Annu. Rev. Sociol. 1997. 23:19–38

THE SAVINGS AND LOAN DEBACLE, FINANCIAL CRIME, AND THE STATE

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KEY WORDS: savings and loans, financial crime, white-collar crime, state, regulation

ABSTRACT

The savings and loan crisis of the 1980s was one of the worst financial disasters of the twentieth century. We argue here that much financial fraud of the sort that contributed to this debacle constitutes "collective embezzlement," and that this collective embezzlement may be the prototypical corporate crime of the late twentieth century. We further argue that the state may have a different relationship to this kind of financial fraud than to manufacturing crime perpetrated on behalf of corporate profits. In the conclusion, we suggest that an understanding of the relationship between financial fraud and state interests may open up new regulatory space for the control of these costly crimes. Our data come from a wide variety of sources, including government documents, primary statistical data on prosecutions, and interviews with regulators.

INTRODUCTION

The savings and loan (S&L) crisis of the 1980s was one of the worst financial disasters of the twentieth century. Experts gauge its cost to US taxpayers over 30 years to be approximately $500 billion, including interest payments on the government bonds sold to finance the industry's bailout (US General Accounting Office, cited in Johnston 1990:1; National Commission on Financial Institution Reform, Recovery and Enforcement [NCFIRRE] 1993:4). Reliable estimates

0360-0572/97/0815-0019$08.00

of the percentage of losses due to criminal wrongdoing range from 10% to 44% (Office of Thrift Supervision 1990, Resolution Trust Corporation 1992, Akerloff & Romer 1993, NCFIRRE 1993).

The savings and loan scandal was by no means an isolated phenomenon in the high-flying 1980s. Insurance fraud, junk bond manipulation, insider trading, and securities fraud took their place alongside the thrift debacle in the headlines and on the nightly news. By the end of the decade, Charles Keating, Michael Milken, and Ivan Boesky had become household words, their names synonymous with corporate wrongdoing. Besides this ill-gotten notoriety, and the vast wealth accruing from their legitimate and illegitimate activities, these offenders had something else in common. Unlike much of the corporate crime of earlier decades addressed by so much of the scholarly literature—for example, the electrical company conspiracy, the Pinto scandal, unsafe practices in the pharmaceutical industry, and occupational safety and health violations (Geis 1967, Cullen et al 1987, Braithwaite 1984, Carson 1981)—their crimes had nothing to do with production or manufacturing but instead entailed the manipulation of money.

In this case study of the savings and loan disaster, we argue 1. that much financial fraud of this sort constitutes a specific form of corporate crime, what we call "collective embezzlement;" 2. that this collective embezzlement may be the prototypical corporate crime of the late twentieth century in the United States, in that it corresponds to the shift away from manufacturing or industrial capitalism to finance capitalism; 3. that the state may have a different relationship to collective embezzlement than to manufacturing crime perpetrated on behalf of corporate profits; and, 4. that by examining this change in the nature of corporate crime, and exploring the state's reaction to these offenses, we may be able to delineate with more precision the relationship between the state and economic activity and more generally to advance state theory. In the conclusion, we suggest that an understanding of the relationship between financial fraud and state interests may open up new regulatory space for the control of these costly crimes.

The data for this paper come from a wide variety of sources. In addition to secondary data such as government documents, regulators' reports, and other published accounts of the S&L crisis, we have gathered two kinds of primary data. The first consists of interviews with 105 government officials who were involved in policymaking, regulation, prosecution, and/or enforcement, in Washington, DC, and in field offices in California, Texas, and Florida, where the bulk of thrift[1] fraud took place. These unstructured, open-ended

[1]We use "savings and loans"and "thrifts" interchangeably here to refer to federally insured savings institutions that have as their primary historical function the provision of home mortgage loans. See Calavita & Pontell (1990, 1991, 1993) for a discussion of the regulatory changes in the early 1980s that freed these institutions to make direct investments, that effectively altered their function as home-mortgage lenders, and that provided extensive opportunities for fraud.

interviews provide substantial background information on techniques of fraud and the state response. Second, we have assembled several statistical data sets on the nature of thrift crime and the government's prosecution effort. These data were compiled from the statistics provided us by three federal agencies: the Resolution Trust Corporation (RTC, the federal agency created to manage and sell assets from seized thrifts); the Office of Thrift Supervision (OTS, which after 1989 took over from the old Federal Home Loan Bank Board the task of examination and enforcement); and the Executive Office of the US Attorneys (which made prosecutorial decisions). These statistical data provide detailed information on criminal referrals, indictments, convictions, and sentencing.

Of course the picture is far from complete and our data are necessarily imperfect. For one thing, we can never be sure how much crime goes undetected, nor whether the crimes that do come to light are representative of thrift crime in general. While this is a concern in all criminological research, it is particularly acute in the area of white-collar crime where fraud is often disguised within ordinary business transactions (Katz 1979), proving fraudulent intent is problematic, and potentially criminal wrongdoing consequently is not prosecuted. Using the "criminal referral" as our indicator of fraud goes partway in addressing this "front end" problem in white-collar crime research.

Criminal referrals, usually filed by examiners or regulators or by whistle-blowers at the institution itself, describe suspected crimes, name individuals who may have committed crimes, and estimate dollar losses. These referrals are sent through the regulatory field office to the FBI and the US Attorney's Office for investigation, where in a relatively few cases they result in indictments. The accuracy of these referrals as a measure of thrift crime—like the accuracy of statistics on "crimes known to the police" as an indicator of street crime—is limited by the existence of a "dark figure of crime," that is, the significant number of crimes that are never detected or reported. We use criminal referrals here to gain some sense of the incidence and patterns of thrift crime, with the understanding that they do not cover the entire population of fraud.[2]

The following section draws on these data to describe the basic forms of thrift fraud. As we will see, despite their apparent complexity, many of these

[2]There may be some cases in which referrals were filed in the absence of actual criminal misconduct. However, our conversations with regulators, investigators, and prosecutors, and our perusal of the detailed referrals to which we gained access, suggest that these forms were by no means filed frivolously. Because of the amount of information required on these forms, and because the reputation of the agency that filed a referral was at stake, they were likely to be limited to the most egregious cases of suspected misconduct, particularly as caseloads bogged down in the late 1980s. See Calavita et al (1997) for a description of the triage-like prosecutorial decisions that resulted in indictments in only one case out of every seven criminal referrals in Texas, and one in four in California.

frauds were variations on a fixed number of themes. As one of our informants put it, “It was as if someone had found a cookie cutter” (personal interview).

TYPES OF S&L FRAUD: HOT DEALS, LOOTING, AND COVERING UP

Corporate crimes of the sort involved in the savings and loan scandal are among the most complex white-collar offenses ever committed, leading one journalist to complain that when “regular people” tried to figure it out, they got “hopelessly bored and confused, as though they’d fallen a month behind in their high-school algebra class” (O’Rourke 1989:43). The concerned layperson is helped considerably by the fact that there are a limited number of basic formulas for abusing thrifts. Before describing these basic formulas, we need to note that our discussion is focused on insider abuse, by which we mean those frauds in which thrift owners and/or managers were central players, either alone or in collaboration with outsiders.

While some have implied that the industry’s problems in the 1980s were brought on by outsiders who victimized thrifts (Lewis 1989, Lowy 1991), the schemes at the heart of the scandal required the participation of insiders. Our RTC data,[3] which allow us to identify the organizational positions of those cited in criminal referrals, confirm that high-level insiders were participants in the majority of these frauds. Of the 2265 criminal referrals in this data set, insiders were listed as suspects in 1294 or 63%. Far from a case of naive insiders being victimized by slick con artists, most thrift fraud at these institutions was self-inflicted.

At the most general level, we can decipher three types of insider abuse, called here hot deals, looting, and covering up. All involved one or more violations of federal bank fraud statutes, including prohibitions against “kickbacks and bribes” (18 USC Section 215); “theft, embezzlement, or misapplication of funds” (18 USC Sections 656,961c); “schemes or artifices to defraud federally insured institutions” (18 USC Section 1344); “knowingly or willfully falsifying or concealing material facts or making false statements” (18 USC Section 1001); “false entries in bank documents with intent to injure or defraud bank regulators, examiners . . . ” (18 USC Section 1005); and/or “aiding and abetting and conspiracy” (18 USC Sections 2, 371). The following sections describe

[3] As part of its mandate to manage the assets of seized thrifts, the RTC collected data on criminal referrals through its Thrift Information Management System (TIMS). This system recorded and tracked criminal referrals at all RTC institutions (that is, those institutions that had been declared insolvent and taken over by the RTC). The TIMS data referred to here summarize the contents of “Category 1” (suspected thrift fraud of $100,000 or more) criminal referrals filed by the RTC or other federal agencies through May, 1992.

hot deals, looting, and covering up, and outline their contribution to the thrift debacle.

Hot Deals

These investment frauds were the sine qua non of insider abuse, providing both the cash flow from which to siphon off funds and the transactional medium within which to disguise it. Four kinds of transactions were central in these deals. As Senate Banking Committee staff members Alt & Siglin (1990:3–5) explain, these transactions include such schemes as land flips, nominee loans, reciprocal lending, and linked financing. Land flips involve selling a property back and forth among two or more partners, inflating the price each time and refinancing the property with each sale until the value has increased many times over. Alt & Siglin (1990:4) use the following example:

> A sells a parcel of real estate to B for $1 million, its approximate market value. B finances the sale with a bank loan . . .. B sells the property back to A for $2 million. A finances the sale with a bank loan, with the bank relying on a fraudulent appraisal. B repays his original loan and takes $1 million in 'profit' off the table, which he shares with A. A defaults on the loan, leaving the bank with a $1 million loss.

While the flip technically could be achieved without the lending institution's participation, thrift insiders were often collaborators. For one thing, insiders were sometimes business associates of the corrupt borrowers, who at a future date would exchange the favor. In addition, while the lending institution was left with an overpriced property on its hands, in the short-term, it made upfront points and fees from the huge loans, from which executive bonuses could be drawn.

It was not unusual in the mid-1980s for partners to sit down and in one afternoon flip a property until its price was double or triple its original market value, refinancing with each flip. The playful jargon for this was "cash-for-trash," and the loans were "drag-away loans," because the intention from the beginning was to default, dragging away the proceeds. Don Dixon at Vernon Savings and Loan in Texas (nicknamed by regulators "Vermin") reportedly "flipped land deals [like] pancakes" (O'Shea 1991:76). He and associates like (fast Eddie) McBirney at Sunbelt Savings and Loan in Dallas (nicknamed by regulators "Gunbelt"), and Texas developer Danny Faulkner used land flips among other schemes to develop hundreds of miles of condominiums on I-30 northeast of Dallas. Officers at nearby Empire Savings and Loan financed the land flips to inflate the value of the land and provide the rationale for making the condo development loans despite an already glutted Dallas real estate market (personal interviews). Faulkner and his partners hosted weekend brunches at Wise's Circle Grill in the I-30 corridor. Invited guests included officials from Empire Savings and Loan, investors, appraisers, and increasingly, politicians who drew huge campaign contributions from the events. Over breakfast, properties quickly changed hands and millions of dollars of phony profits were made in a few hours (O'Shea 1991:32; personal interviews).

Nominee loans were often used in conjunction with land flips. Nominee lending used a straw borrower to circumvent loan-to-one-borrower regulations or restrictions on insider borrowing. One costly nominee loan partnership involved former dentist Duayne Christensen and real estate broker Janet McKinzie in Santa Ana, California. Christensen opened North American Savings and Loan in 1983. In partnership with McKinzie, Christensen used the thrift to make loans to his own real estate projects and to participate in multiple land flips, through a company owned and controlled by McKinzie. In one typical scheme, straw borrower David Morgan purchased property brokered by McKinzie's real estate company and financed by North American. He then resold the property at an inflated value to his own holding company. Fees and commissions poured into McKinzie's real estate brokerage. North American made upfront points and fees but apparently never saw the proceeds from the resale of any of the properties (US Congress, House Committee on Government Operations, Subcommittee on Commerce, Consumer, and Monetary Affairs 1987a:304-9). The thrift was closed in 1988, at a loss of $209 million.

Reciprocal lending was another way of circumventing restrictions against insider borrowing. Instead of making a loan directly to oneself, which would have sounded the alarm among regulators, two or more insiders at different thrifts made loans to each other. Making loans to each other is not in itself illegal, but making loans contingent on a reciprocal loan is fraud (Alt & Siglin 1990:5). These "daisy chains" often involved multiple participants, and unraveling them sometimes took investigators far afield of the original institution and exposed the complex conspiratorial quality of thrift fraud. One investigation in Wyoming in 1987 revealed a single daisy chain of reciprocal loans among four thrifts that by itself resulted in a $26 million loss to taxpayers (US Congress, House Committee on Government Operations, Subcommittee on Commerce, Consumer, and Monetary Affairs 1987b:79-80, 129-130). A Texas network included at least 74 daisy chain participants and involved all the insolvent thrifts in the state (US Congress, House Committee on Banking, Finance and Urban Affairs 1990:799-872).

Similar in logic to reciprocal lending arrangements, linked financing involves depositing money in a thrift, with the understanding that the depositor will receive a loan in return. Loan broker Mario Renda specialized in setting up linked financing deals, even advertising in the *Wall Street Journal*, the *New York Times*, and the *Los Angeles Times*: "MONEY FOR RENT: BORROWING OBSTACLES NEUTRALIZED BY HAVING US DEPOSIT FUNDS WITH YOUR LOCAL BANK: NEW TURNSTYLE APPROACH TO FINANCING" (quoted in Pizzo et al 1991:127).

Renda placed large brokered deposits in thrifts, for which he received a finder's fee, in return for which borrowers with credit "obstacles" received a generous loan from the thrift. Response to Renda's ads was overwhelming; according to his own court testimony, Renda brokered the deposits for hundreds of linked financing schemes.

Investigators and regulators report finding variations of land flips, nominee loans, linked financing, and reciprocal lending arrangements over and over in their autopsies of seized thrifts. Many hot deals combined elements of all four transaction frauds. So-called "ADC" (acquisition, development and construction) lending is a good example. ADC lending was a form of direct investment by thrifts in the 1980s, in which thrifts provided up to 100% of the financing for a speculative development project, reaping proceeds (and collecting on the loan) only if the development turned a profit. Points, fees, and several years of interest payments were often included in the loan, so that it appeared on paper to be in good standing, and the thrift recorded income from the self-funded points and fees. Fraudulent ADC lending was at the core of the S&L debacle in Texas and helps explain continued investment in Texas commercial real estate when the market was already glutted. As the National Commission on Financial Institution Reform, Recovery and Enforcement (1993:48) explains, "ADC loans were an attractive vehicle for abuse. They bound up in one instrument many of the opportunities available." A land flip might provide inflated collateral for a generous ADC loan; the loan then might be to a straw borrower who shared the proceeds with thrift insiders (nominee lending); thrift managers might make the loan contingent on a deposit or other investment (linked financing); and/or, thrift insiders might exchange loans to finance development projects with each other (reciprocal lending arrangements). As Texas S&Ls were pumped up with these huge development loans, they reported unprecedented paper profits from which thrift insiders extracted generous bonuses and dividends—one major form of "looting."

Looting

Looting refers to the siphoning off of funds by thrift insiders and is thus more like traditional forms of crime than are the business transactions involved in hot deals. Because thrift management was doing the looting, it took different forms from a typical bank robbery or embezzlement by a lower-level employee. The most straightforward, but probably least common, way to loot was simply to remove deposits from the thrift and stash them away. Probably more common were shopping sprees with thrift funds, and excessive bonuses or other forms of compensation.

David Paul bought CenTrust Savings Bank in Miami in 1983 and quickly turned it into a megathrift with $9.8 billion in assets (Pizzo et al 1991:404–5;

Lowy 1991:152–53). Paul used over $40 million of CenTrust money for a yacht, a Rubens painting, a sailboat, Limoges china, and Baccarat crystal (Lowy 1991:152). In addition, he built the 47-floor Miami CenTrust skyscraper at a cost of $170 million (Mayer 1990:77; Pizzo et al 1991:405; Lowy 1991:152–53). When CenTrust collapsed, it was the largest S&L failure in the Southeast, costing taxpayers $1.7 billion. For his part in the insolvency, David Paul was convicted of 97 counts of racketeering and fraud and sentenced to eleven years in prison (*Los Angeles Times* 1994:D2).

Excessive compensation schemes were another way for insiders to loot their institutions. The US General Accounting Office (GAO)(1989:21) defines "compensation" as "salaries as well as bonuses, dividend payments, and perquisites for executives." A federal regulation limits permissible compensation for thrift personnel to that which is "reasonable and commensurate with their duties and responsibilities" (GAO:21). At the most expensive failures, executives typically paid themselves exorbitant bonuses and dividends, even as their thrifts were collapsing (GAO 1989:21). For example, Don Dixon and his top executives at Vernon took more than $15 million in bonuses between 1982 and 1986, at a time when the thrift was already deeply insolvent (O'Shea 1991:217–18). During the six years that David Paul was driving CenTrust into the ground, he paid himself $16 million in salary and bonuses, $5 million of it coming in 1988 and 1989 when the thrift was piling up losses from its junk bond investments (Pizzo et al 1991:406).

Of the 26 most costly failed thrifts studied by the US General Accounting Office (GAO)(1989:21), shopping sprees and excessive compensation had occurred in the vast majority. A large proportion of prosecutions have been for such looting, probably because of the relative ease of building a convincing body of evidence for these more straightforward frauds compared to the complex business transactions involved in hot deals (personal interviews). In any case, hot deals and insider looting went hand-in-hand: The deals provided the cash flow and reported income with which to finance shopping sprees and excessive compensation—indeed the ability to siphon off phony "profits" provided the incentive for hot deals and the rapid growth they fueled.

Covering Up

As savings and loans teetered on the brink of insolvency, broken by hot deals and looting, their operators struggled to hide both the insolvency and the fraud. In some cases, the cover-up came in the form of deals whose primary purpose was to produce a misleading picture of the institution's state of health. US Attorney Anton R Valukas describes a number of such cover-up deals:

> In the prosecuted cases of Manning Savings and Loan, American Heritage Savings and Loan of Bloomingdale and First Suburban Bank of Maywood, when the [nominee] loans

became non-performing the assets were taken back into the institution, again sold at inflated prices to straw purchasers, financed by the institution, in order to inflate the net worth of the bank or savings and loan. The clear purpose was to keep the federal regulatory agencies . . . at bay by maintaining a net worth above the trigger point for forced reorganization or liquidation" (quoted in US Congress, House Committee on Government Operations, Subcommittee on Commerce, Consumer, and Monetary Affairs 1987b:99–100).

Insiders also could simply doctor their books to shield their thrift from regulatory action. At one S&L studied by the GAO (1989:41), three sets of books were kept—two on different computer systems and one manually. At another, $21 million of income was reported in the last few days of 1985 in transactions that were either fabricated or fraudulent, allowing the thrift to report a net worth of $9 million, rather than its actual negative $12 million (GAO 1989:44–45). McKinzie and Christensen at North America S&L prepared bogus documents when challenged by regulators. When the thrift was finally taken over, examiners found evidence of fake certificates of deposit, forged bank confirmation letters, and other cover-up materials (US Congress, House Committee on Government Operations, Subcommittee on Commerce, Consumer, and Monetary Affairs 1987a:308).

Relative Frequency of Hot Deals, Looting, and Covering Up: The Dallas OTS Files

For a more detailed picture of the part these insider frauds played in the thrift crisis, we can look at a subsample of Category 1 criminal referrals in one state, Texas. Here we rely on data from files in the Dallas Office of Thrift Supervision (OTS). This OTS office maintained computer files on all criminal referrals for thrift fraud in Texas. We selected a 20% sample from this list of 1210 criminal referrals filed between January 1985 and March 1993, by choosing every fifth referral. We then examined the actual referral forms for each of the 241 cases in our sample, as well as the numerous supporting documents that accompanied these referrals. For each case, we coded the type of suspected violation, whether insiders were involved, and the estimated loss from the suspected crime.

Our main objective was to obtain a better sense of the crimes being reported at thrift institutions. Based on a careful perusal of these referral files, we developed 11 specific categories of insider fraud (including, for example, insider loans, land flips, kickbacks, falsification of documents, etc). While many of these categories overlapped in practice, since these frauds were usually complex and often contained several layers of deception, we made distinctions according to what the primary offense or central ingredient of the suspected misconduct was. We then sorted these offenses according to whether they constituted hot deals, looting, covering up, or some other broad category of fraud. For example, insider loans and land flips are hot deals, kickbacks are a form of looting, and falsification of documents is a method of cover-up.

Of the 241 cases of suspected misconduct, 193 involved insider fraud, as opposed to victimization by outsiders, which is consistent with the RTC data discussed above. More important here, all but three of the 193 insider fraud cases involved some form of hot deals, looting, or covering up. The most common form of fraud was hot deals, with various types of such deals comprising almost 68% of these suspected frauds and contributing by far the highest price tag—over $1.08 billion out of the total $1.6 billion in estimated losses.

Hot Deals and Looting as "Collective Embezzlement"

In discussing different forms of white-collar crime, Sutherland (1983:231) described embezzlement: "The ordinary case of embezzlement is a crime by a single individual in a subordinate position against a strong corporation." Cressey, in *Other People's Money* (1953), focused on the lone white-collar embezzler, stealing from his or her employer. Traditionally, then, embezzlement has been thought of as an isolated act of an individual employee who steals from the corporation for personal gain.

Criminologists have typically drawn a sharp distinction between this "embezzlement" by individuals against the corporation and "corporate crime," in which fraud is perpetrated by the corporation on behalf of the corporation. For example, Wheeler & Rothman (1982:1405) speak of two distinct types of white-collar crime: "Either the individual gains at the organization's expense, as in embezzlement, or the organization profits regardless of individual advantage, as in price-fixing." Similarly, Coleman (1987:407) argues, "The distinction between organizational crimes committed with support from an organization that is, at least in part, furthering its own ends, and occupational crimes committed for the benefit of individual criminals without organizational support, provides an especially powerful way of classifying different kinds of white-collar crime."

Neglected in this dichotomy is the possibility of organizational crime in which the organization is a vehicle for perpetrating crime against itself, as in the hot deals and looting described here. This form of white-collar crime represents a hybrid between traditional corporate crime and embezzlement—crime by the corporation against the corporation—and might be thought of as "collective embezzlement." Unlike Sutherland's and Cressey's embezzlers, these "collective embezzlers" were not lone, lower-level employees but thrift owners and managers, acting in networks of coconspirators inside and outside the institution. Indeed, this embezzlement was often company policy. In some cases, it was the very purpose of the organization to provide a vehicle for fraud against itself. Wheeler & Rothman (1982:1406) have pointed to "the organization as weapon" in white-collar crime: "[T]he organization . . . is for white-collar criminals what the gun or knife is for the common criminal—a tool to obtain money from victims." In the collective embezzlement of the thrift industry, the organization was both weapon and victim.

COLLECTIVE EMBEZZLEMENT AND LATE TWENTIETH CENTURY CAPITALISM

As we approach the twenty-first century, the US economy—and those of other advanced capitalist countries—is compared to a "casino" (Bates 1989:D1, *Business Week* 1985:78–90). In this casino economy, the largest profits are made from placing a clever bet, not making a better mousetrap. Unlike in industrial capitalism where goods and services are produced to make a profit, in finance capitalism—where the "means of production" are currency trades, corporate takeovers, loan swaps, and futures trading—profits come from "fiddling with money" (Trillin 1989). Nobel Prize winner Maurice Allais underscores the magnitude of this shift from an economy based on the circulation of goods to one circulating money itself, pointing out that "more than $400 billion is exchanged every day on the foreign exchange markets, while the flow of commercial transactions is only about $12 billion" (quoted in Bates 1989:D1).

Beginning in 1980, the futures market, in which investors gamble on the future price of hogs, grain, tobacco, and other commodities, rapidly outpaced the production of the goods whose prices were being bet on. In 1983, US futures trading totaled $7 trillion, or $28 billion a day, and by 1985, futures trading was growing at a rate ten times the rate of industrial production (Harrison & Bluestone 1988:54). The US financial market was so active that in 1984, over $4 trillion in trades came through a single investment banking firm—First Boston Corp.—more than equaling the national GNP for that year (Plotkin & Scheuerman 1994:59).

As the management of money and financial speculation outstrip production as the greatest sources of profit, this finance capitalism spawns vast new opportunities for fraud such as the hot deals and looting discussed above. Further, there are relatively few constraints or risks associated with these lucrative opportunities. Unlike corporate criminals in the industrial sector who generally commit crime to advance corporate profits and are constrained by concern for their corporation's long-term survival, collective embezzlers in the casino economy have little to lose. With no long-term investment in the infrastructure of production, their main concern is to get in and out of the house with as much of the pot as possible. The effect of their crimes on the health of the casino, or even its long-term survival, are unimportant to these financial high-flyers. *Business Week* (1985:90) describes "all the games the casino society plays": "The object . . . is to get rich today, come what may." Collective embezzlement, in which highly placed insiders loot their own institutions, may be the prototypical form of white-collar crime in this context, much as violations of fair labor standards or consumer protections are to the industrial production process.

COLLECTIVE EMBEZZLEMENT AND THE STATE

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, 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 consistent with a structural 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 because 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 1977), "legitimation" (O'Connor 1973), or "the cohesion of the social formation" (Poulantzas 1969) in the interest of political survival and the economic growth upon which it depends.

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, 1979) and others (Kolko 1963, 1965, Miliband 1969), structuralists argue that state managers are not captive to individual capitalists' 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 of 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).

Regulation scholars who borrow from this perspective have generally focused on social—rather than economic—regulation. This literature addresses the lax enforcement of social regulations and ties that laxity to the capital accumulation function of the state and the perceived costs of interfering with profitable industry (Barnett 1981, Calavita 1983, Snider 1991, Yeager 1991). These scholars also note 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. The point, however, is that active enforcement of social regulation occurs primarily in response to public pressure and legitimation concerns, and it recedes once political attention has shifted elsewhere and state legitimacy is no longer threatened (Barnett 1981, Carson 1982, Walters 1985, Calavita 1983, Gunningham 1987, Yeager 1991).

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 that 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 US Securities and Exchange Commission (SEC). As Yeager (1991) and Shapiro (1984) have shown, although 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 empirical 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, fewer than 1% of manufacturing violations were criminally processed, and no labor standard violations were prosecuted criminally. Clinard et al (1979:147) 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" (see also Barnett 1981).

Based on these empirical findings and the structural theory with which they are consistent, the lenient treatment of corporate offenders documented by

Sutherland over 40 years ago and reaffirmed by subsequent white-collar crime scholars may be a function of the state's relationship to capital. It may be, however, that this documentation of leniency is related to the fact that the primary focus in this literature is on violations of *social* regulations that cut into profits.

But, what of the collective embezzlement described above? If the structural logic is valid, then the state should have an altogether different relationship to collective embezzlement in the thrift industry than to traditional corporate crimes in the manufacturing sector. For one thing, the structural model would predict—and the empirical literature reviewed above supports this prediction—that the state would take violations of economic regulations quite seriously. Further, we would expect that enforcing *banking* regulations, which lie at the very heart of the economic system, would be among the state's highest priorities and would thus be a showcase for enforcement.

In addition, remember that collective embezzlement is aimed not at enhancing corporate profits, but at personal profit-making at the expense of the institution. In the S&L context, this "crime by the organization against the organization" not only decimated individual institutions, but threatened the demise of the whole industry, and with it the financial stability of the US economy. As a senior staff member of the Senate Banking Committee put it, "This [thrift] industry is very close to the heart of the American economy. We teetered on the edge of a major, major problem here. Well . . . we **got** a major problem, but we teetered on the edge of a major collapse . . .. All these financial industries could bring down the whole economy" (personal interview). For the state whose functions include capital accumulation and long-term economic stability, we would expect that containing this collective embezzlement would have been a top priority.

Instead, extensive evidence indicates that the state not only failed to avert the crisis but was complicitous in shielding thrift offenders from detection (Calavita & Pontell 1990, Calavita et al 1997, US Congress, House Committee on Standards of Official Conduct 1989, National Commission on Financial Institutions Reform, Recovery and Enforcement 1993). In the remainder of this paper, we argue that a close look at the evolution of the thrift crisis and the role of government in delaying its resolution suggests the need to go beyond the reductionism of current state theory, toward a more synthetic model of state activity.

PUSHING THE LIMITS OF STATE THEORY

At first blush, the S&L debacle seems to reaffirm the instrumentalist notion of a state captured by monied interests in the form of campaign contributions and other less subtle forms of "honest graft" (Jackson 1988). Indeed, implicit or explicit collusion of government officials with thrift offenders seems to have played a significant role in thwarting regulation and thereby exacerbating the crisis. At the lowest level of field inspectors and examiners—those with front-line responsibility for detecting and reporting fraud—there were occasional instances of cooptation by fraudulent thrift operators. One strategy of thrift executives was to woo examiners and regulators with job offers at salaries several times higher than their modest government wages (Pizzo et al 1991, personal interviews).

More important than these relatively infrequent forms of outright collusion by regulators and examiners were close connections between thrift industry executives and elected officials. The powerful US League of Savings and Loans, the thrifts' major lobbying group in Washington and generous donor of campaign funds, was a significant force in deflecting regulatory scrutiny, underfunding regulatory agencies, and generally postponing the closure of insolvent and fraud-ridden thrifts.[4] While the "Keating Five"—the five Senators who challenged San Francisco regulators on behalf of Charles Keating—provide the most visible example of Congressional attempts to rein in regulators, they were not alone. Congressman Fernand St Germain, Chair of the House Banking Committee and cosponsor of the deregulatory legislation in the early 1980s that set the stage for the thrift crisis, was a frequent recipient of US League of Savings and Loans largesse. Having been observed regularly dining out in Washington on the US League's expense account, St Germain was investigated by the Department of Justice for conflict-of-interest violations. The Justice Department concluded that there was "substantial evidence of serious and sustained misconduct" by St Germain in his connections with the thrift industry. A House Ethics Committee investigation came to the same conclusion. No formal prosecution was initiated, and St Germain was voted out of office in 1988. He is currently a lobbyist for the thrift industry (Jackson 1988, Pizzo et al 1991).

House Speaker Jim Wright was particularly adept at intervening on behalf of his thrift benefactors and often called Federal Home Loan Bank Board (FHLBB) Chair Ed Gray to task for his attempts at aggressive thrift regulation. On several occasions, documented in the independent counsel's report to the House Committee investigating Wright's alleged conflicts of interest (US Congress. House Committee on Standards of Official Conduct 1989, see also the National Commission on Financial Institutions Reform, Recovery and Enforcement 1993), the Speaker of the House from Texas asked the chief regulator to back off of Texas thrifts and advocated on behalf of specific thrift owners who had contributed generously to his campaign fund.

This complicity of government officials is exactly what instrumentalists would predict, and it sharply contradicts the structuralist notions of relative

[4]For a detailed discussion of the role of government corruption in the S&L debacle, see Calavita & Pontell (1994) and Calavita et al (1997).

autonomy and the priority placed on economic regulation and long-term financial stability. The fact that state officials shielded the collective embezzlement of thrift operators at the expense of economic stability adds substantial credibility to the instrumentalist model of the impact of raw economic power and influence-peddling.

However, there is more to it than this. While it is true that the US League of Savings and Loans and its individual members exerted considerable influence in Congress, at the same time a vitriolic struggle between members of Congress and the FHLBB raged behind the scenes (Black 1994, Waldman 1990, US Congress. House Committee on Standards of Official Conduct 1989). By all accounts, Ed Gray and his staff at the FHLBB were stunned by the escalating thrift crisis in Texas and elsewhere, and they approached their assignment with urgency. Gray was said to have had his "Road to Damascus experience" (Black 1994:9) watching a homemade videotape of miles of abandoned condominiums east of Dallas financed by the insured deposits of Empire Savings and Loan. He spent the rest of his tenure at FHLBB attempting to reregulate thrifts and encountering resistance from the industry, the White House, and Congress. One investigative reporter described the attack on Gray and his dogged persistence: "If Gray's reign as the bank board's chairman had been a fight . . . they would have stopped it. . .. He stood in the middle of the ring . . . taking repeated blows. But he never fell to the canvas" (Binstein 1987:48).

This clash between regulators who were alarmed at the pending disaster and key members of Congress who shielded their thrift benefactors refutes not only the structural notions of uniform state purpose and relative autonomy, but instrumentalists' depiction of state actors as simply lackeys of monied interests. It suggests instead that relative autonomy may vary across the institutions that together comprise the state. 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 contributions. Civil servants in regulatory agencies, while certainly not immune to such political and financial pressures, may for structural reasons be less susceptible to them and periodically may take a more rigorous enforcement approach in the interests of economic stability.

This account of the evolution of the thrift crisis suggests the need for a synthetic model of state action. As we have seen from the literature cited above, the state is capable of concerted action and rigorous regulation in the interest of financial stability, consistent with structural theory. On the other hand, as we have seen in the savings and loan crisis, the real-life political actors who comprise the state have their own political and career interests and are susceptible to a variety of external influences. Thus, while the state has a structural interest in economic stability and therefore in containing collective embezzlement, instrumental influences on state actors can—and periodically do—neutralize that structural interest and derail the regulatory agenda.

DISCUSSION

We have argued here that much of the insider fraud in the S&L industry in the 1980s constituted variations on "hot deals," "looting," and "covering up," and that some of these financial crimes can be thought of as collective embezzlement. Distinct from the corporate crime in the manufacturing sector first documented by Edwin Sutherland (1983), this collective embezzlement is motivated entirely by personal—not corporate—gain and erodes the institution's financial health.

We have also argued that the state's relationship to such collective embezzlement is quite different than to that of crimes perpetrated on behalf of the corporation. As a number of scholars have noted, the structurally based interest of the state in advancing corporate profits—or at least not interfering with them—helps explain the lenient treatment of corporate crime upon which the white-collar crime literature has generally focused. But to the extent that collective embezzlement undermines corporate profit-making and jeopardizes long-term economic stability, the structural restraints on enforcement do not apply; indeed, structural imperatives would dictate a quick and rigorous response.

However, as we have seen here, the US government response to the first signs of S&L fraud in the mid-1980s was conflicted and contributed to the crisis. Close examination of this response reveals that the savings and loan industry and its individual members were able to shield themselves temporarily through effective lobbying of key members of Congress and other officials. With regard to state theory, this pattern of government collusion in the crisis and intrastate struggle over regulation suggests the need for a more synthetic model, the beginnings of which we have sketched above.

This analysis, however, also has policy implications. First, in contrast to the regulatory catch-22 surrounding the enforcement of social regulations, the state has an unequivocal interest (both long-term and short-term) in containing collective embezzlement. The recognition of this new form of fraud for what it is, and the understanding of its objective relationship to the state and economic stability, might open up new regulatory space for deterrence and rigorous sanctions. After all, the looting described above—and its relationship to the state—is different from bank robbery only in its magnitude and its destabilizing effect on the whole economy. As the former Commissioner of the California Department of Savings and Loans told a Congressional committee, "The best way to rob a bank is to own one" (quoted in US Congress, House Committee on Government Operations 1988:34).

More broadly, this analysis suggests the need to revisit the role of monied interests in the political process, not just for the sake of political democracy but to shore up financial stability in this age of global economic transformation. For, while structural relations between the state and capital may allow—even dictate—a strict response to collective embezzlement, this response is subject to sabotage by those with the resources to woo policymakers with hefty campaign contributions. As one S&L regulator told us,

> "It was always the worst S&Ls in America that were able to get dramatically more political intervention. . .. If you know you are engaged in fraud, what better return is there than a political contribution" (personal interview).

In concluding, we urgently call for more research in this emerging area. While neither collective embezzlement nor its regulatory neglect are new, the epic proportions of these financial crimes and the increasing dominance of the finance capitalism on which they are based are unprecedented. Future research should build on the rich white-collar crime and state theory traditions to explore further the theoretical and policy implications of these important changes.

ACKNOWLEDGMENTS

The research reported here was supported under award 90-1J-CX-0059 from the National Institute of Justice. Points of view expressed in this document are the authors' and do not represent the official position of the US Department of Justice.

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