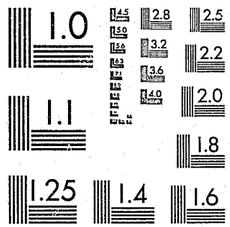

FINAL REPORT

ORGANIZATIONS AS VICTIMS & VIOLATORS

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CHAPTER 1

INTRODUCTION

PERSON-CENTERED PERSPECTIVE ON LAW-BREAKING

There is ample reason to conclude that our conceptions of victimization and of law violation are person rather than organization-centered. The case for the person-centered character of our knowledge about law-breaking is buttressed by describing and examining the ways that theory and research on law-breaking treat organizations as victims and offenders.

Firstly, where organizations are treated as victims or offenders, there is little attention to a population of organizations and their diversity. Nowhere is this more apparent than in the literature on white-collar or 'corporate'[1] crime where most of the empirical inquiry focuses on the largest business and manufacturing organizations and their executives as offenders and ignores them as victims. Scant attention is given to offending by and victimization of small organizations. Consideration of a population of organizations would draw attention to the fact that there are large government and not-for-profit as well as large profit-making organizations. Government organizations such as the U.S. military rank among the very largest of

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1. The concept of 'corporate' crime can be misleading when its use is not made clear. The term is generally used as equivalent to the legal term of a corporation where the whole is formed by a legal act of incorporation rather than in the generic sense of a whole comprised of an aggregation of individuals, as a collectivity or collective whole. All organizations are corporate in the generic sense but large classes of organizations are not incorporated. The term corporate is often misused in another sense, referring solely to a "joint-stock" corporation, i.e., one organized to share profits and losses. A great many incorporated organizations such as universities or churches are not formed for that purpose; often they are called not-for-profit corporations. My own university, The Yale Corporation, is an example.

organizations in the world but ordinarily they are excluded from a population of potential victims and violators of law. Large not-for-profit organizations such as the Teamster's Pension Fund, the Longshoremen's Union, the Rev. Moon's sect, The Teacher's Insurance and Annuity Association and the City University of New York usually are not included within a population of large corporate organizations eligible to break the law. Attention to law-breaking in a population of organizations not only draws attention to all kinds and forms of organizations that break the law but of those who don't as well. Moreover, a count of organizations is necessary to calculate rates of violation and victimization for organizational law-breaking.

Secondly, offending organizations are lumped with organizations instrumental to offending. Organizational power and position often are used by persons to violate laws but the organization violates no law. These violations are not distinguished from those where the organization breaks laws. Often in these latter instances, in fact, the focus is upon persons who violate on behalf of the organization--upon the actions of persons in the organization labeled white-collar-criminals--rather than upon processing the organization as an offender.[2] Theoretically and empirically, this often leads to a confusion of organizational with person attributes.

Finally, we note that classifying persons and organizations as victims and violators does not exhaust the ways that we may classify victims and violators. It has long been recognized that much law-breaking is group

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2. It is quite common to speak of crime and law-breaking in ways that confuse events with their victims and violators. Persons within large corporations who commit certain kinds of crimes are called white-collar criminals, though that may not characterize the offender's occupational status. The confusion of events and statuses of victims and violators and of crimes committed by organizations with their status is commonplace. Criminologists speak rather arbitrarily of white-collar crime, white-collar criminals, and corporate crime as if they encompassed the same phenomena.

behavior and that more than a single person may be victimized in a given law violation. Yet, law-breaking occurs under other organizational conditions and in other organizational forms as well. There are, for example, illegal networks of exchange such as black markets. When one regards crimes committed for political ends, political groups and networks may become the primary target organizations of victimization and of offending. Surely organizations are the primary victims of much criminal activity by terrorist groups or by a political underground.

Our knowledge of victimization and offending, then, is based upon a highly fragmented description of victims and offenders in law-breaking.[3] In its major outlines, criminological theory and research is person-centered with little explanatory theory about organizational victimization and offending. Where attention shifts to organizations, attention is selectively focused on only some kinds of organizations, particularly on those organizations that are seen as large and powerful, such as multinationals with capitalist goals

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3. There likewise is a strong disposition to treat all violations of public and private law as criminal violations or to speak of all violations of public law by large corporations as corporate crime. Clinard and Yeager follow this practice, defining corporate crime as "...any act committed by corporations that is punished by the state, regardless of whether it is punished under administrative, civil, or criminal law" (1980:16). They recognize that this definition broadens the definition of crime beyond the criminal law and argue that it is logical to do so on the grounds that this is necessary to make corporate violations of law comparable with those of ordinary offenders since ordinary offenders are subject only to the criminal law and cannot be subject to administrative penalty. Their facts and logic are peccable. The IRS fines many individual taxpayers for their violation of law but one doubts that Clinard and Yeager would dub all such violators as common criminals; the health department and the department of buildings may do likewise for property owners. Agreed, there is no simple relationship between legal categorization of acts and sociological facts. But, it seems unhelpful to create an asymmetry, especially one that opts for calling all the violations "crimes" rather than the more generic "law-breaking" or "law violation". A related argument, though one not open to the same caveat, is set forth by Geis and Meier who argue that: "Most white-collar crimes are not defined in the conventional criminal codes but are "hidden" in civil and administrative laws and involve rather complex matters of legal protocol (1977:3)".

(Clinard and Yeager, 1980) or to large and powerful governments that characterize capitalist societies (Clinard and Quinney, 1973; Ermann and Lundmann, 1978).

WHAT IS ORGANIZATIONAL LAW-BREAKING?

Distinctions between private and criminal law matters can be blurred in their application to organizational behavior. The culpability of an organization is more difficult of determination than that of individuals. When the number of organizational members involved in the the behavior of an organization is large, it is especially difficult to assign responsibility for organizational conduct. Even when the number of actors seemingly involved in a particular action of the organization is small, it may be difficult to determine individual motivations in acting on its behalf. Organizational memories, moreover, cannot be plumbed in the manner of individuals. Where records are unavailable, the response of individuals can be sought for evidence but the organization's memory is accessible under those circumstances only through its member recollections or accounts. Additionally, organizations are believed to be responsible for some of their actions whether or not they were intended. They are held responsible both as matters of affirmative action or duties--an obligation to comply affirmatively with certain requirements--and in matters of strict liability, that is a liability without fault, an importation from the tort law into criminal doctrines.

Distinctions about responsibility for organizational conduct may be blurred as well in selecting strategic grounds for enforcement and sanctioning. It may lie within the discretion of officials to pursue what are formally the same matters through administrative, civil, or criminal proceedings. The option against a criminal proceeding, for example, may be

made on grounds of efficiency--the same objective in sanctioning can be achieved administratively in a shorter period of time. Or, the evidentiary grounds may be less burdensome in an administrative law hearing than in a trial proceeding.

The law and its enforcement then depends as much, or more, on differences in how to formally proceed than of differences in the form of behavior to be proceeded against. For these reasons, we have chosen to treat all violations of law by organizations or by members on its behalf as organizational law-breaking. At the same time it should be clear that not all organizational law-breaking is to be thought of then as crime. Crimes, when referred to, are a special class of law violation limited to infractions of the criminal law.

Following Reiss and Biderman (1980:4) we shall treat organizational violations of law as those violations to which legal penalties are attached and which involve the use of the organization's position of significant power, influence, or trust in the legitimate economic or political order for the purpose of illegal gain.

WHAT IS AN ORGANIZATIONAL VICTIM?

We shall regard any organization as victimized when attempts to harm it or actual harm results from actions of its own members or those of others that are illegal under the law. An organization may be victimized by a single individual, by another organization, or by collusion or actions among any combination of them.

TYPOLOGIES OF ORGANIZATIONAL VIOLATORS AND VICTIMS

Although distinctions among individuals, groups, and organizations as offenders and as victims are not generally treated as theoretically significant, Bloch and Geis (1962:307-308) were among the first to distinguish among different types of white-collar offenders. Their typology begins to separate individual from organizational violators by distinguishing five major types of offenses:

(1) by individuals as individuals;
(2) by employees against the corporation or business;
(3) by policy-making officials for the corporation;
(4) by agents of the corporation against the general public;
(5) by merchants against customers.

Although their typology advances our understanding of some of the ways that organizations enter into victimization and violation, the typology is cast in terms of the behavior either of individual actors or as organizational agents against individuals or organizations. As Allen, Friday, Roebuck, and Sagarin (1981:194) observe, their list can be expanded to include offenses of policy-making officials against employees (e.g., union-busting or pension fraud) and collusion between corporate officials and regulatory agents (e.g., to fix inspections). One can think of additional distinctions, depending upon whether one differentiates among types of groups and organizations or of individuals in their collective as contrasted with their distributive capacities.

A somewhat more elaborate typology of criminal behavior has been developed by Clinard and Quinney (1973). Their focus is on systems of criminal behavior based on five dimensions: legal aspects of offenses, criminal career offenders, group support of the criminal behavior,

correspondence between criminal and legitimate behavior, and societal reaction including legal processing (1973:14-15). They construct nine types of criminal behavior systems on the basis of these five dimensions, although in combination they permit of a larger number. It is not clear whether the remaining types do not exist or whether they are omitted for some other reason. Among their nine types, six refer primarily to idividual offending, e.g., violent personal criminal behavior or occupational criminal behavior. Those relating to organizational forms of offending are corporate, organized, and perhaps political criminal behavior, though the latter treats offenses where governments are victims as well as offenders. Their types, indeed, fail to distinguish organizational victimization from organizational offending.

We are not interested in this volume to develop an exhaustive typology of offenses in terms of the relationships among different types of victims and offenders but rather to call attention to this diversity as an element that necessarily enters into the kinds of propositions we can make about organizations as victims and offenders. We need not restrict ourselves, for instance, to propositions about organizations victimizing organizations. Rather, we may consider different combinations of individual, group, and organizational offenders and victims involved in committing law violations, including criminal offenses as a subclass. Particular attention is given to: (1) the ways that diverse types of offenders may victimize diverse kinds of organizations, (2) how diverse kinds of organizations may victimize diverse kinds of victims, and (3) how individuals outside and within organizations use organizational positions of power, influence, and trust to commit offenses.

CONSEQUENCES OF CHANGES IN THE UNIVERSE OF LAWS FOR DEFINING VIOLATIONS, THEIR VICTIMS, AND VIOLATORS

A universe of laws is far from constant in rapidly changing societies. The universe of laws that can be violated changes both in quantity (Black, 1976) and in the composition of what is legally prohibited. There are cycles of rapid growth and of repeal in statutory law. Marked shifts occur as well in the growth of administrative rules and of legal regulation. Changes in the number and kind of law enforcement agents also occur. Each has its effects on defining and processing violators and victims under the law. During the two decades preceding 1980, there was a marked growth in administrative law and rules and in the behavior covered by legal regulation. At the same time there was relatively little growth in the criminalization of conduct. The 80's, by contrast, signal selective dismantling of the apparatus of legal regulation and the elimination of some administrative rules. There are also some shifts in enforcement patterns as in surface mining reclamation and enforcement (Shover, et al., 1982), environmental law, and occupational safety. This inconstancy in the universe of laws and in their enforcement markedly affects patterns of law-breaking in a society. A few of these are of special importance for our study of organizational law-breaking and victimization.

Our attention in this volume focuses on the nature and consequences of what at times is described as the explosion in the last twenty years of laws and rules to which legal penalties are attached, of compliance detection and enforcement, and of the number and kind of potential violators and victims. Each of these rapid changes is briefly described.

The number of statutes and of administrative rules grew substantially during the past twenty years. From 1971 to 1975 in the USA alone, the number

of major economic-based regulatory agencies in the USA rose from 8 to 10 and the number of major social-value-based regulatory agencies from 12 to 17. The number of pages in the Federal Register during this same five years grew by about 200 percent, while the number of pages in the Code of Federal Regulations grew by one-third (Lilley and Miller, 1977:50). This rapid growth in legal regulations occurred both by the emergence of new agencies and the coalescence or expansion of existing ones which were given a much broader jurisdiction. The 60's, but especially the 70's, saw the expansion of legal regulation to cover many new areas of organizational life. The following changes in legal regulation were especially consequential in accounting for changing patterns of victimization and offending in American Society during the 60's and 70's.

Firstly, there was a rapid growth in regulation that protects the rights of persons in their roles in organizations or when they are subject to control by organizations. Civil rights legislation and its enforcement by litigation in the courts considered law affected not only discrimination in employment and education based on race, sex, age, and religion but it insured the rights of those who are wards of state authority such as the handicapped and prisoners. The Federal courts not only intervened to compel organizational administrators to comply with the law but took over the management of schools, hospitals, and prisons when management failed to do so. There was an expansion of protection for consumers against organizational harm, especially with the emergence of the Consumer Products Safety Commission and the expansion of the powers of the Federal Trade Commission. The merger of health and safety functions into the Occupational Safety and Health Administration vastly expanded the control over employee safety and health. Litigation also grew during this period. Of special significance were suits seeking

compensation for injured parties both as victims of public (as, for example, in the bringing of suits in Federal courts over the illegal use of police power where government employers as well as employees were defendants) and of private malpractice (as in increased suits against hospitals and physician malpractice).

The decades likewise witnessed increased efforts to protect the public in its collective as well as its distributive order. Among the more important developments was the emergence of increased control over environmental pollution, especially of air pollution and the disposal of toxic wastes under the Environmental Protection Administration. The development of the Nuclear Regulatory Authority out of the old Atomic Energy Commission saw a shift from control over production of atomic energy to protection of the public from harms arising from the use of nuclear power. The Federal Election Commission was designed to ensure the integrity of the electoral process.

There similarly were some marked changes in the control of markets and of market behavior. The emergence of the Commodity Futures Trading Corporation and the expanded powers of the Securities and Exchange Commission had marked consequences for profit-making organizations and the behavior of persons in futures markets. There was increased control over behavior of business transactions by statutory and administrative law, as in the concern for insider trading, conflict of interest, and bribery of foreign officials to secure contracts. The marketing of many products was changed, owing to the increased interest in consumer protection. New and elaborate controls were instituted over the testing of drugs to insure their safety before marketing.

The rapid expansion of the welfare system and of entitlements of all kinds from the 1930's to 1960's resulted in a growing concern in the 70's with

whether these benefits were being distributed appropriately as to entitlement and cost. The emergence of legislation and regulation to control what became designated as fraud, waste and abuse in government benefit programs vastly extended the reach of the law to both individual and organizational behavior.

These extensions of the domain of law and of its enforcement occurred largely through civil litigation and administrative regulation rather than by legislation and enforcement of the criminal law. The Code of Federal Regulations came to dominate detection and enforcement of law violation. Compliance rather than deterrence-based strategies of enforcement grew rapidly. There was a sharp increase both in detection by inspection and of sanctioning by administrative penalty.

The number and kind of violators, especially of organizational violators grew rapidly as a result of these changes.[4] The new law of the 60's and 70's falls more heavily on organizational violators. It also, as an unintended consequence, increases the size of the population of organizations. One of the anomalies of some legislation is that the law forces the creation of organizations which are then held responsible for law violation. The Federal elections law, for example, leads to the creation of large numbers of campaign funding organizations--many of a transient character--that must comply with its campaign contributions provisions; those failing to do so are organizational violators. Indeed, a careful examination of much administrative as well as statutory law of the past decades discloses that some of the burden of violations involving organizational behavior formerly borne by individuals has shifted to organizations. Even more so, individuals

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4. The effect of changes in statutory and administrative law as well as of their enforcement on the case load of violations and violators and their composition is documented for a sizeable number of Federal regulatory agencies by Reiss and Biderman (1980).

have discovered that organizations are ways to circumvent the intent and spirit of the law, if not always its letter. Professional practices, for example, are organized as corporate practice to take advantage of changes in tax law; where there is law violation, the corporation as well as its members responsible will be charged.

Attention is drawn also to the fact that more and more products and environments are seen as noncomplying as well as, or in lieu of, those responsible for the infraction of law. The Consumer Product Safety Commission focuses on bringing the product into compliance, first withdrawing the product and then making it safe before marketing it again, rather then on processing a violator. The Department of Transportation often sets out to have the manufacturer recall an unsafe vehicle and bring it to a safe standard rather than to charge a violation. There is an increasing emphasis on processing organizations and their products to prevent harms from occurring, especially prior to any public use or purchase in a market. The Federal Food and Drug Administration has elaborate procedures for certifying when a drug is safe for human use, when a product meets the standards of effect for which it is advertised, and when a harmful product shall be recalled from sale. The Federal Elections Commission seeks to prevent illegal campaign contributions, given its relative inability to unmake an election by punishment after the election. Preventing harms shifts enforcement more towards compliance and control of organizations, their environments, and their products or transactions and away from penalizing individuals and organizations for harms done. The shift towards organizational compliance, as we shall have occasion to see later, results in regulatory agencies often processing more technical than substantive violations.

Despite these substantial shifts in the universe of law and violative behavior during the past decades, we have not developed an organizational capability to understand and control organizational law-breaking.

SOCIAL CONTROL OF ORGANIZATIONAL LIFE AS PROBLEMATIC

It seems no exaggeration to say that the central problem of modern civilization is the control of organizational life. For the modern world haw witnessed and continues to witness a rapid growth in the number, size, and complexity of organizations. Though it is not possible now to estimate precisely the size of the organizational population for any post-industrial society, it is safe to conclude that its population of organizations is larger than its population of individual members.[5] To say that the USA population of organizations is larger than that of its resident population will seem startling to those who are used to thinking of a human population as being the largest in a society and to think of organizations as made up of numbers of individuals drawn from that population. They may, thereby, have missed something Simmel (1908) called attention to years ago--that each individual is a unique intersection of organizational affiliations. While there appear to be social class differences in the average size of an individual's organizational memberships, the classes differ more in the composition of memberships than in their average size.

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5. To construct estimates of the population of organizations, one begins by counting family and hosuehold organizations. Since individuals have membership in both kinds of organizations, they can be counted separately. One may belong, in fact, to several families and have more than one household or belong to an institutional population. There are legal as well as nonlegal consequences of membership that make families and households organizations. The size of those two populations combined (and they are usually conterminous) is more than three-fourths the size of the resident population. Considering, in addition, the populations of government, profit, and not-for-profit organizations quickly sums to a population that is well beyond the size of the population of resident persons in a society.

What has happened over time is that both the average number of organizations to which each of us belongs has grown as has the total population of organizations. Each of us gives life to many organizations. One's life history can be charted as a history of memberships in many organizations to which one belonged or which had occasion to claim one as client or member. Individuals have the capacity then to belong to a rather large number of organizations contemporaneously and over their life course. Many organizations, indeed, have age-graded memberships. There are birth and burial organizations. Even in death individuals are given organizational statuses--registration in and location within local, state, and national death registration organizations, and occupancy and perpetual care in a corporate cemetery, for example. The interests of the dead may also be preserved in trust bequests and donor organizations such as universities or foundations.[6] Organizations devoted to perpetuating memories for the dead tend to live long lives.

The size of the population of organizations depends, to be sure, on what we define as an organization and of how we bound it. It is one thing to count school systems, yet another to count schools, and still another to count both as organizations. Some organizations are formal and established at law by contract or incorporation; others are less formal--though many informal ones may be contractual. Consider for a moment, by example, the range of such organizations from small to large, from informal to formal, and from private to public in form. Potentially each of these organizations can be involved in

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6. We note, in passing, that were one to include all dead persons and organizations that the organizational population would decrease in size relative to that of individuals.

law-breaking, either as victim or violator.[7] One may be victimized as a member of a family as in child or spouse abuse and the family may be victimized as an organization by a murderous act that deprives it of one of its members. In its household form, the household may be victimized by marauding acts with collective as well as individual consequences. Each organization may also break the law. Governments and their separable organizations, and private profit and not-for-profit organizations likewise may be both victim and violator. When one adds the more informal groups of everyday life, the size of the population of organizations made up of individuals as members is substantially larger than that of the population of persons.

The modern world, nevertheless, has also seen the rapid growth of organizations whose only members are other organizations. These organizations range from such as the United Nations, whose members are societies, and the World Council of Churches made up of religious bodies[8] to local community councils made up of voluntary organizations in the community or chambers of Commerce comprised of industrial and business organizations. Others such as work organizations may be organized locally, nationally, and internationally into councils or collectives as is the case with many worker unions.

Another reason then why the population of organizations can be larger than the population of persons is that organizations can draw members from both the population of individuals and from the population of organizations.

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7. Whether or not individual members who are in some sense thought to belong to any organization--as employee, as principal, or in some other role--are held to be victim or violator, these statuses of victim and violator apply to anorganization independent of that status of individual members. Analagously, where an organization is comprised of organizational members, their dependence as victim and violator likewise is problematic in each circumstance of victimization or violation.
8. The denomination and incorporation historically of organizations called religious bodies points up how closely organizations can be linked analagously to their individual members.

Some organizations may have both individual and organizational memberships. Others will be made up of only one or the other. But since the organizational population draws upon both individual and organizational memberships, the size of the population of organizations approaches the limits of combinatorics for finite populations of persons and organizations. One of the powers of organization is its capacity to create and destroy organizations. Organizations, moreover, can create organizations both within the bounds of preexisting organizations and by chartering new ones. The life span of organizations, as well as their birth and death rates, are more highly variable than for a population of persons. Infant organizational mortality is higher but longevity is greater. The birth rate of organizations can exceed that of the fertility of women of child-bearing age for there is no organization-bearing age for organizations. Some organizations, consequently, persist through endless cohorts of persons. Clearly from the perspective of social control it will be both easier and in many cases a much smaller task to track a population of individuals than of organizations. The capacity of the individual to keep secret some if not all of his organizational affiliations and of organizations to cloak their individual and organizational members as well as their own identities complicates counting them and exacerbates the problem of their control. Additionally, as we shall come to see, individuals more and more are controlled by exchanges among third party organizations. Such organizations represent and sustain the interests of member organizations as well as those of the individuals who belong to them. Above all, many organizational interchanges have low visibility to those affected by them. As a consequence of their low visibility, they are less amenable to public or private forms of control in a wider collective interest.

A population of organizations in its simple as well as in its complex structure poses major problems for their social control. The control of organizations is problematic not only because their influence is ubiquitous in the everyday life of a population of persons but also because interorganization relations are ubiquitous in the everyday life of a population of organizations. Organizations not only exchange with members of a population of persons but with a population of organizations as well. Both types of exchanges are problematic in social control.

Organizations, moreover, may be illegally as well as legally constituted. What is even more likely, any organization may engage in illegal as well as legal exchanges with other organizations and with its own members. Of special concern in modern societies is the control of illegal organization and of illegal exchange with and among organizations. Our examination of organizational law-breaking and of the behavior of organizations as victims and violators is intended to draw attention to the control of organizational life as a pivotal concern for modern societies.

The social control of organizational life requires an organizational capability to understand organizational behavior and of how to control it. Two such failures in our organizational capability deserve special consideration..

One is our failure to develop an information system to collect and process intelligence on organizations as violators. We have nothing for organizations akin to the fingerprint file for individuals. Indeed, it is rare for regulatory and other law enforcement agencies to share intelligence about organizations.

The problem of developing an organizational information system is a complex task, given their capacity to transform their identity. Yet, our current record keeping systems on violations of law fails to distinguish organizational from individual violators and victims. Few Federal agencies systematically collect information on the organizational status of victims and violators and none routinely reports it. There are substantial problems in developing a uniform system of reporting organizational victimization and violation; yet, we do not lack for data bases that have the capability of compiling such information with relatively little organizational effort (Reiss and Biderman, 1980).

The second failure is our inattentiveness to the question of how and why organizations break the law and how that behavior can be controlled. Over time we have evolved different strategies and techniques of law enforcement, some of which are more adapted to controlling the behavior of individuals and others, that of organizations. But we have not regarded organizational behavior as the primary object of control and therefore systematically attempted to answer the question of what is effective in controlling which kind of organizational behavior. Though we currently are investing resources in trying to understand how to control individual careers in crime, there is nothing comparable for understanding organizational careers in crime. Though we now devote considerable intellectual effort and resources to examine deterrence systems, there are no comparable efforts to investigate compliance systems of social control. In sum, we have not attended to the social control of behavior of the new law.

AN ORGANIZATIONAL REVOLUTION

If the prototype criminal in history is an individual, whether the sovereign or his subject, the prototype of the post-industrial society is an organizational violator. If the classic victim was the individual victim and society in its distributive forms, the classic victims of the modern world are organizations and collective life. Much of the literature on white-collar crime has focused on the power of the corporate elite as white-collar criminals and the large corporation as violator--of their capacity to escape the force and enforcement of law. We cannot address those issues directly here but it may well be that the last decades have witnessed a major attempt to shift control to the behavior of organizations and of their members in organizational roles rather than as actors motivated to violate laws.

Unlike the control often exercised over individuals who violate the law, the control of organizational behavior is far more segmented, applying to ways of behaving rather than to the behavior. Organizational charges of law violation often are far more specific than those against individuals and the penalties that apply to organizational misconduct are far more diverse. This specificity has two main consequences. On the one hand, by focusing on the specific act of violation, the organization is left free of labels that characterize it by status attribution, e.g., a criminal organization. This makes it easier for the organization to continue to behave in routine ways when it is being processed for illegality. The other is that in focusing on a specific violation of an organization rather than upon its violator status, the control system calls forth compliance rather than punishment objectives of social control. The prevention of harm rather than punishment for causing it becomes the primary objective in the social control of organizational life.

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CHAPTER 2

SELECTING STRATEGIES OF SOCIAL CONTROL OVER ORGANIZATIONAL LIFE

INTRODUCTION

Our main purpose in this chapter is to make problematic the choice between two generic strategies of social control, compliance and deterrence, regarding social control as organized behavior intended to control the behavior or activities of others (Janowitz, 1975; Zald, 1978). To simplify, the exposition is limited to the conditions under which law and organized legal agents of social control opt for one or the other of these strategies. These options should apply, within specifiable limits, to all organizations.

SOCIAL CONTROL BY LAW

There are institutionalized distinctions in the common law that impede our understanding of how law becomes a means of social control in society. Legal distinctions often cloud social reality. How law operates and becomes controlling (or fails to do so) is perhaps only marginally affected by the law itself. Not only is the law what the law does but the law does what the law is.

One of the institutionalized distinctions in the law that obscures how law operates in social control is that between administrative and criminal law. Another is the distinction between criminal and noncriminal sanctions. And a third is that between public and private matters as in public and private law matters. These distinctions cloud especially our consideration of two major forms of social control by law: compliance and deterrence systems.

Administrative law is regarded as that branch of public law which deals with sovereign power in motion or acting, prescribing in detail the manner of sovereign activity (BLD, 1968:67). Criminal law is that branch of public law where the State is the subject of the right or the object of the duty in the matter of crimes and their punishment (BLD, 1968:1394). In both cases the state operates in its sovereign capacity. Public law applies to the populace generally and its sovereign organization--the State--whereas private law is said to affect only an individual or a small number of persons (BLD, 1968:1394).

Although sanctions are regarded in the common law as penalties or punishments provided as means to enforce obedience to law (or, correlatively, as State interventions when a law is disobeyed or disregarded) (BLD, 1968:1507), the notion of a penalty or punishment is generally limited to the criminal law. Private law matters against a wrongdoer are generally considered remedial rather than penal as are administrative law matters even when the law specifies sanctions as penalties. At law compliance actions in this sense are remedial and criminal actions punitive in nature, even when the penalty or sanction is the same, e.g., a fine. Nonetheless, in the law of damages involving compensation or indemnity, one distinguishes actual damages--amounts awarded in compensation for actual or real loss--from exemplary damages--those awarded over and above what will compensate the complainant for actual losses such as to punish the defendant for his evil conduct or to make example of him. These latter are often referred to as punitive damages (BLD, 1968:467-68). The law of damages thus encompasses punishments.

Given the complex organization of our modern systems of mobilizing the law and its administration, it perhaps is mistaken to cling to notions that compliance systems are somehow associated with administrative law and deterrence systems with the criminal law. When the criminal court grants probation, for example, its object appears to be to secure compliance with law rather than to deter actual or potential violators; punitive sanctions, therefore, are held in abeyance.[1] When either an administrative law judge or a trial judge in a private law matter awards treble damages, the intent may be to punish and, if to make example, to deter, rather than to achieve a simple remedy of conditions or a redress of harm.

Our examination of compliance and deterrence strategies of social control in no sense is intended as exhaustive. Both scant other objectives of social control, e.g., conciliatory (Black, 1976) or restitutive forms of social control where the object is to remedy or redress wrongs.

COMPLIANCE AND DETERRENCE AS GENERIC STRATEGIES OF SOCIAL CONTROL

Compliance and deterrence strategies of law enforcement have different objectives. The principal objective of a compliance law enforcement strategy is to secure conformity with law without the necessity to detect, process, and penalize violators by resorting to means that induce conformity or by taking actions to prevent law violations. The principal objective of deterrent law enforcement systems is to secure conformity with law by detecting violations of law, determining who is responsible for their violation, and penalizing

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1. The frequent use of probation in a deterrence-based system may run the risk, as some argue, of militating against deterrence goals if it is regarded as a form of punishment and perceived as lenient. Mistaking probation as a form of punishment rather than as a compliance measure where the punishment is held in abeyance raises questions about the effectiveness of strategies of combining deterrence and compliance strategies in a single social control organization.

violators to deter violations in the future, either the violations of those who are punished or of those who might do so were violators not penalized. There are two principal types of compliance strategies of law enforcement, one based on incentives to comply, and the other on threats of penalties for noncompliance unless actions to comply are taken. Compliance is voluntary in incentive-based systems, whereas it is to some degree coerced in threat-based systems.

What is Compliance?

Writers have appropriately pointed out that there is no good discussion of what is compliance. Indeed, its definition must be problematic precisely because notions of the probability of harm, of acceptability of risk, and conforming to a standard or norm make it so. The matter of definition is further complicated by whether compliance is voluntary or coerced or whether it is motivated by incentives or by threats of penalty. Finally, the definition of compliance can depend upon a social control perspective, whether the perspective of the compliance agency or of those made to conform to its standards. Pfeffer and Salancik regard compliance from the perspective of the compliant organization as "... a loss of discretion, a constraint, and an admission of limited autonomy" (1978:94-95). This is a somewhat different perspective from that of controllers who, although they may regard their actions as constraints, would regard them as necessary to secure conformity to legitimate standards.

Compliance rests in conforming behavior to the disposition of a standard for conduct. The standard is set by a normative or political determination. Not all standards involve a risk of injury or harm but much social control is over behavior that results in injury or harm. William Lowrance has pointed

out that the notion of safety is a judgment while that of harm is not: "A thing is safe if its attendant risks are judged to be acceptable: ... two very different things are required for determining how safe things are: measuring risk an objective but probabilistic pursuit; and judging the acceptability of that risk (judging safety), a matter of personal and social judgment" (Lowrance, 1976:8,75). The probability of harm or of any given consequence can be known scientifically and is normally some continuous distribution of risk. What is acceptable risk, however, is a matter of both individual and collective choice. Regulatory agencies set standards in terms of choices about collective risk--judgments about how much harm is tolerable. Hence, one must think of compliance in terms of a threshold where there is a state of compliance below the threshold (some level of harm that is acceptable) and noncompliance above it (an unacceptable risk). A legal standard may recognize only a threshold of risk. When one crosses that threshold, there need be no additional judgment about its acceptability. Complex indexes of acceptability can be constructed, nonetheless, based on two or more indicators of risk or by combining risks.

Standards or Tests of Compliance.

Often thresholds of acceptable risk cannot be attained immediately in an instrumental way, either because the threshold is unobtainable except over time or because the threshold itself is negotiable. Given a distribution of risk, conformity is a matter of selecting a threshold that defines an acceptable risk.

Compliance depends upon the measure of risk of harm as well as upon its standard. Risk measures often may not be obtainable or instrumentally possible in any precise sense. The amount of chemical pollutants discharged

into a stream may display considerable variability from day to day and may harm fish more than plant life, for example. Judgment, thus, of the harm caused by discharging into the stream may enter into the measure of risk of harm as well as into its acceptability.

Tests to determine compliance also vary in their precision. Compare the difference in test results for drunkenness or of sobriety based on smelling of breath exhaled, observing a person walking a straight line, and the results of breathalizer, blood alcohol, and urine tests. Tests for speeding similarly may construct reality differently when the tests are officer judgment of speed, use of a police vehicle speedometer, and radar. Reality in compliance-based strategies is constructed and reconstructed on the basis of evidence and by selecting tests as to what constitutes evidence as well as by judgments about acceptable risk. Tests of compliance (sobriety) and/or of violation (intoxication) over time come to rely upon the same test constructs.

The less precise the test for compliance, the more discretion an agent has to determine compliance. Moreover, the more an agent can be flexible both in determining the level or threshold of compliance and of the time to attain it, the more the agent is open to negotiation of reality. Compliance rests in the social construction and reconstruction of reality by control agents and by those they seek to control.

A major issue in compliance is when to intervene to alter the risk of harm. The more immediate and visible the harm, the more one must invoke immediate interventions if it is assumed harm can continue. Where victims are less visible and less determinate and where the consequences of harm are less immediate and visible, as in pollution control, one may permit noncompliance states of longer duration. It is sometimes useful to classify some events

requiring immediate intervention as accidents since they then do not raise immediate issues of compliance and control. Intentional action does. Observe that quite commonly when the emergency requirements of an accident are met, investigators will undertake a compliance investigation. This is true whether it is an auto or a nuclear accident since some compliance issue, such as responsibility for safety, looms above each such accident event.

What is Deterrence?

Deterrence can be regarded as the effect of a sanction or its threat of imposition in inhibiting the behavior of the sanctioned person or of others who would commit like behavior (Blumstein, et al., 1978:16). Andenaes (1974:84) distinguishes between the effect of the threat of punishment, general deterrence, and the effect of the imposition of punishment, special deterrence. The threat of punishment, it would seem, can arise either from its imposition or its existence in a body of law and its enforcement. Persons are considered deterred from entering a population of violators if they perceive punishment as a threat or experience it vicariously.

Basic to deterrence is the causal assumption that either the cost of a punishment and its threat, or its cost relative to any gains, have the power to inhibit behavior. One rationally chooses to minimize losses. The presumption in deterrence, then, is that individual behavior is rational to the degree that it responds to incentives and disincentives, but particularly to the disincentives of negative sanctions.

Both compliance and deterrence seek conformity to law. They differ primarily in the conditions and means of achieving that effect. Deterrence systems hold that deterrent effects stem from one or more of the following:

1) state threats to invoke punishment for failure to obey the law;

2) the experience of punishment for past violation causes one to desist from future violations;
3) a perception that one will be punished for law violation; or
4) vicarious experience of another's punishment causes obedience to law.

In the Durkheim sense, some violation of law must always occur and they are essential to a deterrence system. Without the example of punishment, the collective sentiments and conscience weaken and lose their control (Durkheim, 1902).

A special problem arises with respect to how punishment affects organizational behavior. Although both compliance and deterrence strategies of social control over organizations are ordinarily directed towards persons who control behavior within or by organizations, compliance strategies are less dependent upon affecting the behavior of individual members of the organization to bring it into compliance. Not so for deterrence strategies, however. Deterrence is generally and erroneously regarded as having its effects solely through individual actors. Either the experience of punishment by organizational members or their perceptions of the threat of punishment deter organizational law-breaking. The effect of deterrence thus is seen to arise through disincentives--costs-- to individuals responsible for organizational behavior. If organizational behavior is to be affected by deterrent strategies, it must affect the behavior of members responsible for the violation of law or of those who will lose by their failure to comply.

Not all organizational violation of law, nevertheless, fit neatly into this conception of organizational deterrence by individual deterrence. Organizational violations may often lack the intentionality attributed to

individual actors. Moreover, where the objective is organizational conformity, the problem may be less one of behavior that is to be avoided and more one of behavior that is to be undertaken. Such behavior often requires incentives to change behavior rather than disincentives to prevent behavior.

Over and above the special character of organizational behavior and its amenability to individual deterrence are problems of how individuals fit into organizational sanctioning, of how organizational behavior can be changed or made to conform, and of how sanctions can affect organizational behavior. From the first perspective, individuals may be considered expendable to organizations. Punishment of individuals in organizations does not necessarily alter organizational conduct given their expendability. From the perspective of how organizations are changed, conventional deterrence theory fails to take into account the resource dependence of organizations on their environments (Pfeffer and Salancik, 1978:278). Above all, deterrence theory fails to take into account how sanctions may affect organizational conduct. There are many sanctions possible against organizations that cannot be administered to individuals.

Yet, on balance it appears that compliance strategies are directed more towards controlling the conduct of organizations, whereas deterrence strategies are directed more towards controlling the conduct of individuals. Deterrence systems may be strategically more possible for common crimes where individuals are apprehended for violations and can be punished, whereas compliance systems are strategically more adapted to coping with organizational violations of law where organizational behavior can be moved towards compliance with law.

PENALTIES IN COMPLIANCE AND DETERRENCE SYSTEMS

We have observed that penalties occur in both compliance and deterrence systems. Within compliance systems they serve as threats to induce conformity, whereas in deterrence systems they are invoked to deter future conduct by the offender or by others who might otherwise be induced to violate.

Penalties, when invoked, nevertheless may differ in their primary objectives. Some penalties are directed towards the consequences of action, i.e., the harms they cause, whereas others are directed towards the intentions of the actor. Brickman speaks of the former as equity-based penalties and the latter as deterrent-based penalties (1977:142-43). The purpose of imposing equity-based penalties is to maintain ongoing organizational activities, whereas the purpose of deterrent-based penalties is to deter particular actions by punishing actors. Equity-based penalties are generally restitutive in nature. Their objective is to redress harms against victims by making the penalty roughly proportionate to the gain any infraction may have brought about (Brickman, 1977:144).

Equity-based penalties are perhaps more characteristic of compliance than deterrence systems. The recall of defective products to correct defects may be a voluntary act by the manufacturer representing a form of restitution to the buyer or a required response to a compliance order issued by the Consumer Product Safety Commission or by the National Highway Traffic Safety Administration (NHTSA) of the US Department of Transportation. The object of the equity-based penalty by, say, the NHTSA is principally to restore the contract to a fair or equitable agreement between buyer and seller rather than to invoke any form of punitive deterrent damages. Yet, there are clearly

elements of deterrence as well, since all such orders increase costs to the seller. There also may be compliance effects by preventing future notations since the penalty may increase attention to safety in future behavior.

Restitution, under some conditions, also may be regarded strictly as a penalty to deter future actions. Deterrence forms of restitution often are not made as compensation to the injured parties but to some third party, such as the State. Restitution may take the form of reparations not simply to compensate for harms but to act as a deterrent for the potential conduct of others. Whether for deterrence or compliance, however, equity or restitutive forms of penalties are based on some considerations of fairness towards the victim as well as towards keeping relationships going. Gross (1979:110) notes that equity-based penalties generally do not involve the labeling of the violator and are immediate in their effect, whereas deterrent-based penalties are imposed upon those who threaten the foundations of the activity (Gross, 1979:110).

Violations of rules, then, are not all the same in terms of either their derivation or their consequences. Cohen (1959:476) distinguishes between rules that constitute a particular order or activity, and rules of right conduct, morality or fair play within a given constitutive order. Violation of constitutive order rules are disorganizing, whereas those of fair play are not. Not all deviance, therefore, is disorganizing and need be controlled in the same way. Violations of the rules of right conduct seem more likely to be sanctioned by equity-based penalties, whereas those of the constitutive order seem more likely to be sanctioned by deterrence-based penalties.

SELECTING AND COMPARING COMPLIANCE ENFORCEMENT STRATEGIES AND TACTICS

There is considerable variation in detection, mobilization, and sanctioning strategies and tactics among law-enforceforcement or regulatory agencies. Not all compliance-based strategies are of a piece. Shover, et al. (1982:66), distinguish between enforced compliance and negotiated compliance strategies. The major elements in an enforced compliance strategy they view as:

> "...reliance on formal, precise and specific rules; the literal interpretation of rules; reliance on the advice of legal technicians (attorneys); the quest for uniformity; centralized and hierarchical structure; and the distrust of and an adversarial orientation toward the regulated" (1982:66).

By contrast, the ideal-typical negotiated compliance strategy:

> "...reflects a dominant orientation toward obtaining compliance with the spirit of the law through the use of bargaining and discretion. Its components include: the use of general, flexible guidelines; the discretionary interpretation of rules; negotiation between scientific technicians ('Experts'); allowance for situational factors in rule application; a loosely structured organization; and an accommodative stance toward the regulated" (1982:66).

Hawkins (1983a:36) likewise sees compliance enforcement as essentially a bargaining or neotiating strategy between agents and violators. Both the standards and compliance with them may be negotiated. Hawkins, however, sees the relative importance of threats as a tool of the agent in negotiating compliance; agents can bluff when backed by threats of punishment (1983a:38). These compliance strategies are viewed primarily from the perspective of the enforcement agents--the inspectors--and of how they operate in inducing compliance as well as managerial strategies for defining and enforcing compliance. They distinguish contrasting law enforcement styles of agency and agent. Such styles, it would seem, can be used in both compliance- and

deterrence-based systems. Shover's descriptions might very well fit deterrence-based enforcement as well. Negotiation over what constitutes the violation of law and the penalty to be applied is characteristic of the plea negotiation between prosecutor and defense counsel, whereas sentencing guidelines are more characteristic of an enforced compliance system where judicial discretion is sharply constrained by law.

It seems mistaken to conclude, however, that conformity to law commonly is negotiated in all compliance-based systems. This is so not only because negotiation also is characteristic of deterrence-based systems but also because formal strategies usually are invoked and work as well within compliance-based systems. Thus, seizure of goods, assignment and collection of duty, injunctions, cease and desist orders, and a host of similar actions are formal strategies that work in compliance systems. Customs, for example, does not usually negotiate to secure compliance. Goods not exempt from duty are held until duty is paid in compliance unless there are prior arrangements for customs to bill duty. Contraband is seized and often destroyed.

The number of cases an agency or that agents must contend with in their daily work probably affects whether a formal negotiation or informal strategy like negotiation is used and which strategy is selected. Hawkins (1983b) found that negotiation was a common strategy in pollution control in England, while Yeager (1981) found it less common in pollution control in the USA. Just why is somewhat unclear, though it may be a partial function of differences in administration by rules in the two countries.[2] Shapiro (1980)

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2. Administrative agencies in the USA are constrained by administrative rule and procedural legislation and case law quite independent of their specific legislative mandate. In England, each enactment is at law far more dependent simply upon the legislation which generally gives a broad administrative mandate. In the USA the agency must proceed to make rules according to certain procedures (though there is considerable variation in their specificity). That procedure must allow for public comment prior to their adoption by an agency so that they may have the effect of law. There appear to be no such requirements for most English agencies and thus there are greater possibilities for negotiating compliance in each individual case. The two paths to rule making may not be all that different in their outcomes, since considerations of distributive justice generally constrains agency compliance towards a rule that covers all similarly situated cases. Case law builds rules just as surely as statutory law and agencies are constrained to apply equitably the rules that they make and as they apply them in a particular case.

similarly found negotiation a relatively uncommon strategy in regulation of the exchange of securities--partly perhaps owing to its reactive nature. One can well imagine, furthermore, that many matters of safety and health or of food and drugs are necessarily considered either nonnegotiable or negotiable only within very narrow limits. These matters thus are formally controlled by rules. We have an elaborate compliance strategy, for example, to certify drugs for safe treatment and of chemicals as to their environmental safety. The more control is constrained by technical or scientific considerations, the less standards will be negotiable. When negotiation occurs, however, it is more likely to be with respect to nontechnical matters, e.g., the timing of compliance. Hawkins reports that in water pollution control in England, there was general acceptance of consistency of treatment (1983b:54) that made the state of water pollution per se nonnegotiable. What was negotiable, for the most part, was how and when compliance--was to be achieved--how soon one must begin to clean up, in what ways, and how far must one go towards meeting a standard.

Negotiation strategies are also more likely to be opted for over formal ones when there are relatively few individual or organizational units to be controlled, their identity is known to controllers, and a continuing relationship between controlled and controllers is organizationally feasible. Correlatively, formal compliance strategies will be preferred when the numbers

to be potentially controlled are large, their unique identity is not ordinarily known in advance of a control contact, the contact with the controller cannot be prearranged, and the relationship is sporadic and of short duration.

An examination of the formal control of motor vehicle safety and their poisoning of the environment readily discloses why and when formal may dominate negotiation strategies of control. Responsibility for motor vehicle emission control was given initially to manufacturers whose number is quite small. There was considerable negotiation with them at the beginning as to how to achieve control over pollution, its timing, and its cost. Yet, each motor vehicle can become a source of pollution when operated. Their numbers are far too large to admit of anything other than a formally structured control system for their owners, and not their producers or sellers. Owner responsibility for emission control led to the establishment of line processing inspection for each motor vehicle. That system allows relatively little leeway for negotiation with individual motor vehicle owners. Now it appears to be quite reasonable to negotiate water pollution control by industrial and other highly visible polluters when their number is limited (Hawkins, 1983b). Yet, it seems quite unlikely that one could negotiate with the thousands of inhabitants and organizations who contribute--albeit often minimally--to water pollution, e.g., animal owners. Indeed, in forging a system of compliance there is a strong tendency to either exclude the large number of small polluters altogether from the authority of regulators or for the regulators, at their discretion, to ignore them.

Legislation and regulatory agencies often specifically exclude small organizations from the scope of their authority on the grounds that compliance

is especially burdensome to such organizations, they contribute an insignificant amount of harm or consequence to the aggregate, and enforcement is cost-inefficient for these units and difficult of achievement because of their relatively large numbers and difficult of detecting their noncompliance because they are not formally organized around record keeping and accounting. Title VII of the 1964 Civil Rights Act, for example, explicitly excludes employers with 24 or fewer employees from EEOC authority. Yet, there are times when the small are not excluded from compliance control. Kagan (1978:51) notes that the Cost of Living Council created by President Nixon's Executive Order specifically ruled that even the smallest businesses were covered by the wage and price freeze because of its symbolic value in creating an impression of universal coverage. Nonetheless, the CLC made exclusions from comprehensive coverage for one or more of the conventional reasons for their exclusion from regulation. Raw agricultural products were excluded from compliance because it was believed the farm market was basically uncontrollable (Kagan, 1978:45) and several other minor exclusions were permitted to promote other overriding goals (Kagan, 1978:51-52).

The feasibility of implementing compliance instrumentally and technically will also affect the choice of compliance tactics. The less instrumentally and technically feasible immediate compliance, the more likely it is to be negotiated, either through formal or informal processes. It is not uncommon for highly routinized compliance systems to make formal provision for delays in conforming to the law. Motor vehicle safety inspectors, for instance, grant a period of time to achieve compliance by setting a fixed date for reinspection. The IRS grants extensions for filing tax returns and declarations and building inspectors often grant temporary certificates of occupancy. Informal negotiated strategies, based on incentives, bluffs, or

threats, as in water pollution control in England (Hawkins, 1983a), also are followed when immediate compliance is infeasible. The delay in compliance may be discretionary with the enforcement agents or formally provided by rules and procedures. What seems to distinguish formal from informal provisions to grant delay in compliance is the extent to which inspection systems can be routinized and their labor requirements. When substantial routinization is feasible and cost-efficient and the ratio of inspectors to inspections is low, the decisions will be formalized, routinized, non-negotiable, and often with little opportunity for appeal. One does not negotiate over or appeal an auto inspection failure; one brings the vehicle into compliance and it passes on reinspection. Correlatively, the less routinized the inspection and the more labor intensive, the more that discretion lies with agents and to negotiation and appeal.

A central and continuing problem in both compliance- and deterrence-based systems is whether one is able to or ought to incapacitate violators or to take actions that directly stem the harm they are causing. The more central any violator is to the maintenance of a system, as judged by enforcers, the less likely they are to pursue enforcement strategies that risk incapacitating violators, and the more likely one is to opt for compliance.[3]

What we know about compliance enforcement strategies stems largely from investigations that focus almost exclusively on the actions of enforcement agents at work detecting violations and inducing compliance. That agent focus on law enforcement and upon their behavior at work can lead to conclusions

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3. Organizations can be incapacitated as well as their members. They can be prohibited from taking actions as organizations for periods of time, divested of a part of their capacity, and even put out of oepration altogether by sanctioning agents. The history of marginal mine control is a history of their incapacitation.

that obscure the distinctions between compliance and deterrence strategies. One needs to distinguish how four states of activity relate to compliance and deterrence:

1) Law-abidingness, or a state of compliance with the law
2) Preventive actions, i.e., actions taken to insure either a continuing state of compliance or to ward off or thwart the possibility of noncompliance;
3) A state of violation or an act of violation that makes reactive response problematic
4) Remedial or corrective actions, i.e., actions taken to correct some state or condition of noncompliance.

Although compliance systems rest in creating law-abidingness, they may under with all four types of actions. Deterrence law enforcement agents, by contrast, observe or inspect for conformity primarily when their objective is to detect noncompliance. Having detected law violations and apprehended a violator, they seek correction (or in the case of deterrence, a punishment to prevent future violations or an incapacitation, simply as a just desert).

Put another way, compliance enforcement agents concentrate their activity on searching for and dealing with problems. Many times for many regulated activities, those inspected are in compliance. Hence, whilst all eligible organizations are in the population of regulated organizations and although they are in some sense being regulated by agent inspection, no enforcement action by the compliance enforcement agent is ordinarily necessary. The agency not uncommonly issues a certificate of continuing compliance to those that pass inspection, such as a bill of health, a certificate of safety (as in passing an elevator inspection for safety), a passport, or a renewed license.

Compliance by passing a test of conformity to law is a concern of the regulatory authority although it is in some important sense nonproblematic for its enforcement agents who often prefer problem to nonproblem cases. What is problematic at work for most agents is noncompliance. The problem of agents when they discover noncompliance is whether, when, and how to report the violation and whether and in what ways to induce the violator to come into conformity with the law, if and when it is considered vital to maintain the organization in a population of actors.

Because some organizations are in a steady state of compliance while others are in either a remedial state of compliance or noncompliant, when one observes enforcement agents at work, one can mistake the work of agents as the work of enforcement to secure compliance. It is not that alone. Voluntary compliance or incentive-based compliance, indeed, may require no law enforcement machinery dedicated to enforcing compliance. The ethnographic study of enforcement actions thus can bias our understanding of compliance by focusing on the fact that agents spend a disproportionate amount of time on noncompliant relative to compliant organizations. One similarly may bias views of compliance systems by focusing on enforcement of the law where full compliance is uncommon. This is quite likely to be case where, as in air pollution or even, for that matter, water pollution, we are largely enforcing new regulations or standards. Enforcement of new law generally takes a long shakedown period. What we may be observing in bargaining or negotiating to secure compliance (Hawkins, 1983a) is either an understanding of how new standards or regulations are implemented or an understanding of how new entrants come to be regulated. The larger the number of standards introduced at any point in time and the greater the turnover of organizations in a regulated population, the more enforcement agents will resort to bargaining strategies or at least to threats to secure compliance.

Few remedial or corrective actions may be considered necessary in some compliance systems. Licensing systems, for example, are based on the presumption that compliance with practice requirements essential to obtaining the license are the primary control over malpractice. For the licensed who violate practice rules, they depend primarily upon deterrence-based punishment for the relatively rare events of violation. Licensed-based systems are a mix of compliance and deterrence models of law enforcement.

A main objective of compliance systems is to keep risks of harm at acceptable levels. A compliant organization is minimally at that acceptable level. Unlike deterrence-based agencies that gauge their success in terms of numbers of violations detected and of violators punished, a compliance-based agency calculates success in terms of numbers of organizations in compliance. Its goal is to certify compliance. A secondary objective is to reduce the likelihood that harm will result, an objective that is reached by attending to causal or conditional states that increase the probability of harm. The core violation of a compliance-based system of social control then is the technical rather than immediately harmful by its nature and consequences.

Inspectors in compliance systems consequently are there to detect and certify compliance. They are there to assure that a car meets safety standards, that the food processed is of a given brand and quality, that the pesticide is safe for humans to use, or that the elevator is safe if operated at a particular passenger capacity--to cite but several examples of what inspectors do at work as agents of compliance. They likewise inspect to call attention to technical violations, ones that increase the probability of harm if uncorrected or ones that preclude the determination of whether the organization is in compliance. These include attention to such matters as

whether emergency exit signs are working properly, a sewer drains properly, or there is sanitary working refrigeration. Failure to meet these conditions are treated as technical violations that presage possible harms respectively of loss of life in a fire, a damaging explosion, or a rash of illnesses. Even where the inspector detects harmful violations, marketing foods with PCB levels above the standard for safe consumption, the object is either to alter the conditions that produce them and their remedy or to withdraw them from the market to prevent harm. Yet, while compliance systems achieve compliance by remedy, remedy is not the core of a compliance system; its core is the certification of compliance and the maintenance of conditions following their remedy. A compliance system fails of its goal when it must repeatedly seek remedy.

Despite the centrality of maintaining compliance, the agents of operating compliance agencies seem to prefer enforcing actions to certifying compliance if for no other reason than that the "working action" lies there. Enforcing actions, thus, can be mistakenly taken as the work of compliance when they are not. It would be as if the police actions of arrest and the courts of sanctioning were taken as the work of law-abidingness. Paradoxically, of course, in the policing of common crime, the public police likewise prefer nonconformity to conformity. Their competitors in private policing, however, are compliance- and discipline-centered, a factor that may figure in their substantial growth and what their work accomplishes for private organizations which employ them. Private organizations ordinarily seek compliance in enforcement, not deterrence (Shearing and Stenning, 1981, 1982).

COMPARISON OF COMPLIANCE- AND DETERRENCE-BASED STRATEGIES OF SOCIAL CONTROL

There are a number of ways that we can compare and contrast compliance- and deterrence-based strategies of social control. Although both compliance and deterrence law enforcement strategies are oriented towards preventing the occurrence of violations, compliance strategies are premonitory, attending to conditions that induce conformity or to those that thwart harm. By contrast, deterrent law enforcement strategies are postmonitory, attending to apprehension of violators and to aiding in securing their punishment. Each strategy aims then to prevent violations, differing in their means of prevention.

Compliance and deterrence law enforcement systems differ also in the ways they are organized for the mobilization of law. Although most rule and law-based systems of social control utilize both proactive and reactive mobilization strategies of enforcement (Reiss and Bordua, 1967:29, 40-41), their use in compliance differs from that in deterrence-based systems. Compliance-based systems use proactive mobilization strategies to determine the levels of compliance in a population and to increase conformity with law by its members when violations are uncovered. Proactive strategies are used in deterrence-based systems to reduce law violations by reducing the violator population. For the most part, deterrence-based systems organize reactively to ait reports of law violations so that they may detect, catch, and punish violators. Compliance systems, by contrast, react to complaints by determining whether compliance exists and, if not, of how interventions can prevent future violations.

Violations similarly are attended to in both compliance- and penalty-based law enforcement systems but the two recognize and process them

differently. Deterrence law enforcement is mobilized to detect and search for violations and their violators whereas compliance systems are mobilized to observe the conditional states of systems and their propensities for compliance or noncompliance. The core violation in a compliance system is often dubbed a technical violation, being behavior that violates a condition or standard that is designed to prevent harm or an unwanted condition or that prevents a determination about compliance, whereas the core violation in a deterrence system is immediately harmful behavior. Compliance systems, indeed, create standards for monitoring compliance and non compliance that define a host of technical violations. The Securities and Exchange Commission in the United States, for example, has a host of regulations relating to bookkeeping and reporting and failure of registered parties to follow them constitute technical violations (Shapiro, 1980:245-48).

Looked at another way, deterrence law enforcement systems seek to penalize persons or organizations for the harms they have caused whereas compliance systems seek to avoid harms and their consequences. Compliance systems, consequently, are as concerned with insuring that laws are obeyed as in obtaining conformity once they are broken. Compliance systems are violation, not violator centered. Their central concern is to control occurrences and their consequences by inducing potential violators to comply with the law. By contrast, deterrence-based systems are violator centered. Their objective is to solve law violations by attributing them to known violators who can be punished.

Typically, compliance and deterrence systems differ as well in their presumptions of sociocultural causality. Deterrence systems rest in presumptions about the causal effect of sanctions, especially the power of

generic sanctions such as fines and imprisonment to deter violators and potential violators regardless of the kind of law violation. Compliance systems, by contrast, rest in causal models that specify causal sequences of how conformity and deviations from it come about and what specific interventions can affect those sequences. They use knowledge, therefore, of what causes violations and what causal conditions must be manipulated if they are to be prevented. Stack emission controls, for example, are deemed one means of reducing air pollution. Compliance systems, hence, rely more upon experts and scientists to design compliance strategies than do deterrence systems to design deterrents. Since compliance systems are based in rewards, negative sanctions typically take the form of threats to withdraw, or the actual withdrawal of rewards. Where compliance systems invoke threats of penalties, specific penalties are chosen in terms of their specific effects. Where the reward is a privilege, such as licensing, the threat will be to revoke the license. Or the threat of closing a mine is chosen to secure mine operator compliance because it is deemed a severe economic sanction, given its potential effect on stockholder income. One finds, therefore, considerably more variation in kinds of sanctions available to compliance- compared with deterrence-based organizations of social control.

There are differences also between these two systems in how behavior is interpreted to conform to the law, whether it is in compliance with as contrasted with whether it violates a law. More accurately, there are differences in assessing a condition or state of noncompliance compared with an event of law violation. A deterrence-based law enforcement model, furthermore, ordinarily sanctions for point-in-time or discrete events.[4] This

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4. In selecting a criminal sanction, the judge may also take into account the state and status of the violator, e.g., the number of prior convictions, but the basing point will be the current conviction on a point-in-time event.

requires accurate knowledge about particular events and a tying of that evidence to one or more persons or organizations in the event who then are charged as violators. Compliance systems, by contrast, are more open to looking at measures for a time series of point-in-time events, treating these measures or discrete events as evidence of a state or condition of compliance or noncompliance. Repeated measures may be a requirement to certify noncompliance. Not uncommonly, interest lies in whether average states are attained. An organization, accordingly, can exceed a standard for a given point or period in time provided that its average state is at or above the level of noncompliance. By reason of such a standard, the release of radiation to the atmosphere by a nuclear reactor plant may exceed the threshold of acceptable risk for a short interval of time if it is compensated for by lesser pollution for other periods. Where averaging is not possible, as in many housing code or mine-safety violations, events are treated as part of a continuing condition or state that must be altered. Continuing conditions may persist until some action is taken to alter its state (Mileski, 1971). Often a period of time may be permitted to elapse to bring the matter into a state of compliance since the object is to remedy the condition to show a continuing state of compliance and not to sanction for a continuing state of noncompliance. Since compliance is more future-oriented, it can spread its observation of behavior constituting a state of compliance over time.

One may look at compliance-based systems yet another way. A compliance-based system is always future- rather than past-oriented. Hence, it does not focus, as does deterrence-based law enforcement, on what has happened but rather upon a forecast of what is likely to happen if conditions remain unaltered and of what must happen to have compliance in the future. Sanctioning is essential to special and general deterrence. It is not

essential to achieve compliance. This is so despite the importance that threats in bringing some violators into compliance. Most, if not all, compliance rests in doing things that result in compliance. Ordinarily compliance systems attempt to make those responsible for the state of noncompliance bring the matter into compliance but even that need not be the case. Being violation-centered does not mean changing the violator to change the condition. Threats are used against those defined as violators in compliance systems because the tactic is to move the violator to alter states or conditions. But, if they fail to do so, compliance can still be achieved. A landlord's failure to bring a building into a state of compliance with the housing code can be achieved in some jurisdictions by court-ordered repairs, the cost of which is treated either as a public lien against the property or added to the tax bill with an interest penalty for failure to pay. The Federal or State Government, similarly, may clean up toxic wastes, spend millions to do so either by assessing corporations or taxpayers for cleaning up the wastes. Paradoxically, of course, in neither deterrence- nor compliance-based systems does changing the violator state alter the consequences of any past violation. Changing violators can only affect the future actions of past violators. Compliance violators can act to alter the consequences of violations and their causes; deterrence-based violators can at most make restitution.

The ideal-typical compliance system then is based upon the effect of incentives in inducing conformity, whereas the ideal-typical deterrence system rests in the effect of penalties in preventing violations. Although penalties may be used in either system, they are integral only to deterrence systems. Penalties, when invoked in compliance systems, are used, therefore, principally as threats to motivate compliance rather than as punishments to be

carried out. Ordinarily if a sanction is determined in a compliance system, its imposition is suspended and withdrawn on demonstration of a state of compliance. Whereas penalty systems primarily manipulate punishments, compliance systems principally manipulate actual or potential rewards. The rewards used vary among control organizations but they include such diverse incentives as money grants and subsidies, privileges such as licensing, tax abatement, assumed or limited liability, and the opportunity to pass on the costs of compliance in the pricing of its goods or services.

Deterrence-based enforcement systems are not directly involved in manipulating incentives. To the degree that they are, it is to induce compliance with the law. Ideally, probation, for example, stipulates conditions that the probationer must meet. Lack of compliance should result in its revocation because the compliance assumptions have been violated and the penalties provided at law should then be instituted.[5]

Compliance systems, however, are much more involved than deterrence systems in both manipulating and creating incentives to comply with the law. Although, as previously noted, states of compliance can be achieved without the cooperation of those held responsible for the violation, generally compliance-based systems attempt to motivate those responsible to do so. What agents in coerced compliance systems commonly do to achieve compliance is to

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5. The principal object of probation is to give the person a period of time in which to demonstrate compliance and then to release if one is complying. The incentive on probation is largely one of avoiding the sanction that awaits either failure to conform to the conditions of probation or that will result from any violation while on probation. Probation also can offer other incentives, such as a wiping out of one's record of violations if one complies in the future. Probation systems may even permit some minor violations if the record is judged, on the whole, to be good. Probation is thus state-of-compliance oriented rather than punishment centered. Note also that probation may be a case where one uses the past state of noncompliance as the basis for engendering future compliance.

manipulate or create incentives, reserving the threat of penalties for the failure to take advantage of the incentives.[6] The less opportunity a compliance system has to manipulate or create incentives towards compliance, the more it must invoke threats of penalties and actually use them. Correlatively, the more disincentives towards compliance, the less likely those charged with violations are to meet compliance conditions. Corrupt agents create disincentives to compliance by making it less costly for violators to pay off agents rather than to comply. Correlatively, it may be more economical for violators to pay off agents than to bear the cost of compliance. The threat of penalties always creates in compliance systems an opportunity for corruption.

Regardless of the source of disincentives to compliance--whether they arise in the detection or sanctioning tactics or from a failure to create and manipulate appropriate incentives--the greater the disincentives, the more likely that a compliance system will fail. Ultimately, the corruption of agents or officials is the strongest disincentive for both compliance- and deterrence-based systems, since what is at stake is the compliance of officials as well as official compliance. There appear to be differences also in the process by which actual punishment is determined in the two systems. Hawkins (1983a) observes that penalties in a compliance system are the outcome of a long negotiation process where the relationship between enforcer and potential violator must be a continuing one. A penalty is resorted to when and only when it signals the termination of negotiation--a sign of exasperation with the violator. This appears to be the case in negotiated

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6. In the limiting case, the incentive is a choice between the cost of compliance and the cost of the penalty. Clearly there must, on the average, be an incentive to choose the cost of compliance over the cost of the penalty if the system is to achieve compliance. Where such possibilities cannot be manipulated, there will be a strong disincentive toward noncompliance.

forms of compliance. But penalties quite commonly are assessed as a form of leverage to coerce compliance. Compliance in this sense may be said to be coerced even though the violator has a choice between bearing the costs of compliance or the costs of the penalty.

The efficacy of compliance enforcement depends in part upon the tradeoffs between costs of compliance and of penalties. Whether or not penalties are actually invoked to secure leverage for compliance, or rather to punish for failure to negotiate a reasonable agreement in good faith, the levying of a penalty in compliance systems is a mark of its failure to secure conformity with law, whereas the levying of a penalty in deterrence-based systems is a mark of its success. Penalties serve notice in deterrence systems that all violators will suffer a similar fate. In compliance-based systems they serve notice that the law enforcement system has been unable to secure conformity to law or to particular conditions or states of compliance.

One generally has a clearer articulation of sanctions with violation in compliance- than in deterrence-based systems. If one has a monitor for air quality, for example, one may know what the sanction will be for exceeding that level of quality. A manufacturer may know that the recall of a consumer product involves making it safe and a producer of toxic wastes, what is the cost of proper disposal as well as the cleaning up unlawful disposal of wastes. In deterrence-based law enforcement, it usually will be less clear to the violator as well as to the agents involved in sanctioning whether and what sanction will be invoked. When violators do not know what the sanctions for a given violation will be, assumption of risk is more variable. The more criminalized the sanction for violation, the less the articulation of sanction with a given violation. The point should not be overdrawn, however, since

sanctioning is discretionary in both systems and the greater the discretion, the more difficult it is for potential violators to associate penalty with risk. Perhaps for that very reason negotiated strategies prolong noncompliance unduly until it becomes clear whether and what penalties will be invoked. Negotiation thus may delay as well as facilitate compliance.

DESIGNING SOCIAL CONTROL SYSTEMS OF LAW ENFORCEMENT

The choice between compliance and deterrence strategies of social control is governed by both general and specific structural and operating conditions of organizations. Below we explore some of these conditions that govern choice.

There are conditions where a choice can be made to pursue either a deterrent or a compliance strategy and some where either one or the other strategy seems the clear and reasonable choice. Many organizations pursue mixed strategies of social control, opting for mixes of compliance and deterrent strategies. The typical administrative regulatory agency in the United States, for example, combines both compliance and deterrence strategies in administrative and civil proceedings; it also may opt to mobilize the criminal justice system but ordinarily it has no power to insure such action will be taken. Nonetheless, most agencies can invoke deterrent strategies without resort to the criminal justice system. Where choices exist, the tradeoffs between detecting and sanctioning violators to prevent future harms and the immediate prevention of harms and their relative effectiveness in doing so often governs the choice.

We turn now to consider when the State will opt for a compliance or a deterrence strategy of social control.

Compliance strategies will be preferred whenever the processes of detecting violations and sanctioning violators are so complex and protracted or so costly that they are regarded as inadequate remedies for continuing harm. They are favored then because they provide the quickest relief to continuing harm. Injunctive processes in the law, for example, are essentially compliance-oriented. They grant temporary or perpetual relief from a possible harmful course of action that cannot adequately be redressed by another action at law.

Whether or not one seeks to redress as well as to prevent harm is an important condition affecting the choice of a strategy. The choice between restitutive or reparative sanctions and State denial of life, liberty, or property, for example, rests upon resolving questions of who is to be considered victimized and whose harm is to be redressed by whom. Compliance strategies will be opted for where the possibilities of redressing serious and consequential harms to collectivities are negligible, even when the likelihood of harm is rare. The reasons are simple and obvious enough. There is little to be gained from deterring future behavior where the behavior penalized has been so harmful that it threatens collective life. Given the harmful consequences of radiation or the potentially harmful effects of gene splicing, for example, legislators and administrators will opt for compliance rather than the punishment of violators. The offending parties in harm by radiation can indeed be victims of their own violation. The Nuclear Regulatory Commission thus is compelled in the first instance to opt for compliance rather than deterrence to control harmful consequences from the generation of nuclear power.

Correlatively, where there are simply distributive harms, as is usually the case in common crimes, deterrent strategies are opted for. In such instances, the presumption of the criminal law that the collectivity is an injured party notwithstanding, there is little actual collective harm from an individual case.[7] Where collective harm results from the cumulation and concentration of common crimes in territorial space or for particular parties, the deterrence model seems far less appropriate.[8]

A condition of modern societies is that they are based in trust relationships. Whenever trust systems break down or are undermined in exacting obedience to law, there commonly is recourse to a compliance model of enforcement and its attendant methods of detection by surveillance and direct intervention. There are many examples of this devolution or reversion, as trust systems are fragile. Shearing and Stenning (1981) demonstrate that private policing has grown rapidly as a substitute for public policing not only because private organizations can control policing for their own ends but more importantly because private police are oriented primarily towards controlling opportunities for breaches of the law. Public police, by contrast, are oriented towards discovering breaches of the law, problem populations, and apprehension (1981;214). Similarly, when local citizens lose trust in public policing, they often respond by attempts to develop direct forms of surveillance and control through citizen watch and vigilante groups (Marx and Archer, 1971). Moreover, a response to the breakdown of trust in

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7. Indeed, in the history of the common law, most (though not all) of these individual injuries were treated under the law of torts as private matters.
8. Inasmuch as the occurrence of violations is essential to deterrence-based models and violators with high rates of offending may account for many violations prior to apprehension and punishment, the cumulative consequences of harm to the collective life of a community may be considerable. Strategies of social control that prevent violations may be more effective to forestall such collective harm.

public life, such as that in the hijacking of airplanes, is a resort to surveillance and compliance strategies where only those who pass scanning, screening, and, if necessary, personal searches are permitted to board commercial aircraft. In the face of terrorist activities, though the events be rare, those areas and persons whose protection is considered most vital will be surrounded with compliance law enforcement. Organizations likewise increasingly protect themselves against external subversion from those who cannot be trusted with direct observation, identification, and control of access and egress. The photo identification has come to dominate all former trust systems whether they be the borrowing of books from a university library or the entrance of persons to the oval office. Organizations are more interested in having those who would potentially harm them or their employees pass compliance tests than in reacting to infractions once they have taken place.

Deterrence systems generally arise when the occurrence of events in time and place are unpredictable and when their causes are imperfectly understood so that particular preventive actions can be undertaken. Correlatively, the more predictable any violation or the greater the certainty that a particular intervention will prevent violations, the more likely the organization will resort to compliance strategies. Compliance systems, consequently, often are associated with testing and licensing systems, especially ones that require some demonstration that conformity exists prior to undertaking a particular activity that could cause harm. The license itself can be seen as a conditional reward or at least as conditionally related to rewards; so long as one conforms one is licensed to be rewarded. Parenthetically, we note that questions about the efficacy of such strategies must be separated from matters of belief in efficacy. Control of medical practice or the manufacture of

nuclear power, for example, opts for both licensing of practice and sanctioning of malpractice; the critical sanction, however, is the withdrawal of the license to practice. Control of the manufacture of drugs similarly includes testing evaluations, licensing, and monitoring rather than punishing those who manufacture and distribute harmful drugs. Punishing the makers of drugs that produce Thalidamide babies is hardly to be preferred to preventing the marketing of Thalidamide.

Compliance systems emerge whenever long-run consequences are far more serious than short-run harms and whenever long-run harms can be avoided only by short-run interventions. It is difficult, for example, to undo an election and its results by attempting to locate and punish persons who have voted illegally or to void the effects of illegal campaign financing. The main alternative to accepting a manipulated outcome is a new election. Such outcomes generally are too costly and too difficult to reconstitute so that the system opts to avoid the consequences by adopting compliance procedures. Compliance is sought by setting standards and procedures for campaign financing, registration of eligible voters and their certification at time of voting, the development of technological and organizational means to cast and record votes, and by maintaining voting records that can be audited after an election. Similarly, when delayed effects are understood, e.g., of how coal dust in mines causes both Black Lung disease and deadly explosions, enforcement emphasis falls more upon conditions that produce clean air in mines than upon punishing mine owners when infractions are detected.

Deterrence systems are generally ineffective when penalties against individuals or especially against organizations can be passed on and borne by others without inflicting grievous harm to any of the parties. Thus, the fine

of the corporation can be borne by consumers so long as it does not fatally damage the competitive position of the corporation. The alternative of setting the costs so high that it damages the interests that other parties have in the organization is often unacceptable since such parties are deemed innocent and it is unjust for them to bear such costs. Moreover, interested parties protect their interests by bringing political pressures to bear to reduce the penalties. In either case, the deterrent effect is limited because of the consequences of the penalties for affected but innocent parties. At times the penalties, when invoked, will be designated for the benefit of innocent and affected parties. More commonly, however, the failure of penalties to have a deterrent effect leads to the substitution of a compliance strategy.

The tort doctrines of negligence and liability for harm, including the special case of strict liability, rest in deterrent strategies. The presumption is that one will exercise ordinary care to avoid the costs of being found liable. Prudence may require that one protect oneself against claims of liability but there is an element of deterrence there also since one's cost of protection may rise on being held liable. Tort doctrines are designed to redress injury and to reduce the risk of injury. The collectivization of risk either to injured or injuring parties are ways to ameliorate or minimize the consequences of harm to either party. But organizational risk-taking either for the organization inflicting the injury or for the organization assuming the risk on its behalf, as for example, by insuring against the costs of harm, are most likely when such risks are calculable. That is not always the case. Moreover, when, as noted previously, such risks can be reduced by preventable actions, there will be presssures to opt for compliance strategies, particularly where there are

third party interests for reducing the risk of injury. The compliance strategies adopted to insure safe consumer products is a case in point. There an organized intelligence system of hospital emergency treatment for injuries resulting from consumer products is used to get organizations to develop safe products rather than as a basis for enhancing the claims of litigants. Consumer product safety enforcement exemplifies also how a surveillance system is an essential ingredient of compliance enforcement.

All organizations from the smallest to the largest, from the family to the modern state rest in institutions of secrecy and their private as well as public protection. To a substantial degree secrets are integral to trust since a condition of trust is the capacity to keep secrets. All organizations are vulnerable to the disclosure of their secrets. The greater the harm that can result from the disclosure of a secret, the greater the investment an organization has in preventing its disclosure. The punishment of violators for disclosing secrets is of limited value since it takes place only after the secret is disclosed and the organization harmed.

Secrets are integral to trust since the capacity to keep secrets is a condition of trust. Paradoxically then secrets are vulnerable to the very conditions that make them possible. The society that exists by surveillance and direct control is essentially without secrets whereas the society built on trust will maintain secrecy and individuality. The greater the division of labor and the larger the scale of its organizations, the more trust must be substituted for direct surveillance. Yet, the larger the organization, the more vulnerable it is to the breakdown of trust relationships and the disclosure of secrets. Where such secrets are vital to the organization, it cannot, as noted, rely upon deterrent strategies. The resolution to this seeming paradox is to combine control by compliance surveillance with trust.

Compliance systems emerge where regulators or controllers can define a distinct population of potential violators and track them or exercise direct surveillance and control over them. Compliance systems, therefore, are more likely to be opted for by organizations to control behavior of organizations or of persons in organzed activities within and without organizations rather than to control the behavior of discrete individuals. Correlatively, deterrent strategies are opted for when organizations attempt to control the behavior of discrete and dispersed individuals. Whenever compliance is directed towards discrete individuals--as it is for some behavior--compliance will be treated as a voluntary rather than as a required activity and it will ordinarily be incentive-based.

To be effective then compliance will be directed towards known populations which can be surveyed by direct observation or some means of monitoring behavior and evaluating conduct. Total institutions are compliance-oriented; the public streets and private places are not. Mob and crowd behavior are subject primarily to surveillance and directed or commanded intervention. Infiltration, spying, and related forms of intelligence collection are essential to compliance strategies and may be used for proactive detection in deterrence based-systems but they are not an essential element of a deterrence strategy. Similarly, tactics such as harassment are compliance-inducing rather than simple deterrent strategies. When deterrent systems of justice fail, the police often substitute direct control systems such as by harassment. Note also that harassment works only when a population is reasonably concentrated in space in some form of organized activity. Thus, one can harass prostitutes congregated in residential units or in a particular territory but one cannot similarly harass call girls to conform with stated law enforcement objectives for controlling their activity.

Organizations likewise are more likely to seek compliance when the same victims are repeatedly victimized by the same violators or when there is a very large number of victims for a very small number of violators. In either case, the violators are more easily detected, viewed, and controlled. Moreover, short of incapacitation strategies, few penalties are likely to work under these conditions. Organizations are more likely to victimize in these conditions than are persons. Note, however, that repeated violations in very small organizations such as families are more likely to be subject to compliance then deterrence strategies. Initial efforts to control the behavior of intrafamilial violence, for example, aim towards preserving the integrity of the organization by seeking compliance rather than by penalties. Observe also that under these conditions the family also will be controlled by compliance strategies because it meets other requirements for those strategies, e.g., penalties victimize innocent members.

The selection of compliance strategies as the means of social control often depend upon the degree to which controllers can manipulate collateral security. Given the vulnerability of trust as a means of social control, promises can be buttressed with collateral security. Indeed, where one cannot rely upon direct surveillance and control and yet where relationships must continue, trust is necessary and promise essential. Where one can practically and legitimately levy and enforce penalties, deterrence is an alternative strategy for broken agreements, but where one lacks the power of deterrence, compliance strategies based on collateral security are viable. Hostages were originally forms of collateral security. One gave a most valued person in hostage to assure the voluntary agreement would be kept. Today the hostage is taken to insure compliance with a coerced agreement. Collateral securities are often used by organizations to insure that agreements will be carried out,

i.e., their conditions complied with. Collateral is intended to guarantee both the validity and convertibility of tender or to insure performance of an agreement. If direct security fails, one may fall back upon the collateral. The greater the mistrust that agreements will be kept or the more vulnerable to damage the parties to an agreement if it is not kept, the more likely they are to insist upon collateral security and the more likely that collateral will take the form of transferring possession of the collateral until the agreement is carried out. We note in passing that the institution of bail replaced the communal guarantees of appearance by direct control of the accused or later, the simple promise to appear. The bail bondsman of today is synedochically related to the surety or guarantor for the promise of the accused and it, in turn, is the synedoche of the hundred in early England.

We are increasingly aware in modern society of the power of network organization. Although networks may be formally constituted, as are those, for example, among transportation agencies, they often are informal. Networks, moreover, lack the visibility of concrete organizations and even of their transactions. They are often far less visible. One does not readily perceive communication or ownership networks and how control is exercised through them. Yet, they are there. Gross (1980) draws our attention to aspects of the visibility of networks for law violation and its control. Those which he designates organizational sets are visible to members of the set even though largely invisible to nonmembers and become organized in a status hierarchy (Gross, 1979:109-10; 1980:68). Organizational sets are open to conspiracy and collusion (1980:70). Once sets are formed and the outlines of the strata are visible, at least to those in the set, a new form of interorganizational behavior becomes possible. Relationships develop among organizations in different sets and different strata (Gross, 1980:71). Often

those relationships create an invisible network. The Equity Funding Scandal to which Gross draws our attention (1980:71) and the recent OPM scandal provide illustrations of how a vast number of organizations become available to swindlers, frauds, and cheats. A small number of individuals or an organization can victimize large numbers because of the power to create and elaborate relationships with organizations in an invisible network created by their transactions.

What seems clear is that networks are difficult to control, especially those of low visibility. But it is difficult to see how deterrent can be more effective than compliance strategies in controlling them. Given low visibility, networks are not especially amenable to compliance regulation. But to the degree that network transactions can be made visible, they are subject to control by regulation. Regulation has far greater power to make transactions visible by means such as accounting and record-keeping than do deterrent system detection tactics. Visibility, of course, can be enhanced by clandestine techniques, such as infiltration by spys and undercover agents, that expose clandestine networks. Deterrence-based systems thus make less visible networks visible by exposing them to legal view. But their capacity to do so is limited and it is to be doubted that it can be the major strategy for the control of networks, if for no other reason than the fact they are labor intensive and consequently quite costly. Still, if they can be effective against less visible networks, their limit perhaps is that of exposing illegal organization, such as organized crime, that keeps low visibility. Where the organizations are legal but the network invisible, it is to be doubted that one could operate with essentially clandestine and deterrence-based strategies. Indeed, organized crime is more vulnerable to its legal than its illegal organization where it is visible. The transfer of

illegal into legal gain is the Achilles' heel of organized crime and one that may be subject to greater control by compliance regulation such as tax compliance than by deterrence-based strategies.

CHANGES AFFECTING DETERRENCE STRATEGIES

In modern democratic societies, deterrence systems depend upon the capacity to detect, to prove wrongdoing, and to adjudicate matters to which penalties are attached. The structure of modern democratic societies makes it increasingly difficult to satisfy these conditions so that most violations cannot be detected and penalized, most especially those involving violations of trust. Deterrent effects accordingly are reduced substantially because perceptions of risk of detection and of being penalized are judged low. By contrast, compliance systems are both less subject to restrictions of detection and proof and compliance rather than deterrence objectives are sought. We shall consider briefly the major changes in modern societies that bring about these conditions and their relationship to selecting compliance or deterrence strategies of control.

Extension of Entitlements.

Historically three major changes have altered substantially the nature of wrongdoing and its control. The first of these was emphasized by Durkheim in pointing to the consequences of the elaboration of the division of labor. The common conscience that controlled behavior was weakened in all respects except that it strengthened the individual's position vis-a-vis the collectivity (Durkheim, 1902/1947:172). In particular, modern democratic welfare societies are characterized by the extension of entitlements--what Charles Reich (1970) characterizes as the new property--the rights and benefits for which all are

eligible. They also have extended substantially the right to privacy of the place and person, making it more difficult to directly observe and survey wrongdoing and to gather evidence concerning law-breaking (Stinchcombe, 1963:151). Moreover, such extensions make it more difficult to formally adjudicate matters and administer penalties because of the rights of the accused (Reiss, 1974).

A major consequence of these changes is that they have made it increasingly difficult to detect wrongdoing in deterrence-based systems. At the same time these changes have had less effect on compliance-based systems, most especially those relating to organizational behavior. The basic systems of surveillance by inspection and of investigation, including audit, are far less restricted in compliance- than in deterrence-based systems. What we wish to emphasize here is that techniques of detection and proof that are considerably restricted in deterrence-based systems are far more likely to be legitimated in compliance-based systems, especially where one seeks to control the behavior of organizations or of organized activity.

Two other important consequences of these continuing changes are worth noting because of their effect on wrongdoing and deterrence strategies of law enforcement. One of these is that the growth of the new property has changed substantially the way that members of underprivileged classes commit crimes; the nature of that new property of rights and privileges is to make possible committing a whole series of law violations formerly the domain of the higher classes. These include especially crimes of fraud and misrepresentation with respect to the new property. The second of these is that all classes, but especially the underclasses, can bargain over their outcomes in a justice system given the difficulty of proving matters in a formal system of justice

that recognizes this extension of individual rights. Not surprisingly, it is large-scale organizations that have benefited most in countries such as the United States because of the extension of almost all individual rights to organizations. The failure historically to constitutionally differentiate organizations from individuals as a class has enhanced substantially the power of organizations before the law and of individuals who operate as their agents.

Growth of Trust Systems.

The second major change has been the shift historically from direct observation and intervention to trust as the fundamental basis of relationships and transactions.

One might trace the evolution of strategies of social control from strategies of control by surveillance to control by trust. It is mistaken to regard trust as an element in primary group control since the hallmarks of the simpler systems of primary group control are surveillance, the absence of privacy, and coercion. It was a simple matter in simple societies, it seems, to detect and deal with delicts since even crimes of stealth were difficult of accomplishment without being observed or easily detected. Simple societies and small groups can be seen as compliance-oriented in that the central element in compliance systems is the capacity to observe, monitor, and directly intervene in behavior. Without assigning causal attribution, we can trace a gradual evolution from systems based on surveillance to systems based on trust. Very simply put, where one cannot directly observe yet seeks to control, the principal substitutes are collateral security and trust. The basic contention is that modern societies and their organizations are increasingly built on complex trust relationships.

To say that modern societies are built principally on trust relationships, however, is not to suggest that they are primarily built around institutions of trust. Indeed, the development of trust systems has markedly changed the nature of wrongdoing. In modern societies prototypical law-breaking is a violation of organizational trust. Trust relationships are vulnerable to fraud, misrepresentation, and failure to abide by agreement. The inherent fragility of trust relationships leads to a parallel emergence of institutions built around mistrust and distrust as well as those of trust. There are, for example, a series of institutions that are designed to minimize the risk of harm when fiduciary responsibility is violated. There are institutions of distrust such as of collateral security and the collectivization of risk to minimize losses from harms due to a violation of trust.

Trust may be regarded as the principal means of organizing and controlling individual as well as organizational behavior in modern societies. The individual who ventures into the street trusts that those around him intend no harm. Exchanges among organizations are essentially trust agreements. The fundamental basis of all relationships--the contract--rests in a trust that it will be carried out, not that one will have to invoke any machinery of enforcement to secure its fulfillment. Indeed, it is all too apparent that the power of law as a means of social control lies in its capacity to secure compliance by agreement; to enforce the law by deterrence is to acknowledge the failure of law as a fundamental instrument of social control.

The cardinal violations of modern societies, then, are violations of trust with organizations as well as individuals being their victims as well as

their violators. Apart from the protections afforded by the institutions of mistrust, whenever trust is violated, the principal means evolved for coping with trust violations is that of the penalty for violating trust. While such penalties may take the form of simple restitution, they often require satisfying a collective interest as well. That collective interest takes the form of assigning penalties to deter future violations.

Growth of Organizations and the Complexity of Organizational Life.

The third of these, the emergence of large-scale organizations, though related to a growing complexity of the division of labor, is both its cause and consequence. To a growing extent law-breaking occurs on the part of organizations, especially large-scale organizations. In capitalist societies such law-breaking extends to the not-for-profits as well as governments and profit-making organizations.

Organizations create more difficult problems of detection and proof given their greater capacity to avoid detection (Shapiro, 1980), to subvert the processes of investigation and proof (Katz, 1979), and to bargain over the outcomes of deterrent-based adjudication. Correlatively, organizational processes have remained more open to the very same methods of detection and proof where the goal is compliance. Indeed, so far as organizations are concerned, they may be required to engage in self-incrimination when compliance is at stake.

Inasmuch as most violations involving organizations are violations of trust and inasmuch as deterrence-based law enforcement systems are relatively restricted in their capacities to detect, prove, and sanction violations of trust, modern societies increasingly turn to compliance-based systems of

control over violations of trust. One might readily question why modern societies do not legitimate within deterrent-based what is legitimated in compliance-based systems. There is no simple answer to that question but the answer lies in part in opting for the prevention of harms because of their consequences to both injured and injuring parties. But it may lie also in the peculiar way in which the central institutions, including those of trust, are preserved in such societies. Where the State intends no injury as a consequence of its control and at the same time affords protection of the integrity of organizations, it is easier to legitimate forms of intervention that would otherwise be precluded in the interests of injuring as well as of injured parties.

There is yet another strand to this growing complexity. Historically the law of agency arose to cover every relationship or transaction in which one person acted for or represented another by that latter's authority. The law covered specifically all business or commercial transactions. Agents are the persons designated by another to act for him, one who is entrusted with another's business (BLD, 1968:84-85). With the passing of time, one has seen an enormous growth in the use of agents. The business of government is transacted by a host of different agents and the behavior of those agents increasingly is treated a problematic, being subject at law to actions hitherto denied. Police agents, for example, not only are subject to actions at private law but their municipal and state employers are increasingly held liable for their actions without the necessity to grant their consent in an action at law. Agents, of course, act increasingly for private persons and organizations. Few real estate transactions, for example, are carried out with the principals acting on their own behalf. Rather, they employ a host of agents that do so--real estate agents, lawyers, title search, insurance, and

banking organizations as well as the State to record the transaction. We have reached a point where agents transact for principals and there are few transactions directly between principals. This increase in complexity opens the system of transactions to both new forms of evasion and new forms and means of social control. Often, it is more the behavior of agents than that of principals that must be controlled at law.

There is a second and closely related historical change; that is the growth of third parties and their transactions. Not only do agents act on behalf of principals but the relationship among principals is enormously complicated by the relationship among third parties who may and often have little direct interest in the welfare of the principal. Third parties are commonly organizations. The system of medical care that has grown up in the USA illustrates this evolution of organizational third party transactions. Gone is the simple transaction between patient and doctor in a professional and a business relationship. Not only are their transactions mediated by a host of third parties but the system operates primarily by transactions among third party organizations. Individuals no longer pay for their health care or transact with a health care insurer who covers those costs. Rather, their employer (and union) act for them and transact with an insurer. The insurer, in turn, acts to receive the claims from the providers and the providers, in turn, may be acting on behalf of those who deliver the primary care. Physicians no longer transact with insurers and service delivery organizations but, rather, they belong to an organization (partnership, corporation) that carries out those transactions. The hospital as one service delivery organization transacts with a host of primary care specialists, insurers, and resource agencies. One consequence of this complex set of transactions is that there are many third parties as well as the principals to any given

health care transaction. If one brings an action at private law, all of them may be parties to the suit. Correlatively, this means that any attempt to control a form of transaction or a kind of behavior may involve an elaborate system of control of the behavior of third parties.

The growth of much administrative regulation then is partly a consequence of this growing complexity of third party relationships. Among other outcomes of such complexity is the control of what is called fraud and abuse--the exploitation of complexity by third parties and principals and their agents. For, bear in mind that what has happened is no longer simply that agents act on behalf of principals but that agents act on behalf of and exchange with agencies where the agency becomes the principal as well as agent, and so on, in a chain of transactions.

CONCLUSION

We have posed some propositions concerning the conditions under which modern democratic states attempt to control behavior, especially organizational deviance, by compliance- rather than deterrence-based systems. It is apparent that law enforcement agencies often are built around both. Still if the basic thesis propounded is sound, then one should expect three kinds of shifts will continue to take place in attempts to control individual and organizational law-breaking and to prevent harms to individuals and organizations. One of these is that more and more systems of social control will be built around compliance rather than deterrent strategies. Both individuals and organizations will have to respond to compliance strategies. The prototypical enforcement strategy for both individuals and organizations will become more like that of the Internal Revenue Service than like that of a local police agency. The other is that deterrent law enforcement may be

expected to shift more towards proactive than reactive forms of mobilization, especially towards the techniques of proactive law enforcement that are instrumental to compliance strategies of social control. Finally, as one shifts from notions of individual culpability to organizational responsibility, one is impelled to recognize that structural forces determine compliance as well as violation of law (Schrager and Short, 1978:410). The primary focus of law enforcement then must shift to macro-organizational structures and the social control of organizational life.

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CHAPTER 3

ORGANIZATIONS AS VICTIMS OF LAW-BREAKING

INTRODUCTION

Matters at law are somewhat different for organizations as victims than as violators. Any organization can be directly and indirectly harmed[1] by the intended and unintended consequences of most kinds of law violations. Laws written to protect individuals from harm with few exceptions apply to organizations as well,[2] whereas those written to protect organizations usually do not apply to individuals. Examples of laws applicable only to organizations abound in statutory law and administrative rule making. Many crimes are restricted to state protection such as espionage or tampering with a public record. A large number of laws are intended solely to protect the integrity of profit-making organizations. Examples are laws protecting trademarks, industrial processes, or a share of the market. Still others are designed to preclude organizational practices that are considered harmful, such as racketeering or price-fixing. The universe of laws that apply to

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1. The term "direct" harm is used throughout this monograph to designate the first-order consequences of a law violation. Ordinarily these are the "intended" victims, ones that violators intentionally harm by their violation of law. We separate direct from indirect harm because many violations have a succession of harmful consequences to the same or to different victims. Those harmed can harm others as a result of their harm or those harmed can pass on the consequences of harm to others who then assume some or all of the cost or burden. It is commonly assumed, for example, that when commercial establishments are victimized by employee or customer theft, the establishment passes those costs on to those who purchase the products. In this example, the commercial establishments are considered the direct victims of the violators whereas those who bear any burden of its consequences, such as customers paying higher costs because of crime losses, are regarded as its indirect victims.
2. There are a few obvious and clear-cut exceptions where organizations cannot be direct victims of law-breaking such as those involving the violation of the civil rights of individuals where organizations are commonly violators or the major person crimes of homicide and assault.

organizations, therefore, is substantially greater than that applying to individuals and especially so when one includes laws that regulate individuals solely in their organizational roles, e.g., as parent, as fiduciary, or a public official.

RELATIONSHIPS OF ORGANIZATIONAL VICTIMS WITH VIOLATORS

Organizations can be victimized by their own members as well as by outsiders. Just as the violators of individual victims include all forms of individual and organizational violators acting collectively and alone, so do those for organizations. The violator classes of organizational victims differ from those of individual victims only in that an organization additionally can be victimized by its members. Members of an organization can use its power to bring about its victimization. Those outside who would victimize an organization are limited to the mobilization and use of external power to bring about its victimization, unless they can gain access to the victim organization's resources as well. Societal outsiders, such as a foreign government or corporation, may obtain the secrets of the US government or one of its corporations by bribing employees, by infiltration in an employee role, or by collusion with one or more of its members.

The relationship between an organizational victim and its violators also is determined by the type of violation. Geis (1975:90) has observed that "...certain kinds of white-collar crime insist upon certain kinds of victims". The examples he gives are those that ordinarily involve organizational victims. Thus, he notes that the stealing of trade secrets obviously victimizes only those who are the legal owners of the secrets and of bid-rigging, those who purchase. He goes on to observe that in the US heavy electrical equipment antitrust case, the Federal government, the Tennessee

Valley Authority, and major utilities were the direct victims of price-fixing. Finally, he notes that income tax crimes deprive the taxing authority of revenue. Probably almost any law specifying white-collar or organizational law-breaking applies to only some kinds of organizations and not to others. There are law violations where only governments can be victims, as are those involving government revenue, such as customs and tax law violations. Other law violations apply only to organizations dealing in securities such as those pertaining to firm registration and reporting or to those involved in foreign exchange, and so on.

We can show, similarly, that ordinarily political and organized crimes are selective of their organizational victims. The organizational targets selected by terrorist groups are typically those that will disrupt or undermine state power. Schelling observes that the rackets in organized crime select those organizational targets that lend themselves to criminal monopoly and extortion (1967:116) and concludes that although organized criminal monopoly need not depend upon extortion, extortion from organizations requires a large element of monopoly (1967:116).

Perhaps what distinguishes most common from other kinds of crime is that there are only very broad relationships between a type of offense and the kinds of victims or violators. Broadly speaking, of course, the grand division of common crimes between those against persons and those against property define classes of victims but not in all cases of violators. The offense of rape defines both victim and offender quite specifically, while the crime of homicide does not. Deaths by arson or poisoning can be negligent homicides attributed to the negligence of organizations; in other instances the organization is the primary cause of murder or manslaughter with the

arrangers for the death being instrumentalities of the organizations. Within these broad classes, however, the common law classes allowed for little specificity. Thus, the crime of burglary has only the simple requirements of a place that can be entered illegally for the purposes of committing some other crime. Note that while burglary ordinarily is for the purpose of committing the crime of theft, it also may occur to commit some other felony since at common law a burglary is the entry into the domicile of another with intent to commit a felony.

The law defines violations in terms of special classes of victims or violators and their relationships. Historically, common law crimes allowed for little specificity but increasingly they became residual categories as more and more specific violations were set apart as special crimes. The common law crime of theft, for example, increasingly was differentiated to specify particular relationships between victim and violator. The crime of embezzlement, for instance, is but a special form of theft involving the appropriation of property for one's own use by a person to whom it was intrusted or into whose hands it had lawfully come. That of robbery entails the taking of personal property by coercion and of extortion the taking of anything of value, especially money, from another by unlawful means.

The law similarly differentiates violations and their sanctions in terms of their applicability to particular kinds of organizations. Statutes are more likely to refer to the status of organizational violators than to organizational victims. This is partly owing to the way that the law processes organizations to find they have violated the law and partly to the choice of sanctions for violations. Some regulatory authorities, moreover, can assess penalties only against organizations. The Employment Standards

Administration of the Office of Federal Contracts Compliance, for example, does not admit of complaints against individuals and, hence, there are no individual penalties provided for. The same is true for the National Labor Relations Board and the National Highway Traffic Safety Administration (Clinard & Yeager, 1980, Appendix B).

Yet, not uncommonly, statutes also specify organizational victims, either implicitly or explicitly. Any number of laws, for example, apply only to banks as violators and victims. There are specific criminal statutes for bank robbery and for embezzlement from a bank. Other laws may apply only to corporations that deal in foreign trade or to multinationals as, for instance, the statute specifying an offense of bribing a foreign official to revise a trading contract or violations of tax laws for reporting corporate income from foreign subsidiaries. Administrative law and rules similarly may apply only to classes of organizations as victims or violators; violations of stock purchase by insider trading is an example. Although we know of no study of how organizational victims and violators are qualified in specific statutes or administrative rules, given the functional specialization of regulatory agencies much rule making is applicable not only to a class of organizational violators but to classes of organizational victims as well. Fair trade legislation, for instance, applies not only to commercial organizational violators but to their organizational competition.

Regulatory agencies sometimes take the status of both victims and violators into account in setting penalties. The penalty of a recall by the National Highway Traffic Safety Administration, restitution by the Federal Trade Commission, refunds by the Department of Energy, and divesture by the Federal Trade Commission or the Antitrust division of the US Department of

Justice are examples that hold violators accountable to victims. Some penalties refer only to individual victims such as the back pay awards of the Equal Employment Opportunity Commission and the National Labor Relations Board. Others, like divesture, take only organizational victims into account.

What we can conclude from this brief overview is that some kind of organization can be the direct victim of almost every type of law-breaking. By way of illsutration, most crimes that victimize persons often victimize them in some organizational capacity as well.[3] They are victimized as members of families, of households, or employing establishments, and so on. Looked at another way, it would be mistaken to conclude that organizational victims are exclusively victims of white-collar crime or that there is some close association between organizational victimization and white-collar law violations. We have already seen that organizational offending is by no means limited to what are commonly thought of as white-collar law violations. Here we emphasize a parallel observation--that organizational victimization is by no means limited to what are commonly thought of as white-collar law violations. We shall have occasion to speculate later that organizations in the aggregate are victimized more frequently by common than by white-collar law violations.

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3. The National Crime Survey (NCS) anomalously treats the robbery of a cashier only as a victimization of an establishment rather than also a victimization of the cashier who is threatened in the robbery. Classifying and counting robbery victimizations are problematic in the NCS not only because the counting rules allow an event to be classified only as one type of victimization but also because a robbery simultaneously threatens some person with violence and a person or an organization with the theft of property. Where the property owner is an organization, the NCS treats the organization as the victim and excludes from the victimization the count of persons experiencing the robbery threats. The law similarly may process the violator as guilty of a robbery of the person, a commercial robbery, or a residential robbery. Here we see then by example how certain definitions of law-breaking define certain kinds of victims.

RELATIONSHIPS AMONG VICTIMS OF LAW-BREAKING

Events or incidents that violate the law can involve two or more different kinds of victims. By way of illustration, a single but substantial violation in disposing of toxic wastes that pollutes a surface and an underground water supply can victimize a municipal corporation and individual and corporate property owners who secure their water from the polluted source. At the same time the disposal destroys a part of the environment where the waste is disposed of. Organizations also can be damaged considerably by their own violations of law, especially where those violations incur substantial civil liabilities or penalties. The cost of cleaning up toxic wastes, for example, may put a violator organization out of business. Where organizations appear to take calculated risks about violative behavior aware that it may involve substantial liabilities or penalties under the law, their conduct has a strong resemblance to self-victimization. This seems to be especially true where long-term risks involving occupational health or safety are assumed. The Johns-Manville Corporation currently has filed for bankruptcy because of anticipated liability for asbestosis claims.

Where there are multiple kinds of victims, the number of each kind in a single violation can be substantial. In our hypothetical example above any number of municipalities in a metropolitan area and thousands of individual and corporate wells could be polluted. Not uncommonly, organizational violators are involved in a continuing pattern of law violation rather than in a single discrete event. The number of organizational victims in continuing fraud can be very large as investigation of long-firm fraud (Levi, 1981), manipulation of commodity futures trading options, and false submissions in loan applications amply demonstrate. Among the major cases where large

numbers of organizations were swindled in the late 70's and early 80's, are the OPM Leasing Services Inc. swindle of major financial institutions (WSJ, 03/17/81; NYT, 03/26/81) and Federal grand jury indictments of and conviction of a large number of paving and road construction contractors for rigging bids for victimizing governments. Among the organizational victims of the same group of bidders were the Federal government, the states of Tennessee and Virginia, and municipalities in these states (Washington Post, 01/31/83).

The number and kinds of victims likewise are of special interest where there are competing victim claims against violators. Civil suits and settlements often lay bare a structure of victims according to the priority of their claims. In many instances, organizational claims are given priority over individual ones. Some government organizations such as the IRS often have the top priority in making recovery if they are among the victims. Just how such competing victim claims lay bare the difficulties in sorting out the order of meeting victim claims was disclosed in a sequel to the slaying of a Washington physician by a career burglar. The career burglar, who at one point was held to have substantial assets, was sued by the physician's widow and a Federal Court held the murderer liable for $5.7 million in damages. None of the assets of the burglar were collected by her, however. Those with a property interest, such as the mortgage agent for the murderer's home, were paid for their property claim. Stolen property was returned to those who made claim of it, i.e., they were not compensated as victims but allowed to claim that which was rightfully theirs. Those victims who could not reclaim their property received no compensation. The IRS, which claimed it was owed $20.9 million in income taxes for unreported burglary income, took the remaining assets, which amounted to $80,000. The physician's widow, despite the court's award, was never compensated (The New York Times, 03/30/83).

DEFINING AND DETERMINING ORGANIZATIONAL VICTIMS

Although an event of law-breaking always involves in an abstract sense both violators and victims, in the mobilization of law, one of these three--events, their victims, and their violators--may be known quite apart from any knowledge of the other two. Often knowledge of at least one element is lacking. Thus, the victim may report with no knowledge of the violator or we may know about a law violation without knowing either specific victims or violators. Where organizational violators and victims are involved, our knowledge about organizational victimization derives largely from knowledge of those events where victims and violators are identified. The world of organizational law-breaking consequently must include a substantial dark figure of law-breaking.

Consider first what often are thought of as victimless law violations. There are several kinds of law-breaking that lack individual victims and where only in a very strict sense can one posit organizational victims.

One type of case arises when an organization is charged with technical violations of law, especially where those violations derive from the social control system and the controllers seek information to determine whether or not an organization is in compliance. The number of such technical violations for a single organization at times can be quite large. In 1979, for example, Paine Webber, Jackson & Curtis, Inc., one of the nation's largest brokerage firms, merged with Blyth Eastman Dillon & Company. The merger created problems for Paine Webber, especially those of missing orders, lost records, and clerical mistakes in filling orders--problems characteristic of organizations such as brokerage firms that operate under high volume conditions. In 1980 both the SEC and the New York Stock Exchange sanctioned

Paine Webber for failure to resolve these problems sooner. The SEC ordered them to have more rigorous audits and banned all further acquisitions without SEC approval. The New York Stock Exchange fined Paine Webber $300,000 (NYT, 12/31/80). Though Paine Webber's problems involved technical rule violations with the SEC and NYSE, there were no clear-cut victims of them. Customers, to be sure, may have been inconvenienced or dissatisfied, as may have other brokers, because of these problems, but the rules that were broken did not victimize them in any direct and immediate sense.

Another form of law violation where specific victims are not identifiable arises when only the public or collective order is defined as victim. The seizure of contraband often provides examples. Where the contraband is indistinguishable from legal goods, there is a clear presumption that there are one or more violators. Yet, it is unclear that one can identify wholesalers, distributors, retailers, or buyers of such contraband as victims. Even where the contraband is illegal, as in the seizure of cocaine or marijuana in storage or in transit, law enforcement authorities cannot presume there are identifiable victims, other than the collective order, were it sold. The buyers would be violators.

A separate issue is whether one should regard an organization as victimized in every instance where a member of an organization uses its organizational power to commit a law violation, absent evidence that the law-breaking harmed the organization, or at least that it was potentially harmful. Is the government organization to be considered a victim in all cases where an official uses his power to perform prohibited favors or receive them, e.g., when the official accepts a gratuity or grants an exemption as a favor?

The absence of specific evidence about whether there are identifiable law-breakers similarly occasions problems for determining when an organization is victimized and whether it is so regarded at law. Simple evidence of harm often is an insufficient criterion, even when there is a fairly clear presumption of law-breaking, since absent knowledge about the offender it is difficult to separate accident from violation. The problem of identifying organizational victims becomes even more complicated when one wants to determine whether the organization is victimized by the behavior of one or more of its members or involved, qua organization, in the violation as well. Shall all instances in which an organization gains by the illegal behavior of one or more of its members be regarded as an organizational violation as well? Correlatively, shall organizational violation be ruled out when the the organization is harmed by the law violation of its members? These latter distinctions are not easily determined since at law their separation often is unclear.

Examination of cases in which both the organization and its members are charged with law-breaking discloses that the rules for considering whether either or both are violators and who are their victims are even less clear. This is especially so when the identity of the organization is tied to a single individual as in a sole proprietorship or to a small group of persons known to one another, as in a partnership, family of shareholders, or a small group of persons who know one another and form the organization. When a sole proprietor uses organizational position to violate the law, is the organization always in a violator status or can it be victimized by its owner? The determination of violator statuses is further complicated when the organization is specifically formed to violate the law or as a fake organization to facilitate violation. Can fake and operating illegal organizations be victimized by law violations or are they always violators?

Separating violator and victim statuses likewise is not a simple matter because victim and violator relationships influence those statuses. Consider the case of mass victimization of recording companies, composers, performers, and authorized retailers by organizations pirating labels, copyrighted songs, and performances of the recording industry. The legal system may or may not charge the organization that does the pirating and/or selling with a law violation--only individuals associated with pirating may be charged and then with rather different violations of law depending upon the circumstances and who is doing the charging; moreover, only some organizations may be considered as victims of pirating. To illustrate these problems, compare two court cases. In one, a Federal Grand Jury in New York charged both a New Jersey man and his record-production company with illegally duplicating and marketing millions of dollars worth of hit records, tapes, and cassettes (NYT, 01/28/79). In the other, a Federal Court in Chicago in similar pirating circumstances responded differently in defining victim status. The Federal Court in Chicago threw out mail fraud counts for duplicating recordings. After concluding that recording companies as well as composers are protected by copyright laws, the court held the individual proprietor guilty only of violating copyright law because he had offered to pay royalties to composers but not to the record companies (WSJ, 02/09/70). The status of recording companies as victims under the copyright law determined the outcome of the second case. Victim status had little to do with charging only the individual and not the organization in the second case but seemed to underlie the indictment and conviction in the first case. In both cases, it appears that the organization was formed to violate the law, but only in the first case is that taken into account.

THE DARK FIGURE OF ORGANIZATIONAL VICTIMIZATION

One must presume there is a considerable dark figure of organizational as well as individual victimization. It is commonly said that individuals may not know when they are victimized by organizational crimes. The common examples offered include consumer fraud and occupational safety where it is argued many individuals never know whether and when they were victimized. How does one know when one is being overcharged, that the advertising is false, or that one's employer was negligent in the injury one sustained at work? These examples illustrate quite clearly how much knowledge of victim status depends upon one's intelligence about law-breaking.

Persuasive as these examples are in leading one to conclude that mass victimizations of individuals by organizations often go undetected because of defective individual intelligence systems, it is far from clear that it is any less, if not more, difficult for a retail sales organization to tell when it has been victimized by the common crimes of theft or fraud such as in employee theft, shoplifting by buyers, shortages in delivery, burglary without break-in, or employee fraud in reporting time worked or days of illness. It may be simpler, indeed, to determine whether an organization is committing consumer fraud and to estimate that amount than to determine whether individuals are shoplifting and how much aggregate loss it accounts for. By monitoring a sample of organizations, one can make estimates of aggregate organizational violations for behavior such as consumer fraud and by audit or who are their individual and organizational victims. By contrast, a retail store may find it virtually impossible to allocate aggregate losses to employee theft, to other forms of law-breaking, and to practices related to regular operations. Could a retail grocery chain, for example, ordinarily assign attrition of its

stock to spoilage, or of damage to products to failure to deliver, or of shortfalls to employee theft, shop-lifting, or misrepresentation by markdowns? Modern inventory control and surveillance systems may control some of those practices but with them retail organizations can do little more than determine their aggregate losses; they do not permit reliable allocation of aggregate losses to particular kinds of law-breaking.

Our example above focused on the difficulty of determining when retail sales organizations have been victimized by common crimes, but one must assume that organizations are commonly defrauded and much of it also goes undetected, whether that in bid-rigging, price-fixing, tax evasion, or check-kiting, to mention but some forms of organizational victimization by fraud. Although consumer fraud commonly conjures up a media image of individual consumers (buyers) being defrauded by organizations, organizations perhaps are just as commonly victims of consumer fraud. Organizational buyers are often defrauded in pricing by overcharging and by misrepresentation of the quality of goods.

Examples of local, state, and Federal government organizations being defrauded in purchasing discloses the practice is quite widespread and involves substantial losses. The Metropolitan Transit Authority of New York accused the Rockwell International Corporation and its subsidiary, the Pullman Standard Company, of misrepresenting the results of X-ray tests of the equipment it delivered to the Transit authority (NYT, 06/13/79). The State Controller of New York charged in 1978 that the Municipal Assistance corporation had been overcharged by substantial amounts by three printing concerns (NYT, 12/17/78). A 1978 investigation disclosed considerable fraud in purchasing by General Services Administration stores, including over-pricing, misrepresentation of merchandise quality, charging for commodities

never delivered, and charging for unperformed services. A 1980 GAO report (USGAO, 1980:15) concluded there was unexplained variation in prices for bulk fuel purchased by the US Postal Service. And the Department of Defense was rocked in 1983 by allegations of substantial over-pricing of spare parts (WP, 07/27/83; NYT, 08/01/83). Investigations by the DOD, GAO and the US Senate Armed Services Committee all attested to substantial over-pricing in the purchase of spare parts. The Pentagon accused 14 contraactors of overcharging for them but the cases were usually settled by the contractors alleging it was a matter of "disputed pricing". The accused companies made refunds to DOD rather and the allegations never led to indictment (NYT, 09/01/83).

There undoubtedly is a substantial dark figure for organizations being victimized by consumer fraud. The extent to which legislation designed to protect consumers against fraud is used by organizations as well as individuals is not known. It is possible that large profit-making organizations are the least vulnerable to consumer fraud, given the formal organization of their purchasing. But, the substantial victimization of Federal, state, and local governments by consumer fraud makes it clear that neither size of the organization nor the existence of elaborate purchasing procedures organized in special departments precludes such practices. Nonetheless, when an organization has a special purchasing department and there are internal audits of their practices, some collusion from the organization's employees may usually be required to defraud them. That appears to have been the case for at least some of the GSA purchasing scandals (WP, 02/23/79).

There is compelling argument that many organizations are defrauded by behavior that goes undetected. Whenever a considerable time has elapsed

between the discovery of events and their possible causes, it may be difficult to determine whether fraud or miscalculation, mismanagement, and environmental decay are principal causes. One wonders, by way of example, just how much bridge, highway, and sewer construction of yesterday is now found to have been poorly done because of bid-rigging and fraud in fulfilling contracts. Construction firms have a high rate of business failure but some may go out of business simply to avoid detection and liability for later failure.

We note, in passing, that time lags between the cause of an event and its consequences pose problems of proof of consequences for both individual and organizational victims. The complexity of proof in causal chains of long duration clouds the determination of victim status, at least in terms of particular consequences. The length of time it takes for substances that are toxic to man to affect one's health status adversely is problematic for individuals, even when the individual may have knowledge of exposure. Similarly, where there is considerable delay in discovering organizational victimization, or where a causal chain is of prolonged duration, the determination of organizational victimization is problematic. The disposal of toxic wastes provides examples of both. When Missouri towns purchased oil for their highways, they were victims of purchasing dioxin as well--something that was not discovered until much later when high dioxin levels were found in testing water supplies following a flood. Causal chains are prolonged where toxic wastes are stored or dumped in containers that take years to deteriorate and pollute the environment. Their discovery may be delayed even longer because of the time it takes for pollution to be detected.

Intelligence Organization to Detect Organizational Victimizations

These latter examples likewise suggest that it may be as difficult for organizations to determine when they have been victimized by many kinds of law violations as it is for individuals to do so. Empirically, it may be virtually impossible to resolve these matters of relative risks of victimization. What is clear, however, is that organizations, like individuals, often lack the intelligence capacity to know when they have been victimized and by whom. Much organizational victimization thus will go undetected because the organization lacks the capacity to know it has been victimized. Indeed, even when organizations discover their victimization, oftentimes it is discovered that the law violation has persisted undetected for a long period of time and that its onset cannot be determined. This is many times the case with employees victimizing their employing organizations such as with the crime of embezzlement but it is characteristic of many types of organizational victimization by fraud. Discovery of continuing law-violation by the same violators should remind both organizations and those who study organizational victimization that there probably is a substantial dark figure of organizational victimization because of failure to detect it.

These observations lead to an interesting set of issues about how organizational victimization by law-breaking is detected either by the organization or by other detection systems. Although some of these matters are treated in a later chapter on detecting violations of law, several special problems in detecting organizational victimization by law-breaking are discussed here.

One such problem is how does an organization detect when it is being victimized by one or more of its members? A second is how does an

organization develop an intelligence capacity to detect its victimization by insiders and outsiders? And a third is what is the capacity of external organizations to detect organizational victimization? In this latter instance organizational detection is in large part, as it is for individual victimization, a function of how society organizes itself to detect violators and violations.

Determining victimization is left in society to reactive mobilization of legal agents by victim reports of victimizations which they treat as law violations and to a proactive search for violations. Ordinarily law enforcement agencies do not proactively search for victims. Knowledge of who are victims of law-breaking is a by-product of law enforcement, rather than its primary goal. There are exceptions, of course. They occur where a determination of victim status is to be used as a basis for preventing it. Proactive search for victims is associated with some compliance-based systems whereas deterrence-based systems always depend upon detecting violators.

The best example in the USA of a victim-centered system is the product safety mission of the Consumer Product Safety Commission. Their goal of searching for unsafe products begins with emergency room intelligence on persons who are injured by products. When the number of injuries from a given product reaches a certain threshold, that intelligence is seen as product victimization rather than accident and the system turns to correct the cause of victimization by making the product producers responsible for increasing its safety.

Our examination of the dark figure of organizational victimization by law-breaking has centered to this point upon the intelligence capacity of organizations to detect victimization. Yet, we have just noted that our

knowledge of organizational victimization is largely a by-product of organizational systems that have the responsibility to enforce the law. Their primary interest is in detecting violations and violators, not in knowing about victims. This is true, as we have suggested, for many compliance as well as deterrence-based systems of law enforcement. These law enforcement systems depend, therefore, either on reactive mobilization in response to external systems of detection--primarily self-detection of victim status--or upon proactive determination of violations and violators. A complaint-based system of law enforcement depends upon victims and others detecting and reporting violations in which someone was victimized. The complainant is usually but not always the victim.

A proactive system of law enforcement ordinarily depends upon detecting violations or by tracking violators until they violate the law. A water pollution control agency, for example, seeks to find polluted waters and the source of that pollution to determine who is polluting rather than to find out who are the victims of lack of pollution control, a strategy that might lead them to determine how pollution can be controlled without detecting violators. Often, of course, agents are led to the violation and the violators because a complaint was received about a matter from a self-defined victim. But the law enforcement agent has little interest in the victim per se. Victims ordinarily are starting points for the business of law enforcement, not their end concern. This is so for organizational as well as individual victims--though interestingly enough, organizational victims may more often enter actively into processing violators than do individual victims and they may more often be compensated in some form. To understand the dark figure of organizational victimization, then, we must know something not only about what leads to their detection but what leads to selective reporting of them to law enforcement agencies once they are detected.

Our understanding of the dark figure of organizational victimization is limited by the sources of intelligence we have on reporting by both victimized organizations and others. These limitations are partly owing to the fact that we lack technological organization for obtaining information on organizational victimization comparable to that for obtaining such information on individual victimizations. They also are due to the limits of victimization surveys for intelligence on organizational victimizations. To cite but one example of a survey limitation, the respondent selected to report on organizational victimization has a substantial impact on what is reported. Members of any organization will vary in their knowledge of kinds of organizational victimization. There also are biases in reporting determined by the fact that an organizational respondent will not report victimizations that incriminate the respondent as violator.

Sources of Intelligence on Organizational Victimization

What little information we have on reporting organizational violations to official law enforcement agencies is based on survey reports for primarily business organizations reporting on burglary and robbery victimizations in the National Commercial Crime Victimization Surveys[4] and for households reporting household larceny, burglary, and motor vehicle theft in the National Crime

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4. The National Commercial Crime Victimization Survey was conducted only for the years 1973 to 1976 and then discontinued in part because of the high reporting of these commercial crimes to the police. Annual reports are available as part of the Criminal Victimization in the United States series for 1973 to 1976. The Commercial Crime Victimization also was included in the city surveys. A exposition of these findings for eight cities is found in Hindelang, 1976. The first survey attempts to develop victimization rates for victimization by common crimes against organizations for all forms of organizations was undertaken by Reiss (1967) for the President's Commission on Law Enforcement and the Administration of Justice, Vol. I of Studies in Crime and Law Enforcement in Major Metropolitan Areas. Subsequently an attempt was made to develop rates for a national sample of business organizations (Reiss, 1969) and in a follow-up study in three cities (Aldrich and Reiss, 1969).

Survey.[5] We shall summarize what we know from these surveys before turning to an examination of incentives and disincentives for organizational reporting of victimization by law-breaking.

Organizational reporting to the police of victimization by common crimes is a function of the kind of organization victimized and the nature of the crime. About 9 in 10 robberies reported to survey interviewers in the National Commercial Crime Victimization Survey for the years 1973 to 1976 were also said to have been reported to the police (DOJ, 1973-1976). The comparable figure for burglary is 8 of 10 for most years. These rates are above those for household organizations reporting on their victimization by robbery, burglary, and motor vehicle theft (Hindelang, 1976:361). Where there is a comparable offense, such as robbery, rates of reporting personal robbery are below those for household and business robberies (Hindelang, 1976:364). These rates of reporting for business organizations are well above those for some other kinds of commercial victimization by common crimes. The 1966 survey of business victimizations in high crime rate areas of these cities found that only 27 percent of the owners and managers who reported being given a bogus check said they ever report such victimizations to the police (Reiss, 1967:101). The rate was higher for reporting shoplifting; still 58 percent of all merchants who reported apprehending shoplifters said they never reported shoplifting incidents to the police (Reiss, 1967:90). Given this considerable variation in rates of reporting victimizations to the police by type of common crime and type of organization (household or business), one must recognize that reasons for reporting and nonreporting also may vary considerably by type of victimization by common crime. Still a few general patterns of

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5. The National Crime Survey currently publishes annual rates of victimization only for household victims. See Criminal Victimization in the United States for the years 1973-1979.

organizational reporting of victimizations to law enforcement authorities emerge from the findings of the National Crime Surveys.

The reporting of victimizations to the police was substantially greater for completed than attempted crimes and for large than small monetary losses (Hindelang, 1976:367). The more serious the threat posed by the victimization, moreover, the more likely it was to be reported. Thus, robberies with a weapon were much more likely to be reported than those without a weapon (Hindelang, 1976:367).

The overriding factor behind commercial organizations failing to report their victimizations by common crime to the police is the relative unimportance attributed to the victimization. Persons reporting their organization as victimized by common crimes respond just as do the persons who report personal or household victimizations. The reasons most often given for not reporting to the police are that "nothing could be done about it", it was "not important enough", and "the police would not want to be bothered" with it. It is the trivial nature of many such common crimes that leads to their non-reporting, whether persons, households, or commercial organizations are its victims.

From other reports and speculation about the grounds for reporting or not reporting organizational victimizations to law enforcement authorities, we can discern a variety of incentives and disincentives to report them. Whether or not one reports any given victimization of an organization by law-breaking depends, however, upon tradeoffs among incentives and disincentives to report. Separation of them for discussion, consequently, is somewhat artificial.

Most organizational victims known to law enforcement come either from their proactive strategies or from reports of members of the victim organization rather than from nonmembers. Much of this imbalance in source of reporting to law enforcement agencies is accounted for by the fact that by their nature and the conditions of occurrence most victimizations of organizations are never known to members of other organizations. When an organization is harmed by outsiders, there often is little evidence of it and few, if any, grounds for exchanging that information with members of other organizations who would have an incentive to report it. Where the harm arises from insiders, there is even less opportunity for others to learn of it, given disincentives to disclosure of harm and a lack of access to what is ordinarily privileged organizational information.

Incentives to Reporting Organizational Victimizations

Setting aside the fact that most organizational victimizations are unknown to nonmembers, it is apparent that there are almost no incentives for nonmembers to acquire that information about victimizations or when they do so to report them. There is little apparent individual, much less organizational, gain for reporting any organizational victimization unless one is a member of the organization. This is especially so for persons in nonvictim organizational roles. It is difficult to demonstrate that any outsiders gain very much from the reporting of an organizational victimization unless they are rewarded for doing so.[6]

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6. There is even very little gain for an individual who observes another shoplifting from a retail store. Apprehension of the shoplifter will have no effect, for the most part, on one's purchases both because the apprehension of any single shoplifter's effect on price is probably zero but also because the organization will not reward one for doing so, given the fact that one's contacts are most likely to be with an employee rather than anyone who will gain directly from the apprehension. There, moreover, may be disincentives for witnesses to report shoplifting in that many persons perceive the

There are occasions when members of an organization may perceive some gain in reporting the victimization of other organizations, either because they might be harmed in the same way or because they feel obliged to do so. But such instances are relatively rare, especially when one sets aside the common crimes of burglary, robbery, theft, and vandalism. Even for those common crimes, individuals do not report them except in their organizational roles. There is little incentive then to report violations that victimize an organization to law enforcement authorities except from a sense of duty. And duty seems a weak reed for the report of either individual or organizational victimizations, but especially so for the latter, given the tenuous ties and allegiance that most persons have to particular organizations but most especially to ones to which they do not belong.

The want of incentives for nonmembers of victimized organizations to report those victimizations and their violators to law enforcement agencies may always have prevailed. Their absence may be one of the grounds why historically monetary rewards for information that might lead to the arrest of a violator were quite common. Though such rewards were associated both with the collective investment in locating a particular violator such as the reward for a wanted person, they likewise were offered for information that might lead to the solution of particular crimes. Rewards were offered by organizations that had experienced victimization as well as by law enforcement authorities. The reward is a synthetic incentive to induce persons with low incentives to cooperate in doing justice.

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possibility of some cost if they are responsible for apprehension, either the cost of testifying to the act or a perceived risk of liability if the person is found not guilty of shoplifting.

We can say, then, that apart from such formal structures as a monetary reward, there are no structured incentives for nonmembers of organizations to report organizational victimizations or violations that have an organization as its victim.[7] As a consequence, most reporting of organizational victimizations rests with members of organizations who are in a position to have knowledge of them, some incentive to report, and an organizational duty to do so.

Organizational assignment of responsibility for reporting victimizations derives from an assessment of incentives and disincentives in doing so. Organizations have an incentive to report their victimizations when that reporting is essential to their recovery of injury from harm. How and where they disclose that injury will be a function of the system of recovery.

Organizations are most likely to disclose damage by other organizations in civil suits. They sue either to prevent potential harm, as in suits to ward off mergers and their effects, or to recover damages from harm inflicted upon them. Governments victimized in bid-rigging, for example, may bring suits to recover excess costs. Cartel practices often are grounds for one organization to bring suit against another or to disclose the harm being done

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7. The reader may wonder about the seeming redundancy or circumlocution in the phrase "report organizational victimizations or violations that have an organization as their victim". Are they not the same? The statement is made in this form to call attention to the motivational paradigm in reporting. Our systems of law enforcement are organized, as noted previously, primarily to access information on violations and their violators and not about their victims except insofar as knowledge about them and the victim consequences of violations contributes to an understanding of the violation and the motivation of the violator or it can facilitate the processing of violations and violators. Processing in law-breaking systems is not designed to process victimizations and victims. The language of reporting about victims discloses how people have come to accept the violation language of reporting even an emergency mobilization. Contrast "I need an ambulance; somebody's bleeding to death" with "Send an ambulance; somebody has been shot" or "Send an ambulance; somebody just tried to kill someone".

to reduce future losses. In sum, the civil suit involves a form of disclosure but not one that necessarily will bring other forms of law enforcement into action. Still they may do so. The SEC and the Antitrust division of the US Department of Justice may be led to investigate following the institution of a civil suit on matters in their domains.

There also are incentives to report where there are possibilities of restitution. Such possibilities are generally limited in criminal proceedings, however, even when they involve organizational victims. They occur most frequently when an organization seeks to recover losses from victimizations by one or more of its members. An organization may seek to have the criminal justice system proceed with the indictment of some of its members simply to leverage them into some form of restitutive settlement or to enhance its opportunities to recoup some of the losses from their victimization of it. This is especially the case where the organization stands little chance of recovery if the assets obtained by its victimization can be transferred beyond the jurisdiction of the courts or outside the jurisdiction of easy civil recovery. But where an organization can recover losses without the necessity to mobilize law enforcement authorities, the disincentives to disclosure of victimizations are usually overriding and law enforcement authorities are unlikely to learn about them from a victimized organization.

Organizations are more likely then to mobilize the law for victimization by outsiders than by insiders.

Examination of civil suits for recovery of losses due to law-breaking suggests that organizations are more likely to seek recovery when victimized by outsiders than by their own members, especially if the outsiders are

organizations with resources to restitute or recover losses. Ordinarily when organizations are victimized by their own members, they resort to the private sanctions or forms of settlement open to them.

When an organization mobilizes the law against insiders, it is more likely to do so against members in high than in low positions. This differential mobilization appears to be largely a function of the organization's calculations of its chances to recover losses and its cost on the one hand and its opportunities for private sanctioning on the other. By way of example, ordinary employee theft--the loss of which can be borne by the organization as a cost of doing business--is dealt with by discharging the employee. Reiss (1967, 1969) and Clark and Hollinger (1979) found that most employee theft is handled by discharging the employee. Where, however, the employee is in an executive position, the amount of loss is ordinarily large and the employee possesses considerable assets to make recovery or restitution possible, organizations will go the route of disclosure but only when private settlement is unworkable. Looked at another way, an organization will use its private means to sanction lower level employees when victimized by them or to settle with high ranking employees when restitution is made. The law is invoked only against high echelon employees who refuse or appear unable to settle.

We can look at organizational reporting of its victimization in another way--in terms of who are an organization's violators and what is its capacity to deal with them. Where an organization's violators are its members, its private sanctioning system will be used against them. Since an organization lacks private sanctions when victimized by outsiders, it deals with them by mobilizing private or public law systems on its behalf.

Nevertheless, whenever an organization views particular violators or particular forms of victimization as threats to its survival if they are not punished or deterred, law enforcement systems are mobilized to deal with them. Organizations that deal in cash, legal tender, or assets have a considerable investment in protecting that system from being undermined by bogus tender especially when it damages the system of exchange. By way of example, counterfeit is threatening to organizations in a way that forgery or bad checks are not. Counterfeit currency, for example, threatens a transaction system and raises problems about who shall take the loss. Banks will reject counterfeit from their commercial customers and the commercial customers in turn seek protection from having to detect it. Most discovery of counterfeit will come to the attention of the US Secret Service both because of its systematic threat and the fact that most organizations are unable to detect violators passing counterfeit; they know only when a financial institution rejects their deposit as counterfeit.

Disincentives to Reporting Organizational Victimizations

On balance, however, disincentives outweigh incentives to report organizational victimizations by law-breaking to law enforcement systems. Where an organization can deal with law-breaking by private sanctioning systems, the disincentives of pursuing matters in the alternative public law enforcement systems outweigh any incentives to disclosure. There are several major forms of disincentive to reporting violations to public law enforcement systems.

A major disincentive to organizational disclosure of victimization is that information about its victimization is potentially damaging to the organization. The harm from disclosure may easily be regarded as greater than

any gain, especially since often so very little is gained by disclosure. Even governments seem loath to disclose their victimizations and to publicly pursue compensation for damages from harm by law-breaking when pursuing such matters has harmful consequences for government. The prosecution of violators, for example, may involve harmful disclosures of employee carelessness or malfeasance. This reluctance is especially apparent when government secrets are stolen or when they may be disclosed in the course of prosecution of a government official. The US Department of Justice recently considered dropping charges of embezzlement against an Air Force General because secret military information might be disclosed in his defense; it finally decided to proceed (NYT, 06/08/83). There are special protections for in camera proceedings in matters where disclosures are especially destructive to an organization but they are not easily invoked. Governments may prefer to drop charges rather than proceed when it determines the risk of harm by disclosure is too great.

All organizations regard disclosure of some victimizations as damaging to their reputation or integrity or as increasing their vulnerability to victimization by crime. Disclosures are seen as especially damaging when the organization is victimized by its employees. Victimizations by insiders signal problems for managerial control of the organization and therefore operate as a major disincentive for managers to authorize employees to disclose victimizations of the organization by law-breaking. Governments are especially sensitive to disclosure of victimization by their employees and none seems more sensitive to such disclosure than its law enforcement organizations. Police departments ordinarily do not disclose law-breaking by their police employees because it casts doubt upon the integrity of the organization and risks scandal and characterization of the organization as

corrupt. Indeed, the more implicated an organizational hierarchy is in law-breaking, the more damaging it is to the organization if the law-breaking is disclosed. For public organizations, hierarchical involvement spells scandal and corruption of the public trust (Sherman, 1978); for private organizations, it signals mismanagement.

There are substantial disincentives to disclosing any violations involving the core technology or outputs of an organization. Fiducial violations by employees are especially threatening to fiduciary organizations whether profit-making banks or not-for-profit fund raising organizations. Hospitals and restaurants are reluctant to disclose infractions that suggest unsanitary practices or conditions. Private security firms, like public police, are loath to disclose any law-breaking by their employees since law enforcement is their core technology. Manufacturers do not wish to disclose quality-control problems arising from employee sabotage. And so on.

One can look as well at organizational disincentives to disclose victimizations by law-breaking from the perspective of their structures of accountability and control. Where disclosure of victimization leads the organization to hold one or more of its employees or officials responsible, there is a strong disincentive to disclosure. The discentives, indeed, may lead to additional law-breaking in the form of cover-ups and obstruction of justice. Official cover-ups and papering-over of the delicts of government officials and employees are familiar. From Watergate to Knapp, there is a history of organizational attempts to cover the law-breaking prior to its disclosure and to obstruct justice following disclosure, lest the disclosure implicate more highly placed officials or the organization as law-breakers. Cover-ups to obstruct justice occur for private as well as public

organizations. They seem more likely to arise when the private organization seeks to minimize the scope of criminal justice investigation into employee violations because it increases their liability in civil suits.

Insurance payments offer a major incentive to individuals to report their property losses to the police. Victim surveys of individuals and households disclose that a major reason victims of property losses give as to why they report them to the police is that it is easier to recover their losses from their insurance company. Insurance companies offer a similar incentive to organizations for reporting losses from common crimes. Yet, businesses often fail to do so, especially when they are repeatedly victimized or their losses are relatively small. Their reasons for not reporting losses to insurance companies center largely on a major disincentive--fear of cancellation of their insurance policy, of an escalation in its rate, or of the insuror's refusal to renew at expiration. They withhold reporting many claims in anticipation of the large claim that may eventually be necessary, a loss that cannot be passed on as a business expense (Reiss, 1969:137; Aldrich and Reiss, 1969:147). Many businesses and other organizations, like individuals, also have little incentive to report because they are not covered by insurance or their losses are below or not included in the coverage carried (Reiss, 1969:132-37). Businesses then, unlike individuals, often see insurance recovery as a major disincentive to reporting their victimization to the police.

Private settlement systems and insurors covering victimization losses of organizations often seek to cloak the victimization from public knowledge, lest it increase their risk. Bonding companies, for example, do not ordinarily disclose the losses of their organizations to law enforcement agencies.

What we know about organizational victimizations then is limited by the extent to which organizations are willing to disclose information on their victimizations by law-breaking that is unavailable from other intelligence systems. One perhaps can expect organizations to self-report victimization by law-breaking to law enforcement agencies far less frequently than do persons. This consequently means that knowledge of organizational victimization depends more upon proactive than reactive strategies for the mobilization of law, especially upon compliance-based strategies of law-enforcement. Among reactive mobilizations, one expects that estimates of organizational law-breaking are biased towards individual rather than organizational victims.

Knowledge about organizational victims consequently depends largely upon two major official sources of information. One is by the discovery and reporting of organizational victimizations from the major common crimes of burglary, larceny, and motor vehicle theft to public police agencies. The other source is the intelligence developed by compliance-based strategies of law enforcement where investigations of organizational or individual law-breaking turn up information on organizational victims.

Attention is called again to the fact that even compliance-based systems of law enforcement do not sample victims when they seek to prevent violations of law by focusing on potential violations and violators or by inducing violators to comply. We should expect, nonetheless, that the more randomized the proactive enforcement, the less bias there will be in measures of organizational victimization.

PROTOTYPICAL ORGANIZATIONAL VICTIMIZATIONS AND VICTIMS

Prototypical Organizational Victims

There are genuine difficulties in delineating prototypical organizational victims, given difficulties of combining specific kinds of law-violation into generic types. We can sort out types of victims, however, for specific forms of law-violation.

It is by no means rare for violations of law to involve both individuals and organizations as victims and for organizational victims to include different kinds of organizations. Most commonly, though, victims in law-breaking events are of the same kind or class. Law violations that victimize organizations ordinarily do not victimize individuals.

Even though regulatory agencies have relatively broad organizational mandates to make rules in a domain of law, discretionary enforcement results in each agency attending to violations that involve only relatively few types of victims among those to which coverage could be extended. Shapiro's data on victimization from violations known to the SEC disclose that agency's specialization in victimizations. Setting aside serious under-reporting problems that affect SEC estimates, Shapiro found that only 8 percent of her cases generated any organizational victims. The prototypical victims of an SEC case are individuals victimized in a stock purchase. Of all individual victims, 80 percent were purchasers, 11 percent investors or clients of brokers or investment advisors, and 3 percent sellers; the remainder were largely shareholders. The mean and median number of individual victims in a case was 26-50 (Shapiro, 1980:277). Moreover, Shapiro found that the typical victimization event involved persons who were associates or linked in a

network as, for example, persons who belonged to the same church congregation or who worked in the same office. In only 39 percent of the securities violations where she had information on victims were all of the victims strangers to one another (1980:280). These findings are fairly consistent with those on securities violations from our survey of news stories of organizational law violation and victimization. Shapiro does not report the characteristics of organizational victims of securities law violations. Our newspaper files disclose several different kinds of organizational victims, the main one being violation of stock disclosure rules and usually involving a clandestine purchasing arrangement. These violations victimize stockholders in the distributive capacity of the organization. A second type of case involves manipulating the stock transactions of a company to personal advantage and at a loss to the company.

The prototypical victim of FTC antitrust actions contrasts sharply with that of the SEC. Governments are the characteristic victims of FTC bid-rigging cases.

Although information on prototypical victims is lacking for many regulatory agencies and for each major domain of law, there are reasonable grounds to conclude that while all regulatory agencies have a mix of individual and organizational victims, each becomes oriented towards violations that involve a special class of individual or organizational victims. The reactive mobilization of the Consumer Product Safety Commission emphasizes subclasses of individual victims. Children, for example, are the common victims of unsafe toys and clothing. Similarly, the National Highway Traffic Safety Administration concentrates on automobile owners rather than upon the other victims of unsafe cars. The common victims of embezzlement, by

contrast, are organizations, particularly financial institutions and banks. Fiduciaries usually violate organizational rather than individual trust, although some fiduciaries, like lawyers and administrators of estates, violate individual trust.

These examples of social control agencies specializing in classes of victims draw our attention to the fact that most organizations are invulnerable to most kinds of law violation because they are ineligible as victims for that type of law violation.[8] This selective vulnerability of organizations to victimization by law violations has implications for the social control of law violations since strategies directed towards victims may have higher payoff than those directed towards violators. To risk trivializing the point with an obvious example, where both potential victims and potential violators are known, as in governments contracting for the paving of streets and roads, one may thwart the rigging of bids more by changing potential victim practices than by attempting to detect violations by bidding firms.

Similarly, we draw attention to the neglect of organizations as victims of individual or organizational crime. Schrager and Short (1978:413-416) posit three major classes of victims of organizational behavior: employees, consumers, and the general public, making no mention of the fact that organizations also are the victims of organizational crimes. Indeed, as we shall show later, consumer victims, as buyers, include organizations as well

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8. Parenthetically we note again that common crimes are less specialized in victim selection for both individuals and organizations. Yet, many organizations and many individuals are improbable victims of most common crimes. Men are improbable victims of rape in comparison with women. Unless an organization or individual owns property that can be vandalized, one is an improbable victim of vandalism. Robbery is limited to selected organizations that deal in cash money, precious metals, or rare minerals. And so on.

as individuals. Certain forms of law violation, moreover, such as criminal monopoly, can involve only organizations as primary victims. When individuals as well as organizations are treated as violators, it is abundantly clear that organizations have higher rates of victimization by law-breaking, and especially so for crimes.

Prototypical Organizational Victimizations

Prototypical organizational victimizations involve only individuals or only organizational violators. Organizations, similarly, ordinarily victimize either individuals or organizations in an offense and not both. Rothman (1982), for example, concluded that fraudulent submissions in white-collar offending involved an individual violator and an organizational victim. Typical as that offense may be because of the fact that many entitlements are limited to individuals and require submissions that can be misrepresented, false submissions occur among individuals, among organizations, and by organizations of individuals.[9] The classic real estate frauds, for instance, involve individual or organizational submissions to individual buyers that grossly misrepresent what is being sold and may involve bogus submissions of proof of ownership, of water rights, etc., all of which the individual in theory could but does not check.

Fraudulent submissions of collateral by organizations usually involve organizational victims. Both the OPM and Drysdale Government Securities Corporation cases amply illustrate that such fraudulent submissions can involve substantial harm to organizations. The collapse of Drysdale

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9. That Rothman's sample included none of these kinds of victimizations is partly a function of the sample of Federal court cases used to construct his typology and the fact that selection of cases was limited to only eight clusters of white-collar statutory offenses.

Government Securities on May 17, 1982, because it was unable to pass on semiannual interest payments on the securities it had temporarily purchased under repurchase agreements, led, upon investigation, to indictments in 1983 of an accountant for Arthur Anderson and Co. for issuing a financial statement that grossly misrepresented the company's assets and liabilities and for representing that he had conducted an audit of Drysdale when he had not. The indictments of two Drysdale executives also charged that Drysdale Government Securities fraudulently used the sham financial statement to demonstrate its solvency to Chase, Manufacturer's Hanover, and Chemical Banks as well as other financial institutions with which it traded in government securities (NYT, 07/18/83). Here we have the preparation of fraudulent documents for submission by an organization to defraud other organizations. Chase Manhattan, in fact, experienced a $270 million pretax loss, a sum believed in 1983 to be the largest loss by an American bank to a single client; Manufacturer's Hanover Trust lost $21 million. Just how common fraudulent submissions are in organizational transactions is unknown but clearly they occur and in very substantial frauds, as OPM, Equity Funding, and Drysdale attest. Still, even though combinations of individuals with organizations occur in fraudulent submissions, they ordinarily involve either individual or organizational victims and not both, given a particular violator and a kind of violation.

This separation of organizational from individual victims by lone organizational violators is partly the result of the way that transactions or exchanges are institutionalized and organized. Buying and selling, for example, is organized into wholesaling and retailing with wholesaling restricted largely to interorganization exchanges and retailing having both types of buyers but with some firms specializing in retailing to

organizations. Many service organizations, moreover, or service units within organizations are organized separately for individuals and organizations. They are separated typically in not-for-profit organizations. This independence and insularity, as we shall note later, makes each organization vulnerable to all others as well as to the entry of any outsider into the network, especially absent any overarching organization to detect and disclose illegal manipulation of the relations among them (Gross, 1980:75).

The more common forms of organizational victimization arise out of continuing relationships or exchanges among organizations rather than from an occasional exchange. The most frequently occurring continuing relationships generatin organizational victimizations are those of employees against their employers and of clients against their service or benefit organizations. Continuing relationships based on resource or market dependence also open an organization to victimization. Macaulay's (1963) observation that those who depend upon one another for a continuing contractual relationship are more likely to settle informally than to litigate matters in dispute because litigation threatens the continuing relationship suggests that organizations are more likely to tolerate victimizations arising from resource dependent relationships because they have no viable alternative. Where that dependency is coerced, such as in racketeering, one has continuing or series victimization in a coerced form of contract.

Because law-breaking events have different combinations of individual and organizational victims and violators, it is difficult to speak of prototypical organizational victimizations. The generic crime of fraud includes different combinations of individual and organizational victims and violators. When one subdivides fraud into kinds, nonetheless, there are prototypical individual or

organizational victims in combination with either an individual or organizational violator. The typical victim of false advertising is an individual buyer and an organizational violator as seller; of false testimony, the government and individual or organizational parties to a legal action with an individual violator making false statements; of the fraudulent use of a passport, the government, with an individual violator; of a falsified employment application, some employing organization with an individual deceiver; of one's financial condition, some credit or lending organization, with individual or organizational falsification. These general patterns of an individual or organizational victim linked usually with only an individual or organizational violator will hold for most all subtypes of fraud, though as two of our deliberately chosen examples disclose, not for all of them.

Despite the fact that organizational victimizations and victims are patterned largely by particular types and subtypes of statutory law violation, there are some central tendencies in organizational victimization and among organizational victims that are theoretically interesting. We turn to describe these few patterns.

Patterns in Organizational Victimization

The common types of organizational victimization involve some form of calculated deception such as in theft, fraud, and conspiracy (collusion) (Rothman, 1982:171) or on intimidation, as in extortion and criminal monopoly (Schelling, 1967:116). Calculated deception arises primarily in employer-employee, organization-client, and competitive market relationships among buyers and sellers. Racketeering includes the two major types of businesses--extortion and monopoly.

Where one considers a particular form of law-breaking, such as frauds or thefts, one can categorize them according to their victimizing properties as well as according to the kinds or types of victims and violators involved in them. Rothman, for example, defines frauds as instances where victims are tricked into doing something by a misrepresentation or nondisclosure designed to mislead (1982:89). The basic victimizing property in the case of fraud is some form of misrepresentation, either by deliberate distortion or by selective disclosure of fact. The victims of fraud always are deliberately misled by the violators.

Rothman concludes there are three basic forms of fraud in terms of their behavioral elements: fraudulent submissions, purchases, and sales (1982:90-120). The distinguishing characteristic between a fraudulent submission and a fraudulent purchase he regards as the organizational requirements for review of submissions which is lacking in the case of purchases (1982:103). Although the distinction appears useful, it is difficult to maintain in most empirical instances where an organization defrauds another in purchases. The reason is that most organizational purchases from an organization involve extending some form of credit. To obtain credit, the purchaser must make representations of the soundness of one's credit status. These representations are potentially subject to review by the organizational seller since they involve some form of submissions to obtain the credit--albeit quite often oral submissions. As Levi notes, in long-firm fraud, a classic form of an organization being victimized on a continuing basis, one of the two critical elements is the capacity to obtain goods on credit (Levi, 1981:34). The huge gains are of course made in defrauding the seller by nonpayment of goods sold on credit. Fraudulent bankruptcy is one form of long-firm fraud.

Where fraudulent sales are involved, there is always an implied submission as to one's credit status. Where organizations run the risk of being put out of business by the misrepresentations of individuals, they commonly take steps to insure the credit status of the purchaser. Establishing consumer credit is at the core of consumer purchasing and huge organizations, such as Associated Credit Bureaus of America, Inc., Retail Credit Co., and the TRW-Credit Data Corp (NAS, 1972:132-42), exist to facilitate organizations establishing the credit status of their individual buying clients (Rule, et al., 1969:143-175; Rule, 1974:175-268). Somewhat surprisingly, there are no comparable national record keeping systems to establish organizational credit. This may account in part for the large number of organizations that can be victimized by a single organization seeking credit from each and unknown to the other.

Gross (1980:73) concludes that the independence of organizational sets, each paying attention to its own affairs, makes them vulnerable to a single organization that links them in a series of fraudulent transactions. The Equity Funding Corporation, for example, was able to defraud by exploiting the insularity of the insurance, mutual fund, and banking industries and by creating fictional foreign companies that lay beyond the intelligence reach of US corporations. Although investment banking firms, such as Shearson-American Express and Lehman Bros. and Kuhn Loeb, Inc., bring lending clients together with those seeking loans, they do not widely share their information with other lending firms as is the case with the many local credit bureaus in the United States (NAS, 1972:130-32). Consequently, lending institutions appear more vulnerable to fraudulent submissions. Although law and accounting firms may be aware of the unsavory record of their clients, as was clearly the case in the OPM fraud, they do not disclose such information to lending

institutions, treating it as privileged information (NYT Magazine, 01/09/83). Even when the reputation of executives of organizations seeking loans is a matter of public knowledge, as was the case when one of the executives of OPM pled guilty to 22 felony counts in a check-kiting scheme in Louisiana and was fined $110,000, the information seems to have escaped the intelligence system of all lending firms--though known to OPM's lawyers (NYT Magazine, 01/09/83). Difficulties in making exact comparisons between intelligence organized around individual as compared with organizational credit notwithstanding, it seems that the information network of financial organizations is far more proprietary and insular than is information on the credit status of individuals. Organizations are more protected against fraudulent submissions by individuals than by organizations, given the organization of those respective intelligence systems.

One way that credit status is misrepresented is by creating fake organizations. Operators of pseudo-organizations manipulate relations with creditors to give the appearance of having a bona fide claim to credit. Organizational personnel often fall victims to blandishments in a sham. The most substantial fraud cases in the US involve inflated organizational claims that led organizations to external credit. The Equity Funding Corporation scandal of the 70's disclosed how an organization that began by defrauding individuals ended up by defrauding reinsurers and lending institutions as well.

What is at the core of defrauding in the marketplace is one's claim to credit if one is the purchaser and one's capacity to deliver that which is represented to the buyer if one is the seller. Organizations can be victimized by either form but invariably in selling they are victimized by the institution of credit.

Where submissions of creditworthiness do not involve the establishment of monetary credit, one might say the comparable institution is credibility. Frauds of eligibility to receive some form of benefit (Lange and Bowers, 1979:20) involve forms of misrepresentation where the violator manipulates credibility or a belief that one is a bona fide applicant who is entitled to the benefit. Victimization by fraud rests in institutions of credit and credibility, i.e., establishing one's trustworthiness. At the core in all fraud, then, is the manipulation of a trust relationship. The extent to which trust can be verified rests very much in the development and mobilization of organizations that certify various forms of trust. All forms of theft basically involve the violation of trust relationships.

Organizational victimization involves a higher ratio of violators to victims than does individual victimization. The higher ratio of violators to victims in organizational victimizations appears to hold for both individual and organizational violators, though we suggest it is greater for individual than organizational violators.[10] Where an organization is victimized repeatedly, the more common forms involve large numbers of individuals victimizing an organization as in shoplifting or in employee theft. The fact that the same individual may victimize more than one individual or establishment makes their victim vulnerabilities theoretically equal. Yet, far fewer individuals ordinarily will victimize the same individual but many individuals may victimize the same organization serially or repeatedly.

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10. Quite different ratios will be obtained if one uses violations or sanctioned violations rather than victims and violators in constructing such ratios. Clinard and Yeager (1980:123) use 1,446 primary sanctions imposed on manufacturing corporations to calculate rates of victimization for types of victims. They include diverse categories such as the physical environment, labor force, economic system, consumers, and government among their victim categories. These categories and rates based on them do not permit Clinard and Yeager to separate individual from organizational victims and violators.

Where organizations victimize another organization, the ratio is considerably below that where individuals victimize organizations. The ratio is much lower in violations such as bid-rigging, for example, than in employee theft. Parenthetically, we note that the ratio of individual as violator to individual as victim is lower than that of organization as violator to individual as victim. The capacity of a single organization to victimize large numbers of individuals is great.

There are some patterned relationships among the four major types of crimes--common, political, white-collar, and organized (Reiss & Biderman, 1980:17)--and the three major kinds of organizational victims--government, profit-making, and not-for-profit making organizations. Although political crimes are directed towards all three major types of organizational victims, they typically victimize governments and not-for-profit political groups. Organized crime is directed towards victimizing small businesses and government organizations. Organized crime black markets, racketeering, and cartel practices victimize profit-making organizations, whereas cheating, especially by tax evasion, and the corruption of police and politics victimizes government organizations. All forms of organizations are victims of common crimes, although there is variation by type of common crime. The common crime of burglary, for example, is directed most towards profit-making organizations. Although all forms of organizations are vulnerable to white-collar law-breaking, it accounts for a disproportionate amount of all not-for-profit victimization (even though in the aggregate white-collar law-breaking is disproportionally directed towards profit-making organizations).

CONDITIONS AND CAUSES OF ORGANIZATIONAL VULNERABILITY TO LAW-BREAKING

To understand the vulnerability of organizations to victimization by law-breaking, we are obliged to think about a population of organizations with variation in their probability of victimization. Theoretically and empirically we are trying to explain that variation in victimization probability or proneness. We lack, unfortunately, information on victimization by law-breaking for a population of organizations to develop theory and test it.

What we have, rather, is information about organizational victims and something about the rate at which they are victimized. Some appear to have higher rates than others and we can try to explain that variation. Unfortunately, we also lack information on the factors that might explain differences in vulnerability for the population of organizations and most especially for those organizations that do not appear in our sample of organizational victims or whose rates are close to zero over extended periods of time. Much of what we have to say about organizational vulnerability to law-breaking then stems from a limited set of observations on organizational victims of law-breaking and general knowledge about organizations that might explain differences in their vulnerability. We have chosen a number of factors about organizations that provide some explanation of their differential vulnerability to victimization by law-breaking. Additionally, we shall attend to how some assumptions about organizations as violators may mislead us about their differential vulnerability to victimizations, especially when compared with the vulnerability of individual victims. We shall turn first to consider the vulnerability of organizations to individual and organizational power.

Vulnerability to Individual Violators

Organizations are conventionally regarded as more powerful than individuals. Their power stems from both their capacity to command resources and to organize individuals. Individuals gain power from concerted action, especially when that action is controlled by organizations. All other things being equal, individuals should be more vulnerable to illegality from organizations than by individuals and organizations more vulnerable to illegality by other organizations than from individuals. We lack information to determine whether these deductions about the relative vulnerability of individuals and organizations are correct. What information we have casts doubt upon them.

The commonly expressed presumption that the capacity of a single organization to victimize a large number of individuals is greater than that of individuals to victimize a single organization involves a logical fallacy in positing individual power solely in terms of the individual rather than the collective capacity of individual actors and by viewing the power of individuals solely in discrete events rather than in terms of their cumulative effect. There is considerable evidence that individuals can do extensive harm to organizations through both their collective and cumulative capacities and that a single organization can be harmed irreparably by violations of a large numbers of individual violators. We may say that theoretically the capacity of large numbers of individuals to victimize an organization is at least as great as that of an organization to victimize large numbers of individuals. The numbers of individuals capable of victimizing a single organization and the number of organizations eligible for victimization by individuals of a given number will vary, of course, by the type of law violation. Below we

explore the ways that organizations are highly vulnerable to victimization by individual law-breakers and of how organizations may be less vulnerable to victimization from other organizations because opportunities to victimize are fewer and constraints greater for organizations than for individuals.

Firstly, individuals can cause the death of organizations by unlawful acts just as organizations have the power to cause the death of individuals by law violations.

There are a substantial number of instances where organizational violations cause the death of persons. Members who possess knowledge about organizational violations, for example, may be killed to prevent their disclosure. Organizational negligence involving criminal sanctions likewise can be the cause of an individual's death as in the failure of a contractor to shore up a trench in which employees work or of a mining company to observe safety laws and regulations. Death can be the delayed result of organizational negligence as in the case of asbestosis and the awards for civil damages brought against Johns-Manville.

Individuals correspondingly can destroy an organization by their criminal acts. In some instances the organization is both victim and violator. This occurs especially when executives manipulate the organization in law violations to achieve their own as well as organizational ends and their actions, such as swindling, destroy the organization. The previously mentioned Drysdale Government Securities Corporation fraud is an example of employee delicts bringing bankruptcy and demise of an organization. Embezzlers not uncommonly bankrupt their organizations. The Bell & Beckwith brokerage firm in Toledo, Ohio was forced into liquidation in 1983 by the SEC because of violations of securities laws involving a deposit of $47.3 million

(NYT, 03/10/83). Even the criminal negligence of an employee can lead to such substantial damages that an organization is forced out of business.

In bizarre instances, crimes may involve both individual and organizational deaths. An example was provided by the bankruptcy of the Candor Diamond Company in 1982 and the deaths that year of two of its employees and three CBS employees who came to the aid of one of them (NYT, 05/05/82). Irwin and Madeline Margolies were initially arrested on mail fraud charges (NYT, 05/06/82) and subsequently linked to swingling a lending company. Eventually Mr. Margolies was indicted and convicted for arranging the deaths of his employees. The swindle involved a financial practice known as factoring where a company is given an advance payment at a discount for sales or accounts receivable--a way that companies use to raise cash quickly without having to wait months for full payments from their customers (NYT, 06/04/82). Mr. Margolies was eventually convicted not only for fraud and swindling but for hiring a gunman to slay the controller of his company who was about to expose the fraud. The friend of the controller also was slain, as were three CBS employees who came to the aid of the controller when she was ambushed in her car.

Secondly, a single individual can do considerable harm to an organization by repeated acts of law violation. Such repeated acts are common to many of our commercial transaction systems and thus can involve substantial losses to a single organization or to a number of them who transact with that individual. Crimes of embezzlement, fraud, and forgery by a single individual often harm large numbers of organizations because the individual can undertake a large number of such transactions over a period of time. In 1979, for example, a US Magistrate charged a single individual in a warrant with forging

300 VISA cards and defrauding banks of about $300,000 (WP, 06/12/79). Insider positions where one can make repeated transactions also lend themselves to repeated acts of law-violation against a single organization. Not long ago, a Federal Election Employee was held on a charge of bilking the Federal Elections Commission of $546,000 by preparing fraudulent vouchers payable to an address in his hometown (NYT, 10/09/82). A case of check-kiting over a period of years can illustrate how many transactions of law violation can be involved in cumulative losses to an organization. A Washington, DC service station owner wrote an estimated $70 million worth of checks and handled about $200,000 cash a day in an attempt to keep his business afloat. Beginning in 1976 and continuing to May of 1983, the owner wrote checks and carried cash between two banks four days every week. At the time his scheme was detected, he was carrying almost $1 million in cash a week between the two banks, one located in the District of Columbia, the other in Maryland. The net loss of all these transactions was $204,800 to the bank on which the last check was written just before he was apprehended (WP, 01/22/83).

Perhaps one of the most interesting patterns where individuals harm an organization by their cumulative acts of violation is found in the special law violator called a scofflaw. Scofflaws, by failing to fulfill the sanctions imposed for a law violation, victimize the sanctioning system. Although scofflaws ordinarily are associated with fine systems and the failure to pay fines levied for each repeated law violation, they also are found where the sanction is intended to fulfill a responsibility towards some person or organization they have victimized. Scofflaws generally victimize municipal or town government by failing to pay fines for violation of ordinances. The two most common scofflaws are motor-vehicle operators who violate traffic ordinances and landlords who violate building code violations. The City of

Newark, for example, estimated that at the end of 1982 it had cumulated over 500,000 unpaid traffic tickets worth $14 million in unpaid fines (NYT, 02/03/82). Scofflaws are fairly common also for violation of street vending, sanitation, health, and noise codes. When one cumulates the violations from all of these sources against a single organization such as a municipal government, their effect on revenue for unpaid fines is substantial.

Thirdly, it seems clear that both single individuals acting alone or by using the power of small organizations can inflict considerable harm upon large organizations. Although the amount of harm that they can do singly seems potentially less than that which can be inflicted by a large organization upon other organizations and individuals, it is unclear whether there are vast differences in potential aggregate harm done by individuals and by organizations.

Although data do not exist to test in any sophisticated way whether individual harms to organizations or that of small groups or organizations to large ones is as consequential as that of large organizations towards individuals and small organizations, we shall try to show that there is a substantial capacity for individuals and small organizations to inflict considerable harm upon large organizations and that indeed they quite commonly do so. Granted the difficulty of ranking law-violations according to their seriousness or of determining how serious is the harm inflicted by a given law violation, if one treats criminal violations of law as more serious in their consequences, then the advantage may lie with the small rather than the large organizations.

There is a problem also in estimating how harm is done and by whom in terms of the way that the cost of losses and gains from law violations are

distributed among victims and violators. Where the violator is a single large organization, the gains are concentrated in a single organization and the losses may be born by a few or by many individuals or small organizations. Yet, when there are multiple organizational violators, gains can be distributed in quite different ways. Illegal gains, moreover, do not always involve direct losses or harms to victims since they may be made without victimizing anyone. Direct harm is not an inevitable consequence of law violation.

Consider the case of an organization being victimized by its employees as compared with that where the same organization victimizes its employees. The organization can victimize all of its employees and all of them can victimize the organization. All employees could victimize the organization by employee theft, for example, and the organization might victimize all employees by violating some provision of the National Labor Relations Act or an EEOC regulatory provision. In either case the number of violations can be very large. By way of illustration, repeated employee theft can mount into very large numbers of violations against the organization. Organizational infractions towards employees similarly can be large in number, although it is difficult to find instances in which they approach the volume of employee theft.[11]

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11. How many individuals can be victimized in their employee status will depend, of course, upon both the law and whether potential as well as actual employees are included. To be charged with discrimination in employment by an employee may cover only the single individual, a larger group of employees, all applicants for a position not yet employees, or all members of a class of potential applicants. The single individual may charge discrimination in his or her job or job mobility. Not all employees may be parties to a sex discrimination complaint, and so on. Correlatively, ordinarily one does not expect that all employees will be involved in theft from their employer or fraudulent submissions of work, illness, etc. See data on employee self-reports in Clark and Hollinger (1979).

The number of individual victims of an organization is potentially greater, however, if we consider violations against nonmembers. Product safety violations and defrauding buyers may involve large numbers of individual and organizational victims. Perhaps one should compare the victimizations of organizations against nonmembers with those of nonmembers against a single organization. That number, as we shall see, also can be quite large. Just by way of illustration, the Department of Sanitation of the City of New York is repeatedly victimized by truck drivers who illegally dump refuse or other materials on city property. During the 18 months from May 1979, the Department issued 1,194 summonses and seized 134 vehicles for illegal dumping (NYT, 12/16/80). The Federal government annually is victimized by substantial numbers of individuals and organizations who file false income tax returns, evade exise and import taxes, and make false statements to obtain benefits nuch in the way that a single organization defrauds a large number of customers by false statements.

The number of individuals and organizations which annually defraud the Federal government may well exceed by a considerable margin the losses the government inflicts upon its citizens. The losses of the Federal government from all fraud including that of revenue, contract fraud (especially from military contracting), and Federal benefit programs could well exceed the harms inflicted by all US corporations.[12] The IRS, for example, estimates that

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12. There are severe problems in estimating the amount of loss inflicted by the violations of a single corporation, much less those for all corporations. Yet, there do not appear to be any serious attempts to estimate such losses comparable to the estimates made by Federal departments for revenue and benefit fraud losses or of the GAO of losses from contract fraud. Clinard and Yeager, for example, often refer to the small size of the penalties levied against large corporations relative to the damage losses they inflict, yet offer few comparisons (1980:124-26). Nor does one know how to judge the comparisons made of penalty amount relative to violation losses. They report, for example, that Olin consented to pay $500,000 to local groups and was fined $45,000 in 1978 for a violation involving illegal sales of arms for $1.2

revenue losses from unreported income of individuals for the tax year 1976 amounted to $13 to $17 billion (IRS, 1979:11). Simon and Witte estimate that failure to report corporate profits resulted in at least an additional $5 billion in 1976 revenue loss (1982:20), bringing aggregate income tax loss estimates to $18 to $22 billion for 1976--an amount approximately equal to the Federal budget deficit in 1974.

The question of whether individuals are damaged more by organizations than organizations are by individuals does not admit of a simple or easy answer then, given both problems of defining grounds for comparison and the absence of data to make comparisons in reliable ways. What we shall try to show below is not only that single organizations are vulnerable to victimization by very large numbers of individuals, just as some single organizations can victimize large numbers of individuals, and while they may do so without the use of organizational power, they commonly employ some form of organizational power.

We begin by describing how single organizations are highly vulnerable to mass victimization by individuals in their distributive, such as in mass fraud, rather than in their collective capacity, such as a race riot. Then, Tables 3-1 to 3-6 present examples of how single organizations are vulnerable to individual law-breakers. We shall conclude that while organizations are vulnerable to individual power, organizational vulnerability to individual law-breaking stems primarily from individual mobilization of organizational

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million (1980:125). Such comparisons with respect to sales are very crude since what is at issue in this case, one supposes, is penalty relative to profit. In others one would want to know the gains attributed to such violations as over-pricing or defective product. The IRS in estimating revenue losses, for example, first estimates the amount of unreported income and then by a complex formula estimates an upper and lower bound of revenue loss for that unreported income (IRS, 1979).

power to commit the violation. Following that we shall try to show that there may be relatively little gain in mobilization of organizational power when additional persons become principals rather than agents in violation but that organizations qua organizations and networks have enormous power to victimize other organizations. We shall turn first to the vulnerability of organizations to the exercise of individual power.

Mass Victimization of Organizations

The prototypical case of large numbers of individuals victimizing a single organization arises through mass fraud. In mass victimization, the harm done by any individual ordinarily is small and inconsequential by itself; the aggregate impact of the same kind of harm, however, is substantial. Modern means of communication and exchange create opportunities for mass-scale frauds of single organizations such as credit-card fraud, teller-card fraud, transit-fare fraud, coin-operated-machine fraud, and computer-accounting fraud. The entitlements and benefits of modern industrialized welfare societies similarly lead to a variety of mass frauds including welfare benefit frauds, voter fraud, and illegal immigration. The ways that services are provided likewise create opportunities for fraud such as the metering of water, electricity, and gas, as does the way that markets are organized to buy and sell goods, e.g., by increasing opportunities for shoplifting. We shall illustrate how individuals defraud single organizations in each of these ways.

Firstly, mass victimization of organizations is a consequence of the extension of credit to individuals. The extension of credit to individuals on a mass scale, often without collateral, based on a credit rating created both problems of how to identify individuals in terms of their credit and of how to efficiently collect money from mass credit transactions with minimal loss of

time and money. One major solution to the problem of identifying creditworthy individuals was to issue credit cards to individuals that symbolized their credit status. The problems that credit cards create for an organization, however, are to insure that the use of the credit card is based on a bona fide possession and that the card is not issued to a bogus identity. To facilitate collection, creditors found it efficient to simplify accounting, billing, and the transfer of payment in mass transactions. These simplifications gave rise to the development of organizations to facilitate transfers (such as major credit-card companies) and to transfer accounts received and receivable efficiently (computer-programmed accounting and disbursing). One need not elaborate further to make the point that these institutional and organizational changes enormously increased the power of each individual to defraud organizations. One can defraud not only by fraudulence in the use of legitimate accounts and cards but one can defraud by fashioning bogus cards, accounts, and transfers of funds, to mention only the major of myriad other ways to defraud.

With the institution of credit cards, then, ne cannot only defraud organizations who extend credit but those who issue credit cards as well. The latter includes not only major credit card companies but organizations that issue credit cards to their employees, giving rise to a new form of employee theft. The State Comptroller of New York, for example, estimates that there are substantial numbers of New York state employees who use state-owned credit cards for their personal use (NYT, 08/03/82). Major credit card companies annually report substantial losses from credit-card fraud. Barclaycard in England reported losing 7LM through fraud in 1982 and that the banks would lose 30LM by credit-card and check fraud. Barclay's, the biggest of the clearing banks in England, loses a third of all these loses (London Times, 11/22/82).

Secondly, the substitution of machines for people providing and monitoring services has increased the opportunity for individuals to defraud organizations. The capacity of the machine to supply labor at a lower cost and to more efficiently handle mass transactions has given rise to many new opportunities for mass frauds. Machines now dispense everything from products to services such as withdrawing money, providing a parking space, delivering food, and giving one entry to transportation. The turnstile, the coin-operated machine, and the slug are means of defrauding. Often the means to defraud are relatively simple. Young people jump the turnstiles to the subways; older ones use bogus coinage. Metro in the Washington, DC area reports that a combination of employee and customer vending machine and fare theft amounted to several millions in 1982 (WP, 01/21/83). At the subway stop near City Hall in New York City, the Transit Authority Police found 33 persons using slugs on a weekday morning. Of these, eleven were employees of the city, state or Federal governments, two of whom were service inspectors in the Mayor's Office of Operations, one of whom was a state insurance inspector, and one a warehouseman for the Internal Revenue Service--testimony, perhaps, to the classless nature of this misdemeanor in New York City as well as to the selection of a subway stop for surveillance located near these government centers (NYT, 01/08/82). The metering of services similarly creates opportunities to defraud. Consolidated Edison of New York had over 11,371 bona fide cases of theft of electricity by individuals and organizations in a 1982 investigation leading to retroactive billings of $7.7 million (NYT, 08/01/82).

Thirdly, the growth of individual entitlements and benefits as new forms of property have increased individual opportunities to defraud organizations. Modern democratic states have extended the domains of individual entitlements

and rights. These range from the growth of rights of participation in the society through entitlements to benefits to freedom from state interference in one's private matters. Modern welfare states especially have developed many forms of benefits that are administered by government bureaucratic officials who process individuals for their eligibility and dispense payments to those that provide services to eligible participants. One need hardly document the substantial amount of fraud in government benefit programs where individuals defraud government agencies responsible for them. Such benefit programs include such diverse benefits as agricultural subsidies, income payments, and medicare.[13] Although mass victimization occurs in these programs because large numbers of individuals commit the same type of fraud, e.g., misrepresent their eligibility status, they also are open to a single individual causing considerable organizational harm by committing a large number of frauds through false claims and bogus claimants. There seems little end to the ingenuity of large numbers of individuals to defraud in the same way. The Federal government annually is defrauded by individuals cashing the checks of deceased persons on the OASI roles. Municipalities and other organizations that pension large numbers of persons report similar experiences with dead pensioners' checks being cashed (Boston Globe, 01/20/83).

One of the ways that modern states can be victimized is through illegal immigration. The alien population of the US seems to have grown substantially in the last decades and represents a substantial form of victimization of the

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13. Many benefit programs exist exclusively for individuals such as vererans benefits. Others are for individuals and small groups such as families; an example is aid for dependent children. Others benefit individuals and organizations as to agricultural subsidies. Finally, some are exclusively for organizations, such as minority business loans or low cost insurance for businesses in high crime rate areas. Clearly, the new property increases opportunities for mass victimization of organizations by organizations as well as by individuals.

State not only in terms of the illegality of their entry but also in the cost they bring upon the State to deal with illegal immigration and the benefits to which they may falsely lay claim.[14] Illegal immigration also gives rise to a number of related kinds of victimization of the State. One is by fabricatingh documentation of citizenship. A Manhattan man was arrested in 1982 for selling large numbers of counterfeit Social Security cards and citizenship documents (NYT, 05/13/82). Similarly, four men were arrested for providing bogus citizenship papers and residence cards for illegal aliens in Manhattan and the Bronx in what was described as a multimillion dollar counterfeit operation (09/27/79). The US Senate Permanent Subcommittee on Investigations estimated in May 1983 that the impact of false identification fraud from illegal immigration on government and commerce could be $24 billion annually. These kinds of fraud and misrepresentation involve not only the actions of those who counterfeit, either as individuals or through illegal organizations, but the thousands who use them as well. The US Immigration and Naturalization Service reports that birth certificate fraud, for example, takes three forms: requests by a valid holder for additional copies which are then sold, requests for birth certificates of deceased persons, and simple forgeries. The US Immigration and Naturalization Service is unable to estimate the extent of such fraud but it reports that in one case 29 persons were arrested in four states for holding the same valid birth certificate. The Social Security Administration similarly is unable to estimate how many numbers are used by different persons and how many are counterfeit. It dramatizes how extensive such fraud can be in a single instance with the Hilda Witcher case. Hilda

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14. We note, parenthetically, that illegal immigrants may well be contributors as well to the system not only by their labor but by their contributions to benefit systems and by payment of taxes. Often they may fail to apply for benefits lest they endanger their status as an illegal resident. Among the less common benefits to which they may falsely lay claim are student loans (NYT, 01/21/83).

Witcher was a secretary of a wallet manufacturer who made a facsimile of a Social Security card in 1938. Between 1939 and 1946 a total of 29,526 employees reported earnings using that number. Although that number was withdrawn in 1946, there still are five or six reports each year using that number (NYT, 09/09/83).

Perhaps the most widespread of all forms of mass victimization of organizations is that of shoplifting from retail organizations. The rise of mass marketing of merchandise undoubtedly accounts for the very substantial increase in shoplifting. The relative disappearance of the salesclerk and the appearance of the security guard and the cashier bear witness not only to a growth of shoplifting but a transformation of the enterprise of merchandising itself. It is in this transformation where goods become more accessible to theft so that guile is less important in shoplifting than is ordinary customer behavior and where children as well as adults become customers in the mass market which accounts perhaps for the vast increase in both shoplifting and shoplifters.

These kinds of mass-scale fraud generally occur then where there are continuing large numbers of individuals whose individual transactions of fraud cannot easily be separated from legal transactions. This is the case where credit cards are used both for legal and illegal purposes, where one underpays fare only sometimes, or where most who seek an entitlement are eligible for it. They also occur when it is difficult for the organization to detect illegal transactions and respond to them because of their episodic or relatively infrequent occurrence among all transactions. The failure to pay fares or to underpay are of this kind. Thirdly, these kinds of fraud occur when there are large numbers of consumers or users, especially of a service,

who are in some continuing relationship but who cannot be easily detected because they make lawful as well as unlawful transactions. Generally those who steal electricity, for example, do so by controlling the meter reading to pay minimum amounts. Fourthly, they occur when it is easy for persons to misrepresent their status and conditions and difficult or costly for an organization to determine when they are misrepresented. Eligibility for welfare benefits and for payment of services given in such benefit programs provide examples.

We may model the vulnerability of modern organizations to mass victimization, especially by fraud, in yet another way. There are three major changes in modern societies that increase the vulnerability of many organizations to victimization by mass individual behavior.

Firstly, the modern state has empowered individuals with rights that enhance their legal power over organizations. Where there are legal entitlements, one is granted legal power to insure one is given what is one's right. The legal power of individuals, moreover, often makes it difficult for organizations to determine when individual power is being used against the organization, especially by individual misrepresentations. Privacy protections, for example, reduce the capacity of organizations to investigate misrepresentation. Organizations, moreover, cannot control their actions in their own interest when there are entitlements and it is difficult to so do where legislated rights are at stake. The review of their actions by external organizations to see that the organization applies its power universally constrains its private control of individuals.

Secondly, individual decision makers and clerical routines of monitoring behavior have been replaced by organizational routines and technological

controls. The high cost of labor, especially in labor intensive service industries, has led organizations to substitute machines for labor. Such machines, of which computers are only amont the more sophisticated, are vulnerable to cheating in its various forms.[15] The goal of increasing the efficiency of labor has led also to the substitution of bureaucratic routines that are manipulable by misrepresentation.

And, thirdly, modern society is to a growing extent based on trust relationships. Indeed, one may conclude that modern organizational life is built almost entirely out of trust relationships. The capacity of individuals to manipulate those trust relationships lies at the core of much individual power over organizations.

One of the conditions surrounding organizational victimization by mass-scale fraud is that the cost of detecting and sanctioning the violator may exceed the loss. Each individual violator contributes relatively little to the aggregate loss. It is the cumulative effect of these individual mass violations that has the substantial impact on the single organization rather than any one by itself. State and Federal revenue departments recognize that individual income tax returns, while involving small amounts of tax loss in each individual case, are enormously consequential in terms of aggregate revenue income. Inasmuch as tax penalties can be assessed without processing a violator, and settled at relatively low cost, individual returns have a substantial audit rate and provide substantial opportunity for payment of additional taxes, following an audit (Long, 1980). Federal welfare benefit programs likewise recognize that mass individual fraud accounts for a

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15. Anomalously, the computer is both the sophisticated detector and the sophisticated facilitator of mass fraud. Its capacity to search and compare makes it a sophisticated detector while the capacity to adumbrate its memory and its programs opens it to substantial fraud.

substantial loss.

Before leaving the matter of mass victimization of organizations by individuals, we should note again that mass victimization depends both upon the size and kind of organizations, especially when we consider types of mass victimization. Ordinarily small organizations are not harmed by mass victimization; yet they are major targets in mass riots that physically destroy property.[16] The larger the organization, the more likely it is to be victimized by mass fraud. We would hazard the guess that among classes of victims, governments are most vulnerable to mass victimization and not-for-profits least so, but the empirical evidence indicates some in each class are quite open to mass victimization by fraud. The infiltration of non-profit political organizations by large numbers who are unsympathetic to its cause may put it out of existence, for example. Many kinds of organizations are legally ineligible for certain forms of mass victimization. Only governments in the strict sense can experience revenue losses by fraud, for example.

We likewise call attention to the fact that there are vast differences in the means available to individuals to commit mass victimizations, even though much of the power of the mass lies within each individual and power from organizations is unnecessary. Legal ineligibility is not necessarily grounds for exclusion from a population of potential mass violators since individuals have the capacity to fashion bogus statuses and sham organizations to enhance their power; individual power is limited only by an individual's capacity to make fabrications operative. It is difficult to know the nature of such

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16. The mob often is selective of organizational targets in riot. After the Detroit race riots we observed that most not-for-profit and public buildings were left intact, that the rioters were attentive to the race of ownership, and that certain kinds of retail businesses were invariably targets of looting and subsequently of arson, e.g., grocery and liquor stores.

limits in modern post-industrial societies, but it should be noted that some private individuals have even fraudulently levied and collected taxes. Fabricated extensions of individual power were treated in the previous chapter on organizational violators.

Finally, we should note that not all victimization of organizations involves dollar losses. We can see this for mass as well as individual and organizational victimization of organizations. To illustrate by example, it is difficult to calculate the harm of a voter fraud in dollar losses nor can one measure in dollars the harm that fraud does to confidence in institutions.

Single Individuals Inflicting Substantial Harm on Organizations

There is considerable evidence to call into question the presumption that individuals have relatively little power to harm organizations by acts of law-breaking. Tables 3-1 to 3-6 following below provide examples of law-breaking involving substantial dollar losses where single individuals either qua individual or by mobilizing organizational power victimized one or more organizations. The examples are drawn from newspaper accounts of victimization and are limited to those in which the losses are substantial. Where the amount of loss for a case seems well below that of others in the set, the example was selected because it is a common violation that is characteristic of large numbers of individuals (including mass victimization) and to indicate that individual harms can be substantial against an organization even where there is mass victimization.

We shall first draw attention to some specific patterns that emerge from the way we have organized the information in these tables and then go on to draw some general conclusions about individual power to victimize one or more organizations for substantial losses.

Exploration of the extent of harm individuals can cause organizations requires that we distinguish individual from organizational actors.

A first issue that must be resolved is when is an individual acting alone and when acting with others. A second is when is that acting with and without the power of some organization. All conspiracy is organized but perhaps not all conspiracies have properties of organizations, for example.

The problem of determining when an individual is acting alone is settled in part by the simple criterion: when one is acting without organizational power. That is to say, individuals have certain powers qua individual actors that are recognized by other actors regardless of the organizational status of that actor. Those statuses may be ascribed or achieved.

The ascriptive statuses often may involve an organizational attribute but only in the sense that it is difficult for individuals to be placed in roles apart from some organizational qualities. Almost everyone es a citizen of some country, for example. We shall regard individuals as acting alone if the organizational power inherent in any social role is not actually used by the actor to break the law. One might, for example, be seen as a visitor to an art gallery or as a viewer or buyer when one is actually there to steal some art object. Although the thief in that situation must be seen in some conventional role that accounts for his presence, no organizational power is needed to commit the theft from the art gallery. Stealth and skill are sufficient when one's presence is unproblematic. Often all that may be at stake for an individual to victimize organizations is the capacity of the individual to play a given role. We recognize, to be sure, that often when organizations are victimized, they have been mistaken in their status attributions. Usually they have been deliberately misled by their violators

though there may be considerable self-deception as well. Dissemblance, deception, and disguise do not require organizational power when pretense is sufficient.

Whether a status is achieved or ascribed by society, an individual has the power of many such statuses that can be used to break the law. Some are clearly grants from the society, albeit conditional ones. Thus, it normally is assumed that anyone 18 years of age and older is entitled to register to vote for candidates to Federal office. There are grounds for disenfranchisement such as a felony conviction or mental incompetence but these conditional criteria for enfranchisement are seldom applied to determine an individual's status. Most released felons undoubtedly could vote if they chose to register, though they would do so illegally. Many probably do so and their behavior represents a form of mass individual fraud that is largely undetected. Parenthetically we note that this illegal passing from an illegal to a legal status is a form of mass fraud just as much as the illegal passing from a legal to an illegal status we called attention to in the case of mass illegal immigration.

Some individual statuses used to violate the law are at the margin of an individual behaving qua individual because they derive from an organizational status. Grants of status power that derive from an organizational affiliation, such as veteran status, are an example. Also at the margin are instances where an individual misrepresents his status by adopting or simulating an organizational status. Where one combines a fake persona with a fake organization, one also is operating at the margin of individual and organizational power since it is essential that victims grant those as bona fide attributes to be victimized. Surprisingly, often a letterhead and a post

office box may be all that is required to convince organizations as well as individuals to accept a spurious status of an individual as genuine. The ease with which individuals can fashion both a fake individual and organizational status by using public means of communication lies behind the abundance of convictions for mail fraud. Such convictions speak only to the means and often are incidental to the violation.

Mobilizing Individual and Organizational Power for Law-Breaking

Although organized environments substantially determine the behavior of individuals, we must distinguish then among the ways that organizational power is used to break the law. Cases where an individual violates the law by using or mobilizing power of organizations to which he or she belongs must be separated from those where an individual mobilizes the power of organizations to which he does not belong. Both of these instances must be separated, however, from the case where an individual uses means of power that he possesses individually.

Often one must gain access to organizations if one is to victimize them by using their power against them. There are only a few basic ways of doing so. One can use the power of one's position within an organization. If one is in a fiduciary position, for example, one may embezzle from accounts for which one is responsible. Or, one can get an organizational member who has the cessary power to act with one--knowingly as an accomplice or unknowingly by some form of deception. One may, for example, need the bookkeeper as an accomplice or an auditor to certify that the transactions are bona fide. Still another way to victimize an organization is to gain direct access to it and its power, either illegally such as by illegal entry or legally by manipulating some form of established exchange relationship. Finally, one can

use the organization as actor either because one is in a position to mobilize that power directly, e.g., by using it to launder money through one's accounts, or because one can do so by some form of incentive or deception, e.g., a bribe or false submission to gain some benefit from the organization. The same individual, moreover, can gain power by mobilizing simultaneously or successively the power of different organizations to which he or she belongs or by increasing the number of those acting in concert. Several organizations may be used to make loans to one, each serving as collateral for the other.

Clearly an individual acting along can augment his power by mobilizing organizational power. Gains in organizational power will depend upon what individuals can do to mobilize it or what they may contribute through some form of collective action. In the first instance one may mobilize power through a contract or agreement among organizational actors, often regarded as a conspiracy when the intent is to violate the law; in the second case one mobilizes power by increasing the number of individual or organizational actors to do the same thing or to create a division of labor or exchange among them that is more powerful. The violators and victims of crime, then, can be individuals acting alone or as members of organizations, in some form of group or network, or as organizational actors.

Single Individual qua Individual Victimizes Organizations

An individual acting alone is able to inflict considerable harm upon a single organization or a large number of organizations over time as our examples in Table 3-1 disclose.

***** Table 3-1 *****

TABLE 3-1: EXAMPLES OF LAW-BREAKING INVOLVING SUBSTANTIAL DOLLAR LOSSES WHERE A SINGLE INDIVIDUAL VICTIMIZES ONE OR MORE ORGANIZATIONS: SELECTED NEWS ACCOUNTS

Offense & Offender	Victim(s)	Dollar Loss	Newspaper Source
Household burglar of executive's houses in Menlo Park, Los Altos, Palo Alto & Atherton, CA. Jewelry, Kashan rugs, silver, 7 gold plates, etc.	Estimated 130 households	Estimated $3 million in paintings, jewelry & antiques. $1.5 million recovered in his home	New York Times 11/14/82
Philadelphia physician art theft	Private art galleries in NYC & LA (at least 10 galleries identified by name and objects as stolen)	Estimated loss of recovered art in physician's apartment of $1 million	New York Times 04/08/82
Professional rare book thief	College and University libraries in US	Minimum of $250,000 in recovered volumes	New York Times 10/13/82 Bookman's Weekly 08/02/82
NYC police officer filed false burglary claim of home and false theft of his automobile as insurance claims	Two separate insurance companies	$ estimate not specifically reported but in excess of $10,000	New York Times 03/11/81
Fairfax Co., VA woman convicted of welfare fraud in VA; prior conviction for welfare fraud in Buffalo, NY (Used 5 names & fictitious)	Virginia Dept. of Welfare & New York State	$68,926 in VA; $46,985 in NY	Washington Post 03/26/82

Table 3-1 Cont'd.

Offense & Offender	Victim(s)	Dollar Loss	Newspaper Source
Author indicted on 17 charges of fraudulently collecting payments from Medicaid Program, 1978-81	Medicaid Program, Hawaii	$21,000	New York Times 03/24/83
65 year old financier filed false tax returns for 1975-79; inflated value of gift property	IRS (government)	$1.25 million	New York Times 04/27/82
Elkridge, MD 25 year old man had counterfeit VISA cards made in Baltimore and used them to obtain cash from banks throughout US; forgery charges	VISA and banks who gave cash	$300,000	Washington Post 06/12/79
Operator of a novelty shop posed as a Pan Am flight attendant and bought tickets at employee discount	Pan American World Airways	$40,000 estimated; agreed to reimburse Pan Am for $25,000	New York Times 05/08/83
Long Island man billed and received payment for pesticides and snow pellets never ordered or delivered	Municipalities; free districts; sewer districts; school districts; churches	Unestimated over a period of years; at least $65,000 in last 4 months	New York Times 12/20/78

On their own, individuals appear to victimize organizations for substantial losses primarily in the crimes of burglary and fraud. The common crime of theft, particularly in the form of burglary, can have organizations as victims. Households, especially affluent ones with considerable personal property that can be stolen, as well as business organizations can produce substantial income to individual offenders and lead to substantial loss, even for a single organization. The case of the single burglar in the Palo Alto, California area who burglarized at least 130 households for an estimated $3 million loss--much in recovered valuable property such as antiques, jewelry, and paintings--accounted for the largest gain by a single individual among our examples in Table 3-1. These illegal gains for a single individual are well below those encountered fairly often for two or more burglars who seem more likely to choose businesses and other organizations with substantial assets or property as the target of group burglary. Another reason for this difference, as Sparks (1983) has noted, is that such crimes are more likely to involve work organization.

Although substantial victimization of organizations by a single burglar may be a work career for some, it is not so for others. The Philadelphia physician who stole an estimated one million dollars worth of art from at least 10 private art dealers' galleries on two coasts had a very successful career as an osteopathic physician. His theft was undertaken, it appears, solely to enhance his reputation as a modern art collector since he displayed the art in his apartment for admirers.

That substantial theft from organizations is not limited to the crime of burglary is illustrated by the case of the professional rare book thief who victimized university libraries of at least a quarter of a million dollars in

rare books (NYT, 10/13/82). At least two other examples of major thefts of rare books came to our attention during this period. One involved both employee theft and theft from other dealers who specialized in North American Indian editions (WP, 10/06/80) and another a former Columbia University graduate student who stole rare books from the University Colleges of London library and brought them into the USA for sale (AB, 09/13/82).

Whenever an organization owns or temporarily possesses corporate property with a substantial market value, it is especially vulnerable to theft of it. Such property ranges from rare objects through negotiable instruments to cash money. Much of this valuable property can be obtained by a single individual without the aid of others and, consequently, the owners are especially vulnerable to theft of it. Often, though, it is not known whether an employee, a single outsider, or a few violators committed the theft. Recent examples of such thefts include $400,000 in antiques stolen from two dealers in which the antiques were in transport from an antiques show (NYT, 02/02/83), burglary of Oriental rugs worth $300,000 from a Georgetown rug merchant (WP, 05/18/82), $1,150,000 in Indian ceremonial masks from the Museum of the American Indian in New York City (NYT, 09/01/82), and $478,000 in 25 Mayan jade artifacts taken from the American Museum of Natural History in New York (09/11/82). Perhaps the most bizarre theft of a rare property we encountered was the theft of 3.13 ounces of bull semen worth $90,000 from the East Central Breeders Association in Waupun, Wisconsin. The semen was stolen from a bull called Round Oak Rag Evaluation, believed to be the greatest Holstein dairy stud that ever lived (WP, 12/05/80). Jewelry dealers likewise are highly vulnerable as has been the electronic chip industry. A single warehouse in New Jersey had $1.5 million in electronic chips stolen (NYT, 02/18/82). Note in these examples the vulnerability of not-for-profit as well as profit-making organizations to this form of law-breaking.

One way that individual power frequently is used illegally against organizations is in the crime of fraud. Individual power can be used in only a few ways to defraud organizations as our examples in Table 3-1 suggest.

One major way individual power is used to defraud organizations is for an individual to file false claims that organizations are obliged to pay if they are bona fide. Both the claim and the status of the individual may be bogus. One commonly gets individuals filing substantial claims for insurance losses, especially claims for fire damage and theft of property. The typical victims are private organizations. Another kind of false claim is that made for an entitlement, especially for a welfare benefit; the typical victim organization is a government. There are a host of ways that individuals make false claims to secure a tax refund or to underpay taxes owed to governments. Although our example in Table 3-1 is drawn from a case where the filer, by using fraudulent documents, substantially inflated the value of gift property on a Federal Income tax return, one gains the impression that defrauding local governments of tax revenues may be more prevalent than for the Federal government. We have uncovered substantial instances where that is the case for organizations, e.g., in failure to pay state or local sales taxes, as well as for individuals who defraud in matters of valuing and reporting personal property for tax purposes. The lesser capability of state and local governments to detect and process violators may well open them to more individual fraud as well as organizational fraud.

We note, finally, that single individuals have the capacity to take a variety of false identities that enhance their power to defraud considerably. These range in our Table 3-1 examples from an individual who took the identity of many VISA card holders in counterfeit cards, through one posing in an

employee role, as is the case for our novelty shop operator who defrauded Pan Am by posing as a flight attendant, through our Long Island man who pretended to be a company that had delivered goods to government and private organizations and secured payments for spurious billings. In this range we have individuals defrauding organizations by taking a strictly individual role as a VISA card holder to ones where the seeming actor to the victim is an employee or an organization. These latter might be considered more appropriately as cases at the margin of individual and organizational power. From the perspective of the violator they require only an individual acting with a false individual or organizational persona; from the perspective of the victim these are perceived as organizational roles or organizational actors. At their core, however, the only means mobilized to commit these law violations are those of the individual and the capacity that individual has to manipulate social organizations and the individuals within them.

The relationship between false persona and victim and violator statuses is not a simple one. Note how in making a bogus insurance claim, one may victimize an organization by assuming a pseudo status of victim and creating dummy violators. The police officer who victimized an insurance company by claiming to have been victimized by burglary and larceny when he was not, created a dummy violator who committed a bogus violation of which he was the spurious victim. In other cases the person defrauds an organization by creating neither of these statuses and simply uses a false persona or fake organization.

No claim is made that the examples in Table 3-1 exhaust the ways that an individual qua individual uses power to victimize organizations. Although these are prototypical examples of uses of individual power in victimizing

organizations, they are limited to cases in which there are monetary losses. Omitted are victimizations in which individuals use their power to harm organizations in ways that are not represented by dollar losses or where the amounts are insubstantial. We have considered individuals in these latter roles in connection with mass theft and shall treat other cases when considering forms of organizational vulnerability.

Use of Position of Organizational Power

Reiss and Biderman (1980:4) define white-collar law violations as those to which legal penalties are attached that involve the use of a violator's position of significant power, influence, or trust in the legitimate economic or political institutional order for the purpose of illegal gain, or to commit an illegal act for personal or organizational gain. A major subclass of these violations is that where individual violators victimize organizations.

There are two major ways that individuals use organizational positions to victimize organizations. One way occurs when an individual uses the position one holds to victimize that organization. The other takes place when individuals use the power, influence or trust of one or more organizational positions to victimize other organizations.

Insider Victimizes Organization. We shall consider first the use of an insider position to victimize that organization. The dominant class of insider positions is an employee of an organization where the individual uses the power, influence, and trust of the employee position, or qua employee, to victimize the employer. Members can also victimize their organization in other kinds of positions, such as by using the position of volunteer or as fiduciary. Examples of victimizing the organization in which an individual uses an insider position are found in Table 3-2.

TABLE 3-2: EXAMPLES OF LAW-BREAKING INVOLVING SUBSTANTIAL DOLLAR LOSSES WHERE A SINGLE MEMBER USES AN INSIDER ORGANIZATIONAL POSITION TO VICTIMIZE THE ORGANIZATION: SELECTED NEWS ACCOUNTS

Offense & Offender	Victim(s)	Dollar Loss	Newspaper Source
Air Force Major General; embezzled from US accounts in Swiss Bank Corp. & Lloyds Bank Intl.	US Air Force Accounts; (USA government)	$445,000 in bank funds diverted to personal accounts in Swiss banks	Washington Post 01/29/83
US Federal Election Commission financial assistant; prepared fraudulent vouchers for payments to self	US Federal Election Commission (government)	$546,000	New York Times 10/09/82
Cashier in Ohio State Treasurer's Office; embezzlement	State of Ohio, Office of the Treasurer	$1.3 million in cash & records; $800,000 to auditing firm	New York Times 05/23/82
Vice President, U. of Illinois; embezzlement	University of Illinois fund raising affiliate	More than $600,000	New York Times 04/28/82
Bookkeeper and cashier; embezzlement from employer	South Central Community College	Over $65,000	New Haven Register 06/03/82
Asst. Bookkeeper; embezzled money raised by cookie sales and donations	Girl Scouts of Central Maryland	More than $40,000	New York Times 02/03/82

Table 3-2 Cont'd.

Offense & Offender	Victim(s)	Dollar Loss	Newspaper Source
Assistant to Pastor of First Pentacostal Church, Pleasant Mound, TX	First Pentacostal Church of Pleasant Mound, TX	$100,000	Washington Post 03/01/81
Treasurer of church absconds with church funds by illegal transfer from church trust to own account	Christ Church Episcopal, Rockland County, Suffern, NY	$165,000 to $300,000 by audit; $250,000 on indictment	New York Times 02/19/82 04/21/82
Office Manager of Hero Scholarship Fund, diverted contributions made to fund to own account	Hero Scholarship Fund, Philadelphia, PA; private, nonprofit corporation	$40,000 by audit	Philadelphia Daily News 06/22/82
Bookkeeper of Hermetite Corp., MA; embezzlement by falsifying company records	Hermetite Corp., mfg. of electrical components	Over $235,000	New York Times 05/05/82
Commodity Purchasing Mgr. buys products from company he has set up; does not inform employer of this arrangement; also kickbacks from oils broker	Pepsico subsidiary, Frito-Lay	Settlement of $5 million to Frito-Lay	Wall Street Journal 01/03/79
Manager of Budgets and Reports for WCBS-TV for submitting invoices for nonexistent companies and fictitious employees	WCBS-TV, Manhattan, NYC	$148,944	New York Times 08/08/7[illegible]

Table 3-2 Cont'd.

Offense & Offender	Victim(s)	Dollar Loss	Newspaper Source
Managing partner in brokerage firm; $36 million shortage of collateral in six margin accounts owned by wife	Bell & Beckwith, Toledo, OH brokerage firm forced into liquidation by loss (also charged for filing false statements)	$36 million misappropriated assets by overstating values of securities from 1978 to 1983	New York Times 03/10/83 04/06/83
Chief Financial Officer, Firestone Tire & Rubber Co. with misuse of company funds by appropriation for personal use	Firestone Tire & Rubber Co, Ohio	Settlement of $233,000	New York Times 08/15/79
Principal stockholder agrees to reimburse company in SEC consent agreement for secret perquisites and improper exercise of corporate control over acquisitions	Walco American Corp.	$425,000	New York Times 11/10/82

**** Table 3-2(NEW!!!) ****

The most frequent use of an employee position to victimize one's employer is in theft of property. Employee theft ranges from the common crime of simple theft by stealth where the employee steals property belonging to his employer to frauds requiring elaborate manipulation of organizational means or transactions. The form of theft is a function of both the insider position and the type of organization. Retail and wholesale organizations, for example, are more vulnerable to employee theft of tangible property than are most other organizations and organizations with a substantial cash flow are most subject to theft of money.

An employing organization is most vulnerable to substantial loss at the hands of one of its employees in a fiduciary position. Organizations quite commonly protect themselves against the delicts of fiduciaries by precautionary measures such as special employee screening or bonding against losses resulting from a misplaced trust. Audits and special forms of supervision frequently are designed to protect the organization against internal subversion by employees. Despite these precautions, the most substantial losses through employee victimization are inflicted by fiduciaries in their positions of financial trust.

All of our examples of employee victimization of employers in Table 3-2 involve some form of defrauding one's employer by using the power and trust inherent in one's fiduciary position, i.e., it is ordinarily done as part of one's daily work or one's major responsibility for the organization in carrying out one's job. Precisely because one does it as part of one's job or in the course of carrying it out, it is difficult of detection. Moreover, as Katz (1979:) concludes, the violations are difficult to detect precisely

because one is able to cover the violation in the course of one's work. Although the examples of employee victimization of employers in Table 3-2 involve some form of defrauding one's employer of money by using one's fiduciary position, most did not involve direct control over the actual disbursement of that money. To defraud thus required more than theft by stealth; what was required as well is some understanding of how the organization will respond to one's manipulations. The organizatio is in some sense not simply a compliant victim of theft by employee fiduciaries but in an important sense a facilitating victim since ordinarily normal routines and procedures can simply be manipulated to divert organizational resources to personal gain.

Although most of the victimizations in Table 3-2 were by insiders in employee roles, some resulted from other members violating their fiduciary role. The vestry appointed Treasurer of an episcopal parish, for example, diverted funds from its trust to his personal account. And a managing partner (owner) diverted corporation assets to his own accounts, manipulating his wife's accounts as collateral.

Inspection of the cases in Table 3-2 as well as others where fiduciaries victimize their employers of substantial amounts of money discloses a number of factors in organizational vulnerability.

The most frequently occurring victimizations are by employees in lower level white-collar fiduciary jobs. Opportunities for substantial fraud are often great in such positions because they involve responsibility for high volume routine transactions. One need only alter or falsify an occasional transaction to gain considerably. For that reason, cashiers, bookkeepers, and other lower echelon fiduciaries commonly are charged with embezzlement from their employers.

Attention also is called to the fact that all major forms of organization are vulnerable to victimization by individuals in fiduciary positions Not-for-profit organizations, somewhat surprisingly, are vulnerable to their no-paid as well as their paid fiduciaries. Included among our examples in Table 3-2 are the Treasurer of a church, an assistant bookkeeper for the Girl Scouts of Central Maryland, the vice president of the University of Illinois (who victimized a fund-raising affiliate), and an office manager for a Hero Scholarship Fund. Government organizations likewise are vulnerable to the delicts of low level fiduciaries, as our example of the cashier in the Ohio State Treasurer's office who was charged with embezzlement, that of an employee of the US Federal Election Commission who prepared fraudulent vouchers for payment to himself, and embezzlement by the bookkeeper of a community college illustrate.

The organizational victims in Table 3-2, moreover, vary considerably in size. Substantial amounts are lost by quite small organizations such as the Episcopal parish in rural Rockland County, New York, a regional Girl Scout organization in central Maryland, and the Hero Scholarship Fund in Philadelphia which had a full-time staff of only three persons. The victimizations where the US Air Force was bilked of $445,000 by an Air Force Major General, and the Firestone Tire & Rubber Co. by its chief financial officer diverting company funds to personal use show that large government and profit-making organizations are among the organizational victims of individual employees.

In brief, then, organizations appear quite vulnerable to their fiduciaries regardless of their size and form or where that position is in the organizational hierarchy. This strongly argues for an inherent structural

vulnerability of organizations to fiduciary positions rather than to their incumbents.

One might still conjecture that organizations will differ in their vulnerability to their fiduciaries as a function of how such positions are organized and controled in its hierarchy of positions. Our information is insufficient to explore that possibility. Nonetheless, our cases contradict simple propositions such as one that substantial losses to organizations can be inflicted only by persons in top positions within the organization. It is much more likelyl that the volume of money over which one can exercise control and the opportunities for diverting it affect the size of organizational losses to employee fiduciaries than does the position of the violator in the organizational hierarchy. The cashier in the Ohio State Treasurer's office, the civil servant in the US Federal Election Commission, and the purchasing manager for Frito-Lay all made off with substantial amounts of organizational funds. That a managing partner in a brokerage firm misappropriated by far the largest amont of money is undoubtedly owing in part to his being a partner owner as well as to his senior position in the hierarchy of that organization. Additionally, it appears to have been a function of his control over a large number of fiduciary responsibilities that normally are held by persons in other and lesser positions in an organization. The brokerage firm, moreover, was not a large one. Indeed, one is inclined to speculate that the largest of US corporations are less vulnerable to these forms of fraud by their employees than are much smaller ones. Where larger organizations are most vulnerable is in their subsidiaries and most particularly in their local operations that are permitted to operate quite independently of the parent organization. Small branches of banks are more vulnerable than large ones and branches more than the parent organization in its domain.

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Single Individual with Organizational Accomplice

An individual is precluded from certain opportunities to victimize organizations either because he lacks the organizational resources to break the law or because he cannot get access to the resources of the organization essential to its victimization. An individual acting alone can create a false organizational persona and victimize organizations or individuals only insofar as one does not need an operating or concrete organization to break the law. Where all one has to rely upon are forms of communication and impersonal exchange--as when an individual uses a wire or a mail service to defraud--the individual can operate through a false organizational persona. When, however, an individual requires either resources of the victim organization or the use of an operating organization to victimize another, he can do so only by gaining access to that organization or in some way directing the use of its resources to break the law. Lacking legitimate access to the resources, the simple solution is to collude with someone in an organization who has access to them. The individual who seeks to victimize an organization, then, in a particular way will seek either someone inside an organization to be an accomplice in victimizing that organization or seek another organization as an accomplice to carry out the victimization. Our examples in Table 3-3 Illustrate the several ways that individuals either use an organizational accomplice or an accomplice within the victim organization.

***** Table 3-3 *****

The power of an individual to victimize an organization is enhanced when one can mobilize an organizational accomplice. Although that accomplice

TABLE 3-3: EXAMPLES OF LAW-BREAKING INVOLVING SUBSTANTIAL DOLLAR LOSSES WHERE A SINGLE INDIVIDUAL USING AN ACCOMPLICE(S) IN ANOTHER ORGANIZATION VICTIMIZES ONE OR MORE ORGANIZATIONS: SELECTED NEWS ACCOUNTS

Offense & Offender	Victim(s)	Dollar Loss	Newspaper Source
Washington, DC businessman & bank manager accomplice; misapplication of bank funds using false accounts/checks	Woodley Park Branch, American Security Bank Washington, DC	$3 million over two years	Washington Post 04/06/83
Boxing Promoter of Muhammed Ali Professional Sports, Inc.; embezzled bank funds with bank executive accomplice who manipulated transfer accounts among bank's branches	Wells-Fargo Bank, LA	$21.3 million (apparently diverted to MAPS but not recovered)	New York Times 06/02/82
52 year old man used woman in check-cashing scheme to cash $3,500 in checks each day at Chemical Bank branches; seven years of cashing	Chemical Bank, NYC	In excess of $6 million	New York Times 10/20/79
Acting chief of NYC's Small Business Administration splits kickbacks from SBA loan applicants with businessman	Loan office applicants for business loans	$250,000 split between SBA official and businessman	New York Times 03/05/82
President, NC AFL-CIO and head of printing company; illegally obtaining and misapplying federal job-training funds	Comprehensive Employment & Training Act	Estimated thousands	New York Times 12/30/81
Department of Energy printing specialist steered DOE printing contracts to firm at which he was part-time employee and that was not lowest bidder	Alexandria Graphics & Reproduction Services, VA	Contracts worth $85,000 to company	Washington Post 01/22/83
Head of Arlie Foundation, VA; used aide to Rep. Daniel Flood of PA to pay off Flood to secure Federal grants for his foundation	Federal government grants to foundation	Estimated $28,000 secured by intervention	Washington Post 01/17/79

Table 3-3 Cont'd.

ordinarily shares in the gains from the law-breaking, we did not discover any instances in which the share was more than equal to that of the single individual who recruited them as accomplice.[17] Typically, the share of the accomplice is small relative to that of the individual perpetrator.

A single individual searching for an organizational victim may require an accomplice in one of four major roles, the first two of which are employees of the organization that is victimized. The first is collusion with someone in a fiduciary capacity within the organization selected as victim. The reasons for recruiting an accomplice are simple enough. Any individual who seeks to victimize an organization by acquiring its resources illegally must gain access to them. Not uncommonly one cannot gain those resources by theft or at least not without considerable organizational effort ordinarily unavailable to a single individual. The resources such as money often would not be payable in large amounts of cash in any case and even such disbursements must be a matter of record for, say, the lending organization and other organizations if it is to meet the requirements of a legal transaction. Where, moreover, one wants to secure such resources over a continuing period of time or by accretion, a single act of theft will not suffice. The problem is solved by getting one or more accomplices with the organization who have fiducial control over them to bilk the organization of its resources but in ways that cloak it in legality. This means that the accomplice must not only be able to assist in withdrawing the resources from the organization but to do so in ways that the organization normally will not detect it as an illegal transaction. Where a bank is to be bilked of large amounts of money, this may be a branch manager of a bank; for other organizations, it may be an assistant treasurer;

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17. We exclude here all cases where two individuals collude to victimize an organization since our focus here is on individual violators and the ways they victimize organizations.

or it may be a lesser functionary such as a cashier who controls bogus accounts for the violator. Using someone in a fiduciary capacity is simply one form of employee victimization of employer, a major way that individuals commonly victimize an organization. The only difference is that an employee accomplice serves as an employee of both the offender and the victim organization.

TABLE 3-4: EXAMPLES OF LAW-BREAKING INVOLVING SUBSTANTIAL DOLLAR LOSSES WHERE A SINGLE INDIVIDUAL USES ORGANIZATIONAL POSITION TO VICTIMIZE ANOTHER ORGANIZATION: SELECTED NEWS ACCOUNTS

Offense & Offender	Victim(s)	Dollar Loss	Newspaper Source
President of Long Island Intl. Bro. of Teamsters Local 854; extortion from employer using local's members	Employer (unnamed) using labor members of Local 854	$7,000	New York Times 12/03/82
Official of New York City Transit Authority; extortion from Rockwell Intl. & Pullman Co. for R-46 subway cars	New York City Transit Authority and companies producing cars	$30,000 in benefits	New York Times 06/18/82
Director, New York State Health Dept. program for federal assistance to low income women; extortion of grocery firm supplier of food	Ree Soo Grocery, Inc. and federally financed program	Over $70,000 (demanded and got 10% of weekly gross of sales)	New York Times 02/28/82
Former Governor of State of Maryland; kickbacks from highway construction firms	State of Maryland and firms who did business with state during his term of office	$248,735 ($147,500 in kickbacks plus interest since 1973)	New York Times 11/20/81
Son of Ex-GM President used family name and false documents to obtain loans from banks and business associates	National Bank of Detroit; Manufacturer's Bank of Southfield, MI; City Natl. Bank; Michigan National Bank; local businessmen	Loans of $450,000; $550,000; $50,000; $95,000	New York Times 02/19/82

Table3-4 Cont'd.

Offense & Offender	Victim(s)	Dollar Loss	Newspaper Source
Renovation contract, son of Mayor, makes false loan application to bank and false statements to secure HUD rehabilitation subsidy	City Trust Bank; HUD Bridgeport Housing Authority	Possible $88,000	New Haven Register 09/23/82
West Springfield, MA psychologist; false billing for psychological testing never performed	Medicaid, Massachusetts Welfare Department	$510,883 between Oct. 1980 and Nov. 1981	New Haven Register 05/11/82
President of Nice Fuel Oil Co., Queens, NY; falsely and fraudulently submitted bogus fuel delivery tickets to AMTRAK	AMTRAK Railroad	$450,632	New York Times 11/11/82
Westchester Co. real estate broker & developer pled guilty to swindling Texas based buyer of building; misrepresented rental income	Lilac Corporation, a Texas company	$2.5 million	New York Times 03/18/83
President of Cargo Fashions Inc. of Rockville Centre, LI; falsely obtained loans from major banks; charged with swindling and jumped bail under $1 million bond	Major banks; Manufacturers Hanover Trust Co. & Royal Bank & Trust Co. of Manhattan and Pioneer Bank and Trust Co. of Chicago	Nearly $10 million in loans	New York Times 03/01/83
Landlord of large apartment building guilty of 220 violations of NYC Housing Code (Masada Realty Co.)	NYC Dept. of Housing and households in apartment building	Unestimated losses to tenants but landlord fined $95,480	New York Times 02/19/82

TABLE 3-5 EXAMPLES OF LAW-BREAKING INVOLVING SUBSTANTIAL DOLLAR LOSSES WHERE A SINGLE EMPLOYEE USES ORGANIZATIONAL ACCOMPLICES TO VICTIMIZE EMPLOYING ORGANIZATION: SELECTED NEWS ACCOUNTS

Offense & Offender	Victim(s)	Dollar Loss	Newspaper Source
Chairman and President of Data Access with associates created sham companies, false invoices, and laundered money of employing org.	Data Access, Inc., Blackwood, NJ	$9.4 million	Philadelphia Daily News 03/21/82

TABLE 3-6: EXAMPLES OF LAW-BREAKING INVOLVING SUBSTANTIAL DOLLAR LOSSES WHERE A SINGLE INDIVIDUAL USES ORGANIZATIONAL POSITION AND ACCOMPLICES TO VICTIMIZE OTHER ORGANIZATIONS: SELECTED NEWS ACCOUNTS

Offense & Offender	Victim(s)	Dollar Loss	Newspaper Source
Insurance consultant; tax evasion 1965-75; embezzlement using wife and associate as accomplices from union local pension and welfare fund	IRS for income tax evasion; Brooklyn Teamster's Local 918 for embezzlement	$6.8 million estimated tax evasion; $1.2 million embezzled from union	New York Times 12/16/80
Chairman of the Nassau Co., LI Republican Party; extorted 50% of insurance commissions for party members and self	Insurance agencies	More than $500,000 in insurance kickbacks	New York Times 01/22/82
Billing Clerk for INA submits bogus bills for payments to boyfriend's tow truck service for deposit	Insurance Company of North America (INA)	$476,000	Philadelphia Daily News 03/20/82
Employee of Petroleum Combustion International Inc. falsified NY state sales tax receipt returns at president of firm's request according to his testimony	New York State (sales tax receipts)	$122,000 in sales tax evaded during 18 months	New York Times 05/01/82
Rev. Sun Myung Moon of Unification Church and one of his top aids convicted of tax fraud and conspiracy to obstruct justice	IRS (government)	Failure to report $122,000 income	Washington Post 05/19/82 New York Times 05/19/82 07/19/82

Table 3-6 Cont'd.

Offense & Offender	Victim(s)	Dollar Loss	Newspaper Source
Sole proprietor of a record company, Super-Dupers Inc., Hasbrouck Hts., NJ indicated for reproduction and distribution of copyrighted recordings	Major record recording companies and artists	Estimated $2 million a year	New York Times 01/28/79
Treasurer of Anaconda Co. induced major banks to make loans to two business promoters by claiming they had important business relationships with Anaconda; he received kickbacks from loans	Of all loans obtained fraudulently, unpaid loans held by Bankers Trust Co., Bank of NY, and Wells Fargo	Bankers Trust loan of $11 million; Bank of NY, $6.5 million; Wells Fargo, $1.8 million unpaid; total of $34 million in loans obtained by fraud	New York Times 12/28/78

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