

Unveiling irresponsibility by organizational design

A theoretical reflection on the multi-level marketing industry



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Preface

This master's thesis marks the end of studying Business Administration at Radboud University in Nijmegen, as part of the Recht & Management programme. In the past six years, I have often felt like the Recht & Management programme consists of two separate parts: one focussing on the law, and one focusing on business administration. Apart from one course in the master stage, the two parts never really came together. However, in this master's thesis I have finally been able to use my knowledge from both parts of my university education and combine it in the same project. This opportunity has been the 'cherry on top of the cake' and has been a great way to finish my education at Radboud University.

Before I attended a lecture by William Keep and Peter Vander Nat in the Autumn of 2022 as part of the course 'Organisations and Society', I had never heard of the multi-level marketing (MLM) industry. I do not know anyone who is a distributor in MLM, and I have not been approached by a distributor to become a distributor myself. My only link to the industry was, I realized some time ago, the kitchen drawer at my parents' house full of my mother's beloved Tupperware products. Since that lecture and a chat I had with Mrs. Groß at the master's thesis fair a few weeks later, I have found myself wondering: how is it possible that MLM still exists? This has inspired me to write my thesis on exactly this topic. Although this question can be answered in many different ways, I hope I have contributed to the knowledge on this topic by applying the concept of organized irresponsibility to the MLM industry.

Sometimes, I feel like I haven't been able to say 'thank you' enough to everyone who played a part in supporting me in the past six years. Thankfully, proper round of saying 'thank you' seems to be a mandatory part of every preface of a master's thesis. First of all, my gratitude goes out to my supervisor, dr. Claudia Groß, for her valuable feedback, guidance, kindness and ideas during this project. I could not have wished for a better supervisor. My gratitude also goes out to dr. Dirk Vriens, for his remarks to improve this thesis. I also want to thank Daan, Roel and Maurits, as members of my master's thesis circle, for their feedback during the process of writing my thesis. Lastly, and possibly most importantly, my gratefulness goes out to my family and my friends who have supported me on every step of the way. Two people were of particular importance to me during this time, without whom I would not have been able to do what I did in the past six years. First, my mum: thank you for the countless liters of the best home-made soup you prepared for me, for the innumerable amount of calls you answered when I needed it most, and, most importantly, for the endless support you provided at all times. Secondly, my aunt: thank you for the countless trips to Nijmegen with me (and Irene) on Sunday night, for your unwavering interest in anything I do, and for your never-ending kindness and support. To end, I am afraid I also have to apologize to my sister and brother: Irene and Pieter, I am so sorry for all the times I have been unkind (to say the least) to you, when I was super stressed about some sort of exam or deadline at university.

Bettine Wils

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Abstract

The multi-level marketing (MLM) industry has grown considerably in recent years. MLM companies are defined as companies that market their products and services via self-employed distributors, who typically work from home and sell products or services to end-consumers, and simultaneously recruit, motivate and educate new distributors to start doing the same. The distributors are rewarded for the sales they generate, and for the sales generated by the people they have recruited. Even though the industry is still growing, it is facing criticism. This master's thesis focuses on the problematic side of the MLM industry, by applying the concept of organized irresponsibility from the field of criminology to the industry, in order to analyse how the design of MLM companies can be used for the organization's benefit when it comes to the creation of damages. This concept applies when individuals are collectively harming others while benefiting themselves, for which the individuals can avoid culpability since the damages cannot be traced to them by the current system of the law. The findings of this research underscore the significance of the design of the operations of the MLM industry when it comes to problems in regulation, prosecution and accountability for damages to society.

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1. Introduction

In this master's thesis, the conceptual lens of 'organized irresponsibility' will be used to analyse the multi-level marketing ("MLM") industry. Multi-level marketing companies are defined as companies that market their products and services via self-employed distributors, who typically work from home and sell products or services to end-consumers, and simultaneously recruit, motivate and educate new distributors to start doing the same (Groß & Vriens, 2019). The distributors are rewarded for the sales they generate, and for the sales generated by the people they have recruited (Cardenas & Fuchs-Tarlovsky, 2018), which results in a hierarchy of sellers and recruiters. MLM companies are active in a broad variety of sectors. This includes cosmetics, jewellery, clothing, nutritional supplements, cookware, telecommunication contracts, but also financial products, such as crypto currencies (DSN, 2022; Groß & Vriens, 2019).

Multi-level marketing firms are causing a lot of legal and ethical problems in society (as clearly illustrated by Groß & Vriens, 2019; Koehn, 2001; Leuer, 2022). This ranges from using illegal pyramid schemes, to harming customers and misrepresenting the earnings that can be made by working for a multi-level marketing company. MLM companies like to sell participation as a business opportunity that allows for making money. However, from the little public data available, it is clear that the majority of the distributors in the MLM industry lose money in their participation (Keep & Vander Nat, 2014; Liu, 2018).

Various authors have also worked on describing the apparent advantages of the multi-level-marketing industry (Albaum & Peterson, 2011; Brodie, et al., 2004; Crittenden & Albaum, 2015). They argue that joining an MLM company is just a good opportunity to earn an income, especially for individuals who are unable to earn an income in any other way via a regular job (Bäckman & Hanspal, 2022).

However, in the end, the industry has been characterized in prior research as creating substantial harm (Groß & Vriens, 2019; Koehn, 2001). Critics argue how MLM firms rely on recruitment of new distributors rather than on sales to end-consumers, and point out that MLM companies often make rosy marketing claims that heavily overstate the potential for earning money by becoming a MLM distributor (Bäckman & Hanspal, 2022; FTC, 2016; Taylor, 2011). There have been regulatory actions from various governments in the past against MLM companies, but these actions have not solved the problems that are associated with the MLM industry (Epstein, 2010; Groß & Vriens, 2019). MLM companies continue to exist, and the industry continues to grow (Bradley & Oates, 2022).

Why the industry is allowed to operate as it does, has been explained from various perspectives. A part of the problem with regulation of MLMs is that it appears that there is insufficient understanding of the problems caused in society by the business practices of MLMs. First, some authors argue that, for example in the USA, MLM companies are strong in their lobby to politicians, leading to a certain

protection for their practices from unfavourable legislative efforts (Greenberg, 2022; Leuer, 2022). Furthermore, by connecting to positive ideas like ‘the American Dream’, MLMs seem to be able to create positive branding, possibly leading to them being able to avoid further regulation (Leuer, 2022; Wrenn & Waller, 2021). At the same time, some MLMs have been allowed to self-regulate by pledging adherence to the Direct Selling Association (hereinafter referred to as: ‘DSA’) Code of Ethics, something that does not seem to have solved the many problems (Patten, 2022). Last, and possibly most importantly, a part of the problem is the particular way MLM companies operate (Groß & Vriens, 2019). Bradley and Oates (2022, p. 324) state that “the structure of many modern MLMs have been designed to avoid, delay or frustrate regulatory scrutiny”. In short, MLM companies seem to organize in such a way that they are not caught by regulatory actions, giving them the opportunity to keep making money at the expense of others. This thesis contributes to this last approach, by bringing in the concept of organized irresponsibility from the field of criminology. The concept of organized irresponsibility allows us to analyse in a more in-depth way how the design of an organization can be used for the organization’s benefit when it comes to the creation of damages.

This concept applies when individuals are collectively harming others while benefiting themselves, for which the individuals can avoid culpability since the damages cannot be traced to them by the current system of the law (Curran, 2018a; Curran, 2018b). In MLM literature, Groß and Vriens (2019) have analysed how MLM companies avoid accountability. The conceptual lens of organized irresponsibility has a similar focus, but can be applied to a broad range of different organizations, to explain how these organizations avoid accountability. Therefore, in this master’s thesis, the concept of ‘organized irresponsibility’ will be used to further help explain why multi-level marketing firms can continue operate, even though it is clear that the problems outweigh the benefits that they have for the few that actually manage to make a living out of working in this industry.

1.1. Research question

The following research question has been formulated: *How can the concept of organized irresponsibility help explain why multi-level marketing firms can continue to bring harm to society?*

1.2. Research approach

This thesis uses a theory-oriented research approach without using (empirical) data to answer the research question. The goal is to use the conceptual lens of organized irresponsibility to explore organizational characteristics of MLM that allow for the industry to escape regulatory efforts on a large scale. Therefore, theoretical background (Chapter 2) forms the basis for this research project. In paragraph 2.2.3., six elements of organized irresponsibility are distinguished. These six elements are to be compared to the theoretical knowledge on the multi-level marketing industry in order to establish whether organized irresponsibility can be seen as a reason for the difficulties that authorities experience when trying to regulate MLM companies.

1.3. Relevance

1.3.1. Academic relevance

This research will contribute to the theory on the multi-level marketing industry, by bringing in a new conceptual lens for analysis of the *why* of the continuing of societal problems caused by the MLM industry to society. In literature, most focus is on what multi-level marketing organizations are and on the benefits and drawbacks of their existence on individuals and society as a whole. Although especially in regard to the United States of America articles have been published on regulatory efforts regarding MLM companies (Epstein, 2010; Greenberg, 2022; Keep & Vander Nat, 2014; Leuer, 2022), little academic research has been done into understanding the intersection between fraud and retail business, partly due to a lack of reliable data, since many MLM companies are very reluctant to share data (Bosley & McKeage, 2015; Bäckman & Hanspal, 2022).

The lens of organized irresponsibility has not yet been used to help understanding this. The link between the design of MLM companies and the lack of accountability in the MLM industry has been explored before by Groß and Vriens (2019). Organized irresponsibility provides a new conceptual lens to analyse this link. Altogether, this master's thesis will add to the existing literature on MLM companies, by reflecting based on organized irresponsibility how the structures of MLM companies contribute to their continuous problematic presence in society.

1.3.2. Societal relevance

As will further be discussed in the chapter on the theoretical background, MLM companies are causing a variety of problems in society. During the COVID-19 pandemic, MLM has grown considerably (Bradley & Oates, 2022; Vesoulis & Dockterman, 2020). With a net worth of \$186.1 billion in 2021, the MLM industry is a force to be reckoned with (WFSDA, 2021). In total, there are 128.2 million distributors worldwide (WFSDA, 2021). In the US alone, consumer complaints regarding pyramid schemes and multi-level marketing companies rose by a staggering 459% between 2019 and 2022 (FTC, 2022; Greenman et al., 2023).

So far, various governmental actors have tried to undertake regulatory action against MLM companies, but these actions have not solved the problems that are associated with the MLM industry (Groß & Vriens, 2019). The application of the conceptual lens of organized irresponsibility is expected to help to understand why these actions have so far not been successful. It could contribute to the ways that governments and other entities think and decide about possible more effective counter measures and other forms of regulatory action to deploy against the MLM industry. It is hoped that with more effective regulatory action, societal problems that arise from MLM industry can be minimized.

1.4. Outline

This thesis consists of four further chapters: a theoretical framework (chapter 2), a theoretical reflection (chapter 3), a theoretical analysis (chapter 4) and a conclusion and discussion (chapter 5).

The second chapter of this thesis outlines the theoretical background of the research conducted. This chapter is split up in two sections. The first section discusses on multi-level marketing companies, their behaviour, and the problems they cause in society due to how they are organized. After a more general introduction to multi-level marketing companies and how they operate, the focus of this first section of this chapter will be on the question *why* multi-level marketing companies continue to exist, with little regulatory action that is being taken against them. The second section discusses the conceptual lens that will be applied to the multi-level marketing industry in this thesis: organized irresponsibility. This part of the theory chapter will explain this concept and discuss its main elements. Since the history of development of this concept is key to its current form, one part of this section will also review this briefly. Altogether, this section will lay the groundwork for the operationalisation of the concept to reflect on existing research on how MLMs operate. This chapter will end with a conceptual model.

The third chapter discusses how the theory presented in the second chapter is reflected upon. This includes a discussion on the research approach and the theoretical design. The chapter also describes the quality and limitations of the research conducted, and the research ethics. The fourth chapter contains the results of the application of the lens of organized irresponsibility on MLM. The fifth chapter features the discussion, and the final chapter discusses the conclusions of this research project.

2. Theoretical background

This chapter outlines the theoretical framework of this research. The first paragraph discusses existing knowledge about multi-level marketing companies, how they operate and how they are regulated. At the end of the first paragraph, the concept of organized irresponsibility is introduced, to explain why it is useful as a conceptual lens. Following this, the second paragraph describes what is known in theory about the concept of organized irresponsibility.

2.1. Multi-level marketing companies

2.1.1. The multi-level marketing industry

Multi-level marketing companies are companies that market their products and services via self-employed distributors, who typically work from home and sell products or services to end-consumers, and simultaneously recruit, motivate and educate new distributors to start doing the same (Groß & Vriens, 2019). They can be defined as a subset of direct-sales companies, with direct-sales companies being companies that sell products and/or services to end-users themselves, without using a retailer at a fixed retail location (Peterson & Wotruba, 1996; Vander Nat & Keep, 2002). MLM differs from the traditional business model of direct sales companies, whose sales agents, either employed or contracted, get a salary, plus a bonus, based on how much they sell (Liu, 2018). Direct sales companies are generally speaking lawful (Bradley & Oates, 2022).

In MLM, distributors are not employed by the company. MLM companies market goods and services through direct sales, but also incentivize the distributors to recruit, train and motivate other distributors. This results in a hierarchical structure of the recruiter, their recruits, the recruits of the recruit, and so further (Mangiaratti, 2021). The recruiting distributor is rewarded for the purchases of the recruited distributors and their network of recruits (“downline members”), as well as for their own sales to customers (Brodie, Stanworth, & Wotruba, 2002; FTC, 2021). To stress, the recruiting distributor is rewarded for the *purchases* of the recruited distributor, not for whether this distributor actually sells the products to anyone, uses the products themselves or throws the products away. It is possible that the incentives programme is aligned in a way that it is more profitable to recruit other distributors who purchase or sale products, than to actually sell the marketed products (Liu, 2018). Each MLM company has its own unique compensation plan, which can include bonuses, and can depend on the level of the distributor within the scheme itself (Reingewetz, 2021).

2.1.1.1. *The prevailing model of MLMs*

In their paper, Groß and Vriens (2019) have come up with an extended model of MLMs (Figure 2, see par. 2.1.1.2.). The basis of this model can be found in the ‘prevailing model’ of MLMs, that shows the relationships between three constituents (Figure 1). This model shows the main organization of MLM companies and is based on descriptions of MLM in prior literature (Groß and Vriens (2019) cite: Brodie et al. 2002; Brodie, et al., 2004; Herbig & Yelkurm, 1997; Peterson & Wotruba, 1996). This model helps

to understand the coordination efforts of the headquarters, and the position of the headquarters of the MLM company within MLM companies.

The three constituents in the model are: the MLM headquarters, the independent distributors, and ‘non-members’ (Groß & Vriens, 2019). The MLM headquarters is responsible for “all the key business decisions (products, markets, etc.) and for defining and establishing corporate policies, such as the conditions for becoming a distributor (e.g., no requirements except legal age of majority), the legal status of distributors as self-employed, and the commission system for selling and recruiting” (Groß & Vriens, 2019, p. 340). The independent distributors are the distributors in the network of the MLM company, who can work from home, market and sell the products, and recruit and motivate others to do the same. The non-members are part of the model, because they are generally considered to be crucial in the explanation of how MLMs operate (Groß & Vriens, 2019). The ‘non-members’ can be ultimate consumers and prospective distributors, that the independent distributors can approach to sell the products to, or to recruit as new distributors.

The three constituents are related to one another via three relationships (R1-R3 in Figure 1). The first relation (R1) between, refers to the formal agreement between the MLM headquarters and the independent distributors and the regulations set by the headquarters (Groß & Vriens, 2019). Among these regulations can be the distributor agreement itself and a handbook describing the rights and duties of each individual distributor, possibly including a Code of Conduct or a Code of Ethics (Groß & Vriens, 2019). Such Codes can include rules against misrepresenting income opportunities and product characteristics and benefits. The second relationship (R2), between the independent distributors and the non-members, refers mostly to the interaction between these two constituents. As described above, the distributors approach these non-members to sell products to or to recruit them for the MLM company. These interactions are, at least in part, governed by the relationship between the MLM headquarters and the individual distributor (R1), namely via requirements of the handbook and the distributor agreement (Groß & Vriens, 2019). The MLM headquarters expects the distributors to approach the non-members in a certain way, namely as is described in the handbook and the distributor agreement (Groß & Vriens, 2019). The third relationship (R3) is between the MLM headquarters and the non-members. Groß and Vriens (2019) describe this relationship as follows: “Headquarters regulates, for instance, the rights of prospective and actual clients as well as the rights of prospective and newly recruited distributors in relation with headquarters”. These rights can for example include buy-back policies for products, cancellation policies and rights to withdraw from an agreement (Groß & Vriens, 2019). Such policies try to ensure that new distributors can easily return their inventory and withdraw from their participation in the MLM company as a distributor (Groß & Vriens, 2019; see for example Seldia, 2021, p. 9).

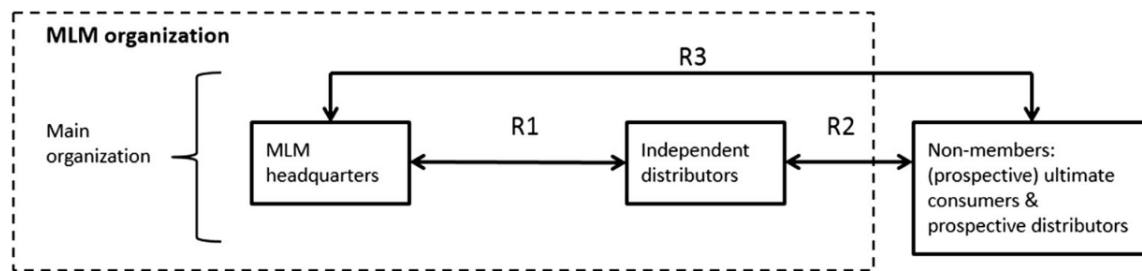


Figure 1: Extended model of MLMs (Groß & Vriens, 2019, p. 341)

2.1.1.2. *The extended model of MLMs*

Groß and Vriens (2019) use the ‘prevailing model’ of MLMs to come up with a second, extended model. This model includes the role of the distributor network more clearly compared to the prevailing model (paragraph 2.1.1.1.), which focuses on the coordination role of the MLM headquarters and not so much on the role of the distributor network (Groß & Vriens, 2019).

Juth-Gavasso (1985) pointed out that the behaviour of the distributors is not only influenced by the MLM headquarters, but also by the so-called ‘training organizations’ (Groß & Vriens, 2019). These training organizations are run by (high-level) distributors, who are known to organize meetings for distributors to attend, and provide distributors with motivational materials, such as books and videos (Groß & Vriens, 2019). The training organizations are known to lead to socialization within the upline and downline distributor systems of MLMs (Groß & Vriens, 2019). The programmes of the training organizations are attended by the distributors, and they, on their turn, offer support and education to their own downline members (Groß & Vriens, 2019). This means that the training and motivation, or, as Groß and Vriens (2019, p. 342) call it, “socialization and indoctrination” of distributors is handled by the independent training organizations, but also by the upline members of the MLM organization. The extended model of MLMs includes the training organization, and the upline and downline system. Groß and Vriens (2019, p. 342) include these in one, fourth, constituent in the model, because “(..) both have the same function (i.e., socialization of members)”. This fourth constituent is called the ‘distributor network’ (DN).

The distributor network leads to two new relationships in the extended model (R4 and R5 in Figure 2). R4 refers to the relationship between the MLM headquarters and the distributor network. Some MLM headquarters are known to impose guidelines for training on the distributor network (Groß & Vriens, 2019). However, as Groß and Vriens (2019) explicitly state in their article: the distributor network is typically legally independent from the MLM headquarters.

The second new relationship (R5) refers to the relation between the training organizations and the independent distributors. The trainings of the training organizations influence how the distributors “act, think, and feel with respect to their business” (Groß & Vriens, 2019, p. 342). This relates to the various

activities carried out by the training organizations, such as the meetings and the provision of all kinds of promotional materials, but also to all types of personal contact between the upline and downline members (Groß & Vriens, 2019). Groß and Vriens (2019, p. 342) state: “This relation forges the ongoing socialization of independent distributors”.

A last new element in this extended model is the environment of the MLM organization. This includes, but is not limited to, governmental organizations (including regulatory bodies), the law, and various MLM associations (Groß & Vriens, 2019). These actors all influence how MLMs operate, something that will be discussed in the next few paragraphs of this master’s thesis in more detail. They, as Groß and Vriens (2019, p. 342) put it quite appropriately, “provide a background for these operations” (of MLMs).

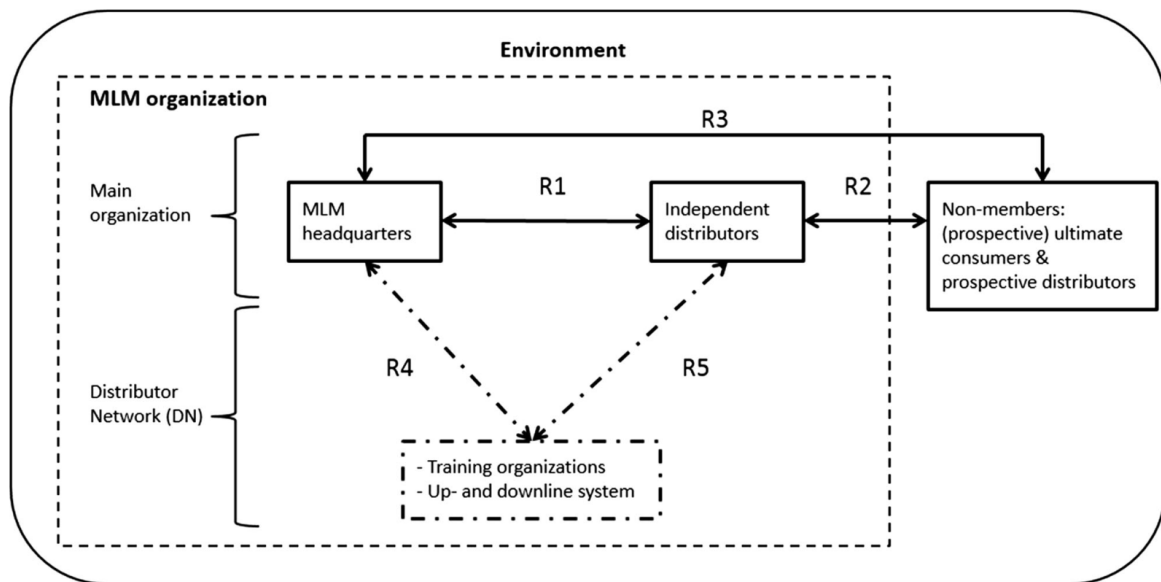


Figure 2: Extended model of MLMs (Groß & Vriens, 2019, p. 343)

2.1.2. The legal and ethical problems of the multi-level marketing industry

MLM companies sell a variety of goods and services, including health and beauty products and financial services (DSN, 2022; Groß & Vriens, 2019). Research shows that some MLMs sell competitive goods to the market, that would also be desirable had those products been sold on an open market, but some MLM companies do not (Bradley & Oates, 2022). Since direct selling is generally considered as unproblematic, MLM companies tend to portray themselves as such. They stress that they sell a valuable (real) product or service and are not just focused on recruitment (Bradley & Oates, 2022). However, the direct-selling aspect of their companies is not what draws so many objections to their existence in society (Bradley & Oates, 2022), it is the multi-level marketing structure that regulators and critics find questionable. Groß and Vriens (2019) describe five categories of problems society faces due to the business practices of MLM companies in their paper.

2.1.2.1. Illegal pyramid schemes

First, prior research suggests that some MLM companies are disguised illegal pyramid schemes (Groß & Vriens, 2019; Juth-Gavasso, 1985; Keep & Vander Nat, 2014; Koehn, 2001; Vander Nat & Keep, 2002). Pyramid schemes are illegal in many countries around the world, since they are economically unsustainable. In pyramid schemes, the focus is on recruitment instead of product sales. Furthermore, it requires new distributors to invest large sums of money into the scheme (Groß & Vriens, 2019). Pyramid schemes and the problems they cause for society are discussed in detail in paragraph 2.1.4.

2.1.2.2. Misrepresented income opportunities

Secondly, income opportunities for potential distributors of MLM companies are often misrepresented. From prior research, it is known that 99% of all MLM participants lose money (FitzPatrick, 2005; Taylor, 2011), with some even ending up in debt or bankrupt (FTC, 2021). Joining an MLM company can, depending on the company, be very expensive, due to the mandatory starter kit that has to be bought or a fee for the rights to sell that has to be paid (Blackman, 2021). Financing to join MLMs may already put distributors-to-be in debt, especially those who join MLMs for the exact reason for making in income when they have no opportunity to do that elsewhere (Blackman, 2021). MLMs are known to target vulnerable population groups, luring them into MLM with misrepresenting promises on how much money distributors make (Blackman, 2021; Bradley & Oates, 2022; Koehn, 2001; Leuer, 2022; Taylor, 2011). This more specifically includes socially deprived groups with limited other employment opportunities, such as mothers (Groß & Vriens, 2019), disabled people (Friedner, 2015), and (undocumented) immigrants (Groß, 2008, as cited in Carr & Kelan (2021); Mangiaratti, 2021). However, there is also some evidence that suggests that MLM companies are also targeting middle-income households that want to gain extra income (Bäckman & Hanspal, 2019). Since there is practically no barrier to join a MLM company, it is easy for all of these vulnerable groups to do so.

Another known tactic of MLM companies is that they control the pricing of the products for end-users, and provide high discounts to distributors, encouraging the distributors to buy a lot of products that they are, realistically, unlikely to ever sell (Bäckman & Hanspal, 2022; FTC, 2016, p. 22; Kayambazinthu Msosa, 2022). This means that distributors can end up with a large stock of products that they have spent a lot of money, with no other option than start using the products themselves (Keep & Vander Nat, 2014). Lastly, when new distributors have entered an MLM company, they are continuously motivated by exemplary calculations of how much money they could make, through which the MLM company or the higher-level distributors try to stress how easy it is to sell, recruit and make money, and how high the market potential is (Groß & Vriens, 2019).

2.1.2.3. Untrue or misleading product claims

Thirdly, prior research shows that with some MLM companies, customers are harmed due to untrue or misleading product claims (Groß & Vriens, 2019; Koehn, 2001). Although the tendency to exaggerate the quality and benefits of a product is present in the marketing strategies of many companies, for many

MLM companies it is standard practice (Groß & Vriens, 2019). A possible reason for this may be that the marketing of MLM products often happens outside settings that are controlled by the company itself, but instead in the homes of the distributors or the clients (Groß & Vriens, 2019; Juth-Gavasso, 1985). Legally, distributor networks operate independently from the corporate headquarters of the MLM company itself (Wrenn, 2022). In this way, the MLM company itself is not liable for potentially misleading or false statements distributors make about the products they sell and can just blame false statements on the individual distributors (see in general Jackall, 1985, as cited by Groß & Vriens, 2019; Juth-Gavasso, 1985). Furthermore, higher-level distributors do not have any regulatory authority over their downline members (Sparks & Schenk, 2001). External training organizations are sometimes used to make the distance between the MLM company and the distributors even bigger, when distributors have to pay to attend their training sessions and seminars (Groß & Vriens, 2019).

Groß and Vriens (2019) describe how this is particularly problematic for health-related products. Individual distributors are often only trained by their recruiter, and possibly external training organizations, and as a result, they can easily make unsubstantiated and exaggerated claims about the benefits of the product they want to sell. Misinformation about products that are sold via MLM distributor networks is amplified by distributors often sharing personal stories about the benefits of the products, rather than basing their selling techniques on actual research carried out (Groß & Vriens, 2019). Literally everyone can become a distributor in MLM, meaning that one does not have to be an expert to be able to sell health-related products (Oloveze, et al., 2021). This became exceptionally clear when, following an investigation, TINA.org found that, from 62 DSA members who sell nutritional supplements, no less than 60 have distributors who make illegal claims about products being able to treat diseases, including autism and cancer (TINA, 2016a; TINA, 2016b). Sometimes, actual experts use their offices to sell MLM products. This is especially problematic, since customers trust their expertise and are more likely to believe their claims about the products (Groß & Vriens, 2019; Koehn, 2001; Wrenn, 2022).

2.1.2.4. Misuse of relationships in social circle

Some research shows that, due to the structure of MLM companies and the way they train their distributors, distributors are encouraged to misuse relationships with friends or family members to earn money (Groß & Vriens, 2019; Koehn, 2001). It is known that it is a lot harder to recruit or sell to a customer that is further removed from the distributor's immediate social circle (Lan, 2002). Distributors thus often approach family members and friends to become a customer or a distributor (Biggart, 1989, as cited by Groß & Vriens (2019); Friedner, 2015; Grayson, 2017; Pratt & Rosa, 2003). Distributors can use social events to recruit and sell their products, something that Groß and Vriens (2019, p. 338) accurately describe as “an ethically sensitive practice”. Like the (medical) experts selling products to their clients (as described in the previous alinea), distributors can misuse the trust of their social circle in private settings by promoting business opportunities (DiMaggio & Louch, 1998; Groß & Vriens,

2019; Kong, 2003). Private social ties are known to make it more difficult to refuse such an offer, so potential customers from the social circle of the distributor may feel the social obligation to indeed purchase products they may not need, want or can afford (Biggart, 1989, as cited by Groß & Vriens (2019); Friedner, 2015; Groß & Vriens (2019); Lan, 2002; Pratt & Rosa, 2003). This risk is present with any form of (direct) selling, but it is known that MLM structures are based on using private relationships to be successful (Groß & Vriens, 2019). Approaching friends, family members and others in their social circle is standard practice (or even: “the central marketing strategy” (Groß & Vriens, 2019, p. 339)) for MLM distributors and is heavily encouraged by MLM headquarters (Sparks & Schenk, 2001; Sparks & Schenk, 2006).

2.1.2.5. Cult-like organizational cultures

Lastly, it appears from prior research that some MLMs have organizational cultures that are similar to cults, leading to a restriction of the ability of its distributors to reflect upon the ethical issues associated with the behaviour and practices of the MLM company they work for (Bromley, 1998, as cited in Groß & Vriens (2019); Brooks, 2018; Groß, 2010, as cited in Groß & Vriens (2019); Leuer, 2022). It can also lead to members to fight for the MLM company, even though common sense is showing them that it is bringing them more harm than good (Leuer, 2022), and can lead members to become alienated from their family and friends (Brooks, 2018).

2.1.2.6. Further criticism

MLM companies have been criticised for primarily existing to profit the owners. This may be a group of shareholders, in the case of a publicly held MLM, or a smaller group of owners, which is the case for most MLM companies (Bradley & Oates, 2022). The founders of a MLM company are often the initial owners of the company, and benefit in that way from the company’s endeavours, or sell the company for a large sum of money. The initial owners, as the earliest participants of the scheme, are usually high up in the structure of the company. In that way, they can benefit from all the sales and recruitment efforts from everyone who is below them (Bradley & Oates, 2022; DeLiema et al., 2018).

2.1.3. Regulation of multi-level marketing companies

This paragraph describes what is known in theory about the regulation of MLM companies, and the possible problems that regulators run in to. A major focus for regulatory authorities has been the so-called pyramid schemes, which are illegal in many countries around the world. Some MLMs can be classified as illegal pyramid schemes, but many cannot. Regardless of their legal status, as was described in paragraph 2.2., prior research shows that MLM companies still cause a lot of harm in society and that regulation is thus inefficient. This paragraph therefore also describes what explanations are given for this in literature on the MLM industry.

2.1.3.1. Pyramid schemes

Some MLMs can be classified as pyramid schemes and are thus illegal in many countries around the world (Bradley & Oates, 2022; Wikipedia, n.d.). Other MLMs are not so easy to classify, meaning they fall in a grey area. They are not illegal pyramid schemes, but at the same time, they are also not legitimate sellers of viable products and services (Bradley & Oates, 2022; Pareja, 2008). MLMs are thus not necessarily illegal in many countries. However, there is an overlap between (illegal) pyramid schemes and MLMs.

In pyramid schemes, the reward promised is derived completely from those recruited by the individual. Whether or not, in the end, a product is actually sold, is irrelevant (Bradley & Oates, 2022). Products that are being sold in pyramid schemes often have little or no actual resale value, making it impossible to earn money by just selling (Akinladejo, Clark, & Akinladejo, 2013). It is not attractive for distributors to focus on selling for this exact reason. Systems that are solely based on growth, like pyramid schemes, are economically unsustainable. When increasing the number of distributors, at some point, one runs out of potential new distributors: market saturation is reached (Groß & Vriens, 2019). Comedian John Oliver put it quite aptly: “within fourteen cycles, you run out of people, and that is assuming that everyone on earth wants to be a protein shake distributor” (Oliver, 2016; Bradley & Oates, 2022). For new members, it becomes impossible to recruit distributors and by that, earn any money, even though they have invested heavily into the scheme. These new members have been promised an income opportunity, something a true pyramid scheme can never realise: with exponential growth of a network, only the top of that network can earn back their investment, while all the others lower in the system will lose money (Bosley & McKeage, 2015; Groß & Vriens, 2019; Pareja, 2008). Those in the top of the network are usually the first few members of a network (Bosley & McKeage, 2015; Groß & Vriens, 2019). When the scheme grows, all the new members will be destined to lose money by the rules of the game (Bosley & McKeage, 2015).

In 2017, the FTC estimated that, in the US alone, there were about 800,000 victims of pyramid schemes (Anderson, 2019; Greenman et al., 2023). Prominent cases of pyramid schemes are present all around the world, often portraying themselves as ‘get rich quick schemes’ (Hidajat et al., 2021). Prior research shows a variety of reasons for people to join such a pyramid scheme, ranging from a vision of high reward for little work, and the attraction of a better lifestyle, to the exploitation of specific (vulnerable) groups by the pyramid scheme (Hock & Button, 2022).

2.1.3.2. The difference between direct selling, MLM and pyramid schemes

The difference between legal direct selling schemes, multi-level marketing schemes and illegal pyramid schemes lies in the activities that are compensated for by the company. With legal direct selling, distributors are rewarded for selling products to customers. In illegal pyramid schemes, distributors are compensated for the number of new distributors they recruit, rather than the actual sales they make

(Keep & Vander Nat, 2014; Koehn, 2001; Vander Nat & Keep, 2002). In MLMs, as described in par. 2.1.1., the profits that are promised to distributors stem from the sales they make themselves and the number of new distributors they recruit (Bosley & Knorr, 2018; Bosley et al., 2019; Liu, 2018). MLM schemes become unlawful when the recruitment of new distributors becomes the primary focus (Bradley & Oates, 2022; Vander Nat & Keep, 2002). Some sales to consumers are generally not enough to protect MLM schemes from being prosecuted as pyramid schemes (Reingewetz, 2021).

Some MLM companies just act like they are selling legitimate competitive products, to satisfy regulators that they are absolutely not a pyramid scheme, and to comfort participants who are afraid to be lured into an illegal pyramid scheme (Bradley & Oates, 2022). This provides regulators with a challenging situation: where do pyramid schemes end and where do legitimate businesses begin? Most MLM companies make sure that the compensation schemes for selling products and recruiting new participants are intertwined in such a way that it is extremely hard to know whether it is indeed a legitimate business or a disguised pyramid scheme (Bradley & Oates, 2022; Liu, 2018). One tactic that many MLMs use, as explained before, is that they require new participants to buy a ‘startup package’ of actual goods. They explicitly make sure to not require a buy-in fee to be paid before one can become a distributor, but do encourage distributors to buy more than they will ever be able to consumer themselves or sell to actual customers with a profit (Bradley & Oates, 2022). The products bought were not actual competitively priced products but are a disguised buy-in fee to be able to start recruiting, which is the actual focus of the company (Bradley & Oates, 2022).

Other companies restrict the amount of downline levels a distributor can receive commissions for, but this does not solve the problem with pyramid schemes (Peterson & Albaum, 2007; Sparks & Schenk, 2006), because it does not restrict the number of levels that a scheme can have (Groß & Vriens, 2019). Other known internal rules that MLMs implement to make sure that they are not viewed as illegal pyramid schemes, are for example the ‘ten-customer rule’, which entails that distributors have to sell products to at least ten consumers per month next to their recruitment efforts (Groß & Vriens, 2019; Keep & Vander Nat, Multilevel marketing and pyramid schemes in the United States: An historical analysis, 2014), or the ‘70%-rule’, which requires distributors to sell at least 70% of the inventory they buy from the company. According to Groß and Vriens (2019), this rule is meant to prevent inventory loading and a focus on recruiting only, and make sure that products are actually sold to end-customers. However, these types of rules do not seem to make sure that the focus is indeed on selling instead of endless recruiting. The rules are generally not (sufficiently) enforced or monitored by the headquarters (Groß, 2008, as cited by Groß & Vriens (2019); Groß & Vriens, 2019; Keep & Vander Nat, 2014; Taylor, 2011). Additionally, distributors may still feel the pressure to purchase a larger inventory than they can possibly sell (Koehn, 2001).

It is possible that a seemingly legal MLM company designs its structure in such a way that it masterfully disguises its illegal pyramid scheme nature (Bradley & Oates, 2022; Keep & Vander Nat, 2014; US

Securities and Exchange Commission, 2013). This makes it time-consuming and difficult for regulatory authorities to pursue enforcement action against these MLM companies, resulting in a focus on prosecuting MLM companies that can clearly be classified as illegal pyramid schemes (Bradley & Oates, 2022; Liu, 2018). Additionally, regulatory authorities seem to focus increasingly on the misrepresentations or misleading promises by MLMs and their distributors instead of prosecuting the MLM companies for their problematic existence in general, for example the FTC in the height of the COVID-19 pandemic (FTC, 2020a; FTC, 2020b).

2.1.3.3. Literature on the regulation of MLM

Most literature on regulation of MLM companies is focused on the USA, for example on case law on the illegality of pyramid schemes and the comparison with MLM (Bosley & McKeage, 2015; Vander Nat & Keep, 2002). More recently articles have been published on other jurisdictions, such as India (Girish & Dube, 2015; Rajesh Babu & Anand, 2015) and China (Garbee, 2020), or even on comparing regulatory approaches in multiple jurisdictions (Tajti, 2022).

Groß and Vriens (2019) provide an overview of existing countermeasures for the various problems that are caused by MLMs, including various Industry Codes of Ethics, national consumer protection laws and policies implemented by MLMs themselves. Their conclusion is that none of these countermeasures currently in place are fit to deal with the problems that MLMs are causing to society. In their article, Groß and Vriens (2019) also suggest various additional countermeasures, focusing on specifying and enforcing existing rules and regulations, improving consumer education, and changing how MLMs are allowed to operate.

2.1.3.4. Various explanations for persistence of the industry

As was explained in detail in paragraph 2.2, prior research suggests that regulation is insufficient. MLM companies continue to persist and cause legal and ethical problems for society. This makes one wonder: why is this the case? Various explanations exist, of which some were already discussed at other places in this thesis. In this paragraph, all these explanations have been collected to paint a complete picture of the current state of literature on the MLM industry.

A part of the problem with regulation of MLMs is that it appears that there is insufficient understanding of the problems caused in society by the business practices of MLMs. First, some authors argue that, for example in the USA, MLM companies are strong in their lobby to politicians, leading to a certain protection for their practices from unfavourable legislative efforts (Greenberg, 2022; Leuer, 2022). Furthermore, by connecting to positive ideas like ‘the American Dream’, MLMs seem to be able to create positive branding, possibly leading to them being able to avoid further regulation (Leuer, 2022; Wrenn & Waller, 2021). At the same time, some MLMs have been allowed to self-regulate by pledging adherence to the DSA Code of Ethics, something that does not seem to have solved the many problems (Patten, 2022).

Last, and possibly most importantly, a part of the problem is the particular way MLM companies operate (Groß & Vriens, 2019). Bradley and Oates (2022, p. 324) state that “the structure of many modern MLMs have been designed to avoid, delay or frustrate regulatory scrutiny”. In short, MLM companies seem to organize in such a way that they are not caught by regulatory actions, giving them the opportunity to keep making money at the expense of others. Especially on this last explanation, very little research has been done so far. The focus of this master’s thesis is therefore on this particular explanation of the persistence of the MLM industry, despite the many problems associated with it. The concept of organized irresponsibility can be helpful for this, which will be explained in the next paragraph in detail.

2.1.4. The usability of the conceptual lens of organized irresponsibility

The lens of organized irresponsibility originally comes from the field of sociology in relation to environmental risks but has more recently been employed by scholars in the field of criminology to help explain how organized irresponsibility as a concept provides opportunities for actors avoiding responsibility for corporate crimes (Curran, 2018a; Curran, 2018b). Curran’s (2018a) understanding of how corporations use their complexity as an opportunity to be irresponsible and avoid culpability, can be applied to MLM, as MLM companies have notoriously complex structures which make it increasingly difficult to regulate them.

Although a concept from criminology may not seem to be very appropriate as a conceptual lens for the MLM industry at first, it can be useful to take such a new perspective on a societal problem for various reasons. In the past, concepts from criminology have been used to analyse MLM companies. Robert Blakey (1998) discussed in his expert opinion for the case *The Proctor & Gamble Company, et al. v. Amway Corporation, et al.*, Case No. H-972384, how MLM company Amway is run in a way similar to that of organized crime groups, such as the Mafia. Furthermore, for her dissertation, Juth-Gavasso (1985) drew upon literature from criminology to develop a theoretical model for organizational deviance in MLM organizations.

Regulatory action on companies can come from different sides of the law. Private citizens can use private law to get injunctions or file claims for damages (Taylor, 2011). In this research project, the main focus is regulatory action by governments or government agencies. Regulatory action by governments can come from administrative law, private law (like the FTC in the United States (Tressler, 2018)), or criminal law (see for a general overview of the regulatory landscape in the US, Mangiaratti (2021)). Especially when regulatory action is based on criminal law, concepts from criminology may be useful.

MLMs can be positioned in the grey area between illegal pyramid schemes and legal direct selling companies. At the moment, regulators are not able or not willing to take regulatory action against MLMs (Mangiaratti, 2021). There are multiple reasons for this. MLMs are difficult to classify as illegal, and it thus takes a lot of time and resources to pursue prosecution. MLMs are seemingly designed to avoid prosecution and culpability: they are as little direct selling companies as they can, but enough to be in

the grey area between illegal pyramid schemes and legal direct selling companies. Literature suggests multiple further reasons why MLMs are not regulated, ranging from apathy to political cowardice, a lack of transparency of the behaviour of MLM companies, and a lack of resources in general (Mangiaratti, 2021). Additionally, there tends to be little reporting of illegal or abusive practices by victims of (disguised) pyramid schemes, which makes enforcement or regulation even more difficult (Bradley & Oates, 2022; Bosley, Greenman, & Snyder, 2019; Matthews, 2020). There are various reasons for this, ranging from monetary loss being so minor that victims may not feel the need to report it, feelings of regret or embarrassment of getting involved with a pyramid scheme or even luring family and friends into the same scheme turning them into victims as well, or even to victims blaming themselves for the failure (Matthews, 2020). The lens of organized irresponsibility can be used to further explain how MLMs specifically organize to succeed in avoiding culpability and prosecution.

2.2. Organized irresponsibility

2.2.1. The concept of organized irresponsibility

The concept of organized irresponsibility applies when individuals are collectively harming others while benefiting themselves, for which the individuals can (partly) avoid culpability since the damages cannot be traced to them (Curran, 2015; Curran, 2018a; Curran, 2018b). Styrdom describes the conditions for organized irresponsibility as follows: “In the build-up toward the threshold, however, *no individual decisions can be isolated, but only the accumulation of effects of decision-making*, the long-term consequences of decisions no longer identifiable, over-complex and indistinct causal relations” (Styrdom, 2002, p. 68, as cited in Curran, 2018b, emphasis added). The idea of this concept is that complexity of organizational structures tends to cause mitigation of culpability and liability, since legal systems generally use reliable links between the harm produced and the producer of the harm before culpability can be established (Curran, 2018b). The result of organizing irresponsibly is that large corporations are able to benefit from the situation that there are various causes and conditions that lead to harm being inflicted to society as a whole or specific individuals, but legal responsibility for the harm that has occurred is extremely difficult to be linked back to specific agents (Pearce, 1993, p. 136, as cited in Curran, 2018b).

The concept of organized irresponsibility was introduced by Ulrich Beck (Beck, 1992; Beck, 1995), but its roots can be traced back to the more individualistic and moral critique of Mills (1956, as cited in Curran, 2018b). In his work, Beck has shown that risks have become a defining characteristic of modern society, even though most risks have been created by society itself (van Bueren, Lammerts van Bueren, & van der Zijpp, 2014). Beck found that, even though we have a society that is producing risks, we do not have proper institutions to deal with these created risks. He refers to this phenomenon as ‘organized irresponsibility’ (van Bueren, Lammerts van Bueren, & van der Zijpp, 2014). Although Beck does not give an exact definition of the term, in his view, organized irresponsibility more specifically occurs when actors are collectively creating risks, for which each of these actors is able to avoid responsibility, due

to the difficulties that occur when attributing specific consequences of the creation of those risks to specific actors (Beck, 1995; Curran, 2016; Curran, 2018a). According to Beck, as society, we are aware of the risks we have created ourselves, but we are incapable to attribute these risks to those who can be held accountable for these risks and their consequences (van Bueren, Lammerts van Bueren, & van der Zijpp, 2014).

Beck provided the link between organized irresponsibility and “organized non-liability” (Beck, 1995; Curran, 2018b), by emphasizing how legal systems and legal mechanisms fail to establish liability when the cause of damages cannot be traced back to a single entity, being an organization or an individual (Beck, 1992; Curran, 2018b). Recently, this link has been explored further, and Mills’ original critique on individuals benefitting from immoral but imputable behaviour has been brought into the discussion again (Curran 2015; Curran 2018a). This means that the benefits that members of the elite are deriving from being ‘organized irresponsible’ are part of the contemporary idea of organized irresponsibility as well (Curran, 2018b).

The work of Pearce and colleagues on corporate crime can be connected the work of Beck and his predecessors to corporations (Pearce, 1976; Pearce, 1993; Pearce, 2001). Pearce viewed corporations, and organizations in a broader sense, as units that commit crimes, without being held responsible for them (Pearce, 1976). Curran (2018a) discusses how corporations avoid culpability, by not being captured by the types of causality that underpin the current systems of criminal law, by combining both the work of Pearce and Beck and colleagues.

In prior research, it appears that corporations are, in particular cases, a good example of organised crime. This includes, but is definitely not limited to, breaches of antitrust rules, tax rules and health and safety rules (Pearce & Thombs, 1998). Criminal activity may even be an actual strategy of companies (Pearce, 1976). In some way or another, companies are able to get away with many of these types of actions. Pearce and various co-authors have worked on exploring how corporations are able to create structures that give them the option to avoid responsibility for damages they have caused (Pearce & Thombs, 1998; Pearce, 2001). This work on corporate strategies to avoid culpability for damages caused to society has been described as an analysis of ‘corporate organized irresponsibility’ (Curran, 2018a; Pearce, 2001; Tombs & Whyte, 2015). Building on the work of Pearce on corporate crime and Beck’s theory of risk, Curran (2018a) analysed the relationship between organized irresponsibility and corporations in contemporary capitalism.

The lens has been used to analyse various societal problems, such as the 2008 financial crisis (Curran, 2015; Curran, 2016), environmental problems (Curran, 2016), wicked problems in general or more specifically in relation to the meat industry (van Bueren, Lammerts van Bueren, & van der Zijpp, 2014), fracking in the UK (Drake, 2018) as well as the effects of global markets and the local production of

food in Australia (Forbes-Mewett & Nguyen-Trung, 2022), but is yet to be applied to the problems caused by MLM companies in society.

2.2.2. Enabling factors for organized irresponsibility

Contemporary configurations and underlying principles of the law also play a key role in enabling the use of organized irresponsibility by organizations. Especially in criminal law, there are structural gaps between the underlying principles that focus on the individual, and the organizational structures of legal entities, and the complex causality issues that are caused by these organizational structures (Norrie, 2001, as cited in Curran, 2018b; Pearce, 1993; Pearce, 2001; Thombs & Whyte, 2015).

This background information is discussed here in order to explain why companies are able to be ‘organized irresponsible’. The main focus is on how MLM companies misuse the space they are given by the law to be irresponsible, and whether the structural characteristics of MLM are designed in such a way to benefit from the gaps in the law as much as possible. The gaps between the underlying principles of the law and the causality issues that are increasingly being caused by the organizational structures of legal entities are thus treated as given.

2.2.2.1. *The individualistic nature of the law*

Pearce (2001, p. 39, as cited in Curran, 2018b) argues that “the criminal focus on intention-act-consequence embodies an extremely simple theory of causation and that the individualism of criminal law cannot capture the dynamics of corporate criminality because responsibility is assigned in a corporation in a way that defeats the attempt to identify a specific responsible individual”. What Pearce essentially proposes with this statement is that corporations are able to benefit from the underlying assumption that there are clear causal links between the intention, the act and the consequence of that act. When these links are indirect or unclear, the law is not able to capture this. Pearce (1993) thus argues that corporations benefit from this, when there are various causes and conditions that together lead to the risks and damages and are distributed among such a large number of agents, that it is impossible for criminal law to ascribe to any specific agent or set of agents. Essentially, a fundamental weakness of the law is that it is very much focused on individuals and has difficulty coping with causes in which there is not one individual or one set of agents to blame for damages (Norrie, 2001, as cited by Curran, 2018b).

Pearce (2001, p. 38, as cited in Curran (2018a)) argues as follows: “The criminal law, rather than recognising the fact that decisions are the product of systemic processes, focuses on individual intentionality”. Common-law based criminal law generally requires *actus reus* and *mens rea* to be present with a specific person or entity, before a person or entity can be held responsible. Such common-law based criminal law jurisdictions are for example England, Wales, Canada, Australia, India, and the United States of America.

The *actus reus* refers to the objective elements of the crime, more simply said, what has objectively happened. Such an act can consist of commission, omission or possession, and is generally

not the problem when looking at corporate crime. The *mens rea*, “the state of the criminal mind”, is the psychological state of the individual in the moment that the act is committed (Tombs & Whyte, 2015, p. 86). This concept, that emerged in English criminal law, is central to the development of criminal law as individualistic, and has led to corporate crime being a minor concern of the law in general. The individualistic nature of the law has not made prosecution of corporate crimes impossible, but it has made it increasingly difficult (Norrie, 2001, as cited in Tombs & Whyte (2015)). Organizational crimes are, after all, often caused by organizational goals instead of personal motives of those involved (Pearce, 2001). The whole idea of defined goals and motives that precede a crime is therefore particularly inappropriate when dealing with corporate crime.

Essentially, the different mental states that are captured under the concept of *mens rea* can be divided in four subcategories: intention, knowledge, recklessness and criminal negligence. The last three categories can be applied to corporations and their actions (Bittle & Snider, 2015), but it is less likely that ‘intention’ is found with corporations. After all, with corporations, it is very often about knowingly taking risks without a clear intention of damages to occur (Tombs & Whyte, 2015). In the end, this results in corporate crimes being found less serious, compared to those crimes that involved clear intention (Reiman, 1995, as cited in Tombs & Whyte (2015)). A simple (non-corporate) example is the distinction between ‘murder’ on the one hand and ‘manslaughter’ on the other: ‘murder’ is considered more serious, as it involves intend to kill, whereas ‘manslaughter’ implies that the death of the victim was caused by reckless or negligent behaviour.

Furthermore, *mens rea* heavily prioritizes criminal act over criminal omissions. When looking at corporate crime, the cause of the damage is quite often an omission (lack of action) instead of an actual act, and this is much harder to identify or link to a particular agent or group of agents (Tombs & Whyte, 2015). This creates massive problems when dealing with complex corporate structures, as the cause of an outcome is often the result of the behaviour of a lot of individuals or groups, that contribute to the establishment of the conditions for damages to occur, or that result in the actual actions or omissions of actions that eventually directly lead to the damages (Curran, 2018a). This complexity leads to a “corporate veil”, that is very difficult to move behind when looking to hold someone responsible for damages (Curran, 2018a; Tombs & Whyte, 2015, pp. 91-115). In conclusion: the fit between organizational structures and the way criminal law examines criminality is very poor.

2.2.2.2. *The collectivism of the law*

In cases when corporations are indeed criminally prosecuted, even if individuals or specific groups within the organization cannot be identified, the burden of responsibility and liability tends to end up with the shareholders of the company (Curran, 2018a). The shareholders are often the least aware of the conditions that the organization has created that have led to damages to occur in the first place, and can be seen as the least directly responsible for these damages. They may have pressured the company for higher returns, leading to policies being put in place that increased the risks taken by the company (like

was the case in the lead-up to the 2007-2008 financial crisis) (Curran, 2018a; Engelen, et al., 2011, as cited by Curran (2018a). However, this is exactly what the responsibility of shareholders is: they seek to get maximal returns on their investments. Curran (2018a, p. 329) further argues: “Simply put, in a situation of knowing very little about the corporation that they (part) own, shareholders cannot distinguish between high returns based on excellent management and high returns based on negligence of care or, alternatively, between lower returns based on greater stability and care and lower returns based on poor management.”

The structure of corporations allows for corporate decision makers to dump responsibility for their own failure on shareholders (Curran, 2018a). After all, shareholders can never lose more than they have invested in the company, generating a “certain position of complacency for shareholders” (Curran, 2018a, p. 329).

2.2.2.3. *The combination of individualism and collectivism*

The concept of organized irresponsibility cannot solely be based on either the individualist nature of the law or the collectivism in the law. It is the combination of the two that leads to organized irresponsibility to exist as a concept in the first place (Curran, 2018a). Curran (2018a, p. 329-330, emphasis added) states: “In particular, the problem is that whereas collective organizations are created, such as corporations, private think tanks, producer and trade bodies, and are able to act as collective agents, they are *not fully collective bodies* in which individuals are integrated together to create a new entity.” This leads to the following situation to occur when culpability for certain damages has to be ascribed to an actor. The individuals within the collective agencies are able to revert to their individual identity (Curran, 2018a). They are able to disown the actions of the collective agencies they have been part of, since they were not fully integrated in this collective body, but remained individual actors after all (Curran, 2018a). Curran (2018a, p. 330) concludes: “It is this incoherent amalgam of collectivism of agency, but not of culpability, that creates the particular dysfunction of contemporary corporations.”

2.2.2.4. *The theory of harm*

Additionally, many systemic harms avoid being defined as crimes under criminal law for the following reason (Curran, 2018b). The harm that is being caused by an agent needs to rise to a certain threshold of harm to the security of others, to be treated as a crime in the first place (Curran, 2018b, p. 599; Omerod & Laird (2015), as cited in Curran, 2018b). As Curran (2018b, p. 599) puts it: “The issue for harms via organized irresponsibility is that no one of the actions or of the individuals in themselves threatens significant harm in this way.” This poses a threat to the way that culpability is ascribed by the law. However, the law is not assigned one purpose: it needs to protect the safety and security of others, but it also has to be limited so that the autonomy of the citizens is protected (Curran, 2018b; Norrie, 2001, as cited by Curran, 2018b). One cannot just remove the thresholds on harm in order to protect others as much as possible. This would have an unimaginable impact on social life, as almost everything we do can be considered harmful in some way or another (Curran, 2017; Curran, 2018b). So, we end up with

the principle that is the foundation to our criminal law system that results in only relatively direct threats to the security of others that pass a certain threshold being punished. However, as described, this also means that as a society, we cannot do much against the recurring situation where the complexity of causation prevents us from tracing risks and damages back to specific acts and specific intentions of individuals. The law thus essentially systematically enables harm and suffering (Veitch, 2007, as cited by Curran, 2018b).

2.2.2.5. *The focus of law enforcement*

Additionally, law enforcement and other government agencies increasingly seem to focus on what is illegal or criminal, even though there can be legal behaviour that is also causing a lot of harm to society (Passas, 2005). Corporate practices in general can lead to massive damages to society, even though they are within the letter of the law. For MLM companies specifically, as described in paragraph 2.1.4., they are often in a grey area between legal direct selling companies and illegal pyramid schemes. Their existence in general can thus very often formally not be treated as a crime. Only when they display behaviour that violates a law, e.g. when heavily misleading consumers, they can become the subject of prosecution based on criminal law.

As mentioned at the start of this paragraph, this paragraph describes the background of the concept of organized irresponsibility. The next paragraph will move on to the core of this part of this thesis: the elements of organized irresponsibility.

2.2.3. **The elements of organized irresponsibility**

This section discusses how companies ‘organize irresponsibly’. As Curran (2018b, p. 598) put it in his article: “The same level of harm can be attributed systematically less culpability depending on the mechanisms generating it, even if the gain from the harm production is the same. The greater the number of agents and the greater the complexity of the connections between actions and the ultimate systemic consequences, the less culpability that tends to be attributed.” Organized irresponsibility can thus be explained by two major elements: the number of agents involved and the complexity. According to Curran (2018b, p. 599), these two elements make that organized irresponsibility is the key explanatory factor that “enables some harms to be considered “ordinary” and hence enable their collective producers to avoid culpability, while other, more direct, but often less impactful, harms are severely punished”. Curran (2018b) gives the following example of the plastic waste crisis. When an individual is using plastic, it is unlikely that this specific use of plastic is going to harm anyone else. Therefore, this individual themselves is not responsible for any significant damage. However, the billions of individuals using plastic cumulatively poses a real treat to the ecosystem of the oceans. What we see here, is that there is an individual lack of culpability, as an individual is not responsible for the harm, but the harm is cumulatively caused, by all these individuals.

According to the work of Curran (2018a, 2018b), citing prior research, a total of six elements can be distinguished (Table 1). These elements (and an example for each element) will be discussed in detail in this paragraph.

Element	Explanation	Example
Number of actors	The number of different legal agents involved in the creation of the damages determines the chance of crimes being prosecuted successfully.	BP/Volkswagen received large fines for an oil spill and hiding excessive emissions of cars respectively. For the global financial crisis or climate change, the damage is bigger, but was caused by a large number of legal actors, hence lower ascribed culpability (Curran, 2015; Curran, 2018b).
Complexity	Risks and damages that are created in a complex way are less likely to be traced back to an organization.	BP/Volkswagen received large fines for an oil spill and hiding excessive emissions of cars respectively. For the global financial crisis or climate change, the damage is bigger, but this is a result of a complex variety of causes, hence lower ascribed culpability (Curran, 2015; Curran, 2018b).
Size of the company	A hierarchy within the company itself, makes it difficult to get to the top of the company when looking for culpability and liability.	The chemical incident in Bhopal, India (1984), the capsizing of the ferry ‘Herald of Free Enterprise’ in Belgium (1987) and the Piper Alpha explosion in the North Sea (1988) all occurred in a sub-division of a large company, leading to low-level employees being held responsible, even though the top management also clearly contributed to the damages by creating policies and culture that put profit over safety (Pearce, 1993).
Number of causes and conditions	Large corporations can benefit from situations when there are indeed multiple causes and conditions for risks or damages to occur, because none of these actors on itself was the cause for the damages to occur.	Curran (2016) argues that in the 2007-2008 financial crisis, no specific actor’s actions in isolation could have caused for the harms to occur, it was always the interaction between the actions of every actor that in the end led to the harm being created.
Role of other actors	Whether the damages or risks can or cannot solely be traced back to the actions of corporations, but instead also to the actions of individual consumers.	Climate change is caused by billions of consumers, together with corporations, meaning that the damages cannot be attributed to corporations, even though they arguably play a large role (Snider, 2015, as cited by Curran, 2018b).
Nature of the crime	When crimes that are aligned with the interests of the elite and/or decision makers, and the state or even	Curran (2018a) argues that after the 2007-2008 global financial crisis, the United States decided not to prosecute actionable financial crimes that (partly)

	capitalism in general, crimes are less likely to be prosecuted.	caused the global financial crisis to happen in the first place, because the existing social and economic order needed to be protected.
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Table 1: elements of organized irresponsibility

2.2.3.1. *The number of actors involved*

This concerns the number of different legal agents that are involved in the creation of the damages (Curran, 2018b). The greater the number of legal agents involved in the creation of damages, the less likely the producers of those damages will be held accountable (Curran, 2018b). When there are many different legal agents that act in a way that in itself does not result in damage to anyone, but those actions cumulatively do, the individuals will not be held accountable for these damages (Curran, 2016), as was explained above with the example of the plastic waste crisis (Curran, 2018b).

Curran (2018b) illustrates this by giving the following example. When companies are causing damages, such as via an oil spill (in the case of BP) or via hiding excessive emissions from diesel cars (Volkswagen), they receive very large fines to redress (at least part) of the damages they have caused to society (Macalister, 2016; Schwartz & Bryan, 2017). For bigger complex cases, for example the global financial crisis, or climate change, the damages to society are generally thought to be larger. However, this cannot be traced back to specific agents: many actors contributed to this, unlike in the cases of BP and Volkswagen, when just one company was the cause of the damage. This results in the ascribed culpability for the larger total amount of damages to be lower than in (for example) the cases of BP and Volkswagen (Curran, 2015; Curran, 2018b).

2.2.3.2. *Complexity*

Essentially, the risks and damages that are created in complex ways by a greater number of contributors, are less likely to be traced back to an organization, leading to culpability of that organization (Curran, 2018b). These two elements can be used to explain how companies behave ‘organized irresponsibly’ in order to avoid culpability and liability. As such, it follows from this idea that risks that can be traced back to a single organization or a single set of agents with a straightforward cause are more likely to be attributed to that single organization or that single set of actors, leading to their culpability or liability, compared to risks that are a result from a complex variety of causes by a greater number of actors (Curran, 2018b).

For an example of how complexity results in a lower ascribed culpability, one can come back to the example of BP and Volkswagen being fined for creating an oil spill and hiding excessive emissions from diesel cars respectively (Curran, 2018b). The damage that resulted in these two cases were not only just caused by one company, the causes for the damage was also quite clear: oil spill and hidden excessive emissions. When looking at climate change and the global financial crisis, these were the result of a complex variety of causes (not one single cause), even though the total amount of damages

resulting from this may be much larger. However, like explained in the previous paragraph, the ascribed culpability ended up lower due to the complexity (Curran, 2015; Curran, 2018b).

The element of complexity can be associated with a variety of factors that in itself result in a higher complexity. These factors will be discussed in the next few paragraphs.

2.2.3.3. *Size of the company*

One of the factors that contribute to complexity in general is the size of a company. When large corporations are divided into sub-divisions, creating a hierarchy within the company itself, it is increasingly difficult to get to the top of the company when looking for culpability and liability. Prior research shows that often low-level employees are being held accountable for damages, while it is clear that the actions of the top-management are in part also the cause of the damages occurring, or have at least incentivized lower-level employees to make certain decisions that led to the damages (Curran, 2018a; Pearce, 1993, as cited in Curran, 2018a; Pearce, 2001). Corporate crimes are often committed for financial reasons and are caused over a very long period of time, by a series of profit-driven decisions taken by the management or via a culture created by that same management (Tombs & Whyte, 2007, as cited by Tombs & Whyte, 2015; Tombs & Whyte, 2015).

Pearce (1993) gives three clear examples: the chemical incident in Bhopal, India (1984), the capsizing of the ferry 'Herald of Free Enterprise' in Belgium (1987) and the Piper Alpha explosion in the North Sea (1988). Each of these incidents led to (extremely) large numbers of fatalities and major harm to those involved. All three incidents occurred within the sub-division of a large company. In the end, in each of these incidents, the financial penalties on the parent company were relatively small, and neither the parent companies nor the executives were convicted of any crimes (Pearce, 1993). In each case, existing safety procedures were not followed, and it was determined that this was mostly caused by employees putting profit before safety. It is clear that the executives and parent companies are responsible for creating a situation in which profit is *not* considered more important than safety, something the executives and the parent companies in these three incidents failed to do (Pearce, 2001). However, only low-level employees were prosecuted and held responsible for all three incidents (Pearce, 1993). This illustrates that, even though the policies and culture created by the respective parent companies and its executives were at least partly to blame for these incidents, the parent companies and the executives were able to avoid responsibility by putting all the blame on those lower in the pecking order.

2.2.3.4. *Number of causes and conditions*

Another element that contributes to the overall complexity is the situation when there are multiple causes and conditions for certain risks to appear (Pearce, 1993, as cited in Curran, 2018b). Large corporations can benefit from situations when there are indeed multiple causes and conditions for risks or damages to occur, because none of these actors on itself was the cause for the damages to occur. When trying to

attribute legal responsibility to one agent or a set of agents, one cannot determine in such a case what agent or set of agents is in itself responsible, since it is a collection of actions that led to the risks or damages to occur in the first place. None of the actions on itself would have led to the risks or damages, but the collective did.

Curran (2016) gives the following example. When looking at the financial crisis of 2007-2008, it is clear that no specific individual's actions, nor any single corporation's actions, in isolation could have created the harm that was being caused. It is the effects of the interactions of all the actions with others that, in the end, realizes the full force of the risks that these actors have created (Curran, 2016). This creates the problem that none of these agents can individually be held responsible, as the damage was only caused by the *interactions* between the effects of their actions and the effects of all the other actions.

2.2.3.5. *Role of other actors*

Complexity is also determined by whether the damages or risks can or cannot solely be traced back to the actions of corporations, but instead also to the actions of individual consumers (Curran, 2018b). While some corporate crimes, such as safety regulation breaches or fraud, are primarily caused by corporations itself, there are also risks and damages that are not just caused by corporations (Snider, 2015, as cited by Curran, 2018b). A good example of this is climate change: billions of consumers play a role in causing this, together with corporations. After all, even though the role of consumers is arguably smaller than that of corporations, one cannot say that climate change is *solely* caused by corporations.

2.2.3.6. *Nature of the crime*

Another aspect of organized irresponsibility is the nature of the crime that is being committed by the organization acting irresponsibly. It appears that crimes that are aligned with the interests of the elite and/or decision makers, and the state or even capitalism in general, are less likely to be prosecuted (Curran, 2018a; Pearce, 1976). Pearce (1976, as cited by Curran, 2018a) argues that the decision to prosecute corporate crime (at least partly) depends on whether it does or does not threaten the reproduction of core capitalist institutions in that country. If a crime does threaten such core capitalist institutions, it is generally more likely to be prosecuted, unless the crimes are being committed by those core capitalist institutions that are necessary for the state to be protected (Curran, 2018a; Pearce, 1976). In both instances, core capitalist institutions are protected by the state against prosecution.

Curran (2018a) illustrates this notion by the example of the 2007-2008 global financial crisis. He argues that the United States decided not to prosecute actionable financial crimes that (partly) caused the global financial crisis to happen in the first place, because the existing social and economic order needed to be protected. He states: "Criminalizing large parts of the American financial system, after almost 30 years of glorification of Wall Street as the bastion of American capitalism, would have been a massive blow to the existing "cultural imaginary" of capitalism and wealth" (Curran, 2018a, p. 323, see also Johnson & Kwak, 2011, as cited by Curran, 2018a; Will, Handelman, & Brotherton, 2013, as

cited by Curran, 2018a). The global financial crisis was also a prime example of criminal behaviour not being prosecuted, because the interests of those in power align with these crimes (Curran, 2018a; Morgenson & Story, 2011).

In conclusion, this suggests that companies can be ‘organized irresponsible’ in two ways. First, they can make sure that their interests align with those in power, for example by lobbying. Secondly, companies can portray themselves as a reflection of positive contemporary ideas of capitalism and entrepreneurship. By doing that, they are able to decrease the likelihood of prosecution and culpability even further. Hence, companies can be ‘organized irresponsible’ in this way as well.

2.3. Illustration of conceptual lens

The research question of this thesis has been visualized in Figure 1. The conceptual lens was explained in this chapter and includes the two central concepts of this thesis and the proposed relationship between them.

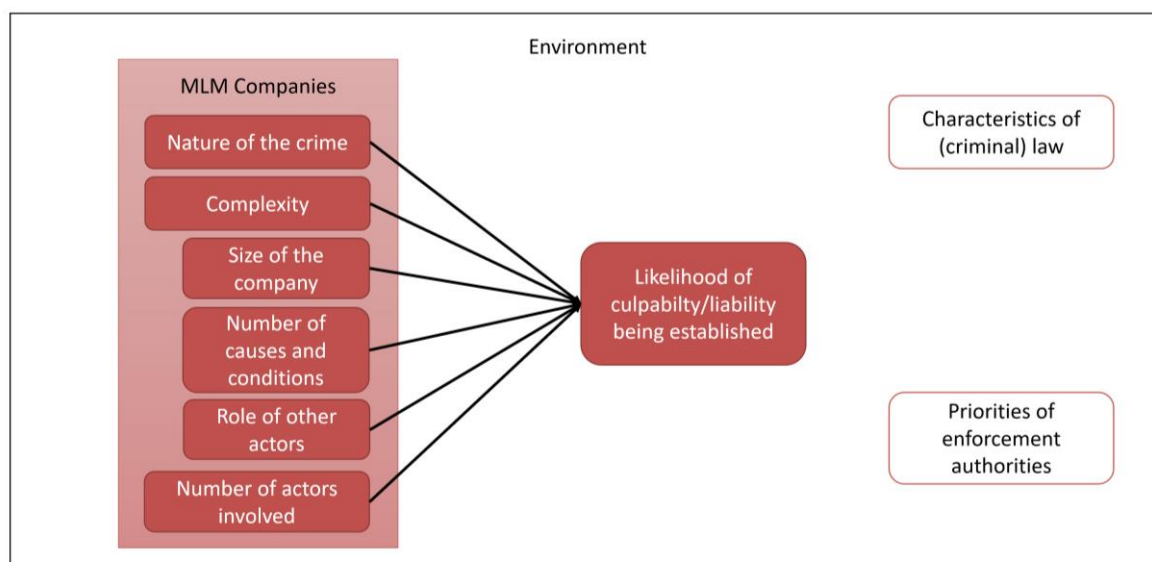


Figure 3: Conceptual lens

3. Theoretical reflection

This chapter describes the way the theory provided in chapter 2 is reflected upon. The example set by Korten (2018) in her master's thesis is followed in this chapter. Paragraph 3.1. sets out the research approach used. Paragraph 3.2. outlines the theoretical design and the analysis. Furthermore, paragraph 3.3. discusses research ethics, and paragraph 3.4. examines the opportunities and limitations of the research approach chosen.

3.1. Research approach

When carrying out research, after finding a topic, one has to decide whether to carry out applied research or theory-oriented research (Vennix, 2016; Verschuren & Doorewaard, 2021). Applied research aims to provide practical problems in organizations by using scientific research or non-scientific research (Korten, 2018; Verschuren & Doorewaard, 2021). Theory-oriented research aims to gain knowledge for the sake of gaining knowledge, without the direct intention to use this knowledge in practice (Vennix, 2016). With theory-oriented research, one can gather information for the research project with or without using (empirical) data.

In this particular case, a theory-oriented research approach is chosen. In this particular research project, the researcher aims to add to the existing literature on the MLM industry. The lens of organized irresponsibility has yet to be applied to the MLM industry. This lens provides us with a connection between the design of an organization and the ability to avoid accountability for damages that the organization has created or has helped to create. In the literature on MLM, this link has been explored in the past by different authors, most notably by Groß and Vriens (2019). Organized irresponsibility is a concept that can be used to analyse this link further. Therefore, the main goal of this thesis is the expansion of knowledge (Easterby-Smith et al., 2012) by reflection upon existing literature on the MLM industry via the lens of organized irresponsibility.

To give empirical illustrations to the conceptual reflection, three interviews with experts of the field were added to discuss and reflect upon the conceptual link made between the MLM industry and organized irresponsibility. The three experts who were approached for the interviews are (in no particular order): Douglas M. Brooks (attorney), Robert L. FitzPatrick (author and president of Pyramid Scheme Alert) and Jason Jones (attorney and advocate for the victims of manipulation fraud).

Expert	Date of interview	Language of interview	Length	Reference in chapter 4/5
Douglas M. Brooks	2 May 2023	English	65 minutes	Expert 1
Robert L. FitzPatrick	2 May 2023	English	95 minutes	Expert 2
Jason Jones	15 May 2023	English	70 minutes	Expert 3

Table 2: overview of interviews with experts

The unit of reflection of this thesis is the industry-level. While this cannot do justice to all differences that occur between different MLM companies, the thesis follows the approach of other researchers, such as Bradley and Oates (2022) and Groß and Vriens (2019). The literature on MLM rarely focuses on one particular MLM company and often describes the industry in general. Since this literature is used for the analysis in this thesis, no distinction is made between MLM companies that are or are not taken into consideration. In this way, it is possible to come up with the core patterns that can be found within the wider MLM industry, to explain why this industry as a whole continues to exist and cause problems in society.

3.2. Theoretical design and analysis

The following research question has been formulated: How can the concept of organized irresponsibility help explain why multi-level marketing firms can continue to bring harm to society? In order to answer this research question, academic literature is collected and reflected upon. The literature that will be used to reflect upon is outlined in chapter 2 of this master's thesis and covers two topics: the multi-level marketing industry and the concept of organized irresponsibility.

In paragraph 2.2.3, six elements of organized irresponsibility were discussed: complexity, its sub-elements of size of the company, number of causes and conditions, and role of other actors, the nature of the crime and the number of agents involved. In this research project, these elements will be used to analyse the multi-level marketing industry. The element of 'number of causes and conditions' is left out in the analysis. This element does not fit the industry and the problems this industry creates well, as it is suggested in literature on MLM that the sole cause of the damages that MLM creates can be found in the industry. This element is thus deemed to be less relevant. The other elements were selected on the basis of recent literature on the topic by Curran (2018a, 2018b), in combination with other literature cited in this work. Curran (2018a, 2018b) is the first to make the explicit connection between the initial work on organized irresponsibility by Beck (1992, 1995) and the work by Pearce and colleagues (1976, 1993, 1998, 2001) on corporate crime. His work clearly distinguished itself from other research carried out by others on organized irresponsibility in the recent years, and was deemed to be particularly useful to further our understanding how the MLM industry is organized in a way that allows it to avoid legal scrutiny (Bradley & Oates, 2022) as well as accountability (Groß & Vriens, 2019).

By using these elements to look at the MLM industry, it can be explored how the MLM industry has used its structure to decrease the chances of being held responsible for damages they cause. The analysis is set up in such a way that the elements will be compared with the features of the MLM industry, for example: the researcher will look at the nature of the crimes committed by MLM companies to see if this is a reason for them not being held responsible for their actions. This can result in a strong link, a weak link or no link at all, based on the interpretation of the researcher (Korten, 2018). For this reason,

in Chapter 4, each final section of every paragraph includes a table that depicts the contribution of various specific characteristics of the MLM industry to the level of organized irresponsibility.

3.3. Research ethics

As with all research, ethics has to be taken into account when carrying out theory-oriented research as well. Since in theory-oriented research, academic literature is collected and reflected upon instead of empirical data, proper referencing and conscious selecting of the literature collected is especially important (Korten, 2018). When selecting literature for this research project, the researcher looked at whether the literature was relevant for this research topic and recent enough to be useful for the analysis conducted.

When carrying out the analysis, the researcher followed the Netherlands Code of Conduct for Research Integrity (NWO, 2018) to ensure that the research was carried out in accordance with ethics standards. This Code of Conduct includes five principles that form the basis of every integer research project: honestly, scrupulousness, transparency, independence and responsibility.

First of all, the principle of honesty means that the research process and the results have to be reported on accurately (NWO, 2018). In this chapter, the research process has been described with great care to reflect what actually happened during the research process. Furthermore, chapter 4 will discuss the results of the research in a way that this principle is taken into account.

Secondly, the principle of scrupulousness focuses on using scientific methods and ensuring that the design, undertaking and reporting in the research project is done with the best possible care (NWO, 2018). This chapter outlines carefully and precisely how data was gathered, analysed and interpreted.

Thirdly, the principle of transparency includes that it is clear to others on what data the research was based on, how this data was obtained, how the results were achieved, and what the role of external stakeholders in the research project has been (NWO, 2018). In order to achieve maximal transparency, this chapter includes a description of how academic literature was selected for the theoretical framework. Furthermore, the researcher has made sure that all literature was referenced properly and thus included in the references list at the end of this master's thesis. External stakeholders did not influence the research project in any way.

Fourthly, the principle of independence covers that the design of the research project, the analysis of the data and the results is not guided by non-scientific considerations, such as of a commercial or political nature (NWO, 2018). Since this research project is theory-oriented, the researcher does not depend on any gatekeepers that may influence the results of this research project. The researcher has remained independent towards stakeholders of this research project, including MLM companies. The researcher is critical of the MLM industry. Furthermore, the conceptual lens used comes from the field criminology, resulting, per definition, in a critical reflection on the industry. However, the researcher has tried to be fair and objective as much as possible.

Finally, the principle of responsibility requires the researcher to take into account the interests

of those that are involved in the research project and the environment. During the research project, the researcher has made sure that everyone who is involved in this research project was treated with care and dignity. This principle also requires research to be scientifically and/or societally relevant (NWO, 2018). The scientific and societal relevance of this research project were discussed in paragraph 1.3.

3.4. Opportunities and limitations of the chosen research approach

3.4.1. Opportunities

Theory-oriented research without the (extensive) use of empirical data can provide the researcher with several opportunities. First, the topics and objectives of the research can be fully determined by the researcher herself. Theory-oriented research is rather flexible (Easterby-Smith et al., 2012), as it does not necessarily require the researcher to collect data from organizations or participants. In this particular case, in order to gather insights from those working in the field of the MLM industry, the researcher has conducted a limited number of interviews with experts. Since the basis for the research project is the reflection on theory, the researcher was not particularly dependent on their cooperation and was always able to continue the research project without the interviews.

Secondly, the researcher is not required to limit the number of elements of the conceptual lens of organized irresponsibility for operationalisation purposes, when working on theory-oriented research. A theory-oriented research project gives the researcher the opportunity to research the concept of organized irresponsibility and its link to the MLM industry in a rather broad way, and to apply the concept of organized irresponsibility as completely as possible on the MLM industry. Furthermore, since there was no need to gather empirical data for this study, it was possible to cover a broad phenomenon, namely the MLM industry, with this broad conceptual lens.

Lastly, theoretical research could eventually form the basis for further research projects that do reflect on empirical data. Since the concept of organized irresponsibility has not been applied to the MLM industry before, it made sense at this point to choose for a broader application instead of a more focused application of the conceptual lens on empirical data. This broad conceptual reflection allows to cover the patterns of organizing irresponsibly that can be found in the MLM industry. It may provide researchers with various avenues to engage in further and more detailed empirical research projects, that can include the differences between different MLM companies that are active in the industry.

3.4.2. Limitations

Next to an evaluation of the opportunities of the theory-oriented research project, the limitations of the research projects have to be discussed in this section as well. With theory-oriented research, the researcher is at risk of ending up with research that only has little practical value (Hitt & Geer, 2012). However, as illustrated in the previous paragraph, theory-oriented research can enhance the value of further theory-oriented research that uses empirical data, or of later applied research projects (Hitt & Geer, 2012). Thus, although this research project may not have immediate and direct practical value, it

can at some point lead reach practical value by forming the basis for further research projects, that may, in itself, provide direct value to practice.

Second, it is possible that the context of theory-oriented research ends up being too broad (Verschuren & Doorewaard, 2021). The researcher seeks to deal with this limitation of theory-oriented research by limiting the research to one industry and one conceptual lens that is being applied to this particular industry.

Lastly, theory-oriented research heavily depends on the reflection of the researcher on the theory. This may give room to tunnel vision or biases. To deal with this limitation, the researcher has interviewed several experts to get some input outside of her own thinking and personal reflection on the theory.

This chapter discussed the research approach, the theoretical design and analysis, the research ethics and the opportunities and limitations of the chosen research approach. The next chapter will feature the results of the application of the conceptual lens of organized irresponsibility on the MLM industry, by reflecting on the theory of Chapter 2 and the interviews that were carried out with several experts in the field of MLM.

4. Theoretical analysis

Chapter 2 provided an overview of the literature on the multi-level marketing industry and the concept of organized irresponsibility. This literature was reflected upon in the way that was described in the previous chapter, in order to answer the research question of this thesis. In this chapter, the results of this reflection are presented.

The core elements of this reflection are the number of actors, complexity (with various factors that contribute to this, such as the size of the company and the role of other actors) and the nature of the crime. The different paragraphs of this chapter are named after the element of organized irresponsibility that is applied on the MLM industry in that particular paragraph: the number of actors (4.1.), complexity (4.2.) and the nature of the crime (4.3.).

4.1. Number of actors

In the literature on organized irresponsibility, the element of number of actors refers to the number of legal actors involved in the creation of damages. The logic behind this element is that the likelihood of the producers of damages being held accountable for the creation of the damages is lower, when this number is high (Curran, 2018b). As Curran (2018b) highlights in his work on organized irresponsibility, for bigger complex cases, for example the global financial crisis, or climate change, the damages to society are generally thought to be larger, compared to smaller, simple cases that include fewer actors. However, this cannot be traced back to specific agents: many actors contributed to this. This results in the ascribed culpability for the larger total amount of damages to be lower than in cases in which a small number of actors was involved (Curran, 2015; Curran, 2018b).

By comparing the MLM literature with the concept of organized irresponsibility two specific elements stick out when looking at the number of actors that is involved in the creation of damages. The first section of this paragraph discusses the legal independence of the distributor network and how this drastically increases the number of actors active in the industry (par. 4.1.1.). This section also discusses how the MLM industry benefits from the legal independence of the distributor network. The second section describes several other independent actors that participate in the creation of damages by the MLM industry in a broader sense (par. 4.1.2.). This does not only include actors that are necessarily affiliated with only one specific MLM company, like training organizations, but also with the industry as a whole.

4.1.1. Legal independence of the distributor network

When comparing MLM with regular companies, such as BP or Volkswagen (Curran, 2018b), the central difference is the legal status of the members. In a regular large company, the employees of the company are not legally independent from the company. The company and its employees are viewed as one legal entity. The company can be held accountable for (most of) the behaviour of the employees. The company

may have several legally independent subsidiaries, for example for each country it is active in, and may contract other legally independent companies to work together on a certain project, but the total number of legal actors involved can be traced back to one or a limited number of legal entities (an example for BP can be found at Espace Mondial L'Atlas, n.d.). Often, the activities and results of all the subsidiaries are included in the consolidated account of the group. When such a company creates damages, such as via an oil spill (in the case of BP) or via hiding excessive emissions from diesel cars (Volkswagen), they receive (very) large fines to redress (at least part) of the damages they have caused to society (Macalister, 2016; Schwartz & Bryan, 2017). These type of fines and claims for damages are often addressed to the parent company in its capacity as head of the group, since it already consolidates the results of the subsidiaries in its own annual figures. If any independent contractors were involved in the project that created damages, they may be fined and/or sued separately. For example, in the case of the 2010 Deepwater Horizon oil spill, the Department of Justice in the United States sued BP, and eight of its independent contractors (Pelofsky & Vicini, 2010)

In MLM, the distributor network is typically legally independent from MLM headquarters (Epstein, 2010; Groß & Vriens, 2019; Leuer, 2022; Vander Nat & Keep, 2002; Wrenn, 2022). The distributors are considered independent contractors under the law (Bradley & Oates, 2022; Greenberg, 2022). There is no formal employment contract between the MLM headquarters and the distributors (Groß & Vriens, 2019; Liu, 2018). The distributors are not paid a fixed salary. Instead, their income depends entirely on their own revenue and on the commissions they receive from the purchases of the downline (Mangiaratti, 2021). Furthermore, unlike traditional employees, independent contractors do not receive any health or retirement benefits (Liu, 2018).

While this is not explicitly discussed in MLM literature, large MLMs have very high numbers of distributors. Herbalife had, for example, 6.2 million distributors as of 31 December 2022 (Herbalife, 2023), while Amway had, according to their own annual report, 'more than 1 million' distributors in 2022 (Amway, 2023). Other sources even suggest that this number is closer to 3 million independent distributors (The Brand Hopper, 2020). This structure thus results in a large number of legal actors being active within the whole MLM industry: not just the MLM companies themselves, but also all of the individual distributors in the distributor networks. The following quote from one of the expert interviews confirms this: "I really think the box where you have the application to MLM is totally accurate because there's both the MLM company that functions as the creator of the marketing plan and the provider of the products, and then there are the distributors, who are responsible for selling and recruiting." (Expert 1). Every MLM company can have thousands of individual distributors (Expert 2), who all in one way or another contribute to the creation of the damages that are caused by the industry.

It appears that MLM companies have chosen this design on purpose (Wrenn, 2022). Historically, MLM companies designed their structure in this way to avoid being taxed (Greenberg, 2022; Expert 1). The high turnover of MLM companies and the large salesforce requires MLM companies to avoid additional

costs such as social security and unemployment taxes (Buell, 1954, p. 119, as cited by Juth-Gavasso, 1985). Due to its unique business model, MLM would not function with distributors being employees, since the costs of maintain a salesforce of employees is much higher compared to a salesforce of independent contractors (Expert 3). MLM companies can thus be characterized as avoiding exerting too much control over the distributors, since this would suggest that that the distributors are employees instead of independent contractors (Juth-Gavasso, 1985; Expert 3).

Interestingly, according to Expert 3 in the interview, we can see developments in the United States that challenge this legal independence. In January 2020, a former independent distributor filed a lawsuit against Amway in California. According to this distributor, Amway improperly classifies distributors as independent contractors instead of employees under the law of California. A very similar lawsuit was filed by a ‘coach’ from MLM The Beachbody Co. in May 2023, under the same California law as the Amway lawsuit (Shumway, 2023). MLMs are closely monitoring these lawsuits, because if Amway’s or Beachbody’s distributors are classified as employees, many other MLMs will also encounter challenges to their classification of distributors as independent contractors (Sanders, 2020; Expert 3).

However, in this day and age, the distance between the MLM company and the distributors allows for MLM companies to blame false or misleading claims on individual distributors who have gone rogue, since this exact distance provides MLM companies with the chance to plausibly deny that they have any control over the distributors (Leuer, 2022; Wrenn, 2022). After all, the distributor is *independent* from the company, so the company cannot be held accountable for their actions. This independence is strengthened by the way that recruitment in MLM works. After all, MLM companies can claim that it is extremely hard to monitor the behaviour of independent distributors. A recent example that illustrates this point can be found in Herbalife’s annual report for 2020. The company states the following: “While we have implemented policies and procedures designed to govern Member conduct and to protect the goodwill associated with Herbalife Nutrition, it can be difficult to enforce these policies and procedures because of *our large number of Members and their status as independent contractors* and because our policies and procedures differ by jurisdiction as a result of varying local legal requirements. In addition, although we train our Members and attempt to monitor our Members’ marketing materials, we cannot ensure that our Members will comply with applicable legal requirements or our policies and procedures or that such marketing materials or other Member practices comply with applicable laws, rules, and regulations” (Herbalife, 2023, p. 22, emphasis added).

Furthermore, the company needs to make sure that there are no misleading income or product claims in their materials, such as videos or on their website (Expert 2; Expert 3). Independent distributors work from ‘remote’ locations, such as private homes and other venues at which the MLM company has no control or option to monitor the behaviour of the distributors (Groß & Vriens, 2019; Expert 2). The rise of the internet, and the role the internet in itself plays in the marketing strategies of MLM

distributors, has only increased the ability of MLM companies to distance themselves from distributors making false or misleading statements. Modern multi-level marketing companies increasingly rely on social media to recruit new distributors and to sell products (Blackman, 2021; Bradley & Oates, 2022). Together with the distance between the distributors and the MLM headquarters, MLM companies are able to deny that they have anything to do with misleading claims made by distributors. As long as their materials do not contain any misleading claims, the MLM companies can blame misleading claims on the distributors, and say that the problem lies with this particular distributor, and not with the company. The following quote from one of the interviews illustrates this: “[The distributors] will be making very specific claims and really hype up the company in a preposterous way, that no company would ever be able to get away with. That’s been working for 60 years” (Expert 3).

MLM companies are not keen on limiting this distance between the distributors and the headquarters, since, above all, the distributors who make the most outrageous claims, are the ones that are most successful at recruiting. As Expert 1 puts it: recruiting is “the lifeblood of these companies” (Expert 1). Even though the historical reason for this structure may not be related to the deniability of misleading claims, the structure chosen seems to serve MLM well for two reasons: avoiding taxation and denying accountability for misleading income or product claims.

4.1.2. Other independent actors active in the industry

Apart from the large number of legally independent distributors in the distributor networks, there are a number of other actors active in the industry. Training organizations play an important role in the behaviour of the distributors (Groß & Vriens, 2019; Juth-Gavasso, 1985; Wrenn, 2022). The training organizations are created by the high-level distributors (Expert 1), who are known to organize meetings for distributors to attend, and provide distributors with motivational materials, such as books and videos (Groß & Vriens, 2019). According to Groß and Vriens (2019), these training organizations can include 100-1,000 distributors, or even 10,000. The training organizations are also known to lead to socialization within the upline and downline distributor systems of MLMs (Groß & Vriens, 2019). The programmes of the training organizations are attended by the distributors, and they, on their turn, offer support and education to their own downline members (Groß & Vriens, 2019). This can include a large variety of activities, ranging from regular (phone) calls or meetings to upline members even accompanying their downline members to recruitment interview or product sales (Groß & Vriens, 2019). This means that the training and motivation, or, as Groß and Vriens (2019, p. 342) call it, “socialization and indoctrination” of distributors is handled by the independent training organizations, but also by the upline members of the MLM organization.

Again, these training organizations are legally independent from the MLM headquarters (Expert 1); whatever they advise distributors to do, cannot be traced back to the MLM headquarters. Although they are not formally part of the MLM company, according to Expert 1, they play “an integral role in the whole operation” (Expert 1). This allows MLM companies to distance themselves even further from

individual distributors, as they do not need to handle education and motivation of the distributors themselves. Even if the training organizations would encourage members to make outrageous or misleading product or income claims, the MLM company would not be held accountable for this. After all, the training organizations take care of some tasks that the MLM company could also take care of, namely the education and motivation of the distributors, but the training organizations are independent of the MLM company.

Furthermore, as with other industries, several other organizations are actively participating in and benefitting from the MLM industry. All large companies contract other companies to provide them with certain services or products, such as office supplies, software and hardware, such as machines and computers, or collaborate on projects. While this is not discussed in the current MLM literature, the interview experts pointed out several other relevant actors that are engaged in the MLM industry. For the MLM industry, one can think of supporting organizations that provide software to MLM organizations (Expert 1). These software companies allow MLM companies to implement and monitor very complex compensation plans (par. 4.2.3.). Another example are third party independent contractors, who provide a guide for customers to compare and purchase products of MLM companies (Expert 1).

To end, there are also independent speakers who give talks in support and for promotion of the MLM industry and make money for themselves in this way (Expert 1). They are hired by MLM companies and training organizations to give these talks during meetings, in order to motivate and ‘inspire’ distributors. However, they are not employed by any MLM company and they are not distributors in any MLM company (Expert 1). Although these individuals play a role in increasing the number of actors active in the industry by actively promoting MLMs to the members of the general public, their presence does not seem to increase the number of actors that is active in the industry significantly.

4.1.3. Findings

To summarize, with regard to the element of the number of actors, one can conclude, based on MLM literature, that several specific characteristics of the MLM industry increase the number of actors that is involved in this industry and the creation of the damages that the MLM industry has been associated with. This does not only include the MLM headquarters and the legally independent distributors, but also various actors that support the industry in their own ways. The concept of organized irresponsibility suggests that damages that are created by this industry are thus significantly harder to prosecute, and that the industry is harder to hold accountable for the damages it creates in general.

The more legal actors are active in an industry, the more difficult it appears to be for regulators to prosecute actors active in this industry. Regulators simply do not have the means to go after every single legal entity. Peter Vander Nat, who worked for the FTC, mentioned in an interview that it takes a lot of time to investigate and prosecute MLMs, using a comparison that illustrates the effect of the large number of actors in the industry: “It’s like a policeman trying to stop cars that are speeding on a highway,

for every one [car] that it stops for speeding, five roll on by” (Vesoulis & Dockterman, 2020). Furthermore, every legal entity involved, can blame other separate legal entities for the damages that have been created.

Characteristic of MLM	Contribution to level of OI	Sources
Legally independent distributor network	++	Bradley & Oates, 2022; Epstein, 2010; Greenberg, 2022; Groß & Vriens, 2019; Leuer, 2022; Liu, 2018; Mangiaratti, 2022; Vander Nat & Keep, 2002; Wrenn, 2022.
Training organizations	+	Groß & Vriens, 2019; Juth-Gavasso, 1985; Wrenn, 2022.
Supporting organizations	+/-	Expert interview 1.
Independent industry speakers	+/-	Expert interview 1.

Table 3: overview of characteristics of MLM contributing to the number of actors

4.2. Complexity

The element of complexity refers to the degree to which damages are created in a more or less complex way. When the complexity in an organization is high, the literature on organized irresponsibility suggests that risks and damages that are created are less likely to be traced back to an organization. In this paragraph, the element of complexity is split up in several factors that contribute to the overall complexity in a company or industry. The first section focuses on the size of the company (par. 4.2.1.). The second section discusses the role of other actors in the creation of damages (par. 4.2.2.). The third section focuses on complexity in general, including additional factors that increase the complexity of a company or an industry.

According to Expert 3, it is worth taking into account that large non-MLM companies or industries work to keep the complexity that is present manageable. When looking at large multinational companies like BP and Volkswagen, they have thousands of employees and work internationally, with large supply chains. This inevitably creates complexity. A difference with MLMs, as Expert 3 argues, is that such a company does not benefit necessarily (only) benefit from complexity, and these companies do not insert any further complexity on purpose to shield their own behaviour. After all, their core activities are legal (see further par. 4.3.1.). At some point, these companies may use the complexity for their own benefit (see the examples of Pearce, 1993, in par. 2.2.3.3.). However, they do not deliberately seem to design complexity into their structure and operations that does not follow from the complexity of the primary process already. Although this requires further (academic) research, based on the insights that were gathered from the interview with Expert 3, it seems that, when the primary process is very complex, the

overall complexity of the operations of this company is also high. In such a case, companies engage in all sorts of activities to decrease this complexity, as high complexity often does not contribute to the success of their business activities.

This general idea of the level of complexity in companies does not apply to the MLM industry. The essentials of how a MLM company works is not difficult, nor complex (Expert 2, Expert 3). This would suggest that the complexity in MLM companies is rather low. As a result of this, unlike many other multinational companies, MLM does not have to engage in decreasing the complexity of their core operations in order to keep operations manageable. However, as will be described in this paragraph, the complexity in MLM is surprisingly high. This suggests that MLM seems to consciously establish *further* complexity in their structure and operations, while this complexity does not automatically follow from the primary process of the MLM company. This complexity is brought into the operations of MLM in various different ways, as will be described in this paragraph. The complex compensation schemes, the dual role of distributors as perpetrators and victims and partly also the size of the companies contribute to the complexity. The situation of MLM companies is thus rather different when it comes to complexity compared to other large multinational companies.

4.2.1. Size of the company

All multinational companies are large in size. The size of these companies is necessary, because these companies have to manage long supply chains and work internationally. These companies have thousands of employees and have a large hierarchy. The managers in the company have some kind of control over those who work lower in the hierarchy. Sometimes, this means that managers can also be held accountable for mistakes that are made by lower-level employees. However, the literature on organized irresponsibility suggests that such a hierarchy, if large enough, may also result in only lower-level employees being held accountable, while the circumstances that allowed for the mistakes to be made in the first place were set out by the managers (Curran, 2018a; Pearce, 1993, as cited in Curran, 2018a; Pearce, 2001; Tombs & Whyte, 2007, as cited by Tombs & Whyte, 2015; Tombs & Whyte, 2015). These managers are able to avoid being held accountable for any damages that occur, because they can shift the blame for the damages to the lower levels of the organization.

Pearce (1993) gives various examples of this (see further par. 2.2.3.3.). All three cases illustrate that, even though the policies and culture created by the respective parent companies and its executives were at least partly to blame for these incidents, the parent companies and the executives were able to avoid responsibility by putting all the blame on those lower in the pecking order. After all, the directors were, they could argue, *not* the direct cause of any of these accidents. The concept of organized irresponsibility thus suggests that, when a company is large, and thus has a large hierarchy with different levels of control within one company, it is less likely those higher up in the hierarchy can be held accountable.

When we use these insights to reflect on the hierarchical structure of MLMs, we find an ambiguous situation. On the one hand, there seems to be a hierarchy present within the company. MLM distributors are not employed by the company, but they are legally independent actors (par. 4.1.1.). MLM companies market goods and services through direct sales, but also incentivize the distributors to recruit, train and motivate other distributors. This, at first glance, appears to result in a hierarchical structure of the recruiter, their recruits, the recruits of the recruit, and so further (Mangiaratti, 2021). This is similar to other large companies, where such a hierarchy consists of different levels of employees (instead of independent contractors).

On the other hand, although the titles of the different levels in the 'hierarchy' may suggest differently, but these titles do not have the same meaning as in regular companies with hierarchies of employees. In regular companies, a hierarchy means that the higher levels have control over the lower levels. In MLM, this control over the lower levels is not present (Sparks & Schenk, 2001). The distributors are legally independent. Legal independence can only exist when there is no other entity that exerts close control over the behaviour of the distributor. As was described in par. 4.1.1., MLM cannot function with employees instead of independent contractors. Thus, it is necessary for MLM to avoid any hint of close control over the independent distributors to be present. The titles that are used to indicate the different levels of the hierarchy, thus do not show the control structure in MLM companies. Expert 2 described this as follows: "But in all these cases, me, you, Claudia, and all of your recruits, essentially, we're all buying directly from Amway. [...] Amway ships it to us. I don't actually manage you. I can't fire you. You know, I can't threaten to. I don't control your pay. You're not under my direction. So I'm called executive director and you're called director. But those titles don't really mean anything managerially. [...] We don't really control or manage each other or anything. We're not accountable to each other. And so on. So that's why I would say, although MLM might have 12 levels, the product doesn't actually flow through those 12 levels. [The titles] are just theatrical, that they give to identify the levels of recruiting, not for distribution." (Expert 2).

To summarize, there is indeed some sort of hierarchy present in MLM companies, but this does not look like a hierarchy in traditional companies, because it does not include a hierarchy of control (Expert 2). After all, higher-level distributors have no regulatory authority over their downline members. They cannot fire members of the downline, and cannot engage in any other forms of punishment, when the downline members misbehave in some way.

As a consequence of this ambiguous situation, the only option these higher-level distributors have is to report the misbehaving of the lower-level distributors to the MLM headquarters. Although the MLM company proposes that they have very little control over the behaviour of the distributors, as the distributors are independent contractors, the MLM company is able to terminate the contract with the distributor. The distributor contracts are often very complicated and describe into detail what distributors can and cannot do (Expert 3). This means that a distributor will often in one way or another violate the

contract, but the MLM company has the freedom to enforce the contract whenever they want and remove the distributor from the company if necessary (Expert 3). The downline of this distributor can be inserted into a different downline of another distributor. The MLM headquarters will conveniently blame whatever went wrong with this distributor on the distributor (Expert 3). This structure seems to work well for MLM companies. If MLM companies wanted control, they would have been able to design their structure in such a way that there is some form of regulatory authority present with the different levels of the hierarchy.

When comparing how high-level managers in non-MLM companies can avoid accountability and how MLMs can do that, the following picture evolves: in non-MLMs, hierarchy allows for high level managers to blame mistakes on the lower levels, by arguing that they, as managers, were not the direct cause of any mistake that was made. Additionally, the high-level management is able to fire or punish employees in the lower levels of the hierarchy when something goes wrong, so they can hold lower-level employees accountable for any damages that have occurred. In some instances, because of this regulatory capacity that is present with the higher-level managers, they can also be held accountable, but the hierarchy decreases the likelihood of this happening, as it is very hard to find a direct cause of damages in the behaviour of the management. Often, the direct cause of the damages can be found with the employee.

In MLM, the hierarchy is a bit more ambiguous. On the one hand, a hierarchy of recruits is present, but there is not much control in the different levels of this hierarchy over the lower levels of the hierarchy. Unlike high level managers in large companies, high level distributors cannot fire members of their downline, only the MLM headquarters can do that. The regulatory authority that can lead to some form of accountability for the management in regular companies, is absent in MLM. The hierarchy itself is not so much the reason for this. It is the *lack* of hierarchy and power over the distributors, the legal independence of the distributors, and the way that MLM works, with the selling and recruiting process taking place in private homes, far away from the MLM company headquarters, and on social media, over which the MLM company has little control, that is the cause of the different levels not being accountable for the behaviour or mistakes of the lower levels in the hierarchy. The size of the company itself contributes to this in a way that it results in the control of the MLM headquarters being lower, resulting in a decrease in the likelihood of them ever being held accountable for the actions of the distributors.

4.2.2. Role of other actors

Complexity is also determined by whether the damages can or cannot solely be traced back to the actions of corporations, but instead also to the actions of individual consumers (Curran, 2018b). In some instances, corporations are the sole cause of damages. The situation is quite clear-cut: the corporation is the perpetrator, the people that are left behind with damages are the victims.

However, there are also risks and damages that are not just caused by corporations (Snider, 2015,

as cited by Curran, 2018b). A good example of this is climate change: billions of consumers play a role in causing this, together with corporations. After all, even though the role of consumers is arguably smaller than that of corporations, one cannot say that climate change is *solely* caused by corporations. Thus, corporations cannot (fully) be held accountable for climate change. Something that is not explored in the literature on organized irresponsibility is a possible dual role of victim and perpetrator for those involved in the creation of damages. One can say that everyone that lives on earth can be, in a way, seen as victims of climate change. Corporations, even though they are not natural persons and do not necessarily 'live' on planet earth, can be considered victims as well, when (for example) due to flooding or other natural disasters that are (partly) caused by climate change, corporations sustain damages to their property. This situation is more complex. While some entities may have had a bigger role in the creation of damages, one cannot separate all those involved into groups of 'perpetrators' and 'victims' anymore. Additionally, the roles of all those involved differ: some contributed more to the damages than others. Such a dual role may thus lead to more complexity.

In MLM, something somewhat similar occurs. First and foremost, the MLM company is the primary cause of the damages to society. Unlike in the case of climate change, the main cause of damages can be found with corporations, in this case: MLM companies (see further par. 4.2.2.3.). However, as described in paragraph 4.1., many other actors *also* play important roles in the creation of damages. The creation of damages is not solely caused by the MLM companies, but also by the many independent distributors that work in the industry and are thus not part of the MLM company itself. Juth-Gavasso (1985) pointed out that the behaviour of the distributors is not only influenced by the MLM headquarters, but also by the training organizations. These distributors can be compared to consumers in the example of climate change. Like consumers who contribute to climate change, it cannot be said that all distributors contribute to the damages to society in the same way or in the same amount. However, one major difference is that the group of distributors is limited to all those that have a formal distributor contract with an MLM company. The group of consumers that contribute in one way or another to climate change is rather unlimited: it can be everyone who lives on planet earth. Altogether, like in complex cases such as climate change, the cause of the damages in MLM cannot be attributed to one single or a limited number of actors. This means that MLM companies are less likely to be held accountable for the damages that the industry creates to society.

As the role of other actors was already extensively described in paragraph 4.1., this section focuses on a different aspect that makes the role of other actors in the MLM industry more complex, namely the fact that distributors are perpetrators as well as victims. The dual role of distributors as both perpetrator and victim has two specific consequences that are discussed in this paragraph, namely: making victims perpetrators may cause less sympathy to exist within the general public for the victims (par. 4.2.2.1.) and may lower the likelihood of reporting a crime to the authorities (par. 4.2.2.2.). The last section of

this paragraph discusses the main cause of damages in the MLM industry: the MLM companies itself (par. 4.2.2.3.).

4.2.2.1. *Less sympathy from general public to victims of the MLM industry*

From prior research, it is known that 99% of all MLM participants lose money (FitzPatrick, 2005; Taylor, 2011), with some even ending up in debt or bankrupt (FTC, 2021). Prior research shows a variety of reasons for people to join MLM or pyramid schemes, ranging from a vision of high reward for little work, and the attraction of a better lifestyle, to the exploitation of specific (vulnerable) groups by the pyramid scheme (Hock & Button, 2022). Many of these (vulnerable) distributors will thus end up as victims.

However, by recruiting others with misleading income statements and selling products to others with misleading product claims, they have personally caused others to become victims as well, and may have even exploited these victims further. Therefore, distributors are perpetrators at the same time as they are victims. This is a very particular characteristic of MLM, that has not been explored in the literature on organized irresponsibility so far. Within the MLM literature, only one recent article aims to categorize actors in pyramid schemes into a typology of ideal and non-ideal victims based on literature from criminology (Hock & Button, 2023). Based on the literature and cases of pyramid schemes, Hock and Button (2023) come up with three characteristics (Table 4) to define seven different categories of actors in pyramid schemes.

Characteristic	Explanation
Scheme type	Relates to two types of pyramid schemes (not necessarily relevant for MLM).
Knowledge and engagement	Relates to the intent, negligence and genuine lack of knowledge about the existence of the scheme being a pyramid scheme. Relates to the gain/loss and the level of recruitment activity.
Status of the victim	Relates mostly to the vulnerability of the victim.

Table 4: Characteristics of victims to be used for typology of actors in pyramid schemes (Hock & Button, 2023, p. 12)

Using the typology from this article, most distributors in MLM cannot be categorized as the ‘ideal victim’ (Hock & Button, 2023). Literature in the field of criminology suggests that the general public and policy makers may be “less willing to come to aid of victims who may be seen as offenders themselves or [are] somehow responsible for their victimization” (Pemberton, 2016; Schwobel-Patel, 2018, as (all) cited by Hock & Button, 2023, p. 10). What follows from this typology, is that MLM has organized in such a way that the public is less likely to accept victims of the MLM industry and come to their aid, since they are also perpetrators at the same time. This is also applicable to government authorities, who are less likely to see the necessity of helping out victims of the MLM industry, since it

may seem that these victims have (i) caused all the problems on themselves or (ii) have themselves created other people to become victims as well (thus becoming perpetrators).

4.2.2.2. Lower likelihood of reporting crime to authorities

Another difficulty that arises from the fact that distributors are perpetrators and victims at the same time, is that it decreases the likelihood that victims will speak up to regulatory authorities, further complicating regulation of MLM companies (Expert 3). This allows the industry being able to hide their irresponsibility even further. After all, they have possibly also recruited family and friends for the MLM company, who now have likely lost (large sums of) money. In a way, they have exploited a lot of people that are very close to them (Expert 1). Approaching friends, family members and others in their social circle is standard practice for MLM distributors and is heavily encouraged by MLM headquarters (Groß & Vriens, 2019; Sparks & Schenk, 2001; Sparks & Schenk, 2006).

This may lead to victims feeling ashamed of what they did. The following quote from one of the expert interviews illustrates this: “They have you focus on what they call ‘your warm market’ first, your family and friends and people around you. So, who you’ve mostly victimized are people that you love and relationships that you wanted to keep. And so you’re thinking: not only did I do this bad thing, but I pulled in my mom and my aunt and all of these people that I really cared about. So you do not want to report it to the government. You don’t want to talk about it. A lot of people who get out just want to turn their backs on and never think about what happened to them again, which is common of any kind of victim problem” (Expert 3). If victims do not speak up, it is less likely that regulatory authorities will step up and take MLM companies down, or propose regulations that make the operations of MLM companies more difficult.

4.2.2.3. The main cause of damages in the MLM industry

What followed from the previous sections is that the behaviour of consumers is also part of the problem in MLM. Without distributors, a MLM company would not function and would not create damages. This does not mean that distributors are the sole or main cause of the problems that are caused by MLM. Of course, some of the distributors that are higher up in the MLM company and the MLM company itself cannot be labelled as victims, and instead only have to be seen as perpetrators. By setting up training organizations to deal with education, motivation and socialization of the downline, and by incentivizing distributors to make misleading income or product statements, they function as the main underlying cause of all the problems that are caused by the industry. These actors are the main reason for the existence of the dual role of distributors as perpetrators and victims. This dual role has, as the previous sections of this paragraph have illustrated, the general consequence that an MLM company is less likely to be held accountable for their actions.

At the end of the day, the main perpetrators are the MLM companies and the high-level distributors. Since there are few examples from literature that explain this or illustrate this further, Table 5 contains quotes from the expert interviews.

Expert	Quote
Expert 1	“We can convince ourselves to overlook or to suspend our disbelief, given the right set of circumstances. So it's a tricky issue because on the one hand, yes, I think greed and sort of wilful self-delusion, are part of this. But on the other hand, the system expects that, the system exploits that, the system works because of those characteristics.”
Expert 2	“But if you flip this and say: well, is that really what is the core of the problem with multi-level marketing, a bunch of untrained, or insufficiently trained distributors that are overexcited and exaggerate everything? Is that really the problem? No, it really isn't. [...] Well, why is that person so excited? That they would go and lie to their best friend, about the income potential, why would they lie about their own income? Well, somebody told them that they could make extraordinary income and their life could be transformed. And they would be rich for the rest of their lives and never have to work. Who told them that? Well, somebody did. Where did they hear it? Ultimately, it all came from the top. [...] They made-up that story. And they created the narrative and then they fed it down the pipeline, and created the myth, that this could be, that MLM could offer that. And the person at the top has to be the most culpable, because let's say the person that comes to me and said, Bob, you can make millions of dollars at this and he believes it. He's been sort of brainwashed. But the person at the top is not brainwashed because they have the data right in front of them.”
Expert 3	“I think it's one of the worst aspects of MLM. Turning [people] into victims first, and then you turn them into perpetrators, which is just another form of victimization.”

Table 5: role of the MLM headquarters/high-level distributors as main cause of problems

These quotes from the expert interviews all illustrate that, ultimately, the MLM headquarters and the high-level distributors are responsible for the main problems that are caused by the MLM industry to society. However, the dual role of the distributors as victims and perpetrators does, in some way, ‘muddy the water’. After all, one cannot say that the MLM headquarters is the sole cause of the issues that have been created.

4.2.3. The complexity of the compensation schemes

The literature on organized irresponsibility suggests that the size of the company and the role of other actors influences the overall complexity in the creation of damages. However, the MLM literature and expert interviews included in this study, indicate that the compensation schemes are another factor that increase the complexity of MLM companies.

A very specific characteristic of the MLM industry is that the companies use very complex compensation schemes. As one of the experts during the interviews put it: “In the Herbalife case, I deposed probably 20 of the top distributors and it was pretty surprising how frequently the top distributors themselves did

not understand the scheme. [...] And a lot of times, their perception of how the rules worked was just completely wrong. And in order to fully understand how the compensation scheme worked, you really did need a lawyer to look at it for hours.” (Expert 3)

These compensation schemes are so complex for the following reason. With legal direct selling, distributors are rewarded for selling products to customers (Bradley & Oates, 2022). In MLMs, the profits that are promised to distributors stem from the sales they make themselves and the number of new distributors they recruit (Bosley & Knorr, 2018; Bosley et al., 2019; Liu, 2018). MLM schemes become unlawful when the recruitment of new distributors becomes the primary focus (Bradley & Oates, 2022; Vander Nat & Keep, 2002). Recruitment does not only become the primary focus when the commission for recruitment is unreasonably high compared to the commission for sales, but also when recruitment is made attractive via compensation for purchases of downline members (instead of actual sales by downline members to end customers). In such a case, the products do not need to end up with end consumers, but may also, for example, be consumed by the distributor themselves if the products are not priced competitively or are not actually competitive products in the first place. Some sales to consumers are generally not enough to protect MLM schemes from being prosecuted as pyramid schemes (Reingewetz, 2021).

This means that there is a very thin line between legal direct selling and illegal pyramid schemes. Most MLM make sure that the compensation schemes for selling products and recruiting new participants are intertwined in such a way that it is extremely hard to know whether it is indeed a legitimate business or a disguised pyramid scheme (Bradley & Oates, 2022; Liu, 2018). It is possible that a seemingly legal MLM company designs its structure and/or compensation plans in such a way that it masterfully disguises its illegal pyramid scheme nature (Bradley & Oates, 2022; Keep & Vander Nat, 2014; US Securities and Exchange Commission, 2013; Expert 3). The complexity, in these cases, is built in consciously (Expert 3). One of the experts suggested during the interview that the schemes constantly evolve and change, which also increases the complexity of the schemes (Expert 3).

It is unknown whether these compensation schemes have become more complex over the years. During the expert interviews, one of the experts stated that in his opinion, compensation plans have not become more complex since he started working on the industry (Expert 1). One other expert concluded that compensation schemes have become more complex in recent years (Expert 3). The MLM literature does not provide a conclusive answer on this topic.

4.2.4. Findings

To summarize, one can conclude based on the analysis in this section that there are different factors present in the MLM industry that together determine the level of complexity found in a company or an industry. The literature on organized irresponsibility suggests that the level of complexity is thus high for this particular industry, and this high level of complexity decreases the likelihood of companies being held responsible for damages they have created (Curran, 2018a; Curran, 2018b).

Literature on MLM suggests that part of the problem with regulation of MLMs is that it appears that there is insufficient understanding of the problems caused in society by the business practices of MLMs. The complexity that can be found within the industry, which has been described in this paragraph, only adds to this. In comparison to many other companies and industries, where complexity in a broader sense is caused by the complexity that can be found in the primary process of such a company or industry, MLM appears to have created complexity in purpose.

Characteristic of MLM	Contribution to level of OI	Sources
Size of the company	+	Sparks & Schenk, 2001; Expert 2.
Dual role of perpetrators and victims	++	Hock & Button 2023; Expert 1; Expert 2; Expert 3.
Complex compensation schemes	++	Bradley & Oates, 2022; Keep & Vander Nat, 2014; Liu, 2018; Reingewetz, 2021; US Securities and Exchange Commission, 2013; Expert 3.

Table 6: overview of characteristics of MLM contributing to overall complexity

4.3. Nature of the crime

The element of the nature of the crime refers to the observation in literature that crimes that are aligned with the interests of the elite and/or decision makers, and the state or even capitalism in general, crimes are less likely to be prosecuted (Curran, 2018a; Pearce, 1976). Pearce (1976, as cited by Curran, 2018a) argues that the decision to prosecute corporate crime (at least partly) depends on whether it does or does not threaten the reproduction of core capitalist institutions in that country. The literature on organized irresponsibility suggests that companies can be ‘organized irresponsible’ in two ways. First, they can make sure that their interests align with those in power, for example by lobbying, but also by connecting themselves with people in power in other ways. Secondly, companies can portray themselves as a reflection of positive contemporary ideas of capitalism and entrepreneurship. By doing that, they are able to decrease the likelihood of prosecution and culpability even further. Hence, companies can be ‘organized irresponsible’ in this way as well.

When comparing these insights with the MLM literature and inspired by the reflection on this topic with Expert 1, it became clear that this element can be split up in two sub-elements (Expert 1). First, it appears that MLM companies are within their company busy with shielding or covering up their actual business activity. This is, in this paragraph, referred to as the ‘internal’ element of the nature of the crime (par. 4.3.1.). Secondly, MLM companies are branding their activities in such a way that they connect to an ideology that is present in wider society. Furthermore, MLM companies are known to lobby to regulators and politicians to shape a favourable legislative landscape for themselves. Since these activities are

directly linked to what is happening in society, this is referred to as the ‘external’ element of the nature of the crime in this paragraph (par. 4.3.2). The literature on organized irresponsibility mostly describes this ‘external’ element. However, with MLM, what happens internally in relation to the core activities of the company, can also relate to the nature of the crime.

4.3.1. Internal

The ‘internal’ level refers to the primary business activities of a company and how these are presented to the outside world. According to Expert 2, it is worthwhile to compare the core activities of MLMs with those of non-MLMs. Many companies around the world have legal core activities. These activities may create damages to society, but are legal nonetheless. A perfect example is BP. One may agree or disagree with drilling for oil and selling petroleum, but drilling for oil and selling petroleum are both perfectly legal and legitimate (Expert 2). These companies do not have to shield their core business activity. They may feel the need to engage in a marketing strategy that portrays the activities in a more positive way, but at the end of the day, what they are doing is legal. When carrying out these legal core activities, employees or subcontractors of the company can make mistakes, resulting in specific damages to others. When there is negligence involved, this may result in prosecution or accountability for the company. BP was, for example, held accountable for damages that occurred from the Deepwater Horizon oil spill in 2009. However, this does not necessarily mean that BP’s core activities are illegal or illegitimate.

Expert 3 as well as MLM literature (Epstein, 2010; Reingewertz, 2021), indicate a difference here: one could argue that the core of MLM is selling a business opportunity (Expert 3). The actual product that is sold does not have much to do with it, and it is thus quite hard to see the legitimate aspect of MLM. Since direct selling is generally considered as unproblematic, MLM companies tend to portray themselves as such (Bradley & Oates, 2022; Taylor, 2011).

Some MLM companies have been characterized as a form of “retail direct selling” (Albaum & Peterson, 2011, p. 348; Bäckman & Hanspal, 2022). MLMs are known to just act like they are selling legitimate competitive products, to satisfy regulators that they are absolutely not a pyramid scheme, and to comfort participants who are afraid to be lured into an illegal pyramid scheme (Bradley & Oates, 2022). This does, however, not mean that MLM companies have made any substantive changes to their business model. MLM just “associate[s] with traditional "single-level" companies where profits come from the sale of products alone - to appear to be a more legitimate business model” (Walsh, 2022, p. 195). As Expert 1 confirmed, there is nothing intrinsically wrong with direct selling and it is “a perfectly legitimate means of doing business”. The term ‘direct selling’ is thus used as a way to cover up the true nature of the core business activities of MLM companies.

Actual direct selling is no longer a feasible business opportunity after the rise of the internet, as the internet has all of the benefits of direct selling without all the drawbacks (Expert 3). The internet is considered to be more efficient and cheaper. Furthermore, in the past 50 years, society has changed quite

a lot. Men and women are both working and are thus away from home during the day. Additionally, people seem to be less likely to let unknown people into their homes nowadays (Expert 3). These aspects all resulted in regular direct selling not being used as business model a lot anymore at the moment. MLM now dominates the direct selling industry in the US. This has not always been the case. Out of all the United States' DSA members in 1990, only 25% were MLM companies, while in 2011, MLM accounted for 96% of all DSA members (Bosley & McKeage, 2015; Brodie, Stanworth, & Wotruba, 2002).

Even though MLM is not the same as direct selling (par. 4.2.3.), the use of the term and the aura of legality that surrounds this term, is used to shield the actual business activities of MLM companies (Bradley & Oates, 2022; Expert 1). The use of the term 'direct selling' suggests that MLM is a legitimate kind of business (Expert 1). The heavy focus on recruitment, that is not present with regular direct selling companies, is covered up in this way, and the core of the business is thus misrepresented by the use of the term 'direct selling'.

Another consequence of the use of the term 'direct selling' can be found in the enforcement actions that are taken by government agencies. Law enforcement and other government agencies increasingly seem to focus on what is illegal or criminal, even though there can be legal behaviour that is also causing a lot of harm to society (Passas, 2005). The likelihood that legal companies are prosecuted is fairly low. Thus, it could be appealing for MLM companies to appear legal. The following quote from one of the expert interviews confirms this: "So the MLM industry has been very of conscious of trying to shift everybody to call it 'direct selling'." The complexity of MLM compensation plans (par. 4.2.3), helps to disguise illegal schemes. For this reason, MLM can indeed act like they are legal direct selling. After all, the compensation plans are so complex that it is hard to determine if participants are mainly compensated for sales to consumers instead of recruitment.

4.3.2. External

In this paragraph, the 'external' element of nature of the crime is discussed. The 'external' element refers to activities that a company or industry engages in direct relation to the wider society, such as lobbying or connecting to values or ideologies that are present in society.

4.3.2.1. *Connecting to ideology in wider society*

Most politicians are reluctant to regulate businesses, since they bring jobs and money to communities, and pay taxes (Expert 3). Businesses are generally considered to be beneficial to society. However, a specific characteristic of MLM is that these companies do not only call on this general argument on the beneficial sides of businesses. Their marketing strategy is specifically focused connecting to ideologies, values or ideals that are (heavily) present in wider society. This decreases the likelihood of politicians and regulators regulating the industry even more. After all, what politician would want to regulate or even shut down a company that has, for example, spiritual and feminist upsides (Mangiaratti, 2021)? It would not make this politician or elected government official particularly popular. In this paragraph,

various examples of this behaviour are provided. These examples all illustrate how the MLM industry engages in a marketing strategy that allows them to jump from one bandwagon to the next very easily.

First of all, MLM companies do employ marketing strategies that connect to the argument that businesses in general are beneficial to society. MLMs claim that they only encourage close relationships between the different levels of distributors, who can work together to grow their businesses (Bradley & Oates, 2022). In the eyes of the MLM industry, their multi-level structure is just an effective way to spread enthusiasm and increase the sales of their product (Bradley & Oates, 2022; Epstein, 2010). Furthermore, they argue that joining an MLM company is a good opportunity to earn an income, especially for individuals who are unable to earn an income in any other way via a regular job (Bäckman & Hanspal, 2022). This connects to the idea that businesses are beneficial to society, because they generate jobs.

Secondly, as argued in the first alinea of this section, MLM is known to connect to popular values or ideologies in society. Especially in the United States, MLM companies are known to use the idea of the ‘American Dream’ in their marketing strategies. The ‘American Dream’ refers to the idea that one is responsible for success in life and that social mobility is a possibility, if one works hard for it (Mastangelo, 2021). Furthermore, MLM companies are known to be branding themselves in such a way that their activities align with positive contemporary ideas of capitalism and entrepreneurship (Wrenn & Waller, 2021). More recently, MLM companies that have expanded their business to developing countries, have started to link their activities to ideologies of Western democracy and capitalism (Expert 3). In these countries, MLM has chosen the strategy to brand their business activities as giving the population a “taste of Western democracy and capitalism” (Expert 3).

In the theory section (par. 2.1.2.), the many problems with the multi-level marketing industry were discussed. One would say that, considering that there are so many problems with this industry, it is becoming increasingly hard for MLM companies to recruit new distributors. Nothing is further from the truth. Modern multi-level marketing companies increasingly rely on social media to recruit new distributors and to sell products (Blackman, 2021; Bradley & Oates, 2022). Some MLM companies, especially those active in the beauty, wellness and clothing industry, are trying to attract women by using phrases like ‘boss babes’, ‘momtrepreneurs’ and ‘girl bosses’ (Leuer, 2022). Wrenn and Waller (2021, p. 424) use the appropriate phrase “faux-feminist rhetoric about female empowerment” to describe this marketing strategy. MLM companies are known to employ four narratives to legitimize the role of women and recruit them for their company (Lamoreaux, 2013, as cited by Wrenn & Waller (2021)). First, MLM companies like to stress that it is possible to be at home and be an entrepreneur at the same time, which is particularly attractive for stay-at-home mothers (‘women can have it all’) (Greenberg, 2022; Leuer, 2022). Second, another often-used narrative focuses on the socializing aspect of being a MLM distributor. Third, MLM companies emphasize that becoming a distributor can lead to financial independence (Leuer, 2022). Finally, MLM companies use the narrative that the MLM industry is

‘empowering women’, by arguing that they offer women economic opportunities that were not available to women before (Wrenn & Waller, 2021).

Thirdly, MLM companies do not only link themselves to ideologies in society, but also use global events or trends in their marketing strategy. The COVID-19 pandemic left many in an economic and health crisis (Bradley & Oates, 2022; Cook, 2020; Mangiaratti, 2021). At the same time, the lockdowns in many countries resulted in an increased use of social media, and increased working from home, and an increased public interest in health. This was used by some MLMs to pitch themselves as a new COVID-19-proof business opportunity during the height of the pandemic (Fluegel & King, 2022). Additionally, the social bonding that is promised by some MLM companies made those in social isolation particularly vulnerable to be recruited by a MLM company (Mangiaratti, 2021).

Another good example is the age wave theory. This theory was developed by psychologist and gerontologist Dychtwald (Dychtwald & Flower, 1990, as cited in Dychtwald, 2003). The theory argues that the aging of the baby boom generation has and will continue to have a transformative effect on the economy (Dychtwald, 2003). MLM capitalized on this age wave, by offering products that would appeal to the age group that the baby boom generation was in at the time. After all, the size of the baby boom generation meant that it would create a wave wherever it went (Expert 1).

These examples illustrate the chameleon-like marketing strategy of MLM companies. Whatever ideology is deemed positive in society at any point in time, MLM will connect itself to this ideology. Whenever there are global events or trends that dominate the news cycle, MLM tries to use this to their own advantage. When this ideology is no longer popular or associated with positivity in wider society, MLM will just jump on the next bandwagon and transform, like a chameleon, to a business that is perfectly aligned with this new ideology. In this way, they can always call on an extra argument when lawmakers or regulators are looking into regulation options for the industry: MLM does not *only* have the benefits of regular businesses for society, but *also* links to whatever ideology is popular at the time.

4.3.2.2. Lobbying efforts and other links to the political establishment

Some authors argue that MLM companies are strong in their lobby to politicians and in their contributions to those politicians, leading to a certain protection for their practices from unfavourable legislative efforts (Greenberg, 2022; Leuer, 2022). As Robert FitzPatrick has said in the past: “MLM lives and has always lived on the strength of its lobbying.” (Stroud, 2014). In the United States, one can see the effects of lobbying and political contributions on both state and federal level. The following examples illustrate this.

On state level, the MLM lobby and the DSA has influenced legislators to pass deceptive ‘anti-pyramid scheme’ laws, that are in reality favourable to MLM (Taylor, 2011; Expert 1). In the US, states take one of two regulatory approaches towards MLMs. A minority of states regulate MLMs by providing definitions in their law that distinguish MLMs from illegal pyramid schemes. This approach is designed

to protect MLMs, since the definition gives no guidelines for compensation and places no limits on recruitment. This approach is also called the “Amway Exception” (Howie, 2002, as cited by Mangiaratti, 2021). It generally *only* requires MLMs to provide “goods and services” (Mangiaratti, 2021). These statutes are thus quite deceptive: they seemingly are appropriate to provide legal basis for the regulation for MLMs, but they are in reality protective of the MLM industry. The majority of the state only indirectly regulate MLMs by ensuring that they are not functioning like illegal pyramid schemes. This approach is referred to as the “endless chain” model and prohibits compensation based on recruitment numbers rather than sales to consumers (Reese Richards PLLC, 2019). These states do not regulate MLM explicitly, and instead only regulate pyramid schemes (Mangiaratti, 2021; Reese Richards PLLC, 2019). In summary, in a minority number of states, MLM has been able to secure protection by lobbying for favourable statutes that set them apart from illegal pyramid schemes. However, in most of the states in the US, such an exception is not made in state law. In these states, MLMs are regulated more intensely. Furthermore, MLMs have also recently been aggressively donating to Attorneys General in several states (FitzPatrick, 2020). The Attorney General is responsible for prosecuting laws in the United States. An Attorney General that has received a lot of political donations from the MLM industry is likely to be reluctant to go after that industry (FitzPatrick, 2020; Expert 1).

A good example of successful lobbying efforts by MLM on the federal level can be found in the determination of the scope of the Business Opportunity Rule. In 2006, the FTC had the chance to impose consumer protection regulations on the MLM industry with this rule (Mangiaratti, 2021). The Business Opportunity Rule would require sellers of business opportunities, such as MLM companies, to provide possible buyers with a pre-sale disclosure, that would cover topics such as a list of criminal and civil legal actions against the seller that involve fraud, misrepresentations and deceptive trade practices, refund and cancellation policies, the total number of purchasers in the past two years, and the number of those purchasers who sought a refund or cancellation during this time period (FTC, 2006). The Rule was meant to protect customers against false or misleading claims from sellers of business opportunities (Leuer, 2022). The original press release on the proposal of the rule included a specific reference to enforcement action against the MLM industry (FTC, 2006).

However, due to the powerful MLM lobby, the FTC eventually exempted the industry from the Business Opportunity Rule (Stroud, 2014). The FTC noted the potential overlap between illegal pyramid schemes and MLM during the revisions of the Business Opportunity Rule in 2011 (Bosley & McKeage, 2015). Herbalife was not known to spend a lot on lobbying in the years prior to the proposal of the Business Opportunity Rule. However, the company embarked on a lobbying spending spree that peaked in 2008 at \$800,000, giving money to MLM friendly politicians in both the Republican and Democratic party in Congress (Stroud, 2014). It stated in its 2006 tax form that the proposed Business Opportunity Rule would harm its operations in the United States (Blackman, 2021). Amway and Avon also tripled their lobbying spending between 2006 and 2008 (Stroud, 2014). Responding to this lobbying effort by MLM companies and the DSA, 81 congressmen wrote letters to the FTC urging to exempt the MLM

industry from the Business Opportunity Rule (Stroud, 2014). Additionally, the FTC received more than 15,000 comments from MLM companies, their representatives, trade organizations and participants of MLM plans (Benway et al., 2010; FTC, 2011). The FTC thus decided to differentiate between pyramid schemes and “legitimate companies using an MLM model” (FTC, 2011, p. 76819). With that, the industry remains to be the only industry in the United States that is not covered by either the Franchise Rule or the Business Opportunity Rule, which both require pre-sale disclosures (Expert 1; Expert 2). Instead, the FTC now uses the more general FTC Act to “challenge unfair and deceptive acts” within the MLM industry, on a more case-by-case basis (Bosley, Greenman, & Snyder, 2019; Ohlhausen, 2017). The FTC is currently reviewing the Business Opportunity Rule and has requested comments to “to inform its consideration of whether the Rule should be extended to include business opportunities and other money-making opportunity programs not currently covered by the Rule” (FTC, 2022, p. 72430). TINA.org is one of the organizations that provided a comment to the FTC that MLM has to be included under the Business Opportunity Rule (Patten, 2023). It remains to be seen whether this will actually happen, or whether the MLM lobby will again put a stop to this potential development.

The examples of lobbying and making political contributions in the United States illustrate the importance and the success of lobbying for the MLM industry. However, one could argue that all heavily regulated industries spend a lot of money on political contributions and lobbying efforts (with varying degrees of success). From research based on open sources, it appears that companies that are active in the MLM industry spends considerably more money on political contributions and lobbying compared to companies in other industries that are also regulated heavily (such as Pfizer, Meta and Goldman Sachs), in terms of the percentage of the total revenue earned (Keep, 2023). This includes the money spend by company affiliates. This suggests that the MLM industry may be focused on lobbying more than other industries, in order to limit unfavourable regulatory efforts.

The main argument of this section is that the MLM industry spends considerable amounts of money on lobbying and political contributions. However, the industry can arguably also be linked to the political establishment in another way. For example, in the United States, MLM is protected by powerful public figures (Leuer, 2022; Mangiaratti, 2021). It appears that these powerful political figures are particularly favourable to the industry because of the large political donations the industry provides them with in (re-)election campaigns (Mangiaratti, 2021). Although the MLM lobby is often connected to powerful figures in the Republican party in the United States, this view has been corrected in recent years when it appeared that 18 of the 45 members of the ‘direct selling caucus’ in the House of Representatives are members of the Democratic party (FitzPatrick, 2020). Additionally, some powerful figures, like former president Donald Trump and various members of his cabinet (Celarier, 2017; Grimaldi & Maremont, 2015; FitzPatrick, 2020), were actually involved in multilevel marketing schemes themselves and made money in this way. However, it is hard to say whether this differs from other large industries, who undoubtedly also have links to powerful political figures in many countries.

Although the focus of this section has been on legal behaviour of MLM companies towards political figures, such as lobbying, in some developing countries, MLM companies have engaged in blatant illegal behaviour to avoid regulation (Expert 3). For example, Herbalife paid \$123.1 million to settle criminal and civil charges under the Foreign Corrupt Practices Act in the United States, after the company bribed Chinese officials in government agencies to boost its business in China (Stempel, 2020). According to the acting U.S. Attorney in Manhattan at the time, Herbalife approved “extensive and systematic corrupt payments to Chinese officials” and tried to cover it up by falsifying records (Stempel, 2020). Another MLM company, Nu Skin, settled a similar case with the US Securities and Exchange Commission in 2016, while Avon got fined for \$135 million after pleading guilty in 2014 (McMorrow & Myers, 2018). The exact scale of this behaviour is unknown and has not been researched in current MLM literature. Of course, it is possible that only a limited number of MLM companies engage in this type of illegal behaviour. Therefore, it is impossible to conclude at this moment whether this illegal behaviour is something that is a specific characteristic of the MLM industry. After all, the aforementioned cases cannot serve as evidence for this to be a characteristic of the entire industry.

4.3.3. Findings

To summarize, one can conclude, based on MLM literature, that the nature of the crimes committed by MLM companies decreases the likelihood that MLM companies are held accountable for damages they create to society. The concept of organized irresponsibility suggests that when crimes are of a certain nature, these crimes are less likely to be prosecuted and companies are less likely to be held accountable for these crimes. This is especially the case when crimes that are aligned with the interests of the elite and/or decision makers, and the state or even capitalism in general (Curran, 2018a; Pearce, 1976).

The MLM industry has certain characteristics that contribute to the decrease in likelihood of prosecution or accountability. First, MLM portrays itself as legal direct selling companies. After all, direct selling is legal. By doing this, MLM suggests that their core activities are legal, and legal activities, even when they create damages to society, are less likely to be prosecuted in general (Passas, 2005). Secondly, MLM companies act like chameleons. MLM companies connect to whatever ideology is popular in society at that moment. By doing this, they decrease the likelihood of being prosecuted or regulated. After all, regulators and lawmakers are less likely to take down companies that contribute positively to certain values that are popular in society, since, especially when these regulators or lawmakers want to be re-elected at some point. Thirdly, MLM companies engage in heavy lobbying efforts to protect themselves against unfavourable regulations. By donating money to political figures, they align their own interests with the interests of these decision makers.

Characteristic of MLM	Contribution to level of OI	Sources
Portrayal as legal direct selling	+	Bradley & Oates; Taylor, 2011; Walsh, 2022; Expert 1; Expert 3.

Connecting to ideology/values in society	++	Blackman, 2021; Bradley & Oates, 2022; Epstein, 2010; Greenberg, 2022; Mangiaratti, 2021; Mastangelo, 2021; Leuer, 2022; Wrenn & Waller, 2021; Expert 1; Expert 3.
Lobbying efforts and political contributions	++	Blackman, 2021; Bosley & McKeage, 2015; Bosley, Greenman, & Snyder, 2019; Greenberg, 2022; Leuer, 2022; Liu, 2018; Mangiaratti, 2021; Taylor, 2011; Expert 1; Expert 2.
Protection by powerful figures	+/-	FitzPatrick, 2020; Leuer 2022; Mangiaratti, 2021.

Table 7: overview of characteristics of MLM contributing to certain nature of the crime

5. Discussion

The previous chapter compared the different elements of organized irresponsibility to the MLM industry. This chapter covers the theoretical implications (5.1), the practical implications (5.2) and the limitations of this research, and recommendations and directions for future research (5.3).

5.1. Theoretical implications

This research contributes to existing knowledge in multiple ways. Most importantly, this research project investigated why MLM companies continue to exist, despite the many problems they cause in society. MLM literature provides various explanations for this. It was suggested by several authors that MLM has designed its structure to avoid regulation (Bradley & Oates, 2022; Groß & Vriens, 2019). By applying the lens of organized irresponsibility to the MLM industry, this thesis has contributed to this approach. The lens of organized irresponsibility can be used to analyse how organizations or industries in general avoid accountability, and in this case, expanded the knowledge on how the MLM industry in particular does this. The application of the lens of organized irresponsibility has suggested that the concept can indeed be used to explore and explain the continuous problematic existence of the MLM industry in society. The MLM industry seems to have purposely ‘organized irresponsibly’, resulting in the lack of regulation and accountability for the industry that is still visible to this day. The complexity that can be found in the industry, the large number of actors and the nature of the crimes that are committed by the industry all decrease the likelihood of successful prosecution, regulation and accountability.

Secondly, apart from the specific contribution of the lens of organized irresponsibility to the existing knowledge on the MLM industry, this research has also illustrated how a concept from criminology can be useful to analyse the industry and explain how and why the MLM industry is allowed to operate in society, regardless of the many problems it causes. This has expanded earlier insights that criminology has provided within this field of study (Robert Blakey, 1998; Juth-Gavasso, 1985). Given the persistence and the magnitude of the problems that are caused by the MLM industry in society (Groß & Vriens, 2019; Koehn, 2001), criminology may provide more insights to understand how and why the MLM industry is allowed to operate. MLM is (still) seen and represents itself as a modern and innovative marketing channel. Anticipating on par. 5.3 of this chapter, the most far-reaching suggestion for future research proposed by this research is that MLM may not be legal in its core. If that is indeed the case, concepts from criminology may help to provide even more insights into why the industry gets away with crimes on such an extensive scale. In future research, other concepts that come from criminology may even be helpful for researchers to explore other topics in relation to this particular industry, such as the victimization of distributors and the use of independent contractors instead of employees.

This research has also contributed to existing knowledge on the concept of organized irresponsibility. The specific characteristics of the MLM industry led to two further additions to the theory on organized

irresponsibility. So far, in the literature on organized irresponsibility, the role of the internet has not been considered explicitly. The literature on organized irresponsibility is generally speaking, with a few exceptions, rather old. Social media and the internet in general could contribute to several of the elements of organized irresponsibility. For example, it could lead to a larger number of actors in the creation of damages, and result in a higher level of complexity. Additionally, it could help companies to increase their connection to ideology or values in wider society. After all, internet marketing is quite flexible, and it is easier to target certain groups with ads via social media. It gives companies the opportunity to connect with certain groups in very particular ways. Via the internet, the chameleon-like behaviour of MLM companies is even more strongly visible than in other more traditional marketing channels.

Furthermore, within MLM, the victims are also perpetrators at the same time. Although this specific characteristic of MLM has yet to be researched in a more in-depth manner in the literature on MLM, the limited literature that is available on this topic suggests that this increases the overall level of complexity of the industry and the damages that are created (Hock & Button, 2023). It would require further research to examine this dual role of distributors, especially related to the MLM industry in particular, and not only on (illegal) pyramid schemes. So far, this phenomenon has not been considered in literature on organized irresponsibility either. The field of criminology has studied the position of non-ideal victims or victims with a dual role as perpetrators. It could be an interesting angle for further research into organized irresponsibility to see whether this specific characteristic of MLM is also present in other industries, and whether this indeed contributes to the overall level of complexity in general.

Finally, in the literature on organized irresponsibility, ‘nature of the crime’ is deemed to be one element. In this study, after reflecting with Expert 1 on the ‘nature of the crime’, Expert 1 suggested during the interview, a distinction was made between an internal aspect and an external aspect of nature of the crime. With the internal aspect of the nature of the crime, it is about the core of the business of MLM being misrepresented as legal direct selling. In contrast, in the external aspect, the focus is on the marketing strategy of connecting to values and ideologies that are popular in society and lobbying efforts. It is unclear whether such a distinction can always be made, or whether this is another MLM-specific distinction.

In a broader sense, an underlying topic of this research is how the design and structure of an organization can result in issues with regulation, prosecution and accountability. This particular example of the MLM industry illustrates that organizations can avoid accountability via their design. While with this particular industry, literature suggests that this design and structure was chosen deliberately for the reason of avoiding accountability, it is also possible that other organizations have a design that unknowingly leads to the organization avoiding accountability for damages that they have created. This underlines that the choice for a certain design does not only have consequences (for better or for worse) for the internal processes of the company, but may also have (adverse) effects on society. With this, whereas this study

particularly focused on one industry or one type of company, it has also contributed to existing knowledge on how organizations are designed to avoid accountability.

5.2. Practical implications

This research project is theory-oriented and is thus aimed to generate new knowledge, expand knowledge or even use a new perspective on existing knowledge (Easterby-Smith et al. 2012; Verschuren & Doorewaard, 2021). The main contribution of this research thus relates to the theoretical implications that were described in the previous paragraph. However, this research project may also have some practical implications.

First of all, this research project may provide regulators and lawmakers with more insight into why the MLM industry is so hard to prosecute or regulate, and with more understanding on how the industry organizes to avoid being held responsible. Furthermore, it could help governmental actors understand why past regulatory actions or counter measures have been unsuccessful in dealing with the problems that are caused in society by the MLM industry. Moreover, it could raise more awareness for government actors in general, that the design and behaviour of a company heavily influences the level of accountability that can be ascribed to this company when damages occur that can be linked to that company. At the moment, it appears that the focus of the MLM industry is shifting to developing countries (Expert 3). This study could provide valuable insight to government actors and others that are involved, as MLM does not seem to have found its way into all levels of society in these countries yet. It is hoped that with more effective regulatory action, societal problems that arise from MLM industry can be minimized, both in the countries where the MLM industry is already (relatively) large, and in countries where the MLM industry is now beginning to grow.

An unintentional practical implication of this study may be that it could provide MLM companies (or even other companies) with a framework on ‘how to organize irresponsibly’ and avoid regulation, despite causing (many) problems in society. After all, this research project sets out into detail how MLM companies manage to avoid regulation by organizing in a certain way. Even though this research project was aimed at creating more understanding for government actors, it could also lead to more understanding in companies and result in unethical behaviour.

5.3. Limitations, recommendations and directions for future research

When interpreting the findings of this research, certain limitations should be considered. One of the most important considerations that relate to the limitations of this research is that this research was almost fully based on theory. This means that there is more room for the researcher’s subjectivity. This research project was only conducted by one researcher. Finally, this research project was only conducted by one researcher. The absence of other researchers may create research bias, resulting in the implication that this one researcher may find what she wants to find, and write up the results from this (Johnson, 1997). Moreover, it results in a lack of multiple perspectives from a variety of people with a different

background than the researcher. The researcher has tried to deal with this limitation in analysis by interviewing three experts in the field of the MLM industry. However, this number is rather limited and the background of each of the experts was fairly similar. Furthermore, by choosing a lens from criminology to analyse an industry, the researcher has a biased, critical view on the industry from start. After all, one does not tend to apply a concept from criminology to a particular topic, when one has a positive view on this particular topic. This view was only strengthened by interviewing three experts that were known to be critical of the industry from start. For this reason, difficulties sometimes arose in keeping an objective view towards the industry as a whole.

Future research should aim for a more diverse group of experts to be interviewed. Additionally, it could be interesting to carry out an empirical research project on the application of organized irresponsibility to particular companies within the MLM industry. This could provide a more comprehensive understanding of how in practice MLM companies are 'organized irresponsible'. This research project was heavily focused on what is known in literature on MLM. An empirical study could also help to strengthen the practical implications of the concept of organized irresponsibility for regulators and lawmakers with regards to the MLM industry. Empirical research could also allow for more differences to be made between different MLM companies that are active in the industry. After all, this study specifically focused on exploring the general patterns that are visible in the industry. An empirical study could focus on the obvious and subtle variations in the design of different MLM companies, and uncover whether some of these designs lead to different results when it comes to accountability for damages.

Another important limitation of this study is that it was heavily focused on Western society, more specifically on the situation in the United States. All three experts that were interviewed as part of the reflection on the literature on MLM are from the United States. Furthermore, a lot of the literature on this topic, especially when it comes to regulation and the relationship between the MLM industry and politics, is focused on the United States. This means that it is possible that in a country-specific analysis, or a company-specific analysis, some results may differ, for example when it comes to the role of lobbying by MLM companies.

Furthermore, not all aspects of the MLM industry have been covered in literature in-depth. This means that for some elements of organized irresponsibility, the theoretical background on MLM was rather limited. Since this research exclusively focused on literature on the MLM industry and did not consider any further empirical data, a full analysis could not always be made. This limitation could be overcome by using empirical data and more expert interviews. Additionally, a few suggestions can be made for further research on MLM that could also improve the overall analysis. First, very little research has been carried out into actors that are active in the MLM industry apart from training organizations and the distributor network itself. Much is unknown about other actors that may benefit from MLM. This could potentially even lead to a further extension of the prevailing model of MLM by Groß and Vriens (2019). Secondly, as mentioned in par. 5.1., the dual role of distributors as victims and

perpetrators also requires further research in MLM literature, to provide a more comprehensive understanding of what this specific characteristic of the industry means for the position of distributors and regulatory efforts.

In future research, a more critical view on the concept of organized irresponsibility could be considered. This study's exclusive focus on the application of this concept on the MLM industry limited the fundamental considerations about the usability of the concept in the first place. When reflecting with Expert 2 on the usability of the concept of organized irresponsibility, this expert suggested that the concept of organized irresponsibility was so far used to analyse companies that primarily engage in legal activities, but in some way or another also behave irresponsibly (Expert 2). With MLM, this expert suggested, the situation is quite different. In his eyes, the primary process of MLM is illegal in the first place (Expert 2; see also FitzPatrick, 2020). After all, the concept of organized irresponsibility does not challenge the core of the operations of a company, but merely focuses on how the company organizes to avoid accountability for damages it creates. Therefore, there seems to be an underlying assumption in place that the core activities of the company are not illegal in the first place. More fundamentally, it is possible that, when using the concept of organized irresponsibility to analyse the MLM industry, the concept may distract us from the question whether the core activities of MLM are legal at all. After all, as was described in par. 4.3.1., the MLM industry itself seems to be very much focused on keeping this idea of legality alive, by branding its activities as just another form of legal direct selling. Although the concept of organized irresponsibility has allowed us to reflect on this aspect of the MLM industry, it does not necessarily challenge the idea that MLM is legal. One direction for future research could thus be whether the concept of organized irresponsibility can be used to analyse illegal behaviour, that is organized in a legal entity. In terms of the literature of MLM, another avenue for future research could be to determine or at least, analyse, whether MLM in its core is *always* illegal, or whether there are also MLM companies that engage in legal activities. This possibility for future research should not be confused with the more normative question if MLM *should* be legal.

So far, the concept of organized irresponsibility had not been applied to a certain industry in a structured way, in order to explore whether the lack of regulation or accountability is (partly) caused by the industry or company being 'organized irresponsible'. From prior research on the concept of organized irresponsibility, several elements were derived that together form the concept of organized irresponsibility (Curran, 2015; Curran, 2016; Curran, 2018a; Curran, 2018b). The concept of organized irresponsibility was not explicitly conceptualized in this way in literature so far. Future research could be carried out into the different elements of organized irresponsibility. In this way, a conceptual framework can be developed that can be used and can be applied to all types of industries, in a similar manner. When such a framework has been developed, it could be used to compare the level of organized irresponsibility in different companies or industries with one another. In the elements that were used for this particular study, some overlap is noticeable between the different elements. For example, the

literature on organized irresponsibility suggests that the number of actors and complexity are two separate elements (Curran, 2018b). However, one could also argue that the greater the number of actors that is involved in the creation of damages, the more the complexity of the process that leads to the creation of damages increases. It would require further research to determine whether complexity can be seen as the main reason for organized irresponsibility, with various other factors influencing the overall level of complexity, such as the number of actors involved, the role of other actors and the size of the company. Moreover, in the literature on organized irresponsibility, the element of nature of the crime appears to be less integrated into the concept compared to the overall level of complexity. It would require further research to connect this element with the concept of organized irresponsibility better.

6. Conclusion

The MLM industry has grown considerably in recent years, partly due to the COVID-19 pandemic (Bradley & Oates, 2022; Vesoulis & Dockterman, 2020). With a net worth of \$186.1 billion in 2021, the industry has become an important player when it comes to the marketing and distribution of goods and services (WFSDA, 2021). However, this research has taken a more critical view towards the MLM industry in general. Despite the many problems that are caused in society by the activities of the MLM industry (Groß & Vriens, 2019; Koehn, 2001), the industry continues to exist. The purpose of this study was to seek to explain the continuous problematic existence of this particular industry. To this end, this research has introduced a concept from criminology, namely organized irresponsibility, into the existing literature on MLM. In this way, this research has contributed to both the existing knowledge on the MLM industry, as well as on the existing knowledge on the concept of organized irresponsibility. By using a concept from criminology, this research has also expanded earlier insights (most notably by Robert Blakey, 1998; Juth-Gavasso, 1985) that the field of criminology has provided on the MLM industry in general, and has illustrated how a concept from a different field of study could be helpful in providing more understanding of a particular problem in business administration.

The elements of organized irresponsibility that were used in this study are: number of actors involved, overall complexity in the creation of damages and the nature of the crimes that are committed. With each of these individual elements, the application of the conceptual lens to the MLM industry led to the conclusion that the MLM industry has certain structural characteristics that contribute to the level of organized irresponsibility that can be determined for an industry or a company. The literature on organized irresponsibility thus proposes that culpability and liability of the industry may be mitigated by these characteristics. Literature on MLM suggests that these characteristics were often implemented in the design and operations of the MLM companies on purpose in order to avoid accountability for the company. Based on this analysis, it can be concluded that the concept of organized irresponsibility can indeed help explain why MLM companies can continue to bring harm to society, without being held accountable for this.

The findings of this research underscore the significance of the structure and design of the operations of the MLM industry when it comes to problems in regulation, prosecution and accountability for damages to society. By understanding the role of the design of the company's structure and operations, more effective strategies can be developed by governmental actors to prevent, combat and minimize the many problems that MLM companies are creating in society.

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