
Another Look at the “Corporate Advantage” in Routine Criminal Proceedings

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If corporate actors are more likely than other offenders to evade punishment, they should also be more successful, as victims, in getting offenders punished when brought to court. This argument was explicitly elaborated and submitted to empirical testing by John Hagan (1982). This article analyses all fraud cases against businesses investigated by police officers in Montreal from January to June 1991. Initial findings indicate that fraud cases were more likely to be cleared by charge when offenders defrauded large business establishments and less likely to be prosecuted when they targeted small businesses. The article explores the extent to which reliance on private security agencies, fraud characteristics, repeat-player effects, differential responsiveness of police investigators and criminal courts, and other potentially confounding factors account for this apparent corporate advantage effect.

Si les organisations et les entreprises ayant commis des infractions réussissent plus souvent que les particuliers à éviter des sanctions pénales, elles devraient donc réussir plus souvent, en tant que victimes, à faire imposer des peines aux contrevenants traduits en justice. C'est John Hagan (1982) qui a élaboré cette hypothèse et qui l'a mise à l'épreuve en y appliquant des tests empiriques. Dans le présent article, les auteurs analysent toutes les affaires de fraude à l'endroit d'entreprises et ayant fait l'objet d'enquêtes policières entre janvier et juin 1991 à Montréal. Ainsi, selon les résultats provisoires, les affaires de fraude à l'endroit d'importantes entreprises seraient plus susceptibles d'aboutir à une mise en accusation, alors que les contrevenants ayant ciblé de petites entreprises seraient moins susceptibles d'être traduits en justice. Or, les auteurs examinent dans quelle mesure le recours aux agences privées de sécurité, les caractéristiques des actes de fraude, les liens inter-organisationnels, les différences au niveau des réactions des enquêteurs policiers et des tribunaux de justice pénale, ou encore d'autres variables potentiellement con-

fusionnelles expliqueraient l'avantage dont semblent bénéficier les organisations et les entreprises.

Introduction

If, as offenders, corporate actors are more likely than other offenders to evade or circumvent punishment, they should also, and for similar reasons, be more likely, as victims, to obtain punishment for those who offend them. This implication was explicitly formulated and empirically tested by Hagan (1982), whose study shows that corporate actors are indeed more effective than individuals in using criminal prosecutions against those who victimize them. Findings also show that the size of corporate actors matters and that the larger entities (as measured by number of employees) are more successful than their smaller counterparts in obtaining convictions: "As size is a reflection of power and resources, this finding is consistent with our focus on the corporate advantage in the criminal justice process" (Hagan 1982: 1011). Not unexpectedly, the corporate victims in the study were also more satisfied than individual victims with law enforcement performance, with sentences generally meted out by criminal courts, and with overall criminal justice outcomes.

The main thrust of Hagan's thesis is to link theoretically two lines of research: the behaviour of corporate actors as defendants in criminal court proceedings and their behaviour as complainants. The corporate advantage argument illustrates Donald Black's (1973, 1976) more general proposition that law – governmental social control – is a resource in itself and that the ability or the motivation to take advantage of this public good is a direct function of social rank and organizational capacity. Corporate actors should thus be more effective in their use of criminal proceedings than individual actors. In Hagan's (1982) study, this basic insight is given an elaborate specification. Corporate victims are more effective in making use of proceedings in three ways. First, they achieve better outcomes because they are more selective in the cases they bring to court and thus obtain a higher number of guilty pleas. For example, such cases are less likely to carry factors that mitigate blame attribution (such as a past history of intimacy between offenders and victims). Second, corporate actors may devote more resources (private security, legal counsel) to detecting suspects and assembling incriminating evidence. Third, police officers, crown attorneys, or magistrates may themselves be more responsive to organizational litigants. Responsiveness can be inferred from the fact that corporate actors have more interactions with the criminal justice sys-

tem – for instance, more than one-third of burglaries and robberies reported to the police are reported by corporate actors – and are thus more likely to be acknowledged as “very important clients of the criminal justice system” (Hagan 1982: 999).

Corporate victims, Hagan found, were also more satisfied than individual victims of criminal proceeding outcomes, presumably because they achieved better outcomes but also because of structural affinities between governmental and corporate agencies: organizations (or their agents) are more likely to understand the behaviour of other organizations. They were also more satisfied because, beyond their natural substantive interest in penal outcomes, they view their formal interest in the long-term formal rationality of criminal courts as more significant than particular case rulings. This implies that general deterrence and predictability concerns should outweigh retribution and seriousness-of-crime concerns and attenuate the idiosyncratic impact of extra-legal attributes. Hagan’s argument is intended to be quite general in scope, since it contrasts two sets of social actors: individual and organizational entities. His category of corporate actors includes both economic and non-economic organizations (such as churches, associations, and schools).

Hagan’s (1982) seminal study also reports a variety of puzzling findings. First, repeat players are not, contrary to expectations (Galanter 1974), more successful in securing convictions, even though larger companies are more likely to be repeat players. This may imply that some other factors can partially neutralize the corporate advantage. Another puzzling finding is that although corporate victims were more satisfied than individuals with the overall case outcome, they were nonetheless just as unsatisfied as individual victims with the actual sentence meted out by courts. This suggests that magistrates’ judicial preferences may override “structural affinities.” Another intriguing finding that receives no particular comment is that although victims who testified in court did not have a significant impact on sentencing outcomes in cases involving individuals, they had a significant *negative* impact in corporate cases, suggesting again that magistrates are less responsive to corporate concerns than to individual needs.

Although the organizational status of litigants in appellate courts has been extensively scrutinized, especially by political scientists (for a review, see Songer, Sheehan, and Haire 1999), students of lower criminal courts have not attempted to replicate or elaborate upon Hagan’s (1982) extension of legal mobilization or “party capability” theory. In

this article, we restrict our analysis to a sub-set of property offences (cheque and credit-card fraud) and a sub-set of corporate actors (retail and financial institutions) but include prosecuted as well as non-prosecuted cases. We also examine more closely the extent to which victimized businesses rely on private security agencies in bringing fraud cases to court and the impact of such agencies on the outcomes of criminal proceedings. Our intent is not to challenge Hagan's basic argument that corporate actors are more likely to take advantage of criminal justice resources but, instead, to examine the derived proposition that this corporate advantage increases as a function of organizational size.

Data and context

We retrieved all archived police files on credit-card and cheque fraud ($N = 775$) against retail (57%) and financial (43%) institutions investigated by Montreal's police department between January and May 1991. (See Appendix A for descriptive statistics on dependent and independent variables.) In this sample, 21% of cases involved cheque fraud and 79% involved credit-card scams. Fraud cases may involve single or multiple fraudulent transactions. As it happens, most cases (63%) were solo transactions. Repeat fraud, however, involved on average 4.3 transactions (775 fraud cases but 1,938 fraudulent transactions). As a result, 71% of all fraudulent transactions were repeat or "string" offences. Because the number of fraudulent transactions is higher for cheque fraud than for credit-card fraud, cheque transactions represent 35% of all fraudulent transactions. There are also many more fraud cases ($N = 775$) than distinct victims ($N = 199$), since large companies typically have many branches or commercial outlets. In fact, 20% of companies ($N = 41$) experienced more than 80% of all fraudulent transactions (for similar findings see Burrows, Anderson, Bamfield, Hopkins, and Ingram 1999: 28). The skewed distribution of commercial victimization is even more salient than distributions of personal property or violent victimizations (Ellingworth, Hope, Osborn, Trickett, and Pease, 1995; Trickett, Ellingworth, Hope, and Pease 1995). This is partly because large organizations are attractive and stable hunting grounds for organized or professional networks of offenders (see, e.g., Mativat and Tremblay 1998; Lacoste and Tremblay 2003). Losses were also distributed very unequally (a standard deviation of \$3,347 for an average loss per fraud of \$946). As is often the case, however, the distribution of losses is lognormal and the geometric mean (geomean) of the average loss is \$371 per fraudulent transaction. Since victims experience 2.2 transactions per fraud, the geomean

of total losses per fraud is \$594 and the geomean of total losses per company is \$2,313.

Although police reports provided no information on the organizational capacity of victimized businesses (sales, assets, and number of employees are typical indicators of size), they did record their economic activities and business names. This is very useful information, since governmental agencies routinely collect data on the average number of employees by type of businesses (Statistics Canada 1993). The 1992 census counted 9,697 business premises involved in retail activities and 701 establishments engaged in financial and credit activities in the Montreal Urban Community. These represented respectively 25.9% and 1.9% of the overall population of organizations, including non-profit associations, operating in Montreal ($N = 37,380$). Note that firms are defined in this census as physical entities – premises or establishments – rather than legal or financial entities (head offices of businesses or companies). Each branch or franchised outlet of a given company is thus viewed as a distinct entity.

Commercial or business victimization surveys (Burrows et al. 1999; Mirrlees-Black and Ross 1995), as well as other studies (Kinsey and Stalans 1999), use the 10-employee benchmark to distinguish between small and large retail or manufacturing establishments. In this study we also use the census distribution of average staff size of “establishments” across sectors of economic activities to approximate size or rank status of the businesses victimized. For example, since census data indicate that the average number of employees for Montreal’s 340 jewellery stores was 3.7 per premises, we used this figure to estimate the organizational size of the five jewellery stores defrauded in our sample. This seems a reasonable cut-point. Organizational size in both sample and parent distributions is bimodal, with small enterprises clustering at six employees per establishment and large companies at 34 employees per establishment. Average staff size of business is only a rough proxy of corporate size. Because security and prosecution policies, practices, and resources in large enterprises are typically corporately determined and directed, we isolated cases involving repeat players (different establishments, same company). Corporate advantage effects are more likely to emerge in cases where offenders repeatedly target large business premises owned by the same enterprise and are best measured by an interaction term (organizational size \times repeat-player status).

Variance in rates of reported fraud across sectors of economic activity

was also substantial: 1.1 per 100 premises for music stores and 1.5 for retailers in jewels, but 32 per 100 for car dealers, 173 for large retail stores, and 234 for banks. Large business establishments are over-represented in fraud cases reported to the police by a factor of six, since they represent 67% of reported fraud cases but only 11% of all retail and financial enterprises. Conversely, small establishments are under-represented by a factor of 2.5, since they are litigants in only 33% of known police cases but represent 89% of all retail and financial enterprises.

Many authors have pointed out that private security firms are not designed to bring offenders to court (e.g., Bayley and Shearing 2001: 18; Shearing and Stenning 1983: 500-501). Yet we find that in the 364 cases for which the role of private security agencies was assessed, 58% of enterprises involved private security agents in their dealings with criminal courts. Organizational size matters: large enterprises (68%) were more likely than small businesses (41%) to use private security services. One of the purposes of this article is to examine more closely the impact of systematic mobilization of private security resources on criminal justice outcomes. A shortcoming of our database, however, is the prevalence of missing information on this variable (53% of the 775 fraud cases). Since missing data also affect another key variable, we address this issue later in the text.

Case processing variables in this study include elapsed time before victims reported the fraud to police, before police contacted victims, and before the case was finally cleared, by charge or otherwise. The more quickly the victims reported the fraud, the higher the odds of prosecution: in cases cleared by charge, the fraud had typically been reported six days after its occurrence (median value), whereas in non-prosecuted cases the fraud had been reported 41 days after the event. Time elapsed before the decision is made to bring the case court or not captures its lack of prosecutorial merit: prosecuted cases were typically handled with celerity and cleared by charge 41 days after the fraud had been reported; cases that were not prosecuted were cleared, on average, only after 143 days. In fact, most fraud cases (72%) were not prosecuted.

Police files reported sentencing decisions but not verdict outcomes. Given the wide prevalence of guilty pleas, we can expect that most of the 213 fraud cases cleared by charge resulted in convictions. Hagan's (1982) study of corporate advantage mentions that 72% of prosecuted offenders had pleaded or been found guilty. More recent data on

1995/1996 court dispositions of fraud cases in Canada indicate that two-thirds of all cases result in a conviction and 2% in an acquittal; in 31% of such cases, prosecution is stayed or charges withdrawn (Janhevich 1998: 13). Since crown attorneys will not lay a charge without a reasonable likelihood of conviction, we can assume that any evidence of corporate advantage in investigation outcomes (cases prosecuted or not) should translate into a corporate advantage in adjudicatory outcomes (cases convicted or acquitted).

An admittedly troublesome feature of our data set is that the sentencing outcome (prison vs. other penalties) is known for only 87 of the 213 prosecuted cases. Missing data become a serious issue only if it can be shown that they contaminate, directly or indirectly, the hypothesized relationship between corporate size and the outcomes of criminal proceedings. The problem, then, is whether the sample of known-outcome cases ($N = 87$) differs in some important respect from those cases for which sentencing dispositions are unknown ($N = 126$). This need not be so. For example, the proportion of prison sentences meted out in known fraud cases (36%) in this study is remarkably similar to the overall proportion of prison sentences handed down in convicted fraud cases in Canada (Janhevich 1998: 13).

To assess the direction and magnitude of self-selection bias, we regressed the occurrence or non-occurrence of missing information on sentencing outcome and private security on selected independent variables (not only organizational size of businesses victimized but also case processing and fraud seriousness indicators). Findings reported in Appendix B show that cases with missing information on private security involvement or sentencing outcomes were just as likely to involve small or large businesses. Moreover, they did not differ with respect to average dollar losses, number of fraudulent transactions, or proportion of cases with solo or co-offenders (on co-offending or "group crime" proportions across types of offences in Canada, see Carrington 2002).² Informal conversations with police officers suggest that, given the duration of criminal proceedings (typically three months; Pereira and Grimes 2002: 4), "overbooked" investigators shifted to more pressing matters were more likely to neglect "filing the paperwork" – for example, updating their files on sentencing outcomes or entering information viewed as "irrelevant" (such as private security involvement in offences reported). These expectations are clearly borne out in our analyses. Missing information on private security involvement was randomly distributed across cases (as indicated by the non-significant value of the model's chi square). And missing information on sentenc-

ing outcomes was more prevalent in time-consuming cases (Odds Ratio (OR) = 2.88, $p < 0.01$) or high-caseload credit-card investigations (OR = 2.24, $p < 0.01$).

Differential responsiveness

We begin our analysis by examining the extent to which large businesses are more likely than small businesses to mobilize law-enforcement resources. Recall that in fraud cases, police officers and crown attorneys appear to spend much more time handling and prosecuting cases brought by larger businesses: 89% of businesses in Montreal are small in size, yet two-thirds of the fraud cases investigated by the police during our study period involved large businesses. One should keep in mind, however, that large businesses (which employ 42% of all employees; Statistics Canada 1993) offer a wider range of fraud opportunities. Offenders have many good reasons to target the "haves": more resources to grab and less suspicious staff (marketing strategies that tend to override security concerns; Tremblay 1986), similar routines across branches, and quick access. Victimization surveys show that large businesses are more likely to be defrauded than small businesses by a factor of 4.4 (Mirrlees-Black and Ross 1995: 80).³ In this study we also find that they are more likely to be repeatedly victimized by a factor of 1.59 (2.86 fraudulent transactions per premises for large businesses and 1.79 for small ones). Combining both figures suggests that large businesses (11% of all retail and financial establishments in Montreal) should represent 77% of law-enforcement case-loads of reported cheque and credit-card fraud ($11\% \times 4.4 \times 1.59$).

Fraud is typically not reported to police: the Scottish survey reports that only 36% of frauds came to the attention of police (Burrows et al. 1999: 78). Although the British commercial survey does not provide any estimate of reporting rates for fraud, findings do indicate that under-reporting is more extensive among larger businesses for burglaries, vandalism, theft from vehicles, and robberies (Mirrlees-Black and Ross 1995: 81). One reason that large companies may not bring as many fraud cases to court as they could is that they have at their disposal "a range of sanctions which are in many respects more potent than those of the criminal justice system" (Shearing and Stenning 1983). Another factor may be that the marginal disutility of losses suffered is lower for large than for small businesses. If we standardize fraud disutility by organizational size, we find that the relative seriousness of the average total loss per fraud per employee is \$23 for large businesses (\$13 per fraudulent transaction on average) and \$63

for small businesses (\$50 per transaction). Thus large businesses have good reasons for not dialling 911 as often as their smaller counterparts. Indeed, in both U.K. surveys, the main justification for not reporting fraud to the police was that the incident had not been viewed as "serious enough" (Burrows et al. 1999: 79; Mirrlees-Black and Ross 1995: 25).

Responsiveness of law enforcement agencies may be assessed by examining the extent to which they respond more quickly to high-status (large) than to low-status (small) businesses. As it happens, bivariate findings show that it took more time for police investigators to contact large than small businesses (96 and 71 days respectively). To control for confounding influences, we regressed time elapsed before police officers contacted victims and time elapsed before the fraud was cleared (by charge or otherwise) on organizational size of businesses, controlling for type of fraud, number of suspects, average loss per fraud, and number of repeat fraudulent transactions. As Albonetti (1987: 311) has shown, prosecutors also have "a generalized preference for avoiding uncertainty." Uncertainty is substantially reduced when cases are legally strong (characterized by a lack of exculpatory evidence, the presence of physical and corroborative evidence, and a lack of intimate victim-defendant relationships). Cases with prosecutorial merits (and those ultimately cleared by charge) are typically processed more quickly than those that lack such merits or that, because of their complexity, require extra investigative efforts. We thus treat elapsed time before the case was cleared as a rough proxy of its prosecutorial uncertainty and as an independent determinant of law-enforcement responsiveness.

Findings reported in Table 1 show that police investigators took more time to contact victims and more time to clear the case in cases involving credit-card rather than cheque fraud. One reason may be simply that credit-card fraud was more prevalent in this jurisdiction than cheque fraud. Victims' celerity in reporting the fraud emerges as a key factor in predicting responsiveness: the more quickly businesses reported the incident to police, the more promptly investigators contacted the victim (OR = 0.14, $p < 0.01$) and the more quickly the investigation was cleared (OR = 0.12, $p < 0.01$). The more important finding is that when we control for such factors, there is no evidence that law enforcement or criminal courts were more responsive to organizational rank status or that responsiveness increased as a function of losses suffered.

Table 1: Size of businesses and responsiveness of law enforcement in fraud offences (Montreal, 1991)

| | Model 1 | | Model 2 | |
|--|--|-------|--|-------|
| | Time before police contact victims (in days) | | Time before decision is made to prosecute or not (in days) | |
| | b (SE) | b | b (SE) | b |
| Organizational size (large/small) | 0.12 (0.10) | 0.07 | 0.02 (0.09) | 0.01 |
| Fraud type (credit card/cheque) | 0.32** (0.11) | 0.15 | 0.29** (0.09) | 0.12 |
| Multiple suspects (yes/no) | 0.01 (0.17) | 0.00 | 0.11 (0.14) | 0.03 |
| Number of fraudulent transactions | 0.05 (0.06) | 0.04 | -0.01 (0.05) | -0.01 |
| Average loss per transaction | 0.06 (0.09) | 0.03 | 0.03 (0.07) | 0.02 |
| Repeat-player status (yes/no) | 0.02 (0.11) | 0.01 | 0.14 (0.10) | 0.06 |
| Time elapsed before victim called police (in days) | 0.15** (0.04) | 0.19 | 0.12** (0.03) | 0.14 |
| Time elapsed in clearing case (in days) | -0.31** (0.09) | -0.16 | -0.40** (0.08) | -0.19 |
| Constant | 0.62** (0.25) | - | 0.87** (0.22) | - |
| R ² | 0.13 | | 0.10 | |
| N | 423 | | 704 | |

** $p < 0.01$

Investigation outcomes

Although law-enforcement agencies may not be especially responsive to the concerns of large businesses, fraud cases were more likely to be cleared by charge when offenders targeted large rather than small businesses (34% vs. 20%). In fact, the odds of offenders being prosecuted were twice as high for large as for small businesses: $(34\%/66\%)/(20\%/80\%) = 2$. This pattern in differential success is very similar to Hagan's (1982) finding that offenders were more likely to be convicted when victims were organizations rather than individuals (80% vs. 66%). Large businesses were also, as expected, more likely than their smaller counterparts to rely on in-house or independent private security agencies (80% vs. 60%).

These bivariate findings may be spurious. We need to examine more closely the extent to which businesses achieve higher prosecution rates in fraud cases as a result of their reliance on private security agencies, their experience of criminal court proceedings ("repeat player" effects), or other potentially confounding factors. To the extent that large businesses can afford to be "patient players," we should also expect them to be more successful in the more complex cases where evidence against offenders is circumstantial and requires extra investigative efforts. Because we introduce interaction terms in our models, hypothesized main effect variables were standardized (Jaccard, Turisi, and Wan 1990).

Findings reported in Table 2 show that the odds of prosecution diminished in cases that were processed slowly ($OR = 0.69, p < 0.01$) and increased in cases involving multiple suspects ($OR = 2.1, p < 0.05$). One possibility is that multiple suspects can be trapped into games of "prisoner's dilemma" and are thus more likely to betray co-offenders. Findings reported in the main effects model indicate that larger businesses were not more successful in achieving high prosecution rates than their smaller counterparts. Indeed, their odds of getting offenders prosecuted were lower ($OR = 0.89$), although not significantly so. In addition, even though large businesses were more likely than small ones to rely on private security services, this did not translate per se into tangible benefits in terms of their chances of getting offenders prosecuted ($OR = 0.95$). Because private security agents do not emerge as particularly efficient in achieving higher prosecution rates, and because missing data on this variable shrink the number of cases in our data set by 50%, we dropped this variable in subsequent models. Finally, repeat players, that is, businesses that repeatedly brought fraud cases to court within a relatively short period (five months), were three times as likely as one-shot players ($OR = 3.29, p < 0.01$) to have offenders prosecuted.

This is an interesting finding, since Hagan (1982) found that "over-exposure" in criminal courts was the only intervening mechanism that did *not* directly account for the higher success of organizations in achieving higher odds of conviction. Both sets of findings are not necessarily inconsistent. In this sample, most large companies, but only half of the smaller ones, qualified as "repeat players" (the Pearson correlation between repeat-player status organizational size is 0.53) and thus more experienced in litigation and more familiar in criminal proceedings. Another possibility is that cases involving bursts of repeat victimizations provide police officials with more incriminating evidence than one-shot operations and result in higher odds of prosecution.

Table 2: Organizational effects (odds ratios) on investigation outcomes (cases prosecuted or not) in fraud offences (Montreal, 1991)

| | Baseline model | Corporate advantage main effects model | Corporate advantage interaction effects models | |
|--|----------------|--|--|------------|
| | | | Repeat-player status | Weak cases |
| Fraud type (credit card/cheque) | 0.75 | 0.93 | 0.69* | 0.69* |
| Multiple suspects (yes/no) | 2.10* | 2.52* | 0.94** | 1.91* |
| Number of fraudulent transactions | 0.97 | 0.78 | 0.92 | 0.93 |
| Average loss per transaction | 1.17 | 1.59* | 1.14 | 1.23 |
| Time elapsed before case cleared (in days) | 0.69*** | 0.45*** | 0.68*** | 0.67*** |
| Organizational size (z-scores) | — | 0.89 | 0.97 | 0.85 |
| Repeat-player status (z-scores) | — | 3.29*** | 1.28* | 1.48*** |
| Private security involvement (yes/no) | — | 0.95 | — | — |
| Repeat-player status 3 corporate size | — | — | 0.86 | — |
| Time elapsed before case cleared 3 organizational size | — | — | — | 1.17** |
| N | 705 | 340 | 705 | 705 |
| χ^2 | 48.42*** | 48.26*** | 65.85*** | 68.86*** |

* $p < 0.10$ ** $p < 0.05$ *** $p < 0.01$

The first interaction model examines the extent to which repeat-player status and organizational size interact in expected ways. Findings show that although businesses that are repeatedly victimized over a short period of time achieve higher odds of prosecution (by a factor of 1.28), large companies were less likely (rather than more) to derive any benefit from their repeat-player status (OR = 0.86, $p < 0.16$). It may be that offenders who recurrently target large companies are more skilled in avoiding apprehension than those involved in repeated fraud against

small businesses. An alternative explanation is that criminal courts viewed repeat victimizations as an aggravating circumstance for small businesses but as an indication of negligence for large companies, which have the means to prevent their occurrence.⁴ The second interaction model, however, tells a different story: large companies are more likely than small companies to have offenders prosecuted in the more difficult cases that require extensive investigative efforts (OR = 1.17, $p < 0.05$).

Punishment outcomes

We also examined the extent to which corporate advantage effects emerged in sentencing outcomes. As a result of missing data, we analysed only the 85 cases for which sentencing outcomes are known. Recall, however, that cases for which sentencing outcomes are unknown ($N = 147$) are very similar to cases with known outcomes on all relevant attributes (organizational capacity of victims, average loss per transaction, average number of fraudulent transactions, proportion of co-offenders involved; see Appendix B). To offset the lack of power of our statistical analyses, we lowered statistical significance levels. Bivariate findings indicated that criminal courts were more likely to impose prison sentences when offenders defrauded small rather than large businesses (59% vs. 30%). Indeed, the odds of a prison sentence were three times as high for the smaller establishments: $(59\%/41\%)/(30\%/70\%) = 3.3$. Recall that Hagan's (1982: 1009) original findings suggest that criminal courts did not impose more severe sentences on offenders who attacked large rather than small businesses. Notwithstanding his observation that organizational respondents were just as unsatisfied as individuals with actual sentencing outcomes (1005), Hagan explains the inconsistency away by arguing that organizations are less interested in retribution or substantive outcomes than in formal outcomes such as deterrence and predictability.

To offset confounding influences, we analysed the impact of corporate advantage on sentencing outcomes by incorporating the same set of control variables. We reasoned, however, that relative seriousness (total loss per fraud per employee) rather than dollar loss should be a more relevant factor for sentencing purposes, since a \$1,000 loss may be quite significant for a small and vulnerable business but much less so for a larger establishment.

Findings reported in Table 3's baseline model suggest that judges were indeed quite sensitive (OR = 2.58, $p < 0.05$) to the relative seriousness of the fraud (total loss per employee). Conversely, supplemental analy-

Table 3: Organizational size effects (odds ratios) on court dispositions (prison sentences or not) in fraud cases (Montreal, 1991)

| | Baseline model | Main effects model | Interaction effects models | |
|--|----------------|--------------------|----------------------------|---------|
| | | | Repeat-player status | Size |
| Fraud type (credit card/cheque) | 1.26 | 1.23 | 0.79 | 1.31 |
| Total loss per employee | 2.58** | 2.51* | 2.55* | 2.56* |
| Time elapsed before case cleared (in days) | 0.63* | 0.65* | 0.65 | 0.61* |
| Organizational size (z-scores) | — | 0.82 | 0.72 | 0.90 |
| Repeat-player status (z-scores) | — | 0.77 | 0.60** | 0.76 |
| Repeat-player status 3 organizational size | — | — | 0.59** | — |
| Time elapsed before case cleared by charge 3 organizational size | — | — | — | 1.54* |
| N | 85 | 85 | 85 | 85 |
| χ^2 | 8.37** | 10.98** | 15.88** | 13.29** |

* $p < 0.10$ ** $p < 0.05$

ses (not reported in Table 3) showed that dollar losses per se (average loss per transaction, number of fraudulent transactions per fraud) did not influence criminal courts' "in or out" sentencing dispositions. Cases that required more investigative or prosecutorial efforts were not only less likely to be prosecuted (Table 2) but also less likely, if prosecuted, to yield prison sentences (OR = 0.65, $p < 0.10$).

The main effects model indicates no evidence of positive organizational size or repeat-player effects on sentencing outcomes. Relative odds coefficients (0.82 for organizational size, 0.77 for repeat-player status) suggest instead that criminal courts were less inclined to impose severe penalties on those who defrauded large businesses or repeat players. Whereas repeat-player status increased the odds of prosecution and conviction, this advantage is reversed at the disposition stage. Reversal rather than cumulative patterns are not unusual in judicial discrimination research (e.g., Dannefer and Schutt 1982).

Interaction effect models, on the other hand, tell a slightly different story. The first interaction model scrutinizes how organizational size affects the impact of repeat-player status on sentencing outcomes.

Findings reveal a pattern of systematic "negative reinforcement": Repeat players are "rewarded" with not more severe but less severe punishment ($OR = 0.60, p < 0.05$). This is especially true for large companies ($OR = 0.59, p < 0.05$), suggesting that criminal courts expect the larger companies to show more diligence in preventing repeated victimizations.

The second interaction model shows that weaker or circumstantial cases (as measured by elapsed time before the investigation is cleared) are less likely to yield prison sentences ($OR = 0.65, p < 0.10$). It is precisely in such cases, however, that a significant corporate advantage effect does in fact emerge ($OR = 1.54, p < 0.10$). Given the small number of known sentencing outcomes ($N = 85$), this is a very significant effect. Recall that larger businesses were more successful in getting offenders prosecuted in the more "complicated" or "time-consuming" investigations (see Table 2). Findings reported in Table 3 show that this corporate advantage also translates into more severe sentences for offenders.⁵ Unfortunately, Hagan's (1982) formulation of the corporate advantage argument specifically states that the corporate advantage will translate not into more severe punishment but into higher law-enforcement responsiveness and higher odds of prosecution and conviction. In fairness, Hagan's analytical framework was designed to track main rather than conditional effects.

Conclusion

James Coleman (1982) underlines the structural implications of the substantial growth in the number of corporate actors in contemporary societies and suggests that changes in crime rates should be analysed in the context of differential trends in the prevalence of the volume of asymmetric (person vs. corporate and corporate vs. person) and symmetric (person vs. person and corporate vs. corporate) interactions. The higher the scope of asymmetric relationships, the higher the rate of offences committed by organizations against individuals (e.g., "white-collar crimes"), but also the higher the rate of offences committed by individuals against organizations. Because organizations typically have more resources than individuals, Hagan (1982) argues that they should be expected to be more successful in their dealings with criminal courts and that this corporate advantage should increase as a function of organizational size.

We examined the latter proposition by analysing all fraud cases against businesses investigated by police officers in Montreal from Jan-

uary to June 1991. Findings reported in this article indicate (1) that fraud reported by large businesses did not elicit preferential responsiveness by law-enforcement agencies; (2) that businesses' reliance on private security agents did not enhance offenders' odds of prosecution, even though private security involvement increased as a function of organizational size; and (3) that large businesses, whether repeat players or not, were less rather than more successful than small businesses in getting offenders prosecuted or sentenced to prison. In short, we found no evidence of a *direct* "corporate advantage." Indeed criminal courts seem to pursue an informal schedule of negative reinforcement in the way they handle fraud cases involving large corporate victims.

Organizational size of business victims does matter, but not necessarily in the way legal mobilization theorists anticipated. Our findings suggest that organizational size is implicitly acknowledged as a legitimate criterion for assessing the relative seriousness of the fraud case. Because losses suffered are assessed in relative terms (fraud losses per employee rather than total loss per fraud), this criterion actually translates into a corporate disadvantage. On the other hand, large businesses were much more successful in securing higher rates of prosecution and incarceration in cases that required extra investigative and prosecutorial efforts. To the extent that organized offenders involved in cheque and credit fraud schemes are more likely to target large rather than small companies, we interpret this finding as indicating that it is only in such cases (those requiring extra effort) that a significant corporate advantage effects emerge. This effect, however, is best construed as a "capability" effect rather than as a "preferential" bias of criminal courts toward high-status complainants.

It should be pointed out that Hagan's (1982) main concern was to explain why, as victims, organizations are more successful than individuals in their dealings with criminal courts. Our main concern has been to assess whether law enforcement and criminal courts are more responsive to the needs of large businesses. Findings reported here are best viewed as tentative, for several reasons. First, we reanalysed a data set initially collected for descriptive rather than theoretical purposes. Second, important fraud case characteristics (e.g., prior record of suspects, severity of custodial and non-custodial sentences, strength of evidence) were unavailable, and missing data on key variables (private security involvement, sentencing outcomes, plea-bargaining processes) diminished the overall value of the data set. Third, our research design, unlike that of Hagan's study, did not incorporate post-disposition interviews with victimized businesses. On the other hand, we did

not exclude non-prosecuted cases, thus correcting what could be viewed as a serious drawback of Hagan's initial investigation. We also relied on a more straightforward measure of crime seriousness (dollar losses, rather than perceived seriousness magnitude ratings drawn from Sellin and Wolfgang 1964).

Hagan (1982) scanned corporate advantage effects at an aggregate level and included a variety of criminal cases rather than a special category of offences (such as fraud). More research should be pursued in specifying the kinds of contexts that may affect both the magnitude and the direction of corporate or organizational size effects on criminal justice outcomes. A given offence's impact on third parties (customers, other employees) should be explicitly considered as an aggravating circumstance in future analyses of corporate or organizational size effects on the adjudication and conviction of offenders accused of robberies committed against individuals and businesses.

Time is money. And money buys time. Feeley (1979) points out that procedural costs ("the process is the punishment") may in fact override sentencing costs in many routine criminal cases, explaining why offenders may find it perfectly reasonable to relinquish legal representation and plead guilty as quickly as possible. Our findings indicate that corporate advantage effects are nested in fraud cases that required "more time" and extra investigation or prosecutorial efforts. The implication is that victims with more resources can afford to be patient and buy time. The higher the costs of mobilizing legal resources, the more significant these corporate advantage effects. This may explain why appellate or high-cost litigation is a privileged hunting ground for research on legal mobilization or party capability theories (Wheeler, Cartwright, Kagan, and Freedman 1987; Dotan 1999; Farole 1999; Songer et al. 1999). Nonetheless, research on appellate litigation has also uncovered judicial patterns quite analogous to those observed here. For example, Kinsey and Stalans (1999) found that owners of family businesses were more likely than large businesses to "come out ahead" in income tax audits and that the favourable outcomes that could be attributed to the occupational prestige of litigants were concentrated only among taxpayers who refrained from involving tax practitioners in their cases. Several authors have questioned the assumption of "institutional passivity" that is implicit in Galanter's (1974) formulation of the corporate advantage and underlined the regulating force of "judicial preferences" and courts' "institutional autonomy" (Sheehan, Mishler, and Songer 1992; Haynie 1995; Dotan 1999). The lack of responsiveness to the status of businesses and the salience

of just deserts concerns observed in this sample of routine criminal proceedings points in the same direction. It is also consistent with large businesses' inclination to under-report offences to the police.

Notes

1. Address all correspondence to Pierre Tremblay at pierre.tremblay@umontreal.ca.
2. In our sample, 76% of fraudsters are solo offenders. In Carrington's (2002: 293) analysis of co-offending, the proportion is 80%.
3. The Scottish business survey mentions that if the analysis controls number of employees or annual turnover, large businesses are not more likely to be victimized than small businesses (Burrows et al. 1999: 48). In doing so, the authors collapse units of analysis that are best kept separate (businesses and individual employees in commercial victimization surveys, households and individuals in personal victimization surveys). Burrows et al. (1999) do not provide any detailed analysis of organizational size effects across crime types (e.g., frauds) or across economic sectors of activity (e.g., retail businesses). In addition, financial institutions (a prime target of fraudulent transactions) were excluded from the survey's sample of eligible respondents.
4. As suggested by Hagan's (1982: 1009) observation that victims who testified in court on behalf of organizations had a negative impact on sentencing outcomes.
5. Missing data on sentencing outcomes ($N = 147$) were more likely to be found in slowly prosecuted cases. As it happens, corporate advantage effects were more clearly detected in such cases. Analysing the restricted sample of cases with known outcomes ($N = 85$) likely underestimates the significance and magnitude of these effects.

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Appendix A: Descriptive statistics for all dependent and independent variables in reported fraud offences (Montreal, January–May 1991)

| | N | % | Missing |
|-----------------------|-----|-------|---------|
| Organizational size | 775 | 100.0 | 0 |
| Small (10 or fewer) | 254 | 32.8 | |
| Large (11 or more) | 521 | 67.2 | |
| Investigation outcome | 749 | 100.0 | 26 |
| Prosecuted | 213 | 28.4 | |
| Not prosecuted | 536 | 71.6 | |

Appendix A (Concluded)

| | N | % | Missing |
|--|----------|--------------------|----------------|
| Sentencing outcome | 87 | 100.0 | 126 |
| Prison | 31 | 35.6 | |
| Other | 56 | 64.4 | |
| Type of fraud | 775 | 100.0 | |
| Cheque | 165 | 21.3 | 0 |
| Credit card | 610 | 78.7 | |
| Private security involvement | 364 | 100.0 | 411 |
| Yes | 152 | 41.8 | |
| No | 212 | 58.2 | |
| Number of suspects | 758 | 100.0 | 17 |
| 1 | 707 | 93.3 | |
| 2+ | 51 | 6.7 | |
| Repeat-player status | 775 | 100.0 | |
| Cases involving "one-shotters" | 158 | 20.4 | |
| Cases involving "repeat players" | 617 | 79.6 | |
| Number of fraudulent transactions per case | 772 | 100.0 | 3 |
| 1 | 498 | 64.5 | |
| 2-3 | 166 | 21.5 | |
| 4+ | 108 | 14.0 | |
| Time elapsed before case is cleared | 732 | 100.0 | 43 |
| Instantaneous (a day or less) | 124 | 16.9 | |
| Swift (3 months or less) | 227 | 31.0 | |
| Intermediate (a year or less) | 274 | 37.4 | |
| Slow (more than a year) | 107 | 14.6 | |
| Time elapsed before victim contacts police | 773 | 100.0 | 2 |
| Instantaneous (a day or less) | 218 | 28.2 | |
| Swift (a month or less) | 171 | 22.1 | |
| Intermediate (3 months or less) | 243 | 31.4 | |
| Slow (more than 3 months) | 141 | 18.2 | |
| | N | M (geomean) | SD |
| Total amount defrauded (log) | 766 | 2.77 (594.02\$) | 0.56 |
| Amount defrauded/transaction (log) | 765 | 2.58 (377.83\$) | 0.52 |
| Amount defrauded/employee (log) | 766 | 1.51 (32.03\$) | 0.59 |

Appendix B: Regressing missing data on private security involvement and sentencing outcomes on selected independent characteristics of corporate fraud cases

| | Involvement of private security agencies | Sentencing outcome in prosecuted case |
|--|---|--|
| | OR | OR |
| Organizational size of business premises (large/small) | 1.11 | 0.87 |
| Type of fraud (credit card/cheque) | 0.87 | 2.24* |
| Average loss per transaction | 1.25 | 1.20 |
| Number of fraudulent transactions | 0.97 | 0.86 |
| Multiple suspects (yes/no) | 1.14 | 1.56 |
| Time elapsed before police contacted (in days) | 0.89 | – |
| Time elapsed before case is cleared (in days) | – | 2.88* |
| χ^2 | 8.0 | 39.06** |
| N | 747 | 207 |

* $p < 0.05$

** $p < 0.01$

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