

Prof. Dr. I.S.J. Maignan

Does Corporate Compliance deserve a seat at the university?

June 2nd, 2008

Dear Rector, Ladies, and Gentlemen:

With this inaugural speech, I would like to invite you to celebrate with me the first days of Corporate Compliance at the university. Together, we are acknowledging the courage of the Faculty of Economics and Business Administration of the VU University Amsterdam to have welcome in its premises Corporate Compliance, a professional young discipline in The Netherlands. It was three years ago that the Faculty first launched its Master of Corporate Compliance program. Today, the VU University Amsterdam is renewing its commitment with the official appointment of a Full Professor of Corporate Compliance.

Given this celebration spirit among us today, we ought to feel quite contented. The academics among us ought to be proud that a university has shown the ability to pick up on a real world phenomenon (the "compliance" phenomenon) and bring it into its premises. The compliance professionals among us ought to feel proud to see their key activity get recognition as a full-fledged discipline worthwhile a place at the university.

But are we truly feeling that proud and that contented? Are we that comfortable about having this managerial practice called Corporate Compliance enter the university? Many of the academics present today are likely to be confronted with questions such as: "Why would a recent corporate practice such as Compliance be worthwhile scientific inquiry? How could Corporate Compliance possibly be welcome by a university given that there is not even an A or a B journal with Compliance as its core topic? In fact, has any piece of quality academic research been published on the topic of Compliance?" I would bet that some of the Compliance professionals among us feel about as uncomfortable as their academic counterparts. Their own question marks are likely to include: "Why should such a practical activity as Corporate Compliance be the subject of academy inquiry? What could be the value added of theoretical research on Corporate Compliance? How could Corporate Compliance possibly survive in the mysterious world of constructs, theoretical models and general laws?"

With this inaugural speech, I invite you Compliance colleagues, and you academic colleagues to examine these questions. Before we leave this room, each of us should have determined whether or not she or he believes that Corporate Compliance deserves a seat at the university. Therefore, I invite you to reflect with me on the following key question:

"Can Corporate Compliance be considered as an academic discipline?"

I further invite you to be cautious in coming up with your own answer to this question because a lot is at stake. If we do arrive at a positive answer to our key question, if Corporate Compliance can genuinely be considered as an academic discipline, then academics will rejoice as they will envision new opportunities both in terms of Compliance education and research. Practitioners will also rejoice as they will be even more able to advocate a full-fledged place for Corporate Compliance in their own organization, a place clearly differentiated from that of other organizational functions. Practitioners will also be enthusiast about benefiting from, and participating in, the development of sound knowledge about Corporate Compliance practices.

On the contrary, if we do arrive at a negative answer to our key question --if Corporate Compliance cannot be considered as an academic discipline--, then our academic colleagues will have to admit first that they ought to stop the beautiful Master of Corporate Compliance started three years ago, and second that they committed a serious mistake by confusing a

growing managerial practice with an enduring phenomenon worthwhile academic investigation. Compliance practitioners will also have to face their disappointment and be prepared for painful defeats as they will be left to work on just another operational activity, as they will be in a weak position to defend the place of Corporate Compliance in their organization, and as they will see their own perspective for growth limited by the lack of knowledge development in the Compliance field.

The stakes of our inquiry are clear. So, without further delay, let's start examining the defining features of an academic discipline so that we can determine whether or not Corporate Compliance can qualify as one.

Part 1. What are the defining features of an academic discipline?

1.a. Objectives of an academic discipline

As stated by Braithwaite in 1955 (cf. p. 140), the ultimate function of an academic discipline is to establish general laws covering the behaviors of empirical events or objects with which the discipline in question is concerned, and thereby to enable us to connect together our knowledge of separately known events, and to make reliable predictions of events as yet unknown. The establishment of reliable and predictable relationships between key concepts and phenomena is therefore the objective of an academic discipline. It is an objective that could definitely add value to Compliance practice.

Think indeed of specific compliance-related events or activities you are familiar with and sense how useful for practice it would be to establish reliable connections between these events or activities. For example, consider the concepts "employee screening" and "violation of an internal regulation"; wouldn't it be useful to establish a relationship between the type of employee screening used and the chances that an employee will violate an insider regulation? Similarly, consider the concept "number of compliance hours training" and the concept "compliance incidents"; wouldn't it be fantastic to know of a clear relationship between the number of hours spent by an employee group on compliance training and the number of compliance incidents committed by that employee group? And what about the relationship between "costs of Compliance" and "reputation"; wouldn't it be easier to promote Compliance internally if the existence of a reliable and positive relationship between investments in Compliance and corporate reputation had been established?

Clearly, the main objective assigned to any academic discipline can be meaningful for the practice of Corporate Compliance. Accordingly, I advance that *the objective of Corporate Compliance as a potential academic discipline is the establishment of reliable relationships between key compliance concepts.*

1.b. Qualification criteria of an academic discipline

Gribbons and Hunt (1978, cf. p. 14) and Hunt (1983) identified three criteria that must be met for a professional practice or activity to qualify as an academic discipline. First, the professional practice or activity must have *a distinct subject matter* drawn from the real world. "Distinct" does not imply that other disciplines have no interest in the subject matter. Rather, each discipline has its own point of focus. For example, the academic discipline "Management" focuses on the subject matter "coordination for goal accomplishment" (Gribbons and Hunt 1978, p. 14). Other disciplines such as Psychology or Sociology also

generate knowledge on this subject matter, but only in Management is the topic of coordination for goal accomplishment the focal point of interest.

The second criterion that has to be met by a professional practice or activity to potentially qualify as an academic discipline is *the presupposition that underlying uniformities or regularities must exist* among the phenomena which comprise its subject matter. The discovery of these underlying uniformities is the key objective of academic research and results in the development of empirical regularities, principles, and theories.

The third and final criterion that has to be met by a professional practice or activity to potentially qualify as an academic discipline concerns its method of inquiry. Across most universities worldwide, there is a general consensus that academic disciplines *employ a set of procedures to develop knowledge that are commonly referred to as the scientific method*.

Accordingly, in order to determine whether Corporate Compliance can be viewed as an academic discipline, we do need to answer the following three questions:

1. Does Corporate Compliance have a subject matter that differs from that of other, related, disciplines?
2. Do we presuppose the existence of underlying uniformities and regularities among the phenomena that constitute the subject matter of Corporate Compliance?
3. Is the scientific method applicable to the study of Compliance phenomena?

I invite you to examine these three questions with me. Please note that I do not intend to arrive at definite answers to these important questions. Instead, while presenting my own preliminary answers, I hope to encourage you to develop your own viewpoints.

Part 2. What is the subject matter of Corporate Compliance?

2.a. Common definitions

Unfortunately, there is no trace of research aimed at comparing and contrasting definitions of Corporate Compliance across companies, regulators, and professional associations. In fact, a simple search on the internet or on any commercial information database yields few definitions of Corporate Compliance. Instead, some sources can be found that characterize specific aspects of Corporate Compliance as illustrated in the following examples:

- KPMG focuses on the meaning of being compliant: "Compliance is fulfilling internal and external regulations".¹
- The Basel Committee on Banking Supervision (2005) focuses on defining the norms that fall within the scope of Compliance: "laws, rules and standards have various sources, including primary legislation, rules and standards issued by legislators and supervisors, market conventions, codes of practice promoted by industry associations, and internal codes of conduct applicable to the staff members of the bank. [...] these are likely to go beyond what is legally binding and embrace broader standards of integrity and ethical conduct".

¹ www.kpmg.nl; March 2008; translated from Dutch

- The Dutch Association of Compliance Officers concentrates on the description of compliance risks as: “The risk of legal or regulatory sanctions and of material, financial loss, or loss of reputation a financial institution may suffer as a result of its inability to comply with codes of conduct that apply to its activities.” (Vereniging Compliance Officers, 2005).
- The Dutch Securities Institute focuses on the nature and objectives of the Compliance function: “the Compliance Professional assists the management of the financial institution in managing the compliance risks of the financial institution. Compliance risks are understood as the risk of legal or regulatory sanctions and of material, financial, or reputational loss that can be faced by a financial institution under supervision as a consequence of failing to meet the rules of conduct that apply to its activities”.²

Gathering more definitions of Corporate Compliance employed by individual organizations is unlikely to provide more guidance as to the exact subject matter of our discipline. By nature, individual entities have little incentives to find what is the underpinning trait of a specific set of activities performed by a variety of organizations; instead, they are eager to establish which boundaries they assign to a specific set of their own activities.

The diverging points of focus that can be found in common definitions of Corporate Compliance such as those listed above should not refrain us from attempting to identify common threads and underlying themes. In fact, I dare to say that the four definitions highlighted above provide sufficient background to start delineating the subject matter of the Corporate Compliance discipline.

2.b. Norms as pillars of Corporate Compliance

The four definitions mentioned earlier introduce the notions of “internal regulations”, “external regulations”, “laws”, “rules”, “standards”, and “codes of conduct” as the foundations of Corporate Compliance. I propose to regroup these different terms under the broader concept of “norms”. As emphasized in the academic literature, norms dictate the nature of desirable behaviors (Homburg and Pflesser 2000). An example of an organizational norm is: “Trading based on inside information is strictly forbidden”. Norms should not be confused with values which are broad in nature and which are defined as the pattern of basic assumptions defining desirable ends and means that a group has invented, discovered, or developed over time (Kluckhohn 1951; Schein 1984). Examples of statements expressing organizational values include “tradition is key to the success of our company” or “we believe in a sound competitive atmosphere”.

Norms can be developed at different institutional levels, ranging from international instances, states, individual organizations, and sub-groups such as business units or departments. Norms can be formalized in large texts --such as laws-- that detail various dimensions of desirable or undesirable behavior; they can also be expressed in succinct terms as illustrated in the examples below extracted from the Business Principles of Philips³:

² www.dsi.nl; March 2008; translated from Dutch

³ www.philips.com, March 2008.

- “The privacy of personally identifiable information about customers, employees, business partners and other individuals will be protected.”
- “Bribes in any form are unacceptable.”
- “Employees are not allowed to have any direct or indirect financial interest in a supplier or competing company with the exception of a financial interest in a publicly traded company.”

Given that norms are the pillars on which Corporate Compliance is built, we do need to ask ourselves the following question: Do all norms fall within the scope of Corporate Compliance? Compliance professionals in the financial sector would most definitely answer this question negatively. Most of them could be expected to quickly assert that the norms of interest to Corporate Compliance are restricted to the external laws and regulations and to the internal standards that fall within the scope of the responsibilities assigned to the supervisors active in the financial services industry. Most of these Compliance professionals would certainly be eager to name some key Compliance norms in the financial sector, including those covering duty of care, market abuse, or terrorism financing. Yet, even within the financial sector, there are major discrepancies as to the exact scope of Corporate Compliance. For example, while certain financial institutions consider the norms defining appropriate corporate governance, appropriate procurement practices, or appropriate inter-industry practices as falling within the scope of Compliance, others exclude these norms from the Compliance field.

The boundaries of the norms in the scope of Corporate Compliance are even vaguer outside of the financial sector. For instance, food safety norms could be the central pillar of the compliance program of a food retailer; drugs testing norms could be essential compliance norms for a pharmaceutical company; pricing norms could be key compliance norms for an energy company; and bidding rules could be essential norms in the compliance program of a building company. These examples illustrate that we cannot a priori define the exact nature of the norms that fall within the scope of the Corporate Compliance discipline. In fact, I suggest that *Corporate Compliance is in essence interested in all norms that apply to the organization under investigation*. This is because the purpose of Corporate compliance and the nature of Compliance activities are essentially the same regardless of the nature of the norms considered. This is an idea that I will discuss further in the next sections.

2.c. Main purpose of Corporate Compliance

Norms are the pillars of Corporate Compliance; subsequently the main concern of this discipline is to keep these pillars in stand throughout the organization. This concern is based on the basic assumption that the violation of applicable norms is likely to engender negative consequences for the organization. “Regulatory sanctions”, “material and financial loss”, and “loss of reputation” are some of the negative consequences mentioned in the definitions of Corporate Compliance mentioned earlier. I propose to simply regroup these consequences under the concepts of material costs and immaterial costs.

The introduction of the notion of “risk” within the Compliance discipline has been stimulated by a variety of institutional developments, including the integrated enterprise risk management framework of the Committee of Sponsoring Organizations of the Treadway Commission (COSO). The concept of “risk” can be useful for the compliance discipline as it makes clear that the degree to which violations of relevant norms lead to material and immaterial costs is uncertain.

Yet, I dare to argue that introducing the notion of risk and risk management adds little to understanding the nature and purpose of Corporate Compliance. Instead of simply viewing the minimization of violations of relevant norms as the key objective of Compliance activities, many organizations, as exemplified in the definitions we reviewed earlier, now assign to Compliance the role of managing the risks associated with violating relevant norms. This could imply that Compliance should be concerned with predicting, measuring, and reducing the consequences --and therefore the costs-- of potential violations of norms. This risk-based approach could imply for example that the establishment of good relationships with various stakeholder groups belongs to the scope of Compliance since stakeholder management is an excellent way to minimize the risk of stakeholders reacting negatively to any potential violation of relevant rules. Even though building strong relationships with organizational stakeholders is an important activity, it is one that certainly fits more within the scope of Public Affairs than within the scope of Corporate Compliance. Similarly, managing the costs of potential violations of norms could incorporate activities such as the development and measurement of a strong Corporate reputation, conducting a cost analysis of each potential type of violation of norms, or establishing an analysis of legal costs.

In the face of such a potential blurring of the boundaries of Corporate Compliance, I argue that the purpose of this discipline is *not* to manage compliance risks, and therefore *not* to minimize the material and immaterial costs associated with the violation of relevant norms. Instead, I suggest that *the purpose of Corporate Compliance is to minimize the violations of the norms that are applicable to the organization.*

2.d. Units of analysis of interest to Corporate Compliance

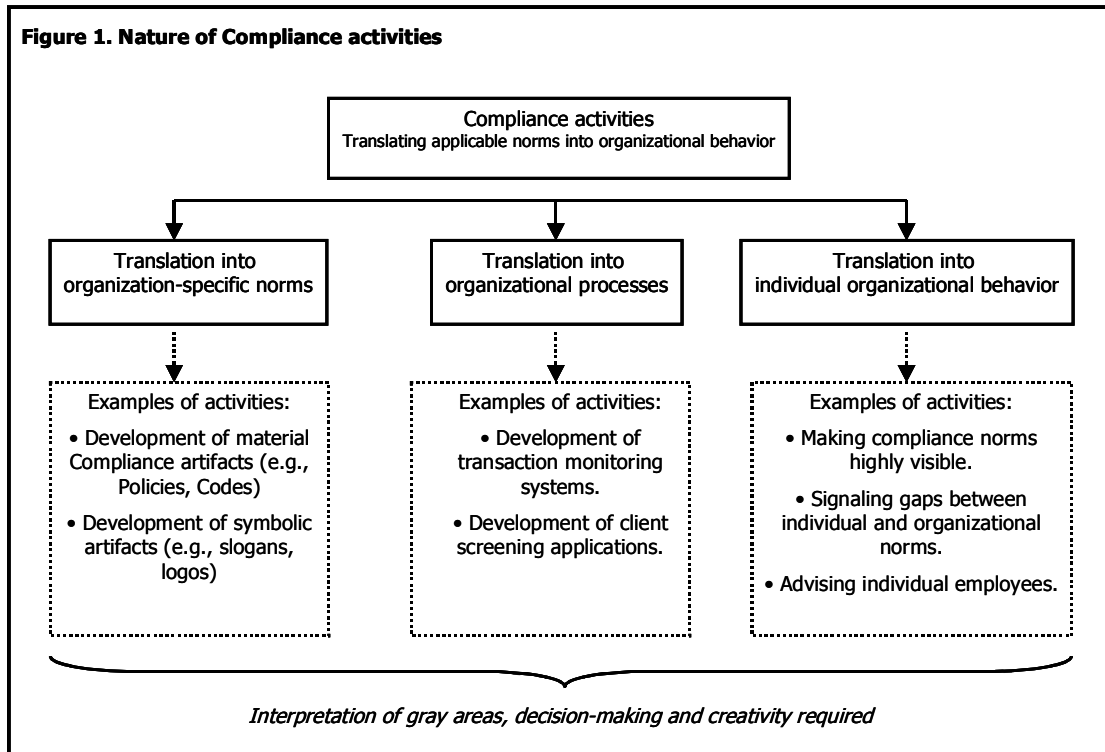
In light of the proposed purpose of Corporate Compliance, is it reasonable to assume that the corporation is the single unit of analysis of interest to our discipline? In my view, the answer to that question is definitely negative for two main reasons.

First, it is worthwhile observing that many other types of organizations besides the corporation are interested in minimizing potential violations of applicable norms. Think for example of: government agencies and procurement rules, charities and anti-terrorism financing rules, or universities and research process rules. There is no a priori reason to expect that the analysis and implementation of applicable rules would be different in these organizations than in corporations. Accordingly, I propose here to set aside the concept of Corporate Compliance and to favor instead the notion of *Organizational Compliance*.

Second, it is important to notice that the violation of the norms applicable to a given organization can take place at different levels. The well-known Dutch "bouwfraude" (building fraud) is a clear example of violation of norms at the level of an industry. The fact that corruption is found (for instance by Transparency International) to be higher in some countries than in others further indicates that the violation of norms can take place at the level of a certain country, or of any other geographic unit. Jérôme Kerviel and the famous Société Générale fraud case also illustrate the fact that the violation of norms can be committed by a single employee operating in a larger organization. Therefore, I suggest that *Organizational Compliance is concerned with three main units of analysis: the individual, the organization, and the market in which the organization operates.* The notion of market is meant to incorporate relevant industry and professional fields at the local, regional, national, or international level.

2.e. Nature of Compliance activities

How does Organizational Compliance attempt to reach its objective of minimizing the violation of relevant norms? I propose that *the translation of relevant norms into organizational behavior is the key feature of compliance activities*. As illustrated in Figure 1, this act of translation can be conducted through a variety of activities taking place at the level of the organization as a whole, at the level of specific organizational processes, and at the level of individuals. Please note that a single compliance activity can potentially be meaningful at different levels.



Translating broader norms into organization-specific norms. A first key activity of organizational compliance consists in translating norms developed outside of the organization into organization-specific norms. This is accomplished through the process of institutionalization of external norms into organizational norms. Very often, this process of institutionalization leads to the creation of organizational artifacts, which are defined as the visible, tangible, and audible expression of underpinning norms (Hatch 1993). A code of conduct, an insider regulation, a conflict of interest policy, or a gifts and entertainment register are examples of material artifacts that are created by the Compliance function and that institutionalize within the organization specific norms that have been developed outside the organization. They are aimed at making clear to employees which types of behaviors are considered as unacceptable.

Beyond formal policies and procedures, the Compliance function also generates more symbolic artifacts aimed at further institutionalizing relevant norms. Slogans such as "Compliance is my business" or "Doing good by doing right" would be examples of symbolic artifacts. I want to emphasize here that the process of translating broader relevant norms into organization-specific norms is far from being straightforward. In particular, this process

requires much interpretation of gray areas, key decisions when several interpretations of norms are possible, and creativity in order to make broader norms meaningful enough for all employees.

Translating applicable norms into organizational processes. A second key activity of organizational compliance consists in translating applicable norms (regardless of whether they originate from inside or from outside the organization) into organizational processes. With this type of activities, Compliance professionals intend to ensure that all business processes supporting value creation do respect relevant norms. For instance, the trade activities taking place within a dealing room environment must not involve any front-running behavior. Similarly, the acquisition of a new client must be preceded by a serious due diligence process that excludes any involvement of the client in money laundering or terrorism financing. Many different types of activities are used by Compliance professionals to translate applicable norms into organizational processes. Advising the owners of these processes, operating transaction monitoring systems, establishing client screening applications are only a few examples of these types of Compliance activities. The process of translating applicable norms into organizational processes also requires much interpretation, decision-making and creativity.

Translating applicable norms into individual organizational behavior. A third key activity of compliance consists in translating norms relevant to the organization into adequate behavior at the level of individual organizational members. Even when processes are set up to be compliant, any organizational member still could engage in behavior that directly or indirectly violates one of the norms applicable to the organization. Therefore, Compliance is first in charge of ingraining applicable norms into organizational members. This is accomplished for example by making the artifacts mentioned earlier (codes of conducts, policies, slogans) highly visible to employees, but also by requesting that employees officially commit to certain norms when signing their employment contract. Second, Compliance is in charge of highlighting any unacceptable gap between organizational norms and employee norms. Employee screening can be used to establish such gaps. Third, and very importantly, Compliance does impact individual behavior by providing advise to employees and management when they are unsure about the exact application of norms to specific behaviors. The process of translating applicable norms into individual organizational behavior also requires much interpretation, decision-making and creativity.

2.f. Conclusions on the subject matter of Compliance

In short, thus far, I have advanced the following main points about Compliance:

1. The concept of Organizational Compliance should be favored over that of Corporate Compliance.
2. The purpose of Organizational Compliance is to minimize violations of applicable norms.
3. Organizational Compliance is interested in the market, the organization, and the individual as units of analysis.
4. The nature of the norms that fall within the scope of Compliance may vary from one organization to the next.

5. Compliance activities consist mainly in translating applicable norms into organizational behavior.

Based on the arguments above, I suggest that *the subject matter of Organizational Compliance is the translation of applicable norms into organizational behavior*. As with the translation from one language to another, there usually are several potential ways of translating applicable norms into organizational behavior. Accordingly, as emphasized earlier, Organizational Compliance requires much interpretation of norms, and much creativity in the implementation thereof.

With this suggested subject matter, I do provide my personal and preliminary answer to the first question that we had to answer in our quest to determine whether Organizational Compliance can be seen as an academic discipline. I am highly aware that this subject matter is abstract, is broad, and is therefore unlikely to be met with enthusiasm, especially among the Compliance professionals among you. However, I argue that this subject matter both adequately defines the key nature of Compliance and encompasses the variety of industries, organizations, activities, and phenomena that do fall within the scope of Compliance. Of course, this broad subject matter allows for more specific definitions at the level of single organizations.

2.g. Implications for Compliance practice

In the process of defining the subject matter of Compliance, I have made a certain number of arguments that have concrete implications for the practice of organizational compliance. Let me discuss these implications now.

In favor of a further roll-out of Compliance across types of organizations. First, my discussion thus far suggests that where strong norms are applicable to an organization and where the interpretation and implementation of these rules are not straightforward, there is a need for Compliance activities. This implies that the Compliance function should be relevant for a great variety of organizations whether commercial or not, in a variety of industries. In the Netherlands, Compliance has crossed the boundaries of the financial sector to enter other types of organizations such as multinationals, the real estate industry, the energy industry, and the pharmaceutical business. A further spread of Compliance to other sectors is definitely possible. Among commercial businesses, think for example of staffing services companies, IT services businesses, or construction companies. Outside the commercial sector, consider for example public or semi-public organizations such as ministries, public hospitals, universities and non-profit organizations. This further roll-out of Compliance to various organizations offers both development perspectives for Compliance professionals and research opportunities for academics.

In favor of a further roll-out of Compliance across organizational functions. Noticeably, compliance is applicable not only to a variety of industries, but also to a number of operational functions within a given organization. As earlier mentioned, in the financial world, it is largely accepted to limit the boundaries of Compliance to those norms that are relevant to supervisors. Too often, Compliance professionals in financial institutions are actively keeping specific norms (think of Sarbanes-Oxley requirements, procurement rules, employment practices rules for example) outside of their scope. This push back is of course understandable for a function that often lacks resources to perform its assigned purpose.

Yet, the activities that make up Organizational Compliance and the expertise developed by Compliance professionals are meaningful to other types of norms besides those relevant to supervisors in the financial industry. Consider for example the norms that govern Human Resources (HR) practices. It is certainly important for any organization that the HR norms stated in external regulations be translated into organization-specific norms, into organizational processes, and into the individual behavior of single managers and employees. Therefore, the activities at the core of Compliance as defined earlier can certainly be applied to the HR function. Similar conclusions could be reached for a number of organizational functions such as procurement, investor relations, communications or Ops& IT.

Accordingly, I am suggesting here that the knowledge and skills developed within the Compliance function to translate broad norms into organization-specific behaviors could be of value to a variety of functions within a given organization. By coordinating the translation process across functions, organizations could both achieve economies of scale and ensure overall compliance with applicable regulations, regardless of the nature of these regulations.

In favor of specialized Compliance professionals. The proposed subject matter of Organizational Compliance and the proposed classification of compliance activities imply that Compliance professionals must make use of a variety of skills and knowledge areas. For example, the translation of broader norms into organization-specific norms requires an ability to interpret regulatory requirements along with a sound understanding of organizational processes. The development of symbolic artifacts that enhance the visibility of applicable norms requires a strong communications expertise. The implementation of norms into organizational processes requires both a solid knowledge of business practices and of OPS & IT applications. This broad range of expertise requires the specialization of Compliance professionals and the recruitment of these professionals from a variety of disciplines. At this moment, organizations still make too much reference to "the" compliance officer; too often do organizations expect "the" compliance officer to perform tasks that require capabilities that lay far apart from one another; and as a result, too often do organizations complain about the quality of their compliance officers.

I argue that large organizations should set aside the notion of Compliance Officer and replace it with the relevant area of specialization of Compliance professionals (e.g., Compliance advisor, Compliance Policy expert, Compliance Communications expert, etc.). These large organizations should dare to assign officially a Compliance role to experts that do work outside of the current Compliance function but who do play an important role in performing Compliance activities (e.g., Relationship Manager and Compliance advisor, Application Developer and Compliance Advisor). Of course, smaller organizations will have neither the need nor the resources for differentiated Compliance experts. I would then recommend that these smaller organizations replace the notion of Compliance Officer with that of Compliance coordinator. Such a title would make clear that the individual in question is not supposed to have the skills needed to perform all compliance activities, but instead that this person is responsible for identifying within or outside the organization individuals with the expertise required to tackle a specific Compliance issue.

Associated with this re-thinking of the nature of the roles assigned to Compliance professionals, I would encourage organizations to design clear career paths for these professionals. As a result of Organizational Compliance being jailed in a limited content box, Compliance is often seen either as a temporary station in a successful career path or as the end station in a not-so-successful career path. As a result, quite often, the Compliance function is not highly respected, is faced with significant employee turnover, and fails to offer continuity and growing expertise to the organization. As Compliance professionals become

aware of the various opportunities for development across the diverse expertise areas core to Compliance (for instance learning to move from an advisor role, to a policy maker role, and to a systems expert role), as they start grasping the breadth and depth of the knowledge they still need to develop within the Compliance field, they are more likely to stay within the Compliance function and to enjoy their personal growth within this function.

All in all, as we broaden the scope of Organizational Compliance, we also broaden the perspectives of the professionals active in this field. In the next section, I invite you to examine with me whether the broad definition of Organizational Compliance proposed thus far leads to much overlapping with other disciplines.

Part 3. Does Organizational Compliance have a distinct subject matter?

In our quest to determine whether Organizational Compliance can be viewed as an academic discipline, we have to assess whether its subject matter differs from the focal examination point of other, related, disciplines. In order to tackle this question, I will not discuss the relationships between the subject matter of Organizational Compliance and that of all potentially overlapping academic disciplines. Instead, I will examine whether the subject matter of Organizational Compliance relative to that of three closely related disciplines: (1) Enterprise Risk Management, (2) Business Law, and (3) Business Ethics.

3.a. Organizational Compliance and Enterprise Risk Management (ERM)

Is ERM an academic discipline? The most well-acknowledged definition⁴ of ERM was provided by the Committee of Sponsoring Organizations of the Treadway Commission (2004, p. 16): “Enterprise risk management is a process, effected by an entity’s board of directors, management and other personnel, applied in strategy setting and across the enterprise, designed to identify potential events that may affect the entity, and manage risk to be within its risk appetite, to provide reasonable assurance regarding the achievement of entity objectives”. The development of ERM across the financial sector over the past few years can be explained by the fact that regulators have been encouraging businesses to adopt a more quantitative approach to risk management. In particular, Basel II enables financial institutions to obtain reductions in capital allocations when risks are estimated by using techniques such as those used in quantitative modeling⁵. ERM is widely regarded as the appropriate method to quantify risks.

ERM takes advantage of classical risk management practices such as those employed for credit and market risks, and applies them to other, more recently acknowledged, types of risks such as operational, technology, or compliance risks (Abrahms et al. 2007). Therefore, some of the principles on which ERM is based have been developed in well-established academic disciplines such as Finance and Accounting. However, ERM in itself, at this stage of its development, is essentially a business process and therefore cannot be seen as more of an academic discipline than Organizational Compliance. Accordingly, the subject matter of Compliance could not possibly be part of an academic discipline called ERM.

⁴ See Abrams et al. (2007)

⁵ International Convergence of Capital Measurement and Capital Standards (Basel II), Basel Committee on Banking Supervision (2004), Bank for International Settlements, <http://www.bis.org/publ/bcbs107a.pdf> (March 2007).

Implications for practice. From a practical viewpoint, one should be wary of the current trend consisting in applying risk management techniques developed in the credit or market risk areas to the Compliance field. Traditional risk management assumes that the probability of occurrence of risks can be established, that the impact of these risks can be predicted in financial terms, and that quantitative risk tolerances can be established. It is simply unrealistic to make the same assumptions about Compliance risks. There is to date little research to speak of that identifies the probability of specific Compliance incidents. For example, there is no model that enables to assess based on a number of variables (e.g., number of employees, years of trading experience, gender) the probability that a trader will engage in front running. Similarly, there is hamper research that links specific violations of relevant norms to financial consequences. For example, there is no model that establishes any form of relationship between the occurrence of insider trading on the part of a business unit manager and the resulting material costs for the organization. As a result, the proper quantification of the probability and impact of Compliance risks is not feasible, and the determination of compliance risk tolerances is out of reach.

Given this lack of empirical evidence and reliable models about the probability and impact of non-compliance, it is in my view premature and essentially inappropriate to attempt to apply ERM techniques to Organizational Compliance. Yet, many organizations are currently in the process of integrating their risk functions --including Compliance-- and of standardizing their practices around the ERM approach. As a result, across the Compliance industry, we can observe the spreading of beautiful compliance risk footprints and Compliance reporting formats. In there, diverse compliance risks are assigned simple colors (from the envied green to the feared red) based on their expected likelihood (usually measured in likely frequency per year, five years, ten years) and their expected financial impact measured in thousands of euros. Given the lack of quantitative research on Compliance phenomena, such appealing instruments require Compliance professionals to actually guess the likelihood and impact of risks.

I admit that it is appealing to be able to tell Management "here is the mapping of your Compliance risks, look you are doing OK, almost everything is green". Yet, I doubt that Compliance professionals at this stage feel comfortable about their own work when they show these types of risk maps, knowing that they essentially guess colors based on few comforting arguments. I doubt that these risk maps truly help Management understand and appreciate the nature of Compliance. And most importantly, I fear that such instruments, at this point of time, cannot possibly provide any reliable presentation of the actual risks encountered by an organization in terms of Compliance.

Therefore, let me advocate a move away from such oversimplified risk mapping systems, and let me argue in favor of reporting systems that do not focus on likelihood and impact of risks, but on the concrete actions that have been taken to minimize violations of the norms relevant to the organization. Based on the classification of Compliance activities discussed earlier, I suggest that Compliance professionals can provide a sound picture of the state of Compliance in their organization by answering three key questions: (1) to which extent have the norms applicable to your business been translated into organization-specific norms? (2) to which extent are organization-specific norms implemented into organizational processes? and (3) which activities are in place to make relevant norms highly visible to individual organization members, and to advise individual employees on specific compliance related decisions? Compliance professionals can provide simple answers to these questions --even with a beautiful mapping of colors if need be-- based on factual analyses. The reporting of such information can provide an accurate depiction of the Compliance activities performed to date and of the Compliance activities still to be developed.

All in all, I suggest that :

1. ERM is not an academic discipline; therefore, the subject matter of Corporate Compliance cannot be confused with the subject matter of an academic discipline called ERM; and
2. From a practical viewpoint, it is premature to apply ERM processes to Organizational Compliance.

3.b. Organizational Compliance and Business Law

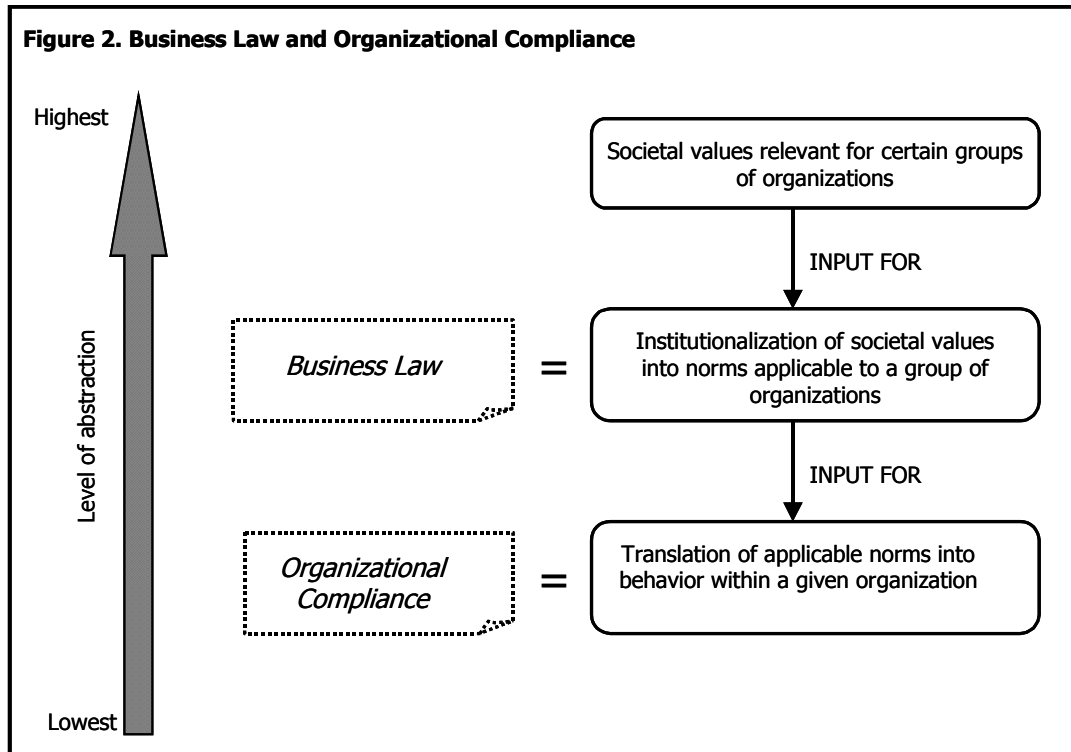
Same or distinct subject matter? Many of the first Compliance Professionals appointed in Dutch organizations were actually part of a Legal Department. Given this starting point, and given that the managerial literature often refers to terms such as “Legal and Compliance Programs” (Paine and Bruner 19986, Trevino et al. 1999), it is only logical to wonder whether the subject matter of Organizational Compliance differs from that of Business Law. Please note here that Business Law covers regulations that are applicable to other organizations than for profit businesses.

As indicated in any Business Law textbook (e.g., Kelly and Holmes 1997), the Business Law discipline incorporates a great variety of topics ranging from company law, partnership law, individual employee rights, consumer rights, due diligence, to appropriate sales practices. In addition, each of these topics has been the subject of a large body of in-depth literature. Therefore, it is quite intimidating for a non-jurist such as myself to come up with an assessment of the potential relationship between Organizational Compliance and Business Law.

Yet, I tend to confer with Crane and Matten’s (2004, cf. p. 9) view of business law as the institutionalization or codification of ethics --defined as issues of right or wrong-- into specific regulations and proscriptions. Crane and Matten add that “the law might be said to be a definition of the minimum acceptable standards of behaviour” (p.9). As illustrated in Figure 2, Business Law and Organizational Compliance are both involved in the institutionalization and interpretation of broad social values, but at different levels of analysis. Business Law essentially institutionalizes and translates broad social values into norms described in concrete regulations applicable to certain groups of organizations. In contrast, among other activities, Organizational Compliance is concerned with the translation of these concrete regulations into organization-specific rules and behaviors. Accordingly, it appears that the subject matter of Organizational Compliance is distinct from that of Business Law.

Implications for practice. Given that Business Law institutionalizes values into broad norms and that Organizational Compliance translates and institutionalizes broad norms into organization-specific norms, there is definitely a need for collaboration between these two disciplines. The most obvious area for mutual support is that concerned with the translation of the norms stated in laws. Noticeably, there is often a mismatch in practice between the type of expertise available within the Legal function and the type of legal advice needed by the Organizational Compliance function. This is largely due to the fact that, as discussed in part 2, Compliance has often been organized as a function next to business line functions. In contrast, Legal expertise has often been embedded within business line functions. As a result, Legal expertise is available on transaction-specific topics, whereas Compliance often requires advice on organization-wide topics (e.g., anti-bribery regulations, anti-trust laws).

In order to ensure the development of strong working partnerships between Legal and Compliance functions, I would therefore advocate that the Legal and Compliance functions be structured according to a common model and be embedded into other business line activities.



3.c. Organizational Compliance and Business Ethics

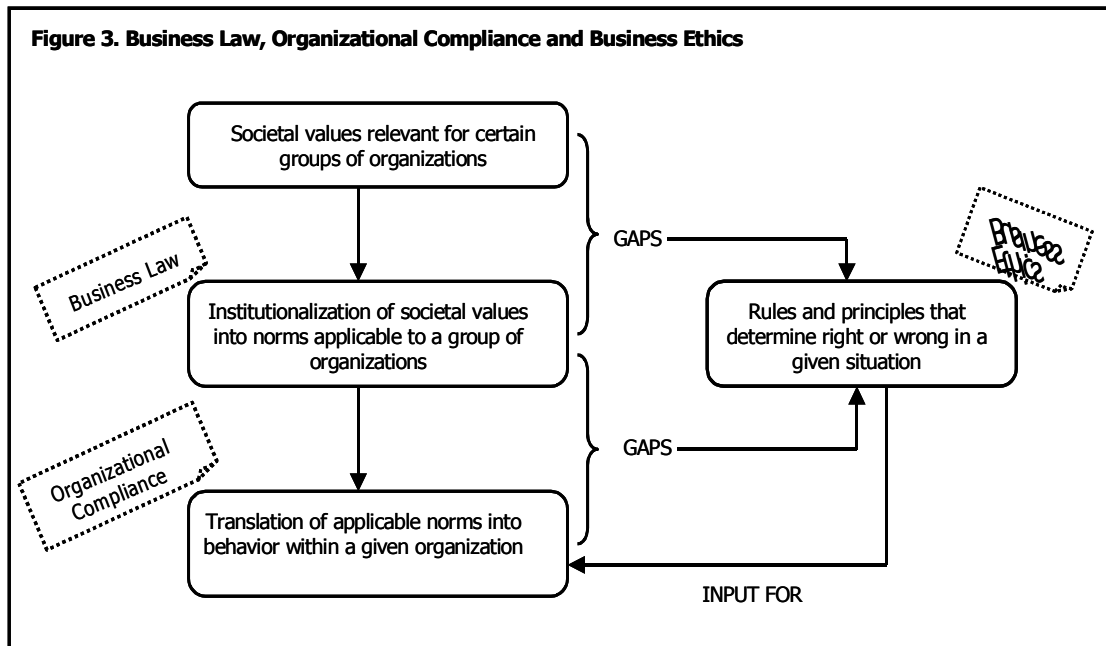
With norms defining appropriate behaviors as its founding pillars, Organizational Compliance can be expected to be closely related to Business Ethics. Therefore, let's examine whether the proposed subject matter of Organizational Compliance is distinct from that of Business Ethics.

Nature of Business Ethics. Business Ethics is a well-established academic discipline that investigates the rules, standards, and moral principles regarding what is right or wrong in specific business-related situations (Ferrell, Fraedrich, Ferrell, 2005, cf. p. 6). Please note that business ethics is not concerned only with commercial businesses, but also with not-for-profit organizations, government organizations, and other types of businesses. As stated by Matten and Crane (2004, p. 9), "business ethics can be said to begin where the law ends. Business ethics is primarily concerned with those issues not covered by the law, or where there is no definite consensus on whether something is right or wrong". The relationships between Business Ethics, Business Law, and Organizational Compliance are illustrated in Figure 3.

Two main sources of Business Ethics dilemmas are outlined in this Figure:

1. The gaps resulting from the fact that not all societal values are institutionalized into laws; and

- The gaps resulting from the fact that some institutionalized norms do not precisely dictate how to act in specific situations.



Noticeably, this second source of ethical dilemma falls within the scope of Compliance activities. Issues associated with the interpretation of applicable norms to specific organizational situations and processes are definitely of interest to Compliance professionals.

Nature of Business Ethics management. Overlaps between Business Ethics and Organizational Compliance become even more apparent when contemplating the literature on Business Ethics management. Business ethics management has been defined by Matten and Crane (2004, p. 144) as "the direct attempt to formally or informally manage ethical issues or problems through specific policies, practices, and programmes". These two authors (cf. p. 145) name the following components of Business Ethics Management:

- Mission or value statements,
- Codes of ethics,
- Reporting/advice channels,
- Ethics managers, officers, and committees,
- Ethics consultants,
- Ethics education and training, and
- Auditing, accounting, and reporting.

When replacing "ethics" with "Compliance" in the list above, the similarities with a typical Organizational Compliance program are striking. Matten and Crane's (2004) depiction of Business Ethics management is not unique. Using a slightly different terminology, Ferrell, Fraedrich and Ferrell (2005, p. 17) refer to "effective ethics programs" and claim that "a company must have an effective ethics program to ensure that all employees understand its values and comply with the policies and codes of conduct that create its ethical climate".

Integration of Compliance and Ethics. Given the depictions of Business Ethics management just discussed, the trend to integrate Compliance and Business Ethics comes as no surprise. This trend is visible in the professional ethics field, in the academic literature, and among regulators as illustrated below:

- The acknowledged professional association Ethics Resource Center published in 2007 a white paper advocating and defining the position of the so-called “Chief Ethics and Compliance Officer”⁶.
- Curtis C. Verschoor, a renowned academic and Editor of the *Journal of Strategic Finance* recently observed that “the most successful organizations have begun to combine their compliance and ethics efforts” (Verschoor 2007, p. 23).
- Whereas the U.S. Sentencing Guidelines⁷ talked about a reduction of penalties for companies that had an “effective program to prevent and detect violations of law” in 1991, the 2004 version of the Guidelines consider penalty reduction for companies that have “an effective compliance and ethics program”.

Learning from the Business Ethics Literature. A quick examination of the rich literature⁸ on Business Ethics further reveals many research findings and frameworks that are definitely of interest to both Organizational Compliance research and practice. A few examples follow:

- Normative ethical theories (e.g., rights theory, justice theory, virtue ethics, ethics of duties) can provide guidance to interpret relevant norms for the organization and to make decisions in specific situations.⁹
- Descriptive ethical theories help identify which factors within an organization and at the level of the individual employee are likely to lead to unethical behavior.¹⁰
- Research on ethical policies and procedures can support the development of compliance policies and procedures.¹¹
- Research on stages of cognitive moral development can help design appropriate employee screening and training schemes.¹²
- Research on assessing ethical performance and ethical climate within a given organization can support the development and measurement of a compliance-minded culture.¹³
- Research on ethics training certainly yields useful insights for compliance training.¹⁴

⁶ Ethics Resource Center (2007)

⁷ www.uscc.gov

⁸ Please note here that several academic journals (e.g., *Journal of Business Ethics*, *Business Ethics Quarterly*), more than 20,000 web pages, and nearly 1,200 books according to a recent review (Kelemen and Peltonen 2001) are dedicated to Business Ethics.

⁹ See for example Robbin and Green (1989), Tsalikis and Fritzsche (1989).

¹⁰ See for example Cavusgil (2007), Fritzsche (2007), Mathieson (2007).

¹¹ See for example Hassink et al. (2007), Kaptein and Schwartz (2008).

¹² See for example Jayantha and Wimalasiri (2001), Izzo (2000).

¹³ See for example Rothwell and Baldwin (2007), Schwepker and Hartline (2005).

¹⁴ See for example Nelson and Obremski (1990), Ruitter (2006).

- Research on business ethics across borders can inspire the structuring of Compliance programs internationally.¹⁵

These and other research streams within Business Ethics clearly indicate that Compliance and Business Ethics are concerned with a number of similar concepts and issues.

Same or distinct subject matter? Before branding Organizational Compliance as a new academic discipline and organizational function, it might be worthwhile for academics and practitioners alike to seriously examine how Organizational Compliance can add to the vast body of knowledge created by the Business Ethics discipline. Please not here that I am not implying that Business Ethics and Organizational Compliance cover the exact same phenomena. Instead, I am more than willing to acknowledge differences between the two disciplines. For example, I would tend to say that Compliance is much more concerned than Business Ethics with the implementation of relevant norms into organizational processes. In turn, Business Ethics is much more concerned than Compliance with the interpretation of broad societal values and with decision-making in situations where concrete norms are lacking. Nevertheless, I argue that given the flagrant overlapping areas between Organizational Compliance and Business Ethics, at a minimum a full-fledged analysis of their respective conceptual domains is absolutely needed. As Compliance practice further develops, it will become increasingly feasible to establish whether any of the following options is appropriate:

- Option 1: Business Ethics and Organizational Compliance are seen as two disciplines with a distinct subject matter, but also with some overlapping topics.
- Option 2: Organizational Compliance is part of Business Ethics.
- Option 3: The two disciplines have such overlaps that they should basically be treated as one.

For the time being, and while awaiting research on the topic, I cautiously suggest that Corporate Compliance might have a subject matter that differs from that of Business Ethics, but that large areas of overlaps between these two disciplines can be expected. I further advance that it might be difficult or even unreasonable to claim the existence of a distinct academic discipline that would have to continuously demonstrate its value-added relative to the well-established Business Ethics discipline.

Implications for practice. Strikingly, even though Business Ethics is well-established as an academic discipline, it is hardly visible in businesses and has only started to point its nose in educational institutions in The Netherlands. This is actually an observation that could be made across most of the European Union. This situation contrasts sharply with that of the United States where the notion of Ethics Officer is well accepted, and where Business Ethics has long been a must of any business degree. This difference can largely be accounted for by the fact that Europeans have traditionally shown much skepticism about the moral worth of capitalism and of businesses in general (Enderle 1996; Van Luijk 1990; Vogel 1992, 1998). In other words, across Europe, there has been a tendency to see "business" and "ethics" as two incompatible concepts.

¹⁵ See for example Smka (2004), Valentine and Rittenburg (2007), von Weltzien Hoivik (2007), Westerman et al. (2007).

As a result, it seems that many businesses across Europe have done their best to avoid any sign of engagement in ethical decision-making. In the Netherlands, ethical responsibilities have often been fragmented across various functions within the same organization. For example, the Business Principles that establish key norms for a given organization are quite commonly developed by the Public Affairs department. Questions about the appropriateness of doing business in often criticized industries (e.g., armament, casino's, tobacco) are assigned to departments such as Public Affairs, Market Risk, or Corporate Responsibility. Usually, when decisions with an ethical component cannot be brought to one of these departments, they do end up within the Compliance function. As a result, Compliance departments provide advice on a daily basis on matters that are not directly derived from explicit regulations. For instance, Compliance is often involved in determining whether or not a certain organization, a given individual, or even a given country is likely to be involved in bribery, in terrorism financing, in money laundering, and / or can be considered as a trusted partner. Such types of decisions involve many gray areas and should involve well-developed and balanced ethical decision-making processes.

The current fragmenting of responsibility for ethical decision making in many business organizations in The Netherlands can be detrimental in at least three respects. First, different functions within the same organization are likely to end up giving different advice on the same dilemmas. Second, ethical dilemmas are likely to be addressed by individuals who do lack the expertise to adequately engage in an ethical decision making process. Third, this fragmenting leads to the lack of visibility of ethical dilemmas within the organization and therefore to insufficient debate about how the organization should act. Therefore, I would argue that organizations should both: (1) regroup their various functions that are assigned responsibilities in the decision-making process involving ethical dilemmas, and (2) make visible both internally and externally the fact that they do engage in ethical decision making. The creation of combined Compliance and Ethics departments and professionals could be a first step toward of implementing these two recommendations.

Part 4. Preliminary conclusions and implications

4.a. Is Organizational Compliance an academic discipline?

In our quest to assess whether Organizational Compliance does qualify as an academic discipline, we still have two questions to address:

1. Do we presuppose the existence of underlying uniformities and regularities among the phenomena that constitute the subject matter of Corporate Compliance? And
2. Is the scientific method applicable to the study of Compliance phenomena?

I do propose a positive answer to both of these questions. Given that its subject matter is defined as the translation of relevant norms into organizational behavior, Compliance is concerned with the study of human behavior. Since numerous uniformities and regularities have been observed in other sciences involving human behavior, there is no a priori reason why the same would not be found with the study of compliance related behavior (Bribbins and Hunt, cf. p. 142). In addition, the fact that research has identified regularities in business ethics related behavior further supports the presupposition that uniformities and regularities can be found in Compliance phenomena.

The final characteristic of an academic discipline is its method. The scientific method of inquiry is recognized in academia as the appropriate method to develop knowledge. Philosophers of science have long debated over the exact nature of the methodologies that can qualify as scientific (e.g., Braithwaite 1955, Bunge 1967, Rudner 1966). As stated by Gribbins and Hunt (1978, p. 142), "the characteristic which separates scientific knowledge from other ways to "know" things is the notion of intersubjective certification". Scientific knowledge must be intersubjectively certifiable, which means that its findings must be reliably and consistently confirmed by different investigators in various contexts.

Berrelson and Steiner (1964, cf. p. 16) highlighted six distinguishing features of the scientific method: (1) the procedures are public, (2) the definitions are precise, (3) the data-collection is objective, (4) the findings must be replicable, (5) the approach is systematic and cumulative, (6) the purposes are explanation, understanding, and prediction. I propose that there is no a priori reason why the scientific method would not apply to Organizational Compliance. Since human behavior is at the core of Compliance phenomena, and since much research has established consistent and reliable relationships about human behavior, one can expect that the scientific method can be used to examine Compliance phenomena.

We now have reached the point where we can provide an answer to our central question: Can Compliance be considered as an academic discipline? So far, I have argued that : (1) Organizational Compliance has a clear subject matter defined as the translation of relevant norms into organizational behaviors, (2) we can seriously assume the existence of underlying uniformities and regularities among the phenomena that make up the subject matter of Compliance, and (3) we can expect the scientific method to be applicable to the study of Compliance phenomena. Yet, it is premature to assert with full confidence that Organizational Compliance qualifies as an academic discipline because of significant overlaps with the subject matter of Business Ethics.

4.b. Implications for Compliance practice

Hesitating to grant Organizational Compliance the full-fledged status of an academic discipline should not discourage us, but instead should motivate us, to further explore and develop Compliance in both practice and research. In terms of Compliance practice, I am sure that many of the Compliance professionals among you are likely to be surprised or even annoyed by some of the statements I have made about Compliance. Please keep in mind here that, as an academic, it is one my duties to question underlying assumptions and established practices in order to encourage both knowledge development and best practice. Therefore, I have challenged the Compliance professionals among you to:

1. think about the common features of Organizational Compliance across various types of organizations --whether for profit or not-- and various types of industries.
2. consider whether Compliance activities are concerned only with specific types of norms --such as those of interest for supervisors in the financial industry-- or whether Compliance activities can be a useful basis to implement other types of norms into organizational behavior.
3. set aside the notion of Compliance Officer to favor more specialized Compliance positions and to establish clear and exciting career paths for Compliance professionals.

4. re-consider the incorporation of Compliance risks into the ERM framework until reliable evidence has developed on the probability and impact of this type of risks.
5. advocate within your organization the regrouping of all functions or activities that are involved in the identification and handling of ethical dilemmas.

While challenging the Compliance Professionals among you on the topics above, I am also inviting you to join us here at the VU University Amsterdam to both further discuss these and other topics that are key to the further development of Compliance. Please start or continue to participate in our educational program, please share your own experience or thoughts with us. Most importantly, I am inviting all the Compliance professionals among you to help the VU University Amsterdam develop knowledge on Organizational Compliance by participating in, and by facilitating research activities. I am also inviting the academic colleagues present today to support directly or indirectly Organizational Compliance research and education.

4.c. Implications for research

As underlined in the arguments I presented thus far, rigorous research is dearly needed in a variety of areas within Organizational Compliance. Some key research topics include:

1. *Research on the subject matter of Compliance.* Is the subject matter of Organizational Compliance conceptually distinct from that of Business Ethics? Are there differences in conceptualizations across countries? How do organizations allocate the handling of ethical dilemmas across their organizational functions? Does this allocation of ethical dilemmas vary depending on the national origin of the organization?
2. *Research on Organizational Compliance as a risk.* Which factors best predict the occurrence of Compliance incidents? Can we develop methods to predict the financial impact of diverse types of Compliance incidents? Can we establish reliable relationships between resources invested in Compliance and the occurrence of Compliance incidents?
3. *Research on the classification of Compliance activities.* Can we establish a classification of Compliance activities that enables the benchmarking of practices across organizations? Can such a classification be meaningful across industries and types of organizations? Which elements of such a classification are most salient among institutional investors?

It is by developing and sharing new knowledge on the nature, scope, and impact of Organizational Compliance that we can grow as a group of practitioners and academics active in the Compliance field. Therefore, in light of our common need for knowledge, we should all be pleased that Organizational Compliance has acquired an official seat at the university today.

Part 5. Thanks

Before I invite you to celebrate this day with some drinks, I would like to close this speech with special thanks to those wonderful individuals without whom I could not be here today.

One underlying uniformity characterizes all these special individuals: they all have made a significant leap of faith by opening new doors for me.

Prof. dr. O.C. Ferrell opened the doors of academic research and of Business Ethics for me. O.C. made a major leap of faith when he gave a call all the way from Memphis, Tennessee to Normandy, France to invite a young French student he did not know to join his Ph.D. program. Thanks for that blunt move O.C.!

Gijs de Beer opened the doors of Compliance and of ING for me. Gijs certainly made a significant leap of faith by hiring a pure academic to act in the down-to-earth world of Wholesale Banking. Gijs, thanks for showing me the way in the "real world"!

Prof. dr. Jean Frijns, Prof. dr. Arnold Schilder, and the other members of the selection committee at the VU also showed quite some audacity when inviting and eventually selecting a highly pregnant woman for this position of Full Professor of Compliance --my last interview took place 48 hours before the birth of our second son! Gentlemen, thanks for your trust in me!

Niels Nieuweboer, my husband, also made a major leap of faith when seriously pushing his pregnant and feeble spouse to apply for this position, and when virtually carrying her to the door of the recruitment interviews. Niels, thanks for trusting me more than I trust myself!

Ingrid Hamming --along with Emiel Erb , Frank Meulendijks and Simone Vis, the other members of the office supporting the VU Master of Compliance-- deserves quite a word of thanks. Ingrid made a leap of faith when assisting Jean Frijns with the development of the first Master of Compliance program, and later by accepting to further develop this program together with me. Ingrid can teach all of us a good lesson on how to keep faith in the face of adversity. Ingrid, thanks for all your support, your tenacity, and your sense of humor.

I also owe a full-fledged thanks to the Executive Board of the VU University Amsterdam and to the Board of the Faculty of Economics and Business Administration for having welcome Compliance and myself to the university.

Finally, I want to thank each of you for your presence today. I also want to make a leap of faith myself now by thanking you in advance for the support that you will start or will continue giving to the VU Master of Compliance.

I thank you for your attention.

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Isabelle Maignan (1971) received her Philosophy Doctorate (Ph.D) in Business Administration with a specialization in Marketing at the University of Memphis in the U.S. Throughout her studies, Isabelle was most interested in investigating marketing ethics and the relationship between corporate social responsibility and marketing. Isabelle has worked as an Assistant and Associated Professor of Marketing in various universities in the U.S. and in The Netherlands until 2004. During that time, she published articles in a variety of international journals including the *Journal of International Business Studies*, the *Journal of the Academy of Marketing Science*, the *Journal of Business Research*, and the *Journal of Business Ethics*. Since 2004, Isabelle has been working as a Compliance professional in various positions within ING Group. In November 2007, Isabelle was appointed as Full Professor of Compliance at the VU University Amsterdam where she is acting as Chairman of the VU Master of Compliance. Isabelle is married and the mother of two young boys.