

PRODUCING CONTROL AND CONSUMING RESISTANCE: THE INFORMATION  
SYSTEM OF CONSUMER CREDIT

By

DANA DESOTO

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To the Faculty of Washington State University:

The members of the Committee appointed to examine the thesis of DANA DESOTO find it satisfactory and recommend that it be accepted.

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Chair

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Abstract

by Dana DeSoto, M.A.  
Washington State University  
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Chair: Todd Norton

The project draws from and hopes to contribute to a small, yet burgeoning field of inquiry at the nexus of culture and economy dealing with the nature of money. Money, as a concrete abstraction of value, works as a signifier in culture and economy in ways that can be rhetorical (McCloskey, 1998), geographic (Martin, 1994), symbolic (Simmel, 1978) and fictitious (Roberts, 1994). In any characterization, the signifier of money does not refer to anything but itself (Corbridge & Thrift, 1994) as it flits from information system to information system in a frantic bid to stay ahead of its own contradictions and crises. I believe this conceptualization of money is at the heart of what is alternatively termed “new capitalism” (Fairclough, 2002 and Jessop, 2004), “hypercapitalism” (Graham, 2002) or “postmodern capitalism” (Harvey, 2001). Inasmuch as this involves the study of abstraction and systems of signification and persuasion, this is a study of communication.

Furthermore, consumer credit as a system of information is fundamentally a system of economic epistemology. The study shows that through a material articulation of consumer information, the consumer is removed (consumer surveillance), rendered (credit report/score) and reconstructed (score feedback) as past and present activity are used to commoditize future

activity. In this system of control, consumers are remade in a process of knowledge gathering and dissemination directed by the interests of capital accumulation (Gandy, 1993a). Inasmuch as this study of consumer credit involves the investigation of information systems, knowledge production, and processes of meaning, it is a study of communication.

Finally, the examination of consumer credit's system of information centered on a discourse analysis meant to uncover the symbolic/material dialectic in the linguistic practices/actions stakeholders employed in the dialectical hegemony of consumer credit (Mumby, 1997b). By looking at the organizational rhetoric in FACTA testimony, I delineated the operation of control and resistance in this conjuncture and demonstrated how symbolic language relates to material practice in the discursive construction of consumer credit. Inasmuch as the study of consumer credit's hegemony involves the interrogation of discourse, the symbolic/material dialectic and communicative action, it is a study of communication.

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## Chapter 1

*Buying a car? New credit laws could drive you crazy. Walk in and drive out? Not if Congress fails to renew key provisions of the Fair Credit Reporting Act (FCRA). It would mean a patchwork of conflicting laws administered by the states and a bureaucratic nightmare of red tape. A mess like that could make everything from financing a new car to obtaining a mortgage more time consuming and expensive. FCRA established a nationwide, streamlined system of consumer credit that works. It ensures accuracy, fairness and confidentiality for consumers as well as an unprecedented level of choice and service. That's why Congress needs to protect that system. (PPCC Ad, 2003)*

Thus states an advertisement produced by the Partnership to Protect Consumer Credit (PPCC), a non-profit, Washington, D.C. based organization whose partners include the U.S. Chamber of Commerce, American Financial Services Association, Capital One, Consumer Data Industry Association, Citigroup, Ford Motor Company, General Electric Company, JPMorgan Chase, MasterCard, Bank of America, and Morgan Stanley-Discover Financial Services (Fred, 2003). As is apparent in the tone of this advertisement and the constituent membership of the PPCC, the financial services industry was very concerned about the renewal of the Fair Credit Reporting Act (FCRA) – a seminal piece of legislation that precipitated and regulated the use of consumer information by this industry. It is doubtful that the public was aware of this concern and the momentous nature of this particular piece of legislation, yet momentous is an understatement when it comes to the economic impact of the FCRA and the consumer credit system it sustains. In 2003, the Fair and Accurate Credit Transactions Act (FACTA) ultimately renewed the FCRA and in 2004, the first full year of FACTA in practice; Americans accumulated \$412 billion in credit card expenditures (CreditCards.com, 2006). Thus, regardless of the public's awareness of this legislation, members of that public participate in its financial fruition. The fact of the matter is that the public has ever been ignorant of the consumer credit industry's place in American culture and the integral role it plays in corporate capitalism's

viability. A critical examination of consumer credit to explore its political, historical, social and cultural underpinnings is the focus of the study.

During 2004, the consumer credit industry earned the distinction of being one of the premier segments of the North American economy in terms of registered consumer complaints, trailing only mobile phone companies and automobile dealerships (Council of Better Business, 2005). Yet unlike the mobile phone and automobile industries, the consumer credit industry does not deal in the commercial exchange of a tangible product. Instead, consumer credit is an intangible yet highly consequential system of information where profits come from selling a customer their ability to buy based on their determined potential to repay what they borrow.

At its most fundamental level, this information system is a database of individual consumer narratives – a historical condensation of their consumer record - but the people who produce them do not own these narratives. These records and the information system they create are proprietary structures of the credit reporting bureaus and the interests they service. It seems that instead of registering complaints that decry billing errors, interest rate hikes, and introductory offer inconsistencies, an informed and aware public would be questioning the loss of its own information; information that is manufactured into a highly profitable consumer product.

The fact that people do not question the apparent inequity of this system underscores the need for the following study—to examine the consumer credit system and gain a better understanding of its methods of reconstituting the public to the advantage of capital production, using its own information. To begin, I outline late capitalism and the consumer credit system to provide a contextual framework and a necessary base of operations for the balance of the study. I will then focus on the exploration of the FACTA legislation, as a unique historical conjuncture in

consumer credit, through the development of two theoretical lenses: the political economy of information and dialectical hegemony. The contextual framework will locate the credit system in relation to the positioning of the consumer while the theoretical frameworks will focus existing research on the credit system as the object of study. These dual frameworks will conceptualize consumer credit as a site of both political economy and dialectical hegemony. I then turn attention to methodological issues such as a further description of the data to be analyzed and analysis processes.

### *Contextual Framework*

#### *Late Capitalism*

To begin, the current epoch of capitalism has many descriptors and this constitutes a breeding ground for debate. Whether this moment is described as post-industrial (Bell, 1973), an information society (Beniger, 1986) or as late modernity (Giddens, 1991), it hinges on a demarcation or turning point that generally, has been labeled the cultural turn. As described by Jameson (1991):

...this problem is at one and the same time an aesthetic and a political one. The various positions that can logically be taken on it, whatever terms they are couched in, can always be shown to articulate visions of history in which the evaluation of the social movement in which we live today is the object of an essentially political affirmation or repudiation. Indeed, the very enabling premise of the debate turns on an initial, strategic presupposition about our social system: to grant some historic originality to a postmodernist culture is also implicitly to affirm some radical structural difference between what is sometimes called a consumer society and earlier moments of the capitalism from which it emerged. (p 55)

Thus, the study's examination of consumer credit is guided by the assumption that a consumer society has now emerged from a historically, politically and aesthetically different form of earlier capitalism. Therefore, late capitalism is a major factor in whatever theorization or form of modernity can be determined to be accurate. In this regards, the study aligns with Jameson's (1991) interest in the conjoining of culture and economy:

...what has happened is that aesthetic production today has become integrated into commodity production generally: the frantic economic urgency of producing fresh waves of ever more novel-seeming goods (from clothing to airplanes), at ever greater rates of turnover, now assigns an increasingly essential structural function and position to aesthetic innovation and experimentation. (p 4)

The potential integration of aesthetic and commodity production and more specifically, the impact of commodification on cultural formations is a key feature of consumer credit that the study will explore in detail. This is not to suggest that culture and economy are synonymous. Rather, culture and economy are distinct, but share many complex connections; one of which the study intends to problematize and explore.

While resonant, Jameson's (1991) conceptualization of late capitalism with its emphasis on postmodernist cultural production and aesthetics quickly becomes abstract when considering a decidedly concrete phenomenon such as consumer credit. Therefore, the historical plane of late capitalism must include a focus on historical economics. More specifically, a basic conceptualization of the consumer's position in late capitalism contextually grounds this abstraction and zooms in on a specific issue within the large and complex capitalist institution and the corresponding body of scholarship it entails. For the purposes of the study, a pointed summary of the political economic development of consumerism provides this magnification and focus.

*The consumer in late capitalism.* The conceptualization of late capitalism in terms of the positioning of the consumer (consumerism) begins with a historical shift in the primary business formation from traditional organizations to large, multi-interest corporations (Dawson & Foster, 1998). From as far back as 1966, new forms of consumerism were described as necessary adjustments to an emerging corporate capitalism, highly susceptible to the counterproductive surpluses of capital accumulation and the resulting decrease in profit rates predicted by Marx (Baran & Sweezy, 1966). In this sense, consumerism, as a combination of new forms of

marketing and debt towards stimulating consumption, is a result of the “overaccumulation” and concentration of capital in corporate conglomerations.

...under monopoly capitalism as it has developed in the advanced capitalist countries during the twentieth century there is a strong, persistent, and growing tendency for more surplus value to be produced than can find profitable investment outlets. The reason is that the process of monopolization – what Marx called the concentration and centralization of capital – is a continuing one which has characterized the history of capitalism throughout the present century and is still operating. We can sum up by saying: the more monopolistic the economy, the stronger the tendency towards stagnation. (Sweezy, 1980, p.3)

Thus, for the consumptive exigency of late capitalism, consumerism is a counter-response to the problem of economic stagnation. This stagnation is so persistent that from the 1960’s through the first half of the 1990’s, a period that saw both an economic downturn and a corresponding upswing, “the average annual rate of growth for the U.S. economy” saw an overall “drop of about 60 percent” (Dawson & Foster, 1998, p. 55). This sheds new light on the reality of corporate capitalism as a system with an inevitable flaw:

The problem, in other words, is *not* why we have sluggish growth and persistently high unemployment but the opposite: why we have long waves of prosperity with vigorous cyclical upswings and only mild cyclical downswings. Stagnation is the norm, good times the exception. (Sweezy, 1980, p. 3)

Contrary to the normalized view of corporate capitalism as a steady and optimistic progression, the emergence of late capitalism was marked by its reality as an endemically risky endeavor for those in dominant positions within the system, if stagnation was not controlled. In the face of such a large and systemic need to produce control, corporate capitalism responded by re-invoking a new form of liberal economic policy, designed to provide corporations with the space to increase their authority. Through partnership with government, these neoliberal responses have been consistent: in their attempts to “restructure the global economy” they have attacked “unions and the state in order to reduce wages and welfare expenditures [while] promoting

deregulation, privatization, and the removal of barriers to capital mobility throughout the globe” (Dawson & Foster, 1998, p. 55).

Yet despite the ubiquity and proclaimed success of neoliberalism, corporate capitalism was still unable to conclusively “alleviate the general structural crisis in which it is caught” (Dawson & Foster, 1998, p. 55). Instead, as these attempts at restructuring the economy towards the desired ends of capital persisted, the crisis continued as “budgetary deficits became the rule rather than the exception, and the private debt structure – especially mortgage and consumer installment debt – grew more and more rapidly” (Sweezy, 1980, p. 5). Inevitably then, late capitalism is characterized by the saturation of markets and the need to artificially stimulate demand in order to maintain sufficient levels of profit and thus, increased capital accumulation in a consistent and contradictory cycle of crisis.

Subsequently, the focus of capitalism has transitioned from production to consumption as “increasingly, the center of gravity of the system has shifted from production to sales” (Dawson & Foster, 1998, p. 56). By extension, the consumer, as the focus of sales and marketing and the enactor of consumption, is now at the center of late capitalism as a target of and a key solution to, its inevitable and ongoing structural crisis. For this reason, mainstream economists see the consumer at the forefront of an economic revolution in a “decisive shift from producer to consumer power” (Shipman, 2001, p. 331). Similarly, these same economists describe corporate capitalism as moving to a “consumption pull” rather than “product push” form of commerce, which allows “previously isolated buyers to share information and pool purchasing power with one another, and to shop around for better deals with unprecedented speed and scale” (Shipman, p. 332). Therefore, late capitalism is characterized by crisis and contradiction, with the consumer identified as both a problem (stagnation) and a solution (consumerism). The problem/solution

duality of the consumer is a focus of the study, but first, the credit system must be contextualized in relation to late capitalism.

### *The Consumer Credit System*

The credit reporting system is significant because it largely determines the way the consumer participates in the American economy. Therefore, given the need to position the consumer in late capitalism, the methods and purposes for producing this determination are of central concern as potential sites for contestation and struggle. Practically everything socio-economic in cultural life today contains consumer information as an integral element because consumer information, in its most common usage in credit, determines an individual's ability to buy. This consumptive ability is a measurable and thus controllable risk based on an individual's historical record of consumption. This consumer record, better known as a credit report or its statistical condensation, a credit score, are concepts that currently are as ubiquitous and generic as the logos of MasterCard and Visa, yet the average consumer is kept from any real knowledge of their constitutive processes (Manning, 2000). In today's consumer culture, these logos are symbols of social, political, and economic institutions of monolithic proportions; yet they would not exist except for the consumer credit information system. The benefits of a product such as consumer credit for American capitalism are significant and extensive.

Credit creates a lucrative market for consumer information collected through the surveillance of consumer activity. By selling consumers credit – or an increased and inflated ability to buy – the financial services segment of late capitalism reinforces and expands consumerism as consumers now have increased capacities for consumption. In essence, “failures in purchasing power are temporarily overcome through credit; in fact, debt becomes the major form of money creation” (Mellor, 2005, p. 51). The money created by this expansion in



consumerism produces another revenue stream for the financial services industry, through various associated interest, late payment and annual fees. As a feature of the consumer credit system, multiple profit streams are a hallmark of late capitalism and so the consumer credit system fits the bill perfectly. In consumer credit, American capitalism essentially has a means for the production of consumption, or more succinctly, the production of capital. As Mellor notes,

The money market is therefore the headquarters of capitalism that links the hierarchy of debtors from the private sector to the state through the banking system. The elastic creation of credit money is the mechanism through which the capitalist system is actualized. (p. 54)

As most often is the case however, what is good for late capitalism is not necessarily good for the individual and the consumer credit system does not favor the consumer.

The consumer credit system is inequitable because it is frequently a one-way street of information. A consumer's record of consumption, the credit report, is acquired via surveillance and without the explicit knowledge or consent of the consumer. Furthermore, credit scores as statistical representations of credit reports are formulated via a proprietary statistical procedures and as such, are never fully revealed to the consumer (Manning, 2000). Instead, nonspecific and frequently contradictory rules for maintaining a 'good' credit score abound. As explained by one of the three major credit bureaus, American capitalism's storehouses of consumer information,

Any change to the credit report could affect the individual's [credit] scores. Simply closing two accounts not only lowers the number of open installment accounts (which generally will improve your score) but it also lowers the total number of all open accounts (which generally lowers your score). Furthermore, such an action will affect the average age of all accounts that could either raise or lower your score. As you can see, one seemingly simple change actually affects a large number of items on the credit report. Therefore, it is impossible to provide a completely accurate assessment of how one specific action will affect a person's credit score. This is why the score factors are important. (Experian, 2006)

Of course, the actual score factors are never revealed due to their classification as proprietary.

Also in keeping with a system of information inequality in consumer credit, once a

‘negative’ activity is recorded to an individual’s credit report, the system is stacked against the individual who attempts to rectify this ‘wrong’. From the same major credit bureau,

Delinquencies remain on your credit report for seven years. Most public record items remain on your credit report for seven years, although some bankruptcies may remain for 10 years and unpaid tax liens remain for 15 years. Inquiries remain on your report for two years. (Experian, 2006)

In order to discover any of these negative changes, an individual must inquire into their credit report, provided without cost only once a year (White House, 2003). As noted in the quote above, the very act of inquiring into a credit report is in itself a negative event proving the system’s blatant disregard for informational equity and fairness. As put forth by Graham,

many people, because they are poor, have an irregular employment history, have encountered problems with debt in the past or have had no previous contact with the financial system, are effectively ‘invisible’ to financial institutions. (quoted in Leyshon & Thrift, 1998, p. 448)

Therefore, consumer marginalization through the planned ignorance of circumstance or context, defines privilege for some and exclusion for many as basic practices of the consumer credit system.

Beyond the discriminatory practices of information inequality in the consumer credit system noted above, the excesses of credit ironically pose a grave risk to late capitalism in the US. From 1980 to 2001, “total outstanding bank and retail credit card debt [had] risen tenfold...to an incredible \$600 billion” (Nichter, 2001, p. 8). In 2005, the ever-increasing amount of debt led to a national average savings rate of negative 0.5%, something that “hasn’t happened since the Great Depression” (MSNBC, 2006). These statistics highlight an inherent risk to consumer credit as “debt-based money does...have internal contradictions” (Mellor, 2005, p. 54). Since debt is essentially “created out of nothing”, there is a “need for an ever-expanding increase in debt-based money as more money must be paid back than was originally issued.” Therefore, a “widespread failure to borrow could at any time provoke a crisis.” In this way, the

consumer credit system has done nothing to solve what can be called a crisis in capitalism (Sweezy, 1980) and has perhaps exacerbated the issue, yet it has served well to delay disaster and in the meantime, increase the profit and influence of late capitalism. From these near-sighted benefits, some argue that a new era of 'post-capitalism' is beginning "in which perfect information becomes the basis for the perfection of the market" (Dawson & Foster, 1998, p. 52) and as consumers, individuals will increasingly benefit from the convenience and liberation of a cashless society (Evans & Schmalensee, 2005). However, liberation and perfection in consumer credit is at best, a conflicted belief.

### *Summary*

As consumers engage in the perceived freedom of an open market, the enactment of consumption - after the surveillance, quantification and reproduction of credit - predicts an individual's future consumer value via their credit score. For consumers, access to this predictive information is in itself a commercial product and not only do they pay to retrieve it, but they must also conform to practices and norms that promote "good" credit in order to have credit and ultimately, participate in and contribute to this system of dubious liberation. Thus, consumer credit's perfection from the standpoint of the consumer is doubtful, yet for late capitalism credit approaches perfection in its self-fulfilling and circular methods of providing for production, consumption and thus profit - without the costs of traditional labor or the explicit consent of the information-providing consumer.

From this conceptualization of the consumer credit system, the study will focus on a specific combination of circumstances in its history. In terms of consumer credit, the various associated concerns of late capitalism, culture, economy and consumerism are among many discourses that articulate together to form a discursive structure. Conceived of in this way from a

historical and theoretical basis, the structures of late capitalism and the consumer credit system are the foundation of the study and inform the development of two theoretical frameworks.

### *Theoretical Frameworks*

#### *Framework I: The Political Economy of Information in Consumer Credit*

As a basis of the consumer credit system, information itself constitutes an important theoretical concept in the study. Gandy (1993b) highlights the importance of information to critical analyses, suggesting that, “personal information provides a useful entry point...which explains relations between emerging technologies, markets, and forms of social organization and consciousness.” As another basis of the consumer credit system, the political economy of late capitalism is also a key theoretical concept. As described by McChesney,

To understand every significant institution in the United States, and across the world, requires a basic grasp of the nature and logic of capitalism and how the system operates in the real world (2004)

Accordingly, the following will develop the political economy of information as the first framework for the study, towards an understanding of the nature of late capitalism’s use of consumer information and its place in the system of consumer credit.

*The political economy of information in late capitalism.* Late capitalism as the dominant force it is today stands almost wholly unchallenged (Schiller, 1996). This is primarily due to its operation as the main producer/collector of information, which “gives institutions power over individuals” (Rakow, 1989, p. 164). As the information dynamic between producer and consumer becomes increasingly one-sided, individuals accept and personify a limited position as receivers/suppliers, while the corporate producers/collectors of information cultivate the belief that there is no other alternative (Schiller, 1996). Subsequently, information is an “essential resource for the bureaucratic management of the global political economy” and as such, is a key site of control and struggle within culture (Gandy, 1989, p. 61).

An unequal distribution to the possession and production of information between the producer and the consumer defines and highlights this struggle (Rakow, 1989 and Schiller, 1996). The reason for this imbalance is the positioning of interests in the means of information production.

If there is any group that does not suffer from a lack of information, for example, it is business, for business can create information, buy it, get it from the government, sell it, and extract it from individuals. Yet business does not have the same obligation to give *out* information that individuals do, on the justification that a business's information is "proprietary", that is, privately owned, and that is necessary to the particular business's competitive strategy. In contrast, ask any individual who has ever applied for a bank loan, for a job, or for welfare benefits how much information about himself or herself he or she is allowed to consider "proprietary", despite the fact that its divulgence might interfere with his or her ability to compete in that particular "marketplace". (Rakow, 1989, p. 168)

Late capitalism thus maintains an imbalance in information production and collection due to its claim to the proprietary or expressly because it is corporate and privately owned. From this predestined right as a corporate institution, late capitalism determines which of its own information is collected/disseminated and in what context. Therefore, the functioning of corporate information collection/dissemination is significant since the use of information is always directed toward a specific end (Rakow, 1989). As an institution existing for the accumulation of capital, it logically follows that information is primarily collected and disseminated for that reason.

Conversely, the individual can make no claim to the proprietary nature of information and so the information collected from the individual is not done so in consideration of context and circumstance. Instead, the individual is possessed of information only until it is transmitted to the institution or put another way, at the moment the individual produces the information (Gandy, 1989). This structural inequity to information production defines a critical difference between institution and individual in terms of information as "the inequality between those who

provide and those who gather personal information” (Gandy, 1989, p. 62). From this inequality, control can exist only with the corporation because

...the power that the individual is able to exercise over the organization when she withholds personal information is almost always insignificant in comparison with the power brought to bear when the organization chooses to withhold goods or services unless the information is provided. (Gandy, 1993a, p. 19)

In the consumer credit system, personal information as a form of political economy is not simply a neo-Cartesian representation of something already existent in a verifiable, objective reality.

Personal information gathered from consumer activity begins its journey as empirical data, but as it travels through the consumer credit system, it is transformed. The transformation of information primarily occurs through the methods of its collection and the motivations of late capitalism in collecting it. This type of motivated information collection is a form of panoptic surveillance adopted from Foucault’s ‘panopticon’ in *Discipline and Punish* (1979). As described by Phillips (2004):

The model of the panopticon is a metaphor drawn from prison designs in which prisoners inhabit individual, well-lit cells in a circular periphery, while guards sit in a darkened central tower. Therefore, a single guard can view each prisoner, but prisoners can see neither the guard nor each other. This architectural arrangement allows the prisoner population to be observed and acted upon as individuals, but understood as a collective. It concentrates all knowledge in the central observer. (p. 695)

The idea of society as a panopticon relates directly to consumer credit as information is acquired from a central collector in the credit bureau. Though spatially and temporally dispersed, the advent of information technology for the data collection and analysis of consumer activity enables the credit bureau’s consistent and constant mining of consumer behavior.

Once the collected information in its empirical state is centralized, it undergoes a transformation from information to commodity. As Phillips (2004) describes it:

In its idealized form, panoptic surveillance individualizes each member of the population, and permits the observation and recording of each individual’s activities, then collates these individual observations across the population. From these conglomerated observations, statistical norms are produced relating to any of a multitude of characteristics. These norms are then applied

back to the subjected individuals, who are categorized and perhaps acted upon, either with gratification or punishment, according to their relation to the produced norm. (p. 695)

From a consumer credit perspective, this is the motivation for producing a credit report and ultimately a credit score - the predictive end of consumer credit that informs the behavior of the consumer. It is “predictive” as it manages and creates, which is significant since “the capacity to predict also provides the opportunity to control” (Gandy, 1989, p. 65).

*The political economy of information in consumer credit.* The potential for control underwrites this information system and the information-mining activity of consumer credit. As a political economy of information, consumers are passive producers of information while the credit system in comparison, is an active collector, producer and reproducer. As an active reproducer, the system does so in a purposeful manner, directed towards specific goals and through a constant back and forth between current action and future outcome (Beniger, 1986). Beniger adds that along with this input-output confirmation process, communication between controller and controlled occurs simultaneously to convey results and more importantly, influence. This feedback process and the individual’s acquiescence to it, defines the information system of consumer credit as theorized by Gandy’s panoptic sort (1993a):

The panoptic sort is a difference machine that sorts individuals into categories and classes on the basis of routine measurements. It is a discriminatory technology that allocates options and opportunities on the basis of those measures and the administrative models that they inform. The panoptic sort has been institutionalized. It is standard operating procedure. It is expected. It has its place. Its operation is even required by law. And where it is not, people call out for its installation. Its work is never done. Each use generates new uses. Each application justifies another. It is efficient, having largely been automated. Like a voice activated recorder, it moves into action solely in response to an action by the object of its control. The panoptic sort is a system of actions that governs other actions. The panoptic sort is a system of power. (p. 15)

In short, consumer information is removed from its empirical context and filtered through a credit system where it is commodified and imbued with self-fulfilling statistical norms. This highlights the substantial value of information as a commodity in late capitalism, but this is only one aspect of consumer information’s value as a commodity.

*The commoditization of information.* Information's commercial value also stems from the ways in which it is inherently different from other commodities and resources. As stated by Gandy (1993b):

Central among these differences is the recognition that unlike other commodities, information is not destroyed as it is consumed; indeed, the consumption of information is non-rivalrous in that the consumption of information by one generally does not limit the ability of others to use that information. This non-rivalrous quality is also evident in the fact that information may be given or exchanged, but may still be retained in full by the provider. (p. 74)

Gandy (1993b) is also careful to note that information's "reproduction costs rapidly move towards zero, especially when the reproduction is by electronic means." (p. 74) In terms of consumer credit, this offers a clear explanation for the systemic information inequality involved in attempting to repair a credit report. It is more profitable for information to remain unchanged, especially information that is considered 'negative', thereby yielding higher interest rates. Additionally, information that remains unchanged is easier to reproduce and send from corporation to corporation without the need for updating.

In this way, the process of credit reporting and the cooptation of personal information through credit is a direct articulation of consumer information for profitable ends, outside of traditional forms of production and consumption. This decenters a conception of information from a purely economic stance as "produced increasingly by wage labor within and for a market" (Schiller, 2007, p. 8) and problematizes a connection between culture and economy by locating information in a material articulation of the consumer.

Through its system of informational inequality and the commodification of information, the consumer credit system reproduces and governs its dominant position as the one-way producer and harvester of individual information. Consumer information is employed by consumer credit to create a particular reality and in this sense, lends this information an articulatory capability. In this way, consumer credit activates its influence not through any form



of active coercion, but instead through the assertion of a normalized and hegemonic system of information. In keeping with dialectic, this system does not exist unopposed and this opposition is most often articulated as the right to privacy.

*The issue of privacy of information.* Seen as a basic individual right, “the right to privacy [is] often defined as the right of the individual to determine what is disclosed about them” and “is central to American culture” (Beaver, 2002, p. 28). Under this conceptualization, information is personally specific rather than common to and owned by, every individual. Consequently, the consumer credit system is effectively excused from reformulating the ownership of information to fit their needs. Instead, it is consumer privacy that becomes “clearly endangered” by “the decline of post-war liberalism and the rise of anti-regulation sentiments in Washington combined with a more active role of corporations in the political process” (Beaver, 2002, p. 27). Ultimately, defending the right to privacy and not the right to informational ownership, frames the argument in terms of the individual and not the collective; fully accepting a role assigned by the discursive hegemony of consumer credit, which “overwhelmingly privilege[s] the understanding of privacy as a personal, rather than a social, value” (Phillips, 2004, p. 698). With the struggle represented in this manner, the individual trades the social control of information ownership for economic capital.

We are witnessing the growth of a "privacy" backlash among consumers, which we believe has less to do with the desire to keep information about themselves confidential and more to do with the pragmatic assessment that the returns for the information they divulge are, simply put, unsatisfactory. Consumers increasingly recognize that they are selling their "privacy" cheaply to companies that are using it to forward corporate interests. More broadly, consumers regularly decry the invasion of their privacy by the government and the press. In those instances, too, they are outraged that those collecting the information are using it to create value only for themselves- or, in some cases, to damage the interests of the people surrendering the information (Hagel and Rayport, 1997, p. 54).

In this articulation of information in terms of privacy, the ownership of information is accepted as impossible and irrelevant. The question of whether an individual should lay proprietary claim

to his or her own information is never asked. Subsequently, individuals relinquish control of their information and substitute ownership awareness for a concern for “privacy in an abstract sense” (Hagel and Rayport, 1997, p. 55). Ultimately, the acceptance of the role of the consumer becomes complete, as “most consumers have shown that they are willing to release personal data if they can profit by doing so” (Hagel and Rayport). As Stone (1983) discovered, the more individuals “value informational privacy, the less control they believe they actually have over personal information” (quoted in Gandy, 1989, p. 71). Considering these articulations of information in consumer credit, the following research questions are posed:

RQ1a: How was the consumer credit system discursively articulated in FACTA testimony?

RQ1b: How was the consumer discursively articulated in FACTA testimony?

#### *Framework II: Consumer Credit as Dialectical Hegemony*

When considering a system as pervasive and dominant as consumer credit, it is easy to assume an oppositional stance of simple dichotomies. Particularly from a consumer standpoint, rich-poor, majority-minority, dominant-dominated are polemics that very quickly, can characterize an analysis of credit’s operation. With systemic entities like consumer credit, a polemic cannot effectively address the multiple complexities of the interactions between the consumer, consumer information, the consumer credit system and late capitalism. This is because a polemic relationship reduces these relationships to simple descriptions of the dominant and the dominated, the subjugator and the subjugated, when in fact; late capitalism is rife with contradictions that defies such simple categorization. Therefore, to conduct an effective analysis of a system with such complexity, there must be space that allows for a consideration of domination that includes the participation of the dominated in their own domination (Gramsci,

1971) as well as struggle, contestation and resistance. Put another way, there must be a space that can at once, accommodate the totality of the interactions among, in and around a polemic. The concept of dialectical hegemony provides this space as it interrogates the way forces are both oppositional and mutually constitutive (Mumby, 2005).

This position is of central importance to the study because its goal is to explore the historical conjuncture presented by FACTA in all its complexity. This is to say that the study will not explore simply two sides in the argument, but will examine each organization as it conflicts with others and/or itself in a shifting field of control and resistance. Therefore, the development of dialectical hegemony as opposed to hegemony alone is necessary because the former provides a more heuristic and contextually conscious version of the concept than the latter. This interpretive ability is necessary because hegemony is subject to its own prescriptive content and available to essentialist narrowing. When this essentialism occurs, concepts like hegemony can shift into totalizing forms, which runs counter to the reading of hegemony necessary for the study.

*Control and resistance: The dialectic in dialectical hegemony.* As an extension of classic and ongoing work in hegemony, critical organizational researchers utilize a dialectical view to examine the ongoing struggle among control/resistance forces. The mutuality of control and resistance defines a dialectical version of hegemony (Mumby, 2005). For Mumby (1997b), dialectical hegemony reclaims and reinvigorates Gramsci's (1971) foundational work "emphasizing a complex interplay between power and resistance" – similar to the complex interplay of control and resistance present in the consumer credit system (p. 344). Furthermore, Mumby (1997b) argues against an essentialization of the term hegemony that confines hegemony

to “a zero-sum cultural game” that is “about pure victory or pure domination” (Hall, 1996, p. 468). Instead, Mumby (1997b) rereads hegemony as

...a term used to demonstrate that organizational realities are neither imposed coercively on people, nor emerge spontaneously and consensually as a result of equal participation in the meaning-making process. Rather, hegemony is conceptualized as noncoercive relations of domination in which subordinated groups actively consent to and support belief systems and structures of power relations that do not necessarily serve – indeed may work against – those groups’ interests. (p. 344)

In support of this dialectical grounding of hegemony, Mumby references Gramsci’s (1971) philosophy of praxis, which insists on the use of theory as “explicated and applied to current, material conditions”. (p. 347) Therefore, Mumby is also arguing for hegemony “as a descriptive term...that functions as a means to explain how a particular group comes to exercise intellectual and moral leadership over other groups” without “a corresponding neglect of resistance and transformation as the dialectical ‘other’ as the exercise of relations of power and domination.” (p. 348) In this way, control and resistance are not polar opposites, but elements in constant, mercurial tension.

As it is crucial for Mumby’s argument, Gramsci’s philosophy of praxis is important for the relevant framework as well. From Mumby (1997b),

Gramsci’s philosophy of praxis – insofar as it situates philosophy in the everyday – provides an important means by which to make more explicit the process through which social actors come to recognize the connection between theory and practice, and to develop a critical conception of reality that moves beyond common sense. (p. 350)

By extension, discourses of hegemony work to produce a common sense acceptance of domination by the dominated, but not in a complete or unchallenged manner. Resistance is present as the other node in this dialectical tension and those actions that challenge hegemonic common sense and raise critical awareness effectively describe this resistance. This contingent, tendential and processual struggle of dialectical hegemony is precisely the focus of this framework and configures resistance in a way that can be collective in action and not always

materially confrontational or relativistically illegitimate, but somewhere in between. In dialectical hegemony then, both control and resistance characterize the articulation of discourse at once and in various ways.

This space for collective resistance drives the research questions from the second framework. As applied to the consumer credit system and the specific artifact of study, FACTA discourse, dialectical hegemony provides a framework for examining the rhetorical choices made by the FACTA legislation's proponents and detractors. More specifically, the study will ask the following questions (RQ):

RQ2a: How did the FACTA hearings function as a site of struggle?

RQ2b: How did organizational control and resistance interact in the FACTA hearings?

## Chapter 2

### *Methodology and Methods*

As the superordinate concept of the study, a conjunctural analysis engages with various axes and structures through multidimensional and multidisciplinary means (Grossberg, 2006). In the examination of consumer credit, multidimensional variety stems from the way credit interacts with cultural, social, political and economic issues. Therefore, the study must correspond to this variety with an appropriate multidisciplinary perspective and so the study does this by weaving together elements of cultural studies, critical organizational communication studies and political economy. These nominally disparate areas of study provide a cohesive way to approach an examination of consumer credit as they are unified by their affiliation with communication studies. This unification is fitting since a study of credit, with its foundation in information and the communication of that information to the consumer, is fundamentally a study of communication. As central aspects of a multidisciplinary study of a historical conjuncture, the theoretical frameworks of the political economy of information (political economy) and dialectical hegemony (critical organizational communication studies) relate to two of the three genres of communication studies. The third genre of cultural studies provides an overall methodology for the study, as it contains an effective ability to engage with the specific methods of communication within the consumer credit system.

### *Methodology*

Communication within consumer credit is based on the communication of value because in essence, credit operates like money, the archetypal expression of value. Like money, credit can operate outside of concrete systems of representation and utilize abstraction because credit circulates with a cultural purpose. This cultural purpose informs individual action as it results in

actions of production and consumption, of both economic and cultural capital (Harvey, 1982). Therefore, a theorization of culture and the utilization of cultural concepts are relevant at this point due to the significance of money and credit as cultural constructions.

*The discourse of money and consumer credit.* This significance is based in the symbolic economics of late capitalism (Goux, 1990) and in the nature of money as a semiotic and abstract construction.

...Money not only reinforces the abstract nature of modern life, it also produces it. Those postmodernists who bemoan abstraction at the level of epistemology sometimes forget that at the level of ontology the production of differences and distinctions is only made possible by concrete abstractions like money. Money forces us to act and think in abstract, depersonalized terms. This is especially true of modern forms of money, which have moved away from basic forms of specie into the realm of electronic signifiers in which money refers only to itself. (Corbridge & Thrift, 1994, p. 20)

As demonstrated, consumer credit exemplifies a form of value founded in the electronic abstraction of a consumer's concrete, consumptive activity. Therefore, according to Simmel (1990), money (and thus credit), "exercises its effects merely as an idea which is embodied in a representative symbol" (quoted in Roberts, 1994, p. 91) and as a sort of fictitious capital, it is based on value which has yet to be created (Roberts, 1994). In this way, credit like money, functions as a sign that refers only to itself, but also through an a priori and determined scheme of difference (a credit score) that commoditizes current consumptive activity in order to control future consumption. From Graham's (2002) reading of Marx,

Credit is money in the subjunctive; it is the future-in-present expression of unreal human life and its calculated worth. In Marx, we see a recognition that the credit system contains in embryonic form the total colonization of social values – spiritual, cultural, social, economic and moral – by monetary values, thus transforming people into mere materials of commerce and the material which money inhabits. In all its future tenses, money infuses human flesh and human hearts. With the emergence of a more or less standardized general credit system, money values are no longer expressed in the alienated, objectified forms of paper, gold or silver, but in personal existence, flesh and blood, social worth and status: today, 'human' and 'social' capital have very literal meanings. (p. 238)

In this way, not only do money and consumer credit have clear foundations in abstraction, symbolic formations and representation, but also manifest concrete action in a material and de-humanizing transmutation of value and worth. Thus, credit's fluid operation on symbolic and material levels of action, aligns with and calls for the use of the concepts of discourse and articulation.

*Discourse and articulation.* Discourse is a broader concept relating symbolic to material as “a way of seeing and researching social life as both constrained by social structures, and an active process of production which transforms social structures” (Chouliaraki & Fairclough, 1999, p. 1). As a related concept, articulation links and forms discourse and originated in the work of Laclau and Mouffe (1985), which many theorists have since incorporated. Articulation temporarily unifies social elements and is a means for the symbolic abstraction of discourse to obtain concrete manifestation in practice and action. Therefore, articulation links moments to practices, which because of that linkage, are “transformed in the process of being brought into new combinations with each other” (Chouliaraki & Fairclough, p. 21). As Grossberg (1992, p. 54) suggests, “articulation links this practice to that effect, this text to that meaning, this meaning to that reality, this experience to those politics.” Furthermore, though the use of articulation as a concept can reveal the ways in which discourses fit together to mediate identity and its contestation, articulation is itself not an entity, but a dynamic process of mapping. For example, Slack (1996) suggests that

the examination of and participation in communication – or any practice – is thus an ongoing process of re-articulating contexts, that is, of examining and intervening in the changing ensemble of forces (or articulations) that create and maintain identities that have real concrete effects. (p. 124)

Thus, articulation as it links and connects with discourse is a key concept of the study because “the construction of a hegemonic discourse is the result of articulation” (Torfing, 1999, p. 101).



More specifically, “the concept of hegemony supposes a theoretical field dominated by the category of articulation; and hence that the articulated elements can be separately identified” (Laclau and Mouffe, 1985, p. 93).

In this way, articulation is a means through which discourses of hegemony operate as a “conflictual terrain of power and resistance” (Torring, 1999, p. 101) aligning with Mumby’s conceptualization of dialectical hegemony (1997b) and the interaction of control and resistance (2005). Thus, the specific configurations of discourse(s) through articulation are a central aspect of the analysis of FACTA because it provides for the practical (re)production of the dialectical relationship between control and resistance in the consumer credit system.

### *Methods*

From this formulation of late capitalism and two key theoretical frameworks, the study will investigate control and resistance in late capitalism in terms of the use of consumer information in the consumer credit system. The study will focus on FACTA as its artifact of analysis and more specifically, the congressional hearings that preceded its passage.

### *Background*

The FACTA legislation of 2003 was a pivotal moment in the legitimation of the consumer credit system. In anticipation of the expiration of the FCRA, several US states had passed their own laws regulating the use of consumer information (NAAG, 2003). These laws represented a sever impediment to the success and profitability of the financial industry because they were specific to each state and with FACTA, the financial industry hoped to permanently pre-empt these varied regulations with a nationalized and streamlined system that favored business interests. This produced debate between the various supporters and detractors of a national credit system in Congress prior to FACTA’s passage. Collectively, this testimony

provides an opportunity for investigating a significant conjuncture in a key moment of consumer credit's legitimation through federal legislation.

As the financial industry's legal basis for accessing and collecting consumer information, the FCRA was passed in 1970 and then amended in 1996 to address a rapidly changing landscape of information and commerce. The 1996 amendment included a temporary provision that pre-empted the ability for states to pass their own consumer information laws. This temporary provision was to sunset at the end of 2003 and in the intervening years before this date, several states passed their own laws regulating consumer information (NAAG, 2003). Thus, the intense focus of opinion and effort in the summer of 2003 as Congress met to hear witness testimony regarding the merits of permanently preempting state level jurisdiction of consumer information and legitimating a federal consumer information system. After the testimony from both finance industry and consumer advocate organizations, the Senate passed FACTA with a large majority similar to the bill's earlier vote in the House, thereby superseding several state laws and leaving many consumer advocate concerns unaddressed (NAAG, 2003). In this way, the passage of FACTA is a key moment in late capitalism as it focused the struggle involved in the claim over and use of consumer information by the financial industry. In a single event, the organizational rhetoric in the FACTA hearings brings to bear the various discursive and rhetorical axes of consumer credit along with its entourage of economic, political, social and cultural implications.

### *Data*

The data consists of the transcribed congressional testimony before the Senate committee that oversaw FACTA legislation. Specifically, the body of data encompasses six days of hearings where organization representatives read prepared statements before the committee and responded

to questions from its members. The FACTA hearings took place before the U.S. Senate Committee on Banking, Housing and Urban Affairs (SCBHUA) on the dates of May 20, June 19 and 26 and July 10, 29 and 31, of 2003. The transcription of the complete body of testimony is public information and available for download, constituting over 700 pages of data. It is important to note that the data contains the interests of the financial industry groups, consumer advocate groups and the U.S. government. The first two groups prepared written statements and fielded questions from the government represented by SCBHUA members. Consequently, the prepared statements are a representation of organizational perspectives and the subsequent responses to Senate Committee questions though still organizationally bound, constitute an individual and 'live' interpretation of the organization's interests. This provides a supplementary opportunity to observe individual decision-making in this organizational conjuncture.

Beyond this, the data provides a prism for struggle and negotiation as it functions in this moment in late capitalism, from a collective standpoint. While each organization may be characterized as for or against FACTA, they collectively represent the most influential organizations in the contestation and struggle within the consumer credit system - a crucial element of late capitalism. The rhetoric employed by these organizations is done so with recognition of this fact. Face-to-face confrontations such as this one are rare in situations involving such large, hegemonic organizations and so the data constitutes an entirely intriguing and provocative glimpse of discourse and articulation at work.

### *Organizational Discourse*

This conceptualization of organizational rhetoric draws from a "discourse-centered perspective" of extra-organizational communication "rooted in discursive process and practice" (Finet, 2001, pp. 272, 273). However, this is not to say that the analysis will recognize

organizational boundaries in terms of internal and external modes of organizational reality. Instead, the organizations of the FACTA testimony are viewed as consisting of permeable and fluid boundaries due to their concern with strategic identity and a sense of self. The act of creating and delivering organizational statements drives this concern with strategic identity as in “attempts to speak ‘for’ an organization using a unitary voice there will almost inevitably be the expression (or suppression) of multiple voices, identities, cultures, images, and interests” (Cheney & Christensen, 2001, p. 233).

Similarly, a key consideration of this discursive emphasis on organizational persuasion is that

the organization as rhetor (or persuader) vis-à-vis its audiences [has] shifted over a century’s time from a ‘reactive’ and sometimes accommodative stance towards external threats toward more aggressive attempts to shape the *grounds* for discussing social and political issues of the day (Cheney & Christensen, 2001, p. 233).

This ‘grounds-shaping’ is significant as it allows for a critical analysis of discourse where the enactment of change in favor of organizational interests occurs on a broad, sociopolitical (and discursive) meta-level as these groups hegemonically attempt to “exert political influence while usually avoiding being labeled as political actors” (p. 234). Therefore, the analysis will pay special attention to the discursive aspects of the organizational rhetoric in the FACTA testimony that will reveal the (re)production of social practices, relations and formations while maintaining a focus on control and resistance in collectives. The following epistemological perspective informs these aspects.

#### *Conjunctural perspective*

A critical analysis of the data is necessary since FACTA provides a unique focusing of discourse in organizational rhetoric between the major stakeholders who control and are controlled by the consumer credit system. This focusing of discourse and rhetoric in various

associated axes and areas is a historical conjuncture in the consumer credit system. From Grossberg (2006),

A conjuncture is a description of a social formation as fractured and conflictual, along multiple axes, planes and scales, constantly in search of temporary balances or structural stabilities through a variety of practices and processes of struggle and negotiation (p. 4).

This is to say that an analysis of a historical conjuncture describes the contextual totality of discourse(s) and articulated discursive structures, as they conjoin and conflict in social operation.

Grossberg adds, "...a conjuncture is always a social formation understood as more than a mere context – but as an articulation, accumulation, or condensation of contradictions" (p. 5).

Subsequently, while context is a prime consideration, the forest should not be lost for the trees and concrete relations to broader formations are equally important.

Therefore, both theoretical frameworks are necessary for an analysis that entails a comprehensive consideration of both contexts and formations, of micro and macro levels. From the first framework, the political economy of the consumer credit system through its articulation of consumer information is based on the removal of context. Analyzing the system as a conjunctural moment will return context as an integral element in detailing this articulation. From the second framework, the dialectical hegemony present in the control/resistance of the credit system's use of consumer information exemplifies struggle and negotiation. Analyzing the credit system as a conjunctural moment will reveal its dialectical hegemony towards an understanding of how control and resistance operates, both between and within each stakeholder position, in contributing to the production and perpetuation of consumer credit's social formations.

To take full advantage of the conjuncture presented by FACTA and to make full use of the organizational rhetoric in FACTA testimony, the study will carry out a critical analysis of discourse. From my reading of the literature, there is no research that approaches a

comprehensive analysis of the use of consumer information in the consumer credit system, or with a consideration of discourse. Therefore, an analysis of this type is important in interrogating the symbolic and material means through which consumers participate in and resist articulation and hegemony via their own information.

### *Coding and Thematic Analysis*

Before conducting a critical discourse analysis, the body of data were coded and assigned to groups. The coding divided the large body of data into manageable sections and prepared the data for an analysis of emergent themes. This initial coding was informed by Bhatia's (2006) investigation of government press conferences, as they share many structural similarities with congressional hearings. Both types of events: 1) were held primarily for the public consumption of otherwise private rhetoric and debate; 2) emphasized the authority of the state in venue (the physical trappings of government), physical positioning (officials placed in an elevated location) and as the mediator of discussion (rules of order, temporal control of speaking) and 3) consisted of prepared statements followed by a question and answer period.

Justified by these similarities, Bhatia's (2006) interactional format (adapted from Have, 1999) was utilized in the initial coding of data into an ordered progression of four sections: 1) "the opening sequence", where the host introduces participants and acknowledges either previous or future discussion; 2) "the individual voices", where prepared statements are given by the participants; 3) "the interactional sequence", where there is a dialogue of questions and responses between statement-giver and statement-receiver and 4) "the closing sequence", where the host thanks the participants and makes remarks towards either the continuation of the event at a later time or the finalization of discussion (p. 179). Though data were assigned to one of these four sections, they were still ordered chronologically so as not to disrupt the narrative chain of events.

Following this coding by situational interaction, the data were then coded by organizational interaction. This involved assigning data to one of six categories: 1) Bank – statements from organizations representing the interests of the financial industry; 2) Advocate – statements from organizations representing consumer interests; 3) State – statements from government sources, experts or representatives; 4) Bank-State – statements from question and answer periods between financial industry representatives and the SCBHUA; 5) Advocate-State - statements from question and answer periods between consumer advocate representatives and the SCBHUA and 6) State-State – statements from question and answer periods between government sources, experts and the SCBHUA and between members of the SCBHUA. Both of these coding processes allowed for an evaluation of the data that recognized situational and organizational variations, while not being determined by these variations. In this way, the analysis was sensitive to both the specific organizational dynamics and the overall structural format of the hearings. With the data thus systematically coded and manageable, they were read and re-read for common and emergent themes. The identification and evaluation of these themes stemmed from a specific form of critical discourse analysis.

### *Critical Discourse Analysis*

The dialectic in discourse is significant here as it is central to methods of critical discourse analyses of late capitalism (Chouliaraki & Fairclough, 1999; Fairclough, Jessop & Sayer, 2001; Fairclough & Graham, 2002; Graham, 2002; and Jessop, 2004). From Fairclough and Graham (2002, p. 3),

We believe that this sort of critique should start from a view of language as an element of the material social process which is dialectically interconnected with other elements – that the production of social life (both economic production and production in non-economic domains) is based within the articulation together of diverse elements and aspects of sociality into relatively stable configurations which always essentially and inherently include language (or more generally, discourse).

Therefore, this type of discourse analysis is particularly well suited to a critique of late capitalism as it maintains a discourse-centered approach to the dialectically productive/consumptive aspects of late capitalism. As described by Jessop (2004), “this combines concepts and tools from critical semiotic [discourse] analysis and from critical political economy to produce a distinctive post-disciplinary approach to capitalist social formations” (p. 2).

Due to this positioning beyond disciplinary considerations, this discourse analysis does not hold to strict procedures or formats.

The relationship between object of research, theory, and method is conceived of as a dynamic relationship, not a matter of pre-existing theory and method being ‘applied’ to a new object, but of theory and method (in our case, the theory and method of critical discourse analysis) evolving in the encounter with the object of research, whose construction is in turn ongoingly developed through this process of evolution (Fairclough & Graham, 2002, p. 5).

Though the coding procedures may be characterized as applied methods, they are a necessary means for managing the large body of data and will not inhibit the flexible and contextual quality of the analysis. To ensure this, the thematic analysis will produce common and consistently emergent themes with consideration of the ways in which they relate to material practices of articulation in the discursive construction of control and resistance in this conjuncture of consumer credit. In this way, the analysis will emphasize the dialectic of discourse in symbolism and action as the data will be read and re-read as themes emerge and are compared and contrasted in reference to several mechanisms of discourse that “serve to select and consolidate radically new practices and to stabilize routine practices” (Jessop, 2004, p. 6).

This approach to discourse analysis draws from an evolutionary theory of discourse analysis proposed by Fairclough et al (2001) and refined by Jessop (2004) into three interpretive mechanisms:

- 1) *Selection* of particular discourses (the privileging of just some available, including emergent, discourses) for interpreting events, legitimizing actions, and (perhaps self-reflexively) representing social phenomena.



2) *Retention* of some resonant discourses (e.g., inclusion in an actor's habitus, hexis, and personal identity, enactment in organizational routines, integrated into institutional rules, objectification in the built environment, material and intellectual technologies, and articulation into widely accepted accumulation strategies, state projects, or hegemonic visions).

3) *Reinforcement* insofar as procedural devices exist that privilege these discourses and their associated practices and also filter out contrary discourses and practices.

The analysis of FACTA testimony will be guided by the recognition of these mechanisms, always in relation to the connection of language and action and the “connectivity in texts; relations, contradictions, and tensions between elements” (Fairclough & Graham, 2002, p. 45).

Again, this does not assign discourse to a status of omnipotence as a deterministic structure.

Rather, the critical discourse analysis of the study will seek to find

...ways of seeing and analysing texts as processes, as work, as ‘working up’ specific relations between elements to the exclusion of other possible relations – semantic, conceptual and classificatory relationships between words, logical relationships between propositions, temporal relationships between processes, syntactic relationships between and within sentences, relationships between what is asserted and what is presupposed, and so forth (p. 45).

From the uncovering of these elements within the text, the articulation of the consumer in the political economy of information and the dialectical hegemony of the struggles and negotiations of FACTA and the consumer credit system are revealed and discussed in terms of the research questions from each theoretical framework.

## Chapter 3

### *The Political Economy of Information in Consumer Credit*

As put forth in the literature review, the political economy of information as a theoretical concept provides a means for viewing the various ways information takes part in late capitalism. As put forth in methods, the perspectives achieved through the application of this theoretical framework are “a description of a social formation as fractured and conflictual” (Grossberg, 2006, p.4). Therefore, the following conjunctural analysis attempts to describe the contextual totality of information, as it exists in credit. In this way, the theoretical conceptualization of information as a commodity (Gandy, 1993b), a reproducer of privilege (Gandy, 1993a) and a system of inequity and control (Rakow, 1989) in the articulation of the consumer, informs this description.

In this broad yet detailed expression, information is predominantly a resource for industry yet remains a resource composed of the individual. More specifically, consumer information as the focus of the consumer credit system is harvested from consumers, reconfigured by industry and fed back to consumers in a process of material articulation. This type of information thus works in both a material and symbolic manner as it moves from more or less empirical data, to narrative data, to statistically modulated data removed from context and finally to determinative information influencing consumer action. In essence, consumer information enters the credit system as ‘organic’ consumer activity and returns as ‘manufactured’ consumer activity via the socio-economic and deterministic feedback of credit reports and credit scores.

In this way, FACTA testimony was revealing in the way that information was shown to be politically economic as a commodity, resource, system and even as an ostensible force for democratization. Thus, information was a shifting discursive landscape moving situationally to

form and fit each passing moment. Information's political economy was repeatedly demonstrated in different discourses united through conflicting notions of reverence, dependence, choice and inequity. That information should be articulated as a precious necessity was unsurprising given its integral position in late capitalism. However, the methods used in accomplishing this discursive portrayal were varied and complex. Similarly, the articulation of consumer agency through a determination of consumer choice was a consistent device, which demonstrated the stark reality to the transformative structure of the credit system's operation. Subsequently, FACTA testimony featured several identifiable avenues exemplifying the movement of discourse from symbolic to material.

In the presentation of these identified avenues and axes, the various organizations and their representatives have been identified in terms of one of the following categories: Advocate (organizations primarily opposed to FACTA); Bank (organizations primarily in support of FACTA), State (organizations representing departments affiliated with FACTA in practice) and SCBHUA (members of the Senate Committee on Banking, Housing and Urban Affairs – the administrators of the hearings). For the sake of data accuracy, it should be noted that five of the listed twenty members of the SCBHUA (Senators Bayh, Chafee, Hagel, Reed and Santorum) were either not present at any of the six FACTA hearings, or did not make any remarks that were included in the official record.

Within this framework, three broadly emergent themes were clearly and consistently present in the FACTA hearing testimony, these being themes of dependency, agency and structure. Respectively, information was shown to be an integral element in a successful US economy, a device for the articulation of the consumer and a system strategically slanted to keep industry in control of information and thus, the consumer.

For each of the three themes, emergent evidence was identified in alignment with one of Jessop’s (2004) mechanisms of selection, retention and reinforcement to demonstrate the various ways these themes were discursively selected, consolidated or stabilized. In this critical discourse analysis, evidence of each major theme — dependency, agency, and structure — is considered in terms of the presence and operation of Jessop’s mechanisms within each theme. All evidence aligned with at least one of the mechanisms and the best examples are presented in what follows.

Table 1: Framework 1 - Emergent Themes & Discursive Mechanisms

<i>Theme</i>	Selection	Retention	Reinforcement
<i>Dependency</i>	Preemptive reverence	Democratization	Change is too risky
<i>Agency</i>	The unknowledgeable consumer	Manipulated consumer choice	Negative consumer responsibility
<i>Structure</i>	Industry owns information	Information only benefits industry	Systemic inequity

As much as possible, evidence constitutes complete sections of hearing testimony in order to provide context in what is a large and topically disparate body of data.

*Theme 1 - Dependency*

The placing of the credit system on a pedestal of reverence, success and preservation consistently marked FACTA testimony. In a Congressional hearing for legislation overseeing and regulating the credit system, this sort of theme seems illogical as it precludes a meaningful discussion of the issues and potential problems involved with credit. Nevertheless, a discourse of dependency was articulated through the selection of preemptive reverence, the retention of credit as an equal opportunity and the reinforcement of FCRA preemptions by highlighting the dangers to credit if they were not reauthorized. Through these mechanisms, credit was upheld as an indispensable system for the US economy that was good for consumers and FCRA preemptions were defined as necessary for credits continued success.

*Selection.* Over the course of the hearings, members of the SCBHUA and various witnesses made opening statements. In the vast majority of these statements by the SCHUBA, State organizations or Bank organizations, the consumer credit system was preemptively revered. Collectively, these opening statements dealt with a variety of subjects according to the particular topic for that days hearing, yet regardless of specific topic, the consumer credit system was revered as an indispensable element of a successful US economy. Senator Shelby, Chairman of the SCBHUA provided a prime example of such preemptive reverence.

Chairman Shelby: The Committee will come to order. Today, the Committee returns to considering the expiring preemption provisions of the Fair Credit Reporting Act. As part of this process, I believe it is essential that we undertake a thorough review of the larger context in which the Act operates. And, in this regard, the first thing worth noting is the truly dynamic nature of the credit markets in our economy. (p. 69)

As Shelby stated, the very “first thing” to be noted in the entire context of FCRA operation is recognition of consumer credit’s primacy in the US economy. This is a clear instance of selection as this privileges dependency over other discourses such as accuracy, equity, or even legality.

However, this example by Senator Shelby is mild in comparison to the following statement by Senator Crapo.

Senator Crapo: I think as we approach the issue, we want to make certain that we do it in the context of recognizing the value of our system of credit in this country today, and not blaming our system of credit but recognizing that the strength of the Fair Credit Reporting Act and what we have in America in terms of the way we approach and manage credit is a strong part of our system that needs to be protected and that can be used as the system by which we achieve the objectives to protect against identity theft. It seems to me that the Fair Credit Reporting Act and our credit system in this country is a big part of the solution, not a part of the problem that we are facing here. And I look forward to working with the other Members of the Committee on this issue. I, too, am putting together an approach to this issue legislatively, and I look forward to working with Senator Corzine and others who are going to be addressing this because it will be one piece of a very big part of our approach to the credit system of our country this year that is critical to consumers, financial institutions, and, frankly, to the strength of our economy. (p. 74)

In this statement, Senator Crapo privileges the value of the consumer credit system over the problems of identity theft within the consumer credit system. Considering this was his opening

statement for the hearing specifically designated for identity theft issues, he ensured the privileging of credit's value before the system could be criticized.

This was a common tactic in the majority of SCBHUA member opening statements.

Senator Allard provided another example.

Senator Allard: Information sharing is a vital part of the U.S. financial and business systems and it has contributed to the vibrancy of the U.S. economy. While it is necessary to protect a consumer's personal information, certain sharing of information is necessary for U.S. financial and business systems to function and operate smoothly. Affiliate sharing allows the operation of our national credit reporting system by enabling lenders to perform effective credit underwriting and credit monitoring. This ability is important for the industry to reduce their overall risk of loss. At the same time, customers deserve protection of certain information. (p. 221)

In this case, Senator Allard's opening remarks took place on the day the SCBHUA met to hear testimony on issues concerning affiliate sharing – or the sharing of consumer information from one affiliated segment of a corporation with another affiliated segment. It is important to note that this means a consumer could apply for a single credit card and due to affiliate sharing; this consumer's information could be used without consent or notification, to determine offers and terms for any service the corporation offers, be it home loans, car loans or insurance. Again, this type of preemptive determination of the US economy's dependence on affiliate sharing and thus credit defeated an effective examination of that day's issues. In effect, the selection of a discourse of dependency on consumer credit was used to preclude any other discourses, especially those that could have taken a critical stance towards the credit system.

*Retention.* Contrary to the privileging of dependency from a standpoint of preemptive reverence, another element of dependency was retained in FACTA hearings. A resonant discourse of credit as a democratizing agent was not simply privileged in the testimony, but retained as a historical and documented fact. In this retention, a discourse of dependency is referred to as an a prior fact and as a pre-existing condition. In this way, the retention of

dependency was included as a premise to an argument. Senator Bennett of the SCBHUA exemplified this sort of discursive retention.

Senator Bennett: My concern, as I sit through these hearings and listen to some of the requests being made in the name of more consumer information, is that we might inadvertently get into the position where we are once again shutting off credit to that portion of the economy that badly needs it. I have often said that the best place to hide a leaf is on the floor of the forest in open sight, surrounded by all of the other leaves. It becomes impossible for you to pick it up. Much of the problems that I have found in life with respect to disclosure of consumer rights is that we end up hiding a whole bunch of leaves. We end up with documents that are very thick and procedures that are very onerous, and we say, well, we are just making sure they get full disclosure. And that kind of full disclosure becomes, in effect, nondisclosure because you cannot pick out of it what really matters and understand what is really going on. I am looking forward in this hearing to hear from the regulators and from the consumer advocates as to what would be the most meaningful disclosure that would give us transparency so that the customer understands what is going on and at the same time not clog up the system with so many “consumer protections” that would end up taking us back to the bad old days when credit was not available to people who desperately need it. (p. 511)

In this excerpt, Senator Bennett responded to a proposal for requests for certain types of consumer rights notifications. In his response, Bennett activated a historically retained discourse, which made claim to consumer credit as a beneficial resource that must be democratically accessible to the underprivileged. According to Bennett, credit was not always an equal opportunity and access to increased spending power through increased debt was important to avoid a backslide into “the bad old days”. In addition, Bennett specifically used a metaphor that equated consumer rights with fallen leaves in a forest. In this metaphor, those historically excluded from credit could be excluded again as their rights could become buried beneath a deluge of notifications of those rights. Therefore, Bennett presented credit as a previously inequitable resource for the previously discriminated and in a seeming non sequitur, related an over-abundance of consumer protections with the return of this credit discrimination.

SCBHUA members and State witnesses also repeated this theme of fear, relating to credit’s history of inequity, in tandem.

Senator Johnson: Secretary Snow, in your judgment, who would stand to lose the most if Congress fails to reauthorize a uniform national standard for credit reporting?

Secretary Snow: Well, I think those who would lose the most are those who, today, have been brought into the system over the course of the last 7 or 8 years because of the national standards. And they, as I think we all know, tend to be more minorities, more Hispanics, more African-Americans, more small business owners who do business on credit cards. It would tend to be the less fortunate, the less financially well established segments of society who would suffer the most. (p. 597)

In this question and answer between an SCBHUA member and the Secretary of the Treasury, the charity of credit was retained as fact and as common knowledge. Since the FCRA was first passed in 1996, this claim was dubious at best, as it asserted that Hispanics and African Americans, like small business owners, suffered from a lack of financial establishment that in six short years (not seven or eight) the FCRA national standards provided.

The retention of this democratization discourse was found prevalent in not only SCBHUA member and State witness testimony, but also Bank witnesses such as Stacy Stewart, President and CEO of Fannie Mae, one of the nation's largest debt financiers.

Ms. Stewart: At the Fannie Mae Foundation, we are very proud of our consumer outreach initiatives, but we know we must do more, and we are committed to doing so with an abiding understanding of our responsibility to lift Americans out of the darkness of financial illiteracy into the light of financial opportunity. I am confident that this Committee shares our commitment. To expand homeownership and help millions of low- and moderate- income Americans build assets. We must enhance their understanding of credit and the relationship between credit reporting and their ability to secure a mortgage. This is an essential step in helping all of our citizens become active and knowledgeable participants in the financial life of our Nation. It is also the first in helping low- and moderate-income Americans fully participate in the American economy and, ultimately, the American Dream. (p. 522)

In this excerpt from a Bank witness, credit was again given an emancipatory quality with power to turn night into day for those outside of mainstream debt opportunities. Stewart perfectly articulated a sweeping hegemonic vision of discursive retention in this theme.

Through the activation of this discourse of democratization, credit was defined as not only a boon to the nation's needy, but also a necessary element of financial participation and success in America. More importantly, it asserted that access and use of credit was the primary means for poor Americans to build wealth through increasing debt. Consequently, the discourse



of dependency led to the conclusion that FCRA reauthorization was imperative for the good of the country.

*Reinforcement.* As an imperative and a force for democracy, credit was also positioned for discursive reinforcement in the theme of dependency. This reinforcement was articulated very simply as changes to the FCRA would jeopardize the entire credit system and all of its associated benefits. Thus, not only was credit an indispensable element of the US economy, the FCRA, as the legislative foundation for credit, could not be altered without risking credit's dissolution. This effectively expanded on the selection of dependency by reinforcing dependency in a procedural manner in FACTA testimony.

Senator Schumer demonstrated this by stating, "Just to make a point, I think it would be really bad to fractionalize these markets. We all know that. There should be a national market" (p. 34). The use of the word "fractionalize" was a clear assertion that failure to reauthorize the FCRA would lead to a divergent and contentious credit system with no sense of unity or common good. In this statement, Senator Schumer was directly reinforcing the nation's dependency on a national system and the assumption that a potentially state-driven system would not be a cohesive structure.

This same sort of discursive fortification was clearer in a question and answer series between an SCBHUA member and J. Howard Beales, a State witness as the Director of Consumer Protection within the Federal Trade Commission (FTC).

Senator Bunning: Do you believe nonpassage of FCRA will lead to a Balkanization of privacy laws?

Mr. Beales: I think it depends on what the States do. One can imagine a scenario in which there is no preemption and no State action and nothing changes. I think it is crucially dependent on what the States do as to what the likely impact of not having preemption would be.

Senator Bunning: In other words, each individual State could do their own thing, then.

Mr. Beales: Right. In the absence of preemption——

Senator Bunning: Yes.

Mr. Beales: —each individual State could do their own thing. But each individual State could also choose to maintain the status quo. And that is the sense in which the consequence of not having preemption depends on what kinds of changes States try to make, are interested in making, and actually do make.

Senator Bunning: Would you like to venture a guess— [Laughter] — about States and preemption?

Mr. Beales: I think the likelihood is that they would try to do various things. Some more sensible than others.

Senator Bunning: Thank you.  
[Laughter] (p. 16)

The overall balance of this series of statements could be described as weakening and not reinforcing the case for FCRA reauthorization. Mr. Beales did a moderately successful job of evading Senator Bunning’s attempts at leading his statement towards supporting the view that a state-run system would be a “Balkanization” of regulation. Towards the end however, he was cornered and essentially forced to admit that states could make mistakes in judgment. Still, this does not subtract from the Senator’s persistence in his line of questioning. Not only did Senator Bunning correlate a state-run credit system with the relatively recent and historical violence of Bosnia, Croatia and Serbia, he also badgered Mr. Beales to such an extent that it was humorous to others; a clear reinforcement of a discourse of credit dependency.

Other members of the SCBHUA were not as circuitous in their efforts to reinforce the perceived and assumed necessity of FCRA reauthorization to the credit system.

Senator Johnson: I think that while there are those who want to utilize this necessary legislation as a vehicle for taking up other issues, and I respect that, I would hope that the Senate will keep a close eye on the notion that what is at stake here is access to credit. (p. 14)

In this excerpt, Senator Johnson reminded his colleagues of the normalized benevolence of credit as a resource. In addition, he redefined any other associated FCRA issues as extraneous to the

central concern of reauthorizing credit's status quo. Therefore, this statement also attempted to preempt those others with related concerns. This method of preemption to highlight dependency was a consistent means for articulating various elements within FCRA testimony. Of all the methods of articulation employed, none was as plainly demonstrated as consumer agency or the consumer's freedom to choose.

### *Theme 2 – Agency*

This theme centered on consumer agency as marked by the manipulation of consumer agency that effectively removed consumer choice by determining the nature of consumer choice. In this way, consumer agency was used as a façade for determining the nature and range of the choices allowed to consumers. Thus, consumer agency was more myth than fact, as it was situationally articulated in contradictory ways. The determination of this myth was demonstrated as participants articulated consumer choice as an important element of the credit system, but only insofar as it involved a choice between products. In many instances, testimonial comments that limited consumer choices were accepted based on a promotion of consumer choice. This contradiction in agency highlighted the way that information, removed from consumers to become industry property, operated as a vehicle for determining consumer behavior and activity. This is significant because these conflicting determinations of consumer agency demonstrate the articulation of discourse towards controlling action in a move from symbolic to material.

*Selection.* In the FACTA hearings, there were two witnesses not there as organizational representatives. These witnesses were called by Chairman Shelby to represent the consumer in terms of the problems they faced with identity theft. Outside of these two 'average' consumers, Advocates represented nine of the thirty total witnesses in the hearings. This under-representation of the consumer perspective was telling when it came to a discussion of the level

of credit knowledge ‘average’ consumers have at their disposal. One of the advocate groups provided a study however, with deciding results.

Senator Sarbanes: Yesterday, the Consumer Federation of America issued a study which found the following: 61 percent of all Americans say their knowledge of credit scores is either fair or poor, and this figures increases to nearly 70 percent among households with incomes under \$35,000 a year; 75 percent of Americans, 80 percent of those with incomes below \$35,000, say they do not know what their credit score is; and when asked a true or false question as to whether applying for a credit card may lower your credit score, only 37 percent of Americans answered correctly. (p. 510)

From this statement, it could be deduced that the ‘average’ consumer does not have a sufficient knowledge of the credit system, however this does not mean the consumer is incapable of learning this knowledge. Still, this did not prevent SCBHUA members and Bank witnesses from making this claim and privileging a discourse of consumer incapability due to apathy.

Chairman Shelby: In other words, you are the average person in America. What is your general awareness regarding the content of their credit report?

Mr. Beales: I think it is something that most people probably never think about. I think if you ask them questions, most people would have a reasonable sense of some of the core elements, that their payment history is in there.

Chairman Shelby: If they do not, they should.

Mr. Beales: If they do not, they should. We have a wide variety of consumer educational materials to try to enhance consumers’ understanding of what is there and why it matters. But we do not have any measures of what they actually know. (p. 37)

Again, Beales represented the FTC’s Bureau of Consumer Protection. This is the primary federal agency for regulating the consumer credit system and protecting the interests of consumers. This statement demonstrated that Beales, as Director of this Bureau, does not believe the consumer would care about the contents of her credit report. In addition, Beales and the FTC did not have any means for measuring the knowledge of the consumers they are in operation to protect. Considering this statement, the efforts of the FTC in protecting the consumer, at least in terms of an educated and aware consumer, were questionable at best. Beales affirmed this in a later statement.

Mr. Beales: We do not have any systematic assessment of how many consumers know or do not know. Or how much they know about exactly how to go about it. There are disclosures that are supposed to be provided with every prescreened offer that you get of how to do it and what number to call. But there is a lot of information there, and a lot of other information about the offer and the terms of the offer that probably makes it hard to find in a great many circumstances. It is not something where we get a lot of complaints, I do not believe. From that perspective, the system seems to be working. But I am sure there are consumers who do not know that they can opt out, some of whom may prefer to opt out. (p. 25)

In this discussion of prescreened credit offers, Beales referenced the fact that consumers receive notices informing them of their right to opt out of these offers at any time they choose, yet because these offers are too complex, consumers do not exercise this right. Despite this, he stated, “the system seems to be working” solely based on a lack of received complaints. The only conclusions that can be drawn from these statements were that the FTC was either incompetent or apathetic in terms of consumer education. In either case, because the consumer required this information and did not complain sufficiently to receive it, the consumer was assumed incapable of receiving this education. Therefore, a discursive selection of consumer incapability was one of the ways that consumer agency was articulated as a consumer who was incapable of receiving information was a consumer whose information must be determined for them.

*Retention.* Contrary to the determination of and for the consumer, a consistently retained discourse within consumer agency asserted consumer power resided in the ability to choose; this also proved to be paradoxical. Terry Baloun, a Bank witness and Regional President and Group Head of Wells Fargo Bank, provided evidence of this articulation of consumer choice.

Mr. Baloun: Senator, we grant our customers—at the time that an account is open, an opt out option and give them the materials. Then, we have set up the 800-number where they can contact—and let me go a step further. Once a year, we mail to our customers another notification, again giving them the opportunity to do a simple tear-off sheet if they want to opt out. Now, as a businessperson dealing with my three regions, we do talk with our customers and talk to them about the advantages of not opting out so we can share information with them. There are times when we may have mortgage products or something that is advantageous, and we will call our customers and talk to them about that, where they will actually end up getting cheaper rates or better deals. We cannot do that if they opt out. If they opt out, they have the right to do that, but we do not encourage them to because I can serve my customers better by being able to communicate with them—but they have the right. (p. 242)

Again, this statement concerned opting out of prescreened credit offers. However, in this instance, Baloun noted that while opting out is a consumer right, the business exigency is to convince consumers to do otherwise, ostensibly so they can give desirable information *to* the consumer. Yet, Baloun equated the ability to notify consumers of sales opportunities with the ability to send them credit opportunities; credit opportunities based on information collected *from* the consumer. Therefore, a consumer's choice to opt out only from credit offers was articulated as a consumer's choice to opt out entirely from communication with their bank. In this way, consumer agency was retained as an industry prerogative rather than a consumer right; a clear contradiction of agency as choice was removed.

Advocate witness Edmund Mierzwinski, the Consumer Program Director of the US Public Interest Research Group, confirmed this tactic.

Mr. Mierzwinski: First, of course, the notion that industry is for opt out, and consumers are for a harsh opt in—industry is actually for no opt. That is what we have under Gramm-Leach-Bliley, is no opt, and that is what they vastly prefer—no choice for consumers. (p. 236)

In this excerpt, discussion moved from the consumer's choice to opt in or out of prescreened offers to the consumer's right to have her information given from one segment of a corporation to another. Mierzwinski referenced the Gramm-Leach-Bliley Act, which is the central privacy statute that preceded the FCRA and allowed consumer information to be shared and regulated through the FCRA. This act provided the legal framework for consumer information to be volunteered from lenders to credit bureaus where other lenders could access it to inform their own lending decisions. Therefore, the articulation of consumer agency is retained, as choice refers only to the products industry sells, rather than the choice to prevent the transmission of consumer information without consumer consent or notification. Senator Bennett made this discursive retention clear.

Senator Bennett: So intelligent businessmen and women will do everything they can to use the information within affiliates in a way that will benefit the consumer so that the consumer will want to come back, will want to stay with that institution and all of its affiliates, and that is the way successful businesses are built, and that is the way consumers want it, and that is one of the magic aspects of American commerce. We have more flexibility, consumers have more choices, they have more opportunities to expand their purchasing options in America than anyplace else, and I think the sharing of information intelligently and for the purpose of trying to build repeat business is one of the reasons that American consumers are so well-served. (p. 220)

Simply put, consumers have a multitude of choices to consume, but have limited choices to withhold information.

Consumer agency was also limited by industry's position as the possessor of consumer information. Michael McEneny, a Bank witness representing the US Chamber of Commerce, demonstrated this retention of choice.

Mr. McEneny: Another topic that has been raised is the important issue of a consumer's ability to access his or her credit report. The Chamber welcomes consideration of how to make credit reports more available to consumers. We believe, however, that this issue requires careful study before next steps are taken. In particular, there should be a full examination of the costs associated with additional free reports in order to ensure that there are no unintended consequences, particularly for consumers. (p. 612)

Prior to FACTA's passage and at the time of these hearings concerned with FACTA's reauthorization of the FCRA, credit reports were free to consumers only in the case that a consumer was denied credit. In the above excerpt, McEneny referenced the FACTA proposal to allow consumers one free report per calendar year at their request, in addition to the free report required by law in concordance with an adverse credit action. In resisting these additional reports, McEneny indicated that the costs for the reports would be passed on to the consumer, which would effectively prohibit their qualification as free reports. A conversation between the SCBHUA and Timothy Muris, Chairman of the FTC confirmed this.

Senator Bennett: Now, back to this issue of cost. I am not talking about the cost to the consumer. I am talking about the cost to the credit bureau.

Chairman Muris: I understand.

Senator Bennett: And the question arises—do we have any statistics as to how [many] more requests they will get, how much additional costs they will incur, and life being what it is, therefore, costs that will be ultimately passed on to the consumer?

Chairman Muris: You are absolutely correct that the costs will be passed on. (p. 372)

As this excerpt clearly showed, the cost to the credit bureau is in effect, the cost to the consumer. This articulation of consumer agency confirmed the position of the credit system as the dictator of consumer agency as the choice to receive a free credit report is in actuality, not free and no choice at all.

*Reinforcement.* The discursive reinforcement of the myth to consumer agency primarily occurred through the procedural privileging of discourses that positioned the consumer as responsible for rectifying the negative consequences of the consumer credit system. In particular, these were the procedures and negative consequences of inaccurate credit information and identity theft.

As mentioned, the FTC is the primary federal agency for consumer protection in the consumer credit system. Therefore, its Chairman was logically asked about the level of accuracy in credit reporting.

Chairman Muris: Well, yes. I do think that a more accurate system, assuming it can be achieved without undue cost, would be better. And I think the proposals that we have made take us a significant way down that road.

Chairman Shelby: Mr. Chairman, do you think that the Federal Trade Commission should have a responsibility to obtain information regarding the accuracy of the information contained in consumer reports on an ongoing basis?

Chairman Muris: I would be particularly concerned—and I know there is a provision in the House bill—if we were asked to spend a lot of resources trying to come up with, trying to determine what the level of accuracy is. I think our resources would be better spent on consumer education, on developing new laws such as we have talked about, on enforcement. (p. 365)

From this excerpt, it is plain that the FTC believed consumers should be responsible for monitoring the accuracy of credit records. As its Chairman stated, the FTC would assist the consumer in this process by educating the consumer, presumably on how to recognize and



correct errors themselves, and assist with enforcement efforts after the discovery of errors. Muris later confirmed his position.

Chairman Shelby: Would you agree that inaccuracy in credit report information could create inefficiencies in the economy?

Chairman Muris: Absolutely. And I certainly agree with the comments that others are making, you know, that not all inaccuracies are created equal.

Chairman Shelby: Sure.

Chairman Muris: But, again, that is why it is so important to put this information in the hands of consumers. (p. 364)

Thus, in the opinion of the only federal agency in a position to monitor and regulate errors in credit records, the consumer is the best choice to provide record oversight and management in the credit system, not the credit bureaus, nor the lenders, nor any other financial institutions. The same consumer who at the time of the FACTA hearings, was not able to access credit reports free of charge.

However, the FTC was not alone in their opinion. Stuart Pratt, a Bank witness as President and CEO of the Consumer Data Industry Association, also supported the consumer as the primary monitor of credit records.

Senator Sarbanes: Who should the burden be upon to make the world more perfect in this regard—the lonely consumer or the business network that is engaged in these practices?

Mr. Pratt: In our review of case law, a very small percentage ever deal with the statute of limitations. Consumers appear to be successful in bringing cases. They do bring cases every year, and certainly litigation has ensued since the 1996 Amendments. (p. 120)

In this case, Senator Sarbanes is questioning Pratt on the statute of limitations for credit errors and the ability of the consumer to correct them. As of the FACTA hearings, consumers had two years *from the date the error occurred* to enter a formal dispute and ask the credit bureau to investigate and potentially fix the error. This meant that the statute of limitations began to run without the consumer's knowledge that an error had occurred. Yet, despite this obvious

disadvantage, the consumer was positioned as the party responsible for maintaining accuracy in credit records.

To cement this blatant lack of logic, Muris responded to a question of whether the voluntary furnishers of consumer information, the lenders, should be responsible for furnishing accurate information.

Chairman Muris: So, I think there are some more things that furnishers can do. There are already duties on furnishers. But I am concerned about shifting our focus from the consumer and the consumer getting notified to a more abstract idea of auditing and studying the procedures of the credit reporting agencies. (p. 366)

This statement exemplified the reinforcement of the myth of consumer agency as Muris described the logical process of a regulatory agency like the FTC “auditing and studying the procedures” of the system, they were federally mandated to regulate, as an “abstract idea.”

The inequity in this articulation of consumer agency is compounded when identity theft is taken into consideration. The testimony of John Harrison, a retired Captain in the US Army and a victim of identity theft, displayed this myth of consumer agency.

Senator Sarbanes: I want to be clear. You asked for your credit report and they sent you a report that differed from the credit report they were sending to your creditors?

Mr. Harrison: Completely different, yes, sir. I had an inkling of that because I had been declined credit from my bank. I was getting married and I was trying to get a home equity loan, and I [was] declined [so] I called my bank and the loan officer talked to me about some of the accounts that were on the report. And I was like I am not seeing those. I thought those accounts were gone. But it turned out that there was a second report that they have that was different from the one that I had.

Chairman Shelby: But they did not share that with you?

Mr. Harrison: No, sir. I have since gotten it. Actually, I [wasn't] able to get it because one of the things that happens when an imposter steals your identity and starts using different addresses and different birth dates, is all that information on your credit reports changes, because the creditors are the ones who control your personal information, not you. So because all that information was different, I look like the fraudster to Equifax. (p. 102)

Clearly then, the consumer was not the best party to correct errors in this instance as ultimately, the credit bureau was still responsible for the collection and dissemination of information as in

effect, there can be no reports, no errors and no information without the credit bureau. For Mr. Harrison, reliance on the credit bureau to receive information towards fixing information was a conflicted and contradictory endeavor. Again, this exemplified the reinforcement of the myth of consumer agency, as does the following question and answer segment between an SCBHUA member and Bank witness Stuart Pratt.

Senator Sarbanes: What is your time frame for the identity theft victim?

Mr. Pratt: The time frame that Senator Cantwell was proposing was, I think it was a 3- or 4-year standard rather than a 2-year standard.

Senator Sarbanes: From when?

Mr. Pratt: From the date the event occurred. I would like to clarify, however, that unlike many other——

Senator Sarbanes: On the one hand, you will not let me get a free credit report, and on the other hand you put me into a statute of limitations framework which is when the event occurred, not when I found out about the event. (p. 120)

This excerpt demonstrated the flaws to this myth as the consumer could not be responsible for correcting errors they were not and could not be aware of in the first place. Through these procedures and their reinforcement of a myth or misrepresentation of consumer agency, the consumer was positioned as the scapegoat for the very negative consequences in the consumer credit system that damaged the consumers themselves. This manner of consumer positioning also manifested more formally, in the planned and strategic operation of credit's systemic structure.

### *Theme 3 – Structure*

The third and final theme that emerged revolved around the actual operation of the consumer credit system. Specifically, this theme highlighted the way that inequity was strategically privileged and preserved as a common prerogative in the system. Similar to the myth of consumer agency, the strategic operation of credit purposefully articulated the consumer, but this time towards a consistently powerless position. This was accomplished through the

structural constitution of credit as a system of information with rules, predispositions and contradictions woven into the fabric of credit. While this fabric was not absolute and spaces for resistance and contestation exist, part of credit's structural operation included mechanisms that preclude change and bolster the status quo. The FACTA hearings themselves were evidence of these phenomena.

*Selection.* The selection of discourses that secured industry's position as the central controller of consumer information was predominant. A question and answer excerpt exemplified this selection.

Chairman Muris: Well, there are several different issues, Senator, and I would certainly be concerned with a fixation on the number and the score, because different companies use different models and different predictions, and if the information were presented to consumers in a way that overemphasized the number and overemphasized the importance and underemphasized the explanation of how the system works and, most important, we need to provide people with information about how to maintain good credit. So, I can see some misuses, probably unintended, in how we present that information. I think we have got to be careful in how we present it, and we would certainly be glad to work with you. But if we are going to provide people information about their credit report and how the system works, it seems odd to me that we would withhold the score. There is no one score, of course, but I think it is important, very important, crucially important, that we not overemphasize the significance of the number, and that we put the thing in context.

Senator Bennett: Okay. We are on the same page here, because we all want the consumer to be able to get accurate information and complete transparency. My concern is that if we focus on the score, we run the risk of distorting the information so that the consumer then starts to argue, as I said, that he has rights. (p. 380)

Chairman Muris was responding to a question from Senator Bennett concerning the issue of consumers receiving credit scores in addition to credit reports, on a regular basis. The first inconsistency here appeared in Muris' statement where he contradicted himself by first saying the credit score should not be emphasized, then confirming the consumer's right to it and finally repeating the score should not be overemphasized. Muris' contradictions stemmed from the fact that credit scores were determined in a multitude of ways and there was no way of tracking which statistical algorithm was used in which situation. From an industry perspective, this was

not a problem, scores were computed and transmitted according to the needs of the system, but from a consumer perspective, this meant there was no way to determine how their credit report was evaluated, a clearly privileged inequity

Senator Bennett confirmed this selection of informational inequity as he blatantly stated that score access could obfuscate the issue as it could lead a consumer to assert her rights. In addition, Bennett like Muris followed the paradoxical dichotomy that consumers deserved transparency in information, but that transparent information should not include a credit score. Their statements demonstrated that consumer interests extended only as far as they did not infringe on the privileged position of industry as the controller of consumer information. An Advocate witness, Edmund Mierzwinski, confirmed this privilege.

Chairman Shelby: But if they do that, you cannot have accuracy in scoring, could you? You do not have all the information.

Mr. Mierzwinski: We do not believe you can have accuracy in scoring, and the fact is even though the so-called black box of the credit scoring models is secret to you and me, the companies know enough about it to know that if they withhold certain pieces of information that they can game the system. And there is a lot of motivation there because if they keep their customers, most of those customers are probably paying too much for the——

Chairman Shelby: It is to their benefit, but perhaps to the loss or detriment of the consumer.

Mr. Mierzwinski: It is absolutely to the loss or detriment of the consumer to be prevented from being able to shop around. And it is also to the loss or detriment of the credit scoring system. I think a bigger threat to the uniformity of the system, to the voluntary nature of the system, than the States, who I think are rational actors, is these acts of companies to prevent their consumers from being able to shop around. (p. 617)

Therefore, the credit score, as a proprietary representation of consumer information, was a sales product that consumers only received at a price and even then, the knowledge of the score's production was industry's alone. By legitimizing this privilege for industry, the SCBHUA and the State selected the inequitable dominance of industry as the controller of consumer information.

This led to another discourse selected to bolster industry's dominant position through the notion that industry was not responsible for sharing consumer information with the consumer. Interestingly, the most direct demonstration of this selection was from a conversation between SCBHUA members.

Chairman Shelby: The scoring, Senator Schumer, as you well know, affects millions and millions of Americans' credit.

Senator Schumer: Yes.

Chairman Shelby: And I would say the average American, for lack of better information on my part, has no clue as to how their credit is rated, based on this computer model.

Senator Schumer: And they cannot get it.

Chairman Shelby: And they cannot get it. (p. 38)

Thus, the scoring was acknowledged as a critical element of the consumer credit system, but remained inaccessible to consumers. Despite this apparent inequity, the status quo was selected and supported.

Chairman Shelby: You have a risk-based system. And the more the consumer knows about how they are being rated, even if it is complicated, the better off they'd be, wouldn't they, in the long run? The more information a consumer knows about things that are rated that affects their lives, their credit and so forth.

Mr. Beales: In general, I certainly think that is right. I mean, I think the complication in credit-scoring kinds of models in particular is—you do not want consumers to be able to play games with the system.

Chairman Shelby: Absolutely. (p. 38)

The obvious contradiction in the above excerpt demonstrated how completely industry was selectively privileged in terms of its lack of responsibility in sharing consumer information with the consumer. Similarly, information was at the heart of the ways in which the dominance of industry was retained in the system.

*Retention.* Primarily, this retention was articulated through the existence of consumer information solely as a benefit for the system and thus, for industry. One of the two ‘average’ consumer witnesses, John Harrison, demonstrated how this occurs.

Mr. Harrison: ...if I want to order my credit report I have to provide my name, my date of birth, my Social Security number, my current address, my previous address. And if that is not enough, if there may be a problem, then they start going through accounts on me and I have to verify some of the accounts that are on my credit report. That is what I have to do. What a creditor has to do is give the Social Security number of the person that is standing in front of them. The information, there is information there for them to use, they just are not using it. They have an application and obviously they have asked this person to give their address and their telephone number, their date of birth. But all they are doing is putting in a Social Security number and they are getting back a FICO score, probably in a lot of cases not even the credit report to see the fraud alert. They are just seeing a high number and they are making a deal. I really think that if creditors were held to the same standards we were, if they had to input four or five different pieces of personal information into the credit bureaus, and if that information was wrong they got the same message I would get, that we cannot identify this person and you are not going to see the credit file, everything in my situation would not have happened. (p. 103)

This excerpt showed that within the system, a completely privileged and differential set of access rules was in operation as compared to the access rules for those outside the system. Consumers, despite their position as the origin of consumer information, were made to conform to much more stringent rules than any required for industry. The fact that this differentiation existed exemplified how consumer information was articulated as an industry resource and not as a consumer resource.

This retention of differential access was supported in a somewhat contentious back and forth between an SCBHUA member and Treasury Secretary Snow.

Secretary Snow: Senator, I think the basic answer is people should get those reports if they want them. These reports, I am told, are dozens of pages. If you do not want the reports, you are probably not going to put it to much use, but a burden is imposed on the credit reporting agencies sending out 100 million plus reports a year, whether the consumer wants it or not, and I underline wants it or not. This could be enormously expensive and serve no purpose, since most of them would be thrown in the trash can. The “upon request” is to get some sense of the user’s interest in the report, rather than engaging in what otherwise could be costly and useless acts.

Senator Corzine: Have there been surveys that would confirm your view that the consumer would think this was useless and automatically be a round file in the wastebasket or is that a presumption?

Secretary Snow: I think if they want the report that they will request it. The best evidence of people's desire for something is the fact that they indicate an interest in it. We are providing an opportunity for people to request. A lot of people I think would not be all that happy to get these reports sent to them—just something else they have got to go through and then throw out. If they want it, they can get it.

Senator Corzine: I guess I understand your reasoning, not necessarily agree. (p. 603)

In this way, information provided to the consumer was shown to be unnecessary unless the consumer requested the information. The assumption here as Senator Corzine pointed out, was that consumers would not want their information sent to them on a regular basis. Put another way, this assumed that consumers would prefer to pay for their credit reports rather than receiving them for free and without asking for them. Of course, the discourse retained for this illogic was that information existed to benefit industry and not the consumer.

Finally, this inherent benefit to industry was also retained structurally. Two statements by a State witness and by a SCBHUA member demonstrated this retention.

Secretary Snow: I would be concerned about higher levels of burdens on furnishers, since it is a voluntary system, creating disincentives for them to stay in the system. The ability to provide broad-based, low-cost credit really depends on lots of furnishers staying in the system.

Senator Johnson: So, Mr. Chairman, I thank you for focusing our attention on America's credit-granting system. The reason credit is so widely available and so affordable is due in large part to the amount of data available to lenders and other users of credit reports. Quantity is no substitute for quality, and I hope we can work together to make any adjustments to the underlying statute to increase the quality of the data without creating unintended consequences that deter data furnishers from participating in the system. (p. 353)

As the furnishers of consumer information provide this information voluntarily, the above statements displayed a concern for the burdens placed on furnishers. This ignored the fact that furnishers operated their lending businesses from the ability to access consumer information so they have a vested interest in maintaining the system. Therefore, the protection of furnishers was not from additional burdens or disincentives, but instead to maintain information as an inequitable benefit for industry.



*Reinforcement.* The discursive reinforcement of credit's structural operation also occurred via the functional workings of the system. These workings were predisposed to resisting change beneficial to the consumer. First on a macro level, the system was reinforced as too large, too complex and too sophisticated for regulatory change. A Bank witness demonstrated the use of this tactic.

Mr. Pratt: ...to give you some idea of the scale of change in the database, 40 million consumers are moving every year so it is difficult to say an address change alone is enough. We have 3 million marriages and divorces, a majority of those end up with a change in your last name. We have about 6 million consumers with a second home in this country. That again results in a second address on your file. We have tens of millions of consumers in this country that use one of their credit cards for billing purposes at work, so they have a work address associated with their personal information. Managing 200 million files and 2 billion data elements——

Chairman Shelby: You are not saying that is impossible, are you? You are in the business.

Mr. Pratt: I suppose with enough time and money, anything is possible, Senator. But I just wanted to set the context here because sometimes we react viscerally to this and we go, how could you not have seen that? The answer is, in some cases, because we are managing an extraordinarily large volume of data, so the pattern that you and I see here today, this seems very obvious something was happening, is not nearly as obvious in the large-scale sense when you are building a nationwide system. (p. 116)

Thus, the system was portrayed as immense and incomprehensible, yet at the same time, capable of finely tuned details.

Mr. Beales: Many creditors and other businesses no longer merely approve or deny applications, but, rather, they use credit report data to finely calibrate the terms of their offer. Consumers benefit from the more efficient consumer credit market that is made possible by these developments. (p. 6)

Simultaneously then, the system is larger and smaller, more advanced and more incomprehensible, according to the need of the moment. Logically, this would seem to provide an opportunity for the SCBHUA to assert its position as the legislator of regulation, but that was not the case.

Senator Bennett: Now, everybody who participates in the system has a vested interest in seeing that the system works. And, therefore, you are going to be as cooperative as you possibly can in providing information that you think will help the system work. If legislation comes in and says, okay, we are going to determine, by the wisdom of Congress, that the following things must be reported by every provider, with fines or other kinds of punitive action taken by the Government

against a provider that does not fill in every single aspect of the blank, it conjures up, for me, a world that I am not really comfortable with because it means the Government virtually has taken ownership of this process, and the next step, Mr. Winston, is that the FTC runs it, Fair Isaac goes out of business, the FTC is giving scores, Congress is mandating what will be considered and what will not. And I think somebody out there is going to figure out a way to game that and get around it because this was not listed, so we can start to make decisions here, there, and everywhere. Am I overreacting? (p. 537)

Thus, rather than attempting to find a balance between an independent system and responsible regulation, the SCBHUA fallaciously defined regulation as an inevitably slippery slope leading to a state-run credit system. This tactic protected the system from any sort of regulated requirements for providing information and reinforced the idea that the system was too intricate and delicate to be changed without risking its overall collapse.

On a finer level of operation, the inequity in the credit system was also reinforced through its details. In particular, the consumer credit system rewarded those who did not need credit to begin with, an odd mechanism to be sure, but made clearer by the following exchange.

Senator Sarbanes: And you list as one of the factors under amounts owed proportion of credit lines used, proportion of balances to total credit limits on certain types of revolving accounts. So you would look to see—maybe you have a \$5,000 limit—whether you would use \$500 of it or \$4,500 of it. Is that correct?

Ms. St. John: Yes.

Senator Sarbanes: Okay.

Ms. St. John: The amount of available credit line that is actually used and the balance owing [have] been proven to be predictive factors.

Senator Sarbanes: And the higher percentage of the available credit on a particular credit line a consumer is using could hurt their credit score. Is that correct?

Ms. St. John: In general, the pattern that we see is the higher the percentage of the line utilized, the greater the risk of nonpayment in the future, yes. (p. 535)

In this way, Ms. St. John, Vice President of Global Scoring Solutions for the Fair Isaac Corporation (FICO), confirmed that one of the criteria used to identify a good credit history is to verify that a low percentage of available credit was in use. Ergo, to achieve a better credit score, existing credit accounts must not be used or if used, repaid in short order. Together with the fact

that opening a new account is also a negative factor in the formulation of most credit scores, this reinforced the notion that the system rewarded those who do no use or need the system.

This inequitable paradox was compounded by the ability of the system to benefit from and increase this inequity. A series of statements between an SCBHUA member and Scott Hildebrand, Vice President of Direct Marketing Services for Capital One Financial Corporation, demonstrated this structural reinforcement.

Senator Sarbanes: Well, I just want to ask Mr. Hildebrand. Does Capital One report the maximums on the credit limits?

Mr. Hildebrand: We do not report the credit limit, the credit line that has been granted. We report the amount outstanding.

Senator Sarbanes: Yes, so the person, this hypothetical person I have been describing, would really get a black mark when they do not deserve it. Isn't that the case?

Mr. Hildebrand: To paraphrase Ms. St. John, it depends on the broad spectrum of the credit that you are looking at as the score is developed. The score is developed looking at the entire credit profile coming from the bureau.

Senator Sarbanes: I understand that, but this is one factor in there.

Mr. Hildebrand: It is one factor.

Senator Sarbanes: As far as this factor is concerned, clearly a negative mark is going to register against the consumer when they do not deserve that negative mark.

Mr. Hildebrand: Senator, there are other scenarios that could be constructed that it is just as positive for consumers. And that is the research we are trying to do, to understand the impact that this would have. We certainly do not want to do anything detrimental to American consumers. We have a business to run as well. That is what we are trying to protect here. And so we have to balance those two. Right now it is a voluntary system.

Senator Sarbanes: Are you unique amongst businesses in following this path?

Mr. Hildebrand: I do not know. (p. 536)

To summarize, Capital One did not report the credit limits of its customers to the credit bureaus.

This meant that when a credit score was formulated from that customer's credit history, the unreported limit was replaced with that account's highest historical balance. Therefore, considering that account limits increase over time, there was a high likelihood that a Capital One

customer's credit score would be negatively impacted by this practice, as the true credit limit was never reported. Furthermore, though this was an example from one corporation, other companies followed the same practice. According to Travis Plunkett, Legislative Director of the Consumer Federation of America,

Senator, I can tell you from our survey and our study in December, from the Federal Reserve study in February of this year in which they looked at 248,000 credit reports. Capital One is likely not the only one using this practice. The Fed study, one of their conclusions, by the way, was that the use of this positive information does overstate risk for particular consumers. The other point I would make is that one of the standard generic explanations that consumers get when they get that adverse notice we have been talking about is, "Proportion of debt to available credit." That means this is one of the reasons why your credit history, your credit report and your credit score, is not as high as it could be. (p. 537)

Thus, not only did the system place unreasonable and rigged expectations on consumers in terms of credit use, its benefactors also found a way to artificially lower the scores of its consumers and impact their ability to secure credit elsewhere. This was confirmed in a series of statements between Hildebrand and Chairman Shelby.

Mr. Hildebrand: No, no, we do not report customer's credit line, that is correct.

Chairman Shelby: Well, why don't you report it, because accuracy is so important?

Mr. Hildebrand: It is a proprietary issue for us. At Capital One, one of the ways we manage risk, quite appropriately, is through the granting of credit lines, and the way that we manage that is called "credit line sloping." We believe that is a competitive tool that we use better than anybody else in America. Our concern is that if we were to report that, our competitors could reverse engineer our credit policies and replicate that. It is an advantage that we have in the marketplace.

Chairman Shelby: But on the other hand, what about accuracy? If I was doing business with you or anybody, I would want my report coming from Ms. St. John's company or whoever does this, to reflect everything I have to be accurate. In other words, how can the other people determine the report that comes out to be accurate if you do not, as a creditor, furnish that information to the credit bureau or if you skew the information?

Mr. Hildebrand: We do not yet—

Chairman Shelby: I know you do it for proprietary reasons, but the customers out there, which is all Americans, do not know that.

Mr. Hildebrand: No, they do not. And as I said, Senator, we do not yet have any evidence that it actually has an impact on the accuracy of their credit score. If we receive that, we will certainly reconsider our policy.

Chairman Shelby: But it could have some impact on whether or not the customers can go somewhere to shop for better.

Mr. Hildebrand: That is possible. (p. 534)

Ultimately, this was a clear example of how in addition to large scale claims of credit's complexity and intricacy, the devil was again in the details and credit's microstructure also reinforced the inequity of the credit system's operation.

### *Analytical Summary*

The FACTA testimony provided a detailed cross section of the discourses in the consumer credit system and the variety of ways they articulate with practices and texts (Grossberg, 1992). Within each theme, a degree of overlap between the mechanisms of selection, retention and reinforcement (Jessop, 2004) was consistent and demonstrated the complexity and interconnectivity of consumer credit's discursive field.

In the theme of dependency, discourse worked in a very active manner, as statements evidenced the decision-making processes involved with defining credit in a way that precluded discussion of its alteration. In this theme, the status quo was asserted and actively protected. Similarly, the theme of structure and credit's strategic operation was also an active articulation of discourse, but due to its systemic nature, this theme was based on existing schemata. Thus, testimonial data supported and explained the status quo through 'past tense' justification and rationalization rather than through 'present tense' definition. The third theme of agency was a theme of conflict and contradiction as in a spontaneous fashion, discourses linked, separated and linked again according to the specific determination of consumer choice needed in that moment.

Perhaps more than the other two, this mythical agency provided the clearest view of articulation at its most dynamic and contradictory in contestation and struggle.

From these themes, the consumer and the consumer credit system articulated together as the system's structure and the reverence accorded to the system, depended on the positioning of the consumer within the system. Therefore, the research questions from this theoretical framework involve a simultaneous yet bifurcated response as the articulation of the credit system necessarily involves the articulation of the consumer and vice versa. To further explore these questions of both consumer and consumer credit articulation, the various mechanisms of selection, retention and reinforcement can be extrapolated and used at a higher level to generally describe the three emergent themes as individual discursive devices in and of themselves.

With its active determination and relatively straightforward bolstering of the status quo, the theme of dependency operated primarily through selection. With its justification and rationalization of an extant system, the theme of structure functioned mainly through retention. Finally, with its fluid articulation of choice, the theme of agency filtered both opportunity and disadvantage, primarily through practices of reinforcement. To describe the themes in this manner does not broadly generalize the *inter*-theme use of these mechanisms nor does it invalidate the *intra*-theme use of these mechanisms. Instead, this description highlights the articulation within these mechanisms and the research questions, in their operation on both micro and macro levels in terms of the consumer and the consumer credit system. This demonstrates the way discourse and articulation function in complexity, independent of spatial or temporal considerations, in a conjuncture of consumer credit. This scalable fluidity, rather than producing disparity and contradiction yet precisely because of disparity and contradiction, marks the way discourse is both material and symbolic. This also marks the way information as a form of

political economy, involves a shifting discursive landscape in the articulation of the individual as both a singular source and a collectively systemic outcome. A comprehensive interpretation of these issues is discussed at length in Chapter 5.

## Chapter 4

### *Consumer Credit as Dialectical Hegemony*

A shifting discursive landscape marks the literature review's conceptualization of dialectical hegemony and expresses the necessity of the second theoretical framework to this study of consumer credit and FACTA testimony. In addition to a consideration of the individual, the second framework emphasized collective action and the interaction of control and resistance (Mumby, 2005). Towards the achievement of a conjunctural analysis (Grossberg, 2006) and a complete description of consumer credit as revealed in FACTA hearings, the concept of dialectical hegemony offers a complex and systemically flexible notion, suitable for the complexities of the system of consumer credit and the FACTA hearings. This complexity stems from a formulation of control and resistance as opposing forces within the same mutuality. In this way, control and resistance are simultaneously present in discourses of struggle, contestation and negotiation and operate in contradictory and conflicting ways (Mumby, 1997b). Despite these incongruities or perhaps because of these incongruities, dialectical hegemony provided a distinct lens to FACTA hearing testimony.

The first framework focused on individual statements and their demonstration of credit discourse at work through these stakeholders. Conversely, the second framework focused more on the discursive structure of the hearings themselves. In this way, the first framework interrogated the substance of the FACTA hearings, while the second framework interrogated the context in which this substance was generated. This is not to say that the second framework did not deal with the issue of consumer credit. Consumer credit, as the central issue of the FACTA hearings, was prevalent in the second framework's analysis. In distinction to the first framework, dialectical hegemony provided a view of consumer credit conscious of the authority and



privilege not only of stakeholders, but also of FACTA hearings as a site for these elements. As such, stakeholder participation in the hearings revealed more than just the operation of credit's discursive structure. This collective participation also revealed the symbolically concrete way that control and resistance interacted to impact and inform the articulation of credit's discursive structure. As a significant element of this conjunctural analysis, the second framework emphasized stakeholder action in FACTA testimony to describe the site in terms of the contestation and contradictions that surfaced and submerged as the credit system was negotiated.

Similar to the first framework, stakeholders and organizations have been identified as follows: Advocate (organizations primarily opposed to FACTA); Bank (organizations primarily in support of FACTA), State (organizations representing departments affiliated with FACTA in practice) and SCBHUA (members of the Senate Committee on Banking, Housing and Urban Affairs – the administrators of the hearings). From this list, Advocate organizations were those claiming to represent consumer interests, Bank organizations were those representing corporation and other industry alliance interests and State organizations were those federal agencies with an ostensibly mediated and removed knowledge of credit system regulatory practices. From these stated witness positions, participant organizations sought to effect SCBHUA deliberation by altering or shaping discursive processes and practices (Finet, 2001). Generally speaking, these organizations participated in FACTA hearings to present their organizational rhetoric towards a favorable discursive shifting of symbolic and material action (Cheney & Christensen, 2001). Despite this obvious and expected positioning, evidence was marked by organizational statements that countermanded a simple for or against characterization of FACTA opinion. Therefore, the deviation and contradiction of professed organizational positions and objectives defined much of the more provocative aspects of FACTA testimony and

displayed the interaction of control and resistance in this site of contestation, rather than simply an opposition between control and resistance.

Therefore, the negotiation of contradiction defined the second framework’s analysis and highlighted the dialectical hegemony in these hearings as control and resistance interacted. Interestingly, this interaction highlighted the discursive devices employed in the hearings that worked to countermand the stated goals of the hearings. Control and resistance were fluid characterizations, both linking and separating organizations without regard to their stated goals or professed positions. Yet overall, FACTA hearings functioned in a way that was more dramaturgical than it was deliberative and remained consistently skewed towards the protection and affirmation of the status quo.

As evidence of this sort of functioning, three broadly emergent themes were clearly and consistently present in the FACTA hearing testimony, these being themes of privacy contradictions, structural contradictions and stakeholder contradictions.

Table 2: Framework 2 - Emergent Themes & Discursive Mechanisms

<i>Theme</i>	Selection	Retention	Reinforcement
<i>Privacy contradictions</i>	Acceptable invasions of privacy		Information as problem and solution.
<i>Structural Contradictions</i>	FCRA reauthorization is assumed	Circumscribing responsibility	Strategic hearing format
<i>Statement contradictions</i>	Sacrificing stakeholder position	Sounding board witnesses	

*Theme 1 – Privacy Contradictions*

The issue of privacy in consumer credit is riddled with contradictions and inconsistencies. The contradiction within the issue of consumer information in relation to the credit system and FACTA legislation is plainly apparent in the fundamental agreement that credit imposes temporarily on the lender, yet permanently on the borrower. For there to be a

credit system, there must be a violation of privacy in that consumer information, while normally private, must be surrendered to receive credit. In essence, the consumer must surrender a substantial degree of privacy in return for credit. However, once the information is surrendered, it cannot be reclaimed unlike credit, which can be fully reclaimed with interest. Therefore, privacy is a fluid and contested area within the credit system and as such, was consistently present in FACTA testimony as a negotiated and fertile ground for articulation.

*Selection.* As the primary federal organization for the regulating of consumer privacy, the FTC was the most illuminating witness in terms of its main contradiction.

Mr. Beales:...in order to protect the consumer's privacy interests, and to balance the consumer's privacy interests against the legitimate needs of creditors in trying to assess whether or not to grant credit, Congress made the decision to enumerate the kinds of purposes for which this was a worthwhile use and an acceptable invasion of privacy, and eliminate the kinds of uses where there is less benefit, but the same invasion of privacy. (p. 8)

This contradiction is clearly demonstrated in the above excerpt, by the characterization of credit as an "acceptable invasion of privacy." Invasion is acceptable in its functions as the central idea that made the consumer credit system possible. This balancing of benefits was between the consumer's informational privacy on one hand and the production of credit by industry on the other. Therefore, the legislation used to permit this acceptable invasion was of particular importance. Again, the FTC's Consumer Protection Director was the seminal source.

Mr. Beales: The fundamental restriction to protect privacy is to restrict the use of information to people who have a permissible purpose. Without a permissible purpose, you cannot get access to information in credit reports because of the concern about privacy. (p. 8)

In this way, the act of gathering consumer information moved from an "acceptable invasion" to access via a "permissible purpose" made possible by the FCRA. This was significant as it demonstrated how the inconsistency was resolved in the FCRA and continued to be resolved in FACTA. This continuation was essential because this contradiction in privacy is a constant element in the consumer credit system. Its constancy highlighted the need for the FTC, as the

primary federal agency responsible for consumer information, to act as the caretaker of this information. This need was presented by David Jokinen, the second of the two ‘average’ consumers called to testify in the FACTA hearings.

Mr. Jokinen: So, I thought about this process when I was asked to come here. I have been a stockbroker licensed by the NASD and the SEC. That is what this FCRA needs. What I suggest is that the FTC or somebody stronger than them have the same power that the SEC has. Take this credit industry and make a self-regulatory agency within the industry; and paid for by the industry. Every human being who has contact with the consumer must be trained. They are not licensed or trained professionally at the moment. I asked them what their backgrounds were. Once they are licensed, they must also take continuing education programs. If they are licensed, they can lose their license to work in that industry. Not only will they be individually licensed, but also the three bureaus and all the information furnishing people and companies will be licensed. This is a much more precise and easy way to enforce accuracy. What we have now is industry promoted fairy tales. I feel the ‘Fair’ Act is a ‘fairy tale’ Act. It has wonderful words, it sounds great; but 95 percent of the players do not follow it. There are no teeth in the existing Act. I am just trying to create a sense of consumer accountability. (p. 390)

While Jokinen’s suggestions were likely received as idealistic by the SCBHUA and the FTC, they did highlight the tension and the necessary balance that characterized the credit system. However, because consumer privacy could be violated by those with permissible purposes, privacy was redefined. Once more, the FTC provided this redefinition.

Chairman Muris...when sensitive information is misused or it is inaccurate, those are the kinds of things that bother people the most rather than abstract notions of, you know, privacy. I think people are very practical, and when it is misused and causes them consequences, that is when they really care. (p. 366)

In this way, privacy was abstracted due to the concrete exigencies of this tension in the credit system. Incongruously, privacy then became an agreement rather than a right and as Muris presumed, people do not care about privacy unless the agreement does not work to their benefit.

*Reinforcement.* The reinforcement of this contradiction in privacy occurred as hearing participants articulated the tension of consumer information as both a problem and as a solution. Similar to the weighing of benefits in the violation of consumer privacy, information was also presented as a dichotomous tension. A back and forth between an SCBHUA member and a State witness expressed this tension.

Senator Bennett: There seems to me to be a very interesting paradox here. The more information we can get in the hands of what I would call the good guys—that is, people who want the information for legitimate purposes, they want to improve their service to the customer, they want to be more efficient in offering products that the customer might use, and they use the information, therefore, for benign purposes—the better off we are. At the same time, the more information that we get in the hands of a wider number of people, by definition, the more vulnerable we are. And there is the paradox. We want affiliates sharing information, your response to Senator Dole. We want people at a wide range to have the information so they can check against each other when something seems to be going wrong. And at the same time, we do not want anybody to see this, for fear they might steal it. And that, I think, is the challenge that is facing the Congress, how to see to it that we take steps to prevent people from stealing information, but do it in a way that does not harm the beneficial effect of having this information in the hands of a fairly large number of good guys, people who will use it for benign purposes rather than evil purposes. Is that a fair characterization of the challenge we face here?

Mr. Beales: I think it is. I think that is exactly the nature of the problem. I believe the challenge is to try to control access in a way that keeps information from getting to the bad guys but makes as much information as possible available to the good guys. There are inherent risks that remain of the information being there, but if you hide the information, then you can pretend to be anybody.

Senator Bennett: So paradoxically, if I am understanding exactly what you are saying, you could make identity theft easier if you restricted too tightly the use of this information on the part of the good guys?

Mr. Beales: Yes, sir, I think that is right. In fact, one claim that has been made to me in my discussions of this issue is that one of the reasons for identity theft is that now you have to make up a real person because the information sharing system means you cannot just make up a name and an address because that will not work. The information sharing system will let us tell that there is no such person. So the name and address has to be a real somebody in order to apply for credit under a false identity. (p. 96)

In addition to directly labeling information sharing as a paradox, these statements also presented a view of information use in the credit system that was contradictory in two ways. First, more information in the system means an increased likelihood that information can be stolen and second, less information in the system means an increased likelihood that information can be stolen. This demonstrated that information was not only a problem and a solution, but also a problem and solution that were present on both sides of the identity theft issue.

Furthermore, the above excerpt was evidence of how FACTA testimony favored business interests in that any restriction in consumer information flows would actually cause identity theft.

However, the reinforcement of this problem/solution contradiction was not limited to those who supported industry.

Senator Sarbanes: We are going to have to look at that because we are sympathetic to expanding commerce and so forth and so on, but it may be at some point this expansion opens up vulnerabilities. And then you have to trade off the question between curtailing the vulnerabilities and perhaps losing some expansion of commerce. (p. 92)

In this statement, Senator Sarbanes described a closed dichotomy where business expansion carried a necessarily direct relationship with increased information problems. Therefore, the articulation of information as both a problem and a solution was a mechanism that was commonly available for different perspectives and situations. An SCBHUA member provided another example of this.

Senator Schumer: Identity theft. On this one, I have been very concerned with identity theft. We have had a lot of problems in my State with it. But you can look at the glass being half full or half empty in terms of FCRA as it relates to identity theft. Some would say that our credit reporting system makes it easy to steal identities. And others would say that the system makes it easier to detect, catch, and remedy identity theft. (p. 35)

With its variety of applications, the problem/solution tension to information defines a means for the reinforcement of a discourse or articulation, to the exclusion of alternatives. Consequently, the problem/solution tension to information as a reinforcement of a contradiction in privacy was not a uniform mechanism and rather than a discursive device for one side or another, was a common device that marked the hearings as a site of struggle.

### *Theme 2 – Structural Contradictions*

As a site of struggle, the hearings themselves were predisposed to contradiction. These contradictions primarily originated from the purpose of the FACTA hearings as a fact-finding and deliberative process. As the hearings were held to inform the SCBHUA's consideration of FCRA reauthorization and its related legislative issues, Chairman Shelby stated that the hearings were "to develop a comprehensive hearing record to inform the Committee's debate." A noble

goal to be sure, since direct public participation in Congressional activity, other than the act of voting, is limited to appearing and participating in Congressional hearings. As such, the FACTA hearings were organized to hear expert testimony from various groups so that the SCBHUA would then be able to make an informed decision on FCRA reauthorization and any additional legislation regulating the consumer credit system. However, the structure of the hearings conflicted with their stated goals of public participation to inform deliberation.

*Selection.* The FACTA hearings displayed a clear predilection towards the selected assumption that FCRA reauthorization was assumed. Senators Crapo, Johnson and Dole demonstrated this selection:

Senator Crapo: As you indicated, we have a short timeframe within which to address the reauthorization of the Fair Credit Reporting Act's preemption authority. And I believe that there is an increasingly strong consensus in terms of that need. (p. 2)

Senator Johnson. I want to thank the Chairman for holding this hearing. Thank you, Mr. Beales, although I have to express disappointment that the Administration has, so far, been unwilling to exert greater effort at pushing for passage of legislation to extend the preemption. My own view is that a failure to act on the preemption by January 1, 2004, will be utterly disastrous for the economy of this country and for consumers all over America. (p. 13)

Senator Dole: In the past two hearings on the issues pertaining to the reauthorization of the Fair Credit Reporting Act, I have discussed the importance of affiliate sharing with some of our witnesses. In each instance, the witness agreed that affiliate sharing is vitally important. Today, we have the opportunity to more fully explore the numerous advantages that affiliate sharing provides to consumers, financial institutions, and public policy objectives. (p. 222)

Arranged in this manner, these statements displayed a summary of the different ways in which FCRA reauthorization was selected in the hearing testimony. In the first excerpt, Senator Crapo prefaced his statement by noting the urgency of their task to reauthorize preemptions and asserted a consensus that the need to do so was increasingly strong. In this way, Senator Crapo was not simply asserting that there was a consensus towards FCRA reauthorization, but towards the need to reauthorize quickly. This demonstrated how clearly this assumption was selected as fact.

In the second excerpt, Senator Johnson also displayed the assumption of FCRA reauthorization and extended this assumption to a witness. Senator Johnson furthered the reauthorization assumption by expressing disappointment that Beales, from the FTC, was not able to confirm his organizations support of reauthorization. This demonstrated the fact that Senator Johnson expected the FTC to support reauthorization to such an extent that he pressed “the Administration” or the overall Executive Branch to formally communicate this support.

In the third and final excerpt, Senator Dole discussed the issue of affiliate sharing – a practice within the consumer credit system that FCRA reauthorization would legitimate. In this excerpt, Senator Dole stated that the purpose of her earlier questions regarding affiliate sharing was to ensure witness support. Furthermore, she characterized that day’s testimony as an opportunity to hear more about the advantages of affiliate sharing for everyone involved. As affiliate sharing could only be legitimated through FCRA reauthorization, Dole was clearly attempting to provide evidence for this action, rather than attempting to seek information and debate on this action. Senator Carper affirmed this tactic,

Senator Carper. Let me ask your thoughts on whether or not— if we permit December 31 to come and go and we do not restore the preemption provisions, what do you think are the downsides to our failure to act, and what, if any, are the upsides? (p. 11)

This excerpt again demonstrated the selected assumption of FCRA reauthorization, as benefits to reauthorization were clearly favored over drawbacks. This directly contradicted the ostensible goals of the hearings as fact-finding and information gathering. Therefore, these excerpts demonstrated the selection of certain structural contradictions, which were premised on the organizational objective of reauthorization of FCRA, not the discursive exploration of the possibility.

*Retention.* Structural contradictions were also retained in FACTA hearing testimony. The hearing’s participants, regardless of organizational alignment, demonstrated this through the



circumscribing of boundaries around the responsibilities of legislation. This was seen in a question and answer between an SCBHUA member and a State witness.

Senator Schumer: Okay. I had one more question, Mr. Chairman I am trying to find it here. [Pause.] Oh, yes. One of the great debates we have always had in this Committee is privacy rights, which again is a lot easier to talk about in the abstract. And when you get into the specifics and see the push and pull, I do not think it is as clear and as easy. But it has been a great concern, I know, to the Chairman and to me. We had this debate on Gramm-Leach-Bliley. And so, my final question to you is, should we, do you think, address larger issues in a reauthorization of FCRA, like identity theft, which I mentioned, but privacy in particular? Or should we not? You know, we could say, Gramm-Leach-Bliley is new. We struck a balance there. Let's not go into other areas or let's not change what we have done.

Mr. Beales: We have always thought that the FCRA is fundamentally a privacy statute. And in that sense, you cannot avoid addressing those parts of privacy because that is what the FCRA is all about. That is one of its key objectives. I think, frankly, that that part of privacy is complicated enough, that it will likely keep you very busy in trying to figure out what is the best answer here. There are some parts and some of the identity theft issues maybe like this, that are so intimately related to the FCRA, that they should be part of that process. But from my own perspective, the more it can be kept confined, the easier it is to deal with. And it is hard enough to deal with as it is. (p. 37)

The Gramm-Leach-Bliley Act (GLBA) was passed by the SCBHUA in 1999 and was a foundational piece of legislation in terms of the FCRA and FACTA (GLB Act, 2008). The GLBA gave legal backing to banking and financial institutions claims to consumer information and was a key element in the legal determination of information privacy. As such, the GLBA and the FCRA share some points of concern and as Senator Schumer alluded to, there was the opportunity for overlap. This overlap was Schumer's main point in this excerpt as he stated that privacy is a difficult discussion outside of "the abstract." From his question to Mr. Beales' response, it seemed the privacy issue was too difficult for discussion in FCRA and with the GLBA in effect, privacy in FACTA deliberation was irrelevant. From Beales' statement, privacy was best kept "confined" so that it was "easier" to deal with, despite the fact that a discussion of FCRA reauthorization "cannot avoid addressing" the issue of privacy. Therefore, the hearing record again demonstrated a structural contradiction in that privacy issues were never discussed and in this way, legislative boundaries were drawn and responsibilities defined.

Outside of the delineation of boundaries by SCBHUA members, Advocate witnesses also defined legislative responsibilities. Linda Foley, Executive Director of the Identity Theft Resource Center demonstrated this type of definition in two separate statements.

Ms. Foley: Not everything needs to be legislated. I think a lot of it is common sense. Why are businesses throwing information in dumpsters behind their stores that has personal identifying information? Do we really need to legislate against it? I know we have in Georgia. We have in California. We have shredding laws now in both of these States. But must we really tell a business, do not carelessly throw away a piece of paper that has someone's Social Security number on it. You would not want that done to you. It is called the Golden Rule. (p. 109)

Ms. Foley: We are going to take a position right now which is—we want to see what these laws are that you are going to pass, and that are going to get signed and put into action. To discuss preemptions in FCRA—we are not talking about renewing the whole FCRA but just those seven areas of preemption right now—is premature. How can we say that we do not want affiliate sharing? How can we talk about any of these other areas when we do not know how the laws are going to deal with it? (p. 111)

The first excerpt contained a contradictory statement from a stakeholder whose organization favored increased business regulation, as Foley stated that legislation was unnecessary in light of how the proper disposal of consumer records was “common sense”. In the second excerpt, Foley refused to assert her organization's position on FACTA legislation until the legislation had been passed. Again, this was contradictory as the stated purpose of the hearings was to hear testimony and debate towards shaping FACTA legislation before it was written and passed into a law that would be very difficult to change without litigation. These statements demonstrated that even Advocate organization's favored legislative boundaries that contradicted the ostensible purposes of the FACTA hearings and precluded substantive discussion of key areas of the Act.

One of the two ‘average’ consumer witnesses, Mr. Harrison, evidenced a final example of this type of retention of structural contradiction.

Mr. Harrison: I guess I will make my last word about the Fair Credit Reporting Act. I said this before when I was before the State legislature in Connecticut. I think the intent of the Fair Credit Reporting Act is very good and I understand it, and I think that everybody that put it together understands it. It makes a lot of sense.

Chairman Shelby: It works well in a lot of ways.

Mr. Harrison: It works well in a lot of ways. I think the problem that I have encountered is that a lot of people are not obeying the intent. They are only obeying the word. Everything that says may might as well say, do not do it. That is why this thing is so difficult. People are not understanding the intent. I really think that has to be firmed up. Less of the intent taken out and more of the, you have to do this put in it. (p. 123)

This excerpt demonstrated Harrison's deference to the SCBHUA in a way that defeated the content of his criticism. The fact that he believed FCRA regulations were largely ignored because they were not firm enough to regulate business practice can only mean that they did not work well, so to state they did work well was contradictory. Furthermore, Harrison separated the word of the FCRA from its intent. This reinforced the position of the SCBHUA as not responsible for the actions of those who may violate FCRA provisions because they chose to ignore its intent. This relieved the SCBHUA of any accountability for the words they wrote and the resulting gap Harrison felt was problematic between the legislation as intended and the legislation in operation. Thus, legislative boundaries and responsibilities were again outlined and defined.

*Reinforcement.* The reinforcement of structural contradictions in FACTA testimony stems from the nature of the hearings as live opportunities to debate issues and gather opinion. As such, hearings are one of the few formal instances where government representatives publicly and on record, interact with issue stakeholders. As found in FACTA testimony however, this did not mean that hearings were egalitarian and conducive to the free airing of opinions.

Throughout the FACTA hearings, SCBHUA members, as the owners of the hearing process, used the structure of the event in a purposeful and strategic manner that contradicted their positions and the stated purposes of the hearings.

The following excerpt demonstrated this strategic use of the hearing structure.

Senator Bennett: My question would be this: Can anybody give me—among those who are opposing the extension of the affiliate provision—a concrete example, other than a single

anecdote, that is, that can be quantified into some kind of analysis of how there has been definite consumer damage, because we have gotten concrete examples from the industry of consumer benefits. The consumer benefits have been fairly consistent...but I have not heard any examples of things that have happened or people who have been damaged. And we have to run off to a vote, but if you could supply that for the record, I assure you I will read it very carefully. But that is where I come down on this.

Chairman Shelby: And we will all read it if they will supply any of these answers.

Senator Bennett: Yes. That is where I come down on this. It strikes me as a theoretical argument of this is what could happen and that could be bad versus this is 6 years of experience of things we have done that have been good. And my own background leads me to go with that which has happened rather than that which could happen. Thank you.

Chairman Shelby: We have three stacked votes; that means we are going to have to accelerate this. Senator Sarbanes. (p. 245)

This exchange displayed the structural authority the Chairman exercised over the presence or absence of FCRA criticism in verbal testimony. Overall, Advocate testimony in comparison to State and Bank testimony, was limited to opening statements. Unless an Advocate witness interjected a statement, members of the SCBHUA rarely asked these witnesses questions or gave them opportunity to comment. In the above example, the Chairman's motivation for deferring the answer to Senator Bennett's question was made clear and this sort of deferral due to time constraints was not reserved only for Advocate witnesses. Yet Advocate testimony shortened by time constraints was consistently diverted towards written submission to the official record rather than as verbal testimony. This limited the public consumption of these statements and precluded their live and dialogical discussion.

The next excerpt displayed a similar use of hearing structure.

Chairman Shelby: I want to ask these questions for the record, because we are going to have votes, and we are going to have another panel, quickly. And you can do it, Mr. Chairman, for the record, as soon as you can.

Chairman Muris: Yes, sir.

Chairman Shelby: Do you believe the consumer has the ultimate responsibility for ensuring his or her credit report is accurate? Would providing consumers access to free credit reports enable them to be more proactive in ensuring accuracy? Doesn't greater accuracy ultimately benefit consumers, the credit reporting agencies, and credit providers—all of them. Do you consider a

consumer credit report that contains incomplete information to be accurate? What is your understanding as to the efforts credit bureaus make to get furnishers to provide full-file reporting? I believe this was brought up earlier today—in other words, not to game the system and so forth. What incentives are there for furnishers to withhold information that we have read about at times? Do you think that the average consumer understands that they can suffer negative consequences because a firm they have a credit relationship with decides to—yes—underreport information regarding their credit history? Do you think they should be made aware of the underreporting activities of these companies? These questions we are interested in getting to.

Chairman Muris: We would be glad to answer those.

Chairman Shelby: At the end of the day and at the end of these hearings, which we are hoping to get to, we are interested in accuracy— which is very important on both sides of the aisle to everybody— because we should do everything to have the credit report accurate, because accuracy depends on money, doesn't it, and the cost, among other things. So, we are going to be working with you on this, and we appreciate your appearance here today.

Chairman Muris: Thank you very much. (p. 379)

This extract saw Chairman Shelby asking Chairman Muris, of the FTC, to respond to a series of questions via written submission to the record, again in the interests of time constraints. This submission method was telling in that the questions Shelby asked were all linked to the responsibilities of industry concerning the accuracy of consumer information. As seen in Chapter 3, the FTC displayed a clear bias towards preserving privilege for business interests as they related to the accuracy of consumer information. Therefore, the answers to any of these questions were potentially problematic for the Chairman of an independent and objective commission, without contradicting this professed lack of bias. Subsequently, considering both excerpts, statements containing the potential for FCRA criticism were diverted towards written submission rather than a live and synchronic dialogue in verbal testimony. More importantly, this structural contradiction of the stated goals of the hearing process occurred regardless of organizational alignment, but consistently towards the reinforcement of industry privilege.

### *Theme 3 – Stakeholder Contradictions*

In this final emergent theme, statements consistently contained the sacrifice of stakeholder interests and positions as viable witnesses capable of delivering substantive

testimony. In some instances, this sacrifice was imposed on the witnesses and in others, this sacrifice occurred through the willingness of the witness. In either instance, stakeholder positions were not contested or defended in any active manner as part of the official transcript.

Reminiscent of the first two themes in this framework, stakeholder's actions contradicted their positions as viably informative witnesses and instead, accepted roles as passive place keepers in the official record. Advocate witnesses and State witnesses did this in two different ways, though both evidenced the same type of stakeholder capitulation, which yielded the same de facto support of credit's status quo.

*Selection.* Many of the Advocate witnesses avoided any extra-testimonial embellishment and were straightforward in reading their statements and responding to the questions asked of them by the SCBHUA. There were some however, that were so deferent as to become obsequious in the face of SCBHUA authority. Evan Hendricks, Editor of the *Privacy Times* newsletter, provided one such example of this behavior.

Mr. Hendricks: Oh, we could not agree more, and you being in this position reaffirms my faith in God. Thank you.

Chairman Shelby: Oh, do not go that far.

[Laughter.]

Mr. Hendricks: Well, we have miracle of credit, and we have the FTC Chairman granting other miracles, and thanks to Mr. Jokinen, because he can show us that just because thousands of lives are being ruined, we can still have a few good laughs, too; right?

Chairman Shelby: He has the humor; he has not lost that, so you know he is alive.

Mr. Hendricks: Yes. Let us walk through the accuracy problem. In a practical sense, accuracy is not necessarily the priority of the credit reporting system. (p. 391)

In this excerpt, Hendricks clearly displayed a substantial need to ingratiate himself to Chairman Shelby just before he began his statement, which as noted at the end of the above excerpt took a critical stance on the credit system. This critical stance was preempted by his flattery and in this

way; Hendricks sacrificed his position as a viable Advocate stakeholder and critic of the credit system.

Also in the above excerpt, Hendricks referenced the sense of humor of David Jokinen, an “average” consumer who due to repeated problems in correcting his credit report after his identity was stolen; found that he had been declared legally deceased. Hendricks and Shelby were able to display such inappropriate humor due to the earlier statements of Jokinen, one of which closed in the following manner.

Mr. Jokinen: Mr. Shelby, if I may.

Chairman Shelby: Yes, sir.

Mr. Jokinen: This has been the best day I have had in over 2 years. Thank you.

Chairman Shelby: Thank you—and I want to say this—I will sign an affidavit—I believe you are very alive.

[Laughter.]

Chairman Shelby: The hearing is adjourned. (p. 398)

While not as blatant in his ingratiation as Mr. Hendricks, Jokinen still surrendered his viability as a witness and effectively countermanded the power of his personal story by rendering it inconsequential through humor. Jokinen cemented the surrendering of his stakeholder viability as he stated that simply appearing before the SCBHUA ameliorated his situation, though the SCBHUA did nothing to directly remedy his situation. These instances of obsequiousness and irrational appeals to the authority of the SCBHUA contradict a viable Advocate position as detractor to FACTA legislation and the consumer credit system.

State witnesses also nullified their stakeholder positions, but in a slightly different way. The State witnesses who demonstrated this behavior were specifically those who represented the FTC, the primary government stakeholders as the enforcers of FCRA and FACTA legislation, whose representatives were present on four of the six days of FACTA hearings. Each time FTC

witnesses appeared, each one stated something similar to this excerpt from a statement by Joel Winston, Associate Director of the Consumer Protection Bureau within the FTC, “I should note that the views expressed in my written testimony represent those of the Commission, but my oral presentation and answers to questions are my own.” By including this disclaimer as a preface to their appearance as an FTC witness, these State participants effectively sacrifice their position as viable witnesses. Instead, they were simply there to read their pre-written organizational statements and once that was complete, their organization was not responsible for any further commitment to the testimony given by that witness. Therefore, that testimony ceased to be fully relevant in that it could conceivably be denied at any point. These separate statements by Mr. Beales demonstrated the extent to which FTC testimony was unviable.

Mr. Beales. The Commission hasn’t taken a position on what you should do. I think that the failure to renew the preemptions runs the risk that... (p. 11)

Mr. Beales: At this point, the Commission hasn’t made any recommendations for changes. But there are certainly things that I see that would lead me to say that there is a pressing need for change. (p. 20)

Mr. Beales: The Commission has not taken a position at this point about rulemaking authority for the Commission. I think, generically, it is a good practice for regulators and it is good practice for the Congress... (p. 43)

Consequently, even though Beales and other FTC witnesses did offer their own opinions in certain situations, these opinions were largely useless in that they did not represent the organization. On occasion, this led to the frustration of SCBHUA members, as demonstrated by Senator Sarbanes after failing to secure a firm organizational opinion from Mr. Beales.

Senator Sarbanes: We have to get at this problem. We cannot continue to pussyfoot around with it...You are on the battlefield. We need to hear from you. Let’s go beyond the great divide and hear from you about things that you think should be done, requirements that we can put into the law. Otherwise, one of the pressures that will come up from the State level and the consumers not to extend this legislation and the preemption will be the argument that this issue is not being addressed, and if you would just let us get at it, we will take measures to deal with this. Now if you want the national system—and there are economic arguments for it that I recognize, then you have to give some thought to some national standards that bring this problem under control. And we need from you a list of possibilities. Maybe it is in your dream world, you never thought it



would be possible. All of a sudden here you are, you have some Senators asking you to give us the list. So, Mr. Chairman, I hope they will go away from here today and come back to us with some detailed suggestions in this regard. (p. 93)

This excerpt was a clear instance of exasperation, but it also conveyed the expectation the SCBHUA had concerning the nature of FTC testimony content and its use in FACTA hearing testimony.

*Retention.* The expectations the SCBHUA had for the FTC and other State witnesses centered on their role as accommodating witnesses. The SCBHUA consistently made use of State witnesses as sounding boards for information these Senators wished to highlight. This retention of accommodation was demonstrated in a series between an SCBHUA member and Treasury Secretary Snow.

Senator Sarbanes: Combating fraud and identify theft; clearly, you have made that a lead item in your own statement.

Secretary Snow: Yes, I have.

Senator Sarbanes: Protecting consumers' financial privacy.

Secretary Snow: Certainly protecting the accuracy, security, and that translates into privacy information, is very important, yes.

Senator Sarbanes: Clarifying the credit scoring process and the use of credit scores.

Secretary Snow: Yes, we have recommendations in that area as well.

Senator Sarbanes: Improving the accuracy of credit reports, which of course relates to the one I just asked.

Secretary Snow: We have recommendations there as well, yes.

Senator Sarbanes: Improving consumers' understanding of the credit reporting process.

Secretary Snow: Very much so, as I responded to the Chairman earlier, yes.

Senator Sarbanes: Combating abusive marketing practices.

Secretary Snow: Yes. Our proposal deals with that as well.

Senator Sarbanes: Finding ways to improve the financial literacy and education of all consumers.

Secretary Snow: Yes, certainly. (p. 593)

As Senator Sarbanes noted in his first question, he was fully aware of the answers to the succeeding questions since they were a part of Snow's opening statement. Yet despite this awareness and the fact that Snow's statement had been entered into the record, Sarbanes found it necessary to reiterate these points. By itself, this instance would seem unremarkable, but other SCBHUA members displayed more strategy when applying this method and revealed that this was a strategic use of witness testimony. The following extract concerning the permissible uses of consumer information demonstrated this type of strategy.

Mr. Beales: Or for insurance purposes. Or for employment. Probably the broadest of the permissible purposes is in connection with a business transaction initiated by the consumer. Any of those would be permissible purposes under the statute.

Chairman Shelby: Not a fishing expedition.

Mr. Beales: Not a fishing expedition. Not idle curiosity.

Chairman Shelby: That is prohibited, is it not?

Mr. Beales: That is prohibited. From the beginning, it has been prohibited for a credit reporting agency to provide information to somebody without a permissible purpose. (p. 8)

This back and forth between Shelby and the FTC's Beales involved statements both knew the other agreed with and seemed to expect, as evidenced by the repetition of words and phrases in question and subsequent response. Another excerpt displayed this again, but demonstrated how both sides worked together to fix an error in the back and forth.

Chairman Shelby: How would you—excuse me a minute. You said if there is no reasonable way to fix it. But what if it were so prevalent, it called for fixing? I am not saying it is, but you said if there is no reasonable way to fix it. First of all, assuming that the number of errors are small, we understand that.

Mr. Beales: Let me back up because I think what I should have said is, there is no reasonable way to prevent it.

Chairman Shelby: Okay.

Mr. Beales: Because if there is an error and it is called to your attention, you have to fix it. Period. End of story.

Chairman Shelby: That is correct. Because accuracy is important.

Mr. Beales: Because accuracy is important. Absolutely.

Chairman Shelby: Right. (p. 26)

Given the consistency of this sounding board utility to witness statements, it acted as a means for establishing a baseline or norm for the issues under discussion. Considering that the two members of the SCBHUA in leadership positions (Chairman Shelby and Ranking Member Sarbanes) extensively utilized this tactic, it demonstrated the alignment and the partnership between the State organizations and the SCBHUA in presenting information retained pre-hearing, as privileged information. This nullified the ability of these State witnesses to provide objective opinion and contradicted the stated purposes of the hearings. More than this, the sounding board strategy demonstrated that hearing testimony was not necessarily meant to find facts or debate opinion, but to highlight certain issues in a particularly tactical and theatrical manner.

### *Summary*

These three themes of privacy, structural and stakeholder contradictions offer a nuanced exploration of how dialectical hegemony operated in FACTA hearing testimony. In addition, the hegemonic and articulatory mechanisms in the FACTA hearings provided a detailed view of the ways control and resistance interacted to reproduce and reinforce credit's status quo. The structural and stakeholder themes demonstrated the presumed dominance of SCBHUA authority in FACTA hearings and their alignment with the financial industry, while the privacy theme demonstrated a space for resistance in the FACTA hearings. The strategic use of witness testimony, whether in its sacrificially nullified form or not, consistently limited opposition

participation and emphasized favorable participation from those organizations in support of FCRA reauthorization and an industry-centered interpretation of credit system regulation.

As a supplement to the consistently emergent themes and the collected evidence, it is worth noting that when all FACTA testimony response series are compiled into discrete categories of State-SCBHUA, Bank-SCBHUA and Advocate-SCBHUA question and answer segments, the Advocate-SCBHUA question and answer periods constitute only 15% of the total. Therefore, it is logical to conclude that Advocate testimony was underrepresented through the structural and organizational control of the FACTA hearings by the industry-aligned SCBHUA. In this way, the FACTA hearings do not conform to their stated goals of fact-finding and information gathering for the purposes of informed deliberation. Instead, the hearings were strategically used to create a record of ostensibly comprehensive witness testimony to legitimate decisions, which had already been made. Consequently, the analysis of FACTA hearings demonstrated that instead of opinion and debate, the FACTA hearings only served as a stage for validation that was more theater than it was civic.

However, this is not to say that this was a planned and deliberate move on the part of the SCBHUA. It is possible that the theatricality of FACTA testimony was simply a result of the process of legislative decision-making. For instance, Senator Bennett mentioned in the transcription that Chairman Shelby was responsible for selecting and inviting the particular witnesses that testified at the FACTA hearings.

Senator Bennett: I think you have assembled a panel that can address that issue, and I appreciate your leadership in this entire effort.

Chairman Shelby: Thank you. (p. 511)

Furthermore, every member of the SCBHUA thanked Chairman Shelby for his leadership in the hearings at least one time throughout the six days of hearings. Therefore, it is clear that the

SCBHUA determined who was able to participate and this constitutes another procedural yet not necessarily purposeful, opportunity for limiting opposition and enhancing support.

Inasmuch as the themes of structural and stakeholder contradictions were consistent in their support of industry, the privacy contradictions theme displayed a marked tendency towards inconsistency and demonstrated that even in the face of clear and apparent control, resistance is still present. This inconsistency was a result of the nature of credit as a tradeoff between informational privacy on one hand and credit on the other. To reap credit's financial benefits, the consumer must sacrifice some privacy and this could also explain the under representation of Advocate participation in FACTA testimony. When privacy becomes an agreement more than an assertion, opposition is difficult to represent in any coherent and forceful manner, as it has already been partially compromised. Still, the fluidity to the concept of privacy, even among industry aligned Bank, State and SCBHUA stakeholders, demonstrated the mutuality of control and resistance in both FACTA and consumer credit. It highlighted how consumer credit functions dialectically as a site of struggle in that information similar to notions of traditional labor, involves a give and take between those who produce and those who own production. A comprehensive interpretation of these issues is discussed at length in Chapter 5.

## Chapter 5

### *Discussion*

#### *Purpose*

The purpose of the study was to achieve a wide-ranging, yet focused conjunctural interrogation of the consumer credit system as it operates on the discursive level. The interpretation focused on the interplay of symbolic and material, theory and action. For this reason, two theoretical frameworks were required to inform the analysis, including (a) political economy in information and (b) dialectical hegemony. Engaging these theoretical literatures, the study provided a concrete and critical inquiry of the basic structure of consumer credit and its place in late capitalism. This preparatory exposition prepared the data analysis, which looked at the FACTA hearings of 2003, as they provided a unique convergence of opinion and discourse that included consumer organizations, credit industry organizations and government organizations. Therefore, the analysis examined credit in terms of those who provide and purchase information, those who own and market information and those who support and reproduce credit's system of information, respectively.

As credit information involved both a material aspect (the monitored actions producing information) and a symbolic dimension (the determined representation of those actions), the study utilized a version of critical discourse analysis that looked at the articulation of the FACTA hearings as dialectical. This analysis was guided by research questions resulting from each framework and its results demonstrated credit's operation as a macro-level systemic structure and as a micro-level systemic reproduction through discourse and action

Credit, banking and the finance industry as a whole, were unified in support of FACTA legislation and the consumer credit system (PPCC Ad, 2003). Considering the integral

importance of credit information and credit production to late capitalism, this support was not surprising, yet this should not detract from the massive, multi-dimensional dominance represented by a unified finance industry. In the face of such dominance, the concept of dialectical hegemony may seem impractical with its emphasis on resistance and the mutuality it shares with control. Though control may seem complete in the credit system and the study's results affirm the existence of such control, resistance must still be included and dialectical hegemony must remain a significant element. This inclusion is necessary because without it, there can be no meaningful discussion of contestation, struggle or options for change. As the results from each framework demonstrate, options for change are limited but still exist. The following discussion relates analysis results to the research questions posed in each framework and explains the study's contribution to practical and theoretical considerations regarding the consumer credit system.

### *Findings*

*Framework I.* Using a lens of political economy of information, this section was concerned with the substance of the FACTA hearings and the articulation of the credit system in terms of the consumer. The first research question from Framework I was as follows:

RQ1a: How was the consumer credit system discursively articulated in FACTA testimony?

From the emergent themes and the results reported therein, the credit system was articulated in accordance with a discourse of dependence. SCBHUA members preemptively revered the credit system in FACTA hearings, and this selected a certain conception of the credit system as a cause and reason for not only a successful economy, but also a force for democratization and a vanquisher of economic inequality. While credit and its place in consumerism does hold central

significance for late capitalism (Baran & Sweezy, 1966 and Harvey, 1990), this significance stems from credit's nature as a means for superficially balancing central crises in capitalism (Sweezy, 1980 and Mellor, 2005). The discursive selection and articulation of credit as a socio-political equalizer contradicted witness testimony in the FACTA hearings that demonstrated numerous problematic aspects of the credit system. Specifically, Advocate testimony primarily consisted of efforts to describe and call attention to these issues. As described, the under representation of this voice was apparent in the FACTA hearings and assigning a discourse of dependence and near infallibility to the credit system was another way the SCBHUA maintained Advocate de-emphasis and also highlighted the reproduction of credit's role as a necessary fix for the endemic contradictions of over-accumulation in late capitalism (Mosco, 1996). Therefore, the SCBHUA clearly supported industry's control of consumer information and the credit system's status quo.

From theory and as born out by analysis, the credit system is inequitable in the way information is managed and controlled by industry to the detriment of the consumer. In credit's material articulation of the consumer, through the surveillance, determination and most importantly, the feedback of information, information taken from the consumer becomes an industry commodity divorced from the consumer and returned to the consumer only as a product (credit score) and as informative feedback (credit report). At each point in this system, consumer access to information is deemphasized, avoided, prohibited and ultimately, deemed unnecessary. As such, credit's status quo controls the consumer through consumer information and more importantly, structures the credit system to maintain and reproduce this control. This leads to the second research question in this framework.



Extending this examination of the construction of consumer credit, research question 1b from Framework I was as follows:

RQ1b: How was the consumer discursively articulated in FACTA testimony?

The strategic structure of the credit system illuminates the articulation of the consumer in FACTA testimony, as the purpose of the system is to control the consumer (Gandy, 1993a). Thus, RQ's 1a and 1b are very much interrelated, as the articulation of the system contains as its goal the articulation of the consumer. However, FACTA hearing testimony, as a convergence of discourse and opinion containing representatives from each aspect of the credit system (Bank, State and consumer Advocate), also demonstrated a primary and specific mechanism used by the system to effectively articulate the consumer into the system.

In the same way that credit's structure disenfranchises the consumer from her own information, FACTA hearing testimony revealed the consumer was discursively disenfranchised from her own ability to choose through the articulation of consumer agency. Consumer agency was defined and determined for the consumer in FACTA testimony, in a constant and conflicting manner that fit the system-justificatory needs of various situations, thus removing any real notions of consumer choice. In this way, consumer agency was a discursive facade used by Bank, State and SCBHUA members as a vehicle for reinforcing the consumer's subordinate position, to resolve contradictions in the credit system and legitimate its practices.

Contrary to a direct and material articulation of the consumer through consumer information, the articulation of consumer agency was demonstrated as a mechanism for reinforcing the credit system rather than a contiguous element of the system itself. In this way, the articulation of consumer agency was not as structurally intertwined as credit's informational articulation of the consumer, but still involved a determination of the consumer towards the

needs of the credit system. In this determination of consumer choice, the relevant systemic need and inception of this determination stems from the nature of information as a commodity.

Underlying credit's importance to late capitalism is information's importance to credit as its central commodity and the most essential aspect of information as a commodity is its nature as a non-rivalrous entity (Gandy, 1993b). As such, this information carries the capacity for near infinite renewal, as the same information can be the basis for a multitude of diverse exchange transactions. In this way, credit information has an extremely high use value since it is not diminished in consumption and as a representation of consumer buying power; it also has tremendous exchange value (Harvey, 1982). Therefore, credit functions much like money, as credit contains both a "general expression of value" and a "real embodiment of value" (Harvey, 1982, p. 241). Put another way, credit is at once a form of money and a non-rivalrous commodity that through its basis in information can be "expanded and contracted at will" (p. 246). However, limitations to information's dynamism as both money and commodity can potentially be accomplished by the source of this information, the consumer.

As the source of credit information, the consumer constitutes a significant risk to the flow of information to the credit system. As formulated, the means for removing the information from the consumer is accomplished by the structure of the credit system, but this does not completely protect commoditized information from alteration by the consumer. Before information is commoditized in credit, this information consists of consumer activity. Therefore, consumer activity can alter commoditized information and lower its non-rivalrous value. As a control for this type of activity, consumers must choose not to engage in such activity. Therefore, the credit system is reinforced by the articulation of consumer choice, but the determination and control of consumer agency is in no way complete nor total.

As the FACTA hearings demonstrated, this articulation of agency occurs in a variety of ways, all of which serve to obfuscate, devalue, limit, or remove the ability of the consumer to take actions that would inhibit the flow of information or precipitate the alteration of information. In the area of choice however, control can never be complete and leaves space for resistance and options for change. Defining these spaces for resistance and their interaction with the control of the credit system was the focus of the second framework.

*Framework II.* Extending Mumby's (1997b) notion of hegemony as dialectical struggle, I explored the context of the FACTA hearings and the interaction of the various stakeholders in terms of control and resistance. The first research question from Framework II was as follows:

RQ2a: How did the FACTA hearings function as a site of struggle?

As demonstrated, Advocate testimony was under represented and suppressed via the strategic practices of SCBHUA members in the FACTA hearings. In addition, Advocate participants (among others) also sacrificed their positions as viable stakeholders and contributed to the de-emphasis of the Advocate voice. In this way, these participants contributed to and supported a structure to the hearings that worked against their own interests (Gramsci, 1971 and Mumby, 1997b) and highlighted the SCBHUA/finance industry domination of the FACTA hearings as a participatory process (Hall, 1996). Therefore, the FACTA hearings evidenced contestation and struggle primarily in the contradictory negotiation of their stated objectives in information, deliberation and decision-making, as stakeholder participation was marked by compliance rather than engagement.

My interpretation of FACTA testimony clearly demonstrated a contradiction in the purposes of the hearings and the methods used to conduct the hearings. FACTA testimony was a means for negotiating a contradiction in that decisions had already been informed, deliberated

and made. As a result, this betrayed the real objectives of the hearing as a sort of legitimization theater for the public consumption of ostensible, congressional diligence.

As analysis showed that an industry-aligned end to the hearings was a foregone conclusion, the FACTA hearings need to be viewed in a larger context and in consideration of preceding issues, which affected the grounds of discussion (Cheney & Christensen, 2001). In a supplement to the procedural and structural considerations of FACTA testimony, the contexts of SCBHUA members thus become noteworthy and significant. The alignment of the SCBHUA with financial industry interests was a pronounced element in the analysis of the second framework and broached the issue of the political economy of politics. Therefore, though not a direct result of the formal data analysis, the contextual consideration of the SCBHUA’s political economy is relevant.

As they are elected officials, the political economy of the SCBHUA is seen in the defrayment of the costs of running for their Senate seats. Table 3 (opensecrets.org, 2008) demonstrates that the context of the FACTA hearings must undeniably include a consideration of the vast mounts of campaign donations SCBHUA members received from the financial industry. While the financial industry may donate money to many other candidates for political office, the members of the SCBHUA received sizable sums that were the largest donations nearly all of them received from any donor. It is important to note that each of the Bank organizations present at the FACTA hearings, individually or as part of larger organizations, donated campaign funds to at least one member of the SCBHUA.

Table 3: Finance Industry Campaign Donations to the SCBHUA (election years highlighted)

Senator	2000	2002	2004	2006	Totals
Christopher Dodd (D-CT)	\$228,499	\$217,474	\$427,562	\$270,191	\$1,143,726
Tim Johnson (D-SD)	\$145,488	\$358,498	\$78,400	\$324,953	\$907,339
Thomas Carper (D-DE)	NA	\$112,384	\$235,132	\$502,921	\$850,437

Richard Shelby (Chair - R-AL)	\$53,000	\$104,250	\$585,682	\$19,300	\$762,232
Charles Schumer (D-NY)	\$290,988	\$123,896	\$254,674	\$1,000	\$670,558
Jim Bunning (R-KY)	\$37,194	\$64,539	\$532,500	\$10,500	\$644,733
John Sununu (R-NH)	NA	\$289,600	\$118,000	\$230,696	\$638,296
Robert Bennett (R-UT)	\$33,500	\$20,624	\$380,203	\$151,500	\$585,827
Wayne Allard (R-CO)	\$39,779	\$503,950	\$5,500	\$35,000	\$584,229
Mike Crapo (R-ID)	\$11,500	\$50,227	\$403,547	\$100,499	\$565,773
Michael Enzi (R-WY)	\$40,731	\$302,371	\$37,500	\$133,000	\$513,602
Debbie Stabenow (D-MI)	\$28,500	\$79,600	\$81,790	\$323,239	\$513,129
Elizabeth Dole (R-NC)	NA	\$253,500	\$99,315	\$117,497	\$470,312
Paul Sarbanes (Ranking Member - D-MD)	\$184,971	\$1,000	\$54,750	NA	\$240,721
Zell Miller (D-GA)	\$100,500	\$6,000	NA	NA	\$106,500
Jon Corzine (D-NJ)	NA	\$8,000	0	NA	\$8,000

All of this supports the notion that FACTA hearings were not meant to be deliberative, but, rather, were designed and implemented in a way that deemphasized opposition to FCRA reauthorization and FACTA legislation containing stricter regulation of the credit system. Though SCBHUA-finance industry alignment dominated FACTA’s structural operation as a site of struggle, the interaction of control and resistance was demonstrated to a clearer extent in connection with the second research question and the issue of privacy contradictions.

These dynamics were further explored in response to the second research question from Framework II.

RQ2b: How did organizational control and resistance interact in the FACTA hearings?

Control and resistance directly interacted in the articulation of consumer privacy in the FACTA hearings. As perhaps the central contradiction in consumer credit, the interplay between control and resistance defines the issue of privacy in consumer credit as they share a complex, mutual and dialectical relationship with one another (Mumby, 1997b and 2005). Some informational privacy must be surrendered by the consumer for credit to be possible, yet as results demonstrated, industry suffers from no obligation to surrender any knowledge of how it handles

the information gained (Rakow, 1989). However, this does not change the truth to credit as being founded and wholly dependent on consumer information. Therefore, this framework and its emphasis on control-resistance interaction revealed the state's role in negotiating and resolving credit's consumer privacy contradictions on behalf of and in conjunction with, the finance industry.

Resolving consumer privacy contradictions in FACTA testimony was specifically accomplished through privileged redefinition (Philips, 2004) and abstraction (Hagel & Rayport, 1997) as privacy was deemed impractical to the concrete necessities of credit. Consumer privacy contradictions were also negotiated by the situational usage of information as both a problem and a solution. As demonstrated, these frequently contradictory, situational assertions occurred in FACTA testimony primarily to resolve the determination of when and how much information should be allowed to flow between consumers and the credit system. This determination of when and how much information should be communicated is a privacy issue, as most definitions of privacy include the ability of the owner of information to dictate when and how much information is divulged.

The main point of difficulty concerning privacy in FACTA is that it is a polysemous term. In most statutory and legal contexts, privacy primarily refers to protection from unwarranted intrusion (Philips, 2004); this tendency was found in the FACTA testimony as permissible purposes could acceptably violate consumer privacy. However, this version of privacy connotes a protected area in need of defense, which in terms of credit, does not reflect an accurate characterization of information's context. In the consumer credit system, personal information is surveilled, transmitted and removed from the consumer at the moment of its creation (Gandy, 1993a). In terms of privacy as a protected area, this instantaneous transmission

constitutes a permanently unprotected loophole. Therefore, this definition of privacy is invalid since there would never be a moment in the credit system where it could exist.

As stated, privacy in consumer credit is an agreement rather than a right and defies definition as an either/or issue. Instead, privacy in consumer credit is a complex determination because contrary to removing information from a protected area, the credit system uses information to remove an entire individual from a protected area. With full-time, real-time access to consumer activity, the credit system creates digitized doppelgangers or informational representations of individuals removed from the context of lived experience and consisting only of recorded consumer activity. These “unary” individuals are separate from the “embodied individual” and exist under the jurisdiction of the credit system (Philips, 2004, p. 702). In this way, the consumer credit system is in a “position of creating and imposing an ontology of the world” on consumers that is inaccurate and does not include a consideration of individual context (p. 702). Therefore, the tension in privacy contradictions from FACTA testimony, as revealed by the contradictory usage of information as a problem and a solution, demonstrated the interaction between control and resistance and much like the articulation of consumer agency is central to considering options for change.

### *Case Implications*

Based on my interpretation, the suitability and salience of the theoretical frameworks as applied to the artifact of the FACTA hearings is apparent. As formulated, Framework I involving the political economy of information, was concerned with the substance of the FACTA hearings and Framework II involving dialectical hegemony, was concerned with the organizational context of the FACTA hearings. In a conjunctural analysis, dual theoretical frameworks proved to be essential in resolving credit as a fractured and conflictual social formation (Grossberg,

2006). The consumer credit system is a complex and multilayered structure, spanning economic, social, political and cultural domains. Thus, the utility of the FACTA hearings is significant, as they effectively distilled this massive, multifaceted institution into an organizational and discursive event, appropriate for analysis and interrogation. To remain theoretically cognizant of the scalar disparities in investigating a single event as representative of a cultural institution, a good deal of flexibility is required of theory. Thus, the use of the two theoretical frameworks was essential, as they effectively rendered the macro-level issues of consumer credit when applied to the discursive, micro-level interactions of constituent organizations. More than accounting for issues of scale however, the dual frameworks also married issues of discourse.

Similar to the way the credit system as a macro-level structure was reproduced through the micro-level organizational interactions in the FACTA hearings, discourse involved a back and forth between practice and process, with one dialectically informing the other (Chouliaraki & Fairclough, 1999). The interrelations or articulatory linkages of practice and process were pronounced in the FACTA hearings, but required both frameworks to illuminate them. The articulation of consumer agency from Framework I and the privacy contradictions of Framework II provide the best view of this.

These issues of agency and privacy highlight what is probably the most prominent aspect of FACTA: the dominance of SCBHUA discourse and its support of the financial industry. Furthermore, Bank organizations in FACTA testimony were the focus of FACTA legislation as the owners and controllers of credit's system of information. Therefore, the FACTA hearings revolved around two dominant yet partnered organizations, one in control of credit and one in control of FACTA. As it was concerned with the underlying mechanisms of credit, the first framework interrogated the substantive discourse in this system as a vehicle for industry



dominance. As it was concerned with the underlying mechanisms of FACTA, the second framework interrogated the contextual discourse of the hearings structure as a vehicle for SCBHUA dominance in support of industry. Therefore, consumer agency, as a privileged discourse of industry, articulated consumers to the exigency of the credit system and consumer privacy, as a privileged discourse of the SCBHUA, articulated consumers to the exigency of FACTA legislation. As demonstrated, these articulations were accomplished discursively as in consumer agency and consumer privacy, situational usages of choice and information ownership, were respectively employed to assert and/or protect industry and SCBHUA interests.

Table 4: Agency and Privacy vs. Industry Privilege

	<b>privilege asserted (change=industry advantage)</b>	<b>privilege protected (change=industry disadvantage)</b>
<b>consumer agency</b>	choice is positive	choice is negative
<b>consumer privacy</b>	industry owns information	consumers owns information

Table 4 broadly and generally explains the articulation of consumer agency and privacy as it operated situationally in the FACTA hearings. Concerned as it was with FCRA reauthorization and the continuation of FCRA preemptions, FACTA legislation essentially centered on a determination of the affirmation or refutation of the status quo. In this way, the FACTA hearings were ostensibly held to determine whether change was necessary. Therefore, as expressed by Table 4, discourses of agency and privacy articulated to suit the types of changes under discussion and demonstrated the way the theoretical frameworks complemented each other to elucidate FACTA and thus, consumer credit, as a discursive formation.

*Theoretical Implications*

Overall, the FACTA hearings provided a clear example of how discourse functioned in an organizationally concrete situation as part of a specific conjuncture in consumer credit. FACTA as a conjuncture in consumer credit, revealed the reproduction of credit's political economic structure and the discursive reproduction of credit's cultural legitimation via the government. Therefore, the study made use of different genres of communication to approach an object of study comprised of different political, economic, cultural and organizational dimensions. The object of study and the nature of its superordinate field of capitalism drove the fitting together of these typically disparate bodies of scholarship because "the economy (and economic categories like capitalism or labor) are never merely economic, but always social, political and cultural as well" (Grossberg, 2006, p. 21). Thus, the theoretical argument referenced by this project is that in conjunctural analyses one has to engage with "the multiple disciplinary discourses, knowledges, and authorities...in all their complexity and sophistication" (p. 21).

For this reason, the project draws from and hopes to contribute to a small, yet burgeoning field of inquiry at the nexus of culture and economy that is dealing with the nature of money. Money, as a concrete abstraction of value, works as a signifier in culture and economy in ways that can be rhetorical (McCloskey, 1998), geographic (Martin, 1994), symbolic (Simmel, 1978) and fictitious (Roberts, 1994). For decades now, the signifier of money has not referred to anything but itself (Corbridge & Thrift, 1994) as it flits from information system to information system in a frantic bid to stay ahead of its own paradoxes and crises. I believe this conceptualization of money is at the heart of what is alternatively termed "new capitalism" (Fairclough, 2002 and Jessop, 2004), "hypercapiatalism" (Graham, 2002) or "postmodern capitalism" (Harvey, 2001). Inasmuch as this involves the study of abstraction, systems of signification and persuasion, I believe this is a study of communication.

Furthermore, consumer credit as a system of information is fundamentally a system of economic epistemology. Through a material articulation of consumer information, the consumer is removed (consumer surveillance), rendered (credit report/credit score) and reconstructed (score feedback) as past and present activity is used to commoditize future activity. In this system of control, consumers are remade in a process of knowledge gathering and dissemination directed by the interests of capital accumulation (Gandy, 1993a). Inasmuch as the study of consumer credit involves the investigation of information systems, knowledge production, and processes of meaning, it is a study of communication.

Finally, the examination of consumer credit's system of information centered on a discourse analysis meant to uncover the symbolic/material dialectic in the linguistic practices/social actions stakeholders employed in the dialectical hegemony of consumer credit (Mumby, 1997b). By looking at the organizational rhetoric in FACTA testimony, I delineated the operation of control and resistance in this conjuncture and in as plain and as concrete a manner as possible, demonstrated how symbolic language relates to material practice in the discursive construction of consumer credit. Inasmuch as the study of consumer credit's hegemony involves the interrogation of discourse, the symbolic/material dialectic and communicative action, it is a study of communication.

### *Conclusion*

As this study of the consumer credit system was a study of communication, issues of cultural studies, political economy and critical organizational communication were treated in a simultaneous and unified manner that is extremely useful in interrogating the operational totality of capitalism (whatever its current characterization), in regard to both the commodifiers and the commodified, their practices and their processes. However, the study would have benefited from

a clearer and less suppressed Advocate organization presence, so future research could focus on empirical work to ascertain consumers' knowledge of the credit system and their specific challenges in resolving credit's inequities. In addition, the parameters of the project were such that a full exploration of capitalism in terms of areas outside of the consumer experience was not included. Credit information is centrally relevant for many more capitalist actors than just the consumer and their interactions and experiences with credit would add to a more comprehensive description of credit as it exists in capitalism. Furthermore, consumerism is another very broad concept the study did not explore in depth. Future research concerning credit's relationship with the various aspects of consumerism would illuminate the motivation behind the consumer's use of credit and assist in describing the normalization of debt in the US. Finally, the study did not pursue the use of credit by the US government or other nation states on a global and international scale. This would also assist in a complete understanding of credit and as it concerns relationships of meta-dominance between those normally in control of credit systems, it would be very interesting to see how these entities are themselves affected by credit's potential inequities.

Although the dominant partnership between the SCBHUA and industry was prevalent in FACTA, not every aspect of credit or FACTA was solely about control and domination. Both the credit system and the FACTA hearings are mutually constituted by controlling interests (industry and SCBHUA) and resisting interests (consumers and citizens) (Mumby, 1997b and 2005). Though consumers and citizens are not in direct positions of control in credit or Congress, they do possess a natural authority in that they are the substance of these respective systems. In credit and in government, consumers and citizens are both the source and outcome of these respective processes. As demonstrated in FACTA testimony, consumers and citizens however suppressed

or deemphasized, can still be organized voices of resistance that speak out against inequitable control and for fellow individuals who left as individuals, are too easily swept aside by the institutional influence of credit and government. The fact remains; credit and government both begin and end with collective individuals and while this resultant space for resistance is slim, it persists as a viable and fertile ground towards options for change.

As the articulations of agency and privacy are integral to credit and credits' legitimation through government, they are also integral to collectively resisting the inequities they sustain. As of this writing, the US is witnessing the repercussions of a neoliberal convergence of government and economy as the credit system, protected by FACTA from increased regulation, has now plunged the housing market and the nation's economy into another impending recession. Combined with the rising prices of oil, gas and food, this potential downturn could persist for an extended period. It is precisely in this moment that consumer choice and consumer privacy must be engaged by collective individuals as critical issues with the potential to balance the inequities of credit and reassert their legitimacy in regard to information and government. Admittedly, this is a substantial task for this would be no less than attempting to reverse a decades-long status quo in US political economy. Still, the importance of credit to the US political economy cannot be underestimated.

Most market analysts expect it to be at least a three year fall overall, but consumer spending as approximately 70% of US gross domestic product, is expected to drop by over \$300 billion in 2008 alone (Mandel, 2007). This projected drop is not a cumulative figure nor is it compounded by considerations of assets and investments; this projected decrease will come straight from the wallets of US consumers to affect everyday expenditures. This means that for the next few years, there will be an opportunity for change not seen in several decades, as

consumer credit becomes increasingly difficult to receive and afford. In this rarified environment, issues of consumer choice and privacy should take center stage; educators should teach them, media should promote them and social movements should organize them. Given a longitudinal period for action, this work should be founded in critical scholarship focusing on issues of information ownership, privacy, surveillance, consumer choice and consumer rights. While doing so, it is important that this work carry an emphasis on praxis and the engagement of social problems through applied theory to carry this research from the peer-reviewed academy to real world applications. The analysis of consumer credit via the FACTA hearings was aimed at accomplishing such scholarship through the utilization of theory from political economy, cultural studies and critical organizational communication.

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