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Crime, Justice, and the Savings and Loan Crisis

ABSTRACT

The epidemic failure of savings and loan institutions during the 1980s was an important chapter in the financial and governmental history of the United States and an instructive context for discussing the costs of crime and for reconsidering longstanding controversies about causation in criminology. Key issues include the effect of deposit insurance on pressure for mobilization of the criminal law, the relationship between social harm from crime and levels of just punishment, the tendency for causal theories about the savings and loan failure to thrive without any empirical testing, the emphasis on regulatory rather than criminal justice failure explanations, the tendency for free market rhetoric to produce "second-best" regulatory environments that are more costly than tighter regulation, and widespread support for structural and environmental explanations of savings and loan crime that neoconservative critics attack as explanations of street crime.

The savings and loan (S&L) crisis of the 1980s and 1990s is one of the most significant chapters in the history of relations between government and financial institutions in the Western world. It will in time be studied from a variety of academic perspectives, including history, politics, economics, and the academic outposts of public administration. To date, however, the books and articles about the S&L crisis have been, in the main, nonscholarly. The early days of any historical event belong to journalists and activists, so the accumulating bookshelf

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on this crisis is both untheoretical and unconnected to the journals and jargon of the social and behavioral sciences. While some of the first generation of literature is of high quality (e.g., Mayer 1990; White 1991), published attempts in the social sciences to digest this chapter of American experience are not yet in evidence.

This essay reports our efforts to comprehend the S&L adventure as academic students of criminal law and criminal justice policy. In conducting a survey of the hearings and literature about the thrift crisis, we are interested both in what criminology can teach about the current crisis and in how data from the current crisis can inform legal and criminological theory.

In concentrating on our field of specialization, we do not mean to imply that the dramatic failure of American thrift institutions should be regarded as exclusively or even principally a criminological problem. We do, however, believe that the criminological perspective has special value in helping to comprehend both the S&L crisis and the governmental response to it. Contemporary discussion of that crisis reproduces themes that are frequently encountered in criminological debate. So the S&L crisis not only presents an opportunity to advance understanding by means of a criminological analysis but also provides a fresh setting in which to consider some issues that are recurrently discussed in criminological circles.

The essay proceeds in two sections. The first deals at length with two issues: first, the costs of the S&L crisis and how those costs can best be calculated; and second, the variety of competing explanations for the massive failure of thrift institutions in the late 1980s. Our discussion of these two issues shows how they parallel familiar debates about the costs of crime and the causes of criminal behavior in criminological literature.

Having dealt with those two issues at length in Section I, the second part of this essay gives somewhat less comprehensive attention to six theoretical issues generated by the longer discussions of cost and causation. In large part, the new ground that we break in Section II depends on the earlier elaboration of more familiar territory.

I. The Crisis as a Social and Governmental Problem

The two topics discussed in this section have great importance in the contemporary debate about the S&L crisis. There is large concern about the cost of the savings rescue, not only because public money is at risk, but also because cost is the only way that the magnitude of the

problem can be measured. The S&L crisis is only a problem to the extent of its public cost, so calculating that cost is a central issue.

The search for causes involves not the calculation of magnitude but the fixing of responsibility; there is a felt need to assess blame or at least to tell the story of this man-made disaster so that it contains some account of why the loss was suffered. It is causation in the moral sense that seems to occupy observers in the thrift crisis just as causation as a moral account is a central theme in criminological debate.

A. The Issue of Cost

There seems to be universal agreement about at least one aspect of the current S&L industry crisis (also known as the S&L collapse, calamity, debacle, and scandal and by a thesaurus of other synonyms). That agreement relates to the centrality of the issue of cost to the public importance of the problem; it also relates to the likelihood that the cost of resolving the S&L failures will be very substantial, or, as one sober economist has put it, "horrendously large" (White 1991, p. 193).

When it comes to the question of the extent of the costs involved, however, unanimity gives way not so much to fundamental disagreement as to what seems much more like an auction with competing bidders. Indeed, the central importance of large numbers suggests that we are entering one of those fields, such as drug abuse, illegal gambling, and pornography, in which hyperbolism is pandemic and where, as we have noted elsewhere, "accounting commonly takes the form of dubious quantitative impressions and largely notional statistics" (Hawkins and Zimring 1988, p. 30).

In this instance, however, appearances are deceptive. It may be no great surprise that Ralph Nader, who sees "the S&L scandal" as the result of "an unprecedented frenzy of speculation and business criminality," speaks of "sums of money [that] boggle the mind." Nader is no stranger to hyperbole. But his reference to "this \$500 billion bail out" (Nader 1990, pp. xiii and xv), although far in excess of the Federal Home Loan Bank Board's earlier estimate of \$31 billion (U.S. Congress 1988, p. 3), actually reflects a relatively modest estimate of cost as compared with some other, by no means unreasonable, computations.

Thus, G. Christian Hill, San Francisco bureau chief of the *Wall Street Journal*, estimates the ultimate cost of the thrift rescue projected over forty years as what he refers to as "a grotesque total of more than \$1 trillion" (Christian Hill 1990, p. 24). Nader's estimate is, in this

case, far from what statisticians call an "outrider." During 1990 and 1991, estimates of the total cost of the S&L crisis varied from under \$50 billion to \$1.4 trillion, or by a factor of twenty-eight. And the existence of gross variations in cost estimates does not, in this case, merely represent indulgence in the adjectival use of zeros but reflects genuine differences not only in modes of computation but also in matters of substance.

Exploring the variations in the estimates of the costs generated by the S&L crisis is justified both because the issue is intrinsically important and because analyzing how people think about costs is a good way of determining their basic assumptions about the nature of the S&L crisis and also the appropriate role of government in response to it. The question of cost is also worthy of note because it is the only empirical question in the S&L crisis to become the subject of sustained public attention.

Discussions of the costs of the S&L crisis do not encounter two major difficulties that usually confound analysis of the costs of crime. The first problem typically encountered in discussions of the costs of crime is the difficulty with which such costs are diffusely spread over a variety of victims, including other citizens, insurers, governments, and social service providers. Both the quantum of costs in the aggregate and the harm suffered by individuals and institutions as a result of criminal offenses are difficult to sum up. In the S&L case, by virtue of the comprehensive insurance scheme, a single set of federal government institutions will absorb almost the entire cost of the episode; accurate centralized accounting of its economic impact should be the automatic result of that scheme.

A second problem with cost analysis of crime is that plausible monetary costs do not exist for fright, pain, or other major loss elements from crime. For the S&L crisis, however, not only will the aggregate cost of the failures be centrally tabulated, but it will also be accurately reflected in the monetary terms used in conventional cost accounting. Trying to determine the economic cost of events like rape or robbery must involve the translation of nonpecuniary harms such as physical and psychological injury into artificial dollar equivalents, or it will inevitably fail to give any economic account of the most harmful negative consequences of those activities. With very few exceptions, what is most significant about the negative consequences of the S&L failures is the moneys lost by the various enterprises that must be replaced by the government insurance scheme. Without doubt, institutional fail-

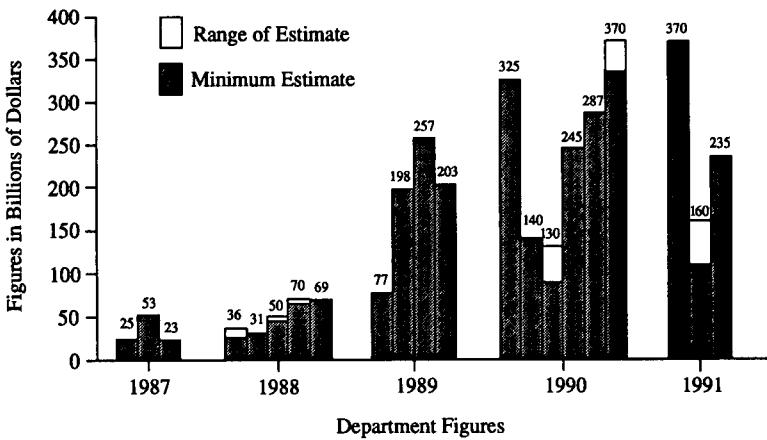


FIG. 1.—S&L bailout cost estimates. Sources: U.S. General Accounting Office (1989a, 1989b, 1991); Reischauer (1990); Barth (1991); U.S. Congressional Budget Office (1991); Wayne (1991); and various unpublished sources.

ures of this magnitude generated a large number of disappointed expectations and a considerable degree of emotional upset, but the heart of the matter was monetary and of a directly measurable nature.

So when compared with estimating the economic impact of most types of crime, analysis of the costs of the S&L crisis should be a relatively simple matter with a reasonable expectation of relatively precise answers. Yet our review of available estimates of the cost of the S&L failures reveals huge variations over short periods of time and discrepancies far in excess of 100 percent between cost estimates provided by responsible government officials, even when the estimates are based on the same data sets analyzed at the same time. While the discrepancies over time—with the total cost spiraling upward at a dizzying rate from 1987 onward—can be attributed to official Washington being reluctant to face the full magnitude of the problem until forced to by events, we show below that the cross-sectional differences in cost estimates among informed opinion reflect different views about what elements of governmental activity should be described as direct costs of the widespread S&L failures.

1. *Patterns over Time.* Figure 1 sets out cost estimates provided between 1987 and 1991 by different levels of government, either responsible federal administration officials or the U.S. General Accounting Office, as to the total dollar cost to the federal government of responding to the S&L failures. Where a single estimate was given, a bar corresponding to that estimate is placed in the figure. Where a

range estimate, for example, from \$100 billion to \$130 billion is provided, a dark bar is drawn to the minimum estimate and a lighter bar represents the distance from the minimum to the maximum cost estimate.

A preliminary point about the data in figure 1 is that most of the estimates of total cost—about three-quarters in the data—are single estimates rather than estimates of ranges. While there is a trend toward a range of estimate techniques being used in 1990 and 1991, there is still a pronounced pressure on observers to conflate all of their thinking into a single uniform measurement system. With the accumulating evidence that such loss estimates had been catastrophically erroneous all through the second half of the 1980s, it is remarkable that there still existed persons willing to make sharp point estimates; yet the pattern persisted.

A second feature of the pattern of official estimates over time is the very significant association between the passage of time and the escalation in cost estimates. Prior to 1987 none of the cost estimates that were officially presented exceeded \$11 billion, and the official estimates that had been provided *prior* to early 1989 were all under \$80 billion. By contrast, none of the eleven official cost estimates *after* early 1989 is under \$80 billion. Between 1987 and 1990 the upward momentum was rather astonishing with the annual inflation rate in cost estimates averaging about 100 percent as it climbed from \$33.6 billion to \$250 billion over three years' time before leveling during the first half of 1991.

Steep rates of inflation over time mean that one year's Cassandra estimate, at least during the late 1980s, could easily come to be regarded by the very next year as Pollyanna optimism. One of the only methods of self-protection available in this atmosphere is repeating estimate procedures and updating the minimum cost. Thus, for senior administrators both in the Bush administration and in the U.S. Government Accounting Office the only effective defense against the estimate one's office made last year is to update the official figure and then to deny that its predecessor should have any continuing claim to public attention.

To some extent, rapid and steep escalation in bailout cost estimates can be attributed to underestimation of the number of institutions likely to fail. But more important than the increasing number of institutional failures was the increasing level of cost that various observers incorporated in their formulae. By 1991 there had been five individual

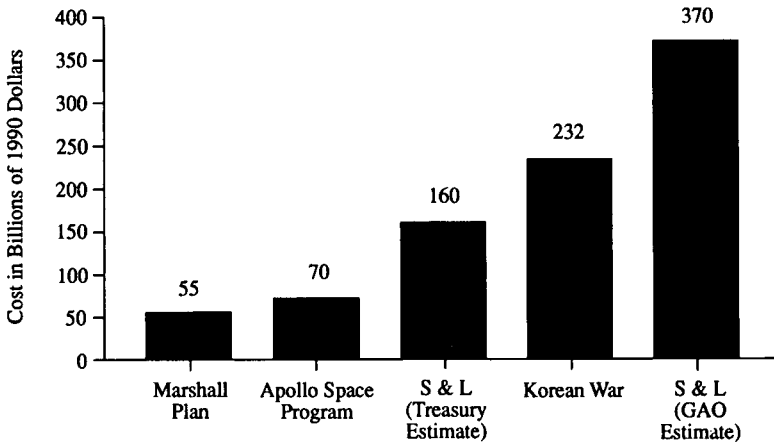


FIG. 2.—S&L bailout cost compared. Sources: Willis (1981, p. 369); U.S. Department of Commerce (1990, p. 336); U.S. National Aeronautics and Space Administration (1990, pp. 11–12); U.S. General Accounting Office (1991).

S&L failures where the bailout cost for a particular association exceeded the total cost of \$1.6 billion for the bailout program predicted by the Federal Home Loan Bank Board in 1985.¹

We would expect that the asymmetrical tendency to err on the low side in making bailout estimates would over time lead at least some observers to overestimate program costs so as not to appear to be subject to what may have looked like perennial shortfall. Yet in the contentious atmosphere of the S&L debates, no one has yet accused the Treasury or bank regulators of exaggerating when generating estimates that begin at the \$130 billion level and surge relentlessly upward from there. So we have probably not yet seen a preemptively high bid in the guess-the-cost sweepstakes.

2. *Variations in Contemporary Estimates.* Figure 2 illustrates both the financial scale of the S&L crisis and the variations in the size of estimated cost by comparing two estimates (as of mid-1991) of the S&L bailout with estimates of the cost of three other publicly funded programs: the Marshall Plan for European recovery, the Apollo space program, and U.S. expenditure for the prosecution of the Korean war—all estimates in 1990 dollars.

¹ The five S&L failures are Lincoln Savings and Loan, Irvine, California—\$2.6 billion; University Federal Savings, Houston, Texas—\$2.57 billion; Western Savings and Loan, Phoenix, Arizona—\$1.73 billion; Centrust Federal Savings Bank, Miami, Florida—\$1.7 billion; Empire of America, Buffalo, New York—\$1.7 billion. Data were provided by Suzanne Brown, Resolution Trust Corporation.

The first lesson of figure 2 is that the economic impact of the S&L crisis is by any account substantial. The low-end estimate of public moneys to be expended exceeds American expenditure for the Marshall Plan by a large margin and represents more than one-half of the total public funds attributable to a multiyear American war effort in Korea. A second lesson of figure 2 relates to the variability in estimates; the high-end estimate in that figure is more than twice the size of the low end, and most of that difference does not stem from differences in the data concerning the current estimate of monetary loss but instead arises from the different principles and procedures used in estimating the total cost.

The most dramatic illustration of the impact of different procedures on estimates of total cost relates to the difference between Bush administration estimates of total program costs and congressional estimates of the cost of the same programs. The administration projected a total cost of about \$160 billion for the program by estimating the amount the government will pay out to implement the recovery package over a small number of years in the near future. The U.S. Government Accounting Office estimate puts a \$370 billion price tag on the same programs by measuring the cost in terms of total dollars to be paid back out of government sources to note and bond holders on account of the recovery program. So the administration estimate is in current dollars while the congressional total is an aggregate of government expenditures whenever incurred without an adjustment to discount to present value the obligation to pay a dollar at some future time.

Which of these two estimates is regarded as most appropriate depends to some extent on how an estimate is to be used. Since figure 2 speaks of the level of public expenditure directly attributable to a government program at the time resources are spent and restates historical experience so as to account for inflation, the more appropriate bailout cost estimate for comparative purposes is the lower estimate. A projection of the cost of the Korean War that included all interest payments on government indebtedness resulting from the War would produce a much higher figure. That much larger figure would be more properly compared with the larger S&L cost estimate.

However, in any discussion where the central issue is the extent and timing of federal government payments that are a consequence of S&L policy, the second estimate might be a more appropriate basis for analysis than the first even without the current value discounts that are usually important in economic analysis. If the question is how many

federal dollars will be earmarked at what time and with what consequent opportunity costs for the federal budget, then the *future value* of *future dollars* spent may be more significant than their current discounted value.

There is a fine irony in the fact that lengthening the term in which the government will pay back obligations incurred in the S&L bailout increases in some estimates the aggregate cost, because the political and economic intention of the long-term payback provision is to reduce the visible economic pain associated with the program by minimizing the immediate budgetary and governmental consequences of the expenditure. A program of expenditure control that attempted to finance one-half of the S&L program by reducing levels of current governmental expenditure would bite with immediate and substantial impact. Seventy-five billion dollars next year in governmental expenditure cuts? From where and with what effects? Thus, the stretching out of repayment is a political necessity albeit one that by some measures more than doubles the cost of the enterprise.

A second conceptual issue encountered when attempting to calculate the cost of the S&L crisis is the question of how much of the total governmental cost of regulating, insuring, and reconstructing should be counted as a cost of the particular problems of the S&Ls in the 1980s. The usual technique here is to count the total cost of the regulatory mechanism as well as all the expenditures for reconstruction as part of the costs generated by the 1980s failures. But an analogy with the calculation of the cost of crime illustrates some potential difficulty with this.

Should we count all the sums spent on the police and courts and prisons as part of the costs of crime? This is a particular problem in criminal justice when scholars attempt to allocate the total cost of crime prevention and insurance to currently active offenders and the crimes they commit (see Zimring and Hawkins 1988, pp. 432–35). It is less of a problem with a limited jurisdiction regulatory regime such as the thrift industry during a period of catastrophic failure. Nevertheless, some part of the regulation and rehabilitation of that industry should be regarded as the cost of maintaining public confidence and business standards in the industry rather than a core cost of responding to thrift institution failure.

3. *The Contingent Significance of Cost.* Comparing the projected cost of the S&L bailout with the usual estimates of the cost of crime both illustrates the scale of the current problem and highlights the absence

of a direct relationship between the extent of monetary cost and the palpable harm that citizens suffer and attribute to particular causes. A \$200 billion round-number estimate for the S&L bailout amounts to a monetary cost of \$750 per citizen, or \$3,000 for a family of four. Those average figures represent a monetary loss greater than the direct cost of crime over a lifetime for all but a very small fraction of American individuals or families.

Yet the social response to the S&L crisis demonstrates a pattern of sustained attention and concern far lower than we would expect in relation to a problem that costs the average family \$3,000 and much less than, for example, public fear of property crime. At the outset, we think that this shows that it is important to take into account how costs are distributed and the basis on which public payments to cope with losses are to be financed in predicting the public response to problems. We would argue that the combination of governmental insurance and long-term deficit funding produces the smallest and least palpable amount of immediate harm to individual citizens.

To begin with, the comprehensive insurance of S&Ls has meant that practically no private citizens have suffered out-of-pocket losses as a consequence of S&L failures. The comprehensive insurance scheme makes the S&L debacle the first major institutional failure in American history subject to 100 percent government reimbursement. In this respect, the S&L crisis is a laboratory experiment in the social impact of governmental insurance, under almost ideal circumstances, because most of the harm suffered is of insurable pecuniary form. The immediate aftermath of an S&L failing and government paying depositors is that none of the depositors suffers any loss. In these circumstances, S&L failures can for a period of time be a governmental problem without being a perceptible social problem, and one significant aspect of the current situation for the criminologist and student of criminal justice is as a case study of the effect of comprehensive insurance on the processes and pressures that are ordinarily immanent throughout the criminal justice system. We return to this topic in Section II.

But it is not just deposit insurance, what Martin Mayer (1990, p. 298) calls "the socialization of losses," that attenuates public perception of the harm attributable to the S&L crisis. For the decision essentially to deficit finance the government's 100 percent liability, and thus defer the cost of the bailout and avoid either immediate taxes or conspicuously forgone opportunities for other government services, also plays

a significant role in modulating public awareness. Imagine the difference in social response if taxpayers were ordered to pay a surcharge that averaged \$1,500 or \$2,000 per family on federal income tax as an S&L bailout assessment. Clearly, the political salience of the issue would substantially increase. By contrast, "money paid ten years from now by today's voters' children seems to belong to a lower order of reality than money paid today by those voters themselves" (Thomas 1991*b*, p. 59). So it is deferral of loss in conjunction with socialization of loss that has deprived a \$200 billion misadventure of immediate impact. In that sense, current government policy represents a considered, and probably correct, judgment that a \$400 billion solution over the long run is less costly than a \$200 billion commitment of current and near-term resources.

The S&L crisis provides an opportunity to study the characteristics and consequences of an almost painless public catastrophe. Does the diminished level of perceptible public harm reduce the pressure on the criminal justice system for prosecution and punishment? If so, might not some of the public outrage that goes into the calculation of just deserts in criminal cases be in part a social response to inadequate insurance? Conversely, perhaps the anesthetic effect of comprehensive deposit insurance leads to criminal justice authorities giving less priority to the S&L problem and its prosecution than a full account of the costs involved would demand. Evidently, contingencies other than the immediate effect of particular acts are an important ingredient of the social response to perceived problems. The student of criminal justice could not find, indeed has never had, a better example of the amelioration of immediate individual loss to serve as an object of study. The wider criminological relevance and significance of this point seem to us both obvious and important.

The performance of government as a cost absorber in the thrift crisis has to date been both impressive and equivocal. The federal government can centralize and defer the cost of making good on hundreds of billions of dollars of deposit insurance. Thus, this process has been almost painless in the sense of defined groups suffering palpable harm. The ultimate cost of this maneuver in individual and social terms is almost completely unknown. Even when more is known, we suspect the social cost of the deposit payouts of this era will be better measured in specific, forgone governmental opportunities than in strict dollar terms.

B. Ideology and Causation

The large and still growing body of books and articles dealing with the S&L crisis provides if nothing else a nice example of what Isaiah Berlin (1966, p. 9) has described as "the disordered mass of truth and falsehood that [goes] by the name of history." It also provides an interesting and varied array of examples of the use of what has been called "the most important explanatory notion in history . . . that of causation" (Scriven 1966, p. 238), more particularly of the influence of ideology in the choice of causal theory.

This sometimes takes the form of direct and explicit causal attribution as when federal deposit insurance is said to have been "the fundamental cause" (Barth and Brumbaugh 1990, p. 58) or "the underlying cause" (Schumer and Graham 1990, p. 69) of the S&Ls' problems, or when "the root cause" is identified as "structural flaws in the system" (Gorham 1989, p. xvii), or "a flawed political process" is nominated as "the most fundamental cause of all" (Christian Hill 1990, p. 22). Elsewhere, although the term "cause" may not itself be used, cognate expressions are, as when the S&L crisis is said to be "*the result of greed*" (Waldman 1990*b*, p. 4; emphasis added) or "*part of the legacy of deregulation*" (O'Connell 1988, p. xi; emphasis added), or when reference is made to "*the forces that led to the downfall of the U.S. savings and loan industry*" (Pilzer 1989, p. 58; emphasis added) or to "*the key component underlying the thrift crisis*" (Romer and Weingast 1990, p. 38; emphasis added).

1. *On Cause in Criminology.* Causation has been the subject of one of "the major theoretical controversies in criminology" (Short 1983, p. 558), and some aspects of that controversy are relevant to the subject matter of this essay. For the most part, controversy has related to the relative importance of one or another perspective, as, for example, when *personality* is said to be more significant than *social structure*. An even more fundamental disagreement took the form of a suggestion by Leslie Wilkins (1968, pp. 158–60) that "the concept of 'cause' be replaced" because "'cause and effect' models . . . have revealed a startling lack of pay-off" in "criminological research." Wilkins's critique was elaborated somewhat by others (Burnham 1968; Carr-Hill 1968), but they added little of substance to his original statement.

For our purpose here, it is necessary to make only two points. The first is that, as H. L. A. Hart and Tony Honore (1985, p. 11) have pointed out, "an inseparable feature of the historian's and the lawyer's and the plain man's use of causal notions" concerns "the particular

context and purpose for which a particular causal inquiry is made and answered." In many cases the only "payoff" that is available, or can be reasonably expected, is that the causal explanation is coherent, in accordance with the available evidence, and satisfies the inquirer. Many causal explanations meet those criteria, which explains the omnipresence of causal notions in everyday language and thinking. Wilkins's (1968, p. 147) suggestion that "the concept of system" might provide a better "basis for models for use in the investigation of problems in the field of criminology," and presumably might provide more "pay-off" than causal explanation, is simply an unsupported (and unlikely) assertion.

The second point is this. Wilkins argues that "there is a basic inconsistency in saying that criminal behavior is complex and then trying to organize that statement into a 'cause-effect' system which is essentially simple." He dismisses as a "*so-called* theory of crime causation" that which is known as the "theory of multiple causation." This "concept," he asserts, proves "to be futile if not absurd" (Wilkins 1968, p. 156; emphasis added). Wilkins had argued in an earlier publication that the theory of multiple causation is "no theory." At best it could be considered an antitheory that proposes that no theory can be formed regarding crime. Such an antitheory may be legitimately put forward as a kind of beatnik philosophy but not as a "scientific theory" (Wilkins 1965, p. 37). Yet it is really immaterial if the theory is not "scientific," in the sense that it is not a systematic formulation, supported by evidence, of apparent relationships or underlying principles of observed phenomena, or that it might better be referred to not as a "theory" but rather, in George Vold's (1958, pp. 99, 182) terms, as the "multiple factor orientation" or the "multiple factor approach."

For as Michael Scriven (1968, p. 80) pointed out in response to Wilkins's article, "The importance of cause doesn't mean one can assume a *single* cause for any phenomenon in any field, or that one can *easily* identify the causes or that their relation to the effect is *simple*" (emphasis in original). The truth is that "the concept of cause is fundamental to our conception of the world in much the same way as the concept of number" (Scriven 1966, p. 258). Moreover, although John Stuart Mill's analysis of causation may have been misleading in some respects, his doctrine of the plurality and complexity of causes accords with both common sense and ordinary usage (Mill 1886, pp. 214–18, 285–88; Hart and Honoré, 1985, pp. 20–21). And in criminological research "the general multi-causal model, which is basic to most re-

search," is based on the presumption "that the phenomenon to be explained may have many causes [and] different instances of the phenomenon may be accounted for by different combinations of these many causal factors" (Miller 1983, p. 568).

The extensive literature on the causes of crime reveals, in addition to a vast miscellany of nominated causes or causal factors, what has been called a "dichotomization of theoretical approaches" (Finestone 1976, p. 45) in relation to causation. Some analysts emphasize the importance of personal or individual factors in the genesis of criminal behavior, and others maintain that the explanation of crime or delinquency is to be found in social, organizational, or structural conditions. At the same time, a review of the literature also reveals a remarkably close relationship between the political ideology of the observer and the tendency to subscribe to either the personal/individual or societal/institutional views of crime causation.

In an earlier essay on this topic, we gave some examples to illustrate this point. Thus, we noted that, whereas political liberals tend to emphasize the importance of such things as poverty, unemployment, lack of opportunity, and racism in producing criminal behavior, political conservatives by contrast emphasize the personal characteristics and qualities of the criminal. As an example of the liberal approach, we cited Ramsey Clark's *Crime in America*:

Ramsey Clark provides an excellent example of the "liberal, root causes" approach. "If we are to deal meaningfully with crime," he says, we have to deal with what he refers to as both "the fountainheads of crime" and the "sources of crime." These comprise a vast miscellany that includes slums, racism, ignorance, congenital brain damage, prenatal neglect, sickness, disease, pollution, overcrowded housing, alcoholism, narcotics addiction, anxiety, fear, hopelessness, and injustice. Clark has also stated, "Today, change is the main cause of crime." Elsewhere he identifies "the automobile, the high-rise, television, and chemistry" as "causes of crime." In addition, he provides a list of the "elemental origins of crime," which are "heredity and environment, the interaction of individual and society, the totality of human nature and human experience." [Zimring and Hawkins 1979, p. 380]

Conservatives, by contrast, tend to speak in terms of selfishness, indiscipline, and lack of respect for the law. Thus,

Richard Nixon stated during his presidency that he totally disagreed with the view that "the criminal was not responsible for his crimes against society, but that society was responsible." "Society is guilty," he maintained, "only when we fail to bring the criminal to justice." In a similar vein, Ernest van den Haag argues that those idealists and reformers who believe that "bad social institutions . . . corrupt naturally good men" ignore "the possibility that naturally bad men corrupt good institutions. . . ." James Q. Wilson adds that "Wicked people exist. Nothing avails except to set them apart from innocent people. We have trifled with the wicked, [and] made sport of the innocent." [Zimring and Hawkins 1979, p. 372]

Having remarked on the conservatives' tendency to blame crime on individual wickedness, we then noted an apparent exception to the general pattern: the category of business or white-collar crime. In this connection, we said: "'Conservatives' raise the question: 'Is white-collar crime really crime?' The implication is that such 'crime' is not criminal in nature. The 'white-collar criminal,' it is argued, may be a violator of conduct norms, but his behavior is really no more than venial; as such referring to him as criminal is mere name-calling, based on political prejudice. . . . For the 'conservative,' crime is something that, almost by definition, cannot be committed by one's friends and associates, and, if it is, cannot be real crime" (Zimring and Hawkins 1979, p. 373).

By contrast:

The "liberal" also adopts an approach to white-collar crime at variance with his attitude to other types of offenses. Indeed, the phrase "white-collar crime" is denounced as "a revealing example of dual-standard labeling by which actions are excused, mitigated or trivialized by reference not to the nature of the conduct but to the status of the actor." The "liberals" say that large-scale theft by deception or exploitation on the part of middle and upper-class persons goes unprosecuted. They emphasize that when it is prosecuted, generally more benign treatment is accorded white-collar offenders than traditional offenders. . . . The "liberal" . . . views the categorization of certain offenses as white-collar crime as a refusal to recognize that such offenses, and, thus, their perpetrators, are really criminal and that crime is a pervasive social phenomenon which is not a reflector of wealth, power or class. It is argued, therefore, that such a refusal indicates

a systematic bias and helps to perpetuate the myth that crime is committed by a class of patently malevolent persons, significantly different from the rest of us. [Zimring and Hawkins 1979, pp. 376–77]

2. *The Thrift Crisis as White-Collar Crime.* The S&L crisis has been described as “the biggest set of white-collar crimes ever uncovered” and “the white collar heist of the century” (Calavita and Pontell 1990, pp. 309, 328). Current debate about the causes of the crisis represents a continuation of the liberal versus conservative exchange over the nature and cause of white-collar crime; a continuation in which the transposition of approaches with the conservatives looking for structural causes and the liberals for bad people to blame is almost absolute. But the complexity of the S&L situation has in this case resulted in a range of causal nominations that can be conveniently considered under four headings: structural problems unrelated to significant human error, intentional thieving and wrongdoing, structural problems attributable to the culpable failure of responsible actors, and a variety of multi-factorial nominations.

a. *No-Fault Structural Accounts.* Both those who speak on behalf of S&L entrepreneurs and intrepid deregulators and some other more neutral commentators have put forward one of two forms of no-fault structural explanation of the massive thrift failures. The earliest form of no-fault account involved a species of geographic determinism in which the recession first in energy prices and then in commercial and residential real estate in Texas and other parts of the Southwest are treated as if they were the most important proximate causes of S&L failures. It is further assumed, in some of these accounts, albeit implicitly, that regional economic turndowns were not foreseeable events that should have generated contingency planning. “The Texas real estate bust,” says Bert Ely (1991, p. 2), “caused most of the FSLIC’s [Federal Savings and Loan Insurance Corporation] asset quality problems. A comparable bust occurred in other energy-producing states. S&L real estate lending in Texas (and elsewhere in the Southwest) exploded in 1983, two years after the Southwest energy boom peaked. Real estate lending should have been declining in the 1983–1986 period, not rising. This escalating lending fueled the building of unneeded real estate, which then suffered a price collapse that added far more to S&L losses than did crime.”

In a similar vein, Lawrence J. White notes that,

Fueled by favorable tax treatment and rosy expectations concerning oil prices, commercial real estate projects boomed—especially in the Southwest. Thrifts were major financiers of and investors in these projects. . . . Not only did the price of oil fail to rise to the heights that many had expected, but it fell to levels that were only half of those of the early 1980s. Again this could only mean a sharp fall in real estate values in the oilbelt. . . . Finally, the price index of real commercial properties in the Southwest sub-region—covering the states of Arkansas, Louisiana, Oklahoma and Texas—fell by almost a third. . . . Since many real estate projects of the early 1980s were based on assumptions of a *continuing rise* in real estate values, even a leveling of prices would have had serious consequences for their viability. A severe price decline meant devastation for these projects—and for their investors and lenders. Thrifts were prominent among these two groups. [1991, pp. 109–10; emphasis in original]

But while the fall in oil prices and the prices of residential and commercial real estate in Texas and other states in the Southwest make up a standard entrepreneurial explanation of thrift failures in 1986–87, other accounts put less emphasis on regional factors and more on general recessionary pressures as the longest period of economic expansion in postwar American history came to a close. The S&L crisis, says Michael Robinson (1990, p. 292), “began with years of economic mismanagement in this country, bloated federal budgets, and finally the ravages of inflation.”

Paul Pilzer puts it as follows:

The forces that led to the downfall of the U.S. savings and loan industry were set in motion in the 1960s by a national government that tried to fight a costly war in Vietnam without sacrificing peacetime prosperity at home. Combined with the impact of the 1973 Arab oil embargo, which ended forever the era of cheap energy, the result was an extraordinary inflationary thrust that spiraled upward almost without pause for more than fifteen years. But while the cost of living rose a spectacular 162 percent between 1965 and 1980, the rate of interest paid on consumer deposits by thrift institutions remained locked in by Depression-era regulations

[that] had a savage impact on both the thrift industry and the millions of trusting depositors. [1989, pp. 58, 60]

b. Intentional Wrongdoing. At the other extreme are those incensed observers who blame the magnitude of the S&L crisis on the activities of thieves and scoundrels and see the S&L crisis as “a story of prodigious crimes and the hurt and tragedy that followed in their wake” (Maggin 1989, p. 1). Thus, Michael Waldman (1990*b*, p. 4) says that “the first thing to understand is that this crisis [the S&L debacle] was not merely the product of adverse economic conditions or an act of nature. Instead it was the result of greed on an epic scale—what Al Capone called ‘the legitimate rackets.’ Bank robbers use guns and physical force. The thrift robbers saw a new method—persuading the government to enact laws that actually *allowed* them to empty the till” (emphasis in original).

“Remember,” says Nader (1990, p. xiii), “when our governmental leaders first let us in on the secret: did you notice that they called it the S&L ‘crisis’ and never the *crime* and looting of the savers’ monies it was and is?” (emphasis in original). “A financial mafia of swindlers, mobsters, greedy S&L executives, and con men,” say Stephen Pizzo and his associates (1989, p. 298), “capitalized on regulatory weaknesses created by deregulation and thoroughly fleeced the thrift industry. Savings and loans would not be in the mess they are today but for rampant fraud. Yet to this day diehard apologists . . . flatly refuse to admit that purposeful fraud was in fact chiefly to blame for the FSLIC’s \$200 to \$300 billion debt . . . [an] orgy of avarice and fraud.”

Other commentators writing in a similar vein emphasize the unprecedented scale of the criminal activity involved as compared with earlier historical examples. “One of the most shopworn clichés of the financial industry,” says L. J. Davis (1990, pp. 50–51), “[is] that the best way to rob a bank is to own one. This maxim, like all maxims, is rooted in a basic truth about human nature: To wit, if criminals are given easy access to large sums of money, they will steal, and under such tempting circumstances even honest men may be corrupted. To forget this is to invite madness and ruin. In our time, such madness and ruin has visited in the form of the savings and loan scandal . . . *the most astounding financial scandal the nation has ever witnessed*—not simply a debacle but a series of debacles” (emphasis added).

“We have here . . . a decade of commercial lawlessness,” writes Michael M. Thomas (1991*a*, p. 30), “*unmatched anywhere in our history*.”

Nothing in the Gilded Era of Gould and Fisk, or in the 1920s of Insull and Ivar Krueger, or any of the celebrated 'bubbles' comes close in scale and breadth of effect. . . . A great many people conspired over at least two decades to bring down the nation's system of savings and loan institutions. . . . The mosaic of disaster was complex in the extreme, mixing simple thuggery with subtle feats of financial and legal prestidigitation. . . . It is an extremely difficult story to tell in a fashion that would provoke the kind of outrage it deserves" (emphasis added).

Again, Mayer says that

the theft from the taxpayer by the community that fattened on the growth of the savings and loan (S&L) industry in the 1980s is *the worst public scandal in American history*. . . . The S&L outrage makes Teapot Dome and Credit Mobilier seem minor episodes. . . . Future sociologists, like today's journalists, will study the irruption of criminality into what had been conservative, even beneficent organizations. . . . They will tell of Texas cowboys, California sharpies, Beltway whores, and assorted mafiosi . . . and investment banks that permitted some of their partners and executives to conspire with criminals and even rewarded them for it, provided the income derived from the conspiracy was sufficiently great. [1990, pp. 1, 3; emphasis added]

Many commentators incidentally cite in support of their analyses the testimony of Frederick D. Wolf, assistant comptroller general of the U.S. General Accounting Office (GAO), who at the San Francisco Hearings of the House Banking Committee in February 1989, stated that the "GAO found that extensive, repeated and blatant violations of laws and regulations characterized the failed thrifts that we reviewed in each and every case. Virtually every one of the thrifts was operating in an unsafe and unsound manner. . . . Under the Bank Board's definitions alone, fraud or insider abuse existed at each and every one of the failed thrifts and allegations of criminal misconduct abounded" (Wolf 1989).

We assemble all these statements not only to illustrate the popularity of this type of ascription of blame but also to highlight the ideological significance of this portrayal of the S&L crisis as the result of intentional dishonesty. For this diagnosis of the nature of the crisis by critics of the general business community is characteristic of those who subscribe to the Nader paradigm of the American state and society.

c. Culpable Negligence. Perhaps the largest group of observers and

commentators on the S&L crisis to subscribe to a single-cause explanation emphasize the culpable stupidity of government and business leaders rather than larcenous hearts or impersonal economic forces. Thus, Ely writes that “early to mid-1983 would have been the ideal time for the federal government to have disposed of all then insolvent S&Ls. But it did not, and consequently this buried problem has continued to build.” Ely ties the failure of the thrift institutions to the basic structure of the industry before the mid-1980s:

The earliest source of FSLIC/Resolution Trust Corporation (RTC) losses, maturity mismatching (investing short-term passbook savings in long-term, fixed-rate home mortgages) finally caught up with the S&Ls in 1981. Although interest rates exploded in late 1979, the willingness of many people to keep deposits in S&L at below-market interest rates largely neutralized for almost two years the devastating effect that high interest rates had on the market value of the fixed-rate mortgages owned by S&Ls at that time. In the first half of 1981, S&L depositors on average were accepting yields almost 5 percent below market rates.

By mid-1982, however, the willingness of depositors to subsidize S&Ls had substantially disappeared, which had the effect of making S&Ls deeply insolvent, based on the market value of their mortgages. At this peak, . . . almost every S&L in America was insolvent on a market-value basis; collectively, the industry was almost \$100 billion underwater, an amount equal to 15 percent of the industry’s deposits and other liabilities. [1991, pp. 1, 2]

But far more popular as a candidate for blame are the legislative changes that decontrolled interest rates paid by thrift institutions and also the financial risks they could take, while both continuing the pattern of depository insurance and substantially increasing the amount of coverage. “Probably the single most damaging provision in the law [the Garn-St. Germain Depository Institutions Act of 1982],” says Mayer (1990, pp. 97–98), “was the elimination of all regulation of the ratio between what an S&L could lend to a developer and the appraised value of the project for which the loan was made. . . . Garn-St. Germain was increasing greatly the proportion of their assets that S&Ls could have in commercial real estate—and at the same time eliminating all control over how much could be lent to build and carry commercial

properties. And the Bank Board was permitting developers to buy S&Ls."

Another commentator on that legislation, James Ring Adams, puts it as follows:

Garn-St. Germain unleashed a horde of habitual risk-takers without subjecting them to any risk. The Bank Board compounded the problem by relaxing capital requirements almost to nonexistence. With expanded deposit insurance and reductions in the amount of capital thrifts were required to keep on hand, the new owners had every incentive to be as reckless as possible. They would reap the benefits of a long-shot business deal but bear none of the cost. In the words of one regulator, "Heads, they win. Tails, FSLIC loses." Insurance professionals have a term for it, "moral hazard." The policy offers too much temptation to cheat. [1990, p. 22]

Many commentators emphasize the role of federal deposit insurance. Thus, James Barth and R. Dan Brumbaugh (1990, p. 58) refer to federal deposit insurance as "the fundamental cause of the savings and loan problem." Again, Charles Schumer and Brian Graham (1990, pp. 73, 79) say that "it was federal deposit insurance that made the thrift crisis possible. . . . The underlying cause of this massive crisis [is] the deposit insurance system."

The operating motive suggested here is not predatory greed but rather ideologically accented naïveté or stupidity. As Neil Eichler (1989, pp. viii–ix) puts it: "In the end it was not venality or evil intentions that produced losses approaching, if not exceeding, \$100 billion most of which will fall on taxpayers; rather it was the power of an idea . . . deregulation. Ideological puritans in the Reagan administration went wild."

As for the president, "Reagan," says P. J. O'Rourke (1991, p. 206), "was the blind, deaf referee of the deregulatory wrestlemania match." "In the name of 'deregulation,'" say Norman Strunk and Fred Case (1988, pp. 2, 14), "almost overnight the [savings and loan] business was thrown into the jungle of open competition even though it was not equipped for it. . . . The single most important development that precipitated the wave of failures was 'deregulation' which first produced operating losses for most institutions and then attracted venture-

some entrepreneurs to the business who led savings associations into unfamiliar business activities."

Nevertheless, many of those who subscribe to the idea that "the savings and loan failures of the 1980s are part of the legacy of deregulation" (O'Connell 1988, p. xi) see those failures as the result of culpable negligence, more than occasionally influenced by campaign contributions and other financial inducements. "The major blame for the debacle," says Barth (1991, p. 4), formerly chief economist of the Federal Home Loan Bank Board, "rests with the government—Congress, the administration, and the federal (and state) regulators and insurers of savings and loans."

Some commentators blame "the system." Thus, William Gorham (1989, p. xvii), president of the Urban Institute, says, "The root cause of the crisis is neither a few specific regulatory mistakes nor corruption by a group of unscrupulous people in the Savings and Loan industry. The problem is the result of structural flaws in the system. Because of these flaws, the industry and its regulators, which include the United States Congress, are faced with virtually irresistible incentives to ignore signals of pending insolvency, and to postpone the inevitable day of reckoning until 'someone else' takes over and becomes responsible."

Thomas Romer and Barry Weingast (1990, p. 38) also emphasize the political foundations of what they refer to as "the thrift debacle." "The key component underlying the thrift crisis," they assert, "[was that] massive gambling for resurrection was allowed to proceed because Congress intervened in the regulatory process. . . . First, Congress delayed and kept recapitalization funding at low levels thus ensuring that regulators could force only some insolvent savings and loans to close or reorganize. . . . Second, when regulators did propose to embark on a tougher policy, Congress intervened to prevent enforcement of existing rules and, through new legislation, relaxed many regulatory provisions."

Pilzer, too, stresses the political background of the crisis:

Nor did Congress wish to have the thrift crisis laid bare and the enormous cost unveiled. Certainly the Democratic leadership could not be expected to see any profit in such an exercise. In the first place, Congress had always been the ultimate regulator of the thrift industry. It had set the rules for the Federal Home Loan Bank Board. It—or, rather, its Democratic majority—had allowed

the crisis to develop. . . . [But] the Democratic leadership's vulnerability on the thrift issue wasn't a weakness that could be exploited by the Republicans. After all, it had been the Reagan White House that had blocked Ed Gray's efforts to increase the size of the FHLBB's regulatory police force. There was also the troubling matter of Vice President George Bush's involvement. . . . The fact is that exposing the monstrous proportions the thrift crisis had reached by 1988 carried no political advantage for either party. [1989, pp. 208–9]

Moreover, Edwin Gray (1990, p. 138), who was chairman of the Federal Home Loan Bank Board from 1983 to 1987, has himself described the S&L crisis as “a story of unbridled power and influence corrupting the political process.” And Joseph Grundfest (1990, p. 25), who was a commissioner of the Securities and Exchange Commission from 1985 to 1990, sees the crisis as the result of “political failure endemic to congressional decision making: under current budgeting procedures some constituencies can manipulate Congress to provide massive private benefits at substantial public cost.”

Others have made more explicit charges. For example, Waldman (1990a, p. 47), director of Public Citizen's Congress Watch, has said that “voters are now coming to realize that Capitol Hill corruption will soon cost them thousands of dollars each. The present system of special interest financing of congressional campaigns, routine congressional intervention on behalf of wealthy contributors, and a capitol besieged by business lobbyists of every pinstripe, has led to this unprecedented bailout and a scandal of historic dimensions.”

Again, “The S&L disaster couldn't have happened without a posse of thrift allies on Capitol Hill—lawmakers purchased by campaign contributions, personal gifts, entertainment, and speech fees. In the 1980s Congress was a thoroughly corrupted institution. . . . Financial industry political action committees as a whole gave current Senate [Banking] Committee members \$3,836,598 between 1985 and 1990 and gave current House Banking Committee members \$5,193,258” (Waldman 1990b, pp. 60, 63).

The same point is made in a somewhat breezier style by O'Rourke (1991, pp. 208, 210), the White House correspondent for *Rolling Stone*: “If we want somebody to blame who can stand the blaming, let's look to the jacklegs in Congress. Beginning in the late 1980s savings-and-

loan lobbyists produced a bloody flux of political-action-committee funds and other influence effluvia, and members of the House and Senate stood by like toilets with lids up. . . . There is not room in this book for a complete list of elected offenders. There are 535 members of the House and Senate; as many as a dozen of them are blameless."

Finally, Adams offers an explanation:

Congress was an easy mark. After a decade of campaign finance hypocrisy, its members needed the money more than ever. The growth of television advertising has made the multi-billion dollar campaign a common event. With the right technology, an incumbent could virtually guarantee his seat; the rate of re-election in the 1988 House campaign exceeded 98 percent. . . . Just on the face of it—the thrift industry ruined at a public cost of \$300 billion—the result was an incredible scandal. Congress had been willfully irresponsible; in the face of urgent warnings, it had delayed the rescue of FSLIC and then had saddled it with the harmful CEBA, and all to protect the worst elements of the industry. It is hard to think of a grosser betrayal of the public interest. The one-hundredth Congress may well be remembered as the most corrupt since the days of the Credit Mobilier scandal in the late nineteenth century. And the 101st Congress is an accomplice after the fact. [1990, pp. 51–52]

d. Multiple Causation. In concentrating on single-cause explanations of the S&L problems, we do not mean to imply either that the multiplicity of failures can best be understood as the product of a single cause or that most observers who have published accounts of the matter have adopted single-cause explanations. The implosion of so many financial institutions is a phenomenon that can accommodate a variety of different causal factors interacting in the historical context of the 1970s and 1980s. Moreover, many observers have been sensitive to the way in which different kinds of problems associated with different levels of personal culpability have interacted. But, as we shall see, the attribution to multiple cause lacks a central moral focus. If lots of elements are responsible, then no one agency or personification is to blame.

"The recent savings and loan crisis," writes Patricia Werhane (1990, p. 125), "is attributed to *a number of factors*, including: deregulation of the thrifts and subsequent changes in the minimum capital requirements; the raising of Federal Savings and Loan Insurance Corporation

guarantees to \$100,000 for depositors; increased costs of funds in a fixed mortgage interest rate market; the growth in popularity of high-yield junk bonds and money market funds; and insufficient oversight of savings and loans by regulatory agencies" (emphasis added).

Christian Hill (1990, pp. 21–23) says that "there is common agreement that the biggest mistakes leading to the thrift crisis were the decisions by the Federal Home Loan Bank Board from 1980 to 1989." But he adds that "there are at least *three other primary causes* of the thrift debacle. . . . The first is the lack of current market information about the value of assets owned by the thrift industry. . . . But beyond that, it is deposit insurance that has led to the most pressing problem for depository institutions. . . . Finally there is common underestimation of another primary cause of the thrift debacle—the extent to which the mortgage market is moribund" (emphasis added).

"The savings and loan crisis. How did we get here?" wrote James Glassman in the *New Republic*. "Through a *combination* of deregulation, short-sighted home-district politics, changing cultural values, macroeconomics, and the deposit-insurance system," he states (Glassman 1990, p. 16; emphasis added). Whereas Lawrence White (1991, p. 117) says that the "thrifts largely failed because of *an amalgam* of deliberately high-risk strategies, poor business judgments, foolish strategies, excessive optimism, and sloppy and careless underwriting, compounded by deteriorating real estate markets" (emphasis added).

Perhaps the most popular multicausal explanation of the S&L crisis is in terms of the interaction of lack of regulatory control and supervision and entrepreneurial larceny in a situation where "the enhanced opportunities, capabilities and incentives for risk taking . . . created an explosive mix" (White 1991, p. 109). For the uneven regulatory pattern of the post-1981 legislation made the operation of an S&L an ideal business opportunity for entrepreneurs. As Adams (1990, p. 22) puts it: "Garn-St Germain shifted the focus to rebuilding capital. Reasoning that thrifts couldn't profit on their traditional mortgages, the bill greatly expanded the types of investments they could make. A new breed of owner was invited in, aggressive risk-takers who presumably would help the thrifts earn their way out of their hole." And entrepreneurs willing to take astronomic risks with insured deposits moved in, straddling the frontier between optimism and felony.

But a review of these multicausal accounts reveals that they lack a moral center of gravity in their descriptions of what went wrong—a bedrock notion of whom or what to blame. And here the parallel with

the general debate about white-collar crime is most striking, in that subscription to one pattern of emphasis seems to involve the exclusion of the other. Thus, some structural accounts of the S&L mess seem to be at pains to argue not merely that larcenous hearts are not a good explanation of the crisis but rather as if a search for evildoers would divert from the proper appreciation of systemic problems. Ely (1991, p. 2), whose explanation of the S&L failures we noted earlier, says categorically, "Claims that crooks stole a big chunk of the money that the S&L cleanup is going to cost are simply not true."

Critics like Nader and Waldman, by contrast, are anxious not to have attention diverted from what is referred to as "epic corruption" and "an unprecedented frenzy of business criminality" (Nader 1990, p. xiii). While they recognize the role played by government error in, for example, "failing to shut down insolvent thrifts," they reject as morally inappropriate accounts that place the emphasis on negligence or mistake. "We don't say there isn't a mugging just because the foot patrolman is off at the donut shop" (Waldman 1990*b*, p. 53). Waldman (1990*a*, p. 48) acknowledges "the S&L crackup was the product of many factors" and mentions "speculative excess, high interest rates, and falling land values . . . magnified by reckless deregulation." At the same time, he poses, as though it were the crucial issue, the question "Who robbed America?" (Waldman 1990*b*, p. 3). The emphasis must remain singly on individual moral accountability.

The reversal of positions that occurs in the liberal-versus-conservative debate in relation to white-collar crime can be thought of as a *moralistic inversion* in which the liberals shift from an emphasis on societal/institutional factors to an emphasis on moral blame and personal responsibility while crime control conservatives move in the opposite direction. In the S&L affair, we would expect this reversal to be most pronounced when the focus of attention is high-status businessmen rather than some of the more socially marginal figures associated with S&L acquisitions in the early 1980s.

The morally indignant political liberals are at particular pains to label those who would describe themselves as business leaders in morally freighted language; to speak of "thrift robbers" (Waldman 1990*b*, p. 4) or the "financial mafia" (Pizzo, Fricker, and Muolo 1989, p. 298) is to create in language a moral linkage of those responsible for thrift institution losses with street criminals and Cosa Nostra dons.

Industry analysts, by contrast, tend to regard talk of "thrift robbers" as something of a distraction from the structural causes of large thrift

losses. They speak of institutional causes such as partial deregulation and subsidized deposit insurance in the same tones that liberals might use to describe inequality of economic opportunity as a cause of street crime, a set of institutional forces more important than individual wrongdoing and on a different plane.

On one issue, however, proponents of wildly different causal accounts are in near total agreement. Nobody seems to believe that empirical tests of various causal accounts should be an important element in public discourse about the S&L crisis.

3. *The Prospect for Causal Testing.* While the considerable literature on the S&L scandal is awash with causal theories, very few observers have stepped over the boundary that separates theoretical speculation from statistical evidence and empirical testing. Indeed with the one exception of the issue of cost the absence of factual dispute in the S&L discussion is striking. Later in this essay we argue that there is a reason for this lacuna: factual evidence is irrelevant and superfluous when the crucial test of a theory's validity is ideological.

But quite apart from any motives that anyone might have for neglecting empirical testing of propositions about the causes of the S&L failures, there is the question whether there is available evidence relating to those failures that might be used by any observer wishing to carry out such tests. While the data available for testing existing causal theories is limited, there is much more data available for this purpose than has so far been used.

Two kinds of historical evidence could be used to test theories regarding factors nominated as causal in relation to the S&L collapses. In the first place, one can search for historical antecedents of the widespread S&L failures from the 1980s onward and critically examine the argument that in this case temporal order provides evidence for causal order. Some of the historical antecedents that have been nominated in this context include deficit spending, the activities of the Arab oil cartel, hyperinflation in the 1970s, and deregulation.

Causal arguments from historical antecedents are notorious for their inadequacy. Post hoc, ergo propter hoc is one of the most elementary fallacies, and the arguments involving this fallacy to be found in the literature on the S&L failures are no stronger than the usual post hoc candidate. But it is not merely unsophisticated post hoc argumentation that provides an inadequate empirical reference for causal inference in this area. For multivariate statistical analyses that attempt to control by statistical means changes in policy and in economic conditions other

TABLE 1
S&L Resolutions, GAAP Insolvencies,
and Estimated Resolution Costs

	Texas	United States Other than Texas
Percentage of failure rate in the 1980s	34 (108/318)	11 (418/3,675)
Percentage of operating institutions insolvent under generally accepted accounting principles (GAAP) (1988)	56 (114/204)	12 (320/2,745)
Percentage of total funds estimated for resolutions (1989)	53 (2,953/5,608)*	47 (2,655/5,608)*

SOURCES.—Barth, Bartholomew, and Bradley (1989); Barth (1991).

* Millions of dollars.

than the hypotheses that are being tested also seem to us a singularly weak method for analyzing the empirical evidence regarding the causes of the S&L failures. Statistical sophistication and complexity hold little promise of overcoming the problems of post hoc reasoning. Almost anything that happened in the United States over the 1970s and 1980s is a candidate for post hoc causal responsibility for the thrift crisis.

A second kind of historical analysis seems more promising than efforts at post hoc reasoning. Cross-sectional analysis provides potentially helpful tests of the determinants of S&L failures. Despite the generality of the crisis, only a minority of thrift institutions in the United States have in fact failed, and failure rates differ for different kinds of institutions, in different areas, and with different management histories (White 1991, pp. 108, 113–15). Straightforward analysis of these cross-sectional differences could provide significant evidence about the relative contributions of various causal factors to the current level of failure and loss.

Consider by way of example what we would call the “geographical determinist hypothesis” as an explanation of the S&L failures. Table 1 shows three measures of S&L failure, comparing Texas to the rest of the United States. First, it shows the rate at which federally chartered S&Ls failed throughout the 1980s to the point of requiring “resolution” by the relevant federal agencies. The second measure in table 1 shows the percentage of Texas and non-Texas institutions regarded as insolvent for bookkeeping purposes by federal regulatory agencies

in 1988. The third measure of comparative difficulty is the estimated dollar cost in constant dollars for Texas and non-Texas thrift rescues.

The analysis on the impact of geography begins with data on the S&L "resolutions" by the federal government. Thirty-four percent of Texas thrifts in existence in 1980 had to be put through "resolution"—about three times the "resolution" rate for the rest of the United States. Yet the same data show a modest role for any geographical influence in two respects. First, a Texas location was hardly a sufficient condition for S&L failure. Two-thirds of Texas thrifts survived the decade without being put into "resolution." Second, only a small fraction of all S&L institutions that were put through "resolution" were located in Texas, about 20 percent of total resolutions (108 out of 526) during that ten-year period. A Texas location was far from being a necessary condition for S&L failure.

At the same time, each of these reservations needs to be further qualified by the rest of the data in table 1. When the percentage of all Texas thrifts considered to be in a state of bookkeeping insolvency in 1988 is added to the 33 percent that had already failed and been resolved, the aggregate percentage of thrifts in serious difficulties over the 1980–90 period was greater than 75 percent. A Texas location was not a sufficient condition for financial difficulty, but Texas thrifts were much more likely than not to encounter very serious problems.

Moreover, the small percentage of total thrift failures occurring in Texas understates the contribution to the S&L crisis of Texas institutions when measured by cost. For, as the bottom figures in table 1 reveal, as of 1989, more than one-half of the aggregate dollar losses attributable to particular resolutions came from Texas institutions. So Texas thrift failures when they occurred were big ticket items for the federal insurance schemes.

The simple cross tabulations in table 1 are far from telling the whole story. S&Ls can be further subdivided where data are available in order to determine whether capital and managerial conditions that might be associated with a Texas location, rather than the Texas location itself, are the significant predictors of failure or serious trouble. This kind of specific analysis should be the next step in the discussion and investigation of the causes of thrift institution failure.

None of the published discussion or analysis to the time of this writing contains any multivariate disaggregation of S&L failure rates. Indeed, it is difficult to determine, from the available literature, the actuarial odds of S&L failure by any accounting or legal measure.

With few exceptions, for example, Lawrence White's *The S&L Debacle* (1991), there is no citation of data on the relative chances of thrift institution failure in the already substantial volume of discussion of the causes of the S&L crisis. We speculate later in this article about why very few of those who purport to explain S&L failures seem to require empirical data.

II. Some Criminal Justice Perspectives

This section discusses six hypotheses about the thrift crisis of particular interest to academic students of American crime and criminal justice. We hope here to illustrate the value of social science perspectives to the comprehension of the policy issues raised by the S&L crisis.

A. *Deposit Insurance and the Mobilization of the Criminal Law*

As we have earlier noted, there is considerable disagreement among contemporary observers about the amount of criminal conduct associated with the S&L failures and about the degree to which criminality can be said to be a cause of the large number of failures. At one extreme are trade figures like Ely's estimate that criminal conduct is the explanation for no more than 3 percent of S&L insolvency (Ely 1991, p. 2). At the other extreme are a substantial number of commentators who appear to suggest that criminal fraud or its substantial equivalent played a major role in most S&L failures (Calavita and Pontell 1990; Mayer 1990; Nader 1990; Waldman 1990b; Thomas 1991a, 1991b).

A part of the difference between such polar estimates can be accounted for by terms of reference. We think that Ely has in mind criminal diversion of S&L assets where the primary intention was to misrepresent and no thought was given to the repayment of loans or the straightening out of accounts. By contrast, practices included in Nader's condemnation cover a far wider spectrum of conduct. So it seems likely that the explanation of this polar opposition regarding the degree to which the S&L failures can be blamed on criminal misconduct depends to a significant extent on where the observer draws the line in defining the management of failed loans and other potentially blameworthy S&L conduct as criminal.

The federal criminal code contains several fraud statutes that define as a felony any known falsehood in a loan application that turns out

to be material to securing a loan and that (for jurisdictional purposes) involves the use of the mails, the telephone, or another instrument of interstate commerce (e.g., 18 U.S.C. 1001, 1014). Since most of the S&L failures involve hundreds of loans that turned sour, the degree to which those failures can be regarded as the product of criminal activity depends very much on the discretionary view of federal and state prosecutors, judges, and juries. Was the developer who applied for a loan a liar, or merely an optimist, or both? Did the S&L officer who made the loan on the basis of what turned out to be an inflated market estimate know that the market estimate was too high? Did the S&L officers and board that declared and distributed profits know that those profits were an artifact of inflated asset values?

In such circumstances, the degree of criminality involved in an S&L failure is very much in the eye of the prosecutorial beholder. Moreover, the amount of punishment that might be regarded as socially required in response to such behavior is contingent on a number of other social variables. One of the major variables influencing the social pressure to prosecute and punish in this context is deposit insurance. When such insurance schemes cover individual losses, they absorb pecuniary losses that would otherwise be suffered by individual depositors and thereby diminish the pressure on investigators and prosecutors to seek out and prosecute questionable S&L behaviors as criminal acts. This in turn makes it more likely that regulatory rather than criminal law approaches will be adopted in the restructuring of the thrift industry.

A textbook example of the relationship between insured losses and pressure to prosecute concerns Charles Keating and the now-famous business practices of his Lincoln Savings and Loan. Of all the activities involving that organization and its officers, many of which appear to be potential subjects of criminal investigation and prosecution, it is significant that the first substantial indictment to be generated by the failure of the Lincoln Savings and Loan was a thirty-count fraud charge centrally concerned with the sale of holding company bonds to southern California residents. The outrage provoked by these bond sales was largely due to the fact that when the assets of the Lincoln management were seized the bondholders found themselves in possession of corporate obligations unlikely to repay one cent on the dollar and not covered by deposit insurance because they were corporate securities rather than association deposits.

The billions of dollars of Lincoln deposits that probably will not be

covered by the S&L's assets will, by contrast, nonetheless be cashed out by Federal Deposit Insurance. Those losses have to the date of this writing been the subject of no criminal prosecution. And whatever public chagrin and disapproval may be attached to the spectacle of hundreds of millions of dollars of insured deposits poured into a hotel complex with break-even room rentals of \$600 a night, it is the palpable harm represented by the losses of individual investors that produces pressures for criminal prosecution.

A significant feature in the politics of criminal prosecution is that federal and local prosecutors pay more attention to crimes when identified individuals are the victims (Benson, Cullen, and Maakestad 1990). Comprehensive insurance schemes may substantially diminish effective pressure for criminal prosecution. When insurance schemes are not subsidized, there may be some countervailing pressure for criminal prosecution generated by those who administer insurance funds or who contribute to them in ways that are sensitive to variations in cost. But such funds not only spread risks, they also diminish the levels of palpable harm that influence the allocation of prosecutorial and punishment resources.

Publicly subsidized insurance schemes where the costs of harm or damage will be absorbed at some unspecified future date should serve as a particularly effective anesthetic for the kinds of harm that usually produce public pressures for criminal prosecution. So the S&L crisis presents an opportunity for studying the way in which the insurance of individual losses affects the priority that federal and state prosecutors assign to thrift cases vis-à-vis other public and private harms that compete for attention and resources. We can also predict that the level of punishment meted out to convicted S&L miscreants will be moderated because the widows and orphans who deposited money in their institutions have been rendered fiscally whole by federal deposit insurance, a prospect we discuss in the next section.

Whether the deemphasis on punishment that social insurance may produce should be considered a distortion of the proper priorities of prosecution and punishment depends on whether there is in any meaningful sense an optimal level of prosecution and punishment for such financial crimes and also on whether the way in which that optimal level should be defined relates primarily to the level of gross pecuniary loss or to the palpable individual harm incurred. To say that such questions have not yet been answered is to misrepresent our current level of information. For such questions can only be considered in an

informed and objective fashion in the aftermath of studies of the impact of insurance schemes on the operation of the institutions of criminal justice.

B. Harm and Punishment

It is a popular axiom in modern discussions that punishment should be calibrated in proportion to the amount of harm resulting from a particular criminal act perpetrated by a particular criminal actor (van den Haag 1975; von Hirsch 1976; Singer 1979). For property crime this has been taken to justify direct linkage between the amount of money or the value of the property taken in the course of an offense and the quantum of punishment called for. This sort of justification can be found in, among other places, the guidelines issued by the U.S. Sentencing Commission that took effect in November 1987 (U.S. Sentencing Commission 1987).

The role of deposit insurance in the S&L episode shows, however, that contingencies other than the amount of money or property taken can have a powerful influence on the level of harm suffered by identifiable victims. Where the level of harm suffered depends on factors outside the offender's control, why should the social results be considered an important element in assessing the degree of blame applicable to the offender? Consider an example from the previous subsection. If Keating is convicted of fraud in relation to insured deposits, should the level of punishment be reduced because the individual losses usually associated with predatory property crime were avoided because of the federal deposit insurance scheme? If he is convicted of fraud in connection with the uninsured losses of corporate security holders, should the punishment be increased because of the greater harm to individuals? One way of considering the question is to view it in light of the common thief's complaint when punished for stealing uninsured property, which is to the effect that part of the punishment imposed on him is not due to his wrongdoing but rather to inadequate insurance.

One ingenious answer to this problem in the S&L case seems inadequate. It might be argued that the existence of deposit insurance does not affect the quantum of social harm but merely the site where the ultimate costs are borne, so that the theft of insured property is just as socially injurious as the theft of uninsured property. But one problem with this formulation is that if we took it seriously, there would be no basis for insurance. Loss spreading does in fact diminish the social disutility caused by theft. A second way of magnifying the harm

caused by theft in the context of insurance is to create a moral link between the offender's behavior and the fate of the general insurance scheme. Thus, a prosecutor may attempt to tie the behavior of individual offenders to the insolvency of the insurance fund in the late 1980s and early 1990s.

But this stratagem runs afoul of strict standards of causation because no single S&L failure was either the necessary or the sufficient cause of the failure of the insurance scheme. No single failure would have exhausted the insurance fund by itself even if the losses attributed to it were added to the historically normal loss rates for the rest of the industry. So the social harm attributable to any single S&L failure would have been quite modest if so many other S&Ls had not also failed. In this sense, the social harm attributable to the aggregate of S&L failures is considerably greater than the sum of its parts. But is each offender morally chargeable with notice that so many other S&Ls would fail?

Thus, the institution of insurance may be relevant not only to the amount of pressure for prosecution and punishment that in fact occurs but also with respect to the degree of punishment that should as a matter of principle be imposed. We would hope that the experience with insurance loss that we are currently enjoying will be seen to provide an opportunity for sustained analysis of these matters.

C. The Independence of Causal Theory

We have already distinguished between causal theories about the S&L crisis and tests of such causal theories using empirical data. The literature on the S&L failures is flooded with causal theories and hypotheses, yet the possibility of testing those theories empirically is never mentioned. This is a pattern that demands an explanation. The same factors that allow and even encourage the development of such theories without any substantial resources being invested in testing them can be found also in the circumstances of criminological discourse over the past few decades.

The motive that most observers have for constructing causal explanations of the S&L crisis is to provide explanations that are consistent with the observers' worldviews. The task is one of making the relevant events comprehensible within the observers' own ideological frame of reference. For the most part, their theories seem to have been cooked up for home consumption rather than developed for competitive trials among agnostics in the free marketplace of ideas. As soon as an expla-

nation has been found that is consistent with the observers' general views, the problem of explaining the S&L crisis is taken to have been solved. In such circumstances, any empirical testing of the explanation is regarded as superfluous, indeed potentially dangerous.

As long as such explanations are designed for consumption by persons who share the observers' perspective, an appropriate causal explanation will be accepted as more or less self-validating. It is only when dialogue and debate between those whose perspectives differ produces disagreement about causation that the need for empirical testing of any kind comes to be recognized. But as long as those who subscribe to different causal explanations talk *past* each other rather than *to* each other, there will be no recognition of any such need. That seems to be the position in relation to the explanation of S&L failures in the United States in 1993.

It also seems to be closely analogous to the conditions that characterize much criminological discourse on the subject of causation in recent decades, particularly where ideologues of the left and right are concerned. Those who are substantially committed to either "Marxist" or to neoconservative positions seem to be principally concerned to discover or formulate theoretical accounts that can be integrated with their own general views. Once an explanation of crime is found that is consistent with their respective positions it can function quite satisfactorily without being subjected to any empirical testing as long as its principal audience consists of persons already predisposed to accept it.

It is only when dialogue or debate between those holding conflicting views become more important than exchanges within the opposed ideological camps that the question of empirical testing is likely to receive attention as an important criminological concern and even then it is by no means certain that it will do so (Allen 1974, pp. 1–23).

D. The Relationship between Regulatory and Criminal Justice Responsibility

The S&L story has presented an unprecedented opportunity to observe the interaction of civil law regulatory regimes and the federal criminal justice system. Increasingly, modern government action is an important influence in creating the environment in which individual conduct including criminal conduct takes place. But the discussion of the causes of the S&L failures is the first time we can recall when the failure of the regulatory system has been widely seen as a principal cause of large-scale criminal conduct.

The notion of public causes of crime and, in particular, of government action or inaction as an influence on individual behavior is by no means novel, but it is usually associated with attenuated theories regarding the relationship between poverty or unemployment and street crime or inadequate supervision as part of a climate that allows that criminal conduct to occur. In the case of the S&L failures, however, many observers go well beyond that and speak of regulatory changes as a proximate cause of a wave of financial recklessness quite frequently including criminal conduct. It is a common understanding of the early 1990s not only that criminal conduct was an important part of the S&L failures but that this was one crime wave that was made in Washington.

William Seidman, the Federal Deposit Insurance Corporation (FDIC) chairman who led the initial Bush bailout effort, for example, put it as follows: "I suppose bad members of the industry are at fault, but they are at fault because the government allowed them in. The government said here's the candy and you can have all you want. What they didn't realize is that if you combine a credit card on the United States with no limits, the chance to invest that money just about any way you wanted, and then call off supervision because you decide you have deregulated the industry, you create almost an entrapment—a fatal attraction or whatever they call it in the law" (O'Shea 1991, pp. 289–90).

In most contemporary discussion of those failures, the actions and the inaction of the regulatory authorities are regarded as both costly and blameworthy, while the relative inaction of the criminal justice system is regarded as unimportant and certainly not particularly blameworthy. There are three attributes of the regulatory scheme that governed thrift institutions that make it an eminently suitable candidate for blame when things went wrong: thrift regulation was specific to savings institutions, was preventive in design, and historically had been effective.

All other things being equal, a specific regulatory mission should generate more responsibility for behavior within the agency's jurisdiction than a more general mandate. The Federal Home Loan Bank Board had only the responsibility for certain specified institutions, while U.S. attorneys and the FBI are charged with enforcing an enormously thick federal criminal code covering the full spectrum of social and individual conduct in violation of the criminal law. When something goes wrong with thrift institutions, it is both natural and appro-

priate that the public should expect more from the body with the more specific enforcement responsibilities.

The second reason for expecting more from the bank regulators than the enforcers of the criminal law in this context is that the regulatory scheme was designed to *prevent* harm while criminal law enforcement notoriously can only arrive after the fact of particular harms. The preventive rationale of regulation inevitably creates expectations of prevention and a tendency, when prevention fails, to blame those who maintain and operate the preventive apparatus.

A third reason why thrift regulators have received the brunt of the blame for S&L failures is that thrift regulation had succeeded, at least in avoiding scandal, for almost four decades before the 1982 deregulation. Since the regulatory mechanism was presumably effective for all those years, any epidemic of losses would naturally be seen as a culpable failure on the part of the regulators.

So state and federal criminal law enforcement has so far been assigned little of the blame for the catastrophic losses in the S&L industry. There are several aspects of this relatively low profile that are worthy of note. First, with the growth of regulatory government, the number and variety of circumstances in which other arms of government seem more importantly connected to specific areas of behavior than the criminal law have also grown and now include almost all forms of economic regulation. Sale of publicly owned securities, fraud in labeling and advertising, pollution of air and water, and standards of conduct in regulated industries are four of the main instances where specific civil regulatory authority is generally regarded as more important than criminal law enforcement.

Second, this displacement of primary responsibility can take place independently of whether criminal conduct is a recurrent and significant element in the regulatory problem. All three of the attributes we nominate as reasons for looking first to regulatory responsibility can occur even when most of the losses regulatory failure produces involved criminal conduct. The allocation of primary responsibility may then depend not on how the behavior may be characterized but rather on perceptions about how it can best be controlled.

Finally, one consequence of the relatively low profile of criminal justice agencies and processes in the S&L crisis is that it has encouraged caution on the part of criminal law enforcers. The surest way to attract attention and thus be seen as more responsible for outcomes in this crisis is to make loud noises. As long as inaction is unlikely to be

perceived by the public as the cause of any great loss, the risks associated with any conspicuous activity are likely to suggest to more than one prosecutor that discretion may be the better part of valor.

E. Deregulation and the Theory of Second Best

The story of thrift institutions in the 1980s amounted to a large-scale demonstration project testing what economists call “the fallacy of second best” (Meade 1955, pp. 102–18; Lipsey and Lancaster 1956–57). The economic fallacy is to conclude that, even when conditions contain one distortion from a perfect market, the goal of policy should still be to make all other circumstances as close to free market conditions as possible. The lesson was that policy analysts could not assume that just because a perfect market would be the best outcome, an environment with only one distortion from a perfect market would be second best. Postwar economists demonstrated that under certain conditions “two small distortions” from market conditions “are preferable to one large one” (Stiglitz 1986, p. 389).

The distortion from market conditions inherent in the structure of S&Ls was the availability of deposit insurance sold at rates that do not reflect risks or costs. As long as this distortion was a characteristic of the S&L industry, other steps toward free market conditions such as interest rate deregulation, eased capital requirements, or the end of restrictions on S&L investments may not improve the efficiency of the system and could well make matters worse.

Nobody seriously suggested moving away from deposit insurance in the 1982 deregulation—indeed, deposit insurance coverage was substantially expanded from a maximum of \$40,000 to \$100,000 per deposit. Yet all the other restriction removals were justified in classic fallacy of second-best terms.

This is perfectly exemplified in the 1984 Report of the Task Group on Regulation of Financial Services that was chaired by Vice-President Bush (Bush 1984). Although, in a prefatory letter to the president, the vice-president says that “our goal was to develop practical proposals to *strengthen the effectiveness of federal regulation*” (emphasis added), that is the only reference to strengthening federal regulation in the entire document. The whole tenor of the report is inimical to, indeed represents an explicit repudiation of, the notion of federal regulation (Pilzer 1989, p. 208; Pizzo, Fricker, and Muolo 1989, p. 250).

It is no exaggeration to say that the dominant, recurring, and unifying theme of the report, so far from being the need “to strengthen the

effectiveness of federal regulation," is by contrast what is referred to as the "need for regulatory relief" and for the removal of "excessive regulatory controls," as well as the need for "the removal of unnecessary barriers to competition" and the "reduction of unnecessary regulatory costs" (Bush 1984, pp. 27, 28, 41).

In the report's summary of recommendations, the emphasis throughout is on the achievement of "a deregulated environment" by such means as reducing "unnecessarily burdensome restrictions" and "eliminating redundant federal oversight." Thus, it is said that "the Task Group recommendations would eliminate or narrow the application of various regulatory controls to reduce unnecessarily burdensome regulatory controls." Again, "The Task Group recommendations would substantially reduce . . . the overall regulatory burden on regulated institutions and their customers" (Bush 1984, pp. 63-65).

Moreover, the rationale underlying the recommendations is clearly stated in Section I of the report: "In the five decades since the 1930s federal government policy has been largely interventionist, imposing restrictions on financial markets. . . . Federal controls on interest rates and legislative creation of various areas of restricted competition helped to stabilize the chaotic marketplace conditions that followed the stock market crash of 1929 and the wave of bank failures that occurred over the succeeding few years." It is suggested, however, that viewed in retrospect "these actions were more restrictive of competition than necessary" and that an unfortunate aftereffect is that, well over half a century later, "bank and thrift institutions remain some of the most extensively regulated businesses in America. Extensive controls remain."

By contrast, a future is envisaged in which "most federal restrictions on pricing by depository institutions will end," as will other "outdated or unnecessary regulatory controls." "Unnecessary restrictions on financial competition" will be eliminated, and "unrestrained entry into financial services markets will produce efficient markets, free of the distortions and inefficiencies that are usually created by government attempts to organize market activity." Indeed, "Congress is considering Administration-sponsored legislation to reduce the current restrictions" (Bush 1984, pp. 23-27).

As a result, of course, the other deregulations of the 1980s greatly magnified the level of public resources absorbed by the S&L failures, a case of second best with a vengeance.

The interesting question is why such an expensive object lesson of

a rather uncontroversial economic theorem was required during the 1980s. The most plausible explanation would stress the important distinction between the free market as an economic system and free market terms and metaphors as a rhetorical system. In the political arena of the 1980s and 1990s, terms like "competition," "market," "regulation," and "incentives" were part of a rhetorical system not grounded in economic theory. They were among a set of symbols to be turned to advantage by contending interest groups.

In this context, no industry group ever regards perfect competition as a best-case political outcome. Government subsidies such as underpriced deposit insurance and barriers to the free entry of potential competitors are high on the wish list of every industry lobby. The "noncompetitive regulations" under attack in the early 1980s were those that limited the ability of thrift institutions and their managements to attract funds, take risks, and have unrestricted dispositional power over their deposits. So the economists' notion of efficiency was not seen as an important value in the debate on deregulation, and technical economists were not regarded as a significant constituency to be consulted in the deregulation process.

Further, if it is only the metaphorical and symbolic significance of terms like "competition" and "market" that is of paramount importance, then it is to be expected that close but imperfect approximation of markets would be enormously appealing. And this seems just as true of efforts like the Bush Task Group after the fact of deregulation as it was in the administration and congressional activities of deregulation in 1982. So the politics of deregulation with respect to thrift institutions were on a collision course with informed economic analysis from the start. As is usual in the United States when rhetoric and substance pull in opposite directions, a rhetorical outcome was preferred.

When deregulation of financial institutions functions as a rhetorical rather than an economic exercise, close parallels can be observed between rhetoric on deregulation and the chronically theatrical debates about crime policy. Just as the symbolic politics of crime dominates discussion of legislation and judicial opinions, the symbolic politics of deregulation preempted the field and were manipulated by industry groups. For a not insignificant period in the 1980s, some economic policy in the United States was too important to permit the participation of economists in its analysis and formulation.

F. The Triumph of Structural Explanation

Earlier, we referred to competition between structural and individual theories of crime causation. When asked to list the causes of, for example, automobile theft, a person favoring structural explanations would prefer accounts featuring the widespread ownership of automobiles, inequality of incomes, inadequate security devices, and the like, whereas those who regard crime as caused primarily by individual character defects would stress such things as moral deficiencies, lack of parental discipline, and possibly other familial conditions that might encourage delinquent character development. In debates about most types of crime it is commonly liberals who emphasize structural factors and conservatives who stress individual moral weakness. This pattern is frequently reversed in the case of white-collar crime, with liberals putting the emphasis on personal immorality as the proximate cause of white-collar offenses (see Zimring and Hawkins 1979).

Some of this type of moral inversion on the part of liberals is a feature of the S&L crisis. But a much more significant reaction to the events of the past few years has been the universal acceptance by all who have seriously studied the issue that the structure of incentives produced by the 1982 deregulation was the most important explanation of the behavior that resulted in epic financial losses. Just as Richard Nixon ruefully observed in the early 1970s that "we are all Keynesians now" (Passell 1991), it can be said in the wake of the S&L crisis that we are all, or nearly all, structuralists. Indeed, nothing so powerfully confirms the importance of the structural elements in the thrift story as the reality that ignoring such factors would cause observers to be classified for that reason as part of a lunatic fringe.

The popularity of structural explanations for thrift failures stems in part from the pervasive importance of regulation in the history of the industry and the abrupt shift in policies that so immediately preceded the epidemic of failures. What remains to be noted is the hostility of some observers to accounts that stress criminal wrongdoing.

There is, of course, no inconsistency in holding to structural explanations of behavior and labeling that behavior as criminal. No matter the social forces and lapses in law enforcement that may influence the rate of purse snatching, the act itself is properly labeled and condemned as a crime. Yet many of the industry analysts minimize the role of crime in the dimensions of the S&L collapse. Thus, White says that

any treatment of the S&L debacle that focuses largely or exclusively on the fraudulent and criminal activities is misguided and misleading. It perpetuates the incorrect notion, implicitly held by many, that virtually all the thrift insolvencies were caused by "crooks" whose ill-gotten gains are deposited in Swiss bank accounts (and if we could somehow find those bank accounts, we could recover all the moneys that are necessary to clean up the insolvencies). It also diverts attention from an understanding of how and why government policies went awry and distracts policy makers from the difficult but necessary policy reforms . . . that are relevant for all of bank and thrift regulation. [1991, p. 117]

At one level, this analysis misses the obvious point that behavior can be both structurally caused and morally blameworthy. At a deeper level, however, there *is* a competition for moral attention taking place in the S&L crisis in which regulation and condemnation are competing paradigms for public policy. To address the problem as if bad men and Swiss bank accounts were the heart of the matter will divert our attention and resources from changes in society and government that can better protect us from loss.

This is, of course, the very point the liberal criminologists have been making in critiques of the politics of law and order for two decades. There is novelty, if not irony, in the prospect that massive failure of financial institutions may be the vehicle that restores the respectability of this perspective.

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