

“What the Fuck are We Collectors for American Express:” Credit Cards, Crime, and the Financial-Regulatory State

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Abstract

Discussing their potential indictment for credit card related crimes, a New York City mob operative told his fellow mafiosos that they had little to worry about. The district attorney would, he assured, “take the position, what the fuck are we collectors for American Express.” In this specific case he was correct, but only because the police followed improper procedure when arresting him and his co-defendants. In a broader sense he was mistaken: four years earlier, in 1969, New York passed a credit card crime statute written as part of a study funded by American Express. By that time, sixteen other states had passed laws based on the same study, while in 1970 Congress enacted a credit card crime bill derived in part on these state laws. Thus, when this mob operative and his partners were arrested in 1973, state and federal governments were, through their prosecutors and their courts, both collectors for and protectors for American Express and other credit card issuing companies.

This was hardly a predetermined outcome, however, but instead the result of a concerted lobbying effort by credit card issuers at the state and federal level to enact legislation defining the boundaries of acceptable practice for their new credit devices. In the 1960s, third-party credit cards, those issued by banks and firms like American Express, became an increasingly common means for consumers to finance their purchases. Cards also became an increasing object of theft and fraud, but at the time they occupied an uncertain legal space – one commentator termed them “a legal infant” – because they did not conform to established doctrines regarding fraud or stolen property. Consequently, card issuers needed to construct legal and regulatory mechanisms with which to protect their novel financial products and they needed the states, the federal government, and their courts and prosecutors to police the illicit activities made possible by their new credit devices.

By examining card issuers’ efforts to construct the legal and regulatory boundaries of credit card crime, this paper will offer a novel perspective on the relationship between business and the state at the beginning of the financial era, showing how financial corporations harnessed the penal powers of the state to protect their novel financial instruments and regulate the consumer credit market. It will do so by focusing on New York, a national center of both credit card crime and legislative and corporate efforts to police these criminal practices, and the federal government, where card issuers turned when their cards moved between state jurisdictions. Drawing on legislative records and the papers of state assemblymen and US congressmen, it will try to reconstruct the legal and legislative

efforts of card issuers to protect their plastic. Criminals, of course, did not have an active voice in the legislative process, but they continued to subvert efforts to police card crime by contriving new and ingenious schemes beyond the scope of the law. Their activities, documented in judicial and district attorney records, will offer a counterpoint to this legislative story.