

**Student Guide
To
Donald Black's *Behavior of Law***

**Ralph B. Taylor
Department of Criminal Justice
Temple University**

To Accompany
Undergraduate Course
Doing Justice (0853)
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**NOTE TO STUDENTS: As of November 7, 2019,
Section 4 on Law and Social Control was
added**

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Preface

From 2007 to 2009 I and other colleagues in the Department of Criminal Justice at Temple University developed a general education course entitled “Doing Justice in Philadelphia 1925-2025: Déjà vu All Over Again.”¹ The purpose of the course is to understand how justice agencies have acted and continue to act, and will probably act in the future, relying largely on events that have happened in and around Philadelphia. The course has several goals. These include:

- Exposing students to the sociolegal framework, that is, understanding how law “plays out” in real word contexts. The way law plays out is the way individuals representing justice agencies act. *It is different from how written law, like the Pennsylvania criminal code.*
- Providing students a conceptual toolbox for understanding these variations in how agents of justice act.
- Hoping to inspire in students some interest in historical and current developments, mostly in Philadelphia, so that they will become somewhat more engaged with the rich sociocultural context of Philadelphia;
- Providing students opportunities to practice some basic social science competencies that relate generally to getting certain types of social science data, interpreting several types of historical data including primary documents, as well as graphical and tabular data display, and linking data to concepts.

The main framework used as a conceptual toolbox to help students understand these dynamics is Donald Black’s *The Behavior of Law* (1976, Academic Press; hereafter *BoL*). Black’s theory is a macro-level sociology of law, seeking to explain variations in the amount of law delivered by justice agencies. Although the theory is controversial, it does have some empirical support from a range of different types of studies.²

The variations he addresses include differences between societies or countries, as well as differences within one country. *It is only the latter that are relevant to this course.* In other words, we are using *BoL* to understand differences in how agents of justice act within the US.

I decided to write this guide because some students in previous classes complained that *BoL* was unreadable. Yet, the book provided the main conceptual framework used to understand the pressures on justice agencies, and how they responded. I hope that if students refer to this guide as they read *BoL*, they will more readily understand how his framework is being used in this course.

Students – when you get a chance, let me know how much – or how little! – this guide assists you in learning *BoL*.

The intent with this work is not to outline his key points. The goal is simply to clarify the core arguments Black makes in his book which are used in this course.

Each section of the guide corresponds to the pages as they are assigned.

Suggestions on how to approach

Follow these steps in reading *BoL*.

1. Read the relevant pages in the reader guide – this document.
2. *Print out* and read the questions that have been posted for the Black pages.
3. Read *BoL* pages once through, just a quick scan.
4. Re-read *BoL* pages slowly, with printed out questions next to you, and write answers and corresponding page numbers on your question sheet.
5. Take a brain break.

This guide is not a substitute for reading the assigned pages!

Moral Issues and Counter-Reactions: An Incomplete Model?

Many students find Black's model morally repugnant. They are offended that this is how agencies operate. "It's not right, even though it may be true" is how one student put it.

I encourage students to stay in touch with their moral concerns, should they arise. This model is not about how things should be; it is an effort to develop a simple framework that can explain a lot of what actually happens. Understanding the dynamics described does not mean accepting that it is "ok" for things to work like this. One can analyze corrupt city politics, for example, and still agree that many people should be in jail who are not.

In just the few years, with the deaths of Michael Brown, Eric Garner, Freddie Gray and too many others at the hands of police officers, concern about this gap between what has been happening and what "should" be happening has led to complicated political developments on the ground and in social media.

This all leads to the question: if the dynamics described by Black go too far, and if public opinion shifts in response to this, is it possible that some societal agencies - legislatures or courts for example – act in ways to constrain the types of dynamics described by Black?

Once we have a handle on how the dynamics described by Black work, we will take up these questions.

In essence, we will be asking: is the Black model incomplete because it fails to anticipate limitations placed on justice agencies when the dynamics between individuals and agents of justice create widespread concern?

Can the BoL Model Describe How an Entire Regional Subculture Evaded Justice?

Another question we are going to consider is whether this model helps us understand *systemic* failures of law. More specifically, you will be reading about murders of Osage Indians in Oklahoma in the 1920s.³



BoL is geared to specific crimes. But can it help us understand a multi-year pattern of the most serious crime there is, murder, that involved dozens if not hundreds of people, and dozens if not hundreds of murders. Stay tuned.

Figure 1. Donald Black is currently an emeritus professor at the University of Virginia, and a past president of the Law and Society Association.

Assignment 1: Pages 1-37

Chapter 1

Sociological frame

Black informs the reader right away that his perspective is sociological. He is concerned with “social life” (p. 1) which means how society behaves. His explanations will therefore use sociological factors. Roughly, sociological factors represent the macro-level features and dimensions along which societies are organized. There are many of them. He announces (p. 1) the dimensions of society which will be of interest to him:

- the vertical dimension, which corresponds to socioeconomic status (SES) or social class;
- the horizontal dimension, which, for the purposes of this course, corresponds to race, ethnicity, native-born vs. foreign-born status, and Native American status;
- culture, which for the purposes of this course corresponds roughly to decency;
- organizational structure; if one of the parties in a dispute or a crime is a group, or if both parties are groups, the size and organization of the group or groups will be crucial; and
- social control, which refers to the ways people get other people to stay in line without calling on the law.

To put Black’s model into a rough causal model, these features of society are predictors, and the behavior of law (see below) is the outcome:

sociological factors → how law acts, i.e., the behavior of law

The behavior of law includes the activities, statements, findings and opinions of those individuals who represent specific justice agencies. These include but are not limited to: police officers and administrators; correctional officers and administrators; parole and probation officers and supervisors; judges; and the personnel, elected or not, who direct agencies in the criminal justice system and/or write and/or enforce laws directing what those agencies do or do not do.

The Outcome

Black then (p. 2) introduces his outcome, what he is going to try and explain: how law behaves. He first defines law (“governmental social control”). Then he introduces his controversial idea “law is a quantitative variable ... the quantity of law varies in time and space” (p. 3). It is the quantity of law that gets delivered in a situation, and to a lesser extent the type, which his model will seek to explain.

These ideas are controversial because a straight legalistic framework assumes that laws are written down and then applied as they were written, given the intent of the law. Black instead is positioning himself with those who work in a **socio-legal** framework. This framework expects that law, as it is delivered “on the ground” by police and judges and juries and wardens and parole officers, is very different from the law “on the books.”

Black’s writing builds on the work of Roscoe Pound, a forward-thinking legal scholar who, in the first third of the 20th Century, taught law at Northwestern University and Harvard University. In 1906 he delivered an important speech to the American Bar Association entitled “The causes of popular dissatisfaction with the administration of justice.”⁴ He made many remarkable points in this speech including things like:

- “Dissatisfaction with the administration of justice is as old as law.”
- “Justice, which is the end of law, is the ideal compromise between the activities of all in a crowded world ... When the community is divided and diversified, in groups and classes and interests, understanding each other none too well, have conflicting ideas of justice, the task is extremely difficult. It is impossible that legal and ethical ideas should be in entire accord in such a society.”



What Black is doing is giving us a systematic view of the factors shaping these variations in the “administration of justice.”

There are two ways that law can vary: (1) amount, and (2) type or what Black calls “the style of law” (p. 4). He describes these types on pp. 4-5. This course will concentrate mostly on the **amount** of law delivered. Because the course focuses on justice agencies, and how they behave, the type of law they deliver is often penal. People may get searched or arrested or hit or even shot by a police officer; they may pay a fine or serve jail or prison time or be released on bail or not released on bail. Sometimes justice agencies enact compensatory law – you pay the other party for damages – but this comes up most often in civil law.⁵ Most of this course deals with criminal laws enforced by justice agencies.

Amount of law

You want to spend time thinking of examples of varying amounts of law being delivered. This is a somewhat novel idea.

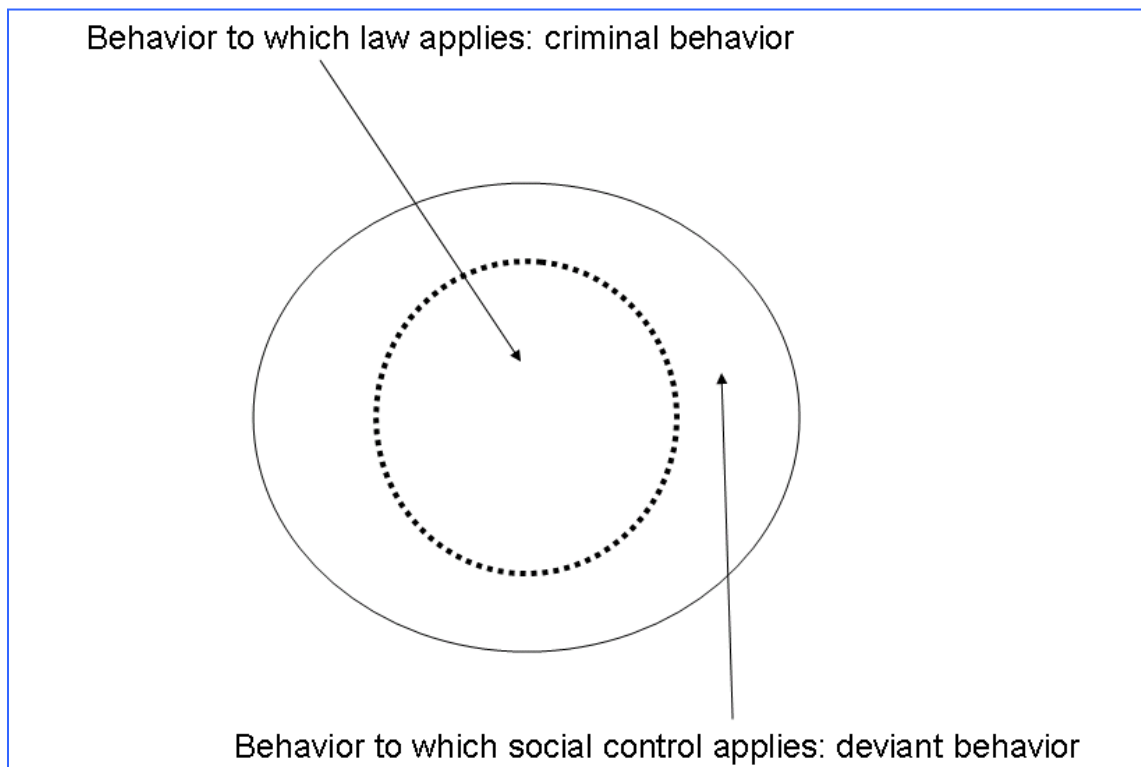
Connecting society and law

Black (p. 6) is going to put together society and law through a series of propositions for “every setting.” He introduces an important example: “law varies inversely with other social control” (p. 6).

If there is a situation where there is low social control – for example in a family, in a neighborhood – then will be more law exercised as compared to a setting where there is high social control. For example, if parents in a suburban neighborhood let their teen boys drive their cars fast up and down the street, and if parents of said boys have told worried neighbors to mind their own business, neighbors might try to get the bored local police to set up speed traps or hand out tickets.

Law and crime; deviant behavior and social control

Black sees the operations of law as nested within the broader operation of social control. It takes over where social control fails. Social control concerns itself primarily with deviant behavior that is not criminal. See the figure below. The dashed circle for criminal behavior indicates that sometimes the line between what is illegal and what is deviant can be fuzzy. ⁶



Black takes up describing how social control “behaves” on pages 31-36. That discussion is not central to the course material.

Chapter 2

Black introduces the vertical dimension of society, SES, in this chapter.

It is not just who you are

One way to be misled at this point is to think just about SES at an **individual** level. All that matters, for example, is the SES of the criminal. It is more than this.

Black wants you to think **sociologically**. This means don’t think about just the SES of the offender or just the SES of the victim. Instead think of the **relative SES of the two parties**. It is the two parties’ relative position that **structures how the rest of society defines and interprets the event**.

Imagine an affluent business person – she belongs to fancy clubs in town, has a vacation house in Aspen, summers in a large house at the shore, owns yachts and private planes – has her car stolen off a downtown street. Imagine the car thief is an unemployed dishwasher who is homeless. Ok – got the picture?

Now imagine instead that the car is stolen by a fellow member at the fancy club, and the fellow member comes up with a seemingly legitimate reason for the theft.

Black argues that the same event, with the same victim, involving exactly the same criminal behavior and consequences, will be perceived very differently by others in society and by the justice agencies that serve society, as the sociological

relationship between the offender and the victim shifts. I expand on this important point below.

Black provides a variety of technical terms to describe the **relative** sociological relationship between the victim and the offender. You want to know these terms, e.g., vertical distance.

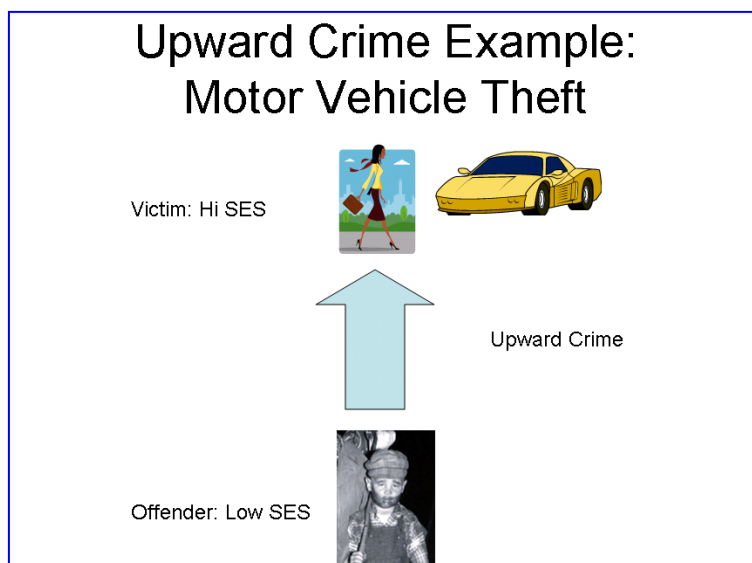
Black provides some descriptions about differences between societies in the amounts of law they deliver, e.g., “Law varies directly with stratification” (p. 13). In this course we are not interested in his discussions about differences **between** societies, since this is a course about the structure and conduct of U.S. society. You want to focus on his maxims addressing relationships **within** a society.

Not only is the relative position important – who is higher in SES, who is lower – the **degree** of distance is important as well. Sociologically, how separated are the two parties by their relative SES? Are they at the extreme opposite ends of the SES ladder (e.g., homeless person and rich CEO)? Or are they closer (e.g., middle class person and blue collar worker)? Black uses the term **distance** to refer to their sociological distance of one party relative to another. In this chapter, that separation is taking place along the vertical dimension of SES, and he refers to this as “vertical distance” (p. 24).

In short: don’t focus on just the characteristics of the offender or on just the characteristics of the victim. What is crucial is the relationship between the two. *Many students miss this important point and opt for a short hand “the rich can get away with anything.” This is not what Black is saying.*

The Relationship gives the crime a direction

Black leaves this point implied. Crime has a direction. If the victim is high SES (wealthy business person) and the offender is low SES (unemployed homeless person), the crime has an upward direction. You can describe it as upward crime. It was initiated by a low SES person against the property of a high SES person.

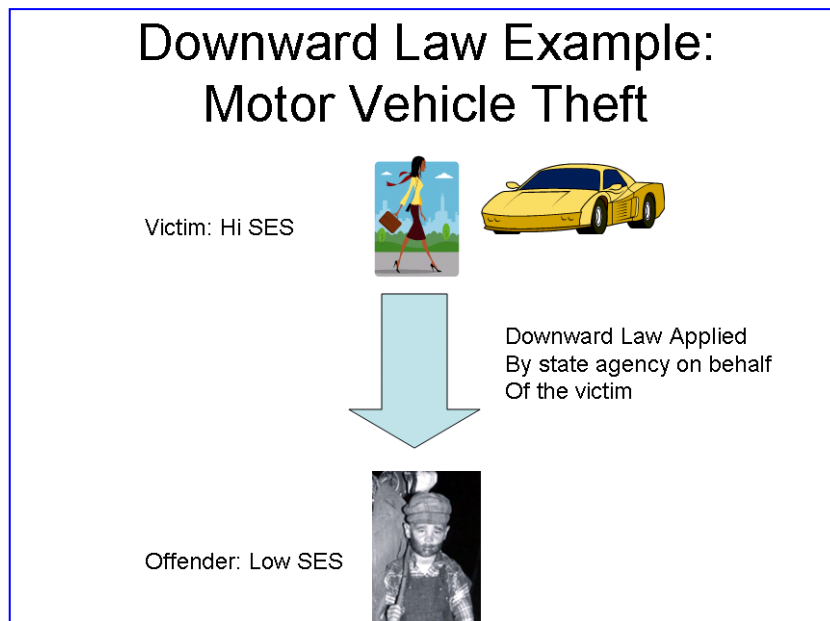


Law has a direction

Black talks about “upward law” and “downward law” (p. 21). The state is acting on behalf of a victim, and is punishing an offender. So the law is going “from” the victim “to” the offender, and it is the state which is applying the law on behalf of the victim. So if the state is punishing a homeless person for a crime he committed against a wealthy business person, this is **downward law** in response to the **upward crime**.

The Direction of the law is the opposite of the direction of the crime

Black also leaves this point implied. Law behaves on behalf of the victim. That victim may be an individual, a group, an organization, a broader constituency, or the state itself. The direction in which law is applied is opposite to the direction of the crime itself.



So if the crime “moves” upward the law will move in the opposite direction, downward. ***The direction of the law actions, delivered by agents of justice, is opposite the direction of the crime committed.***

The Relationship shapes seriousness

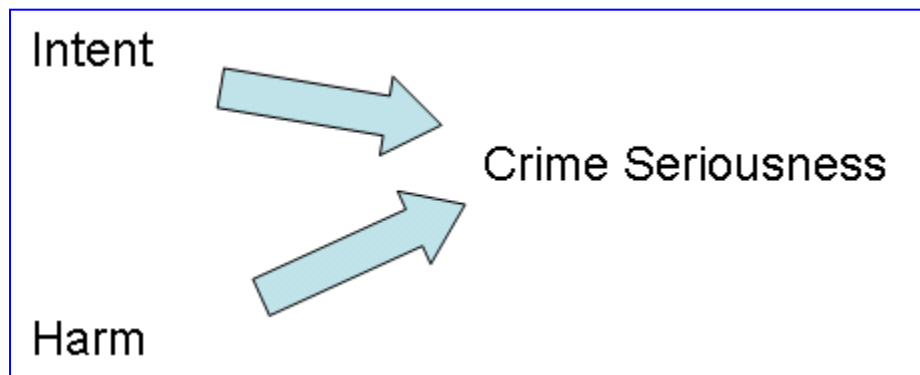
On p. 24, Black slips in a key point that is easy to overlook: **“Upward crimes are more serious than downward crimes.”**

This is an important idea because it disagrees with much of the work that has been done on how people perceive the seriousness of a crime.⁷ Generally, that work has suggested that people perceive a crime as more serious if:

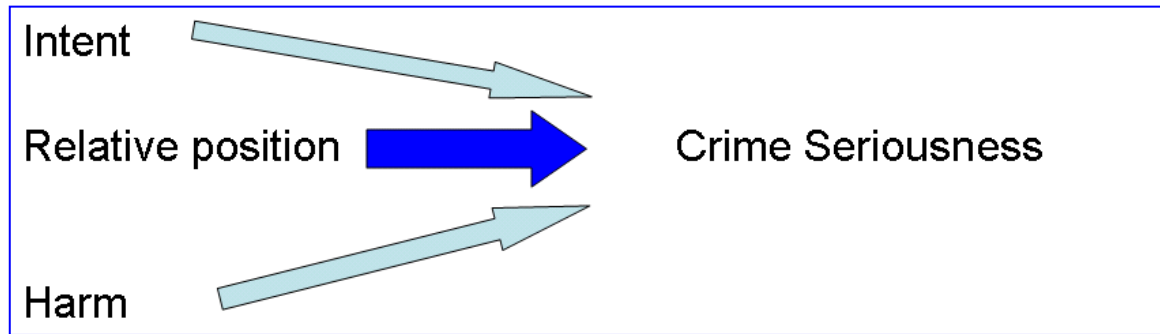
- the offender intended the harm to occur (mens rea or guilty mind in legal jargon);
- the harm that did occur was more serious, either in terms of the degree of harm (fatal gunshot wound vs. minor knife cut) or the number of people affected (seven people killed vs. 1), or the vulnerability of the victims (innocent 5 year old playing on the street vs. an ex-con hanging out in a bar); and
- the offender has a more extensive criminal history.

Of course, many of these same factors are codified into law and sentencing guidelines.

In short the “traditional” view of crime seriousness suggests:



Black with his statement now adds the **relative position of the two parties**. In this chapter, since the topic is SES, what is relevant is the direction of the vertical distance – which party had the higher SES, the victim or the offender? – and the extent of the vertical distance – how great were the differences in SES between the two parties?



Do not think that Black is “throwing away” the traditional legal framework on seriousness. He is not. Rather he is adding to it. His addition is a sociological variable: the relative position of the two parties relative to one another in the broader society.

Black’s argument here is a radical sociological position. He is arguing that these sociological attributes of the crime itself – the direction and degree of difference between the two parties -- shape **how we perceive** the event itself. The sociological feature has social psychological consequences; it shapes how the members of a group, the broader society, perceive the seriousness of the crime.⁸

Naturally, the more serious the crime, the more law is likely to be applied.

On p. 28 (see text right after break) he makes this point again, even more strongly, here referring generally to deviant behavior: “It is possible to order the seriousness of deviant behavior according to its vertical direction and location, at once.” Since crimes are a subset of deviant behaviors, this same point also applies to crimes.

Putting it all together: why there is more downward law

When Black says (p. 21) “downward law is greater than upward law” he is saying that if there is an upward crime, it will be seen as more serious, and more law will be delivered – someone is more likely to get arrested, more likely to be convicted, more likely to get a longer sentence – **because** the direction of the law is downward, in response to the upward direction of the crime.

Where the differences are on the dimension matter also (feel free to skip this)

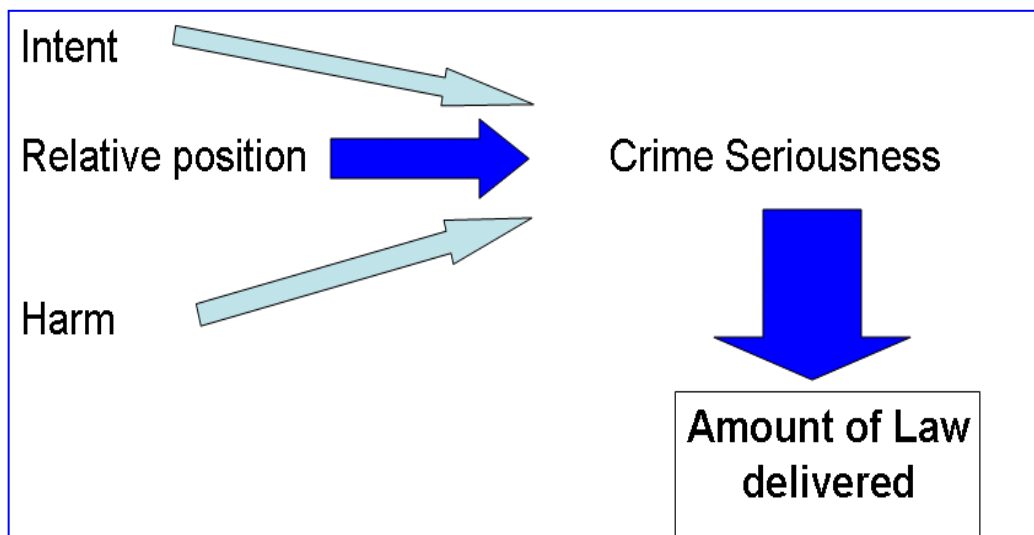
This point seems to apply only to cases where the two parties are of equal status (pp 17, 28). If the feud is between higher status parties, more law will be delivered. If it is between two low SES parties, little law will probably be delivered.

In making this point, Black seems to confuse the amount of law delivered by a state agency, such as police or a judge, and the ability of different people to mobilize different amounts of law in their own interests. I think in this instance he is talking about the latter meaning of the term law.

Imagine two wealthy households in an exclusive suburb having a dispute over a property boundary. Each will have funds to hire surveyors and lawyers and bring suits in civil court. Now imagine a property dispute involving two low SES households. In the latter case there are no funds to hire lawyers and take people to court, so less law will end up being delivered.

Seriousness drives how much law is delivered

The seriousness of the crime, in turn, determines how much law is delivered, or stated differently, how law “behaves.” If seriousness is lower, “the quantity of law decreases accordingly” (p. 28).



So, to return to the point made earlier, it is **because** the upward crime, committed by a lower SES offender against a higher SES victim, is seen as more serious than the same act committed with roles reversed, the downward crime, that there is more corresponding downward law in the first case as compared to upward law if the roles were reversed.

Stated differently: the crimes committed by the “little people” that victimize “the big shots” are seen as more serious than the opposite type of crime: when the “big shots” victimize the “little people.” **And it is because of that difference in perceived seriousness of the crimes committed that the amount of law delivered is different in the two cases.**

If you stop and think about this for a minute, there are all kinds of current-day applications.

Victimless crimes

In this course we will be talking about enforcement of victimless crimes such as Prohibition violations in the 1920s and illegal video gambling in the 1980s. Here is how I suggest Black’s model applies when there is no clear-cut victim.

In a victimless crime, like making, transporting, distributing or consuming alcohol when this was illegal during Prohibition, the **victim is the moral sensibilities of the larger community**. To get a sense of the status of that larger community, find information about the population at the time. For example, in the 1920s Philadelphia was predominantly white, predominantly native born, and you can recover what a typical Philadelphia household was like from census data. The relative status of the victim and the offender, then, can be

estimated by “filling in” the typical Philadelphian’s status (or ethnicity or nativity in other chapters) for the victim.

Say a wealthy businessman is drinking illegal alcohol at a hotel bar. The crime is “downward” because he, the offender, is higher SES than the typical Philadelphian of the time. The corresponding law would be “upward.”

Now imagine a relatively poor unemployed person drinking illegal alcohol at a dive saloon. Now the crime is “upward” because he is lower SES than the typical Philadelphian at the time. The corresponding law would be “downward.” In this second situation you know, according to Black’s model, that more law will be delivered because downward law is greater than upward law. Downward law is “greater” in the sense that it is more likely to be applied and if applied, the penalty will be harsher.

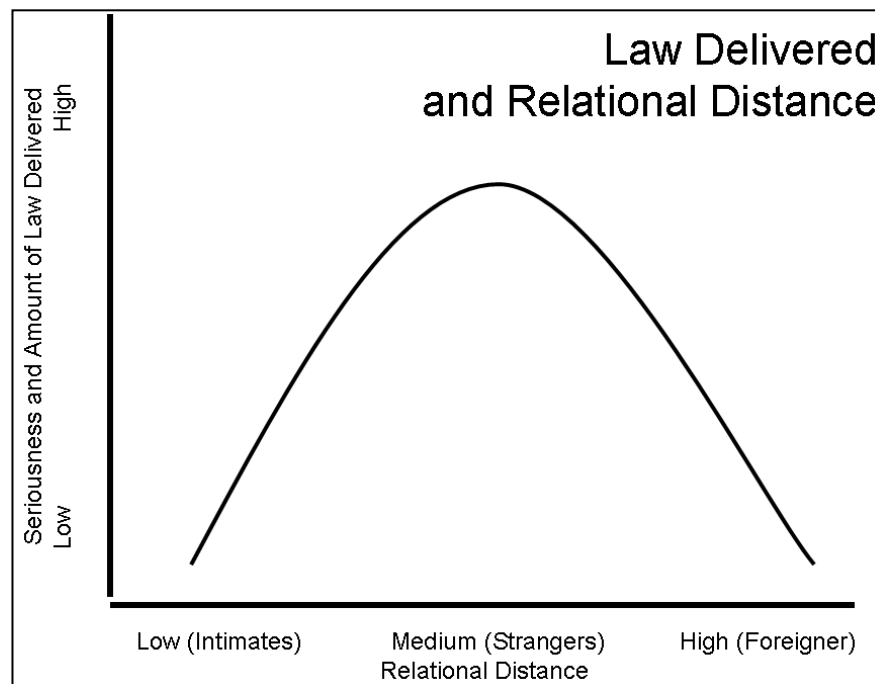
Assignment 2: Race/ethnicity and Nativity pp 37-54 (FOCUS HARD on 49-54)

This section addresses the **horizontal** dimension of social life. Although Black defines this horizontal dimension in extremely broad terms (p. 37), its main use in this course is with reference to varying degrees of integration into one society.

More specifically, in this course the examples used examine degree of integration as a function of three attributes: race (e.g., African-American vs. white), ethnicity (e.g., Latino vs. non-Latino), and nativity (foreign born vs. native born).

Relational Distance **[FALL 2019 STUDENTS – SKIP THIS SUB SECTION]**

As in the earlier sections, Black moves between inter- and intra-societal discussions. As before, our interest is largely in dynamics within a society. So you can just read over pp. 37 – 47 relatively quickly. The only key idea there is **relational distance** and how it links to law: “The relationship between law and relational distance is curvilinear” (p. 41).



Again, it is differences in perceptions of seriousness that drive justice agency responses: “It is less serious, for example, to murder one’s wife or friend than to murder a stranger: The penalty is less severe” (p. 44). This might explain the leniency of police or towards other officers in some circumstances: “A policeman is more lenient toward someone close to him.” And of course, unless you have Joe Pesci as your lawyer in the movie “My Cousin Vinnie,” you are usually out of luck with an out-of-town lawyer because “it is an advantage to have a hometown lawyer who knows the judge” (p. 45).

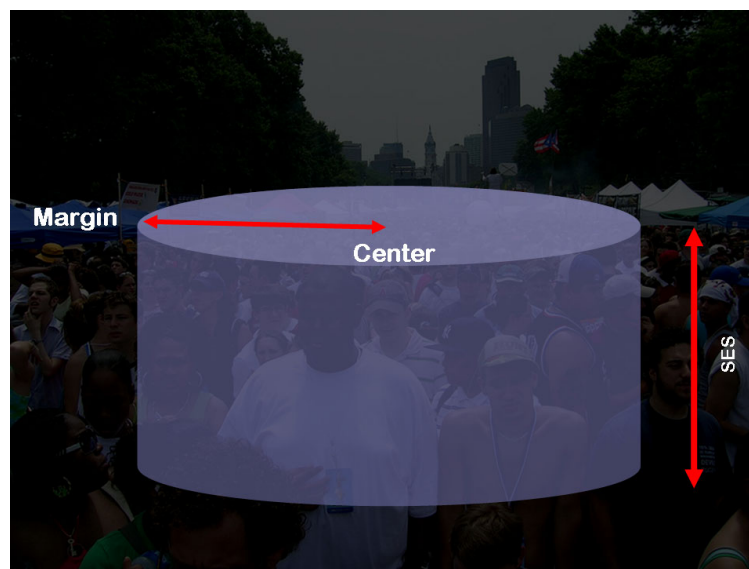


The material more relevant to the course starts on p. 48.

There is a problem with Black's idea of relational distance, however, and because of this we will not be using it much in this course. This is an idea that includes within-societal and between-societal ideas. Within one society, as relational distance increases, the amount of law likely to be delivered, or the chances of any law getting delivered at all, increases or decreases linearly. If we stay in **one** society, as we are doing here, the idea of **radial status** is a much more helpful way to approach the horizontal dimension of society and how it links to doing justice.

Radial Status [\[START READING AGAIN HERE\]](#)

On this horizontal dimension along which society is organized, persons are located at different positions of radial status. "The radial location of a person or group is a status that confers privileges and disabilities" (p. 48). If people or individuals have a higher radial status they are more integrated into mainstream society; they are closer to the center. If people or individuals have a lower radial status they are less integrated into mainstream society; they are closer to the margin.



This idea of being at the center or the margin is **independent of SES** or rank (p. 48): “A useful person may be wealthy, but not necessarily, and the same applies to the marginal: some are central to social life, even essential, and yet low in rank; others are wealthy and do nothing.”

Indicators

Challenges to deciding on one or more indicators. The question arises: what indicates a more or less integrated position in society? In contrast to vertical status or SES, where I suggested most agreed on four attributes (wealth, income, education, occupational status), horizontal or radial status can depend on a wide array of individual or group attributes. This makes it hard to pinpoint the relevant indicators.

Deciding on what indicators to use also becomes tricky because the notion of center vs. margin is culturally relative: it depends on which society you are considering, at which point in time, at what level of analysis.

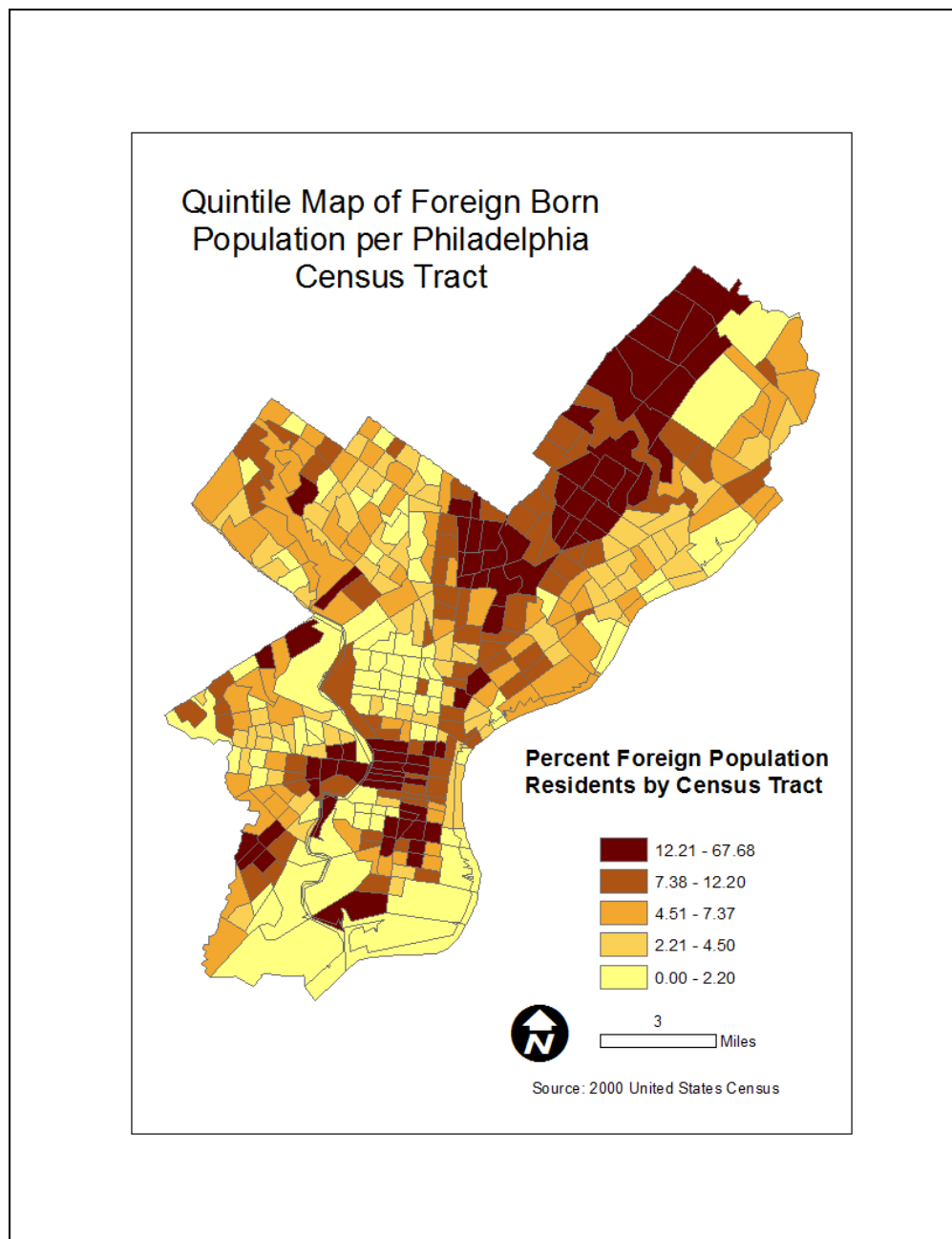
When thinking about Philadelphia in the 1920s, we might agree that in Philadelphia, with only 25 percent of its population foreign born at that time, native born Philadelphians were more integrated than were foreign born Philadelphians.

This is at the scale of the entire city. Of course if you drop down to the neighborhood level, you could find many neighborhoods where the foreign born were quite integrated, and perhaps even occupied the most central positions in the neighborhood.

Foreign born vs. native born. But since local city justice agencies had as their jurisdiction the entire city, and we are focusing on justice agencies in this course, we could perhaps agree that foreign born residents held a more marginal position than did native born residents at that time. Therefore I will suggest that **foreign born vs. native born** be used as one indicator of radial location.

In Philadelphia in 2000 the percent foreign born was 9 percent (and 11 percent in the U.S.).⁹ In 2006 the numbers were 10.9 percent for Philadelphia and 12.5 percent for the U.S.¹⁰

There are ways you can map the 2000 Census data using a mapping facility on the Census web site. If we look at it at the census tract level (to be explained in class), and make a quintile map (to be explained in class), here is the 2000 percentage foreign born in Philadelphia mapped by census tract:

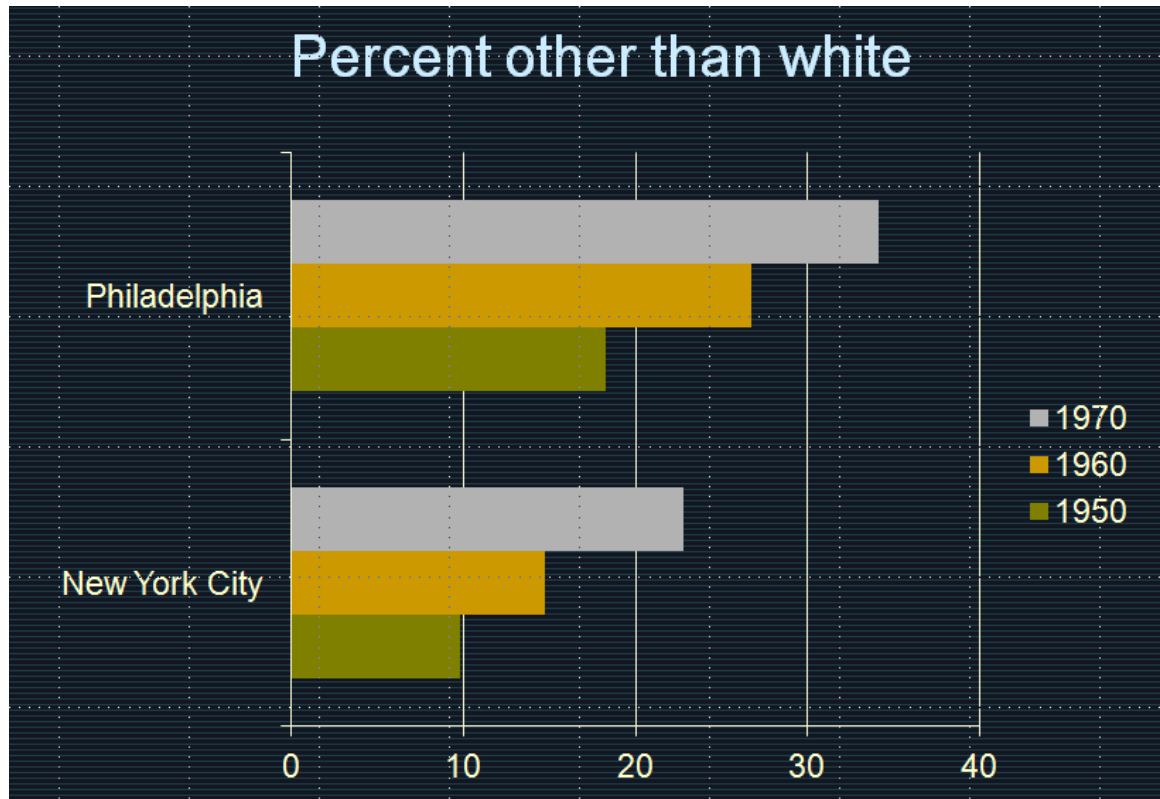


Map courtesy of Evan Sorg

Race and ethnicity. I am also going to suggest that we can use indicators of race (non-white vs. white) and ethnicity (Latino vs. non-Latino) as indicators of central vs. marginal location. Again, this use is **limited** to the particular local and historical context being used in this course.

From its earliest days up through 2000 Philadelphia was majority white. Nevertheless, the percentage of the city's population that was non-white,

increased markedly from 1950-1970 as seen below. ¹¹ Increases in NYC for the same points in time are shown for comparison purposes.



The percentage other than white continued to increase in the last three decades of the 20th Century. Here was the 2000 racial breakdown of Philadelphia looking at just those who were mono-racial: ¹²

One race	1,483,976	97.8
White	683,267	45.0
Black or African American	655,824	43.2
American Indian and Alaska Native	4,073	0.3
Asian	67,654	4.5
Native Hawaiian and Other Pacific Islander	729	0.0
Some other race	72,429	4.8
Two or more races	33,574	2.2

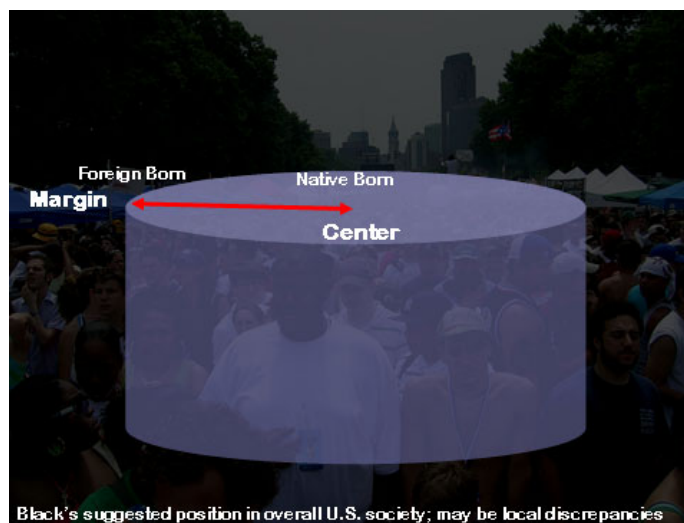
As you can see Whites still outnumbered African-Americans.

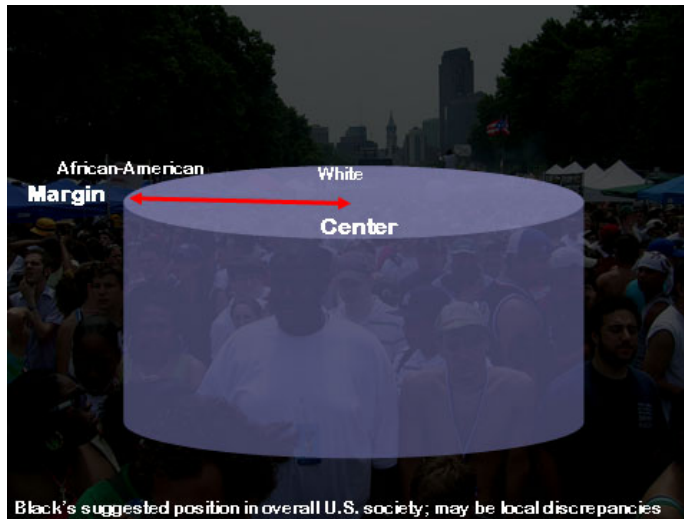
By 2006, however, it appears that African-Americans outnumbered whites for the first time in Philadelphia's history:¹³

One race	1,425,218	98.4
White	605,796	41.8
Black or African American	642,013	44.3
American Indian and Alaska Native	3,698	0.3
Asian	77,265	5.3
Native Hawaiian and Other Pacific Islander	488	0.0
Some other race	95,958	6.6
Two or more races	23,176	1.6

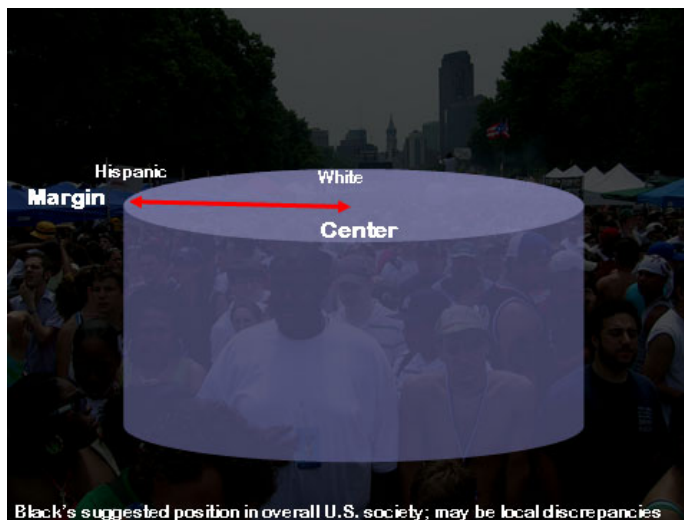
Both of the above tables do not show figures for those in the population who labeled themselves as being of two or more races. These were 2.2 percent of the 2000 Philadelphia population and 1.6 percent of the 2006 population.

In short, we can use race and foreign born status as indicators for individuals who are in a more marginal societal position when we are discussing the city of Philadelphia as a whole, and are talking about the period from the 1920s up through 2000.





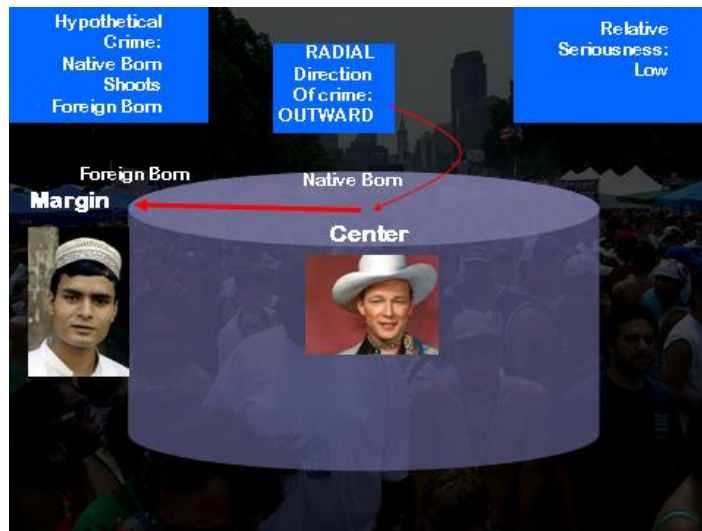
I also suggest we can use ethnicity as well. In 2006 the percentage Latino was 10.5 percent in Philadelphia and 14.5 percent nationwide. This ethnicity variable will become centrally important when we discuss recent developments in Maricopa County, in Arizona around immigration enforcement and the phenomenon of being stopped for “driving while brown.”



Radial Direction

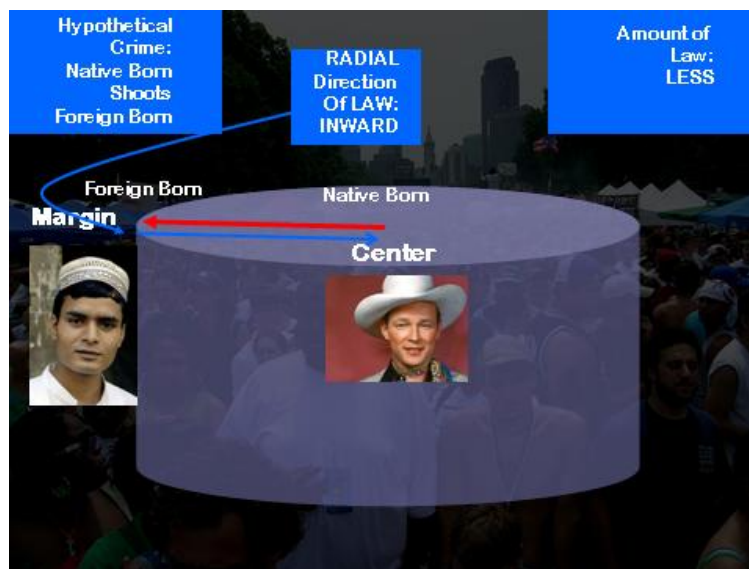
This brings us to Black’s idea of radial direction. **Direction becomes relevant when there is a crime involving a victim, and refers to the relative position of the two on the horizontal dimension.** Again, we want to keep in mind both the direction of the deviance or criminality, and the corresponding opposite direction of the law or justice agency response.

Consider the following hypothetical situation. First is the crime: a white homeowner mistakenly shoots a foreign-born person who comes to his door. The white person thinks the person is trying to break into the house, but the foreigner is just looking for a party, does not speak English very well, and is dressed up like a member of the 70’s rock group “Kiss.” ¹⁴



The **radial direction** of the deviance or crime is **outward**. Black calls this **centrifugal deviance** “with the deviant [or criminal] more integrated than his victim” (p. 50). This will be seen as **less serious** than the reverse situation.

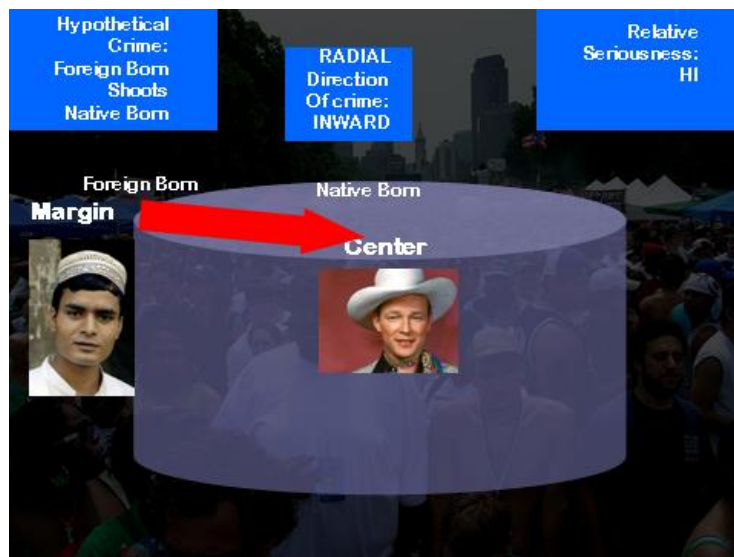
The radial direction of the corresponding law will be **inward law** or **centripetal law**. The force of the law is applied toward the center of society:



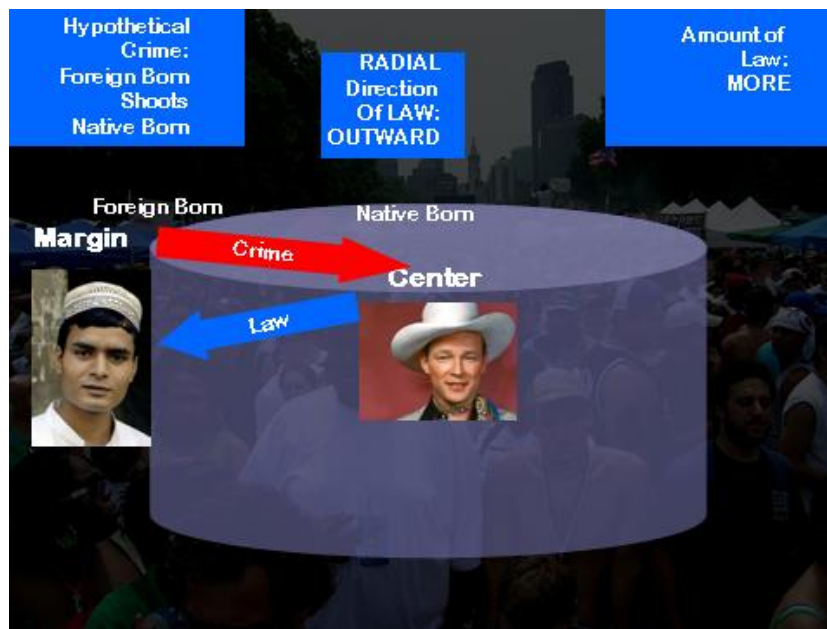
Because the direction of the crime is outward, and because the corresponding seriousness is low, only a small amount of law will be applied.

Now imagine a reverse situation. A foreign born person kills a native born person. Here the deviance or crime is **inward**. Black would call this **centripetal deviance** which “offends inwardly” (p. 50) toward the center of society. Society will see this as **more serious** than the above situation. “The offense of a marginal person or group against an integrated person or group is more serious than an offense in the opposite direction” (p. 50). He also tells us (p. 54) “Deviant

behavior by a marginal person or group against an integrated person or group, or centripetal deviance, is the most serious.”



Because the crime is seen as more serious, more law will be applied:



All of which leads use to Black’s (p. 50) maxim:

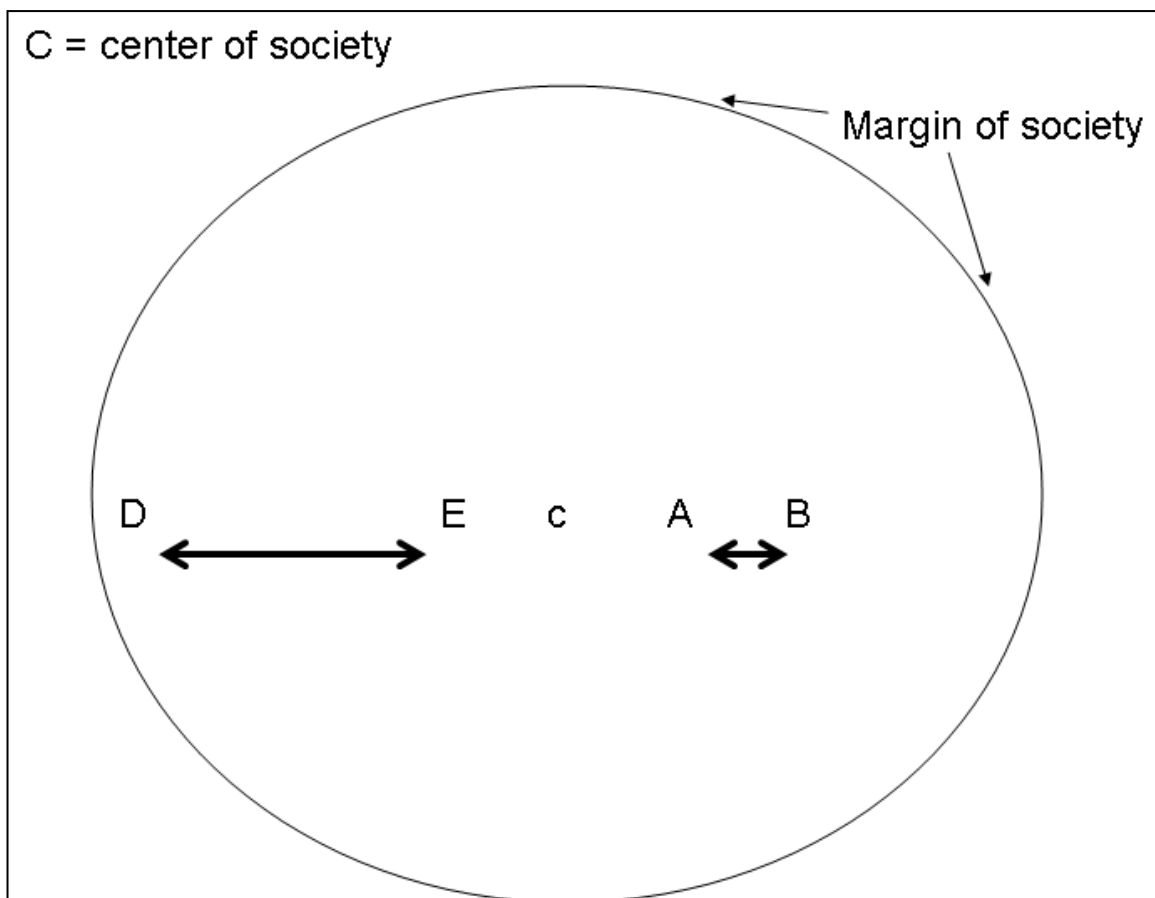
“Centrifugal [outward] law is greater than centripetal [inward] law.”

Radial Distance

As was true for the vertical direction, so it is also true for the horizontal dimension in Black’s model: not only does direction matter – upward or

downward in the vertical case, inward or outward in the horizontal case – but so too does distance. This leads to Black’s idea of radial distance. How much more marginal is one party than the other? “Integration is a matter of degree, however, and the difference between people in this respect – the radial distance between them – also predicts and explains the quantity of law” (p. 50). So the radial distance between two parties is how much more inward or outward one party is relative to the other.

Consider the figure just below. Persons A and E are both equally close to the center of society (c). The radial distance between person A and B is relatively small. B is neither a marginal nor a central person in this society. By contrast, the radial distance between person E and D is much greater because person D is much closer to the margin of society.



If the crime or deviance is **by** the more marginal person (B or D) **against** the more centrally located person (A or E), there will be more law delivered if the radial distance is greater:

“Centrifugal [outward] law varies directly with radial distance” (p. 50).

But if it was the reverse situation, and the deviance was **by** the more centrally located person **against** the more marginal person, the amount of law delivered will be less as the distance increases:

“Centripetal [inward] law varies inversely with radial distance” (p. 50)

Again, recall that underlying these differences in law delivered are differences in seriousness judgments. If a white, native born, non-Latino person driving a car has a hit and run and kills a minority, native born person, the amount of law delivered against him or her will be greater than if the person killed was non white and **non** native born. See the references in footnote 15 for more information on the killing of the 16 year old Japanese exchange student by the white homeowner in Louisiana and the justice delivered.

Victimless Crimes

Victimless crimes such as vice and graft can be approached in the same way they were when the vertical dimension was discussed. On the horizontal dimension in Philadelphia a victimless crime is committed against a “majority” Philadelphian. Up until 2006, a majority Philadelphian was white and native-born. That average Philadelphian can be viewed as the victim, whose morals were offended by the deviance or the crime.

Some Problems with Black’s Horizontal Dimension

There are three general concerns about Black’s horizontal dimension. First, although conceptually this horizontal dimension can be separated from the vertical dimension, there are questions about whether in everyday life this separation is so clean. For example, if being unemployed makes a person a more marginal member of society (Black p. 51), doesn’t it also make him/her a lower SES person? Certainly that person’s income is going to go down. So, realistically, there may be more overlap between these two dimensions than Black would seem to admit.

The overlap is not fatal. But you just want to be aware of it.

Second, although we can suggest that those who are native born, non-Latino and are white are more centrally located in Philadelphia society, at least up until recently, who is at the center and who is at the margin depends on how you are framing society. What period and what location are being examined? The implication is that one needs to think very carefully about applying these labels, and work through what the composition is of the society in question. For example in Tom Wolfe’s (1987) Bonfire of the Vanities the central anti-hero, who is clearly at the center of society in Manhattan, commits a crime and is tried in an outer borough of New York City, where the question of who is at the center and who is at the margin becomes much fuzzier.

Third, this model works most cleanly in situations where those who are in the majority on race, ethnicity, and nativity, also hold the reins of power and run things. What happens when those who are in the minority on race or ethnicity or nativity run things? How do we decide about who is more centrally positioned?

Consequently, deciding on exactly what indicators to use for central vs. marginal position in society should be approached carefully.

[FALL 2019: SKIP THIS SECTION] Assignment 3: pages 92-98

The Organizational Dimension of Social Life

These pages address how organizational factors and differences between organizations influence the behavior of law. Black (p. 85) describes organization as “the corporate aspect of social life, the capacity for collective action.” This idea is firmly embedded in the sociological frameworks of Max Weber and others. This is about the power of formal or recognized groups in society, and the implications of differences between groups, or between groups and individuals.

Range of interest

Black (op cit) is going to pursue this theme across many **levels of analysis**, from small groups “a couple or a gang of playmates” to “a family, or firm” to a “municipality, or state.” As with his previous focus on stratification, he will be looking at between-society differences and within-society differences. **For this course we are interested only in the latter.** Further, in this course we are not interested in extremely small organizations like families or gangs or playmates. The range of organizations of interest here will run from individuals and small political or community groups on the “low” end to justice agencies, at the local, state, or federal level on the “high” end.

Overall Quantity of Organization

Black (op cit) tells us “organization is a quantitative variable. Measures of organization include the presence and number of administrative officers, the centralization and continuity of decision making, and the quantity of collective action.”

This last statement is confusing because Black is combining two different things: the structure of different organizations, and the outputs of different organizations. These two are distinct.

Consider a large city agency, like Philadelphia Department of Corrections. This agency will have more organization in comparison to, say, a prisoner advocacy group like the Pennsylvania Prison Society. Indicators of more organization include: the number of employees, the volume of policies and procedures, and budget, to take just a few examples. Again, as with SES, Black’s interest will be in contrasting positions on the attribute. Some more examples of contrasting levels of organization appear below.

More organization		Less organization
FBI	vs.	Small city police department
City Housing Agency	vs.	Renter Advocacy Group
Philadelphia City Council	vs.	Neighborhood Community Organization
Federal Government	vs.	One State Government

Organization and Law

Organizational levels, but more importantly for this course, differences in organization, relate to how law behaves. “Organization explains aspects of law as well (Black p. 86).” He then tells us there are four ways organization and law connect.

“The quantity of law varies with

- the organization and its environment,

- **its direction in relation to differences in organization**, and
- with the organization of law itself (op cit).”

It is only this second relationship between how law behaves and organization that is of interest to us in this course.

Differences in Levels of Organization

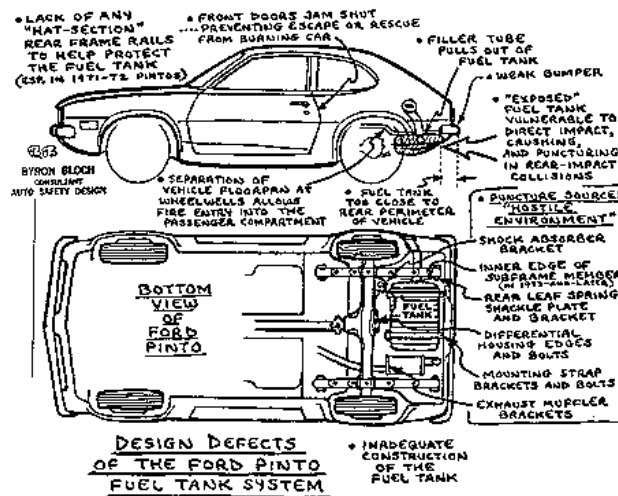
In the same way that Black turned differences in SES between two parties into a vertical direction (upward or downward crime, upward or downward law), he also turns differences between degree of organization into a direction which he calls organizational direction. “Just as law may have vertical direction in relation to differences in rank ... so it may have organizational direction in relation to differences in organizational status.”

The highest level of organization would be a large multi-national corporation, or international agency. The lowest level would be an individual, who is not in a group, and has even less power than a small group.

Behavior of Law is Still a Response

As before, the behavior of law is instigated by criminal behavior, or, more broadly, deviant behavior (p. 92). So, as before, the direction of law will be opposite the direction of the crime or criminal behavior.

For example: a large, corporation, like Ford Motor Company, victimizes a group with less organization, owners whose Ford Pintos caught on fire in accidents because of badly designed gas tank placement. T-bone or side impact collisions were most likely to cause fire to break out. Relatives of those victims also would be included in the victim group – we call these secondary or indirect victims.





The direction of the deviance would be toward less organization: consumers were victimized by a large company. The direction of the law would be toward greater organization: the victimized consumers sued (successfully) Ford Motor Company. To over-simplify the complex situation: It was revealed that the designers knew the fuel system was defective, but opted not to fix it, figuring that the costs of the lawsuits would be less than the costs of the design change. Interested readers should consult a primary source.¹⁵ The corporation was acting in a deviant manner not because it designed something that was hazardous, but rather because it knew it was hazardous but opted to do nothing about it.¹⁶



Direction of the Deviance →



The direction of the law will run in the opposite direction:



← Direction of the Law

More Law Runs Downhill (Against Lesser Organizational Capacity) Than Uphill: Organization Direction

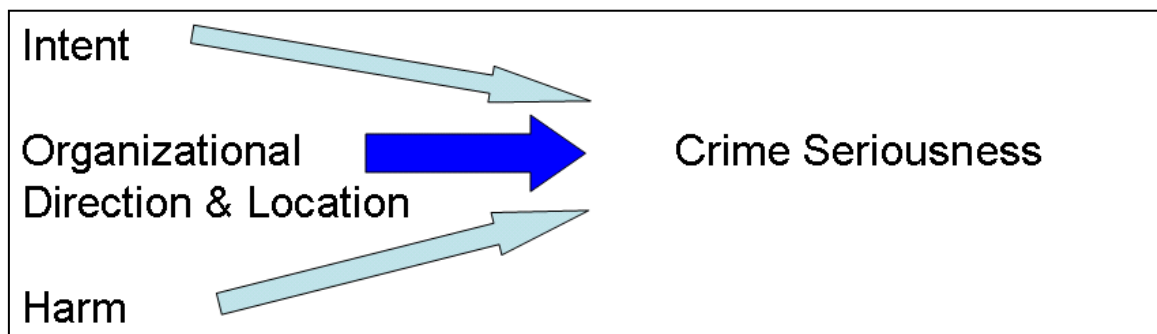
In his hypothesis (p. 92) Black tells us “law is greater in a direction toward less organization than toward more organization.” Some examples: a citizen who is arrested with unnecessary roughness complains against the police, but no official action against the department is taken. A suspect is wrongly convicted by

a court, but has a very difficult time getting his case re-opened, even though there might be substantial evidence supporting his point of view.

Remember the seriousness components. Law is more likely to run downhill, from greater toward lesser organizational capacity, because crimes against smaller organizations, or individuals, are seen as less serious than crimes against larger organizations committed by smaller organizations or individuals (a police officer hitting a citizen vs. that same citizen hitting that same police officer). Several individuals killing several Ford Motor Company executives in a raid on corporate headquarters would be seen as more serious than several Pinto drivers being placed at risk and subsequently killed, by Ford Motor Company executives who permitted known potentially lethal flaws to remain in the Pinto design.

Black revisits the seriousness issue (p. 97): “it is possible to rank the seriousness of deviant behavior according to its organizational location and direction.” Remember, it is these differences in perceived seriousness that are going to drive the differences in amount of law delivered.

In addition to the organizational direction of the deviance or criminal behavior, the traditional elements determining crime seriousness are still relevant: harm and intent.



In other words, when a large organization commits a crime against a less organized group, like Ford and Pinto owners, it is extremely unlikely that substantial law will be applied against the more organized group.

Of course it can happen. In the Pinto case, there was a lot of harm: people died. There was also intent insofar as the company decided yes, people would die, but we can afford it. (Again, this is a drastic simplification of a very complex case.)

In short, more law runs “downhill,” being levied against less organizational capacity, than uphill, being levied against greater organizational capacity, because crimes against bigger organizations are seen as more serious than crimes against smaller organizations or individuals.

This scenario leads to Black’s perhaps controversial statement “Just as a robbery of a business is more serious than that of an individual, so a robbery of a supermarket is more serious than that of a small grocery store (p. 95).” Law resulting from an individual robbing a large supermarket chain would be shown

in right most arrow of the figure below. Law resulting from an individual robbing a neighborhood grocery would be captured in the fourth arrow from the right.

Can law run “uphill”? Of course. Law can and does run uphill, being levied against the party with greater organizational capacity. Smaller groups get judgments through the courts against larger groups. But when this happens Black is suggesting to us that the **amount** of law is likely to be **less**.

Recent racial profiling/stop and frisk rulings

In New York City a federal judge decided that the NYPD was acting in a racially imbalanced way with its policy of stopping, and sometimes frisking, pedestrians.¹⁷ (At right you see Mayor Bloomberg and, in background at left, Police Commissioner Kelly, following the news conference where Bloomberg worried that the decision would hamper the police department and make the city less safe. This seems to be a rare case of law going **against** the bigger organization, the NYPD and the City of New York. You will read part of Judge Scheindlin’s decision. Part of her reasoning was that **so many**



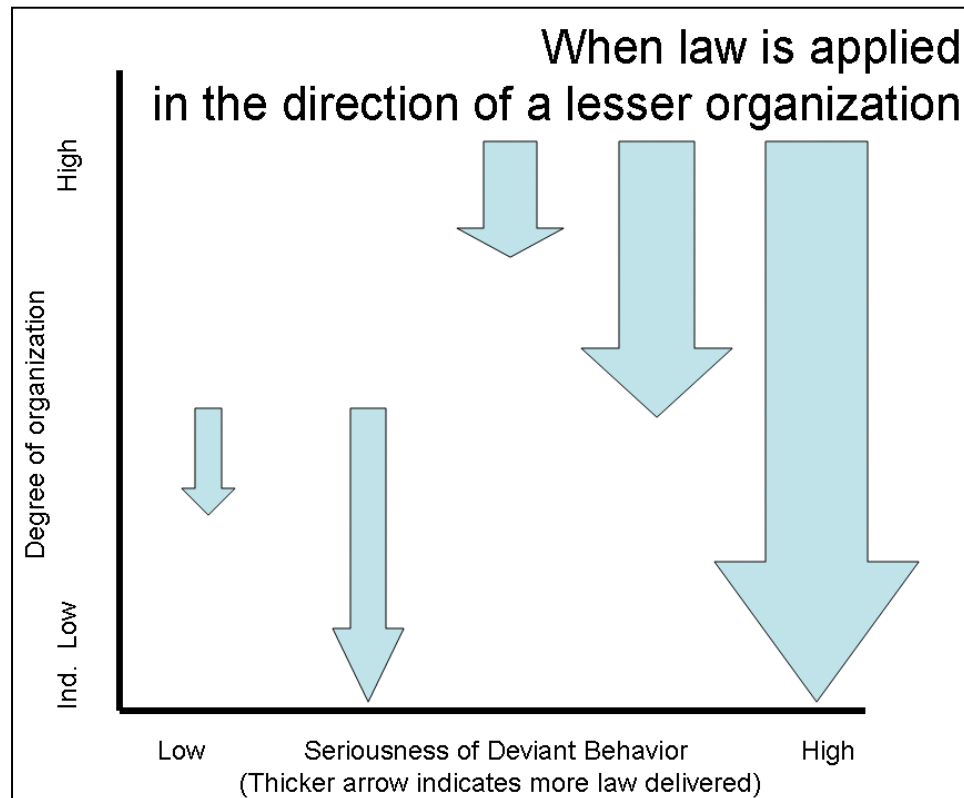
individuals were affected by the police policy. So perhaps, this leaves open the question of which group – the NYPD or the citizens – had “more organization.” We will discuss in class whether this example runs counter to Black’s model.

Organizational Distance

Black uses a distance metaphor to capture relative differences in organizational capacity. “Just as differences in [SES] rank may be understood as vertical distance ... so a difference in organization [capacity] may be understood as organizational distance (p. 24).”

Law delivered against the lesser organization. Black tells us if law is going downhill against a lesser organization “law varies directly with organizational distance (p. 93).” In other words, the bigger the organizational difference, the more law flows downhill.

In the figure below, the shorter the arrow, the less the organizational distance. The thicker the arrow, the more law is being delivered (longer sentences, bigger fines, the death penalty vs. a life sentence).



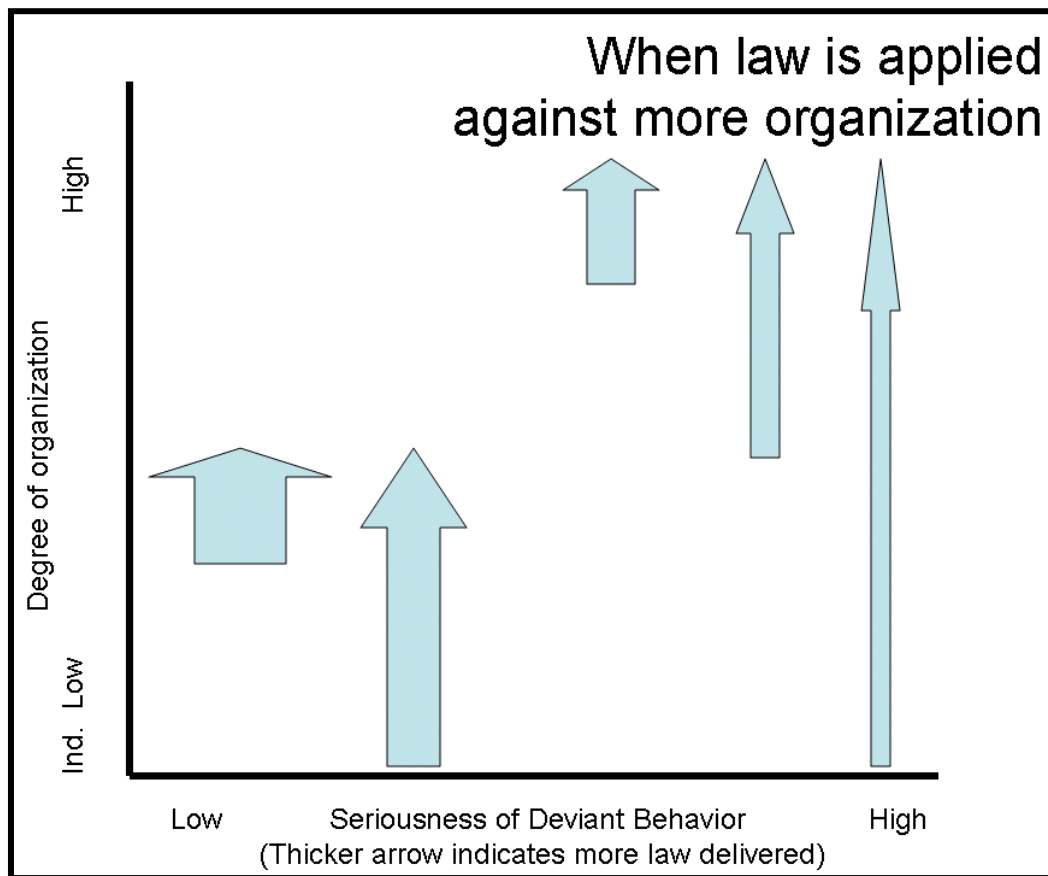
Most law will be delivered (right most arrow) if you have law being delivered on behalf of a highly organized victim, like a government which has been victimized by terrorist attacks with large numbers of citizens dying, against a single individual, like an individual terrorist. Or, alternatively, a disgruntled customer kidnaps high ranking officials at a large, multi-national corporation.

If the victim on behalf of whom the law is being delivered remains highly organized, but the organizational capacity of the offender increases, then the amount of law lessens.

If the victim on behalf of whom the law is being delivered is only moderately organized, less law is delivered, and those amounts decrease as the organizational capacities of the offending organization increase.

Law delivered against the organization with greater capacity. The situation **reverses** when law is being delivered **against** an entity with more organizational capacity, on behalf of an organization with less organizational capacity: “In a direction toward more organization, law varies inversely with organizational distance.” So a group of Ford dealers suing Ford Motor Company would get a bigger judgment against Ford than a group of Ford customers.

Graphically, this could be shown as below when the focus is on the resulting amount of law delivered. Again, thicker arrow means more law delivered.



Relevance to Victimless Crimes

How is all of this relevant to victimless crimes? Remember the earlier suggestion that in the case of victimless crimes, the state is acting on behalf of typical residents of the locality: your average Philadelphian of the time. This is in essence either an unorganized group, or a hypothetical individual.

From an organizational point of view, using Black's model, when the Philadelphia Police in the 1920s under Butler's leadership, on behalf of the average Philadelphian, were trying to shut down saloons and, later, hotels, they were up against more organized components. The saloonkeepers were a group or constituency with some degree of organization. Each major hotel was a business organization, and the different hotel top management or executives probably had some degree of organization or collaboration among themselves.

Both of these groups were at some level law abiding. The saloons, as long as they just served low power beer, and the hotels, as long as they did not serve alcohol at public functions.

Did the police have a lot of organizational capacity? Yes, but in the case of victimless crimes what is relevant is just the organizational capacity of the perpetrators relative to the victims. The latter were Philadelphians whose morals were offended.

But, If the police are attacked directly (MOVE 1, MOVE 2, Danny Faulkner) it is a different story. More about that later.

Application to Course Examples?

Here are several cases where we might want to think about relative differences in organizational directions and distance. In addition to the victimless crime instances mentioned above, the following additional examples may provide additional illustrations of how justice agencies responded in ways that took account of organizational differences and direction (listed chronologically):

- Responses to the Holmesburg prison riot in 1970
- Responses to the Attica Prison riot in 1971
- MOVE 1
- The Shooting of Philadelphia Police officer Danny Faulkner and the subsequent sentencing of Mumia Abu Jamal
- Philadelphia police corruption probe in the 1980s around illegal video gaming
- MOVE 2
- 39th Police District corruption probe in the 1990s, instigated by the treatment received by a Temple University student.

Assignment 4: Law and Social Control (pp. 105-111)

This section considers the relationship between law and other forms of social control. Law is one type of social control.

Social control “defines and responds to deviant behavior.” It tells us what is normal, “the normative aspect of social life” (Black, 1980: 105).

This section contrasts law and one particular type of “other social control”, informal social control.¹⁸

Informal control arises from the pro-social expectations placed on us by family, friends, and institutions. Your mom does not want you to beat up your brother. Your room mate does not want you to barf all over the rug, or, if you do, to at least pay for getting the rug cleaned, do it promptly, and apologize.

In this course we will use one key Black idea to explain the rise of the law & order agenda in this country.

Concerns about law & order deepen in times of social unrest, as in Prohibition in the 1920s and social change in the 1960s.

Here is Black’s (1980: 107) key idea:

“Law varies inversely with other social control.”

During times of social stability, informal social control is ascendant; people do what authority figures tell them to do. So we do not need much law and order. People are not clamoring for more cops on the street.



MORE formal social control is needed; MORE concern about law&order because informal social controls seem inadequate



Informal social control is weak or weaker than it needs to be; no one listens to scolding moms and dads and old heads

But in times of social change things are different. People do not listen to authority figures, or do what old heads tell them. They do what they want to do.

It seems that

- Deviant behavior is increasing
- Because people are not properly socialized they
- Do not listen to authority figures
- Therefore, to protect ourselves we need
 - More police on the street
 - Judges who hand out harsher sentences including death sentences
 - Abolish probation and parole
 -

The underlying model is **deterrence**; threat of punishment will deter unwanted behavior.

Endnotes

¹ Participating colleagues included the late Professor Mark Haller, a professor in both History and Criminal Justice at Temple, and Dr. Phil Harris, an associate professor in Criminal Justice at Temple.

² Gottfredson, M. R., & Hindelang, M. J. (1979). Theory and Research in the Sociology of Law. *American Sociological Review*, 44(1), 27-37

³ Grann, D. (2017). *Killers of the Flower Moon: The Osage Murders and the Birth of the FBI*. New York, Random House.

⁴ Full text available at: <http://www.scribd.com/doc/46100343/Roscoe-Pound-The-Causes-of-Popular-Dissatisfaction-With-the-Administration-of-Justice>

⁵ There is growing application of this idea to some criminal cases through the restorative justice movement. That's a different course.

⁶ The whole question of what is deviant behavior, and who defines deviance, and are those we label deviant really any different from those we do not label deviant, is a big huge complicated area of scholarship in BOTH sociology and criminology.

⁷ See, for examples, any of the following: Borg, I. (1988). Revisiting Thurstone's and Coombs' scales on the seriousness of crimes and offenses. *European Journal of Social Psychology*, 18, 53-61; Cohen, M. (1988). Some new evidence on the seriousness of crime. *Criminology*, 26, 343-353; Coombs, C. H. (1967). Thurstone's measurement of social values revisited forty years later. *Journal of Personality and Social Psychology*, 6(1), 85-91; Figlio, R. M. (1976). The Seriousness of offenses: An Evaluation by offenders and nonoffenders. *Journal of Criminal Law and Criminology*, 66, 189-200; Walker, M. (1978). Measuring the seriousness of crimes. *British Journal of Criminology*, 18(4), 348-364; Wolfgang, M. E., Figlio, R. M., Tracy, P. E., & Singer, S. I. (1985). *The National survey of crime severity*. Washington: USGPO.

⁸ This does not mean that there won't be differences in how that crime is perceived. In any group, there are differences around a group norm. Research has shown differences in how people perceive the seriousness of various crimes; despite those differences, however, there is also substantial agreement across people about the relative seriousness of different crimes. The important point is that the norm exists and that in general many if not most group members adhere to it.

⁹ From the U.S. Census "2000 Fact Sheet, Philadelphia County, Pennsylvania." To generate this sheet go to: factfinder.census.gov and key in Philadelphia County and Pennsylvania. Click on 2000 tab.

¹⁰ From the U.S. Census "2006 Fact Sheet, Philadelphia County, Pennsylvania." To generate this sheet go to: factfinder.census.gov and key in Philadelphia County and Pennsylvania. Click on 2006 tab.

¹¹ This table is from: Long, H. H. (1975). How the racial composition of cities changes. *Land Economics*, 51(3), 258-267.

¹² From the U.S. Census "2000 Fact Sheet, Philadelphia County, Pennsylvania." To generate this sheet go to: factfinder.census.gov and key in Philadelphia County and Pennsylvania. Click on 2000 tab.

¹³ From the U.S. Census "2006 Fact Sheet, Philadelphia County, Pennsylvania." To generate this sheet go to: factfinder.census.gov and key in Philadelphia County and Pennsylvania. Click on 2006 tab

¹⁴ This really happened in the early 1990s, and was the subject of a "Homicide: Life on the Streets" episode with David Morse playing the homeowner ("Colors," Episode Number: 32

Season Num: 3 First Aired: Friday April 28, 1995 Prod Code: 319 [ONLINE:

<http://www.tv.com/homicide-life-on-the-street/colors/episode/36492/recap.html>; accessed 2/25/08] In the episode a Turkish exchange student is depicted. In real life it was a Japanese exchange student, 16 years old, and the shooting took place in Louisiana. See: "Acquittal in doorstep shooting of Japanese student," (May 24, 1993) *New York Times* p. A1. [Online: New

York Times full text; accessed 2/25/08]. The case verdict generated considerable discussion across the country. See Applebome, P. (May 25, 1993). "Verdict in death of student reverberates across country" *New York Times* p. A14.

¹⁵ For more details on the Ford Pinto case see: Cullen, F.T., Maakestad, W.J., and Cavender, G. (1987). *Corporate crime under attack: The Ford Pinto case and beyond*. Cincinnati, OH: Anderson.

¹⁶ See for example: Vaughan, D. (1999). The Dark side of organizations; Mistake, misconduct, and disaster. *Annual Review of Sociology*, 25, 271-305.

¹⁷ Goldstein, J. (August 12, 2013). Judge rejects New York's stop-and-frisk policy. *New York Times*. [ONLINE: http://www.nytimes.com/2013/08/13/nyregion/stop-and-frisk-practice-violated-rights-judge-rules.html?pagewanted=all&_r=0]

¹⁸ Greenberg, S., & Rohe, W. (1986). Informal social control. In R. B. Taylor (Ed.), *Urban neighborhoods: Research and policy*. New York: Praeger; Hunter, A. (2003). Social control. In K. Christensen & D. Levinson (Eds.), *Encyclopedia of Community* (Vol. 3, pp. 1297-1302). Thousand Oaks: Sage