WESTERN CRIMINOLOGY REVIEW
http://wcr.sonoma.edu

Online citation: Barak, Gregg. 2013. "The Flickering Desires for White-Collar Crime Studies in the Post-Financial Crisis: Will They Ever Shine Brightly?" *Western Criminology Review* 14(2):61-71. (http://wcr.sonoma.edu/v14n2/Barak.pdf).

The Flickering Desires for White-Collar Crime Studies in the Post-Financial Crisis: Will They Ever Shine Brightly?

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Keywords: corporate crime, criminological scholarship, financial crime, newsmaking criminology, state regulation, white-collar crime

Let me thank Elliott Currie, Mary Dodge, Paul Leighton, Mike Lynch, and Robert Tillman for participating in this symposium stimulated by the publication of *Theft of a Nation*. Each of these commentators provides thoughtful responses and reflections on the crimes and victims of the powerful: Currie on the implications and wider social consequences for a developed democratic society run by an elite group of financial criminals; Dodge on the complexities of legal status, financial damages, and victimization; Leighton on (1) the diminishing consciousness of corporate crime, (2) the increasing abuses of corporate power, (3) the expansion of economic inequality, and (4) the contraction of class inquiry; Lynch on the structural connections between financial exploitation and other related forms of corporate, ecological, and environmental crime; and Tillman on the criticality of societal dependence on the growth of financial capital as the motive force behind Wall Street looting and federal regulatory colluding.

From the beginning let me also acknowledge that the other essays in this symposium fittingly harmonize with the kinds of analytical responses that I had hoped *Theft of a Nation* would prompt from a criminological readership. In other words, connecting with other criminologists who could take my ideas and apply them to the full spectrum of the crimes of the powerful was certainly a goal of this writing project, a goal that has been facilitated by both this symposium and another one that will appear in a fall 2013 issue of *Contemporary Sociology: A Journal of Reviews*, featuring *Who are the Criminals?* by John Hagan and *Theft of a Nation*.[1] In each symposium, I have directed more than a little space to correcting what I regard as misrepresentations of some of my critical points or arguments.

As a broad field of criminological inquiry, pedagogy, and research, the study of white-collar crime has remained marginal to the discipline ever since its formal birthing on December 27, 1939 when Edwin Sutherland gave his presidential address, entitled "The White Collar Criminal," to the members of the American Sociological Association. After all of these years, one concern of mine, especially as a newsmaking criminologist (Barak 1994), is that in 2013 the investigation of white-collar crime and its social control still resides outside the core of the criminological imagination. In fact, one might argue that the study of white-collar crime has never made its way off of the "endangered species" list of criminology and criminal justice, and its continued near omission persists at a time when actual human civilizations may be passing, as we have known them. On the other hand, one might argue that the flickering desires for studying white-collar crime within criminology aided by community-based organizations, NGOs, and other non-profits, may still gain traction and shine brightly from the virtual knolls of an emerging and larger worldwide undertaking for sustainability (Agnew 2012; Farrall, Ahmed, and French 2012; South and Brisman 2013).

Theft of a Nation, like several of my books, employs a social-historical approach to its subject matter. In this case, the subject is an examination of the non-prosecution of high-risk securities frauds and the legal contradictions between private banking and the state and state regulation of public banking on behalf of investors and taxpayers. As with my other social histories, such as the emergence of the public defender system in the U.S. (Barak 1980) or, homelessness in America (Barak 1991), this one calls for a cluster of collective action. In this volume, however, collectivities refer as much to the activities of criminological study as they do to the activities of body politics. So for this reason alone, let me further recognize the other analysts-researchers in this exchange for their willingness to amplify, enlarge, and generalize from many, if not all, of my thematic arguments that were developed specifically to explain the inter-workings of the Wall Street financial meltdown of 2008-09, the at-risk U.S. banking policies, and the enforcement of civil, criminal, and regulatory laws concerning the thousands of illicit securities transactions, circa 1999 to 2009.

In the opening of this journal's issue McGurrin, Jarrell, Jahn, and Cochrane have identified the dismal and paltry representations of white-collar crime in both the criminological literature and the pedagogical curriculum of U.S. criminology and criminal justice Ph.D. programs. Allow me to accentuate their findings by pointing out that neither the American Society of Criminology nor the Academy of Criminal Sciences has a division or a section that cultivates the area of White-Collar Crime. This organizational reality exists because there is apparently simply not enough demand to warrant the formation of such groups or outlets. Yet comparatively, there is enough demand that the ASC has eight divisions catering to such interests as Corrections & Sentencing, Critical Criminology, Developmental and Life-Course Criminology, Experimental Criminology, International Criminology, People of Color & Crime, Victimology, and Women & Crime. Similarly the ACJS has demand for ten sections catering to differing and overlapping areas of interest with the ASC, including Community College, Corrections, Critical Criminal Justice, International, Juvenile Justice, Law and Public Policy, Minorities and Women, Police, Restorative and Community Justice, and Security and Crime Prevention. Moreover, while several of these divisions have journals, there is no such journal for white-collar crime. Indeed, taken more broadly while there are journals for many categories of crime, such as school violence, suicide and homicide studies, for gang research, etc., there is no journal devoted to white-collar crime.

What's more, by slightly reframing McGurrin et al.'s thesis, it seems to me that if criminology and criminal justice studies are ever going to be relevant to the actual body of knowledge informing "white collar crime public policy solutions aimed at reducing its costs and consequences," then the relative absence of an examination of the crimes of the powerful must cease and desist, the sooner the better. However, given the 75-year old history of white-collar crime studies, this seems almost as unlikely as the United States ever criminally prosecuting any of the high-risk securities fraudsters occupying the offices of the biggest Wall Street firms.

Before turning to the five commentaries, a couple of self-disclosures: Like Elliott Currie I am not "a specialist on white-collar crime generally, much less on financial crime specifically." I, too, "come at these issues from the perspective of a criminological generalist." I believe, however, that more important than my status as a relative outsider to financial control frauds are the tools, methods, and perspectives that I borrow from social history, political economy, and critical legal studies. Even more so than the formal study of white-collar crime, these approaches inform both my investigation and analysis of Wall Street looting and federal regulatory colluding. Stated differently, it is the interplay of these intellectual lenses combined with the overlapping and merging historical forces that drive the critical narratives running throughout my text, which were not fully appreciated here by some of the otherwise refined and excellent commentaries.

Similarly, as a criminological generalist without a specialty who has written on numerous subjects over the years, I only started to think seriously about Wall Street securities fraud when I decided to write *Theft of a Nation* in March of 2010. At the time, I committed myself to writing this book because there were some 50 books available on the largest financial crime in U.S. history and not one of these by a criminologist. In 2013, there are now more than 200 books on Wall Street's epidemic of transgressions and the financial meltdown of 2008 that ensued because of these. More significantly, my book still stands by itself as the only one written by a criminologist.[2] Without doing the calculations, I suspect that the number of books written by non-criminologists on these financial crimes exceeds the number of "card carrying" white-collar criminologists in the U.S.[3] These social realities may have more than a lot to do with why Robert Tillman and his colleagues frequently complain about the relatively low visibility of research on white-collar crime in academia or policy studies. I further believe that this also explains the undersized study of white-collar victimization surveyed by Mary Dodge in her commentary.

To re-paraphrase: I believe that the current lack of white-collar crime discernibility in criminology speaks volumes to the more fundamental absence of theory, practice, and research devoted to the policy, teaching, and writing about the crimes of the powerful. I further believe like Jock Young (2011) that the growing state of criminological irrelevancy has a lot to do with the influence of mainstream criminology and its misplaced emphases on scientific positivism and abstracted empiricism. Likewise, as Paul Leighton contends in his commentary I also believe that these scholarly omissions

are directly linked to, or connected with, the serious lack of attention paid to economic inequality and to class-based analyses of crime and crime control in the United States.

Finally, in bringing to a close my introductory thoughts on the thoughts of the five other criminologists, allow me to leave you with an extraction of sorts based on and/or from *Theft of a Nation* that provides a synopsis of both my approach to and argument about the "crimes of capitalist control." As I wrote on page four, "Marx and Weber would have understood that this investigation is about the interplay of the developing political economy and the bureaucratically rational legal state." At its core, this work "is a study in the structural contradictions of *bourgeois legality*." Theoretically, the reciprocal model developed in Chapter 4, "Theories of White-Collar Illegalities and the Crimes of the Powerful: A Reciprocal Approach to the Political Economy of Wall Street Looting and Federal Regulatory Colluding," for example, explains the contradictions of securities frauds and state intervention that date as far back as the early 1600s in Amsterdam. These same contradictory social relations that enabled the kinds of high-risk securities frauds then as now, which have always been *de facto* beyond or outside of the formal criminal law enforcement and regulatory regime in practice, are proof of the integration of William Chambliss' *structural contradictions theory of crime* (Chambliss and Zatz 1993) with Donald Black's *theory of law in action* (Black 1976/2010).

RESPONDING TO ELLIOTT CURRIE

Overall I enjoyed the framing of Currie's commentary and thought his estimate of the costs of financial fraud as one trillion dollar annually to be reasonable and consistent with the estimated annual losses of internal fraud by the Association of Certified Fraud Examiners. For perspective, however, I would like to mention that the Wall Street debacle accounted for more than $20 trillion in lost wealth globally. It also cost some 20 million workers their jobs worldwide. Domestically, by the end of the 2012, twelve million borrowers in the U.S. were "underwater," owing $600 billion more on their mortgages than their homes were worth. In addition, between 2007 and the end of 2012, some 4 million American households lost their homes to mortgage foreclosures.

In terms of Currie's criticism of my tentativeness and the lack of conviction in my conclusion compared to my detailed analysis up to that point, he is correct. At the time, as a non-economist who had only been studying securities fraud and the Wall Street meltdown for less than two years when I wrote the conclusion, I was admittedly not as ready or sure of what my recommendations should be in order to prevent future Wall Street busts without breaking up the banking cartels. I had read a fair amount on the subject yet I ended up relying on others' assessments, evaluations, and recommendations. In particular, I was very much influenced by former Treasury Secretary Henry Paulson's *Blueprint for a Modernized Financial Regulatory Structure*, the Obama Administration's *Financial Regulatory Reform: A New Foundation*, and economist Robert Shiller's (2011) chapter, "Democratizing and Humanizing Finance," in the edited volume, *Reforming U.S. Financial Markets.* Unfortunately, many of these ideas or recommendations did not find their way into Dodd-Frank, or if they did, they have yet to materialize as discussed in my response to Leighton below.

In any event, as Currie recognizes I was much more confident about what had caused the financial meltdown of 2008, and why the Wall Street fraudsters (or their associated institutions) were not criminally prosecuted than I was about how to prevent future implosions. At the same time, I was certain that the infrequency, if at all, of any prosecutions of high stakes securities fraud and/or of a "self-regulating" financial services industry, would never realistically halt, or even restrict, any future epidemic outbreaks on Wall Street. Thus, I did not advocate for either of these approaches, alone or in combination.

Making matters more complicated and unsettling for me when it came to recommendations was that I had only just begun to appreciate that there were "good" and "bad" derivatives. Finally, to be perfectly candid I did not understand how a modernized version of Glass-Steagall or a new mechanism of some sort could be re-created where liquidity and the inability to meet payment obligations would be separated from large-scale financial gambling, without economically breaking up the banking cartel and its political oligarchy in Washington, D.C., which I did not and still do not see as happening anytime soon, short of the next Wall Street meltdown.

So with some timidity, I lined up "wishy-washy" behind Shiller's (2011) guiding principles for re-regulation rather than articulating a series of bullet-point recommendations of my own, which would have included many of his policies as well as those policies calling for more structural change. In fact, before I eventually "spit out" here and there some general recommendations, I first took the reader through Schiller's more moderate and interesting technocratic approach. After Shiller came my imaginary bailouts in the very last section of the book—A Fantasy Bailout for the American People—where the compensations to Main Street unfold during a National Tribunal for Reparations for the Crimes of Securities Fraud Committed Against the American People. It is not until the Postscript, however, as Currie correctly points out that I finally got around to calling for either the breakup of these too big to fail financial institutions and/or the nationalizing and public ownership of these mammoth banks.

Today, I am more confident that breaking up the gigantic banks rather than allowing them to fail or prosecuting them for jail is the best way to avoid future

financial scenarios like the dot.com, mortgage, and other Wall Street-like bubbles and bursts. In terms of "what needs to be done" to strengthen the social economy, I am not as confident of how to democratize the political economy of capitalism for the masses. Yet, I now have a list of recommendations, including several mentioned in the book, for struggling to democratize the political economy. In addition to two measures mentioned in my response to Lynch below, these currently include but are not limited to: breaking up and/or nationalizing the too big to fail or jail banks; exempting securities trading, insurance operations, and real estate transactions from the FDIC; standardizing derivatives and trading them openly on the public exchanges; instituting a financial transaction tax to discourage excessive trading and risk; taxing earned, unearned, and carried interest income at the same rates; and establishing state-owned banks and creating Benefit or "B" corporations.

RESPONDING TO MARY DODGE

As it worked out, *Theft of a Nation* devotes slightly more attention to victimization than it does to financial crimes and legal enforcements of securities frauds. For example, not counting the Introduction and the Conclusion, there are seven chapters in the book and the word "victimization" appears in four of those, showing up twice in separate titles and showing up twice in separate subtitles. So I was pleased that Dodge decided to target victimization in her essay. Generally, she provides a succinct and inclusive overview of the dilemmas facing the array of victims of white-collar crime and why the prospects for making these folks whole again looks less and less likely as one descends the socioeconomic ladder of victimization.

Let me say that I am in accord with most of what Dodge has written. However, I do have some comments to make on a few of the critical points that she raises. First, I am not at all optimistic about a day coming when many victims of WCC will see themselves experiencing some kind of relief or restorative justice where they are made whole again for their financial losses. While I agree that most victim rights measures do not apply to white-collar crime, I also do not view civil lawsuits as any kind of panacea or remedy for the overwhelming number of parties subject to high-risk securities fraud like the millions of mortgage victims, for example, were.

Second, absent the filing of "class action" lawsuits that are increasingly more difficult to legally certify to claim damages from a class of defendants like the Wall Street banks, civil lawsuits are a rich investor's game, for all of the reasons enumerated by Dodge. But I examine those civil suits for other reasons, including revealing the hundreds of plaintiffs who were awarded hundreds of billions for their injuries due to fraudulent activities as a way of proving that securities frauds did illegally occur. Therefore, regardless of a preponderance of evidence versus beyond a reasonable doubt, the U.S. Department of Justice could have brought forward criminal prosecutions against any of the largest banking firms since they have all been successfully sued for securities frauds, which often is the way these things go; civil victories leading to criminal prosecutions. The problem was that since all of these financial institutions were legally guilty of victimizing millions of people, it would not have been fair to only prosecute one of them as an "example" without prosecuting the others. Hence, no person or firm was criminally prosecuted for anything. Worse yet, while all the major banking, mortgage, and rating agencies were acting fraudulently with respect to investors and borrowers alike, all of them became the beneficiaries of large bailouts, bonuses, and "get out of jail" free cards.

Third, allow me to respond to Dodge who says about my "application of the 'weathering framework' and resulting stress, though thoughtful, creates complexities that are seemingly impossible to overcome in terms of improved program policies designed to assist and compensate victims of white-collar crime." As I have already stated I have no faith that improved programs for compensating victims of WCC is coming in the near or distant future. More importantly, without the criminal convictions of these financial institutions in the first place, any criminal compensation or restitution schemes for victims are irrelevant. Nevertheless, I like "weathering" as it expands our understanding of victimization in general. Moreover, it is already being employed to compensate victims of corporate crime. Again, while I am not optimistic about victim restitution or compensation programs, whether dealing with street or suite crime, I would point out that variations in weathering did play out in compensating the victims of the British Petroleum Oil Spill. Likewise, when it comes to allocating money for victims of the Boston Marathon Bombings who lost their limbs or lives, weathering will be factored in to the dollar amounts they or their families receive.

Lastly, as far as the April 2013 agreement between the Federal Reserve Board and some of the larger banks, I would not get very excited about this. This was about the third or fourth time that the government and the banks have come up with some proposed payout scheme, adjustment in the foreclosure procedures, and/or refinancing arrangement as part of a "mortgage settlement" for the more than 12 million American families affected by the housing crash. At the end of day, when assistance has come, it has been too little, too late. Folks had already "bellied up" and lost their homes and those underwater are still underwater as there was never enough assistance spread around even when enough money had been allocated. Overall, these monies ended up not be being spent and were only dispersed to a fraction of the injured victims.

Most notably, I refer to the Trouble Assets Relief Program. For example, out of a total of $700 billion, TARP allocated for those homeowners who were facing foreclosures or whose homes were underwater, $47.5 billion. Less than 10% or some $4.5 billion of that money ever found its way to homeowners because under the direction of the former Treasury Secretary Tim Geithner, the administrators in charge of overseeing the refinancing, relief, and forgiveness mortgage programs did not want the victims of predatory lending to directly benefit from their fraudulent mortgages.

RESPONDING TO PAUL LEIGHTON

In a recent commentary on collaborative authorship, Stuart Henry (2013) made an analogy between marriage and co-authorship when he suggested among other things "partnership can be mutually reinforcing." I refer to Henry's essay because Leighton and Barak have been colleagues at the same university for nearly two decades and have collaborated on several writing projects. In particular, we have been co-authoring *Class, Race, Gender, and Crime: The Social Realities of Justice in America* for some 15 years and counting through several editions. Though Leighton and Barak have not totally eclipsed each other over the years, the content of our work especially around white-collar and corporate crime has probably begun to have interchangeable content, if not distinct similarities. I also believe that our erratic yet constant conversing (e.g., in person and online, especially regarding the exchange of emails and links between us, for example, on the latest Wall Street developments) coupled with our rewriting and editing of each other's work has been mutually reinforcing experiences in how each of us sees the world and analyzes the issues of crime and justice. Hence, it might not be a coincidence or even surprising that Leighton does not critique or misrepresent my ideas in *Theft of a Nation* and I do not have any issues of difference with Leighton's commentary—although I do have a little tweaking to do. In light of these realities, I will respond to his key points as best and briefly as I can.

Size Matters

When it comes to financial capital and the banking cartel in the United States, I certainly agree with Leighton, that size does matter. A few key figures should suffice. At the end of 2011, there were some 8000 banks in the United States. The top twenty banks controlled 92 percent of the market and the top three controlled 44 percent (Ritholtz 2011). At the end of 2012, the five biggest banks—Bank of America, Wells Fargo, JP Morgan Chase, Citigroup, and Capital One Financial—held $7.94 trillion in assets. Moreover, since the Wall Street implosion the Federal Reserve has provided four of these banks (minus Capital One) plus Goldman Sachs with total subsidies equal to about $64 billion annually. Astonishingly, this is roughly equivalent to their annual aggregate profits during the same period (*Bloomberg View* 2013).

Law Making

While white-collar researchers routinely note that the harmful or illegal acts by the wealthy are by way of preemption (e.g. defeating a bill before it becomes criminal law) rather than being criminalized in the first place. I would like to see some actual data as I suspect that this is not uniformly the case and varies within and across the applicable illicit industries one examines. There are, for sure, those corporate criminal codes of other nations such as Australia, Canada, and the UK that Leighton refers to, as well as the fact that there are no laws against corporate assault and/or reckless endangerment, not to mention limited liability in the United States. At the same time, however, there are many other corporate acts that are not precluded from criminalization *de jure* but that are only *de facto* beyond incrimination.

With respect to financial frauds and securities violations in particular, these are all criminal felonies subject to imprisonment. Securities frauds are also objects of administrative, civil, and regulatory laws as well as torts, which essentially make the exact same acts or behaviors not subject to loss of liberty only subject to fines. A case in point, those financial securities frauds that brought down Wall Street and the U.S. economy were all criminal by legal definition and subject to prosecution by the DOJ. Fortunately for the wealthy, these acts are also subject to other legal sanctions defining the same behaviors as not criminal or penal, which of course brings the Federal Reserve, the Securities and Exchange Commission, the Commodity Futures Trading Commission and some 14 other agencies involved in financial regulation into play. In short, the bourgeois legal system, subject to the discretionary application and enforcement of the powers that be allows, at the same time, for both the criminalization and decriminalization of securities frauds.

Regulation and Enforcement

As for legally buying off and stymieing regulatory enactment in the first place, and regulatory enforcement in the second place, see Chapter Seven, "The Wall Street Financial Reform and Consumer Protection Act of 2010: A Synopsis of Dodd-Frank and the Re-regulation of Financial Abuse." Three years after the law's passage, Dodd-Frank has been defanged further with the help of some 2700 lobbyists, lawyers, and consultants costing the Wall Street banking cartel about $180 million dollars during this period (Rivlin 2013). An update on how the regulatory capture of Dodd-Frank is going, as of March, 2013, revealed that 148 rules had been finalized, 176 rules

had missed their deadlines, and 74 rules were still pending. In brief, the full implementation of Dodd-Frank will likely never happen; it probably won't even be close as it is now essentially high-risk banking as usual. So much for inadequate re-regulatory reforms that were always short of the mark in the first place, namely, breaking up the banking cartels. At the same time, high-risk banking could be significantly curbed without breaking up the "too big to fail," as discussed in the last section of this essay.

Crime Reports, Crime Reports When Government Partners with Industry, and Corporate Research on Their Own Victimization

Yes, yes, and yes. Crime reports and research on white-collar crime, pretty much of any kind, are woefully inadequate at best or non-existent at worst. Where they minimally exist, they are typically one-sided in nature, focusing on the attacks against corporations and their interests, and virtually indifferent to the harms and injuries perpetrated by corporations against workers, consumers, taxpayers, and the environment.

Corporate Ownership of the Media

Rounding out the whole terrible mess of colluding and propaganda is the corporate ownership of the mass media, which is perhaps being taken on a bit today by the emergence and spread of online activism and social media. But this medium is still not much of a match when it comes to the anti-regulatory biases and mantras, not to mention the even more acute dilemmas at work, such as the "regulatory Stockholm syndrome" and/or the "shadow regulating" industry. As the old Marxist adage states, the ideas of the ruling class become the ruling ideas of everybody else. In the present era dominated by finance capital the ruling ideas belong to the "high rollers" of Wall Street. And so it goes, whether we are entertaining what constitutes "securities fraud," "free markets," or "regulatory reforms," the thoughts of or the representative thinking of Wall Street have so far prevailed as the dominant ideology.

RESPONDING TO MIKE LYNCH

When it comes to the study of crime and to white-collar and corporate crime research in particular, Barak and Lynch share epistemological, ontological, and theoretical orientations that do not come across in his commentary as I think they should. In this illustration, I believe that our analyses of securities frauds and the lack of enforcement surrounding them are actually a lot closer than Lynch articulates. In short, I believe that he has downplayed exploitation as a key component of my analysis.

After aptly situating his assessment of and remarks on *Theft of a Nation* in the epidemic of corporate and financial crime that occurred during the first decade of the 21st century, Lynch continues by identifying some of those mutual strands of our shared analyses, which include: the roles of C. Wright Mills' power elite in the neoliberal formation of ideology and public policy, the material conditions of the more radical-structural Marxist or dialectical traditions of capitalist appropriation and exploitation, and the structural relations of individual or psychological behavior embedded in the subcultural-organizational worlds of the financial and regulatory services industries. Similarly, Lynch recognizes the attention that I paid to the organizational levels of crime (e.g., Barak 2012, Figure 4.2, Interactive Model of Organizational Fraud, p. 71).

On the other hand, Lynch apparently misses the connection that he should have drawn between the more powerful institutional levels of crime (e.g., Barak 2012, Figure 4.3, Interactive Model of Institutional Fraud, p. 77) that I employ as part of my analysis with his structural imagination or sociological analysis of the deleterious impacts of capitalism. As Lynch writes: "Part of the answer has to do with the inherent structural limitations of capitalism and the contradictions between structural limitations and other aspects of capitalism such as inculcating the drive for endless accumulation." Exactly. As I wrote, while capitalist societies "produce the means of survival, they also produce the means of decline, creating perpetual dilemmas and conflicts" (2012: 6) I continue on the next page:

With respect to the crimes of capitalist survival, these arise from the particular forms of social relations associated with the processes of capital accumulation, concentration, and centralization. The control of these types of financial crimes call for an examination of: (1) the particular dynamics of accumulation that develops when capital is privately owned and the process of accumulation is managed largely for private rather than public interests, and (2) the contradictory political and economic forces that permeate the social relations of criminalization and law enforcement (Barak 2012: 7).

So I am puzzled by how Lynch has extended my analysis. That is to say, my arguments I believe are consistent with the very same set of bourgeois contradictions that Lynch emphasizes in his commentary, albeit if not with the same Marxist pedigree:

> Within the structural confines of capitalism, there is little that can be done to control the consequences of these economic transformations. The state has little motivation to do so since with the advent of neo-liberal capitalism, the state largely abandoned its commitment to maintaining legitimacy among the poor and the working classes, and began to more visibly shift its legitimation function to maintaining

> conditions of capitalist accumulation. Coupled with enfeebled enforcement and regulation, the organizational context of American capitalism became ripe for promoting the theft of the nation.

Moreover, in Chapter Five, "Financial Looting, Victimization, and Legal Intervention: On Criminal Prosecution and Civil Law Enforcement," the *raison d'etre* or repeating message is to show how the contradictions in capitalism express themselves in the dialectics of bourgeois legality.

Similarly, my current and evolving PowerPoint presentation on Wall Street banking and the diffusing of the risks for future financial meltdown that Lynch has admittedly not had access to, offers a dozen recommendations (an abbreviated version of these were recited in my response to Currie above) for, in part, taking steps to socialize the ownership of wealth and helping to serve the common welfare of communities.[4] Two additional recommendations, for example, #9 [Support Environmental Defense Organizations like the Business Alliance for Local Living Economies and the American Sustainable Business Council] and #11 [Integrate Climate Change Adjustments and Financial Market Incentives] are actually based on the work of several economists as well as by the Marxist ecologists who have as Lynch argues, "extended the economic model of Marx to include the exploitation of nature." These interconnections between the inherent contradictions of capitalism in relation to both the exploitation of labor and the exploitation of nature are reinforcing of what I conclude are the mutual needs to redistribute the wealth of capital while serving the interests of the communal well-being of the greatest number of people. In other words, both of these are prerequisites for an ecologically sustainable global economy.

In sum, rather than adding to my analysis and explanation, I believe that Lynch more accurately identifies the applicability of these to other crimes of the powerful, especially in the case of "theft of health care" he discusses. I further believe that when my two interactive models of securities fraud are brought together as they are in the inclusive Reciprocal Model of Wall Street Fraud (Figure 4.4, p. 79) that criminologists are provided with what Lynch correctly concludes is "a guide to exploring other forms of white collar, corporate and green crimes."

RESPONDING TO ROBERT TILLMAN

One of the themes running almost cover-to-cover in *Theft of a Nation* is that if a bank is too big to fail, then it is too big to jail, for essentially the same reasons. In the case of the Wall Street collapse, both courses of action would have been detrimental to tens of thousands of both very high paid and well paid workers in the financial services industries, to millions of financial investors, individual and institutional, and to the U.S. and world economies. So the federal regulatory colluding to bail and not to jail is not merely about a criminal cover-up or whitewashing of securities fraud, which they are. More fundamentally, federal regulatory colluding is about doing what most people in positions of power come to view as the "best" course of action for the Wall Street workers, the investors, and the taxpayers as a whole. Colluding also has to do with the mass psychological denial of Wall Street criminality and, more importantly, to the damage control that comes with maintaining the structural faith in the "free market" financial system.

Tillman's commentary strangely is and is not a reification of my arguments. He reifies my arguments in the sense that his essay covers much of the same territory and in very similar, if not, the same kinds of ways, including examples and references shared in common. On the other hand, Tillman's essay invites me or any other reader to explore "some of the factors that lie behind the government's response to the financial crisis." I think that I tended to virtually all of those factors. I further think that I argued like Tillman does: "The contemporary financial crisis and the apparent failure of the state to aggressively punish those responsible may well reflect structural changes in the American economy." In other words, I have no doubt that the structural changes in capitalist formation affected the abilities of the state to regulate Wall Street.

If there is confusion here I suspect it may be due either to my two-sided narrative approach or to my usages of the terms, colluding and collusion. In terms of the former, my inquiry moves back-and-forth between the realities of financial markets and securities frauds, on the one hand, and the representations of these financial frauds and their regulation, on the other hand. For example, as U.S. Attorney General Eric Holder testified before the Senate Judiciary Committee on March 6, 2013:

> I am concerned that the size of some of these institutions becomes so large that it does become difficult for us to prosecute them when we are hit with indications that if you do prosecute, if you do bring a criminal charge, it will have a negative impact on the national economy, perhaps even the world economy (Gongloff 2013).

Although this has actually been the "private" position of the Obama Administration and the Holder Department of Justice since they each first took office in early 2009, it was not until Holder's recent testimony that the AG's rhetoric "came clean" and spoke publicly about the position that he and the Obama Administration had held all along. However, when the AG was unveiling the President's Financial Fraud Enforcement Task Force for the first time, back on November 17, 2009, he was singing a very different tune: "one of this Administration's most important missions is to draw upon all of the resources of the federal government to *fight financial fraud in all its*

forms. The Task Force will wage an aggressive, coordinated, and proactive effort to investigate and prosecute financial crimes" (Barak 2012:13).
Amazingly, the exact same do-nothing Task Force consisting of the very same individuals was unveiled again during President Obama's State of the Union Address in 2012. As for the fourth estate and other social media, not a peep that I know of could be heard pointing out that Obama had played the very same task force card for the second time. That is to say, not one news commentator or politician, or blogger that I am aware of has mentioned this Bill Murray *Groundhog Day* moment.

No matter, neither task force ever set up office, had a staff, or a phone number. Then again, they did not need one since they were not doing anything anyway. Perhaps "austerity" got in the way since less than a dozen FBI agents were assigned to deal with the estimated $5-7 trillion in lost home equities compared to 100 FBI agents assigned to the Enron case and more than 1000 agents assigned to the Savings and Loans scandal—crimes that together cost less than 1/40th as much as Wall Street.

In terms of the latter, I am not sure but I think that Tillman may be assuming or treating regulatory colluding or collusion as involving some kind of intentional conspiracy carried out by Congress and the various federal regulatory bureaucracies on behalf of the ruling classes to cover up their crimes of capital. In terms of my specific usage of these words, I incorporated and extended the work from Michael Johnston's *Syndromes of Corruption* (2005). Accordingly, regulatory colluding refers, in part, to a governing corruptation that "entails the ability to influence Congress' behavior and regulatory behavior more generally, from the financial industry's billion dollar lobbying and political campaign contributions to the revolving doors between Wall Street and Washington, DC" (Barak 2012:76). In part, collusion also refers to the ways in which Wall Street has penetrated all three branches of government and, in effect, "established an apparatus of regulatory collusion where criminal prosecutions of [high-risk] securities fraud are out of bounds" (Ibid).

Once again, my reciprocal model of Wall Street securities fraud depicts the working relations of the kind of non-conspiracy regulatory collusion that I am talking about. The reciprocal model has everything to do with the contradictory approval, consent, knowledge, and support of banking policy and justice relations that reproduces high-risk securities fraud that are beyond incrimination. This type of regulatory collusion has nothing in common with popular notions of conspiracy theory. Nor does "conspiracy" have much in common with the type of complicity, collaboration, connivance, participation, and involvement by federal regulators, legislators, or law enforcers, that have coalesced around a prevailing post-Keynesian neo-liberal ideology of "free markets" that I go to great lengths to describe in detail in Chapter Three, "Unenlightened Self-Interest, Unregulated Financial Markets, and Unfettered Victimization: From the Savings and Loan Bailouts to Too Big To Fail."

Somewhat differently, when Tillman represents *Theft of a Nation* as resounding with populism, a Progressive strain in American history, and a muckraking journalistic tradition, he is not off the mark. Only there are more layers of influence operating here and there are also popular currents running wider and deeper than Tillman portrays. These are culturally embedded and they include not only the more "radical" Matt Taibbi's of *Rolling Stone* or the passing voices of the Occupy Wall Street movement, whose analyses also do not vary much, if at all, from those takes on Wall Street looting by mainstream journalists, such as Gretchen Morgenson or Andrew Ross Sorkin. Finally, while my arguments have much in common with some forms of American populism, my narratives are also shaped by, build upon, and resonate with economists such as Simon Johnson, Robert Reich, and Yves Smith, not to mention those white-collar criminologists like Henry Pontell, William Black, Kitty Calavita, and Robert Tillman himself.

Most importantly, *Theft of a Nation* strives to capture the U.S. financial times, past and present, by way of the real people making history and financial policy. What I try to paint is a multilayered picture of the ongoing struggles between financial exploitation and state intervention, struggles that are older than the nation itself. Similarly, my goal by design was to be as inclusive of all positions, arguments, and viewpoints as possible. That is why I try to use the actual words of as many of the relevant economic, legal, and political players as I could to tell the story of trying to regulate the crimes of capitalist control.

POST OCCUPY WALL STREET, POST DODD-FRANK AND POST FINANCIAL CRISIS: THE "STRUGGLE" CONTINUES

As we all know our political system is less than functional. The last Congress to conclude, the 112th, set a record for the lowest number of laws passed since they started counting in 1948. I honestly don't know if that is a bad thing or not, given our overly conservative US House and Senate. I also know that there is a small, but growing, Progressive caucus in the House and that there are Progressive folks like Sherrod Brown (D-Oh), Bernie Sanders (D-Vt), and Elizabeth Warren (D-Ma) in the Senate. There are also bankers who want to break up the big banks, including Lawrence Summers,[5] and financial regulators like Daniel Tarullo, a Federal Reserve governor, who is also concerned about the ability of these banks to generate highly-leveraged profits and to rely on short-term non-deposit borrowing rather than on equity capital. On May 3, 2013 Tarullo warned the public that too big to fail remains a threat:

> We would do the American public a fundamental disservice were we to declare victory without tackling the structural weaknesses of short-term wholesale funding of markets, both in general and as they affect the too-big-to-fail problem. This is a major problem that remains, and I would suggest that additional reform measures be evaluated by reference to how effective they could be in solving it (Nasiripour 2013).

With or without breaking up the big banks, Tarullo like other struggling advocates of re-regulation are pushing such "structural fixes" as: ratcheting up capital requirements for the increased risk posed by a bank's reliance on creditors who lend on a short-term basis; requiring a greater percentage of a big bank's assets to be funded by equity rather than borrowed funds; and making it more expensive to be big by further taxing size and complexity. My knee-jerk response is to say "good luck" even though I know that recent bills in Congress, including the one introduced by Sens. Sherrod Brown and David Vitter (R-La), would compel the largest banks to either increase the amount of equity capital or reduce the amount of debt used to fund their assets, or break themselves up into several smaller pieces.

All of the above-discussed measures could indeed reduce risks as well as profits.[6] Therein lies another contradiction in the re-regulation of finance capital. And what about those flickering studies in white-collar crime and social control after the financial crisis? Of course, there is no shortage of valuable work to perform here. After all, crimes of the powerful—state, corporate, financial, and green—are ubiquitous. Unfortunately, there are far too many criminologists willing to conduct research on the powerless and far too few willing to conduct research on the powerful.

Notes

[1] Those commentators include: William Laufer, Michael Levi, Henry Pontell, and Sally Simpson.

[2] Columbia University Press published an excellent anthology. See: Will, Handelman, and Brotherton (2013).

[3] As of March 2012, there were 159 members who belonged to the White Collar Crime Research Consortium. See:http://www.nw3c.org/docs/wccrc/wccrcmembers.pdf?sfvrsn=4.

[4] "Theft of a Nation: Why the Biggest Financial Crime in History Was Not Prosecuted by the United States" has to date been publicly presented in Ypsilanti, New Orleans, New York City, and San Diego. (See the podcast interview with the Vera Institute of Justice in NYC on March 28, 2013: http://www.vera.org/videos/gregg-barak-theft-of-a-nation)

[5] As this article goes to publication, Lawrence Summers, who after the financial meltdown had argued vigorously, before President Obama, for breaking up the big banks in opposition to Timothy Geithner, former U.S. Secretary of the Treasury, who argued not to, and prevailed at the end of the day, is believed to be Obama's front runner to become the next Chair of the Federal Reserve when Ben Bernanke steps down at the end of the year. If that is the case, I would imagine that the economist-banker Summers has changed his position once again since 2009.

[6] For a critique of Brown-Vitter and why it is destined for failure by the fraud control maestro himself, see Bill Black (2013).

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