

TO: Students in 406
FROM: RBT
Date: 11/28/06
Re: More thoughts on Hawkins "Law as Last Resort"

On the one hand this volume can be read as a treatise on discretion, and what structures that in regulatory settings. This is how Hawkins' work is usually framed in criminal justice programs.

On the other hand it can be read as a socio-legal treatise that points out how legal proceedings play only a minor role in getting people to follow the law. This would seem to lead us back to Black and broad conceptions of social control, with actual law playing only a minor role.

On the third hand, it can be used to illuminate the different context in which regulatory law is enforced compared to the enforcement of violations of Part I or Part II crimes of more standard enforcement activities (moving violations). The purpose of the exercise today was to start thinking along these lines. Hopefully it pointed up different relationships between enforcers/violators in these two arenas. These relationships also bring us back to Black.

On the fourth hand, it can be read as a description of lay theories about regulatory compliance and non-compliance. In the same way that we have theories about why individuals become criminal or delinquent, we can have theories about why organizations and the individuals within them comply or violate. I think for the purposes of this course, this is what you want to concentrate on. Linked to these lay (inspector) theories about violators and non-violators are theories about how to respond in a way that is most effective, where the definition of "effective" is complicated and multidimensional.

The lay theories about violation and violators link to the response. Particularly crucial are what links the lay theory of the violation and the selection of the violation response. Here, the integrated image of the offender and offending organization are crucial. This is the connection.¹

In thinking about lay theories and linked responses, there is strong overlap of some of this lay theorizing with normative theories about when companies go bad. Diane Vaughan has written extensively on this. Highly recommended.²

In some of the thinking about responses, there are strong links to Schlegel and the desert and commensurability ideas. Bear these in mind.

Are there criticisms of this work? Certainly, particularly by the more radical legal theorists.³ They see him as too exculpating of the status quo. You want to make up your own mind.

¹ For another example see: Taylor, R. B., and Mason, R. (2002) Responses to prison for environmental criminals: Impacts of incident, perpetrator and respondent characteristics. *Environment and Behavior* 34 194-216.

² Vaughan, D. (1998). Rational choice, situated action, and the social control of organizations. *Law and Society Review*, 32, 23-61; Vaughan, D. (1999). The Dark side of organizations; Mistake, misconduct, and disaster. *Annual Review of Sociology*, 25, 271-305.

³ Tombs, S. (2004). Review of "Law as Last Resort." *The Modern Law Review* 704-709.