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Perhaps the most striking revolution of the twentieth century was the rapid expansion of the population of organizations. As the century draws to a close, the population of profit, not-for-profit, and governmental organizations in the United States rivals in number the population of individuals.

Both organizations and individuals may be regarded as behaving under the law. Many organizations, created by the acts of individuals, of corporate organizations, or of governments, are given a legal identity. Under the law, organizations are accorded distinct properties, such as a corporate form, a domicile, and recognition as a not-for-profit, a profit-making, or a governmental entity. Organizations can be held accountable for their behavior under the law, without any of the individuals who took actions on behalf of the organization being held legally accountable. Capital and not-for-profit organizations, for example, can be fined for violations of law—even to the point of bankruptcy. They can be placed on probation for violations of laws and be required to meet special conditions or perform community service, much as is the case for sanctioned individuals.

This volume consists of case studies of organizational violations of law. Each is limited to patterned violations of civil and criminal law and patterned evasions of administrative regulations by organizations in an organizational network. The focus is on the behavior of organizations in that network, rather than on specific individuals who commit those violations. For example, in essays on savings and loan organizations, the central focus is not on any particular organization, such as the Lincoln Savings and Loan Association, but on understanding the widespread violations within the S&L industry. We are less interested in how and why individuals committed violations than in why so many individuals in particular roles in savings and loan organizations did

so. Hence, our interest in people working within organizations is in understanding their conduct in the pursuit of organizational purposes or in understanding how employees in the pursuit of personal goals victimize organizations by using their resources.

Violations by and within organizations are facilitated by the behavior of other organizations in their or other networks. For example, enforcers or regulators of organizational behavior in various ways may account for the pattern of violations by organizations in the network.

To return to the S&L example, in planning this volume we were not interested specifically in Charles Keating or in, say, the five U.S. senators who became known as the "Keating Five" but in how people in a class of organizations—the savings and loan industry—came to behave as they did, and how the Keatings, the regulators, and the congressmen came to behave as they did and do. Savings and loan violations are embedded within larger environments and exchange systems, such as the structures of savings and lending, of regulation, and even of congressional campaign financing, all of which are relevant to understanding how a particular industry becomes involved in violations and how a regulatory system is compromised.

A caveat is in order, lest readers be misled into thinking that we are not interested in specific cases such as the Lincoln Savings and Loan Association debacle. We most certainly are to the degree that specific cases enliven the exposition as examples. Writers were asked to seek out telling and colorful examples.

We are interested in common-law crimes such as fraud and theft only to the degree that they are part of the patterning of violations in an organization. To return again to the S&L example, employees and contractors of many specific S&L associations appear to have committed fraud in assessing the value of property for investment and may personally have gained from doing so. We are interested in that employee behavior and its sanctioning only to the degree that it helps us to understand how the industrial and organizational structure and the structure of regulation gave rise to such behavior throughout much of the S&L system. Many of the violations, for example, may be generic common-law crimes of employee theft and fraud, but this is not another book on how white-collar persons commit such crimes.

From an organizational perspective, however, violations by a particular class of individuals—for example, the affluent or those at the top of an industry, or of the less affluent who often become involved in the commission of violations—are less important than how persons of

any class may become enmeshed in the patterned violations and hence be open to individual prosecution under the criminal law, to tort liability and litigation, or to regulatory sanctions like fines, loss of licenses, or registrations.

About a decade ago Lawrence W. Sherman (1978) published a book, entitled *Scandal and Reform: Controlling Police Corruption*, that illustrates an organizational approach to unlawful behavior within organizations. His central focus was on explaining how police organizations are corrupted and why the reforms that follow are often ineffective. Although scandals in cities such as New York and Oakland, California, are used as illustrations, the central argument focuses on the fairly widespread phenomenon of department corruption. Although in the corruption scandal a substantial number of officers and employees at different levels of police departments and organized criminal activity may be processed as violators, the core of the explanation is on how and why departments become corrupted and why there are repeated failures in controlling the conduct that leads to organizational corruption.

I. Four Features of the Legal Control of Organizations

Most theories and conceptions of law violation and of victimization center on persons rather than on organizations. Most criminological theories, including subcultural, social learning, and structural opportunity theories, focus on individuals and attempt to explain their behaviors. Causal theories in criminology center on individuals making rational choices to offend or offending because of the influence of a plethora of individual or situationally induced motives. Any examination of different kinds of law violations, however, makes it clear that an emphasis solely or preponderantly on individuals can provide only an incomplete and impoverished account of crime in America.

Once the search for improved understanding of the causes of crime is widened to include organizations, four implications stand out. One is that organizations are central offenders in many violations of law. Most major violations of environmental pollution laws, for example, are committed by public and private organizations rather than by private individuals. It is organizations that must be controlled in the public interest (Yeager, in this volume). Likewise, fraudulent record keeping and billing is endemic in the American nursing home industry. To remain financially solvent, many operators bill Medicaid for services that are not rendered. Similarly, institutional neglect of the well-being

of nursing home residents is more of a problem for nursing home regulation than is employee abuse of residents (Braithwaite, in this volume).

Second, organizations and collectivities of individuals (such as taxpayers, or residents of a town or neighborhood, or members of an association) are a major class of victims of crimes by individual offenders and by organizations. Vandals who destroy public property, such as parks and schools and public transportation equipment and facilities, directly victimize a corporate entity and indirectly victimize collectivities of taxpayers and users. Organizations that collude in fixing the prices of commodities or services may target organizations as well as individuals as their victims. Reuter, in this volume, shows how collusion in the cartage industry in the New York metropolitan area has for many years significantly raised the price of garbage collection for commercial establishments. Two essays on the savings and loan crisis in this volume (Pontell and Calavita; Zimring and Hawkins) focus on both the victimization of particular S&L organizations that became insolvent and on the short- and long-run victimization of American taxpayers who must absorb losses that would otherwise have fallen to individual depositors and shareholders.

Third, many individual violations of law and almost all organizational violations involve use of an organization's position of significant power, influence, or trust to commit the violation (Biderman and Reiss 1968). The insider trader who uses a position of access to information that will affect the market price of shares is an example, as is the use of appraisal, loan officer, corporate officer, and directors' positions in the savings and loan crisis.

Finally, it is evident that many violations of law are committed neither by individuals nor by organizations acting separately. Much organizational lawbreaking involves the use of the organizational power created by a network of organizations or the coercive power of a syndicated network. Recent notorious examples include allegations of price-fixing in bidding on public construction projects in many cities, allegations of nationwide collusive bidding for military and public school supply contracts by dairy products companies, and allegations of price-fixing by domestic airlines. Reuter, in this volume, shows how the coercive power of the Mafia, the network power of trade unions, and ethnic and kinship networks were fundamental to creating and maintaining segmented local markets in the early years of the cartage industry in New York, New Jersey, and elsewhere. Later those combined

powers and influences were replaced by racketeering organizations that maintain discipline among the conspirators and inhibit customer complaints. Reichman's account of insider trading in this volume depicts it as enmeshed in a web of deal-making roles and relationships and describes how insider trades can be unlawfully brokered through networks of even remotely connected participants. Those who unlawfully take advantage of trading information may be far removed organizationally from its source, as when the printer of financial documents relating to an impending stock split trades on that information.

II. Five Limitations of the White-Collar Crime Literature on Organizational Wrongdoing

Since Sutherland (1945), the empirical criminological literature on white-collar crime has abounded with examples of organizations as violators. Critiques of that literature have drawn attention to five limitations that the essays in this volume seek to address through intensive case studies of industrywide violations of statutes and administrative regulations.

The first, only partly addressed, is the general neglect of organizations as victims of law violations. This subject is only partly addressed because we have not included cases of substantial victimization of organizations by common crimes—how, for example, public transportation systems bear substantial losses of revenue from fare cheating or incur substantial costs owing to vandalism. There are many other examples of how minor crimes, such as employee theft, are more costly to organizations than are felonies; a retailer that suffers "shrinkage" of 2, 4, or 10 percent of its inventory bears far greater financial burdens from shoplifting and employee theft than from store robberies. The essays in this volume focus far more on organizations as violators than as victims and on individuals as indirect victims of organizational violations rather than on organizations as direct victims. The essays on the S&L crisis are a notable exception, focusing on the victimization of S&L organizations and its consequences for depositors and taxpayers.

A second major limitation of the white-collar crime literature is the tendency to focus solely or preponderantly on large profit-making organizations and on the behavior of corporate officers and managers as major offenders; many violations by and against organizations are committed by people in lower-ranking white-collar and blue-collar positions. The corruption of authority endemic in large public police organizations in the United States, for example, normally involves the rank

and file and line supervisors rather than the top command. Reuter's description of collusion in the cartage industry demonstrates how organizational offending is grounded in the behavior of many small-scale entrepreneurs in one of the most demeaned occupations—garbage and trash collection.

A third limitation has been the tendency to focus on particular named organizations and the violations of their white-collar employees rather than on how industrial and commercial organization creates and sustains particular patterns of violation. The focus should be on opportunities the legal, economic, and regulatory structure of an industry provide for patterned law-breaking by organizations. For example, an examination of the highway construction industry might concentrate on major changes in the structure of competition in the industry, in the public bidding process and its regulations, and in supervision of performance contracts awarded.

By focusing on industrial systems and the environments they create, such as the savings and loan industry, or on market organization, such as that of garbage and trash collection or stock transactions, one can better understand how particular organizations and their employees become violators as a consequence of system organization and change. The two essays on the savings and loan industry and their lending and investment practices illustrate how organizational practices come to be regarded as law violations in a turbulent business environment. In the essay on insider trading, Reichman argues that the new forms of insider trading sought to corrupt the market itself—to change its dynamic features. To understand insider trading, she locates it within the changing structures of finance. Similarly, the essays on the S&L crisis locate it within the conjunction of deregulation and the dynamic forces affecting commercial real estate and the production and marketing of commodities such as oil.

This limitation is closely related to a fourth. Typically, the control of organizational law violations is investigated by studying the behavior of enforcement or regulatory agencies and their agents and only rarely by focusing on how enforcement or regulation interacts with an environment. Braithwaite's account of nursing home regulation in this volume shows how comparative societal studies of nursing homes and their regulation enhance our understanding not only of different regulatory processes but of the ways that organizations sometimes adapt to their regulatory environments in ways that can undermine efforts to attain their own goals. He demonstrates how the U.S. regulatory in-

spection of nursing homes, which emphasizes maintenance of paper records of staff and organizational compliance with rules and regulations, leads to organizations that are more concerned with ritualistic bureaucratic compliance than with the quality of the care they provide. In contrast, the more goal-directed regulatory regime in Australia generates small nursing homes focused on giving personal rather than institutional centered care. He concludes, moreover, that empowerment of staff and residents through local accountability and advocacy provides more humane care than does the more bureaucratized American approach. Such studies accordingly approach the problem of controlling organizational behavior in conformity with law as one of mutual adaptations of regulators and regulated.

Finally, there is a tendency to treat violations of administrative law as violations of criminal law. Although individual contributors to this volume have not always maintained a distinction between the two, in part because willful, persistent, or extreme violations of administrative regulations can constitute criminal offenses, many violations of law involve administrative regulations and are subject to administrative rather than criminal law proceedings. The failure to distinguish these two bodies of public law usually carries over into treating all organizational violators as white-collar criminals and all organizational violations as white-collar crimes.

This conflation of criminal and administrative law has some major consequences for consideration of strategies of social control over organizational behavior (Reiss 1984). Regulatory agencies are primarily intent on inducing *compliance* with the law—to prevent the violation of law. Criminal law systems, by contrast, are organized on *deterrence* principles—the detection of violations and punishment of violators to deter future violations. Because compliance systems are oriented toward prevention, they are *premonitory*. They attend to conditions that increase the risk of violation and seek to have the organization alter those conditions so as to increase the likelihood of conformity with the law. Because law enforcement systems seek to prevent future violations by punishing violators, they are oriented toward detecting violations, apprehending and charging violators, and imposing penalties that will deter the violators or others from violating. While each system seeks to prevent violations, they do so by quite different means.

Although penalties can be invoked in either compliance or deterrence systems, they are integral only to deterrence systems. Deterrence systems assume that penalties have a causal effect in preventing future

violations. In compliance systems, the emphasis is on rewarding compliance or withholding the potential imposition of penalties to induce compliance. In compliance systems, penalties are principally used as threats rather than as sanctions. Typically, sanctions are suspended or withdrawn when acceptable compliance is demonstrated.

Some of the essays in this volume illuminate these contrasts between the two systems. Braithwaite's essay on nursing home regulation shows how inspections can be used to induce compliance rather than to punish violators. Yeager's essay on water pollution likewise demonstrates that compliance is a *process* rather than an end state and details the gradual evolution of a compliance system to control water pollution.

III. Controlling the Behavior of Organizations

A central problem of modern societies is to control the behavior of organizations in the public interest. There are several principal ways of doing so.

One is to rely on governments to make laws and rules governing the behavior of organizations and to establish techniques for their enforcement or compliance with them. Our civil, criminal, and administrative law systems are the foundation of legal control of organizational behavior. Public prosecution, civil litigation, and regulatory actions are their hallmarks.

Another is to trust that market mechanisms can control organizational behavior. Markets usually operate in conjunction with some form of formal or informal regulatory system. A presumption of formal deregulation is that an open or free market controls behavior in the public interest. The two essays on the crisis in the saving and loan industry examine from different perspectives the ways in which deregulation contributed to that crisis. Pontell and Calavita attribute the S&L crisis to the conjunction of thrift deregulation with federal insurance on deposits, which created a "criminogenic environment" that provided extensive opportunities for fraud at minimal risk to managers and attracted dishonest entrepreneurs to the industry. Zimring and Hawkins, by contrast, advance a more structuralist explanation. The structure of incentives produced by deregulation was a major explanation for the behavior that resulted in record losses. The symbolic politics of deregulation rather than technical market economics drove the deregulation of thrift institutions to their debacle.

Market mechanisms of control are more or less indifferent to the legality of commodities or services, however, and competition may be

restricted by illegal means such as coercive violence, as well as by legal means. What is commonly called "organized crime" is a form of control imposed on the marketing of illegal commodities or services or the use of illegal means to control transactions in legal commodities. The essay on garbage collection by Reuter documents how the marketing of a legal commodity—garbage—in the New York metropolitan area has been dominated by a private cartage industry that operates in restraint of trade through customer allocation agreements that treat customers as assets. He shows that both law enforcement and regulation have failed to eliminate these agreements and, indeed, that they have achieved a more legal form, thereby enhancing the power of racketeers.

A third way to control the behavior of organizations in the public interest is to depend on aggrieved parties—typically private organizations or individuals—to exercise control over organizations through civil suits for compensatory or punitive damages. This form of control is limited, however, by the extent to which liabilities are insured as well as by the extent and liquidity of organizational assets. Federal insurance on thrift deposits effectively obviated the need for civil litigation for recovery of deposits in S&L institutions and may even have encouraged imprudent lending, as Pontell and Calavita argue. Severe declines in the market value of housing, offices, and retail buildings, moreover, limited the government's potential recovery of loss as an insurer.

Braithwaite points to other private alternatives—the use of advocacy groups to represent client interests in nursing homes, the empowerment of staff vis-à-vis the power exercised by management, and self-regulation. Self-regulation exists when collectivities of self-interested organizations develop or adopt norms of behavior and ways to get members to conform with them. It often is adjunctive to control exercised by regulatory agencies. Reichman in her essay on insider trading points out that the National Association of Securities Dealers (NASD) provides adjunctive support to Securities and Exchange Commission (SEC) rules governing conflicts of interest in multiservice securities firms. The erection of so-called Chinese Walls within a firm—invisible procedural barriers that separate conflicts of interest within the firm—is a recommended procedure by both NASD and the SEC. Braithwaite's essay on nursing homes emphasizes that the homes with the lowest rates of violations have a participatory regulatory structure rather than a strictly hierarchical management structure.

The thematic volumes in the *Crime and Justice* series are testament

to the need and the difficulties for multidisciplinary research and theory that transcends the balkanizing partitions that divide academic disciplines. Too often, scholars and policy analysts from different specialties look at different aspects of a large and complex problem. The cumulative result too often resembles the portrayal of an elephant as a horse built by a committee. Criminologists interested in organizational crime have tended to adhere to the white-collar-crime emphases described earlier and too seldom have learned from sociologists of organization and bureaucracy, from economists and organizational theorists, and from legal and regulatory literatures. Each of these in turn generally fails to benefit from each others' learning and from the criminologists. In commissioning the essays in this volume, we asked writers to reach beyond their disciplinary grasps, and all have done so.

We hope these essays demonstrate that the understanding of organizational law violations is enhanced by bringing an organizational and social system analysis to the study of the behavior of organizations rather than relying principally on the traditional criminological analyses of white-collar and organized crimes and criminals. That understanding is enhanced also by expanding the horizons beyond the scope of the criminal law and criminal justice to include administrative law and legal regulation. These shifts in emphasis may open the way to better control of law violations through both organizational compliance and deterrence strategies.

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