

CORPORATE COMPLIANCE AS A PROBLEM OF CULTURAL MOTION

EXTENSION OF REMARKS TO THE SYMPOSIUM ON NEW DIRECTIONS IN CORPORATE COMPLIANCE

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Abstract

The culture concept has taken on an explanatory role in popular media accounts of corporate misconduct, from Enron in the early 2000s to the recent Volkswagen emissions-cheating scandal. However, the concept, from its origins in the Enlightenment philosophy of Immanuel Kant at the end of the eighteenth century through its transformations within the discipline of anthropology during the twentieth century, has continued to undergo refinement. This Article outlines recent developments in culture theory, focusing on one novel approach to culture as a form of motion. This approach views culture as propelled, retarded, and altered in its movement through the world by four classes of force: inertial, entropic, metacultural, and interest-based. I argue that the approach illuminates the problem of corporate compliance. True compliance occurs when the force of an explicitly formulated regulation—a metacultural force—is brought to bear on conduct. Much of what appears to be compliance in this true sense is actually habitual cultural practice, driven by inertia. An important source of metacultural force inside the corporation is the coherence of its regulations and internal motivations, that is, its ethos. Correspondingly, the sources of non-compliance include ethos incoherence. The Article concludes with two corporation-external sources of ethos incoherence—legal theories regarding corporations as existing exclusively for the benefit of shareholders, and economic theories emphasizing the self-regulatory character of markets and the

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quest for profit. Compliance, from this perspective, depends in part on the relationship between corporations and their external cultural environment.

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I. THE CULTURE CONCEPT APPLIED TO BUSINESS

One can hardly pick up a newspaper these days without reading about the culture of some business enterprise. The recent Volkswagen scandal is a case in point. Engineers at Volkswagen gamed the emission detection tests by installing in many vehicles software that activates emission controls only when a test is being performed.¹ Since those controls cut into vehicle performance, Volkswagen effectively hoodwinked regulators into believing that their vehicles met government-mandated emission standards while still delivering the acceleration and fuel efficiency the company claimed. Under normal driving conditions, the vehicles actually emitted up to forty times the government-allowed limit for nitrogen oxide pollutants.² According to a 2015 *New York Times* article: “As the automotive giant struggles to

1. Guilbert Gates et al., *How Volkswagen’s ‘Defeat Devices’ Worked*, N.Y. TIMES, http://www.nytimes.com/interactive/2015/business/international/vw-diesel-emissions-scandal-explained.html?_r=0 (last updated Mar. 16, 2017).

2. Russell Hotten, *Volkswagen: The Scandal Explained*, BBC NEWS (Dec. 10, 2015), <http://www.bbc.com/news/business-34324772>.

explain a globe-spanning emissions-cheating scandal, its management culture—confident, cutthroat and insular—is coming under scrutiny as potentially enabling the lawbreaking behavior.”³

Back in 2002, claims about culture abounded in explanations for the collapse of Enron.⁴ A *Wall Street Journal* article, for example, proposed that Enron’s corporate culture “drove Enron to dizzying growth, as the company remade itself from a stodgy energy business to a futuristic trader and financier. Eventually it led Enron to collapse under the weight of mindbogglingly complex financial dodges.”⁵

But the culture concept was not always such a popular explanatory device. It is hard to pinpoint precisely when it emerged. A case could be made that it became fashionable around the time of publication of Michael Lewis’s book, *Liar’s Poker*, an exposé of the seemingly outrageous day-to-day culture at Salomon Brothers, one of the great Wall Street investment banks back in the 1980s.⁶ The book even had a chapter entitled: “Learning to Love Your Corporate Culture.”⁷ By that time, though, anthropological approaches to culture were already beginning to catch on in some corners of the business literature. The year 1982, for instance, saw the publication of Terrence Deal and Allan Kennedy’s book, *Corporate Cultures: The Rites and Rituals of Corporate Life*.⁸ This book translated for a business audience ideas growing out of anthropological research on small-scaled societies.⁹ It remains a valuable read for anyone interested in this area.

It was also around 1980 that anthropologists themselves were once again becoming interested in the culture of corporations.¹⁰ Histories of business anthropology usually look back to the 1930s,¹¹ but they also

3. Jack Ewing & Graham Bowley, *The Engineering of Volkswagen’s Aggressive Ambition*, N.Y. TIMES (Dec. 13, 2015), http://www.nytimes.com/2015/12/14/business/the-engineering-of-volkswagens-aggressive-ambition.html?_r=0.

4. See Anita Raghavan et al., *How Enron Bosses Created a Culture of Pushing Limits*, WALL ST. J., <http://www.wsj.com/articles/SB1030320285540885115> (last updated Aug. 26, 2002, 11:58 AM).

5. *Id.*

6. See generally MICHAEL LEWIS, *LIAR’S POKER: RISING THROUGH THE WRECKAGE ON WALL STREET* (1989). Lewis’s book was even reviewed in an extended scholarly essay. See generally Denis Collins, *An Ethical Analysis of Organizational Power at Salomon Brothers*, 2 BUS. ETHICS Q. 367, 367 (1992).

7. *Id.* at 39.

8. See generally TERRENCE E. DEAL & ALLAN A. KENNEDY, *CORPORATE CULTURES: THE RITES AND RITUALS OF CORPORATE LIFE* (1982).

9. *Id.*

10. See Greg Urban & Kyung-Nan Koh, *Ethnographic Research on Modern Business Corporations*, 42 ANN. REV. ANTHROPOLOGY 139, 140 (2013).

11. See MARIETTA L. BABA, NAT’L ASS’N FOR THE PRAC. OF ANTHROPOLOGY, BUSINESS

give the late 1970s and early 1980s as the period of revival in which some corporations began to hire “anthropologically trained ethnographers directly into research and product development labs.”¹² The 1980s were also a period in which Japan became a serious contender for world economic leadership.¹³ Some attributed Japan’s success to Japanese culture and even to the peculiarities of the Japanese corporate form, which seemed to conform to a family model.¹⁴

As the anthropological culture concept from the first half of the twentieth century worked its way into popular understanding of the corporate form, anthropological research was moving on.¹⁵ By the last two decades of the twentieth century, some anthropologists were even rejecting the term, “culture,” finding it used too often to stereotype a group of people, downplay internal differences, and underestimate movement across boundaries.¹⁶ However, the term continues to prove useful to scholars across a range of disciplines, even if the specific culture concept has undergone revision.¹⁷

The present article endeavors to bring to the attention of legal audiences one novel anthropological reincarnation of the culture concept that focuses on culture as a form of motion.¹⁸ As a principal proponent of this approach, I argue that it provides greater precision and clarity in the analysis of cultural phenomena, especially as they pertain to business. This approach also furnishes fresh insights about corporate compliance without forgoing the appeal that the traditional but more diffuse culture concept has had in the popular literature. In order to provide context for the approach, the article begins with a thumbnail sketch of the prior history of the concept. It then proceeds to

AND INDUSTRIAL ANTHROPOLOGY: AN OVERVIEW 4 (1986); HELEN B. SCHWARTZMAN, ETHNOGRAPHY IN ORGANIZATIONS 5–6 (1993); Ann T. Jordan, *The Importance of Business Anthropology: Its Unique Contributions*, in ADVANCED READINGS IN BUSINESS ANTHROPOLOGY 22 (Robert Guang et al. eds., 2011).

12. MELISSA CEFKIN, *Introduction: Business Anthropology and the Growth of Corporate Ethnography*, in ETHNOGRAPHY AND THE CORPORATE ENCOUNTER: REFLECTIONS ON RESEARCH IN AND OF CORPORATIONS 1, 4 (Melissa Cefkin ed., 2009).

13. See Brian Moeran & Christina Garsten, *What’s in a Name? Editors’ Introduction to the Journal of Business Anthropology*, 1 J. BUS. ANTHROPOLOGY 1, 11 (2012).

14. See *id.*

15. Robert Brightman, *Forget Culture: Replacement, Transcendence, Relexification*, 10 CULTURAL ANTHROPOLOGY 509, 509 (1995).

16. For a trenchant review of these critiques, and also a defense of the traditional culture concept, see *id.* at 509, 510–11, 539–41.

17. GREG URBAN, METACULTURE: HOW CULTURE MOVES THROUGH THE WORLD 250 (2001) [hereinafter URBAN, METACULTURE].

18. *Id.* at 15; Greg Urban, *A Method for Measuring the Motion of Culture*, 112 AM. ANTHROPOLOGIST 122, 122 (2010) [hereinafter Urban, *Motion of Culture*].

the concept of replication, the central concept for the study of culture as a form of motion. The argument is that culture moves at the behest of forces (inertial, entropic, reflexive or metacultural, and interest-based), and that compliance results from the operation of those forces on cultural replication. The analysis of cultural motion in terms of forces simultaneously enables us to understand the sources of non-compliance. From the base of understanding why non-compliance arises, it is possible to venture suggestions regarding how the broader environment for compliance might be improved and perhaps already is improving.

II. A BRIEF HISTORY OF THE CULTURE CONCEPT

The culture concept in anthropology developed out of late eighteenth and early nineteenth century thought, notably that of Immanuel Kant and most especially his culminating major publication, *Anthropology from a Pragmatic Point of View*.¹⁹ Kant had argued for a notion of culture as cultivation.²⁰ Culture for him was what humans, as “free acting beings . . . can and should make of themselves.”²¹ They possess a capacity for self-perfection, with culture accumulating over time, as reflected in the advances of science and industry and civilization more generally. Humans cultivate themselves through learning, and they cultivate others through example and teaching.

By the latter nineteenth century, this idea of self-perfection—along with what became known as the “unilinear evolution” approach to culture—gave way to a conception of culture as carried by social groups, especially peoples.²² In this view, the social world consisted of many different cultures, each studied more or less separately. The first English language definition of this social group conception of culture is generally credited to Edward Burnett Tylor, who, in 1871, wrote: “Culture, or Civilization . . . is that complex whole which includes knowledge, belief, art, morals, law, custom, and any other capabilities and habits acquired by man as a member of society.”²³ Tylor and subsequent anthropologists placed emphasis on acquisition by virtue of membership in a group; by participating in the group, one over time

19. See Greg Urban, *Neo-Kantianism*, in *THEORY IN SOCIAL AND CULTURAL ANTHROPOLOGY* 590, 590–93 (R. Jon McGee and Richard L. Warms eds., 2013).

20. IMMANUEL KANT, *ANTHROPOLOGY FROM A PRAGMATIC POINT OF VIEW*, at xiii (Robert B. Louden ed. & trans., Cambridge U. Press 2006) (1798).

21. *Id.*

22. Elizabeth Prine Pauls, *Cultural Evolution*, *ENCYCLOPEDIA BRITANNICA*, <https://www.britannica.com/topic/cultural-evolution> (last updated May 1, 2009).

23. 1 EDWARD B. TYLOR, *PRIMITIVE CULTURE: RESEARCHES INTO THE DEVELOPMENT OF MYTHOLOGY, PHILOSOPHY, RELIGION, ART, AND CUSTOM* 1 (John Murray ed., 1871).

acquired the group's culture.²⁴ This conception underwent revisions and refinements but dominated the discipline of anthropology for most of the twentieth century.²⁵

This social group concept of culture worked well in the mid-twentieth century because the primary objects of empirical interest tended to be small-scale, non-Western societies. For the same reason, the concept works well in describing the distinctiveness of business enterprises and other organizations, where the differentiating characteristics seem obvious from an outsider perspective. The characterization of Volkswagen's recent management culture as "arrogant," for example, pinpoints an attitude within the company that might help explain why Volkswagen managers thought they could outwit government regulators. The description works together with others depicting an authoritarian culture (of "fear and respect") in which employees were reluctant to question the instructions of their bosses—exemplifying arrogance among superiors and fear among subordinates.

The usefulness of the social group version of the culture concept in characterizing distinctiveness, however, also led some to criticize it as stereotyping and failing to call attention to group internal differences.²⁶ This was especially true in the case of the attack on "orientalism," which saw the drawing of cultural differences as inevitably bound up with hierarchical rankings of social groups, leading in some ways back to the critiques of nineteenth century unilinear evolution theories.²⁷ In the case of corporate cultures and issues of compliance, this might be seen as a benefit in trying to figure out how to improve compliance, but it was a sensitive issue in the broader political-economic world marked by disparities and racial ideologies.

Quite apart from politically sensitive issues, there was also the work of research oriented disciplines to press the boundaries of what is known, so that many scholars focused on what might be regarded as specific aspects of the broader study of culture. The focus on discourse,²⁸ for example, can be seen as an alternative to describing culture more generally, since the term zeroes in on linguistically constructed expressions that pass between or circulate among people. But discourse can also be seen as one aspect of culture, even if a hugely important one. The same is true of the term "habitus," understood as "a system of

24. *See id.*

25. *See Pauls, supra* note 22.

26. Brightman, *supra* note 15, at 523.

27. EDWARD W. SAID, *ORIENTALISM* 5-6 (1978).

28. Brightman, *supra* note 15, at 532-33.

acquired dispositions.”²⁹ It focuses attention on embodiment, but again, habitus can be seen as an aspect of culture or as one way to approach culture. All of these concepts in some way insinuate research more deeply into the terrain mapped out by earlier work.

The investigation of cultural motion explored here in connection with compliance begins with what is arguably the key feature of culture—its acquisition from and transmission to other people by processes of social learning. The mid-twentieth century concept, by way of contrast, emphasizes the social group as the carrier.³⁰ There is a difference in focus. However, the motional approach is not at all incompatible with the idea of studying the culture that does circulate inside a social group, whether a tribal population, a nation, a town within a nation, a business corporation, or, for that matter, even a special purpose team constituted within an enterprise to accomplish a specific task. From a motional perspective, however, one might question the degree to which sharing takes place within the group, and one might examine the pathways through which that sharing takes place or fails to take place. Correspondingly, the motional approach raises questions about group-ness itself. In what measure does the group exist prior to the circulation of culture within it? In what measure does the group emerge out of the circulation of culture among its members?

The study of motion gets us to the highly concrete, such as learning to operate a stud gun on an assembly line or acquiring an arrogant attitude towards governmental laws and regulations. But it also gets us to the highly general, since characterizations of culture can also form part of culture. Those characterizations of culture are “metaculture,” or reflexive culture, as in the practice of referring to a highly dispersed group of people engaged in a form of cooperative cultural activity as a “corporation” (Volkswagen AG, for example, or Samsung) or a “nation” (the “United States of America,” “The People’s Republic of China”).³¹ The cultural activities grouped together in these ways form highly abstract sets, although they can be analyzed in fine-grained detail. Crucially, for understanding compliance, the study of motion also poses questions about the forces that bring about, redirect, accelerate, or impede cultural movement.

29. PIERRE BOURDIEU, *IN OTHER WORDS: ESSAYS TOWARDS A REFLEXIVE SOCIOLOGY* 13 (Matthew Adamson trans., Stan. U. Press 1990) (1987) [hereinafter BOURDIEU, *IN OTHER WORDS*]; see also PIERRE BOURDIEU, *DISTINCTION: A SOCIAL CRITIQUE OF THE JUDGMENT OF TASTE* 169-225 (Richard Nice trans., Harv. U. Press 1984) (1979).

30. See URBAN, *METACULTURE*, *supra* note 17, at 1-2.

31. *Id.* at 252-254, 269-70.

III. CULTURAL REPLICATION

For something to count as an element of culture, from the perspective of cultural motion, it must ultimately be traceable to processes of replication.³² Take the phenomenon of jaywalking, where a pedestrian illegally crosses the street. In New York City, the East Coast, and a good portion of the United States more generally, people are in the habit of jaywalking. It is technically illegal, but they do it all the same. And no one issues them a ticket. Let us think of jaywalking as an element of culture. Arguably, it is an acquired habit. If you grow up in New York City or merely visit there for a while, you observe other people doing it, and they do not get a ticket, so you follow suit. It is a culturally acquired form of conduct, part of what Pierre Bourdieu calls one's "habitus"—or "system of predispositions."³³ Those who embody the practice of jaywalking are predisposed to do it.

But how do we know it is a culturally acquired habit? One answer is that there are other places in which people do not have the habit. Los Angeles is a case in point. Pedestrians there are much less likely to jaywalk, and, if they do, they are not infrequently issued tickets.³⁴ A 2015 *Los Angeles Times* story³⁵ documents one case where a \$197 ticket was issued to one Eduardo Lopez, described as a college student trying to catch a bus to get to class. Reportedly, he had stepped into the street "after the red flashing hand and countdown timer had begun."³⁶ The interesting part of the story is the reader response in the form of letters to the newspaper: "[T]he initial batch of letters . . . didn't express much sympathy for the aspiring firefighter stuck with a fine that amounts to a third of his monthly rent."³⁷ But then letters came in from outside readers or from those who had lived elsewhere, and mounting criticism developed of the practice of ticketing pedestrians.³⁸ A kind of culture clash sprouted up between those who had acquired the jaywalking cultural habit and those who had not or, rather, who had acquired other habits.

While the example is about compliance, I want to focus for the time being just on the culture, on the fact that a habit and predisposition to

32. Urban, *Motion of Culture*, *supra* note 18, at 124–30.

33. BOURDIEU, IN OTHER WORDS, *supra* note 29, at 90.

34. Paul Thornton, *A City that Punishes Pedestrians: Out-of-Town Takes on Jaywalking in L.A.*, L.A. TIMES (Apr. 29, 2015, 2:48 PM), <http://www.latimes.com/opinion/opinion-la/la-ol-jaywalking-tickets-east-coast-opinion-20150429-story.html>.

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.*

jaywalk (or not) can be socially learned. In this regard, such habits are essentially like other culture. Take, for instance, the habit that Americans have of looking to the left when they cross a city street. This conforms to the driving pattern in the United States in which cars drive on the right. But in the United Kingdom, as well as many former British colonies, people drive on the left. Therefore, pedestrians typically look to the right. The mistake is a scary one that I and perhaps some readers have experienced. A *New York Times* article put it more evocatively: "It is a familiar if somewhat chilling scene, played out regularly at intersections across London. A group of tourists approach a busy street, glance to their left and then confidently step off the curb—and nearly into the path of a bus bearing down on them from the right."³⁹ Here is another culturally acquired habit, albeit one not directly sanctioned under the law. It too is learned through interaction with other people, especially ones driving vehicles, but also those who are crossing the street. And we might observe that there are other culture-specific patterns for street crossing as well. In the major cities of Vietnam, for instance, people step off the curb into rapidly moving traffic through which they have a way of walking, looking at the oncoming motorists; the vehicles too, many of them motor scooters, adjust themselves by parting to allow room for the pedestrian.⁴⁰ You can find videos and discussions by doing an Internet search for "crossing street Vietnam."

We can usefully conceptualize the replication processes underlying cultural motion with the aid of diagrams, such as Figure 1 below. A, B, and C are individuals or groups. The cultural element e_1 could be "jaywalking New York City style." In this case, A would be New York City pedestrian, and B might be either someone growing up in New York City or someone from out of town, say from Los Angeles, observing the repeated reproduction of the element and, in turn, learning to replicate it. B might be someone that C in turn observes and whose production of the element informs his or her own behavior. The solid arrows indicate the movement of the element. The dashed reverse arrows indicate that those to whom an element has been transmitted may retransmit it back to those from whom it came, thereby reinforcing the element. I have put an apostrophe after the element produced by B

39. William E. Schmidt, *London Journal; Britain Puzzles Over a Peril: Crossing the Street*, N.Y. TIMES (Nov. 25, 1991), <http://www.nytimes.com/1991/11/25/world/london-journal-britain-puzzles-over-a-peril-crossing-the-street.html>.

40. See Thomas Fuller, *Why Did the Tourist Cross the Road? The Real Riddle is 'How'*, N.Y. TIMES (Sept. 27, 2012), www.nytimes.com/2012/09/28/world/asia/hanoi-traffic-daunts-tourists.html.

to indicate that it may not be, and, indeed, generally is not, reproduced perfectly, so that there is variation and possible change in the culture as it gets transmitted.

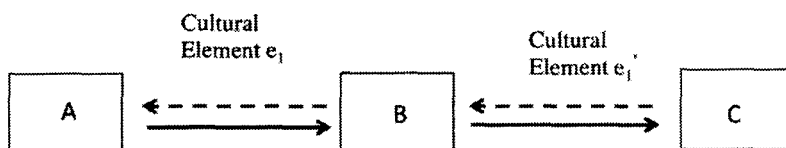


Figure 1: General model of cultural replication as the basis of motion. A, B, and C are individuals or groups. Solid arrows represent the movement of the element e_1 , such as Jaywalking New York City Style. B replicates the element after exposure to it from A; C replicates it after exposure to B. Note that the element produced by B is labeled e_1' , that is, "e one prime," indicating that the replication process may produce copies that differ in some respects from the original.

Replication is the basis for the movement of the element through space and across time. So, for example, someone from Los Angeles who has spent time in New York City may return to Los Angeles and try to reproduce the "jaywalking New York City style" there. The result could be culture change in Los Angeles.

Replication involves linguistic as well as non-linguistic behaviors. For instance, people in Los Angeles might have read about the Edward Lopez jaywalking incident and retold the story to their friends (A=Los Angeles Times, B=readers, C=readers' friends).⁴¹ Similarly, people can reproduce ways of speaking, such as "like speech" ("he was like, 'wow,' and I was like, 'no way'"), a pattern that dates back to the beatnik generation but has become associated with Valley Girl Speak.⁴² Of course, among the linguistic elements that can be reproduced are laws and regulations, where, for example, company employees (B) may learn them from HR (A), and in turn tell or remind other employees (C) about

41. See Thornton, *supra* note 34.

42. S.J. Diamond, *Like it or Not, 'Like' is Probably Here to Stay*, L.A. TIMES (Aug. 21, 2000), articles.latimes.com/print/2000/aug/21/news/cl-7683.

them.

IV. COMPLIANCE AS A DISTINCTIVE TYPE OF REPLICATION

“Compliance,” as I use that term here, represents a distinctive type of replication. It is not the re-production of a cultural element but the enactment of behaviors that are prescribed by that element. The elements of corporate compliance are in the form of explicit laws and regulations put in place by governmental bodies under whose jurisdiction the corporation operates⁴³ or explicit regulations promulgated internally by the firm itself.

Consider, as an example, a company’s regulation that its employees must wear goggles at all times while on the shop floor. The linguistic expression might be: “Safety goggles must be worn on the shop floor at all times.” The expression is a replicable element of culture in its own right. It may also be conveyed through a pictorial sign, as is frequently the case in factory settings, or the pictorial sign may occur together with the linguistic representation. From the point of view of cultural motion, we need to distinguish the replication of the regulation, as mentioned above (from human resources (HR) to employee one to employee two), from the behavior that the regulation prescribes—in this case, the actual wearing of safety goggles while on the shop floor. Both the expression of the regulation and the behavioral manifestation of the regulation are possible replicable culture elements. Employees, for example, might see other employees wearing safety goggles on the shop floor and copy that behavior themselves, quite apart from thinking of it as having anything to do with an expressed rule. The behavioral pattern is a potential element of culture in its own right. Employees would copy it in the way that pedestrians in New York City copy the jaywalking of other pedestrians without thinking in particular about the rule telling them not to cross the street.⁴⁴

We can conceptualize these as two subtypes of replication: replication of the rule, that is, restatements of the rule, or for that matter of linguistic expressions more generally, and replication of the

43. See generally EDWARD V. MURPHY, CONG. RESEARCH SERV., R43087, WHO REGULATES WHOM AND HOW? AN OVERVIEW OF U.S. FINANCIAL REGULATORY POLICY FOR BANKING AND SECURITIES MARKETS (2015), <https://www.fas.org/sgp/crs/misc/R43087.pdf> (providing an overview of the regulatory policies of the agencies that oversee banking and securities markets).

44. See Tina Susman, *Crackdown on a New York Way of Life: Aggressive Driving, Jaywalking*, L.A. TIMES (Jan. 29, 2014), <http://articles.latimes.com/2014/jan/29/nation/la-na-nn-new-york-jaywalking-20140129>.

behavior described by the rule or by the linguistic representation. These two are, in theory, independent pathways of motion. I will suggest later that the independence of these pathways is one source of non-compliance.⁴⁵ In reality, the replication of the rule—where A communicates the rule to B and B communicates the rule to C—is not different in principle from the replication of non-linguistic behavior. Both are based on the copying of the form: in the one case, the linguistic form (the rule), in the other, the non-linguistic behavioral form (the wearing of safety goggles).

When I use the term “compliance” here, however, I am referring to what is analytically a second and distinctive type of replication, one in which the linguistically or otherwise symbolically expressed rule is seen to undergo replication or instantiation in the actual behavior of the persons subject to the rule. An attempt to depict this can be found in Figure 2. In the diagram, A (for example, the HR department) issues a rule (such as “safety goggles must be worn on the shop floor at all times”) to B (an employee of the company). In this type of replication, B does not pass on the rule to C by saying, “Safety goggles must be worn on the shop floor at all times.” Rather, B enacts a behavior (wears safety goggles while on shop floor) that is describable by the rule issued by A (“B always wears safety goggles while on the shop floor”). Here, the replication is apparent in the surface linguistic forms as the similarity between a sentence in the imperative mood and one in the declarative mood:

Imperative: “Safety goggles must be worn on the shop floor at all times.”

Declarative: “B always wears safety goggles while on the shop floor.”

The declarative sentence appears as a transformation of the imperative in which the wording is sufficiently similar to make it obvious that some sort of copying has taken place. The words “safety goggles” and “on the shop floor” are identical, while “wears” is a present habitual form of the verb “to wear” and “must be worn” is a variant with implied second person subject of “you must wear.”

This is an intriguing form of replication in which the word (the rule) is made flesh (behaviorally enacted). We might, accordingly, refer to it as “transubstantiation.” Notice that if B enacts the behavior in the presence of C, C could in turn copy the behavior or reconvert it into

45. See *infra* Section VIII.A.

words by telling yet another actor, “B wears safety goggles while on the shop floor.”

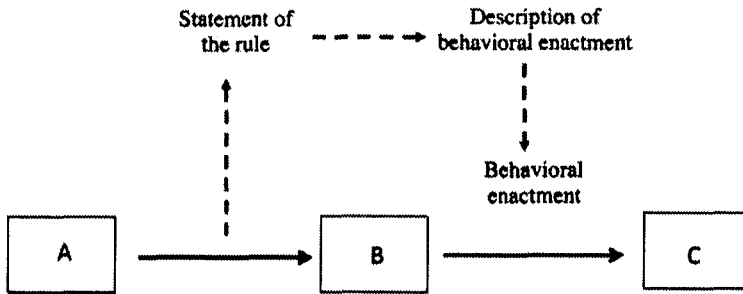


Figure 2: Model of the transubstantiative form of cultural replication in which A (for example, the HR department of a corporation) issues a rule (such as “safety goggles must be worn on the shop floor at all times”). B then, rather than repeating the statement (as in ordinary replication) instead engages in behavior describable by a declarative statement linguistically similar to the original rule. C could in turn then copy B’s behavior or reconvert it into a linguistic expression (“B always wears safety goggles while on the shop floor”).

The transubstantiation relationship is really the essence of compliance, but it is also, from the perspective of motion, difficult to track. The only time we can feel truly confident that transubstantiation has taken place is when a new rule is issued that changes behavioral practices. We can then look for the effect of the rule in the practices themselves. Otherwise, we might be dealing simply with practices—cultural elements—that are already in circulation. If I order people to do something that is already being done, I cannot be sure that transubstantiation has taken place. If people on the shop floor are already in the habit of wearing safety goggles and they continue to wear them after HR issues a rule that they must wear them, we cannot be sure whether they are endeavoring to be compliant or whether they are simply continuing past habits in a kind of inertia. This would be like posting a sign telling people, “Please continue to breath as you always have,” and then observing that people are in fact continuing to breath as they always have. Perhaps we should think of the transubstantiative form of replication as compliance in the strong sense, whereas the simple coexistence of a rule within a corporation and the behaviors

prescribed by the rule would constitute compliance in the weak sense.

Compliance deals with what are, linguistically, “imperatives”—phrases or sentences in the imperative mood. Of course, not all imperatives are laws or regulations—these merely form a subset of imperatives. But we can gain some insight into the problem of compliance by setting it in the context of the obeying of imperatives. In the social science literature, including anthropology, obeying commands is studied in connection with power and authority.⁴⁶

The central social science question, accordingly, is: “Why do imperatives get obeyed (or disobeyed)?” I will come back to that issue in the next section. However, in the present context, that question can be rephrased as, “Why does the peculiar transsubstantiative form of cultural replication take place (or fail to take place)?” In this way, the obeying of commands appears as a problem of cultural motion, alongside the other forms of motion.

V. THREATS, COERCION, AND THE IDEA OF FORCE

A central idea in the approach to cultural motion presented here is that cultural elements move at the behest of forces.⁴⁷ The word “force” conjures the image of coercion, as when one person holds a gun to the head of another and demands that they do something. I use the term in a broader sense of whatever brings about, retards, or alters the movement of a cultural element. Looked at from this point of view, coercion is, indeed, an example of a force that can bring about the movement of culture. This is notoriously true in the case of “forced labor,” which, in the definition employed by the International Labour Organization, means “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”⁴⁸ Forced labor acts are typically discrete, replicable cultural elements, as in the case of the gang labor system in the antebellum southern United States, where “the hoe hands chopped out the weeds which surrounded the cotton plants as well as excessive sprouts of cotton plants. The plow gangs followed behind, stirring the soil near the rows of cotton plants and tossing it back

46. See, e.g., Cari Romm, *Rethinking One of Psychology's Most Infamous Experiments*, ATLANTIC (Jan. 28, 2015), <http://www.theatlantic.com/health/archive/2015/01/rethinking-one-of-psychologys-most-infamous-experiments/384913/>.

47. See Urban, *Motion of Culture*, *supra* note 18, at 122.

48. ILO Forced Labour Convention art. 2, para. 1, June 10, 1930, http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/generic_document/wcms_346435.pdf.

around the plants.”⁴⁹

When it comes to compliance, the obeying of commands—that is, the transubstantiative form of cultural replication—might be thought to result from fear of the consequences attendant upon disobeying, as in Los Angeles where jaywalkers are subject to fines. The fear of negative consequence acts as a force tending to bring about the motion of a cultural element, namely, the practice of complying with the traffic signals regarding the pedestrian crossing of streets.

In a sense, even rewards for doing something, such as performing work for wages, can be coercive. In the case of wages, the labor that ensues, viewed as cultural practices, might come about only or primarily because the person fears the absence of the wages. The motion of the cultural elements (the labor practices) takes place for conditional reasons—out of fear of the consequences of not replicating the cultural element, which can also be construed positively as the desire for the consequences of replicating it.

What I propose in this essay is that compliance be conceptualized as a continuum stretched out between two extremes. At one end is physical coercion—threatening to kill or seriously injure or incarcerate another person in order to get them to do something, such as follow a particular command or rule. That is one way to elicit compliance. At the other end is self-regulation⁵⁰—a pre-programming of individuals or the prior inculcation in them of a disposition to conduct themselves in a certain way, say in conformity with a command or rule. It can appear to a casual observer as if no external constraints on conduct are operative here. Somewhere towards this end of the continuum lies Foucault’s notion of “governmentality.”⁵¹

What I propose to argue here, however, is that the binary opposition—“forced versus voluntary”—is, from the perspective of motion, not quite accurate. Rather, we are dealing with different kinds of force operative on the replication of culture. When we speak of voluntary or unforced compliance, we are often thinking of something analogous to what I call inertial cultural force. In physics, inertial force arises from the tendency of bodies in motion (or at rest) to stay in

49. ROBERT WILLIAM FOGEL & STANLEY L. ENGERMAN, *TIME ON THE CROSS: THE ECONOMICS OF AMERICAN NEGRO SLAVERY* 204 (Little, Brown & Co. eds., 1974).

50. On the concept of “self-regulation” as used in the legal compliance literature, see John H. Walsh, *A History of Compliance*, in *MODERN COMPLIANCE: BEST PRACTICES FOR SECURITIES AND FINANCE* 9–13 (David H. Lui & John H. Walsh eds., 2015).

51. MICHEL FOUCAULT, *SECURITY, TERRITORY, POPULATION: LECTURES AT THE COLLÈGE DE FRANCE, 1977–1978*, at 144 (Michel Senellart et al. eds., Graham Burchell trans., 2009).

motion (or at rest) unless acted upon by another force. Inertial force resists accelerative force, that is, change. In the case of culture, we could say, analogously, that culture in motion tends to stay in motion unless acted upon by some other force. Accordingly, the inertial force of culture resists other accelerative forces, the forces of change.

Culture is of interest in connection with compliance precisely because culture, in its mid-twentieth century social group form, highlights this inertial force as force. As I have described elsewhere, the inertial force comes in two varieties.⁵² One is existential, that is, culture gets replicated because it is already there to be replicated, as when a child learns the language of the adults around him or her just because the language is there to be learned.⁵³ Similarly, when new employees first join a company and find others wearing safety goggles when on the shop floor, they follow suit and do the same. Or when one grows up in a country where people first look left when they step off the curb, they too look left. Or when one lives in a city where one is surrounded by jaywalkers, one too begins to jaywalk.

The other variety of culture is habitual, the result of doing something the same way over and over again, or saying the same thing time and again.⁵⁴ The body is conditioned or predisposed to do or say the same thing. The familiar expression in English, "habit is second nature," captures the sway that habit exercises over human activity.⁵⁵ Contemporary anthropologists, as mentioned earlier, use the term "habitus" to describe interconnected sets of embodied habits.⁵⁶ Existing habits form the basis for resistance to any accelerative change to the culture, as when American tourists going to the United Kingdom tend to look left rather than right before stepping off the curb and into the street, or when New York City jaywalkers try to carry on their habitual patterns in Los Angeles or protest the strange patterns vociferously when they are fined.

While it seems (and arguably is the case) that people are acting voluntarily, they are actually under the influence of a force—the inertial force of the culture they have acquired by virtue of past

52. See URBAN, METACULTURE, *supra* note 16, at 224.

53. See *id.*

54. See *id.*

55. The phrase appears to date back, in one form or another, at least to ancient Rome. Cicero, for example, uses the phrase, "*Consuetudine quasi alteram quandam naturam efficit*" (custom becomes a kind of second nature). See 5 MARCUS TULLIUS CICERO, DE FINIBUS BONORUM ET MALORUM ¶ 74, https://la.wikisource.org/wiki/De_finibus_bonorum_et_malorum/Liber_Quintus.

56. See BOURDIEU, IN OTHER WORDS, *supra* note 29, at 13.

experience. Under inertia, the existing ways of doing things and of thinking seem natural—just the ordinary way of the world. I think Foucault had something like this in mind when he spoke of “the naturalness of the [human] species within the political artifice of a power relation.”⁵⁷

VI. THE FOUR CLASSES OF FORCE OPERATING ON CULTURAL MOTION

To probe more deeply into issues of compliance and non-compliance, we need to zoom out and take a look at the broad classes of force affecting the motion of culture generally.⁵⁸ In the framework I have developed, there are four classes: inertial, entropic, metacultural, and interest-based.⁵⁹ I have already outlined the inertial forces.⁶⁰ Culture that is already being replicated (that is, is already in motion) tends to keep getting replicated (that is, tends to stay in motion).⁶¹ Although not usually formulated in this way, this principle has been basic to anthropological accounts of culture from the end of the nineteenth century until today.⁶²

Another long-recognized class is entropic force, though this has usually been termed “drift” in anthropological literature.⁶³ You will recall that in Figure 1 the cultural element e_1 produced by A (an individual or group) is distinguished from the element e_1' as reproduced by B (an individual or group).⁶⁴ The “e prime” designation, borrowing from mathematics, indicates that the element as produced by B may be a transformation, however slight, of the element as produced by A.⁶⁵ In the case of language, for example, pronunciations may change when B reproduces the speech of A.⁶⁶ These changes, which result from possibly random processes at work on transmission, can accumulate over time.⁶⁷

In the case of language if a community of individuals speaking a common language gets divided into two relatively non-interacting

57. FOUCAULT, *supra* note 54, at 37.

58. See Urban, *Motion of Culture*, *supra* note 18, at 122.

59. *Id.* at 122–25, 128.

60. See *supra* Part V.

61. See Urban, *Motion of Culture*, *supra* note 18, at 124.

62. See *id.*

63. For linguistic drift, see EDWARD SAPIR, LANGUAGE: AN INTRODUCTION TO THE STUDY OF SPEECH 157–82 (1921). Regarding cultural drift more generally, see MELVILLE J. HERSKOVITS, CULTURAL ANTHROPOLOGY 506–10 (1955) and MELVILLE J. HERSKOVITS, MAN AND HIS WORKS: THE SCIENCE OF CULTURAL ANTHROPOLOGY 580 (1949).

64. See *supra* Figure 1.

65. See *supra* text accompanying Figure 1.

66. See *supra* Part III.

67. See *supra* Part III.

groups, such as when one part of the group migrates to another part of the world, changes gradually develop in the speech of the two subgroups.⁶⁸ Over time, the changes accumulate, resulting in distinctive accents.⁶⁹ After one thousand years, communication between the subgroups becomes difficult, and by two thousand years, nearly impossible.⁷⁰ The two dialects eventually transform into distinct languages.⁷¹

Similar changes occur in corporations and other organizations, and the effects are felt more quickly.⁷² The book, *From Control to Drift: The Dynamics of Corporate Information Infrastructures*, includes six studies of entropic drift in corporate information systems.⁷³ One study⁷⁴ documents what happened at Norsk Hydro—a Norwegian fertilizer, light metals, and oil and gas company—after it implemented a standard for microcomputers, software, networking, and communications throughout the company during the 1990s. There were good reasons for wanting everyone in the company to do everything on computers in the same way.⁷⁵ For one thing, the company would experience cost savings if it chose one specific software package for all.⁷⁶ Not only would the price per computer be less, the work of IT support (including user training) would be reduced.⁷⁷ For another, standardization would facilitate internal communication.⁷⁸ But as the standard gets propagated, local customization also ensues.⁷⁹ In the language I have been using here, cultural element e_1 becomes cultural element e_1' , where the prime indicates the transformation of e_1 into something somewhat different.⁸⁰ To take just one example from Norsk Hydro, while the standard in the mid-1990s required the use of Lotus rather

68. SAPIR, *supra* note 63, at 150–51.

69. *See id.* at 152–53.

70. *See id.*

71. *See id.*

72. *See generally* CLAUDIO U. CIBORRA ET AL., *FROM CONTROL TO DRIFT: THE DYNAMICS OF CORPORATE INFORMATION INFRASTRUCTURES* (2000).

73. *See id.*

74. Ole Hanseth & Kristin Braa, *Who's in Control: Designers, Managers—Or Technology? Infrastructures at Norsk Hydro*, in *FROM CONTROL TO DRIFT*, *supra* note 72, at 125–47.

75. *Id.* at 127, 129.

76. *Id.* at 127 (“It was cheaper to have one [license] for all divisions than for the divisions to buy different systems.”).

77. *Id.* at 129 (explaining that consistent installation of software resulted in “less costly installation, maintenance, and support”).

78. *Id.* at 136.

79. *Id.* at 131.

80. *See supra* text accompanying Figure 1.

than Microsoft software, some segments of the company found that, in interacting with clients, they had to be able to use Microsoft.⁸¹ More generally, the standard evolved as small changes of different sorts brought about deviations from the standard, thereby requiring a revised standard, and so forth, with the standard constantly evolving.⁸²

The Norsk Hydro case illustrates as well a third class of forces on the motion of culture: the reflexive or “metacultural” forces.⁸³ The standard, like the imperative (indeed, as an imperative), is an attempt to bring uniformity in cultural practices, an internal corporate order.⁸⁴ In the case of Norsk Hydro, that order was in the realm of microcomputers and information practices within the company.⁸⁵ Establishing the use of Lotus software as a standard, for example, required a change on the part of those who were not already using it.⁸⁶ They were engaged in other practices that for them had become habitual.⁸⁷ The habitual culture, in turn, exercised an inertial force on the decree of a standard, bringing about resistance to it.⁸⁸ As the authors of the Norsk Hydro study put it, “[M]ost users prefer the products and applications they are experienced in using.”⁸⁹

The fourth class, what I refer to as interest-based forces, involves not so much either commands (metaculture) or inertia (culture already in motion) as it does desire and repulsion.⁹⁰ While the authors of the Norsk Hydro study do not foreground interest, we can feel reasonably confident that it did figure into the larger picture, since, for example, technology and software are also objects of desire—as illustrated in the Mac versus PC wars.⁹¹

In any case, interest is a crucial component of motivation inside corporations, as it is in other organizations.⁹² In the business realm, it is often thought of as only a conditional motivator: one engages in a particular cultural practice (such as operating a stud gun on an assembly line, or preparing a proposal to bid on a project) only as a

81. Hanseth & Braa, *supra* note 74, at 128.

82. *Id.*

83. See Urban, *Motion of Culture*, *supra* note 18, at 123.

84. See Hanseth & Braa, *supra* note 74, at 125.

85. See *id.* at 125.

86. See *id.* at 128.

87. See *id.*

88. See *id.* at 129–30.

89. *Id.* at 130.

90. See Urban, *Motion of Culture*, *supra* note 18, at 125.

91. See *PCs vs. Macs: Who Wins the War Today?*, FOX NEWS (Sept. 22, 2012), <http://www.foxnews.com/tech/2012/09/22/pcs-vs-macs-who-wins-battle-today.html>.

92. See generally Urban, *Motion of Culture*, *supra* note 18, at 125.

means of satisfying a different desire. The interest is not in the cultural practices (stud gun operation, proposal preparation) for their own sake. Rather, the interest lies in the other cultural practices, such as vacationing or acquiring food, clothing, or shelter, that those work practices enable. The work practices appear as a condition for satisfying those other interests.

To be sure, conditional interest forms part of compliance with government laws and regulations, as in the desire to avoid a \$197 fine for jaywalking in Los Angeles.⁹³ The fine inhibits jaywalking, even if the avoidance of jaywalking in Los Angeles is also a habitual cultural practice, driven by the force of inertia.⁹⁴ At the same time, there would also be a direct interest in obeying laws and rules as part of the group ideals to which people directly aspire, which I discuss below.

VII. TRANSMITTING AN ORIENTATION TO LAWS AND REGULATIONS

According to the 2008 “Alberta Horse Welfare Report,” China was by far the leading country when it comes to horsemeat consumption, with the United States listed “as having zero consumption,”⁹⁵ and Mexico—right across the border from the United States—listed as the second largest equine meat consumer.⁹⁶ A calculation based on the figures in their table shows that in 2005 Mexico consumed approximately 185 million pounds of horsemeat.⁹⁷ Yet in the United States many people feel sick even at the thought of eating horsemeat.⁹⁸ Evidently, the desire for and repulsion from certain foods can be socially learned and socially transmitted.⁹⁹ In other words, culture can in some measure guide our interests.

Commonsensical enough, therefore, is the idea that an orientation to laws and regulations can also be transmitted as an element of culture. Take, for example, the media portrayal of management culture

93. See Thornton, *supra* note 34.

94. See *id.*

95. ALBERTA EQUINE WELFARE GRP., THE ALBERTA HORSE WELFARE REPORT 6 (2008), <https://canadianhorsedefencecoalition.files.wordpress.com/2012/03/afac-horse-welfare-report.pdf>.

96. *Id.*

97. See *id.*

98. “If you’re like the majority of US citizens, you would likely balk – maybe even gag – at the thought of eating horsemeat at a restaurant.” Caty Enders, *Why You Really Should (But Really Can’t) Eat Horsemeat*, GUARDIAN (Jan. 9, 2015, 07:00 AM), <https://www.theguardian.com/environment/2015/jan/09/eating-wild-horsemeat-america>.

99. *Id.* (“Here in North America, the culture of hunting horses just isn’t there. And certainly no culture of eating them.”).

at Volkswagen as “arrogant.”¹⁰⁰ Did the arrogance extend to national laws, such that management transmitted an attitude to employees that compliance with government regulations took second place to, say, the desire for advancing the company’s pecuniary interests?

This observation adds to our analysis of compliance an additional layer. Recall the earlier distinction between two types of replication, the basic and the transubstantiative.¹⁰¹ The former has two subtypes, replication of a non-linguistic behavior and replication of a linguistic behavior, such as an explicitly formulated regulation or law.¹⁰² The latter involves enacting in non-linguistic behavior¹⁰³ the description contained in the semantic meaning of linguistic behavior.¹⁰⁴ We are now adding to this the possibility of replicating an attitude or orientation to the relationship between the linguistic and non-linguistic behavior involved in such transubstantiative cultural processes. I have attempted to diagram this type of complex cultural element in Figure 3.

100. David Kiley, *VW Wrong to Blame “Rogues” and Not Point Finger at Themselves and Dr. Piech*, FORBES (Dec. 10, 2015, 05:59 PM), <http://www.forbes.com/sites/davidkiley5/2015/12/10/vw-is-wrong-to-blame-rogues-and-not-point-finger-at-themselves-and-dr-piech/#2d9d4eb84b9e>.

101. *See supra* Part IV.

102. *See supra* Part IV.

103. Compliance may also, perhaps obviously, involve enacting a linguistic behavior prescribed in an imperative, as in, “Repeat after me: ‘I X . . .’” used in U.S. presidential swearing-in ceremonies.

104. *See supra* Part IV. Replication of this second type may also involve the conversion of a non-linguistic into a linguistic behavior, as in the description of the non-linguistic behavior, for example, “He always wears goggles while on the shop floor.”

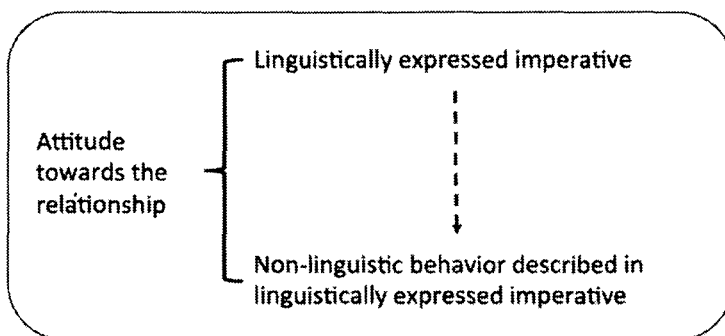


Figure 3: General form of a replicable but complex cultural element. The element is an attitude towards the relationship between an imperative expression (such as a law or regulation) and the non-linguistic (or, for that matter, linguistic) behavior it describes. The box around the figure indicates the replicability of the complex whole, independent of the possibilities for replication of the linguistically expressed imperative by itself, or the non-linguistic (or linguistic) behavior described in the imperative by itself.

For some as yet unspecified subset of employees at Volkswagen, for example, it appears that the orientation to government regulations surrounding automobile pollution emissions was something like the following: give the appearance of complying without actually complying, thereby maintaining claimed vehicle performance without allowing government officials to detect the true emission levels associated with that performance. We can readily imagine such an attitude being transmitted through words and/or deeds inside the company. The attitude is a cultural element, one that can be replicated.

The attitude as a transmittable cultural element can be highly nuanced. In the case of Volkswagen, for example, the attitude might conceivably apply only to emission regulations or even just to emission regulations pertaining to nitrogen oxide pollutants. It need not indicate a general disrespect for laws. While the attitudes towards laws and regulations can be highly nuanced cultural elements, however,

anthropologists have long reported that social groups tend to develop overall ethical or moral orientations.¹⁰⁵ The orientations over time come to fit together into a pattern, with one element resembling another.¹⁰⁶ The term used for this kind of overall patterning has been "ethos."¹⁰⁷ At Volkswagen, to continue with the same example, the ethos prior to the eruption of the emissions scandal has been characterized in the public media as authoritarian,¹⁰⁸ and the various descriptors tend to align.¹⁰⁹ For example, a former management trainee at Volkswagen reports, "It was like North Korea without labor camps . . . you have to obey."¹¹⁰ The article containing that quote opened with the observation, "All cars at the headquarters should, according to the rules, be parked facing the same way."¹¹¹ Judging from such accounts, it is not inconceivable that the company cultivated allegiance to the corporate hierarchy and its rules and decisions, over and above government regulations.

The group ethos, insofar as it inspires interest on the part of group members, contributes the force of that interest to the transubstantiation process in which a linguistically expressed imperative gets enacted in behavior.¹¹² The force bringing about the motion is interest—the positive desire to comply inspired by the group ethos.¹¹³ A corollary of this general principle is that if a rule does not appear to express the group ethos, it will tend not to undergo transubstantiative replication; that is, the command will not be obeyed. Another corollary is that a weak or incoherent ethos—to be discussed further below in Section VIII.D.—contributes little or no force to transubstantiative replication. Correspondingly, non-compliance, as a byproduct of indifference to the rule, will tend to ensue.

105. GREGORY BATESON, *NAVEN: A SURVEY OF THE PROBLEMS SUGGESTED BY A COMPOSITE PICTURE OF THE CULTURE OF A NEW GUINEA TRIBE DRAWN FROM THREE POINTS OF VIEW* 33 (2d ed. 1958); see also Charles W. Nuckolls, *The Misplaced Legacy of Gregory Bateson: Toward a Cultural Dialectic of Knowledge and Desire*, 10 *CULTURAL ANTHROPOLOGY* 367, 367–94 (1995).

106. Nuckolls, *supra* note 105, at 367–94.

107. See BATESON, *supra* note 105, at 32–33 (discussing the concept of ethos); see also Nuckolls, *supra* note 105, at 367–94.

108. Ewing & Bowley, *supra* note 3 ("[Volkswagen] is controlled by a tight-knit troika of a billionaire family . . . a German state government . . . and powerful labor unions.").

109. *Id.*

110. *Id.*

111. *Id.*

112. See BATESON, *supra* note 105, at 32.

113. *Id.*

VIII. SOURCES OF NON-COMPLIANCE

A. *Independence of Pathways*

The Enron Corporation,¹¹⁴ a Houston-based energy company that expanded to include commodities trading and services, provides us with an example of the idea, mentioned earlier,¹¹⁵ that linguistically encoded imperatives can circulate independently of the cultural elements (forms of conduct) they are designed to affect. Despite having an elaborate code of ethics¹¹⁶ encouraging honesty and compliance with the law, Enron ended up, in December of 2001, declaring bankruptcy amidst accusations of accounting fraud.¹¹⁷ The scandal resulted in criminal prosecutions, as well as the collapse of the accounting firm Arthur Andersen.¹¹⁸

From the perspective of cultural motion, a fascinating fact is that Enron not only had such a code, but the booklet containing the Enron code included “a Certificate of Compliance” that employees were required to sign, attesting to their “personal agreement to comply with the policies stated [t]herein.”¹¹⁹ Toward the very end of the booklet the code states, “It is a condition of employment that each employee accept the responsibility of complying with the foregoing policies.”¹²⁰ Evidently, efforts were made to circulate the code throughout the company.¹²¹ This layer of circulation of the code appears to be a linguistically formulated cultural element.

Two passages in the Enron code are worth mentioning. One emphasizes the importance of obeying government statutes: “Laws and

114. For brief overviews of Enron prior to and through its collapse, see Jonathan R. Macey, *Efficient Capital Markets, Corporate Disclosure, and Enron*, 89 CORNELL L. REV. 394, 397–99 (2004) and Raghavan et al., *supra* note 4. For a more extended account, with an insider point of view, see generally KURT EICHENWALD, *CONSPIRACY OF FOOLS: A TRUE STORY* (2005) and MIMI SWARTZ WITH SHERRON WATKINS, *POWER FAILURE: THE INSIDE STORY OF THE COLLAPSE OF ENRON* (2003).

115. See *supra* Part VII.

116. See ENRON, CODE OF ETHICS (2000), <http://bobsutton.typepad.com/files/enron-ethics.pdf>; Lisa H. Nicholson, *Culture Is the Key to Employee Adherence to Corporate Codes of Ethics*, 3 J. BUS. & TECH. L. 449, 450 (2008).

117. Raghavan et al., *supra* note 4; SWARTZ & WATKINS, *supra* note 114, at 339; see also Nicholson, *supra* note 116, at 450.

118. Ken Brown & Ianthe Jeanne Dugan, *Arthur Andersen's Fall From Grace Is a Sad Tale of Greed and Miscues*, WALL ST. J., <http://www.wsj.com/articles/SB1023409436545200> (last updated June 7, 2002, 12:01 AM).

119. ENRON, *supra* note 116, at 3.

120. *Id.* at 62.

121. Enron's “Code of Ethics”, SMOKING GUN (Jan. 30, 2006), <http://www.thesmokinggun.com/documents/crime/enrons-code-ethics>.

regulations affecting the Company will be obeyed.”¹²² The passage makes reference to foreign as well as U.S. laws, and it concludes: “Illegal behavior on the part of any employee in the performance of Company duties will neither be condoned nor tolerated.”¹²³ Another passage stresses: “Relations with the Company’s many publics — customers, stockholders, governments, employees, suppliers, press, and bankers — will be conducted in honesty, candor, and fairness.”¹²⁴

As attested in the subsequent trials, however, the actual cultural practices of high-level executives appear to have contradicted the requirements of the Enron code of ethics to obey “[l]aws and regulations affecting the [c]ompany,” as well as to conduct relations with the public in “honesty, candor, and fairness.”¹²⁵ The Chief Executive Officer, Jeffrey K. Skilling, was convicted on eighteen counts of fraud and conspiracy¹²⁶—hardly either obeying the law or conducting relations with the public in “honesty, candor, and fairness.” Kenneth L. Lay, the company founder and Chairman was judged guilty on six counts of fraud and conspiracy.¹²⁷ Sixteen Enron executives pleaded guilty in the course of the proceedings.¹²⁸

Apparently, the attitude towards the Enron code of ethics, at least on the part of many top executives, was to ignore rather than enact some of its key provisions. Indeed, we may wonder what the purpose of circulating this code within the company was. A portion of the document focuses on maintaining company secrets, and it is likely that the executives wanted employees to adhere to these rules.¹²⁹ At the same time, the purpose of circulating the code of ethics may have been to assure outsiders that it had one, or it may simply have been to copy the practices of other major corporations, showing that Enron too was a respectable corporation. Many of the top companies (such as Intel, Amazon, and Google) post their ethics statements on their websites, often in the sections designed specifically for investors.¹³⁰

122. ENRON, *supra* note 116, at 13.

123. *Id.*

124. *Id.* at 12.

125. *Id.* at 12–13; Alexei Barrionuevo, *Enron Chiefs Guilty of Fraud and Conspiracy*, N.Y. TIMES (May 25, 2006), <http://www.nytimes.com/2006/05/25/business/25cnd-enron.html>.

126. Barrionuevo, *supra* note 126.

127. *Id.*

128. *Id.*

129. See ENRON, *supra* note 116, at 14–22.

130. See *Code of Conduct*, ALPHABET INVESTOR RELATIONS (Oct. 2, 2015), <https://abc.xyz/investor/other/code-of-conduct.html> (listing Google’s Code of Conduct); *Code of Business Conduct and Ethics*, AMAZON, <http://phx.corporate->

Figure 4 is an attempt to diagram the complex cultural circulation of regulations, conduct associated with those regulations, and attitudes toward the relationship between regulations and the conduct associated with them. The disks formed from arrows in the diagram are an attempt to represent broader patterns of motion of the type depicted in Figure 1. In the Enron case, regulations were encoded in a code of ethics booklet, containing rules to which all employees in the firm were required to subscribe.¹³¹ The circulation of the rules contained in that booklet forms the middle layer in the diagram. The actual practices in the firm undergo replication as cultural elements in their own right, as depicted in the lowest layer in the diagram. In the Enron case, the top layer, indicating the circulation of attitudes toward the relationship between the two lower layers, did not bring about an alignment between the lower layers, at least in the case of upper management. We would expect the top layer to play a key role in ethical firms, with the interest inspired by the ethos bringing about transsubstantiative replication; that is, the obeying of the company's rules.

ir.net/phoenix.zhtml?c=97664&p=irol-govConduct (last visited Mar. 1, 2017); *Intel Code of Conduct*, INTEL, <http://www.intel.com/content/www/us/en/policy/policy-code-conduct-corporate-information.html> (last updated Jan. 2017).

131. ENRON, *supra* note 116, at 2.

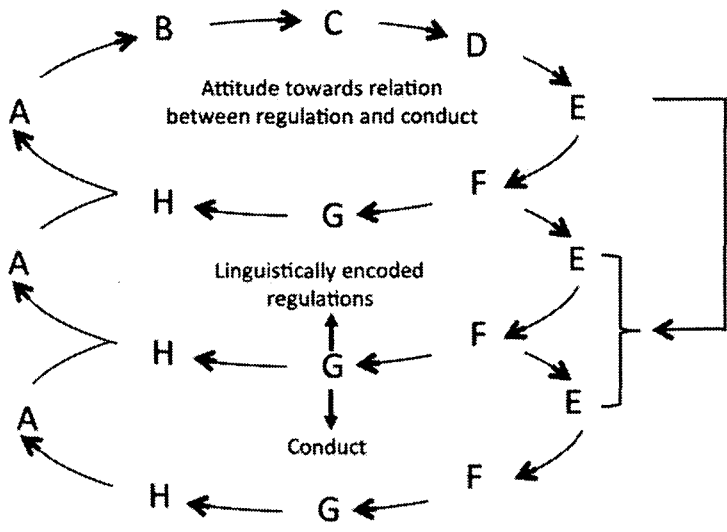


Figure 4: Diagram of the motion of linguistically encoded regulations in relation to the conduct they specify. The bottom plane, the conduct as cultural element, can in theory travel independently of the linguistically encoded regulations (middle plane). The attitude towards the relationship between the two planes itself circulates at yet another plane. It can increase the connection between the two planes or make that connection largely irrelevant.

B. Drift and Ethos Change

Suppose, for example, that there is a habitual inertial cultural pattern of wearing safety goggles on the shop floor. One force that might undercut compliance is entropy, such as results from forgetting. Since random events of forgetting sometimes cluster, an observation of a shop floor on a given day may appear to indicate non-compliance. If nothing is done to call attention to the non-compliance, drift might occur as others start to regard not wearing goggles as the inertial culture. Before long, the shop floor might be in a widespread pattern of non-compliance.

From one area, non-compliance can spread to other areas. As

mentioned earlier, a group tends to develop an ethos in which ethical-moral orientations align over time.¹³² The ethos principle is really a byproduct of habitual inertia—the tendency to do the same thing, with similarity carrying over from one element to the next within the social group.¹³³ From not wearing safety goggles, the pattern could extend to laxity in wearing protective gloves or checking gauges or keeping passageways open. The force of interest eventually kicks in as well, with employees using company property for personal purposes or taking home company supplies.

Cultural drift of this sort undoubtedly played a role in the decline in compliance in New York City that led to high crime rates and a climate of fear in the 1970s and 1980s.¹³⁴ Recognition of the small but accumulating changes—cultural drift—also contributed to the solutions that began to bear fruit in the 1990s.¹³⁵ The seeds of the reversal seem to have been planted by the publication in 1979 of an article entitled “On Subway Graffiti in New York” by Nathan Glazer, who observed that “minor infractions aggregate into something that reaches and affects every subway passenger.”¹³⁶ That article was followed by another in 1982 by George L. Kelling and James Q. Wilson, “Broken Windows: The Police and Neighborhood Safety.”¹³⁷ They opined: “Perhaps the random but relentless maintenance of standards on buses would lead to conditions on buses that approximate the level of civility we now take for granted on airplanes.”¹³⁸ They concluded: “Just as physicians now recognize the importance of fostering health rather than simply treating illness, so the police—and the rest of us—ought to recognize the importance of maintaining, intact, communities without broken windows.”¹³⁹

Kelling and Wilson did not use the language of cultural motion, but what they describe is usefully explained by the operation of drift, interest, and the spread of non-compliance through a group ethos, in

132. BATESON, *supra* note 105, at 32–33.

133. *Id.* at 33–34.

134. See George L. Kelling, *How New York Became Safe: The Full Story*, CITY J., <http://www.city-journal.org/html/how-new-york-became-safe-full-story-13197.html> (last visited Mar. 1, 2017).

135. *Id.*

136. Nathan Glazer, *On Subway Graffiti in New York*, PUB. INT., no. 54, Winter 1979, at 11; see also Kelling, *supra* note 134.

137. George L. Kelling & James Q. Wilson, *Broken Windows: The Police and Neighborhood Safety*, ATLANTIC, <http://www.theatlantic.com/magazine/archive/1982/03/broken-windows/304465/> (last visited Mar. 1, 2017).

138. *Id.*

139. *Id.*

this case the ethos of New York City dwellers.¹⁴⁰ The measures that were subsequently taken to strengthen the sense of order in communities helped to dramatically alter the crime situation in the city and to restore more widespread compliance not only with laws but also forms of sociability.¹⁴¹

C. Acculturative Pressure

Another source of non-compliance is contact with other cultural patterns.¹⁴² Perhaps the best-known example of the latter involves corporations doing business in cultures where bribing is a habitual practice, even though local laws prohibit it.¹⁴³ In Brazil, for example, there are individuals known as *despachantes*—“dispatching agents”—whom John Grisham, in novelistic, though in my experience ethnographically accurate, prose, describes this way: “[T]he *despachante* is the guy who knows the city clerks, the courthouse crowd, the bureaucrats, the customs agent He’ll do your voting, banking, packaging, mailing — the list has no end. No bureaucratic obstacle is too intimidating.”¹⁴⁴ Grisham goes on to describe a *despachante* who will deliver to you a passport for a fee of \$2000.¹⁴⁵ The regular use of *despachantes* is one of the patterns that American businessmen in Brazil find themselves adopting. And it is one that may involve what is, in terms of U.S. laws and the Foreign Corrupt Practices Act, bribery.¹⁴⁶

The giant German engineering firm, Siemens AG, is one of the companies whose involvement in worldwide bribery resulted in criminal prosecutions during the previous decade.¹⁴⁷ An interesting aspect of this case is that one of its central figures, Reinhard Siekaczek, did not benefit personally from the bribery;¹⁴⁸ he merely channeled the money.¹⁴⁹ Indeed, he was known within Siemens “for his personal honesty

140. See Kelling, *supra* note 134.

141. *Id.*

142. See Memorandum from Simpson Thacher, FCPA Concerns for Investments in Brazil (Nov. 5, 2012), <http://www.stblaw.com/docs/default-source/cold-fusion-existing-content/publications/pub1527.pdf?sfvrsn=2>.

143. *Id.* at 3–5.

144. JOHN GRISHAM, *THE TESTAMENT* 245 (2000).

145. *Id.*

146. 15 U.S.C. § 78dd-1(a) (2012).

147. Siri Schubert & T. Christian Miller, *At Siemens, Bribery Was Just a Line Item*, N.Y. TIMES (Dec. 20, 2008), http://www.nytimes.com/2008/12/21/business/worldbusiness/21siemens.html?_r=0.

148. *Id.*

149. *Id.*

[and] his deep company loyalty.”¹⁵⁰ Siekaczek reportedly stated, “It had nothing to do with being law-abiding, because we all knew what we did was unlawful.”¹⁵¹ He went on to say, “We thought we had to do it . . . [o]therwise, we’d ruin the company.”¹⁵² The company ended up paying \$1.6 billion in fines and fees.¹⁵³

Siemens is an example of a company that, as a result of doing business in countries where bribery is tacitly accepted, ended up adopting local cultural practices. Non-compliance, in other words, resulted from acculturation to locales where different implicit norms prevail. The acculturation can occur even when those involved are aware that they are engaging in illegal behavior.

D. Incoherence of the Ethos

The one factor that perhaps most affects compliance in the strong sense—that is, affects the probability of conforming to a new rule whose behavioral implementations are not already part of habitual culture—is the relative coherence versus incoherence of the group ethos. The laws and rules governing conduct must make sense in terms of an overarching ethical-moral perspective pervading the group. This is reminiscent of the mid-twentieth century social group version of the culture concept, with the difference that ethos coherence arises out of motion and is a relative matter, not a starting point or assumption.¹⁵⁴ Moreover, the force behind compliance is the interest inspired by the ethos. When the ethos is coherent, group members actively aspire to comply with its rules. That interest is the force motivating compliance, manifested in the transubstantiative form of replication of the linguistically-encoded rules.

Within a group left to its own devices, ethos coherence emerges thanks to the nature of the replication processes discussed earlier.¹⁵⁵ Habitual inertia results in the reproduction of already present cultural elements,¹⁵⁶ but there is often a slight difference between element e_i and element e_i' . When only entropy is operating on inertia, there will be a central tendency in the pattern of drift. In reproducing element e_i , Person A will also tend to make element e_i' resemble the other

150. *Id.*

151. *Id.*

152. *Id.*

153. *Id.*

154. See BOURDIEU, IN OTHER WORDS, *supra* note 29, at 12.

155. See *supra* Part III.

156. See BOURDIEU, IN OTHER WORDS, *supra* note 29, at 77-8.

elements, e_2, e_3, \dots, e_n , insofar as is possible. This is a byproduct of the propensity to reproduce what is already there. That is, people will tend to reproduce in any new element they are acquiring properties of other elements insofar as they are perceived to be analogous to the new one. For example, if a range of habitual practices on the shop floor seems to have the characteristic of emphasizing safety, any new practice introduced will be shaped so as to take on that characteristic. I have tried to illustrate this in Figure 5. The result is that elements circulating within a relatively isolated group will, over time, come to cohere, that is, to resemble one another in various respects. They will tend to form a pattern.¹⁵⁷

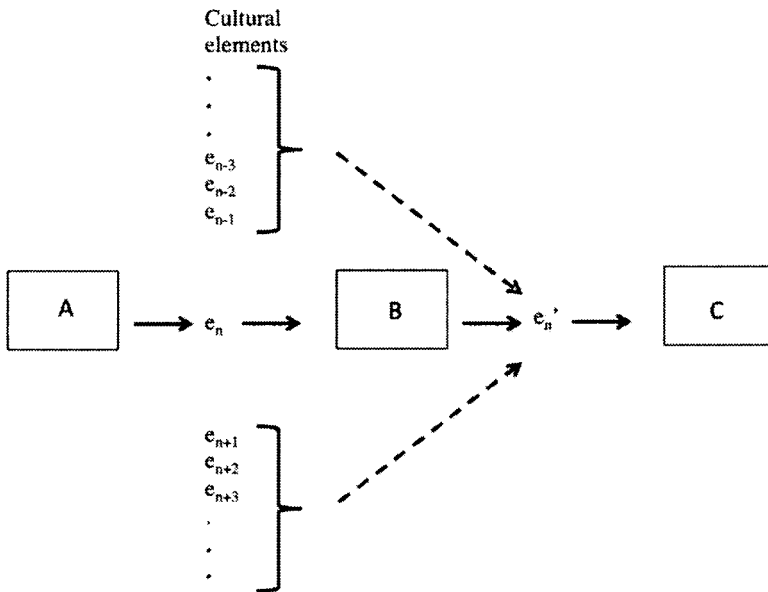


Figure 5: Depiction of the process by which one cultural element e_n , tends to come to resemble other elements (e_{n-1}, e_{n-2} , etc. and e_{n+1}, e_{n+2} , etc.) over time, bringing about a general internal resemblance among elements and coherence in the ethos of a group that exists in relative isolation. The element e_1' , if no other forces than inertia and entropy act upon it, will

157. See *id.* at 78 (noting that practices considered dangerous by society are more likely to be codified even if the individual practices are disparate).

tend to replicate not only e_1 but also aspects of the surrounding elements.

Of course, corporations do not exist in isolation, though, as Galambos and Sturchio note, “Few who have not worked in or studied modern multinational corporations up close realize how insular they can be.”¹⁵⁸ Still, modern businesses perform function in the legal contexts of states; hence, government laws and regulations are one source of possible incoherence in the ethos of a corporation. They also exist in the wider intellectual milieu of discourses about the economy in relation to society. These discourses are other possible sources of internal incoherence in the ethos of a corporation.

1. Incorporation as a Source of Ethos Incoherence

A corporation is not even in theory an autonomous social group on a par with a nation-state or an isolated tribal population, functioning outside the context of a state.¹⁵⁹ One of the key characteristics of a corporation is its “creation by the state” through incorporation practices.¹⁶⁰ It is thus subject to the laws and regulations of the state. At the same time, the corporation, understood as a group functioning as a single actor or agent, is regarded as self-regulating, “self-renewing,” and “self-sufficient.”¹⁶¹ This means that in reality it is, in some respects, autonomous. There is thus something of a contradiction in the concept

158. Louis Galambos & Jeffrey L. Sturchio, *Life in the Corporation: Lessons from Business History*, 3 J. BUS. ANTHROPOLOGY, no. 1, Spring 2014, at 24. They go on to explain:

Despite being global organizations that may operate in more than 100 countries, with tens of thousands of employees who interact daily with millions of customers and countless politicians, regulators, policy influentials, journalists, investors, advocates and community representatives, there is a strong cultural bias to look inward rather than outward. The main points of reference for most employees in corporations are their supervisors and fellow workers; the main concerns on a day-to-day basis the mundane tasks of meetings, presentations, memos and “deliverables.” To an extent surprising to those on the outside, the quotidian rhythms of corporate life are dominated by priorities, processes and practices that are too readily divorced from the world in which the corporation’s customers and communities live. If these tendencies operated without mediation, it would be hard to understand how most businesses could succeed at delivering products and services that their customers value enough to purchase.

Id.

159. See 1 JOHN P. DAVIS, CORPORATIONS: A STUDY OF THE ORIGIN AND DEVELOPMENT OF GREAT BUSINESS COMBINATIONS AND OF THEIR RELATION TO THE AUTHORITY OF THE STATE 16–18 (1905).

160. *Id.* at 16.

161. *Id.* at 20.

of the corporation, and that contradiction potentially leads to ethos internal incoherence.

This contradiction can be observed in the Siemens case discussed earlier, where saving the company took precedence in the minds of at least some of the employees over obeying state laws—"We thought we had to do it . . . [o]therwise, we'd ruin the company."¹⁶² Something similar seems to have been true in the Volkswagen case as well, though there it was not saving the company that was understood to be at stake but rather advancing its interests.¹⁶³ There is no evidence, thus far at least, that Volkswagen managers worried about company survival per se.¹⁶⁴ Rather, reports indicate that they adopted an attitude of "arrogance" towards the state and its regulations, considering their corporate interests in success more important than the interests of the state in fostering its image of a just community.¹⁶⁵

2. Economic Theory as a Source of Ethos Incoherence

Like the legal theory of the corporation, economic theorizing about the market environment in which business corporations are embedded poses problems for the ethos internal coherence in firms. The problems can perhaps be traced back to Adam Smith and his publication in 1776 of the *Wealth of Nations*, in which he argued that government should allow freer reign of the market, that the market operates in accord with an "invisible hand": "By pursuing his own interest [the individual] frequently promotes that of the society more effectually than when he really intends to promote it."¹⁶⁶

As the idea has come down to us, it has been taken to mean that unregulated, free market exchange produces the best results, the greatest good for society.¹⁶⁷ Through his 1970 *New York Times Sunday Magazine* piece, economist Milton Friedman gave extra impetus to the ideal of pursuing individual interest when he proclaimed, "The [s]ocial [r]esponsibility of [b]usiness is to [i]ncrease its [p]rofits."¹⁶⁸ The greatest

162. Schubert & Miller, *supra* note 147.

163. See Geoffrey Smith & Roger Parloff, *Hoaxwagon: How the Massive Diesel Fraud Incinerated VW's Reputation—And Will Hobble the Company for Years to Come*, FORTUNE (Mar. 7, 2016, 6:30 AM), <http://fortune.com/inside-volkswagen-emissions-scandal>.

164. *Id.*

165. *Id.*

166. ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS 194 (Richard Maynard Hutchins ed., Encyclopedia Britannica, Inc. 1989) (1776).

167. See generally Mark A. Zupan, *The Virtues of Free Markets*, 31 CATO J. 171 (2011).

168. Milton Friedman, *The Social Responsibility of Business Is to Increase Its Profits*, N.Y. TIMES MAG. (Sept. 13, 1970), <http://www.umich.edu/~thecore/doc/Friedman.pdf>.

good for society results from the maximization of profit;¹⁶⁹ Friedman added a proviso to this statement—"while conforming to the basic rules of the society, both those embodied in law and those embodied in ethical custom."¹⁷⁰ However, as the replication of that dictum (as a cultural element e_1) has taken place, it has spawned modified replicas (elements e_1'), in which the proviso about "conforming to their basic rules of the society" has been too often elided.¹⁷¹

Where profit produces the ultimate good for society, government laws and regulations can appear as obstacles not just to the production of profit but to the pursuit of the good of society and, indeed, the good of humanity more generally. The catchword for many holding this point of view is "deregulation."¹⁷² For example, Kenneth Lay, founder of Enron, said in a March 27, 2001 interview on the PBS show, *Frontline*, just months before the scandal broke:

We see ourselves as first helping to open up markets to competition. And through competition, reducing costs, and of course significantly reducing prices paid by consumers. Also we see ourselves as being innovators in these new markets once they're deregulated, where we can come in and begin providing a lot of other products and services.¹⁷³

The interviewer asked whether he had faith in the market. He responded, "I have faith in the market when we get the rules right."¹⁷⁴

It is possible and even likely that some U.S. government regulations have had a pernicious effect on financial markets. Jonathan Macey has argued as much, singling out the assimilation into government rules of financial industry best practices, such as the use of credit rating agencies to assess company financial health.¹⁷⁵ When such ratings became mandatory, they cease to do the job for which they were originally intended, instead contributing to false confidence in the

169. *Id.*

170. *Id.*

171. *Id.*

172. See, e.g., Adam D. Thierer, *A Five Point Checklist for Successful Electricity Deregulation Legislation*, HERITAGE FOUND. (Apr. 13, 1998), <http://www.heritage.org/research/reports/1998/04/checklist-for-electricity-deregulation>.

173. Interview by *Frontline* with Ken Lay, First Chairman/CEO, Enron Corp., <http://www.pbs.org/wgbh/pages/frontline/shows/blackout/interviews/lay.html> (last visited Mar. 1, 2017).

174. *Id.*

175. Jonathan R. Macey, *The Nature and Futility of "Regulation by Assimilation"*, in *CORPORATIONS AND CITIZENSHIP* 199, 200 (Greg Urban ed., 2014).

companies rated and so to the financial meltdown of 2008.¹⁷⁶

The issue here, however, is not whether or which government regulations of markets are good or bad. It is that faith in the market, if it is blind faith, creates problems within a corporate ethos in regards to the orientation to government laws and regulations. Are the laws and regulations to be obeyed because they are the law of the land? Or are they to be treated as obstacles to be gotten around—by deceit if necessary? The Siemens employee through whom so many of the international bribes were channeled put it this way: “People will only say about Siemens that they were unlucky and that they broke The 11th Commandment . . . The 11th Commandment is: ‘Don’t get caught.’”¹⁷⁷

IX. BUILDING A BROADER CULTURE OF COMPLIANCE

The ethos internal coherence problem outlined above is recalcitrant to most compliance solutions proposed in the literature on the subject,¹⁷⁸ valuable as those solutions are in enabling firms to develop, maintain, and improve internal compliance. This is because ethos coherence is not an entirely corporate internal problem. Rather, it is a problem of the relationship between the corporation and its broader environment. It is still a cultural problem but one in which the inertial culture—consisting of modern economic theory and legal teaching—is massive.

In the legal realm, the problem has to do with ideas regarding the purpose of the corporation as existing entirely for the benefit of its shareholders, a view encapsulated during recent decades in shareholder value theory.¹⁷⁹ That theory holds that corporate managers are legally obligated to maximize the profits of shareholders.¹⁸⁰ The theory relies heavily on the 1919 *Dodge v. Ford* decision by the Michigan Supreme Court.¹⁸¹ However, Lynn Stout argues that “*Dodge v. Ford*’s description of corporate purpose is mere dicta in an antiquated case that did not involve a public corporation, and that has not been validated by today’s Delaware courts.”¹⁸² She asks further whether there is any “other solid

176. *Id.* at 202, 214–16.

177. Schubert & Miller, *supra* note 147.

178. See, e.g., COMPLIANCE PROGRAMS AND THE CORPORATE SENTENCING GUIDELINES (Jeffrey M. Kaplan & Joseph E. Murphy eds., 2015); MODERN COMPLIANCE: BEST PRACTICES FOR SECURITIES AND FINANCE (David H. Lui & John H. Walsh eds., 2015).

179. LYNN STOUT, THE SHAREHOLDER VALUE MYTH 75 (2012).

180. *Id.* at 26–27.

181. STOUT, *supra* note 179, at 25.

182. *Id.* at 27.

legal authority to support" shareholder profit maximization, and she answers, "[N]o."¹⁸³

Still, the legal theory dovetails with Milton Friedman's economic view mentioned earlier. That view—"[t]he [s]ocial [r]esponsibility of [b]usiness is to [i]ncrease its [p]rofits"¹⁸⁴—lives on in the Efficient Market Hypothesis, according to which markets are largely self-regulating through the price mechanism.¹⁸⁵ To change this view would require inverting Friedman's formula to read something like the following: "[T]he social responsibility of the corporation is to promote the basic values and rules of the society, both those embodied in law and those embodied in ethical custom, while simultaneously increasing its profits." In other words, profit would become a desirable byproduct of a corporation's social purpose rather than its *raison d'être*.

There is, to be sure, already substantial support for such a view, even among CEOs.¹⁸⁶ John Abele, co-founder and former director of Boston Scientific, the giant medical technologies company, for example, argues that corporations ought to be conceptualized as "profitable philanthropies."¹⁸⁷ Roy Vagelos, while he was CEO of the leading American pharmaceutical company, Merck, oversaw the development of a treatment for onchocerciasis, which causes river blindness.¹⁸⁸ The disease affects tens of millions of people in some of the poorest area of Africa.¹⁸⁹ After extensive testing, and because the afflicted communities and associated national governments could ill afford to pay for the treatment, Vagelos "made a decision to provide the treatment free to as many people who needed it, for as long as necessary, to eliminate river blindness as a public health problem."¹⁹⁰ He put social purpose first. And the list of CEOs could go on.¹⁹¹

183. *Id.*

184. Friedman, *supra* note 168.

185. Chris Williams, *Efficient Market Hypothesis and Irrational Investing*, WEALTH HORIZON (Mar. 10, 2015), <http://www.wealthhorizon.com/efficient-market-hypothesis-and-irrational-investing/>.

186. Bruce Bartlett, *Is the Only Purpose of a Corporation to Maximize Profit?*, BIG PICTURE (May 13, 2015, 8:30 AM), <http://ritholtz.com/2015/05/corp-purpose-maximize-profit/>.

187. Greg Urban, *Why For-Profit Corporations and Citizenship?*, in CORPORATIONS AND CITIZENSHIP, *supra* note 175, at 1, 26.

188. Jeffrey L. Sturchio & Louis Galambos, *Corporate Purpose and Social Responsibility*, in CORPORATIONS AND CITIZENSHIP, *supra* note 175, at 74, 85. Sturchio is the former Vice President of Merck for Corporate Social Responsibility.

189. *Id.*

190. *Id.*

191. Also worth mentioning here is the emergence of so-called "Benefit Corporations" (B Corporations) and "Social Purpose Corporations" (SPCs), as well as the recent

At the same time, we should recognize that shareholder value theory gained popularity¹⁹² at a period in history when U.S. corporations were seen as bloated and insufficiently competitive on the international scene.¹⁹³ Although today the theory has the characteristics of inertial culture, its resurgence in the 1970s was part of an attempt to stimulate greater efficiency and increased competitiveness in the corporate world. The "managerial revolution" of the early and middle twentieth century, when business owners came to be replaced by professional managers, was held by some to be responsible for corporate inefficiencies and wastefulness.¹⁹⁴ A shift in the direction of corporate social responsibility may thus represent a turning point in a pendulum cycle, with the maximum displacement in the direction of shareholder value having been reached and the move towards social responsibility underway. If that movement in fact takes place, it should result in the possibility of increased ethos internal coherence in corporations, and thereby, according to the theory of cultural motion put forth here, lead to a healthier environment for compliance.

X. CONCLUSIONS

From the perspective of cultural motion, compliance is a form of replication, albeit replication of a highly specific type. In compliance, it is not a behavior or a linguistic expression performed by A that is reproduced by B. Rather, B reproduces in behavior what is described in the command issued by A. As in all cultural motion, however, the replication involved in compliance takes place at the behest of forces. Those forces fall into four broad classes: inertial, entropic, reflexive or metacultural, and interest-based.

I have argued in this article that, while all four kinds of force may be at work in any given instance of replication, interest plays a special role in the case of compliance. The forms of interest typically associated with compliance are fear (a negative interest in the penalties threatened for non-compliance) and desire (a positive interest in the promised rewards for compliance). Compliance is thus conditional.

prominence of "triple bottom line" and related ideas. *Id.* at 81.

192. STOUT, *supra* note 179, at 15-23.

193. Walter Licht, *The Rise and Embedding of the Corporation*, in CORPORATIONS AND CITIZENSHIP, *supra* note 175, at 143, 150-52.

194. See JAMES BURNHAM, THE MANAGERIAL REVOLUTION 254-55 (1941); ALFRED D. CHANDLER, JR., THE VISIBLE HAND: THE MANAGERIAL REVOLUTION IN AMERICAN BUSINESS 490-91 (1977).

However, interest is involved in another, and perhaps more important, way as well. In this form, compliance is not conditional on something else, be it rewards or punishments. All social groups, such as corporations, tend to develop an ethos, in which various ethically tinged cultural elements come into alignment. An internally coherent group ethos inspires interest among the members. They spontaneously desire to live up to the group's ideals, including obeying the group's rules. That force of interest is brought to bear on the replication involved in compliance. The force cannot be imparted if the command is discordant with the ethos; nor is a weak or internally incoherent ethos capable of exercising much force in the compliance process.

While suggestions for developing the internal culture of compliance within corporations abound, ethos coherence depends also on the corporation's relation to its external cultural environment. In the last several decades, ethos internal coherence in corporations has been negatively impacted by legal theories stressing shareholder value, which dovetail with economic formulations of the invisible hand type, stressing the production of collective good out of the pursuit of individual interest. At the same time, a pendulum swing in the direction of corporate social responsibility may be underway, and, if so, we just might be witnessing the formation of a broader cultural climate more conducive to ethos internal coherence and corporate compliance.