



THE SILENCE OF ORGANIZATIONS

How Organizations Cover up Wrongdoings

**Edited by
Sebastian Starystach
and Kristina Höly**



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Kristina Höly, Sebastian Starystach, and Ragna Heyne

Introduction

The present anthology is the result of the international conference “The Silence of Organizations—How Organizations Cover up Wrongdoings”, which was held in Heidelberg in October 2019. The conference took place in and was funded by the Heidelberg Academy of Sciences and Humanities, whose aim was to give young scientists the opportunity to independently organize international, interdisciplinary scientific conferences. This generous support provided us with the opportunity to design an event that enabled a scientific dialog on forms of silence in organizations across disciplinary and national borders.

Our idea for the conference originated from the observation that although organizations and especially business corporations are increasingly regulated and prosecuted for their (alleged) wrongdoings, there is a never-ending supply of new scandals of all colors: be it child abuse in the Catholic Church, the Diesel scandals, manipulation of transplantation lists, killing of patients or most recently the Wirecard scandal. In all these cases, the responsible organizations tried to cover up. Even well-founded accusations concerning illegal behavior were swept under the organizational carpet. This behavior seems counter-intuitive since—besides the enormous pain inflicted on the victims—organizations regularly also do harm to themselves, when the ongoings are uncovered and prosecuted. Consequences then can range from an extensive loss of societal trust to state sanctions threatening the organizations’ existence. Therefore, the question arises whether tighter regulations and prosecution are effective to combat crime, corruption, and other forms of wrongdoing in organizations since they neither effectively prevent wrongdoing nor do they incentivize an honest dealing with its consequences.

There is a plethora of research done on this topic, which highlights that one central cause for organizational wrongdoing and its cover-up is rooted in organizational deep structures, especially informal norms and (sub)cultures. In this context, the concept of organizational silence, which focuses on these informal norms and culture, especially caught our attention. Silence in organizations is considered one of

the main moderators to explain why organizational wrongdoing can still flourish in our society despite tightening regulations, increased efforts of compliance and relentless prosecution. As a culture or informal set of rules, it prevents employees from speaking up or even incentivizes them to actively cover up wrongdoings by organizations. However, we observed when researching silence in organizations that although much work has been done, an interdisciplinary perspective and a corresponding integrative theoretical framework were missing.

This led us to invite scholars from various disciplines to deepen our understanding of silence in organizations and to lay the groundwork for an integrative approach. Here, we focused deliberately on the analysis of silence as a cultural or structural phenomenon and not as the result of individual deviant actors. The following questions guided our efforts:

- Which factors of organizational culture increase the willingness to tolerate, to stay silent about or to cover up misconduct within organizations?
- Which forms of silence exist? Is there evidence that looking away and helping to cover up wrongdoings of others are connected, or are these different social phenomena?
- How and why do organizational cultures develop forms of silence, that is which function do they serve since they can potentially backfire?

Following these research questions, the contributions of international researchers from various academic disciplines as well as from organizational practice focused on the theoretical development of the concept of silence in organizations, empirical case studies, and the elaboration of implications for combating silence in day-to-day business. These analyses regarding the quality and the extent of silence in corporations, churches, political parties, sports associations, hospitals, and the police were presented and discussed in front of a broad audience. The event confirmed our assumption that there is no lack of instructive knowledge about silence, but that more theoretical and interdisciplinary integration is needed and that organizational dynamics of silence pose great challenges to actors from the most diverse areas of society and on a transnational scale.

Since we intend to integrate the given insights outside the disciplinary box, we therefore aimed to identify and theoretically classify explanatory factors of silence in organizations in order to create the basis for a systematic investigation of the phenomenon from the perspective of an integrated organizational science.

The contributions of this anthology show that silence in organizations is a central part of what one might call organizational self-regulation. It plays a central role in coping with the problem of collective action, but at the same time opens the door for deviant actors or groups to instrumentalize this functional structure for individual benefits or illegal organizational purposes.

The anthology begins with three contributions that provide a theoretical framework. First, the contribution by *Dr. Michael Knoll* from the Psychological Institute at

Chemnitz University of Technology summarizes central results of the current research on organizational silence. From the perspective of organizational psychology, manifestations, motives, and influencing factors of organizational silence are discussed; in addition, the contribution outlines necessary steps for theoretical integration. Central to the potential development of organizational silence are both “cultural artifacts” (such as policies) and values that are dominant within an organization. Since Knoll conceptualizes organizational silence as a multilevel phenomenon, he also stresses that silence can occur between different levels (e.g. pressure from a manager) as well as within one level of the organization (e.g. pressure from coworkers). Furthermore, it is important to note that organizational silence comes in different forms dependent on an individual’s motivation for staying silent: “disengaged silence” can be very different from “diffident silence”. On a collective level, organizational silence is best understood as a process since every person or group of people has an individual learning history that influences their behavior, and members of an organization often develop shared “implicit voice theories” about when breaking silence is risky or inappropriate. Between environmental factors, individual learning histories, and social dynamics that influence the structure and culture of organizations, organizational silence thus appears to be a complex and multifaceted phenomenon.

Then follows the contribution of *Prof. Markus Pohlmann* from the Max Weber Institute for Sociology at the University of Heidelberg which deals from an organizational sociological perspective with the question of why even capital crimes in organizations can remain undetected for a long time. In this context, he examines the explanatory reach of rational choice theory and neo-institutionalism using two extreme cases of collective silence: patient killings in hospitals and the sexual abuse of minors in the German Catholic Church. On the one hand, his analysis highlights that organizational effects are at work that can influence the interaction between rational egoists and thereby the outcome of suboptimal cooperation and collective default. On the other hand, he points in particular to the significance of informal norms in organizations, which can promote and endow collective silence with recognition and thus contribute to its legitimation in organizations. He hypothesizes that this does not require embedding in total institutions at all but can be a concomitant of regular organizations.

In a third theoretical contribution, *Dr. Sebastian Starystach and Dr. Kristina Höly* from the Max Weber Institute for Sociology at the University of Heidelberg analytically differentiate between individual and organizational deviance on the one hand and individual and organizational silence on the other. They argue that the combination of both analytical categorizations offers the possibility of building archetypes or idealtypes as to how silence and wrongdoing can be interconnected. Based on this heuristic, they analyze the case of the “German Transplant Scandal”. The analysis supports their assumption that it is central to understand silence in organizations not as isolated but always in the context of the kind of wrongdoings it covers up. The case analysis shows that the informal norms which struc-

tured the organizational deviance also influenced the corresponding dynamic of silence.

Subsequently, the empirical side of the phenomenon is examined more closely. The focus of this section lies on studies of silence in organizations that make the forms and consequences of silence in organizations of different social spheres tangible.

Opening this section, *Bastian Kückelhaus*, *Iris Kraneveld*, and *Prof. Gerhard Blickle* from the Psychological Institute of the University of Bonn use the concept of Machiavellianism as a personality trait to explain the behavior of individuals with a tendency towards amorality, insensitivity, and manipulation within organizations. Such individuals often disguise their counterproductive tendencies early on in their career, so that deviant behavior only emerges when the individuals are already highly integrated into the respective organization. With its theoretical approach mainly centered around psychological factors that promote wrongdoing within organizations on an individual level, it contributes to an understanding of the social dynamics that result in organizational silence: where a deviant Machiavellian individual has been part of an organization for a long time (and has thus acquired a certain level of both trust and power within the organization) it becomes increasingly difficult for other members to speak out about said individual's misconduct. Thus, Machiavellian individuals with good social skills and high impulse control that manage to mask their counterproductive tendencies for long periods of time can often rely on an organization's implicit power structures to uphold silence in their favor and create climates of silence.

Dr. Steve Conway and *Prof. Louise Westmarland* of the Faculty of Humanities and Social Sciences at the Open University UK present data from a recent survey of British police officers and police support staff. The main research question is whether, under what circumstances, and through what means the respondents would report misconduct observed among colleagues—and thus break silence within the organization. Among the main features of police culture that promote organizational silence seems to be a camaraderie between the officers resulting from a unique combination of social solidarity and social isolation that police officers experience on duty. Further enhanced by the potential danger as well as the “rites and rituals” of police work, group solidarity among police officers is both a vital aspect of police culture and a substantial obstacle to the reporting of misconduct within the police force—especially where such misconduct is of benefit to the organization as opposed to that of an individual officer. Even though police officers' attitudes towards reporting misconduct have seemingly shifted over the past decades to at least some degree (especially concerning drunk driving and excessive use of force), the “Blue Code of Silence” thus appears to still be active in police culture despite recent regulatory efforts such as the implementation of a Police Code of Ethics.

Prof. Ajay K. Mehra, Senior Fellow at the Nehru Memorial Museum and Library, India, subsequently provides information on party and election campaign financing in India as well as on the growing presence of individuals with a criminal his-

tory in Indian politics, which has increasingly become the focus of national and international criticism due to its lack of transparency and the infusion of illicit funds. In the context of Indian politics, practices of silence seem to be present on the level of individual political parties as organizations as well as on the larger systemic scale of the political system itself. Despite efforts on an institutional level as well as stemming from civil society, political parties seem to go to great lengths in order to uphold organizational silence. It is important to note in this context, that this “organizational silence” refers not only to an unwillingness to disclose the origins of a parties’ funding but also to extensive efforts to thwart any attempt at structural reforms.

Afterwards, *Prof. Dieter Dölling* from the Institute of Criminology at the University of Heidelberg presents the results of a research project on sexual abuse offences in the German Catholic Church and the Church’s reaction to these acts. Findings on the number and type of crimes committed, as well as on the persons affected and accused are presented. The underlying causes of these crimes are also discussed, with a focus on the Catholic Church’s reaction to exposed crimes and possible explanations for this reaction. Most importantly, allegations made by victims of sexual abuse against priests seem to have been viewed by its members mainly as a threat to or an attack on the institution of the Catholic Church. In this context, protecting the Church was deemed more important than protecting victims, and thus priests were mostly relocated rather than prosecuted. Another important factor that contributed to the failure of attempts at establishing protective concepts seem to have been “clerical power structures”. Furthermore, the church’s sexual morality and the way of life of the priests may also have contributed to creating the scenario in which such numerous instances of sexual assault could occur and be swept under the rug for an extended period of time.

Prof. Ilse Hartmann-Tews of the Institute for Sociology and Gender Studies at the German Sport University Cologne then discusses elements of the social structure of (professional) sport and its organizations on the basis of online surveys of sports clubs and national sports associations as well as interviews with prevention officers and victims. Her paper concludes that these structures seem to be favorable not only for incidents of sexualized violence but also for the silence of the organizations in question. Of particular importance to the emergence of organizational silence in this context are certain dominant mindsets that are very common in sports organizations, such as the positive image of sport, a narrative of male dominance (that is specifically present in sports organizations through dominant values such as “toughness”), the power imbalance between coach and athlete, and the strong sense of membership trust and loyalty within sports organizations. Despite regulatory efforts, these mindsets (which are vital to sports organizations’ culture) have made it particularly difficult to establish normative structures that promote breaking organizational silence. Without such normative structures, it is extremely difficult for victims of sexualized violence to find ways of speaking out despite dominant mindsets promoting organizational silence.

These studies show that silence in organizations is to be understood as an integral part of the reality of state, church, and leisure-oriented organizations. Thus, combating the structures that perpetuate this silence represents a particular challenge. Therefore, the anthology also includes the perspectives of organizational practitioners: Prof. Martin Zeier and Markus Jüttner, whose contributions focus on practical implications as well as possible solutions for the silence in organizations.

Markus Jüttner (Vice President Compliance, E.ON SE), in his contribution as a practical expert, outlines challenges, opportunities, and alternative concepts for dealing with organizational silence. He argues that the reason for never-ending scandals lies in the propensity of corporate compliance to view the fight against crime as a legal matter which can best be solved with the help of best-practice measures. These measures may protect the respective organization in case of a scandal since a state-of-the-art compliance system was implemented, but they do not address the root causes of corporate crime and the propensity of employees to stay silent. The root causes for these are to be found in the organizational deep structure in toxic structural elements. He concludes that to prevent crime and silence in organizations, an “invisible hand” in the form of the absence of toxic structural elements is needed, rather than focusing on best-practice compliance measures. Therefore, he argues that uncovering toxic structural elements, and then eliminating them with the help of structural prevention is the core task of serious compliance to prevent corporate crime and silence. Against this background, compliance officers are required to counteract the dilution of the compliance task by other topics as well as to withstand the constant appeal of consultants for “more is better” and the “latest best practice pressure”.

Finally, *Prof. Martin Zeier*, Medical Director of the Kidney Centre at the University of Heidelberg, discusses the so-called “German Transplant Allocation Scandal”, in which patients who were on the waiting list for a liver transplant were deliberately pushed forward at various German transplant centers. Using this example, Zeier discusses factors that could have led to deviations from rules in the allocation of donor organs and their initial toleration in isolated cases. In addition to the general shortage of donor organs and unsatisfactory control mechanisms, he emphasizes the high degree of expertise required of personnel in the complex field of transplant medicine, which on the one hand creates team spirit, but on the other hand also leads to intense competition for the best minds. Zeier refers to studies that have shown that employees tended to adhere more to instructions of their boss than to official guidelines and regulations. Quite often, looking away from deviations was linked to the intention of protecting the patients’ well-being. Zeier places particular emphasis on organizational measures to prevent deviations from rules and to break existing dynamics of silence, such as the introduction of an independent control system and a multiple-eyes principle. He calls for an increase in outcome quality for the patients with the help of multi-center studies, and advocates for a “scientific control” of transplant medicine.

The contributions provide both theoretical and practical insights into phenomena of silence in organizations and the concealment of wrongdoings in organizations in various societal domains. Based on them, we pledge for a more holistic and interdisciplinary view of silence which should take a closer look at the interconnectedness between wrongdoings and silence in organizations since their frames of reference are often enough associated via informal norms. Organizational-psychological approaches provide here a deep understanding about the influence of concrete organizational structures and norms on individual behavior, which can aggregate to a climate of silence. The social science perspective on the other hand can provide a case-based understanding of the dynamics of informal norms in organizations, which can also be the root cause for deviance and silence in organizations.

As editors of this anthology, we would like to thank the authors of the individual contributions as well as the speakers of the Academy Conference for their participation. Furthermore, we would like to thank the staff of the Heidelberg Academy of Sciences and Humanities, who made the organization of the conference and the publication of the anthology possible in the first place through their promotion and support.

Heidelberg, May 2021

Kristina Höly, Sebastian Starystach, and Ragna Heyne

Section I

Theoretical Framework

Michael Knoll

Silence in Organizations— What We Need to Know, What We Know, and What We Don't Know

Abstract The conference from which this book arose showed that organizational members' withholding of ideas, questions, opinions, and concerns is an issue in many contexts and is approached from diverse perspectives. The chapter discusses what organizational research may contribute to the understanding of this phenomenon. I wrote this chapter with three aims in mind. First, I wanted to present a framework which can guide exploration and practitioner attempts to overcome silence in organizations ("What we should know"). This framework considers silence and its antecedents and effects at the individual, team-, organization-, and societal level. Second, I wanted to provide a focused review of existing knowledge on silence and its antecedents and effects (i.e., "What we know"). To give the scattered research focus, I organized this review along the following seven principles: Silence can be detrimental, motives for silence are manifold, silence is affected by factors at different levels, silence is a process, silence has many faces, silence is contagious, and silence is not always a conscious choice. Third, I wanted to point at blind spots within our current knowledge (i.e., "What we do not know"). I use the seven principles to illustrate how blind spots might be detected knowing that my list is not exhaustive. I believe that these three ways of approaching silence in organizations—an integrative framework, a review of existing knowledge, and the identification of unanswered questions—are useful for researchers and practitioners in their attempts to advance knowledge on silence in their respective areas.

Keywords silence, voice, organization, multi-level, review

*In the end, we will remember not the words of our enemies,
but the silence of our friends (Martin Luther King).*

Introduction

At the conference from which this book arose, practitioners and researchers from a broad range of countries linked silence to topics such as malfeasance and corruption in office and administration, sexual abuse of minors in the Catholic Church, maltreatment and murder of patients in hospitals, sexualized violence in sports organizations, corporate compliance, police integrity, manipulations in the allocation of liver transplants, and unsafe, unethical or poor quality care. The talks and the respective chapters included in this book show that—with respect to antecedents, manifestations, and outcomes of silence—there are factors that are relevant in each of the addressed cases and settings, and that there are factors that are rather idiosyncratic. The talks furthermore mirrored the diverse (theoretical and practical) approaches to and scattered evidence on silence in organizations that have been applied in recent years (see Brinsfield, Edwards, & Greenberg, 2009; Knoll, Wegge, Unterrainer, Silva, & Jønsson, 2016; Morrison, 2014).

While diversity in approaches is valuable at early stages of theoretical development, when a concept matures and aims at application, research is advanced by integrating and eventually aggregating knowledge (Edmondson & McManus, 2007). This, however, is a delicate endeavour. Taking a too narrow perspective may cause one to neglect processes and influences that appear outside the scope of issues that are directly associated with silence. Indeed, the cases reported in this book show that in practice, for example, a shortage in personnel, a competitive culture, and opportunities to easily swap employers contribute to silence in organizations. On a conceptual level, taking a too narrow focus may cause one to neglect that a number of family-like concepts have received research attention in diverse disciplines (e.g., voice, issue-selling, principled organizational dissent, withdrawing, facades of conformity) which may provide insights into the organizational phenomenon that we observe as silence. In this chapter, I approach this endeavour of an amenable integration in three ways.

First, I offer a model of silence in organizations that can function as a framework for exploring new and integrating existing knowledge on antecedents, manifestations, and consequences of silence, and that can also guide practitioner attempts to overcome silence (“What we should know”). I present this model at the beginning of the chapter so it can guide thinking about factors and processes involved in silence, maybe even invite the reader to position her or his individual experience and knowledge on the topic. Second, I use the model as the scene on which I present my subjective review of existing knowledge on the topic (i.e., “What we know”). I condense this knowledge into seven principles to make it more tangible

(see Table 1). Third, I will point at blind spots within these seven principles (i.e., “What we do not know”). I believe that these three ways of approaching this important area of research and practice—an integrative framework, a review of existing knowledge, and the identification of unanswered questions—are useful for us to proceed in our respective areas.

Silence in Organizations—An Integrative Framework

Silence denotes “the withholding of any form of genuine expression about the individual’s behavioral, cognitive, and/or affective evaluations of his or her organizational circumstances to persons who are perceived to be capable of effecting change or redress” (Pinder & Harlos, 2001, p. 334). Thus, while it exists in the absence of speech (Scott, 2018), silence is “anything but” (Tannen, 1985) nothing happening. While silence in organizations does not include someone remaining silent due to a lack of knowledge or ideas, it includes those (vocally) agreeing while (in fact, silently) disagreeing and those who refuse to ask (although they have questions) or do not express their concerns and doubts.

When speaking about silence in organizations, it seems helpful to consider that organizations are a multi-level context in which several layers are nested within each other (Kozlowski & Klein, 2000). As a consequence, silence in organizations is an aggregated phenomenon. On the one hand, it comprises a combination of decisions, motives, and interests of the individual member of this organization; on the other hand, silence emerges from a combination of contextual factors that—as an integrated whole—lead organization members to withhold their views. Of course, this duality of individual and contextual factors leading to silence is artificial and should be treated as a heuristic. In reality, organizational members and organizational context (at least as it is perceived by its members) are interwoven in a dynamic interplay. Figure 1 (which is an adaptation of Knoll et al., 2016, which, in turn, was inspired by Dragoni, 2005, and Morrison & Milliken, 2000) is my attempt to illustrate this multi-level approach in an abstract form.

One consequence of this multi-level approach is that silence may occur at different levels, an idea that derives from the two articles that introduced silence to organizational research. Specifically, Morrison and Milliken (2000) coined the term *organizational silence* in their attempt to “explain why the dominant response within many organizations is for employees (en masse) to remain silent” (p. 707). Pinder and Harlos (2001), in turn, focused on the employee level and identified two types of *employee silence*—acquiescent and quiescent silence—which capture discrete emotional and cognitive states of an individual that withholds his/her view. As I will discuss later in this chapter, one is a state of tension and the other a state of despair. Notably, while employee silence focuses on the individual level, its causes are not supposed to be rooted in the individual alone, but may lay in higher-level factors

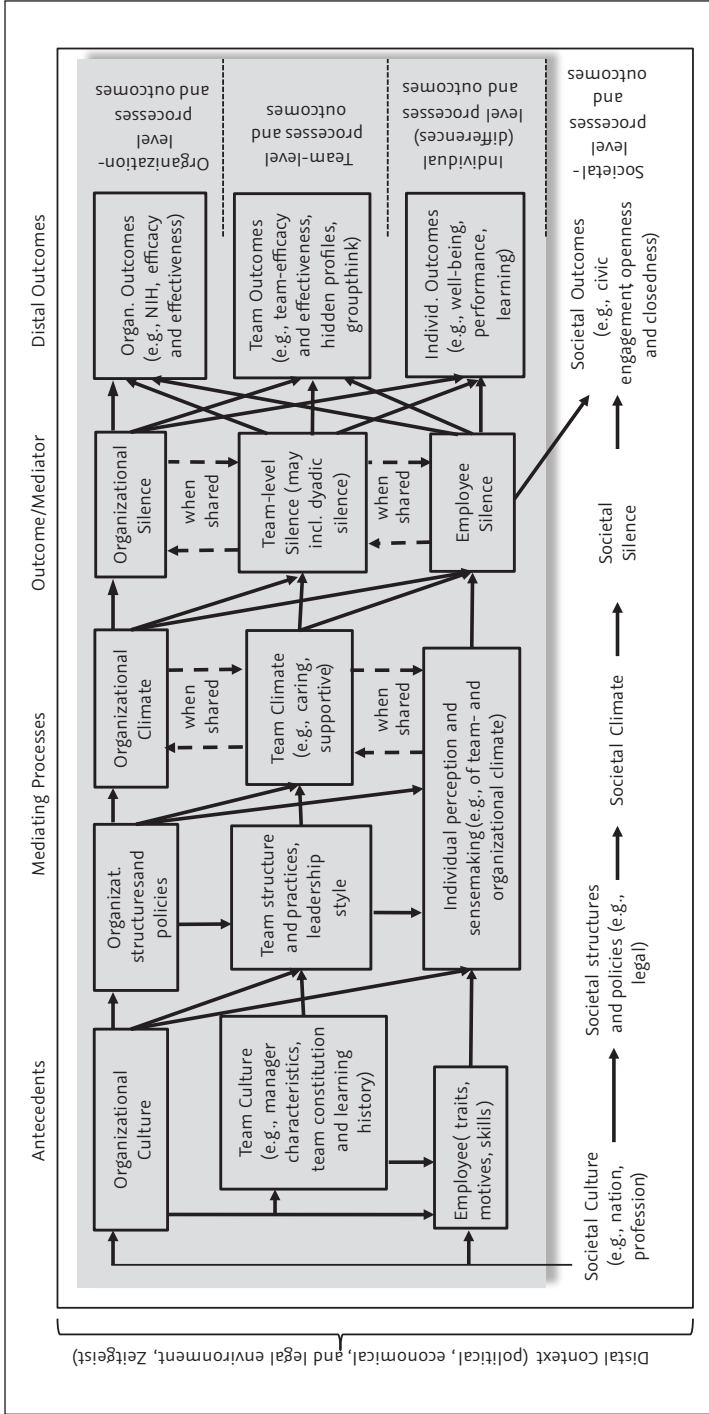


Figure 1 An integrative framework of silence in organizations (modified from Knoll et al., 2016, p. 177). The most important same- and cross-level effects are included, but reverse paths are omitted due to clarity concerns. The shading is supposed to illustrate a figure-ground-distinction.

that are situated at the team-, organizational or cultural level. To give an example that can be situated in Figure 1, imagine working in an organization with a weak culture that does not provide values and thus tolerates your supervisor treating colleagues, customers, patients and the like unfairly and unethically, and who is not responsive to your ideas and concerns. In such an environment, you are likely to perceive the organizational climate as non-supportive and your supervisor as hostile—two perceptions that are likely to result in silence.

While the concepts of organizational and employee silence have received considerable research attention, silence could emerge in-between the two levels (e.g., at the team level or dyadic level between an employee and his or her supervisor) and/or above the organizational level. Silence as a phenomenon that may exist above the organizational level, for example, societal level silence, is addressed in sociological, historical, and anthropological studies. Examples include Sheriff's (2000) study on the refusal to address ethnic-based discrimination in Brazil, Fontes' (2007) work on Latino victims' refusal to speak about abuse to the police, and work on the so-called blue wall of silence in police (Trautmann, 2000) and white walls of silence in medical professions (Gibson & Singh, 2003). Note that when speaking about silence in organizations, societal level characteristics are likely to not directly affect silence but are mediated by more proximal levels such as organizational culture and leadership style (Hackman, 2003). Again, as mentioned above and visible in Figure 1, lower-level factors are not independent from higher-level factors as evident in the finding that different leadership styles are likely to flourish in different countries (House et al., 2004).

Figure 1 portrays silence at the different levels as hubs or hinges connecting antecedents and outcomes occurring at diverse levels. Given the example above, the employee who remained silent due to an unsupportive organizational climate and a hostile supervisor is likely to suffer from the situation, for example, by experiencing frustration and fear in specific situations, and ruminate on the situation after work (Knoll, Hall, & Weigelt, 2019). Besides these individual-level effects, the employee's withholding of ideas and concerns is likely to impede team-learning and decision-making (team-level effects; Janis, 1972) and (directly or indirectly via poor team-level learning; Edmondson, 1999) hamper organizational development and effectiveness (organization-level effects; Morrison & Milliken, 2000). The most important same- and cross-level effects (both up- and downward) are included in Figure 1, but reverse effects are omitted due to clarity concerns. With respect to reverse effects (or feedback loops), it is likely that the frustration which employees experience after remaining silent further reduces their contribution to team learning which, again, hampers organizational effectiveness (see Perlow & Repenning, 2009). In the following, I will come back to this figure time and again to organize what we do and do not know about antecedents and outcomes of silence at the several levels. While this model may be helpful to build a comprehensive approach to silence in organizations (and beyond), one may select specific parts of it when analysing specific cases or aims at understanding/addressing silence in a specific context.

What we know and what we do not know about silence in organizations

In the following, I will introduce seven principles that I think are useful to organize existing knowledge on silence in organizations that has been developed in organization science, social, clinical, and developmental psychology, ethnography, and communication, historical, and political science. As can be seen in Table 1, for each principle, I also point out blind spots that need to be addressed.

What we know	What we do not know (exemplary questions)
Silence can be detrimental	What are the benefits of silence to individuals and organizations? This might help understand why silence is so often tolerated.
Motives for silence are manifold	Which motives are active/dominant at a given time or and in a given context? How are the motives triggered or suppressed?
Silence is affected by factors at different levels	What is the influence of peers? What about managerial silence? What about cultural (e.g., nation, profession) influences? How do factors at different levels interact? Are some factors (situated at which levels?) stronger than others?
Silence is a process	How do individuals, teams, and organizations gain or lose momentum with respect to voice/silence? Are there stages that are less/more open to intervention? How do organizations or institutions develop cultures and climates of silence?
Silence has many faces	What happens if members with diverging views or those who noticed wrongdoings leave teams and/or organizations? How do voice and silence show in social media?
Silence is contagious	Are some people more contagious/susceptible? How are self-reinforcing dynamics/spirals broken that strengthen the grip of silence in organizations?
Silence is not always a conscious choice	What are the influences of early and secondary socialization on implicit beliefs and mental models? How do primary and secondary socialization interact (e.g., does primary socialization pave or block the way for intervention in secondary socialization)? How can we address non-conscious information processing that makes silence endure?

Table 1 Seven principles of what we know about silence in organizations (and some remarks on what we do not know, yet)

Silence is detrimental, isn't it?

A central reason for introducing the concept of organizational silence was the observation of university professors Elizabeth Morrison and Francis Milliken (2000) that in their respective organizations, critical issues were not expressed. They did not only experience personal unease in their situation, but they feared that the inability to express ideas, concern and the like will fossilize their organizations. About the same time, Craig Pinder and Karen Harlos (2001) identified the concept of employee silence as a central issue when they tried to understand harassment and abuse in the Canadian military. These two articles already provide a great deal of

information on the detrimental effects of silence in organizations, particularly with respect to the levels we see in Figure 1.

With respect to the individual employee, Knoll and colleagues (2019) showed in a longitudinal study that remaining silent at work due to fear of negative consequences and resignation resulted in burnout symptoms deindividuation and emotional exhaustion. While the processes that are responsible for the negative relationships between employee silence and health and well-being have not yet been shown empirically, suggestions have been made by clinical and developmental psychologists for a long time (Harter, 1997; John & Gross, 2004; Winnicot, 1960). In these works, it is proposed that self-regulation demands and rumination are directly detrimental, and that a number of negative indirect effects occur due to silence's detrimental effects on relationships and enduring inefficacies of work processes, and toxic climates (Perlow & Repenning, 2009). From the organizational behavior and developmental psychology literature, one can also derive that silence hampers individual learning and development (Argyris & Schön, 1978; Morrison & Milliken, 2000).

Team-level effects of silence have not been central in organization research, yet. Social psychological research, in turn, using concepts such as groupthink and hidden profiles (Janis, 1972; Strasser & Titus, 1985), revealed that silence can hamper information sharing and the decision-making process, leads to poor use of unique information and dissent, and eventually poorer decisions. Silence furthermore prevents collective elaborations on, for instance, work-life-balance arrangements that would benefit every group member, but remain hidden because they are not openly communicated (Perlow, 2012). In a similar vein, diversity is not used in teams because the diverse viewpoints are not expressed (Syed, 2015). Finally, examining surgery teams, Edmondson (1999) showed that collective learning and eventually team performance relies heavily on open communication.

The effects on organizations are similar to those on teams with respect to information sharing and detection of errors leading Morrison and Milliken (2000) to the statement that organizational silence hampers sustainable organizational development. With respect to organizations, the negative effects of silence may be even more dangerous. On the one hand, the negative effects can affect more people as the negative effects are not specific to team members but may spread across the organization. Further, organizational silence can have stronger effects than individual or team silence on people outside the organization. For example, research on work design—which is usually defined top-down and established at the organizational level—proposes that if employees feel not able to participate in decision making, they will not only suffer in silence and not contribute to team-learning, but will also less likely engage in civic duties after work (Weber, Unterrainer, & Schmid, 2009).

In sum, media reports and rigorous research using a broad range of methods revealed that silence is negatively related to individual and collective well-being and detrimental to organizational development, it inhibits the detection of errors, con-

tributes to the endurance of negative behaviors such as bullying and harassment, eventually resulting in toxic workplaces and suffering way beyond organizational boundaries. While these detrimental effects have been the reason for introducing silence as a discrete concept into organizational research, and also for organizing the conference that this book emerged from, arguing as if silence were always detrimental would not do justice to the complex and ambiguous phenomenon (Scott, 2018; Tannen, 1985; Valle, 2019). That is why we need to be open to the potential positive effects that silence may have and understand that benefits and harm may manifest at different points in time and/or at the same time at different levels of analysis. I want to briefly elaborate on this issue but see this as an underdeveloped facet of silence in organizations.

The nature of conversation and communication as an interaction includes that it cannot succeed without silence, and omitting certain (taken-for-granted) information is an essential element of professional and efficient decision making. Silence can also be a form of self-determination and justified resistance (Collinson, 1994; Covarrubias, 2015; Kurzon, 1995). Think of situations in which individuals may want to defend against attempts to take their knowledge away assuming that sharing their implicit knowledge may eventually make them obsolete. Or think of situations in which individuals want to conceal an aspect of themselves, for example, their sexual orientation or a chronic disease because they think revealing it could make achieving their goals difficult if not impossible. Asking for a right to remain silent may be premature though because the benefit at one level (i.e., the individual who conceals her sexual orientation and achieved her individual goals) could leave detrimental conditions intact to the harm of others (i.e., negative group-level effects of invisible minorities). Moreover, at times, individuals are unable to overcome the state of silence despite their suffering and knowing that prolonged silence will see their relationships, teams, and organizations perish.

More research is needed on how to cut (or untie) the Gordian knot that links positive or at least (avoiding negative) effects at the individual level with detrimental effects at the collective level. We need to consider the individual struggles and rights but acknowledge that the silence of one or few often causes harm to others—as emphasized in the entry quote.

Motives for silence are manifold

Exploratory studies were the starting point for systematically identifying employees' reasons for remaining silent at work. Drawing on interviews, Milliken, Morrison, and Hewlin (2003) identified fears and beliefs as central reasons for remaining silent. They found support for Morrison and Milliken's (2000) initial suggestion that one main reason for remaining silent is fear of negative consequences for oneself including fear of being labeled or viewed negatively by others, fear of

damaging relationships, and fear of retaliation and punishment by superiors. Also in line with Morrison and Milliken (2000; and Pinder & Harlos, 2001), feelings of futility emerged as a second central reason for remaining silent at work. Notably, about a fifth of respondents in Milliken et al.'s interviews mentioned that they feared negative consequences for others. Individual characteristics such as a lack of experience and a lack of tenure were also mentioned. In a more recent attempt to identify motives for remaining silent, Brinsfield (2013) found support for Milliken et al.'s findings, with fear of negative consequences for oneself and one's relationships and resignation seemingly most important. However, Brinsfield also found evidence for disengaged silence (i.e., not wanting to be involved) and diffident silence (i.e., feeling insecure and uncertain, avoiding potentially embarrassing oneself).

Based on these exploratory studies, conceptual articles suggested typologies of silence motives, and subsequent research supported their validity. Knoll and van Dick (2013), for example, drew upon van Dyne, Ang, and Botero's (2003) tripartite model of silence that is based on fear, resignation and prosocial motives (i.e., employees withhold their views in order to not embarrass a colleague or supervisor or protect colleagues or supervisors from harm), and added opportunistic silence. The latter type of silence, that was informed by research on knowledge hiding and hoarding (Connelly, Cerne, Dysvik, & Skerlavaj, 2019), addresses that employees withhold their views to protect a knowledge advantage or try to avoid an additional workload. Finally, based on elaboration, Bies (2009) proposed to consider further motives for remaining silent at work including silence for domination, revenge, blame management, focused reflection, and disguise.

While identifying new motives will remain a research task, applied research and practitioner interest could use existing frameworks to identify which motive or combination of motives is most prevalent, for example, in specific countries, occupations, or in a specific organization of interest. The chapters of this book provide excellent opportunities to exercise this step as they provide in-depth descriptions of a diverse range of organizations (e.g., hospitals, sports clubs, the church) and domains (e.g., medical, pedagogical, sports, law enforcement). Thick descriptions (Geertz, 1973) of the situations and personal sensemaking processes would deepen our understanding of different types of silence, and provide insights into how and when specific motives are activated or suppressed, and how the motives interact. In-depth descriptions are available for quiescent and acquiescent silence (Pinder & Harlos, 2001), but have not been realized for other motives, yet. In this journey, qualitative research could be complemented by quantitative studies such as Knoll and colleagues' (2019) longitudinal study on the bidirectional relationship of silence with health and by experimental research. For example, the Kirran, O'Shea, Buckley, Grazi, & Prout (2017) experimental study on distinct relationships between silence motives and emotions provided important insights into the ambiguous nature of prosocial silence.

Silence is affected by factors at different levels

Knowledge on the motives and reasons employees have for withholding their views is important because these are the proximal triggers for silence. The many other factors that have been related to the occurrence of silence, for example non-responsive supervisors or factual constraints, are more distal factors that operate indirectly through the individual motives. Besides offering an opportunity to organize potential outcomes of silence in organizations, Figure 1 also allows for organizing the factors that are likely to cause or at least facilitate silence indirectly. An organizing scheme is important to keep track of the many studies and potential reasons that research and media reports revealed (for more detailed reviews on voice and silence, see Chamberlin, Newton, & LePine, 2017; Knoll et al., 2016; Morrison, 2014), and to guide focused intervention attempts.

When it comes to antecedents of silence, the classical distinction between person and situation (Mischel, 1977) seems useful. With respect to factors within the person, self-esteem, experience, and personal initiative are often mentioned (e.g., Morrison, 2014). While these factors are situated within the individual, we should not forget that individual employees are the result of a learning history. This learning includes primary socialization at home and in school and secondary socialization when individuals enter organizations and take roles. The relative influence of outside and inside organization socialization is not well understood, with Dertert and Edmondson (2011) emphasizing primary and Gioia (1992) emphasizing secondary socialization as important antecedents of silence. Knoll, Neves, Schyns, and Meyer (2021) suggested a model of how primary and secondary socialization may both affect silence but rigorous empirical support is lacking, yet.

Socialization within organizations is driven by factors of an organization's culture (Schein, 2017). These include concrete context factors such as policies and practices which Schein labels cultural artefacts, but also the values that are dominant within an organization and which guide behavior. Whether organizational policies and practices constitute voice opportunities or barriers is often the starting point when it comes to overcoming silence (Morrison & Milliken, 2000). This is evident, for example, in research on the so-called "deaf ear syndrome" (e.g., Harlos, 2001). Organizational voice opportunities as antecedents of silence in organizations are also emphasized by researchers from the human resource management and employee relations scholars (see, for example, Wilkinson, Donaghey, Dundon, & Freeman, 2015) with the latter putting stronger emphasis on the role of meta-organizational institutions such as unions as voice opportunities.

The context factor that received most research attention are direct supervisors or managers. Managers directly influence silence by either encouraging and being responsive to voice, or by being hostile and defensive when employees approach them with ideas or concerns. The issue-selling literature provides elaborate studies on how employees make sense of superiors' mood and interests before challenging the status quo (e.g., Dutton & Ashford, 1993). A second way through which team

managers affect employee silence is indirect, for example, by shaping a team's culture (e.g., structures and values) and climate in a way that it is either facilitating or hampering employee voice. Edmondson's (1999) study on surgery teams is a good example for how a team leader's openness and encouragement create a climate in which it is safe to take risks and speak up. Finally, upper echelons (Hambrick, 2007) develop organizational policies, but lower-level managers interpret and transform policies and thus mediate and moderate higher-level influences (Dragoni, 2005; Lord & Dinh, 2014).

While managers are often viewed as a barrier for speaking up due to their formalized power to retaliate, coworkers are a potential source of pressure that does not rely on formal authority (Barker, 1993; Chiaburu & Harrison, 2008; Liu, Nauta, Yang, & Spector, 2018). Therefore, more comprehensive conceptualizations and measures could consider that coworkers might not always appreciate peers who question the status quo. Another area where knowledge is limited is whether silence tendencies vary systematically between national cultures (Knoll, Götz et al., 2021; Morrison, 2014) and industries or whether cultural features in some industries make voice or silence more likely. In their seminal article on organizational silence, Morrison and Milliken (2000) proposed that silence is more likely in mature and stable industries but should be less prevalent in high-velocity environments because those need to adapt quickly and thus consider alternatives and innovation. Furthermore, there are some industries where silence is rather often mentioned as a major issue, for example, health care and law enforcement (as visible in metaphors such as white and blue walls of silence; Gibson & Singh, 2003; NHS, 2017; Trautman, 2000; see also Conway & Westmarland; Pohlmann; Starystach & Höly; Zeier in this volume).

Silence is a process

The decision regarding whether to express or withhold one's views is made in a particular situation. However, it would be very narrow to focus on the situation alone. One reason for this cautionary note is that every individual and group at any time is a result of a unique learning history (e.g., Schein, 2017). Another reason is that individuals and groups are able and willing to anticipate future events and the consequences their behavior is likely to have (although the tendency to do so differs; Zacher & Frese, 2009). Thus, the decision regarding voice or silence is better conceptualized as a point in an unfolding process. In an elaborate case study, Perlow and Repenning (2009) provide an excellent example for such an unfolding process. Based on participatory research, the authors follow a start-up firm from on-set to closure, watching it deteriorate due to their founding members' inability to come to terms with new managers they brought in to help them manage their growth. Their tendency to withhold their views—ironically intended to protect relationships that

deemed vital for the firm's survival—led to disaster. Figure 2 illustrates how such a process could look in a rather abstract form. In the following, I will describe the stages of the process briefly, emphasizing that at every stage, personal and situational factors may divert employees from engaging in voice eventually leading towards silence.

As can be seen in Figure 2, during the process leading to voice or silence, an employee engages in a number of cognitive, affective, motivational, and behavioral operations such as perceiving, focusing attention, evaluating, memorizing, acting,

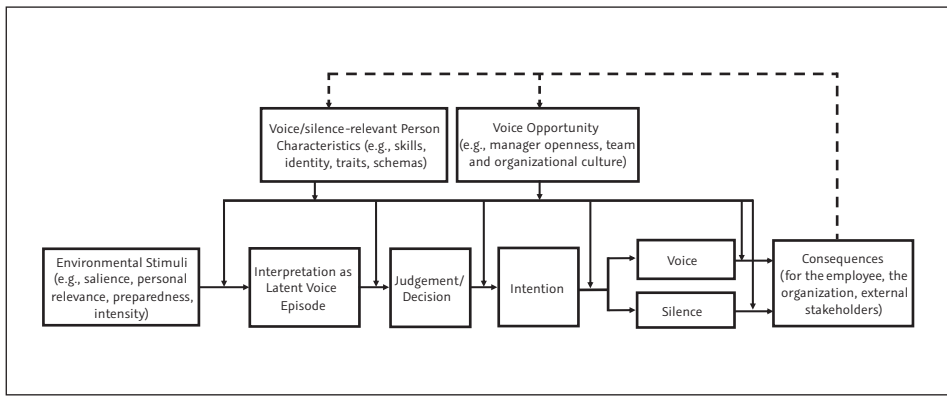


Figure 2 A process view on voice/silence (modified from Morrison, 2011; Rest, 1986). Dotted lines signify anticipation and feedback loops.

speaking or remaining silent, and evaluating the costs/benefits of having engaged in either voice or silence. The process starts with a stimulus that is interpreted in a way that voice is an option (i.e., a latent voice episode is experienced; Detert & Edmondson, 2011). This could include the perception that patient mortality is higher if a particular nurse is on the shift or that a meeting or strategy is not effective anymore (see Pohlmann in this volume). Drawing on behavioral ethics research (Bazerman & Tenbrunsel, 2011; Moore & Gino, 2015; Trevino, Weaver, & Reynolds, 2006), I think failure to interpret a situation as a latent voice episode (i.e., lacking *awareness*) is a potential detour that may lead to silence and thus needs to be considered in models on understanding voice and silence. Each stimulus has specific qualities (e.g., intensity, distinctiveness in relation to its context) and it competes with other stimuli for an individual's attention. Notably, the stimulus does not need to be temporarily close to the interpretation of a latent voice episode. For example, as visible in the #metoo movement (Prasad, 2018), being confronted with a case of sexual harassment in the media may make oneself aware that one has been subject to harassment oneself or has observed a similar behavior shown by the perpetrator some years ago. Thus, current media attention may create a latent voice episode. As can

be seen in Figure 2, personal and context conditions influence whether a stimulus is interpreted as a latent voice episode.

If the individual comes to the conclusion that voice is an option in a particular situation, he or she needs to decide whether voice or silence are appropriate responses (i.e., *judgment stage*). Drawing on Morrison's (2011) model, whether voice or silence are conducted is influenced by person and context factors and their interaction. Recent meta-analyses by Chamberlin et al. (2017) and Sherf, Parke, and Isaakyan (2020) are useful starting points to identify person and context factors that facilitate or inhibit voice and silence—some of them were mentioned earlier in this chapter. As has been shown in behavioral ethics research and also in the bystander literature (Bazerman & Tenbrunsel, 2011; Harlos & Knoll, 2018; Moore & Gino, 2015), a decision to act does not necessarily manifest in the respective behavior. One barrier is that individuals are not motivated to implement their decision. Thus, we need to consider that a decision is followed by an *intention* to act accordingly (Rest, 1986). However, even if this intention to speak up is given, there are further barriers that may result in silence. Employees may lack the confidence or skills to speak up and context factors may interfere and let voice go flat (e.g., Brinsfield, 2013; Harlos, 2001).

If the individual finally engages in voice or silence, positive and negative consequences can follow. Recent reviews and meta-analyses provide insights into the consequences of voice and silence (Bashshur & Oc, 2015; Morrison, 2014; Sherf et al., 2020), however, this might not be what employees expect based on their lay theories (Detert & Edmondson, 2011). Notably, the consequences of voice/silence behaviors will influence employees' perceptions of context factors such as voice opportunities, but also voice-relevant person characteristics such as skills (Dutton & Ashford, 1993; Grant, 2013). In the case that voice did not make a difference and fell on deaf ears, employees will estimate their context differently (i.e., less responsive). When employees engaged in voice, even if it was not successful, they learned something and thus increased their competencies in issue-selling (Dutton & Ashford, 1993). However, they may also become frustrated and drift into learned helplessness (Pinder & Harlos, 2001). Depending on the response they received from their supervisor and colleagues, they will re-evaluate whether voice is useful or futile. Maybe they will see their expectations supported, maybe they are in for a surprise.

The preceding description focuses on the individual passing through an unfolding process leading to voice or silence and their respective consequences. The focus on the individual is due to the fact that a majority of research on voice and silence as a behavior is rooted in psychology or organizational behavior research. Much of this process can be derived from existing knowledge on processes leading to helping and ethical behavior (or their absence). Less is known, in contrast, about organizational dynamics leading to voice, silence, and their respective consequences. Addressing the organizational level was the focus of Morrison and Milliken's (2000) pioneering article. Subsequent research, however, did focus on the team and individual level. It is thus a research gap to test and further develop Morrison and

Milliken's proposed sequence. The authors suggested that organizational and environmental characteristics (e.g., a low-cost strategy, industry maturity, and reliance on contingent workers) shape (mediated through managers' implicit beliefs) organizational structures and policies (e.g., centralized decision making, lack of upward feedback mechanisms). Structures and policies, in turn, facilitate a climate of silence in which withholding one's view becomes the norm. Morrison and Milliken also elaborate on collective sensemaking processes and their underlying interactions and communication that help to create and reinforce this climate of silence.

Again, examining organizational processes leading to climates and cultures of silence may start with thick descriptions of the history and development of organizations and institutions which seem particularly prone to featuring such climates and cultures (e.g., Enron, Volkswagen, French Telecom; Allard-Poesi & Hollet-Haudebert, 2017; Ewing & Bowley, 2015; Maxfield, 2016; Perlow & Williams, 2003). The chapters by Convey & Westmarland; Dölling; Hartmann-Tews; Kückelhaus et al.; Mehra; Zeier in this volume provide further opportunities to identify paths into cultures and climates of silence, and the chapters by Pohlmann; Starystach & Höly provide hints for extending the theoretical framework to draw upon. Based on (organizational) historical analyses, it may become possible to create experiments or observe quasi-experimental developments to identify how and when individuals, teams, and organizations gain or lose momentum with respect to voice or silence. This knowledge will inform practitioners about whether there are stages that are less/more open to intervention.

Silence has many faces

When employees face situations like the ones that are subject to the chapters in this book, they may either address these issues or remain silent. These options, however, include more than speaking up or keeping quiet. Voice and silence should not be reduced to a vocal act and the absence of it. As Hirschman (1970) proposed, voice denotes any attempt to challenge the status quo. Thus, voice can be expressed via formal (e.g., talking to an ombudsperson or employee representative) and informal channels (e.g., chats with supervisors or mobilizing peers), it may be done within (e.g., grievance system) or outside the organization (e.g., whistleblowing), individually and/or collectively (e.g., via unions or social movements like #metoo), and it might be vocal (e.g., speaking up in a meeting) or non-verbal (e.g., refusing to comply or making a stand, for example, by not leaving one's seat in a bus). If there are many ways to initiate change, are there also many ways to avoid challenging the status quo?

Indeed, Hirschman (1970) observed that besides trying to initiate change (i.e., voice), individuals (e.g., employees, customers, citizens) get out of the situation, which could mean leaving a relationship, organization, or country (i.e., exit). More-

over, individuals could further contribute in their role as, for instance, a partner, employee, citizen, even if they disagree or think something should change (i.e., loyalty). Rusbult, Zembrodt, and Gunn, (1982) and Farrell (1983) further extended Hirschman's exit-voice-loyalty model by including cases in which individuals remain members, customers, or citizens, but reduce the efforts they invest into their relationship, organization, or country (i.e., neglect). Figure 3 shows these four (ideal) types of responses to latent voice episodes. It also shows that, with the exception of voice, all responses constitute faces of silence.

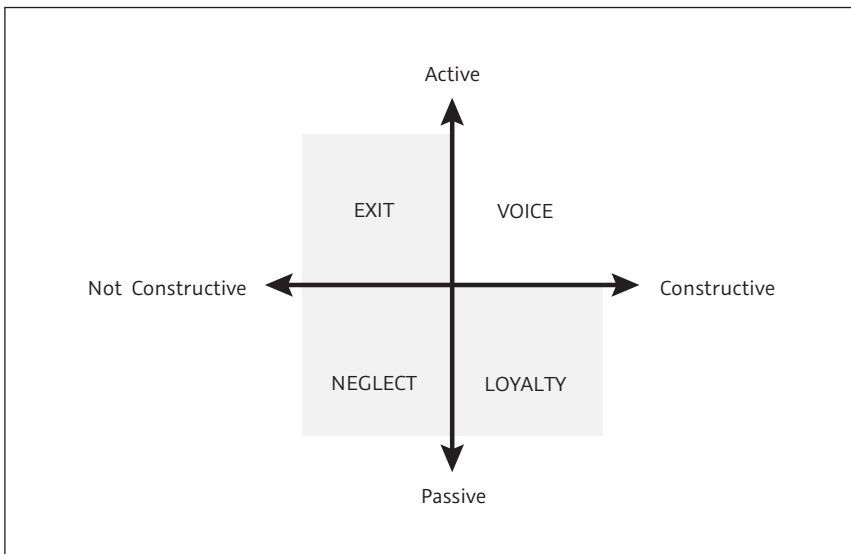


Figure 3 A functional approach to voice and silence based on the exit, voice, loyalty and neglect framework by Rusbult et al. (1988, p. 601). Shaded areas signify silence.

So far, voice and silence research focused on whether employees spoke up or remained silent. At times, researchers even infer the presence of one from the absence of the other (for a discussion of this fallacy, see Knoll & Redman, 2016; Sherf et al., 2020). A broader perspective is needed to acknowledge that in reality, employees may search and find a range of ways to both express or withhold their views. Debra Meyerson's (2003) studies on tempered radicals are rare examples that show the spectrum of activities employees engage in to make change happen without vocally speaking up. So far, no similar approach has provided an integrative view on activities employees engage in to withhold their views. However, there is research focusing on a range of withholding behaviors that may contribute to filling this research gap, including creating facades of conformity, knowledge hiding, micro-politics, and influence tactics (e.g., Connelly et al., 2019; Hewlin, 2003).

A functional perspective (Morgeson & Hofmann, 1999) may provide the theoretical framework for integrating the diverse responses that might result in silence. Functional approaches focus on the similarity of effects while allowing for a diversity of causes and antecedents. Using this approach, everything that conceals an opinion, question, concern or the like, and that does not challenge the status quo results in silence. One example are employees who are confronted with a critical situation but keep mum, for example, remain silent in a meeting or are a passive observer when bullying happens. Another example is when an employee who openly agrees while secretly disagreeing (protective voice; van Dyne et al., 2003; see also Bies, 2009). In such a situation, there is no vocal silence but functionally, the status quo is not challenged. Such a situation is problematic as observers might think the respective employee is agreeing and perpetrators feel encouraged (Harlos & Knoll, 2018). The critical issue is also not addressed and thus endures in cases in which organization members who noticed unethical issues leave. This was the case when members left the Canadian Forces after observing mistreatment (Pinder & Harlos, 2001).

Moreover, it does not need to be the observer or the victim who leave the situation. Post-hoc analyses of wrongdoings revealed that at times, moving the person who is supposed to be the reason for the critical issue allows wrongdoings to endure although in another setting, organization, or branch. For example, priests who engaged in abuse were moved to other districts (Denef, 2014) and the so-called “Todesengel”, a nurse who killed 17 people (see Pohlmann in this volume), was free to start employment in another hospital after irregularities raised eyebrows in prior employments. For the organization—or at least the branch as was the case for the Catholic Church—the status quo changed, but the issue has not been addressed and can—as is visible in the case of the Todesengel (see Pohlmann in this volume)—cause further harm in other organizations.

Silence is contagious (as may be voice)

When entering a latent voice episode (see Figure 2), employees consider how managers and colleagues, maybe even family members or the public are likely to respond if they speak up or remain silent (Dutton et al., 2001). They consider the response of those whose behavior or idea is challenged (e.g., the manager who established the procedures whose efficacy is questioned, or the colleague who is accused of bullying). They consider those who are supposed to act upon voice, and they consider bystanders, observers, and others who are indirectly affected by voice or silence (e.g., other managers in the company, further victims of harassment, the general public that may become involved as an ally or opponent when it comes to implementing the change that is initiated by voice). As those who enter a latent voice episode consider these other ‘players’, challenging the status quo is a *social act*.

One implication of social acts is that individuals are influenced by others' behavior, and that their own behavior affects others' behavior and experience (Bandura, 1991). Research on social influence and persuasion offers insights in the ways majorities and minorities can change opinions and behavior (e.g., Cialdini & Goldstein, 2004; De Dreu, De Vries, Franssen, & Altmink, 2000). Majorities can achieve compliance when recipients of messages are not well-informed and use the majority opinion as orientation. Majorities can achieve conformity if recipients know better or hold a different opinion, but fear negative consequences or feel unease when diverging from the majority. Using the term spiral of silence, Elisabeth Noelle-Neumann (1974) described not just a simple act of conformity or compliance, but proposed a process of how majorities influence the public opinion in a way that minorities are marginalized. According to Noelle-Neumann, people first scan their environment to determine the dominant opinion. If they hold the dominant opinion, they express it more readily. If they hold a minority opinion, in turn, they are more willing to withhold their views. As a consequence, the dominant opinion becomes even more dominant as representatives of this opinion are vocal and present in public. The minority opinion, in turn, becomes even more marginalized over time as it disappears from the public sphere.

Both social psychological research on majority and minority influence as well as research on the spiral of silence can inform our understanding of silence in organizations. They suggest that silence, but also voice, can become contagious in a self-enforcing process. When the majority prefers to remain silent, it is even more difficult for individuals to break the silence. This is one reason for why negative acts such as discrimination endure in institutions. However, this research can also explain why and how opinions shift, and practices that have been tolerated for a long time are overthrown—as is visible in the removal of confederate statues and racist names. Minority influence suggests that if one person disagrees (ideally persistently and without selfish motives, De Dreu et al., 2000), the majority or neutrals are trying to understand why this individual diverges potentially raising questions to what was formerly taken for granted. The divergence of one (trustworthy person) can also encourage others who hold diverging viewpoints to come out and express their opinions and concerns, potentially showing that there are many with diverging viewpoints or negative experiences. The #metoo movement and several other movements that address domestic violence, abuse in institutions, corruption, and inappropriate practices are examples that can be studied during their life course for how not only silence but also voice can be contagious (Deutsches Jugendinstitut, 2015; Prasad, 2018).

I believe we need more research revealing the dynamics through which silence becomes the norm and marginalizes diverging viewpoints and options. While field experiments are the gold standard (Eden, 2017), they are seldom available. However, silence and voice mechanisms can be observed in the process at times, for example, when following the #metoo movement and investigations into abuse in the US gymnastics team. A rigorous analysis of case studies—ideally informed by theo-

retical and conceptual knowledge on, for example, social influence, social movement research, and path dependencies—is also useful to examine contagion processes, path dependencies and the likes. Examples are offered in this book (e.g., Dölling; Hartmann-Tews). In the context of business organizations, Perlow and Reppening's (2009) case study is a valuable source for understanding dynamics of silence as is Bowen and Blackmon's (2003) work on vertical spirals of silence (which complement Noelle-Neumann's, 1974, horizontal spirals). Aggregative theory development could identify similarities and differences in the dynamics responsible for silence. It is likely that there is not merely one path to silence but many—which again can be understood when taking a functional approach (see above). Equally valuable are case studies which show how dynamics that marginalized minorities, and diverging viewpoints were broken and countered. One example is Perlow's (2012) case study on how collective attempts to improve work-private life balance questioned taken-for-granted beliefs about availability of consultants. Revealing how movements such as the #metoo movement gained momentum should provide further insights into the dynamics that often involve several levels (e.g., individual motives, organizational structures, societal attention or neglect) and that do not follow “traditional views of linear causality but emergent processes, non-linear dynamics, lock-ins, tipping points, path dependencies, self-reinforcing processes, contagion, and unintended outcomes of intentional behavior” (Knoll et al., 2016, p. 175).

Silence is not always a conscious choice

When introducing the concept of silence in organizations earlier in this chapter, I emphasized that it describes the active withholding of information, questions, or concerns but does not include the mere absence of voice, for example, due to a lack of ideas. Research on voice and silence almost entirely draws on the assumption that the decision to remain silent is a conscious choice (Edmondson & Lei, 2014; Morrison, 2014). Conscious choice emerges from deliberate processing of information, for example, managerial openness or the voice opportunities provided by the organization. Thus, employees intentionally apply what they know about the potential impact speaking up may have and the degree of psychological safety within their team or organization. However, a large deal of human behavior is based on automatic information processing (e.g., Bargh & Ferguson, 2000). As described in dual-process models of human information processing and behavior (Baumeister & Bargh, 2014; Deutsch & Strack, 2006), individuals often do not deliberately elaborate on all the available information, but draw upon well-learned associations of external stimuli with their existing knowledge structures. As a consequence, well-learned knowledge structures such as schemas, scripts, and implicit theories replace or bypass deliberate decision making and guide employees' behav-

ioral responses to situational cues. Notably, employees may lack awareness of the impact these mental structures have in their decision (Bargh & Ferguson, 2000; Epitropaki, Sy, Martin, Tram-Quon & Topakas, 2013). As is the case for research on organizational behavior in general (see Pratt & Crosina, 2016), research on voice and silence in organizations did neglect this second process for long. This is problematic, at least because attempts to overcome silence mostly address deliberate processing of information and may not reach causes of silence that are non-conscious.

This picture has changed rather recently. In a seminal conceptual article, Kish-Gephardt, Detert, Trevino, and Edmondson (2009) emphasize that employees who once remained silent due to fear of negative consequences develop habits to not only remain silent when confronted with a critical situation but also avoid such situations in the first place. Thus, even if the reasons that once justified remaining silent (e.g., a hostile supervisor) are not present anymore, employees remain silent due to their habit of doing so. Moreover, Kish-Gephardt et al. argued that there is an evolutionary priming that makes us refrain from questioning those who hold a higher status within our group.

Detert and Edmondson (2011) suggested, based on interview studies, that during socialization, individuals develop certain beliefs that make silence a likely response when confronted with authority figures. Specifically, the authors suggest that individuals learn during early socialization from being around their parents, teachers, and sports coaches that questioning authority figures is neither valued nor appropriate. As a consequence, individuals develop so-called implicit voice theories—taken-for-granted beliefs about when and why speaking up at work is risky and/or inappropriate. Detert and Edmondson developed a measure to assess five implicit voice theories (e.g., the theory that challenging the status quo will offend those who initially installed it, and the theory that the one who points at a problem needs to be able to provide a better solution) and showed that implicit voice theories explained variance in silence above and beyond traditional antecedents' managerial openness and organizational voice opportunities.

Knoll and colleagues (2020) replicated this finding and additionally found that implicit voice theories can be shared among team members and within organizations. This is an interesting extension in two ways. First, the finding that implicit voice theories are shared opens a way to examine “the basic layer (i.e., its underlying taken-for-granted assumptions; Schein, 1990) of cultures of silence that are proposed to immunize communities and groups against rational arguments, and that cause their members to withhold information and views even in the absence of coercion (Sheriff, 2000)” (Knoll et al., 2020, p. 24). Understanding cultures of silence is important given what we know about silence among members of not just organizational but also professional, religious, ethnic, and even national cultures (see Dölling; Jüttner; Mehra; Pohlmann; Starystach & Höly; Zeier in this volume). The second interesting extension that Knoll and colleagues (2020) suggested is based on their finding that team-level shared implicit voice theories were related to team-

manager openness. Knoll et al. interpreted this finding in a way that employees' implicit voice theories are not entirely determined by early socialization (as Detert & Edmondson, 2011, suggested), but can be affected by the experience they had in their current organization. Thus, being subject to a hostile manager might result in the development of implicit knowledge structures such as schemas and scripts which manifest silence as an automatic, taken-for-granted, response.

The influence of non-conscious factors on silence in organizations is uncharted territory to a large extent but offers a way to complement traditional approaches that focused on deliberate decision making. Little is known, yet, about the origins of implicit voice theories and their malleability. We need to know under which circumstances knowledge structures that were formed prior to the entry in their current organization endure or change. We also need to know more about the processes and circumstances under which collectively-held implicit theories emerge and can be changed.

Conclusion

The chapter aimed to provide some guidance regarding current knowledge ("What we know") and knowledge gaps ("What we do not know") with respect to silence in organizations (see Table 1 for a summary). My framework (see Figure 1) is intended to help the reader organize his or her knowledge and maybe integrate the approaches, observations, and ideas that are subject to the other chapters of this book. I also hope to provide some impetus for future research and interventions. In my view, it is important to understand that silence is a multi-faceted concept and occurs in a broad range of contexts (e.g., professions, organizations, cultures). It is furthermore important to understand silence as a process (and not merely as a result) that affects and involves many levels (i.e., intra-individual, inter-individual, team-, organizational, societal level). To gather silence in its respective contexts (which is—in my view—a precondition for overcoming detrimental silence) requires research that resembles this complexity. These endeavours could combine etic and emic approaches (Morris et al., 1999)—as known in cultural research. Etic approaches provide theories and tools (e.g. designs, measures) that are developed for broad usage, and that may make findings from diverse fields, organizations, and settings comparable with the eventual aim of accumulative theory-building and evidence-based interventions (Rousseau, 2020). Emic approaches, in turn, examine "thoughts and actions primarily in terms of the actors' self-understanding—terms that are often culturally and historically bound" (Morris et al., 1999, p. 782). These studies provide in-depth insights into peculiarities of specific settings which might tailor interventions but also make cumulative research aware of blind spots and required adjustments. While I believe both approaches can help us to extend our knowledge and opportunities to address silence in organizations, we also need

integrative attempts and forums such as the conference “The Silence of Organizations—How Organizations Cover up Wrongdoings” in Heidelberg from which this book arose.

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The Silence of Organizations— The Difficulties of Organizations to Detect and Unveil Capital Crimes

Abstract Why do crimes such as sexual abuse or serial murders of patients go unreported in organizations for so long? Why does, even in the case of capital crimes, collective silence prevail in organizations? The article discusses two different answers to these questions. The first answer is given by rational choice theory: under the conditions of organization, a cooperation dilemma of rational egoists occurs, leading to collective silence, the sub-optimal outcome for all. The second answer is provided by institutional theory: the informal norms and interpretive organization's orders make collective silence appear as normal and justified. A form of organizationally useful illegality is established in dealing with crimes. The two explanatory approaches are exploratively applied to the example of patient killings and the cases of abuse in the Catholic Church and discussed in terms of their explanatory scope and the generalization of the findings.

Keywords rational choice theory, institutional theory, silence, abuse, serial killings, organizations

1 Introduction

What is the reason for brutal crimes being undetected in legal organizations for such a long time? Can one look away when patients are killed in series or children are sexually abused one after the other? The horror we feel about this makes it even harder to explain how this is possible.

In such cases, the moral appeal for the individual is significant. In legal organizations, therefore, there will hardly be anyone who welcomes such crimes and their cover-up. If this assumption is correct, the long period until detection cannot be explained by individual actors' intentions. If each individual outside an organization decided to cover up or to expose the manslaughter or sexual abuse, the vast majority would choose exposure as a course of action. It is the organized collective context in which the acts of homicide and abuse are embedded that—according to our hypothesis—ensure that their disclosure is delayed or that the acts only come to the organization's attention when there is an external cause. The cases discussed below are also particularly interesting because they do not appear to be in the gray area of legality. In this gray area typical of white-collar crime, organizations suggest at the same time compliance and non-compliance with their personnel's legal standard, often in ambivalent ways (see Pohlmann et al. 2016; Pohlmann et al. 2020). However, in what follows, we are dealing with offenses for which—according to our assumption—there is no collectively applicable informal rule to cover crimes. Thus, we move into the realm of unintended consequences of the action of organizational self-regulation.

In every society, there are situations and circumstances that can inhibit our helpful actions. For example, on the subway, we may be afraid of becoming victims ourselves and suffering harm. Or in the case of war, the civil value system can be reversed, and killing and abuse become habitual acts. Nevertheless, in the cases of the morally challenging crimes chosen here, none of this applies. As a rule, the “by-standers” in these cases do not run the risk of becoming victims themselves, and the canon of values of society, as well as its laws, do not justify these acts either. This is why we have chosen these cases because it appears sufficiently puzzling as to why a long-lasting silence about these acts has come about. How can we explain this silence in organizations and their difficulties in preventing and detecting these major crimes? The following article is devoted to this question.

We will discuss two different answers to this question. On the one hand, the rational choice theory proposes to understand the collective silence about the crimes as rational egoists' rational actions, who realize a suboptimal outcome in their interaction. It is suboptimal because it does not correspond to their primary preferences because they are not helped, and the offenders are not stopped. On the other hand, with the help of the institutional theory of organization, one can answer that in organizations, “parallel worlds” emerge in which informal interpretive orders and unwritten rules come into play, providing strong justifications for collective silence, based on hierarchy, socialization, and dogma. Here, the collective omission

no longer appears as an unintended consequence of action in the tragic interplay of rational egoists but as a “normal” activity of the organization and its personnel that conforms to norms in a parallel interpretive order with the organization’s own unwritten laws and rules.

We have deliberately chosen extreme cases because, on the one hand, they should serve us like a magnifying glass. We want to see how strong, even under circumstances of complete societal, organizational, and individual rejection of such acts, the “organizational effect” that leads to collective silence is and what mechanisms become apparent. In this sense, we follow the general idea that if we study extremes, some valuable insights can be gained to apply to organizations’ whole population (Statistics How To, “Extreme Case Sampling.”). Second, the selection of extreme cases should help us to better illustrate and clarify the two proposed responses: this is because the two theories behind them are particularly challenged in their explanatory scope to explain such extreme cases. At the same time, we also see more clearly where their strengths and weaknesses are.

In order to better illustrate the nature and scope of the two proposed responses, I have thus chosen two extreme cases as examples on which we can base the discussion: the patient homicides in German hospitals and the cases of abuse in the Catholic Church. In both cases, the moral appeal is very high, and, at the same time, a collective silence about the crimes prevailed for a relatively long time.

We treat the two extreme cases in terms of an exploration, an inquiry to better understand the organizational mechanisms that lead to collective silence. Our analysis draws on publicly available court records, testimonies, interviews with affected individuals, and secondary analyses of existing studies. This results in empirical limitations, which also limit the generalizability of the results. Thus, it is purely exploratory and is intended to explore this field of crimes with high moral appeal to expose them in preparation for further studies.

To this end, we first turn to the state of research on bystander effects. In the discussion of literature, it will become clear that in the context of a (legal) organization, the processes and mechanisms that lead to collective acts of omission in detecting crimes are different from those in the public sphere (2.). We then turn to the explanatory proposal of rational choice theory (3.). We will then use the example of Niels Högel, a convicted serial killer of patients in two German hospitals, to test and illustrate how far we get with the rational choice theory explanation. We then turn to the second proposed explanation, institutional theory. Again, we turn to an extreme case: the Catholic Church’s long-standing silence in Germany about abuse by its priests, and we test out an institutional theory explanation (4.). A concluding chapter then sums up how far we have come with the two proposed explanations and what we have learned about the organizational mechanisms behind collective silence about serious crimes (5.).

2 The Bystander Effect

When “bystander effects” are mentioned in literature, they are often based on rational choice theory, although this is rarely stated, and the systematic and theoretical reference is often missing (cf. Dieckmann 1985; Kliemt 1986; Campos-Mercade 2020). The following remarks are intended to change this. Using the example of patient homicides in hospitals, the bystander effects elaborated in literature will be related to Coleman’s rational choice theory and will find their systematic classification here. We start with the bystander effects and place them in the paradigm of the rational choice theory. On this basis, we then take up the well-known German case of the male nurse Niels Högel, whose conviction for killing 85 patients became final in 2020.

There are numerous studies on so-called bystander effects, especially in psychology and social psychology (see only Latané and Darley 1968; Latané and Nida 1981; Fischer et al. 2011; Liebst and Philpot 2018; Hussain et al. 2019, and many others). They refer to the phenomenon that bystanders do not intervene when they witness a crime and that the probability of intervention decreases the more observers there are at a crime scene.¹ This effect is generally explained in literature by three factors, in addition to personality traits such as “self-efficacy,” gender, and effects of different situations (see, e.g., Krieger et al. 2017; Mabry and Turner 2016; Leone et al. 2017).

- 1) First, it is argued that a cognitive redefinition of the situation occurs, which allows for moral justifications. For example, sexual harassment is deciphered as harmless flirting behavior, thus eliminating the need to report the potential offense or to intervene (see, e.g., Allison and Bussey 2016; Thornberg 2017; Thornberg 2020, and many others). (Cognitive Restructuring).

1 For many years, social psychological studies of violence have focused on the role of bystanders. One example is the well-known “Genovese effect,” first observed when 38 witnesses to the brutal rape and murder of Kitty Genovese in New York in 1964 observed various perpetrator-victim interactions but did not intervene. This effect states that the greater the number of bystanders who witness aggression, the less likely any of them will intervene (Latané and Nida 1981, 309) unless they perceive it to be particularly dangerous (Fischer et al. 2011). Many other variables have been shown to influence bystanders’ willingness to intervene, including membership of an “in-group” or “out-group,” as well as various characteristics of the victim, the bystander, and the situation (Paull et al. 2012, 352). The bystander effect is a widespread phenomenon. When other people are present (or believe they are present), individuals are less likely to intervene in a scenario of street violence (Levine and Crowther 2008) or in a simulated bicycle theft situation (Fischer and Greitemeyer 2013), help with a flat tire (Hurley and Allen 1974), and respond to an email request (Blair et al. 2005). It even occurs when individuals merely imagine the presence of others (Garcia et al. 2002). A recent meta-analysis (Fischer et al. 2011) confirms these findings and finds strong support for the notion that others’ presence inhibits helping (Greitemeyer and Mügge 2013, 774).

- 2) Second, easily accessible schemas that have been used frequently before are more likely to be applied to ambiguous situations than competing schemas that are not so easily accessible. For example, in the case of sexual harassment, ambiguity is reduced to the motto: lovers like to tease each other (see, e.g., Samosh 2019; Garcia et al. 2002). (Reducing Uncertainty).
- 3) Third, it turns out that the more information regarding a rule violation circulates among employees, the less each employee feels responsible for giving hints or intervening (see, e.g., for meta-analyses: Fischer et al. 2011; Hortensius and de Gelder 2018; but also for a discussion of positive bystander effects, Fischer and Greitemeyer 2013, among others). (Diffusion of Responsibility).

In psychological and social psychological literature, it is seldom known exactly which explanatory approach lies behind these factors, nor how they are classified in a theoretical explanation. The following remarks attempt to remedy this deficit.

Currently available literature is also devoted to bystander effects in the workplace. In addition to characteristics of the workplace and the employees (see only Hellemans et al. 2017), three organizational effects are particularly emphasized in the various studies:

- 1) Bystander reactions depend on how the organization handles misconduct or suspicious incidents (see, e.g., Ferguson and Barry 2011; Christianson 2015). (Sanction Culture Effect).
- 2) Intervention is prevented by unspoken rules, such as not confronting colleagues in front of others, or by hierarchical barriers (see, e.g., MacCurtain et al. 2018; Coine et al. 2019; Ng et al. 2020). (Organizational Culture Effect).
- 3) Because managers have authority over employee performance appraisals and promotions, bystanders often choose to tolerate misconduct out of fear (see, e.g., Gao et al. 2015; Samosh 2019). (Hierarchy Effect).

Again, it is noticeable that the organization effect is not theoretically illuminated and not traced back to the basis of rational choice theory. Although the effects are named as results of the studies, they are not further substantiated theoretically.

However, in the workplace, mechanisms come into play that differ from those in the disorganized context of public space. However, these differences and organizations' specifics receive too little attention in mainstream literature on bystander effects.

When we move into organizations' context, the collective background of silence about crimes changes significantly: we want to call this the "organization effect." It can facilitate the detection of crimes, e.g., using compliance departments, but at the same time, it can also make it more difficult.

The organization effect is determined by structuring the context in which the omission occurs through the organization's rules. In this context, many things change. Thus, the person becomes the personnel, the affiliation becomes the so-

cial entity, and the membership becomes contractually regulated. The autonomy of action is temporarily restricted in favor of order, and bound by instructions in a hierarchy. Even the standard rules of conduct experience a different, new imprint in this social context. After a period of membership, the organization's culture shapes its members cognitively, as well as normatively and habitually. This means that actions in this context follow a different pattern than those without this context. These principled differences, with their implications for the nature and likelihood of acts of omission, are rarely clearly elaborated in bystander effects literature. They will be considered in more detail below, based on the example of patient killings analysis using rational choice theory.

3 The Case of Niels Högel and the Rational Choice Theory

To explain these bystander effects using rational choice theory, I will refer to Coleman's approach (1990) in the following. In his work "Foundations of Social Theory," he provides an analytical model applied to omission cases with sufficient explanatory scope. To illustrate this, we refer to Hartmut Esser's reformulation of the model (only 2001, 203f.; 2011, 54ff.), without thereby adopting its substantive theoretical assumptions. In our case, we are left with an explanatory strategy that only pretends that audiences are utility maximizers and asks how far we can get with such an explanation.

"Rescue Rambo" or "death Högel" were the nicknames given to male nurse Niels Högel, who was respected for his resuscitation skills. On June 6, 2019, Högel was found guilty of 85 counts of patient homicide and sentenced to life in prison for the second time. The court found an exceptional gravity of guilt. The Federal Supreme Court confirmed the sentence on Sept. 11, 2020. Högel worked as a male nurse in hospitals in Oldenburg and Delmenhorst from 1999 to mid-2005, committing numerous murders that are believed to be the most extensive murder series in German criminal history. In total, the authorities initiated preliminary proceedings on suspicion of murder in 332 cases.

Niels Högel brought patients into life-threatening situations with drugs, only to appear indispensable during their resuscitation. However, because he administered various antiarrhythmic drugs or even potassium chloride in high doses, the resuscitations were often unsuccessful. This is because these drugs themselves can trigger life-threatening arrhythmias. So how could these serial murders at the two hospitals have gone undetected for so long?

The answers we can give to this question with the help of rational choice theory lead first to the logic of the situation and its perception (1).

(1) Logic of the Situation

Unlike in the public space, *the logic of the situation* is characterized by hierarchical orders and the contractual relationships between the principal and his agents. Besides, there are often forms of long-standing familiar cooperation in which the bystanders see themselves again and again as “personnel” and move within predefined forms of cooperation.

The organizational effect in hospitals is different from many other organizations. This is because they are organizations in which life-and-death decisions are part of everyday life and in which the element of being “blindly” dependent on each other in cooperation is of existential importance. Teams often work together for many years. The hierarchical gradient is steep and determined by the medical profession. Public hospitals are profession-based administrative organizations in which the principal—federal, state, or local government—sets a large number of rules, but is often only indirectly present in the hospital itself. In its place, the hospital management assumes the principal function.

The public hospital is particularly unique in another regard as well. Because of the individual, organizational worlds of nursing, administration, and the medical profession with their own laws, there is also a form of collective ignorance of the respective counterpart, despite all the practical instructions to one another. In clinical interaction, everyone is united around the patient with hierarchical gradations—in the public hospital organization. However, they are divided by different hierarchies. The professional segregation of medicine, nursing, and administration, each with their own hierarchies, career systems, and forms of work organization, creates blind spots. While one’s world is more sensitive to deviations that fall outside the expected bounds, this sensitivity is less pronounced in the other worlds (cf. Beine 2011; Beine and Turczynski 2017; Yorker et al. 2006; Yardley and Wilson 2016).

(2) Bridge Hypothesis

In the theory of cognitive framings (*bridge hypothesis*), the act must first be recognized as such and not accounted for under the organization’s usual routine framings.

It is well known in sociology that people develop interpretive routines and habits that help them classify things without giving them much thought. These frameworks are often taken for granted and maintained until something forces us to classify things differently: thus, as in H’s case, to evaluate the cause of resuscitation not in the context of a disease event but to recognize it as the result of deliberate manipulation. This initially everyday conservatism is even increased in organizations. Their busy operational form gives rise to collective habits of interpretation that become firmly established. The stronger the “corporate identity,” the more such interpretive habits frame everyday life in organizations. The natural adherence to these

interpretive routines is referred to as organizational conservatism. It regularly causes resistance when changes are imminent. This is because the well-rehearsed routines mean security for hospital employees and ensure that someone can be “blindly” relied upon, especially when life and death are at stake. These frameworks are maintained and ensure that the probabilities of detection for patient killings decrease. The manipulative killing of patients falls outside the frame and is therefore dismissed as unlikely. Warning bells do not ring on the organization’s radar.

Anything out of the ordinary cannot be considered because of the extreme time pressure, the high workload, and the existential pressure—unless it is forced to be taken into account. However, the selectivity of what is perceived is always high and ensures the collective organizational tunnel vision necessary to operate as a matter of course, daily. Against this background, deaths after resuscitation appear to be normality, and only their accumulation can bring attention. The “bystanders” are—besides the relatives of the patients, who can only see the individual case—the personnel themselves working under these extreme conditions.

At the same time, the hospital’s operational radar is set to life-sustaining, curative patient treatment measures and risks. The set of warning signs that receive regular attention is also oriented toward this. This “professional deformation,” which is essential for patients’ survival, leaves out the other side of the distinction: not wanting to heal, waiting, cheating, and destroying life. This dark side becomes a taboo zone. The professional orientation toward the treatment of the sick is usually so strong that all indications of a deviation from it are blanked out as long as they do not have to be taken note of. Even if, as in the case of Michaela R., who became known as the “Angel of Death” in Wuppertal, suspicion arises and is reported after prolonged hesitation, the credibility of the observations is doubted rather than the professional loyalty of those suspected of a crime (effect of organizational culture).

This is an integral part of the cognitive restructuring of the situation and the “frame selection” of the onlooking staff. A former colleague reports that *“in the beginning, people said that Högel was a jinx because the patients’ condition always worsened when Högel was on duty. Later it was said: ‘oh dear, the death Högel is on duty again.’ At first, no one really took it seriously until the conspicuities became more frequent. [...] The mistrust of the colleagues grew. Högel was not stopped.”* (Ramm, *“Mordprozess gegen Ex-Krankenpfleger ‘Ach herrje, der Todes-Högel hat wieder Dienst.’”* Translation M. P.)

(3) The Logic of Selection

According to the organizational culture, the benefits and costs of non-intervention in the *logic of selection* are now determined according to the organization’s payoff matrix and the probabilities of their occurrence. A and B are no strangers to each other but colleagues. The preference ordering that determines the utility of an intervention is now twofold. A not only wants to stand as the right person for himself and others but also as a good employee for the principal and colleagues.

Only when there is a perception of suspicion does the logic of selection apply in this case. Since helping and healing are part of the organization's professional self-image, the order of preference is shaped. The benefit of helping and avoiding further deaths in a preventive way may be considered as high and may argue for colleagues to express their concerns about making the suspicions public. It is also in the principal's interest, the hospital's sponsors, to prevent patient homicides. Since the lives of patients are at stake, the benefit is considered to be exceptionally high. Also, the likelihood that the benefit will occur, when concerns are raised is high, in the case it is brought to external institutions' attention, e.g., the media or the public prosecutor's office. However, the costs of whistleblowing are there as well. For one thing, it means reputational damage to the hospital, which the agent wants to avoid in the principal and supervisor's interest. Thus, the senior physician in heart surgery of the hospital in Oldenburg stresses, "*It was also about the reputation of the hospital. Strictly speaking, we were afraid of committing character assassination. That is why the matter was handled very discreetly.*" And according to a former colleague of Niels Högel: "*Then the doctors and the head of administration at the time said, 'No, we're not going to press charges under any circumstances. Because, of course, such negative press is bad for such a hospital.'*" (Krausz, "*Er arbeitete umsichtig und gewissenhaft. Über den Krankenhausmörder Niels Högel.*" Translation M.P.)

On the other hand, existential fears came into play. Some accuse the whistleblower of being a slanderer, others of defiling their reputation. According to the hospital's organizational culture as well as its "corporate identity," Högel's colleagues are more likely not to incur these costs. For example, a former colleague and witness at the trial reported, "*She [a colleague] said to me that I had no evidence and therefore I should watch out because otherwise, I would commit character assassination,*" the nurse said. "*From then on, I was scared and kept my mouth shut.*" (Effect of sanction culture). So, neither the costs nor the probabilities of them occurring are low, but the benefits seem to outweigh them. Furthermore, in isolated cases, there were internal whistleblowers. However, how was it possible that Niels Högel remained undetected for such a long time and that the hospital organization did nothing to put a stop to him?

(4) The Aggregation Logic

The game between agent A and agent B in the *aggregation logic* is no longer a prisoner's dilemma but a cooperation game. In this, it can be rational that—under the condition that A and B have to achieve a joint outcome—agent A tries to contribute as little as possible to it, especially if he sees that agent B is doing a lot. This problem is known as the "free-rider" problem. Again, the suboptimal outcome in dealing with this problem may be that neither A nor B contributes much to the joint outcome. It may follow from this form of cooperation that aggregation logic does not lead to the joint outcome of detecting the crime but collective omission. A and

B fuel the rumor mill, but do not decide to intervene, either alone or together. However, unlike in the public sphere, here, the principal and the central management of the corporate actor play a crucial role. The reason for that is that in organizations, such cooperation problems are well known and are addressed in various forms of management and work organization.

Even if the common cynical nicknames such as “angel of death” or “rescue Rambo” give indications that at least accumulations of deaths have become evident, silence usually prevails in the hospital for a long time—based on “ignorance” of the facts—as well as astonishment and disbelief when the serial murderers do come to light.

Let us assume that nurse A and nurse B are engaged in a cooperation game or a “volunteer’s dilemma” (see Dieckmann 1985; Kliemt 1986). Both are interested in a common result that Niels Högel is exposed and condemned, but equally having to do as little as possible for it and take as little risk as possible. This “free rider problem” leads on the one hand back to the situation we already know from the prisoner’s dilemma game: if B does a lot for it, A can pull back and vice versa. This leads to both holding back and waiting, hoping that the other will do something first. On the other hand, however, the cooperation game is set in a hierarchical organization: A’s and B’s perceptions of what the principal and superiors expect of them in terms of the joint outcome of an intervention play a significant role in the cooperation game. Moreover, there is much to suggest that the principal, as well as the management were not considering it as necessary, based on A’s and B’s suspicions. This is crucial in this case for the aggregation of decisions not to intervene in A and B’s cooperation game. For example, a colleague of Högel’s testified in court, “*When I informed the ward management about the incident, he said, ‘Don’t act like that, people are getting older and dying.’ The ward manager said to me, ‘If you can’t handle that, you need to find another job.’*” (Effect of sanction culture). Or the head doctor of the cardiology department in Oldenburg stated about a tally list of deaths, which the head of nursing had prepared, that he had not known about it, “*I am seeing these here for the first time; he says when the court shows them to him. The list showed a particular cluster of resuscitations when Högel was on duty. Underneath is a handwritten comment: the evidence is ‘in no way’ sufficient to inform the public prosecutor’s office.*” Or a former colleague of Högel reports that he reported his suspicions to the ward nurse: “*But they didn’t draw the right conclusions. Or didn’t want to.*” Thus, it becomes clear that the executives’ perceived expectations and reactions triggered the suboptimal result of the collective omission. As far as can be seen, these expectations and reactions of the superiors (hierarchy effect) tended to point toward welcoming an omission more than a disclosure of the incidents.

(5) Transformation Rules

The theory of the corporate actor can be applied, especially in the case of the *transformation rules*. The sanctions and informal reactions of the principal and central management help determine whether and in what way cooperation games of this kind are tolerated in the organization.

The delegation of responsibility recognizably played an essential role in the cooperation game. It became clear from the court proceedings that the rumor mill around Niels Högel began to bubble early on, and the cynical names given to him indicated that at least many had an inkling, even if they were still protecting themselves from the clear realization of reality, if necessary. The background here is the horizontal and vertical delegation of responsibility, a kind of externalization of the problem. It is typical for organizations. The more hierarchically structured they are, the more responsibility is delegated not only downward but especially upward. From the perspective of the employees, the superiors are supposed to decide this. Since hospitals are usually profession-based administrative organizations in Germany, the hierarchical gradient in them along the three corporate worlds of administration, nursing, and the medical profession is very strong. There are barriers to interference, especially when trained and proven medical expertise is lacking. This is why the higher valuation of utility in the logic of selection does not translate into a better outcome in the interaction of A and B. The possibility of upward delegation—in this case, without consequences—also prevents this.

However, not only delegation upwards and horizontally to colleagues plays a role in hospital organization but also a delegation of responsibility by superiors using the transfer to another department. This is part of a “percussive sublimation” or “lateral arabesque”, if someone is kicked upstairs or moved with praise to another department, typical in organizations (cf. Peter and Hull 1969, 34f.). Its hallmark is that personnel who prove to be low-performing or critical to handle are praised away and sometimes even kicked upstairs. Due to this mechanism in organizations, Niels Högel was not only transferred to anesthesiology but they were also not informed about the concerns in cardiology. Due to this form of delegation of responsibility upwards and sideways, i.e., horizontally towards other colleagues and departments, which is common in organizations, the logic of selection did not translate into a logic of aggregation that led to an intervention involving the external principal, the public prosecutor’s office, or the media. While there were isolated tips passed on to superiors, the next step was not taken when these proved inconsequential.

4 Dealing with Abuse in the Catholic Church—an Explanation in the Light of Institutional Theory

While the rational choice theory is the dominant paradigm in literature to explain bystander effects, it is not without alternatives. A second proposed answer to our question is inspired by institutional theory. Drawing on it to address how collective silence can occur in the face of extreme acts of high moral incitement refers to the organizational rules in dealing with these crimes and what force of validity they can acquire in the organizations as in the organizational field.

In this context, an institutional theory perspective shows that omission should not be understood as isolated opportunistic-criminal behavior of individual employees but can be linked to institutionalized, i.e., taken-for-granted expectations and practices in their organizational field. Within the particular organizational field, it may be rational and legitimate to behave in silence in the organization's interest because even behind the facades of formal specifications of organizations, there are unwritten rules.

Niklas Luhmann (1964, 304ff.) refers to the organizationally useful deviation from formal rules as “useful illegality” in early work. In the case of organizationally useful illegality, there are, in turn, rule deviations that appear legitimate and rule deviations that appear illegitimate. The culture of an organization then determines which rule deviations receive recognition and which do not. In our argumentation, we move to the next level of explanation, which is about how the organization and its employees deal with these rule deviations. We want to show that on this level, organizationally useful illegality or organizational deviance can occur, which does not report the serious appalling rule violations to the public prosecutor's office but endures them according to the informal rules, interpretative orders, and informal norm orientations of the organization and remains silent about them to the outside world. This perspective will be illustrated in the following using the example of abuse in the Catholic Church.

The abuse in the Catholic Church has already been reported on, and there are many excellent studies on it (including Dreißig et al. 2018; John Jay Report 2004). Nevertheless, it remains quite a mystery as to why the church did not merely transfer suspected priests to administration or a convent but often to new parishes—where they again had access to children and potentially new victims. At times, there was even bartering between dioceses: “I will take your problem case if you help me with another problem or with my problem case.” That is just the scandal behind the scandal.

That the acts of abuse in the Catholic Church are a structural problem is beyond question. This has been convincingly highlighted by the results of the study by Dreßing, Dölling, Hermann et al. (2018), commissioned by the German Bishops' Conference. The research group's evaluation of the personnel and hand files of a total of 38,156 clerics of the 27 dioceses from the years 1946 to 2014 revealed that evidence of accusations of sexual abuse of minors was found in a proportion of 4.4% (1,670) of

the clerics. The number of victims was 3,677 children and adolescents—62.8% boys and 34.9% girls. On average, there were 2.5 affected persons for every accused person, with around 42.3% being “multiple accused persons” (Dreßing et al. 2018, 5). Thus, the impressive database already shows that the cases of abuse are by no means to be seen as the misconduct of individual black sheep but rather point to deviant processes within the institution of the Catholic Church.

However, the form of organizational deviance can also be found, in particular, in the way the crimes and potential offenders are dealt with in the Catholic Church. This is because the moral incitement character of the acts contrasts here with the established practice of transferring and concealing in the Catholic Church. At this point, we want to examine how far we can go with the explanatory approach of institutional theory—concerning the phenomenon of ecclesiastically useful illegality in dealing with potential crimes and offenders.

(1) The organizational field: the Catholic Church is not an organization like any other. Its range extends from voluntary services to regular forms of interest and work organization to forms of total institutions, such as those practiced in monasteries and seminaries. This hybrid variety of social forms under one roof is not the only characteristic of the Catholic Church: it is a purpose-driven, ideological organization, i.e., its organizational purpose and membership motive are closely linked. It has a dogmatic and canonized core of “eternal truths” that it has tried to maintain for more than two millennia in the face of changing zeitgeist currents. In doing so, it has succeeded in obtaining special rights. These include its own jurisdiction and, for example, its own labor law or church tax like in Germany, which is collected by the state. The list of privileges and special rules is long. However, this applies to many churches and religious organizations worldwide. Scientology or the megachurches in the USA have also achieved numerous benefits, e.g., regarding tax treatment. Moreover, the claim to autonomy is high, and the handling of abuse cases is similar (see, e.g., Kern and Schimank 2013; Starks 2013; Bakari 2019).

In the organizational field of religious organizations or institutions, it is good (or bad!) custom to treat good and bad shepherds’ transgressions primarily and, if possible, exclusively according to their own rules. Nevertheless, this is not all. Much more importantly, they are interpreted in the religious interpretive order of the organization—the dogma. This “theorization” of the misdemeanors, along with a dogmatic order of justification and interpretation, also results—more or less necessarily—in a certain way of dealing with the misdemeanors. Depending on the offense, this can range from public branding and internal punishment to prescribed repentance and correction.

One of the peculiarities of the Catholic Church is its head, the Pope. His directive authority is used in various ways, but always refers to misconduct in the church, priests, the faithful people, and the rest of humanity. For example, in his speech at the Eucharistic celebration after the Child Protection Conference at the Vatican, February 21–24, 2019, Pope Francis proclaimed:

“Consecrated persons, chosen by God to guide souls to salvation, let themselves be dominated by their human frailty or sickness and thus become tools of Satan.” He goes on to ask, “So what would be the existential ‘meaning’ of this criminal phenomenon? In the light of its human breadth and depth, it is none other than the present-day manifestation of the spirit of evil. If we fail to take account of this dimension, we will remain far from the truth and lack real solutions.” (Vatican, “Address of his holiness Pope Francis at the end of the eucharistic concelebration.”)

He had previously established such a line of interpretation of the potential offenses that portray the abusers as Satan’s victims and tools; thus placing them both under the primary jurisdiction of the church (Who but the church can discern this truth and find solutions to it?) and suggesting their pastoral treatment as deceived prodigal sons who can repent, be healed, and be led back to the right path only in the bosom of the Church.

(2) The autonomy of the Church: the Catholic Church considers itself as an independent institution, superior to the secular powers. Therefore, when misconduct occurs in the church, there is no direct path to the state and state executives. Not only the cognitive and normative institutions are oriented accordingly but also the regulative institutions of the church. Thus, in legal and administrative procedures, it follows its own norms of secrecy (*secretum pontificium*, papal secret), the violation of which is punishable. The church superiors litigate themselves since only they can maintain the religious order (“hierarchy”). Likewise, the church conveys within its doctrine of faith, derived from the sacrament, that only ecclesiastical representatives can judge sin and misconduct and impose appropriate sanctions, such as confession. This may explain why only 19.4% of criminal charges overall were filed by representatives of the Catholic Church (Dreßing et al. 2018, 297). Thus, in the cases of abuse that became public, the first steps toward dealing with the acts under criminal law were often taken only at a time when the Pope or the curia feared for the power and reputation of the church. However, in the case of the U.S., this also occurred only in isolated cases and with a long-time lag from the crime (Formicola 2004, 2011; Plante 2004; Wasserman 2017). In most cases, family members or the victims themselves brought the charges. The initiation of proceedings was equally hesitant. Consequently, on average, more than 13 years passed between the first offense and the initiation of proceedings in criminal charges, and 22 years in the case of proceedings under church law (Dreßing et al. 2018, 298).

The Catholic Church’s hybrid organization’s dogmatic side is still in line with its “culture of sanctions” in dealing with priests, bishops, and cardinals accused of abuse.

Nevertheless, this changes when we look at the internal sanctioning measures of the Catholic Church. Here, the facade and everyday practice in dealing with potential offenses committed by its pastors diverge. It is surprising that in more than half of the cases, the Catholic Church did not use its possibilities to initiate inter-

nal procedures (“sanction culture”). Overall, the church was very reluctant to take sanctioning measures against the accused. In the case of more than half of those accused of sexual abuse of minors (53%), no proceedings under church law were initiated (Dreßing et al. 2018, 294). It was even less common to report to the Congregation for the Doctrine of the Faith at the Vatican (Dreßing et al. 2018, 296). Considering the seriousness of the offenses, it is also alarming that more than a quarter (27.2%) of the internal proceedings ended with no sanctions at all, and that sanctions that were drastic from the perspective of canon law (e.g., dismissal from the priesthood) were handled very hesitantly overall (Dreßing et al. 2018, 295).

In the Church’s interpretation, the Catholic Church’s religious order, which is to be protected, takes precedence over individuals’ misconduct, in some cases, even when they became victims of this misconduct. Clearly, this also shaped the organizational culture, the unwritten rules in dealing with the abuse cases.

This was also underlined by a religious interpretation of the upper personnel, who appear as “representatives of God”:

“The priest is sacral, he is untouchable, he is the master pastor, and when this image of the priest prevails, authoritarianism is, of course, the constant danger. The priest determines everything, and there is the danger that the priest is allowed to afford more than the others.” (Bayerischen Rundfunk, “Missbrauch in der katholischen Kirche: Eine Frau kämpft um Aufklärung.” Translation M.P.)

The many years of socialization of the personnel, as well as the nuns and monks, do the rest in cultivating this practice. The appropriation of life in the monastery’s total institution leaves its mark on those who have entered into this total form of communion.

A clarifying conversation between Doris Wagner, a former nun and abuse victim, and Cardinal Schönborn from Vienna, which was broadcasted on TV Bayerischer Rundfunk on February 6, 2019, shows such an interpretation par excellence. The former nun reports about her emotional world after the rape by a priest, “*My first impulse was: I can never tell anyone about this, and the most important thing is that no one ever finds out about this because otherwise, people would doubt the church. [...] What responsible people have when you tell them about it? The most important thing is that nothing happens to the church. And that comes naturally to people because the church is their home and no one wants to lose their home.*” (Bayerischen Rundfunk, “Missbrauch in der katholischen Kirche: Eine Frau kämpft um Aufklärung.” Translation M.P.)

This shows, although in the extreme case of a totally included nun, how much socialization establishes an order of interpretation as a matter of course, in which the protection of the church has the highest priority, even when bad things have happened to the person herself by representatives of this order.

The former nun continues to report, “*My superiors represent the place of God for me, they are commissioned by the Church, in a community that is recognized by the*

Church. God has called me into this community, i.e., whatever they ask me, it comes from him and is therefore somehow good. [...] And I believed in that. I was convinced of that. That always worked for me. Until the moment when a priest stood in my room, undressed me, and raped me. That is when I knew: it does not make sense anymore. [...] Why does God allow this? (Bayerischen Rundfunk, "Missbrauch in der katholischen Kirche: Eine Frau kämpft um Aufklärung." Translation M.P.)

This incorporation of a formal and informal system of norms in an organization, which in the case of the Catholic Church is not only theologically based but to- tally inclusive concerning leadership positions or membership in monasteries—i.e., it appropriates the members with their lives—is a first explanatory building block for the organizational criminality behind the transfer and cover-up practices. If membership is very closely linked to the "sacred" purpose of the organization, as is common in churches as "purpose driven ideological organizations," rule-breaking in favor of the sacred purposes seems more likely to be acceptable. This is because the exclusive dogma of eternal truths is baked into the organization's program structures, as it were, and the primary task appears to be to represent them independently of the profane external world and its concurrent impulses.

(3) Atonement and forgiveness: from a sociological perspective, the faithful people are the Catholic Church's clientele. They are reached through the "shepherds," who are the personnel of the Church. The faithful people are, therefore, part of the organization's environment. However, most of the activities of any organization, including the Catholic Church, are directed inward, not outward. For the Catholic Church, the shepherds are far more essential than the flock, especially since their replacement—unlike that of the flock—is severely limited in the Catholic Church. Priests are appointed to a parish ministry for life. Therefore, their exchange is very difficult—as with once appointed professors—and entails special burdens of justification. Besides, the paternalistic way of interpreting caring guidance claims validity not only outwardly toward the flock but also inwardly. In this interpretation pattern, care is directed primarily to shepherds who have committed missteps and have been specially tested by God in this matter. The shepherds who have stumbled experience special treatment on the path of atonement and forgiveness for their sins. According to the John Jay College of Criminal Justice study (2004), reliance on psychiatric or pastoral healing has been too great for the Catholic Church in this regard. In this interpretation pattern, both the possible return to the path of Christian virtue and the duty of care along the way are central elements. They can explain why inner transfer and concern for the return of the lost shepherds were firmly anchored in the repertoire of action of the Catholic Church. An underlying system was established—in great contrast to the organization's facade—which, in addition to sanctions such as early retirement or leave of absence, operated mainly based on transfers and made it possible to get rid of "problem cases" at short notice. The study found that diocesan priests accused of sexual abuse of minors were transferred more frequently within the diocese (4.4 times on average) than diocesan priests who

were not accused (3.6 times on average)—and the situation was similar for transfers between dioceses (Dreßing et al. 2018, 304). Nearly one-fifth of intradiocesan and international transfers of accused persons and about one-quarter of interdiocesan transfers were explicitly linked to sexual abuse by the dioceses themselves (Dreßing et al. 2018, 306). The researchers concluded from the data that “the more frequent transfers of the accused [...] had not come about by chance but were subject to a systematic approach in a statistically significant sense.” (Dreßing et al. 2018, 306; translation M. P.). A kind of “abuse carousel” was established in the church’s work organization. Furthermore, evidence was also found “that the majority of these transfers or changes were not accompanied by appropriate information to the receiving parish or diocese about the respective accusation or the possible risks for repeat offenses associated with the change.” (Dreßing et al. 2018, 9; translation M. P.). However, transparent documentation of the accusation for the respective receiving diocese was omitted in 91% of the cases (Dreßing et al. 2018, 308). While most sanctions issued appear to be light overall, the findings also reveal that those responsible—by placing the accused in a mostly unsuspecting environment—accepted the potential risk posed by the accused. Ultimately, this “sanctioning culture” contributed to the fact that the perpetrators were not infrequently supplied with new victims.

At the same time, such a practice tied in with firmly established routines in the church’s handling of misdeeds. Not only the opportunity but also the habit legitimized the inhumane way of dealing with the abuse offenses of priests toward the victims. The many years of socialization in the church, as well as the hierarchy, support not only the legitimization but also the habitualization of this concealment and cover-up practice of the organization. It was in line with the interpretive order and the unwritten rules for dealing with the “lost sons.”

Therefore, there was no rational choice of the actors, which could be easily explained based on individuals’ calculating actions. Only the organized, collective context in which the acts of abuse are embedded ensures, according to our assumption, that their disclosure is delayed or that the acts only come to the attention of the church upon the external cause. As we have seen, all the ingredients for classification as organizational deviance are present. The collective failure to report abuse was as illegal as it was useful to the church. Longstanding socialization, ecclesiastical hierarchy, justificatory interpretive patterns, and cognitive and normative institutions were essential factors in framing the collective omission as regular organizational action. Justifications were plentiful. However, it became apparent how much the facade and the actual activity structure began to diverge over time. This triggered a late dynamic of change, which we are witness to today. The church is opening up more to the secular external world and promises to make abuse allegations heard by the public prosecutor’s office in the future. Whether this will be broken again by the informal interpretive order, the future will have to show. In any case, a first step has been made to discredit the collective omission as “normality” and to give the indications of providing the uncovering of abuse cases with more legitimacy. After all, the Pope is now also behind it.

5 The Explanation of Collective Silence in Organizations—Discussion and Conclusions

We have become acquainted with the two answers as to how it is possible for such extreme cases as the series of murders in the hospital and the sexual abuse in the Catholic Church to go partially undetected in organizations or remained undisclosed for a long time. In doing so, we have approached the task of solving the puzzle by applying two theoretical approaches without going into more detail about their scope, their difficulties, and their limitations. In conclusion, I would like to provide this in the required brevity. The advantage of Coleman's rational choice theory is that it offers a precise set of tools and precise analytical terminology to analyze the bystander effect in organizations in more specific terms than psychological and social psychological literature has done so far. While the latter wallows in many empirical findings without explaining them systematically, Coleman's rational choice theory does this par excellence. Conversely, however, it has the problem that it develops its precision in analytical terms and is based on hypothetical attributions that are difficult to test empirically. While it can provide good empirical evidence of collective omission and the negative or positive effects of cooperation, it remains dependent on model assumptions at the level of the logic of selection. Here, research on these cases would rely on measuring the preferences and calculations of the actors involved, which often works only approximately, if at all, and outside of the laboratory, not on a case-by-case basis. The other way around, the institutional theory is very well redeemable empirically, but the conceptual and theoretical tools are too general and not precise enough. While the institutional theory debate has gained momentum in recent decades and many theoretical fragments have been added, a precise general theoretical blueprint is not yet liberated (see, e.g., Senge 2011; Meier 2011; Bromley 2017; Tempel 2006; Meyer 2015; Teriesen et al. 2015). Too much can still be explained with it. Nevertheless, it is possible to give important hints as to which direction an explanation can lead at this point.

In other words, there are limitations in both approaches: on the one hand, in their theoretical precision and, on the other hand, in their empirical foundation, and both have problems in ensuring their empirical refutability. However, that is not what we are concerned about in this article. It aims neither at a comparison of theories nor at a comparison of cases. For the time being, it only wants to show how the explanatory problem can be approached exemplarily and how the puzzle can be solved. A comparative analysis of extreme cases is still pending here.

It was essential to show that both approaches can solve the puzzle and how much the organization effect—often neglected or left undefined in literature—applies. Nevertheless, more importantly, we wanted to show how it comes into play. On the one hand, we wanted to clarify that the interaction of rational egoists in the organization—unlike in the public sphere—is determined by the organization and that the tragic outcome of suboptimal cooperation, collective default, can also

be prevented by it.² Second, we wanted to emphasize the extent to which the informal orders of organizations can promote collective silence and endow it with recognition—so that criminal omission becomes a legitimate act that conforms to norms. This does not only require sects or total institutions but just regular organizations.

The empirical generalization of our exploratory findings has not yet been done here and is still pending in the currently available literature. The contribution of the paper to the question of generalization is rather in the argument that led us to investigate the extremes in the first place: if organizational effects take hold to this level even in such extreme cases, we hypothesize, do they take hold even more strongly in less severe forms of rule and law-breaking in organizations? At the very least, our analyses of corruption and manipulation cases so far support this assumption. In half of the cases, such organizational effects and forms of organizational deviance could be detected. Thus, these extreme cases can indeed serve as a magnifying glass to learn more about the organizational mechanisms that lead to collective silence in organizations.

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2 Thus, there are many psychological, social-psychological, and pedagogical literature and empirical studies on what can be done to avoid bystander effects or reverse them into positive effects.

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Silence and Deviance in Organizations

Abstract Our contribution analytically differentiates between individual and organizational deviance on the one hand and individual and organizational silence on the other. The combination of both analytical categorizations offers the possibility of building archetypes or idealtypes as to how silence and wrongdoing can be interconnected. Based on this heuristic, we analyze the case of the “German Transplant Scandal”. The analysis supports our assumption that it is central to understand silence in organizations not as isolated but always in the context of the kind of wrongdoings it covers up. The case analysis shows that the informal norms which structured the organizational deviance also influenced the corresponding dynamic of silence. Against this background, we argue that the current research focusses too heavily on identifying case independent factors with the help of quantitative research designs and that a qualitative case perspective is needed to understand more deeply the phenomenon of silence in organizations.

Keywords organizational silence, organizational deviance, hospital, White Wall of Silence, informal norms

Introduction

Despite increasing legal regulation of organizations in almost all areas of society, the scandals are not abating. Whether it is child abuse in the Catholic Church, the VW Diesel scandal, maltreatment in the military, manipulations of transplant lists or patient killings in hospitals—the responsible organizations are silent, look away, cover up. Only few members of the respective organization in question try to actively prevent the wrongdoing. Instead, it is more a norm than the exception that wrongdoings are swept under the carpet. Only in the face of overwhelming evidence and public outcry do the Catholic Church, the militaries, automobile manufacturers, and hospitals hesitantly begin to address these problems directly. Apart from the immense damage to the victims, organizations often also harm themselves through this behavior. The consequences range from the extensive loss of social trust to state sanctions, threatening the very existence of the organization.

However, no organization can stick to all rules all the time, without collapsing. Organizations and their members must walk a fine line between useful illegal behavior (Luhmann 1964), necessary to attain the organizational goals, and external societal norms and state law, necessary to obtain legitimacy. As a result, deviant behavior is to a certain extent a necessary evil in organizations (Kühl 2020) and therefore, some forms of covering up, tabooing or silence, are also a normal part of organizations. Organizational silence answers to the dilemma that on the one hand, rule-breaking is necessary to achieve even mundane organizational goals, but on the other hand, cannot be addressed or admitted openly without endangering the legitimacy of the respective organization.

Moreover, although doing something illegal or morally reprehensible typically goes hand in hand with keeping quiet about these ongoings, perpetrators are often not the only members of the organization who keep silent. Take, for instance, the case of child abuse in the Catholic Church: priests who regularly molested children were covered by high church officials who did not directly take part in any form of abuse (Doyle 2017). This points to the fact that silence and crime in organizations refer to one another, but are two distinct forms of organizational behavior.

Against this background, the question arises as to why deviant behavior is protected by mechanisms of silence, which is morally reprehensible or not even useful for the respective organization. And why do members who are not directly involved in crimes in organizations protect the perpetrators by covering up the wrongdoing? Therefore, it seems to be paramount to understand how organizations develop such forms of self-regulation which are characterized by covering up even the most excessive forms of deviance.

To address this issue, we will provide a conceptual framework on how to categorize silence in organizations in reference to deviance in organizations, with the main goal of instructing empirical analysis. Based on the example of the “German Transplant Scandal”, we show that it is, from a sociological point of view, central to

understand silence in organizations not as isolated but always in the context of the wrongdoings it covers up.

1 State of Research

Organizations in all areas of society are affected by cover-up dynamics, which in turn has stimulated an extensive interdisciplinary and international research interest. Under the umbrella term “Wall of Silence”, silence in organizations has been researched for decades. Phenomena like the “White Wall of Silence” in hospitals (Gibson and Singh 2003) and the “Blue Wall of Silence” of the police (Chin and Wells 1998, Kleinig 2001, Benoit and Dubra 2004, Rothwell and Baldwin 2007, Nolan 2009, Conway and Westmarland in this volume) are especially thoroughly investigated. To explain these phenomena, reference is made to perpetrator biographies (Beine 2009), their environment or a “sick system” that silences organization members (cf. Gibson and Singh 2003, Beine and Turczynski 2017). In this vein of thinking, silence in organizations is the outcome of employee silence, i.e. the absence of voice behavior, which can have a plethora of reasons or motives (Brinsfield 2013). Here, silence in organizations is understood as an organizational climate of silence, the extent of the existence or absence of “speaking up norms”.

Although in principle, with the term “Organizational Silence” (Morrison and Milliken 2000, Knoll and van Dick 2013, Knoll in this volume, among others) a genuinely organizational approach to the topic was created and structural factors were thus also considered as important influencing factors for cover-up dynamics. This research is characterized by the dominance of psychological approaches. In this view, silence in organizations is regularly considered as the outcome of aggregated individual behavior based on personality traits, beliefs, and perceptions. To explain organizational behavior, this strain of research concentrates on factors like beliefs concerning the effectiveness of voice, forms of detachment, perceptions of powerlessness or dynamics of loyalty, the MUM-effect, etc. In addition, contextual factors are taken into account to explain silence in organizations, such as a climate of fear and distrust, an instrumental organizational climate, the deaf ear syndrome, and spirals of silence (Blackman and Sadler-Smith 2009, Whiting et al. 2012, Brinsfield 2013, Knoll and van Dick 2013, Mannion and Davies 2015, among others).

Despite all these advances in understanding, why employees keep silent and how a climate of silence is formed, we argue that a key for understanding this phenomenon from a sociological standpoint lies in understanding the dynamics and structural effects of subcultures and informal norms. The formation of subcultures that operate based on tacit agreements and informal norms are already known contributing factors to explain the extent of silence in organizations (Muehlheusser and Roider 2008). The main research interest from a sociological perspective lies in trying to find answers to the following questions: How do they develop and how are

they reproduced in the organizational setting? We believe that part of the answers to these questions is rooted in the commonly shared, underlying informal structures of silence *and* wrongdoing in organizations and the effects of their interconnectedness.

2 Conceptual Framework

Rule-breaking, deviance and (petty) wrongdoing are ubiquitous in organizations. No organization can stick to all formal requirements and at the same time fulfill their operative goals (Kühl 2020). This is why “service by the book” is easily capable of paralyzing organizations. Therefore, organizations are necessarily and to a large extent characterized by informal structures and useful illegality (Luhmann 1964, Pohlmann et al. 2016, Kühl 2020). This is, for instance, the case when organizational members of a multinational organization bribe a public official to win a contract. However, wrongdoing can also benefit individual members of the organization. This is the case for the public official who requests a bribe. In this case, the organization is instrumentalized by the member(s), and the organization becomes their prey. Against this background, there is a well-established differentiation between (a) individual deviance which serves particularistic interests at the cost of the organization and (b) organizational deviance which serves the (shared) interest of the organization (Pinto et al. 2008, Pohlmann et al. 2016). Although there are regularly cases which fit into both categories, the distinction between both types proved to be a productive framework for empirical research (Pohlmann et al. 2016). We propose that the current research concerning silence in organizations would profit from a similar differentiation between (a) individual silence and (b) organizational silence.

- a) In the case of individual silence, the members of the organization decide on their own or are forced to stay silent about wrongdoings in or by an organization; mainly to protect themselves from retaliation. The current research is primarily concerned with this type of silence. The focus lies on personality traits or contextual factors which make speaking up a poor option for each member of the organization individually. Not speaking up is in this perspective regularly an individual rational choice.
- b) However, organizational silence focusses on cases in which the actions of the organizational members are based on shared norms for the benefit of the organization. This type of silence is mostly researched when it comes to professional walls of silence, for example of policeman and physicians. Like in the case of organizational deviance, acting towards the common good of protecting the organization requires at least a partly shared frame of reference (Starystach 2018), a system of informal norms, and an organizational subculture in which

these norms are reproduced. These systems provide an overarching structure of meaning and enable deviant behavior and their cover-up. The aim of the framework lies in differentiating different combinations of deviance and silence.

		Silence in Organizations	
		Individual	Organizational
Deviance in Organizations	Individual	Workplace Harassment	Child Abuse in the Catholic Church
	Organizational	Exploitative Working Conditions in Low-wage Sectors	VW Diesel Scandal

Table 1 Deviance and Silence in Organizations

To grasp individual silence, you can take the case of workplace harassment. Unwanted sexual advancements of a colleague to another do not serve the benefit of the organization but satisfy the desires of the perpetrator. Typically, these forms of harassment do not come to light due to a climate of silence, in which victims of such behavior are not heard (deaf-ear syndrome) (Hershcovis et al. 2021). There might be some fringe benefit to the organization, but in most cases, it depends on power structures in organizations, due to which perpetrators cannot be prosecuted internally, i.e. they acquired a certain position (Hartmann-Tews in this volume). Individuals not speaking up or helping is to be understood as not wanting to be involved. There is not an organized effort of covering up for the perpetrator, rather the climate of silence prevents the victim as well as other individuals from speaking up. Therefore, the transgression as well as the silence can be explained by personality traits and context factors, such as opportunity structures and a climate of silence.

However, there are very similar phenomena of transgression, but they are deeply connected with a form of silence which is decisively protecting the organization. The child abuse in the Catholic Church is a prime example of this. The perpetrators again use their position of power to gain personal benefits, in this case of a sexual nature. The covering up on the other hand focusses primarily on protecting the perpetrators to prevent the de-legitimation of the Catholic Church. In this case, the abuse can be explained in terms of personality traits and context factors, but the organizational silence is based in the norm of eternal servitude to the goals of the Catholic Church. This creates a climate of silence, but its main purpose is to protect the organization. In other words, it is normalized and rationalized by appealing to a higher goal. The main result is that organizational members do not only keep silent but some of them also actively protect the perpetrator and help them to get away with their transgression (Dölling in this volume; Pohlmann in this volume).

We can further differentiate this analytical approach by looking at cases in which the transgression benefits the goal of the organization, but the silence is in-

dividualized. A good example for this are exploitive working conditions which violate state set standards for good work. In this case, the transgression benefits the company by reducing manufacturing costs. However, the reasons why employees do not speak up against this are mostly due to a climate of fear induced by the management. The problem is individualized and efforts of joint representation of interests via unions are prevented. Therefore, the silence of the employees can be explained via personality traits and context factors, while the transgression consists of an informal rule set of the management with the goal of improving the return on investment at all costs. The silencing of the employees is in this case part of the wrongdoing.

From a sociological perspective, a very interesting combination is when both the transgression and the silence benefit the organization and rely on an informal understanding of a common good. Take, for instance, the recent VW Diesel Scandal. Here, the invention and proliferation of defeat devices were for the benefit of the company and relied on a shared corporate identity. In addition, also the attempts of covering up were not mainly undertaken to protect the organizational members but to protect Volkswagen from prosecution. In this constellation, both the transgression as well as the covering up appealed to the higher value of the organization. Unlike in the case of poor working conditions, employees who kept silent were not victims of the wrongdoing and kept silent to keep the wrongdoing going for the sake of the company (Pohlmann and Klinkhammer 2018).

Of course, all these cases are archetypes, in reality, such a strict analytical differentiation can never be made. For instance, in the VW Diesel Scandal, many workers kept silent, not because they were acting for the company but rather because they were afraid of the management, especially in the Volkswagen case. Volkswagen was famous for its notoriously strong grip on management (Pohlmann and Klinkhammer 2018).

But what these archetypes show is that the key to understanding the role of informal rules to explain certain forms of silence in organizations lies in the understanding of the standards of justification and legitimation to cover up wrongdoings and if they also contribute to the justification of the transgression to be covered up. Therefore, the framework helps to understand which explanatory factors are relevant, by first understanding the underlying standards of justification.

To show the usefulness of focusing on the standards of justification and legitimation, we take the example of the “German Transplant Scandal” and ask what the informal standards which led to the manipulation of transplant lists are and how are these also connected to the corresponding covering-up dynamic.

3 Methodology of the Case-Analysis

This analysis draws on data collected and analyzed as part of a larger research project at Heidelberg University led by Prof. Pohlmann, Prof. Dannecker, Prof. Dölling, and Prof. Hermann in 2013–2017. The “German Transplant Scandal” is not to be understood as one single case but rather as a complex of several cases that occurred often in a similar systematic way in various transplant centers in Germany. The research question at that time focused on the background of rule deviations and to which extent these deviations could be classified as organizational deviance. To answer this question, structural data were systematically collected and quantitatively analyzed. This was supplemented by systematic qualitative research and a collective mindset analysis (CMA; see Pohlmann et al. 2014) of interviews with physicians, nursing staff, administrative staff, and lawyers, as well as organizational case studies and participant observations. However, although the question of silence in organizations was not the focus of the research conducted, both the structural data and in particular the interviews provided the opportunity to conduct initial exploratory analysis on reconstructing interpretative frames of silence and corresponding standards of justification and legitimation.

With the help of the guiding questions below, we aim to make our theoretical approach empirically concrete and show which organizational factors are in effect. It is important to emphasize that we do not reconstruct organizational factors as formal structures of the organization. Rather we understand them as collective norms of interpretation and action which can influence the actions of organizational subcultures and are therefore central to the analysis of different forms of deviance and silence in organizations. First, we investigate the structure of conduct to reconstruct the wrongdoing as well as the cover-up in an analytical manner, to be able to differentiate between both. Secondly, we uncover contextual factors which facilitated both the wrongdoing and the cover-up dynamic. Thirdly, we want to understand what the standards of justification and legitimation of the wrongdoing were on the one hand and the cover-up on the other and how they are interconnected. For illustration of the interconnectedness, a few particularly striking passages from the empirical material are cited and corresponding interpretative frames and rules of action are formulated.

Levels of Analysis

Structure of Conduct	Which types of actors are involved in the wrongdoing and the cover-up and how were their actions structured?
Contextual Factors	On which organizational structures or environmental factors did the wrongdoing and the cover-up rely on?
Standards of Justification and Legitimation	What (collectively shared) norms of interpretation and action underlie the wrongdoing and the cover-up dynamic?

Table 2 Research Approach

Given our existing prior research on the structure of the wrongdoing concerning the “German Transplant Scandal” (Pohlmann and Höly 2017, Pohlmann 2018), the focus of this article will be on investigating the corresponding dynamics of silence.

4 Case Analysis: The “German Transplant Scandal”

In 2013, Dr. Aiman O., then senior physician in transplant surgery at the University Medical Center Göttingen, was accused by the public prosecutor’s office in Braunschweig of bodily harm with fatal consequences in three cases, and of attempted homicide in 11 cases (LG Göttingen 2015). The accusation was that he had manipulated medical data to accelerate his patients’ liver organ allocation, and thereby violated the allocation guidelines of the German Medical Association. For example, Aiman O. was accused of having reported incorrectly on the use of dialysis therapy, on data of the alcohol waiting period, on the size of carcinomas, and additionally of having manipulated blood tests—all with the intention, as can be read in the revision of the judgment, to increase his patients’ prospects of organ allocation (BGH 2017, 8f.). He was therefore accused of attempted homicide because other patients were displaced on the waiting list due to the manipulations and thus had to wait longer for the vitally important organ. On May, 6th 2015, Aiman O. was acquitted by the district court of Göttingen for factual and legal reasons (LG Göttingen 2015, 18ff. and 22ff.) and this judgment was confirmed on June, 28th 2017 by the German Federal Court of Justice (BGH 2017).

This case is one of the most prominent cases in the “German Transplant Scandal” that went public in 2012, as Aiman O. became the first physician to be officially prosecuted. However, comprehensive investigations by the examination and surveillance commission (*Prüfungs- und Überwachungskommission*) of the German Medical Association have shown that the manipulations in Göttingen were not isolated incidents. Instead, the nature and scope of the acts gave reasonable grounds to believe, according to the examination and surveillance commission, that systematic violations were taking place at several centers throughout Germany (see annual reports of the *Prüfungs- und Überwachungskommission* beginning in 2013). In this context, both judicial assessment and our own research have shown that explanations of the acts that focus on individual enrichment fall short (BGH 2017, 10). Moreover, the unwritten norms of interpretation and action, which were used to justify and explain deviance, turned out to be shaped by the medical profession itself. Although they could be reconstructed as organizationally contributory, they appeared to be shaped in particular by medical competition, by medical professional authority, by the professional ethos, and the claim to the mandate for autonomous problem solving. Even with a general rejection of the manipulations, rationalizations took place among the interview partners that foregrounded the medical benefit and medical context of the deviations and provided professionally oriented and ethical reasons

for legitimacy. This professionally justified form of deviance can therefore be described as “professional deviance” (see Pohlmann and Höly 2017, Pohlmann 2018).

Although neither in all nor in the majority of transplant centers in Germany the guidelines of the German Medical Association have been violated, it also became apparent in the course of the (judicial) reappraisal as well as in our research that the violations cannot be said to be accidental or negligent individual acts (see Pohlmann and Höly 2017, Pohlmann 2018). Instead, the frequency of the incidents (per center with violations), bundled with their complexity, give us reasonable grounds to believe that many actors in the respective transplant centers were involved, or at least were aware of the guideline violations (Pohlmann and Höly 2017, 198).

This becomes even more obvious when one considers the organizational complexity surrounding transplant coordination, administration, and documentation which requires the involvement of multiple actors. Primarily medical staff is involved, such as transplant surgeons who direct the procedure, but also anesthetists and assistant physicians. Auxiliary staff, such as transplant coordinators, their assistants as well as nursing staff and others also take on important tasks by maintaining contact with the relatives, for example, and regularly complying with the bureaucratic requirements for patient listing. It is thus common for patient files to pass through several hands and to be reviewed numerous times before a report to Eurotransplant is made. However, in the context of the investigation surrounding the manipulations in transplant medicine, investigators have reported on the following experience with regard to witness interviews:

“You will hardly find a nurse, or an anesthesiologist, who has been present and who gives you a clear statement. (...) When they come into the main trial (...) then everything is being relativized, then everything is withdrawn somehow. (...) So, if you only rely on verbal statements, so on testimonies, then you are lost.”

The quotation suggests that there were dynamics of silence or concealment at work here, which resulted in a “White Wall of Silence” in the course of the criminal prosecution. There are already explanations for this form of silence in literature, which seems to be the result of individual (fear-guided) calculations.

However, we are interested in the silence before the effects of possible criminal prosecution came into play: the (judicial) review of the manipulation cases has shown that, in addition to the defendant, several others at least knew about the manipulation cases or had to tolerate them so that they could take place to the extent that they were judicially proven in Göttingen. How was it possible, nevertheless, in several centers to repeatedly, even systematically, violate the allocation guidelines of the German Medical Association?

Hierarchical effects certainly play a significant role here. The transplant process is embedded in the organizational structure of hospitals where usually clear relationships of superiority and subordination come into play. Hierarchies not only become valid along the official authority but particularly also along the medical

professional authority (see Wilkesmann and Jang-Bormann 2015, 227ff., Vogd 2017). This especially becomes relevant in transplant centers, as they work in a (former) pioneer field of medicine. Thus, the behavior of subordinate personnel prior to prosecution was possibly influenced by obedience to superiors as well. It is conceivable that people did not go public with potential suspicions for fear of losing their jobs or in order to protect themselves from prosecution. Against the background of our conceptual framework, silence could thus be explained as a form of *individual silence* whose causes are possibly rooted in a climate of fear.

Explanations that focus on the goals of the organization can also be mentioned here. Thus, for the context “hospital”, the well-being of patients is considered to be the primary reference point. Transplant medicine takes on a special role in this regard as transplantation is often considered the only life-saving option when other therapies have failed to achieve sufficient medical improvement. This often life-saving hope might have been taken away from the patients by criticizing the practices of usually highly subspecialized transplant physicians. Furthermore, the bureaucratic requirements to keep the patients listed, once they were listed, were very high. One had to regularly report medical data, and with non-reporting, one risked the patient being taken from the list or placed further down. For example, by entering medical values into the database without a corresponding data basis, the requirements of the abstract bureaucratic system were met, allowing the quite real patients to remain listed. Moreover, it should be mentioned that the judicial assessment of the cases of manipulation was accompanied by a heated debate of medical and legal specialists as well as the public concerning the concrete content of the guidelines and the competence of the German Medical Association to issue guidelines in general (for a short summary see Richter-Kuhlmann 2017). Thus, from the outset, those responsible for rule-making were faced with the dilemma that in the event of organ shortage, regardless of how one regulates organ allocation, patients would highly likely die. If the guidelines favor those patients who are more likely to still be helped by a transplant, the most seriously ill will have a higher risk of dying. If, on the other hand, the most seriously ill are given priority, the risk of dying on the waiting list increases for the “less” seriously ill (see Pohlmann 2018). This is a decision-making situation on a tragic basis, on which controversial opinions were already circulating in the medical profession in the run-up to the manipulations. Against this background, it is conceivable that the primary purpose of the organization provided orientation in an environment characterized by ambivalence, and that the toleration of the manipulations thus appeared to be justified and legitimated for the patients’ well-being. Thus, drawing on our conceptual framework, elements of *organizational silence* directed towards the higher value of the organization—the patient well-being—can also be found.

It becomes obvious that both approaches that focus on personality traits and context factors, and approaches that emphasize orientation to the organizational goal make an explanatory contribution to the silence, toleration, and concealment of rule deviations in transplant centers.

But is that really the end of the story? If one analyzes the empirical material more closely, it becomes clear that obedience to the superior or to the organizational goal cannot sufficiently represent the cognitive reference point. The following quote of a transplant assistant can be only an example of this:

“I was expected once to list a patient ‘T’ [transplantable, note of the authors], where hardly any documents were available. (...) I do not question anything and just do it. I am not a physician either. (...) And in case of problems, he [the chief physician, note of the authors] would have to be liable for that.”

During our research, it was sometimes openly addressed by actors that decisions made by medical leaders are adopted even when they deviate from formal rules. In this context, a cognitive framework of justification can be reconstructed which in the first place stresses the *professional* authority of the physicians instead of the official authority. If wrongdoings are noticed as such, there could still be the possibility that they result from medical considerations concerning the patient’s well-being. And sovereignty in medical matters is assigned exclusively to physicians. It can even be observed a cognitive decoupling of the wrongdoing from one’s own area of responsibility and competence and its externalization to the other, higher organizational sphere, where it can be accounted for. Against such a framework of justification, interpretations can evolve in which rule deviations are no longer considered as such but are reinterpreted as medical decisions. Following this, silencing and covering up can thus be interpreted as medically necessary. In addition, in an organizational context, where the operational procedure—often under time pressure—is programmed to be curative and life-sustaining, ethically accepted values (such as, for example, the patients’ well-being) lent themselves to both the deviation from rules and their covering-up.

In summary, a professional barrier appears to be at work on the backstage that shows clear limits to interference, especially in ambiguous situations (e.g., the medically controversial debate about the guidelines of the German Medical Association). This barrier seems to have become a cognitively normalized and unquestioned point of reference. Accordingly, an interpretive rule with respect to deviations from the guidelines could be as follows: ‘It’s none of my business’. A rule of action that follows from this could be: ‘It is for the good of the patient, I continue in the usual way’¹. Silence is the result.

1 Certainly, counterexamples can also be found: “Patients who still have any findings pending, no matter how insignificant they are, I do not give approval (...), even if the boss has a different practice there” (quote from a transplant assistant). Nevertheless, the above analysis has shown that in the case of manipulations in transplant medicine, a form of silence is active whose cognitive justifications refer to a professional barrier within the organization hospital.

Just as it could be shown for the form of deviance, the justifications in the context of silence could also be located within the horizon of the profession. We can therefore speak of *professional silence* in this case. Although the reference is not based on the goal of realizing professional claims, the profession's claims to validity nevertheless form the central point of reference.

With regard to the guiding questions presented at the beginning, the results of the analysis can be summarized as follows:

Empirical Research Approach		Deviance	Silence
Structure of Conduct	Which types of actors are involved in the wrongdoing and the cover-up?	Chief and senior physicians*	Chief, senior and assistant physicians, transplant coordinators and assistants, nursing staff etc.
Contextual Factors	On which organizational structures or environmental factors did the wrongdoing and the cover-up rely?	Hierarchy characterized by both official and medical professional authority, organ shortage, tragic decision-making situation, complex processes, a high level of bureaucracy, controversial professional discussion about the validity and definition of the guidelines, life-saving mission in operational procedures	
Standards of Justification and Legitimation	What (collectively shared) norms of interpretation and action underlie the wrongdoing and the cover-up dynamic?	Medical competition, medical professional authority, professional ethos (especially patients' well-being), the mandate of autonomous problem solving	"Professional barrier", patients' well-being

* Most common chief and senior physicians are in the sights of the investigating authorities. One of the reasons for this is that they are able to sign orders and documents more frequently, making them more easily legally responsible.

Table 3 Summary Case Study

Conclusion

The "German Transplant Scandal" points towards the importance of understanding the interconnectedness between the type of wrongdoing and the type of silence. The analysis has shown that the informal standards of justification and legitimation underlying organizational deviance and organizational silence overlap in the case of manipulations in transplant medicine. The manipulation of the transplant list was primarily not a case of individual wrongdoing but rather organizational deviance based on medical professional standards. The reason for covering up the wrongdoings by the confidants can also be located within the scope of professional authority and autonomy of the physicians, which points towards the interconnectedness at the cognitive level of both phenomena. Against this background, the well-being of patients represents a value of reference in both rule deviance and its silencing.

From the perspective of a sociology of organizations, the emergence of professional silence as a subtype of organizational silence can be explained by the specific type of the organization “hospital”: the particular bundling of official and professional authority, which in the present case increases the distance between the medical management level and the lower-level personnel, provides opportunity structures that have promoted a cognitive decoupling of the medical decision-making area from the broader organizational setting—even in the case of deviations. Such decoupling processes are usually anchored in the many years of socialization of personnel in the organization, in which corresponding problem-solving patterns often gain validity and are passed on unquestioned. The example of manipulations in transplant medicine has thus shown that the existence of such “parallel worlds” in organizations can be relevant not only for the emergence of deviance but also for the emergence of silence.

Our example shows that a qualitative case perspective is needed to understand more deeply the phenomenon of silence in organizations. No case of organizational silence can be fully understood if it is not put into perspective with the (type) of wrongdoing it covers up.

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Section II

Studies of Silence in Organizations

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Planful Machiavellians at Work: Perceived Career Potential and Actual Counterproductive Work Behavior

Abstract In this paper, we analyze the vocational behavior of individuals with different scores on the personality trait of Machiavellianism. A meta-analysis showed (O'Boyle, Forsyth, Banks & McDaniel, 2012) that trait Machiavellianism is associated with low performance at work. This is surprising because Niccolò Machiavelli had success in mind when he repudiated traditional morality as naïve. This paper tackles the question how highly Machiavellian individuals can become successful in vocational life. On the basis of socioanalytic personality theory (Hogan & Blickle, 2018) and mimicry-deception theory (Jones, 2014), we suggest that Machiavellians with good social skill and high impulse control will successfully mask their tendencies for amorality, callousness, and manipulation and appear benign to coworkers. Additionally, the length of time an employee works in a job is crucial: planful (as opposed to impulsive) Machiavellians with good social skill aspire a positive image among coworkers. Therefore, they curtail their counterproductive work behavior in early stages of tenure, nest themselves into an organization, and extract resources for personal gain in later stages of tenure.

Keywords Machiavellianism, Counterproductive Work Behavior, Mimicry-Deception-Theory, Career Potential, Vocational Success

Introduction

In the past few decades there have been numerous broadly publicized examples of how individuals' crooked financial actions have strongly impacted organizations and individuals. For instance, the rogue trader Nick Leeson, at that time a young broker at British Barings bank, was effective in the downfall of one of the oldest merchant banks in England by using fraudulent and highly risky trades and investments, which lost his bank £832 million and led to its bankruptcy (Powell, 2015). Another well-known example is that of Bernie Madoff, who conducted an enormous Ponzi scheme. By cheating thousands of clients out of around \$20 billion, he not only ruined the lives of several of his investors but also his own and those of his family members (Smith, 2013). A question sometimes raised in the media and legal proceedings is if others knew of the fraudulent behavior. Most coworkers or supervisors free themselves from liability by claiming to have known nothing. It is of course debatable if they were genuinely unaware or if they chose to remain silent. Subsequently, one might ask if Nick Leeson or Bernie Madoff were actually capable of skillfully hiding their wrong-doing or if their good reputations and position power prevented others from speaking up.

The vast amount of media coverage shows the public's interest in cases like these. While some may address the legal or organizational conditions that facilitate these fraudulent deeds, others focus on the key players involved, their rise to power, their biography, and character.

Correspondingly, researchers from various scientific fields have studied such behaviors, aiming at describing, explaining, and predicting causes and consequences. One strand of research focuses on the personality traits that underlie morally and socially aberrant behaviors. Using the term "dark triad", which was coined by Paulhus and Williams (2002), a body of research has emerged that focuses on the personality traits of psychopathy, narcissism, and Machiavellianism. The terms psychopathy and narcissism are oftentimes confused with distinct taxonomic clinical diagnoses, but while these originate in psychiatry and clinical psychology, the dark triad facets are understood as continuous personality traits in ordinary individuals, while the taxonomic clinical diagnoses are conceptualized as extreme manifestations in individuals with personality disorders.

Subclinical antisocial psychopathic individuals show attributes such as a superficial affect (no empathy and feelings of moral guilt), callousness, and low impulse control (Decuyper, De Pauw, De Fruyt, De Bolle, & De Clercq, 2009; Lynam & Derefinko, 2006). Central aspects of subclinical trait narcissism include a disposition toward an overly inflated self-esteem, immoderately emotional responses to criticism, and a sense of entitlement and grandiosity (Morf & Rhodewalt, 2001; Raskin & Hall, 1979).

Highly Machiavellian individuals are characterized by distrustful and cynical views of human nature, ambition for prestige, the willingness to manipulate others, and a disregard for conventional morality (Christie & Geis, 1970; Miller, Hyatt, Maples-Keller, Carter, & Lynam, 2017). Research concerning the dark triad has grown

extensively in the past years (Glenn & Sellbom, 2015; LeBreton, Shiverdecker, & Grimaldi, 2018; Muris, Merckelbach, Otgaar, & Meijer, 2017; O'Boyle, Forsyth, Banks, & McDaniel, 2012).

This paper concerns the question of how highly Machiavellian individuals progress in their respective careers while having a tendency to show behaviors such as deception, manipulation, and callousness. Based on socioanalytic personality (Hogan & Blicke, 2018) and mimicry-deception theory (Jones, 2014), we argue that successful Machiavellians have good social skill and strong impulse control. They are able to adjust their behavior in the workplace in order to appear benign at the beginning of their organizational career and consequently nest themselves into the new organization to extract resources for their own benefit.

Theoretical Foundations

Machiavellianism as Personality Trait

A personality trait is a relatively time-stable individual disposition of how a person feels, thinks, perceives the self and others, and acts (McCrae, 2018). The concept of the personality trait of Machiavellianism is based on the writings of the Italian politician, diplomat, and political theorist of the Renaissance period, Niccolò Machiavelli. In *The Prince* (1532; 1950), he suggests that methods of deception, ruthlessness, and amorality must be readily used to become an effective leader who strives for power and wealth. Christie and Geis (1970) described the personality trait of Machiavellianism accordingly. Highly Machiavellian individuals are ambitious, strategic, callous, distrustful, cynical, and prone to manipulate and deceive others for personal gain (e.g., Jones & Paulhus, 2009).

Within the extensive research on the personality trait of Machiavellianism in the vocational and organizational context and beyond, there has been growing criticism concerning the traditional measures that supposedly assess the trait (McHoskey, Worzel, & Szyarto, 1998; O'Boyle, Forsyth, Banks, Story, & White, 2015). To be more precise, Machiavellianism is conceptually thought to include "a long-term, strategic focus, the ability to delay gratification, and average to good impulse control" (Miller et al., 2017, p. 440). The traditional measures of Machiavellianism (e.g., Mach-IV, MPS, Dirty Dozen; Christie & Geis, 1970; Dahling, Whitaker, & Levy, 2009; Monaghan, Bizumic, & Sellbom, 2018; Jonason & Webster, 2010), however, do not cover this domain of the construct. Recent meta-analytic findings even suggest Machiavellianism to be associated positively with impulsivity and negatively with conscientiousness (Monaghan et al., 2018).

Highly impulsive individuals (Dickman, 1990) act "without thinking," without giving themselves time to assess the situation, to appreciate dangers, to foresee the consequences, or even to anticipate how they will feel about their action them-

selves when they have time to consider it" (Lykken, 1995, p. 122). Accordingly, there is a need to explicitly represent the extent of an individual's impulse control in combination with Machiavellianism. This allows for the assessment of the consequences of Machiavellianism, which may vary depending on whether Machiavellianism comes along with high or low impulse control.

Socioanalytic Personality Theory

The socioanalytic theory of personality (Hogan & Blickle, 2018) is a perspective on human nature that combines insights about human evolution (Darwin), unconscious motivation (Freud), and the dynamics of social interaction (Mead). Socioanalytic personality theory postulates that human beings are motivated by a combination of two evolutionarily-based social motives: the motive to get along and the motive to get ahead. The motive to get along indicates the need for approval, community, and acceptance, while the motive to get ahead describes the need to strive for power, to control resources, and to gain status within one's social group. The extent and strength to which individuals exhibit either motive can vary from person to person.

Socioanalytic theory not only proposes that the intensity of the two basic social motives can differ individually. The ability to put these motives into successful action can vary as well. A key factor for success is social skill, as it is needed to translate aspirations into action. Social skill can be described as capable impression management (Hogan & Shelton, 1998). It comprises the ability to control how others see us. Socially skilled individuals are savvy observers of social situations and are able to adjust their behavior to changing social contexts. Consequently, they gain the trust of others which gives them the chance to exercise influence (Hogan & Blickle, 2018).

Empirical research strongly supports the idea that successful individuals use social skill to competently manage their images and reputations. For example, there is evidence for the relation between social skill and academic success (Kholin et al., 2016), supervisor-rated cooperation, job performance, and promotion potential (Blickle, Momm, Liu, Witzki, & Steinmayr, 2011), higher income and marketability of new employees (Blickle et al., 2011).

Recent research suggests that social skill does not only help bright personalities but can compensate for dark personalities such as psychopathy and narcissism (Owens, Wallace, & Waldmann, 2015; Schütte et al., 2015).

For the organizational and work context, a specific conceptualization of social skill, so called political skill, has been developed and comprehensively validated (Bedi & Skowronski, 2014; Bing et al., 2011; Ferris et al., 2005, 2007, 2008; Jacobson & Viswesvaran, 2017; Munyon, Summers, Thompson, & Ferris, 2015; Ng et al., 2005). Political skill refers to "the ability to effectively understand others at work and to use such knowledge to influence others to act in ways that enhance one's personal

and/or organizational objectives” (Ferris et al., 2005, p. 127). It is a blend of four distinct dimensions: *social astuteness* refers to the ability to sense (hidden) motivations and agendas of others. *Interpersonal influence* describes the capacity to persuasively communicate with others. *Networking ability* comprises the building, and use of interpersonal connections, relationships, and networks to achieve work- and career-related goals. *Apparent sincerity* includes the ability to convey authenticity and integrity while influencing others at work (Ferris et al., 2005, 2007, 2008). Previous research suggests that politically skilled individuals are capable of effectively marketing themselves in order to achieve more fulfillment of their motives (Blickle, Schütte, & Wihler, 2018).

In sum, political skill allows individuals to put their social aspirations into successful vocational action. Highly Machiavellian individuals are highly motivated to get ahead while their motive to get along is low. To successfully enact their motive in the work place, they need political skill in order to build a façade over a period of time and consequently appear benign to coworkers. This rather complex scheme of deception is required to follow a long-term strategy according to mimicry-deception theory (Jones, 2014).

Mimicry-Deception Theory (MDT)

Mimicry-deception theory (Jones, 2014) proposes that human deceptive behavior for selfish gain can be described as long- vs. short-term strategies that differ in four aspects: complexity of deception, detectability, rate of resource extraction, and host integration. Within this theory, human behavior is compared to the behavior of nonhuman animals and microorganisms. A short-term strategy is characterized as a superficial, rather easily detectable deception, a predator uses to overwhelm its unsuspecting victim and extract as many resources as possible in a short amount of time. As this deception is easily detectable, it is not specific to one victim but needs to be spread out in order to be successful. In nonhuman animals, this kind of deceptive tactic is for example found in predators that use their exterior coloring to either confuse their prey or approach unnoticed. In humans, this deception is observed in, e.g., credit card fraud or the use of spam e-mails. The long-term strategy, however, is found in parasitic infection or viral diseases: the victim unknowingly acts as a host organism which is usually unaware of the infection because of complex deception techniques. The predator then extracts resources from this specific host over a long period of time and at a slow rate to minimize the threat of detection. In humans, this kind of strategy might be used in embezzlement or antitrust violations. To carry out embezzlement, the perpetrator not only requires a high-ranking position but also a complex deceptive strategy and has to restrain the frequency of extraction to minimize the risk of detection (Jones, 2014).

On the basis of mimicry-deception theory, highly Machiavellian individuals are expected to successfully follow a long-term strategy if they have good political skill

and impulse control. At low political skill and impulse control, they are more likely to use a short-term strategy. There is empirical evidence supporting this assumption. Dahling et al. (2009) reported that highly Machiavellian individuals with a long job tenure have higher task performance ratings. From the perspective of mimicry-deception theory, this can be interpreted as host integration. Accordingly, the length in which an employee works in a job for an organization is of interest in studying the behavior of highly Machiavellian individuals.

Implications for Vocational and Organizational Behavior

Machiavellianism refers to the motive to get ahead by manipulating and betraying others, when it serves personal advantage or advancement (Dahling et al., 2009; Hogan & Blickle, 2018). As highly Machiavellian individuals are supposedly ambitious and strive for power and control, they should aspire to use a long-term strategy according to mimicry-deception theory (Jones, 2014), which is characterized by complex deception tactics.

However, an important factor to consider is political skill, as it allows individuals to put their aspirations into successful action (Hogan & Shelton, 1998). Politically skilled individuals are not only able to appear sincere and trustworthy but can also use impressions management tactics successfully (Harris, Kacmar, Zivnuska, & Shaw, 2007). Further, individuals with high impulse control think first and act later, learn from their mistakes, carefully plan ahead, and put a great deal of thought into their long-term goals (Lykken, 1995).

Consequently, individuals high in Machiavellianism, low in political skill, and low in impulse control should use superficial deception tactics, whereas individuals high in Machiavellianism, high in political skill, and high in impulse control should use complex deception tactics with different short- and long-term consequences for their career progression, i.e., career role performance as well as deviance in the workplace, i.e., counterproductive work behaviors.

Career Role Performance

Career role performance describes the individual career behavior within an organization. It refers to how well an employee seeks out career opportunities, acquires important career-related skills, and accomplishes central career goals (Welbourne, Johnson & Erez, 1998). According to socioanalytic theory, coworkers continuously exchange views on others, how easy it is to work with them and by that, individual reputations are formed (Hogan & Blickle, 2013). Reputations emerge on the basis of others' perceptions, which represent demonstrated behavior and accomplishments. A positive reputation has been shown to be related to more power, better performance appraisals, and more elbow room among others (Zinko, Ferris, Blass, & Laird,

2007). The assessment for career role performance therefore represents an individual's reputation for the potential to achieve a successful career within the organization (Blickle, Schneider, Liu, & Ferris, 2011).

Additionally, in the context of Machiavellianism and mimicry-deception theory, job tenure plays an essential role: the extraction of resources should increase over time, after individuals high in Machiavellianism have built a positive reputation. Consequently, at a short tenure, employees with low impulse control and low political skill should have a lower reputation for career role performance than employees with either high impulse control or high political skill. Individuals with high levels of Machiavellianism should thus be able to hide behind the façade of high impulse control and high political skill. For a long tenure, individuals high in Machiavellianism, political skill, and impulse control should successfully use complex deception tactics. Therefore, given these boundary conditions, there should be a positive relation between levels of Machiavellianism and career role performance reputation.

Counterproductive Work Behavior (CWB)

Counterproductive work behaviors (CWB; Bennett & Robinson, 2000) are voluntary behaviors that threaten the well-being of the organization and its members. One form of CWB is secret organizational resource extraction, such as stealing, falsifying receipts for personal gain, intentionally working slower or coming in late to work (Mercado, Dilchert, Giordano, & Ones, 2018). According to mimicry-deception theory, highly Machiavellian individuals with high impulse control and good political skills should abstain from behaviors like these if job tenure is low, as not to jeopardize their good reputation. Once integration into the organization has been achieved however, the incidences of such behaviors should increase as a function of Machiavellianism. Consequently, if political skill and impulse control are low, Machiavellianism should be positively related to CWB at both, short and long job tenure. Additionally, highly Machiavellian individuals with high impulse control and good political skill should always show lower rates of CWB than any other combination of Machiavellianism, impulse control, and political skill, even at long job tenure, in order to minimize the risk of detection by others.

Empirical Evidence

The assumptions above have been tested by Kückelhaus, Kranefeld, Schütte, Gansen-Amann, Wihler, and Blickle (2019) in two consecutive studies with a total of 1,438 participants from the German labor market. A combination of self-assessment and other-ratings were used in order to cover behavioral as well as perceptual domains.

Study 1: Reputation for Career Role Performance

The first study with 753 participants concerned the Machiavellians' career role behavior, i.e., career role performance (Welbourne et al., 1998). In this study, self-assessments of Machiavellianism, political skill, impulse control, and job tenure were combined with coworker ratings of career role performance, resulting in a multi-source design, consisting of one target employee and two colleagues. The final sample consisted of 251 employee-coworker triads.

We postulated and tested the four-way interaction between Machiavellianism, political skill, impulse control, and job tenure on coworkers' ratings of career role performance. The data supported our hypothesis, as the relation between Machiavellianism and career role performance was indeed moderated by political skill, impulse control, and job tenure.

Figure 1 shows the plotted results of the four-way interaction. At a short job tenure (top plot in Fig. 1), individuals with low political skill and low impulse control, received low other-ratings of career role performance. However, if both, political skill and impulse control were high, career role performance was high even at a high Machiavellianism. At a long job tenure (bottom plot in Fig. 1), the relation between Machiavellianism and career role performance was positive, if political skill and impulse control were both high.

Study 2: Counterproductive Work Behaviors (CWB)

685 employees participated in the second, completely anonymous study. To cover actual behavior from employees, only self-ratings were assessed. In addition to Machiavellianism, political skill, impulse control, and job tenure, the target employee provided information on CWB.

We postulated a squared four-way interaction between Machiavellianism, political skill, impulse control, and job tenure. The data supported the hypothesis: the relation between Machiavellianism and CWB was jointly moderated by political skill, impulse control, and job tenure.

Figure 2 depicts the relations between Machiavellianism, political skill and impulse control at low (top plot) and high tenure (bottom plot). At short and long tenure, the relation between Machiavellianism and CWB was positive, if political skill and impulse control were low. Those low in political skill and impulse control displayed the highest levels of CWB overall. Those high in political skill and impulse control reported low values of CWB at short tenure. When job tenure was long however, in line with Weiss et al. (2019), CWB increased exponentially for highly Machiavellian individuals. Overall, CWB remained at a comparatively low level, if political skill and impulse control were high.

In sum, the four-way interaction between political skill, impulse control, and job tenure was supported by the data. At the beginning of their organizational ten-

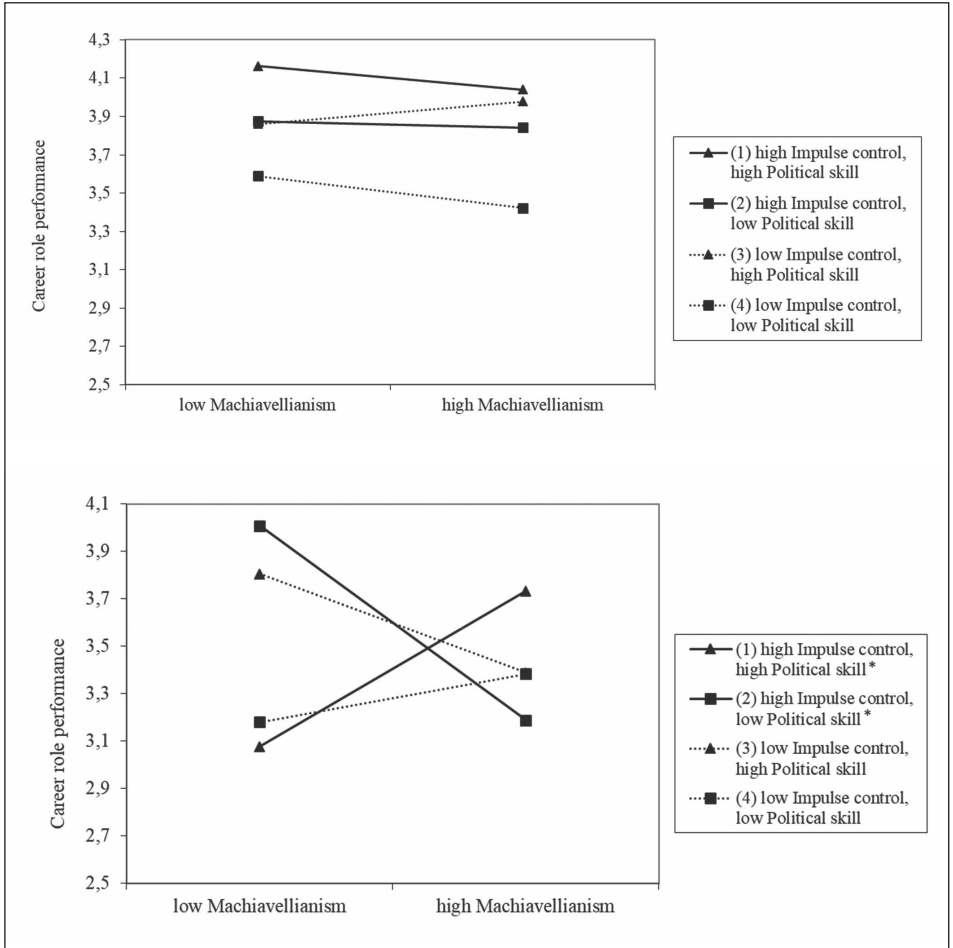


Figure 1 The relations between Machiavellianism and career role performance assessments by coworkers moderated by employees' impulse control and political skill in for those with low (top plot) and high (bottom plot) tenure (* $p < .05$).

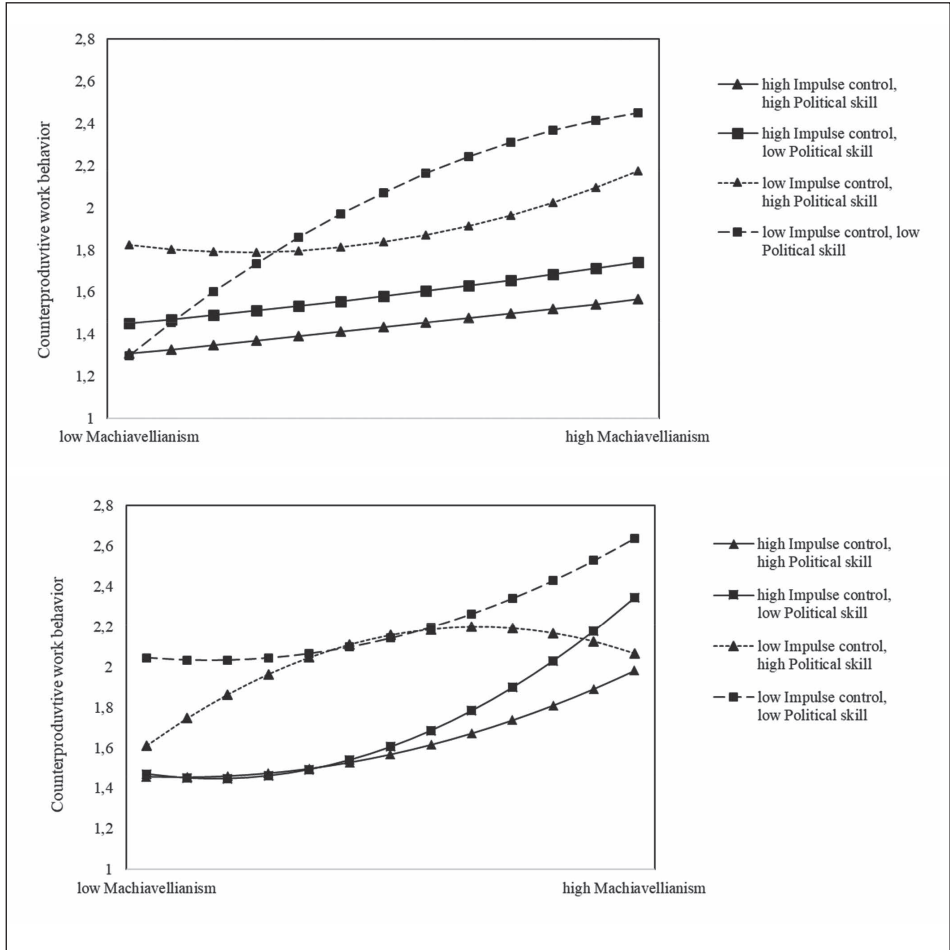


Figure 2 The relation between Machiavellianism and CWB moderated by employees' impulse control and political skill at low (top plot) and high tenure (bottom plot).

ure, individuals who are high in Machiavellianism, political skill, and impulse control strive to build a positive image by refraining from deviant behaviors, but at a longer tenure they show elevated levels of CWB. However, the amount of CWB is not excessive, as to prevent being detected as wrongdoers.

Summary

In the present paper, we discussed the career role performance and organizational misbehavior of highly Machiavellian individuals. Political skill and impulse control are important factors to consider in the context of Machiavellians' careers, as they enable individuals to mask their true intentions to enact deviance and follow a long-term deceptive strategy. Furthermore, job tenure has to be taken into account, as the behavior of highly Machiavellian individuals with good social skills and impulse control will vary. When entering an organization, they strive for a good image and tend not to engage in counterproductive work behaviors. At a longer tenure, they still strive to keep their good reputation intact, but do show exponentially increasing more counterproductive work behavior.

Significance for Theory

The empirical evidence reported by Kückelhaus et al. (2019) contribute to the body of research on socioanalytic personality theory. The results show that political skill is a moderator for the (successful) enactment of basic motives. Additionally, the data supported assumptions of mimicry-deception theory, which has previously not been tested empirically in a vocational and organizational setting. The results suggest that Machiavellians with good social skills and high impulse control do indeed use a long-term deceptive strategy and nest themselves into an organization to slowly extract resources.

The study by Kückelhaus et al. (2019) further supports the assumption that impulse control is an important factor to consider. The measures of Machiavellianism have been criticized for lacking this crucial part of the construct. In response to the criticism, Collison, Vize, Miller, and Lynam (2018) developed a new measure of Machiavellianism that comprises not only the antagonistic but also the agentic and planful parts of Machiavellianism. Although a first study has shown promising evidence for its validity in a general sample, this new measure of Machiavellianism has not yet been comprehensively validated for the vocational and organizational context.

Significance for Practice and Future Research

Future research might focus on the type of organization and job demands that attract those high in Machiavellianism and political skill, whether and why there were no identifying indicators when these individuals were hired, and how it is possible for these individuals to persist in organizations instead of getting fired.

The perception of highly Machiavellian individuals by coworkers, supervisors and subordinates might be of further interest. The results by Kückelhaus et al. (2019) imply that highly Machiavellian individuals can use social skill to hide their misdemeanors at work and thereby evade detection and consequently dismissal from the organization. Correspondingly, Kholin et al. (2020) showed that social skill might be an important factor in the career advancement of dark personalities. Yet another potential explanation for the continued progression of highly Machiavellian individuals might lie in the construct of organizational silence. It is possible that individuals working closely together with highly Machiavellian individuals do indeed notice counterproductive work behavior to some degree, but choose to remain silent to either protect themselves or because they feel unable to make a difference. As highly Machiavellian individuals with good social skills build up a good reputation, strive for integration into the organization, and keep their misbehavior to a minimum at the beginning of their careers, a coworker or subordinate might feel that it is too dangerous to tell on a powerful person like this.

Future studies should therefore incorporate self- and other-ratings of counterproductive work behavior as well as a measure of the multidimensional approach of organizational silence (van Dyne, Ang & Botero, 2003) to cover a multitude of possible reasons not to disclose relevant information. This might disentangle the relation between Machiavellianism, actual, and perceived counterproductive work behavior.

Machiavellianism was nearly perfectly masked by high political skill and impulse control. However, their dark intentions were more pronounced at higher levels of Machiavellianism. Because of their highly skillful social behavior, it seems that conventional selection-approach-based personality questionnaires should not be able to identify these individuals. However, individuals also have a desire to express their identity in personality questionnaires (Johnson & Hogan, 2006) and in personnel selection situations (Hogan, Barrett, & Hogan, 2007). A strong marker of a Machiavellian identity is a distrustful and cynical view of human nature (e.g., Christie & Geis, 1970; Dahling et al., 2009). Because such beliefs are taken as indications of competence and intelligence by laypersons (Stavrova & Ehlebracht, 2018), even though individuals high in Machiavellianism probably try not to disclose their willingness to act amorally for personal gain on personality questionnaires in personnel selection situations, they are likely to candidly express their distrustful and cynical views of human nature in such situations to create an image of competence and intelligence. Therefore, there is a good chance of detecting such nearly perfectly masked individuals' high Machiavellianism even when political skill is high.

Conclusion

Cases like those of Nick Leeson and Bernie Madoff attract a lot of attention from the public, media as well as the organizational sciences. A frequently asked question is how fraud on this level could ever have occurred. While some seek answers in organizational structures, missing government oversight or dysfunctional laws, answers may also be given from a psychological point of view focusing on individuals' personality: those with dispositions towards manipulation, deception, and amorality are able to build a protective façade through good social skills and impulse control and consequently appear benign to the people around them. This might enable them to climb the organizational ladder way up to the top and ultimately give them the power and status to harm others (Kholin, Kückelhaus, & Blickle, 2020).

The positive reputation such individuals build up might lead to silence on an individual, team- or even organizational level. Either because wrong-doing is in fact not being detected or because these individuals have acquired enough power to force the people around them into self-protective silence. We suggest that employers use the self-disclosure of distrustful and cynical views of human nature as markers in personnel selection to crack this nearly perfect mask of benignancy. Further, organizations should strengthen individuals' voice behavior, in that they feel secure enough to disclose

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Steve Conway and Louise Westmarland

The Blue Wall of Silence: Police Integrity and Corruption

Abstract This paper explores some data from a recent survey of UK police officers and police support staff. The study used an online survey, employing the use of scenarios, to ask whether it was likely the respondents would report certain misbehaviors. There was also the option of adding free-text responses and comments. In addition to “conventional” questions about bending the rules and accepting cash and valuable goods, some of the scenarios raised questions about inappropriate sexual behavior and the use of illicit drugs. In addition to some quantitative data, the discussion also explores free-text responses in order to consider some of the underlying reasons for this behavior. Questions addressed why respondents would report colleagues’ misbehaviors and what methods they would use.

Keywords police ethics, police integrity, police cultures, code of ethics, “blue code” of silence

Introduction

The question of how, and perhaps more importantly why, organizations cover up wrongdoings is a complex problem. Organizational silence in public bodies, such as public health services and the police is particularly troubling. Whereas private businesses might claim to have commercial reasons for keeping quiet about certain internal matters, surely public organizations should be more transparent? As organizations such as the police are dedicated to, and funded by, the people they serve, it could be argued that their accountability relies upon truthfulness and transparency. A lack of willingness to be open and honest about wrongdoings, where they occur, is surely part of the responsibility of public office.

This paper explores some data from a recent survey of UK police officers and police support staff. The study used an online survey, employing the use of scenarios, to ask whether it was likely the respondents would report certain misbehaviors. The survey also provided the option of adding free-text responses and comments. In addition to “conventional” questions about bending the rules and accepting cash and valuable goods, some of the scenarios raised questions about inappropriate sexual behavior and the use of illicit drugs. The discussion first focuses on some quantitative results of the survey before considering themes emerging from the free-text responses which capture issues of why the respondents thought they would report colleagues’ misbehaviors and the methods they would prefer to use.

Background

Academic interest in police ethics and integrity has a long history in North America (Wesley, 1970; Skolnick, 1966; Elliston and Feldberg, 1985). However, it was not until the mid-1990s that the subject became a particular focus of scholarly research in the UK—exemplified in Kleinig’s (1996) seminal work on “the ethics of policing”. These themes were subsequently addressed by Alderson (1998: p. 71–72) in his discussion of “principled policing”. In this text, Alderson advocated a code of ethics for policing—an idea which was developed by Neyroud and Beckley (2001: p. 47–48). The late 1990s saw the advent of significant public policy research relating to police corruption in police forces in England and Wales. Newburn (1999: p. 8) suggested that—although police corruption is hard to define—practices exist within the police “which whilst they may be considered to be ‘deviant’ are nonetheless tolerated; they are not perceived as corrupt.” In a follow-up report, Newburn (2015: p. 29) made 15 suggestions for reform, which included encouraging the “reporting of misconduct” or what might these days be referred to as “whistle-blowing”.

Police corruption can take many forms. Kleinig (1996: p. 166) characterises corruption as involving officers exercising—or failing to exercise—their authority for the primary purpose of private or organizational advantage. “Acquisitive corruption”

is motivated by personal material gain. This form could be manifested in a range of behaviors, from the mundane—such as accepting gifts of food and drink from businesses in an officer’s neighborhood—to serious infringements such as collab-
orating with organized criminals. “Acquisitive corruption” can be seen as involving a different motivation to that involved in “noble cause corruption”—the bending or breaking of rules/laws in order to satisfy an abstract concept of extra-legal justice. Such behavior does not provide any clear material benefit to the officer. Instead, it seems to be motivated by the individual feeling that their actions are justified by perceived deficiencies and limitations of the criminal justice system. An example of “noble cause corruption” is planting a piece of evidence to incriminate a known dangerous criminal who would otherwise escape “justice”.

These forms of police misbehavior—acquisitive and noble cause corruption—can both be viewed as being related to, and in some cases facilitated by, the “blue code” or “blue curtain” of silence. This is an informal, unwritten code fostered by police culture that demands loyalty and within-group secrecy (Chin and Wells, 1998 in Skolnick 2002: p. 10). It is said to be perpetuated by an “us and them” attitude, meaning that non-compliance with the code may result in individuals being socially excluded from the group and lack peer support in dangerous situations. This code is posited as perpetuating a range of corrupt and ethically problematic behaviors, through cultural mechanisms which prohibit the reporting of colleagues—and stigmatises individuals that do take the decision to report misdemeanors (Westmarland, 2005).

The primary research discussed in the present paper took the form of a survey administered to a range of policing professionals and aimed to address some of the questions arising from the wider literature on police corruption. We were particularly interested to understand which behaviors officers and policing staff felt to be most problematic; how likely they were to report such issues; and how they would prefer to go about reporting any instances of police corruption or wrongdoing they may encounter. In order to explore these issues, we designed questions based on scenarios that required ethical decisions about reporting colleagues breaking the code of silence. We were keen to establish if respondents’ perspectives, views and approaches changed according to whether the scenario involved the categories addressed above (acquisitive corruption, noble cause or blue code). The survey builds on the originally devised by Klockars et al. (2003), which was subsequently developed in various forms by the lead author (Westmarland, 2005; Westmarland and Rowe, 2016).

The power to police

There are few organizations with such wide-ranging powers as the police, both in terms of their ability to control people and behaviors, and their ability to cover up misdemeanors—although they are not unique in this latter regard. These wide-ranging powers have implications for the role of secrecy in police culture and normative professional behaviors. These powers range from being able to deprive individuals of their liberty, in some cases on flimsy evidence of minor wrongdoing. Even if this deprivation of liberty is for a relatively short period of time, it may be very distressing for the individual. The police can level accusations which may harm someone even if they are later proved to be innocent, potentially leading to a “spoiled” reputation for the arrestee. These actions, as the enactment of police powers, are supposedly controlled by rules, laws and regulations, but this relies on the discovery or confession of any wrongdoing by the individual officer.

One reason that the individual officer’s wrongdoing might not be discovered is that in the police, the most immediate and wide-ranging powers are located at the level of lower ranking individuals in the organization—the police constable. This is a stark contrast to most organizations, which deprive low status staff of the power to act on their own initiative and make important life-changing decisions. Reiner (2019) has considered this arrangement in relation to Wilson’s observation that “discretion increases as one moves down the hierarchy” (Wilson 1968: p. 7, as quoted by Reiner, 2019: p. 170). He notes that “the rank-and-file officer is the primary determinant of policing where it really counts: on the street” (Reiner, 2019: p. 170). Waddington (1999: p. 129) adds to this discourse by suggesting that perhaps “police rules made by superiors serve to insulate them from criticism by pushing responsibility *down* the hierarchy.”

Front line officers, in some cases with very little experience of the occupation or life in general, have a great deal of discretion. They can be on patrol in their late teens or early twenties with sole responsibility for highly discretionary choices. Their decisions can have wide-ranging life-changing outcomes. They can decide, for example, whether to arrest and charge a young person caught with a small amount of a recreational but illegal substance. If charged, this offense may remain on the offender’s record and affect them for the rest of their life. In some cases, this may affect their future life chances, employment opportunities and potentially create family discordance such as a breakdown of relationship with their parents. Short prison sentences, as the result of minor offenses, have sometimes led to the young person committing suicide—a trend which is sadly on the increase in UK prisons. The Prison and Probation Ombudsman (2019: p. 17) recorded 91 self-inflicted deaths in 2018/19—a 23% increase compared with the previous year.

There are many opportunities to cover up rule breaking due to the way police officers often work alone or in pairs, with very little scrutiny or supervision. Where officers work in pairs, it is often the case that they develop close working partnerships with their “buddy”. These trusted partners are said to operate behind the “blue

curtain” of silence in that having had to rely upon each other in dangerous and stressful situations, they have learnt to protect each other from “outsiders”. This principle extends to the wider work group or “shift” of officers who again, will have often had to deal with “close calls” such as physical threats or emotionally challenging situations. Dealing with the so called “sad, mad or bad” people the police come across leads to a number of responses, most of which help cultivate a “bonding” effect. A range of emotions such as revulsion at the scene of a death, pity for a victim and abhorrence for a perpetrator’s act can all occur in the space of very short period of time in a police officer’s line of duty.

The way officers support each other and deal with the sort of emotions they feel in these situations—including fear for their own safety—leads to a feeling of all “being in it together”. Protecting each-others’ “backs”, or watching out for each other’s safety, is a way of coping with some of the worst incidents attended by the police—such as tragic deaths, serious road accidents, and cases where they feel powerless to help. Police officers often note an inability to discuss their most distressing work experiences with their husband/wife/partner or friends—noting that “only other officers would understand.” This does not only refer to physical threats, or potentially dangerous incidents such as firearms or terrorist attacks, but also loss of face, or control of emotions. A show of emotions such as fear, sadness or anger is not culturally acceptable to be displayed where “outsiders” (non-police) are present as it would be considered “unprofessional” (Westmarland 2001a: p. 151).

These occupational cultural beliefs about keeping things “within the family” are in evidence as a “blue curtain” or code of silence in other aspects of policing. Keeping quiet about receiving “perks” or illicit rest periods are also well documented in the literature describing everyday policing. Beliefs about keeping silent are learnt and transmitted from the beginning of an officer’s induction. Due to the system of officers having to begin to learn their trade in the lowest roles as street cops, nearly all senior officers have worked their way up from this position. The glue that holds the whole system together is an understanding that sometimes corners have to be cut and that where the necessity occurs, it should be kept behind the “blue curtain”. As police officers believe they know best, in many cases, they use the power of secrecy to bend the rules for the benefit of society.

The need for secrecy

Both the legitimacy and effective operation of the police is premised on the consent of the public. The police therefore must be perceived as free from bribery and corruption. As the police uphold the law, they also have to be seen to abide by these same laws. In this way, the police have a great deal of power but a lot to lose. Given the level of power and discretion the police can wield over the general population, the question “who will guard the guards?” has occupied thinkers since antiquity.

As an organization, the power to police is predicated on the belief that they are accountable to the populace, and in turn this supposes that they are open about their activities. This raises the questions that have preoccupied the second author over the past two decades—“why cover up individual misdemeanors and wrongdoings”? If the police mandate relies upon being seen to be honest and open, why not be transparent about mistakes?

One possible explanation is that disclosure of such mistakes risks tarnishing the virtuous image the organization seeks to project. The police are held in generally high regard by the UK public. A report into “public perceptions of policing in England and Wales” (HM Inspectorate of Constabulary and Fire Rescue Services, 2018: p. 12) found that 61% of respondents were satisfied with the police. The same report (p. 40) also found that 52% of respondents felt their local police force to have “a good reputation all or most of the time.” Scholars such as Skolnick (2002: p. 8) have suggested that the volatile and unpredictable nature of police work leads to the development of a strong sense of loyalty between officers and a reluctance to report misdemeanors. Trust and loyalty to each other demands in-group secrecy, not only against the “bosses” and supervisors but also “criminals” and “ordinary members of the public”. In some cases, they may feel their safety or life depends upon it. One way this culture can be illustrated is the real-life case of an American detective, which was the basis of the film “Dirty Harry.” This so-called “maverick” detective would not accept the bribes which were shared among his colleagues and was consequently ostracized by them. When he was shot in the head by someone he was trying to arrest, it is alleged that colleagues did not rush to his aid.

In addition to such cases, there is a wealth of literature on the reasons why officers might keep silent, including Reiner’s (2019: p. 171–174) compelling list of seven “characteristics” of police culture. These characteristics provide some valuable insights into the police cultural context within which misconduct—and the reporting of such instances—takes place:

- Sense of mission/action: studies of policing tend to find that officers have a sense of the role as a “worthwhile” vocation, involving a challenging though ultimately rewarding “game of wits and skill” (Reiner 2019: p. 172).
- Cynicism/pessimism: some officers develop a sense of the moral decline of the wider society they police, leading to feelings of despair and pessimism.
- Suspicion: officers frequently develop cognitive tools to help them predict, interpret, and rapidly respond to the communities they encounter. Reiner notes the tendency for the generalizations which are the basis of this suspicion to result in problematic stereotyping of groups based on class, race and gender.
- Isolation/solidarity: there is significant scope for officers to become isolated due to the shift patterns and the stresses associated with the role. Reiner (2019: p. 173) views solidarity as partially caused by this isolation, as well as “the need to be able to rely on colleagues in a tight spot, and a protective armour shielding the force as a whole from public knowledge of infractions.”

Many ethnographers, conducting observational studies of policing, have demonstrated the validity of these “rules” of police behavior. From the early studies of the 1960s (Skolnick 1966, Cain 1973, Van Maanen, 1978) to contemporary work in the discipline (Westmarland 2001b, Loftus 2009, Bacon 2016), these characteristics have been apparent. Observers have argued that “insider” status is extremely important to police officer identity and peer approval. One of the most influential US commentators on this topic, Jerome Skolnick, has written most recently in 2002, about the continuing influence of the “blue code” of silence. Having studied police behavior and culture for around forty years, he concludes that:

To fulfil their mandate, police work is done in unpredictable and sometimes violent environments. Given the potential danger of their workplaces coupled with their authority to use force to overcome resistance, police develop a close-knit sub-culture, with its own demands and expectations. Loyalty to fellow officers is a key feature of the culture of policing, regardless of whether criminality is involved (Skolnick 2002: p. 8).

Although the data presented in the present paper is largely survey-generated, it reinforces Skolnick’s argument regarding the ideas of loyalty and a close-knit community. It also illustrates and extends Reiner’s characteristics of police culture and the beliefs that encourage internal solidarity—perpetuating the so-called “blue curtain” or “blue code” of silence.

The survey

The survey was distributed electronically to both support staff and officers from the anonymous research force—a large non-metropolitan force which included both rural and urban areas. A total of 1509 responses were recorded. A breakdown of demographic details is provided in Appendix 1. A methodological flaw of the survey was that we failed to ask respondents to state whether they were Police Officers, PSCOs, Specials or support staff. Initially, a drop-down box was considered, but it was decided that providing respondents with a free-text box would allow them to define their own role. In the majority of cases, it was possible to determine whether a respondent was either police or staff based on these answers. However, in the case of 334 individuals this was not possible, with three distinct categories of equivocation: those who skipped the question; those who provided an answer along the sentiment of “I would prefer not to say”; and a few individuals who provided an ambiguous answer—which could fall into either category of police or staff. In retrospect, it would be beneficial to have explicitly asked respondents whether they were staff or officers.

In terms of occupational groups of the respondents, Police/Police Community Support Officer (PCSO)/Special Constable (volunteers) accounted for 41% of responses; and support staff 37% (with 22% preferring not to provide an answer). A gender split

of 38% female to 50% male was recorded (with an additional 12% preferring not to provide an answer to this question). In an attempt to contextualise these figures, Table 1 features Home Office (2017) data detailing “workforce numbers in the 43 police forces in England and Wales and the British Transport Police.” This dataset captures the headcount of staffing levels as of March 2017, while the main data collection period of the survey took place in the three months from December 2016. The Home Office Figures record that 41.0% of the workforce at this time was female and 59.0% male.

Present Survey								
Role	Male		Female		Prefer not to say/blank		Total	
	Count	%	Count	%	Count	%	Count	% role
Police/PCSO/Special	400	64.6%	171	27.6%	48	7.8%	619	41.0%
Support Staff	239	43.0%	287	51.6%	30	5.4%	556	36.8%
Role not specified	111	33.2%	120	35.9%	103	30.8%	334	22.1%
Sub-total	750	49.7%	578	38.3%	181	12.0%	1,509	100.0%
44 Forces Combined								
Role	Male		Female				Total	
	Count	%	Count	%			Count	% role
Police/PCSO/Special	105,331	68.7%	47,977	31.3%			153,308	69.1%
Support Staff	25,601	37.4%	42,851	62.6%			68,452	30.9%
Sub-total	130,932	59.0%	90,828	41.0%			221,760	100.0%

Table 1 Comparison between research force and 44 Forces in England and Wales

Respondents were presented with instances of rule breaking, corruption, and illegal activity. They were asked to rate—on a 5-point Likert scale—both their perception of seriousness of the scenarios, as well as the likelihood that they would report such behavior if encountered. An additional qualitative feature of the survey was the inclusion of some follow-up questions, which aimed to capture why and how respondents might report the behaviors described. The full phrasing of each scenario is reproduced in Appendix 2, as well as the average seriousness and likelihood of reporting.

Although respondents were asked about behaviors spread across ten distinct scenarios, the focus of the present paper is just two scenarios—due to space limitations. Both scenarios provide insights into the “silence of organizations” debate, as they both involve law breaking, reputational damage, and potentially serious disciplinary action against the officers involved. The first scenario involves a drink driving colleague who is transported home; while the second focuses on the use of excessive force against a suspect. It could be argued that this pair of scenarios involve a higher risk of potential reputational damage compared with many of the

other scenarios. Both these behaviors have undergone something of a cultural reappraisal in the UK over the last 50 years. Drink driving was once widely regarded as acceptable behavior—and it was not until the Road Safety Act of 1967 that a specific blood-alcohol level was stipulated in UK law. Similarly, the use of excessive force against suspects is now considered to be an unacceptable relic of a bygone age of policing. There is evidence of a growing consensus that both behaviors are morally unacceptable in contemporary British society although we are not claiming that this is why our survey shows differences over the time period described. Furthermore, some of the scenarios describe phenomena that respondents may never have encountered.

The second author has distributed various versions of the survey to different forces over a 14-year period (2003–2017). These shifting cultural norms are detectable in the patterns of responses between the 2003 and 2017 surveys.¹ In each case, there seems to have been a progressive change from possible seriousness and in terms of reporting. For example, “seriousness” in terms of excessive force is at 65.5% in 2003, whereas by 2017 it was 83%. Likelihood to report this behavior has moved up about 20% of the sample, 53% to 73%. Similarly, covering up for a drink driving colleague has gone up in “seriousness” from 66% (in 2003) to 87.6% (in 2017), but likelihood to report has not changed so much in percentage terms. Likelihood to report the officer covering up for the intoxicated driver had only changed by about 10%, at 66% to 77.5%.

These two scenarios are “middle ranking” examples of responses, in other words, fairly serious, sometimes likely to report, increasingly so, and rather ambiguous. The question for the focus of this paper, relating to the secrecy of organizations is whether, as respondents regard these actions and behaviors more serious, and say they are likely to report them, this means they come to light?

In addition to the two scenarios examined above, we also introduced some targeted qualitative questions. Space prohibits a full discussion of these findings, but to illustrate the “silence of organizations” debate, the following section provides an overview of some of the emergent themes of these qualitative questions.

1 It should be noted that the phrasing of both these scenarios was identical across the three iterations of the survey. However, minor differences of phrasing were used in the follow-up questions in the different iterations. This was largely because the phrasing of the earlier iterations reflected the status of the survey as posed only to officers, while the latest iteration also included support staff. For the precise details of the difference in phrasing, see Appendix 3.

	Excessive Force					
	1	2	3	4	5	Blank
2003 Survey (275): Seriousness	1.0%	4.0%	10.5%	17.5%	65.5%	1.8%
2003 Survey (275): Likely to Report	5%	8%	15%	17%	53%	2.2%
2011 Survey (520): Seriousness	0.8%	3.1%	9.0%	21.9%	64.6%	0.58%
2011 Survey (520): Likely to Report	4.2%	6.5%	13.1%	21.2%	54.4%	0.58%
2017 Survey (1,509): Seriousness	0.3%	0.7%	3.4%	11.3%	83.0%	1.26%
2017 Survey (1,509): Likely to Report	1.9%	3.3%	5.2%	14.2%	73.6%	1.72%

Table 2 Table 2: Comparison of perceived seriousness of excessive force over time

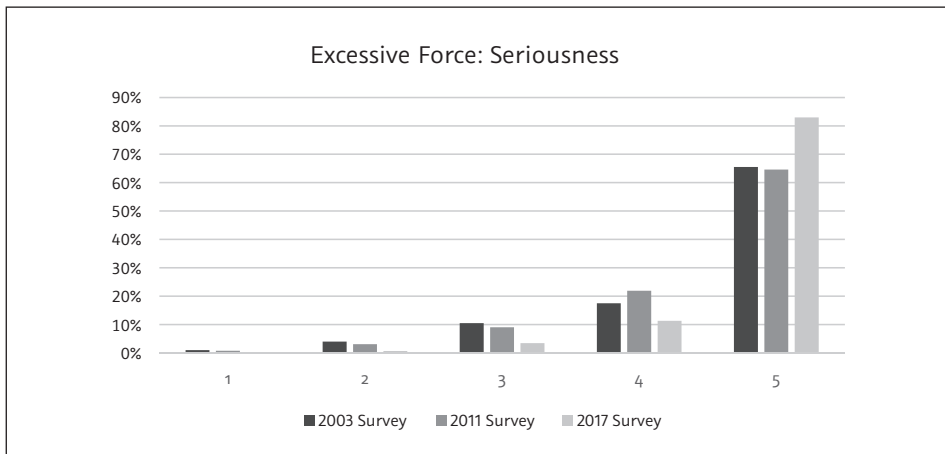


Table 3 Bar chart of perceived seriousness of excessive force over time

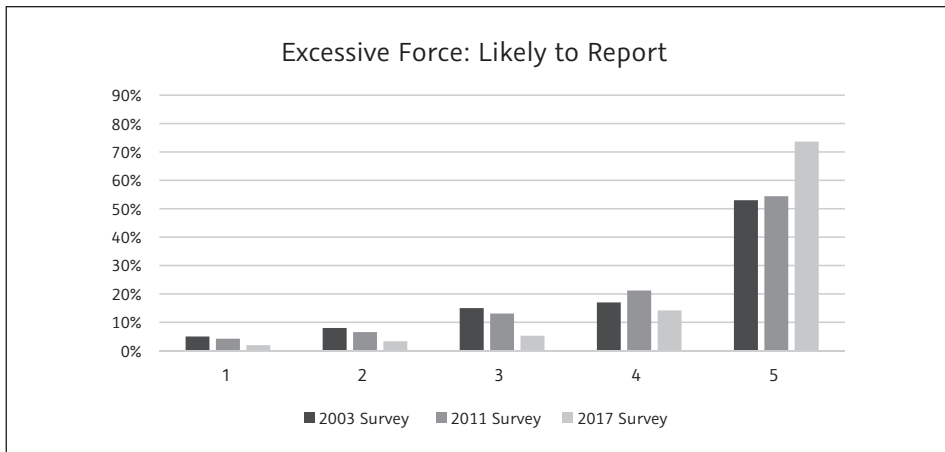


Table 4 Bar chart of likelihood of reporting of excessive force over time

	Intoxicated Driver					
	1	2	3	4	5	Blank
2003 Survey (275): Seriousness	1.0%	2.5%	6.5%	22.5%	66.0%	1.45%
2003 Survey (275): Likely to Report	6%	6%	15%	22%	50%	1.45%
2011 Survey (520): Seriousness	0.0%	0.6%	5.0%	14.0%	80.0%	0.38%
2011 Survey (520): Likely to Report	2.5%	4.4%	8.9%	14.4%	69.0%	0.77%
2017 Survey (1,509): Seriousness	0.1%	0.4%	1.6%	9.3%	87.6%	1.06%
2017 Survey (1,509): Likely to Report	1.7%	2.0%	3.8%	13.2%	77.5%	1.86%

Table 5 Comparison of perceived seriousness of intoxicated driver over time

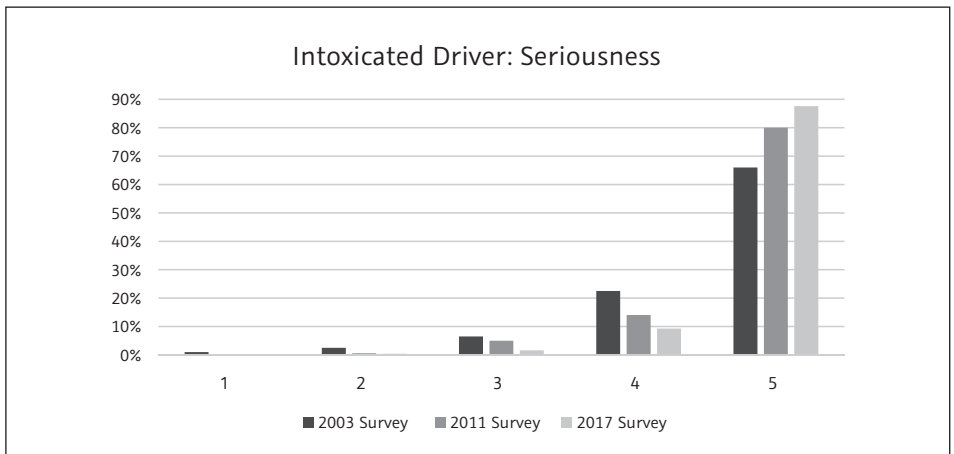


Table 6 Bar chart of perceived seriousness of intoxicated driver over time

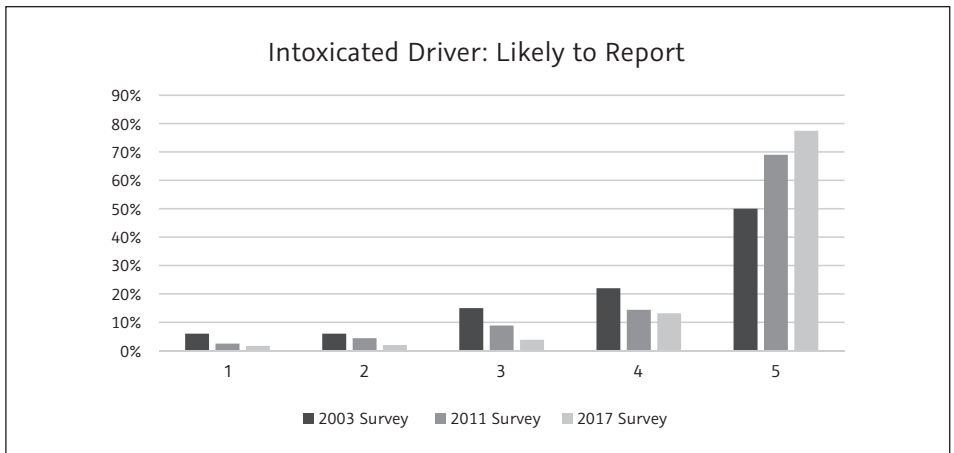


Table 7 Bar chart of likelihood of reporting of intoxicated driver over time

Qualitative dimensions

A new dimension of the most recent iteration of the survey was the addition of some qualitative questions, which it was hoped would shed some light on the deeper meanings, intentions, and thoughts behind the wider answers. Attuned to the risks of overloading respondents, just four targeted questions with qualitative dimensions were included. Two are addressed in the present paper. The first considers a scenario of sexually inappropriate behavior within the office environment, while the second posed a more general question regarding the factors which may be taken into account when deciding whether or not to report an instance of potential misconduct. Two further scenarios which are outside the scope of the present paper involved feelings about the prospect of working with a “whistle-blower”, and an open-ended question which gave respondents the opportunity to add any further thoughts, ideas or comments which had occurred to them while undertaking the survey.

In essence, we were keen to capture how serious respondents perceived each scenario to be, and how likely they would be to report such behavior. However, we were also keen to understand why people responded as they did and how they would prefer to report a given issue. Both questions are salient to policing scholarship. Understanding *why* people gave a particular response provides meaningful insights into the reasoning process and the implicit values which underpin police culture. The issue of *how* respondents would prefer to report has direct implications for practice. Specifically, the responses provide insights for the types of formal and informal reporting mechanisms which staff and officers prefer, as well as the nature and extent of reservations about any existing reporting mechanisms. These insights could be used to guide any future redesign of reporting mechanisms—in order to increase the propensity to report misconduct.

Scenario 8: Sexually inappropriate behavior

The first qualitative question was supplementary to Scenario 8—which involved an officer witnessing a male colleague engaged in inappropriate sexual behavior around a female colleague. We asked respondents how they would go about reporting the issue, and gave the multiple choice options of “Make an anonymous report”, “Speak to supervisor”, as well as “Other (please specify)” in which case respondents were provided with a free-text box to expand upon their answer. It should be noted that for all the questions, respondents could choose multiple options. For example, making an anonymous report, as well as speaking to a supervisor. Therefore, combined totals for each option exceed 100%. It is clear from Table 8, that the preference for the majority of respondents was the relatively informal approach of speaking to a supervisor, with 74% choosing this option. A further 27% said they would ideally make an anonymous report.

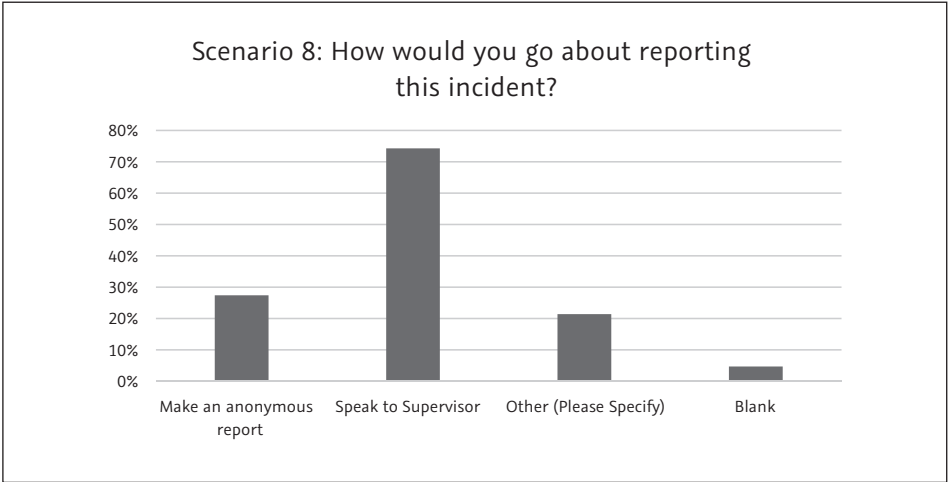


Table 8 Bar chart of reporting preferences

In total, 312 people provided a free-text response to this question. Six distinct though overlapping categories emerged, which provide some further insight into the perspective of respondents in relation to how they would prefer to deal with such a scenario. It should be noted that several individuals provided fairly detailed answers which encompassed two (and occasionally three) distinct categories. These

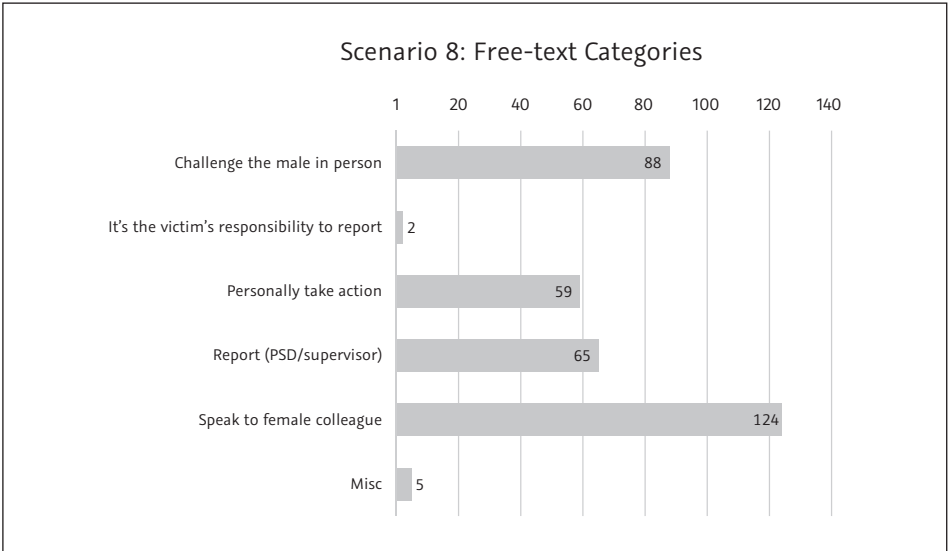


Table 9 Bar chart of reporting preferences—free-text responses

responses have therefore been included in the analysis—bringing the total to 343. The most common free-text response can be summarised as “speak to the female colleague”, with 124 individuals picking some variation on this theme. The main reasoning for this response seems to be that—before proceeding with further formal reporting mechanisms—a sensible step might be to establish the wishes and feelings of this individual, and to work out how she would like to handle the situation. Responses which fell under this theme tended to either explicitly or implicitly commit to supporting this colleague in whatever manner she would like to proceed. Several respondents also reasoned that they—as a passing observer—may not have the full picture, and that it was possible that the two colleagues were in a romantic relationship.

The next most common response involved directly “challenging the behavior of the male officer in person”—at the time of witnessing the behavior. This response was selected by 88 individuals. Though not necessarily incompatible with the approach of consulting the female colleague, it can be understood as somewhat contrasting, as it prioritises addressing the situation immediately—rather proceeding tentatively. Further categories can be understood as variants on the approach of challenging the behavior, such as “personally taking action” (with sentiments along the lines of “I would speak to these two people involved”); and “making a formal report to the Professional Standards Department.”

Factors which may prevent reporting

The authors were keen to give respondents the opportunity to expand on any of the issues which had occurred to them in considering the various scenarios. Therefore, following the final quantitative scenario, respondents were asked, “What would prevent you/put you off reporting an incident, such as those described above?” Five multiple choice options were provided, in addition to “Other (please specify).” Once again, respondents were able to select any combination of these responses, as well as the option of declining to select any—an option taken by 10% of respondents.

The multiple-choice options provided to respondents can be generally divided into two types: those with personal ramifications for *the person making the report*; and those with personal ramifications for *the subject of the report*. The options “your own reputational damage” and “damage to your own career prospects,” were both selected by 23% of respondents. Conversely, the two categories grounded in the personal ramifications for the subject of the report—“the reputational damage to the colleague you report” and “letting down the colleague you report”—were selected by 28% and 18% of respondents respectively. These patterns are consistent with accounts of the police as an organization characterized by a strong sense of institutional affiliation and integration, with individuals operating within this culture exhibiting reluctance to damage this sense of fraternity and their own position within

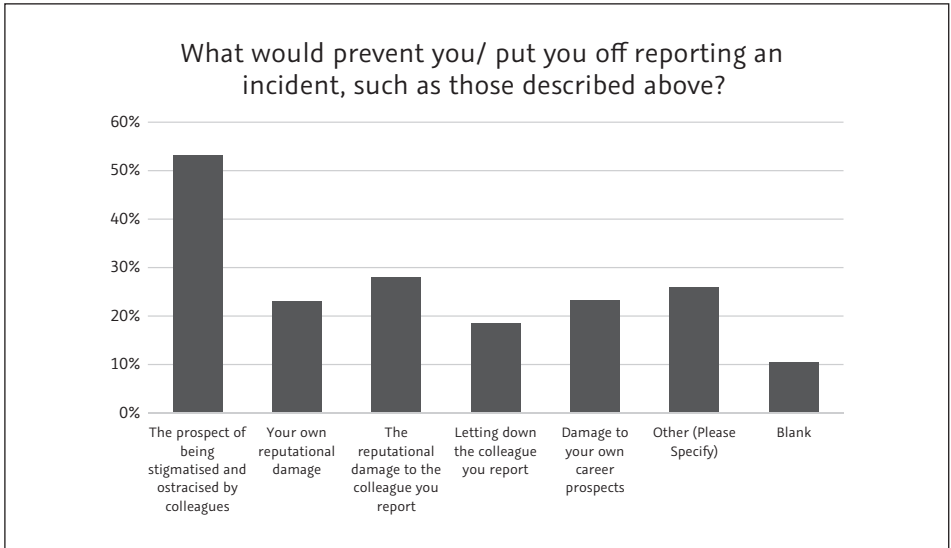


Table 10 Bar chart of factors influencing reporting

the culture. Indeed, it is revealing that the option selected most frequently as a factor was “the prospect of being stigmatised and ostracized by colleagues”, with 53% of respondents selecting this response. This option can be interpreted as a synthesis of both concerns, as it implicitly involves the personal ramifications of being stigmatized/ostracized—though as a direct consequence of the implications of breaking the “blue code” of silence. The sense of obligation to comply with the “blue code” on the individual level—where it is felt—could be interpreted as contributing to the mechanism whereby organizational silence is realized on the wider collective level. Though not a theme emerging from our data, a possible explanation for the failure to punish noble cause corruption—which is claimed to be the more prevalent form of misbehavior hidden by the blue code—is that it potentially benefits the organization in subtle ways. Potentially, some aspects of noble cause corruption could be tolerated by the police hierarchy because they recognize that there are certain benefits to “rule bending.” These benefits might be thought to include “informal” methods leading to suspects receiving their “just rewards” or minor criminals being “warned” but not prosecuted, as it may not be in the public interest due to scarce resources. Similarly, the blue code may be tolerated in some organizational structures as it encourages enhanced group bonding and effective team working.

A total of 383 individuals (25% of respondents) elected to provide a free-text response to the question of the factors which may put them off reporting an incident of police misconduct (with two individuals providing responses that span two distinct themes). This question elicited a range of responses, with eleven distinct categories. It should be noted that several respondents provided free-text responses

which spanned more than one category. The most common theme to emerge from these free-text responses was the category labelled as “unequivocal” with 160 individuals providing some variation of this theme. This category refers to fairly straightforward statements, with sentiments along the lines of “I would not be deterred”, or “I would always report any misconduct without hesitation.” In contrast, 24 responses noted the scope for “ambiguity” around a given instance of misconduct—for example, whether the observer knew all the facts and context of the situation, as well as understanding of relevant regulations.

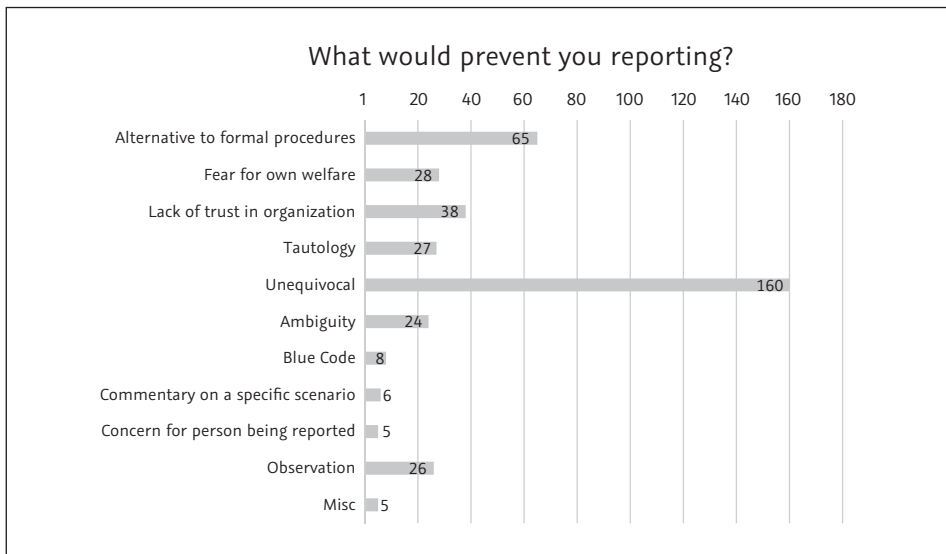


Table 11 Bar chart of factors influencing reporting—free-text responses

The second most common category, captured within the answers of 65 individuals, can be summarized as “alternatives to formal procedures.” Many responses which fell under this category noted that an appropriate response to some instances of technical misconduct would be an informal intervention. For example, Scenario 1 was deliberately designed to capture a fairly innocuous and mundane instance of technical misconduct—involving a member of police staff making some extra money by baking cakes for weddings and birthdays. Several people noted that this person may not realize that they first needed to get authorization to undertake this work, and proposed that rather than proceeding directly to a formal report, the proportionate response may be to highlight this requirement to the individual concerned.

Also captured within this theme of “alternatives to formal procedures” was a slightly more subtle argument. Some respondents suggested an equivalency be-

tween police misconduct on the one hand, and deviancy in wider society on the other. These responses sometimes involved respondents citing the subtleties of police work such as proportionate decision making and a recognition that many people technically infringe on rules and regulations at some point in their lives. For example, though unambiguously a formal criminal offense, in many instances officers may consider cautioning a young person for shoplifting on a first offense, rather than entering them into the criminal justice system. In some cases, a similar conception of justice was invoked in relation to police wrongdoing. For example, in Scenario 1—some respondents pondered whether criminalizing the officer described for baking cakes would be the appropriate response; or whether pointing out that this was potentially a breach of regulations would be a more constructive and proportionate intervention.

Discussion

The evidence we have presented in this paper is a relatively small section of a larger project we will be publishing in due course. The larger dataset contains a great deal of qualitative data that space prevented us from exploring here in more depth. The aspects we have tried to highlight from the wider study concentrate on the “secrecy” and “blue code” or curtain-of-silence aspects of our data. To this end, the findings have shown that over time, the “blue code” may have changed in form, but it still exists. As Kutnjak Ivković et al. (2020: p. 102) argue, it is not a matter of if the code persists, but what the code covers and to whom it extends. The next section of this paper will attempt to draw some conclusions on this topic from our findings. Before proceeding with this discussion however, there are a couple of points for clarification: namely, what is the “corruption” that the so-called “blue code” is hiding or keeping secret?

As mentioned earlier in this paper, Kleinig defines two types of police corruption—one type that leads to personal benefit for the officer—“acquisitive corruption”—and another type with no obvious gain—“noble cause corruption.” In addition to these two categories, one of the more comprehensive sets of answers to this definitional question is offered by Newburn—who notes that there have been many attempts to “wrestle with the thorny issue of how ‘corruption’ might be defined” (Newburn 2015: p. 3). He goes on to explain that there are two other main aspects to the sort of corruption commonly found in policing—“individual” abuse of position for personal gain, and actions which result in “*organisational gain*” (ibid: p. 5 italics in original). He argues that Kleinig’s (1996: p. 166) definition is more useful as it includes the furtherance of organizational advantage, including ‘departmental/divisional advantage’.

Given this wide range of definitions, one of the questions that is often asked about police corruption is not only why it happens but also why police officers, with

little to gain, protect colleagues who misbehave. As upholders and enforcers of the law, surely most officers would consider rule breaking to be worthy of reporting? Our findings suggest that officers and staff feel that the taking of money—as in the theft from the suspect’s hidden stash—is outright theft, and should almost always be reported. By way of contrast, what about cases where no monetary advantage is possible—where officers are breaking procedural rules and colleagues keep quiet? If Kleinig’s definition is adopted however, breaking rules for organizational advantage, at either local or senior level, would mean that participants would see that “everyone” would benefit and no-one would approve of a whistle-blower.

One of the potential answers to the questions posed here is that police occupational culture and corruption are said to run hand in hand and feed upon each other. Another explanation is that occupational culture and corruption co-exist due to the outcome-led demands of the role. Cockcroft (2013: p. 59) claims that the combination of social solidarity and social isolation that police officers experience leads to a camaraderie that exerts a power over and above that of sanctions or the prospect of sanctions. Camaraderie and team solidarity are fostered by the unpredictability and potential danger of police work and the “rites and rituals” of police cultural characteristics (Reiner 2019). Punch (2009) has argued, with others (see for example Maguire and Norris, 1974), that a culture of pressure for results provides a motivating factor and that corruption is tolerated, difficult to define and multi-faceted (Waddington 1999). As mentioned above, there are potential advantages at an organizational level for this code of silence and aspects of police culture such as camaraderie that are seen as beneficial, although this is not official policy.

As we appreciate, there have been many reasons put forward for police officers covering up or not reporting colleagues’ misbehavior in various countries across the world (Klockars 2004, Chan, 1997, Kleinig 1996, Skolnick, 2002). Since the early days of police observational studies in the 1950s, the “blue code” of silence has been discussed as an enduring aspect of police culture. In the 1960s, Skolnick was one of the first US academics to point out that operational discretion—whether or not to charge someone—was accompanied by the assumption that the decision would remain within the occupational group. Skolnick’s observations of a police “working personality” based on “danger and authority” (Skolnick 1966, Chap. 3) led to discussions of the role of police culture and Reiner’s (2019: p. 171) “core characteristics” of policing. These observations pointed to the existence and nurturing of group solidarity and the bonds secured by the police officers’ sense of mission, with policing being expressed as not simply a job but “a way of life with a worthwhile purpose” (Reiner 2019: p. 172). Whilst many aspects of policing may have changed over the past 50 years, some of these rules around the non-reporting of a colleague’s misdemeanors, perhaps influenced by group solidarity, remain a potential problem for managers, policy makers and individuals themselves.

In an attempt to add to this ongoing discussion, we have raised a number of key research questions. Our primary aim was to explore whether police officers and support staff regard certain misbehaviors as serious, and whether they would re-

port deviant colleagues. It could be argued that although the “blue code” is not new, it has taken on a new dimension since 2014 in UK policing. Whether or not to blow the whistle is no longer purely based on individual moral reasoning; it is now encoded in statute. This is illustrated by a case in the north of England in 2016 where a Police Sergeant failed to report an officer he was accompanying during a disturbance in a bar. The PC was accused of using excessive force. At a disciplinary hearing for gross misconduct—the outcome of which is usually dismissal if found guilty—he claimed he did not see the other officer hitting the detained suspect six times in the head and the allegations were adjudicated “not proven.” The officer who committed the assault was dismissed without notice. The police sergeant resigned and the Police Constable was later reinstated (Shine 2018).

The UK College of Policing’s Code of Ethics is not only aimed at police officers “working the streets” however, which Manning (2007: p. 70) argues “produces most of the known public scandals, media amplified incidents and political controversies”. Another recent case in the UK revealed how a Chief Constable had lied about how his force-issued mobile phone had been damaged, originally claiming it had been run over by a car. He later confessed, after a whistle-blower contacted the force, that he had hit the device with a golf club in a fit of temper (Shine, 2018a). He then became Chief of another force and has since resigned in the light of other, so far unproven, allegations of improper behavior. The motives to act in ways which may lead to the ending of an officer’s career seem difficult to comprehend, although “outbursts of temper” was one of the reasons considered in a recent paper on the “blue code” of silence within the US police by Donner et al. (2017). Using survey data from a multi-agency sample of 1072 police recruits, the authors of that study found that “impulsivity/temper was positively related to the unwillingness to report fellow officers’ misconduct.”

Our current study supports the findings from various previous ones such as those by Klockars (2003) and others such as Westmarland (2005) and Westmarland and Rowe, (2016). The survey was designed and administered about 3 years after the College of Policing’s *Code of Ethics* was published in 2014. This could be significant for future studies because the College’s Code contains a much stronger, statutory requirement for officers to report misdemeanors. Adhering to the “blue code” rather than the Code of Ethics could now be regarded as a criminal offense and/or gross misconduct and if proven, may result in dismissal. As mentioned above, cases have already been brought under this new statute in the UK. This will obviously be more relevant in some of the scenarios than others. It seems unlikely for example that the cake baker or party rousers would be sacked. On the other hand, not reporting the theft of a valuable watch or cash taken during a house search might end in dismissal of the offender and the colleague who did not report it.

This has become an issue because around five years ago, the British Home Office created a “College of Policing” with the stated aim of “professionalising” the police. In the UK, there are several professional “Colleges” which act as centers for teaching, information, disciplinary matters, and a focus for the media and other general

enquiries. Long-standing colleges exist for medical professionals and nurses which hold a “register” to which practitioners must subscribe, following suitable training, and can be “stuck off” for disciplinary misadventures. In the UK, the newly formed College of Policing have not insisted on this level of membership as yet, but they have published a Code of Ethics, which presumably, in time will act as a guide to acceptable behavior. The published Code of Ethics (2014) has nine policing principles and 10 standards of professional behavior. At the time of writing—around five years following the introduction of the Code of Ethics—it is perhaps too early to have made a difference. Our study seems to show that over the past twenty years or so, attitudes towards reporting, certainly in terms of drink driving and excessive force, has improved. What has not been addressed however is trust in the organization—either in terms of supporting officers who report or the transparency afforded to systems. We might ask however, whether the Code of Ethics overlooks the “blue code”, and does nothing to draw back the cultural issues around the curtain of secrecy and suspicion.

Conclusion

We feel that our study has thrown up some interesting findings and a number of anomalies which we would like to explore further in future papers. These findings were fed back to the senior management team of the research force who received them with interest but did not seem particularly surprised by anything we had discovered. In future analyses, we will further explore the perceived seriousness of the staff member accessing the PNC, the likelihood of reporting the officer dating the victim of crime, and the officer who was making potentially unwelcome advances to a co-worker (see Appendix 2). It is difficult to say whether the sample we surveyed represented the research force accurately or police officers and support staff across the UK generally. We also recognize that as many respondents preferred not to clarify the nature of their role, we are unable to infer whether divergent attitudes exist amongst officers and staff. Another reason to be cautious about these findings is that survey results may not represent actions. As Deutscher has argued, there is a difference between “sentiments and acts.” “Moral attitudes,” he argues, cannot predict what people will do when faced with a particular situation (Deutscher, 1973: p. 41).

As mentioned in our discussion above, the code of silence is often seen as just one negative aspect of police occupational culture. The code is seen as an agreement between individuals, covering up for each other, keeping secrets from the senior officers and the wider organization. The code of silence is therefore blamed for malpractice at lower levels, focussing on issues such as excessive force and front line policing behaviors. We acknowledge that this paper perpetuates this approach by asking individual officers and support staff what they would do in certain circum-

stances and ignores the wider organizational issues. One of the connections we have raised throughout the paper is the link between the advantages of police culture—bonded teams, camaraderie, and group support—and the needs of the organization. In some senses, the blue code of silence is seen as an inevitable outcome where close working and bonds of trust are a key element of getting the job done. If this is the case, one implication is that a certain level of in-group secrecy may have to be tolerated by the organization's chiefs—who in turn may have been inculcated to this way of thinking throughout their career. As part of a rank-based organization with quasi military leanings, police officers and support staff will look to these senior officers as representation of the ethical stance they should take. Consequently, where senior officers are found to be covering up their misbehavior, such as one of the cases reported in our paper (Shine 2018a), the connection between individual secrecy and organizational secrecy is reinforced.

As always, these conclusions raise further questions. Following the analysis of the data, we realized there were some scenarios we could have created around the Code of Ethics and respondents' attitudes towards the new requirement to report colleague's misbehavior or find themselves in disciplinary proceedings. We should also have asked, specifically, whether respondents were police or support staff, and for a more general indication of "role", to avoid a sizable number of respondents refusing this on the grounds—as some claimed—that it risked identifying them. As we think this may be one of the first studies to ask serving police officers and support staff about ethics and the "blue code", we accept that this was an error. Overall, it is difficult to assert whether the College of Policing's new Code of Ethics has made a difference to police whistle-blowing or any aspects of police culture. On the other hand, we feel that our findings throw new light on some interesting and real-life dilemmas facing front line officers in the UK today. We also assert that in some cases, the "blue code" or curtain is still firmly in place, despite attempts to use the threat of a statutory instrument aimed at drawing it back.

Appendix 1: Respondent demographics

Variable	Number	%
Gender		
Female	578	38.30%
Male	750	49.70%
Prefer not to say/blank	181	11.99%
Role		
Police/PCSO/Special	619	41.02%
Support Staff	556	36.85%
Prefer not to say/blank	334	22.13%
Rank of Respondents		
Inspector or above/Staff Equivalent	240	15.90%
PC/Staff Equivalent	936	62.03%
Sgt/Staff Equivalent	294	19.48%
Prefer not to say/blank	39	2.58%
Age of Respondents		
18–25	62	4.11%
26–30	87	5.77%
31–35	181	11.99%
36–40	218	14.45%
41–45	246	16.30%
46–50	292	19.35%
51–55	192	12.72%
56–60	112	7.42%
61–65	39	2.58%
65+	4	0.27%
Under 18	1	0.07%
Blank	75	4.97%
Years Worked in the Police?		
Under 1 Year	79	5.24%
1–5	130	8.61%
6–10	240	15.90%
11–15	395	26.18%
16–20	190	12.59%
21–25	164	10.87%
26–30	173	11.46%
31 and above	90	5.96%
Blank	48	3.18%

Appendix 2: Scenarios and averages

Scenario number	Full Details	Average Seriousness	Average Likelihood of reporting
1	A member of staff is having trouble making ends meet and wants to earn some extra money. This person works Monday to Friday and has weekends off. He has a great skill for cake making and has been asked by a number of friends and family to make cakes for events such as weddings and birthdays.	Not Asked	2.62
2	A police officer is interested in body building but frustrated at her slow progress compared with a gym friend. This friend offers the police officer some tablets which she takes, informing her that they are legal and that she has been using them for some time.	4.02	3.70
3	A member of staff is approached by a close friend with whom he socialises on a regular basis. This friend is worried about her daughter who has started to go out with a local lad. She is concerned that the boyfriend is known as being in abusive relationships previously and has recently noticed her daughter being in an emotional state. The staff member agrees to check on police records to see if the boyfriend is known to the police.	4.80	4.51
4	A police officer purchases a new watch for his partner. However, when they open it, the watch does not fit. They exchange the original at the store for an alternative watch. Upon arriving home, the officer realises that the store assistant has inadvertently placed the old watch in the bag along with the new watch. He decides to keep the second watch.	4.45	3.95
5	A police officer is attending a search warrant. The person whose house is being searched is a suspected high profile organised criminal who is currently detained. During the search the officer finds a large amount of cash in one of the bedroom drawers. He decides that a small amount will not be missed by the suspect, and takes cash equivalent to one day's pay.	4.98	4.94
6	Two police officers on foot patrol surprise someone who is attempting to break into a car. He runs off. They chase the suspect for about two streets before apprehending him by tackling him and wrestling him to the ground. After he is under control, both officers punch him a couple of times in the stomach as punishment for fleeing and resisting.	4.78	4.57
7	A party is taking place in a public bar in the city centre. It is obvious from the posters and banners that this is a police staff retirement party. During the evening as more alcohol is consumed, two colleagues have a disagreement resulting in one pushing the other and having a loud argument whereby they are swearing at each other. Other colleagues intervene and split them up and have to escort one off the premise. There are no injuries to either party.	3.26	2.73
8	Within the office environment, a police officer has witnessed a male colleague behaving inappropriately. This officer has been 'accidentally' touching a female colleague's knees and placing an arm around her shoulders whilst making sexually explicit remarks.	4.67	4.45

Scenario number	Full Details	Average Seriousness	Average Likelihood of reporting
9	A police officer enters a romantic relationship with a woman he originally met in a professional capacity, while investigating the burglary of her home. The officer only began seeing this woman in a romantic manner following the conclusion of the court case.	Not Asked	2.32
10	At 2am, a police officer, who is on duty, is driving a patrol car on a deserted road. She sees a vehicle that has been driven off the road and is stuck in a ditch. She approaches the vehicle and observes that the driver is not hurt but is obviously intoxicated. She also finds that the driver is an off-duty police officer. Instead of reporting this accident and offence, she transports the driver home.	4.86	4.66

Appendix 3: Difference in phrasing across survey iterations

Scenario: Two police officers on foot patrol surprise someone who is attempting to break into a car. He runs off. They chase the suspect for about two streets before apprehending him by tackling him and wrestling him to the ground. After he is under control, both officers punch him a couple of times in the stomach as punishment for fleeing and resisting.

Questions and options

2003	“How serious do YOU consider this behaviour to be?”	1	2	3	4	5
	(Not at all serious)					(Very serious)
	“Do you think YOU would report a fellow police officer who engaged in this behaviour?”	1	2	3	4	5
	(Definitely not)					(Definitely yes)
2011	“How serious do YOU consider this behaviour to be?”	1	2	3	4	5
	(Not at all serious)					(Very serious)
	“If you discovered a police officer behaving in this manner, do you think YOU would report them?”	1	2	3	4	5
	(Definitely not)					(Definitely yes)
2017	“How serious do you consider the behaviour of these officers to be?”	1	2	3	4	5
	(Not at all serious)					(Very serious)
	“How likely are you to report this behaviour?”	1	2	3	4	5
	(Unlikely)					(Highly likely)

Scenario: At 2am, a police officer, who is on duty, is driving a patrol car on a deserted road. She sees a vehicle that has been driven off the road and is stuck in a ditch. She approaches the vehicle and observes that the driver is not hurt but is obviously intoxicated. She also finds that the driver is an off-duty police officer. Instead of reporting this accident and offence, she transports the driver home.

Questions and options

2003	"How serious do YOU consider this behaviour to be?"				
	1	2	3	4	5
	(Not at all serious)			(Very serious)	
	"Do you think YOU would report a fellow police officer who engaged in this behaviour?"				
	1	2	3	4	5
	(Definitely not)			(Definitely yes)	
2011	"How serious do YOU consider this behaviour to be?"				
	1	2	3	4	5
	(Not at all serious)			(Very serious)	
	"If you discovered a police officer behaving in this manner, do you think YOU would report them?"				
	1	2	3	4	5
	(Definitely not)			(Definitely yes)	
2017	"How serious do you consider the behaviour of the officer on duty?"				
	1	2	3	4	5
	(Not at all serious)			(Very serious)	
	"How likely are you to report this behaviour?"				
	1	2	3	4	5
	(Unlikely)			(Highly likely)	

Acknowledgements

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Party and Election Campaign Financing in India

A Quest for Legal Limits amid Illegal Reach

Abstract The party and election campaign financing in India has been questioned for its opaqueness and the infusion of black money. The Indian political parties have also been accused of collusion with and an influx of criminal elements, a phenomenon that has led to the criminalization of politics. A major ramification of the process has been the presence of legislators—both at the national and state levels—with criminal records. A large body of research of the phenomenon indicates that the dubious elements with whom individual candidates and the parties sought help and protection during elections have muscled their way into politics and have been elected as lawmakers. A natural progression has been the infusion of black money into politics. There have been several efforts to peg election expenditure, but the parties have attempted to wriggle out even by using the Parliament to enact a new legislation. There is complicity and organizational silence of political parties on these issues.

Keywords organizational silence, political parties

One of the causes of corruption and corrosion of values in our polity, as well as criminalization of politics, stems from the flaws in the electoral process. To ensure free, fair, and fearless elections and to prevent use of money and muscle power, Government will introduce a comprehensive Electoral Reforms Bill for which considerable groundwork has already been done.

President K. R. Narayanan, at the beginning of the budget session of Parliament, March 1998 (Chhokar 2017, 92).

Introduction

What the then President of India K. R. Narayanan (1997–2002) said in 1998 so succinctly about the Indian political and electoral processes in his address to the Indian Parliament, Jesse M. Unruh stated even more candidly in the 1970s, “Money is the mother’s milk of politics.”¹ While Narayanan was stating what he considered a developing anomaly, nay distortion, in Indian politics that was detrimental to the evolving Indian democracy. Unruh was spot on in stating what is possibly a universal truth in politics in most polities. In fact, from the days of the Roman republic to the contemporary democratic polities, the corrosive impact of money on politics has been highlighted by several writers, commentators, and analysts. The misuse of money, even from the government’s treasury, has been succinctly described by Chanakya, the 350–275 BCE Indian statesman-philosopher and the mentor Prime Minister of Indian Emperor Chandragupta, the founder of the Mauryan dynasty:

“Just as it is impossible not to taste honey or poison that one may find at the tip of one’s tongue, so it is impossible for one dealing with government funds not to taste, at least a little bit, of the King’s wealth. Just as fish moving under water cannot possibly be found out either as drinking or not drinking water, so government servants employed in the government work cannot be found out (while) taking money (for themselves).” (Kangle 1972, 91).

Yet, the shape and dimensions that money has acquired in democratic politics in the contemporary world, has emerged as an element with tremendous corrosive power despite being an essential ingredient. In democracies across the world political finance—needed for running political parties and for funding elections—is increasingly acquiring gargantuan proportions, compelling parties to look for fresh sources of funds.

1 Also known as ‘Big Daddy Unruh’, Jesse M. Unruh was an American Democratic politician from California, who excelled in political and party fund raising as treasurer in the 1970s.

What Narayanan, who traversed diverse routes of diplomacy and the academia before ascending to the office of the President of India, said was till then assiduously debated in the country despite the apparent mismatch between the declarations by candidates and political parties of their electoral expenses due to statutory compulsions and the real conspicuous spending. In fact, in 1993, a committee constituted by the Government of India, headed by then Home Secretary N.N. Vohra,² brought out the existing close nexus between politics and crime that impacted the electoral politics, bringing in the role of black or unaccounted money in the electoral process.³ It was perhaps in that context that Narayanan referred to a comprehensive Electoral Reforms Bill being contemplated by the government. Electoral Reforms that included the proposals for State (Public) Funding of Elections had a history in the Dinesh Goswami Committee Report, 1990⁴ and the Indrajit Gupta Committee Report, 1998.⁵ Later, the reference to it also came in the report of the Na-

2 The report of the N. N. Vohra Committee remains classified to date. It has not been put out fully in the public domain. Parts of the report have been selectively released. A version of the report was published in the *Indian Journal of Public Administration*, the quarterly journal of the Indian Institute of Public Administration, which is an autonomous institution under the Ministry of Home Affairs, Government of India. The report is available at 'Vohra Committee Report (Ministry of Home Affairs)', *The Indian Journal of Public Administration*, XLI (3), July-September, 1995, pp. 642–43.

3 The reports submitted to the Committee by the Directors of the two of the premium security agencies of the Government of India—the Intelligence Bureau and the Central Bureau of Investigation—are particularly significant in the context of the discussion here. Both the Directors of the Intelligence Bureau and the Central Bureau of Investigation unambiguously reported the presence of organized criminal syndicates across the country, several under political patronage. The DIB wrote, "In certain States, like Bihar, Haryana and UP, these (criminal) gangs enjoy the patronage of local level politicians, cutting across party line and the protection of Governmental functionaries. Some political leaders become the leaders of these gangs/armed senas (armies) and, over the years, get themselves elected to local bodies, State Assemblies and the national Parliament. Resultantly, such elements have acquired considerable political clout...." Referring to the 1993 bomb blast in Mumbai (then Bombay) he said, "... The investigations into the Bombay bomb blast cases have revealed extensive linkages of the underworld in the various governmental agencies, political circles, business sector and the film world."

The DCBI said, "...all over India crime Syndicates have become a law unto themselves. Even in the smaller towns and rural areas, muscle men have become the order of the day. Hired assassins have become a part of these organizations. The nexus between the criminal gangs, police, bureaucracy, and politicians has come out clearly in various parts of the country. The existing criminal justice system, which was essentially designed to deal with the individual offences/crimes, is unable to deal with the activities of the Mafia; the provisions of law in regard to economic offences are weak; there are insurmountable legal difficulties in attaching/confiscation of the property acquired through Mafia activities.'

For a detailed analysis of these aspects, see Mehra 2015, 519–70.

4 <https://adrindia.org/sites/default/files/Dinesh%20Goswami%20Report%20on%20Electoral%20Reforms.pdf> (accessed on 28 June 2019).

5 https://adrindia.org/sites/default/files/Indrajit_Gupta_Committe_on_State_funding_of_Elections.pdf (accessed on 28 June 2019).

tional Commission to Review the Working of the Constitution of India, which was appointed in March 2000 and submitted its report on 31 March 2002.⁶

The use of money power brings in the demand for transparency and regulatory regimes in accordance with the constitution and the legal regime of the country concerned, so that leaders and parties do not become trapped with money-bait that leads to mortgaging, or making pliant, the policy regime to the big buck donors. Also, to check the possible entry of persons with ill-gotten wealth to enter the political arena on the strength of possessing stacks of money. The questions, however, are if the legal regimes across the world have been able to bring in transparency that the governments and the civil society are desirous of. And, political finance, i.e. funding of political parties and elections, has not only developed a tendency to invite black money,⁷ it has also been turning white money into black, with a deleterious effect on civic life and governance. How does it work and are there ways to retrieve this situation? We examine this question by reconnoitring the Indian case using the data in the public domain, some relevant existing studies, and the data and debate generated by ADR, a civil society organization.

This study is situated at the national level, i.e., in a macro setting. Using the theoretical model of and insights from 'organizational silence', it attempts to understand two interrelated phenomena of criminalization of politics and electoral and party funding, which has witnessed the entry of unaccounted money in the political arena. Studies on organizational silence are mostly focused on a) employer-employee relations, and b) the management, particularly top level managers and middle and lower level workers (see, Bagheri, Zarie and Aeen 2012; Donaghy, Cullinane, Dundon and Wilkinson 2011, and Morrison and Milliken 2000).⁸ This study does not fit into such a conceptual and methodological framework. For we are not studying an organization here, we are studying a system. Within it, governmental organizations, which are staffed by bureaucracy who cannot speak about systemic anomalies, keep silent. Political parties, which would not speak on these aberrations at the top level because they are planned and implemented there and middle and lower levels just comply. This brings in the CSOs, which raise voice, mobilize public opinion, and seek the support of the judiciary and other appellate authorities. This would thus be a heuristic tool to study and understand a macro

6 <http://legalaffairs.gov.in/ncrwc-report> (accessed on 28 June 2019).

7 There is no uniform definition of black money. A white paper on black money issued by the Ministry of Finance, Government of India, in 2012 defined black money "as assets or resources that have neither been reported to the public authorities at the time of their generation nor disclosed at any point of time during their possession." (Quoted by Chhokar 2017, 91). In short, it could be money earned illegally, and/or no requisite tax is paid on it.

8 Literature on Organizational Silence is large. In referencing the three here, I am not indicating that these are the most representative ones. Since my objective is to situate my study in the conceptual framework of Organizational Silence, I have referenced what I have used.

level phenomenon under which organizational silence works at the systemic level and impacts the larger organizational structure at different layers and levels.

The Context

India's seventeenth general elections held in April–May 2019 returned Narendra Modi-led BJP to power with absolute majority (303 seats) in India's 543-member Lok Sabha (the House of the People) for the next five years. During and after the elections, the question of campaign finance emerged time and again, reinforcing old questions and underlining new emerging challenges.⁹ While the conspicuous flush of funds to the BJP since 2014 has been discussed time and again, the then Congress President Rahul Gandhi mentioned a shortage of funds for his party for an effective election campaign both during the campaign and after resigning as the party President in July 2019, taking responsibility for the party's loss.¹⁰ It is debatable though whether that would have made a difference to the outcome of the ultimate result. This brings in the key questions of party and electoral funding, which are opaque in India. And, the parties, even the government, are reluctant to make the processes of party and election financing transparent. This brings in both systemic and organizational silence here. Moreover, over the past one decade and three elections, the cost of conducting and contesting elections has increased tremendously in India.

According to the Delhi-based CMS,¹¹ while the 2009 election cost \$2 billion, in 2014 the expense on election-related activities was \$5 billion (Kapur and Vaishnav 2018a, 4). The cost of recently concluded seventeenth general elections has exceeded \$7 billion.¹² According to the CMS, the 2019 elections cost ₹600 billion (\$8.7 billion), of which 45 per cent, i.e., ₹270 billion (\$3.9 billion), was spent by the winning party—the BJP. This also shows a tilting of the political scale with a changing party system. The expenditure by the Congress, about 40 per cent of the total in 2009, went dramatically down to about 15–20 per cent. This is in contrast to the BJP spend-

9 The strength of the ruling combine, as the BJP has retained the NDA, has even enlarged it, despite achieving absolute majority on its own, has increased to 353 seats with eighteen parties, of which four have no seat in the Lok Sabha.

10 According to the latest analysis by the ADR, there is a huge difference in donations received during the Financial Year 2016–17 and 2017–18 between the two major parties the BJP (₹9.155 billion; \$121 million) and the INC (₹553 million; \$73 million). (Association for Democratic Reforms 2019, 4)

11 CMS (<http://www.cmsindia.org/>) is a Delhi-based autonomous think tank that declares itself to be dedicated "to conduct path breaking Research and Capacity building to work towards a vision of Equitable Development & Responsive Governance." It does not specify the methodology through which it has arrived at the figures quoted above. We have simply quoted the data they have put out.

12 <https://www.forbes.com/sites/kenrapoza/2019/04/12/indias-crowded-crazy-expensive-month-long-election-has-begun/#46e73be65c37> (accessed on 30 May 2019)

ing about 20 per cent of the total poll expenditure in 1998, against about 40 per cent spent by the Congress. According to this report, around ₹120 billion (\$1.6 billion) to ₹150 billion (\$2 billion) was distributed directly to voters, while ₹200 billion (\$2.7 billion) to ₹250 billion (\$3.3 billion) was spent on publicity.¹³ Logistics accounted for about ₹50 billion (\$661 million), formal expenditure was between ₹100 billion (\$1.3 billion) and ₹120 billion (\$1.6 billion), while miscellaneous expenses were about ₹30 billion (\$396 million) to ₹60 billion (\$794 million).¹⁴ Even if we regard these figures as approximations, the scale of spending by parties and candidates in Indian elections is huge.

In case it is asked as to why, as also how, so much money, much of it in cash, is required in Indian elections, we need to look at the ways in which the money is acquired by political parties and candidates and spent. Parties and candidates do not leave any chance to lure the voters by means unimaginable even in most advanced democracies. That the party and election financing in India have been linked to the regulatory regime, as also to corruption and regulation, is widely acknowledged (Kapur and Vaishnav 2018b, 76). In India, parties and candidates even look for fresh sources of spending to lure the voters that include handing out gifts as varied as cash, alcohol, kitchen blenders, television sets, and even goats; and these do not complete the list.¹⁵ A former Chief Election Commissioner of India S. Y. Quraishi lists 40 “types of illegal expenses [undertaken] during election.”¹⁶ He is candid in discussing the “ever-evolving” ways of such electioneering, “every year more ingenious methods of distributing cash come to light” (Quraishi 2014, 265–67). When most parties and candidates use such methods, the need for unaccounted cash increases.

Obviously, the cost of representative democracy is increasing in India, as it is across the world. “But the implications of the costs of democracy can be significant for democracies—new or old, rich or poor.” (Kapur and Vaishnav 2018a, 5). It is particularly significant for a young and developing democracy such as India. However, “models of political finance from industrialized democracies have limited purchase on the problems developing democracies face” (Kapur and Vaishnav 2018a, 5). As compared to advanced democracies, where there are “well-established systems of monitoring and accounting for political finance and a complementary system

13 The exchange rates keep changing. The conversion of the INR (₹) into US dollars (\$) mentioned in the text is according to the existing rate on 29 June 2020.

14 <https://scroll.in/latest/925882/bjp-spent-nearly-45-or-rs-27000-crore-of-total-expenditure-for-2019-lok-sabha-polls-report?fbclid=IwARoj48sTV4EB8RoQ557vLk1kFkSxX2HACw67eW4tt4yYtUGMOWSvL-WvAg> (accessed on 5 June 2019).

15 *The Economic Times*, 12 March 2019.

16 An exhaustive list, it cannot be reproduced here. It ranges from “Envelopes of cash hidden in newspapers and slipped between the elector’s door” to cash given in the name of government projects, to cash given on various pretexts for the distribution of electronic items, to the distribution of milch animals, to the distribution of alcoholic liquor and other intoxicants, and so on (Quraishi 2014, 265–67). Moreover, Quraishi describes these as ever evolving.

of prosecuting those involved in alleged improprieties.)” (Kapur and Vaishnav 2018a, 5), India presents a paradox of unceasingly using shortcuts to beat the norms while discovering and setting up new norms. Howsoever imperfect, these act on financial improprieties and the transfer of illicit funds to a limited extent as checks. As a result, paradoxical processes of setting legal limits amid extra-legal reach and methods continue.

Political Malfeasance

The issue regarding the party and campaign financing in India goes beyond the sources, managing, and disbursal of finance in managing the party and conducting electoral campaigns as well as the rules and regulations that keep impacting it. Interrogating the issues relating to collecting funds and their management in elections by individual candidates and political parties leads to the critical issue of the creeping nexus between crime and politics in India that has reached a level where criminally tainted persons, with serious cases of crime registered against them, enter politics; from being supporters of politicians, they have emerged as political players themselves. This has naturally impacted both morality among the parliamentarian and the manner of finances collected for and spent in elections. We will briefly outline the issues below.

The table below briefly gives the percentage of candidates with declared criminal cases, including serious cases against them during the past three elections, including the current, general elections. There is hardly any party in the country that does not have candidates in elections and legislators at both levels of the Indian polity with criminal cases of some kind against her/him.

	Candidates with Declared Criminal Cases (%)	Candidates with Declared Serious Criminal Cases (%)
2009	15	8
2014	17	11
2019	19	13

Source: Compiled from the website of the Association of Democratic Reforms, a voluntary group monitoring development and distortions in Indian democracy: <https://adrindia.org/content/lok-sabha-elections-2019-phase-1-7-analysis-criminal-background-financial-education-gender> (accessed on 14 December 2020).

Table 1 Percentage of Candidates with Declared Criminal Cases 2009, 2014 and 2019

An incremental trend is very clearly visible over the three recent elections (including the latest one) in the data given above. In fact, analyses of the earlier elections indicate that what has been discussed as criminalization of politics in India, has gradually and incrementally been impacting, nay infecting, India’s body politic for

a few decades. In 2009, candidates with criminal cases against them, including serious cases, were 23 per cent, a decade later, they were one-third of the total candidates. Obviously, it is a tenacious and developing anomaly being persisted by political parties and their top leadership. If we look at the figures for the fourteenth Lok Sabha i.e. House of the People, or the lower house (2004–09), both national and state parties had fielded candidates with criminal records. Congress, then leading the ruling coalition, had 17.3 per cent members with various levels (in terms of possible punishment) of criminal record and the main opposition BJP had 20.3 per cent such members, and smaller parties such as BSP (39%), SP (30.5%) and Shiv Sena (58.3%) had an even higher percentage of members with criminal records (Mehra 2006). In the fifteenth Lok Sabha (2009–2014), 153 members had criminal charges of various kinds against them (Mehra 2014). This shows two things: (i) political parties considering societal toughies, if not criminals, highly useful in electoral game and; (ii) a total disregard for the country's law among a large section of the potential and elected lawmakers and political parties that patronize them.

The parliamentarians in India have also been found wanting in ethics over other related matters as well that deserve a mention in the context of this discussion. Eleven parliamentarians were caught in a sting operation conducted in 2005 by a web-based news site Cobrapost and a Hindi TV news channel in what came to be known as "Cash for Questions." Fourteen MPs were approached to ask certain questions in the Lok Sabha for a price, eleven belonging to different parties agreed. The issue raised quite a political stink (Mehra 2007).

Another similar sting operation was conducted on a scheme available to the Indian parliamentarians known as MPLADS since 1993.¹⁷ Under the scheme, an MP, from either house of parliament, is entitled to spend a certain sanctioned amount in her/his constituency for development work—the amount has been revised from time to time and currently stands at ₹50 million (\$662,000) per annum. An MP can recommend work to be done in her/his constituency from the list of work prescribed to the District Magistrate, the senior most bureaucrat at the district level, who will have the work accomplished; MPs do not receive the money. However, corruption has been reported and detected in the execution of this scheme. To expose this, sting operations were carried out against six MPs by TV channel Star News in collaboration with Detective Intelligence Guild, which was aired on 20 November 2005. It captured the MPs on camera seeking commissions while allotting funds under the scheme for developmental works in their respective constituencies. One of these MPs was also exposed in the cash-on-camera sting. The audio records of the sting operation revealed the transaction to establish that money had been paid and

17 MPLADS has been suspended in the wake of the outbreak of Covid 19, as a large amount of funds had to be allocated by the Union and state governments to the welfare of a poor daily labor force who were rendered unemployed due to the harsh lockdown imposed by the governments at both levels.

that the MP will receive ₹20,000 (\$265) for a ₹500,000 (\$6,600) job. Another one negotiated a 20 percent commission, which was agreed upon for a ₹1 million (\$13,200) to ₹1.5 million (\$19,800) project, but when the team offered him only ₹50,000 (\$670), the MP threw a tantrum (Mehra 2007). Even though the matter raised heat in parliamentary discussion, it was focused on partisan level. The anomaly was not debated at the systemic level in the parliament; there was complete organizational silence to that extent.

These correlate with a large number of MPs facing criminal charges. The sixteenth Lok Sabha had one-third of members facing criminal charges. According to ADR, a movement for better governance and political accountability, the seventeenth Lok Sabha elected in 2019 has 43 per cent MPs with criminal charges of varying degrees, which is very high and corroborates the point made earlier regarding a high percentage of the lawmakers having disregard for the law, if not being outlaws.¹⁸ With the presence of such a large number of politicians with criminal antecedents in the political arena, nay the political market place, both the supply (politicians) and demand (voters) side of the market is met. It has serious repercussions from different perspectives. First, despite the reputation and tendency of the criminal politicians to engage in criminal activities, they may not have been convicted (Vaishnav 2017, xii). Second, with so many of them having won the elections and entered the highest portal of the Indian democratic polity, they impact political and electoral financing, as either their parties have had that kind of arrangement with them, or they end up using their networks for the purpose. In any case, their reaching the center stage of Indian politics (or of their respective states) has serious implications in several ways (Vaishnav 2017, xiii).¹⁹ The working paper on political parties of the NCRWC (National Commission for the Review of Working of the Constitution) puts it succinctly:

“A stage has now been reached when the politicians openly boast of the criminal connections.... Earlier in the 1960s, the criminal was only content to play...second fiddle to the politician to enable him [to] win the election and in turn to get protection from him. The

18 <https://www.thehindu.com/elections/lok-sabha-2019/43-newly-elected-lok-sabha-mps-have-criminal-record-adr/article27253649.ece> (accessed on 14 July 2019).

19 A stark example of this was witnessed in 2008 in the wake of the civil nuclear cooperation bill with the US. The UPA government faced a no-confidence motion in parliament. To survive, it approached six MPs in jails having been convicted of serious crimes, collectively facing over 100 cases of kidnapping, murder, extortion, arson, and more, “so that they could fulfil their constitutional duties as law makers.” (Vaishnav 2017, 3). It would be apt to mention here that neither the parliament nor the Legislative Assemblies in states have ever discussed the issue of criminalization of politics—there is complete organizational silence on this vital issue. However, the ECI has taken cognisance of the phenomenon and each candidate contesting election at either national or state levels has to file an affidavit listing criminal cases registered against her/him, though only those convicted are debarred.

roles have now been reversed. It is the politician now, who seeks protection from criminals. The latter seek direct access to power and become legislators and ministers.”²⁰

Apparently, India’s parliamentary politics has developed malfeasance that is stark and disturbing. The literature on corruption and criminalization of politics in India is vast. Since in vast areas of India’s public life—economy, business, industries, natural resources, infrastructure, education, health, public utilities, and so on—the Indian state plays, and is expected to play, a large role, particularly a regulatory one despite liberalization of the economy in 1991, corruption creeps in in many ways. Mehra (2015) and Vaishnav (2017) provide an overview and analyses of dimensions of corruption and criminalization and the possible ways these phenomena impact political finance and India’s electoral process. Vaishnav (2017, 61–62) aptly says,

“...political finance serves as the glue that holds together India’s dubious system of regulating land, lubricating the well-oiled machine that benefits land sharks, builders, and politicians.... (P)oliticians (and the bureaucrats they control) exercise considerable discretion over the acquisition and allocation of land and what the land is ultimately used for. This provides politicians with a steady supply of favors they can dole out to prospective builders and developers, who must come with a hat in hand to politicians for policy and regulatory favors.... Oftentimes, politicians will use their regulatory leverage to demand a cut of the builders’ investment....”

Financing Parties and Political Campaign: An Indian Case Study

Corruption in India’s public life, which has over the years led to the criminalization of politics in India (Mehra 2015), needs to be factored in in discussing political finance in the country. Political finance includes the finance involved in both electoral campaigns and the funding of political parties. It is one of the much-debated issues in India, not merely due to their nature, manner, and scale but also their impact on public morality. So much so that, along with the government’s discretionary powers in the realm of the economy which continue to throttle entrepreneurial initiatives despite liberalization of the economy in 1991, not surprisingly it is considered among the foremost drivers of corruption in India. An estimated \$5 billion was the cost of campaigns during the 2014 general election (Sridharan and

20 National Commission to Review the Working of the Constitution. “Review of the Working of political Parties Specially in Relation to Elections and Reforms Options”. NCRWC Consultation Paper. January 8, 2011. <http://legalaffairs.gov.in/sites/default/files/%28VI%29Review%20of%20the%20Working%20of%20Political%20Parties%20specially%20in%20relation%20to%20Elections%20and%20Reform%20Options.pdf> (accessed on 16 July 2019).

Vaishnav 2018, 15). As mentioned earlier, an estimated \$8.7 billion was spent in the 2019 general election, a rise of over 70 per cent. And, 45 per cent of this, i.e. \$3.9 billion, was spent by the ruling party BJP alone.

Not that there has been no effort to check poll expenses in the country. The expenses a candidate can incur in an election are fixed from time to time by the ECI under the RPA, 1951. We shall limit ourselves to the Lok Sabha elections, for the arguments emerging from it apply equally to the state legislative assemblies. The expenditure limit has been raised from time to time. It began with ₹25,000 in 1951, moved up to ₹100,000 in 1979, to ₹450,000 in 1994, to ₹1.5 million in 1997, to ₹2.5 million in 2003, and to ₹4 million in 2011. It was last raised in February 2014 to ₹7 million (\$93,000) (Chhokar 2017, 92).²¹ This limit was retained for the 2019 elections.²² Political parties across the political spectrum took up the matter at a meeting with the ECI held days before the first phase of the Lok Sabha polls to find relief on poll expenses. There was a proposal from political parties to exclude expenses incurred in advertising criminal records from a candidate's poll expenditure, which the Election Commission turned down. A proposal from the parties to add candidates' expenses to the party expenditure account also did not receive the ECI's nod.²³ All parties and candidates routinely exceed the amount, and to that extent all the money spent beyond the limit, which in reports to the ECI is fudged by each candidate and party, is "illegal." The fact that the political parties have been routinely flouting and misrepresenting the limit set for election expenses shows how deep the issue is. We will attempt to understand and review this phenomenon historically, taking into account the efforts that have gone into it since electoral politics began in India.

Before we take up an analysis of issues of party and campaign finance, how it has developed, and where it stands today, it is worthwhile underlining that party politics in India—elections included—is an expensive and cash-intensive affair. Elections, particularly, have become a round-the-year affair, with state Legislative Assembly elections in one of the twenty-eight²⁴ states happening in the country between two Lok Sabha elections; and we are not taking into account the local bodies elections. It not only has implications for the public exchequer but political parties and leaders too have to be cash-ready for contesting elections. Despite the call and

21 We are not converting the amount mentioned for earlier years into US dollars because they should be converted using exchange rates of respective years, otherwise the conversion would not convey the correct picture. In any case, an approximation in US dollars can be concluded from the conversion of the recent figures.

22 <https://www.dailypioneer.com/2019/state-editions/ec-sets-rs-70l-as-expenditure-limit-in-lok-sabha-elections.html> (accessed on 4 July 2019).

23 *The Economic Times*, 17 April 2019, <https://economictimes.indiatimes.com/news/elections/lok-sabha/india/criminal-record-publicity-expenses-no-relief-for-candidates/articleshow/68916122.cms?from=mdr> (accessed on 4 July 2019).

24 It is also important to point out that two of the nine UTs—Puducherry and National Capital Territory of Delhi—also have Legislative Assemblies and elected governments headed by a Chief Minister with limited transferred subjects as prescribed in the Indian constitution.

effort for digitization in the Indian economy and finance, contemporary Indian democracy continues to be a cash-intensive business. There are not only anonymity and undocumented transfers as political parties still report a large part of their donations as cash gifts and parties and their leaders continue to distribute cash and other material inducements during elections. Indeed, cash reigns supreme in political finance, which facilitates a nexus with black money (Kapur, Sridharan and Vaishnav 2018, 274).

The opaque system of political finance in India started almost from the initial years of independence. If we attempt a division of its phases, the first phase since independence would last up to 1990. An opaque and corrupt system gradually emerged, evolved, and consolidated during this period. Between 1990 and 2003, a process of reform ensued. The year 2003 witnessed greater transparency in political finance, as during this period efforts were made to bring in greater transparency, but structural changes were few and far between. The demonetization in 2016 sought to bring about a change in the way cash was used and looked at in India, but somehow it did not impact to bring in greater transparency.

Following the limit imposed in 1951 under the RPA, the parties were compelled to look for sources for funding elections. The Congress had an advantage over others on two counts—a) it was a large party with a big membership base and, b) it was in power with little political challenge. It banked on membership dues, which proved inadequate in the long run. Then it used political power to seek funds from industries, business, and commerce, taking advantage of the regulatory regime by offering favors under it. They indeed obliged, but began evading taxes, generating “black money,” which they used as donations to the Congress and other political parties. In due course, offering and seeking regulatory favors in exchange for donating black money became an innate part of India’s political and business culture.

The heavy loss the Congress suffered in the fourth general election in 1967 brought in apprehension, even a bit of panic, within the party regarding competition from the right-wing parties such the Swatantra Party and the Bharatiya Jan Sangh, who had done relatively better than before at the hustings. Indira Gandhi apprehended that the corporate funding would go to these parties due to their pro-business agenda. Consequently in 1969, she banned the corporate contributions to political parties. Since she did not create any alternative source of financing elections such as public funding, a nexus between black money and politics developed and became entrenched in the years to come. If this was not enough, several of her policy measures in the following years, such as the nationalization of banks, coal mining, petroleum, and general insurance, the MRTPC, FERA, 1973 further strengthened the link between political parties and black economy.

The following years witnessed more steps and developments that negatively impacted the possibility of a transparent poll funding. The basic aim of these steps was to free the restrictions of candidates’ poll spending. So, candidate and candidate-authorized expenditure was delinked from the expenditures made by parties and other independent supporters to keep the expenditure by candidates below

any limits. This indeed was seen as an anomaly as a supporter could spend, or be shown to spend, any amount of money. In 1974, the issue came up before the SC in *Kanwarlal Gupta vs Amar Nath Chawla* and the verdict said that party expenditure would be considered candidate's spending. The parliament reacted soon enough; it amended the RPA in 1975, nullifying the SC judgement. Amending Explanation 1 to Section 77(1) of the RPA²⁵ in such a way that expenditures incurred by a candidate's party and supporters but not authorized by the candidate was not included in calculating a candidate's election expenses. Since this limited the poll expenses to the candidate's own expenditure, it made the limit on election expenditures largely ineffective. In 1979, political parties were given more relief, they were exempted from income and wealth taxes. However, for the exemption they needed to file annual income tax and wealth tax returns including audited accounts, list donations of ₹10,000 (\$134) and above, and disclose the identities of their donors. The next significant development in party and poll funding was in 1985, when an amendment was made in the Companies Act. Section 293A allowed corporate donations to political parties that Indira Gandhi had banned, but under certain conditions. Under the fresh modification, companies could donate a maximum of five per cent of their average net profit over the previous three years, subject to approval by the board of directors and disclosure in the profit and loss account statement in the audited annual accounts of the company.

However, this did not incentivize transparent corporate donations to political parties. They were not given any tax incentive, in the absence of which they had little reason to enter the area of political funding. Moreover, an open and transparent system to fund parties was likely to expose the companies regarding the extent of their funding to various political parties. Since despite a Congress government

25 Section 77(1) and Explanation 1 read as follows:

77. Account of election expenses and maximum thereof.—(1) Every candidate at an election shall, either by himself or by his election agent, keep a separate and correct account of all expenditure in connection with the election incurred or authorized by him or by his election agent between [the date on which he has been nominated] and the date of declaration of the result thereof, both dates inclusive.

[Explanation 1. For the removal of doubts, it is hereby declared that—

- (a) the expenditure incurred by leaders of a political party on account of travel by air or by any other means of transport for propagating programme of the political party shall not be deemed to be the expenditure in connection with the election incurred or authorised by a candidate of that political party or his election agent for the purposes of this sub-section.
- (b) any expenditure incurred in respect of any arrangements made, facilities provided or any other act or thing done by any person in the service of the Government and belonging to any of the classes mentioned in clause (7) of section 123 in the discharge or purported discharge of his official duty as mentioned in the proviso to that clause shall not be deemed to be expenditure in connection with the election incurred or authorised by a candidate or by his election agent for the purposes of this sub-section.

http://legislative.gov.in/sites/default/files/o4_representation%20of%20the%20people%20act%2C%201951.pdf (accessed on 24 July 2019).

at the Center with a three-fourth majority, India's multi-party system was alive and some states have government by different parties, the corporate houses did not want to expose themselves as being partisan. Hence, the well-entrenched opaque system continued with black money being donated to parties.

The 1990s was a significant decade, for several significant painstaking efforts were made in poll and party funding as well as in their ethical conduct. The efforts were made by the government, which appointed two committees—the Dinesh Goswami Committee (1990) and the Indrajit Gupta Committee (1998), and some concerned citizens and civil society institutions to bring in transparency in poll funding to ensure rectitude in the electoral process in the country. Equally, two SC orders in 1996 and one legislative change created a ground for greater transparency.

The Dinesh Goswami Committee was appointed in 1990 by the National Front government led by V. P. Singh. In its report, it devoted chapters VII and VIII to issues related to Election Expenses and State Funding of Elections. It was in favor of empowering the ECI to lay down the ceiling on election expenditure, rather than the government. It was also for doing away with the clause relating to expenses by a third person, which they thought created room for misuse and was against corporate donations. To compensate that, it recommended partial public subsidy, not in cash but in the form of fuel for vehicles, additional copies of electoral rolls, defraying the expenses on microphones and voters' identity slips that should be taken by the election body. These were indeed a rather partial substitute to either public or corporate funding in a substantive way.²⁶

On the initiative of a civil society organization Common Cause, which filed a PIL, the SC ordered political parties to file their annual income tax and wealth tax returns. In fact, this was a repeat of the order of 1979 that was never complied with. Second, there was a significant judgement of the SC in April 1996 when it ruled that party expenditure would be counted towards a candidate's election expenditure, thus nullifying the impact of the Explanation 1 of the Section 77(1) of the RPA. Indeed, loopholes still remained, as the accounts were to be audited by the auditors of the parties rather than independent auditors appointed either by the ECI or by the government; it left room for parties to manipulate their accounts.

Along with the civil society initiatives that began in the 1990s, but emerged as a continued engagement, the concern of the CII, beginning with the liberalization of the Indian economy in 1991, reflected an engagement with the issue of electoral reforms, particularly poll funding. A task force set up by the CII recommended public funding. It suggested that funds could be raised by an earmarked tax on excise duty or the industry could contribute to a pool under the supervision of and managed by the ECI. It somehow agreed to a poll cess on the industry, which would create a pool from which funds could be distributed to the parties. The task force also recommended tax relief to contributions made by the industry.

26 The Committee's report can be accessed at <https://adrindia.org/sites/default/files/Dinesh%20Goswami%20Report%20on%20Electoral%20Reforms.pdf> (accessed on 28 June 2019).

Despite being creditable and sincere, the effort was not given much attention. However, between 1996 and 98, the United Front government (which was led in two years by two prime ministers, H.D. Deve Gowda and I.K. Gujral) set up the Indrajit Gupta Committee to look into state funding of elections, which it endorsed in order to establish a fair playing field for parties with less money.²⁷ The Committee, however, recommended two conditions for the disbursement of public funds to parties for elections. First, only national and state parties that have been allotted a symbol should be entitled to public funding, but not to independent candidates. Second, to begin with, state funding should only be given in the form of certain facilities to the recognized political parties and their candidates, not in cash. The Committee took note of the prevailing economic situation of the country then and felt only partial, and not full, state funding of elections was possible. The committee recommended airtime on public broadcasting television and radio, fuel for vehicles, paper, and other campaign material within a limit. However, the parties were supposed to maintain audited accounts and file income tax returns. Also, donations above ₹10,000 (\$134) were to be received by cheque/bank draft only. The government introduced partial public funding in 1998, it was the first such initiative since elections began in free India. The subsidy was not in money but free airtime on state-owned television and radio to recognize political parties—seven national and 34 state parties—in national and state elections. The formula was simple, the length of time was on a given time slab, additional time was granted to parties on their electoral performance.

This concern emerged again in 1999 when the report of the LCI endorsed total state funding for elections, but on the condition that political parties are prohibited from taking funds from other sources. It acquiesced with the Indrajit Gupta Committee on partial state funding given the economic conditions of the country at that time. It equally strongly recommended the need for an appropriate regulatory framework for political parties (ensuring internal democracy, internal structures, and maintenance of accounts, their auditing and submission to the ECI) as a precondition for the state funding of elections. In the same year, Hyderabad-based civil society institution Lok Satta, founded by social activist and politician Jayaprakash Narayan, campaigned for tax-deductible contributions for parties for both individuals and companies. For the NCRWC, 2001, an appropriate framework for the regulation of political parties needed to precede state funding of elections.

While the efforts have been from both within the government (each of the three organs of the government—executive, legislative and judiciary—has contributed) and the civil society to cleanse India's political and electoral space, not very successfully though, the election expenditure has emerged as an area that has compelled a number of complex anomalies—from introduction of crime to submission of manipulated accounts of election expenditure. Even while parties and candidates

27 The Committee's report can be accessed at https://adrindia.org/sites/default/files/Indrajit_Gupta_Committee_on_State_funding_of_Elections.pdf (accessed on 28 June 2019).

have been complaining about a ridiculously low limit fixed for campaign expenditure, an analysis of 2009 general elections by the ADR revealed that only four of the 6,753 candidates admitted exceeding the limit, 30 claimed to have spent around 90 to 95 per cent of the limit. The remaining 6,719, about 99.5 per cent of the candidates, declared under oath that they had spent only 45 per cent to 55 per cent of the limit (Chhokar 2017, 92).

Another indicator that shows a typical incongruity in India's democratic practice, though through indirect evidence, is the increase in assets of MPs. The ADR compared the assets declared by MPs in their affidavits in two consecutive elections in 2009 and 2014. The result was stunning—assets of four MPs increased more than 1,000 per cent in 2014. The precise figures for four of them were 5,649 per cent, 2,081 per cent, 1,700 per cent, and 1,281 per cent, while assets of 22 MPs increased between 500 per cent and 999 per cent (Chhokar 2017, 92). The SC took cognizance of this anomaly in 1994 in *Gadakh Yashwantrao Kanakarrao v E V Alias Balasaheb Vikhe Patil & Others*, (1994, 1, SCC, 682, para 16; Civil appeals no. 2115, 2116, and 2444 of 1993). A judgement by Justices N. P. Singh, N. Venkatachala, and J. S. Verma noted:

“The prescription of ceiling on expenditure by the candidate is a mere eye-wash and no practical check on election expenses for which it was enacted to attain a meaningful democracy. This lacuna in the law is, of course, for the Parliament to fill lest the impression is reinforced that its retention is deliberate for the convenience of everyone. If this be not feasible, it will be advisable to omit the provision to prevent the resort to indirect methods for its circumvention and subversion of the law, accepting without any qualm the role of money power in the elections. This provision has ceased to be even a fig leaf to hide the reality.”

Civil Society Intervention

The ADR²⁸ has been raising the issues regarding party funding and electoral reforms along with a number of other issues relating to governance of the country since the early years of the millennium. Among the major issues that they have been focusing on is where were the political parties obtaining their funds. Their experience in seeking information regarding the IT returns of the political parties is revealing. On 28 February 2007, ADR filed an RTI application with the CDBT seeking detailed infor-

28 <https://adrindia.org/> (accessed on 26 July 2019). Since most of this section is about the journey of the ADR to seek transparency, the facts and arguments here have been adapted with the permission of Prof. Jagdeep Chhokar (2017), among the main activists of the ADR. I acknowledge his help in understanding the issue, he was generous with time in explaining each nuance to me.

mation regarding income tax details of certain political parties, including ITR filed by them for five financial years beginning 2002–03, PAN allotted to them, and so on.

They did not have much success, as the CBDT sent the application to nine regional CCITs. Only two responded and the rest cited various reasons for their inability to give the information sought. The reasons included exemption of the information from the RTI, confidentiality of the information, and so on (Chhokar 2017, 93).

Not resting with the inadequate and evasive responses, the ADR went into appeal with the relevant appellate forums, eventually their second appeal to the CIC yielded a decision after several hearings on 29 April 2008. Citing corruption in political funding and the need for transparency and public funding on the model of Germany, the decision of the CIC directed the relevant public authorities to provide ITR of the political parties and the Assessment Orders for the period mentioned to the appellant within six weeks of the order (Chhokar 2017, 93–94).

Realizing that the parties receive millions of rupees in donations/funding, but were exempt from paying income tax under section 13A of the Income Tax Act, the ADR probed further to find that the IT Act had to be read in conjunction with Section 29C of the RPA 1951, which in effect says that if a political party does not submit a statement of donations of more than ₹20,000 each to the ECI, it will not be entitled to the 100 per cent exemption under Section 13A of the IT Act. The ADR then filed an RTI application to the ECI seeking copies of the lists of donations of more than ₹20,000 submitted by political parties. Further, with the information, the total amount of donations of more than ₹20,000 (\$268) received by a political party in a specific year were compared with the total income declared by the same political party for the same year in its income tax return. It led to the revelation that only 20 to 25 per cent of donations were of more than ₹20,000, the rest were from unknown sources. Clearly, over three-quarters of the donation was under the radar.

Focusing on the six national parties of the country, the ADR sought information on the sources, the modes (cheque, cash, DD, etc), the amount and identity of voluntary contributors of more than ₹100,000 beginning financial year 2004–05 to 2009–10. The parties responded that they were not under the RTI, so were not under any obligation to respond. When the ADR approached the CIC, it was asked to obtain more data, which took two years to gather through several RTI applications. After looking at the painstakingly gathered data presented by the ADR, the full bench of the CIC on 3 June 2013 declared “that AICC/INC, BJP, CPI(M), CPI, NCP, and BSP (the six national parties) are public authorities under Section 2(h) of the RTI Act.” The order directed the six parties to appoint CPIOs under the RTI Act who would respond to the relevant queries (Chhokar 2017, 94).

However, the political parties not only ignored this verdict of the CIC, they ignored subsequent notices sent after the complaints of the ADR; and finally, on 16 March 2015, the CIC expressed its inability to ensure compliance with its orders. An exasperated CIC observed:

“The following is decided: (a) the respondents are not in compliance with the Commission’s order of 3 June 2013 and the RTI Act. The respondents, as public authorities, *have not implemented the directions contained in the Commission’s order and there is no evidence of any intention to do so* [emphasis added];...

(e) the complainants are at liberty, in view of the facts and circumstances of this case, to approach the higher courts for appropriate relief and redressal” (Chhokar 2017, 95).

The ADR filed a PIL at the SC with the Union of India, the ECI, and the six national political parties as respondents. The Union of India was quick to respond even before the parties did that political parties should not be under the RTI Act. The matter is subjudice.

An Overview for an Inconclusive Issue

The civil society efforts that highlighted and sought solution to a matter detrimental to rectitude and probity in India’s political and public life continues to remain in suspension even over a decade after the first efforts were made in 2007. In fact, the matter since then became more convoluted, as the manner of funding remained the same, or even more brazen, the civil society efforts for greater transparency in this matter remained determined.

The two largest national parties, the BJP and the INC, received donations from Vedanta, a Trust jointly set up by three companies that were subsidiaries of a company 100 per cent fully British owned. This was a clear violation of the FCRA, 1976, which regulated funding of Indian entities, including political parties, by foreign sources. Section 4(1)(e) of the FCRA clearly prohibits political parties from accepting any foreign contributions, “(1) No foreign contribution shall be accepted by any— (e) political party or office-bearer thereof.” This act was revamped in 2010 as the FCRA, 2010. Section 3(1)(e) thereof also retained the proscription on political parties: “No foreign contribution shall be accepted by any...(e) political party or office-bearer thereof.”

The ADR knocked at the doors of the judiciary and filed a PIL in 2014 at the Delhi High Court against the two parties for violating the FCRA. The parties argued that the majority shareholder of the British entity was an Indian citizen, which did not convince the high court, which ruled that “the donations accepted by the political parties from Sterlite and Sesa accrue from ‘Foreign Sources’ within the meaning of law” and were a violation of the FCRA, 1976. Even though the 28 March 2014 judgement ordered compliance of its directions within six months, it did not happen. The ECI wrote to the MHA which administers the FCRA, which wrote to the MCA, but nothing happened. At the end of six months, both the parties appealed at the SC, which did not stay the judgement.

In the meantime, the government attempted a couple of amendments to the FCRA, which did not succeed. In the 2016 Finance Bill, the government finally slipped in the Section 2(1)(j)(vi) that said:

“Provided that where the normal value of share capital is within the limits specified for foreign investment under the Foreign Exchange Management Act, 1999, or the rules or regulations made thereunder, then notwithstanding the nominal value of share capital of a company being more than one-half of such value at the time of making the contribution, such company shall not be a foreign source.”²⁹

This was an attempt by the government to get around *ADR v. Union of India* by making the new proviso with retrospective effect from the 26 September 2010, when the second version of the FCRA came. On 22 November 2016, the lawyers for the BJP and Congress sought to withdraw their appeals because in the light of the above-mentioned amendment of the FCRA, the Delhi High Court judgement, and consequently the appeals, had become infructuous. However, the Delhi High Court had stated that since the case concerned with donations taken in 2009, the amendment did not impact the case. At this, the plea was withdrawn by the lawyers of the two parties and as such the appeal was dismissed by the Supreme Court.

The entire narrative leads to certain inescapable, though disturbing conclusions. Some of them are listed below:

- (i) Political parties, who wield political power on being elected according to the constitution with popular mandate, have scant respect for probity in public, particularly political, life. They not only maintain silence on this and related issue but also thwart any move for reform.
- (ii) This is visible so clearly on the crucial issue of collection and management of the party funds; they are wary of disclosing sources of their funds. Obviously, there is organisational silence whenever party funds are used to buy political support or other such issues.
- (iii) In order to prevent any access to information regarding their funds, they could use even legislative process in Parliament, even the entire bureaucracy.
- (iv) They are even ready for brute defiance of orders/directions/judgements of the legitimate and the highest constitutional and statutory authorities.
- (v) Of course, defiance of a law such as the FCRA and immoral and surreptitious tampering with them is a small matter for them, which is a clear example of organizational silence.

29 <http://corporatelawreporter.com/2016/12/07/2016-amendment-to-the-fcra/> (accessed on 27 July 2019).

The Latest

In the 2017–18 Union government budget, the Finance Minister hailed political parties in the world's largest democracy, in "a multi-party Parliamentary democracy" at that, as an "essential ingredient" and discussed the unresolved issue of party funding. He admitted that "Political parties continue to receive most of their funds through anonymous donations which are shown in cash." He spoke of cleansing the system. He proposed the following scheme:

- a) In accordance with the suggestion made by the ECI, the maximum amount of cash donation that a political party can receive will be ₹2,000 from one person.
- b) Political parties will be entitled to receive donations by cheque or digital mode from their donors.
- c) As an additional step, an amendment is being proposed to the Reserve Bank of India Act to enable the issuance of electoral bonds in accordance with a scheme that the Government of India would frame in this regard. Under this scheme, a donor could purchase bonds from authorised banks against cheque and digital payments only. They shall be redeemable only in the designated account of a registered political party. These bonds will be redeemable within the prescribed time limit from issuance of bond.
- d) Every political party would have to file its return within the time prescribed in accordance with the provision of the Income-tax Act. Needless to say, that the existing exemption to the political parties from payment of income-tax would be available only subject to the fulfilment of these conditions. This reform will bring about greater transparency and accountability in political funding, while preventing future generation of black money.

The ADR has criticized the scheme announced by the Finance Minister. In fact, it has been in operation and it was used during the 2019 general elections. Jagdeep Chhokar, one of the main pillars of the ADR writes, "What is being claimed to be a reduction from ₹20,000 to ₹2,000 (\$27) is completely untrue. There was no law limiting cash donations to ₹20,000. The political parties only had to declare donations above ₹20,000. This limit of ₹20,000 still remains the same even after the budget. A new provision has been introduced to put a limit of ₹2,000 of cash contributions which do not necessarily have to be declared. The other supposedly big announcement is about 'electoral bonds.'" (Chhokar 2017, 97). Chhokar further points out a few inconsistencies in the statement of the Finance Minister, for the room open for donations by check and digital transfer had been available even earlier.

How effective the electoral bonds would be in removing corruption and black money from the political arena still remains a question. During March and April 2019, the months preceding the seventeenth general elections, electoral bonds worth ₹36.22 billion (\$480 million) were purchased, mostly by the corporates. This is almost equal to the combined three-year income of seven national parties.

This clearly indicates the financial stakes increasing. Uneasy with the anonymity clause in the electoral bonds, the ADR filed a PIL with the SC, which gave interim directions on 12 April 2019, which mandated political parties to disclose the sources of the bonds donated to them by 30 May 2019. The ADR's data reveals that four branches of the State Bank of India, the leading public sector bank, Delhi, Mumbai, Kolkata and Hyderabad sold 81.28 per cent in March and April in 2019. The remaining twelve branches accounted for the sale of 18.72 per cent of the bonds.³⁰ Obviously, this leaves the issue of party and election funding in India still open for debates and activism for transparency.

Political parties, and we are talking of the parties across the board, have been silent regarding the deleterious impact on society and polity of criminalization of politics as well as the way the process of political and party funding has been handled and designed. Organizational silence here is on both systemic and organizational levels.

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30 https://factly.in/3622-crores-is-the-amount-of-electoral-bonds-purchased-in-march-april-2019/?fbclid=IwAR1SFzQ7tfVfFoGm5wKoVfiPjyoX_z2AWVsTCSKMI4ajGyLPot-UoLyZA hUk (accessed on 17 May 2019).

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Abbreviations

ADR:	Association for Democratic Reforms
AICC:	All India Congress Committee
BJP:	Bharatiya Janata Party
BSP:	Bahujan Samaj Party
CBDT:	Central Board of Direct Taxes
CBI:	Central Bureau of Investigation
CCIT:	Chief Commissioner of Income Tax
CIC:	Chief Information Commissioner
CII:	Confederation of Indian Industries
CMS:	Centre for Media Studies
CPI:	Communist Party of India
CPI (M):	Communist Party of India (Marxist)
CPIO:	Central Public Information Officer
DCBI:	Director Central Bureau of Investigation
DD:	Demand Draft
DIB:	Director Intelligence Bureau
ECI:	Election Commission of India
FCRA:	Foreign Contribution Regulation Act
FERA:	Foreign Exchange Regulation Act
IB:	Intelligence Bureau
INC:	Indian National Congress
IT:	Income Tax
ITR:	Income Tax Return
LCI:	Law Commission of India
MCA:	Ministry of Corporate Affairs
MHA:	Ministry of Home Affairs
MP:	Member of Parliament
MPLADS:	Member of Parliament Local Area Development Fund
MRTPC:	Monopolies and Restrictive Trade Practices Commission
NCP:	Nationalist Congress Party
NCRWC:	National Commission for the Review of Working of the Constitution
NDA:	National Democratic Alliance
PAN:	Permanent Account Number
PIL:	Public Interest Litigation
RPA:	Representation of People Act
RTI:	Right to Information
SC:	Supreme Court
SP:	Samajwadi Party
UPA:	United Progressive Alliance
UT:	Union Territory

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Dieter Dölling

Sexual Abuse of Minors in the German Catholic Church

Abstract The study presents the results of an investigation of the sexual abuse of minors in the German Catholic Church. The analysis covered the period from 1946 to 2014. It found that many priests had been accused of sexual abuse. In many cases, priests were charged with multiple offenses. The minors affected were predominantly male. The health and social consequences for the victims were partly severe. Priests were only punished in relatively few cases. In many cases, there was no serious response to the crimes by the church, which can be seen as an example of the “silence of organizations”.

Keywords sexual crimes against minors, Catholic Church, delinquency in institutions

Introduction

In recent years, sexual crimes against minors in the Catholic Church have become a matter of great public interest. The following report presents the results of a research project which was aimed at determining the frequency and the forms of sexual abuse of minors in the German Catholic Church and to identify church structures and dynamics that may have fostered the abuse and its veiling. The project was conducted on behalf of the German Bishops' Conference. In 2014, after a call for bids, the study was awarded to a research consortium made up of researchers from Mannheim, Heidelberg and Giessen. The study is referred to as "MHG Study", indicating the cities where the researchers are active. Under the parameters of the project, the study covers the priests and deacons in the German dioceses and male members of religious orders who have been or are still active in the authority of a diocese.

Methodology

Because access to the object of the research is difficult, multiple methods were used to obtain reliable results. The project as a whole is made up of seven sub-projects (closer to the conception of the research project Dreßing et al. 2015). Sub-project 1 consists of a qualitative and quantitative exploration of the data and the data management practices related to the personnel records at the 27 dioceses. For this purpose, all of the dioceses were surveyed in a written questionnaire. Qualitative interviews were also conducted in addition (see for sub-project 1 Dreßing et al. 2018a). Sub-project 2 includes qualitative interviews with 214 victims, 50 accused and 100 non-accused clerics (for sub-project 2, see Kruse et al. 2018). Sub-project 3 evaluates records of state criminal proceedings for sexual abuse of minors against catholic clergymen and for comparison with employees of other institutions, e.g. schools. The analysis covered 243 criminal files on employees of the Catholic Church. These criminal files referred to 209 accused clerics and 645 victims. In addition, 77 criminal files for employees of other institutions were examined. These criminal files dealt with 78 accused employees and 403 victims (for sub-project 3, see Dölling et al. 2018). Sub-project 4 consists of an analysis of the prevention efforts of the Catholic Church. Written surveys were conducted of the vicars' general and prevention officials at the 27 dioceses (for sub-project 4, see Dreßing et al. 2018b). In sub-project 5, a secondary analysis was conducted of national and international studies of sexual abuse in institutions and a meta-analysis of prevention projects in institutions. 53 primary studies of sexual abuse in the Catholic Church and 25 primary studies of sexual abuse in other institutions were analyzed. The meta-analysis of evaluation studies of prevention projects in institutions included 25 evaluation studies (for sub-project 5, see Dölling/Hermann/Horten 2018). The subject of sub-

project 6 was the quantitative analysis of personnel, reference and case files from the 27 dioceses. Files were evaluated for 38,156 clergymen. In 10 dioceses, files were analyzed for all clerics who were living, active or retired during the period from 1946 to 2014. For the remaining 17 dioceses, the reference and case files for the period 1946 to 2014 and the personnel records for the period 2000 to 2014 were analyzed (for sub-project 6, see Dreßing et al. 2018c). In sub-project 7, an anonymous online survey was performed for victims. 69 victims took part in this survey (for sub-project 7, see Dreßing et al. 2018d).

Results—Offenders, Offenses and Victims

The analysis yielded the following findings: The analysis of personnel records found that complaints of sexual abuse of minors were made against 1,670 clergymen. This represents 4.4% of clerics whose personnel records were reviewed. Among diocesan priests, the share of the accused is 5.1%, among deacons 1.0% and among religious order priests in the authority of a diocese 2.1% (see Table 1). It has to be taken into consideration that there was some evidence of the destruction of records and that not all of the offenses were documented in the records. The rate obtained is therefore only the tip of the iceberg, the true extent of which is unknown. This is the case even if we allow for the fact that the documented cases in the personnel records may include some false accusations.

	Total	Diocesan priests	Deacons	Religious order priests
Records viewed	38,156	28,208	2,356	7,534
Accused clerics	1,670	1,429	24	159
Rate	4.4%	5.1%	1.0%	2.1%

Table 1 Number of Accused Clerics according to Personnel Records

The distribution of accusations over time in the personnel records shows a concentration in the 50s, 60s and 70s of the previous century (see Table 2). We cannot conclude on this basis, however, that the sexual abuse of minors by Catholic clerics is a problem that lies exclusively in the past. It should be noted that the number of priests has fallen significantly in recent years and there is often a long period of time between the act and the reporting of the act, meaning that we can assume a significant number of unreported incidents especially in recent years. It is therefore clear that we are dealing with a persistent problem that still requires clearing up, accounting for the past and prevention.

Period	Percent	Period	Percent
Before 1945	7.8	1981–1985	4.8
1946–1950	4.9	1986–1990	4.4
1951–1955	7.5	1991–1995	3.6
1956–1960	9.4	1996–2000	3.4
1961–1965	8.2	2002–2005	4.2
1966–1970	9.6	2006–2010	3.7
1971–1975	7.9	2011–2014	2.5
1976–1980	5.4	Unknown	12.7

Table 2 Distribution of Accusations Over Time according to Personnel Records (in %, n = 1,670)

The evaluation of the personnel records yielded a number of 3,677 persons victimized by sexual abuse crimes against minors. This is not the same as the total number of all victims during the period of study, as we also have to allow for a significant number of unreported cases. The analysis of personnel records found that 62.8% of the victims were male, while based on the analysis of criminal records, 80.2% of victims were male and according to the qualitative interviews, the percentage of male victims was 76.6%. The percentage of male victims is thus significantly higher than with the sexual abuse of minors within the family and circle of friends. A possible explanation is the opportunity for easier access to male victims or a homosexual disposition on the part of perpetrators. A complex interplay of sexual immaturity and repressed homosexual inclinations in an ambivalent and in part homophobic environment may potentially be an explanation for the preponderance of male victims in the sexual abuse by Catholic clerics. Based on the analysis of personnel records, the age of victims at the first incident of abuse averages 12 years. The same average was obtained from the analysis of criminal records. The average age of victims at the time of the first abuse according to the interviews was 10.6 years.

Frequently, victims were abused multiple times. Only a minority of the victims suffered a single incident of abuse. More than 10% of the victims were victimized over 10 times (see Table 3). Accordingly, individual cases of abuse often extended over a long period of time. The abuse lasted 15.8 months on average according to the analysis of personnel records, 15.3 months according to the criminal record analysis and 20.3 months according to the interviews. In many cases, the sexual abuse had severe health and social consequences for the victims (see Tables 4 and 5).

The average age of the accused at the time of the first offense was 42.6 years according to the analysis of personnel records, 40.5 according to the analysis of criminal records and 30.2 according to the interviews. The average time between consecration and the first incident of abuse was 14.3 years according to the personnel records analysis. It appears, therefore, that a number of priests were able to act in

	Personnel records n = 3,677	Criminal files of Catholic Church n = 645	Criminal files comparison group n = 403
1	27.8%	30.7%	27.8%
2–10	21.3%	32.5%	38.4%
11–30	5.4%	9.0%	5.5%
31–50	1.5%	1.7%	2.0%
51–100	1.1%	1.2%	0.7%
More than 100	2.6%	0.6%	0.5%
Unknown	40.3%	24.2%	25.1%

Table 3 Number of Acts of Abuse per Victim

Health consequences	Percent	Health consequences	Percent
Fears	11.9	Suicide attempts	2.6
Depression	11.8	Pain	2.5
Distrust	8.0	Alcohol abuse	2.5
Sexual problems	8.0	Restlessness	2.2
Contact difficulties	7.9	Irritability	1.8
Nightmares	6.7	Self-harm	1.4
Sleep disorders	5.5	Memory disorders	1.1
Physical complaints	5.2	Drug use	1.1
Flashbacks	4.8	Nervousness	1.1
Suicidal ideations	4.3	Bulimia	0.8
Panic attacks	3.6	Anorexia	0.6
Mood swings	3.5	Medication abuse	0.5
Concentration disorder	3.0	Severy obesity	0.4

Multiple answers, victims with health consequences named in the personal records of the accused n = 1,028; 28.0%

Table 4 Health Consequences among Victims

Social consequences	Percent
In a relation or partnership	12.9
In sexual life	10.4
In work life	8.3
Participating in society	7.9
In school or education	4.8
Unability to forget	4.6
In religious life and faith	4.4

Multiple answers, victims with social consequences named in the personal records of the accused n = 890; 24.3%

Table 5 Social Consequences among Victims

conformity for a period of time before their crime. It should be noted, however, that for a significant number of the accused, the first offense was significantly before or after the average. There were indications of a homosexual orientation with 14.0% of the accused according to the analysis of personnel records, 19.1% of the accused according to the analysis of criminal records and 72.0% according to the interviews. There were hints of paedophilia for 28.3% of the accused according to the analysis of personnel records, 28.2% of the accused according to the analysis of criminal records and 28.0% according to the interviews. For a significant number of the accused, indications of overload, e.g. problems fulfilling the responsibilities of the position, were documented in the personnel records (see Table 6). In many cases, the

Indications of overload	Percent
Difficulties carrying out official duties, problems meeting the responsibilities in the office	26.6
Social or maturity deficits, psychological abnormalities	23.4
Specific hardships (finances, death of relatives, etc.)	23.4
Substance abuse	11.6
Feeling of isolation	6.5

Table 6 Indications of Overload Documented in Personnel Records (as % of all accused)

accused were charged with sexually abusing multiple victims. This was the case for 42.3% of the accused according to the evaluation of personnel records and 51.2% of the accused according to the analysis of criminal records. Most of the accused were charged with multiple offenses. In many cases, these offenses numbered more than ten (see Table 7).

	Criminal files of Catholic Church n = 209	Criminal files comparison group n = 78
1	19.1%	15.4%
2–10	19.1%	35.9%
11–30	11.0%	6.4%
31–50	5.3%	7.7%
51–100	4.8%	9.0%
> 100	2.4%	2.6%
Several offences	24.4%	12.8%
Many offences	11.0%	7.7%
Unknown	2.9%	2.6%

Table 7 Number of Offences per Accused

In the overwhelming majority of cases, the abuse was planned and not spontaneous (see Table 8). Most offenses were part of a longer-term systematic pattern of abuse (see Table 9).

	Criminal files of Catholic Church n = 645	Criminal files comparison group n = 403
Spontaneous	5.4%	5.0%
Planned	83.1%	83.6%
Both (when committing several offences)	5.3%	5.2%
Unknown	6.2%	6.2%

Table 8 Spontaneous and Planned Acts of Abuse

	Criminal files of Catholic Church n = 645	Criminal files comparison group n = 403
Yes	64.8%	75.7%
No	17.1%	11.9%
Unknown	18.1%	12.4%

Table 9 Acts of Abuse as Part of a Longer Term Systematic Line of Action

The offenses took place in a range of different contexts. Frequently, the abuse occurred in the context of private meetings, instruction, camps or vacation trips and sacral activities (see Table 10). The offenses were predominantly hands-on activities, i.e. activities where there was physical contact between the participants. According to the analysis of personnel records, for 81.2% of the victims the abuse was a case of hands-on activities. For 9.6% of victims, the abuse involved exclusively hands-off activities. For the remainder of victims, no precise determination could be made as to the abuse that occurred. For 15.8% of victims, the abuse involved penetration. The evaluation of the state criminal proceedings showed that 91.8% of proceedings involved at least one case of hands-on activity. 8.2% of the proceedings involved cases of exclusively hands-off activities. According to the analysis of criminal records, bodily penetration occurred for 16.3% of victims. Acts of violence were not very frequent. In 10.7% of the official criminal proceedings analyzed, the use of force was investigated.

	Share of all victims n = 3,677
Private meeting	41.4%
Teaching	14.8%
Camp/vacation	10.9%
Sacral activity other than confession	10.0%
Boarding school/institutional care	7.8%
Confession	5.9%
Church excursion	5.0%
Assistance activities by the victim in the community	3.0%
Special occasion (e.g. communion celebration)	2.4%
Communication via internet/other new media	1.4%
Assistance by victim in household of accused	1.3%
Contact of accused with family of the victim	0.1%
Unknown	14.3%

Table 10 Table 10: Context of Acts of Abuse according to Personnel Records Analysis (multiple answers possible)

Reactions

With respect to the response of the Catholic Church to the charges of abuse, the analysis of personnel records found that in many cases the church responded by transferring priests. Both transfers within the diocese and between dioceses were significantly more frequent than for non-accused priests (see Table 11). The analysis of personnel records further revealed that a canonical process was initiated against 33.9% of the accused (see Table 12). A report to the Congregation for the Doctrine of the Faith in Rome was observed for 13.9% of the accused (see Table 13).

In many cases, there was a long period of time separating the initial offense and the initiation of a canonical process or a criminal complaint. According to the analysis of the personal files, the time interval between the first offense and the beginning of the proceedings was on average 22.0 years (standard deviation 16.1 years) for proceedings under canonical law, 23.5 years (standard deviation 16.2 years) for reports to the Congregation for the Doctrine of the Faith, and 13.7 years (standard deviation 15.3 years) for criminal complaints. With regard to the results of the canonical processes, the analysis of personnel records indicated that in many cases, lighter sanctions, such as a change in area of activity, were issued. Serious sanctions, e.g. excommunication or discharge from the clergy, did occur, but they were not very frequent (see Table 14).

The data shows that in many cases there was no serious response by the church to reported sexual abuse crimes. The sexual abuse by priests was viewed by church

		Average number of transfers Within diocese (Std Dev)	p-value (two-sided)
Transfers within diocese	Diocese priests without accusation	3.6 (2.6)	< .001
	Diocese priests with accusation	4.4 (2.9)	
		Transfer to other diocese	p-value (two-sided)
Inter-diocese transfers	Diocese priests without accusation	29.0%	< .001
	Diocese priests with accusation	33.2%	

Table 11 Transfer of Diocese Priests

	Number of accused	Share of all accused (n = 1,670)
Canonical process initiated	566	33.9%
No canonical process initiated	885	53.0%
Unknown	219	13.1%
Total	1,670	100%

Table 12 Canonical Processes for the Sexual Abuse of Minors

	Number of accused	Share of all accused (n = 1,670)
Report	233	13.9%
No report	1,165	69.8%
Unknown	272	16.3%
Total	1,670	100%

Table 13 Report to Congregation for the Doctrine of the Faith

Process results	Number of accused	Share of all accused (n = 1,670)	Share of accused with processes (n = 566)
Process not concluded at time of study	34	2.0%	6.0%
No punishment or sanction	154	9.2%	27.2%
Change of area of activity	278	16.6%	49.1%
Celebration ban	203	12.2%	35.9%
Early retirement	164	9.8%	29.0%
Therapy out-patient	148	8.9%	26.1%
Therapy in-patient	127	7.6%	22.4%
Suspension from office	119	7.1%	21.0%
Intradiocese transfer	116	6.9%	20.5%
Admonishment	103	6.2%	18.2%
Monetary penalty	102	6.1%	18.0%
Spiritual exercises	95	5.7%	16.8%
Other sanctions	92	5.5%	16.3%
Excommunication	88	5.3%	15.5%
Release from clergy	41	2.5%	7.2%
Interdiocese transfer	39	2.3%	6.9%
Reduction of salary	35	2.1%	6.2%

Table 14 Result of Canonical Process (multiple entries, n = 566)

authorities primarily as a threat to the institution and the clerical system. Sanctioning offenses and protecting the victims were deemed less important than protecting the system of the church. There was an informal strategy to veil the sexual abuse crimes.

With respect to the state criminal proceedings against clerics for sexual abuse of minors, the analysis of records showed that 67.1% of criminal proceedings were dropped by the public prosecutor's office. Only in 32.9% of cases did the prosecutor bring charges or apply for an order of summary punishment (see Table 15). The high rate of cases where charges were dropped was due overwhelmingly to the expiration of the statute of limitations for the offenses in question.

Of the clergy members against whom criminal main proceedings were brought, 96.3% were convicted (see Table 16). 18.2% of these received fines, 26.0% of them a suspended prison sentence and 51.9% were sentenced to prison without probation (see Table 17).

The surveys on prevention work in the Catholic Church revealed that prevention was practiced in the dioceses with varying degrees of intensity. This becomes clear

	Catholic Church n = 249	Comparison group n = 78
Charge/apply for a penal order	32.9%	79.5%
Termination of proceedings	67.1%	20.5%

Table 15 Decision of Public Prosecutor after Conclusion of Investigations

	Catholic Church n = 80	Comparison group n = 60
Conviction	96.3%	88.3%
Termination of proceedings	2.5%	1.7%
Acquittal	1.3%	10.0%

Table 16 Legally Binding Decision of the Court in Main Proceedings

	Catholic Church n = 77	Comparison group n = 53
Warning with sentence reserved	0	1.9%
Fine	18.2%	7.5%
Suspended prison sentence	26.0%	43.4%
Imprisonment without probation	51.9%	45.3%
Corrective and prevention measure	2.6%	1.9%
Unknown	1.3%	0

Table 17 Criminal Sanctions

e.g. in the varying position quotas for the prevention officers in the dioceses (see Table 18). The prevention officers noted “clerical power structures” as well as reactance among some clerics regarding the problem of sexual abuse, which hampered the implementation of effective protective concepts in the pastoral units.

Position quotas of prevention officers	Number of dioceses
No hourly allotment or none defined	6 (22%)
Up to 20 hours per week (max. 0.5 position)	10 (37%)
21 to 30 hours per week (max. 0.75 position)	1 (4%)
31 to 40 hours per week (max. 1.0 position)	8 (30%)
More than 40 week hours	2 (7%)
<i>Position allocation over all dioceses</i>	<i>26.4 h (average week hours)</i>

Table 18 Position Quotas of Prevention Officers (Current as of 2014)

Conclusion—Sexual Abuse in the German Catholic Church— A Case of Organizational Silence?

Overall, the findings of the investigation show that the sexual abuse of minors by clerics is not only a matter of misconduct on the part of individuals but suggest that we have to look at specific structural characteristics of the Catholic Church that foster the sexual abuse of minors and hamper its prevention. For example, sexual abuse delinquency is associated with problems with the selection and training of priests, as well as their guidance after they are in their position.

For a long time, the Catholic Church viewed the problem of the sexual abuse of minors as an attack on the institution of the Catholic Church and attempted to solve the problem through silence. This was also an attempt to protect the accused priests and a general strategy on the part of the church. The result of this strategy of silence was not only that the problem was not solved, but it was in fact strengthened. It also resulted in a significant loss in the credibility of the Catholic Church.

In recent years, efforts by the church to solve the problem have been noticeable. In 2010 and 2013, for example, the church issued general directives on the prevention of sexual abuse of minors and guidelines for handling the sexual abuse of minors. 2019 saw the beginning of the “synodal path”, in which the German Bishops’ Conference and the Central Committee of German Catholics seek to address fundamental problems in the Catholic Church, which also relate to the problem of sexual abuse: the church’s relationship to power, the sexual morality of the church, the way of life of priests and the role of the woman in the church. The question of whether these efforts will be successful remains to be seen.

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Ilse Hartmann-Tews

Gender-Based Violence and Organizational Silence in Voluntary Sports Organizations

Abstract There is growing international research that documents the life histories of survivors and victims who experienced gender-based violence in sports and, in particular, being silenced by coaches, members of the sports organization, and even parents and siblings. In contrast, this chapter develops insights into organizational silence as a collective-level phenomenon of sports organizations. The theoretical perspective of a recursive social process of agency and social structures, in which social structures act as social frames that mold social action and the options of voice and silence, is used as a heuristic tool. It enables to discern systemic, structural elements that evoke organizational blindness toward gender-based violence in sports or inhibit voice and facilitate silence on critical issues to be addressed. Against this backdrop, the relevance of specific evaluative and cognitive mindsets, formal and informal normative structures, and constellations structures that mold paths to silence is shown.

Keywords Social structures, sexual violence, sport organizations, trust, voice and silence

1 Introduction

Gender-based violence in sports has long been taboo. Only when media covered prominent cases of sexual harassment and abuse of Olympic and other elite-level coaches in the early 1990s did the topic enter the research agenda (Brackenridge and Fasting 2002). However, the first empirical study on violence against girls and women in Germany on behalf of the Ministry of Women, Youth, Family and Health of North-Rhine-Westphalia (Klein and Palzkill 1998) was discredited and rejected by sports organizations, who accused the authors of fowling the nest and damaging the reputation of organized sports. Research on gender-based violence in sports and sports organizations has recently gained more attention due to a growing number of mediated cases inside and outside of sports (Lang and Hartill 2015). There is a considerable scientific discourse on the definition of sexualized violence based on the World Health Organisation's (WHO) report on violence and health. Alexander et al. (2011) define sexual violence in sport as a

“behaviour towards an individual or group that involves sexualised verbal, nonverbal or physical behaviour, whether intended or unintended, legal or illegal, that is based upon an abuse of power and trust and that is considered by the victim or a bystander to be unwanted or coerced” (p. 61).

Sexual violence is often not about sexual acts but violence performed sexually based on the abuse of power or hierarchical gender relations. More recently, the generic term of gender-based violence is used to cover several forms of violence related to a person's gender or sexuality (Rulofs 2015). Consistent with the IOC Consensus Statement (Mountjoy et al. 2016) and its denotation of “non-accidental violence”, the terms sexual violence, sexualized violence, and gender-based violence make explicit the intentional nature of the behavior of an agent, and are used equally in the chapter.

Gender-based violence occurs in many forms including activities without body contact (e.g., sexist jokes, sexual harassment) and activities with body contact (e.g., groomed or coerced sexual abuse and rape). The frequency of these acts in the context of sports is the focus of many qualitative and quantitative studies with heterogeneous study designs. Consequently, there is a considerable variation in the identified prevalence rates of sexualized violence, varying between 1% to 63% of the surveyed population (Bjørnseth and Szabo 2018). In Germany, the “Safe Sport” project assessed the frequency of sexual violence in a comprehensive sample of elite German athletes within (Allroggen et al. 2016; Ohlert et al. 2018). Overall, 1,529 elite German athletes over 16 years of age from 128 different sports took part in the online survey. The results showed that 37.6% of the athletes had experienced at least one act of sexual violence in organized sports. On average, the affected athletes were 17 years old at the time of the first act of sexual violence; however, two-thirds were under the age of 17. There are two subgroups with significantly higher frequen-

cy. First, females, who had more frequently experienced at least one act of sexual violence in organized sports (48.1% females compared to 24.3% males). This finding confirms previous results in the systematic review by Bjørnseth and Szabo (2018). Second, non-heterosexual athletes, who are more vulnerable compared to heterosexual athletes (47.6% vs 37.3%). This level of vulnerability is consistent with other research (e.g., Smith et al. 2012; Vertommen et al. 2016). The perpetrators were predominantly male (91%), adult (81%) and in functional roles such as a coach, physiotherapist or staff member. The research also addressed the locations at which the sexual violence took place. The affected athletes indicated that sports clubs (62%) were the most common location, followed by training camps and competitions (22%) of national or regional sports federations (Allroggen et al. 2016; Ohlert et al. 2018).

Against the backdrop of 38% of elite German athletes having been subjected to sexual violence, the representative “Safe Sport” project survey of incidents in German sports clubs revealed a striking contrast. Only 2% of all sports clubs reported any knowledge of incidents that had occurred over the last five years (Hartmann-Tews et al. 2017). The comparison of two different surveys—elite athletes and sports clubs—implies a number of serious methodological constraints and reservations. However, the discrepancy between the findings is striking, and supports the proposition that sports clubs are either not aware of the incidents of sexualized violence or are reluctant to report wrongdoing.

The “Safe Sport” project comprised a systematic analysis of prevention policy of sexualized violence in organized German sports (see section 3 for the research design). This paper builds upon this focus and the results of a baseline study to review the implementation of prevention measures and identify structural and attitudinal correlates of more or fewer engagement ways to strengthen child protection and the prevention of sexual violence. This multilevel and mixed-method research allows us to explore assumptions about the systemic and organizational factors that contribute to the silence of sports organizations reflected in the statements of the Commission for the Prevention of Sexualised Violence. Against this backdrop, systemic conditions and organizational factors contributing to silence and their underlying social processes become visible.

2 Theoretical perspectives

There is a significant amount of research on *voice* and *silence* in organizations, particularly about for-profit organizations and their employees. Many authors refer to Hirschman’s (1970) original model of *Exit, Voice and Loyalty*. Hirschman described *exit* and *voice* as central behavioral alternatives for people when they are dissatisfied with the social system (e.g., society in general, unions or political parties, and even marriage). People are either moving away from the social system (*exit*), thus being active but not constructive in the system, or staying and attempting to improve it

(*voice*). Instead, *loyalty* may express itself as active or passive and encompass attitudinal or behavioral components aimed at improving a situation or setting. Hirschman's framework was extended with a fourth characteristic: the concept of *neglect* (e.g., Rusbult and Zembrodt 1983). This means people have the option to accept a dissatisfying situation and remain passive and non-constructive (e.g., by withholding information).

To understand why critical issues in an organization are silenced, a functional approach allows consideration of several causes related to the model of *Exit, Voice, Loyalty and Neglect* (Knoll et al. 2016). The framework they use places the four elements of dissatisfaction into a framework of two axes: passive—active and constructive—not constructive. *Voice* (active/constructive), *Loyalty* (passive/constructive), *Neglect* (passive/not constructive), and *Exit* (active/not constructive) represent the quadrants. Against this perspective, Knoll et al. explain that “voice and silence are (results of) complex social processes” (2016, p. 167), with silence being a potential outcome of the phenomena of *exit, neglect, and loyalty*.

Research defined silence in organizations as “the collective-level phenomena of doing or saying very little in response to significant problems or issues facing an organisation” (Henriksen and Dayton 2006, p. 1539). This definition has two points of focus. The first is organizational silence, starting with the collective perceptions of voice-inhibiting social structures. The second is employee silence with a focus on individual behaviors and motivations. Comparatively fewer researchers have analyzed organizational antecedents of *silence* and covering wrongdoing compared to individual factors. This is in line with research on non-accidental violence in sport, as there are only few studies considering organizational factors that may underpin psychological, physical or sexual violence in sport (Roberts et al. 2020).

This chapter is about organizational silence and the voice-inhibiting and silence-facilitating social structures of organized sports and its organizational units. The concept of social structures is a central, multifaceted, and highly debated reference point of discussion in sociology. Schimank (2010) distinguishes three dimensions and kinds of social structures: (a) expectancy structures, (b) mindsets, and (c) structural constellations. Expectancy structures include both formal norms and informal norms that serve to ensure an expectable agency. Formal norms include the statutes of a sports club or the requirement for a police record check for coaches involved in children's and adolescents' sports. Informal norms encompass any kind of non-codified social rules (e.g., fair play in sports or volunteer work in sports clubs). Mindsets are interpretative schemes that provide generalized orientations for the agency. They show as evaluative mindsets, representing generalized values, such as sociability and communality in sports clubs. Closely connected to these values are cognitive mindsets, which reflect popular knowledge and common sense, for example, “the winner takes all” or the “natural gender order.” Structural constellations are the third kind of social structures and represent any kind of well-balanced pattern of relationship between (elements of) the systems. Examples are the coach-athlete constellation, reflecting a power imbalance, and the con-

stellation of the voluntary sport sector based on umbrella organizations and clubs at grass-root level. These three dimensions of social structures are interconnected and inform each other in real situations. At the same time, they frame and mold the agency in different ways. Mindsets mold the will and desire of an agency, normative structures influence the “must and should do” of organizations, and constellations frame the capability and ability to realize norms and mindsets (Schimank 2010).

The theoretical perspectives of a recursive social process of agency and social structures, in which social structures act as social frames that mold social action, is a heuristic tool to discern systemic, structural elements that evoke organizational blindness toward gender-based violence in sports or inhibit voice and facilitate silence on critical issues to be addressed.

3 Research design

Organized sports in Germany is a merger of voluntary organizations characterized by a complex structure. The German Olympic and Sport Confederation (DOSB) is the national umbrella organization that oversees 62 National Sport Federations (NSF) for specific sports, 16 Regional Sport Associations (RSA) in the federal states, and approximately 90,000 sports clubs at grass-root level. Overall, the DOSB represents more than 27 million members. The empirical studies in the “Safe Sport”¹ project were designed to collect information on policies for the prevention of sexual violence in the sports organizations. The research design proposes a mixed-method approach using online surveys and semi-structured interviews focusing on three levels of organized sports: national, regional, and grass-root local-level volunteer sports clubs.²

3.1 Quantitative approach and data analysis

The data on sports club prevention policies were collected via an online survey of all sports clubs as an integral (small additional) part of the bi-annual Sport Development Survey. The final sample size was $n = 20.546$ participating clubs, represent-

1 Financed by the Federal Ministry of Education and Research (Bundesministerium für Bildung und Forschung (BMBF, 2014–2017)

2 All research components were approved by the ethics committee of the German Sport University Cologne. Participants in both the online survey and the interviews were assured anonymity concerning all data collected. Pseudonyms were used for the NSFs, participants in the studies, and all potential identifying features in the transcripts. The original data were stored in a separate, secure device.

ing a return rate of 26%. Since not all participants were willing or able to answer the questions about the prevention of sexual violence, the number of valid cases was reduced to $n = 8,571$, or 42% of all valid cases. This dropout may have led to selection bias; it is possible that the responding clubs were more likely to be engaged in child protection.

The data on prevention policies of the National Sports Federations (NSF) and Regional Sport Associations (RSA) was collected via two online surveys. All 62 NSFs and all 16 RSAs were invited to take part in the survey that included 150 questions about policies about sexualized violence and case management. Ultimately, the response rate was 67.8% ($n = 42$) for the NSFs and 100% ($n = 22$) for the RSAs.

Statistical analysis of the survey data was conducted using SPSS 23 for Windows. A data-screening procedure following the recommendations of Tabachnick and Fidell (2013) was applied. Frequencies (percentages), means, and standard deviation (SD) were used, and correlation analyses were conducted after a positive assessment of the statistical requirements.

3.2 Qualitative approach and data analysis

The qualitative approach encompassed structured telephone-based expert interviews with Commissioners of the Prevention of Sexualised Violence in both the NSFs and RSAs. The interviews were designed to obtain additional insight into the role of the commissioners and the kind of social structures (i.e., formal/informal norms, evaluative/cognitive mindsets and constellations) that frame the implementation of prevention policies. All interviews were conducted by telephone and audio recorded. A total of 47 NSF Commissioners agreed to be interviewed, reflecting a response rate of 75.8% (22 male, 25 female). All of the RSA Commissioners ($n = 22$) agreed to participate. The average length of the telephone interviews was 23 minutes (min: 10 min, max: 63 min).

In addition, five NSFs were identified for semi-structured, in-depth, face-to-face interviews about their prevention policies that focused more on the process of self-governance related to the prevention policies. Five commissioners and three members of boards of directors took part in the interviews, with a mean duration of 104 minutes (min: 77 min, max: 167 min). Because the survey on the frequency of sexual violence in athletes focused on elite and high-performance sports, the same kind of semi-structured, in-depth, face-to-face interviews were conducted with six experts from three Olympic Centres. Although they are not immediate members of the DOSB, they are a relevant setting for high-performance athletes within their career (mean duration of 53 min, min: 18 min, max: 95 min).³

3 Quotes are documented using the acronym of the organisation, the reference number of the interview, and line in the transcript. Organizational acronyms are NSF = Na-

All interviews were recorded and transcribed. The data were subjected to deductive and inductive thematic analysis following Mayring and Fenzl (2014). That analysis involved reading and re-reading the text to understand general patterns, themes, and their interrelationships. Through this process, themes were increasingly refined (Hartmann-Tews et al. 2020).

4 The social structures of organized sports as constraints on *voice* and conditions of *silence*

The first significant step toward the prevention of gender-based violence in organized sports in Germany was the adoption of the Munich Declaration of Protection against Sexualized Violence in Sport at the 2010 DOSB general assembly. The declaration included 15 multidimensional actions to address sexualized violence in sport which all member organizations committed to the task of preventing (DOSB 2010). Examples of the actions include the commitment to designate a commissioner for the prevention of sexualized violence, to develop procedures for responding to complaints, allegations and cases, to sensitize staff through a code of ethics, and to develop educational material about the prevention of sexualized violence.

Due to the constitutional characteristics of voluntary organizations, the adoption of the Munich Declaration was preceded by a lengthy consultation of the member organizations. The German Sport Youth is an integral element of the DOSB representing the interests of children, adolescents, and young people up to 26 years of age. The organization has been a driving force in the process of raising awareness and developing prevention policies. The Munich Declaration represents a consensus on a normative frame for all member organizations, in particular the NSFs and RSAs, who represent 90,000 sports clubs. However, the constitutional framework of the voluntary sector means that the member organizations must follow the policies of the DOSB. As a result, there is no means of enforcing decisions made at the top.

4.1 Restrained prevention policy as antecedents of *silence*

The quantitative data for the surveys of sport clubs, the RSAs, and NSFs indicated a slow top-down process for implementing prevention policies within the sports system. Six years after the Munich Declaration, 38% of the sports clubs had not implemented a single measure. Only two of 14 measures were implemented. The number

tional Sport Federation, RSA = Regional Sport Association; OC = Olympic Centre. For the NSFs and RSAs, the additional notation "a" refers to the telephone expert interviews and "b" to the in-depth, face-to-face interviews.

of clubs that implemented individual measures varied between 7% (prevention of sexualized violence is an integral part of their statutes) and 34% (incidents of suspicion are passed over to other helpdesks) (Hartman-Tews et al. 2017). Regarding the evaluative mindset of intent and willingness to implement further measures, the data indicates low interest, varying between 8% and 15% of sports clubs that intended to implement specific measures in the near future. At the level of collective agents (NSFs and RSAs), the implementation rate and the commitment to take further actions is higher. The RSAs had a mean of eight out of 13 implemented measures, whereas the NSFs had an average of three implemented measures (Rulofs, Wagner, and Hartmann-Tews 2016).

The commitment to designate a commissioner for the prevention of sexualized violence is an essential part of the Munich Declaration (DOSB 2010). In 2016, every RSA had created this position, compared to 80% of the NSFs (only 54% made the designation public). The varying level of compliance with the Munich Declaration likely reflects the associations' different tasks and mindsets. The NSFs represent the interests of specific sports disciplines (e.g., gymnastics, soccer, and track and field) and have specific responsibilities for (Olympic) competitive and performance sports. In contrast, the RSAs represent the general interests of all sports clubs beyond any specific discipline and are more engaged in general issues of sports development.

At grass-root level, only 12% of the sports clubs had established and made public a contact person for the prevention of sexualized violence or child protection. This low level of commitment means that a large majority of sports clubs have not created a clear normative structure and, in particular, no institutionalized option for *voice*. Hence, there are no official means for individuals to turn to an authority and expose perceptions of wrong-doing, regardless of whether he/she is personally affected, a bystander or potential whistle-blower who wants to report activities within the club that are deemed illegal or unethical.

The action of not following the commitment of the Munich Declaration is in sharp contrast to the empirical evidence of the benefits of channels of *Voice*. Research indicates that people are more likely to take action and voice their concerns about unethical behavior within an organization if there are complaint systems that provide confidentiality (Rowe 1993). Tangirala and Ramanujam (2008) concluded that employees' perceived opportunity for *voice* is a central contextual moderator of the relationship between *voice* and *silence*. Their finding on the lack of opportunity for *voice* may explain, in part, the discrepancy of a large number of athletes (38%) who experienced sexualized violence in organized sports and the small number of sports clubs (6%) that know of potential cases. Apart from this missing institutionalized option of *voice*, the question remains, what is behind the discrepancy? Or, to reframe the question from the theoretical perspective, what is or might be the contribution of (additional) social structures to the complex social processes of *voice* and *silence* and the various paths to silencing wrong-doing?

It is important to note that this was not the original research question of the “Safe Sport” project, but has evolved based on various findings of this research. Thus, the following sections present theoretically informed and empirically supported descriptions of social structures that have the potential to frame perception and mold behavior of individual members toward *silence*.

4.2 The positive image of sports—cognitive and evaluative mindsets as an institutional shield of *silence*

Many commissioners of the NSFs reported that the prevention of sexualized violence has no priority within their organization and is generally considered as “irrelevant” (NSFa 09, 15). Concerning potential incidents of sexualized violence, there is a general attitude in the organizations that these are “rather not imaginable for our sports” (NSFa 02, 15), “do not happen with us” (NSFa 15, 30–34) or that they happen in different milieus as “We are academics, it does not exist here” (NSFb 02, 248).

It is a widely shared cognitive map that this specific sports (organization) or its (specific) membership are not affected by sexualized violence. At first glance, it appears naïve to share this interpretation because, in recent years, the media has reported a growing number of incidents and cases of gender-based violence in a variety of social settings (e.g., church, boarding schools, youth welfare centres and sports). However, this mindset must be examined in the context of the image of organized sports in general and their specific organizational subcultures, in particular.

Beginning in the 1970s, organized sports launched many programs to foster the development of integration and inclusive programs accessible to everyone. Against this backdrop, there was broad consent that organized sports produces public benefits such as social integration, community, education, crime prevention, and democratic decision-making (Hartmann-Tews 2017). Due to these ascribed positive externalities of sports, the DOSB successfully developed the image of a welfare organization—immune from any kind of wrongdoing. In this sense, the development of organized sports in Germany is a success story that is mirrored by the increase in membership from 10 million in 1970 to 27 million in 2019. The positive image of sports and the unchallenged cognitive mindset of its benefits are linked with an organizational culture that, in the pursuit of joint volunteering, is often referred to as “we” and the “sports family” (Lepke 2020; Netzathleten 2018). It can be assumed that this culture of affective attachment and identification is conducive to value consensus and loyalty more than an open airing of doubts and alternative views.

The interviews showed that it is part of a systemic culture to assign organized sports a normative charging as part of welfare production steered by a family-like community, and to make sexualized violence a taboo topic, consequently making prevention measures irrelevant. In doing so, the organizations developed an “in-

stitutional shield of silence,” (Heitmeyer 2012, p. 29) which is central to constraining *voice* and enabling collective *silence*.

This assumption is confirmed by many commissioners, who are aware that the topic of sexual violence is considered a “taboo issue” (NSFa 33, 24) and “no-go topic” (NSFa 15, 17). Several commissioners from RSAs enforce the impression of the shared informal expectations, not to talk about such issues, with the perception that sports organizations try to “keep the incident under wraps as long as possible” (RSAa 02, 84–90), “sweep topics under the carpet” (RSAa 17, 53), and “tend to take it as a taboo topic and prefer to brush it under the table” (RSAb 04, 348). In this context of cognitive and evaluative mindsets that inhibit *voice*, commissioners describe their role as a challenging one: “It is a big problem to introduce the topic of prevention because you are immediately accused of waking sleeping dogs” (NSFa 16, 5–9). Hence, there is a kind of hidden awareness on the part of both of the commissioners and the (board) members at grass-root level that organized sports is not immune to sexualized violence. The commissioners’ perception that sports organizations’ fear to speak up, to give voice to worries, presumptions or suspicions, is prevalent in almost all interviews. A commissioner even identified a general fear “to open Pandora’s box” (NSFo4, 35), and many experienced an explicit rejection from sports managers “who then say to me, don’t act up and make a fuss” (NSFa 20, 44).

4.3 Lack of normative structures and uncertainty as constraints to *voice*

Yet, there is another important characteristic of organized sports that makes a significant difference in the available research on *voice* and *silence* that focuses on for-profit organizations. Sports clubs are voluntary, non-profit organizations with democratic decision-making structures designed “to furnish activities for members as an end in itself” (Gordon and Babchuk 1959, p. 25). Research literature characterizes sports clubs as inward-oriented associations that are predominantly run by volunteer personnel with limited resources. Typical features of the self-governing of sports organizations are vague purposes, informal strategic programmes, and diffuse communication channels (Borggreffe, Cachay, and Thiel 2012). There is agreement in literature that these characteristics point to slow and discontinuous communication as well as diffuse responsibilities (Fahrner 2008). The dark side of this organizational framework of voluntary sports clubs shows in a variety of the “Safe Sport” project findings.

First, responsibilities for tasks and functions of volunteers are rarely formalized and documented. In particular, there is a missing normative structure for the duties of the commissioner on the prevention of sexualized violence. Of the National Sport Federations that have a commissioner, 82% reported that there is no description of that person’s role, or responsibilities, regardless of their formal status as a volunteer or employee. Many commissioners are aware of this situation, as the following examples illustrate:

"You want to know about my responsibilities? I would say...well...hm..., as I said, I really thought about this—what in fact is my role here? At the moment, it is merely on paper, because nothing is really done." (NSFb 05, 113)

A similar perception is shared by another commissioner of an NSF, who turned to his board of directors and asked:

"Actually, what are my tasks? Well, nobody knew, but it was necessary [for the organization] to have the position, you had to have it." (NSFb 01, 3)

The missing description of the role and responsibilities of many commissioners can be traced back to two factors. On the one hand, there is the typical organizational structure of voluntary sports organizations and, on the other hand, the lack of interest in and low priority given to the prevention of sexualized violence.

Second, because of the low number of prevention measures and the lack of normative framing of the role of the commissioner, there is a widespread uncertainty in the organizations about "the definition of the situation." Without open discourse about potential unethical behavior in sports, members are in danger of losing their way and making valid decisions in critical situations. This lack of moral framing is omnipresent in the sports clubs, in particular. Members and volunteers are often not aware of sensitive situations, and they don't have a clear understanding of what is wrong or right, what is acceptable behavior in a sports context or what behaviors must be sanctioned.

The following quote of an NSF commissioner illustrates the dilemma:

"I think there are many incidents on the way to the locker room, in showers and contact in the swimming pool that are still not described as intrusive or harassment (by volunteer staff), but are probably perceived differently by the person concerned." (NSFa 33, 21)

Another RSA commissioner described his difficulty in evaluating "incidents" that are forwarded to him with a specific example, in which many stakeholders were involved and in which he felt insecure or uncertain as to what was wrong or (still) acceptable and how to give advice:

"...precisely because it is not really not certain, was not certain determined,...is as yet unknown whether something had happened or not. Right, it is really an assumption,...although it was quite clear, for me. Well, yes, that is always a matter of opinion." (RSAa 11, 29)

The findings about missing or vague standards on the prevention of sexualized violence provide important insight into the social processes and paths to the silence of sports organizations. The positive effects of clear normative expectations are documented in the survey of sports clubs and indirectly confirm the downside of missing rules. The results indicate that those volunteer sports clubs designated as

a youth aid organization under public welfare regulations have implemented far more measures for the prevention of sexualized violence than those without recognition. Being accepted and registered as part of the Youth Welfare System requires compliance with public regulations, and the data show a higher awareness of the relevance (prevention) of gender-based violence in those organizations (Hartmann-Tews et al. 2017).

Diffuse responsibilities, discontinuous communication, and normative uncertainty are typical characteristics of sports organizations. Conviviality and membership trust are further factors that explain the social processes of silencing in sports and can be identified as a specific mechanism to absorb uncertainty.

4.4 Membership trust as a systemic constraint to realize and speak up against wrongdoing

The majority of sports clubs in Germany are small; almost half have 100 members or less. An additional one-quarter have memberships between 101 and 300 (Breuer, Feiler, and Wicker 2018). The most important resource in the sports clubs is the voluntary involvement of their members, who work free of charge in a spirit of solidarity. Similar to other civic associations (e.g., hobby clubs or music groups), volunteer sports clubs have frequent face-to-face interactions among members and a high degree of conviviality, which in turn created a sense of belonging by the members and of being part of the community.

These characteristics are reflected in findings on the production of social capital that members of sports clubs and other civic associations are distinct from non-members in significantly higher in-group trust, or trust in a person's circle of family, friends, and acquaintances (Burrmann, Braun, and Mutz 2018). Moreover, the level of in-group trust in sports club members is only slightly higher than membership trust, or trust in the sports club members. The results indicate that sports club members are more likely to be regarded as acquaintances than strangers, confirming the popular metaphor of belonging to a "sports family." With regard to the demographics of vulnerability and perpetrators, it is a notable finding that men have a significantly higher level of membership trust than women.

Against this backdrop, one of the commissioners reflects on the dispositions and sentiments of the members of a typical small club in the countryside; the discussion is about introducing a police record check for instructors and coaches:

"Virtually you know each other. (...) Most of the board members know the persons in charge, the coaches...for twenty, thirty, forty years. The same people who have been running the club forever. You would not mistrust them!" (RSAb 04, 89)

"Well, yes it is a taboo (author's remark: *talking about police record check*) insofar as you know the people for many, many years. They are youth coaches for many, many years.

Nothing happens. The people would personally take it as an offence, too, if you ask them to provide a policerecord check because we do not trust you any more or because it is required." (RSAb 04, 96)

This quote reveals at least two aspects relevant to the social processes that lead to silence. First, there is a high level of membership trust and confidence; nothing wrong will happen because people have known each other for many years. Our data, as well as research evidence, suggests that this kind of trust and confidence is not only an individual, personal trust but a generalized membership trust. Within the scope of membership trust, references to or indications of transgressive behavior may not even be perceived as such and not marked as sensitive information within the social system of sports clubs. The effect is that dangerous or unethical behavior may be underestimated.

Our survey data indicates that small clubs and clubs focusing on traditional values, i.e. setting a high focus on tradition, conviviality, and non-sport offerings, have significantly lower general self-assessments concerning the prevention of sexual violence and fewer prevention measures compared to big clubs and those focussing on values like diversity, service or youth/performance sports (Rulofs et al. 2019). These characteristics indicate that clubs that place a high value on traditional values of sport clubs and are small in size, give ground on generalized membership trust. Thus, they are more likely to ignore the topic of sexual violence prevention.

In addition, the sense of conviviality, belonging, and membership trust are morally elevated. Against this backdrop, rational arguments for adopting preventive measures may be immediately labelled as mistrust, thus suppressing any kind of discourse and reflections. This situation reveals the importance of implicit voice theories or taken-for-granted beliefs about when speaking up is inappropriate. This was demonstrated in the previous quote in which the police record check was considered to be "taboo" The measures were marked as untrustworthy even before it was proposed. Research on large corporations points out the impact of widely shared implicit theories on workplace silence (Detert and Edmondson 2011).

An essential feature of volunteer sports clubs is their volunteers as an integral part of implicit voice theory. In other words, the fear that volunteers may quit if they were asked to provide a police record check. As the commissioner of a RSAs put it, "They would say 'hey, you are crazy', you can do your stuff alone" (RSAb 04, 98). The commissioner of an NSF explained about typical reactions from clubs:

"Well, I have always been slowed down with 'don't ruin it,' 'delicate plantlet,' 'if there are coaches to train at least women, we should be happy, don't scare them.'" (NSFb 01, 211).

Because gaining and retaining volunteers is one of the significant challenges for volunteer sports organizations, the belief that speaking up would be inappropriate, and risk termination might be a moderating contextual factor for silencing as well. Another commissioner even reported that pressure was put on him to convince the

family of a sexual violence victim to step back from their accusations based on the reason that it was impossible to substitute the coach:

“Yes, yes, yes, protection of the offender according to the principle. ‘listen, he has been doing a good job and if we have to do without him, we have no clue how to continue the work...’” (NSFa 25, 106–118)

There are many examples from inside and outside sports of volunteers who make themselves indispensable for the organization and consequently immune to any suspicions (Bundschuh 2010). This phenomenon suggests that the idealization of voluntary work and altruistic engagement might make people blind to further (egoistic) motives and wrongdoing of volunteers.

4.5 Conformity to the master narrative of male dominance as *voice*-inhibiting structure

The most vulnerable groups concerning sexualized violence in sports are female athletes and non-heterosexual athletes. At the same time, perpetrators are predominantly male staff and volunteers (Allroggen et al. 2016; Bjørnseth et al. 2018; Vertommen et al. 2016). Both findings blend in the traditional gender order and indicate the necessity to consider the hierarchical gender order and the concept of hegemonic masculinity in the field of sports concerning the topic of gender-based violence (Hartmann-Tews, Menzel, and Braumüller 2020).

There is a cultural master narrative of male dominance in sports that is deeply rooted in the socially constructed concept of natural hierarchical gender order and compulsory order of the biological sex, that is associated to the corresponding gender and attraction to opposite-sex individuals (Butler 2006; Krane 2019). Against this background, girls and women have long been denied access to physical activity and sports, and there has been a long-lasting hesitance and reluctance to give girls and women access to competitive sports at grass-root level and include them in the Olympic program (Hartmann-Tews and Pfister 2003). Even today, girls and women still face challenges in a social system, in which masculine characteristics (e.g., well-defined muscles, playing hard, and being aggressive) are taken as the reference for being an athlete, reflecting a “hegemonic notion of athleticism as a masculine trait” (Griffin 2012, p. 101). This gender hierarchy is omnipresent in sports culture, e.g. in the representation of women in leading positions of the sports system.

In Germany, gender distribution in sports club membership is about 60% male and 40% female. In contrast, the gender ratio on the boards of the NSFs, RSA, and sports clubs is 80% men and 20% women, and the same gender ratio can be identified about the number of coaches, referees, and umpires which is about 80% males and 20% females (Hartmann-Tews 2016). The characteristics of voluntary sports organizations and the construction of sports as a male domain appear to generate

a tendency towards homosocial recruitment, which in turn confirm and strengthen male dominance (Elling, Hovden, and Knoppers 2019). This culture of male dominance, hegemonic masculinity, and heteronormativity is framed by respective societal values and norms, re-produced by the sports media, and enacted by sports organizations and individual agency (Fink 2015; Krane 2019).

A female commissioner of an NSF, who was a referee in a sport with a strong connotation as a male sport, describes elements of the culture of male dominance she experienced during her career as a referee:

“...that was a tight male alliance. Those, those, the one who did not want me. Where I was knocking against again and again, that was such a tight men’s squad who were refereeing for years and they have clinged together very tight.” (NSFb 01, 132, 24)

“I have always been in the focus, as woman in particular, I received everything. Everything was discussed, my appearance, my shape. Well, if we want to talk about verbal gaffes, I had to take everything. Even the size of my buttocks was discussed...” (NSFb 01, 24)

There are cultural and social scripts of gender hierarchy through which discourses operate in powerful ways to silence victims. Victims cannot count on being heard and treated with sympathy. These discourses even frame the work of (female) commissioners as a quote of a female commissioner of an NSF about the acceptance of the topic of prevention and her role as a commissioner illustrates:

“...because the topic is not wanted, you know. There are men thinking ‘What is she doing here?’ She only wants to aggrandise herself! We do not have a problem with it (*sexualised violence*), that costs us a pretty penny and that is absolutely useless.” (NSFa 16, 31)

Research reveals that this cultural master narrative is important to understand incidents of gender-based violence and the fear and reluctance of victims and bystanders to speak out (Sanderson et al. 2019). The impact of gender and gender composition of the governing board on the discourses about the relevance or irrelevance of gender-based violence in organized sports is documented in the “Safe Sport” survey of sports clubs. The number of women on the board has a positive and significant effect on the awareness of sexualized violence in organized sports, the need to talk about the risks of sexualized violence and the number of measures implemented by the sports club (Hartmann-Tews et al. 2017). This finding suggests two interpretations. On the one hand, women might have qualifications that add to a club’s ability to engage in child protection. On the other hand, a club’s general management culture, being supportive of female leadership, is decisive in confronting sexual violence in sports clubs. However, the most recent evidence from longitudinal research confirms that women on the boards have some positive effects on the governance of sports clubs (Wicker, Feiler, and Breuer 2020).

4.6 High-performance sports: greedy institution as a constraint to *voice* and path to *silence*

Because the survey on the frequency of sexualized violence in organized sports in Germany documents the responses of squad athletes (high-level performers in their respective sports), it is worthwhile to review this sub-system of organized sports. Essential for high-performance sports is an evaluative mindset of winning—reflected in the Olympic Code of “*altius, citius, fortius*.” The respective binary code of victory/defeat is the generalized scheme of all people involved in high-performance sport (Stichweh 1990). This mindset has a strong impact on social structures and agency, as one of the commissioners put it:

“...in performance sports, they have blinkers, practically. They run through their world, you know. The long jumper only sees the pit and nothing else right or left.” (RSA 04b, 404)

The focus on winning and the impact of this basic mindset are supported by a variety of informal normative structures, which give way to silencing incidents of gender-based violence.

First, the binary code of victory or defeat, of winning or losing is elevated to a far-reaching ethic, if not ideology. Research shows that there is a coherent “culture of risk” communicated to athletes. That culture is closely entangled with the norms and values of being the best, seeking distinction, challenging limits, taking risks, and sacrificing for the sport (Hughes and Coakley 1991; Nixon 1993). Squad athletes have been socialized into the social structures of elite sports with this kind of “hidden curriculum.” These informal norms are broadly shared and generate an organizational culture that may condone, encourage or even reward transgressive behavior, as one of the commissioners put it: there is “generally a tough tone, breaching the limits and crossing the lines is taken as granted” by everyone (OSC 03, 263).

Within this culture, the behavior of coaches and other staff may move beyond ethical limits that are set and accepted outside of performance sports. However, widely shared values, along with the binary code in this kind of microcosm, have the power to alter the boundaries of what is right and wrong. Within this sub-system, there are different standards of normality, and this kind of “breaching the limits” is generally not perceived as unethical and, consequently, no real cause for *voice*.

Second, growing into the role of a high performer implies an inevitable path to hyperinclusion. This path entails a complete and entire dedication of the athlete towards his/her sport on a factual, temporal, and social dimension to serve the final goal of winning competitions at regional, national, and international level (Bette and Schimank 1995). Given this significant individual investment of the athlete, increasing inclusion goes along with decreasing options of *exit*. Moreover, as the binary code of winning or losing is essential for performance sports, all members, coaches, instructors, physiotherapists, and parents invest substantial time, money, and energy and want to see a return through victories of their athletes, their sons,

and daughters. This commitment creates interdependencies in the sense that they “are all in one boat,” a situation and climate that, on the one hand, condones transgressive behavior for the ultimate goal and, on the other hand, evokes attitudinal and behavioral *loyalty* to the system. The consequence is to silence wrongdoing.

At first glance, high-performance sports appear to be characterized by elements of Goffmann’s concept of a “total institution” (Goffmann 1961). He describes a total institution as a place of residence where a number of similarly situated people, isolated from the wider community, lead an enclosed, formally administered public life without any chance of self-governance, e.g., jail, psychiatric clinic. This situation may apply to specific institutions in high-performance sports, such as sports-related boarding schools, where different spheres of life (school, training, leisure, peer group relations, sleeping, and eating) are integrated and organized as a closed system. However, high-performance sports may be better understood by the concept of the “greedy institution” (Coser 1974) because it focuses on the normative integration of individuals in the organization without institutionalizing them. Within high-performance sports, social processes of elevating the ultimate goal and hyperinclusion of athletes on a social, time, and factual dimension are omnipresent (Bette and Schimank 1995). These features generate a high level of loyalty to the systems, which in turn may develop into several sports-specific closed systems inhibiting *voice* (Bundschuh 2010).

Key to a deeper understanding of the paths of silence in performance sports is another element of the social structure: the social constellation of coaches and athletes which is characterized by power imbalance. During their career, high-performance athletes frequently undergo screening processes, internal competitions, and selections processes. In contrast, coaches face the challenge and have the power to select. Successful coaches are appreciated, and very successful coaches are even more appreciated. They enjoy great respect and develop a kind of immunity against critiques. This kind of economic rationality within the system, in combination with the elevation of the binary code, inhibits victims and bystanders from speaking out, as one of the commissioners put it:

“And if a top coach is involved, they wouldn’t risk the system. They would rather put a male or female athlete to the sword, I tell you. I tell you very clearly right away as a coach. That is my experience. That is always the same.” (OSC 02, 96f)

This quote reveals the specific type of constellation structure in competitive sports in general, and in high-performance sports in particular. On the individual level, it is a power constellation between coach/instructor and athlete, based on expertise, age and (often) the gender-order. On the other hand, on the system level, it is a constellation structure of dependency on professional/volunteer engagement. Against the background of high interdependencies in a greedy institution, *silence* is the result of social processes of *neglect* and *loyalty*.

Conclusions

There is growing international research that documents the life histories of survivors and victims who experienced gender-based violence in sports and, in particular, being silenced by coaches, members of the sports organization and even parents, and siblings (Rulofs and Hartill 2018; Sanderson and Weathers 2019). The results show a low level of awareness of sport organizations of gender-based violence in sports, and the general experience of survivors and victims documents an overwhelming reluctance of individuals and organizations to hear, accept or act on concerns about incidents of gender-based violence.

There are two general strands to explain sexualized violence in sport. One that considers it to be caused by individual factors, such as personality or psychopathological characteristics of the perpetrator, and the other that considers the sport environment as a relevant frame that enables gender-based violence. As there are only few studies considering organizational factors that may underpin psychological, physical or sexual violence in sport (Roberts et al. 2019), this chapter has sought to develop insights into organizational silence as a collective-level phenomenon of sports organizations. The theoretical background of the analysis is informed by a functionalistic view of Hirschman's expanded model of *Voice and Exit*, describing *silence* as the result of complex social processes with a focus on underlying organizational logic and framing social structures that inhibit voice and promote silence in specific evaluative and normative mindsets, informal and formal normative structures, and constellation structures.

The systematic analysis of social structures shows a range of interconnected organizational factors as antecedents of *silence* and inhibiting structures of *voice*. The key features identified in the survey and the expert interviews are multifaceted and interconnected. The dimension of expectancy structures shows a formal commitment of the DOSB and its member organization to the Munich Declaration and the protection of athletes against sexualized violence (DOSB 2010). At the same time, there is evidence that only a low number of prevention measures have been implemented, in particular at grass-root level of voluntary sports clubs. The low level of real commitment to the prevention of sexualized violence is framed by a variety of mindsets and constellation structures of voluntary sports organizations. Some crucial antecedents of *silence* and constraints to *voice* were identified with regard to the cognitive and evaluative mindsets as there are: the positive image of sport, a naïve conviction that gender-based violence is not imaginable and does not happen in sports and a cultural- and sport-specific narrative of male dominance and traditional stereotypical masculine values such as dominance and toughness. A further general factor within the dimension of shared beliefs and values that constrains *voice* is membership trust and the popular metaphor and cognitive mindset of belonging to a family. It can be assumed that this affective attachment is conducive to value trust and consensus more than an open airing of doubts and alternative views, thus giving way to *loyalty* as a path to *silence*. This combination of social

structures may evoke organizational blindness against wrongdoing. It confirms the notion of Brackenridge (2001) that the reputation of the organization is more cared about than child protection. Focusing on high performance sport, there are further constraints to *voice and frames for silence*: the elevated binary code of high performance in connection with the “winner-take-all” reward system, and the normative integration of all individuals to this mindset; hyperinclusion of athletes and the constellation of a power imbalance between coach and athletes.

The combination and intersection of mindsets and constellations explain the low pace and reluctance to implement prevention measures against sexualized violence in sport. These social structures frame a climate that avoids talking about risks of transgressive behavior and measures to prevent gender-based violence. This avoidance, in turn, leads to missing or weak normative structures about the prevention of sexualized violence and a high level of normative uncertainty and ambiguity about standards of acceptable or unacceptable behavior. A vast majority of sports clubs have no institutionalized option for *voice*. There is no nominated commissioner, no binding rules on how to interact with children and youth (e.g., concerning body contact, changing, and training camps), and no guidelines or procedures for dealing with allegations of sexualized violence. Only few measures are adopted, leaving the critical issue of the risk of sexualized violence in sports untouched and thus contributing to collective silence.

In this article, an organizational lens to silence of gender-based violence in organized sport was presented based on the “Safe Sport” project, i.e. a survey with sport organizations and interviews with commissioners of the prevention of sexualized violence in sport. The findings add to the evidence Roberts et al. (2019) presented in their systematic review of 43 qualitative studies investigating psychological, physical, and sexual abuse of athletes. They highlight two factors that help to explain these types of abuse: on the one hand, organizational tolerance for abuse and on the other hand, conformity to dominant values within sports. Failure to implement the measures of the Munich Declaration, to establish and enforce formal standards of acceptable conduct, and to institutionalize opportunities for voice facilitate bystander inaction and organizational silence.

The results demonstrate that organizational mindsets, normative structures, and power constellation are interconnected and altogether mold complex social processes of *voice* and/or *silence*. Against this backdrop, a systemic or “whole-of-system” approach (Roberts et al. 2020) seems to be the most promising strategy to promote safe sport and underpin social processes of voice. Recent international studies and the EU funded VOICE project in particular developed a good practice guide for sport organizations (Hartill et al. 2020). Informed by the life histories of “survivors” who have been subjected to sexualized violence in a sports context, most of the recommendations refer to the implementation and strengthening of social structures in order to facilitate *voice* for victims and bystanders.

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Section III

Perspectives from Organizational Practitioners

Markus Jüttner

Corporate Compliance and Business Ethics between Claim and Reality— Why Academic-Bureaucratic Compliance Programs Fail

Abstract Propagated compliance management standards fail. Despite certified, audited, and award-winning compliance programs, serious compliance scandals continue to take place. While some see the shortcoming in an insufficient implementation of best practice compliance management standards, others criticize a lack of focus on the “human factor.” However, all approaches fail to recognize the reality of organizational behavior and tend either towards naïve oversimplification or fragile complication.

Keywords Business Ethics, Behavioral Science, Compliance Management, Corporate Crime, Useful Illegality

A policeman sees a drunk man searching for something under a streetlight and asks what the drunk has lost. He says he lost his keys and they both look under the streetlight together. After a few minutes the policeman asks if he is sure he lost them here, and the drunk replies, no, and that he lost them in the park. The policeman asks why he is searching here, and the drunk replies, "this is where the light is." (P. Watzlawick)

Introduction

When the last compliance policy has been written, the last compliance process implemented, the last compliance training held, the last compliance risk analysis performed and the last tone from the top announced, what has actually been achieved? By no means a company that complies with criminal law, as many compliance scandals show; there, such measures were even in place in certified, award-winning and audited form. Neither corporate criminality nor a criminogenic attitude are prevented by these academic-bureaucratic management methods.

Despite that, the role of corporate compliance in a management and business context has gained enormous importance in the last two decades. There is now an almost unmanageable number of guidebooks, publications, and more than a dozen compliance standards, numerous national and international guidelines, regulations, and recommendations on how compliance with laws, internal rules or even integrity can be effectively (apparently) ensured by organizations. Google shows more than 600 million hits¹ for the term "compliance" and not only law firms but also auditors, management consultants, and communication agencies see compliance as a lucrative field of activity.

Thus, comprehensive and costly compliance management systems are implemented, compliance programs are rolled out, and compliance officers are appointed. According to a PwC study (2018), 60% of medium-sized companies with 500 to 999 employees now have a compliance management system (CMS); large companies with more than 10,000 employees have even implemented a CMS in 97% of cases. In the German DAX, there are on average 1.75 compliance professionals per 1,000 employees. The average compliance budget of German DAX compliance organizations is around EUR 9 million/year.² In another (published) example of a German-based, internationally active company with currently about 30,000 employees and a turnover of about 4 billion EUR, it states:

1 10th January 2021.

2 A DAX30 compliance maturity benchmarking from 2017/2018 initiated by the author together with Ernst & Young.

"In 2015 and 2016 alone, 50 million euros were spent to bring the compliance system up to date. Starting in 2017, another 40 million euros will be invested in expanding and anchoring the system. These amounts do not include internal costs, such as management and staff time, which are expected to be around a similar total." (Schneider 2017, 441)

Citigroup Bank now employs around 15% of its staff in compliance; that is currently around 35,000 employees. Nevertheless, the bank recently had to pay a fine of 400 million dollars for compliance violations (Cassin 2020). AT&T won a compliance award only to be embroiled in a compliance scandal a short time later (Kelly 2018). Other well-known companies have even had the adequacy and effectiveness of the implemented compliance management system audited or certified and yet corporate criminal behavior was not prevented (Chen and Soltes 2018; Grüninger and Schöttl 2017, 3ff.; Bergmann 2016, 85ff.). So, if you strictly or blindly follow any compliance standard, you run the risk of losing sight of reality, with sometimes serious consequences: *"Enron, Lehmann Brothers, or Fannie Mae's asset valuation, for example, surely followed some accounting standard and yet were not necessarily related to reality"* (Hubbard 2014). The bank Morgan Stanley had installed an extensive compliance program, but it did not reach the employees, as the accused in the corruption case explained: *"[...] whatever nonsense they've shown to the government. It just wasn't in my head, and it wasn't in other people's head"* (Dauble 2012).

So, what is going wrong in corporate compliance?

Against this background, the first part outlines the prevailing legal-economic compliance approach and critically analyzes it as a "small world" approach. This is followed by a presentation of an alternative compliance approach which, following Simon, Gigerenzer, Taleb, Zimbaro, Schünemann and Luhmann, prefers context-related "large world" insights for compliance to prevent corporate crime.

1 Compliance and Business Ethics for a small world³ — the prevailing legal-economic compliance approach

The starting point of the current approach to corporate compliance is the USA, the "motherland of modern compliance" (Haack and Reimann 2012, 2) and still the main driver of the compliance movement. The origins of corporate compliance date back to the 1970s, when the US Foreign Corrupt Practices Act (FCPA) required compa-

3 Small world: a situation in which all relevant alternatives, their consequences, and probabilities are known, and where the future is certain, so that the optimal solution to a problem can be determined (Gigerenzer and Gaissmaier 2011, 451ff.; Jüttner et al. 2019, 225ff.).

nies to establish internal controls to prevent corporate corruption. Some of the confusions of the currently propagated corporate compliance are related to the US mindset, as will be shown below.

1.1 Compliance as a legal discipline

In line with the legal requirements and following the core of the definition of compliance, the topic was originally understood as a legal discipline (Marschlich 2010, 75).⁴ With this understanding, “*all measures were directed primarily at the establishment of rules and their control*” (Bussmann 2009, 223) including their communication of rules, i.e. training. Even today, more than 75% of compliance officers have a law degree (Deloitte 2019); the compliance function is also (still) part of the legal department in many places.⁵ In addition, a large number of legal topics and statutory regulations are still, and even increasingly, declared, analyzed and presented as compliance tasks by lawyers.⁶ For example, labor and social security law, banking and finance, stock exchange and capital market law, export control and foreign trade law, corporate law, insolvency liability issues, data protection law, product liability law, tax law, environmental law, etc. are all considered compliance topics.

This originally purely legal view of compliance has been and still is often criticized.⁷ For example, the question “*Why Don’t General Counsels Stop Corporate Crime?*” (Avci and Seyhun 2016) has been addressed. It has also been argued that the view to need a lawyer to run a compliance program because they’re an expert on the law is like saying one need a referee to be the head coach of a team because they’re an expert on the rules (Pellafone 2020). Some even speak of an outdated legal “Compliance 1.0” approach:

“In the early days of compliance, a new remit to help companies prevent and detect wrongdoing had to evolve. At that time, companies often relied on a flawed model that we now call Compliance 1.0. This model was based on the misconception that compliance

4 But even at present, corporate compliance manuals are dominated by legal contributions and authors. “*For the question of whether a proper CMS exists, only the requirements of case law and laws are decisive. This can only be answered by lawyers*” (Wiedmann and Greubel 2019, 88f.). This is certainly correct when it comes to the question of liability, but not the actual prevention of corporate crime.

5 Depending on the size of the company, compliance history, and industry (Deloitte 2017, 18).

6 Critically and rightly also Kreutzner 2020, 24.

7 In the author’s opinion, rightly so, but this does not necessarily mean that compliance cannot be part of the legal function. Compliance is first a question of approach and mindset, i.e. the correct understanding of the task and goal of compliance, and only then a question of implementation. Whether this task is then taken on in isolation by a separate department or part of another corporate department or even (without delegation) by the body itself can then, in principle, be left open.

could be implemented and managed from within the legal function. But this is a misconception. Many large compliance cases show that general counsel or partners of law firms do not have the necessary expertise or experience to set up and monitor a modern compliance program that meets the requirements. In fact, the legal advice that shapes their work is completely different from compliance management.” (Boehme 2015)

The criticism of a purely legal understanding of compliance is justified. Managers that treat compliance as a legal topic are more interested in how it looks as a legal defense and not whether the compliance program actually works in practice. However, serious and effective compliance as risk prevention is not primarily about reducing sanctions after a crime has been committed but about preventing company-related crimes in advance (Hui Chen 2018). The fate of preventive risk management measures is then also the non-occurrence as success — “*There is no glory in prevention*” (Merkel 2021). An exclusively legal understanding of compliance then also includes the danger of merely working through legal guidelines regardless of the question of whether the measures manifested in the guidelines are actually suitable for preventing corporate crime. Closely connected to this is also a lack of trying out new compliance approaches, although it is recognized that “trial and error” is one, if not the most elementary, procedure for solving a complex problem; with a purely legal understanding, however, it is a red rag in corporate compliance.

1.2 Compliance as an economic discipline

In the wake of this criticism, because of the Sarbanes-Oxley Act in the US and the compliance scandals that continue to occur despite implemented internal rules, controls, and training, compliance is currently understood as a management system or an economically organizational model (Haack and Reimann 2012). One speaks of so-called “compliance management systems” (CMS). A CMS can be understood as a systematic planning approach that ensures compliance with the principle of legality (in special risk areas) through rules, process flows, and an organizational, documentation and communication structure. Over the years, various compliance management system standards and guidelines have developed as framework concepts for compliance with rules and laws in and by companies, including possible audits and certifications (Cauers et al. 2008, 2718).⁸ These compliance standards are developed in the hope of establishing a basis for organizations to follow in order to build an effective compliance management system (Makowicz 2020). In practice, many companies use such compliance management standards as framework concepts (Deloitte 2018, 15). Well-known ones are the OECD Principles, United States Federal Sentencing Guidelines, ISO 19600, IDW PS 980, ISO 37001, COSO, UKBA Principles for Adequate

8 Bürkle (2018, 525ff.) speaks of the “organisation-centred approach”. Same here.

Procedure etc. The elements or criteria of the compliance standards are very similar in their basic features and orientation.

“The catalogue of relevant organizational measures ranges from the development of a compliance risk strategy tailored to the company and a clear commitment of the management to compliance with the rules, to communication and training measures, sufficient controls and regular documentation and updating processes. If there is broad agreement on this basic program of compliance management, however, difficulties often arise in the implementation and realization of the measures in corporate practice.” (Schulz 2018, 1283f.)

The cited guidelines also refer directly or indirectly to a so-called compliance culture, which is decisive for compliance success. In this context, the compliance culture is often associated with a corporate culture of integrity or ethics and thus expanded into a so-called “integrity management” (Pyrcek and Uebachs-Lohn 2019, 291f.). In summary, the idea behind this is that the behavior of employees should not only be controlled by means of rules, guidelines, and processes, as is the case with the “pure compliance approach”⁹ but that the personal responsibility of employees should also be strengthened through ethical measures (KPMG 2019), i.e. a sense of “we” should be created together with emotional commitment paired with insight and conviction (Pyrcek and Uebachs-Lohn 2019; Grüninger and Wanzek 2018). The goal is the internalization of the underlying norms for a decision by the employees (Schulz 2018, 1283ff.) or the induction to act correctly (KPMG 2019), to a kind of “self-moral governance” (Tams 2018)¹⁰ or “ethical leadership”. For example, it is said:

“While compliance aims at the pure conformity of a company on the basis of legal requirements, integrity management is dedicated to value orientation from a moral point of view. Integrity therefore covers not only legality but also legitimacy in the sense of an awareness of norms in the cultural corporate identity [...] Only if companies link compliance management with the factors of integrity and business ethics and internalize criminal law norms will they be able to approach the goal of legal conformity. As a result of a corporate culture that promotes integrity, [...] consistency, trustworthiness, transparency and conformity to rules can be generated, open communication can be stimulated and the autonomy of the actors can be limited. Through a common goal, the employees’ sense of community is increased in the sense of an internal self-binding effect. A lived corporate culture and functional identification with the employer does not only encourages employees to adhere to value concepts out of conviction and thus prevent compliance violations.” (Volk 2019, 31ff.)

9 Pyrcek and Uebachs-Lohn (2019, 291f.) speak of “rigid rules” and “blunt surveillance”.

10 Against this already Jüttner (2018, 28ff.).

A better understanding of this economical management approach as well as the classical legal approach is gained if one understands the person-relatedness as well as the (ir-)rationality idea behind both approaches.

1.3 Person-relatedness as the first common factor of the legal-economic compliance approach

The current CMS measures are largely based on a perpetrator-related understanding of the causes of “white-collar crime” and thus on a person-centered approach to prevention. On the face of it, this is obvious because ultimately only a person can be a (criminal) perpetrator. *“He is the origin of every crisis and the one who can prevent it, master it and—very importantly—learn from it”* (Hockling 2016). Closely connected to this is an almost unmanageable number of studies on the “motives of white-collar criminals” (Blickle et al. 2006, 220–233), the “types of perpetrators” (Hugendubel 2016), the “reasons for misconduct by managers” (Reuter 2020, 673ff.), the characteristics of the “fraudster” (KPMG 2016), the “mind of a white-collar criminal” (Soltes 2016). It is therefore not surprising that the classic compliance prevention measures are similar:

“personality tests before hiring a manager; regular personality tests in the course of employment, especially in critical areas; request for regular submission of police clearance certificates (personal clearance certificate); transfer of (potentially) suspicious employees to other departments or regular rotations; clear governance rules, communicated with an “ethical leadership approach” and the much-cited “tone from the top”; regular information; regular training to increase sensitivity; installation of effective internal processes (four-eyes principle, etc.); regular checks; consistent enforcement of the rules, including a consistent and appropriate response in the event of non-compliance, in particular investigations and appropriate responses; whistleblower procedures and hotlines; central bodies installing and monitoring the above compliance measures.” (Reuter 2020, 687 with reference to Hugendubel 2016)

Also, the majority of measures to establish a corporate and compliance culture that promotes integrity and ethics are of an educational, i.e. behavioral, nature. For example, a so-called “Management Education & Development” (Grüninger 2019, 26ff.), further education and training courses (Schulz and Muth), workshops (Schulz 2018), positive attitudes, and statements by the management (“Tone from and at the top”) (Unger 2020) as well as communication elements such as pocket cards, posters, emotional films (Prycek and Uebachs-Lohn, 294), furthermore a comprehensible formulation of compliance rules and guiding values (Schulz 2018) or the inclusion of compliance or integrity in the corporate vision or in the so-called “Mission Statement” are recommended (Schulz 2018). This understanding of cultural design is accompanied by the appeal of so-called “ethical leadership”. This is associated with an expectation on the part of the organization that compliance is not only a manage-

ment task (Gößwein 2017) but that managers must also behave with moral integrity and not allow themselves to be corrupted (in the broader sense) (Rinker 2019). Ideally, a leader with integrity has the following characteristics:

“vision, honesty, integrity, trust, service, modeling, pioneering, appreciation of others and empowerment [...] communication, credibility, competence, stewardship, visibility, influence, persuasion, listening, encouragement, teaching and delegation...altruistic calling, emotional healing, persuasive mapping, wisdom and organizational stewardship...empowering and developing people, humility, authenticity, interpersonal acceptance, providing direction and stewardship.” (Parris and Peachey 2013, 380)

The manager is thus elevated to the status of a “role model” who assumes an exemplary central position in dealing with compliance, moral issues, and integrity—or has to learn to do so in the sense of the educational instruments cited above.¹¹ This “understanding of leadership” is thus largely cross-situational and cross-role, since the manager has to behave in a normatively correct manner in a wide variety of decision-making situations and should also transfer this attitude to the employees he/she leads (see also Jung 2019, 43ff.).

1.4 (Ir-)Rationality as the second common factor of the legal-economic compliance approach

Both branches of science also have in common that they traditionally cultivate a thought model of the rational human being and the rational organization. This fundamental background understanding assumes that people (especially in organizations) decide on their violations of rules and laws according to a cost-benefit analysis (Vaughan 1998, 23ff.). Whatever is done or not done, the rationality (rational guidance) of decision-making is given decisive importance (critically summarizing Pertiwi 2018, 70ff.; Schütz et al. 2018, 29f.). In accordance with this so-called “rational choice” theory, current compliance programs are also purpose-driven (Kette and Barnutz 2019, 47ff.). Terms such as “goal”, “program”, “process”, “guidelines” or “management” reflect this basic attitude.¹²

11 In order to achieve moral compliance among subordinates, the leader must be manipulative, “has to be manipulative, in order to make the followers behave ethically” (Brown et al. 2006, 108).

12 Osrecki (2019, 19ff.) then also speaks (ultimately criticising) of “...*adapting agent behaviour to the actual interests of the headmaster. In this approach, the legal sciences have the task of specifying under which circumstances a given conduct is to be considered as fraud on the headmaster...*”

“The standard approach to the study of ethics in business and management has been a normative or prescriptive approach, which focuses on what managers, employees and people in general “should” do to act as morally responsible actors...The prescriptive tones that are inherent in this literature are clearly reflected in the popularity of organizational codes of conduct and moral guidelines issued by management...An interesting and important underlying assumption of this approach is that it promotes the idea that individuals are rational purposive actors who act in accordance with their intentions and understand the implications of their actions.” (De Cremer et al. 2011, 4)

This understanding of compliance is accompanied by the idea that well-informed, rational actors can decide what is “wrong” and what is “right”. Knowledge, reasoning power, and intentions are supposed to cause people to act in accordance with the law or even ethically (critically Palazzo et al. 2012, 323ff.). Extensive rules and regulations or appropriate guideline management, monitored instructions as well as training and processes are considered to be the all-important basic condition for functioning compliance. The management from the “very top” (Schütz et al. 2018, 30) then watches over the orderly implementation of the rules, and in the event of a breach of the rules, it must punish it in the sense of “zero tolerance”¹³.

In contrast, according to recent economic behavioral research and psychology, the impression arises that man is “irrational”, i.e. a downright faulty construction with several cognitive deficiencies (so-called biases). Thus, economic scandals are now also seen as the result of the irrational, lazy-thinking “Homer Simpson” (Schneider 2010). The newer compliance improvement measures and prevention programs that follow on from this, such as the nudging and debiasing approaches¹⁴, continue to work with a “rational as-if model” (Gigerenzer 2018).

13 The concept of “zero tolerance” originates from criminology and follows the “broken window” approach (Kunz 2011, 348ff.).

14 Haugh (2017, 683ff) distinguishes between three types of “behavioral ethics nudges” with partly limited benefits and (also) points out the dangers, especially if the workforce perceives the nudging itself as encroaching, immoral. Feldmann and Kaplan (2018) also point out an important distinction and difficulty when they elaborate that the traditional nudges of Thaler und Sunstein “are designed to help people to make decisions that better serve their own self-interest; in contrast, ethical nudges are supposed to help people make decisions that more candidly consider the interest of others. This means that it would typically be more difficult to design and implement effective ethical nudges, compared to traditional nudges, so that they will successfully alter behavior.”

1.5 The failure of the legal-economic compliance approach

But if the (ir)rationality considerations and their instruments to prevent violations of the law are correct, why do serious violations of the law continue to happen (Kühl 2020b, 109)? Why is it that “*in some organisations, despite highly complex and intricate systems of rules, regular disasters occur (...) and in others they do not*” (Möhrle and Weinen 2016, 253ff.)? Increasingly, therefore, the question is being asked why current compliance management systems fail (Chen and Soltes 2018; Grüninger and Schöttl 2017, 3ff.; Bergmann 2016, 85ff.), especially in cases of blatant moral or criminal behavior.

“Indeed, the first goal of any compliance program is to prevent corporate agents from violating the law. While this be a top priority for companies, effectively managing compliance risks remains elusive. Large companies spend millions of dollars a year on compliance, some hiring “hundreds, and even thousands of compliance officers at a time,” yet most are unsure of how to best deter wrongdoing. Despite a sustained focus on curbing bad corporate behavior over the past two decades, and a resulting boom in the compliance industry, corporate America is still searching for compliance strategies that are evidence-based, demonstrably successful, and cost effective.” (Haugh 2017, 683–741)

...lack of evidence

The lack of evidence base of the prevailing legal-economic compliance concept mentioned in the quote does indeed seem to exist. Spindler (2013, 292f.), for example, speaks of compliance as a “*sociological-empirical or legal-statistical nirvana*.” Others state that compliance is merely a “*theory of better legal compliance*” or is based on a *hypothesis* (Bassl 2017, 68). In this context, Schütz et al. (2018, 24ff.) and Orthmann (2009, 5) also speak of compliance as a “*game with fear*.” Reichert (2017, 671f.), in turn, regrets that the “*empirical research on the effectiveness of the compliance measures under consideration is insufficient, hardly reliable and contradictory in itself*.” According to Bassl, the study situation regarding the effectiveness of compliance in preventing legal violations is not only “*deficient*” but “*practically non-existent*” (2017, 68ff.). Hence, Corporate Compliance is doing the second step before the first one (Singelstein 2012, 52ff.).

...lack of empiricism

Closely related to this is the question of whether the legal-economic understanding of compliance is based on solid empirical substance or whether a connection between the implemented CMS or a compliance measure contained therein, and the hoped-for goal is not simply asserted. However, for a management method to

stand out from chance and thus justify an application or intervention in the first place, the following minimum cumulative conditions must be present (Barabba and Pourdehnad 2002, 5ff.):

- 1) The group of organizations must be randomly selected.
- 2) The group must include both “successful” organizations, i.e. companies without a compliance scandal, and “unsuccessful” organizations, i.e. companies with a compliance scandal.
- 3) The proportion of “successful” organizations with the corresponding success factor (here a CMS) must be significantly higher than the proportion of “successful” organizations without the factor (here without a CMS).
- 4) Finally, the proportion of “unsuccessful” organizations without the success factor must be significantly higher than that of the unsuccessful with the corresponding factor.

To date, the propagated corporate compliance management has apparently not provided this proof with regard to combating corporate crime. It rather looks as if a multitude of promises are being made (Compliance Punk 2020, 58ff.).

“However, the promises associated with this are hardly ever questioned or examined on the basis of effectiveness and efficiency criteria. Instead, an ideal image is often adhered to, free of an impact-oriented discourse. Compliance programs are said to be necessary to curb white-collar crime by establishing ethical, legal and manageable guidelines and, in the case of criminally relevant violations, to make prosecution possible in the first place [...] From the perspective of white-collar criminology as well as white-collar criminal law, however, there is reason to doubt whether the introduction and expansion of compliance programs in companies [...] can actually contribute to the legal control of white-collar crime.” (Puschke and Singelstein 2015, 339ff.)

The fact that the CMS approach has become widespread despite the lack of proof of its effectiveness and the lack of empirical evidence is due not only to the lack of willingness to experiment (Jüttner 2020, 20ff. with reference to a lack of falsification practice according to Karl Popper) but also to the so-called “isomorphism”, the “liability issue”, and the so-called “horror vacui”.

...isomorphism instead

Isomorphism is understood as a process through which organizations, including their structures, work processes, etc., converge—irrespective of the question of its effectiveness. This can happen in three different ways: either through coercion by an authority, through mimesis (imitation) or through profession, i.e. through professional associations and education and training institutions (Schütz et al. 2018).

All three phenomena can also be found in compliance, as the legalization of CMS standards is increasing, imitation is encouraged by the tendency to compare best practices, i.e. benchmarking (critical of this Jüttner 2018, 2), and the professions are also strongly trained with those of lawyers, auditors, and fraud examiners.

“Regardless of which of these basic mechanisms underlies regulatory-organizational alignment processes: It is continuously possible that ideas or practices of organizational design and management spread, the effectiveness of which cannot be proven or cannot be proven satisfactorily even despite or precisely because of an already advanced degree of dissemination. However, this is also not surprising, and it is precisely with reference to isomorphism that it can be substantiated that (almost as an irony) with rapid and intensive dissemination it becomes increasingly difficult to precisely determine local benefits and specific functioning.” (Schütz et al. 2018, 87)

...instead focus on legal defense

In this context, the original US-style “compliance set-up” certainly plays a role. In that, the compliance measures imposed (decades ago) by the US authorities and then (more or less) accepted or proposed by the offending companies themselves served less to actually prevent corporate crime than ultimately to reduce the liability of the company and the managers. In this respect, questions and doubts about the actual effectiveness of the compliance measures to be implemented would be counterproductive in terms of liability for the companies under regulatory scrutiny. However, if these compliance measures implemented by the companies—due to the publicity of the scandals—are later seen as “best practice” on the market and are continually propagated as such by the consultants extensively involved in those projects, these measures continue to assert themselves without being asked. Authorities then (unfortunately) do replace justifications in this context. However, this seems to be changing, at least to some extent, when it is said:

“What do you hear from the highly regulated financial industry? That you need an additional compliance and governance system that really works, in addition to the one that is checked by all kinds of regulatory bodies.” (Grüninger 2020, 8ff.)

The development of having two management systems is actually worrying because it is not only highly inefficient, calling into question the meaningfulness but also increases the fragility of the company as well as the legal system. On the other hand, assuming the quote reflects reality, it shows the first signs of tackling the rampant academic bureaucracy.

...instead filling the horror vacui

The third cause of the successful dissemination of the legal-economic compliance approach despite unsuccessfulness is the so-called “horror vacui” (Nicolai 2004, 99) of compliance managers and the C-suite. On the one hand, there is a desire (or rather pressure) for practical solutions that are as familiar as possible; on the other hand, at least at the beginning of the compliance career, the managers mentioned are often untrained in how to ensure effective compliance through organizational measures due to a lack of training, experience, interest or time. The propagated compliance management standards fill this vacuum by thinking ahead and anticipating the individual legal and business management action steps for supposedly successful compliance. In addition, the conditions for the development of such methodism are particularly good in situations where one rarely receives feedback on the consequences of one’s actions or only after a long time (Dörner 2003). This also applies to corporate compliance or business ethics because whether the measures implemented by the compliance managers or integrity evangelists actually have an effect is not readily apparent; and especially not to the compliance managers or integrity evangelists.¹⁵

1.6 Interim result: Problems of knowledge *and* implementation of corporate compliance

The critics of current compliance management systems can be roughly divided into two camps. One group is of the opinion that there is no problem with knowledge but only with implementation (Remberg 2020; Schlaghecke 2016 notes that most of the time, it remains with the establishment of guidelines, the whistleblower hotline, and the implementation of initial training). The second group goes further and considers the current CMS to be insufficient insofar as “*compliance or non-compliance is ultimately about individual behaviour, which is decided in the minds of the employees*” (Haack and Reimann 2012, 1). It is therefore also referred to as the “human factor” (Schulz 2018, 1283). This is also increasingly linked to the demand for an interdisciplinary approach to compliance. A look at the behavioral sciences or the discipline of behavioral economics is then obvious, even if it brings uncertainties for one or the other traditionally thinking lawyer or business economist.

“While many firms continue to see ensuring compliance as a legal exercise, it is really much more a behavioral science. That assertion may make attorneys uncomfortable...” (Chen and Soltes 2018)

15 “Culture is when the Compliance Officer leaves the room.”

However, two pitfalls should be pointed out that are frequently encountered in practice. It is either the trend towards “oversimplification” or a trend towards “complicatedness”. A rogue who thinks evil here.

...for all the criticism, “as simple as possible, but not simpler”.

If the criticism of legal and business compliance practice concentrates on the lack of focus on people, there is a danger of succumbing to a deceptive oversimplification; especially if, in addition to the knowledge of rules and values that needs to be trained, one also boldly demands strength of character, moral intelligence, and self-regulation from the employees and then thinks that they have automatically created a corporate culture of integrity. The deceptive oversimplification also manifests itself in simplified nudges:

“Armed with a sparkling new vocabulary of cognitive and behavioral effects, it’s easy to see examples of biases all around us, and we fool ourselves into believing that we have become experts...By simplifying human behavior into a collection of easily identified, neatly separate irrationalities, we strengthen our misguided self-perception of expertise...” and even more “it’s rare for a single, simple nudge to have the full desired effect.” (Smets 2018)

But there are also naïve forms of training that want to train attitudes or even habits of the employees through e-learning.¹⁶ The idea of contributing to the socialization of the workforce through training or quasi-education does not take into account the host. The actual socialization power lies in the operative business areas, not in a cross-sectional department outside the line (Pohlmann and Starystach 2018).

...for all the criticism, “complexity does not mean complicatedness”.

On the other side of the scale, a complication can also be observed, especially when it comes to the question of personality tests to promote integrity, the analysis and design of an integrity “lived” compliance culture or the measurement of the effectiveness of compliance. Here, recommendations are often made that are seen as “ad on” to the legal-business CMS and have a high, detailed degree of complexity. According to the measurement, evaluation, and design methods offered on the market, more than 100 measurement points are supposed to be decisive for this, in addition to various culture and integrity dimensions (Nagel and Heine 2020 or

16 Thus, vis-à-vis the author, compliance training recommended by third parties and touted as “next practice.”

Bielefeld et al. 2020, 205ff.).¹⁷ As a consequence, this would mean that in addition to the detailed and fine-tuned CMS, complicated, comprehensive culture and integrity analysis measures, including corresponding effectiveness measurements backed by mathematical formulas (see for example Hastenrath 2020, 84ff.), or design and adjustment programs, would have to be available. In this respect, there is not only the danger of “overfitting” (Gigerenzer 2018, 4), but also of fragility (Taleb 2018, 53).

However, life, human behavior, companies as emergent dynamic, social systems are not complicated like a clock or a chess game; they are complex, like a football match, a forest or our body (on the distinction also Ramge 2020, 29ff.). So, compliance and the issue of preventing corporate crime are also complex, *not* complicated. While complicated problems (e.g. a broken clock) can be solved by specialized experts, this learned silo expertise does not help in solving complex problems. Instead, networked thinking, experience, and robust heuristics are needed. Successful compliance management to prevent corporate crime is therefore not a consequence of legal, business management, psychological expert advice or a causal management sequence mechanism; it is rather like a good craftsman or forester who looks after the well-being of his forest, or even an experienced doctor who not only looks for symptoms but holistically for the causes of the illness in the body, mind, and also in the environment (sic!) of the patient. One can describe this with so-called “context competence”, which is needed instead of complicated methods.

“Knowledge is context, it strives for relationships. Contexts make up the world. Contextual knowledge, then, is one that stands on both feet in reality—and that doesn’t just operate within the confines of a discipline, a bubble or within oneself.” (Lotter 2020, 12)

In order to promote this urgently needed contextual competence in risk management and compliance, however, the criticism of the prevailing CMS, which is justified in itself, should not focus on an even more intensive implementation of measures that are unsuitable in themselves, nor on a concentration on the individual employee or the individual manager. Rather, an organizational view is needed because the whole is not the linear accumulation of its components, as is yet to be shown (Taleb 2018).

17 See, for example, the so-called “Integrity Index” of GOII GmbH, a consulting firm, which considers 126 measurement points necessary to determine a corporate culture of integrity.

2 Compliance and Business Ethics for the large, real world¹⁸ — an organizational behavior approach

“Given the great rewards and low risks of detection—, why do so many business people adopt the ‘economically irrational’ course of obeying the law?” (Braithwaite 1985)

2.1 Corporate crime as a decision of the organization

Corporate compliance as a *“form of privatised social control of economic life”* (Puschke and Singelnstein 2015, 339ff.) is embedded in an entrepreneurial environment. As organizations, enterprises are *“decision-based social systems”* (Luhmann 2006) or *“decision machines”* (Nassehi 2005, 178ff.)¹⁹. Everything that happens in companies happens in the form of decisions. Whether a new product is designed, a project started, new personnel recruited, a transaction carried out, etc., these are always decisions (Jung et al. 2019, 7ff.). In this respect, criminal corporate behavior is also a decision of the organization “company”, even if it is punishable or illegal. *“Corporate crime is organisational crime, and its explanation calls for an organisational level of analysis”* (Kramer 1982, 75ff.). The understanding of this, however, must be sought beyond the realms of law, business studies, and political science (Jüttner 2018, 168f.).

2.2 Decisions are neither rational nor irrational but contingent

As outlined, the traditional and currently still advocated legal-business compliance management concept wrongly assumes logically decisive “rational actors” (Hertwig 2004, 391ff.). Where decision-makers deviate from this picture, the errors of human behavior are located in the mind by these approaches—in irrationality, as postulated by behavioral economics (Kahnemann 2012), for example, or human mental rot or lack of impulse control, as propagated by the “nudging” approach²⁰. However, reducing human misbehavior to individual deficits does not do justice to the complexity of the situation. People, organizations, and the world are characterized by

18 Large world: a situation in which some relevant information is unknown or must be estimated from samples, and the future is uncertain, violating the conditions for rational decision theory (Gigerenzer and Gaissmaier 2011, 451ff.; Jüttner et al. 2019, 225ff.).

19 That organizations are not “machines” has been recognized at least since the work of March and Simon. They tend to act according to the so-called bin principle, i.e. on the basis of a multitude of inconsistent and poorly defined preferences (Cohen et al. 1990). The striking quotation is therefore also more about the concept of decision.

20 In order to speak of serious nudging in the compliance context at all, these have to be “deployed in real time”, “targeted rather than general” und “tailored to the characteristics of the specific bias that is causing unethical behavior in each specific case.” (Feldmann and Kaplan 2018).

a lack of information, dynamics, and complexity in which the optimal strategy is usually difficult or impossible to define in advance (Jüttner et al. 2019, 225ff.).

Thus, neither the traditional rational nor the more recent irrational approach with its reduction of human or organizational misconduct to individual deficits does justice to reality because the rationality of decisions is not logical but contingent or ecological. Contingent rationality implies that a decision is not intrinsically good or bad, rational or irrational but only in relation to a certain environment (see also Gigerenzer 2006, 37ff. He merely speaks of heuristics instead of decisions.).

“People always behave naturally according to the context in which they live. That is, people behave reasonably according to the system. And if the organisation is stupid, they behave stupidly.” (Vollmer 2016, 31)

With this in mind,²¹ corporate criminal behavior may be illegal, wrong, irrational, and possibly even immoral for outsiders²², but from the perspective of the organization and its members, it is (often) rational, logical or useful (Kühl 2020b, 28). This observation is overlooked in the currently propagated form of corporate compliance, for example with the demands for “*ethical leadership*” and “*self moral governance*” (Jüttner and Barnutz 2020).

“Once you understand this principle, you understand better that moral decisions (by whomever) are not a sufficient condition to exclude corrupt structures in organizations. Decision-making programs sometimes mask immoral effects at the system level. Ethical leadership then merely feeds the illusion of having made moral decisions, while failing at the system level. Especially with regard to corruption, it would be worthwhile to examine the logic of organizational decision-making programs more closely...” (Jung 2019, 43ff.)

But the associated communication and observation latencies (Kühl 2009; 2020a, 34) are also underestimated in day-to-day compliance, which manifests itself, for example, in a “socially desirable response behavior” of operational departments towards the compliance department (Jüttner 2020, 18ff.). Against this backdrop, expectations of current corporate compliance must be put into perspective, especially if compliance is absolutized with an integrity component and comprehensively formalized as “*service by the book*”. The former only leads to hypocrisy (Jüttner and Barnutz 2020, 28ff.), the latter is known to be a form of strike (Pohlmann 2020, 185ff.).

21 Following Herbert Simon’s so-called “scissors”; cf. in relation to moral behavior (Gigerenzer 2010, 528ff., 529f.).

22 Illegal behavior is not necessarily immoral at the same time.

2.3 Myth of the person and personalized organizational culture

If one has internalized that compliance is about decision-making strategies, however, it is not—as is very often erroneously assumed—the person, the employee, the manager or the individual, including his or her character and attitude, that is to be focused on in isolation (Epley and Tannenbaum 2017, 73ff.)²³. In this respect, one can also speak of a compliance myth (critical of this: Jüttner 2020, 6of.). The rash demand that compliance measures must focus on people must not lose sight of the organization.

“But if people are seen as the solution to organizational problems, then the search for the right conditions for organizational action seems irrelevant. Structural organizational problems are then attributed to people—and remain unsolved...One is far from finding possibilities for better organization. Because the lack of analytical access leads to blame instead of system-sensitive causal research.” (Muster 2019, 16f.)

As a result of the person- or human-centeredness, the compliance culture of a company is then also wrongly understood as the sum of the individual attitudes of the employees (Jüttner and Barnutz 2020). For example, it is emphasized that “*first and foremost, it must be about the personal attitude of each employee*” in order (Schwenker 2010, 153ff.) to shape a compliance culture. But if, strictly speaking, an organization does not consist of people as a whole but only of the part of them that they need to interact in this social system and their role then a corporate culture is not the sum of the individuals’ attitudes either.

“Equally important is the realization that culture is not tied to individuals. It consists only of the agreements that have developed in the history of the organization. They remain, even if the originators are no longer there. Or are currently in prison for tax evasion. *Mia san trotzdem mia!*” (Vollmer 2016, 62)

The fact that this cult of personality is nevertheless deeply anchored in compliance has three main reasons: one, as already outlined in the introduction, is anchored in the US culture with its absolutization of the individual:

“...the social control of organizations no doubt originates in a belief fundamental to American culture: the value placed on individualism that locates responsibility for achievement, accountability, and responsibility in the single actor...This cultural belief has been reinforced by socio-legal research on structural variables related to “white collar” and other forms of organizational misconduct.” (Vaughan 1998, 3)

23 They call it “*three myths about morality*”, as there are: “*Ethics are a property of people*”, “*Intentions guide ethical actions*”, and “*Ethical reasoning drives ethical behavior*”.

The other reason for the focus on the individual is due to the fact that individual decision-making situations are easier to study in the laboratory²⁴ and therefore psychology enjoys a higher status than sociology.

“Normally the decision situation in normal life exhibits a lot of intransparency with regard to the situation, the consequences of action and the prerequisites of a decision. Until now psychological research tried to avoid the dirtiness of everyday life by cleaning, and therefore denaturalizing, such situations.” (Dörner and Wearing 1995, 65ff.; simililar Friemel 2008, 9; Vaughan 1998, 71)

Finally, the third cause of compliance personalization is the charm after a case of corporate crime has been uncovered of being able to hold people responsible for the act, since the perpetrator(s) can be shown to have received appropriate training, directions, instructions (Parker 2013, 174ff.).

“From the perspective of organizational sociology, it seems reasonable to assume that the main effects of organizational compliance management are the initiation of a blame game that draws its energy from the uncertainty regarding future attributions of responsibility. The background problem of compliance management is then less the securing of factual conformity to rules than the question of who has to answer when violations of rules become apparent.” (Kette 2018, 4)

2.4 Focus on the organization instead of the person

However, instead of placing the individual person at the center of newer, interdisciplinary understood compliance efforts, the interaction between employees, i.e. the company as an organization with all its characteristics such as decision-making premises, membership expectations, division of labor, informalities, zones of indifference, functional deviance, etc. is decisive. This certainly does not make compliance easier at first glance, but it makes it more serious and credible and thus ultimately more effective. The following metaphor is helpful in this context:

“The main idea behind complex systems is that the ensemble behaves in way not predicted by the components. The interactions matter more than the nature of the units. Studying individual ants will never (one can safely say never for most such situations), never give us an idea on how the ant colony operates. For that, one needs to understand an ant colony as an ant colony, no less, no more, not a collection of ants. This is called an “emergent” property of the whole, by which parts and whole differ because what matters is the interactions between such parts.” (Taleb 2018)

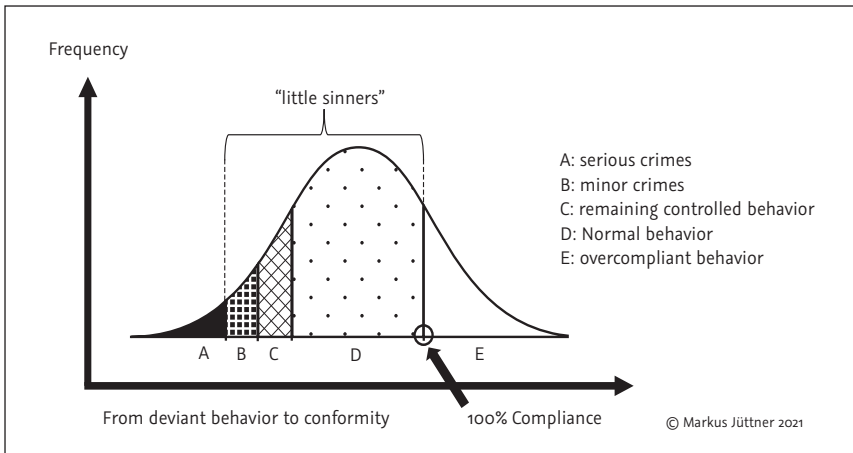
24 Instead of laboratory, one could also use the term “small world” (Gigerenzer and Gaissmaier 2011, 451ff.; Jüttner et al. 2019, 225ff.).

Taking this into account,²⁵ a compliance program to prevent corporate crime should therefore be less likely to educate the individual employee and demand that he or she internalizes values and knowledge through guidelines, sets of rules, and training that he or she cannot then use in the concrete situation. In this respect, a distinction must be made between relatively ineffective behavioral prevention and relatively successful situational prevention in compliance (Pohlmann 2020). Accordingly, legal or ethical-moral decisions are always context-related:

“It is a truism in psychology that personality and situations interact to generate behavior as to cultural and societal influences. However, I’ve tried to show in my research over the past 30 years that situations exert more power over human actions than has been generally acknowledged by most psychologists or recognized by the general public.” (Zimbardo 2004, 21ff.)

2.5 Little bandits instead of big sinners

In this context, the behavioral sciences also show that we humans may be “*little sinners*” or “*little bandits*”, but we are *not* serious (immoral) offenders (cf. chart) (Bannenberg and Rössner 2005, 20; see also Mazar et al. 2008, 633ff.).



25 One could counter here: an examination of an ant gives little information about how an ant colony functions. The examination of an organizational member, however, can say something about the organization, since people internalize structures in the form of expectations. However, this is precisely the reason why behavioral prevention aimed at the individual is unsuitable. People internalize structures, form fixed expectations, therefore the structures are the cause although they also interact with individual interpretations of the structures.

The latter is then also less a question of character than of the said context.²⁶

“In the world of the “little bandits”, minor deviations from rules are not only part of everyday life but have the function of keeping the organization running. Often, it is not possible to comply with all internal and legal requirements in everyday operations without causing the daily business to collapse. Even the “zero tolerance” of behavioral prevention will not change the necessity of regular rule violations. It only leads to the fact that the number of unreported cases will increase and hypocrisy will gain further importance.” (Pohlmann and Starystach 2018)

In this respect, compliance to prevent corporate crime, i.e. serious legal or moral misconduct, differs from compliance to ensure any adherence to rules or even to behave with integrity.²⁷ Effective compliance to prevent corporate crime should therefore not take the form of a prescribed change in behavior but rather start with the (formal) structure of the organization (Jüttner and Barnutz 2020) and thus the main causes of corporate crime. The concrete corporate environment is therefore decisive because a kind of basic willingness to obey already exists through voluntary membership in the organization “company”.

“It is only because organizations are able to make their membership conditional that they can achieve such a high level of willingness to follow among their members. The organization simply declares everything that seems good and important to them to be a membership obligation. If you need people in the human resources department to be willing to enforce salary cuts in the company then you make this unpleasant activity a condition for remaining in the organization. If you need soldiers in a professional army to be willing to secure elections in the Congo and to put up with a six-month separation from their life partners to do so then this willingness to serve is made a formal expectation without further ado. Either you participate or you have to leave the organization.” (Kühl 2010, 3)

Now, a still formal legal membership expectation can exceptionally (previously the heading “Of little bandits...” as well as Schünemann 2013, 20) also become an informal illegal membership expectation.²⁸ In this context, one speaks of a so-called “criminal association attitude” (also the government draft on the law on sanctions for associations, going back to Busch 1933; Schünemann 1979; Gross 1978, 55ff.; Ashforth and Anand 2003, 1ff.; Kölbl 2014, 552ff.), which essentially causes compliance violations. Describing this phenomenon in general terms as “false culture” may be striking, but it is far too unspecific to be of any help in concrete compliance

26 Incidentally, this applies to both types of deviant behavior. Both self-interested and other-interested deviance is context-related (Jüttner and Koch).

27 See Luhmann and his concept of useful illegality.

28 A formal illegal membership expectation would be, for example, the mafia, if one classifies the mafia as an organization and not as a family.

work. In connection with the causes of corporate crime, behavioral science speaks in particular of “*social cocooning*”, “*rigid framing*”, “*slippery slope*” or “*escalation path*” (Jüttner and Barnutz 2020).

If the aforementioned “toxic” structural factors of an organization are the main cause of corporate crime, they must be (merely) uncovered and eliminated through structural changes; the latter, however, must then focus less on the respective individuals (Van Rooji and Fine 2018, 13). Therefore, there is no need for a continuous behavioral preventive compliance management that impacts on the staff. For as outlined, the combination of us humans as merely “little sinners” and voluntary membership in a legal organization does not automatically mean that a criminal association will always emerge; on the contrary, legally organized business and entrepreneurship are not criminal in the majority of cases even without a CMS. Thus, “toxic” intra-organizational structural factors must first be added for “normal cucumbers” to become pickles.²⁹

“While a few bad apples might spoil the barrel, a vinegar barrel will always transform sweet cucumbers into sour pickles—regardless of the best intentions, resilience, and genetic nature of the cucumbers. So, does it make more sense to spend resources to identify, isolate, and destroy bad apples or to understand how vinegar works...?” (Zimbardo 2004)

3 Conclusion

This realistic view then also answers the question why scandals occur in some organizations despite implemented legal-economic compliance and integrity management systems and not in other companies, although the latter either have not implemented a CMS at all or have large gaps in their compliance programs. The “invisible hand” is the absence of the toxic structural elements of the organization, i.e. the vinegar. Uncovering the vinegar, i.e. the toxic structural elements, and then eliminating them within the framework of situational prevention is and remains the core task of serious compliance to prevent corporate crime. Compliance officers are therefore required to counteract the dilution of the compliance task by other topics as well as to withstand the constant appeal for “more is better” and the “latest next practice pressure”.

29 “With this concept (remark: “criminogenic association attitude”) was intended to draw attention to the fact that a company, like any organization, is of course not criminogenic as such but only on condition that a criminal association attitude prevails in it...Conversely, organizations (associations) without a criminal association attitude do not mean a greater source of danger for legal interests than it already...exists in society as a whole” (Schünemann 2013, 20).

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The Silence of Organizations— The Transplant-Allocation Scandal

Abstract In the years around 2012, patients waitlisted for a liver transplantation were willfully advanced and received a donor liver earlier than expected. The urgency for a liver transplantation is based on the MELD (Model of Endstage Liver Disease)-Score, which includes three clinical/biochemical variables. These variables were manipulated from some, however, not all transplant centers in Germany. Therefore we are talking about a liver-allocation scandal and not about a transplant scandal (which would imply a completely corrupt transplant system). Research Results concerning the liver allocation scandal: The deviation of liver allocation policy was based on several reasons. None of these reasons are solely responsible for the deviation, since there is a multilayer interaction. One reason was the competition between various transplant centers. A second reason was the hierarchical structures in University Hospitals, mainly in surgical units. Further reasons were the need and the responsibility of a donor liver for the waitlisted patients in a certain transplant center. Financial benefits for the caregivers were not a major reason for the allocation deviation. Consequences for the allocation scandal: First of all, the “Bundesärztekammer” called for audits at all German transplantation centers. These audits comprised not only the liver transplant programs, but also kidney, kidney-pancreas, heart and lung transplant programs. Due to these audits several deviations in other programs, e.g. heart and lung, were discovered. What should we learn from the liver-allocation-scandal? Hierarchical structures in clinics should be questioned and a board of health workers (physicians, nurses, coordinators etc.) should be involved in the wait listing process. The allocation rules need revision and a public discussion, which includes also non-medical professions. The number of transplant centers may be reduced to decrease an unhealthy competition and to concentrate medical specialists in such centers. Finally the transplant medicine and its caregivers should not be stigmatized as “doing criminal or semi-criminal” deeds, just because they are serving patients with life-threatening diseases. This has a huge impact on further generation of nurses and doctors who are potentially seeking a career in the transplant medicine.

Keywords Transplant Allocation Scandal, organ shortage, scientific control, multi-center studies, investigator-initiated studies

1 Introduction

A brief History of deviation of the allocation of donor organs

In the year 2012, it came to public attention that in 25 cases of liver transplantation, patients' charts had been manipulated in a hospital in Göttingen (see e.g., Gückel 2012). This fact was officially investigated by public prosecution in Braunschweig and in July 2012, when manipulations surfaced, the Euro-Transplant Leadership was asking for more rigid controls. As public prosecution went on, the focus was placed on 26 out of 91 cases from the years 2010 and 2011 in Göttingen (see e.g., Siegmund-Schultze 2012). Two doctors were accused of manipulating patients' charts in order to prematurely allocate a donor organ (in these cases liver transplants). By this time, the scandal had reached political institutions, and the Bundestag's Healthcare Committee (Bundestags-Gesundheitsausschuss) was called for an extraordinary meeting. Now, the attention was no longer only on Goettingen, where the scandal started: the transplantation program in Regensburg also came into focus. In August 2012, experts asked for more intensive and independent controls of local transplantation programs. In the following months, all transplant centers in Germany were investigated through a team of experts from the German Medical Association (Bundesärztekammer). The results went public and are available on the Medical Association's website¹.

However, rumors of manipulated donor organ allocations had been circulating even before that. During the previous one or two years, rumors were being spread during the annual meeting of the German Transplant Association (Deutsche Transplantationsgesellschaft DTG) that manipulations may have occurred.

What was the transplant allocation scandal not?

Before any details of the transplant allocation scandal are discussed, it is imperative to differentiate between the transplant systems in general and this specific allocation deviation.

The transplantation allocation scandal was not a failure of organ donation and the concept of brain death. Nor was it a failure of "Eurotransplant" or the German Organ Transplantation Foundation (Deutsche Stiftung Organtransplantation (DSO)) as an organization. Above all, however, it was not a failure of all transplantation centers, since by far not all transplantation centers were involved in the allocation scandal and a large number of employees in transplantation centers were committed to caring for their patients before and after transplantation. Unfortunately,

1 <https://www.bundesaerztekammer.de/>

this transplantation allocation scandal has been described as a systemic crisis in transplantation medicine in general.

2 Drivers of deviation

A range of different drivers of deviation could be identified. Apart from environmental factors (especially the shortage of donor organs, the access of caregivers to databases and questionable guidelines), professional and organizational competition, hierarchical power structures within healthcare institutions, a lack of control mechanisms and the public view of transplant medicine could be identified as decisive. These drivers of deviation will be discussed in the following.

2.1 Environment

Donor organ shortage

One of the most important drivers of the transplant allocation scandal was the shortage of donor organs. In 2019, more than 9000 German patients were registered at Eurotransplant for an organ transplantation. In contrast, in the year 2019, 5300 German patients were newly listed, however, the number of organ recipients ($n = 3538$) was much lower². The number of organ donors is depicted in figure 1³. This fig-

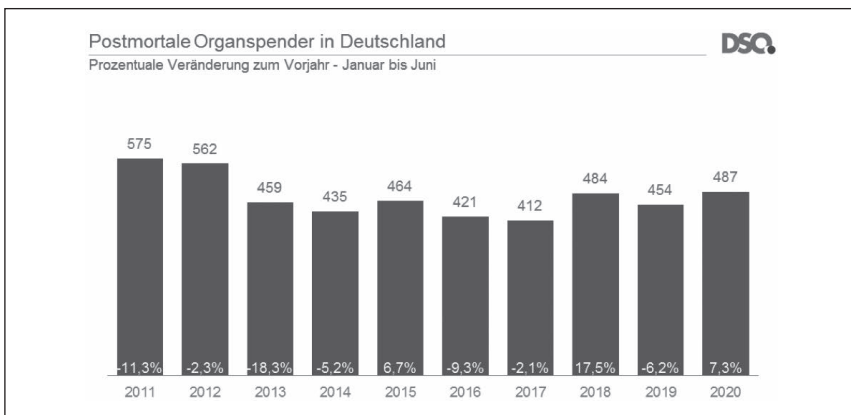


Figure 1 Organ donors in Germany between 2011 and June 2020.

- 2 www.eurotransplant.org/patients/deutschland
- 3 <https://dso.de/organspende/statistiken-berichte/organspende>

ure is an image of the extraordinary disproportion of need and supply of donor organs. A sufficient number of donor organs would shorten the waiting time and thus reduce a considerable pressure on the allocation of donor organs. Patients who receive transplantations in time do have a much better chance of survival. In the case of a sufficient donor organ availability, the risk of any manipulations would vanish immediately. From my personal point of view, this was the most important trigger of allocation deviations. The daily care of patients on the verge of death puts an extensive pressure on the medical professionals who try to save their patients' lives.

Access of caregivers to medical databases

Another cause was the possibility of false reports or manipulations through the caregivers. Transplant medical staff had access to the Eurotransplant database registration, which naturally made it possible to carry out manipulations unnoticed. Additionally, control mechanisms were not institutionalized, and, if they were available at all, they were at a low level. This was due in particular to highly specialized knowledge that was available to only few in the field of transplant medicine, so effective controls were rather difficult to implement. Transplant specialists who carried out these manipulations were well aware that the control mechanisms were not sufficient. These facts smoothed the way to the now well-known manipulations.

There are possible further reasons for dishonesty in the process of allocating patients. One might be a certain "team-spirit", as transplant medicine is a highly specialized field in medicine where only few specially trained people are working together.

Questionable guidelines

A third reason was that the guidelines were in part at least questionable. Patients with the worst prognosis are given preference for transplantation. Thus, patients who can expect a more favorable outcome of the transplantation will remain on the waiting list for longer. This was and still is engraved, as already mentioned, by the lack of organ donations. Patients with a more favorable prognosis, as time goes by, often become patients with a worse prognosis. The reason for this is a progressive loss of organ function in a relatively short time period. The correlation of mortality and the MELD score is shown in figure 2.⁴, where the relationship between survival and MELD-score points is impressively shown.

4 MELD is short for Model for Endstage Liver Disease. Retro- and prospective studies have shown the MELD-score to be an excellent tool for estimating the gravity of terminal chronic illness.

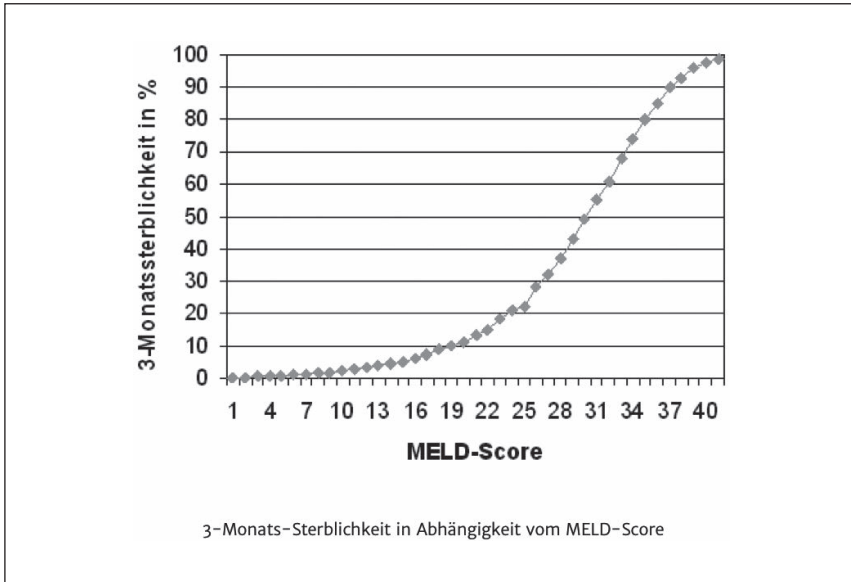


Figure 2 The relation between mortality/survival in correlation to the MELD-score

In summary, the allocation system in Germany, especially with regard to liver and heart transplantation, is a system with a high demand for critically ill patients and a low supply of donor organs. This was, beside other causes, one of the main reasons for organ allocation manipulations.

2.2 Professional and organizational competition

Transplantation medicine is a highly competitive field due to the high level of specialization and the complex nature of the treatment. Specialists are required for these treatments and only they can treat the patients in question with acceptable chances of success. On the one hand, this leads to competition between the major transplant centers, especially because top specialists are recruited by large transplant centers. On the other hand, performing well in this highly competitive environment naturally has advantages for the progression of an individual career. Finally, the reputation of a transplant center or a university hospital with a successful and big transplant program is also enhanced. Thus, individual medical professionals and transplant centers alike have a strong interest in establishing a highly competitive, high-performance work environment. This may in turn lead to deviant behavior by transplantation specialists due to the immense pressure put on them in this competitive context.

2.3 Hierarchical power in institutions

A further point is the hierarchical power that is exercised in these highly specialized areas. Data published by Markus Pohlmann and his team (Pohlmann 2018, Pohlmann/Höly 2017) showed that the employees tended to adhere more to the instructions of the chief of the department than to official guidelines and regulations. This became all the more apparent when the specialists realized that regulations were often not congruent with reality (e.g. donor organ shortage versus critically ill patients on the waiting list). In this context, we would like to refer once again to the challenges of success and urgency. If the sickest patients are given preferential treatment on the one hand, and on the other hand, the waiting time for patients who could still be successfully transplanted becomes longer, the consequences of the gap of donor organ shortage are amplified: This is where the practitioners in a transplant center are in a considerable dilemma.

What also turned out to be true is that financial benefits for transplant surgeons or transplant physicians or even the clinic (almost exclusively University Hospitals) were usually not demonstrable. Here, it is particularly worth mentioning that the revenues only just cover the costs of a transplant, often even leading to a shortfall in coverage.

Due to the high prestige of transplant medicine, there was a desire to expand transplant programs. However, this expansion is not only for the sake of increasing prestige, it has a lot to do with the economic management of such a cost-intensive therapy. The more transplantation procedures carried out, the higher is the cost-effectiveness because smaller transplantation programs tend to be uneconomical due to so-called “jump-fixed costs”. To illustrate this with an example: for each action (waiting list management, inclusion on the waiting list, organ harvesting and transplantation, early postoperative inpatient, and later outpatient follow-up care), a core of trained staff must be maintained. Whether they care for a few patients per year or several dozen, the staff must be available in any case. In addition, an infrastructure must be available with regard to laboratory, imaging diagnostics, etc.

Furthermore, the desire to be more visible nationally and internationally and to enlarge transplant programs has additional reasons: for example, large transplantation programs have easier access to public and industrial research funding. This is particularly important because without scientific support, transplant medicine would stagnate. As has already been mentioned, a large number of well-educated people are required for such programs and every institution naturally wants to have the best and most talented people for training and subsequent work in transplant medicine.

2.4 Lack of control mechanisms

As has already been mentioned, uncontrolled access to the Eurotransplant database was a major problem, with uncontrolled manipulation of data being entered. When data were entered through the program leader or leaders, the remaining staff were not courageous enough to communicate allocation deviations. It has already been mentioned above that this uncontrolled input was also due to the fact that there were few people who could even see through these manipulations. In the meantime, this has been made impossible by the fact that the doctors involved in the treatment no longer have access to the Eurotransplant database. In most centers, the transplant coordinators are exclusively responsible for data entry.

Furthermore, there was no internal control system that monitored the transplant programs and reported deviations from the guidelines. There was no internal ombudsman or whistleblower system that made it possible to report obvious deviations to the responsible head of the transplant program or their superior. In this context, it has to be mentioned that there were no internal guidelines making clear to employees the ethical and regulatory barriers within which they were to operate.

Furthermore, until 2012 there was no external control system in the sense of a control commission of the German Medical Association (Bundesärztekammer).

2.5 Public view on transplant medicine

The question arises as to why the public has taken such a negative view of this so-called transplantation allocation scandal, and why public dislike of transplant medicine is repeatedly upcoming. First of all, transplantation medicine is connoted by the public (with the exception of those directly affected) as not very positive. Although the results of transplantation medicine have improved massively in recent decades, its public perception remains rather unfavorable. Possibly, this is also due to the long-standing discussion about brain death diagnostics.

In contrast, for instance heart disease and, above all, cancer, its treatment, and its success or failure are perceived rather positively—despite the fact that in oncology in particular, outcomes are by far not as good as in transplant medicine, at least for several types of cancer (e.g. lung, pancreas etc.).

Not only in public opinion but also in the media and in the entertainment industry, transplantation medicine is portrayed rather negatively. This is especially true for films, novels, and short stories, independently of whether a rule violation in association with transplantation medicine has occurred at all.

These points certainly augmented the so-called scandal and made it even worse. As a result of these observations, a public discussion is necessary to clarify the role of transplant medicine in our society.

3 Summary and outlook

What is left after the perception of the transplant scandal has calmed down?

First of all, we need to ask ourselves: Has the transplant scandal changed anything at all?

For one thing, yes. A public and independent control system by the German Medical Association (Bundesärztekammer) has been established. This allows the detection of systemic deviations and their correction and also improves the transparency of transplant medicine in Germany.

However, does it actually meet the needs of patients? In no way, because the key challenge, the shortage of organs, is still unsolved. And this has been even more the case since the German Parliament (Bundestag) declined the “contradiction solution” that would have made every German citizen an organ donor by default and would thus probably have been an effective measure against the shortage of donor organs. This legislation means that in the upcoming years, no significant increase in donor organs can be expected.

What can we learn from the allocation scandal in transplant medicine?

The allocation scandal has led to a reconditioning and to a new culture of ethics in transplantation medicine. Internal measures (within the hospital) have led to a division of tasks and responsibilities and thus to the introduction of a more-eye-principle. In particular, certification procedures, overseen by external consultants and repeated regularly, have led to a significant improvement. Furthermore, transparency is provided by the control mechanisms of the German Medical Association (Bundesärztekammer). Finally, the head of a transplant center and the leadership of such hospitals must set an example of honesty and authenticity through so-called “ethical leadership.” They need to demonstrate that adherence to rules and fairness in a transplant program is more important than sheer competition with other transplant centers. External measures have already been mentioned, such as independent control committees and, once again, the presence of a higher number of donor organs.

Outlook: the potential to improve outcome quality and adhere to the regulations in transplant medicine

Are there any other tools to improve quality, control, and transparency of transplantation programs? As we have learned from the immediate past, no increase in donor organs can be expected. In contrast, the number of wait-listed patients will increase per year. The only benefit we can achieve for the patients is the improvement of outcome quality with the help of multi-center studies.

We should request a comprehensive “scientific control” of transplant medicine. This means that almost all patients listed for solid organ transplantation should be included in so-called investigator-initiated studies (IIT). There are several advantages at hand: unhealthy competition will stop, relevant and scientifically justified questions can be asked, and a high level of transparency and efficiency can be demonstrated by measuring results. Finally, innovative strategies for further treatment options can of course be drawn from these results. There are other examples from clinical medicine that have demonstrated this with great success over decades (e.g. in pediatric oncology) (see Pui et al. 2015).

Further advantages of the studies in transplantation medicine are so-called observational study monitoring boards. These are independent experts who regularly assess the course and results of the studies to ensure that a high level of data quality is available, that no violations of study protocols occur, and that the evaluation and publication of the data is carried out transparently and appropriately.

Finally, scientific monitoring would have a further advantage that public, private, and industrial research funds could be raised.

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Be it child abuse in the Catholic Church, manipulations of transplant lists or the current Dieselgate cases. Scandals repeatedly shake our trust in organizations. Against the backdrop of the devastation that rule-breaking in and by organizations leaves in our society, it is necessary to address how wrongdoings and crimes are regularly swept under the organizational carpet. To this end, the present anthology brings together contributions of international researchers from various disciplines to explain how organizational wrongdoing can flourish in the shadow of organizational silence despite tightening regulations, and increased efforts of compliance and prosecution.



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