The State and White-Collar Crime: Saving the Savings and Loans

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We attempt to make sense of the law enforcement response to the savings and loan debacle and the larger pattern of white-collar crime enforcement of which it is a part. Drawing from government documents and in-depth interviews with federal regulators and enforcement officials, we argue that the current response to savings and loan fraud is unprecedented both in terms of the extensive resources committed and the prosecution of thousands of white-collar offenders. Pointing out that this at first seems inconsistent with the government's relative tolerance of corporate crime cited in other white-collar crime studies, we borrow from state theory to explain this "crackdown." By bringing together two traditions that have usually remained distinct—white-collar crime research and state theory—this analysis may contribute both to a better understanding of the government response to white-collar crime and to a more empirically grounded approach to the state.

In early 1989, news reports began to reveal evidence of widespread fraud in the U.S. savings and loan (S&L) industry, in what has turned out to be the costliest white-collar crime scandal in U.S. history.[1] Shortly after his election, President Bush announced a plan to bail out the crippled industry and investigate and prosecute thrift crime. Several months later, Congress passed the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA). This law authorized $75 million annually for three years to fund the Justice Department's efforts to prosecute financial fraud. The FBI budget for these cases went from less than $60 million for fiscal year 1990 to over $125 million in 1991, and FBI personnel dedicated to financial fraud almost doubled (U.S. Senate 1992:45). By 1992, over 800 savings

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[1] For a description of the epidemic of savings and loan fraud and the conditions that facilitated it, see Calavita & Pontell 1990, 1991.

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and loan offenders had been convicted, with 77% receiving prison sentences (U.S. Department of Justice 1992b:66).

Edwin Sutherland in 1949 documented the pervasiveness of white-collar crime and highlighted the lenient treatment received by elite offenders compared to perpetrators of street crimes. Since Sutherland's lead, a vast literature has developed attesting to the differential treatment of white-collar criminals (Geis 1967; Carson 1970, 1982; Clinard et al. 1979; Clinard & Yeager 1980; Ermann & Lundman 1978, 1982; Barnett 1982; Levi 1984; Pearce & Tombs 1988; Snider 1978, 1991). Recently, however, a number of scholars have questioned the conventional wisdom that white-collar offenders are favored by the legal system (Katz 1980; Hagan & Nagel 1982; Hagan 1985; Wheeler & Rothman 1982; Wheeler et al. 1992). While the empirical and theoretical foci of these latter studies vary, they all argue that a crackdown on white-collar crime is underway.

The government effort to ferret out and prosecute S&L criminals seems inconsistent with the longstanding argument of legal favoritism of elite offenders, and might seem to substantiate these more recent arguments that white-collar criminals have been put on notice by an outraged public and "enterprising" law enforcement officials (Katz 1980:170–71). We argue here, however, that the issue is more complex than this "either/or" debate implies. Pointing out that the official response to white-collar crime is decidedly *selective* (e.g., regulators continue a policy of lenience toward violators of labor standards and occupational safety and health laws), we use the S&L case to explore the patterns of that response and the conditions under which it is likely to include a crackdown on corporate offenders.

In an effort to make sense of the enforcement response to the S&L debacle and the broader pattern of white-collar crime enforcement of which it is a part, we borrow a number of concepts from the state theory literature, thereby bringing together two traditions that have much in common but have largely remained distinct. While state theorists generally focus on the role of the state and public policy in *subsidizing* specific capitalists, or the capitalist class collectively, with favorable public policies, corporate crime scholars focus on government action (or inaction) in the *punishment* of capitalist actors. Yet, the way a state punishes (or does not punish) capitalist offenders must be related to the nature of the relationship between the state and capital and the degree to which the offenses in question jeopardize that relationship. This article represents an effort to synthesize the white-collar crime and state theory traditions in order to understand the U.S. government response to savings and loan crime, as well as the current selective crackdown on white-collar crime more generally.

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We first provide a brief overview of the scholarship defining white-collar crime and locate thrift fraud within this context. We then outline the government reaction to thrift crime and pose alternative explanations for the crackdown, including the possibility that it reflects a growing intolerance of white-collar crime in the post-Watergate era. We further argue that the highly selective nature of the crackdown on white-collar crime suggests that the explanation must lie elsewhere. In searching for a viable explanation for the aggressive response to thrift fraud, we place it within the context of state theory, focusing on the notion of "relative autonomy" posited by structuralist theories of the state. We point out that the assertive posture of the government in pursuing thrift fraud—and financial crime more generally—seems compatible with the structuralist position that the state must work to preserve economic stability, and that in doing so it enjoys a measure of autonomy vis-à-vis individual elites. Having illustrated the utility of these structuralist insights for explaining the pattern of the response to thrift crime by the late 1980s, we turn next to the shortcomings of a pure structuralist model. In particular, we note the inadequacy of any model that attributes to the state a coherence of purpose and collective rationality that were conspicuously absent in the early (mis)handling of the thrift disaster. We argue here that the indecision and active struggle among policymakers and regulators during the mid-1980s over how to respond to early signs of thrift fraud reveal a state that neither is monolithic nor unilaterally enjoys relative autonomy. After offering some suggestions for an alternative synthetic model, we conclude that just as it is necessary to unpack "the state," so too the concept of corporate crime must be unpacked to reveal its various dimensions and its relationship to the modern state whose job it is to preserve the stability of the economic and financial system.

Our data come from a variety of sources, including government documents, congressional hearings and reports, and interviews with key policymakers, investigators, and regulators. The interviews with FBI investigators and officials in the Federal Deposit Insurance Corporation (since 1989, the thrift insurance agency), the Office of Thrift Supervision (the federal thrift regulatory agency since 1989), and the Resolution Trust Corporation (the new agency charged with managing and selling insolvent thrifts' assets), were tape-recorded and open-ended. They took place in Washington, DC, and in field offices in California, Texas, and Florida, and generally lasted between one and two hours, with some key respondents being interviewed several times over the course of two and a half years. Secondary sources and journalistic accounts of specific cases supplement the primary and archival material.

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"White-Collar Crime" Revisited

Sutherland (1949:9) defined white-collar crime as "crime committed by a person of respectability and high social status in the course of his [*sic*] occupation." Recognizing that the concept includes a broad range of behaviors and motivations, later scholars have attempted further classification. One broad distinction is that between "corporate" or "organizational" crime which is committed by executives and managers acting as representatives of their institutions on behalf of those institutions versus white-collar "occupational" crime perpetrated by employees acting independently of their organizations and victimizing them for personal gain (Clinard & Quinney 1973; Coleman 1985; Hagan 1985; Schrager & Short 1978; Shapiro 1980; Wheeler & Rothman 1982).[2] There are a myriad of other ways of categorizing and labeling white-collar crime, and indeed some (e.g., Wheeler et al. 1982) include in the concept any crime committed by a white-collar individual, whether or not it occurs within the context of his or her occupation. The white-collar crime definitional debate is beyond the scope of this article and, in any case, has generally resulted in an intellectual cul-de-sac (see Geis 1992). For our purposes here, the important distinction is that between "corporate" and "occupational" crime, as defined above.

Following Sutherland, numerous researchers have found that corporate crimes are treated differently by law enforcement than are common street crimes. Clinard et al.'s (1979) study of legal actions taken against 582 of the largest corporations in the United States supports Sutherland's contention that not only is corporate crime extensive but law enforcement and regulatory systems tend not to take it very seriously. Case studies of specific industries and/or specific corporate violations corroborate these findings. Whether the focus is on the great electrical company conspiracy (Geis 1967), the Pinto case (Dowie 1979), the Firestone tire scandal (Coleman 1985), occupational safety and health violations (Carson 1970, 1982; Berman 1978; Calavita 1983), or environmental crimes (Gunningham 1974; Barnett 1982), a substantial literature documents the anemic legal response to corporate crime.

These empirical studies of corporate crime have focused primarily on the manufacturing sector. These *manufacturing* crimes are perpetrated for the purpose of maximizing corporate profits and/or cutting production costs and therefore are in a sense consistent with the logic of capital accumulation. Increasingly, however, a qualitatively different type of "corporate" crime has attracted headlines. As financial services replace industrial pro-

[2] It is of course possible for lower-level employees to commit occupational crime. Clinard & Quinney (1973), for example, point to a variety of occupational crimes by blue-collar workers, such as embezzlement and theft.

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duction as the primary locus of economic activity in late capitalism, more corporate crime scandals involve *financial* fraud. Many of these crimes are distinct in important ways from the manufacturing crimes described above. Unlike corporate crimes in the manufacturing sector, financial fraud is often perpetrated by corporate executives for their own personal gain. More important, while manufacturing crimes tend to advance corporate profits and thus follow the logic of capital, financial fraud undermines that logic, jeopardizing the stability of the financial system and/or institutional survival.

Such financial frauds may thus be thought of as a hybrid. Like traditional corporate crime, the fraud is often carried out by management as part of company policy, not by isolated individuals acting independently of institutional prescriptions. Indeed, many thrift kingpins operated within institutions whose primary purpose was to provide a "cash cow" to management. Unlike traditional corporate crime, however, these financial frauds ultimately erode the viability of the corporation itself. In this sense, it is crime *by* the organization *against* the organization; or to use a variation of Wheeler and Rothman's (1982) conceptual scheme, the organization is both weapon *and* victim. Thus, these financial frauds combine aspects of both traditional "corporate" crime—in which the offenses are company policy and are committed via company transactions—and "occupational" crime perpetrated by individuals for personal gain, in which the institution itself is victimized.

While thrift fraud is unusual in its scope and impact, it is by no means unique in combining aspects of corporate and occupational crime. As we have shown elsewhere (Calavita & Pontell 1991), some insurance industry fraud is similar to this thrift fraud, as is much crime in other financial institutions, such as pension funds and credit unions. What these crimes have in common is that they are committed *by management, against the institution.* As we will see, the government response to the thrift crisis hinges in part on the peculiar nature of this hybrid form of corporate crime.

"Throw the Crooks in Jail": A Crackdown on White-Collar Crime?

In a speech to U.S. Attorneys in June 1990, President Bush promised, "We will not rest until the cheats and the chiselers and the charlatans [responsible for the S&L disaster] spend a large chunk of their lives behind the bars of a federal prison" (quoted in U.S. Department of Justice 1990:1). Announcing his plans for attacking financial institution fraud, the president was unequivocal: "[W]e aim for a simple, uncompromising position. Throw the

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crooks in jail" (quoted in U.S. House of Representatives 1990a: 128).

President Bush undoubtedly hoped to gain political mileage from an emphatic response to the worst financial fraud epidemic in U.S. history. However, this was not empty political rhetoric—at least not entirely. By 1989, both the legislative and executive branches were devoting considerable attention to savings and loan fraud. FIRREA allocated $225 million over three years to the Justice Department's financial fraud efforts. Almost immediately, FBI personnel assigned to financial fraud investigations climbed from 822 to 1,525. The total Department of Justice budget for financial institution fraud went from $80,845,000 to $212,236,000 (U.S. Senate 1992:45). The 1989 law also provided for increased penalties for financial institution crimes and extended the statute of limitations for such crimes from 5 to 10 years. The Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990 raised maximum statutory penalties from 20 to 30 years in prison for a range of specific violations, reserving the most severe sanctions for "financial crime kingpins."

The number of prosecuted S&L offenders grew quickly. Major financial institution fraud investigations increased 54% from 1987 to 1991, when the FBI opened over 260 investigations every month. By early 1992, it had over 4,300 major financial fraud investigations underway, of which about 1,000 involved savings and loans (U.S. Senate 1992). From October 1988 to April 1992, more than 1,100 defendants were formally charged in "major" savings and loan cases,[3] and 839 were convicted (for completed prosecutions, the conviction rate was 92.6%). Of the 667 offenders who had been sentenced by the spring of 1992, 77% received a prison sentence (U.S. Department of Justice 1992b:64).

At no time in its history has the U.S. government allocated so many resources and concentrated so much of its law enforcement effort on pursuing white-collar criminals and sending them to prison.[4] The question is, Why? Two explanations come to mind. The first possibility is that this assault on financial fraud is

[3] "Major" cases are those in which "a) the amount of fraud or loss was $100,000 or more, or b) the defendant was an officer, director, or owner[of the S&L] . . ., or c) the schemes involved multiple borrowers in the same institution, or d) involves [*sic*] other major factors" (U.S. Department of Justice 1992a:9).

[4] The law enforcement response to the S&L crisis is of course not without its critics. Public interest groups as well as Congress, citing backlogs and unworked cases, have questioned the job the Justice Department is doing in prosecuting thrift offenders (see, e.g., U.S. House of Representatives 1990a; U.S. Senate 1992). Whether or not the Justice Department could pursue these cases more efficiently is beyond the scope of this article. White-collar crime cases are notoriously difficult to investigate and prosecute (Katz 1980; Braithwaite & Geis 1982). It is worth noting that S&L fraud cases are among the most difficult and time-consuming with which the FBI has ever had to deal, dependent as they often are on intricate financial schemes involving "daisy chains" of participants (personal interviews). The more important point here, however, is that the U.S. government has launched an unprecedented attack on this form of white-collar crime.

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an indication of the erosion of official tolerance for white-collar crime postulated by a number of recent scholars. Katz (1980), for example, notes an increased emphasis on the criminal prosecution of business and political elites. Arguing that while earlier in this century journalists, populists, and other "lay catalysts" spearheaded the movement against business and political corruption, beginning in the 1970s prosecutors and public officials began to take the initiative, rendering the general public a "passive audience" (p. 169). Katz notes that the potential for *institutional* reform has been eroded by the "case" approach taken by law enforcement and that the movement against white-collar crime may be in decline since its peak in the 1970s. He nonetheless concludes that "some degree of institutionalization of the increased emphasis on white-collar crime has been achieved" (p. 178). Hagan (1985:286) similarly argues that in the post-Watergate era, the prosecution of white-collar and corporate crime has been stepped up. And Braithwaite and Geis (1982:292-93), on the eve of Ronald Reagan's presidency, observed that the post-Watergate era had seen a "surge of governmental . . . interest in corporate crime" and warned against reversing the trend.

While not distinguishing among different types of white-collar crimes, a number of empirical studies report an increased willingness to prosecute and sanction white-collar offenders in general. Focusing on prosecutorial patterns in the Southern District of New York from 1963 to 1976, Hagan and Nagel (1982) point to "proactive" policies, including an increase in resources for white-collar prosecutions and an "activist" approach to successful completion of these cases. According to this study, while there was a general tendency for white-collar offenders to receive favorable sentencing, this depended on the nature of the offense, with those convicted of mail fraud being most likely to be sent to prison (60%) and those convicted of illegal restraint of trade the least likely to be incarcerated (2.4%). Hagan and Palloni (1983) similarly report an increased tendency to sentence white-collar criminals to prison, albeit with relatively short sentences.

Wheeler, Weisburd, and Bode (1982) investigated eight types of white-collar crime in seven federal districts for the years 1976, 1977, and 1978 in order to determine the effect of a number of variables on white-collar sentencing. Surprisingly, they found that higher-status perpetrators of white-collar crime received prison sentences more often than did their lower-status counterparts.[5] Although they observe that in the aftermath of Watergate

[5] It is noteworthy that the Wheeler et al. study included few of what could be called "corporate" or "organizational" crimes and indeed contained a large contingent of very low-status violators, including significant numbers of the unemployed. Geis (1991) has suggested that the type of offenses and offenders included in this study do not fit particularly well Sutherland's original definition of "white collar crime."

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judges may be sensitized to the seriousness of elite deviance, Wheeler et al. (p. 658) speculate that heavier penalties for higher-status individuals is not a new phenomenon but is "anchored in historical patterns that link greater social obligation with higher social status."

These arguments contesting the notion that white-collar criminals receive more lenient treatment are complicated by a number of issues. Some (e.g., Katz 1980; Hagan 1985) suggest, for example, that there has been a *shift* toward greater intolerance of white-collar crime since the Watergate revelations; others (such as Wheeler et al. 1982, who subtitle their article "Rhetoric and Reality") contend that the assumed favorable treatment of higher-status offenders has always been a myth. Further, to a large extent, the empirical studies focus on the status of the offenders rather than the nature of the offenses. Despite the fact that embedded in these data are revelations that certain offenses continue to be dealt with leniently and almost never result in prison sentences, the cumulative effect of this research has been to buttress the increasingly common refrain that we are witnessing a "crackdown on white collar crime."[6] The government reaction to thrift crime might, then, simply be part of a larger pattern of decreasing official tolerance for white-collar crime.

The second possible explanation for the vigorous response to thrift fraud is that the unprecedented epidemic of fraud has quite naturally required a corresponding, unprecedented response. There is, however, a common flaw in both of these explanations: The "crackdown" on white-collar crime is highly *selective.* While Congress, the Justice Department, and the thrift regulatory agencies take an aggressive approach to financial institution fraud, corporate and business crime in other sectors is virtually ignored. Further, the regulatory response to crime in these other sectors seems unrelated to the frequency or scale of the crimes involved. Since the Reagan administration began dismantling the Occupational Safety and Health Administration in the early 1980s (Calavita 1983), sanctions against employers who violate safety and health standards have plummeted. Despite the fact that hundreds of thousands of U.S. workers are killed and disabled annually from work-related accidents and illnesses, employers are rarely prosecuted criminally for safety and health violations. (The production of asbestos will result in 170,000 deaths from lung cancer and other related diseases; yet none of the corporate executives who deliberately concealed the dangers have been criminally charged.) The U.S. Food and Drug Administra-

[6] Tillman and Pontell (1992) have recently contested this crackdown hypothesis. Presenting data on Medicaid provider fraud in California, they found that Medi-Cal offenders were less likely to be sentenced to prison than comparable street criminals, and conclude, "Our findings provide considerable support for the white-collar leniency thesis" (p. 423).

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tion continues to be reluctant to recommend criminal prosecution of corporate executives who conceal the hazards of their products or deliberately fabricate data to attest to their safety (Coleman 1985:44–45). Indeed, if we focus on traditional forms of corporate crime in the manufacturing sector, there is no evidence of any crackdown. The point here is that if the aggressive response to thrift fraud were simply a reflection of a broader crackdown on white-collar crime or a straightforward response to the scale of thrift crime, then we would expect to see similar patterns in other sectors where regulatory violations are frequent and egregious. The laxity that characterizes much regulatory enforcement contrasts markedly with the aggressive response to thrift fraud, however, and suggests that the answer must lie elsewhere.

To understand the government response to thrift misconduct, particularly in conjunction with the lenient reaction to other regulatory violations, we need to examine the nature of the state itself and its relationship to the industrial and financial sectors it is charged with regulating.

A Structuralist Perspective on Regulatory Enforcement

Sociologists have long made a distinction between "social" regulations (such as occupational safety and health standards) which are aimed at controlling production processes, and "economic" regulations (such as insider trading restrictions) which regulate the market and stabilize the economy (Barnett 1981; Cranston 1982; Snider 1991; Stryker 1992; Yeager 1991). While the former protect workers and consumers against the excesses of capital—and tend to cut into profits—the latter regulate and stabilize the capital accumulation process and historically have been supported by affected industries.

This distinction is based on a structuralist approach to the state, which emphasizes the "objective relation" (Poulantzas 1969) between the state and capital (see also Althusser 1971; O'Connor 1973). This objective relation guarantees that the capitalist state will operate in the long-term interests of capitalists independent of their direct participation in the policymaking process or mobilization of resources. Central to this objective relation under capitalism, the state must promote capital accumulation since its own survival depends on tax revenues derived from successful profit-making activity, as well as the political stability that is contingent on economic growth. In addition, it must actively pursue "political integration" (Friedland et al. 1978), "legitimation" (O'Connor 1973), or "the cohesion of the social formation" (Poulantzas 1969) in the interest of political survival and the economic growth on which it depends. As O'Connor (1973) has pointed out in his seminal work on the capitalist state's fiscal

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crisis, the state's capital accumulation and legitimization functions are often mutually contradictory: efforts to promote and protect capital accumulation favor the capitalist class and may jeopardize the state's legitimacy by alienating the other classes who inevitably pay the price. From this perspective, state institutions must continually grapple with this contradiction and its various forms of fallout, which according to O'Connor is at the base of the state's "fiscal crisis."

In this structuralist rendition, the state enjoys "relative autonomy" in its efforts to realize these potentially contradictory functions. In direct contrast to the instrumentalist model espoused by Domhoff (1967, 1978) and others (Kolko 1963, 1965; Miliband 1969), structuralists argue that state managers are not captive to individual capitalist interests and indeed are capable of violating those interests in order to pursue the broader and more long-term interests of capital accumulation and political legitimacy. Nonetheless, its autonomy is "relative." While the state may be free from the manipulation of individual capitalists or even the business community as a whole, it is by no means autonomous from the structural requirements of the political economy within which it is embedded and which it must work to preserve (see Poulantzas 1969, 1973).

Most of the corporate crime literature that borrows from this structuralist perspective focuses on social—rather than economic—regulation. This literature addresses the generally lax enforcement of these regulations and ties that laxity to the capital accumulation function of the state and the perceived costs of interfering with profitable industry (Barnett 1979; Calavita 1983; Snider 1991; Yeager 1988). These scholars also note, however, that the legitimation mandate of the state periodically requires that it respond to political demands to shore up worker safety, reduce environmental hazards, or enforce labor standards. Thus, when there is a politically powerful working-class movement, or in the face of high public visibility of the social costs of nonenforcement, the state may mount correspondingly visible enforcement campaigns. The point is, however, that active enforcement of social regulation occurs primarily in response to public pressure and is usually short-lived, receding once political attention has shifted elsewhere and state legitimacy is no longer threatened. Whether the issue is occupational safety and health standards (Carson 1982; Walters 1985; Calavita 1986; Gunningham 1987; Tucker 1987), environmental regulation (Adler & Lord 1991; Barnett 1979, 1981; Yeager 1991), or U.S. Office of Surface Mining enforcement (Shover et al. 1986), empirical studies consistently confirm that social regulation ebbs and flows with

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public pressure; in the absence of such pressure and the related challenges to state legitimation, enforcement dwindles.[7]

In contrast, when the goal is economic regulation, the state tends to assume a more rigorous posture. Despite occasional protest from the individual capitalists at whom sanctions are directed, the state rather vigorously enforces regulations that stabilize the market and enhance economic viability. Unlike social regulations which are implemented primarily in response to on-again/off-again legitimation needs, economic regulations are integral to the capital accumulation process and are thus more consistently and urgently pursued (Barnett 1981; Snider 1991; Yeager 1991). While case studies are far fewer in this area, some excellent research has focused on the U.S. Securities and Exchange Commission (SEC). As Yeager (1986) and Shapiro (1984) have shown, while the SEC is by no means omnipotent in the face of its powerful Wall Street charges, nonetheless it rather routinely seeks criminal sanctions and stiff monetary fines for elite offenders.

Extensive comparative research documents this enforcement discrepancy. Clinard et al.'s (1979) comprehensive analysis of enforcement actions against the 582 largest corporations in the United States during 1975 and 1976 found a strong relationship between level of enforcement and type of violation. While over 96% of "manufacturing violations" (involving social regulations concerning such things as product safety and food and drug standards) were handled entirely at the administrative level, only 41.5% of "trade violations" (involving economic regulations controlling bid rigging and other unfair trade practices) were disposed of administratively. Further, while over 21% of trade violations were processed criminally, less than 1% of manufacturing violations were criminally processed, and *no* labor standard violations were prosecuted criminally. Clinard et al. (p. 147) conclude, "Corporate actions that directly harm the economy were more likely to receive the greater penalties, while those affecting consumer product quality were responded to with the least severe sanctions. Although over 85 percent of all sanctions were administrative in nature, those harming the economy were most likely to receive criminal penalties."

Surveying enforcement efforts across a variety of regulatory areas, Barnett (1981:17) similarly concludes that enforcement is directly correlated with whether the regulation in question pro-

[7] As Yeager (1991:28) points out, there may be cases in which social regulation and its enforcement are the product of "intraindustry competition" and the desire of some segments of capital to use regulations to enhance their own competitive edge. For example, Kolko (1963) demonstrates that the Meat Inspection Act of 1906 was spearheaded by large meatpackers to eliminate smaller companies that could not comply with the new social regulation of the industry. Far more common, however, is the scenario depicted above, in which social regulation is opposed by industry and enforced by the state primarily to further its legitimation needs.

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tects or impedes capital accumulation. Regulations perceived as "anticapital" received the least enforcement and those protecting markets or economic stability elicited the most enforcement.

This empirical discrepancy in the enforcement of social and economic regulations is consistent with the structuralist depiction of the state, and the concept of relative autonomy in particular. While social regulations potentially cut into profits and interfere with the capital accumulation process, the function of economic regulations is to stabilize and shore up that process. In pursuing this economic function, the state inevitably encounters individual opposition and periodic attempts to neutralize enforcement, but overall its successes in this area dwarf its halting efforts at social regulation.

In the next section, we draw from this structural analysis of the state, and the distinction between social and economic regulation, to explain the vigorous response to thrift fraud by the late 1980s. As we will see, the pattern of that response confirms the utility of these structuralist insights and seems to contradict competing models of public policy such as instrumentalism, pluralism, or public interest/consensus theory. Following this discussion, we turn to the limitations of a pure structuralist paradigm for explaining the pattern of collusion and influence peddling that characterized the early stages of the thrift crisis, then sketch the outlines of a more synthetic approach to the state.

The Thrift Cleanup, Capital Accumulation, and Relative Autonomy

At first glance, the details of the crackdown on thrift fraud seem to fit well with the structural model described above. Most important, the law enforcement response is consistent with the logic of the state's capital accumulation function and its relative autonomy in realizing that function. For if we look at the pattern of enforcement, we find that it varies with the degree to which the fraud jeopardizes financial stability. It is noteworthy, for example, that priority is placed on financial institutions on the verge of failure or already insolvent and in which fraud played a significant role in the collapse.

The official definition of a "major case," or cases to which top priority is assigned, refers to dollar losses, the role of insiders, and the like (see note 3 above). Yet, government officials consistently specify another factor as among the most important ingredients: *whether the alleged fraud contributed to insolvency.* Ira Raphaelson, at the time Special Counsel for Financial Fraud in the Deputy Attorney General's Office, told a Senate subcommittee that cases are treated as "major" depending on dollar losses and whether the fraud played a role in an institution's failure (U.S. Senate 1992:10–11; emphasis added):

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Senator Dixon: "How do you define a major case?"

Mr. Raphaelson: "If it involves an alleged loss of more than $100,000 or involves a failed institution."

Senator Dixon: "There are at least 4300 cases over $100,000?"

Mr. Raphaelson: "Or involving a failed institution, it might be less than $100,000. But *because it is linked to a failure, we still consider it a major case.*"

At the same hearing, Harold A. Valentine, Associate Director for General Government Programs of the U.S. General Accounting Office (U.S. Senate 1992:55), defined major cases as "those involving failed institutions or alleged losses of $100,000 or more." Referring to their prioritization of cases, as well as sentence severity, one FBI agent in Florida gave an example: "If you steal over $5 million and you make a bank fail, you've popped the bubble on the thermometer there!" (personal interview). The same Florida agent tied the influx of federal resources for financial fraud investigations to the economic importance of these cases. He explained that a few years ago:

> We as financial crimes or financial institution fraud investigators were vying for manpower in this office along with [drugs and public corruption] squads. We had to share the white-collar crime staffing . . . with these people. *Now that we've had such dramatic increases in the number of failed institutions in the last year and a half, they're being investigated here and Congress has appropriated huge amounts of funds to target that.* (Emphasis added)

In addition to the "major case" specification, in June 1990 the Office of Thrift Supervision, the Resolution Trust Corporation, and the Federal Deposit Insurance Corporation developed a matrix with which to prioritize thrift fraud investigations and used the matrix to draw up a list of the "Top 100" thrift institutions to be investigated. Among the most important ingredients in this prioritization were the financial health of the institution, whether fraud had contributed to insolvency, and the economic effect on the larger community (personal interviews).

Enforcement statistics confirm these priorities. A General Accounting Office report (U.S. Senate 1992:8) reveals that of the approximately 1,000 major thrift cases under investigation in fiscal year 1991, *one-third* involved failed institutions, and the other two-thirds were for investigations of fraud that contributed to major losses. The Dallas Bank Fraud Task Force handles *only* failed financial institution fraud cases. Indeed, the task force was established in 1987 when it was brought to the attention of officials that 18 thrifts in the Dallas area were on the verge of collapse.

When alleged fraud does *not* result in demonstrable losses, no further investigation is pursued. In response to a query from Congress about criminal referrals made in connection with Silverado Savings and Loan, the Justice Department explained that one of the referrals in question was dropped: "This matter

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involved no demonstrable loss; prosecution was declined in the United States Attorney's Office, District of Colorado" (quoted in U.S. House of Representatives 1990a:121).

The emphasis of the regulatory and law enforcement community is thus on fraud in failed, or failing, "problem" institutions in which the alleged fraud undermines the thrift's financial health. This selective focus suggests that *the crackdown on financial fraud represents less an effort to control crime per se than it is a desperate effort to contain the damage in a fraud-ridden and ailing industry.*[8] While crime in one financial institution might elicit relatively little concern, the epidemic of crime in the thrift industry in the 1980s threatened the survival of the industry itself and, indeed, the stability of the whole financial system. The law enforcement reaction was thus meant both to incapacitate the offenders and as a deterrent to curb the epidemic of fraud. The unprecedented crackdown on this form of white-collar crime conveyed the deterrent message that this fraud will be dealt with seriously; and defining fraud de facto as including only those activities that might lead to insolvency highlights the "damage control" basis for this crackdown. Together with the reregulation of thrifts under FIRREA, the aggressive prosecution of thousands of thrift offenders was designed to stop the hemorrhage of public dollars and stabilize the industry.[9]

The General Accounting Office's Harold Valentine (U.S. Senate 1992:19) called bank and thrift fraud and the financial collapse to which they contributed "perhaps the most significant financial crisis in this nation's history." The Justice Department (1990:2) referred to it as "the unconscionable plundering of America's financial institutions." A senior staff member of the Senate Banking Committee explained the attention being given to thrift fraud: "This industry is very close to the heart of the American economy! We teetered on the edge of a major, major problem here. . . . [W]e got a major problem, but we teetered on the edge of a major collapse. . . . You know, all these [financial] industries could bring down the whole economy" (personal interview).[10]

[8] A continuum of law enforcement motivations might be devised in which pure "crime control" lies at one extreme and "damage control" at the other. Thus, victimless crimes and statutory offenses are prosecuted to penalize the offender for having violated the law: it is the *fact* of law violation in and of itself that is at issue in this kind of "crime control." At the other extreme is "damage control," in which the primary motive for enforcement is to contain the effects of the violation. It follows that, as in the case of thrift fraud prior to the 1980s, little response will be elicited in the absence of perceived effects from the offense. Between these two extremes, there is considerable overlap and, it could be argued, it is in this middle region that much day-to-day law enforcement lies.

[9] We are not suggesting here that an aggressive law enforcement response is the most effective deterrent to fraud. (It might be argued that reversing the deregulation that in the early 1980s set the stage for the fraud epidemic was the more potentially effective deterrent strategy.) The point instead is to determine the motives for the crackdown.

[10] One official spoke of the "havoc ratio"—the amount of havoc that a given thrift crime wreaks on the institution, the community, and the general economy. The reason

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Bank and thrift fraud are of course not new. Investigators and regulators report that abuse by thrift insiders was frequent in the 1960s and 1970s but attracted little attention since the institutions were generally thriving (personal interview). One regulator who said that fraud has always existed in thrifts claimed that "[hot prices in real estate are] the only thing that pulled everybody's asses out for years" (personal interview). A staff member of the Senate Banking Committee explained it this way, "People basically bet on the come. If the market goes up, we all win. And if the market goes down, you begin to look back and see what corners were cut. But you don't look back if the market goes up" (personal interview). The current response to thrift fraud thus has less to do with punishing criminal activity per se than it does with preventing further damage to financial institutions that lie "close to the heart of the American economy."[11]

A number of studies have noted the role of regulatory agencies in minimizing uncertainty and risk and generally stabilizing the financial system. Shapiro's (1984) study of the Securities and Exchange Commission is exemplary. As Shapiro reports, SEC officials see their function as protecting the securities and exchange system rather than as its adversaries. Similarly, Reichman (1991) underlines the stabilizing effect of regulating risks in the stock market. Abolafia (1984) observes a similar dynamic in the commodities futures market, where regulations "structure anarchy." And Yeager (1986) draws attention to the fact that the Reagan administration, while virtually dismantling the worker safety and health system and eroding environmental protections, was relatively aggressive in pursuing insider trading and stock market fraud in an effort to restore confidence in the integrity of the market and encourage investment. As Snider (1991:224) explains, "Controlling this type of corporate crime turns out to be in the interests of the corporate sector overall, as well as being compatible with state objectives. Such laws protect the sanctity of the investment market, which is central to the ability of corporations to raise money by issuing shares."

The U.S. government's mission to salvage the thrift industry is consistent with this literature. And the mission is all the more

these crimes are so serious, she said, is that they have the potential to wreak havoc far beyond the millions that the offender actually steals. She explained, "Using a thrift to go on a shopping spree is a lot like a fellow who wants to rob a teller at a bank. . . . In order to get the $20,000 dollar cash drawer, he blows up the entire building" (personal interview).

[11] It might be argued that the vigorous prosecution of thrift offenders has to do also with the fact that the "villains" are identifiable individuals, not corporations. This certainly makes prosecution and conviction easier. Nonetheless, it is also the case that in a number of notorious corporate crime scandals in the manufacturing sector—the great electrical company conspiracy comes to mind here—individual offenders have been identified as the responsible parties yet have received notoriously lenient treatment. The central ingredient here seems to be that in the thrift case, the institutions—and ultimately the industry—were victims, not beneficiaries, of the offenses.

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urgent since this industry—and the capital it stands to lose—are government-insured. This, then, is an effort directed less at penalizing wrongdoers for their misdeeds than at limiting damage to the industry, preventing comparable damage in other financial sectors, and containing the hemorrhage of government-insured capital. An upper-echelon Washington official, when asked to comment on this interpretation, said simply, "You hit the nail right on the head" (personal interview).

The crackdown on thrift crime thus begins to make sense. As we have seen, savings and loan fraud is not new. What is new is the devastating effect it has had on the industry and the billions of dollars of government liability for losses. The need to contain the damage precipitated the unprecedented response and explains the priority accorded failed and failing institutions. So consistent is this pattern that the very criminality of an act is defined not only in terms of whether it violates the law but also in terms of the effect it has on an institution's financial health. Thus, a regulator explained that violations of bank statutes and agency regulations—such as misapplication of bank funds, violations of loan-to-one-borrower restrictions, and nominee loan schemes—are often treated by regulators as illegal *only* if they result in a loss for the institution. "If you're good for the money," he explained, referring to various types of loan fraud, "you're not defrauding the bank" (personal interview).

This pattern of the government response to thrift crime seems to confirm the utility of the structuralist model of the state, in particular, the notion of relative autonomy. Despite the vast resources available to these corporate offenders, an unprecedented campaign was launched to prosecute and penalize their frauds. Further, enforcement is focused on frauds that jeopardize the stability of the financial system. Thrift fraud was not taken seriously until it began to undermine one institution after another in the 1980s, and as we have seen, the current prosecutorial effort still aims only to curb fraud that causes demonstrable losses.

This pattern is inexplicable from a straightforward instrumentalist position, which would predict that these affluent offenders could shield themselves from prosecution and/or conviction by mobilizing their extensive resources. Neither is it explicable from a traditional interest group model, according to which public policy is the result of pressure from any of a plurality of special interests. The U.S. Savings and Loan League—the thrift industry's major association and during the 1980s one of the most successful lobbying groups in Washington—was certainly the most powerful political actor in this arena; yet it was incapable of derailing the Financial Institution Reform, Recovery, and Enforcement Act of 1989 and the enforcement campaign that it unleashed—a failure that triggered intense contro-

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versy and recriminations within the association (O'Connell 1992). Further, the *public's* knowledge of the scope of the thrift disaster was minimal before President Bush's announcement of the bailout and enforcement effort following the 1988 election. Media attention to the scandal quickly intensified, but only *after* the state response was well underway, suggesting that it was not public pressure that triggered the vigorous government reaction.[12] While this reaction is inexplicable from either an instrumentalist or an interest group model of public policy, it is consistent with the structuralist notion of the capital accumulation function of the state and its ability to sacrifice individual capitalists' interests to long-term economic survival.

Furthermore, these structuralist insights offer the only viable explanation for the pattern of the current crackdown on white-collar crime more generally. The increased intolerance of corporate crime noted by Katz (1980), Hagan (1985), and others is in fact a *selective* intolerance—directed at financial fraud and similar violations of economic regulations that undermine the stability and viability of the economic system. This intolerance of risky financial fraud, in combination with the absence of a corresponding response to traditional corporate crimes that violate social regulations, cannot be explained by instrumentalism or by any general theory of post-Watergate reformism. It is, however, precisely what structuralists would predict.

The Limitations of Structuralism

While the structural model of the state offers a viable explanation for the crackdown on thrift fraud beginning in the late 1980s, it contains notable empirical and theoretical limitations. Structuralists have been criticized for reifying structure and imbuing the state with the anthropomorphic ability to act, for depicting the state as monolithic, and for exaggerating its rationality (Block 1987; Chambliss & Seidman 1982; Skocpol & Finegold 1982; Calavita 1992).

At least as important here is a glaring empirical deficiency: The structural model by itself is unable to account for the early mishandling of the thrift crisis in the mid-1980s. In particular, it cannot explain the reluctance of many state actors to recognize widespread fraud in the S&L industry and to adopt a rigorous enforcement stance until the crisis was full blown. A close look at the way state managers responded—or failed to respond—to the

[12] It has been consistently alleged that during the 1988 presidential campaign, both Michael Dukakis and George Bush deliberately avoided any discussion of the S&L issue since both political parties shared responsibility for the disaster (Mayer 1990:260–61; Pilzer 1989:208–9; Waldman 1990:90). The dearth of news reports on the subject before the election is indeed striking, particularly in comparison to the rapid escalation of media attention beginning in 1989, suggesting that the candidates' strategy may have been successful in keeping the issue out of the public eye.

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early stages of the thrift crisis reveals a state that is neither omniscient nor uniformly rational. Instead, it is comprised of real-life political actors with often disparate motives, whose various locations within the state expose them to conflicting demands and pressures. In this context, not only is relative autonomy historically and institutionally contingent but the structural imperatives of the state as guardian of the economic and political order may be fatally derailed.

An important dimension of the early response by state managers involved influence peddling by thrift owners and operators, particularly in the form of generous campaign contributions to key policymakers. Deregulation had expanded the opportunities for fraud at little risk, exacerbating the thrift crisis (see Calavita & Pontell 1990, 1991). Having set the stage for an epidemic of crime, policymakers were slow to limit the damage. The powerful and well-financed U.S. Savings and Loan League was a significant force behind the deregulation that provided the opportunities for fraud.[13] Financial pressure was then brought to bear by the operators of suspect institutions to avoid regulatory scrutiny and investigations of alleged fraud. A few examples will serve to clarify the mechanisms through which this pressure was exerted and its effect in temporarily shielding thrift offenders from prosecution.

Charles Keating, owner of Lincoln Savings and Loan in Irvine, California, contributed heavily to political candidates at the state and federal levels and to both political parties. In early 1987 Lincoln was investigated by the Federal Home Loan Bank (FHLB, the thrift regulatory agency at the time) in San Francisco for poor underwriting of loans and investment irregularities. In April 1987 Senator DeConcini called the chair of the Federal Home Loan Bank Board (FHLBB) in Washington, Ed Gray, to a now-infamous meeting in his office. Attending the meeting were Senators McCain, Glenn, and Cranston, all of whom had received hefty campaign contributions from Keating. The San Francisco regulators were soon summoned to another meeting with the senators, this time joined by Senator Riegle, who was to become chair of the Senate Banking Committee and who also had received generous donations from Keating. At this meeting, the senators—now known as the "Keating 5"—tried to persuade

[13] Representative Fernand St Germain, Chair of the House Banking Committee at the time, spearheaded the 1980 increase in deposit insurance and sponsored the Garn–St Germain Act of 1982, which effectively deregulated the thrift industry. He was a major and frequent recipient of U.S. League of Savings and Loan largesse during this period. The Justice Department investigated connections between St Germain and the thrift lobby and concluded that there was "substantial evidence of serious and sustained misconduct" by St Germain in his relationship with the League. A House Ethics Committee came to the same conclusion. However, no formal prosecution was initiated, and in 1988 St Germain was voted out of office. He is currently a lobbyist for the thrift industry in Washington, DC (Jackson 1988; Pizzo et al. 1989).

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the regulators of the financial health of Lincoln and the absence of any "smoking gun" to prove misconduct.[14] Later that summer, Ed Gray was replaced by M. Danny Wall as chair of the FHLBB, and the investigation of Lincoln was moved to Washington, DC, out of the hands of the "hostile" San Francisco regulators. Lincoln was not closed until two years later, a delay that cost the government an estimated $2 billion.

The Keating case is by far the most widely publicized instance of political influence peddling to stave off scrutiny of thrift fraud, but it is only part of a larger pattern. The connections between former House Speaker Jim Wright, Representative Tony Coelho, and thrift executives—detailed in the report of the Special Counsel in the House Ethics Committee investigation of Wright—are exemplary of this pattern (U.S. House of Representatives 1989). Such ties between key policymakers and the thrift industry were replicated throughout the country, most notably in California, Texas, Arkansas, and Florida, where thrift failures proliferated and losses soared.[15] One senior official in Florida reported that *all* the Florida thrifts that managed to stay open after insolvency did so with the help of their owners' and operators' well-placed political connections (personal interview). Pointing out that the relationship between massive campaign contributions and political intervention was not just a matter of elected officials watching out for their constituents, a senior regulator put it this way:

> It was always the worst S&Ls in America that were able to get dramatically more political intervention. The good guys could never get political muscle like this. Some of it makes sense, of course, because you have a bigger incentive [to make contributions] if you are a sleaze. . . . If you know you are engaged in fraud, what better return is there than a political contribution? (Personal interview)

The political patrons of thrift offenders were regularly confronted with evidence of their clients' misdeeds. During the two-hour meeting between San Francisco regulators and the Keating 5, regulators repeatedly explained the irregularities at Lincoln. Michael Patriarca, senior regulator with the San Francisco FHLB, finally told the group of resistant senators, "I've never seen any bank or S&L that's anything like this. . . . They . . . violate the law and regulations and common sense" (Pizzo et al. 1989:293). Several months later, the San Francisco regulators were barred from any further dealings with Lincoln.

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[14] Field notes of meeting taken by William Black, San Francisco FHLB representative in attendance, reproduced in Pizzo et al. 1989:392–404.

[15] Senator David Pryor of Arkansas, a state with a per capita thrift failure rate among the highest in the country, put a hold on the FSLIC recapitalization bill in the Senate, informing Ed Gray that unless he "correct[ed] the abuses which have been taking place in Arkansas" (meaning regulatory activity, not savings and loan fraud), the bill would remain on hold (letter quoted in Mayer 1990:232).

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In other instances, members of Congress actively chose not to hear evidence of wrongdoing. One regulator told of a meeting with House Speaker Jim Wright regarding Vernon Savings and Loan in Texas. As he remembers the meeting, "I got involved in attempting to defend the agency [the FHLB, in its actions against Vernon], and the Speaker went ballistic and started yelling. Thereafter . . . the Speaker's aides sought to get me fired" (personal interview). The same regulator was, without explanation, "disinvited" to testify before St Germain's House Banking Committee in 1987 on the subject of crime in the S&L industry. Having submitted his formal testimony 24 hours in advance as required, the regulator was met by House aides as he attempted to enter the hearing room and was bluntly told that his testimony was no longer needed (personal interviews).

A number of important points are clear from this brief look at the early stages of the thrift crisis. First, key policymakers were responsive to the demands of those with the resources to exert influence through the financing of electoral campaigns. This influence limited the ability of the state to react effectively to early warnings of a fraud epidemic and increased the scale of the debacle. The record of political access by individual executives at the expense of overall economic viability seems to contradict the structuralist depiction of the state as relatively autonomous and driven by the singular motive of preserving the economic order. Instead, it is more compatible with instrumentalist notions of a direct link between economic resources and political access and the reluctance of the state elite to take action that violates the interests of their benefactors.

Second, however, the specific *pattern* of influence peddling and the persistent and sometimes vitriolic struggle between members of Congress and regulators, together with the crackdown on thrift crime beginning in 1989, suggest a reality that is more complex than either the instrumentalist or structuralist models can account for by themselves. While the structural need to shore up financial stability precipitated the vigorous response to thrift crime, the clash in the mid-1980s between regulators and Congress (and, according to personal interviews, members of the White House staff as well) debunks the notion of a uniform state purpose. In addition, it suggests that relative autonomy is not necessarily a quality of the state as a whole but varies across the institutions that together compose the state, much as state-centered theorists Skocpol and Finegold (1982), Hooks (1990), and others (Krasner 1984; Rueschemeyer & Evans 1985) have maintained. Members of Congress, whose political careers depend on a steady influx of campaign funds, may be particularly susceptible to the demands of those with the resources to make large campaign contributions. Career civil servants in regulatory agencies, while certainly not immune to political pressures and finan-

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cial temptation,[16] may for structural reasons be less susceptible to such pressures and periodically may take a more rigorous enforcement approach. Thus, not only does the record of the early response to thrift fraud reveal a state in which cooptation by private interests *exacerbated* the financial crisis, but also the struggle between politicians and regulators highlights the fragmentation of the state and the variable and contingent nature of state autonomy.

This account of the evolution of the thrift crisis suggests the need for a synthetic model of state action. As we have seen, while the state periodically is capable of concerted action in the interest of financial stability and to shore up government-insured capital, the real-life political actors who make up the state have their own political and career interests and are susceptible to a variety of external influences. The result is a shifting pattern of policies that reflect in varying degrees both individual influence and structural imperatives, capture, and autonomy.

Block (1987) is one of the few to attempt such a synthetic model, and his work may be of use here. Block (p. 84) starts from the premise that "state managers collectively are self-interested maximizers, interested in maximizing their power, prestige, and wealth." These state managers enjoy some autonomy and are capable of restricting the activities of even the dominant classes. This ability derives from the fact that the dominant classes are dependent on the state for a variety of essential services, including checking through regulation the excesses intrinsic to the capitalist economy.

While Block notes that the career and institutional interests of state managers are the immediate cause of policy outcomes, those interests are in turn linked to the "capitalist context." In describing this context, he notes both the structural dependence of the state on economic growth and the economic elite's ability to buy influence over policymakers and control the media, thereby integrating structuralist and instrumentalist approaches. He makes an important contribution to state theory, locating human agency between the structure of capitalism and individual

[16] A vast literature documents the phenomenon of "captured" regulatory agencies (Lowi 1969; Cranston 1982; Snider 1991). The record of thrift regulation reveals several instances of regulator collusion with the thrift industry. For example, when the owner of Centennial Savings and Loan in Santa Rosa, CA, was questioned by examiners about his extravagant parties, excessive compensation and bonuses, and multiple land flips, he hired the deputy commissioner of the California Department of Savings and Loans, making him an executive vice-president and doubling his $40,000-a-year state salary. Similarly, Don Dixon at Vernon hired two senior officials from the Texas Savings and Loan Department in an effort to ward off investigation (personal interviews). Political appointee M. Danny Wall, Ed Gray's successor as head of FHLBB, had close connections to friends of the thrift industry in Congress and was largely responsible for postponing the closing down of Lincoln (personal interview). What is important here, however, is that over time thrift regulators seem to have been less compromised by thrift industry influence than Congress and more willing to take a rigorous regulatory stance.

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policy outcomes, thus providing the missing causal link in the potentially teleological argument of structuralists.

What Block's synthetic approach fails to highlight is the *contradiction* between the structural function of state managers as guardians of economic and political stability and their simultaneous susceptibility to instrumental influence by economic elites that threatens to disrupt and occasionally—as in the S&L case—derail the collective endeavor. The way this contradiction is played out depends in part on the relative susceptibility of such instrumental influences through history and across state agencies. As we have seen here, thrift regulators in the mid-1980s seem to have experienced greater autonomy from the S&L industry than did Congress. In this context, the contradiction between structural imperatives and instrumental influences was manifest in the form of intrastate conflict, as regulators and Congress locked horns over regulatory enforcement.

To account for the intricacies of this case—and to advance state theory more generally—we need an inclusive and multifaceted approach, one that matches rather than conceals the complex face of empirical reality. Such an approach would at a minimum incorporate insights from the structuralist and instrumentalist traditions. It would perhaps start from a structuralist base, placing at the center of analysis structural imperatives and the objective relation between the state and capital. At the same time, however, it would recognize the very real instrumental economic influences on state actors and the ways in which they jeopardize structural imperatives.

Our study documents the limited utility of specific instrumentalist and structuralist concepts and has begun to sketch out in general terms the contours of a synthetic approach. While a single case study can reveal the limitations of prevailing models—and perhaps underscore their insights—it will take a collective, cumulative effort to construct adequate alternatives. This much is clear: If our models are to reflect the complexity of political reality, they must incorporate rather than exclude, integrate rather than draw boundaries.

Conclusion

We have argued here that the aggressive reaction to thrift fraud in the late 1980s is not indicative of a general crackdown on corporate crime, recently postulated by some white-collar crime scholars. The timing of the response, the almost exclusive focus on fraud that leads to institutional insolvency, and the selective nature of the crackdown—targeting financial fraud while virtually ignoring traditional corporate crime in the manufacturing sector—all suggest that it is not an increased intolerance of

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white-collar crime that motivates the reaction but a concern with economic stability.

To understand this government response, we draw on a number of concepts from the state theory literature. We demonstrate that a structural theory of the state provides the only viable explanation for the aggressive reaction to thrift fraud by the late 1980s. Nonetheless, the structuralist model, by itself, is inadequate to account for the mishandling of the early stages of the crisis. As we have seen, access to the levers of state power available to thrift executives with virtually unlimited funds provided by their savings and loan "money machines" initially shielded them from detection and sanctioning, in a scenario consistent with the instrumentalist model of the state and much of the corporate crime literature. This instrumentalist dynamic was in large part responsible for the reluctance of Congress and other key policymakers in the mid-1980s to recognize the scope of thrift fraud. But by the end of the decade, with the thrift industry decimated, the federal insurance agency bankrupt, the government tab mounting, and fears that other financial and economic sectors might be next, state managers launched an unparalleled, if belated, effort to contain the fraud and curb the damage.

This analysis highlights the importance of de-reifying the state, which is often presented in structuralist accounts as monolithic and displaying an anthropomorphic ability to act. In so doing, it has become clear that the political actors and agencies that make up the state neither act from a singular motive nor always act rationally to preserve the economic order. Indeed, in the early stages of the thrift crisis, state policy was in conspicuous disarray, with political actors in various institutional locations holding fast to their own particular agendas—agendas that in some cases substantially exacerbated the crisis. Thus, in unpacking the state, we see that both instrumentalists and structuralists oversimplify reality. Specifically, the relative autonomy of state agencies and their ability to deal rigorously with elite offenders is both historically and institutionally variable.

Such "state-centered" theorists as Skocpol and Finegold (1982), Hooks (1990), and others have already noted that state autonomy varies, with some state agencies being remarkably strong and capable of enforcing their own agendas, while others are relatively weak and pliable. What the savings and loan case illustrates is that an active struggle may ensue between those with instrumental connections to external interests and those in the state who are more insulated from those interests and may be in a better position to pursue collective goals. While in this case, members of Congress in the mid-1980s acted to neutralize regulators in the interest of their affluent benefactors, the battle lines are likely to shift with various issues and over time. Indeed, on some issues and in some contexts, it may be that regulatory agen-

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cies are more susceptible to "capture" than is Congress, although the latter's reliance on significant infusions of cash from affluent interests may predispose it to instrumental behavior.

Just as it is important to reexamine the monolithic concept of the state, the concept of corporate crime must be unpacked if we are to understand the pattern of the state's response to corporate offenders. To explain the current response to thrift fraud, side by side with the official tolerance for other corporate offenses, an important distinction was made here. White-collar crime research generally defines corporate crime as crime committed by corporate offenders *on behalf of the organization;* but thrift fraud *undermines* the financial viability of the institution and ultimately the industry itself. Thus, it is important to distinguish between traditional corporate crimes in the manufacturing sector that enhance profits at workers' or consumers' expense, and financial fraud that enriches individuals at the expense of the economic system. The state is likely to tolerate the former, taking action primarily in response to grassroots political demands and to shore up its own legitimacy, while treating the latter with more urgency.

The current response to thrift fraud makes sense within this context. As we have seen, the way the state punishes corporate offenders depends on the nature of the relationship between the state and capital at various points in time and across agencies, and the way the offenses in question jeopardize that relationship or undermine the economic process around which the relationship revolves. In attempting to explain the crackdown on financial fraud, we thus bring together two traditions that have remained relatively distinct—state theory and white-collar crime research. It is hoped that the analysis will contribute not just to a better understanding of the government response to white-collar crime but to a more integrated and empirically grounded approach to the state.

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