concerning the terms of the 'lemon law,' Ford, General Motors and Chrysler framed the purpose and benefits of their dispute resolution processes in terms of legitimacy, efficiency, informality and customer satisfaction, as opposed to consumer protection (Talesh, 2009). Manufacturers collectively claimed that their institutional venues were primarily created to benefit consumers and to provide less costly, more effective ways of resolving disputes. Without formally evaluating the merits of these procedures, the legislature subsequently incorporated these institutionalized organizational practices into legal doctrine, by making consumer rights and remedies contingent on first using certified third party manufacturer dispute resolution structures in compliance with cursory federal regulation.

At first blush, one might infer that institutionalized business structures may in fact serve as a useful mechanism for resolving these statutory rights. However deference to organizational construction of the California 'lemon law' made powerful consumer rights and remedies contingent on first using manufacturer dispute resolution procedures, where attorneys' fees and civil penalties were not available and where one more repair attempt could be awarded in lieu of a consumer restitution or replacement of their vehicle (Talesh, 2009).

Once organizational logic as to the meaning of compliance became formally codified into law, legislative amendments had less to do with protecting consumer rights and more to do with giving legal legitimacy to institutional venues through cursory regulatory monitoring and oversight, and bolstering the degree to which consumers, manufacturers, legislators and regulators defer to institutional venues designed and funded by manufacturers (Talesh, 2009). In particular, changes to the regulatory structure and certification process aimed at strengthening the legitimacy of these forums ultimately allowed arbitrators from manufacturer sponsored programs to retain flexibility and final authority regarding the legal standards, statutory or otherwise, they chose to ultimately apply in particular cases. Thus, as businesses 'legalized' their domains with law-like structures, business logics – anchored in informality, efficiency, discretion, and problem

solving – flowed back into core public legal institutions through the efforts of advocacy coalitions, who reframed the meaning of consumer protection for legislators and regulators.

The consumer protection example highlights why a compliance versus noncompliance dichotomy fails to capture the relationship between business and law. Manufacturers did not strategically choose to ‘comply’ or ‘not comply’ with consumer warranty laws. Instead manufacturers were able to reshape the meaning of compliance with consumer warranty laws and transform public rights attainable in court into private rights to dispute resolution (Talesh, 2009). As in the employment context (Edelman et al., 1993), dispute resolution processes provided a means through which manufacturers’ values and norms influenced the structure and content of the organizational field far more than did consumers’ interests. However, unlike legal endogeneity in the judicial context, political mobilization – in the form of manufacturer advocacy coalitions – influenced the legislative process by claiming that the ‘legal value’ (Edelman et al., 1999:447) of these dispute resolution structures lay in their informality and efficiency. Because private dispute resolution structures created and institutionalized within the organizational field ultimately shaped the legislative facet of the legal environment, the politics of consumer protection policy were at least partially rooted within the logic of organizational fields. By analyzing the connection between institutionalized logics and political mobilization during legislative and regulatory processes, Talesh shows not only the institutional conditions under which taken-for-granted norms and values were developed by and through the organizational field, but also how these logics are politically mobilized during the legislative process. Political contestation is a critical factor in determining which legal principles, structures and rules come to dominate the meaning of law as organizational and legal field logics overlap.

CONCLUSION: OVERLAPPING FIELDS AND THE IMPLICATIONS OF AN ORGANIZATIONAL CONSTRUCTION OF LAW AND COMPLIANCE FOR REGULATORY CAPITALISM

This chapter offers an alternative theoretical approach for understanding the relationship between organizations and legal regulation. Whereas most accounts seek to specify the conditions under which organizations comply or do not comply with law, we focus on the processes through which organizations construct the meaning of compliance. In particular, drawing upon neo-institutional organization theory, we suggest that

conceptions of law and compliance that evolve within organizational fields can shape judges' and legislators' understandings of compliance, and ultimately the meaning of law.

Building on Edelman's work on how the managerialization of law in organizational fields shapes the meaning of law in legal fields and Talesh's work on the mechanisms through which institutional and political forces together shape the meaning of law, we argue that compliance is a complex process that is shaped by institutional and political processes that shape logics within fields and by the flow of logics across field boundaries. The two examples we have focused on – judicial construction of civil rights law and legislative constructions of consumer protection law – show that organizations are not simply rational actors responding to top-down regulation, but rather that organizations are involved in the social construction of legal meaning. Through the institutional and political processes that we have discussed, organizational ideas about the meaning of law and compliance flow into legal fields (specifically into the legislative and judicial arenas) and reshape the meaning of law and compliance.

While we do not contend that organizations never respond rationally to top-down mandates, we argue that accounts of compliance that focus only on organizations as rational actors miss a large part of the compliance picture. Laws regulating organizations are often broad and complex. Rather than stating clear and coercive rules, they motivate a process through which organizations collectively seek to construct legal meaning. This process is fraught with politics as firms and their employees, customers and competitors compete for legal constructions that favor their interests. But this process is also shaped by institutionalized logics that evolve over time through the everyday processes of organizational life, and in particular through dispute resolution. Organizations are social actors that both respond to and construct meaning within organizational fields. Legal actors, including legislators, administrators and judges, exist within legal fields that overlap with organizational fields in myriad ways. Through the continual overlap of organizational and legal fields and interplay among organizational and legal actors, the meaning of compliance evolves and comes into focus. Understanding law as shaped through the processes of institutionalization and political mobilization that take place within, and at the intersection of, organizational and legal fields reveals the ways in which organizations subtly reshape the meaning of law.

Although the two examples offered in this chapter involve constructed forms of compliance that favor business over employees and consumers, we do not mean to suggest that business construction of the meaning of compliance is always harmful to individuals who encounter law in organizational domains. Institutionalized structures and practices developed

within organizational fields offer individuals informal opportunities to resolve conflicts and vent frustrations, and in some cases provide redress to employees or consumers whose rights have been violated. More importantly, these structures in some cases help to infuse organizational fields with legal values. Nonetheless, it is important to recognize that the process of legal endogeneity may foster forms of compliance that are more symbolic than substantive, and that are legal in form but provide little relief to victims of discrimination or to consumers who have bought lemons.

Continued investigation into the subtle processes by which organizations shape the meaning of compliance is crucial especially given the rise of 'regulatory capitalism' (Levi-Faur, 2008). Amidst the proliferation of public-private partnerships and 'responsive regulation' sanctioned and approved by legislatures and administrative agencies over the past 20 years, business organizations across a wide variety of industries are increasingly engaged in 'public' decision making in private settings and in determining how they will comply with law (Braithwaite, 1982; Macaulay, 1986; Ayres and Braithwaite, 1992; Freeman, 2000; Hacker, 2002; Lobel, 2004). Through regulatory negotiation and formal contracting out of public services and benefits, the private role in public governance has migrated into the educational system, health care administration, prison management, policing and environmental regulation (Braithwaite, 1982; Gunningham, 1995; Hacker, 2002; Kagan et al., 2003; Lobel, 2004; Ansell and Gash, 2008; Freeman and Minnow, 2009). Private organizations are not merely influencing government institutions; private organizations are also performing many traditional government functions with state sanction and approval. Moreover, at least in the civil and consumer rights context, private organizations via collaborative arrangements with the state, are now adjudicating public legal rights through mandatory arbitration clauses and the creation of internal and third party forums to resolve legal disputes (Galanter and Lande, 1992; Edelman and Suchman, 1999; Talesh, 2009). Although there may be potential benefits to delegated governance and self-regulatory arrangements, our institutional analysis highlights the potential of such organizations to undermine legal ideals through symbolic or ineffective structures and policies.

The recent global financial crisis highlights the need for further analysis of how businesses construct the meaning of compliance in ways that sometimes weaken legal regulation. Just as managerial values and business logics transformed civil and consumer rights law, corporate culture and institutionalized organizational practices helped to shape the regulation of financial and lending institutions. Deference to corporations, particularly with respect to the disclosure policies of financial lending institutions, internal compliance structures, and auditing and reporting

systems, alongside a push for flexible, collaborative regulation, failed to sufficiently protect consumers and investors from excessive fiscal risk-taking policies. Financial disclosure regulation and policies resulted in 'an exercise in political symbolism' (O'Brien, 2007). Although corporate and lending institution structures and 'best practices' may symbolize compliance and ethical conduct by corporations and financial institutions, institutionalized structures did not discourage financial fraud and abuse even though government institutions chose to allow for bottom up constructions of the meaning of compliance with legal regulation. Therefore, policymakers overlooking business ability to construct the meaning of compliance in unfavorable ways could unwittingly be 'watering down' law and undermining public policy goals under the guise of collaborative partnership.

Although there are now a number of empirical studies that reveal the operation of legal endogeneity in securities regulation (Reichman, 1992; Krawiec, 2003, 2005; O'Brien, 2007), insurance regulation (Schneiberg, 1999; Schneiberg and Bartley, 2001) and criminal justice (Jenness and Grattet, 2005), more work is needed that addresses the relationship between business and legal regulation. In particular more research is needed to investigate the various ways in which institutional and political mechanisms are at play in shaping the meaning of compliance. Such studies are likely to move us away from a 'compliance/noncompliance model,' and toward a 'business construction of law and compliance model' that simultaneously encapsulates the institutional logics and political power of organizations operating in overlapping organizational and legal fields.

NOTES

- * We would like to thank Christine Parker and Vibeke Nielsen for very helpful comments on an earlier draft. We would also like to thank the other contributors to this volume for helpful comments given at the 2010 Annual Meeting of the Law and Society Association.
- 1. The concept of an 'organizational field' bears some resemblance to Kagan et al.'s (2003) notion of social, economic, and legal 'licenses to operate' in that both emphasize the role of organizations' environments in shaping organizational behavior. We think that neo-institutional theory provides a more completely theorized and holistic explanation of the mechanisms through which socially constructed rationalities affect organizational action but the notion of license to operate helps to elucidate the various types of constraints and opportunities within organizational environments.
- 2. Note, however, that Braithwaite (1992, 1993) found that where EEO officers had strong professional networks and also connections to networks of women employees, regulation resulted in greater employment of women.
- 3. On a positive note, their study revealed that internal complaint handlers generally want to resolve all complaints, even those complaints with little legal basis, so as to maintain

good morale and smooth working relations. Thus, employer structures have the potential to widen the net in terms of responding to employee concerns.

4. More recently, increasing attention has been given to identifying the legal, social, and normative factors that explain organizational compliance or noncompliance with regulation (Vaughan, 1998; Kagan et al., 2003, 2004; Coglianese et al., 2008).

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