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Private power, public policy and the U.S. automobile industry

Luger, Stan, Ph.D.

City University of New York, 1988

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PRIVATE POWER, PUBLIC POLICY
AND THE U.S. AUTOMOBILE INDUSTRY

by

STAN LUGER

A dissertation submitted to the Graduate Faculty
in Political Science in partial fulfillment of the
requirements for the degree of Doctor of Philosophy,
The City University of New York.

1988

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This manuscript has been read and accepted for the Graduate Faculty in Political Science in satisfaction of the dissertation requirement for the degree of Doctor of Philosophy.

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ABSTRACT

Private Power, Public Policy and the U.S. Auto Industry

by

Stan Luger

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This dissertation is a study of the changing nature of corporate political power. It examines government policy toward the automobile industry to analyze how a contracting economy has affected the political leverage of contending groups over public policy (business, labor and the public interest). It argues that government policy toward the auto industry can be understood in terms of three periods: from the birth of the industry until the mid-1960s, 1966-1978, 1979-present. Each period has a distinct pattern governing industry-government relations. At first the industry was able to control the questions of safety and pollution, preventing federal regulation. This hegemony ended with the rise of "public interest" opposition culminating in federal safety regulations. Subsequently, vehicle design was the product of bargaining between the industry and government. As the industry encountered unprecedented economic losses in the late 1970s this pattern of defensive maneuvering shifted and the industry obtained a series of more favorable government policies. The hypothesis of this study is that the vulnerability of public officials to corporate interest groups increases with recessionary conditions. This can be explained, in large part, by the structural dependence of government on private corporations for tax revenue and economic growth. With economic contraction the options seen as available to policy makers are limited to those favorable to the interest of business in the hope of stimulating economic growth. As a result the political leverage of corporations increases. This study examines the trade and regulatory policies affecting the industry, including import quotas, safety, emissions and fuel economy. It also examines anti-trust policy, the Chrysler bailout and the unsuccessful attempt for domestic content legislation.

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CHAPTER 1

INTRODUCTION

The proverbial man from Mars, looking at us afresh, would doubtless come to the conclusion that the automobile was the dominant fact in our producing, consuming, and perhaps our fantasy lives; he could plausibly conclude that the four-wheeled creatures run the society and that the two-legged creatures are its servants.

Douglas Dowd

This dissertation is a study of the changing nature of corporate political power. It examines federal government policy toward the automobile industry to analyze how a contracting economy has affected the political leverage of groups contending over public policy and how the business cycle acts as a constraint on the policy process. The hypothesis of this study is that the vulnerability of public officials to corporate interest groups increases with recessionary conditions. In the case of the auto industry this situation became apparent when, in the wake of the industry's economic decline in the late 1970s, a series of more favorable policies were obtained as government policy was redirected.

This phenomenon can be explained, in large part, by the dependence of government on private corporations for tax revenue and economic growth. Coupled with this

fiscal dependence, prospects for reelection are often linked to successful management of the economy. Because private control over investment is taken for granted, the options seen as available to policy makers attempting to stimulate the economy are limited to those favorable to business. As a result, corporations are in a position to use periods of economic decline to further their political interests. In fact, even when particular policy issues have little to do with economic decline or recovery, corporations can obtain more favorable policies.

Given the size and scope of large corporations, analyzing the relations between business and government raises fundamental questions going to the core of American society. Indeed, the corporation has long been acknowledged as one of the central institutions of modern society, rivaling the state in its impact on contemporary life. One of the often quoted statements concerning the centrality of the corporation was made by Peter Drucker in 1946.

What we look for in analyzing American society today is therefore the institution which sets the standard for the way of life and mode of living of our citizens; which leads, molds and directs; which determines our perspective on our own society; around which crystallize our social problems and to which we look for their solution. What is essential in a society is, in other words, not the static mass but the dynamic element; not the multitude of facts but the symbol through which the facts are organized in a social pattern; not, in other

words, the average but the representative. And this, in our society today, is the large corporation.¹

Automobile companies have long been among the largest corporations. On a worldwide basis the industry is the largest manufacturer. American producers dominated world auto production for most of the twentieth century, from before World War I until 1980, and the industry has remained the largest in the country since the early 1920s. Emphasizing the historical significance of the auto industry Drucker wrote:

The automotive industry stands for modern industry all over the globe. It is to the twentieth century what the Lancashire cotton mills were to the early nineteenth century: the industry of industries. The performance of all industry is judged by it.²

Throughout their history auto companies have been instrumental in shaping changes in the labor process, corporate structure, labor relations, and consumer spending.

And the industry continues to be a leading force for change in the American political economy. A recent study by the Harvard Business School's Project on the Auto Industry and the American Economy stressed its current significance. It is "an enterprise of enormous power and scale where the issues of the economy and politics are cast on a giant screen."³

In this one industry there are fundamental issues that may define the social, economic and political agenda of the 1990s: the

philosophy of the corporation, its purposes and practices; the fate of organized labor; the role of government in a global economy and the national competitive position of the United States.⁴

The Auto and American Society

The automobile is one of the icons of the twentieth century.⁵ Its impact can be seen throughout society whether one examines dating patterns or family life, commuting or economic development, air and noise pollution or accidental deaths. Indeed, the car's presence is ubiquitous. It is one of the characteristic commodities of our times, marrying technology and individualism. It has been linked to the deepest elements of the psyche, merging power and violence, freedom and sexuality.⁶ The endless highways of our urban landscapes, often choked with traffic, evoke many of the contradictions of modern society. Even as early as 1929, Robert and Helen Lynd realized the auto was having a profound impact on American society.⁷

The economic impact of motor vehicles has been equally important. In fact, Paul Baran and Paul Sweezy characterized the automobile as one of the epoch making inventions of modern times, alongside the steam engine and the railroad.⁸ They define epoch making innovations as those "which shake up the entire pattern of the

addition to the capital which they directly absorb."⁹

Thus, suburbanization, made possible by the automobile, was the engine of growth for the post World War II economy, profoundly altering urban development and economic investment.¹⁰ However, even before the Great Depression the auto was transforming the American economy. In fact, William Leuchtenburg argues that "without the new automobile industry, the prosperity of the Roaring Twenties would scarcely have been possible."¹¹ Baran and Sweezy cogently summarize the economic development made possible by the car:

The process of suburbanization, with all its attendant residential, commercial, and highway construction, has all along been propelled by the automobile. The petroleum industry, with more capital investment than any other industry, is in large part a creation of the automobile; and several other major industries (rubber, glass) are similarly dependent. Many service "industries" too have grown up in the wake of the automobile, such as filling stations and repair shops, motels and vacation resorts. Clearly, the amount of capital absorbed by all these outlets exceeds by many times the investment in the automobile industry itself.¹²

There are more than 170 million motor vehicles in the United States with cars comprising over 130 million of this total. More than half of American households own two or more cars, and overall there are 1.5 vehicles for every household in the country.¹³ Privately owned vehicles account for 83 percent of all trips taken in the U.S., and approximately 84 percent of all Americans

commute to work by car; 65 percent of all commuters drive to work alone.¹⁴

Autos and Public Policy

Analyzing the patterns of federal government policy toward the auto industry requires examining decisions made by several institutions. Auto policy is made by the Congress, the President and the United States Trade Representative (USTR), the Justice Department's Antitrust Division, the Federal Trade Commission (FTC), the International Trade Commission (ITC), the Department of Transportation and the National Highway Traffic Safety Administration (NHTSA), the Environmental Protection Agency (EPA), and frequently the federal courts. Because of the extensive number of decision making points, the policy network affecting the auto industry provides unusually fruitful material for generalizing and speculating about the nature of power and the policy process.¹⁵

Much has been written about the auto industry. Books have lampooned,¹⁶ celebrated,¹⁷ as well as, studied the car's effects on the social environment.¹⁸ There are comprehensive works on the evolution of highway traffic regulations¹⁹ and the development of transportation policy.²⁰ There are books on the labor process,²¹ GM's contribution to the modern concept of

the corporation,²² and a number of works about the personalities who have been involved with the Ford Motor Company.²³ Car enthusiasts have a number of their own magazines, including Road and Track, Motor Trend, Hot Rod, Car and Driver, to mention a few. Combined, their circulation is in the millions.²⁴

Yet, political scientists have largely neglected the study of government policy directly affecting the nation's largest industry. No comprehensive work on the politics of the industry has been published.²⁵ This dissertation attempts to begin to fill that void by examining the patterns of government policy toward the industry. Further, it seeks to contribute to the long standing debate on the study of power by focusing on the relation between economic contraction and political influence.

The central components of automotive policy explicitly directed to the industry are regulatory, trade, and antitrust policy. Transportation policy and the development of the Interstate Highway System are also clearly relevant to an overall treatment of the politics of the industry, but they fall outside the parameters of this dissertation. The focus of this study is the shift in automotive policy beginning with the Carter Administration and culminating with the Reagan Administration's "policy package" made in April 1981.

Included in this program were policy changes involving regulatory rollbacks (safety, emissions, and fuel economy) and import quotas on Japanese cars. In addition, the Reagan Administration introduced substantial changes in regulatory procedures that critics charged threatened the rule of law. This shift has to be understood in the context of the history of automotive policy. Accordingly, the earlier patterns of government policy are also examined.

The importance of this investigation goes well beyond the insights into the policy process provided by these issues. It also highlights the relationship between the policy process and fundamental aspects of daily life. In the case of the auto industry, this includes the quality of the air we breath, the risks of driving, our dependence on oil, the nature of a large sector of jobs, and, the largest purchase for the average family, except for the cost of a private home.

Despite the absence of critical works on auto politics, there is an extensive critical literature on the role of corporations in American politics. Several books have been written on specific industries, including oil, steel, and rail roads.²⁶ Other works have examined the general theme of business influence and participation in government policy.²⁷ These works share at least one theme in common. Corporate power is

preeminent. Arguing against this position with a typical pluralist analysis of corporate power, is Edward Epstein, The Corporation in American Politics.²⁸ Because he can identify specific instances where corporations lose political battles, he concludes they do not unfairly dominate American politics or threaten democracy.

While business firms do indeed experience frequent success in the political sphere on given issues, so also do they meet with defeat on particular matters. As a class of political participant, corporations possess no monopoly over political access or influence.²⁹

Epstein seems unaware that critics of corporate power have virtually never claimed that business has a monopoly over political access or influence. Instead, they have argued corporations have a pervasive --and unfair-- influence over government. Underlying the difference between Epstein's conclusions and those of the critics of corporate power is a fundamental theoretical difference concerning approaches to the study of power.

Approaches to the Study of Power

The concept of power or influence continues to be contested in political science. Debates have raged for years generating a voluminous literature, with little indication of any resolution.³⁰ Part of this debate involves the relationship between economic and political

power. This relationship is crucial for understanding the nature of power in a liberal democracy where a political system based on equal rights is coupled with an economic system based on exclusion and inequality. Power held in one sphere is not necessarily translated into the other. In fact, Franz Neumann argued that the translation of economic power into political power becomes, in a liberal democratic society the central concern of political scientists.³¹

The two main traditions that epitomize this debate are pluralism and neomarxism.³² Dominating American political science, pluralism assumes that the state is neutral and argues that the focus of study should be the group pressures that move government into action.³³ Central to pluralism is the belief that there is no inherent structure or matrix of power within American society. Power is tied to issues and issue networks do not overlap. Nelson Polsby uttered the classic pluralist dictum contending "...nothing categorical can be said about power....If anything, there seems to be an unspoken notion among pluralist researchers that at bottom nobody dominates...."³⁴

Pluralist writers of the 1950s and 1960s were responding to earlier community power studies done by sociologists emphasizing the stratified nature of power.³⁵ In contrast to these studies, the pluralists

defined community power in terms of government decisions, concentrating their energies on the decision making process. They assumed that studying government decisions was sufficient for evaluating community power. This approach ignores a wide range of decisions and relations involving the so-called "private sector." One aspect of this narrowed conception of power was illustrated by Polsby. He argued that only when a banker explicitly attempts to influence government decisions does he become worthy of attention. When a banker performs his "normal" activities he does not affect the community.³⁶ Needless to say, this ignores the tremendous power of banks to shape economic development through loan policies.

In the most celebrated pluralist study, Robert Dahl stressed the notion of "dispersed inequalities," rejecting the stratification view of "cumulative inequalities."³⁷ Due to this dispersal of resources Dahl concluded that no one group dominated, downplaying the relationship between economic and political power. In another work he argued that "all active and legitimate groups in the population can make themselves heard at some crucial state in the process of decision."³⁸ Thus, the pluralists concluded that power in American society was not stratified. There have been several criticisms of the pluralist approach, most

notably by Schattschneider, and Bachrach and Baratz. They argue that pluralists overemphasize those issues visibly considered by decision-makers, ignoring "non-decisions" and the bias of the system as a whole.³⁹

Recently, however, two of the leading voices in the pluralist camp --Robert Dahl and Charles Lindbloom-- have reconsidered their earlier position.⁴⁰ Today, they both acknowledge businessmen to be more than just one of many interests, having a more powerful influence than merely an "interest group."

Unfortunately, the "new insights" of neopluralism remain conceptually flawed. Having discovered that American politics is not characterized by relatively equal access for all groups, the neopluralists have substituted a model where, it seems, business can never lose in the political arena. A good example of this is Charles Lindbloom's work Politics and Markets.⁴¹ He distinguishes between "primary" and "secondary" issues to explain the outline of business's political power. Primary issues are those central to the health of business and are never contested. Secondary issues are those business can afford to lose and are open to debate. Although Lindbloom introduces these concepts in the quest for more precision, they cloud rather than clarify critical analysis. All losses except those affecting the socialization of ownership are

automatically labeled secondary. The ability to evaluate actual modifications of business power as, for example, in the imposition of safety and health regulations or the welfare state, is lost.

Sometimes forgotten in these new debates is the most subtle and fruitful pluralist analysis found in David Truman's The Governmental Process. Truman used the metaphor of a "discount rate" to explain the translation of economic power into political power. Unlike the early Dahl or Lindbloom, Truman acknowledged from the beginning that business was in a "favored position" with "superior status" to other groups.⁴² However, he emphasized the problems of internal group cohesion, overlapping membership and the time bound nature of coalitions as countervailing forces. They formed the basis for his concept of a discount rate diminishing the effectiveness of economic power entering the political process. It allowed Truman to argue, like the early Dahl, that representative government was not threatened by organized business interests.

For Truman the success of a group largely depended on its strategic position within society, the "ease with which it commands deference from outside its bounds."⁴³ Although he stressed ideological advantages of prestige and propaganda, he added: "the favored position of "business" is furthered by the existence of an economic

system under which businessmen's confidence and expectations of profit are of crucial importance to the health of the economy."⁴⁴ This statement resembles the position of a neomarxist like Fred Block who argues that state managers are forced to concern themselves with reproducing the social order where the central constraint upon government officials is business confidence.⁴⁵

Using Truman's concept of a discount rate is helpful to explain the rise of federal regulations of the car. Clearly the automakers were unable to translate their economic muscle into political might to prevent federal regulation. Despite their opposition regulations were implemented. However, this framework does not account for the most recent period of government policy toward the industry when government did not have to be "pressured" into helping the industry. There was a consensus that government had to come to the aid of the industry due to the industry's pivotal economic position.⁴⁶ The inadequacy of Truman's approach lies in his failure to analyze how economic conditions affect the discount rate. Because he does not explicitly locate business power within an economic context, he is unable to account for the relationship between economic and political change.

This failure is a common weakness of the pluralist

perspective. Indeed, one of the biases of pluralist theory results directly from not taking into account the relevance of socio-economic structure.⁴⁷ Recent examples of this can be found in the work of Ornstein and Elder, and David Vogel. In each case the success of an interest group is explained by its "internal resources," without any linkage to the effects of economic conditions on group influence. Success is dependent upon a group's size and its organizational skills, its expertise and political knowledge, and for Vogel, its alliances with other groups.⁴⁸

While theorists critical of pluralism such as Schattschneider or Bachrach and Baratz identify the limitations of pluralist theory in terms of the bias of the system as a whole, they offer little in the way of guides for the empirical study of political power in the broader context of society.⁴⁹ As a result, examinations of policy formation often produce a model of politics closely resembling the group model of pluralism due to the pervasiveness of group conflict within the policy process. Those sensitive to the inadequacies of pluralism are left to stress the unequal nature of group competition or the privileged access of business groups.

If for pluralism there are few, if any, contextual conditions that shape a group's political success, on

the other hand, the functionalist versions of marxism have seemingly removed the active behavior of political contestants, substituting a model of structural determination. Individuals become mere "bearers" of objective social relations.⁵⁰ This perspective is the other side of the traditional debate between voluntarism and determinism, or to use Steven Lukes' terms, power and structure.⁵¹ Needless to say, the explanation of most social phenomenon cannot be found in either of these extreme positions but instead lies in the relationship between the two.⁵² Focusing on this relationship is one way of formalizing the insights of the historical method. For as Marx wrote, "men make their own history, but do not make it just as they please; they do not make it under circumstances chosen by themselves, but under circumstances directly encountered, given and transmitted from the past."⁵³

The recent neomarxist literature on the state offers the most rewarding direction for analyzing this relationship.

By focusing on the interplay between economic and political factors, it provides the most incisive account of political power in advanced capitalist societies. The neomarxists approach "weakens" the standard marxist reading of business domination of the state. These critics focus on the relative autonomy of the state from

the particular interests of business.⁵⁴ Needless to say, the neomarxists emphasize the relative nature of this autonomy. The state is still seen as a capitalist one, but whose role is to mediate between different factions within the capitalist class and working class demands for reform. According to this formulation, the state is responsible for maintaining conditions of capitalist accumulation, while at the same time ensuring social harmony.⁵⁵ The state is seen as dependent on accumulation for its tax revenues, as well as for providing one of the essential conditions of electoral support--stable economic growth. As a result, the role of the state becomes the long run reproduction of advanced capitalism and cannot be reduced to the simple handmaiden of business.

Thus, the state apparatus exerts a relative independence or autonomy in responding to these contradictory forces. Among different theorists the degree of this relative autonomy varies. For some, in fact, as the state responds to these demands it also must be seen as an independent third factor, central to the ultimate outcome of political change.⁵⁶ Together these forces alter the nature of class struggle, and increasingly the state becomes the arena of conflict. Needless to say, however, this is not to suggest that all neomarxists subscribe to each of these positions.

The neomarxist approach, based upon an understanding of state actions as shaped by the needs of accumulation and legitimation, can explain both the rise of regulation during a time of high profits and social demands, and the resurgence of corporate influence with economic contraction and subsiding demands. This perspective can make sense of the expansion of government regulation and the more recent rollback of standards, as well as the Chrysler bailout and the import quotas on Japanese cars. Because of government's dependence on large corporations, during times of economic contraction officials are more vulnerable to corporate lobbying. Officials respond to business in the hope of stimulating economic activity, and do so across a wide variety of policy issues, not simply tax or investment policy. For the auto industry this pattern has shaped decisions on trade, regulatory and antitrust policy. However, as Claus Offe emphasizes, although apparent throughout the policy process, accumulation acts as a constraint on policy makers and not as a determinant.

The criterion of the stability of accumulation is... incorporated in the pursuit of interests and policies that, considered by themselves, may have little or nothing to do with accumulation. Accumulation, in other words, acts as the most powerful constraint criterion, but not necessarily as the determinant of content, of the policy process.⁵⁷

Although the neomarxist insights of the imperatives of accumulation and legitimation significantly advances the understanding of power, there are a number of issues left unresolved. In particular, there is fairly widespread disagreement concerning the relationship between the capitalist class and the state, how to understand the nature of the state in a capitalist society and how to study power. Both Bob Jessop and Martin Carnoy have analyzed the variations in neomarxist theory in detail.⁵⁸

One of the most unresolved issues is the concept of relative autonomy and the conditions which shape and delimit it. Resolving this theoretical debate through the further development of theory is unlikely. However, by studying actual conditions of political change progress can be made. The inadequacy of positing the notion of relative autonomy and leaving it undeveloped was stressed by Franz Neumann in 1936, prefiguring much of the recent neomarxist debate on the state.

It is...a meaningless statement that law and the state are relatively autonomous. The central task of sociological investigation into the legal system consists in indicating on the one hand the conditions under which law and the state can develop relatively independently, and on the other the forces which go to destroy this relative autonomy and subject the law and the state with full force to the stream of social realities.⁵⁹

The problem that Neumann identifies, analyzing the

variable conditions which shape relative autonomy, has yet to be fully developed by neomarxist theory. Yet, Offe, for example, does acknowledge one aspect shaping it, the political consequences of economic decline. Nevertheless, he does not explore this issue in depth.

[There is an] increased weight that the veto power of capital, especially large corporate investors, achieves under conditions of economic instability and low growth rates. The economic imperatives which impose themselves upon governments...[under] such conditions then result in the imposition of stricter constraints upon those political forces whose uninhibited articulation could do damage to 'business confidence' and the 'investment climate.'⁶⁰

Despite this insight all too often the level of analysis for neomarxists is the abstract level of theory or a broad evaluation of such periods as the New Deal or the emergence of the welfare state. Few insights are yielded concerning how to study questions of policy formation, or how business uses periods of economic contraction to further its political goals.

This inadequacy can begin to be worked out by analyzing how variable market conditions shapes business-government relations. One method to develop the notion of relative autonomy is to examine how economic contraction affects the influence of contending groups within the policy process. In this way, the insights of neomarxism, concerning the needs of accumulation and legitimation, are combined with the

sensitivity of pluralism to group conflict and alliances. Both the external economic conditions shaping the context of policy debates and the exercise of power through interest group behavior are synthesized, offering a more comprehensive explanation of the dynamics of the political process. Economic contraction increases the vulnerability of public officials to corporate lobbying, and acts as a constraint on policy makers, at the same time as it shapes the strategies and alliances among contending groups.

Because the control over capital provides corporations with an unparalleled form of leverage, the withholding of investment and withdrawal of economic activity, during periods of economic contraction this leverage is enhanced, as concerns over the economy accelerate. Since the state, by and large, does not directly engage in economic activity, it must attempt to stimulate economic growth by creating conditions conducive to private profits. Capital mobility further exacerbates this asymmetrical power relation. Offe emphasizes the built in advantage of business over the state. "The entire relationship between capital and the state is built not upon what capital can do politically via its association, as the critical theory of elitism maintains, but upon what capital can refuse to do in

terms of investments...."61

By using this approach the effectiveness of interest groups is linked to the contextual conditions in which contests for power occur. This dissertation argues that corporate lobbying is more effective during times of economic contraction, and, in fact, corporate groups actively invoke these contextual conditions. Examining how variable economic conditions increases the vulnerability of public officials to corporate lobbying, can empirically illustrate the state's dependence on business.

The ultimate source of business's political power, state dependence, should not be confused with the expressions of power associated with increased business mobilization typically accompanying economic decline, as seen since the mid-1970s. Again Offe makes this point.

The dependence of the state apparatus upon the performance of capital...is exploited and fine-tuned by the operation of business associations, but it is by no means constituted or created by them. Their success is not accomplished by or because of the organization itself; rather, it derives from a power relationship that is logically and historically prior to the fact of any collective action of businessmen.⁶²

Thus, this study argues corporate political power has to be examined on three levels: traditional resources of organization and access, state dependence on business, and the consequences of economic decline.

This dissertation is predicated on the assumption

that all societies have systems of power and institutions which are responsible for its reproduction. As Robert Lynd wrote: "the social structure of a given society conditions and controls the structure and uses of the society's institutions. A social structure is, itself, a structure of power."⁶³ In American society the fundamental locus of power stems from capitalist relations of production. But it is joined to a democratic political system. Accordingly, political demands such as safety or environmental control are forced to confront economic constraints, just as corporate political demands are circumscribed by democratic norms and the imperatives of maintaining legitimacy.

In the case of the automotive policy, for example, it would be extremely unlikely that the advent of federal regulation would have occurred during a time of economic contraction. Conversely, the resurgence of the industry's ability to influence government policy would be unlikely without economic decline. Variable economic conditions create "opportunities" that can then be maximized in the policy process. However, this study argues that without significant social pressure the imperative of accumulation is dominant. Robert Lynd made a similar point in a discussion of the power relations expressed by the interaction of different

institutions in the social structure, and, in particular, business and democracy.

If the power expressed in the social structure and related dominant institution is secure, the development of the power of minority segments of the social structure, and of powers expressing secondary interest throughout the entire social structure, tends to be allowed to grow; but with the onset of insecurity in the dominant power, these minority or secondary powers tend to lose those parts of their freedom that conflict with the interests of the dominant power. One may illustrate this dynamic relation between dominant and secondary interests by reference to business and democracy, respectively, in our society: threats to the prestige and security of our economy lead to the extension of business control over...politics.⁶⁴

Patterns of Government Policy and the Hypothesis of the Study

Government policy toward the auto industry has developed in three fairly distinct periods: from the birth of the industry to 1966; 1966-1978; 1979 to the present. The central difference between these periods is the role of government as product regulator. Until the 1960s there were no federal regulations concerning auto design. The industry was able to define the way safety issues were understood. It supported and coordinated those groups oriented toward the so-called "nut behind the wheel" view of highway safety. From 1966 through 1978 federal regulations increased in scope. With the industry's unprecedented losses in 1979 and 1980,

government policy was redirected. As a result, the industry has been able to use its central economic position to obtain more favorable government policies.

The major element of federal involvement in the industry before the 1960s was road building programs. Beginning in 1916 with the subsidization of state road building programs and culminating with the Interstate Highway System, federal support for highways has been all but a direct subsidy of the industry. Without this support the industry's expansion and dominance over the transportation sector is inconceivable. Heavy tariffs on imported cars also helped the early American auto makers. From 1913 to 1922, tariffs on imports ranged between 30-45 percent, while during 1922-1934 rates fluctuated between 25-50 percent. After 1934 rates dropped to 10 percent and with the General Agreement on Tariffs and Trade (GATT) have continued to decline.⁶⁵ State and local efforts for licensing, registration and traffic laws, as well as roadbuilding were also important.

By the time of the New Deal the auto industry was already the largest in the nation in sales and employment. As such its health was central to any plans for recovery. Franklin D. Roosevelt's attempt to use the National Recovery Administration (NRA) temporarily increased federal involvement with the industry. The

industry had little trouble in shaping its code, however, a pattern that was not unique. Davis Dyer comments,

The NRA permitted the National Automobile Chamber of Commerce (forerunner of today's Motor Vehicle Manufacturers Association) to draft its own code, which ratified almost all of the industry's existing practices in pricing, dealer and supplier relationships, and model introduction strategy. Although the automakers guaranteed workers a minimum wage, the companies also avoided or evaded for several years provisions in the recovery legislation that encouraged collective bargaining.⁶⁶

After the NRA and until the mid 1960s, government policy toward the industry took the indirect forms of industrial relations mediation and macroeconomic management, as well as antitrust investigations.⁶⁷ Despite repeated antitrust investigations, the focus of almost every case has been anticompetitive behavior rather than monopoly structure.

With the advent of federal safety regulations through the passage of the National Traffic and Motor Vehicle Safety Act of 1966, the Federal government became directly involved in regulating the industry. Now the car's design became a public issue, with a concern for the second collision, the one between the vehicle and its passengers. In 1970 the Clean Air Act set strict goals for car emissions. In 1975 the Energy Policy and Conservation Act extended auto regulations to fuel economy. The regulatory apparatus for

automobiles took form throughout this period, culminating in the establishment of the Environmental Protection Agency and the National Highway Traffic Safety Administration, formalizing the political relations of bargaining and opposition.

The pivotal change that explains this shift in government policy was a change in the ideological parameters of American politics associated with the rise of the social movements of the 1960s. Change in the ideological climate brought with it a concern for safety, consumer and environmental issues previously absent from political debates. The number and vigor of public interest groups mushroomed, significantly expanding the scope of interests influencing policy makers.

More recently, the patterns of government policy have changed again. Regulatory policy has been redirected away from environmental concerns for the ostensible purpose of facilitating economic recovery. At the same time, new policies have been implemented to directly aid the industry. The two most notable examples are the Chrysler bailout and the import quotas on Japanese cars. Accordingly, the most recent stage of government policy can be characterized as a resurgence of corporate political power.⁶⁸

This shift in automotive policy began during the

Carter Administration. Upon becoming President, Jimmy Carter angered the industry by appointing Joan Claybrook, an associate of Ralph Nader, to head the NHTSA. However, when the industry began losing money the political consequences of contracting economic conditions were revealed. Carter came to the aid of the industry. First, there was the Chrysler bailout. It represented an unusual example of a large private corporation receiving government aid to prevent bankruptcy. Within a market economy model this type of aid would be unexpected. However, in an oligopolistic economy government faces "pressures" which lead to such results.

When it became clear that the entire industry was in trouble Carter had Transportation Secretary Neil Goldschmidt prepare an outline of proposals to help the automakers. Presented to Carter as he was leaving office in January 1981, the central components of the plan included import quotas, regulatory relief, antitrust relaxation, tax relief, worker retraining and community development.

The Reagan plan, announced in April of that year, closely paralleled the Carter plan. Clearly, there would have been differences if Carter was reelected, particularly in implementing regulatory changes as well as community development and worker retraining.

However, the striking similarities between the outlines of the two plans is not coincidental. It reflects pressures placed on government during times of economic contraction. These demands lead to shifts toward more cooperative arrangements in business-government relations. These changes can be explained, in large part, by a new economic environment where American manufacturing corporations are challenged by foreign competition. As a result, government policy has been subordinated to corporate interests in the hope of stimulating economic growth and increasing corporate profits.

The industry's increased ability to obtain more favorable policies suggests an inverse relationship between corporate political influence and economic growth.⁶⁹ This can explain both the most recent redirection of auto policy and the rise of regulation in the 1960s and early 1970s, when the industry enjoyed year after year of healthy profits. Of course, this relationship is predicated on other factors remaining unchanged. During times of significant economic breakdown, as for example, the Great Depression, business's ability to shape policy eventually declined as traditional relations among institutions were radically altered.⁷⁰

The inverse relationship between economic decline

and political power, due to the increased vulnerability of policy makers to corporate lobbying, is a result of the auto industry's central economic position. According to the Congressional Budget Office (CBO) in 1980 approximately 20 million jobs, or about 20 percent of the total employment in the nation, is related to the industry.⁷¹ The CBO also estimated that when 700,000 people were out of work due to the industry's downturn during the summer of 1980 it cost government \$350 million per week in lost revenue and additional outlays.⁷² Hence, the industry's success in obtaining favorable policies is a consequence of the increased vulnerability of public officials in the context of economic decline.

This vulnerability stems from the structural dependency of the government on private corporations for tax revenue and maintaining employment opportunities, which makes the vitality of domestic corporations a direct concern of government officials.⁷³ According to CBO estimates, at the time, each percentage point of unemployment cost the federal government \$30 billion.⁷⁴ Thus, economic instability directly affects fiscal stability, and often as a result political stability.

Frequently, electoral politics reflect the expectation by the electorate that government officials should be responsible for maintaining economic growth.

During hard times both political parties attempt to convince the public of their respective solutions to economic problems. Consequently, prospects for reelection are often tied to economic conditions, with elections a referendum on the incumbent's management of the economy.⁷⁵ In addition to this general concern, the Big Three have plants scattered across at least 26 different states, and thus a large number of senators and representatives receptive to its requests. On top of this is the wide distribution of the industry's supplier firms, increasing the number of the industry's allies in Congress.

While a central argument of this study is that the political influence of the industry stems from its pivotal economic position, there are other dimensions of the nation's dependence on the auto industry that are outside the scope of this dissertation, but still important factors contributing to the industry's political success. No analysis of the power of the auto industry can ignore the psychological fixation that many people have for cars, or the dominance of automobiles over transportation. The allure of cars no doubt creates sympathies for the auto makers that few industries can match. For a society that typically defines freedom in terms of possessive individualism cars offer a means of escape.⁷⁶ Cars are also a highly

visible form of conspicuous consumption.⁷⁷ However, the release offered through cars is often an "euphoria in unhappiness."⁷⁸

As long as the nation's transportation networks remain thoroughly dominated by private passenger cars, the industry will be able to link the interest of individual car drivers to its own. Unless alternative forms of transportation are developed, most notably along densely traveled corridors within and between cities, the nation's ability to free itself from auto domination is limited. Further, the problems of air pollution and highway congestion will not be solved until viable public transportation is available.

Several objections could be made to the explanation that the most recent period of government policy is the result of the state's increased vulnerability to corporate interest groups. To begin with, at the same time the industry experienced economic hardship there was a broad mobilization of the business community, including the automakers. This mobilization has been analyzed by Thomas Edsall, and Ferguson and Rogers.⁷⁹ Meanwhile, the social and environmental movements that led to auto regulation were on the wane. Either of these factors could be offered as an explanation for the change in auto politics.

However, neither of these two factors are

independent of the economic stagnation beginning in the mid-1970s. Following a number of legislative defeats that led to the expansion of social and environmental regulation, the business community mobilized to attack government regulation, arguing that regulation was a main cause of its problems, although there was little evidence to support this claim. By the late 1970s Ferguson and Rogers estimate that corporate spending on advocacy advertising and grass roots lobbying, much of it targeted against social regulation, reached \$1 billion annually.⁸⁰

This effort was largely successful in reshaping the debate over regulation, forcing defenders to argue against the propositions that government "red tape" was the cause of economic problems and environmental protection could only be accomplished at the expense of jobs. Advocates of social regulation were put on the defensive. However, this redefinition of the debate over regulation did not succeed simply because of corporate mobilization. Without the economic stagnation and decline that plagued the American economy since the mid-1970s, this effort would have lacked plausibility. As policy makers searched for mechanisms to stimulate the economy, alleviating the "burden" on business seemed logical.

Another objection to the explanation of increased

corporate political success would suggest we are witnessing no more than the use of potential power. This objection is weak on both empirical and conceptual grounds. Empirically, it is impossible to argue that the industry suddenly started fighting government initiatives. Since the mid-1960s it had tried to stop the implementation and expansion of federal regulations, but was unsuccessful.

On the other hand, categorizing uses of power as expressions of "potential power" reifies the concept. Power is not simply something that a corporation, or an individual for that matter, has ready and waiting to use when necessary. This view would suggest it is a static entity comprised of those resources necessary for its use: organization, money, access, status, public support.

Power in the social world is above all a relation. The relational aspect of power must be integrated into the analysis, not just acknowledged and dropped. This relation, however, can not be analyzed by merely focusing on the contestants and their actions, regardless of the complexity. As a relation, power is also shaped by the environment in which it is embedded, institutional, legal and economic. Thus, the translation of corporate power into political power is shaped by the traditional power resources of money,

access, information and organization and by the context of economic and social change. To ignore the connection between the economic context and political behavior is to separate politics from economics, as if the two were unrelated and functioned independently.

By focusing attention on these two levels of analysis it is possible to integrate the interplay between economic and political factors. It can also make sense of changes in the industry's political strategy which increasingly emphasized the issue of jobs as it encountered economic hardship. This strategy maximized the industry's two forms of leverage: traditional interest group pressure and its control over investment and employment.

One final objection must be met. After the auto industry's losses of the late 1970s and early 1980s, it has enjoyed several years of handsome profits. In fact, in 1983 the industry earned record profits which were significantly surpassed in 1984. Yet, the friendly relations with government have not changed. If policy making simply mirrored the business cycle it could be expected that under these conditions regulatory policy would be extended. However, despite the industry's recent profits, all analysts agree that the future for domestic auto production is not bright. All expect the market share of domestic producers to continue to

decline as import competition accelerates. In the future the Big Three will be smaller companies with fewer employees. Accordingly, the profits of recent years are more a temporary reprieve than a signal of a rejuvenated industry. Moreover, and to repeat, this study does not argue that political power automatically comes with economic power, or that when public officials are more vulnerable to corporate lobbying the industry is able to obtain everything it wants. The political relations of liberal democracy are far more complex.

In general the broad contours of auto policy reflect the hypothesis that moderate economic decline increases the vulnerability of government officials to corporate interest groups and acts as a constraint on policy makers. Regulation of the industry has not increased when the industry is losing money or is seen to be in a precarious position. The only significant exception to this pattern occurred in 1975 when Congress legislated mandatory fuel economy standards. At the time sales were down as a result of the rise in gas prices following the oil "crisis" of 1973 and general recessionary conditions. In this case auto policy was subordinated to the larger issue of energy policy and conservation. National concerns over the dislocating affects of energy shortages overrode the industry's effort to obtain voluntary standards.

More recently, another possible exception can be seen in the near success of auto workers in obtaining a domestic content law. In spite of the industry's vigorous objection the bill passed the House of Representatives in two different sessions. The bill was an explicit attack on the investment autonomy of the industry. In this case, the local pressures for employment during the time of the deepest recession since the Great Depression, organized by a sustained effort by the United Auto Workers, appeared as if it would reverse the general pattern of increased influence associated with economic contraction. However, the bill did not gain support from the executive branch or the Senate. Indeed, it never even made it out of committee in the Senate. Nevertheless, the partial success of the auto workers is an adumbration of the possibilities that do exist for challenging corporate power, even in times of economic contraction.

Conclusion

The various periods of government policy toward the auto industry offer us three different versions of business-government relations which parallel the general patterns of twentieth century American liberalism. By analyzing these different patterns of business influence it is possible to clarify the nature of power in

American society. With the halcyon days of the American Century clearly over, changes in the world political economy are affecting business-government relations, which in turn result in changes throughout American society.⁸¹

The once mighty steel, auto and textile industries no longer can claim world dominance.⁸² Record trade deficits, reaching \$170 billion in 1986, have been common throughout the 1980s. The standard of living for the average American has declined in the last decade⁸³ and the number of people in poverty increased in the early 1980s.⁸⁴ These economic changes are likely to have political repercussions. Some analysts argue that the consequences of current economic changes are so significant that policy responses will affect the heart of the American political system. Kenneth Dolbeare, for example, contends that democracy is at risk, because strategies for economic renewal will likely force policy makers to constrain political rights and economic benefits.⁸⁵

Organization of the Study

Following this introductory chapter, chapter 2 examines the structure of the industry, including the issues of economic concentration, diversification, the GM-Toyota joint venture, antitrust policy and labor

relations. Chapter 3 begins the historical narrative, tracing the issue of safety from the inception of the industry through the passage of federal safety regulation in 1966. Chapter 4 covers the years 1967-1978, examining the three areas of auto regulation: safety, emissions and fuel economy, as well as the shift in the industry's political strategy.

Chapter 5 analyzes the resurgence of the industry's political power during the Carter Administration. Chapters 6-8 examine regulatory and trade policies during the Reagan Administration, including changes in regulatory procedures implemented by the OMB, and a discussion of the rule of law in the regulatory process. Chapter 9 presents the conclusions concerning private power and public policy.

Endnotes

1. Peter Drucker, The Concept of the Corporation (NY: John Day Company, 1972), pp.6-7.

2. Drucker, pp.176.

3. Davis Dyer, et.al., Changing Alliances: The Harvard Business School's Project on the Auto Industry and the American Economy (Boston:Harvard Business School, 1987), p.ix.

4. Davis Dyer, p.xi.

5. Actually the car was invented in the late nineteenth century. The first workable gasoline powered road vehicle was built in Germany in 1885 by Karl Benz and Gottlieb Daimler, forerunners of Mercedes Benz. The first successful American car was built by Charles and Frank Duryea in Springfield, Massachusetts in 1893, following the ideas of Benz's car published in Scientific American. Henry Ford built his first car in 1896, but it took him seven more years to put cars into production. A brief summary of this history can be found in John Rae, The American Auto Industry (Boston: G.K. Hall, Inc., 1984), pp. 11-14.

6. For a disturbing fictional account of these themes see J.G. Ballard, Crash (NY: Vintage Books, 1985).

7. Robert and Helen Lynd, Middletown (NY:Harcourt, Brace & World, 1929), especially chapter XVIII on leisure activities. The responses the Lynds received about cars are still rather startling. One working class wife said : " We'd rather do without clothing than give up the car." (p.255) Another said: "I'll go without food before I'll see us give up the car." (p.256) When a teenage boy was asked in Sunday school to name a temptation we have today that Jesus didn't have he responded-"Speed!" For a general collection of writings examining the car and American culture see David Lewis and Lawrence Goldstein, The Automobile and American Culture (Ann Arbor: University of Michigan Press, 1983).

8. Paul Baran and Paul Sweezy, Monopoly Capital (NY: Monthly Review Press, 1966).

9. Baran and Sweezy, p.219.

10. William Tabb, The Long Default (NY: Monthly Review Press, 1982), p.72. For an analysis of the patterns and consequences of this development see William Tabb and Larry Sawers, Marxism and the Metropolis, 2ed. (NY: Oxford University Press, 1984).

11. William Leuchtenburg, The Perils of Prosperity (Chicago: University of Chicago Press, 1958), p.185.

The growth of the industry was so rapid Leuchtenburg contends that its development "in a single generation was the greatest achievement of modern technology." In 1900 annual auto production was 4000, while by 1929 it reached 4,800,000. At this time in the U.S. there was 1 car for every 5 persons, compared to 1 car to 43 persons in Britain and 1 to 325 in Italy and 1 to 7000 in Russia (p.186).

12. Baran and Sweezy, p.220.

13. Motor Vehicles Manufacturers Association, Facts and Figures 1986 (Detroit: MVMA, 1987) pp. 19,44.

14. Motor Vehicle Manufacturers Association, Facts and Figures 1982 (Detroit: MVMA) p.46.

15. This policy network is not, however, a coherent subsystem. The auto industry touches so many areas of public policy that it confounds the idea of a policy network, let alone an iron triangle. The number of Congressional committees that hold hearings on industry related matters is remarkable. Listed under the subject heading of "automobile industry" in the Congressional Information Service Index, during 1979-1982, were 89 different committees and subcommittees.

16. John Keats, The Insolent Chariots (Philadelphia: J.B. Lippincott, 1958).

17. John Rae, The Road and Car in American Life (MIT Press, 1971).

18. See for instance, Kenneth Schneider, Autokind v.Mankind (NY:Schocken Books,1971); Ronald Buell, Dead End (Englewood Cliffs: Prentice Hall,1972); John Jerome, The Death of the Automobile (NY: Norton, 1972); W.H. O'Connell, Ride Free, Drive Free, (NY: John Day, 1973); Terrence Bendixson, Without Wheels (Bloomington: Indiana University Press, 1975); James Flink, The Car Culture (Cambridge: MIT Press, 1975); For a defense of the auto which attempts to counter these "anti-auto" works see B. Bruce-Briggs, The War Against the Automobile (NY: E.P. Dutton, 1975).

19. Edward Fisher and Robert Reeder, Vehicle Traffic Laws (Evanston, Illinois: Traffic Institute, Northwestern University, 1974).

20. See Glenn Yago, The Decline of Transit (Cambridge: Cambridge University Press, 1984); Gary Schwartz, "Urban Freeways and the Interstate System," California Law Review, vol.49, p.406; Helen Leavitt, Superhighway-SuperHoax (NY: Ballantine Books, 1970).

21. David Gartman, Auto Slavery: The Labor Process in the American Automobile Industry, 1897-1950 (New Brunswick: Rutgers University Press, 1986); Stephen Meyer III, The Five Dollar Day: Labor Manangement and Social Control in the Ford Motor Company, 1908-1921 (Albany: State University of New York Press, 1981).

22. See Peter Drucker, The Concept of the Corporation (NY: John Day Company, 1946); Alfred Sloan, My Years With General Motors (NY: Anchor Books, 1972); Alfred D. Chandler, Strategy and Structure (Cambridge: MIT Press, 1962), chapter 3.

23. One of the best biographies on Henry Ford is Keith Sward, The Legend of Henry Ford (NY: Rinehart & Company, Inc., 1948). For a shorter fictional account of the history of Ford see Upton Sinclair, The Flivver King (Chicago: Charles Kerr Publishing, 1984) [originally published in 1937]. More recent accounts of both the personalities and the company can be found in Allan Nevins and Frank Hill 3 volume study: Ford: The Times, the Man, the Company (NY: Charles Scribners and Sons, 1954), Ford: Expansion and Challenge, 1915-1932 (NY: Charles Scribners and Sons, 1957), Ford: Decline and Rebirth, 1933-1962 (NY: Charles Scribners and Sons, 1962); Robert Lacey, Ford: The Men and the Machine (Boston: Little Brown, 1986); David Halberstam, The Reckoning (NY: William Morrow and Co., 1986). These are just a few examples of the voluminous literature on the Fords and the Ford Motor Company.

24. 1985 Writer's Market (Cincinnati, Ohio: F&W Publishers).

25. No article on autos or auto politics has appeared in the American Political Science Review in the past thirty years. There is one dissertation that attempts a comprehensive look at the politics of the industry, David Lachman, "The Politics of the Automobile" (unpublished dissertation, New York University, 1979). Unfortunately, it could not deal with the period of the 1980s when there was a changed

dynamic to government policy, nor does it examine the period before and leading up to the mid-1960s when federal auto regulations began. Its focus is a select number of issues during the 1970s.

As recently as 1984 John Rae, The American Automobile Industry (Boston: G.K. Hall & Co.), acknowledged the lack of a comprehensive book on the politics of the industry and called for the writing of "at least one substantial book" on the subject of the relations between the government and the industry.

In 1986 a book on urban politics was published that examined the political relations of three Michigan communities with GM, Bryan Jones, et. al., The Sustaining Hand (Lawrence: University Press of Kansas, 1986). It is an interesting attempt to evaluate the nature of corporate power by comparing three cities' reactions to plant location decisions of GM. Jones concludes that GM's power is counterbalanced by the initiative of local political leaders. However, one could easily come to the opposite conclusion from reading this case study. Simply because each community (Detroit, Flint, and Pontiac), reacted slightly differently to GM's decisions is not a substantial foundation for their conclusion. Each community's actions were favorable to GM, and each seemed to have little choice in the matter. The example used for Detroit is the "Poletown case," where thousands lost their homes to make way for a new GM plant, or more precisely, a parking lot for the plant. The plant itself uses a minor portion of the total land of the site. Inexplicably, this tragic event of a corporation demanding people's homes, and a municipal government handing them over in the hope of preserving a few jobs in the community, is used as an example of how political leadership and initiative can balance corporate power.

26. Robert Engler's works on the oil industry, for instance, is an explicit attempt to study corporate power and its impact on American society. Robert Engler, The Politics of Oil (NY: Macmillan, 1961); The Brotherhood of Oil (Chicago: University of Chicago Press, 1977). For steel see William Scheuerman, The Steel Crisis (NY: Praeger, 1986) and Matthew Crenson, The Unpolitics of Air Pollution (Baltimore: Johns Hopkins University Press, 1971). For railroads see Gabriel Kolko, Railroads and Regulation (NY: Norton, 1964).

27. Gabriel Kolko, The Triumph of Conservatism (NY: The Free Press, 1963); Grant McConnell, Private Power and American Democracy (NY: Vintage, 1966); James Weinstein, The Corporate Ideal and the Liberal State (Boston: Beacon Press, 1968); Edward Greenburg,

Understanding Modern Government (NY: John Wiley and Sons, 1979). Robert Himmelberg, The Origins of the National Recovery Administration: Business Government and the Trade Association Issue, 1921-1933 (NY: Fordham University Press, 1976); Ellis Hawley, The New Deal and the Problem of Monopoly: A Study in Economic Ambivalence (Princeton: Princeton University Press, 1966).

28. Edward Epstein, The Corporation in American Politics Englewood Cliffs: Prentice Hall, 1969).

29. Epstein, p.304.

30. In the revised edition Community Power and Political Theory (New Haven: Yale University Press, 1980), Nelson Polsby examines the debates that ensued since the publication of the original edition in 1963. Polsby devotes almost as much space to this discussion as the entire original work. There are almost 200 footnotes in the additional material added in 1980. Some include bibliographies with thousands of entries themselves. See Polsby, p. x, fn. 5.

31. Franz Neumann, "Approaches to the Study of Political Power," The Democratic and The Authoritarian State (NY: The Free Press, 1957), p.12.

32. There are other approaches to the study of power. Among them are the positional approach, for example, G.William Domhoff, Who Rules America? (Englewood Cliffs: Prentice Hall, 1967), and the reputational approach, for example, Floyd Hunter, Community Power Structure (Chapel Hill: University of North Carolina Press, 1953). Each has been criticized for having significant flaws. The positional approach provides a general conception of the state in terms of personnel but does not explain individual policy decisions. The reputational approach has been criticized for biasing responses toward the conclusion that someone has power.

33. John Mollenkopf, The Contested City (Princeton: Princeton University Press, 1983) offers a new twist to the pluralist approach. He emphasizes the role of policy entrepreneurs using government programs in bringing together coalitions to ensure electoral success. Nevertheless, he shares the basic pluralist view of the divorce between economic and political power, and goes so far as to argue the independence of "political logic."

34. Nelson Polsby, Community Power and Political Theory (New Haven: Yale University Press, 1980), p.113 (emphasis in the original).

35. A number of these studies are discussed by Polsby. The most notable are the ones done by Helen and Robert Lynd.

36. Polsby. p.117.

37. Robert Dahl, Who Governs? (New Haven: Yale University Press, 1961), p.228.

38. Robert Dahl, A Preface to Democratic Theory (Chicago: University of Chicago Press, 1956), p. 137.

39. E.E.Schattschneider, The Semisovereign People (NY: Holt, Rinehart & Winston, 1960) faulted pluralists for failing to examine the mobilization of bias and definition of alternatives. Peter Bachrach and Morton Baratz, Power and Poverty: Theory and Practice (NY: Oxford University Press, 1970) criticize this view for ignoring the dimension of non-decisions, the ability to delimit the scope of conflict. Steven Lukes, Power: A Radical View (London: Macmillan, 1974), adds that to truly understand power relationships one must study how ones conceptions, ideas and understanding of problems is shaped through the manipulation of language, myths and symbols. John Gaventa adds to these three dimensions of power, arguing that powerlessness is self reinforcing, shaping the dynamics of any conflict. John Gaventa, Power and Powerlessness (Urbana: University of Illinois Press, 1980).

40. See John Manley, "Neo-Pluralism: A Class Analysis of Pluralism I and Pluralism II," American Political Science Review vol.77, no.2 (June 1983), p.368.

41. Charles Lindbloom, Politics and Markets (NY: Basic Books, 1977).

42. David Truman, The Governmental Process (NY: Alfred Knopf, Inc., 1951), pp. 248-261.

43. Truman, p.506.

44. Truman, p. 255.

45. Fred Block, "The Ruling Class Does Not Rule: Notes on the Marxist Theory of the State," Socialist Revolution volume 7, No. 3, 1977.

46. Senator Howard Metzenbaum (D-Ohio) expressed the mood in Congress in the spring of 1980 when he said "There is a general feeling that if the auto industry goes down, it will take the rest of the economy with it." Cited in Dale Tate, "Sagging U.S. Auto Industry Pleads for Federal Help," Congressional Quarterly Weekly Report May 10, 1980, p.1262. One month later the Senate passed a resolution asking the administration and Congress to review policies affecting the industry to help the auto makers (S Con Res 101), June 18, 1980. The vote was 90-4.

47. Claus Offe, Disorganized Capitalism (Cambridge: MIT Press, 1985), p.222.

48. Norman Ornstein and Shirley Elder, Interest Groups, Lobbying and Policymaking (Washington, D.C.: Congressional Quarterly Press, 1978), particularly pp. 69-79; David Vogel, "A Study of Clean Air Legislation 1967-1981", in Betty Bock, et.al., eds., The Impact of the Modern Corporation (NY: Columbia University Press, 1984), p.371.

49. Sidney Plotkin, Keep Out: The Struggle for Land Use Control (Berkeley: University of California Press, 1987), p.5.

50. Louis Althusser and the early writings of Nicos Poulantzas have long been criticized for holding this position. See, for example, Louis Althusser, Lenin and Philosophy and Other Essays (NY: Monthly Review Press, 1971), and Nicos Poulantzas, Political Power and Social Classes (London: New Left Books, 1974).

51. Steven Lukes, "Power and Structure" in Essays in Social Theory (London: Macmillian Press, 1977).

52. Lukes, 1977.

53. Karl Marx, "The Eighteenth Brumaire of Louis Bonaparte," in Karl Marx and Frederick Engels, Selected Works (NY: International Publishers, 1968), p.97.

54. Ralph Miliband, Marxism and Politics (NY: Oxford University Press, 1977); Nicos Poulantzas, State, Power, Socialism (London: New Left Books, 1978).

55. Jurgen Habermas, Legitimation Crisis (Boston: Beacon Press, 1973); James O'Connor, The Fiscal Crisis of the State (NY: St. Martins Press, 1973).

56. See, for example, Theda Skocpol, "Political Response to Capitalist Crisis: Neo-Marxist Theories of the State and the Case of the New Deal," Politics and Society volume 10, No. 2, 1980.

57. Claus Offe, "The Theory of the Capitalist State and the Problem of Policy Formation," in Leon Lindberg, et.al., eds., Stress and Contradiction in Modern Capitalism (Lexington, Mass.: D.C.Heath, 1975), p.126.

58. Bob Jessop, The Capitalist State (NY: New York University Press, 1982); Martin Carnoy, The State and Political Theory (Princeton: Princeton University Press, 1984).

59. Franz Neumann, The Rule of Law: Political Theory and the Legal System in Modern Society (Dover, New Hampshire: Berg Publishers, 1986), p.16. [originally published 1936]

Engels realized the complexity of law and its relation to economic power. He wrote:

In a modern state, law must not only correspond to the general economic position and be its expression, but must also be an expression which is consistent in itself, and which does not, owing to inner contradictions, look glaringly inconsistent. And in order to achieve this, the faithful reflection of economic conditions is more and more infringed upon. All the more so, the more rarely it happens that a code of law is the bold, unmitigated, unadulterated expression of the domination of a class - this in itself would already offend the "conception of justice."

Letter from Engels to Conrad Schmidt dated October 27, 1890, printed in The Correspondence of Marx and Engels (NY: 1937), pp.477, 481, quoted in Adam Chayes, "The Modern Corporation and the Rule of Law," in Edward Mason, ed., The Corporation in Modern Society (NY: Atheneum, 1969), p.29.

60. Claus Offe, Contradictions of the Welfare State (Cambridge: MIT Press, 1984), p.166.

61. Clause Offe, Disorganized Capitalism p.192 (emphasis in the original).

62. Offe, Disorganized Capitalism, p.192.

63. Robert Lynd, "Power in American Society as Resource and Problem," in Arthur Kornhauser ed., Problems of Power in American Democracy (Detroit: Wayne State University Press, 1957), p.23.

64. Lynd, 1957, p.25.

65. Dyer, p.47.

66. Dyer, p.47. For a detailed account of the industry's experience with the NRA see Sidney Fine, The Automobile Under the Blue Eagle (Ann Arbor: University of Michigan Press, 1963).

67. Dyer, p.49.

68. Dyer argues that government policy toward the industry has different phases. He suggests the three phases of policy began with the birth of the industry through the 1930s when the industry received a variety of direct and indirect support. From the 1930s through the 1960s the industry was the subject of a number of investigations, at the same time road building efforts supported the industry. The final stage began with the advent of federal regulation of product design (p.46).

Dyer does not see any change in policy since 1979 (pp. 212-3). Although acknowledging the slowdown of regulations, Dyer argues that because there was not a fundamental realignment of relations among management, labor and government toward strategic planning for the industry's future, these changes are insignificant.

69. In their recent work, Ralph Nader and William Taylor support this view, although they do not systematically examine a historical series of policy actions. Instead they offer nine biographies of corporate officials in the hope of stimulating greater attention to corporate behavior. Nevertheless they argue,

It is stark testimony to the dominant power of large corporations in this country that while our economic conditions become more perilous, these companies and their leaders grow even more supreme. Over the past decade, our economic activity has deteriorated.... The power of the countervailing institutions to business has declined.... The philosophy guiding our political institutions is that when times are tough, we should leave the wealthy and powerful alone, or succor them with fruits from the public treasury. For

only they can lead the country out of the valley of economic despair to the hilltops of recovery (pp.505-506).

Nader and Taylor, The Big Boys (NY: Pantheon Press, 1986).

70. Piven and Cloward argue that rapid institutional change and upheaval upset the traditional patterns of acceptance among social groups. With the breakdown of the normal regulating patterns of economic and political life, social movements can weaken the usual alliance between business and the state. Frances Fox Piven and Richard Cloward, Poor People's Movements (NY:Vintage, 1979).

71. Cited in staff working paper prepared by the Natural Resources and Commerce Division of the Congressional Budget Office, "Current Problems of the U.S. Auto Industry and Policies to Address Them," presented in U.S., Congress, House, Budget Committee, Mid-Year Perspectives on the Economy. Hearings. 96th Cong., 2d sess., July 23-4 1980, p.186.

72.Mid Year Perspectives on the Economy, p.186.

73. Joseph Schumpeter, "The Crisis of the Tax State," International Economic Papers (NY: Macmillan, 1954), no.4. While the state has always been dependent on tax revenue and throughout the history of capitalism been involved in facilitating economic development, the Employment Act of 1946 explicitly assumes that it is government's responsibility to take a positive economic role. For the classic study on the law see Stephen Kemp Bailey, Congress Makes a Law (NY: Vintage Books, 1964). For an analysis of the role of the nineteenth century American state in "releasing economic energy" see James Willard Hurst, Law and the Conditions of Freedom (Madison: University of Wisconsin Press, 1956).

74. Of this, \$19 billion is lost tax revenue and \$11 billion is the increased outlays of unemployment insurance, welfare, etc. Cited in Kenneth Dolbeare, Democracy at Risk (Chatham, NJ: Chatham House Publishers, 1984), p.125. Although these figures are large, the human side of unemployment takes an even greater toll. M.Harvey Brenner estimates that a 1 percent increase in the aggregate unemployment rate sustained over six years has been associated with:

37,000 total deaths (including	20,000
cardiovascular	deaths)
920 suicides	

650 homicides
 500 deaths from cirrhosis of the liver
 4,000 state mental hospital admissions
 3,300 state prison admissions

M. Harvey Brenner, "Estimating the Social Costs of National Economic Policy: Implications for Mental and Physical Health and Clinical Aggression", a report prepared for the Joint Economic Committee, U.S. Congress (Washington, D.C.: U.S. Government Printing Office, 1976), cited in Barry Bluestone and Bennett Harrison, The Deindustrialization of America (NY: Basic Books, 1982), p. 65.

Brenner used data from the period 1940-1973. Bluestone and Harrison suggest that it is likely that permanent layoffs due to plant shutdowns, for instance, may cause even more "social trauma" since the prospects for employment in the future is so bleak. A study done by the Congressional Office of Technology Assessment found that of the 11.5 million workers lost jobs because of plant shutdowns or relocations from 1979-1984, only 60 percent got new jobs in this period. Of those who did find new jobs and reported their earnings in a Census bureau survey, 45 percent had taken pay cuts, and two-thirds of those were earning less than 80 percent of their former income. See Kenneth Noble, "Study Finds 60% of 11 Million Who Lost Jobs Got New Ones," New York Times February 7, 1986, p. 1.

75. See, for example, Morris Fiorina, Retropective Voting in American Presidential Elections, (New Haven: Yale University Press, 1981); Edward Tufte, Political Control of the Economy (Princeton: Princeton University Press, 1978).

76. For the definitive analysis of the concept of possessive individualism and its relation to liberalism see C.B. Macpherson, The Political Theory of Possessive Individualism (NY: Oxford University Press, 1962).

77. For the classic analysis of conspicuous consumption see Thorstein Veblen, The Theory of the Leisure Class (NY: Mentor Books, 1953).

78. Herbert Marcuse, One Dimensional Man (Boston: Beacon Press, 1964).

In 1955, Eric Larrabee identified the sense of emptiness that is so much a part of our "car culture."

Stand at night, on a corner in a strange town,
 and watch the cars go by. What is there so
 poignant in this? A sense of private

destinies, of each making his own choice, of being independent of everything but statistics. The car owners choose - or think they do - when to stop and start, where to go. The automobile offers a vista of escape: for the adolescent, from parental planning; for the Negro, from Jim Crow; and for others, from less formal restrictions on their freedom of movement. Thus they are liberated to the loneliness (and perplexity) of their independence, and thus travel on the highway at night acquires its own tones of adventure and sorrow.

Eric Larabee, "Autos and Americans: The Great Love Affair," Industrial Design vol. 2, No.5, October 1955, p.95, cited in Stephen Bayley, Sex, Drink and Fast Cars (NY: Pantheon Books, 1986), p.4.

79. Thomas Edsall, The New Politics of Inequality (NY: Norton, 1984); Thomas Ferguson and Joel Rogers, Right Turn: The Decline of the Democrats and the Future of American Politics (NY: Hill and Wang, 1986).

80. Thomas Ferguson and Joel Rogers, p.88.

81. The classic statement on the American Century is Henry Luce, "The American Century," Time February 7, 1941.

82. See Barry Bluestone and Bennett Harrison, The Deindustrialization of America (NY: Basic Books 1982). For a general survey of the decline of American manufacturing and its economic consequences see Ira Magaziner and Robert Reich, Minding American's Business (NY: Vintage 1983); Samuel Bowles, David Gordon and Thomas Weiskopf, Beyond the Wasteland (Garden City: Anchor Books, 1984).

83. Steven Greenhouse, "The Average Guy Takes It On the Chin," New York Times July 13, 1986 section 3 p.1.

84. Robert Pear, "Rise in Poverty From '79 to '82 Is Found in U.S.," New York Times Feb. 24, 1984 p.1. Hunger is also widening, see Keith Schneider, "Experts Assail Reagan Over Problems of Hungry," New York Times May 24, 1986, p. 6.

85. Kenneth Dolbeare, Democracy At Risk: The Politics of Economic Renewal (Chatham, N.J.: Chatham House Publishers, 1984).

CHAPTER 2

THE STRUCTURE OF THE INDUSTRY

As the nation's largest industry, the auto industry contains some of the largest corporations in the country. In terms of sales GM is the largest manufacturing corporation, while Ford is number three. Chrysler, the smallest of the American producers, is the fourteenth largest. Long dominated by GM, the industry has been one of the most profitable in the nation. The historical ability of the Big Three to earn substantial profits, a result of its control of the market, was noted by Davis Dyer.

Between 1947 and 1967, the Big Three averaged a return of 16.7 percent of net worth, nearly twice the rate earned by other manufacturing companies. With an average return of 20.7 percent in this period, GM was one of the most consistently profitable corporations in the world.¹

Currently, the industry is undergoing a fundamental transformation in size and scope. Beset by foreign competition, it is reorganizing its capacity, downsizing its vehicles and diversifying out of car production. The industry's transformation is part of the larger phenomenon of deindustrialization. However, these

The critical shift under way today is not simply from a smokestack economy to a high-tech economy, or even from a manufacturing to a service economy. Rather it is a change from a national to a global economy and, thus, from a competition between American companies operating within one enterprise system to a competition between enterprise systems.

Seen in this light, the challenge to the American auto industry [to respond to foreign competition] is a challenge to the American economy....²

This chapter examines the scale and scope of the industry and its importance to the economy. It discusses the current changes in the industry, including joint ventures, diversification moves and product changes. It analyzes the FTC's decision to sanction a joint venture between GM and Toyota and surveys the history of the industry's concentration, its pricing policy and profits. Finally it briefly discusses the industry's antitrust and labor relations history.

Significance of the Industry to the Economy

In the early 1980s there were 2.3 workers employed in supplier industries for every auto worker. The industry uses a wide variety of products and the following examples are repeatedly noted in discussions of the impact of the industry on the economy. It utilizes 21 percent of the nation's steel (its largest single use), 50 percent of the nation's malleable iron, 60 percent of its synthetic rubber, 33 percent of the nation's zinc, 30 percent of ferrous castings, 25

percent of its glass, 20 percent of its machine tools, and 11 percent of its primary aluminum. Auto companies are also the largest industrial user of textiles in the nation. Over 2000 companies produce goods primarily for the industry which each year purchases over \$40 billion of equipment and material from suppliers. In 1982, the payroll of the vehicle and parts makers combined totaled \$18.4 billion, while the payroll of the service industries related to the auto totaled \$38.8 billion.³

Thirty-four percent of the nation's consumption of oil goes to gasoline for car use. Moreover, American cars use half of the U.S. transport sector's energy and one ninth of all the oil used in the world every day.⁴

Sitting at the center of the American economy, the industry exerts enormous influence on economic events at home and abroad. A Department of Transportation report sent to President Carter in January 1981 summed up the importance of the industry.

Because of its scale and reach, the auto industry has played a central role in the definition and accomplishment of our broadest national goals: work for Americans; energy security; and, perhaps most important, national security. In the future direction of this industry, then, will lie critical answers about America at home and in the world: about the number and kinds of jobs for our people; about our strategic position in the world defined by our economic power; about our competitive position in an evolving international economy.⁵

To speak of the U. S. auto industry is in many respects to speak of GM. If it were a sovereign state its economic size would place it ahead of all but twenty-five nations.⁶ Its financial subsidiary, the General Motors Assistance Corporation (GMAC) is the largest finance company in the country.⁷ GM is the fourth largest advertiser in the nation and the second largest in terms of television and newspapers.⁸ In 1986, it had assets of \$72.6 billion and sales of \$102.8 billion. It remains the most vertically integrated auto company, producing 70 percent of its parts, with 170 plants in 27 states. It has 640,000 U.S. employees. Ford has 75 plants in 20 states with 181,476 U.S. employees, while Chrysler has 35 plants in 13 states with 93,700 U.S. employees.⁹

Recent Changes

Recent auto industry history has been volatile. Although the industry has always experienced variable sales and profits, recently these shifts have resembled tidal waves. In 1980, the industry as a whole sustained record losses of \$4.2 billion. In stark contrast, during the previous two decades it never returned less than \$2 billion in profits (1980 dollars).¹⁰ Moreover, GM sustained its first loss since its 1921 reorganization. The significance of this is underlined by the fact that

even during the Depression it never lost money. Chrysler, which in 1979 ranked tenth on the Fortune list of the largest industrial companies, was on the verge of bankruptcy in 1980 and was saved by a government bailout. By 1983, however, the industry's fortunes had turned and it earned record profits of \$6.7 billion. In 1984 its profits reached \$10 billion.

Once a tightly knit oligopolistic industry, insulated from foreign competition, today the industry is shrinking and shares the U.S. market with a number of companies from abroad.¹¹ Increasingly, "American" cars have foreign made parts, blurring the distinction between domestic and foreign built vehicles. Imports will soon capture 60 percent of the U.S. market. This transformation, most pronounced in the last 15 years, and particularly since 1979, had its antecedents in the late 1950s when Volkswagen first entered the U.S. market.

Amidst the fluctuations of recent profits at least one trend has remained constant. Each of the Big Three has been faced with reducing its capacity; first Chrysler, then Ford and finally GM. During its heyday GM controlled approximately 50 percent of the American car market; in other words as much as all the other companies combined. Those days are over. GM's market share in 1986 was 41 percent, and all indications are

for further decline.¹² Its 1987 market share slipped to 36 percent.¹³

Overall, the entire domestic industry faces further future reductions. In fact, in 1986 Business Week reported that auto industry analysts expect a reduction of 30 percent of Detroit's car making capacity-- at least 2.5 million cars-- within the next five years.¹⁴ Chrysler recently estimated North American overcapacity at 5 million units.¹⁵ Meanwhile, the American car market continues to grow, and imports take an increasingly larger share.

GM, long the strongest and most profitable of the auto makers, crossed an historic watershed in 1986. For the first time since 1924 it was surpassed by Ford as the most profitable automobile company in the country. Ford earned \$3.3 billion in 1986 compared to GM's \$2.95 billion. The success of Ford is even more noteworthy because its sales were significantly less than GM's: \$62.7 billion compared to \$102.8 billion for GM. Profits for 1987 show Ford continuing to surpass GM.

A vivid illustration of the changes underway in the domestic auto industry can be seen in the decline of the number of auto workers. In late 1986 there were 510,000 auto workers, down from the 1978 peak of 725,000. This shrinkage received a dramatic jolt forward in November 1986 when GM announced a major series of layoffs and

plant closings. Thirty thousand workers permanently lost their jobs. Eleven facilities were closed, including six of the company's thirty assembly plants. Just a few weeks later the company announced a temporary layoff of another 26,000 workers. This forced reduction is affecting the entire corporation, including its salaried employees. GM plans to cut 25 percent of its salaried workers by 1989.¹⁶ The restructuring of GM, preceded by that of Ford and Chrysler, signals the end of the era of unchallenged American auto dominance.

Given the cyclical nature of car sales, layoffs are not new to the industry. However, current layoffs are rooted in a different set of market relations. Many of these layoffs signal a permanent shrinking of the industry. But it is not the volume of American car sales that is changing. In fact, the 1985 and 1986 model years set records for sales with 15.6 million and 16.0 million cars and light trucks sold, respectively. Two major changes account for this transformation: a new era of automation, and imports.

The increased use of automation and robotics has allowed the industry to produce more cars with fewer workers. GM, for instance, needed 163 worker hours to produce a car in 1981; by 1984 the number was reduced to 137 worker hours.¹⁷ These changes have continued, contributing to a significant increase in real profits

per vehicle. Coupled with import quotas on Japanese cars, this improved efficiency enabled the industry to reap real profits per vehicle in 1983 that were 50 percent higher than in 1975, a year of similar sales.¹⁸

The impact of imports has also been dramatic. In 1980 American manufacturers were surpassed in total worldwide production by Japan. The dominance of the Japanese car industry is remarkable considering it hardly existed in 1960.¹⁹ With the recent entrance of Korean car producers to the U.S. market, the future for domestic producers will be one of sharing the American market, the largest in the world, with a number of foreign companies. Auto profits, historically higher than the profits of the manufacturing sector as a whole, will no longer be the sole preserve of the Big Three.

On the surface it appears that analysts of American "monopoly capitalism" have been proven wrong by international competition. Seemingly, competition among nations has replaced the domestic oligopolies of the past. Despite the trend toward competition, particularly between U.S. and Asian producers for the American market, there has been a counter trend among auto companies to enter joint ventures with each other. In effect the car market is being reorganized on a global scale. American car companies are investing in their so-called "competitors" in Japan, Korea, and

Europe. Thus, the competition of today can be understood as a transitional stage to a concentrated industry on a larger scale. This trend will be examined below.²⁰

History of Concentration

The industry was quite different at earlier stages of its development. Before 1970, the American auto industry was a stable oligopoly with GM as the dominant firm. One of the first full length treatments of the economics of the industry, published in 1971 by Lawrence White, demonstrates that autos were a tightly knit joint-profit-maximizing oligopoly, earning excessive profits in the post-war period.²¹ At the same time, he argues, the industry was unresponsive to changing consumer preference and to public concerns with safety and pollution. It was technologically stagnant both in product design and manufacturing methods, especially compared to foreign companies, and concentrated beyond any necessary economy of scale.²² Accordingly, White called for the use of anti-trust enforcement to break up the industry.²³

In contrast, during the industry's early years there was competition among a large number of firms. Between 1895-1926 there were 1000 firms formed to make cars; most however, existed only on paper. An early historian of the industry estimated there were 181 firms

engaged in car manufacturing between 1903-1926, with the maximum number of 88 companies in 1921. The trend toward concentration began in the mid 1920s when 43 firms left the industry between 1923-1926. By 1935, there were only 10 firms left and by the late 1950s just three firms accounted for virtually all of domestic production, (and at the time all of domestic sales as well).²⁴ American Motors, long the industry's marginal member, recently disappeared through a merger with Chrysler.²⁵ Commenting on this consolidation, Bradford Snell concludes that "the trend toward concentration in the automobile industry is unequalled in the history of American manufacturing."²⁶

Snell argues that the advent of the annual style change in 1923 effectively eliminated smaller manufacturers unwilling or unable to restyle its product. GM led the market in emphasizing styling changes, enabling it to increase its market share from 13 percent in 1922 to 43 percent in 1927. After entering the market in 1923, Chrysler followed GM's lead and captured 6 percent of the market by 1927. Ford resisted these changes and dramatically lost its position of industry dominance. From 1922-1927 its market share decreased from 51 percent to 9 percent. In 1928 it adopted the annual style change and within two years its sales were up to 31 percent of U.S. market.

Collectively, the Big Three increased their market share from less than 65 percent in 1923 to over 90 percent in 1935.

Prior to the introduction of the annual style change entry to the industry was relatively easy. Scale economies were not a deterrent to entrants. Annual style changes forced smaller firms to change dies and tools before they were worn out, while larger firms could spread costs over more vehicles. It also required large scale advertising to alert consumers of the "new" cars each year. Moreover, style changes brought with them the need for extensive forward integration into franchised dealer networks with specialized maintenance abilities. Previously, parts were standardized and interchangeable. All these factors put pressure on small volume producers.

As early as 1939 the role of the annual style change in driving out competition was noted. Commenting on the declining number of vehicle manufacturers the FTC's Report on the Motor Vehicle Industry stated, "the introduction of yearly models, and the increasing importance of the style factor, the large amount of capital required to finance new models in good and bad years, all favored the large manufacturing company with huge capital and equipment resources."²⁷ By the early 1960s the overall cost of annual style changes was

estimated to account for 25 percent of the cost of a new car. As a result, each year car buyers were paying \$5 billion extra for new cars. Meanwhile, throughout the 1950s average fuel economy declined, adding billions of dollars to the aggregate cost of operating cars.²⁸

The decline of competition in the auto industry became the subject of several major Congressional hearings. The Senate Judiciary Committee's subcommittee on antitrust and monopoly held extensive hearings on General Motors in 1955 and on administered prices in 1957.²⁹ Few doubted that GM was the price leader and targeted its return at 20 percent net after taxes. The Kefauver committee's report stated: "In all of their testimony, officials of Ford, Chrysler, and American Motors--sometimes explicitly and more often implicitly--made clear that their basic approach to the pricing of their products was in terms of meeting the price setting by General Motors."³⁰

David Lachman documents the pattern of price leadership that historically characterized the auto industry.³¹ When sales lagged output was cut and prices raised, instead of cutting prices to stimulate demand.³² This is one of the classic indications of a concentrated industry following a pattern of price leadership. This general pattern was examined by John Blair. He compared the pricing behavior of concentrated industries compared

to non-concentrated industries in the mid 1950s and found that in the overwhelming majority of concentrated industries prices went up, even as demand declined, while prices declined in the competitive industries.³³

GM's ability, in the past, to control the auto market and target its returns was a reflection of its market power and not traditional business acumen. The subcommittee on antitrust's study of GM emphasized this point in its report. "Efficiency to General Motors is apparently its ability to achieve its planned return on investment. This is not economic efficiency and General Motors return is more a reflection of its market power than its economic efficiency."³⁴ Ralph Nader pointed out that GM's rate of return seems unaffected by income taxes, which apparently became another cost of production to be passed on to the customer.

After taxes, for example, the 1929 rate of return was 36.2 percent, while the 1950 rate of return was 37.5 percent. The 1929 rate of return was attained with a pretax earnings of 38.5 percent on average stockholder's investment while in 1950 GM made a pretax profit of 77.4 percent to earn 37.5 percent after taxes.³⁵

The higher than average profitability of auto making is easy to illustrate. Table 2-1 lists the annual rates of return (net profits after taxes divided by net worth) for the Big Three compared to manufacturing corporations. While GM traditionally earned higher rates of return than the other two major

domestic firms, Ford's returns typically have also been higher than the average for all manufacturing corporations. Compared to the 1950s and 1960s, the 1970s were years of wide fluctuation for the industry. Profits varied, although sales remained fairly constant. Since 1970 the car market has changed due to the increasing sales of imports. See Table 2-2 for domestic industry and import sales. Total 1986 sales for the Big Three was approximately \$188 billion.³⁶

The demand for smaller cars was not new to the market, as demonstrated by Volkswagen's success beginning in the late 1950s.³⁷ Imports comprised 10 percent of the domestic market by 1959, but declined to 5 percent by 1962 with the introduction of smaller domestic vehicles. By the late 1960s the import challenge came from Japan and in the early 1970s imports took 15 percent of the market. The oil shock of 1979 dramatically shifted consumer demand. In one year the imports share of the market increased from 15 percent to 20 percent. The following year, 1980, it increased to 25 percent.

The Commerce Department estimates that imports could capture 36 percent of new car sales by 1988.³⁸ In 1987 the number of imported car models sold in the U.S. equalled the number of domestic models.³⁹ Models are distinguished by nameplates, the Honda Civic or Honda

Table 2-1.

Annual Rates of Return: Net Profits After Taxes as a Percentage of Net Worth, 1953-1985.

Year	GM	Ford	Chrysler	All Manufacturing Corporations
1953	20.5	11.5	13.1	10.5
1954	24.7	14.2	3.7	9.9
1955	28.5	22.8	15.3	12.6
1956	17.8	11.7	3.1	12.3
1957	17.5	12.8	16.9	10.9
1958	12.8	5.0	---*	8.6
1959	16.5	17.3	---	10.4
1960	16.5	14.9	4.6	9.2
1961	14.8	13.1	1.6	8.9
1962	21.9	14.1	8.5	9.8
1963	22.4	13.1	17.6	10.3
1964	22.8	12.6	19.1	11.6
1965	18.5	15.7	14.8	13.0
1966	20.6	13.0	11.1	13.4
1967	17.6	1.9	14.1	11.7
1968	17.8	12.7	14.1	12.1
1969	16.7	10.5	4.3	11.5
1970	6.2	9.4	---	9.3
1971	17.9	11.8	3.7	9.7
1972	18.5	14.6	8.9	10.6
1973	19.1	14.2	9.4	12.8
1974	7.6	5.8	---	14.9
1975	9.6	5.1	---	11.6
1976	20.2	13.7	---	13.9
1977	21.2	19.8	5.6	14.2
1978	20.0	16.4	---	15.0
1979	15.0	11.2	---	16.5
1980	---	---	---	13.9
1981	1.9	---	---	13.7
1982	5.3	---	---	9.3
1983	18.0	24.7	na	10.5
1984	18.7	29.6	na	12.5
1985	13.5	20.5	na	10.1

*Losses are identified by a line
na-not available

Source: 1953-1977, Lachman, p.39; 1978-1985, Moody's Industrials, FTC Quarterly Report.

Table 2-2 U.S. Domestic and Import Sales of New Cars

<u>Domestic Sales</u>	<u>Import Sales</u>
1960.....6,142,402	1960.....500,000
1961.....5,556,102	1961.....380,000
1962.....6,752,919	1962.....340,000
1963.....7,334,200	1963.....390,000
1964.....7,616,858	1964.....480,000
1965.....8,763,197	1965.....570,000
1966.....8,376,993	1966.....660,000
1967.....7,567,884	1967.....769,300
1968.....8,624,819	1968.....1,030,700
1969.....8,464,375	1969.....1,117,700
1970.....7,115,537	1970.....1,287,520
1971.....8,676,284	1971.....1,565,500
1972.....9,321,502	1972.....1,621,900
1973.....9,669,689	1973.....1,776,900
1974.....7,448,921	1974.....1,403,035
1975.....7,050,120	1975.....1,577,000
1976.....8,606,673	1976.....1,493,000
1977.....9,104,454	1977.....2,071,100
1978.....9,307,998	1978.....2,000,500
1979.....8,315,622	1979.....2,327,932
1980.....6,578,275	1980.....2,396,934
1981.....6,206,296	1981.....2,326,376
1982.....5,756,660	1982.....2,221,517
1983.....6,795,302	1983.....2,385,734
1984.....7,951,517	1984.....2,441,713
1985.....8,204,542	1985.....2,841,063
1986.....8,214,662	1986.....3,248,430

Source: "1987 Data Market Book", Automotive News, April 29, 1987, p.32.

Accord, as well as the body style and significant additions of equipment and trim. Since the domestic total includes transplants--car assembled in the U.S. by foreign manufacturers-- it may be fair to argue that

foreign producers offer the American car buyer greater variety than the domestic producers.

If one adds together imported vehicles, parts, and joint venture hybrids, the import share is much higher. Lee Iacocca estimates that the Japanese will capture 50 percent of the American auto market by the end of 1987.⁴⁰ Davis Dyer estimates the total foreign share of the U.S. market will be 60 percent by 1990.⁴¹ Japanese auto parts and materials suppliers are investing heavily in the U.S.. According to a Commerce Department study by 1990 there will be 300 Japanese firms operating in the U.S.⁴² See Table 2-3 for imports as a share of the domestic market.

The changing demand in the American car market for smaller, more efficient, and better constructed cars has forced changes on the domestic industry. Detroit "downsized" its cars to make them more fuel efficient. The weight of the average domestic vehicle dropped significantly with front wheel drive models replacing heavier traditional models.⁴³ American cars, however, still remain heavier and less efficient than imports. See Table 2-4 for the changing weight of the average American car. The other significant change was the shift away from 8 cylinder cars. Even in the mid 1970s these large cars accounted for 75 percent of domestic production. By 1980 this share was just under a third.

See Table 2-5. However, horsepower has not declined as significantly. While American engines have lost 50 percent of their engine displacement in the past tens years, they have gained over 30 percent more power per liter.⁴⁴

Table 2-3. Import Penetration of the U.S. Market.

<u>Year</u>	<u>Import share (percent)</u>
1960	7.60
1961	6.50
1962	4.90
1963	5.16
1964	5.95
1965	6.12
1966	7.33
1967	9.33
1968	10.53
1969	11.22
1970	14.66
1971	13.12
1972	14.59
1973	15.15
1974	15.75
1975	18.16
1976	14.87
1977	18.28
1978	17.81
1979	22.68
1980	28.20
1981	28.79
1982	29.29
1983	27.58
1984	24.90

Source: Crandall, p. 11.

Table 2-4. Estimated Average Weight of U.S. Passenger Cars, Selected Years, 1960-82, pounds.

<u>Year</u>	<u>New passenger cars (domestic only)</u>
1960	3,384
1965	3,449
1970	3,664
1971	3,702
1972	4,026
1973	3,933
1974	3,844
1975	3,885
1976	3,908
1977	3,695
1978	3,422
1979	3,306
1980	2,868
1981	2,757
1982	2,817

Source: Crandall, p.16.

Table 2-5. U.S. Auto Production, by Number of Cylinders, Selected Model Years, 1965-84, percent.

<u>Year</u>	<u>4</u>	<u>6</u>	<u>8</u>
1965	0.0	26.6	73.4
1970	0.3	12.8	86.9
1971	7.2	12.3	80.5
1972	9.4	10.8	79.8
1973	8.6	9.9	81.5
1974	12.7	18.7	68.6
1975	8.5	18.9	72.6
1976	10.3	20.9	68.8
1977	6.3	17.9	75.8
1978	10.2	23.9	65.9
1979	17.4	23.6	59.0
1980	31.4	36.5	32.1
1981	39.9	33.2	26.9
1982	41.4	30.3	28.3
1983	38.7	29.1	32.2
1984	45.1	26.8	28.1

Source: Crandall, p.15, from Ward's Automotive Yearbook, 1985, p.35.

As demand for small cars grew and foreign auto makers established themselves as permanent features of the American market, domestic producers were faced with a dilemma. Traditionally small cars have meant small profits. Accordingly, U.S. producers have not developed models for this segment of the market. However, changing domestic demand forced the Big Three to alter its strategy. Increasingly, the industry is obtaining components from foreign sources-- the practice is known as "outsourcing"-- and are importing foreign made cars for sale under domestic labels, the so-called "captive import."⁴⁵ They are also entering into joint ventures with Asian car companies to produce components for the small car market.⁴⁶ See Table 2-6 for recent commitments made by the industry with foreign producers. The conversion of the industry as a result of downsizing and outsourcing is, according to Davis Dyer, "massive enough to represent the largest peacetime shift in technological, human and capital resources in U.S. history."⁴⁷

Joint Ventures

Each of the American car producers have entered into joint ventures with Asian companies, mostly with the Japanese, but recently with the Koreans as well. These arrangements represent a significant element in

Table 2.6. Foreign Sourcing.

<u>Automobile Manufacturer</u>	<u>Description of Component</u>	<u>Intended Use</u>	<u>Manufacturing Source</u>	<u>Approximate Number of Components</u>	<u>Period</u>
G.M.	2.8 liter V-6	Cars	GM de Mexico	<400,000/year	1982-
	2.0 liter L-4 with transmission	Mini trucks	Isuzu (Japan)	100,000/year	1981-
	1.8 liter diesel L-4	Chevette	Isuzu (Japan)	small numbers	1982-
	1.8 liter L-4	J-car	GM de Brazil	250,000/year	1979-
	THM 180 automatic transmission	Chevette	GM Strasbourg (France)	~250,000/year	1979-
Ford	2.2 liter L-4	Cars	Ford-Mexico	<400,000/year	1983-
	Diesel L-4	Cars	Toyo Kogyo	150,000/year	1983-
	2.0 liter L-4	Mini trucks	Toyo Kogyo	<100,000/year	1982-
	2.3 liter L-4	Cars	Ford de Brazil	~50,000/year	1979-
	Diesel 6 cyl.	Cars	BMW/Stegor	100,000/year	1983-
	Turbo-diesel/4 cyl.	Cars	BMW/Stegor	-	1985-
	Manual transaxles	Front Disc Cars	Toyo Kogyo	100,000/year	1980-
	Aluminum Cylinder heads	1.6 liter L-4	Europe, Mexico	-	1980-
	Electronic Engine control devices	Cars	Toshiba	100,000+/year	1978-
Chrysler	Ball Joints	Cars	Musashi Seiribu	1,000,000/year	1980-1984
	L-6 and V-8 engines	cars	Chrysler de Mexico	<100,000/year	early 1970's
	2.2 Liter L-4	K-body	Chrysler de Mexico	<270,000/year	1981
	2.6 Liter L-4	K-body	Mitsubishi	1 Million	1981-85
	1.7 Liter L-4	L-body (Omni)	Volkswagen	1.2 Million	1978-82
	1.6 Liter L-4	L-body	Talbot (Peugeot)	400,000 total	1982-84
	2.0 Liter Diesel V-6	K-body	Peugeot	100,000/year	1982-
	1.4 Liter L-4	A-body (Omni replacement)	Mitsubishi	300,000/year	1984-
	Aluminum Cylinder Heads	2.2 liter L-4	Fiat		
AMC	Car components and power train	AMC-Renault	Renault in France and Mexico	300,000/year	1982-
VW of America	Radiators, Stampings	Rabbit	VW de Mexico	250,000/year	1979-
	L-4 diesel and gas	Cars	VW de Mexico	300,000 +/-year	1982-

the changing structure of the industry. GM announced the first major joint-venture in the U.S. in late 1983, joining forces with Toyota to produce 250,000 cars annually. GM also entered a joint venture with Daewoo, a Korean corporation, to produce components.⁴⁸ The new company, DHMS Industries, Ltd., will produce steering gears, brakes, radiators and air conditioning components in Korea. In 1984, Ford announced a joint venture with Mazda to produce 240,000 cars annually in Flat Rock, Michigan. In 1985, Chrysler joined with Mitsubishi to build 180,000 cars yearly near Bloomington-Normal, Illinois.⁴⁹

Unquestionably, the most significant joint venture is between GM and Toyota, bringing together the largest and the third largest car companies in the world. In 1983, they entered into a 50-50 joint venture forming New United Motor Manufacturing, Inc. (NUMMI) to produce small cars in a closed GM plant in Fremont, California. Essentially a Toyota Corolla, the joint venture car is marketed by GM as a Chevrolet Nova. Although it was met with a storm of protest from industry critics, as well as Ford, Chrysler and AMC, the deal was sanctioned by the FTC. The potential consequences of this agreement made it one of the most important recent auto policy decisions.

Alan Webber, of the Harvard Business School, outlined the significance of the joint venture.

The fundamental meaning of the G.M.-Toyota deal is that American largest manufacturer has decided that it cannot compete against the Japanese in small cars. Stripped down to its bare essentials, G.M.'s response is to redefine a part of its business: From car maker to car importer and wholesaler.

The ramifications are potentially staggering--not only for the American auto industry but also for much of American industry now entering global competition. If G.M. cannot compete against the Japanese in small cars, will it be able to in the future in mid-sized cars, where the Japanese are already beginning to press their cost and quality advantages?

If G.M. cannot compete, is there any reason to think Ford and Chrysler can? If the United States auto makers cannot compete with their own American-made cars, then what is the future for the thousands of American suppliers whose components actually make up the finished product? 50

In 1984 the FTC voted 3-2 to approve the deal, claiming there would be procompetitive benefits from allowing the largest American and Japanese car companies to work together.⁵¹ President Reagan's appointees to the commission formed the majority, while the two dissenters were Carter appointees.⁵² Writing for the majority, Chairman James Miller, 3rd. made three basic points about the joint venture: (1) it would increase the total number of small cars available in the country, giving consumers greater choice at lower prices, despite the import quotas on Japanese cars; (2) the joint venture car will cost less to produce than if GM were

forced to rely immediately on some other production source;(3) it "offers a valuable opportunity for GM to complete its learning of more efficient Japanese manufacturing and management techniques....the venture should lead to the development of a more efficient and competitive U.S. industry."⁵³ The potential for anti-competitive collusion was prevented, according to Miller, by a consent decree limiting the exchange of information only to joint venture business and requiring that all communication be logged.

Together, GM and Toyota sell more cars in the United States than all other car makers combined. At \$ 6000 per car, the 250,000 vehicles will have a retail value of \$1.5 billion, putting the Fremont plant in the top half of the Fortune 500 and making this model the third largest selling nameplate in the country, out selling all the cars sold by AMC in 1983.⁵⁴ Undoubtedly, GM and Toyota will benefit from this plan in more ways than their expected profits. GM obtained the ability to sell small cars without having to make a major investment, maintaining its full line marketing strategy. Toyota increased its share of the American market at a time when import limits still existed for Japanese cars.

Notwithstanding the positive gains for GM and Toyota, there are several negative consequences

associated with the deal. With a new small car to sell GM was able to phase out the Chevette. As a result thousands of jobs were lost. The joint venture vehicle is basically a knockdown kit, designed and engineered by Toyota, with a predominance of high-technology components made in Japan. It is only assembled in California.⁵⁵ Thus, Toyota maintains control of the technology and the highest value added components while GM becomes a car retailer. The new plant is to hire 2500 auto workers, the overwhelming majority out of work UAW members. However, these gains do not offset the loss of 17,000 jobs associated with the Chevette.⁵⁶

Vehemently objecting to the proposed venture, Commissioners Bailey and Pertschuk likened it to a partial merger.⁵⁷ Pertschuk wrote: "Battalions of neo-classical economists dancing on the head of a pin cannot obscure the threat that this marriage of competitors poses to the American consumer, nor the fact that this joint venture is a plain and unambiguous violation of the antitrust laws."⁵⁸ He argued it will very likely assure the price of new cars will continue to rise above competitive levels.

Commissioner Bailey saw the venture as a prototype for an industry already undergoing a concentration trend. The FTC's approval would accelerate the process, "almost inevitably touch[ing] off a reactive pattern of

strategic pairing between car manufacturers... [resulting in] a decrease in the overall number of market participants, leading to the increased likelihood of tacit, if not actual collusion."⁵⁹ Bailey charged that the Commission had swept aside generally recognized antitrust law principles. She concluded, "if this joint venture between the world's first and third largest automobile companies does not violate the antitrust laws, what does the Commission think will?"⁶⁰

Ralph Nader stated his concerns dramatically. This is a "watershed issue in the history of antitrust enforcement."⁶¹ He cited leading law journal articles on joint ventures for criteria for permissible ventures.⁶² The venture violated all of them. The four basic criteria for anti-competitive joint ventures are: a 50-50 venture; selling of a standardized product; the new product competes directly with those currently sold by the respective corporations; the joint-venture parents account for a substantial share of the market. Accordingly he concluded:

Every structural characteristic that could possibly make a joint venture anticompetitive is present in this joint venture. Its purpose is not research but production; it is not conglomerate or vertical but horizontal; it will produce not a new innovative product but an existing one. The industry in which it takes place is highly concentrated with high entry barriers, and a history of price leadership....⁶³

In uncharacteristically blunt terms the other American car companies argued against the plan. Lee Iacocca's comments before a House subcommittee went to the heart of the issue and merit being cited at length. Nader described this testimony as "the most penetrating, forthright analysis of the auto industry's competition policies since George Romney...of AMC testified in the fifties..."⁶⁴ Iacocca suggested that if this deal was not illegal the antitrust laws had lost all meaning.

What really is at issue here? Size and Power. GM's sales are bigger than the GNP of all but 25 countries in the world; add Toyota and their combined sales are bigger than the GNP of all but 20 countries.

In the U.S. market ... they are bigger than all the other automotive companies in the world put together.

But you know that, and so does the FTC and the Justice Department. But they continue to feel that this combination will increase, not diminish, competition in the U.S. market, and I say they are standing the world on its head when they come to such a conclusion.

Why?

One reason is prices. Everybody knows--even the FTC figured this out, by the way,--that GM is the domestic price leader and Toyota the import price leader.

Ford and Chrysler target their domestic prices on GM. Chrysler, by contract with our Japanese partner Mitsubishi, targets imported vehicle prices on Toyota. It has been the head-to-head competition between Toyota and GM that sets the pricing pattern of the entire industry.

Do you think that this pattern is going to stay the same when GM and Toyota sit down together and set prices, as they already have, and when this competition disappears, do you think the American consumer will have lower prices? I don't.

[The second reason is product. GM will

save \$1-2 billion by selling ready made Toyotas.]

A third reason is collusion. If GM and Toyota can meet every day for 12 years to discuss prices, products, marketing strategies, advertising, dealer networks, suppliers, R & D, manufacturing techniques, labor relations, and any other subject that comes into their heads, do you think they won't?

Do you think they will be able to resist that kind of temptation?

I doubt I would.⁶⁵

The Commission's decision was challenged on several grounds. To begin with, Ford charged that the FTC should enforce the antitrust laws and not try to cure the self-inflicted wounds of GM. If it cannot sell a small car on its own that is its own doing. Michael Pertschuk emphasized that a whole series of government policies in the 1980s, including the import quotas on Japanese cars and regulatory rollbacks, have been geared to helping American manufacturers compete on an even footing with foreign companies. The joint venture allows GM to sell small cars, not by manufacturing them itself, but by selling cars primarily made in Japan. AMC, among others, questioned the claims of operating efficiencies to be gained from the plan and cited the FTC's own guidelines on horizontal mergers. It also stressed precedents where the protection of competition overrode possible economies.⁶⁶

GM's claim that it needed to learn Japanese production methods from Toyota is difficult to support

in light of GM's 34 percent interest in Isuzu since 1972, and a share of Suzuki, considered by some the most efficient Japanese producer.⁶⁷ John Kwoka, Jr., a consultant to the FTC on the proposed joint venture, and until 1980 the Commission's Chief Economist for auto industry matters, recommended that an alternative venture with a smaller Japanese company, Isuzu, for instance, would pose no anti-competitive threat. His report to the FTC concluded the venture proposed a substantial threat to competition in the small car market. Although efficiencies are easy to argue and hard to assess, Kwoka calculated the possible efficiencies gained and suggested it was "overwhelmingly likely" that any possible savings would be offset by price increases.⁶⁸

Overall, the move toward joint ventures and the outsourcing of production represents the evolving strategy of the auto industry confronting a competitive market. As Robert Reich argued, the long term survivability of firms like GM, Ford and Chrysler is not at stake; what is at stake are the number and quality of jobs that will be left as the industry reorganizes itself.

Despite the name plate that graces the exterior of these automobiles, they will be assembled and produced all over the world from components which are sourced all over the world; and they will be assembled from those components on the continents and in the jurisdictions where they are going to be distributed, partly because of economies of

scale and efficiency, but also because of certain political exigencies.⁶⁹

Reich suggested that the current Japanese strategy is to establish joint ventures around the globe that keep the highest value segments to themselves, gaining dominance in engines, transmissions and transaxles, the high technology components of production. In the quest for short term profits the American producers are cooperating. Another advantage of a joint venture is that it gives the appearance of being domestically built since it can be assembled in any host country. Yet, only 15-20 percent of a car's value is related to assembly.

Roger Smith, Chairman of GM, noted the internationalization of auto production when he said: "We are a global industry now. All companies must consider how best to rationalize their facilities and production."⁷⁰ The clearest example of this trend is Ford's "world car". Originally introduced in 1976 as the "Fiesta", and now as the "Escort", Ford has facilities in 16 countries on 3 continents involved in its production. Through the use of dispersed sourcing and parallel production, Ford can avoid labor disruptions and maximize its advantages across the globe. The international sourcing of Ford's world car challenges the notion of Ford as a "domestic" company. See Table 2-7 for the European sourcing of Ford's car.

Table 2.7.

EUROPEAN ERIKA CAR COMPONENT SOURCING

Country	Components
Austria	Radiator and Heater Hoses, Tires
Belgium	Wood-in Trim, Seat Pads, Tires, Brakes Tubes
Canada	Glass, Radios
Denmark	Fan Belts
France	Seat Pads, Sealers, Tiers, Underbody Coating, Weatherstrips, Seat Frames, Heaters, Brakes, Master Cylinders, Ventilation Units, Hardware, Steering Shaft and Joints, Front Seat Cushions, Suspension Bushes, Hose Clamps, Alternators, Clutch Release Bearings
Italy	Defroster Nozzles and Grills, Glass, Hardware Lamps.
Japan	W S Washer Pumps, Cone and Roller Bearings, Alternators, Starters
Netherlands	Paints, Tires, Hardware
Norway	Tires, Muffler Flanges
Spain	Radiator and Heater Hoses, Air Cleaners, Wiring Harness, Batteries, Fork Clutch Releases, Mirrors
Sweden	Hardware, Exhaust Down Pipes, Pressings, Hose Clamps
Switzerland	Speedometer Gears, Underbody Coatings
U.S.	Wrench Wheel Nuts, Glass, EGR Valves
England, Germany	Muffler Ass'y, Pipe Ass'y, Fuel Tank Filler
England	Steering Wheel
England, Germany	Tube Ass'y Steering Column, Lock Ass'y, Steering and Ignition
England, France	Heater Ass'y
England, Germany	Heater Blower Ass'y, Heater Control Quadrant Ass'y
England, Italy	Nozzle Windshield Defroster
England, Germany	Cable Ass'y Speedometer
Germany	Cable Ass'y Battery to Starter
England, Germany	Turn Signal Switch Ass'y, Light Wiper Switch Ass'y
England, Italy	Headlamp Ass'y Bilux, Lamp Ass'y Front Turn Signal
England, Italy	Lamp Ass'y Turn Signal Side, Rear Lamp Ass'y (inc. Fog Lamp), Rear Lamp Ass'y
England, Germany	Weatherstrip Door Opening, Main Wire Ass'y Tires, Battery, Windshield Glass, Back Window Glass, Door Window Glass, constant Velocity Joints
France, Germany	Transmission Cases, Clutch Cases
England, Germany	Rear Wheel Spindles
Germany	Front Wheel Knuckle
England, Germany	Front Disc
England, France, Italy	Cylinder Head
England, Germany	Distributor
USA	Hydraulic Tappet
England, Germany	Rocker Arm
England	Oil Pump
Germany	Pistons
England	Intake Manifold
England, Germany	Clutch
Germany	Cylinder Head Gasket
Eng., Germ., Swe.	Cylinder Bolt
N. Ireland, Italy	Carburetors
England	Flywheel Ring Gear

Steel (body steel and forging barstock) from U.K., Germany, Belgium
France, Italy, Austria (sheet) and Finland (bar).

Source: Department of Transportation, U.S. Auto Industry, 1980

Diversification

In addition to the changes from outsourcing and joint ventures, the auto industry is diversifying out of car production. In fact, Automotive News, the industry's leading trade journal, selected as its 1985 "Story of the Year" the "buying spree" of the Big Three, acquiring businesses unrelated to the automotive field.⁷¹ These acquisitions are in several basic areas: financial services; high technology, and in particular computers, robots, and artificial intelligence; and defense contracting.⁷² Not surprisingly, GM, the first to do so, led the industry in the size of its acquisitions.

GM was also the first to reorganize its corporate structure, consolidating its operations in order to, among other things, increase its ability to respond to the changing car market.⁷³ Traditionally, GM organized its operations through a decentralized multi-divisional structure, with operating "autonomy" for each of its divisions. Each division was supposedly responsible for producing cars for a specific segment of the market.⁷⁴

In 1984, GM reorganized its car making divisions, consolidating them into two larger groups. Buick, Oldsmobile and Cadillac form its larger-car group, while Chevrolet, Pontiac and GM's Canadian subsidiary form the small-car group, eliminating the Fisher Body and

Assembly Divisions. Car buyers who now purchase large cars from the latter lines will eventually have to select vehicles from the more expensive brands. Design and engineering, once the responsibility of each line, is now consolidated into the two groups, with only marketing and sales remaining in the hands of each product line. GM hopes to re-establish the distinct image of each car line at the same time it avoids duplication of white collar jobs and increases its ability to respond to market changes.

GM's first major acquisition came in June 1984 with the purchase of Electronic Data Systems, Inc. (EDS) from Ross Perot for \$2.5 billion, moving it into the computer services business.⁷⁵ The following year this acquisition was dwarfed when GM bought Hughes Aircraft for just over \$5 billion.⁷⁶ GM also expanded its financial services into the mortgage business. It purchased the rights to service the \$11 billion mortgage portfolio of Norwest Corp., and bought the Colonial Group of CoreState Financial Corp., whose mortgage portfolio is \$7.4 billion. GMAC, already the largest finance company in the world, with assets of \$64.3 billion, is the nation's 5th largest "bank", and the second largest lender of home mortgages.⁷⁷ In 1983, it netted \$1 billion, surpassing the highest earning of the nation's largest bank, Citicorp.

For Chrysler restructuring came in 1985, with Lee Iacocca's announcing that it would "give us the flexibility we need" to manage diversification.⁷⁸

Chrysler also made large purchases in high technology and finance. Its largest expenditure was \$637 million for Gulfstream Aerospace, a maker of corporate aircraft. Its investments in the financial world included \$405 million to acquire FinanceAmerica from BankAmerica and \$147 million to buy E.F. Hutton Credit Corporation, increasing its consumer finance business. Chrysler entered into a joint venture with General Electric Credit Corporation to make equity investments in machinery, equipment and real estate.⁷⁹

Ford's major spending came when it purchased 81 percent of First Nationwide Financial Corporation, the nation's ninth largest savings and loan association for \$493 million. First Nationwide has \$11.2 billion in assets. Ford also bought Sperry Corporation's New Holland farm equipment company for \$330 million. The Ford Motor Credit Company, the second largest finance company in the world, has assets of \$24 billion, more than all but 13 U.S. banks.⁸⁰

Antitrust History

The industry's unparalleled concentration has made it the recurring target of antitrust investigations.

Beginning in the 1930s, and continuing until the 1980s, the auto industry has been investigated for a variety of practices.⁸¹ Yet, virtually all of the cases involved anticompetitive behavior rather than monopoly structure.

George Heaton commented on this checkered past:

Given the extent of the activity, it is surprising that so little occurred in the way of definitive results. Many cases proposed by agency staff were never brought. Of those that were, relatively few proceeded through the judicial system to a clear decision; many, instead, were abandoned or compromised in a consent decree. Legislative hearings and investigations, an almost constant phenomenon, frequently produced reports, some legislative proposals, but almost no legislation.⁸²

As the industry's largest firm, General Motors has been the prime subject of antitrust discussions. Still, those cases that did involve monopoly structure did not touch its car, truck, bus or rail operations. There were two successful structural cases involving GM. In the Dupont-GM case Dupont was forced to divest itself of its 23 percent stock interest in GM. In the Euclid case, a consent decree was entered requiring GM to sell its Euclid off-highway earth moving equipment division.⁸³ For a selected chronology of antitrust against the industry see Table 2-8.

Labor Relations

Central to the structure of the industry is its pattern of labor relations.⁸⁴ Labor is, of course, one

Table 2.8.

Chronology of Selected Antitrust Actions Against the U.S. Automobile Industry				
Time Period	Actors	Type of Action	Focus	Outcome
1937-42	FTC/GM	FTC/Clayton Act Suit	exclusive dealerships	changes in dealer relationships*
1933-39	FTC	Study	concentration and conduct	principal findings: no price fixing; active competition; unfair dealership arrangements
1933-53	DOJ/GM	Sherman Act litigation	financing	GM retained GMAC; coercive practices barred**
	DOJ/Ford/Chrysler	Sherman Act Indictment	financing	consent decrees** barred finance company affiliation
1939-53	FTC/GM/AC Spark	Clayton/FTC Act Suit	exclusive dealing, price fixing	cease and desist ordered: no structural relief
1947-55	DOJ/GM/Nat'l City Lines	criminal indictment, divestiture action	municipal bus transport	criminal conviction, divestiture suit dismissed
1949-61	DOJ/DuPont/GM	Clayton Act Suit	monopolization of fabrics and finishes	divestiture GM holdings
1963	DOJ/Independent automakers	scrutiny	improvements in competition against big three	mergers approved
1955-55	Senate Antitrust Committee	study/hearings	GM	preliminary report criticising GM: Car Dealers Day in Court Act
1957	Senate Antitrust Committee	study/hearing	administered pricing, financing	report critical of GM; proposed legislation banning financing-manufacturing affiliations to DOJ
1958-59	DOJ/Ford	criminal indictment	price fixing	<i>nolo contendere</i>
1959-68	DOJ/GM/Euclid	Clayton Act	monopolization earth moving	divestiture of Euclid
1960-69	DOJ	task force	shared monopoly theory: case against GM	much analysis: many proposals: all abandoned
1961-63	DOJ/Chrysler	Sherman/Clayton Suit	exclusive dealerships	suit dropped with Chrysler notices freeing dealers
1961-71	DOJ/Ford/Autolite	Clayton Act Suit	vertical integration	Autolite divestiture

Chronology of Selected Antitrust Actions Against the U.S. Automobile Industry

Time Period	Actors	Type of Action	Focus	Outcome
1964	DOJ/Chrysler/Mack	Sherman/Clayton Suit	related industries	Chrysler/Mack merger dropped
1966	DOJ/GM	Sherman Act	"location clauses" barring discount sales	Supreme Court found to be per se violation
1967-68	Senate Antitrust Committee	hearings	auto industry market control	no report
1969-81	DOJ/Mfgs. Assn.	Sherman Act Suit	joint development emissions technology	consent decree barred joint activities***
1974	Senate Antitrust Committee	hearings	industrial concentration/ground transportation	proposed legislation/no report
1974	DOJ/Chrysler/GE	law suit	interlocking directorates	consent decree: boards disaffiliated
1976-81	FTC	investigation	monopolization in domestic and foreign industry: GM	issuance of subpoenas: investigation dropped, 1981
1980	DOJ	guidelines	joint R&D	clarification/more permissive
1981	FTC/Echlin/Borg-Warner	Clayton/FTC Act Suit	reduced supplier competition	pending
1981	FTC/Tenneco/Monroe	Clayton Act Suit	reduced potential competition	divestiture order pending

* The long history of these cases, and other related actions, makes the outcomes complicated. For example, *Standard Oil Company of California v. U.S.* 337 U.S. 288 (1949). Barring exclusive dealerships for oil companies, also had an important impact on the automobile industry.

** These consent decrees, along with all others outstanding, were under review by the Justice Department as of this writing. Justice may modify them "to lift improvements in auto financing."

***In the last two years, this decree has been relitigated and modified, with the government currently proposing its termination.

Source: Heaton, p. . 767-768.

of the costs of production calculated in any business. However, it is unique among the factors of production since it represents the living labor power of individuals. Unlike other factors of production, workers have consciousness and will. Obtaining their "cooperation" is essential in the capitalist extraction of surplus value. The contradictory interests traditionally separating capital and labor are continually involved in a struggle over the use of labor power.

The history of auto workers, from the bitter struggles in the 1930s, through the peaceful and profitable arrangements of the 1950s and 1960s, to the givebacks and decline in the 1980s, is often seen as setting the pattern of organized labor throughout the country. The auto companies violently fought workers' attempts to unionize the industry.⁸⁵ The Battle of Overpass and the sitdown strikes in Flint are still considered highwater marks in labor militancy.⁸⁶ Yet, after WW II the union settled into a peaceful relations with the industry, leading William Serrin, to subtitle his book The Company and the Union, "The "Civilized Relationship" of the General Motors Corporation and the United Automobile Workers."⁸⁷

The transformation of the union from one of the most militant labor organizations in the country in the

1930s and 1940s to its subsequent "civilized" position as a junior partner can be vividly seen in its attitude toward industrial planning. Before and after WW II Walter Reuther led efforts to extend labor's role in industrial governance. As the head of the union's GM division his proposals for wartime conversion of the auto industry received widespread attention. After the war he called for a Peace Production Board to direct the conversion of industry back to civilian production to ensure full employment. He also recommended that housing be the first priority of post-war industry and government owned aircraft plants be used to manufacture prefabricated mass-produced, low-cost homes.

The UAW also attempted to have GM open its books, creating a tremendous uproar in the business community. The union was willing to base its wage demands on the company's ability to pay. Needless to say, GM refused the request. Many in the business community saw the union request as a direct challenge to business autonomy and felt the future of labor relations in the post-war world was at stake. Despite President Truman's appointment of a panel to arbitrate the issue, providing neutral observers to examine GM's books, after a 119 day strike (1945-46) the union gave up its request. Yet, the union continued its efforts to shape the direction of the industry. In 1949 the UAW called on the

automakers to manufacture small cars. However, with the contract of 1950, known as the "Treaty of Detroit," the union increasingly focused on wage issues.

The automakers were glad to facilitate this change in order to buy labor peace. Throughout the post war period, they negotiated contracts that made auto workers the highest paid among the American working class.⁸⁸ The industry and the union participated in pioneering benefits packages that became the goal for most workers in the country, including: pensions, cost of living allowances, productivity raises, supplemental unemployment, profit-sharing, early retirement and health care.

However, the UAW largely abdicated control over the labor process in exchange for financial benefits. Basically, auto workers became junior partners in the industry and shared in the monopoly profits during the industry's glory days. The expectation that big unions would exert countervailing power against big business, was, in large part, not realized. As Adams and Brock argue, when an industry possessing oligopoly power is faced with a powerful union there is an almost "irresistable tendency" toward vertical collusion.⁸⁹

Nevertheless, the union retained its progressive political image. In part it was maintained by Reuther's visible stance on a variety of social issues as well as

his participation in the civil rights movement, marching with Martin Luther King in Selma.⁹⁰ The scope of Reuther's involvement as a spokesman for the labor movement was noted by his brother Victor, a long time UAW official. "[Walter Reuther testified] nearly 100 times before Congressional committees in connection with almost every social and economic issue..."⁹¹ (However, despite the "civilized" relationship between the union and the industry concerning contract bargaining, on the shop floor worker dissatisfaction did not completely disappear.⁹²)

Although the union had retained its progressive image, William Serrin argues that by the 1960s the UAW was no longer the socially concerned union of its past.

When the issues of the 1960s and early 1970s arose-the Vietnam War, the black riots, automobile safety, pollution, consumerism- the union seemed out-of-touch, old-fashioned, old-hat. There are a handful of liberals on the executive board, but most members are conservatives. The UAW became a right-of-center union with a left-of-center reputation. It was for others to lead the campaigns; the union was not out in front, nor, at times, even in the parade.⁹³

With the death of Walter Reuther in 1970 and the increasing volatile auto market in the years that followed, even the union's ability to receive larger and larger contracts became a thing of the past.

When the industry was losing money in the early 1980s auto workers were forced to negotiate give backs,

previously considered unheard of. Although many of these benefits were subsequently returned, the focus of the 1984 contract was job security, not economic benefits.⁹⁴

For Mike Davis the 1984 contract was

certainly a disturbing harbinger of the extent to which concessionary bargaining has eroded the principles of even the most progressive large unions. For the 'bottom line' of the GM settlement was the UAW's willingness to relinquish defense of its job base in return for some security provisions for senior members that could be negotiated without a national strike.⁹⁵

Another indication of the union's decline is the end of pattern bargaining among the Big Three. In fact, even within the same corporation, different contracts are now negotiated among different divisions.⁹⁶

Historically the union chose not to fight for control over the labor process or management's unilateral control over investment decisions. It was content to accept steadily increasing economic benefits. Now the gains embedded in the compromises made in the past are giving way in response to new technology and international competition. The union seems ill prepared to respond to these changes in the economy, and is seemingly unable to arrest the orderly shrinkage of the industry. Today, while the auto companies may continue to profit, auto workers are the big losers in a market dominated by international competition and high technology.

Endnotes

1. Davis Dyer, et. al., Changing Alliances (Boston: Harvard Business School Press, 1987), p.33.
2. Dyer, p.xii.
3. Motor Vehicle Manufacturer's Association (MVMA), Facts and Figures 1982, p. 60.
4. Robert Stobaugh and Daniel Yergin eds., Energy Future: Report of the Energy Project of the Harvard Business School (NY: Random House, 1979), pp. 146-7.
5. U.S. Department of Transportation Report to the President, "The Auto Industry 1980," p.2.
6. This comparison is arrived at by comparing sales to GNP. Fortune, April 28, 1986 reports GM's sales at approximately \$ 96.4 billion, with assets of \$ 69.2 billion. It ranked number one in sales and number two in assets behind Exxon. For a ranking of GNP's see George Thomas Kurian, The New Book of World Rankings (NY: Facts on File Publications, 1984).
7. "GM a New Kind of Corporation," Automotive News January 21, 1985, p.1.
8. Advertising Age, September 14, 1984, "100 Leading National Advertisers," p. 1. Questions have been raised concerning GM's ability to influence the editorial policy of newspapers and magazines through the use of its advertising budget. See Edward Lapham, "GM studying magazine ad position," Automotive News December 1, 1986, p.6.
9. Geoff Sundstrom, "Trade bill could cut import flow to dealers," Automotive News April 27, 1987, p.2.
10. Statement of Ford vice president D.N. McCammon before the U.S., Congress, Senate, Committee on Finance, Issues Relating to the Domestic Auto Industry. Hearings before the subcommittee on International Trade. Part 2, 97th Cong., 1st. sess., January 14-15, 1981, p.170.
11. In addition to the changes within the industry, other businesses related to the industry are also being transformed. Car dealerships are becoming concentrated into fewer and fewer hands with the rise of the so-called "super-dealer," those with a number of outlets across different states. Currently, they account for 15

across different states. Currently, they account for 15 percent of all car sales and by 1990 could sell 30 percent of all cars. Analysts see this trend as the beginning of the end of the small dealer. See "The New Super-Dealers," Business Week June 2, 1986, pp.60-66. Another veritable American institution-- the junkyard-- is also undergoing a radical transformation. Partly due to the influx of cheap imported parts, hundreds of junkyards are going out of business. See Robert Lindsey, "Junkyard Operators Finding 'Just No Opportunity Left'," New York Times June 8, 1986, p.1.

12. "1987 Market Data Book," Automotive News April 29, 1987, p.44.

13. Joseph Bohn and Philly Murtha, "'87 sales off 7% at 15.2 million," Automotive News January 11, 1988, p.51.

14. "Downsizing Detroit: The Big Three's Survival Strategy," Business Week April 14, 1986, p.50.

15. Edward Lapham, "Overcapacity to Linger," Automotive News December 28, 1987, p.1.

16. Steve Prokesch, "General Motors to Shut 11 Plants," New York Times November 11, 1986, p. A 1. For the announcement of the subsequent layoffs see Susan Pastor, "G.M. Plans Temporary Output Cut," New York Times December 12, 1986, p.D 1.

17. "Earned, and Unearned, Auto Bonuses," New York Times May 7, 1984, p.A 18. This is not the first time that there have been significant productivity gains in the industry. At the Kefauver hearings in 1957 (see note 29) Walter Reuther, head of the UAW, testified that in 1947 the industry made 4,798,000 vehicles with 648,000 workers. In 1957 it took 652,000 workers to make 7,220,000 vehicles. Production went up 50.5 percent, while employment gains were 0.5 percent. (p.2207).

Although each of these improvements are significant, GM's has plans for a "factory of the future" that will operate for an eight hour shift without any human production workers. The plant will produce axles and supposedly be in full operation by late 1987. See John Holusha, "G.M.'Factory of Future' Will Run With Robots," New York Times October 20, 1984, p.29.

18. Robert Crandall, et. al., Regulating the Automobile (Washington: The Brookings Institution, 1986), p.18.

19. Robert Crandall, p.11.

20. For an extensive list of industry joint ventures see "1987 Data Market Book," p.201.

21. Lawrence White, The Auto Industry Since 1945 (Cambridge: Harvard University Press, 1971).

22. John Delorean, the now notorious former GM vice president, who was the youngest divisional manager when he headed Pontiac in 1962, wrote in the mid 1970s:

...there [has not] been an important product innovation in the industry since the automatic transmission and power steering in 1949. That was almost a quarter-century of technical hibernation. In the place of product innovation, the automobile industry went on a two-decade marketing binge which generally offered up the same old product under the guise of something new and useful.

Cited in Patrick Wright, On A Clear Day You Can See General Motors (Grosse Pointe, Michigan: Wright Enterprises, 1979), p.4. Delorean provides an interesting insiders account of life within GM and how loyalty and "team play" replaced competence and competition. Pleasing one's superiors by carrying their bags or picking them up at an airport became an obsession. The most extreme example was the courtesy given a particular Chevrolet sales official.

...the boss liked to have a refrigerator full of cold beer, sandwiches, and fruit in his room to snack on at night before going to bed. They lined up a suite in one of the city's better hotels, rented a refrigerator and ordered the food and beer. However, the door to the suite was too small to accommodate the icebox. The hotel apparently nixed a plan to rip out the door and part of the adjoining wall. So the quick-thinking zone sales people hired a crane and operator, put them on the roof of the hotel, knocked out a set of windows in the suite, and lowered and shoved the refrigerator into the room through this gaping hole. (p.45).

When the official left the next day the refrigerator was removed. Of course the official never knew what went into what Delorean describes as the most expensive midnight snack eaten by a GM executive. See Brock

Yates, The Decline and Fall of the American Automobile Industry (NY: Vintage Books, 1984), particularly chapter II, "The Detroit Mind" for another discussion of the insularity and myopic behavior of auto executives.

23. Bradford Snell also calls for the use of the antitrust laws to restore competition in the auto industry. Moreover, he calls for the break up of GM's control over the entire ground transportation system in the U. S. See Bradford Snell, "American Ground Transport: A Proposal for Restructuring the Automobile, Truck, Bus and Rail Industries", report submitted to the subcommittee on Antitrust and Monopoly of the Senate Judiciary Committee, 93rd., Cong., 2d., February 1974.

Snell presents a thorough analysis of how the Big Three shaped the transportation alternatives in the U.S. to depend on the car through a concerted use of monopolistic practices to destroy competing forms of ground transportation. Snell documents how the industry colluded with oil and tire companies to successfully take over interurban rail systems, and urban trolley systems, dismantling them and substituting diesel buses. Due to the higher costs and slower speeds, these buses contributed to the collapse of several hundred public transit systems and the diversion of commuters to cars. In 1949 a Chicago federal jury convicted GM, Standard Oil of California, Firestone Tire, and others of conspiring to dismantle rail transit throughout the country. The fine was a meager \$5000. United States v. National City Lines, Inc. 186 F.2d 562 (7th Cir. 1951); certiorari denied, 341 U.S. 916 (1951). See also U.S., Congress, Senate, Committee on the Judiciary, A Study of the Antitrust Laws: Investigation of General Motors. Hearings before the subcommittee on Antitrust. 84th., Cong., 1st. sess., November 1955. Hereafter referred to as GM hearings.

Recently, GM sold its transit-bus manufacturing operations to Greyhound. See Pauline Yoshihashi, "Greyhound to Buy G.M. Unit", New York Times, January 13, 1987, p. D 4.

24. See Bradford Snell, "Annual Style Changes in the Automobile Industry As An Unfair Method of Competition," Yale Law Journal vol.80, 1971, p.577.; GM hearings, p.2277.

25. For information on the Chrysler acquisition see Automotive News March 16, 1987, pp.3, 55-57; Barnaby Feder, "A.M.C.'s Long, Hard Struggle," New York Times March 10, 1987, p.D 1.

26. Snell, "Annual Style Changes," p.577.

27. Cited in Snell, "Annual Style Changes," p.607, from p. 26 of the Report. Snell examines the failure of Kaiser in the early 1950s, the only serious entry of a domestic car maker since 1923, as a consequence of the inability to afford to keep up with annual styling changes due to insufficient volume. It entered the market in the late 1940s and captured 5 percent of the market in 1948. It could not afford the retooling or advertising costs and sold its 1948 model in 1949 and 1950. In 1951 it did restyle but its volume was too low for efficient production. As a result its unit costs and prices were higher than the Big Three and it was forced to withdraw from the market in 1954. See Alfred Sloan, Jr. My Years With General Motors (NY: Anchor Books, 1963), chapter 13, "The Annual Style Change," for an insider's view of style changes.

28. Franklin Fisher, Zvi Grilliches, and Carl Kaysen, "The Costs of Automobile Model Changes Since 1949," Journal of Political Economy October 1962. Fisher, et.al. base their estimates on the cost of a 1948 car and trace the changes through the 1950s.

29. GM hearings; U.S., Congress, Senate, Committee on the Judiciary, Administered Prices. Hearings before the subcommittee on Antitrust and Monopoly, 85th., Cong., 1st. sess., 1957. (Hereafter referred to as Kefauver hearings). In addition to the invaluable information on the development, structure, and practices of the industry, throughout these hearings there is a concern for the social and political consequences of concentrated economic power which is largely absent from current debates.

30. U.S., Congress, Senate, Committee on the Judiciary, Administered Prices: Automobiles, Report of the Subcommittee on Antitrust and Monopoly, 85th. Cong., 2d. sess., 1958, p.74.

31. David Lachman, "The Politics of the Automobile: Corporate Power and Government Policy," (unpublished dissertation, New York University, 1979), pp.25-51.

32. Even the recent "incentives" of low financing charges and longer warranties which appears to signal a trend toward price competition is deceptive. Prices have continued to rise despite the advertised deals. Often, the incentives are temporary and are used to clear inventories at the end of the year, not to establish competition on the basic price of new cars.

33. John Blair, Economic Concentration (NY: Harcourt Brace Jovanovich, Inc., 1972), chapter 17 "Oligopolistic Price Behavior," and particularly pp. 448-458.

34. U.S., Congress, Senate, Committee on the Judiciary, Bigness and Concentration of Economic Power--A Case Study of General Motors Corporation. Report of the subcommittee on Antitrust and Monopoly, 84th. Cong., 2d. sess., 1956, Report 1879, p. 8.

35. U.S., Congress, Senate, Select Committee on Small Business. Planning, Regulation and Competition: Automobile Industry--1968. Hearings. 90th. Cong., 2d. sess., 1968, p. 208.

36. "1987 Data Market Book," Automotive News April, 29, 1987, p. 100. In comparison, the "official" political contributions through the industry's political action committees is small. In 1986, for example, the UAW was the largest spender among industry groups, distributing \$2.73 million. Combined the Big Three did not approach this figure. GM spent \$503,896 while Ford spent \$274,736 and Chrysler spent \$330,124. The National Automobile Dealers Association spent \$1,378,000. (Automotive News April 27, 1987, p. 2.) See also Geoff Sundstrom, "How auto industry doled out political funds," Automotive News April 22, 1985, p. 25; Helen Kahn, "2 auto PACs wind up with \$2.6 million," Automotive News January 6, 1986, p. 3.

37. In 1957, Automotive News, the industry's main trade journal, chose the rise of imports as the annual "Story of the Year."

38. "Downsizing Detroit: The Big Three's Strategy For Survival," Business Week April 14, 1986, p. 86.

39. John Teahen, Jr., "Import model count rises to 304," Automotive News, March 9, 1987, p. E 20.

40. Cited in John Holusha, "The Disappearing 'U.S. Car,'" New York Times August 10, 1985, p. 31.

41. Dyer, p. 2.

42. Cited in Geoff Sundstrom, "Japan's parts firms speed U.S. attack; total may hit 300," Automotive News May 18, 1987, p. 1. For a detailed breakdown of Japan's auto and parts makers in the U.S., including product, location and number of employees, see Geoff Sundstrom, "Study charts Japanese invasion of the U.S. parts

industry," Automotive News May 25, 1987, pp.18-20.

43. The advantages of front wheel drive are several. Since the driveshaft is in the front, the long and heavy connection to the rear axle is not necessary. This removes the "hump" in the center of the car. With the added room cars can be made smaller and still preserve the same space for passenger. Since the car is lighter the engine does not need to be as large, and it can be made smaller and lighter, further reducing weight. Front wheel drive vehicles also handle better in slippery conditions since there is added traction with the weight of the engine over the power wheels.

Other weight improvements have been achieved through the substitution of steel with lighter materials, such as plastic and aluminum. See for instance, "The Car of the Future Will Have New Skin and Bones," Business Week July 29, 1985, p.50.

44. Earley Lance, "Passenger Car Engine Trends," Automotive Industries, vol. 1, May 1986, p.85.

45. A captive import is a car made in a foreign nation but sold under a Detroit nameplate by domestic dealers. "Imports" can be divided into five different categories. In addition to the captive import and the true import, a car made and sold by a foreign manufacturer, there is the transplanted import: a car assembled in the U.S. by a foreign company with varying amounts of domestic content; the joint venture import: assembled in the U.S. in a partnership with a foreign manufacturer, but sold under a domestic label. The joint venture between GM and Toyota in Fremont, California is an example. The car to be produced will contain approximately 70 percent foreign content but will be sold by GM as a Nova; the final type of import is an invisible import: a car make by a domestic company but with many foreign parts. See John Holusha, "The Disappearing 'U.S. Car,'" New York Times August 10, 1985, p.31.

46. This trend is by no means limited to the U. S.. Worldwide there were 30 joint ventures between auto companies announced between 1978-1983, John Koten, "British Car Makers Tie to Honda Shows Why Auto Linkups Increase," Wall Street Journal December 12, 1983, p.1 col. 6.

47. Dyer, p.150.

48. "Daewoo and GM divisions plan joint ventures in Korea," Automotive News November 11, 1985, p.8.

49. Susan Chira, "Chrysler and Mitsubishi to Build Small Cars Jointly in the Midwest," New York Times April, 16, 1985, p. A 1.; John Holusha, "Chrysler, Mitsubishi Pick Illinois Site," New York Times October, 8, 1985, p. D 1. See John Holusha, "Auto Industry Adjusting To a Painful New Reality," New York Times December 21, 1986, p. section 4 p.4, for a table detailing Japanese car makers in North America, including joint ventures and wholly owned plants.

50. Alan Webber, p.2.

51. The decision making process used for this case was surrounded by controversy. There were no public hearings held by the FTC allowing for an adversarial forum to challenge the factual or legal contentions of GM and Toyota. Chrysler had to petition the FTC for the release of information submitted by GM and Toyota. When the Commission granted this request it allowed the joint venture partners to decide what was confidential information and Chrysler received a highly expurgated version. The partners waived the requirement that the Commission's decision contain a finding of fact and conclusions of law, as well as the right to judicial review. Thus, the Commission's decision is a brief outline of conclusions, difficult to challenge.

Chrysler charged that there is reason to believe that the parties timed their compliance with the Commission's request for information to wait out the term of Commissioner Clanton, who was thought might vote against the plan. After months of delay certain key documents were turned over after he left the FTC and two days before Senate approval of Commissioner Calvani, who voted for the plan.

Ralph Nader also charged that James Miller 3rd, the FTC Chairman, was a private consultant to GM until November 1980, just 16 months before the consideration of the plan was announced.

As a result of the closed decision making process, the closest one can find to a full debate on the public record is U.S., Congress, House, Committee on Energy and Commerce, The Future of the Automobile Industry. Hearings before the subcommittee on Transportation and Tourism. 98th Cong., 2d sess., February 8, 1984, Serial No. 98-117. Hereafter referred to as Joint-Venture (J-V) hearings.

52. The three Reagan appointees were James Miller, 3rd. (Chairman), George Douglas and Terry Calvani. The Carter holdovers were Michael Pertschuk and Patricia Bailey.

53. U.S. Federal Trade Commission Decisions, vol. 103, p.374, (1984), General Motors Corp., et.al., Docket C-3132, pp. 387-8.

54. The 1987 manufacturers suggested retail price was \$8,200.

55. Alan Webber, "Conceding the Subcompact to Japan," New York Times January 8, 1984, section 3, p. 2. For a defense of the joint venture see Maryann Keller, "Just What the U.S. Needs," printed alongside the above article.

56. In addition to the introduction of 200 robots, in the new plant, the Chevette's content was virtually all from domestic facilities, unlike the joint venture vehicle. See testimony of Bruce Hahn, Manager of Government Affairs, National Tooling and Machine Association, J-V Hearings, pp. 326-333.

57. The dissenting opinions can be found in the J-V hearings or the Federal Register 48 F.R. 250 Wednesday December 28, 1983.

58. J-V Hearings, p.513.

59. J-V Hearings, pp. 60-70.

60. J-V Hearings, p.81.

61. J-V Hearings, p.190.

62. Joseph Brodley, "Joint-Venture and Anti Trust Policy," 95 Harvard Law Review 1521 (1982); Robert Pitofsky, "Joint-Venture Under Anti Trust Laws," 82 Harvard Law Review 1007 (1969).

63. J-V Hearings, p.209.

64. Joint Venture Hearings, p.187. Nader is referring to the Kefauver hearings of 1957. Romney was concerned about the lack of adequate competition in the industry. Contrary to the traditional industry attitude, that there was vigorous competition even when just three firms controlled the industry, Romney testified:

My experiences convince me that it is not in the public interest to permit one concern to control a dominating percent of total industry sales, or to permit 2 or 3 companies to

control total industry sales. It is my observation that when companies acquire as much power as the big three, it is difficult for the management to realize the economic, social, and political impact flowing from the exercise of that power. (p.2895)

He also argued that the question of intent be removed from the definition of anti competitive behavior. (p.2900).

65. J-V Hearings, pp. 152-3. Chrysler filed a suit in federal court against the venture but settled out of court. The settlement limited the venture to eight years, considered by many a face savings move for Chrysler to bow out of the suit it had little chance of winning after the FTC approval, and a public relations necessity to clear the way for its own joint venture with Mitsubishi. See Dale Buss, "Chrysler Settles Suit Over Link of GM, Toyota," Wall Street Journal April 15, 1985, p.2.

66. J-V Hearings.

67. GM is not alone in owning shares of Japanese car makers. Ford owns 25 percent of Mazda, while Chrysler owns 15 percent of Mitsubishi. Lee Iacocca dismissed GM's claim that it wants to learn Japanese management techniques from Toyota. He cited a statement made by GM Chairman Roger Smith January 1984: "I know what the Japanese management system is." Smith added, "We have had a 34 percent interest in Isuzu for 12 years. But I don't know if the Japanese management will work in the United States." Cited in J-V Hearings, p.154.

Nader claims that in addition to raising prices, part of GM's motivation is to see how Japanese management techniques can be used to turn the UAW into a company union. For a discussion of life in the new plant see Joan Walsh, "Cultural Exchange on the Production Line," In These Times April 17-23, 1985, pp. 8-9.

The UAW's stance on the joint venture is emblematic of the decline of the union. While others were calling it one of the most significant policy decisions affecting the industry, and a watershed anti trust case with long term implications for jobs, potentially costing thousands of jobs, the union said it had no opinion. "Because we cannot predict the net effect on competition, the UAW has not taken a position on this issue before the FTC." (J-V hearings, p.170). The President of the UAW, Owen Bieber did not attend the hearings but sent a short statement, where the above

quote appeared. The UAW did submit lengthier testimony, but this had already been used before the House Banking Committee's subcommittee on Economic Stabilization in hearings held on September 28, 1983. In it the union did approve of joint ventures as a way to apply innovative approaches to the production of small cars.

68. J-V Hearings, pp.273-299.

69. J-V Hearings, p.244.

70. Cited in John Holusha, "A Blending of Cultures Produces a Car," New York Times April 5, 1985, p.D 3.

71. Reportedly GM has plans to diversify its operations out of the car business to 20 percent non-automotive by 1990. In 1981 non-automotive operations accounted for 7.3 percent of its revenues. See Ralph Nader and William Taylor, The Big Boys (NY: Pantheon, 1986), p.85. Lee Iacocca would like to see Chrysler move its operations to be 50 percent non-automotive. See Dan McCosh, "Iacocca elaborates on restructuring," Automotive News, November 25, 1985.

72. For summaries of the financial subsidiaries of AMC, GM, Ford and Chrysler see Michelle Krebs, "Big Three eye spinoff in finance," Automotive News July 28, 1986, p.1.

73. John Holusha, "G.M. Sets Change to 2 Groups," New York Times January 11, 1984 p. D 1.; for a more in depth discussion of the reorganization see John Holusha, "G.M.'s Overhaul: A Return to Basics," New York Times January 15, 1984, p. section F, p.1.

74. Alfred Chandler, Jr., Strategy and Structure (Cambridge: MIT Press, 1962), p.143.

75. John Holusha, "G.M. Acquiring Perot Company for \$2.5 Billion," New York Times June 29, 1984, p. A 1. At the time it was GM's largest acquisition. GM financed the deal with part of the \$9 billion cash it had on hand. The deal was the 27th largest acquisition in American history. See Andre Rhoads, ed., Mergerstat Review 1986 (Chicago: W. T. Grimm & Co., 1987), p.34. For an in depth analysis on what EDS offers GM see the special section of Automotive News March 18, 1985, "GM & EDS," pp. 25-45.

In December of 1986 Ross Perot was removed from the GM Board of Directors and bought out for \$700 million, twice the market value of his stock. He was the largest stockholder with eight-tenths of 1 percent of GM stock.

The iconoclastic entrepreneur's criticism of the inefficiency and perks of GM's management was too much for the corporation. As part of the buyout he was barred from publicly criticizing GM.

Many described the buyout as a form of greenmail and criticized GM. The buyout came just weeks after GM announced the permanent layoffs of 30,000 workers and on the heels of its third quarter loss of \$338.5 million.

See John Holusha, "Perrot Is Removed From G.M. Board, But Has Big Profit," New York Times December 2, 1986, p. A 1 and several related articles in that day's business section of the paper. See also Business Week, "GM Hasn't Bought Much Peace," December 15, 1986, p. 24.

The rewards of being an auto executive are considerable. The average salary of the top 170 industry executives in 1985 was just over \$620,000 (Michele Krebs, "Auto leaders average \$620,000 in '85 pay," Automotive News June 30, 1986, p.1). In 1985 the top five officials at GM each earned over \$1 million. Roger Smith the Chairman of GM earned \$1.82 million. Meanwhile Lee Iacocca realized a profit of more than \$15 million through stock options (John Holusha, "Top G.M. Five Each Got Over \$1 million," New York Times April 19, 1986, p.35). The bonuses of 1983 stirred up a controversy that made its way to the editorial page of the New York Times May 7, 1984, p. A 18, since they came during the import quotas on Japanese cars, angering many.

76. Robert J. Cole, "G.M. to Acquire Hughes Aircraft in \$5 Billion Bid," New York Times June 6, 1985, p. A 1; John Holusha, "'Complementary' Technology Seen as Goal of G.M. Purchase," New York Times June 6, 1985, p. D 19. This acquisition was the 11th largest in American history. For a list of acquisitions see Andre Rhoads, ed., Mergerstat Review 1986. (Chicago: W.T. Grimm & Co., 1987), p.33.

77. Robert A. Bennett, "Expanded Scope for G.M.A.C.," New York Times August 6, 1985, p. D 1.; John Teahen, Jr., "Top story: Big 3 buying Binge," Automotive News December 30, 1985, p.1.

78. John Holusha, "Chrysler Reshaped into 4 Units," New York Times November 8, 1985, p. D 1.; Dan McCosh, "Corporate structure revamped at Chrysler," Automotive News November 11, 1985, p.1; Dan McCosh, "Iacocca elaborates on restructuring," Automotive News November 25, 1985, p.3.

79. John Teahen, Jr., p.30.

80. John Teahen, Jr., p.30; Stephen Hansen, "Why Ford Shouldn't Be Your Banker," New York Times March 2, 1986, section F, p.2. For the opposite point of view see George Benton's adjoining article, "Why Not Bank Where You Buy a Car?"

81. One of the most notable cases involved the industry's efforts in restraining the development and implementation of smog control devices. This issue will be discussed in detail in chapter 4.

82. George Heaton, Jr., "Government Structural Policies And The Automobile Industry," Policy Studies Review Vol. 2, No. 4, May 1983, p.765.

83. For further information on these and the host of other antitrust cases involving the industry see Simon Whitney, Antitrust Policies (NY: Twentieth Century Fund, 1958), vol.1, ch.8 "Automobiles"; Bradford Snell, "American Ground Transport", particularly pp. 72-5; U.S., Congress, Senate Select Committee on Small Business. Planning, Regulation, and Competition: Automobile Industry-1968. Hearings. 90th. Cong., 2d., sess., July 10, 23, 1968, testimony of Donald Turner Assistant Attorney General, Antitrust Division and testimony of Paul Rand Dixon, Chair of FTC; 1955 GM hearings, particularly pp. 2756-2833.

84. It is not surprising that the role of labor is ignored since it raises the issue of labor as a social relation. This has been long denied by many of the ideologists of capitalism in the attempt to argue that capitalism represents the "natural" order of economic relations, not a social convention, subject to change.

None of the following works that contain chapters on the structure of the industry examine the role of labor: Robert Lanzillotti, "The Automobile Industry", in Walter Adams, ed., The Structure of American Industry, 4 ed. (NY: Macmillan Company, 1971); Lawrence White, "The Automobile Industry", in Walter Adams, The Structure of American Industry, 5 ed. (NY: Macmillan Publishing Co., 1977); Bryan Jones, et. al., The Sustaining Hand (Lawrence: University Press of Kansas, 1986). When labor is discussed it is typically reduced to one of the many factors of production, calculated as any other cost. See for instance, Robert Crandall, et. al., Regulating the Automobile (Washington: The Brookings Institution, 1986).

Even Lawrence White, The Automobile Industry Since 1945 (Cambridge: Harvard University Press, 1971), a full length study of the structure of the industry, does not examine the structure of labor.

85. See Keith Sward, The Legend of Henry Ford (NY: Reinhart and Co., 1948); James Green, The World of the Worker (NY: Hill and Wang, 1980); U.S., Congress, Senate, Committee on Education and Labor, Violations of Free Speech and Rights of Labor: Industrial Espionage. 75th Cong. sess. 1-3, Report No. 46, General Motors spent over \$1 million on espionage and munitions between 1933-6.

86. For a detailed account of the Flint sit down strike see Sidney Fine, Sit-Down: The General Motors Strike of 1936-1937 (Ann Arbor: University of Michigan Press, 1969).

87. William Serrin, The Company and the Union (NY: Alfred Knopf, 1973).

88. American auto workers are not alone in earning more than the average wage in the manufacturing sector. Auto workers in Japan and West Germany also earn more than the average worker their respective nation's manufacturing sector. See Robert Crandall, Regulating the Automobile, p. 24.

89. Walter Adams and James Brock, The Bigness Complex (NY: Pantheon Books, 1986), p.324.

The most notable statement concerning countervailing power can be found in John Kenneth Galbraith, American Capitalism (Boston: Houghton Mifflin Company, 1952). In his subsequent works Galbraith has largely abandoned these views.

90. Although Reuther had highly visible presence in the civil rights movement, charges were made that within the union racism continued.

91. Victor Reuther, The Brother's Reuther and the Story of the UAW (Boston: Houghton Mifflin Co., 1976), p.434.

92. For a discussion of the history of shop floor resistance at Chrysler see Steve Jefferys, Management and Mananged (Cambridge: Cambridge University Press, 1986).

93. William Serrin, pgs.147-8.

94. See David Moberg, "Autoworkers strike to save jobs at GM," In These Times Sept.26-Oct.2, 1984, p.2; David Moberg, "Unions fight for job security," In These Times Oct.3-9, 1984, p.3.

95. Mike Davis, Prisoners of the American Dream (London: Verso, 1986), p.150.

96. GM, for instance, has negotiated a different arrangement for its joint venture plant in Fremont, California, (NUMMI), its new Saturn division and the bulk of its auto operations.

CHAPTER 3

CORPORATE POLITICAL HEGEMONY AND ITS DECLINE

Before the passage of the National Traffic and Motor Vehicle Safety Act of 1966 (NT & MVSA), the automobile was the only form of transportation without federal safety standards.¹ Railroads, trucks, planes, and ships were all subject to federal regulation.² At the same time, the auto was (and continues to be) the leading cause of death and injury in the transportation sector, accounting for 92 percent of all deaths and 98 percent of all injuries.³

This chapter analyzes the industry's political dominance during the years before the federal intervention in auto safety. It focuses on how the industry seized the initiative on safety, shaping and integrating the organizations that developed around the issue. The industry used its superior resources to overwhelm critics, thwarting alternative approaches to traffic safety. This chapter also examines a few examples of the industry's early safety practices, and demonstrates its disregard for safe design. Finally, it examines how a mounting concern for vehicle design developed, and eventually succeeded in pressuring the federal government to establish safety standards for all cars sold in the United States.

In part, this history has been told by other authors, particularly Ralph Nader and Joel Eastman. However, both end their analyses before the final battle for the Safety Act. Not only does this chapter include that material but throughout it relies on the documentary record as much as possible in describing this period. Outlining this past is essential for analyzing the patterns of automotive policy and how the industry operates politically.

For years the auto industry was able to control the responses to traffic safety problems through a sophisticated and extensive lobbying effort. With the passage of the NT & MVSA the industry's hegemony came to an end. In a sustained effort, public interest advocates, supported by members of the medical community and the United Auto Workers and Teamsters Union, lobbied for years for federal regulation. This alone was not enough to topple the industry from political dominance. The advent of safety regulations required one of the most liberal Congresses in American history, as well as a series of shocking revelations about the industry's safety practices. At the same time as there was a growing public concern for environmental and product safety, the industry was in its heyday, enjoying year after year of healthy sales and profits. When

challenged, the industry had great difficulty claiming it could not "afford" federal regulations.

The early advocates of a federal role in highway safety had an additional hurdle to overcome--the long held belief that traffic safety was a state and local responsibility. By 1966 this too had been overcome. Sen. Warren Magnuson (D-Washington) attributed this change to the advent of the Interstate Highway System, legitimizing a federal role in traffic safety. An Act which, at the time, was an expression of the industry's unchallenged strength, sowed the seeds of its political decline.

The breakdown of the hegemony of the safety establishment fundamentally changed the nature of power in the auto industry. Government became a partner at the engineering table, circumscribing the autonomy of the industry. Formally, at least, the public interest now has a legitimate mechanism to hold the industry accountable for vehicle safety. Although the vigor of regulators varies, vehicle design is now subject to government requirements, not the unilateral decisions of corporate planners.

The Traffic Safety Problem

The human costs of car accidents are staggering. In 1980, for instance, 51,000 people died in car accidents

and approximately 4 million individuals were injured, 250,000 of them seriously.⁴ There were 28 million accidents involving 48 million vehicles.⁵ The daily death toll averages 121, comparable to a major airline disaster.⁶ Car accidents are the largest killer of Americans under the age of 34 and the largest cause of paraplegia and quadriplegia.⁷ The cumulative consequences of this wreckage was noted in a 1979 Congressional Office of Technology Assessment report. "In this century, approximately two million persons have died and nearly 100 million have been injured through the use of motor vehicles--a total that is more than three times the combat losses suffered by the United States in all wars."⁸ Table 3-1 shows the number of traffic deaths by year.

The annual highway death toll merely highlights the human "costs" of auto accidents; the economic costs are also staggering. The economic loss to society from motor vehicle accidents, (in 1980 alone), was estimated by the Department of Transportation at \$57.2 billion.⁹ In addition, in 1984 the cost of automobile insurance was \$50.5 billion.¹⁰ However, any recitation of the bare figures can never fully capture the impact of car accidents. As the 1983 Department of Transportation study on the economic costs of accidents stated:

the true value of the lives and the physical and mental capabilities which are destroyed in

Table 3-1. Traffic Fatalities by Year, 1913-1985.

1985.....	45,600
1984.....	46,200
1983.....	44,452
1982.....	45,779
1981.....	51,385
1980.....	52,600
1979.....	51,900
1978.....	51,500
1977.....	49,500
1976.....	46,700
1975.....	46,000
1974.....	46,200
1973.....	55,800
1972.....	56,600
1971.....	54,700
1970.....	54,800
1969.....	56,400
1968.....	55,200
1967.....	53,100
1966.....	53,041
1965.....	49,100
1964.....	47,700
1963.....	43,564
1962.....	40,804
1961.....	38,091
1960.....	38,137
1959.....	37,910
1958.....	36,981
1957.....	38,702
1956.....	39,628
1955.....	38,426
1954.....	35,586
1953.....	37,955
1952.....	37,794
1951.....	36,996
1950.....	34,763
1949.....	31,701
1948.....	32,259
1947.....	32,687
1946.....	33,411
1945.....	28,076
1944.....	24,242
1943.....	23,823
1938-1942 avg...	33,549
1933-1937 avg...	36,313
1928-1932 avg...	30,900
1923-1927 avg...	21,700
1918-1922 avg...	12,500
1913-1917 avg...	6,700

Source: U.S.Census Bureau, Statistical Abstract of the U.S.:From Colonial Times to 1970;NSC, Accident Facts.

motor vehicle accidents can never be adequately measured because the pain, suffering, and frustration felt by individual accident victims cannot be expressed in economic terms.¹¹

The lack of safety standards was explained by Ralph Nader in his now famous Unsafe at Any Speed, still the most notable work on the auto industry. It was not the result of haphazard policy-making or the oversight of government officials. The legal structures affecting the industry were shaped by a political and propaganda machine directed by the traffic safety establishment. This establishment is not a conspiracy; it does not have to be. As the only organized constituency in traffic safety...it has been more like a great power with no challengers."¹²

Supported and directed by the auto industry, the "highway safety establishment" was a series of public and private groups reflecting the industry's desire to focus questions concerning accidents and injuries away from vehicle design and toward driver behavior. It stressed the so-called "nut behind the wheel" theory. As early as 1914 this position was expressed by Julian Harvey, in what became the holy trinity of highway safety, the three Es: engineering, education and enforcement, (engineering refers to highway design, education to driver education, and enforcement to traffic regulations).¹³ Organization after organization

invoked this triumvirate since the beginning of the century. Although seemingly apolitical, according to Nader, "the prevailing view of traffic safety is much more a political strategy to defend special interests than it is an empirical program to save lives and prevent injuries."¹⁴

Driver behavior has always been the focus of the safety establishment. Nader described its reigning philosophy. "Most accidents are in the class of driver fault; driver fault is in the class of violated traffic laws; therefore, observance of traffic laws by drivers would eliminate most accidents."¹⁵ No distinction is made between accidents and injuries; the former unpreventable, while the latter is avoidable with appropriate vehicle design. This distinction is the basis for the concept of the "second collision."¹⁶

The "second collision" is the collision between the passenger and the vehicle and determines the nature and extent of injuries. The human body can survive significant decelerating forces inflicted during crashes if the forces are spread over time and area. In essence, the "damage is done not by the force, but by the distortions produced as a consequence of the force."¹⁷ A simple example can illustrate this principle. Falling on a surface that "gives," like a

hay stack, spreads the force over an area, unlike falling on a sharp object like an ice pick.¹⁸

Emphasizing driver behavior as the cause of "accidents" oversimplifies an involved process.¹⁹ "In reality, automobile accidents are the result of a complex, synergistic interaction of a multitude of factors involving the driver, the vehicle, the highway, and the environment."²⁰ Although individual accidents are unplanned events and are impossible to predict, on a systemic level they are utterly predictable and not "accidental."

The Capture of the Safety Movement

The motorization of America resulted from a series of private decisions both allowed and then encouraged by government. Unfortunately, as Joel Eastman writes:

The motorization of the highway system was begun without any formal consideration of either how the motor vehicle might serve the transportation needs of the nation or what effect a change from animal to mechanical power might have on the economy, efficiency, and safety of the road system.²¹

At the end of the nineteenth century the early proponents of the automobile argued cars were safer than horse-drawn vehicles. Horses were seen as "willful and wild," while cars did not "shy or run away."²² However, in 1899, early car users were made vividly aware of the danger of cars with the first recorded fatality

attributed to a motor vehicle.²³ As the auto population grew so did the death and injury toll. By 1909 motor vehicle accidents killed and injured more people than horse-drawn vehicles.²⁴

Growing numbers of casualties brought a mounting concern for highway safety and with it criticism of the car itself. Articles appeared in newspapers and magazines with titles such as "Menace of the Automobile," "Curbing of the Automobile Danger," "Slaughter on the Highways."²⁵ By 1917 it became a concern of the Metropolitan Life Insurance Company. Lee K. Frankel, third vice-president, delivered an address entitled "The Increasing Automobile Hazard" and called for an organized effort to deal with the problem.

The increasing importance of the automobile as an instrument of injury and death is daily being viewed with greater alarm by life insurance companies, police officials, civil authorities and public health administrators. Vital statisticians are observing that while the communicable diseases have responded more and more each year to the measures instituted by health authorities for their control, injuries and fatalities resulting from the growing use of automobiles are steadily climbing.... The data available show clearly that we have before us a problem of the first magnitude and that we must organize all communal groups interested in public safety to combat this growing evil. It will be necessary to interest legislatures and to educate the public generally if we are to control the results of the automobile industry which has grown so tremendously in recent years.²⁶

Focusing on driver behavior as the "cause" of accidents is partly understandable. Cars, unlike horses, are inanimate objects, making it natural to blame drivers for accidents.²⁷ Moreover, the decentralized aspect of car accidents down-played the systemic nature of the traffic safety problem. The number of people involved in any one accident is usually small, presenting the problem of accidents as an individual one.²⁸ As a result, according to Joel Eastman, attention was focused on operator education and enforcement of motor vehicle laws. The industry gladly supported this view, arguing cars do not cause accidents and it was impossible to develop a perfect vehicle to compensate for driver error or poor road conditions. The critical distinction between accidents and injuries was ignored.

Early concerns for traffic safety were formalized in the highway safety movement, institutionally born around 1914.²⁹ The National Safety Council (NSC) became the largest and most important organization in the field. The NSC was formed in response to a growing industrial safety movement, part of the business response to the worker's compensation movement.³⁰ From its founding in 1912, it was the ideological arm of business. "Judge Gary of U.S. Steel and the NCF [National Civic Federation] was a guiding light in the

new group".³¹ The connections between the NSC and the auto industry will be explored below.

In 1916, the National Automobile Chamber of Commerce (NACC) appointed a safety committee amidst growing concern over highway safety. World War I temporarily diminished this concern, but it soon resurfaced after the war. By the early 1920s the NACC formed a Traffic Planning and Safety Committee, chaired by Paul Hoffman of the Studebaker Corporation.³² Hoffman was one of the first in the industry to argue that accidents could be a deterrent to sales. However, Hoffman emphasized factors other than the vehicle itself, admitting years later this was consciously done to avoid harming sales.³³

Through the 1920s the safety movement had no centralizing focus since it had no institutionalized forum. In 1923, C. W. Price, former president of the NSC, realized this gap provided a vacuum the industry could fill. Price argued, "the whole problem of public safety is still in the formative stage, awaiting the leadership of some group of interests - such as the automobile industries - having more invested capital, wider contacts, greater influence, and more aggressiveness than have thus far been available for this movement."³⁴ Price's concern was based on sound economic reasoning. A reaction had set in against

automobiles and high insurance costs threatened to hurt sales. If positive actions were not taken legislation would be passed regulating vehicle design.³⁵

The industry's participation in the highway safety movement remained largely dormant until the mid 1930s since there was no imminent threat of legislation. In fact, in 1932, Hoffman requested the board of directors of the Automobile Manufacturers Association (AMA) to allocate \$10,000 to study the best method for involving the industry in the highway safety movement. His request was rejected. Three years later this decision was reversed due to a tremendous rise in the public concern for the problem of vehicle safety, sparked by an article in the August 1935 issue of the Reader's Digest entitled "--And Sudden Death".

Describing in detail the "pain and horror" of different kinds of car accidents, the article was reprinted in approximately 2000 newspapers and magazines. Total printed circulation reached an estimated 35 million copies by the end of 1935. Paul Hoffman acknowledged the impact of the article in 1939.

The greatest single impetus to the [highway safety] program from the standpoint of the general public came in 1935 with the publication in Reader's Digest of a lurid and macabre article by J.C. Furnas entitled "And Sudden Death",...a spark that touched off a tremendous explosion of public interest and concern.³⁶

Congress responded to this mounting interest in June 1936, requesting the Bureau of Public Roads to survey motor vehicle traffic conditions.³⁷ The growing concern for safety led the Automobile Manufacturers Association (AMA) to fund Hoffman's request and to the formation of the Automobile Safety Foundation (ASF) in June 1937, formally institutionalizing the industry's strategy towards auto accidents.³⁸ The solution to the safety problem was the "classic three"--education, engineering, and enforcement. According to Hoffman: "train safe drivers. Make penalties for unsafe driving certain--but not punitive. Engineer hazards off the right-of -way...."³⁹

His program appeared in the Saturday Evening Post.⁴⁰ The ASF adopted the plan and decided to promote existing safety programs corresponding to the seven components of the plan, (Legislation, Motor Vehicle Administration, Enforcement, Engineering, Education, Technical Personnel Training, and Research).⁴¹ Joel Eastman comments on this development:

Thus, the automobile industry had, in effect, carefully selected organizations within the highway safety movement--groups which would later be called the "safety establishment" by critics--whose programs conformed to the strategy of the industry in regard to the accident problem. The exclusion of programs focusing on the automobile, itself, was made easy by the fact that there were no formal studies underway at this time, but the establishment of the automobile industry as the major source of funding for highway safety

organizations was certainly not conducive to encouraging such studies.⁴²

Founded by four auto industry executives, the ASF's funding came exclusively from the AMA for its first five years. Then financial support broadened to include money from oil, rubber, steel, glass, cement and asphalt companies, as well as auto dealers, advertising agencies, and banks.⁴³ By 1963, the AMA contributed half of the ASF's income, \$764,086 out of a total of \$1,528,173, the foundation's approximate budget for the 20 previous years.⁴⁴ Overall, 90 percent of its funds came from the auto industry and its suppliers.

Although its ostensible purpose was improving traffic safety, the ASF was in reality an auto industry lobby group. The foundation's funding of research reflected this connection. In 1963, for example, the foundation spent roughly \$700,000 on research and action programs in such areas as safety education, traffic law enforcement, driver education, and highway improvement. Virtually nothing was spent on the issue of the design aspects of the car.⁴⁵ In a publication from the early 1960s, for example, it reiterated the industry's longstanding view on the problem of traffic accidents. "Being inanimate, no car truck or bus can by itself cause an accident any more than a street or highway can do so. A driver is needed to put it into motion-after which it becomes an extension of his will."⁴⁶

The ASF supported the promotion of driver education in the nations high schools. The manufacturers made special provisions for dealers to donate or loan cars to schools. For the driver education movement the solution to the traffic safety problem was improved driver behavior and individual responsibility. That driver education increased the number of drivers, and thereby the number of accidents, was ignored. Further, the contribution of driver education is questionable because those who take it may be less prone to accidents in the first place.⁴⁷

Paralleling the ASF's position, the NSC was another arm of the industry. The ASF and AMA provided funds to the council. The NSC, however, was concerned with a wide variety of issues, not just traffic safety, and received the major source of its funding from various industries. In addition, industrial and commercial executives dominated its board of directors.⁴⁸ The NSC not only avoided the issue of vehicle design but insisted that research, standards and recommendations pertaining to operational and crashworthy qualities of vehicles were adequate. It based its assertion on a letter from the AMA.⁴⁹ In spite of its close connection with business, the NSC has contended it is non-profit, non-political, and non-commercial.⁵⁰

A unique service provided by the NSC is the compilation of traffic accident statistics. Nader noted, "this represents a rather unusual delegation of a public function to a private organization" and a privilege that has been abused.⁵¹ If one compares the NSC's estimates of injuries from car accidents to the Public Health Service's (PHS) there is an enormous discrepancy. Daniel Moynihan pointed out this problem as early as 1959, questioning the NSC's methods of collecting data. He noted that in 1957 the NSC claimed there were 1,400,000 injuries, while the PHS estimated the figure at 4,880,000.⁵²

The council has been a firm proponent of evaluating the relative safety of the nation's roads by measuring the death rate per vehicle miles traveled. This formula-- one death per 100 million miles traveled-- was first announced by Paul Hoffman. It shifted the method of measurement from using the total number of cars registered per death.⁵³ Automatically, it gave the appearance of safer roads. However, there are a number of problems inherent in estimating aggregate mileage, given the variations in fuel economy, evaporation, and traffic. If the number of traffic deaths are compared per 100,000 population, there has been little change. Nader evaluated this comparison. "What this means is that a motorist can expect to drive farther in any given

year without being killed, but he is just as likely as in previous years to be killed within that year."⁵⁴

The centerpiece of the NSC's traffic safety activities was the support and promotion of the "Action Program" of the President's Committee on Traffic Safety (PCTS). "The Action Program is a compilation of the best knowledge in the traffic safety field and incorporates accepted standards of national organizations concerned with traffic safety prevention. It is the master plan for all safety activities."⁵⁵ The Action Program grew out of a 1946 White House Conference on Traffic Safety.⁵⁶

On the surface the PCTS had the appearance of an official governmental body. It was not. Accordingly to Nader, it "is a federal institution quite without parallel in the history of American government....There has never been another agency created by and then leased back outright to private enterprise."⁵⁷ The Committee grew out of a 1954 letter from President Eisenhower, sent shortly after an industry sponsored White House Conference on Traffic safety. Writing to Harlow Curtice, head of GM and chairman of the Business Advisory Committee on Highway Safety, Eisenhower suggested "a national committee for traffic safety [be] formed to follow through on the fine work begun by the business group."⁵⁸

The group, an unusual mix of private power and public authority, was given a more permanent legal status in 1960 by Executive Order 10858.⁵⁹ Nader called it a vaguely worded statement "permitting the committee's ruling advisory council wide latitude in interpreting its own role and the role of the committee."⁶⁰ In a 1959 report by the Secretary of Commerce to the House Committee on Public Works, the PCTS was commended. "There is no parallel group within government circles that has responsibility for developing official programs of equal breadth and for encouraging their application at all levels of government..."⁶¹

Originally, the PCTS was entirely funded by private industry, but by 1961 the federal government paid three-quarters of the budget. In 1964 the cost totaled \$200,000, and civil servants worked on the staff. The startling aspect of this organization was that the selection of its executive director and his two assistants was made and paid for by private industry.⁶² By the mid-1960s private interests supplied \$50,000 a year to the PCTS, a rather modest fee for maintaining an agency that, as Chairman W. R. Hearst Jr. stated, "by virtue of its identification with of the Office of the President, provides the traffic safety movement with the

prestige of the President, which no other organization could accomplish."⁶³

When Kennedy became president the future of the PCTS was somewhat in doubt. Nevertheless, he reappointed W.R. Hearst, Jr. as Chairman, but added representatives of the Departments of Commerce, Labor, HEW, and Defense to sit as ex-officio members. Their role remained secondary. Daniel Moynihan, the Labor Department's representative, said of the PCTS:

I served as a departmental representative on the body for a year before learning that the executive director was neither chosen or paid by the Federal Government, but rather by the industry. This man presided over the expenditure of public funds,...and generally disported himself as the head traffic safety man in government although, in fact, he was a paid agent of the interests he ought at least to have been keeping an eye on.⁶⁴

The nerve center of the PCTS was the Business Advisory Panel. Testifying before the Senate subcommittee on executive reorganization in 1965, General Alfred M. Gruenther (Ret.), a member of the PCTS, said the advisory committee is what makes the committee tick.⁶⁵ The panel consisted entirely of businessmen, the majority of whom were affiliated with the auto industry. There were representatives from GM, Ford, as well as, B.F. Goodrich, and Firestone, among others. There were no representatives of the scientific or academic community.⁶⁶

Not surprisingly, the PCTS became another voice in the industry orchestrated chorus on traffic safety. In 1966, Elizabeth Drew appropriately commented on the PCTS, "the committee has made unabashed use of the prestige of the Presidential seal to spread the industry gospel: traffic safety is preserved by careful driving, good car maintenance, vehicle inspection, traffic laws, and bigger and more highways."⁶⁷ A 1962 episode is revealing. Part of the growing concern over vehicle safety in the late 1950s and early 1960s was a debate over whether highway safety was the responsibility of the federal government or the states. The industry argued it was a local concern. The PCTS circulated a pamphlet entitled "Vehicle Equipment Safety Compact" with the Presidential seal prominently displayed on the cover. It emphasized that highway safety was entirely the responsibility of states, not the federal government. The pamphlet was printed and paid for by the AMA. There is no record of any federal agency approving this decision.⁶⁸

The ASF, PCTS and NSC were connected by both money and personnel. Individuals migrated from one group to another.⁶⁹ And as Elizabeth Drew commented: "The interlocking directorates and mutual dependence of virtually all safety groups on the same sources of revenue - the automobile industry and its commercial

allies - produced a remarkably harmonious point of view."⁷⁰

When the links among these organizations were brought to public attention in the 1960s, there was wide-spread criticism. However, there were earlier critics. In 1937, for example, E. George Payne wrote about the safety establishment's approach to accidents and the role of the NSC.

The relative futility of these efforts in the face of constantly mounting accidents and hazards lies mainly, not in lack of concern about the accident problem, but in lack of intelligent attack upon the problem of accidents and the method of their prevention. The leadership of the safety movement is now and has been for a long time in the hands of an agency which has the appearance of a professional society or a public service agency. It is actually more nearly a trade association primarily interested in saving money for its members and incidently in saving human lives.⁷¹

Ralph Nader summed up the nature of the safety establishment's unique activities: "[it] displays a creativity in political science not approached by the most powerful of private lobbies."⁷²

Industry control of the highway safety movement obscured the built-in design failings of the auto. By the mid 1960s Nader observed: "today almost every program is aimed at the driver - at educating him, exhorting him, watching him, judging him, punishing him, compiling records about his driving violations, and organizing him in citizen support activities."⁷³

Built in Design Failings

Intimately intertwined with the industry's antipathy toward safety is its long standing stress on marketing. Separating its aversion to safety from its concern for sales is almost impossible. Throughout the history of the industry fast cars and "performance" have been used as marketing strategies. According to Eastman, "the use of the themes of speed, performance, horsepower and racing by automobile manufacturers to promote their products was evident from the beginning of the industry," as early as 1903.⁷⁴ Emphasizing vehicle safety raises public awareness that cars are inherently unsafe, tarnishing the image of cars as fun.⁷⁵ John Keats identified this problem in his 1958 book The Insolent Chariots.

Detroit sees itself as nothing but dreams of speed, sex, luxury, and horsepower. It would no more occur to Detroit to try to sell safety at the same time than it would occur to a fashionable restaurant to provide sodium bicarbonate and a stomach pump with every place setting.⁷⁶

The importance of marketing to the auto industry is hard to underestimate. By themselves cars can be rather simple vehicles and can be repaired repeatedly. Most purchases of new cars can be put off for years. However, stimulating demand can increase the turnover of the vehicle population. The annual model change became a

method of building in obsolescence and focusing attention on the appearance of the vehicle. The following industry statements from the 1940s, 1950s, and 1960s, respectively, illustrate the automakers frivolous attitude toward cars.

Since the automobile is an intimate personal possession--comparable in a sense to ones clothes or ones home-- it is essential that it express individuality, style and good taste. Because it is a swiftly moving vehicle, its exterior must suggest fleetness and movement; because it carries passengers, its interior must express comfort and repose.⁷⁷

We live in a highly civilized country where the appearance of our cars is almost as important as the appearance of our clothing. When clothes become old fashioned we discard them-- this is true for cars too.⁷⁸

To a great degree our cars are 'women's hats'. They have to have special attractiveness, and sometimes they even compromise with function.⁷⁹

In the mid 1950s GM vice-president for engineering, C.A. Chayne gave the themes of safety and speed a novel interpretation when commenting on the increasing horsepower of its vehicles. As he reviewed the safety features of GM cars he said the engine was the foremost feature which provides the driver with the maximum ability to carry out safe decisions, and that the chief reason for engines of high horsepower was that they were safer.⁸⁰ Unfortunately, increased horsepower led to faster driving and more accidents.

The industry's cavalier attitude toward safety was exposed in a 1966 exchange between Sen. Vance Hartke (D-Indiana) with Harry Chesebrough, vice-president of Chrysler. When asked about a magazine story reporting the braking distance of two cars under identical conditions, one taking 138 feet to stop without the driver holding the wheel, the other requiring 238 feet and the constant attention of the driver because of rear wheel lock-up, Chesebrough responded: "I don't know why the public would have any concern over it."⁸¹ Nader cogently summarized the industry's emphasis of marketing over safety:

The industry has actively cultivated a consumer ignorance about safety by promoting a concept of an automobile that stresses style, ride, and performance. While eager to tell the potential customer about the rated horsepower, acceleration capability and kinds of interior decor, the automaker will not tell him, even if he demands it, such important facts about safety as: brake stopping ability, tire skid and blowout resistance, roof collapse strength, door latch and door hinge strength, the dash panels and windshields cushioning ability, the amount of rearward displacement of the steering wheel and shaft under a forward crash into a fixed barrier, the side and roof crash resistance of the vehicle and seat anchorage strength.⁸²

While it is impossible to survey the entire history of unsafe design features of cars, a few notable examples have been written about, particularly the Corvair and the Pinto.⁸³ Nader documented the built in design problems with the Corvair, problems known to GM.

He appropriately labelled it "unsafe at any speed." Several law suits were won by owners who suffered accidents due to the Covair's faulty rear axle. In the Pinto case internal corporate documents surfaced which indicated Ford's awareness of the Pinto's safety problems and its willingness to ignore the problem because settling the number of law suits it expected was cheaper than fixing the car.

Other examples of the industry's callous attitude toward safety have received less attention. One of the most extreme was the "tail fin" style of the 1950s. They were obviously dangerous and caused pedestrian injuries. However, styling took precedence over safety. No auto engineer employed by the industry ever did an analysis of pedestrian collisions.⁸⁴ In addition, there were criticisms of the poor braking and steering problems of cars throughout the 1930s through the 1950s, frequently caused by the demands of styling.⁸⁵

Steering problems were not unusual in the 1930s due to the wide adoption of smaller diameter low pressure balloon tires and a change in weight distribution. The stylists promoted the tires for their appearance and softer ride. However, these tires created steering problems due to the increased road friction. These problems were compounded by the stylists move of placing the engine forward over the front wheels for the sake of

interior room. Although engineers opposed the move, it went ahead any way, increasing the danger of blowouts.⁸⁶

Stylists also pushed for the wrap around windshield, which GM subsequently hailed as "increasing the vision of the driver". Critics disagreed. At the American Medical Association annual meeting in 1956 Dr. Dupont Guerrey, chair of the Department of Ophthalmology at the Medical College of Virginia said:

In it all basic optical principles have been completely ignored, and the stylists' dream or nightmare has been allowed to run rampant. The driver who must use such [a windshield] suffers from terrific visual distortion due to prismatic effect, increased glare because of the focusing of extraneous light in the axial area of the windshield, and insuperable diplopia [double vision] from ghost images resulting from the surface reflections exaggerated by the acute curvature.⁸⁷

Roy Haeusler, director of auto safety at Chrysler, admitted the industry did not consult any authority in optics while designing the wraparound windshield, and reluctantly agreed there was distortion.⁸⁸

Other criticisms of car's field of vision were made. Complaints arose due to the effects of tinted glass on night vision and obstructions of vision causing blind spots. The industry argued the negative effects of tinted glass were minor, although tests published in the Journal of the Optical Society of America claimed it was unsafe. In response to the problem of blind spots

the industry response was "there are not statistics showing that blind spots cause accidents."⁸⁹

Glare was another problem related to field of vision. It is often a common complaint of drivers who do not "see" pedestrians. Nader reported the results of tests done by Prof. Merrill Allen of Indiana University indicating the inherent defects in windshield design.

Sitting in a vehicle about fifteen feet in front of which a man stood on a tree-lined street in broad daylight, Dr. Allen photographed the scene twice. In the first picture, the pedestrian was completely invisible to any driver because of the reflection of the dashboard on the windshield. In the second picture, by simply placing black velveteen on the dash top as a light-absorber, the pedestrian became clearly visible.⁹⁰

In 1963, Allen studied the adequacy of the visibility of American cars and found that not one car made in this country provided for a suitable visual environment.⁹¹

General Motors attitude toward dashboard padding is yet another example of its disregard for safety. In 1955, a New York bank official wrote a letter to GM telling about his eight year old son being thrown against the dash and breaking his tooth as he braked to avoid hitting a kitten. He suggested they pad the dash to avoid such injuries in the future. GM's vehicle safety engineer Howard Gandelot wrote back: "driving with young children in an automobile always presents some problems. As soon as the youngsters get large enough to be able to see out when standing up, that's

what they want to do-- and I don't blame them." He described how he trained his sons to brace themselves by putting their hands on the dash when he gave the command--Hands!-- and how he practiced it with them. The banker wrote back to GM's customer research department suggesting perhaps he had not made himself clear and that the engineer's advice was not practical in an accident situation. He added, "for safety's sake the danger should be removed by making the dash safer to bounce into." Gandelot replied, "a lot of people are hurt in bathtubs too, aren't they? Do you hear anybody demanding that they take the bathtubs out of homes?"⁹²

The industry's emphasis on styling reached unparalleled heights in the 1960s when car buyers were offered seemingly unlimited choices. A 1966 New York Times article reported:

Last year a Yale University physicist calculated that since Chevy offered 46 models, 32 engines, 20 transmissions, 21 colors (plus 9 two-tone combinations) and more than 400 accessories and options, the number of cars that a Chevrolet customer could order was greater than the number of atoms in the universe. This seemingly would put General Motors one notch higher than God in the chain of command.⁹³

Another indication of the industry's priorities can be found in the amount of money spent on the promotion of racing. In 1964, Chrysler spent \$3 million on racing, while Ford spent \$20 million. By 1967 Ford spent \$30 million. GM did not promote racing due to an earlier

industry agreement banning the practice. Nevertheless, GM spent only \$1.25 million on safety in 1965, while profits were \$1.7 billion. This contrasts to the industry wide cost of annual cosmetic model changes, estimated by the Bureau of Labor statistics at \$1.5 billion for 1969.⁹⁴

Governmental Structures

A number of bureaucratic structures developed parallel with the industry's control over traffic safety. Federal intervention, which was resisted by the industry in the 1960s, had once been requested by automakers. In 1905, the National Association of Automobile Manufacturers (NAAM) unsuccessfully argued for a federal licensing law and national motor vehicle laws. By 1910 the campaign for national legislation ended with the general adoption of interstate reciprocity agreements and a trend toward uniformity in state motor vehicle laws, solving the problem of national standards without the involvement of the federal government.⁹⁵

However, the development of traffic laws was not left to chance. According to Nader:

the industry's presence on the membership roll of the National Committee on Uniform Traffic Laws and Ordinances is an impressive display of how automobile companies and their trade organizations and front organizations can saturate an organization....The code is a

place for implementing the automotive lobbies determination to achieve uniformity in vehicle equipment laws throughout the fifty states without the supervision of the federal government.⁹⁶

Through financial support and the direct participation of industry officials, the Uniform Motor Vehicle Code as a "Guide for State Motor Vehicle Laws," received periodic revision. Yet, not a single feature of the 194 page guide significantly deals with vehicle design features prominently associated with injuries. Nevertheless, the code claimed to offer a sound framework for effective safety programs.⁹⁷

Traditionally, the responsibility for traffic safety and roads resided with the states. As late as 1959 the Commerce Department supported this view. "The direct projection of federal authority into highway safety functions that have been the responsibility of state and local governments is concluded to be impractical, and would only weaken state and local authority."⁹⁸ Early federal actions were devoted to road building and facilitating state cooperation on vehicle codes. In 1893, the Secretary of Agriculture was instructed to investigate the best methods for road building. In 1916 Federal aid was given to state road making efforts. In 1924 Herbert Hoover, as Secretary of Commerce, organized the first national conference on street and highway safety.⁹⁹ Nevertheless, Hoover did

not have federal intervention in mind. Instead, he saw the role of the federal government to encourage state and local governments to work together voluntarily.¹⁰⁰ A standing committee to promote uniform traffic rules resulted from the conference.¹⁰¹

New York State's motor vehicle laws, for instance, go back to 1901 when cars were included under the definition "carriages" in highway law. Other early developments in the state include legislation to license chauffeurs (1903), requirements for vehicles to be registered (1904), annual registration (1910), operator licensing (1917), the appointment of a Director of a Motor Vehicle Bureau (1921), and the codification of various regulations in a Vehicle and Traffic Law (1929).¹⁰²

By the late 1950s, the federal government had at least 16 different federal agencies involved in highway safety. According to a Commerce Department survey there was virtually a total lack of working liaison among these agencies. Of the 16, 10 engaged in or sponsored research affecting highway safety; 4 were concerned with engineering standards and specifications; 12 provided some other type of safety service. About half were involved in a single phase of vehicle safety, while a few worked in 4 or 5 different areas.¹⁰³ None were involved with the issue of vehicle crashworthy

standards. One of the more interesting aspects of this array of agencies is the presence of the Air Force. Its involvement began during the Korean War, when it discovered there were more losses in auto accidents, unrelated to combat, than in enemy action.¹⁰⁴

In response to this disorganized state of affairs, the Commerce Department recommended the establishment of an Interdepartmental Highway Safety Board. Chaired by the Secretary of Commerce, its members included the Secretary of HEW, Defense, and the chairman of the ICC, and FCC. The PCTS served as a consultant and advisor to the official board. Although formed on December 2, 1959, its first meeting was not until June 28, 1962. It never played a significant role.¹⁰⁵

The Rise of Opposition

Throughout the 1950s the industry's control over traffic safety questions was challenged from a number of different fronts. While there had been earlier critics of the industry, now it was the medical and scientific establishment rejecting the industry's point of view. The American Medical Association and the American College of Surgeons, for example, recommended to the car makers that safety be given greater attention. In 1953, at the annual meeting of the American Medical Association a resolution passed stating: "Resolved, that

the American Medical Association recommends to the motorcar manufacturers of America that they consider equipping all automobiles with safety belts and, furthermore, that they give increasing emphasis to safety design of all automobiles."¹⁰⁶

Independent crash research was conducted by the Air Force, Cornell University's Aeronautical Laboratory at Buffalo, the Institute of Transportation and Traffic Engineering at the University of California at Los Angeles, and the Mechanical Engineering Department of the Institute of Technology at the University of Minnesota. Growing interest in vehicle design led the automakers, one by one, to establish safety departments for the first time. This did not represent a sudden transformation of the industry's thinking. Instead, prudence dictated watching new developments. Even in 1958, after the first Congressional hearings on safety, the industry's position did not change. GM's Lawrence Hofstad, Vice President of the research staff said: "I am convinced that more progress can be made in traffic safety by emphasizing the relations between the driver, the signalling system, and the road, than by undue emphasis on the crash proof car."¹⁰⁷

The first response by government to the growing awareness of the built-in safety hazards of cars came from Congress, when hearings on vehicle safety were held

in the House of Representatives in 1956. In an era of Presidential domination of the legislative process, car safety was the domain of Congress throughout the ten years between the first hearings in 1956 and the passage of the NT & MVSA. In the 1950s it was led by Rep. Kenneth Roberts (D- Alabama). During the 1960s several senators headed legislative efforts. Dan Corditz captured the division between Congress and the Executive in a June 7, 1965 front page Wall Street Journal article entitled "Congress vs. Cars", stating the automakers were still welcome in the White House, despite mounting pressure in Congress for safety legislation.¹⁰⁸

Roberts was instrumental in the formation of a special House subcommittee on traffic safety in 1956.¹⁰⁹ He continued his interest in vehicle safety until his defeat in the 1964 election. Although attracting little publicity, his efforts were instrumental in laying the ground work for the NT & MVSA. To this day he rarely receives the credit he deserves.¹¹⁰

Before his interest in car safety, Roberts was responsible for sponsoring legislation regulating refrigerator door design to prevent the suffocation of children playing in abandoned refrigerators. Moynihan reports that in the two and a half years before the legislation 39 children had died.¹¹¹ The carnage from

car accidents dwarfed the problems with refrigerators. Roberts efforts were a harbinger of things to come.

In July 1956, the Roberts subcommittee opened hearings on traffic safety. Sen. Paul Douglas (D-Illinois), the first witness, emphasized the need to stress vehicle design. He began by reciting the all too familiar litany of accident statistics: 38,000 killed in 1955, and 42,000 estimated for 1956; 100,000 totally disabled in 1955 and estimates of as many as two million involved in accidents; auto caused deaths since 1900 totalled 100,000 more than all deaths in wars in our history. He then dramatically stated:

Gentlemen, if a scheming enemy of the United States were to touch off a series of catastrophes that in each year took the lives of more Americans that were killed in battle in the Korean war and injured from 10 to 20 times the number wounded in that bloody struggle, the people would demand and get protection against this terrible slaughter and these wanton injuries.

The Congress would declare war against such an enemy and the people would mobilize their energies to defeat him and to stop such grievous human losses.¹¹²

To Douglas, it was appalling that we should take this grim fact for granted. He then raised the issue that would hound the industry for the next ten years: the need for mandatory safety standards.

The committee studied five general areas of traffic safety: human factors in traffic accidents, legislation, vehicle design, highways, and enforcement. In its

January 1957 report, the committee issued 19 recommendations, including the call for expanded research on safe vehicles and less emphasis on speed and horsepower. However, it concluded it was not prepared to recommend federal regulatory legislation, along the lines of the comprehensive regulatory powers exercised in the field of aviation. Yet, it noted if the states and local governments continued to lag behind the public demand for action, there would be an "increased demand for action by the Congress."¹¹³

In 1958, the subcommittee continued holding hearings. Rep. John Beamer (R-Indiana) introduced a resolution giving permissive authority for two or more states to enter into compacts to cooperate in the field of traffic safety, which passed on August 20.¹¹⁴ However, this effort brought few results. In September 1963, 44 states and the District of Columbia formed the Vehicle Equipment Safety Commission (VESC) to deal with matters involving the overall traffic safety problem. Largely ineffective, it did not have a full time staff member until February 1966.¹¹⁵

In 1959, Roberts held hearings on legislation requiring that the General Services Administration (GSA) establish safety standards for government purchased cars.¹¹⁶ He saw the bill as a intermediate step to the final goal requiring safety devices on all

cars. According to Daniel Moynihan, Roberts "came to the conclusion that the automobile industry could not be depended upon to adopt safety design features within a reasonable period of time after their development."¹¹⁷ The bill passed the House even though the GSA and the industry opposed it. However, Senate approval was not forthcoming. It was not until August 1964 that the Senate agreed to the bill, finally establishing standards effective with the 1967 models.¹¹⁸ Unfortunately, Roberts never had the opportunity to realize his final goal since he was defeated for reelection in 1964. In any case, the GSA standards were an opening wedge in the movement toward mandatory safety standards.

The standards involved 17 items including dashboard padding, seat belt anchorages, flashers, impact absorbing steering columns, safety glass, dual braking, outside rear view mirror. However, not all safety advocates were satisfied. Nader criticized the standards as far too minimal. In some cases the standards were less than what the industry already offered, in others it merely required features that were already optional.¹¹⁹

In 1965, Automotive News, reported "most automotive people are quite receptive to the General Services Administration approach because they have

representatives on the General Services Administration committee permitting them to influence the selection of reasonable features."¹²⁰ A May 1965 statement by Arjay Miller, president of Ford, revealed the industry's success in molding the standards. "Although some reports may lead the public to believe that the GSA standards will be new, in most instances they are similar to or stem from our current engineering practice."¹²¹

One of the more serious charges made against the industry is that it frequently withholds and slants technical information to control the debate over regulatory standards. This behavior was evident with the first GSA standards. Throughout the GSA's discussions with the industry in 1965 over the collapsible steering column it argued that it was already too late for the 1968 models since their design had already been set, and tool and die making begun. The industry persisted with this position as late as January 1966. Yet, with public pressure mounting two weeks later both GM and AMC announced that its 1967 cars would have it and disclosed that the telescoping feature had been exhaustively tested over the past five years.¹²² Nader argued the industry's knowledge was ten years old.¹²³

The industry's opposition to the legislation had many of the elements that continue to reappear in subsequent legislative and administrative actions.

Typically, the industry and its sponsored groups opposed legislation arguing it was unnecessary, would hurt the economy and stifle automotive engineers. If legislation passed, the industry bargained with administrative decision makers, often shaping the actual standards to its benefit. Sometimes it argued that standards were impossible to meet, and then under pressure turned around, quickly meeting the standards.¹²⁴

At the same time that vehicle safety attracted interest in Congress, the states took a more active stance. In fact, the first attempt to require seat belts as mandatory equipment came in 1959 in New York State, where a joint legislative committee was also formed on motor vehicles and traffic safety, chaired by State Senator Edward Speno. Until the mid 1950s the industry as a whole resisted installing seat belts. In 1955 Ford and Chrysler announced they would offer seat belts as optional equipment. GM continued its opposition, arguing that seat belts had little merit, there was not enough known about them, and the public was not interested.¹²⁵ In 1961, Wisconsin passed the first legislation requiring seat belts. New York State's seat belt law followed the next year. Given its share of the nation's car market, the law was a major blow to the industry's efforts to stifle concern for safety.¹²⁶ In January 1964, under growing pressure, the

industry as a whole agreed to make seat belts standard equipment. By 1965, 33 states had passed their own laws.¹²⁷

Although there were many efforts between 1956-1966, the advocates of vehicle design standards, a collection of lawyers, doctors, public health experts, and key members of Congress, supported by the United Auto Workers and Teamsters Union, still had an uphill battle to fight. David Bollier and Joan Claybrook write of this time:

Despite these sporadic signs of progress, few measurable achievements occurred to improve auto safety during the period of 1956-1966. It was a period of steady ferment of hearings, reports, and worthy recommendations by government bodies, but little of it penetrated the public consciousness or changed corporate behavior.¹²⁸

Nevertheless, these efforts were an essential foundation for an auto safety bill. In addition, there were two other key background factors that aided the advocates of federal regulation: a mounting death toll and substantial industry profits. With the growing public concern for product safety and environmental protection, these factors enabled the advocates of federal standards to finally overcome the industry's hold on government policy.

Between 1961 and 1966 annual traffic deaths increased from 38,000 to 53,000, a 38 percent increase. Some forecasts predicted it would spiral to 100,000

annual deaths if trends continued. Meanwhile, the industry's profits were well above the levels of the average manufacturing firm in the nation. (See Table 2-1.) Healthy profits diminished the industry's claim it could not afford implementing safety regulations, or that it would cost jobs, two arguments used successfully in recent years when profits have lagged. Moreover, with the economy as a whole growing throughout the 1960s, public officials felt comfortable establishing regulations, with little doubt of its social affordability.

When the 89th Congress convened in 1965, Kenneth Roberts was gone, and the initiative for traffic safety shifted to the Senate. Gaylord Nelson (D-Wisconsin) introduced a bill requiring GSA standards for all cars. Abraham Ribicoff (D-Connecticut), just elected after having been Governor, had established himself as "Mr. Safety" by sponsoring a vigorous campaign to penalize speeders on Connecticut's roadways. As Chairman of the Government Operations Committee's subcommittee on Executive Reorganization he announced hearings in February aimed at curbing the "fantastic carnage" on the highways. Bringing the issue of vehicle safety to the front pages of the nations newspapers, the hearings created momentum in Congress that soon snowballed. The issue of car safety touched off what Elizabeth Drew

described as a "political car-safety derby, with politicians jockeying for the position out front."¹²⁹

Drew reported Sen. Warren Magnuson (D-Washington), Chairman of the Senate Commerce Committee, "was annoyed at Ribicoff for horning in on his committee's territory." Magnuson eventually held his own hearings, and the Commerce Committee became the arena where the issues raised by the

NT & MVSA were fought out. The media's interest also was aroused by new revelations of the industry's disregard for safety.

During the Ribicoff hearings, beginning in 1965 and continuing into 1966, the industry continued its opposition to federal safety standards. There was a notable exchange between Frederick Donner, GM's Chairman of the Board and Robert Kennedy (D-NY). It is often cited to illustrate the industry's lack of concern for safety. It also illustrates how vulnerable the industry was to demands for federal safety regulation. Kennedy asked how much GM spent researching car safety. Donner replied they did not separately account for this research. When Kennedy asked how much the company spent on safety outside the company, Donner responded \$1.25 million. (Of this total \$1 million was given to M.I.T. only the week before the hearings.) Kennedy then asked what was GM's previous year's profits. Donner objected,

arguing it was irrelevant. Kennedy persisted. Donner was forced to turn to his aids since he did not know the answer, an embarrassing moment in itself. The answer was \$1.7 billion. Kennedy noted if the corporation had spent only one percent of its profits on safety it would amount to \$17 million.¹³⁰ The Washington Post, reported: "Kennedy dealt with Donner (\$ 653,000 in salary and bonuses last year and Roche [President of GM] (\$482,000) much as if he were examining a couple of youthful applicants for a driver's license who hadn't done their homework."¹³¹ The Wall Street Journal called the auto executives performance "dismal."¹³²

In fall 1965 Nader's book was published. Its impact was magnified when GM's "investigation" of Nader became public in March 1966. Even before publication GM initiated an "investigation" of Nader, involving interviews with friends and associates under the pretext of a prospective job, surveillance and, according to Nader, attempts to entrap him for blackmail. In February, Nader was followed into the New Senate Office Building by two investigators who lost him and then asked a guard where he went. The guard was suspicious and called Jerome Sonosky, chief counsel of Ribicoff's committee. Nader was an unpaid staff member of the committee and had testified the previous day.¹³³ Upon being told that Nader was followed, Sonosky immediately

called Ribicoff and said, "a strong auto safety bill has just been passed."¹³⁴ GM's acknowledgment and subsequent apology to Nader sent shock waves throughout the industry and further damaged the credibility of the automakers.¹³⁵

President Johnson entered the auto safety fray with the 1966 State of the Union address, outlining his intention to propose a Highway Safety Act. The Administration was divided over the content of an auto safety bill. On one side was Joseph Califano, assistant to the President, and Charles Schultze, Director of the Bureau of the Budget. On the other was Secretary of Commerce John Connor. Califano and Schultz argued for a bill requiring federal safety standards, while Connor pushed for a bill allowing for the establishment of standards after two years if the industry's voluntary action did not improve. Connor, a former member of GM's board of directors, won. Johnson also sent to Congress a request for a new Department of Transportation, bringing together eleven different agencies and bureaus.¹³⁶

The Administration's attempt to delay the safety movement did not work. Ribicoff and Magnuson quickly criticized the discretionary provision of the bill. Nader called it a "no-law law." Meanwhile, in March the Senate unanimously passed a tire safety bill that

Johnson endorsed, although it originated in Congress.¹³⁷ The political currents in Congress were changing, but the industry continued its hard line position and opposed even the Administration's proposals.

Also in March, Magnuson opened the Commerce Committee's hearings on the Administration's Traffic Safety Act, stating the second session of the 89th Congress is likely to be marked as the "Automobile Safety Congress." The industry presented its stance on the Administration's bill through the testimony of John Bugas, vice-president of Ford and Chairman of the AMA Safety Administrative Committee. The statement was drafted in Detroit by a committee of vice-presidents of the Big Four.¹³⁸ Elizabeth Drew described the industry's position: "we are doing a good job on safety, and we will do even better; leave us alone, loosen the antitrust laws so that we can get together on this, and let the states have a larger role in setting safety standards."¹³⁹ The industry proudly pointed to the recent creation of a President's Safety Committee, within the AMA, as well as a Safety Administrative Committee. Bugas also noted the industry's increased efforts in safety research, illustrated by recent grants of \$10 million to the University of Michigan for the establishment of a Highway Safety Research Institute,

and \$800,000 to Cornell for a three year program of in depth on the scene accident investigations.

Senator Howard Cannon (D-Nevada) asked Bugas if Congress were to accept his ideas of voluntary cooperation, giving them a year to show progress, could meaningful changes be accomplished. Bugas replied: "I think we could report significant progress in less than a year, both in setting these minimum performance standards, and also the exchange of information."¹⁴⁰ He even volunteered to report monthly. Bugas stressed the importance of an anti-trust exemption, contending that cooperation rather than competition would allow for faster progress.¹⁴¹

Both points are noteworthy. One of the constant complaints of the industry is the necessity of sufficient lead time to incorporate regulations. According to the industry plans for cars are set years in advance of actual production. In this instance, left to control itself, the industry seemed able to show "significant progress" without regard to this limitation. Another constant debate is whether competition or cooperation best encourages progress. Usually, the industry argues "free market competition" is the most efficient stimulant to progress, and regulation a retardant. Here, self-regulation somehow

avoided this problem.¹⁴² This ploy did not work, however.

The industry's credibility received a disastrous blow with the acknowledgement of recall campaigns previously kept secret. Together, there were 426 individual recall cases between 1960 and May 1966.¹⁴³ This information surfaced after the Ribicoff hearings in response to a telegram Ribicoff sent to the automakers. Coming on the heels of the industry's refusal to support any concept of federal regulation, it cast the die for an auto safety law. Sonosky, for instance, thought this revelation had an even greater impact than the Nader episode.¹⁴⁴

Now, even the Commerce Committee's Republicans would not support the industry's position. With the inevitability of federal standards, the industry shifted its focus to modifying the proposed bill. The AMA hired Washington lawyer Lloyd Cutler who advised the industry to get the story off the front pages and make the bill "bearable."¹⁴⁵ The final version of the bill was hammered out with Cutler sitting in one room and Nader in another, with staff members going back and forth double checking with the two protagonists.¹⁴⁶

The Commerce Committee's recommendations removed the discretionary provisions of the Administration's bill. It is clear from the opening sentences of the

committee's report that the industry's control of traffic safety questions had ended.

The legislation which the Commerce Committee unanimously reports today reflects the conviction ... that the soaring rate of death and debilitation on the Nation's highways is not inexorable. [It] also reflects the committee's judgement that the Federal Government has a major responsibility to meet in assuring safer performance of private passenger cars which it has not yet met.¹⁴⁷

The report asserted that "the compelling need for strong auto safety legislation" was embodied in the statistics of highway deaths. It acknowledged that the auto industry is a dynamic part of the national economy, but added, "the committee met with disturbing evidence of the automobile industry's chronic subordination of safe design to promotional styling, and an overriding stress on power, acceleration, speed, and "ride" to the relative neglect of safe performance or collision protection."¹⁴⁸

Noting the lack of improvement in safe design until the recent prod of heightened public opinion, the report listed several examples of safety devices that were not implemented until years after their feasibility and desirability was established. Moreover, the industry was lax in adequately notifying owners of latent defects and taking effective steps to ensure speedy and efficient repair of defects.

The report emphasized the necessity of mandatory standards. "The promotion of motor vehicle safety through voluntary standards has largely failed. The unconditional imposition of mandatory standards at the earliest practicable date is the only course commensurate with the highway death and injury toll."¹⁴⁹ Individual state actions were inadequate. Mandatory procedures were needed for notification and correction of safety related defects. The committee rejected the industry claim that safety should be a consumer choice. "The individual in the marketplace, upon whom the free market economy normally relies to choose the superior among competing products, is incapable of evaluating the comparative safety of competing models."¹⁵⁰

The principles guiding the promulgation of safety standards included whether the standard was reasonable, practical and appropriate. "Reasonableness" involved cost, feasibility and adequate lead time. The report included a sentence which remains central to the ongoing debates over safety regulation, as well as several major law suits filed against the NHTSA. "The Committee intends that safety shall be the overriding consideration in the issuance of standards under the bill."¹⁵¹

There was little controversy during the floor debate over the safety bill, although there were several

strengthening amendments proposed in the House. Reportedly these were made to answer critics who suggested the House would be friendlier to the industry than the Senate. The respective versions of the bill unanimously passed both houses of Congress. The only area of serious contention came after Senator Vance Hartke (D-Indiana), with the support of Magnuson, introduced an amendment adding criminal penalties for willful violation of the law. It was defeated by a vote of 14-62. Hartke argued that criminal penalties would not apply to simple mistakes or negligence. Civil penalties, by itself, were insufficient "when human life is at stake." He added "criminal behavior is criminal behavior whether done on a dark road or behind a corporate organization."¹⁵²

Some argued that no existing safety laws had both civil and criminal penalties. Hartke responded there were several examples of laws with both: the 1964 Civil Rights Act, the 1938 Food and Drug Act, the 1933 Securities and Exchange Act. He also noted a mine safety bill the Senate passed the previous week contained both penalties. Senator John Pastore (D-Rhode Island) opposed the amendment, asserting the spirit was "obnoxious" and that the "mere fact it is written in the law, psychologically or otherwise infers that the Senate is dealing with Mobsters." "To the contrary, the

industry was the industrial pride of the country, was the envy of the industrial world."¹⁵³ Nader strongly supported the amendment, arguing that without such a provision the new law lacked teeth.

After the passage of the Safety Act the conflicts over safety regulations were displaced into the administrative arena. The passage of the NT & MVSA ended the industry's political hegemony and began a new set of political arrangements involving a wider scope of participants in the politics of auto safety. Of course, the industry would have preferred the comfortable arrangements of the past, however, the legislation was not a complete loss for the industry. Federal regulation had its benefits. An unnamed industry spokesman put the new law in context:

...we can get some good from this. New York and California were getting into safety, and what they would have demanded probably would have been worse than what the Federal government, after listening to both sides, will come up with. In addition this law will help us with our product liability problems, and will restore public confidence in our products.¹⁵⁴

Endnotes

1. P.L.89-563 passed on September 9, 1966. The respective bills in the House and Senate (HR. 13228 and S. 3005) passed unanimously. On October 15, 1966 the Department of Transportation was established through P.L. 89-670. The new department assumed responsibility for car safety from the Commerce Department. Initially, safety standards were set by the National Traffic Safety Bureau, (NTSB). With the passage of the Highway Safety Act of 1970, P.L. 91-605, December 31, 1970, the National Highway Traffic Safety Administration (NHTSA) was established, which continues to have responsibility for car safety standards.

2. Railroad safety regulations were first passed by the individual states, until the Interstate Commerce Commission (ICC) was established in 1887. By 1891 Congress passed railroad safety legislation. Airplanes were quickly regulated with the Air Commerce Act of 1926. Trucks were first regulated with the Motor Carrier Act of 1935. Federal standards for the safety of ships at sea began long before the Civil War. For a brief summary of safety regulations for railroads, trucking and aviation see Daniel Moynihan, "The Legal Regulation of Automobile Design," in Passenger Design and Highway Safety (NY: Association For the Aid of Crippled Children and Consumers Union of the U.S., Inc, 1962), from a conference on Vehicle Design and Safety Research held May 17, 1961, pp. 267-270.

3. Ralph Nader, Unsafe at Any Speed, updated ed. (NY: Bantam Books, 1972).

4. U.S. Department of Transportation, The Economic Cost to Society of Motor Vehicle Accidents, (Washington: Government Printing Office, 1983), p. 1. For a discussion of the classification of injuries see p.17 of Department's study.

5. U.S. Department of Transportation, The Economic Cost to Society of Motor Vehicle Accidents, p. 17.

6. David Bollier and Joan Claybrook, Freedom From Harm: The Civilizing Influence of Health, Safety and Environmental Regulation (Washington, D.C.: Public Citizen and Democracy Project 1986), p.65.

7. Bollier and Claybrook, p.66.

8. Cited in Bollier and Claybrook, p.65.

9. The Economic Costs to Society of Motor Vehicle Accidents, p.17. Of this total about \$21 billion is due to property damage, \$ 14.2 billion attributed to lost productivity, \$3.3 billion resulted from medical costs, and \$18.7 billion was caused by insurance administration expense, legal and court costs, emergency services, coroner/medical examiner costs, and the administrative costs of public assistance programs. The costs to governments affected by expenditures and revenue losses associated with motor vehicle accidents, including those portions of public assistance programs which accrue because of accidents, the immediate expenses relating to government workers involved in accidents, tax losses, and the cost of government programs related to motor vehicle safety are estimated for the Federal government at \$7.5 billion and for State and local governments at \$3.4 billion, annually. (p. 3).

10. U.S. Bureau of the Census, Statistical Abstract of the United States 1986, p.513.

11. U.S. Department of Transportation, The Economic Cost to Society of Motor Vehicle Accidents (Washington: Government Printing Office, 1983), p.5.

12. Nader, p.182.

13. Joel Eastman, Styling vs. Safety: The American Automobile Industry and the Development of Automotive Safety, 1900-1966 (Lanham, MD: University Press of America, 1984), p.7.

14. Nader, p.178.

15. Nader, p.178.

16. This knowledge of elementary physics was even known to the ancient Greeks. Hippocrates wrote about accidents from falls. For a thorough discussion of the "second collision" see Nader, Unsafe at Any Speed, chapter 3, "The Second Collision: When Man Meets Car."

Even as early as 1956 ten years before Nader's book, this issue was highlighted in the first Congressional hearings on auto safety. Testifying before the House Special Subcommittee on Traffic Safety Senator Paul Douglas cited an article from the Journal of the American Medical Association, November 5, 1955, by Dr. C. Hunter Sheldon, "Prevention the Only Cure for Head

Injuries."

The accidents may occur as the result of speed, inadequate highways, poor judgement, or mechanical failure, but none of these actually causes the passenger injury. The injury occurs primarily as a result of faulty interior design of the automobile. "Faulty" is actually a gross understatement as there is almost no feature of the interior design of a car that provides for safety....

Cited in U.S., Congress, House, Committee on Interstate and Foreign Commerce. Traffic Safety. Hearings before the subcommittee on Traffic Safety, 84th. Cong., 2d. sess., 1956, p.6. Hereafter referred to as the Roberts hearings.

17. Dr. Carl Clark cited in Nader, p.71.

18. Nader, p.71.

19. See Charles Perrow, Normal Accidents (NY: Basic Books, 1984), for a discussion of the inherent risks of modern technology where accidents are anything but "accidental". They are an inevitable result of technology itself.

20. Eastman, p.121.

21. Eastman, p.ix.

22. Eastman, p.115.

23. A New York real estate dealer was run over near Central Park. See Eastman, p.115.

24. Eastman, p.14.

25. Eastman, p.116.

26. Cited in Eastman, p.117.

27. Eastman, p.118.

28. Eastman, p.118.

29. Eastman, p.120.

30. Daniel Berman, Death on the Job (NY: Monthly Review Press, 1978). For a thorough discussion of the conservative agenda of the National Civic Federation see James Weinstein, The Corporate Ideal in the Liberal

State 1900-1918 (Boston: Beacon Press, 1968).

31. Berman, p.21. The Council continued to emphasize driver behavior as the source of the highway safety problems even during the Congressional hearing of the mid-1960s which led to the NT & MVSA, arguing against mandatory government safety standards.

32. Eastman, p.135.

33. Eastman, p.135.

34. Cited in Eastman, p.136.

35. Eastman, p.136.

36. Cited in Eastman p.138.

37. Nader, p.200.

38. Eastman, p.140.

39. Cited in Eastman, p.141.

40. A year later it was published in an expanded form under the title Seven Roads to Safety: A Program to Reduce Auto Accidents (NY: Harper and Brothers, Publishers, 1939), Paul Hoffman in collaboration with Neil Clark.

41. See Eastman pp. 141-2 for a summary of the corresponding organizations and their programs.

42. Eastman, p.142.

43. Nader, p.208.

The interests integrated into the ASF were also brought together in another forum--the National Highway User's Conference (NHUC). Organized in 1932 by Alfred Sloan Jr., the head of GM, the NHUC combined the representatives of the nations's auto, oil, and tire industries into a common front to lobby for highway construction. The groups included in the NHUC were AMA, the American Automobile Association (AAA), the American Petroleum Institute (API), the Rubber Manufacturers Association (RMA) and the American Truckers Association (ATA). The NHUC became a principle force behind the Interstate Highway System. In 1970, the NHUC and the ASF merged into the Highway Users Federation For Safety and Mobility.

For a discussion of the NHUC see Bradford Snell, American Ground Transport: A Proposal for Restructuring

the Automobile, Truck, Bus and Rail Industries, presented to the Senate Subcommittee on Antitrust and Monopoly of the Committee on the Judiciary, February 26, 1974, 93rd. Cong., 2d sess., pp. 44-46.

44. Nader, p.208. See Paul Hoffman, Seven Roads to Safety: A Program to Reduce Automobile Accidents (NY: Harper & Brothers Publishers, 1939), for a list of the officers, operating committee, and trustees of the ASF (pp. 77-83). The list reads like a veritable Who's Who of the automotive industries. In fact, the list of trustees and members, approximately five of the six and a half pages of this list, is broken down by industry. There are no members who were affiliated with any independent safety groups, no doctors, or academic researchers.

45. David Klein and William Haddon, "The Prospects for Safer Cars," Consumer Reports April 1965, p.176. The research orientation of the private safety groups was mirrored by public organizations. In the list of 64 grants given by the Public Health Service between 1957-1967 the overwhelming emphasis was on driver behavior and only one was related to injury prevention. For a list of these grants see Ribicoff hearings, pp. 223-8.

46. Cited in Nader, p.209.

47. For a fuller discussion of driver education and the industry see Eastman, pp. 151-4.

48. Nader, p.197.

49. Nader, p.198-9.

50. Roberts hearings, p.237.

51. Nader, p.199.

52. The NSC defined an injury as one disabling beyond the day of the accident. The PHS considered an injury to involve at least one full day of restricted activity or the necessity of seeking medical attention. See Daniel Moynihan, "Epidemic on the Highways," Reporter April 30, 1959. Nader argues that the NSC also provided a protective service to the industry by not collecting information on the accident experience of different makes and models of automobiles; something it could easily have done since the standard accident forms include data on the make and year of the vehicles involved. (Nader, p.199).

53. Eastman, p.155.

54. Nader, p.200.

55. Cited in Nader, p.201.

56. The Program consisted of ten separate subjects each represented by a booklet distributed by the PCTS): laws and ordinances; traffic accident records; education; engineering; motor vehicle administration; police traffic supervision; traffic courts; public information; organized citizen support; and research. The Program remained unchanged since 1949. See Nader pp. 201-2.

57. Nader, p.203.

58. Cited in Nader, p.204.

59. For Claus Offe, attributing positive political status to private groups is one of the elements of corporatism. See Disorganized Capitalism (Cambridge: MIT Press, 1985), pp.236-38.

60. Nader, p.205.

61. "The Federal Role in Highway Safety," letter from the Secretary of Commerce to the Committee on Public Works, House of Representatives, pursuant to section 117 of the Federal-Aid Highway Act of 1956, March 3, 1959, 86th Cong., 1st sess., House Document Number 93, p.8.

62. Eastman, p.147.

63. Cited in Nader, p.203.

64. Cited in Eastman, p.164.

65. U.S.Congress, Senate, Committee on Government Operations, The Federal Role in Traffic Safety. Hearings before the subcommittee on Executive Reorganization. 89th. Cong., sessions 1-2, 1965-1966, p.139. Hereafter referred to as the Ribicoff hearings.

66. For a list of the members of the PCTS and the Business Advisory Panel see the Roberts hearings, p. 249.

67. Elizabeth Drew, "The Politics of Auto Safety," Atlantic Monthly October 1966, p.96.

68. Nader, p.208.

69. Nader, p.184.

70. Drew, p.97.

71. Cited in Eastman, p. 154, from George Payne "Contemporary Accidents" quoted in Edward Tenny, The Highway Safety Jungle: The Story of the Public Safety Movement and the Failure of "Driver Education" in the Public Schools (NY: Exposition Press, 1962), p.64.

72. Nader, p.203.

73. Nader, p.177.

74. Eastman, p.84.

75. This has given rise to a endlessly repeated dictum--"safety doesn't sell." In the fall of 1955 Ford tried to use the safety theme in its advertisements. When sales lagged the industry took this as confirmation of this long held belief. During the next ten years the industry argued "Ford sold safety while Chevy sold cars." However, the safety options Ford offered were very successful. Ford, led by Group Vice President Robert McNamara, took the unprecedented step in offering consumers the option of having padded dashboards, deep-dish steering wheels, padded sun visors and lap belts. These options were discontinued five months later. However, in a press release dated November 18, 1956 it is clear that "safety did sell." Under the section entitled "Public Will Buy Safety" it stated:

Since two of the five features--crash padding and seat belts--were optional with the customer, it was possible to measure demand by totaling up the number sold. The demand surprised even the optimistic Ford staff. No optional feature in Ford history caught on so fast in the first year. For example, 43 % of all 1956 Fords were ordered with safety padding. When tinted glass was first produced in 1952, only 6 % of the customers wanted it. Even Fordomatic [automatic transmission], one of the most popular options, was ordered by only 23 % of the customers when it was introduced in 1951. Power steering, introduced in 1953, was ordered by only 4 %. During the first year, one of every seven buyers ordered seat belts.

Nader claims that GM expressed its disapproval of the Ford move and had it halted. Besides the personal friendships between GM and Ford executives Nader documents, and the very conversations that led to this turn around, it

is always important to remember that at the time GM controlled about 55 percent of the American motor vehicle market, more than all the other car makers combined. It could easily have engaged in retaliatory pricing to force Ford's cooperation. The press release is cited in Nader, p.xi. Nader explains the lag in Ford sales due to its inability to compete with the newly re-styled Chevys.

76. John Keats, The Insolent Chariots (Philadelphia: J.B. Lippincott and Co., 1958), pp. 97-8.

77. GM Corporation, Motorist's Handbook (NY: GM Corp., 1940), p.46, cited in Eastman, p.26, emphasis in original.

78. Statement by Buick's chief engineer, Oliver Kelly in 1959, cited in Eastman, p.27.

79. Statement by Chrysler's safety Director, Roy Haeusler in 1966, cited in Eastman, p.27.

80. Roberts, p.239.

81. Magnuson hearings, p.468.

82. Ribicoff hearings, p.1279.

83. The classic discussion of the Corvair is Nader's Unsafe at Any Speed. For a thorough discussion of the Pinto see Lee Patrick Strobel, Reckless Homicide? (South Bend, Indiana, : and books, 1980).

84. Nader, p.171.

85. See Eastman, pp. 60-66.

86. See Eastman, pp. 62-3 for a lengthier discussion of this episode.

87. Cited in Eastman, p.43.

88. Eastman, p.53.

89. Eastman, pp. 54-56.

90. Nader, p.51.

91. Nader, p.51.

92. Harold Mehling, "Big Three Fight Over How Safe To Make Your Car", Bluebook Magazine October 1955, cited in the Roberts hearings, p.41

93. Hal Higdon "The Big Auto Sweepstakes", New York Times Sunday Magazine, May 1, 1966, p.97.

94. Cited Snell, 1971, p.576.

95. Eastman, p.ix.

96. Nader, p.181.

97. Nader, p.181.

98. Commerce Department, "The Federal Role in Highway Safety," p.2 . The information for this discussion is taken from this report.

99. Bollier and Claybrook, p.66. Other national conferences were held in 1926, 1935, 1946, and 1954 as a series of presidents expressed concern over the issue.

100. Eastman, p.124.

101. Bollier and Claybrook, p.66.

102. Daniel Moynihan, "The Legal Regulation of Automobile Design," in Passenger Design and Highway Safety (NY: Association For the Aid of Crippled Children and Consumers Union of the U.S., Inc., 1962) from a conference on Vehicle Design and Safety Research held May 17, 1961, p.271.

103. See Commerce Department, "The Federal Role in Highway Safety," pp. 106-120. The agencies involved were: Agricultural Extension Service; Air Force; Army; Bureau of Public Roads; Bureau of Standards; Civil Service Commission; FBI; GSA; PHS; ICC; National Park Service; Navy; Post Office Department; PCTS; Commission on Accidental Trauma of the Armed Forces Epidemiological Board.

104. Moynihan, Reporter, p.16.

105. Ribicoff, p.408. It issued a report with no emphasis on vehicle design. The Chairman of the Board was Secretary of Commerce John Connor, who had formerly been a member of GM's Board of Directors. The report is reprinted in the Ribicoff hearings, pp. 408-431.

106. Cited in Eastman, p.195 and reprinted in Roberts hearings, p.50. For a thorough historical discussion of the origins of automobile design for crash protection see Eastman, particularly chapter vii, pp. 177-208.

107. Cited in Eastman, p.119.

108. Corditz wrote that the automakers were no strangers to legislative wars.

In years past, they've faced official accusations of everything from price gouging and mistreatment of dealers to high pressure financing tactics and the squeezing out of small competitors. But now the politicians are up to something considered potentially troublesome: They are laying unfriendly hands on the car itself.

There were two major pieces of legislation in the 1950s directed at the industry: the O'Mahoney-Cellar "Day in Court" bill, P.L. 84-1026, (1956) giving dealers the right to sue auto companies in federal court over franchise agreements, and the Automobile Information Disclosure Act, P.L. 85-506, (1958) requiring window stickers on new cars listing prices.

109. House Resolution 357, forming the committee is reprinted in the opening page of the Roberts hearings.

110. David Lachman never mentions Roberts. On the other hand Joel Eastman gives Roberts a prominent role in the development of a federal role in traffic safety.

111. Daniel Moynihan, "The Legal Regulation of Automobile Design," 1962, p.266.

112. Roberts hearings, p.3.

113. U.S., Congress, House, Committee on Interstate and Foreign Commerce, Report of the Special Subcommittee on Traffic Safety. 84th Cong., submitted January 3, 1957, House Report 2971, p.4.

114. House Joint Resolution 221, known as the Beamer Resolution.

115. P.L.85-684. See Ribicoff hearings pp. 403-5 for a more detailed discussion.

116. HR. 1341.

117. Ribicoff, p.314.

118. P.L. 88-515. During these years two bills were passed by Congress giving the Secretary of Commerce the responsibility to set standards for brake fluids,

P.L. 87-637, and seat belts, P.L. 88-201. These bills did not require their use, only performance standards if used.

119. For a complete list of the standards see Magnuson, p.85. Nader's discussion of the interplay between the House and the Senate and the inadequacy of the GSA's procedures, as well as, the standards themselves can be found in Nader, pp. 257-263.

120. Cited in Nader, p.262.

121. Cited in Nader, p.262.

122. See U.S., Congress, Senate, Committee on Commerce, Traffic Safety Act. Hearings on S.3005, 89th Cong., 2d sess., March-April 1966, Serial No. 89-49, p.247, for a description of this episode by Dr. Seymour Charles, president of Physicians for Automotive Safety. Hereafter referred to as the Magnuson hearings.

123. The pattern of the industry withholding knowledge concerning safety design was not limited to this area. In his testimony to the Ribicoff committee Nader provided examples of 22 different patents developed by the industry but not installed. See pp. 1304-22.

124. This theme is elaborated in chapter 4.

125. These are the same arguments used today against the air bag. Ironically, the industry is now in favor of seat belts as it attempts to fight the air bag. See Nader pp. 96-110 for a sampling of the industry's earlier attitude toward seat belts, a discussion of the scientific basis for seat belts and summary of the actions taken by New York State.

126. New York State's safety efforts continued and in 1965 the legislature overwhelmingly passed a bill authorizing a feasibility study of a prototype safety car.

127. See Ribicoff hearings p.1158 for a list of state seat belt legislation.

128. Bollier and Claybrook, p.69.

129. Drew, p.96.

130. Ribicoff hearings p.780. A detailed summary of the dialogue can also be found in Ed Cray, Chrome Colossus (NY: McGraw Hill, 1980), pp.418-420.

131. July 14, 1965, p. A-2, cited in Jeffrey O'Connell and Arthur Meyers, Safety Last: An Indictment of the Auto Industry (NY: Random House, 1966), p.92.

132. July 20, 1965, p.14, cited in O'Connell and Meyers p.92.

133. Ralph Nader's efforts on behalf of auto safety were Herculean. In fact, Elizabeth Drew described them as "probably unprecedented in legislative history." (p.96). Notwithstanding his invaluable work, Nader was not solely responsible for auto safety legislation. This effort was aided by the efforts of a number of others including Roberts, Ribicoff, Magnuson, and Moynihan. However, Nader's contribution continues to be exaggerated by liberals and conservatives alike. For a liberal appraisal of Nader's role contending his efforts were responsible for auto safety legislation see Public Citizen, "The Success Stories of the National Highway Traffic Safety Administration On Its Twentieth Anniversary," (Washington, D.C.: Public Citizen, 1986) pp. 3-4.

The conservative view was expressed by Raymond Peck, the first head of the NHTSA under the Reagan Administration.

Back in 1966 when the agency was created, it was in the middle of a huge amount of controversy in which polarized questions became the issues before Congress. Those polarized questions were the influence, in this particular case, of an individual Ralph Nader, and his concerns that vehicles were not being manufactured as safely as they could be.

U.S., Congress, House, Committee on Science and Technology, Small Car Safety Technology. Hearings before the subcommittee on Transportation, Aviation, and Materials and the subcommittee on Investigations and Oversight. 97th Cong., 2d sess., November 30, December 3, 1982, p.308.

Although Nader became the public focus for auto safety, he was not the first to challenge the industry's safety policies and call for federal regulations. Daniel Moynihan had called for federal regulation as early as 1961. He wrote: "in the past few years there has been growing among government officials, legislators, and members of various professions a feeling that the time

has come for government to enter wholeheartedly into the field of automobile design regulation." (Moynihan, 1962, p.276).

134. Cited in Charles McCarry, Citizen Nader (NY: Saturday Review Press, 1972). p.20.

135. GM's apology to Nader and the Ribicoff Committee can be found in the Ribicoff hearings, pp. 1381-1465. Despite GM's apology, the rest of its testimony was combative and acrimonious. See, for example, the exchange between Robert Kennedy and Louis Bridenstine, assistant general counsel of GM, pp. 1454-1461. For a full account of GM's surveillance and investigation of Nader see Thomas Whiteside, The Investigation of Ralph Nader (NY: Arbor House, 1972). In 1970 GM settled an invasion of privacy suit filed by Nader for \$425,000.

136. Johnson's request for a Transportation Department had a long history. Earlier proposals were made by Eisenhower in his 1961 budget message, the Hoover Commission of 1949, as well as the 1936 Senate Select Committee. For the text of Johnson's message to Congress requesting the department see Congressional Quarterly Weekly Report March 4, 1966, p.535.

137. S.2669.

138. Drew, p.99.

139. Drew, p.99.

140. Magnuson hearings, p.426.

141. The automakers were not alone fighting federal safety standards. The safety establishment continued its efforts on behalf of the industry. At the Ribicoff hearings, for example, Howard Pyle, President of the NSC, defended the industry, arguing against the idea of a centralized auto safety agency. He suggested that the Interdepartmental Highway Safety Board be moved into the Executive Office of the President to coordinate the already existing organizations involved in safety. Pyle opposed the creation of a cabinet level office responsible for auto safety, but added any new legislation should be administered by the Commerce Department. For his testimony see Ribicoff, pp. 1109-1154.

One of the more interesting comments from Pyle came after an exchange with Ribicoff about putting design responsibility in the hands of the GSA. At this point

Pyle supported the idea since it seemed like the best compromise that would be agreed upon. Pyle's statement contains a phrase that can be interpreted as either a slip of the tongue, or a revealing comment on the marriage between the industry and the NSC. Pyle said: "I don't know how you could possibly place it more effectively when the Government is one of the biggest single customers we have..."(emphasis added), Ribicoff hearings, p. 1154.

142. The industry's "cooperation" on air pollution control was the issue of a major anti-trust case settled by a consent decree in 1969. The settlement was extremely controversial since the evidence strongly pointed to collusive behavior by the automakers beginning in the mid-1950s. It is discussed in chapter 4. Although the industry asked for an anti trust exemption in order to work together on safety, testimony by M.F. Moore, vice-president of Automotive Research and Engineering for AMC, in the 1956 Roberts hearings indicates the industry was already working together.

Now, I would like to touch on one thing that is not generally known. That is the cooperation within our industry. I happen to be a member of the executive board of the Engineering Advisory Committee. We meet regularly and ... we never have an agenda without safety items on it. Those are thrown open by all of the competitive companies. No punches are pulled. We have excellent cooperation with the vehicle administrators. They have come to us for suggestions and with their problems.... So when it comes to safety, the whole industry is moving as one. Nobody is trying to hide something from somebody else when it comes to safety.

Lord knows we will skin the tail off them any other way we can, but not for safety. (p.115).

143. See Ribicoff hearings, Appendix, pp. 1-153 (following Part 4) for the information submitted by the industry. Also during the spring of 1966 Moynihan wrote an article published in the Spring issue of Public Interest, "Traffic Safety and the Body Politic," reprinted in Daniel Moynihan, Coping: Essays on the Practice of Government (NY:Random House, 1973), retelling an event from the mid 1950s to illustrate the industry's, and in particular GM's, opposition to safety and the problem of recalls.

The 1953 Buick Roadmaster had a defective brake system allowing brake fluid to escape. When GM discovered the flaw it issued kits to dealers for

repairs and instructing them to make repairs at GM's expense when the vehicles were brought in for any reason, but not to inform the owner of such work. A Buick dealer said the Service Department of Buick would not permit sending letters to owners. "It was a hush thing. They didn't want the public to know the brakes were bad and they were very alarmed." When this episode became public Buick's General Manager disagreed with this version of events. He said that all Buick did was send parts when requested by dealers, claiming it was the dealers responsibility. He did not think it right to tell the dealer to fix the defective part since dealers are independent businessmen. (pp. 84-85).

144. Cited in McCarry, p.82.

145. Drew, p.99.

146. Drew, p.100.

147. U.S., Congress, Senate, Committee on Commerce, Report on Traffic Safety Act of 1966, (S. 3005), 89th Cong., 2d sess., Senate Report 1301, June 23, 1966, favorable as amended, p.1. Hereafter referred to as Commerce Committee Report.

148. Commerce Committee Report, p.2.

149. Commerce Committee Report, p.3.

150. Commerce Committee Report, p.4.

151. Commerce Committee Report, p.6. Since committee reports are often used to clarify legislative intent, this passage would seem to preclude cost-benefit analysis, which elevates costs to an equal consideration with benefits. It can also be argued that this passage indicates that the safety mission of the NHTSA should not subordinated to the economic rhythms of the industry. In the late 1970s and 1980s this conflict became manifest when safety regulations were rolled back to save the industry money. This development is discussed in detail in chapter 6.

152. Congressional Quarterly Weekly Report (CQWR) July, 1, 1966, "Auto Safety Bill Passed by Senate 76-0," p.1365.

153. CQWR, July 1, 1966, p.1365.

154. Drew, p.102.

These are some of the same themes which Gabriel Kolko uses to interpret business efforts for national regulation during the progressive era as a triumph of conservatism. See Gabriel Kolko, The Triumph of Conservatism (NY: The Free Press, 1963).

CHAPTER 4

THE POLITICS OF COMPROMISE

If the auto industry thought the worst was over with the passage of the National Traffic and Motor Vehicle Safety Act, it was wrong. The advent of federal auto safety regulations expanded the scope of conflict surrounding automotive politics.¹ New organizations such as the Center For Auto Safety and Public Citizen became participants in the conflicts over automotive public policy, lobbying for a wide range of issues under the banner of the public interest. With the rise of the environmental movement, the social consequences of technology became contested political issues and attention was focused on the car's impact on American society.² Following the introduction of federal safety regulations, pollution emissions and then fuel economy were included in the federal regulation of vehicle design.

This chapter surveys the legislative and administrative battles during the years between the NT & MVSA and the Chrysler bailout (1967-1978). It concentrates on pollution emissions and fuel economy policy, and also includes a brief discussion of early government safety policy. It also offers an analysis of the shift in the industry's political strategy as it

responded to a new set of political arrangements which were accompanied by increasing economic instability. During this period bargaining and compromise characterized automotive public policy. Resisting each new government initiative, the industry eventually complied with new federal regulations, succeeding only in delaying and modifying these actions.³

The success of the industry in shaping government policy varied significantly throughout this period. With the rise of opposition, the industry was on the defensive and unable to prevent the extension of federal auto regulation to emissions or fuel economy. The industry's inability to prevent the establishment of mandatory fuel economy standards is the most notable loss it encountered. Occurring while sales were dropping, it represents a reversal of the typical pattern of economic decline and industry success. In this case national concern over the "energy crisis" overrode the industry's lobbying efforts.

Yet, by the late 1970s, it had recaptured much of its lost political influence. This turnaround resulted from a series of economic events, two oil shocks and a recession, coupled with a change in the industry's political strategy. In light of the turbulent economic events of the 1970s, each of which hurt sales, the industry altered its lobbying strategy to emphasize the

issue of jobs. Because of its central economic position, the argument that government regulation would cost jobs at a time of high unemployment provided the industry with leverage that environmental groups could not match. Feeling the brunt of the industry's downturn, the UAW jettisoned its previous support for extending federal regulation. It joined the industry in calling for modifications in regulatory standards in the hope of arresting the decline of auto employment.

The Framework of Auto Regulation

Auto industry regulation is part of the larger recent phenomenon of "social regulation." Traditional business regulation was oriented toward the health of particular industries, and concerned with more strictly economic behavior. The regulatory efforts of the 1960s, however, focused on the consequences of corporate behavior. Indeed, as David Vogel notes, "by 1970, the issue of corporate accountability, with its explicit focus on the lack of adequate political and economic controls over the decisions of large corporations, had directly moved onto the political agenda...."⁴

Between the 1967 and 1973, for example, Congress enacted more than 25 consumer, environmental and other social regulatory laws as well as an extensive regulatory apparatus to administer these laws.⁵ The

contrast between this flurry of legislative activity and past practice was emphasized by Vogel.

From 1900 through 1965, only one regulatory agency was established at the federal level to protect either consumers, employees, or the public from physical harm due to corporate activities: the Food and Drug Administration, established in 1931. Between 1964 and 1977, ten federal regulatory agencies were created with this as their mandate.⁶

The regulatory goals of these new agencies significantly transformed American politics. "Public interest" groups now had formal forums before which to challenge corporate decisions for their social consequences. However, the shift from the legislative to the administrative arena created a new set of problems. Removed from public scrutiny, regulatory agencies were frequently less confrontational than Congress.

The institutional structure of auto regulation is one of shared jurisdiction, with no sole agency responsible for regulating the car. Congress delegated authority to promulgate safety standards to the National Highway Traffic Safety Administration. On the other hand, pollution emissions and fuel economy standards were established by Congress. The EPA is responsible for administering pollution standards while the NHTSA administers fuel economy regulations. The EPA is also responsible for certifying the fuel economy rating of particular vehicles. In each case, the respective agency has some discretion in implementing the mandated

standards. Further, both the EPA and the NHTSA have discretionary authority for defect recalls. Since there is no coordinating mechanism to bring these programs together, some critics, including the industry, charge that government policy often works against itself.⁷

The goal of auto safety standards is to reduce accidents, deaths and injuries. Section 102 of the NT & MVSA defines "motor vehicle safety" as:

the performance of motor vehicles or motor vehicle equipment in such a manner that the public is protected against unreasonable risk of accidents occurring as a result of design, construction, or performance of motor vehicles and is also protected against unreasonable risk of death or injury to persons in the event accidents do occur, and includes nonoperational safety of such vehicles.⁸

The key word in this definition is "unreasonable"; a concept sufficiently vague to keep an army of lawyers continually busy. Despite this inherent ambiguity more than fifty separate safety standards have been promulgated. Safety regulations fall into three basic categories: accident avoidance; crash protection and survivability; postcrash survivability.⁹

Accident avoidance standards involve the braking system, tires, windshield systems, lamps, and transmission controls. Crash protection standards are divided into two basic categories: occupant protection and exterior protection. Occupant protection standards include seat belts, energy absorbing steering columns,

head restraints, high penetration-resistant windshield glass, padded instrument panels, and side door strength. Exterior protection standards require specific energy absorption capacity of front and rear bumpers in order to reduce vehicle body damage. Postcrash survivability standards include requirements for fuel system integrity and for flammability of interior materials.¹⁰ (See Table 4-1 for Federal Motor Vehicle Safety Standards.)

Air pollution standards were established by the Clean Air Act of 1970.¹¹ Ambitious goals were set for the reduction of three basic emissions in automobile exhaust: hydrocarbons (HC), carbon monoxide (CO), and nitrogen oxide (NOx). These emissions were to be reduced by 90 to 95 percent of the average 1968 levels. HC and CO standards were to be reached by 1975, and NOx by 1976.¹² However, the industry persuaded the EPA and then Congress to delay implementation of the program. Eventually, Congress modified these goals through the Clean Air Act Amendments of 1977.¹³

Fuel economy regulations, established through the Energy Policy and Conservation Act of 1975, were a response to the oil shortage of the early 1970s.¹⁴ The automakers were required to meet a sales-weighted fleet average. The 1985 target for corporate average fuel economy (CAFE) of new cars was 27.5 miles per gallon (mpg). The Secretary of Transportation had the

Table 4.1. Federal Motor Vehicle Safety Standards.

<i>Standard number</i>	<i>Standard title</i>	<i>Effective date</i>
<i>Accident avoidance</i>		
101	Control location, identification, and illumination	1-1-68
102	Transmission shift lever sequence, starter interlock, and transmission braking effect	1-1-68
103	Windshield defrosting and defogging systems	1-1-68
104	Windshield wiping and washing systems	1-1-68
105	Hydraulic brake—passenger cars	1-1-68
106	Hydraulic brake hoses	9-1-74
107	Reflecting surfaces	1-1-68
108	Lamps, reflective devices, and associated equipment	1-1-68
109	New pneumatic tires	1-1-68
110	Tire selection and rims	4-1-68
111	Rearview mirrors	1-1-68
112	Headlamp concealment devices	1-1-69
113	Hood latch systems	1-1-69
114	Theft protection	1-1-70
115	Vehicle identification number	1-1-69
116	Hydraulic brake fluids	3-1-72
117	Retreaded pneumatic tires	1-1-72
118	Power-operated window systems	2-1-71
119	Tires for vehicles other than passenger cars	9-1-74
121	Air brake systems—trucks, buses, and trailers	9-1-74
122	Motorcycle brake systems	1-1-74
123	Motorcycle controls and displays	9-1-74
124	Accelerator control systems	9-1-73
125	Warning devices	1-1-74
126	Truck-camper loading	1-1-73
<i>Crash protection and survivability</i>		
201	Occupant protection in interior impact	1-1-68
202	Head restraints	1-1-69
203	Impact protection for driver from steering control system	1-1-68
204	Steering control rearward displacement	1-1-68
205	Glazing materials	1-1-68
206	Door locks and door retention components	1-1-68
207	Seating systems	1-1-68
208	Occupant crash protection—passenger cars	1-1-68
209	Seatbelt assemblies	3-1-67
210	Seatbelt assembly anchorages	1-1-68
211	Wheel nuts, wheel discs, and hub caps	1-1-68
212	Windshield mounting	1-1-70
213	Child seating systems	4-1-71
214	Side door strength	1-1-73
215	Exterior protection	9-1-72
216	Roof crush resistance	8-15-73
217	Bus window retention and release	9-1-73
218	Motorcycle helmets	3-1-74
301	Fuel system integrity	1-1-68
302	Flammability of interior materials	9-1-72

Source: Crandall, p. 48

discretion to increase CAFE requirements afterwards and to lower them to 26.0 mpg if this target was unfeasible.

Although safety, emissions, and fuel economy debates dominated automotive public policy in the 1970s, other issues surfaced. A 1970 FTC report on automobile warranties provides a graphic illustration of how low the industry's political capital had sunk in the late 1960s. It highlights the difference between the political environment before, and after, federal involvement in auto regulation.¹⁵

FTC Report

In 1965, the FTC began investigating reports of widespread failures of car makers and dealers to honor new car warranties. During the public comment period it received one of the largest number of letters ever regarding a consumer complaint.¹⁶ According to the report, warranties were used as a gimmick to sell cars. They were "meaningless, voluntary and unilateral."

In sum, the present situation is that quality control of automobiles is unsatisfactory, the warranty coverage putatively provided by manufacturers is inadequate, and the industry response to the problem insufficient to protect the public. The time has come for warranty and quality control standards in this industry to be established by the public, through governmental action, rather than by the automobile manufacturers.¹⁷

The report's recommendations are one of the high water marks of government opposition to the industry.

The Commission, headed by Casper Weinberger, suggested "the automobile industry is no less a public utility industry than the other transportation industries."¹⁸

What the public interest requires from the federal government is enactment by Congress of a new and comprehensive Automobile Quality Act, which would give statutory recognition to the public utility obligations of automobile manufacturers and provide for minimum standards of quality, durability, and performance for new automobiles and all parts thereof, and which would place a statutory obligation on manufacturers to provide consumers with defect-free automobiles in compliance with such standards and to repair defective automobiles and automobile parts which do not conform to such standards.¹⁹

Issued in February 1970, the report was an omen of what would follow later that year when Congress passed the Clean Air Act. The days of the industry's domination were over. In time, however, the industry would realize how to combat this string of defeats.

Political Strategy

During the early safety and emissions debates the industry changed its traditional low-profile stance. Due to its unparalleled concentration it previously tried to avoid attracting political attention. Its lobbying activities were largely carried out through a variety of front organizations, including the National Highway Users Conference, the Auto Safety Foundation, the National Safety Council, and the President's Commission on Traffic Safety. With the new politics of auto

regulation this was no longer a viable option. Government regulation of car design forced the auto makers into the open. Kirk Hanson outlined how the industry reacted to proposed regulatory standards in the early years of automotive regulation.²⁰

- (1) technologically infeasible;
- (2) standards demand technology not fully developed in production volumes;
- (3) it can be done but at costs that are prohibitive and cannot be justified;
- (4) it can be done at reasonable costs but regulations violate free enterprise;
- (5) OK, we'll do it.

Repeatedly, industry claims that regulations were economically unjustified or technologically unfeasible were proven untrue. Consequently, as standards were met, the industry's credibility suffered.

Another common argument used by the industry throughout the late 1960s and early 1970s was that regulation violated free enterprise. This position was eventually abandoned. Hanson argues,

During the early 1970s the major automobile makers recognized that arguments about the need for "free enterprise" and for "managerial autonomy" did not capture the support of legislators or their constituents. Instead automobile company positions are [now] increasingly tied to external issues which the companies have concluded are of greater concern to the general public -- increasing inflation, unemployment, and governmental bureaucracy.²¹

"Jobs" and "inflation" provided the industry with powerful ammunition to fight its political battles. As both the industry and the economy in general suffered

significant levels of unemployment and inflation, the industry realized how to convert its central economic position into political leverage.

Economic stagnation provided the context within which this approach became effective. To see the industry's successes of the late 1970s simply as the result of a greater sophistication or effectiveness of its lobbying "efforts" is to ignore the interplay between socio-economic events and political strategies.²² With economic decline, the industry's main weapon, control over investment and employment, has an added effectiveness. On the other hand, to argue as David Vogel does, that the industry's greater successes were the result of its alliance with the UAW similarly ignores the conditions that led to the alliance in the first place.²³ Examination of the particular battles over public policy will illustrate this point.

Safety Policy

The initial safety standards, effective January 1968, encountered a storm of protest from the industry. Based on existing industry and GSA standards, they were hardly revolutionary.

[The standards] included such simple items as laminated windshields to absorb head impact energy and prevent faces and necks being slashed by large chunks of sharp glass; collapsible steering assemblies to cushion the trauma to the head, neck, and chest in a

crash; non-rearward displacement of the steering assembly to reduce the impact on the upper body; enhanced door locks to keep passengers from flying out in a crash; interior padding to cushion body contact with the car interior; seat anchorages to prevent seats from tumbling around and smashing bodies against the roof in a crash; and lap and shoulder harnesses to restrain car occupants and diffuse and reduce crash energies sustained during impact.²⁴

Although Nader, and other safety advocates, criticized these standards as insufficient, the industry challenged them in court. This reaction had little to do with the "burden" posed by the actual standards. Instead, it was a challenge to the safety agency's authority to control of the future direction of auto design. The industry realized its autonomy was at stake.²⁵

The political turmoil generated by the new standards erupted when the new safety agency's chief engineer William Stieglitz resigned in protest after the agency modified the initial standards to temper industry criticisms.²⁶ Nevertheless, notwithstanding the probability that tougher standards were feasible and practical, the fact remains that the industry was forced to modify its designs.²⁷ Given its earlier safety record it is difficult to imagine these modifications occurring voluntarily.²⁸

Congressional safety actions increasing the authority of the NHTSA continued during the early 1970s, beginning with the Motor Vehicle Information and Cost

Savings Act of 1972 (MVI & CSA), and followed by the Motor Vehicle and Schoolbus Safety Amendments of 1974 (MV & SSA).²⁹ Among its provisions the MVI & CSA authorized the NHTSA to issue bumper standards and to develop comparative consumer information on insurance costs and safety. The MV & SSA expanded the recall authority of the NHTSA.

The MV & SSA authorized the NHTSA to order car makers to recall vehicles with safety defects and repair them at their own expense. The original Safety Act only authorized the NHTSA to require manufacturers to notify car owners of safety-related defects. The NHTSA could not require a recall, or force manufacturers to pay for the necessary repairs. Between September 1966 and February 1972, 25 million vehicles were recalled by the industry in over 900 recall campaigns.³⁰ While car makers usually paid for necessary repairs, sometimes they did not.³¹ However, the new law did not define a "defect."³² Because the NHTSA itself has never defined a safety related defect, it relies instead on a case by case determination.³³ This policy creates extensive opportunities for the manufacturers to argue and delay each new case since prior decisions may not create precedents.³⁴

Emissions Control

As concern over air pollution grew throughout the 1960s cars increasingly were seen as the culprit. According to EPA estimates, in 1970 cars accounted for 48 percent of carbon monoxide emissions, 32 percent of hydrocarbon emissions and 21 percent of nitrogen oxide emissions.³⁵ The Clean Air Act of 1970 was the first in a series of major battles over pollution control that occupied policymakers during the 1970s. Yet, there were several important precursors beginning in the late 1950s. According to Krier and Ursin, the history of federal intervention in pollution control was "one of gradual steps, first toward study, then toward modest intervention, then toward more far-reaching controls."³⁶ A slight detour in the historical narrative is important to set the framework for the political battles of the 1970s, after the passage of the CAA.

Air pollution has been defined as "a concentration of pollutants in the ambient air high enough to cause adverse effects of any kind...."³⁷ There are two basic categories of pollutants: primary pollutants, emitted directly from sources, and secondary pollutants, formed in the air by the interaction among primary pollutants and the normal atmosphere.³⁸ Carbon monoxide and hydrocarbons are essentially primary pollutants, while particulate matter and various sulfur and nitrogen oxides exist in both primary and secondary forms.

"Smog" results from the reaction among hydrocarbons, oxides of nitrogen, and sunlight.³⁹

The health effects of air pollution are diverse, contributing to a wide range of respiratory and lung diseases. It can reduce the ability of the blood to carry oxygen and harm plants and animals. Cars account for the largest share of hydrocarbon and nitrogen oxide emissions. Cars are also the largest source of carbon monoxide, the least dangerous of the three (once in the atmosphere). Motor vehicles emit pollutants in three ways: through tailpipe exhaust emissions; through evaporative losses from the carburetor and gas tank; and through "blowby," from the pistons to the crankcase into the air. Exhaust emissions are the major source of car pollution.

Concern over smog first emerged in the early 1940s in southern California. It was a "mysterious" new form of pollution, different from the smoke troubling urban areas since the 1880s.⁴⁰ Before the federal government intervened, California led efforts to control vehicle emissions. Examining its efforts is crucial for understanding the politics of pollution control.⁴¹ At first smog baffled scientists in California. In fact, in the fall of 1943 a major smog episode was blamed on one synthetic rubber plant. In 1945 the City of Los Angeles passed an ordinance limiting smoke emissions

from any single source. No one realized that smog was not a single source problem.

Aggravating episodes of pollution continued. The California State legislature took its first step in pollution control in 1947 with the California Air Pollution Control Act. It permitted, but did not require, countywide pollution control districts. Los Angeles established a district immediately; however, pollution problems increased because the role of the car was ignored. While some speculated about the contribution of car emissions to smog, there was little scientific evidence until 1950. Prof. A.J. Haagen-Smit of the California Institute of Technology suggested that a photochemical reaction converted refinery and motor vehicle emissions into smog. Not surprisingly, the oil and auto industry rejected Haagen-Smit's analysis, but independent research confirmed his conclusions in 1954.

Meanwhile, in 1953, the industry responded to the growing concern over smog by establishing a pollution control committee through its trade association (Automobile Manufacturers Association). In 1954, the AMA announced a joint venture among the vehicle manufacturers to speed development of pollution control equipment. Yet, little progress was made. By the mid 1960s this agreement was the subject of a major

antitrust investigation charging a conspiracy to delay the introduction of pollution control equipment.

Legislative initiatives providing for further study of the causes, effects and control of air pollution continued in both California and Congress during the 1950s. Regulatory efforts remained with the states and in California with the local governments. In 1959, California instructed its Department of Public Health to determine air quality and motor vehicle emissions standards needed to protect public health.

Despite the beginning of federal efforts, in 1960 California took a major step with the passage of its Motor Vehicle Pollution Control Act. It was the first motor vehicle emissions control legislation. The law mandated the certification of control technology to be required on new vehicles. A series of problems plagued the implementation of the program and the first controls were not required on new vehicles until 1964, three years after the industry began voluntary installations. Congress also acted in 1960, passing the Schenck Act, the first federal automotive pollution legislation.⁴² It called on the Public Health Service to study the problems with automotive exhausts.

Following these efforts, the Clean Air Act of 1963 provided for limited federal power to abate air pollution endangering health and welfare. It instructed

the Department of Health, Education and Welfare (HEW) to develop criteria on the effects and control of air pollution and to increase its efforts on research. Although it was not a major step in the direction of controlling vehicle emissions, it provided the groundwork for future legislation. Opposing federal intervention, automakers argued that emissions controls should vary with state needs. The industry expected it would be better able to control the growing concern for pollution control on the state level.

With the passage of the Motor Vehicle Pollution Control Act of 1965 the federal government became fully involved in motor vehicle pollution control.⁴³ Emissions standards for new vehicles were established by HEW the following year, taking effect in 1968. They were roughly the same as those in California. There were other federal and state steps taken in the late 1960s. None, however, significantly altered emissions standards until 1970. Despite the groundwork provided by these efforts, the most revealing government effort came not from legislative activity but from an antitrust investigation. The Justice Department initiated an antitrust suit against the auto industry for delaying the implementation of pollution control equipment.

Smog Consent Decree

To many observers in the mid-1960s it was apparent that the auto industry was not progressing in developing pollution control equipment. Many felt the industry was dragging its feet. In 1964, S. Smith Griswold, the Los Angeles County Air Pollution Control Board Executive, described the industry's accomplishments since its 1954 announcement of cooperation among the manufacturers.

What has the industry accomplished in the last years? Until recently, very little. In 1953, the pooling of efforts was announced. Through an agreement to cross-license, progress by one would be progress by all. How has it worked out? Apparently it has served to guarantee that no manufacturer would break ranks and bring into this field of air pollution control the same kind of competitive stimulus that spokesmen for the industry frequently pay homage to as the force that has made them what they are today. ⁴⁴

Lawyers told Griswold he described a classic conspiracy to restrain trade. The following year the Los Angeles County Board of Supervisors requested that the Department of Justice investigate the matter.⁴⁵

A Grand Jury convened and was on the verge of handing down criminal indictments, giving the case a landmark status. However, criminal charges were never filed. According to Samuel Flatlow, the Justice Department Attorney who headed the case, he received "an eleventh-hour communication" from the Assistant Attorney General for Antitrust, Donald Turner, instructing him that criminal sanctions were inappropriate. The grand jury reluctantly terminated its indictment only after

Flatlow counseled them against challenging the Department.⁴⁶ Three of the four Justice Department attorneys on the case recommended that all the manufacturers and their trade association be indicted under the Sherman Act.⁴⁷

The case lay dormant for over a year. Finally, civil charges were filed in January 1969 as the Johnson Administration was leaving office. This tactic left the controversial case in the hands of the incoming Nixon Administration, which quickly settled the case with a consent decree. A Justice Department memo summarizing the grand jury's investigation leaves little doubt about the industry's illegal behavior.

The cross-licensing agreement was merely a vehicle to accomplish the non-competitive and delaying activities of the signatories.... The evidence adduced before the Grand Jury clearly developed that the signatories to the ... agreement had the following understanding and agreements...: (A) not to publicize competitively any solution to the motor vehicle pollution problem; (B) to adopt a uniform date for announcement of the discovery of any air pollution control devices; and (C) to install devices only on an agreed date.⁴⁸

The civil suit charged that on three occasions the industry delayed or limited the installation of specific anti-pollution devices until later model years, although earlier installation was possible. In one particular instance the industry was charged with agreeing to tell California regulatory officials that installation of proposed equipment was technologically

impossible until an agreed upon date well after it was actually possible.⁴⁹

Instead of responding to these charges the industry immediately began negotiating a consent decree.⁵⁰ The decree permanently enjoined the defendants from combining to restrain pollution control device development, manufacture and sales. It ordered the withdrawal from the cross-licensing agreement of 1955, prohibiting any similar future agreements. Further, the defendants were ordered to grant to "any person" royalty free licenses for the use of any pollution control device patents issued during the cross-licensing agreement. In addition, the AMA had to make available the technological reports under its control prepared under the enjoined agreement, allowing new entrants to the pollution control device field to compete on equal footing.⁵¹

The decree also contained two renewable ten year provisions. The defendants were enjoined from exchanging confidential information on applied research pertaining to pollution control device development, manufacture, sale or installation. However, it allowed for sharing of basic research concerning "the presence, nature, amount, causes, sources, effects or theories of control of motor vehicle emissions in the atmosphere."⁵² The other renewable provision forbade the defendants

from making joint statements before certain regulatory bodies.⁵³

Public reaction against the proposed decree was unprecedented. During the thirty day comment period the court received 2000 assorted petitions against the decree. According to John Esposito, "nothing like this had ever occurred in the history of the consent decree procedure."⁵⁴ Fifty-two congressmen filed a brief, and several individual states including Illinois, Connecticut, Maryland, New Jersey, New York, and New Mexico. Several cities and counties also joined the outcry, including New York City, six California cities, and the counties of Santa Barbara and Los Angeles. The Air Pollution Control Districts of Los Angeles and the Bay Area, and the ACLU of Southern California, also filed complaints. Despite these protests the court approved the decree with minor alterations.⁵⁵ Prior to the decree New York City unsuccessfully tried to sue for treble damages under the Sherman Act on the grounds that its citizens had been harmed by the restraint of pollution control equipment.

In 1979, the Carter Administration sought a ten year extension of the decree. Initially, the federal court agreed, but upon reconsideration a few months later, the U.S. District Court for the Central District of California reversed itself pursuant to a petition by

Ford. However, on appeal the U.S. Court of Appeals for the Ninth Circuit set aside the lower court's action and extended the provisions of the agreement, remanding the matter for a broad evidentiary hearing on its merits.⁵⁶ In April of 1981, President Reagan requested the Justice Department review the case and in November it asked the court to modify the decree.⁵⁷ In October 1982 the court approved.⁵⁸

The history of the smog consent decree actions by the Johnson, Nixon and Reagan Administrations illustrates the friendly relations the industry has maintained with the Executive branch, across the political spectrum.⁵⁹ Relations with Congress have not been as smooth. The decree further weakened the credibility of the industry and later in the year of the original agreement (1970), the Clean Air Act hit the industry like a thunderbolt.⁶⁰

Clean Air Act of 1970

Although it was not the first federal effort to regulate auto emissions, the Clean Air Act was a significant departure from past legislation. The Motor Vehicle Pollution Act of 1965 did not advance pollution control beyond California's efforts. While other areas of the country now benefited from California's initiatives, the legislation did not force the industry

to improve its pollution control technology. With the Clean Air Act, on the other hand, Congress advanced mobile source pollution control, establishing emissions standards in the enabling legislation itself.⁶¹

Pressures for regulating auto emissions came from a broad cross section of American society. There was a swelling public interest in ecology culminating in Earth Day (April 22, 1970). Millions attended teach-ins and participated in anti-pollution protests. Congress, sensitive to this rising tide, adjourned for the day to allow members to address local rallies.⁶² In July, the UAW in conjunction with several major environmental groups, including the National Audubon Society, Sierra Club, Environmental Action, Friends of the Earth, Wilderness Society and Zero Population Growth, delivered a 19 point plan to every member of the Senate calling for the regulation of auto emissions. The standards were so tough that they would ban the internal combustion engine by 1975.⁶³

The standards themselves were the product of political jockeying between Democrats, vying for the presidential nomination in 1972 and hoping to capitalize on the swelling environmental movement, and Richard Nixon, conscious of this challenge and equally interested in capturing votes. On the Democratic side the main protagonists were Sen. Edmund Muskie (D-Maine),

at the time the front runner for the 1972 nomination, and Senators Gaylord Nelson (D-Wisconsin), one of the sponsors of legislation to ban the internal combustion engine by 1975, and Henry Jackson (D-Washington).

Nixon, not wanting to lose the environmental issue to the Democrats, proposed a 90 percent reduction in emissions by 1980. Muskie, chairman of the Senate Subcommittee on Air and Water Pollution of the Committee on Public Works, had considerable leverage over pollution legislation. After a bill had already passed the House, he amended it. "Muskie took Nixon's standards and Nelson's deadline and fashioned his own program."⁶⁴ The bill received almost unanimous support in Congress, falling only one vote short in the House.

The legislation required a 90 percent reduction from 1970 levels for hydrocarbons and carbon monoxide by 1975 and a similar reduction for oxides of nitrogen by 1976.⁶⁵ It preempted state legislation, with the exception of California due to its unique history with pollution control. The deadlines could be extended by the EPA, but only once for one year. Congress stipulated that an extension could be made if it was essential for the public interest, the auto companies had made a legitimate effort to comply with the law, and the required technology was not available.⁶⁶ The bill also provided for a \$10,000 fine for each car built that

did not meet the standards. The severity of the penalty caused William Ruckelshaus, head of the EPA, to compare it to a nuclear deterrent, supposedly so powerful its use is precluded.⁶⁷

The target dates presented the industry with an insurmountable hurdle. The intermediate steps in the legislation effectively allowed two years for developing pollution control devices, while the industry requires three years lead time to bring a new piece of hardware into production. Muskie admitted that the targets were technologically unfeasible at the time, but believed that tight deadlines would force the industry to develop the needed technology.⁶⁸ Robert Crandall argues "this 'technology-forcing' strategy was motivated in part by a congressional view that the auto industry was implacably opposed to emissions abatement."⁶⁹

The industry choose to reduce emissions by adding catalytic convertors to the exhaust system, instead of developing a different engine. These devices convert exhaust gases into harmless vapors. However, they have been continually beset by problems. In fact, a report issued in February 1973 by the Committee on Motor Vehicle Emissions of the National Academy of Sciences (NAS), mandated by the CAA, called the catalytic system "the most disadvantageous with respect to first cost, fuel economy, maintainability, and durability."⁷⁰

Since Congress established performance standards for emissions control, it allowed the industry to select the compliance technology. By selecting the catalytic converter, the industry virtually guaranteed that pollution policy would be an ongoing contest due to its inherent problems. In its early years the device was plagued by a series of problems, including reduced fuel economy, problems with engine tuning, and tampering by owners, leading to requests for delays in compliance.

From April 1973 through August 1977 the industry received four delays or modifications in the pollution standards. David Lachman argues these changes were unwarranted and that government decision makers ignored scientific evidence that the standards were attainable.⁷¹ The EPA granted the first delay April 1973. It postponed from 1975 to 1976 standards for HC and CO. The next change was the result of the Energy Supply and Environmental Coordination Act of 1974 which set back final HC and CO levels to 1977 and loosened the NOx standard. The third delay came in March 1975 when the EPA extended existing HC and CO standards for one year (1978 model cars). The final delay was made in August 1977 with the Clean Air Act Amendments of 1977 permitting even longer delays and a permanent weakening of the standards.

Before the first delay, in 1972 two requests by the industry for extensions were rejected by the EPA. Several studies, one by the EPA and the other by the NAS, argued the standards were possible, although the industry was pursuing the most costly and least satisfactory method of abatement. Both agreed that the 1976 NOx standards were out of reach given the current available technology.⁷² In May of that year Henry Ford went on the offensive with the industry's ultimate weapon: plant shutdowns. He told a stockholders meeting: "If the emissions standards are not suspended, the result so far as we can see would be to force suspension of most U.S. automotive manufacturing operations in 1975."⁷³

This threat were effective. In granting a one year extension to the industry in April of 1973, William Ruckelshaus justified his actions as avoiding "the potential societal disruptions" if the requirements went into effect on schedule.⁷⁴ The following year the industry received another extension to the emissions standards: The Energy Supply and Environmental Coordination Act of 1974.⁷⁵ This time Congress responded to the "energy crisis."⁷⁶ The auto makers framed the alternative open to policy makers in stark terms: cleaner air could only be achieved at the expense of reduced fuel economy.

In the aftermath of the oil embargo, fuel prices remained high. The sudden leap in oil prices was blamed for playing havoc with the international monetary system and contributing to a worldwide recession. Treasury Secretary William Simon went so far as to claim that almost 50 percent of inflation in the United States could be attributable to the rise in energy prices.⁷⁷ The U.S. experienced inflation and unemployment at the same time, confounding mainstream economists. By pitting the need for energy conservation against cleaner air, the industry was able to turn the debate on emissions standards away from environmental concerns, translating it into a debate about economic recovery.

As the recession continued into 1975 the industry received another EPA extension in the emissions standards deadline, this time from 1977 to 1978. Allegedly the cause for the delay was potentially dangerous sulfuric acid emissions from the catalytic converter. Although there was scientific evidence contradicting EPA claims, the extension was given. By April of 1976, the EPA itself admitted it had been wrong. As a result of these delays the industry mitigated its previous legislative defeats.

In large part, these successes were a consequence of faltering economic conditions which increased the vulnerability of government officials to corporate

requests for policy changes. Ornstein and Elder note, "by the middle of the decade, the drive to stop pollution, which came to resemble a national crusade in the aftermath of 'Earth Day' 1970, was running head-on into not only energy shortages but rising inflation, spreading unemployment, and deepening recession as well."⁷⁸ During the battles over emissions standards the industry noticeably changed its political strategy to take advantage of this situation.

In 1975 the Wall Street Journal ran a front page story capturing this shift, "Breaking the Rules: Auto Men Use Slump In Seeking Slowdown on Safety, Pollution."⁷⁹ The article noted that since the mid-1960s government passed ever tighter safety and pollution rules and "automakers, in turn, have resisted almost every new rule, often predicting that production would be disrupted or sales crippled." Nevertheless, new standards were met and production did not falter. In fact, 1971-1973 were record sales years. "Now, however, the auto makers are mounting perhaps their most ambitious campaign yet against federal safety and pollution regulations, and they have been making more headway than ever."⁸⁰ Vital to this success was a drop in sales from 9.6 million cars in 1973 to 6.7 million in 1975.

The following year Bernard Asbell described the change in the New York Times.

In mid-1975, America was in a state of alarm over the recession and the memories were still fresh of long lines at gasoline stations. The auto industry lobby, after repeated and ignominious losses to environmentalists, now at last found a winning pair of arguments: jobs and energy. The collapse of car sales, which had already thrown assembly line workers by the hundreds of thousands into the street, was blamed by the industry on pollution control devices that drove up prices. Furthermore the auto makers claimed that the devices caused higher gasoline consumption.

Brilliant. Their arguments touched raw nerves. Though they could not withstand factual rebuttal, the American automobile companies pressed them in direct congressional testimony and lobbying, and in ads in "thought leader" magazines such as Harper's, letters to Congressmen, and propaganda to dealers who, in turn, were advised to alarm customers.⁸¹

This combination maximized the industry's political leverage. Two Congressional actions vividly illustrate this point.⁸² In 1976 and 1977 the industry gambled and won further postponements in meeting emissions standards by emphasizing the loss of jobs and threatening plant shutdowns.

In 1976 both the House and the Senate passed amendments to the Clean Air Act extending the emissions deadlines. The bills were substantially different and had to be resolved in a conference committee. The stricter Senate version was chosen. Although it still contained an extension, on the last day of the 94th Congress the industry supported a Senate filibuster on

another part of the clean air bill to prevent its passage. Consequently, as Lachman concludes, it "meant that unless the Clean Air Act was changed before the 1978 cars went into production in August 1977, the auto companies would be unable to produce 1978 models without breaking the law."⁸³

The industry gambled that in 1977 it could get more favorable modifications in the law, otherwise it would be forced to shut down its plants, leading to millions of lay offs. The industry's defiant attitude was "mimicked" by Edmund Muskie just before the 1976 vote.

Congress would not dare to hold us accountable for failing to meet the law. They wouldn't dare. We are too important. There are too many jobs involved. We are above the law, and unless we can have the law written the way we want it, we will break the present law and dare Congress to do anything about it.⁸⁴

E.M. Estes, the President of GM, confirmed Muskie's version a few hours later. "They can close the plants. They can get someone in jail-maybe me. But we're going to make [1978] cars to 1977 standards."⁸⁵ In August 1977 the gamble paid off.

Coming only weeks before the beginning of the 1978 model year, the August 1977 compromise just averted the threatened plant shutdowns. The auto makers marshalled an effective coalition of parts suppliers, dealers and the UAW to emphasize the economic consequences of failing to amend the law.⁸⁶ The UAW urged its 1.5

million members to write or directly contact their senators and representative with this unmistakable message: "Congress must be told quickly that your job is as stake.... Tell Congress...your future depends on protecting air quality without disrupting jobs."⁸⁷ A lobbyist from another industry neatly summarized the results. "The auto companies' success in 1977 was due to one key factor: they employ so many God-damned people."⁸⁸

The political advantages of large corporate size, aided by threatened economic hardship, had asserted itself. In a highly concentrated industry like autos, policymakers face additional obstacles. To begin with, a small number of firms can more readily collude in presenting uniformly pessimistic accounts of the possibilities for technological innovation.⁸⁹ Collusion among a few firms is easier to organize, less detectable, and can be tacit rather than overt. In addition, the potential for economic dislocation due to government regulation complicates matters further. Lawrence White described this aspect of regulating an industry composed of a few firms.

If one meat packer out of 2,500 had to close down because it could not meet government sanitation standards, few outside a handful of workers and owners would be effected. But if one or more of the four automobile firms...were required to shut down, the

structural consequences for the economy as a whole would be quite serious.⁹⁰

The Clean Air Act of 1977 gave the industry more generous modifications than the 1976 version, allowing the industry to use 1977 standards for their 1978 and 1979 cars. Final compliance with the HC levels was postponed until 1980, and CO levels until 1981. The final standard for NOx was permanently changed from the original 0.4 gram per mile to 1.0 gram per mile, going into effect in 1981.⁹¹

Notwithstanding the modifications in emissions standards, they have had a significant impact on aggregate emissions levels. "Despite a 26 percent increase in vehicle miles traveled over 1970-82, estimated annual emissions of these two pollutants [HC and CO] fell by 58 and 42 percent, respectively, over the same period."⁹² As cars are scrapped from the precontrol and early control years, there will be further reductions in emissions. Under the current standards, Robert Crandall estimates that by the year 2000 despite a projected 58 percent increase in aggregate vehicle miles, emissions from HC, CO and NOx will decline 20, 40 and 78 percent of their respective 1970 levels.⁹³

Fuel Economy

The final component of automotive regulation is fuel economy regulation, established in 1975 by the Energy Policy and Conservation Act (EPCA). As a response to the first oil shock of the 1970s, it involved a wide range of energy issues, including mandatory fuel economy standards. Actually, the bill was an amalgamation of five different bills, each targeting a different aspect of energy use, conservation or security.⁹⁴ The final bill, over 100 pages long, involved issues as diverse as the strategic petroleum reserve, rationing authority, auto fuel economy, energy conservation, coal conversion and oil pricing.⁹⁵

In this instance, the pattern of automotive policy identified in this study was reversed. The vulnerability of public officials to the industry's lobbying did not increase with economic contraction. Although the industry was hurt by a major drop in sales, it was unable to prevent mandatory standards. Because the problem of energy shortages threatened to have devastating national repercussions, Congress discounted the chorus of industry arguments mobilized to stop the extension of federal regulation. The specter of economic disruption and social disorder due to gas shortages transcended the industry's own claims of economic harm. Policymakers responded to the perceived

needs of the nation as a whole and not the requests of the automakers.

According to the conference committee report on the Energy Policy and Conservation Act, the general purpose of the bill was to increase domestic supplies and availability, to restrain domestic demand and to prepare for emergencies. The report states that EPCA establishes a comprehensive national energy policy to:

- (1) maximize domestic production of energy and provide for strategic storage reserves of crude oil, residual fuel oil and refined petroleum products;

- (2) minimize the impact of disruptions in energy supplies by providing for energy standby measures;

- (3) provide for domestic crude oil prices that will encourage domestic production in a manner consistent with economic recovery; and

- (4) reduce domestic energy consumption through the operation of specific voluntary and mandatory energy conservation programs.⁹⁶

The fuel economy provisions of the bill required the auto makers to meet fuel economy levels that were higher than planned.⁹⁷ However, it allowed the industry to meet these levels based on a fleet weighted average, avoiding minimum performance standards. Fleet averaging enables the industry to continue selling large more profitable but gas guzzling cars. The law required car makers to reach a 18 mpg CAFE for 1978, 19 for 1979, 20 for 1980, and 27.5 for 1985. After 1985 the NHTSA could increase the standards. It could also lower the 27.5 standard to 26.0 if the target was unfeasible.

Although EPCA remains the cornerstone of government fuel economy standards, there were two other legislative actions directed at fuel economy. The National Energy and Conservation Act of 1978 allowed the NHTSA to increase the sanctions for non-compliance and to raise the penalty from \$5 to \$10 for each .10 per mile over standard. It also included the so-called gas guzzler tax. Cars with very low efficiency ratings are subject to a tax, regardless of the overall fleet economy of the manufacturer. However, the bill has had little effect since the standards only affect luxury cars.⁹⁸ The other legislative action was the Automotive Fuel Efficiency Act of 1980, permitting car makers to carry credits for surpassing the annual efficiency standards for three years forward or three years backward to compensate for CAFE shortfalls, saving the industry millions of dollars.⁹⁹ Congress passed two additional laws pertaining to fuel economy research.¹⁰⁰

EPCA was opposed by GM and Chrysler, as well as the Ford Administration. Because the "energy crisis" was a powerful psychological and economic trauma influencing Congress, the Ford Motor Company, the UAW, and the National Automobile Dealers Association (NADA) concluded that mandatory standards were inevitable and supported fleet averages rather than alternative proposals for excise taxes on less efficient cars. Robert Leone and

Stephen Bradley argue that some in Congress saw mandatory fuel economy standards as a positive step away from gas price increases, another method to decrease gas usage but an unpopular idea with consumers. On the other hand, they add, others felt the industry could not be trusted to consider any voluntary social responsibility.¹⁰¹

With an issue of such overriding national concern, coming on the heels of the first disruption in the nation's energy supply, the political leverage of the industry was constrained. Although the industry tried to convince Congress to allow it to pursue a voluntary program, its past behavior precluded voluntary compliance. Until 1974, the fuel economy of new cars slowly declined for a number of years.¹⁰² The 1974 average domestic fuel economy was 13.9 mpg.

Congressional debates on motor vehicle fuel economy began in 1973 in response to a number of factors: reports of a forthcoming energy crisis, a cold winter, early summer gas shortages and the October oil embargo. Between 1973 and 1978 there were over 100 bills introduced in Congress on the subject of improving fuel economy. They covered a wide range of methods, including gas and motor vehicle taxes, improving fuel economy information, mandated fuel economy standards and mandated fuel economy labels.¹⁰³

The industry objected to the concept of mandatory fuel economy standards, claiming it violates the principle of consumer sovereignty.¹⁰⁴ Let the individual who wants to own an inefficient vehicle pay the price, the argument goes. If the price of gas goes up, the market will stimulate demand for more efficient cars, if consumers want them. Needless to say, this argument assumes that there is a fully competitive market registering consumer demand.¹⁰⁵ Given the oligopolistic concentration of the auto industry, and the ability of car dealers to sell what is "on the lot," this argument is unsupportable. Further, it ignores the larger social consequences of having the nation's drivers increase our dependence on foreign oil, given the drilling decisions made by the oil industry. Failing to decrease oil consumption only exacerbates this situation. As a result, oil consumption figures largely in trade deficits and national security policy.

Automobile fuel usage comprises a large component of the nation's overall consumption of oil. In the late 1970s, estimates of the nation's consumption of oil attributed to cars ranged between 40 and 50 percent. Several studies have emphasized the importance of automotive fuel economy as a major aspect of energy conservation. Given their emphatic thrust, lengthy

citation is warranted. The Energy Project of the Harvard Business School stated:

Conservation for the most part involves a multitude of decision makers. One major exception does stand out-transportation, and in particular, the automobile. What is involved here is a relatively standardized product used for a standardized activity-moving people. Only a few producers are engaged in its manufacture, and they are the key decision makers. The automobile is the one and only consumer product that has a disproportionate and indeed massive effect on energy consumption. The transport sector uses 26 percent of the energy used in the United State - half of the oil. The private automobile, in turn consumes over half of the transport sector's energy. Indeed, the American car alone consumes a ninth of all the oil used in the world every day. But the car is amenable to technological fixes- and rather quick ones, since the auto stock turns over more rapidly than most other forms of capital. Because about half of the American automobile population is replaced within five years, an improvement in mileage efficiency, which is a form of conservation, can make itself quickly felt on the international energy market.¹⁰⁶

A National Academy of Sciences report reiterated this theme.

The automobile offers the greatest single opportunity to improve the energy efficiency of the U.S. transportation system.... The potential for energy conservation in replacing today's automobiles with more efficient ones after their 10-15 years on the road is so great that the total annual fuel consumption by automobiles could remain relatively constant over the next 30 years, over which time the total mileage driven can be expected to increase 50-100 percent.¹⁰⁷

Moves to improve the fuel efficiency of American made cars first came in response to market changes, not government regulation. The rise in fuel prices in 1973-4

and the resulting increase in Japanese imports led the industry to slowly reduce the weight of its vehicles.¹⁰⁸ Robert Crandall concludes "the major changes in product offering before the development of front-wheel-drive cars were driven by the sharp rise in fuel prices in 1973-4 and not by the enactment of the CAFE program in 1975."¹⁰⁹ Since industry efforts to improve fuel economy began before EPCA, the industry claimed it would continue without mandatory standards. However, Crandall concedes "it is possible that the CAFE regulations accelerated the adjustment to more fuel-efficient cars. Automobile manufacturers typically require long lead times to respond to changing technologies or consumer tastes. The CAFE standards may have forced a more rapid adjustment."¹¹⁰

Despite the rhetoric of market forces, and Crandall's ambivalence, it is difficult to claim that EPCA did not force the industry to improve its fuel efficiency. Even the industry's record of compliance to the CAFE standards reveals a pattern of willful efforts to avoid the law. Fuel economy improvements came as slowly as possible. Indeed, most of the new cars sold during the late 1970s did not even achieve CAFE standards set by Congress. A House Government Operations Committee report attributed this failure to the inadequacy of the EPA's testing program and the

industry's efforts to take advantage of the loopholes and "flexibilities" in the program.¹¹¹

The report resulted from hearings examining why fuel economy standards certified by the EPA were not reflected in on-the-road fuel economy of new cars.¹¹² Both the EPA and the industry acknowledged the discrepancy. Citing an October 1979 study by Barry McNutt as the most definitive analysis of the mileage gap, the report outlined his findings. McNutt compared EPA test results with actual on the road fuel economy of 11,000 cars, which included 400 different models from 1974-1978. His findings included the following points.

(1) The Department of Energy and others, including GM and Ford, agree there is an increasing mpg shortfall between the EPA tests and on the road fuel economy during 1974-1978.

(2) The mileage gap has increased from about 5 percent (or less than 1 mpg) in model year 1974, to over 21 percent (over 4 mpg) for 1978.

(3) The shortfall is greater for more efficient cars, with gaps ranging from 2 mpg, or 13 percent, for cars with an EPA rating of 15 mpg, to 8 mpg, or 30 percent for 27.5 mpg rated cars.

(4) Projecting the shortfalls based on current trends indicates that a 1985 car with an EPA rating of 27.5 mpg will only get 19.5 mpg on the road.

(5) The trend of an increasing mileage gap will increase consumption in 1985 by one million barrels of oil per day, compared to usage if shortfall had not increased from the 1974 level.¹¹³

The House report noted a number of the industry's inconsistencies in responding to the law. In 1976, for example, GM stated it would only be able to meet the 1985 standard if it limited its sales to 92 percent Chevettes, its smallest car. In 1977, the industry admitted it could meet the 1980-1985 standards with a marketable mix, despite the major financial commitment required. In 1978, GM and Ford petitioned the NHTSA to lower the standards for the 1981-4 model years. The request was rejected. According to the NHTSA, the presentation "reinforced earlier conclusions that the current standards are both technically feasible and economically practicable." In 1979, GM President E.M. Estes vowed GM would exceed the 1985 standards.¹¹⁴

The report identified several practices of the industry demonstrating its deliberate effort to circumvent the law and willingness to go to extra lengths ensuring that once standards were met, nothing further was done to go beyond the minimum requirements. Two striking examples of this practice are "double tooling" and "running changes".

Double tooling is the practice of purchasing machinery to produce particular components in either steel or aluminum. If there is some margin in the CAFE figures, the maker has the choice of using steel components, putting the more expensive aluminum tooling

in storage. For example, in 1979, Ford cars weighed 30 pounds less than originally projected. In response, the tools for aluminum light weight bumper reinforcements were abandoned and steel tools put into production. A Ford Vice-President explained, "if we don't need the weight saving, we don't waste the money."¹¹⁵

Running changes is the other technique used. It involves design changes on the factory level after the vehicle has been submitted to the EPA for certification. Prior to 1980 running changes may not have affected CAFE. However, the rapid rise in fuel prices during the spring of 1979 presented a new situation for the industry. For the first time it found itself exceeding CAFE requirements due to the shift to small cars. The industry implemented mid-year changes to lower CAFE, while still remaining within the legal requirements.¹¹⁶ Ford sent a letter to the EPA on August 24, 1979, stating:

The recent shift of the market to small cars has raised our projected [1980] CAFE to the point where it is well over 20 MPG. Thus, Ford finds itself in a position where it is considering taking product actions [running changes] which will achieve cost savings but which may also have the effect of lowering both CAFE and fuel economy values on affected models.¹¹⁷

The EPA's authority to control fuel economy running changes is minimal, in contrast to its ability to regulate emissions running changes. Upon receipt of GM's

weight adding changes, Richard Harrigan, Director of the EPA's Certification Division observed in a diary note dated December 10, 1979:

It appears now that GM, having received (MPG) labels which would not change over the year is submitting running changes for the purpose of economy which would have the effect of adversely impacting fuel economy. The collective circumstances surrounding these changes have all the appearance of a deliberate attempt to deceive the public with respect to the fuel economy and relative fuel economy that they can expect from their products.¹¹⁸

Problems with CAFE compliance were exacerbated by inaccuracies in the EPA's test procedure itself, and faulty administration of the program. In part due to a lack of funding, the EPA relied almost exclusively on an honor system, with tests done on prototype vehicles individually constructed before the start of the production year. Not only was the EPA test grossly inadequate to measure actual road conditions, its procedures were not properly followed. In 1979, the virtual absence of confirmatory testing caused concern within the EPA that the industry was "playing games." As a result, without warning it asked various makers to submit 62 cars for testing in August 1979. The results confirmed suspicions. A portion of each firm's fleet generated higher fuel economy when the tests were done by the EPA.¹¹⁹

During these tests the EPA originally planned to target suspect cars. When various automakers claimed the suspect cars were not immediately available the EPA settled for those made available. Selected by the industry, the first group of cars fell short of reported fuel economy by .08 percent. Once the suspect models were tested the discrepancy reached 7.25 percent.¹²⁰

Supposedly, part of the problem with the EPA procedures was the complexity of the test. In a November 1977 letter to the EPA, D.A. Jenson, the director of Ford's Automotive Emissions and Fuel Economy Office, insisted that it "cannot be charged with the responsibility of speculating what an agency wants done as opposed to what an agency says must be done."¹²¹ Eric Stork, EPA Deputy Assistant Administrator, replied directly to Ford. His letter details a pattern of industry actions extending well beyond the particular fuel economy issue which initiated the letter. It merits being cited at length due the larger patterns he identified.

To quote Mark Twain, "not even a burglar could have said it better." It is precisely the sort of reasoning advanced by Ford in its petition which- although generally valid- has at times led to an attitude on the part of the regulated industry which can best be described as "anything that is not specifically prohibited is allowed." That attitude resulted, a few years ago, in the defect device scandal, in which Ford and other major automakers installed on their vehicles various devices that sensed environmental or operating

conditions dissimilar from the Federal Test Procedure, and --because regulators had not foreseen that anyone might do so--used such signals to turn off emissions controls when cars were outside of the FTP parameters.[122]

It is similarly this attitude which more recently led numerous automakers to recommend shift schedules for the purpose of emissions and fuel economy testing for manual transmissions vehicles that were far from shift schedules that could reasonably used in actual operations. It is furthermore this attitude that has launched this agency on an intensive search for similar distortions of procedures that may have large, nonrepresentative effects on measured test results. And it is this attitude which, presumably, may have led Ford in past years to design its cars so as to be just under the upper limit of the larger weight classes.¹²³

Contrary to the industry's early claims, the standards did not present significant problems. The shift to smaller cars, joined with downsizing, made compliance relatively easy for the first few years of the program. Following the pattern of emissions and safety standards, the industry's vigorous challenges often succeeding in modifying or delaying standards, but nevertheless the regulation of the automobile increased throughout the 1970s.

However, beginning in the mid-1970s, the financial problems of business in general were increasingly blamed on government. Although little evidence supported this claim, Ronald Reagan stressed it in the 1980 campaign. Coming at a time of declining profits, coupled with record inflation, the concerted efforts of business to

blame government created a political climate where regulation became synonymous with red tape and oppressive bureaucracy.¹²⁴

The auto industry had made this claim since the first days of federal regulation, with only intermittent success, despite stagnating economic conditions during the 1970s. When the industry reeled under record losses in 1979 and 1980, however, the entire direction of policy shifted.

Endnotes

1. For an analysis of politics from the theme of the "scope of conflict" see E.E. Schattschneider The Semisovereign People (NY: Holt, Rinehart and Winston, 1960).

2. Typically in the past technology was seen as a positive and autonomous force. For a thoughtful essay on the inherent logic and consequences of contemporary technology see Robert Engler, "Many Bhopals: Technology Out of Control," The Nation April 27, 1985.

3. David Lachman, "The Politics of the Automobile", (unpublished dissertation, New York University, 1979), argues this basic conclusion. However, he does not locate government policy toward the industry in an historical context, or see any basic patterns in government policy toward the industry. Nevertheless, Lachman does include several of the events that form the essential character of these years.

4. David Vogel, "A Case Study of Clean Air Legislation 1967-1981," in Betty Bock, et. al. eds., The Impact of the Modern Corporation (NY: Columbia University Press, 1984), p.323. Hereafter referred to as Vogel, 1984.

5. Michael Pertschuk, Revolt Against Regulation (Berkeley: University of California Press, 1982), p.5.

6. Vogel seems to ignore the FTC, established in 1914, which, in part, protects consumers from unfair business practices. David Vogel, "The "New" Social Regulation in Historical and Comparative Perspective", in Thomas McCraw, ed., Regulation in Perspective: Historical Essays (Cambridge: Harvard University Press, 1981), p.161.

The ten agencies created with the mandate to protect consumers, employees, or the public were: the Equal Employment Opportunity Commission (1964), the National Transportation Safety Board (1966), the Council on Environmental Quality (1969), the Environmental Protection Agency (1970), the National Highway Traffic Safety Administration (1970), the Occupational Safety and Health Administration (1970), the Consumer Product Safety Commission (1972), the Mining Enforcement and Safety Administration (1973), and the Office of Strip Mining Regulation and Enforcement (1977).

7. Robert Crandall, et. al., Regulating the Automobile (Washington, D.C.: The Brookings Institution, 1986). For example, safety and emissions standards can increase a vehicle's fuel consumption. Although it is clear that different standards made by different agencies have increased the complexity of complying with federal regulations, the assumption made by Crandall is that government should only pursue one goal at a time. When programs pursue two or more goals it is argued these programs are contradictory. It is just as logical to argue that government should pursue several goals simultaneously when each is deemed essential.

8. P.L. 89-563.

9. The NHTSA gives each one of these categories a different standard series number. Accident avoidance standards are given numbers in the 100s; crash protection and survivability standards the 200s; and postcrash survivability standards the 300s. For example, the air bag and the seat belt, come under the heading of occupant crash protection with Standard number 208.

10. Robert Crandall, 1986, pp.47-9.

11. P.L. 91-604.

12. In grams per mile the final standards are 0.41 HC, 3.4 CO, and 0.04 NOx.

13. P.L. 95-95.

14. P.L.94-163.

15. During the early seventies several bills were introduced in Congress to outlaw the internal combustion engine. Among them were HR. 6599, March 16, 1971 and HR. 3091, January 29, 1973. These efforts dramatized the problems of air pollution, but never had practical possibilities of passage. However, their introduction represented a fundamentally critical attitude toward the industry and the car that is virtually absent from current thinking.

16. U.S. Federal Trade Commission, Report on Automobile Warranties (Washington: GPO, 1970), p.31.

17. FTC, Report on Automobile Warranties, p.68.

18. FTC, Report on Automobile Warranties, p.68.

19. FTC, Report on Automobile Warranties, p.69.

20. Kirk Hansen, "The Effect of Fuel Economy Standards on Corporate Strategy in the Auto Industry," in Douglas Ginsberg and Ralph Abernathy, eds., Government, Technology and the Future of the Automobile (NY: McGraw Hill, 1980), p.154.

21. Kirk Hanson, p.157.

22. Frances Fox Piven and Richard Cloward make an analgous point in analyzing the strategies "available" to the poor. They criticize the pluralist tradition for failing to realize this seemingly self-evident point.

...the pluralist tradition defines political action as essentially a matter of choice. Political actors, whoever they may be, are treated as if they are not constricted by a social environment in deciding upon one political strategy or another; it is as if the strategies employed by different groups were freely elected, rather than the result of constraints imposed upon by their location in the social structure.

Poor People's Movements, (NY: Vintage Books, 1977), pp.14-15.

23. Vogel, 1984, p.344.

24. David Bollier and Joan Claybrook, Freedom From Harm (Washington: Public Citizen, 1986), p.73.

25. Bollier and Claybrook, p.73.

26. Congressional Quarterly Weekly Report February 10, 1967, p.203.

27. The benefits of safety standards have been documented in recent scientific studies. Bollier and Claybrook cite a number of recent studies that demonstrate that for \$48.86 per car, NHTSA standards save 1,000 lives and 200,000 serious injuries per year. These savings involve six different standards: steering assembly; side impact; head restraints; fuel system integrity; laminated windshields; windshield adhesive bonding (pp.75-6).

28. The controversy over safety standards has continued to today. Perhaps the most notable, and longstanding, controversy involves the air bag. The

history of government actions goes back to the late 1960s. Due to its long, complex history, and vital importance to vehicle safety, it will be examined in detail in chapter 6.

29. P.L. 92-513; P.L. 93-492.

30. Ralph Nader, Unsafe At Any Speed (NY: Bantam Books, 1972), p.xxxiv.

31. Nader, p.xxxvi.

32. The problems with the NHTSA's recall procedures are examined by Richard Tobin, "Safety Related Defects in Motor Vehicles and the Evaluation of Self-Regulation," Policy Studies Review vol.1, #3, February 1982. In reviewing the Ford Transmission case involving cars which unexpectedly jumped from park to reverse, Tobin concluded that the NHTSA showed more concern for Ford's financial condition than for the consequences of the defect. The NHTSA's decision not to require a recall reportedly saved Ford \$90 million and was made in 1980 when Ford was recording record losses. The case was surrounded by controversy and in 1985 Congress held hearings on the issue. See U.S., Congress, House, Committee on Energy and Commerce, NHTSA's Conduct in the Ford Transmission Case. Hearings before the subcommittee on Telecommunications, Consumer Protection, and Finance, 99th Cong., 1st. sess., August 1, 1985, Serial No. 99-78.

33. In 1973 the NHTSA declined to define a safety related defect, 38 FR 9510 (1973), cited in Tobin, p.533.

34. Tobin, p.533.

35. EPA, National Air Pollutant Emission Estimates, 1940-1983, tables 9,10,11,14,15,16. Cited in Robert Crandall, et. al., Regulating the Automobile (Washington: Brookings Institution Press, 1986), p.87, note 5.

36. James Krier and Edmund Ursin, Pollution and Policy: A Case Essay on California and Federal Experience with Motor Vehicle Air Pollution, 1940-1975 (Berkeley: University of California Press, 1977), p.200.

37. Krier and Ursin, p.18.

38. The following information is from Krier and Ursin, chapter 1.

39. Krier and Ursin, p.18.

40. Even in the 1860s Los Angeles was troubled by the problems of air pollution. Smoke, coupled with certain atmospheric conditions, clouded the air. Since 1905, city ordinances aimed at emissions of dense smoke from flues, chimneys and smokestacks. In 1907, the position of smoke inspector was established to regulate discharges of smoke from industrial structure and appliances.

Other states responded to the problem of air pollution. According to Krier and Ursin the first air pollution control law in the country was passed by the Chicago City Council in 1881. It prohibited emissions of dense smoke. By 1912, of the 28 cities with populations over 200,000, 23 had smoke abatement programs. (p.47)

41. The following summary of events in California and the subsequent federal efforts leading to the CAA 1970 is taken from Krier and Ursin.

42. P.L. 86-493. Schenck had originally sponsored legislation to prohibit the use in interstate commerce of vehicles discharging dangerous amounts of unburned hydrocarbons. The bill was modified in response to objections by HEW (Krier and Ursin, p.169).

43. P.L.89-272.

44. Cited in John Esposito, Vanishing Air: The Ralph Nader Study Report on Air Pollution (NY: Grossman Publishers, 1970), p.42.

45. The resolution is reprinted in Nader, Unsafe At Any Speed, appendix.

46. Esposito, p.43.

47. David Lachman, "The Politics of the Automobile" (unpublished dissertation, NYU, 1979), p.130.

48. Cited in Mark Green, The Closed Enterprise System (NY: Grossman Publishers, 1972), p.255. The entire Justice Department Confidential Memo was published in the Congressional Record on May 18, 1971, after it was obtained by Rep. Philip Burton. See Congressional Record, House of Representatives, May 18, 1971, pp. H4063-4074.

49. Stephen Kroll, "The Automobile Pollution Case: Intervening in Consent Decree Settlement," Harvard Civil Rights, Civil Liberties Law Review #5, 1970, p.409.

50. Kroll, p.409.

51. Details of the decree are summarized in Bennett Goldstein and Howell Howard, "Antitrust Law and the Control of Auto Pollution: Rethinking the Alliance Between Competition and Technical Progress," Environmental Law #10, 1979-1980, pp.526-28.

52. Goldstein and Howard, p.528.

53. This is one reason why the industry's trade association, the MVMA, has had such a relatively low profile.

54. Esposito, p.47.

55. Practically speaking, the decree prevented private action of a Sherman Act suit for treble damages. With the decree the Justice Department's evidence would be closed and it would be impossible to produce the evidence privately (Kroll, p.410).

56. US v MVMA, 643 F2d 644. This summary of events is from Melissa Merson, "Environmental Regulation of the Automobile," BNA, Environmental Reporter-Monographs Monograph No. 31, vol. 13, No.33, December 17, 1982.

57. This was part of the Reagan plan to aid the industry announced in April of 1981. It will be examined in chapter 6.

58. US v MVMA, Civ. Action No. 69-75-JWC, October 28, 1982. Judge Jesse Curtis claimed that when the decree was originally signed air pollution was a major problem facing the industry. Now, both energy conservation and pollution control were pressing problems. He added, it was once thought that independent action by the auto makers was the best solution to these problems, now it is clear these problems are beyond the ability of any individual company to solve. Under the new agreement the automakers could enter into cross-licensing and patent pooling agreements, as well as joint research, although these agreements must be filed with the Justice Department. The decree automatically expires in five years. "Court Approves Consent Decree Changes Permitting Joint Ventures By Automakers," BNA, Environmental Reporter-Current Developments vol. 13, p.1168.

59. While the hypothesis of this dissertation focuses on the structural relations between business and government, there has unquestionably been a series of personal relations and favors between industry and

government officials that also affected the policy process. In the early months of the Reagan administration a controversy arose concerning the smog decree and a conflict of interest between G. Boyden Gray, counsel to Vice President Bush's task force on regulatory rollbacks. Gray had worked for the Washington law firm of Wilmer, Cutler and Pickering, representing the industry. (Lloyd Cutler has represented the industry since its battle over the 1966 traffic safety act. He was also President Carter's counsel.) Gray worked closely with James Miller 3rd the executive director of the task force on regulatory reform in reviewing the regulatory proposals of the auto task force, although the proposals did not include antitrust matters.

Nevertheless, the language of the Transportation Department's recommendation to end the decree was nearly identical to the recommendation of the MVMA. Gray insisted he had nothing to do with the decision and the Transportation Department claimed they were working on the recommendation before Reagan took office. A debate over the possible conflict of interest appears in U.S., Congress, House, Committee on Government Operations The Administration's Proposals to Help the US Auto Industry. Hearings before the subcommittee on Government Activities and Transportation, 97th Cong., 1st sess., May 13, 14, 1981.

An example of industry favors to the Office of the President, unrelated to the smog decree case, came to light during the Carter Administration. The past practice of accepting free gasoline and free use of cars for Presidential inaugurations was discontinued. Although Carter's aids began discussions with car executives for the free loan of 450 cars, in light of the post-Watergate climate they were discontinued due to the appearance of accepting favors. Oil companies were asked to donate 40-45,000 gallons of gas. "This is in keeping with past practices, especially the 1973 inauguration of Richard Nixon, when the oil companies, auto concerns and other major companies helped finance those activities." Albert Hunt, "Inaugural Committee For Carter Decides Not to Take Freebies," Wall Street Journal November 11, 1976, p.27.

Carol Greenwald, Group Power: Lobbying and Public Power (NY: Praeger, 1977), reports that GM leased Cadillacs to Pentagon brass for \$100 per year. It would have cost the average citizen thousands to do so. Relations with Congress were similar. Until 1970 Ford leased insured Lincoln Continental Sedans to key committee chairman and ranking minority members for \$750 per year, compared to the \$4000 it charged private citizens. (p.82).

60. Bernard Asbell, "The Outlawing of Next Year's Cars," New York Times Sunday Magazine, November 21, 1976, p.128.

61. The act's provisions covering stationary pollution sources remained in the hands of regulators.

62. Norman Ornstein and Shirley Elder, Interest Groups, Lobbying and Policymaking (Washington: Congressional Quarterly Press, 1978), p.160.

63. "Auto Union Urges Ban on Gas Engine," New York Times July 12, 1970, p.28; John Kifner, "Earth Day Group Zeros in on Autos," New York Times July, 20, 1970, p.52.

64. H.Jacoby, et.al., Clearing the Air (Cambridge: Ballinger Publishing Co.,1973), p.11, cited in Krier and Ursin, p.203.

65. The 90 percent figure was based on a report prepared by the predecessor of the EPA (the National Air Pollution Control Administration), concluding that providing for air quality with a reasonable margin of safety required such reductions (Krier and Ursin, p.206). In terms of grams per mile these reductions meant a decline of 4.1 to 0.41 for HC, 34 to 3.4 for CO and 3.1 to 0.04.

66. Krier and Ursin, p.206.

67. Quoted in Lachman, p.153.

68. Asbell, p.128.

69. Crandall, et.al., p.87.

70. Cited in Lachman, p.134, from Congressional Quarterly Weekly Report February 24, 1973, p.380.

71. Lachman, p.140.

72. Congressional Quarterly Weekly Report February 17, 1973, p. 337; Congressional Quarterly Weekly Report February 24, 1973, p.380, cited in Lachman, p.142.

73. U.S.News and World Report May 22, 1972, p.61, cited in Lachman pp.153-154.

74. Congressional Quarterly Weekly Report April 14, 1973, p.818.

75. P.L. 91-190.

76. See Robert Engler, The Brotherhood of Oil (Chicago: University of Chicago Press, 1977) for a discussion of the 1973 oil shock.

77. 1974 Congressional Quarterly Almanac (Washington: Congressional Quarterly Press, 1975), p.723.

78. Ornstein and Elder, p.163.

79. John Emshwiller and Albert Karr, "Breaking the Rules: Auto Men Use Slump In Seeking Slowdown on Safety, Pollution," Wall Street Journal January 9, 1975, p.1.

80. The industry's concern that regulatory standards will harm sales is not an argument that began in the 1970s. The auto makers have made this complaint since the very beginning of federal regulations. In fact, the day the NT & MVSA passed the Wall Street Journal ran a front page story entitled, "Manufacturers Worry Federal Car Standards May Disrupt Production", by Lawrence O'Donnell, September 9, 1966. The difference in later years is that these threats carry more weight due to the increasingly volatile nature of auto sales, and general economic growth.

81. Bernard Asbell, p.128.

82. The following summary of the 1976 and 1977 Clean Air Acts is largely based on Lachman, pp.154-157.

83. Lachman, pp.154-155. He adds that the lead time for designing the 1978 model cars had already passed before the consideration of the 1976 compromise bill. It was obvious the industry would be unable to meet the 1978 standards.

84. Quoted in Asbell, p.126.

85. Asbell, p.126.

86. The coalitions generated by the 1977 amendments involved a large number of environmental, labor and business groups, with literally dozens of organizations involved in lobbying. For an outline of these coalitions see Ornstein and Elder, pp. 159-160.

87. Cited in Vogel, 1984, p.345.

88. Cited in Vogel, 1984, p.344.

89. Douglas Ginsberg, "Making Automobile Regulation Work: Policy Options and A Proposal," in Douglas Ginsberg and William Abernathy, eds., Government, Technology and the Future of the Automobile (NY: McGraw Hill, 1980), p.17.

90. Lawrence White, "The Auto Pollution Muddle," The Public Interest Summer 1973, #32, p.103, cited in Vogel, 1984, p.350.

91. One of the complicating factors in the control of emissions is the durability and efficiency of the control equipment over the life of a car. Without periodic equipment inspection, cars that pollute are allowed to remain on the road, including cars that might have once met emissions standards. Moreover the EPA now admits that pollution control equipment deteriorates faster than it had anticipated. The Clean Air Act of 1977 requires states to implement mandatory inspection and maintenance programs in areas that do not meet air quality standards. These programs have encountered a series of problems. Nevertheless, only about one-third of the nation's fleet of cars and light trucks are subject to inspection. Crandall, p.103. See Crandall p. 104, Table 5-6, for a list of inspection and maintenance programs.

92. Crandall, pp.92-3, from estimates by the EPA, Office of Air Noise and Radiation, National Air Pollutant Emissions Estimates, 1940-1983, EPA 450/4-84-028 (Research Triangle Park, N.C.: EPA, 1984), tables 14,15,16.

93. Crandall, p.92.

94. The scope and implications of EPCA were so extensive that the Congressional Information Service, (CIS), index that lists hearings and reports held in Congress limited its list for the EPCA to the two main Committees responsible for the legislation, adding that "virtually every congressional committee can be said to have issued relevant publications during 1974 and 1975." Congressional Information Service Index January-December 1975, p.1024.

95. The five bills that became EPCA were :

- S. 662 The Standby Energy Authorities Act, approved by the Senate April 10, 1975;
- S. 1883 The Automotive Fuel Economy Act of 1975, approved by the Senate July 15, 1975;
- S. 349 The Energy Labeling and Disclosure Act, approved by the Senate July 11, 1975;

-S. 677 The Strategic Energy Reserve Act, approved by the Senate July 8, 1975;

-HR 7014 Energy Conservation and Oil Policy Act of 1975, approved by the House September 23, 1975.

96. U.S., Congress, House, Energy Policy and Conservation Act of 1975. Conference report. House Report No. 94-700, 94th Cong., 1st sess., pp. 116-7.

97. In January 1975 President Ford announced in his State of the Union address that the car makers agreed to voluntarily meet a gas-consumption target of 18.7 mpg by 1980 in exchange for a five-year postponement in emissions standards.

98. P.L. 95-619. The gas guzzler tax went into effect in 1980. For the 1986 model year the tax rates are as follows:

Mileage (mpg)	Tax (dollars)
22.5 or more	0
21.5-22.5	500
20.5-21.5	650
19.5-20.5	850
18.5-19.5	1,050
17.5-18.5	1,300
16.5-17.5	1,500
15.5-16.5	1,850
14.5-15.5	2,250
13.5-14.5	2,700
12.5-13.5	3,200
less than 12.5	3,850

Source: Crandall, p.138 from 26 U.S.C. 4064.

By fiscal 1983 the tax yielded \$4 million.(Crandall, p. 138).

99. P.L.96-425.

100. The Energy Reorganization Act of 1975, P.L. 93-438, provided for research and development of advanced propulsion systems; The Electric and Hybrid Vehicle Research, Development, and Demonstration Act of 1976, P.L. 94-413, provided for research into electric vehicle technology.

101. Robert Leone and Stephen Bradley, "Federal Energy Policy and Competitive Strategy in the US Automobile Industry," Annual Energy Review 1982, vol.7, p. 65.

102. NHTSA, "Automotive Fuel Economy Program", 3rd Annual Report to Congress, 44 FR 5749, January 29, 1979.

103. Richard John et. al., "Mandated Fuel Economy Standards as a Strategy For Improving Motor Vehicle Fuel Economy," in Douglas Ginsburg and William Abernathy, eds., Government, Technology and The Future of the Automobile (NY: McGraw Hill, 1980), p.120.

104. In part, this is the basis for the Reagan Administration's hostility to the CAFE program. See chapter 6.

105. The other unexamined assumption inherent in the concept of consumer sovereignty concerns the creation of wants and needs. For an insightful examination of this issue see William Leiss, The Limits of Satisfaction: An Essay on the Problem of Needs and Commodities (Toronto: University of Toronto Press, 1976).

106. Robert Stobaugh and Daniel Yergin, eds., Energy Future: Report of the Energy Project of the Harvard Business School (NY: Random House, 1979), pp. 146-7, partially cited in U.S., Congress, House Committee on Government Operations, Automotive Fuel Economy: EPA's Performance. Report by the subcommittee on Environment, Energy and Natural Resources, 96th Cong., 2d sess., May 13, 1980, House Report No. 96-948, p.4. Hereafter referred to as House Fuel Economy Report.

107. Final Report of the Committee on Nuclear and Alternative Systems, National Research Council, National Academy of Sciences, Energy in Transition 1985 2010 (Washington, D.C., 1979), p.85, cited in House Fuel Economy Report.

108. Crandall, p.124.

109. Crandall, p.124.

110. Crandall, p.122. Given these long lead times, it is likely that the CAFE program actually prevented the industry from suffering more severe losses in 1979 and 1980, after the sudden rise in oil prices.

111. House Fuel Economy Report, p.2. At the time there were no "credit" provisions in the law and hence no "incentive" to exceed CAFE.

112. The fuel economy ratings were not accurate for comparison purposes either. "According to EPA, various model cars with identical EPA fuel economy values,

commonly obtain widely disparate fuel economy values in actual use." (House Fuel Economy Report, p.18.)

113. House Fuel Economy Report, pp. 15-16.

114. House Fuel Economy Report, p.6.

115. House Fuel Economy Report, pp.7-8. The report cites "1979 Market Data Book," Automotive News April 25, 1979, p.100; Automotive News December 25, 1978, p.3.

116. The Automotive Fuel Efficiency Act of 1980 gave the industry the right to take advantage of exceeding the standards in any given year by giving them "credits" which it could apply forward or backward for years when the standards were not met.

117. Cited in House Fuel Economy Report, p.9.

118. Cited in House Fuel Economy Report, p.10.

119. House Fuel Economy Report, p.30.

120. House Fuel Economy Report, p.30.

121. House Fuel Economy Report, p. 24.

122. The so-called defect device scandal led to a \$7 million fine of Ford. See "Ford is Assessed Total of \$7 Million in Clean Air Case," Wall Street Journal February 14, 1973, p.4.

123. Stork's letter was dated January 31, 1978 and was reprinted in House Fuel Economy Report, pp. 24-5.

124. Michael Unseen, The Inner Circle (NY: Oxford University Press, 1984) documents the falling rate of profits. The following chart is from p.153.

Period Average			
	Pre tax		After Tax
1948-9	12.5%	1947-9	8.1%
1950-4	11.8%	1950-4	6.1%
1955-9	10.8%	1955-9	6.1%
1960-4	11.2%	1960-4	7.5%
1965-9	12.2%	1965-9	9.0%
1970-4	8.1%	1970-4	6.0%
1975-6	7.4%	1975-8	5.9%

See Thomas Edsall The New Politics of Inequality (NY: Norton, 1984), particularly chapter 3, "The Politicization of the Business Community;" see also

Thomas Ferguson and Joel Rogers, Right Turn: The Decline of the Democrats and the Future of American Politics (NY: Hill and Wang, 1986).

CHAPTER 5

THE RESURGENCE OF CORPORATE POWER

The oil shock of 1979 dramatically transformed the American car market. For the second time in six years gas prices jumped and supplies were scarce. Demand for small cars and foreign imports changed the comfortable practices of Detroit, based on the production of large cars for large profits. The industry's problems increased between 1980-1982 when the nation sunk into recession, the most severe downturn since the 1930s. Its losses were unparalleled. Chrysler teetered on the verge of bankruptcy, saved only by a government bailout.

This chapter analyzes the shift in automotive policy during the Carter Administration. Beginning with the Chrysler bailout, Carter was forced to respond to the industry's economic crisis. When losses spread to all the automakers, Carter extended policy initiatives to help the entire industry. The chapter also examines the "Poletown Case." Although Poletown involved a local government decision to use eminent domain to take over 1000 homes so GM could build a factory, its timing in 1980, and the issues raised in the case, warrant attention. To analyze government policy toward the industry without including Poletown would ignore one of

the most dramatic contests of corporate power seen in years.

The substantial changes in the car market in the late 1970s were emphasized in January 1981 by Transportation Secretary Neil Goldschmidt. In a report to President Carter, Goldschmidt wrote:

In 1977 it might have seemed totally unrealistic to project that Chrysler would have shrunk to less than half its world size in two years; that the federal government would be guaranteeing almost \$2 billion in various forms of credit to auto companies and dealers; that a nationalized French company would own almost half of American Motors; that Japanese auto production would exceed that of the U.S.; and that Ford and GM would experience record losses and would have drained more than \$7 billion of liquid reserves from their international systems within eighteen months.¹

Stressing the need for a "new" socio-economic compact between industry, labor, and government, the report argued that "cooperation" had to replace the adversarial relations of the past. The financial problems of the industry extended well beyond the corporate board room or the homes of laid off auto workers. It threatened economic stability across the nation. Government action quickly followed.

Goldschmidt's report included a series of proposals to help the ailing industry. However, this was not the first Carter Administration program to help the industry. In July 1980 the Carter Administration had announced an earlier plan for the industry. Goldschmidt

hailed the effort, claiming a new era of goodwill toward the industry had begun and would last for twenty years.² This "new era" was the result of a shift in automotive policy.

Acknowledging this shift in policy during the Carter Administration, a 1985 New York Times article noted that the commonly held belief that policy changes toward the industry began with the Reagan Administration was untrue. It began with the industry's economic problems during the Carter Administration.

By most accounts, the Government began easing up on Detroit in the late 1970s--well before Ronald Reagan moved into the Oval Office and advocates of deregulation were appointed to top policy making jobs--when the finances of the big American car makers were nosediving.³

Given the industry's importance to the economy, its problems made government officials increasingly vulnerable to corporate requests for policy changes. Because the industry's problems came during his final year in office, it is difficult to say with certainty what would have been the precise course of automotive policy if Carter was reelected. However, taken together, the initial plan to aid the industry announced in July 1980, the Chrysler bailout, and the final outline of proposals presented in January 1981, point to a fundamental transformation in the direction of automotive public policy.

Chrysler Bailout

The most important automotive policy during the Carter years was the \$1.5 billion federal loan guarantee that saved Chrysler from bankruptcy.⁴ Throughout the 1970s Chrysler's finances fluctuated. Although it lost money in 1974 and 1975, it recorded profits in 1976 and 1977. However, its slide toward bankruptcy accelerated in the late 1970s. Beginning in 1978, and continuing through 1981, its losses were significant. The losses for these years were, respectively: \$200 million, \$1 billion, \$1.7 billion, \$500 million. By 1982, it broke even, and in 1983 made profits, enabling it to pay off its federal loans. In 1984, Chrysler earned record profits of \$2.4 billion. The magnitude of this turnaround was remarkable. Earnings for the first six months of 1984 alone, \$1.5 billion, were more than earnings for the previous ten years combined.⁵

While it was the nation's tenth largest industrial firm in 1979, Chrysler was the smallest and most vulnerable of the Big Three. Typically, its profits were the smallest as well. Financial problems were not new to Chrysler, nor was the bailout the first time it sought federal help. In 1975, the Senate passed a revision in the tax code allowing Chrysler to claim a refund on taxes it paid during profitable years, extending the normal three year carry-back rule to eight

years. However, the provision was deleted in the conference committee. The following year the corporation was profitable, alleviating fears of financial ruin. In hindsight, however, these profits did not signal a meaningful change in Chrysler's financial condition.

Chrysler's problems and the bailout were front page news. One of America's largest and best known corporations with over 130,000 employees in 1978 was on the verge of bankruptcy. It was forced to go to the government for a bailout because the banking community would not lend it more money. They had already lent the maximum regulations or bank policy allowed.⁶ The logic of the "market" would have dictated Chrysler's demise. Many in the business community argued that Chrysler's problems were its own fault, and faulty management should pay the price. However, the logic of the market was inserted into a political process that transformed market discipline into political leverage. The facts were simple. The economic consequences of allowing Chrysler to fail outweighed the rhetoric of "free enterprise" used in much of the debate over the bailout.⁷

Interpretations vary as to the significance of the bailout. According to Robert Reich and John Donahue they include: "a loathsome instance of government meddling;

an inspiring model of cooperation among business, labor and government [and]; an overblown but routine specimen of the nation's incoherent industrial development policy."⁸ Senator William Proxmire (D-Wisconsin), an opponent of the bailout contended:

If we provide loan guarantees to Chrysler, we will be saying, in effect, to every business in the country that it doesn't matter if you make bad management decisions, it doesn't matter if you no longer make products that enough people want to buy, it doesn't matter even if the federal government has no direct stake in your continued existence. None of this matters so long as you are big enough and can muster enough interests groups to fight your cause in Washington.⁹

Proxmire's analysis points to the advantage of concentrated economic power. Size has its own rewards. Large corporations have enough groups tied to their future to muster lobbying efforts almost impossible to match. When economic consequences like a Chrysler default are added, a political force that overwhelms the political process is created. Stated directly, the consequences of default are so large that bankruptcy is not an option that can be tolerated. In contrast, when thousands of small businesses continually go under every year little is done. But when one of the nation's largest corporations is threatened, relief is forthcoming. In recent years there has been other similiar examples beginning with Lockheed and Penn Central, and in 1984, Continental Illionis, the nation's

eleventh largest bank. This time a threatened collapse cost the federal government \$4.5 billion, dwarfing the \$1.5 billion Chrysler loan. Unlike Chrysler, there were no Congressional hearings. Fears of a banking crisis seemed to be enough to silence all questions.

The economic fallout of a Chrysler bankruptcy threatened the entire nation. Several studies tried to estimate the economic consequences of a Chrysler failure. Since no corporation Chrysler's size has ever gone bankrupt, estimates of the final economic outcome are speculative. What would happen to the stock market, for instance? How many supplier firms would go under? The Congressional Budget Office commissioned Data Resources, Inc. (DRI) to estimate the economic costs of a failure. Using the DRI model it was estimated,

Over the three year period from 1979 through 1981, personal income tax revenue would fall by \$6 billion, corporate taxes by \$4.4 billion, Social Security contributions by \$3.4 billion. Government spending for welfare and other programs would rise by \$1.4 billion. City governments would lose \$75 million in Chrysler property taxes. The federal government would be liable for \$800 million in Chrysler pensions it guaranteed. In total [the net loss would be] \$16.5 billion over three years....¹⁰

A study by the Department of Transportation estimated that a Chrysler bankruptcy would cause a decline of about 0.5 percent in the GNP, a rise in the national unemployment rate of between 0.5 and 1.09 percent, and a

negative impact of \$1.5 billion on the balance of trade.¹¹

The macroeconomic consequences of a Chrysler failure exposed the dependence of government on the vitality of large corporations. What Chrysler could not get in 1975 when its losses were small, became a necessity in 1979 when bankruptcy seemed imminent. In December 1979 while Congress debated the bailout, Lee Iacocca framed the choice facing policymakers.

If government wants to do something about unemployment, if it wants to keep the nation's urban areas and cities alive, if it wants to prevent increased welfare dependency and government spending, if it wants to offset an \$8 billion imbalance in automotive trade with Japan, let it approve Chrysler's [request].¹²

Nevertheless, Chrysler had to organize a concerted lobbying effort to assert the necessity of its claim. Many of the leading voices in the business community opposed the bailout, including the Business Roundtable, National Association of Manufacturers (NAM), Citibank, Bank of America, and the Wall Street Journal. Supporters of Chrysler included the U.S. Conference of Mayors, American Motors, Manufacturers Hanover, the National Bank of Detroit, the UAW, AFL-CIO, NAACP, and the Urban League.

Thomas Murphy, Chairman of GM, initially opposed the bailout but eventually lent his support. At first he argued a bailout was counter to the philosophy of free

enterprise and would compromise the discipline of the market.¹³ The following month, however, GM abstained from the discussion and vote by the NAM which opposed the bailout.¹⁴ A few weeks later Murphy announced that if the bailout was the only way to save the corporation he would favor it.¹⁵ The reasons for this shift are unclear. Perhaps GM was worried that without Chrysler an antitrust suit breaking up the corporation, something talked about for years, would be initiated. One of the longstanding claims is that GM "tolerated" the other companies in the industry to protect itself against antitrust action. Moritz and Seaman note that, in part, Ralph Nader's opposition to the bailout was based on the hope that, without Chrysler, GM would finally become "fodder for the trustbusters."¹⁶

The groups that directly lobbied for Chrysler are testimony to the scope of the interests dependent on the company. In addition to its 130,000 employees, Chrysler harnessed its 4,500 dealers and 19,000 suppliers, spread out through virtually every congressional district in the nation. "Lists of every Chrysler plant, dealership, or supplier were fed into computers and recombined by Congressional district. The district printouts let the Chrysler lobby sketch detailed scenarios on the town-by-town impact of a Chrysler failure."¹⁷ The plight of Chrysler's local dealers and suppliers elicited sympathy

in a way that the misfortune of a billion dollar corporation could not, not to mention the fact that its dealers were polished salesmen.¹⁸

The corporation established a team of experts to "sell the company on a one-to one basis" to every legislator, in a classic example of interest group lobbying. By the fall of 1979 the law firm of Pattan, Boggs & Blow had a dozen lawyers on the task. Since Tommy Boggs connections were with Democrats, Chrysler also hired the firm headed by William Timmons, a former aide to Presidents Nixon and Ford to lobby Republican legislators. In addition, it hired two former Michigan Congressmen, Gary Brown and James O'Hara, as well as, former Maine Senator William Hathaway. Those opposed to the bailout never mounted a systematic campaign; their stake in the outcome was just not large enough.

The route to the bailout was complicated. It began in late 1978 as an attempt to obtain a loan for \$250 million from the Indiana office of the Farmers Home Administration, a branch of the Department of Agriculture, that helps pay for rural development projects. The money was for a transaxle plant in Richmond, Indiana. However, there was a ceiling of \$50 million for any single enterprise.¹⁹ Changing the tax code became Chrysler's next move.

Because Chrysler was losing money, it was not paying any taxes. In spite of these losses Chrysler was modernizing its plants and equipment to cut costs and produce a more competitive car. The investment tax credits that accumulated were "going to waste." Although the credits could be saved for the future, it was the future that was in doubt. Thus, Chrysler proposed a clever idea of having the federal government give it a \$1 billion advance against future tax benefits. After the company began to earn profits, it would refund to the government the tentative adjustment. As Reich and Donahue comment, the plan was carefully drafted to look as little as possible like a handout.²⁰ Chrysler also wanted a two year reprieve from environmental regulations.

There were several problems with the Chrysler solution. To begin with, changes in the tax code made for one company can be used by others, and there is no way to predict how many. Also there were no mechanism to evaluate the program. Loan guarantees, on the other hand, are specific, and can be supervised. New York City's experience with federal loans was seen as a successful precedent. But Chrysler wanted to avoid the government telling it what to do, and did not want to acquire more debt. Meanwhile, President Carter reshuffled his cabinet in July 1979 and G. William

Miller, formerly Chairman of the Federal Reserve, became Secretary of the Treasury. He objected to the tax idea, basically precluding it as an option. However, he did support loan guarantees. Carter agreed with him.

At this point the debate was narrowed to bankruptcy or bailout. Despite attempts to raise other options, none succeeded in gaining serious attention. Douglas Fraser, President of the UAW, for example, suggested partial state ownership of Chrysler, so that the public would share in any future profits. Rep. Henry Reuss, (D-Wisconsin) Chairman of the House Banking Committee, wanted to require Chrysler to build energy efficient cars and mass transit equipment, and guarantee employment. Another rejected option was reorganization through Chapter 11 of the bankruptcy laws. Chrysler feared it would look like bankruptcy and scare customers away. In the end, no major participant had a clear stake in exploring alternatives, and none were realistically considered.

The loan guarantee bill passed December 1979 and was signed into law January 1980. It was the complicated result of an ad hoc process characterized by amendments and compromises. Sen. William Armstrong (R-Colorado) said it was a lesson on how not to legislate. It was not a simple financial rescue. According to Reich and Donahue, "it called for a new deal among the

various constituencies that made up the Chrysler Corporations."²¹ The bill specified eight sources of funds, totally \$2 billion, as a prerequisite for the federal loan.²² If any group refused the deal collapsed, putting pressure on large and small creditors alike.²³

(1) The company's union workers had to give \$462.5 million in concessions;

(2) Its nonunion workers had to give up \$125 million;

(3) Chrysler's U.S. based banks and other creditors had to contribute \$500 million, 80 percent in loans and 20 percent in concessions to outstanding debt;

(4) Foreign creditors had to contribute \$150 million in new loans;

(5) Chrysler had to sell off \$300 million in assets;

(6) State and local governments had to contribute \$250 million in loans;

(7) Suppliers and dealers had to contribute \$180 million;

(8) Chrysler had to sell \$50 million in new stock.²⁴

In percentage terms, lenders contributed 32 percent, employees 29 percent, sale of assets 15 percent, other governments 12 percent, suppliers and dealers 9 percent, and sale of new stock 3 percent.²⁵

A loan guarantee board headed by the Secretary of the Treasury was established. Its members included the Chairman of the Federal Reserve Board and the Comptroller General, with the Secretaries of Labor and Transportation as non-voting members, an indication of the fiscal orientation of the bailout. The board had the power to remove management and modify the amounts required by Chrysler's constituents if the corporation

failed to meet its obligations. The act forbid stock dividends on existing common or preferred stock as long as the loans were outstanding.

By the summer of 1980 Chrysler laid off 40 percent of its workforce. Marc Stepp, head of the UAW's Chrysler division, complained about Chrysler's severe layoffs arguing that he felt the loan board was putting pressure on the corporation to strip down its operations, although he had no proof. Treasury Secretary Miller disagreed, stating his sole object was to ensure that Chrysler had a sound plan for recovery. Reich and Donahue comment:

Yet the matter was more complicated than this. The government's central concern, stipulated in the legislation and embodied in countless rules issued by the loan board, was to keep Chrysler in business. If this required shrinking the firm down to a viable core, the public officials administering the program took it as their duty to accept such shrinkage, indeed to insist upon it. The irony of canceling jobs in order to preserve the firm in order to carry out the act Congress had passed in order to save jobs did not impress the bureaucrats caught up in the tension and the excitement of the rescue.²⁶

Reich and Donahue never explain why this is "ironic." Perhaps these layoffs reveal the inherent bias of a bailout that did not require preserving jobs or producing particular products. Even though many different constituencies were required to make concessions as a prerequisite to the federal loans, Reich and Donahue conclude that the biggest losers were

the workers, while Chrysler's stockholders, managers, lawyers, and lenders benefited most. This is the legacy of the bailout. Since the business of business is to make money, and providing jobs is an incidental by-product, there is little irony in the fact that the so-called "New Chrysler Corporation" employed 42,000 fewer workers by the summer of 1983, when it had repaid its loans.²⁷

Carter and the Shift in Automotive Policy

The crisis in the auto industry spread throughout 1979 and 1980, effecting all the automakers, and as a result, the entire nation as well. Reluctantly, President Carter was drawn into the orbit of auto politics. Besides the fact that the nation's largest industry was in dire straits, it was an election year.

At the end of 1979 the industry's problems became apparent to auto executives. Individually, Ford and GM approached the Carter administration with extensive regulatory "wish lists," requesting substantial changes and rollbacks. At this point Carter rejected these efforts.²⁸ However, by the spring of 1980, with imports surging, profits falling and unemployment increasing, the magnitude of the industry's problem was undeniable. When the April unemployment figures were announced on May 2, both the Congress and the President took notice:

with national unemployment rising to 7 percent, auto unemployment was 21.9 percent, the highest for any single group in the nation.²⁹ The Congressional Budget Office estimated that 700,000 people were out of work due to the industry's downturn, costing government \$350 million per week in lost revenue and additional outlays.³⁰ Responding to the industry's requests could no longer be avoided.

Led by Senators Howard Metzenbaum (D-Ohio) and Donald Riegle (D-Michigan), twenty senators whose states were directly affected by the auto industry met in the Capital on May 6 with leading officials of the industry, including UAW President Douglas Fraser, GM President Thomas Murphy, Ford Chairman Philip Caldwell, Chrysler President J. Paul Bergmoser and AMC Chairman Gerald Meyers. Senator Metzenbaum expressed the mood of the initial meeting. "There is a general feeling that if the auto industry goes down, it will take the rest of the economy with it."³¹ Specific pieces of legislation were not discussed but a number of general options were considered including delays in emissions and fuel economy standards, tax credits for those who buy small U.S. built cars and loans for car dealers, accelerated depreciation schedules, domestic content legislation, and restrictions on Japanese imports.³² Carter was scheduled to meet with industry officials on May 14.

The Carter Administration opposed import quotas on Japanese cars but considered easing CAFE standards and providing tax incentives to the industry. When Carter met with industry officials he asked for "shopping lists" for federal assistance.³³ He promised the industry a response in six weeks, establishing a task force headed by Transportation Secretary Goldschmidt. It consulted with a wide variety of government agencies whose policies affected the industry: the Council of Economic Advisors, Treasury Department officials concerning tax and depreciation policies, regulators at EPA, OSHA, and the Department of Transportation, trade spokesmen from the Office of the U.S. Trade Representative, officials from the Small Business Administration (SBA), Labor Department experts on regional and community dislocation, Justice Department antitrust advisors, and OMB and Domestic Council officials.³⁴

Meanwhile, Congress also moved to redirect automotive policy. On June 24 it overwhelmingly passed a resolution asking for a review of the fiscal, regulatory and import policies affecting the failing auto industry, in order to devise new policies to help the automakers.³⁵ The resolution acknowledges the industry's importance to the nation and why "new

policies" were necessary. In part, action was required because

the massive unemployment resulting from the decline in United States auto production has imposed major costs on Federal, State and local governments across the country in the form of trade adjustment assistance, unemployment benefits, social services, and large losses in tax revenues; and

...the present difficulty in the American automobile...industry results from more than a downturn in the business cycle, is not self-correcting and threatens to inflict lasting structural deterioration and dislocation on the industrial base of the United States...³⁶

Two weeks later, July 8, 1980 Carter announced his plan in Detroit. Republican party officials complained that he was "grandstanding," attempting to upstage the Republican party convention beginning the following week in the city. Although there were complaints that the plan would not significantly help the beleaguered automakers, the industry generally praised Carter for opening a new era of cooperation.³⁷

Announced as a billion dollar rescue, the program included relaxation of federal auto emissions standards, tax relief, financial aid for affected communities, and creation of permanent Auto Industry Committee with members of the industry, (manufacturers, suppliers and dealers), labor, and government to deal with the industry's problems on a continuing basis. Carter avoided taking any overt action to restrain imports,

deciding instead to request the ITC expedite the UAW-Ford petition concerning Japanese imports.³⁸

Implementing the Carter plan required actions by the EPA, NHTSA, OSHA, SBA, as well as changes in the tax code.³⁹ The EPA made three commitments involving emissions standards, with the major saving (\$500 million) coming from a "creative interpretation" of the Clean Air Act directing all 1984 and later car models meet low altitude emission standards at high altitudes. Cars would have to meet the same emissions standards at 1,000 feet as 5,280 feet. Normally cars emit nearly double the HC and CO at higher altitudes. According to the EPA the intent of Congress was unclear. Should cars meet low altitude emissions standards at all altitudes where they are sold, or did it intend only major high altitude population centers be covered? The EPA opted for the latter interpretation. Cars would be required to meet standards at 6,000 feet, not 10,000 feet where only 1 or 2 dealerships exist.⁴⁰ The EPA also promised to implement a voluntary pilot program reducing the cost of verifying the durability of vehicle emissions control devices, and to expedite consideration of requests to change the CO emissions standard.⁴¹

OSHA announced it would permit GM and the UAW to develop a less costly way of complying with newly promulgated lead and arsenic exposure standards, and

would consider similar proposals from Ford and Chrysler. The NHTSA's principal commitment was to refrain from issuing any new major safety standards during the remainder of 1980. It also promised to "review again" fuel economy standards for light trucks for 1983-5, and to "thoroughly consider" post-1985 passenger car standards.⁴² The SBA loaned \$400 million to hard hit dealers. The Economic Development Administration set aside \$50 million for aid to communities affected by auto unemployment. Trade Adjustment Assistance for unemployed auto workers was broadened to include workers in supplier industries.⁴³

The final element of the plan involved two changes in the tax code: shortening of the allowable depreciation schedules for auto industry equipment and machinery under the Asset Depreciation Range System, leading to a savings of approximately \$100 million per year, and allowing for the full depreciation of special hand tools in one year instead of the current two, for a one time gain of \$100 million.⁴⁴ Although the scope of the plan was wide ranging, the problems of the industry were much larger. Some estimated that the industry needed \$60 billion to modernize its plants.⁴⁵ Nevertheless, the direction of automotive policy had changed; now the operational word was "relief."

As part of the ongoing redirection of automotive policy, Carter established an advisory committee, chaired by Transportation Secretary Goldschmidt. After its first meeting in September 1980 Goldschmidt stated: "without regard to which administration sits in the White House after the election, this work must be done."⁴⁶ The committee brought together industry, labor and government. Esther Peterson, Carter's consumer affairs advisor, complained that there was no consumer voice on the committee. Over the objection of Goldschmidt Carter added her to the committee.⁴⁷

The Carter Administration's efforts on behalf of the industry did not end here. In January 1981, days before Carter left office, he received the Transportation Department's 1980 study on the industry, which included policy recommendations.⁴⁸ Due to its timing, the recommendations were general in nature. However, the report clearly outlined the new direction of automotive policy. The Reagan plan, announced in April 1981, closely resembled Transportation's outline.

Blame for the industry's problems was spread across the board. Nothing less than a redefinition of the relations among business, labor and government was seen as necessary to re-assert the industry's preeminence in international competition.⁴⁹ The report recommended eight major steps in its call for a new

social compact between business, labor and government.

The recommendations were:

- (1) import quotas on Japanese cars (VRA);
- (2) government help to the industry to obtain capital by altering depreciation schedules and revising the tax code, perhaps a re-industrial finance corporation;
- (3) labor givebacks to close wage gaps with competitors;
- (4) in return for givebacks, management should give labor profit sharing;
- (5) rather than extending the system of mandated fuel economy, a negotiated goal between business and government linking future fuel economy targets with anticipated fuel costs. There should be steady and predictable fuel price rises, and in general, coordinate energy policy with fuel economy policy;
- (6) a reformed regulatory approach, seeking more constructive and cooperative relations;
- (7) relaxed antitrust regulations;
- (8) increased support for worker retraining and community redevelopment.⁵⁰

At the same time as this report was sent to Carter, the NHTSA, headed by Joan Claybrook, invited public comment on improvements in fuel economy. Claybrook's appointment in 1977 had dismayed industrial officials since she was an associate of Ralph Nader. However, the NHTSA notice illustrates the narrowed options available to even one of the most dedicated advocates of the public interest.

In view of the pivotal position of the automobile industry in this nation's economy, the NHTSA believes that improving fuel economy should be pursued in a manner consistent with the preservation of a strong domestic automotive industry. A healthy automotive industry is important to the health of the national economy and the well-being of the many persons working directly or indirectly in the industry and of the communities in which those persons work. Further, certain levels

of sales are necessary for vehicle manufacturers to be able to generate capital for renewing plant and equipment and for making further improvements in vehicle quality and fuel efficiency.⁵¹

Poletown

While the industry's crisis threatened to have national repercussions, a decision directed at a few thousand people aligned the City of Detroit and GM against a neighborhood known as "Poletown." In 1980, GM gave Detroit the opportunity to develop a 465 acre site for a new plant that the corporation planned to build. GM wanted the land by May 1981. The new plant, scheduled to open May 1983, would build GM's large cars: Cadillacs and Oldsmobiles.⁵² The site requirements could only be met by annexing property adjoining a closed factory (the old Dodge Main plant). In the way was an integrated working class section of eastern Detroit.

The City was faced with an unpleasant choice between the homes of 3,000 people and 6,000 jobs. In the end, home ownership for the working class, in some respects the embodiment of the American dream, was sacrificed. Detroit had faced a long and painful decline during the 1970s, and here was a chance to arrest its declining economic base. The details of Detroit's condition are quite stark. Between 1970 and 1977 Detroit lost 47,000 jobs, more than 9 percent of

its workforce. Between 1970 and 1980 the city's population declined from 1,514,000 to 1,192,000, in the process changing from 44 percent Black to 63 percent. Property values declined 1.5 percent, while property values in the metropolitan area increased 116.5 percent.⁵³

Added to this bleak overall picture, GM announced that it was closing two aging plants in Detroit employing 15,000 workers. As a result, obtaining the Poletown plant would not create new jobs in Detroit; it would merely retain a portion of the jobs that would be lost. The deal involved more than just the site. GM received a twelve year, 50 percent property tax abatement.⁵⁴ A collection of federal, state and local sources totalling \$220 million was used to acquire the area, relocate the residents, demolish the structures, and build the necessary rail and road facilities for the plant. With the tax subsidy, the total package reached \$350 million. In return GM paid \$8 million.⁵⁵

Obtaining the land required the use of eminent domain. To prepare the site, 3,438 residents had to be removed, as well as 1,176 houses, 117 commercial and industrial buildings, 12 churches, a 278 bed hospital and 2 schools. One thousand people were employed in the area. GM "promised" the plant would employ 6,000 workers.⁵⁶

The plant itself only required 70 acres of the 465 acre site. The rest of the land went to a one level parking lot and landscaping. During the circuit court trial experts testified that instead of a large open ground parking lot next to the plant, rooftop parking or a parking structure would allow the plant to be built on a smaller lot--an area that would only sacrifice about 100 of the least desirable homes.⁵⁷ GM refused to modify its plans. The bitter conclusion is that the Poletown residents did not lose their homes in order to create jobs, but because GM refused to alter its plans for a parking lot.

Poletown residents struggled to keep their homes and neighborhood intact, challenging the taking in the courts and demonstrating to arouse public support. They picketed GM headquarters, as well as the home of its Chairman, Roger Smith. They filed a legal challenge to Detroit's use of eminent domain. Their quixotic battle continued even as the bulldozers reduced the area to rubble, testimony that the neighborhood was not a dying community being put out of its misery, as GM and the City claimed.⁵⁸

The heart of the legal challenge hinged on the meaning of "public use" in the eminent domain laws. The basic issue, according to the Michigan Supreme Court, was whether the proposed condemnation was for the

primary benefit of the public or the private user. The court ruled 5-2 that the primary benefit was for the public and could not be forbidden regardless of the "incidental" private gain.⁵⁹

In his dissent, Justice Fitzgerald, summarized the essence of the case.

This court today decides that the power of eminent domain permits the taking of private property with the object of transferring it to another private property for the purpose of constructing and operating a factory, on the ground that the employment and other economic benefits of this privately operated industrial facility are such to satisfy the "public use" requirement for the exercise of eminent domain power.⁶⁰

Accordingly, the case turned on whether the economic benefits of employment were "incidental." Unlike slum clearance cases, Fitzgerald argued, where slum clearance is seen as the primary benefit, and land resale to private owners incidental, the transfer to GM is not incidental. It is only through the transfer that the "public purpose" could be achieved. "Thus, it is the economic benefits of the project that are incidental to the private use of the property."⁶¹

Ominously, Fitzgerald added, the decision would place

virtually no limit to the use of condemnation to aid private businesses...[and thus] no homeowner's, merchant's or manufacturer's property, however productive or valuable to its owner, is immune from condemnation for the benefit of other private interest that will put it to a "higher use."⁶²

Justice Ryan, reportedly one of the most conservative justices on the Michigan court, concurred, writing a separate dissent. He spoke directly to the issue of GM's power, arguing the decision "seriously jeopardizes the security of all private property ownership."⁶³

Ryan described Detroit as having its back to the wall when the "proposal" was made by GM.⁶⁴ In reviewing the history of the case he said the "government, in all its branches, [was] caught up in the frenzy of a perceived economic crisis."⁶⁵ However, the genesis of the case did not lie with government. "Behind the frenzy of official activity was the unmistakable guiding and sustaining, indeed controlling, hand of the General Motors Corporation."⁶⁶

The evidence then is that what General Motors wanted General Motors got. The corporation conceived the project, determined the cost, allocated the financial burden, selected the site, established the mode of financing, imposed specific deadlines for clearance of the property and taking title, and even demanded 12 years of tax concessions.⁶⁷

Ryan argued there were no limits or principles to the majority's use of "public benefit."

He concluded his dissent with a stinging indictment of the power of large corporations and the use of eminent domain. His criticism is as basic a critique of corporate power as one is likely to find in a legal decision, raising questions about state sovereignty.

...when the private corporation to be aided by eminent domain is as large and influential as General Motors, the power of eminent domain, for all practical purposes, is in the hands of the private corporation. The municipality is merely the conduit.... Eminent domain is an attribute of sovereignty. When individual citizens are forced to suffer great social dislocation to permit corporations to construct plants where they deem it most profitable, one is left to wonder who the sovereign is.⁶⁸

Poletown reveals another instance of corporate power benefiting from economic decline, this time, however, in a local context. Detroit was left with few options as it confronted a declining economic base. As long as economic development is left in the hands of private corporations, communities will be forced to compete against each other to attract jobs. In the case of Poletown this required the destruction of a neighborhood. Is it even possible to imagine similar destruction if there was a booming economy and a labor shortage? The context of economic decline and government dependence structure the universe in which decisions like Poletown are made.

Conclusions

The redirection of automotive policy initiated during the Carter Administration continued with the Reagan Administration. If the industry's problems in 1980 elicited government's response, in 1981 as the financial position of the automakers worsened, more

substantial action would follow. Even before the November 1980 election the Reagan Administration's stance toward the industry was made explicit.

Just two weeks after the initial Carter plan was released in July 1980, and only days after Reagan secured the Republican presidential nomination, Reagan called for immediate legislation allowing for accelerated depreciation and a temporary moratorium on all future regulations. In addition, he called for a careful review of current regulations in order to eliminate or revise those deemed unnecessary. Holmes Tuttle, an Los Angeles Ford dealer and long time Reagan confidante said there were 40-50 auto related regulations which would be likely targets for repeal under a Republican administration.⁶⁹

Endnotes

1. U.S. Department of Transportation, The Auto Industry, 1980 (Washington: GPO, 1981), p.72.

2. Cited in Edward Lapham, et.al., "Carter offers his plan to rescue Detroit," Automotive News July 14, 1980, p.41.

3. Reginald Stuart, "Car Makers Are Getting Back in the Driver's Seat," New York Times July 21, 1985, section 4, p.2.

4. P.L. 96-185.

5. "Chrysler's Profit Sets A Record," New York Times July 20, 1984, p.D 1.

6. Robert Reich and John Donahue, New Deals: The Chrysler Bailout and the American System (NY: Times Books, 1985) p.111.

7. Few questioned the concept of a "market" in which a handful of corporations controlled production. True markets are those with an infinite number of buyers and sellers, where the actions of any particular participant has virtually no effect on supply or demand. Markets are predicated on competition and require vigorous state actions to enforce it, preventing collusive behavior. Adam Smith, the champion of free markets, was well aware of this. In no way can he be interpreted as being opposed to state actions. He realized the state must play a active role in establishing and maintaining competition.

8. Robert Reich and John Donahue, p.4. In general, this is the most detailed and thorough work on the bailout, examining the elaborate process of decisions that went into the legislative and administrative componets of the case. With its emphasis on detail, often down to individual conversations, there is very little in the way of interpretation. The authors vaguely conclude that the bailout was "probably not" the best response to the companies troubles (p.297). They do contend that Congress should have added one more condition to the bailout, that Chrysler maintain a certain percentage of employment (p.296).

9. Cited in Reich and Donahue, p.116.

10. Cited in Reich and Donahue, p.315.

11. Cited in Michael Moritz and Barrett Seaman, Going For Broke: Lee Iacocca's Battle to Save Chrysler (Garden City: Anchor Press, 1984), p. 246.

12. Cited in Walter Adams and James Brock, The Bigness Complex (NY: Pantheon Books, 1986), p.302, from the Wall Street Journal December 3, 1979.

13. See Reginald Stuart, "G.M. Chairman Opposes Special U.S. Aid Asked by Chrysler," New York Times August 3, 1979, p.1.

14. Judith Miller, "Chrysler Aid Is Opposed by N.A.M.," New York Times September 26, 1979, p. D 5.

15. "G.M. Chief Eases Chrysler Aid View," New York Times October 10, 1979, p. D 4.

16. Moritz and Seaman, p.253.

17. Reich and Donahue, p.147. One example cited by Reich and Donahue was the list of Chrysler suppliers produced for Rep. Elwood Hillis, Republican for the Fifth District of Indiana. It ran three and a quarter single-spaced pages and included the names of 436 companies in the district whose sales to Chrysler totaled \$29.52 million for the year.

18. Iacocca himself was an effective spokesmen for the company and directly lobbied members of Congress. In fact, Joseph Ventura, head of the Italian American Foundation, invited the members of the House Italian-American caucus to meet with Iacocca. In the end, regardless of party affiliation, the entire caucus of thirty-one voted for Chrysler. (Reich and Donahue, p.148).

19. Reich and Donahue, p.90.

20. Reich and Donahue, p.101.

21. Reich and Donahue, p.160.

22. The final concessions totalled \$2.6 billion, see Reich and Donahue, p.204.

23. The intricate bargaining that was required to obtain the cooperation of the various constituencies is examined in detail by Reich and Donahue, pp. 163-205.

24. Reich and Donahue, pp.161-2.

25. Reich and Donahue, p.163.

26. Reich and Donahue, pp.212-3.

27. One of the truly ironic twists concerning government policy toward Chrysler came during the Reagan Administration. Reagan tried to distance himself from the bailout throughout 1981, partly due to the company's tenuous future and also because of his free market rhetoric. David Stockman, the head of OMB, had opposed the bailout all along, even though he previously represented a Michigan congressional district. Reich and Donahue argue that two actions taken by the Reagan Administration funneled public subsidies to Chrysler that were probably larger, though less overt than the bailout.

The two programs were the VRA on Japanese cars and changes in the tax laws allowing losing firms including Chrysler, to take advantage of safe harbor leasing provisions. Between 1981 and 1983 the tax changes allowed Chrysler to obtain tax subsidies of \$68 million, subsidies that would never have to be paid back.

The change in the tax law works this way. Since a money losing firm could not take advantage of its investment tax credits the best it could do was to bank them for the future. With the future in doubt, this was of little help to failing firms. Reagan made it easier for companies to sell their tax benefits to profitable firms by enabling them to sell and promptly lease back plant and equipment to profitable companies who could use the credits. Previously, there had to be some economic justification for such a move. Chrysler was even able to get the IRS to rule that if a firm were to go bankrupt the benefits would not be lost as creditors seized the companies assets. (Reich and Donahue, pp. 242-3).

28. George Eads and Michael Fix, Relief or Reform: Reagan's Regulatory Dilemma (Washington: Urban Institute, 1984), p.130.

29. Dale Tate "Sagging U.S. Auto Industry Pleads for Federal Help," Congressional Quarterly Weekly Report May 10, 1980, p.1262.

At the time, 7 percent unemployment was considered a national problem, requiring action. One of the more fascinating changes that occurred during the Reagan years is the redefinition of the "natural" level of unemployment, and when government should take special steps in response to joblessness. In 1985, the Congress ended a benefit program for long term unemployed, signalling that 7 percent unemployment is no longer considered worthy of special attention. See Peter Kilborn, "New Ways of Assessing Jobless Rate," New York

Times, April 6, 1985, p.22.

30. U.S., Congress, House, Committee on the Budget, Mid Year Perspectives on the Economy. Hearings. 96th Cong., 2d sess., July 23-4, 1980, p.186.

By itself, these figures illustrate how large an impact the auto industry has over the entire economy. Coupled with the more general problem of deindustrialization, the decline of the auto industry was more of a problem. Bluestone and Harrison argue that in the 1970s 32-38 million jobs were lost due to private disinvestment in American business, Barry Bluestone and Bennett Harrison, The Deindustrialization of America (NY: Basic Books, 1982), p.9.

31. Tate, May 10, 1980, p.1262.

32. Tate, May 10, 1980, p.1262.

33. Helen Kahn, "Can U.S. help Industry? Quick fix seems unlikely," Automotive News July, 7, 1980, p.1.

34. Kahn, July 7, 1980, p.1.

35. Senate Concurring Resolution 101, June 24, 1980.

36. "American Automobile and Truck Industry-- Congressional Support," S. Con. Res. 101, June 24, 1980, 94 STAT. 3669.

37. Edward Lapham, et. al., "Carter offers his plan to rescue Detroit," Automotive News July 14, 1980, p. 1.

38. The ITC did expedite its proceedings and ruled on December 3, 1980 against the petition for trade protection. Despite this decision the Reagan administration negotiated a VRA with Japan.

39. Also in July, a report was prepared by the CBO at the request of the Speaker of the House examining possible changes in automotive policy, "Current Problems of the US Auto Industry and Policies to Address Them," a staff working paper prepared by Raymond Scheppach of the Natural Resources and Commerce Division of the CBO, presented in U.S., Congress, House, Committee on the Budget, Mid Year Perspectives on the Economy. Hearings. 96th Cong., 2d sess., July 23-4, 1980. The report examines a wide range of short and long terms policies to improve the economic situation of the industry.

40. Lapham, July 14, 1980, p.41.

41. Eads and Fix, p.130.
42. Eads and Fix, p.130.
43. Lapham, July 14, 1980, p.41.
44. Lapham, July 14, 1980, p.41.
45. Michael Wines, "Reagan Plan to Relieve Auto Industry of Regulatory Burden Gets Mixed Grades," National Journal July 23, 1983, p.1536.
46. Cited in Edward Lapham, "Carter auto committee begins work," Automotive News September 15, 1980, p.6. The committee was soon chartered as a federal advisory committee. See Helen Kahn, "President's Auto Committee chartered as advisory group," Automotive News October 6, 1980, p.2.
47. Lapham, September 15, 1980. The advisory committee members included Secretary of Transportation Neil Goldschmidt (chair), UAW President Douglas Fraser, United Rubber Workers President Peter Bommarito, Labor Secretary Ray Marshall, Commerce Secretary Philip Klutznick, Presidential Consumer Affairs Advisor Esther Peterson, Ford Chairman Philip Caldwell, Chrysler Chairman Lee Iacocca, GM Chairman Thomas Murphy, Volkswagen of America President James McLernon, American Motors Financial and Administration Group Vice President Wilson Sick, Jr., NADA President George Irvin and Borg-Warner Chair James Bere.
President Reagan abolished the committee upon taking office.
48. U.S. Department of Transportation, The Auto Industry 1980 (Washington, GPO, 1981). Hereafter referred to as DOT report.
49. DOT report, p.1.
50. DOT report, p.1.
51. NHTSA, "Passenger Automobile and Light Truck Average Fuel Economy Standards; Model Year 1985 and Beyond", Advanced Notice of Proposed Rulemaking, 46 FR 8056, (1981).
52. The plant did not open until late 1985, although the site was delivered according to schedule.

53. These figures are taken from Bryan Jones, et. al., The Sustaining Hand: Community Leadership and Corporate Power (Lawrence: University Press of Kansas, 1986), pp.23-24.

54. The use of tax abatements and economic subsidies as a strategy for local development is standard fare among the nation's state and local governments. The bidding for new plants is often intense. When GM announced it was creating a new division (Saturn), inviting bids from across the nation for a site for the new plant, 38 government bodies--counties, cities and states--came to GM. The press compared it to a new civil war. Even Automotive News questioned if the bidding had gone too far, see "Are they offering too much?," Automotive News June 3, 1985. See also, James Barron, "G.M. Getting Roses and Proposals From Suitors for Saturn Plant," New York Times February, 18, 1985, p. A 1.

Local communities hope that the money pumped into the local economy will outweigh the benefits given to corporations. However, some question this approach. One study of 197 abatements in Detroit shows that it has forgone \$56.3 million in taxes between 1974 and 1986, and \$32.3 million of this money has not created or retained any jobs. Only 43 percent of the jobs projected by companies have been created. See Roger Rowand, "Detroit study slaps tax abatements," Automotive News July 7, 1986, p.43. Analogous problems with the Saturn deal are examined by Anthony Borden, "G.M. Comes to Spring Hill," The Nation June 21, 1986, p. 852.

Corporations with existing plants in communities have also realized they can demand local aid as a condition for remaining. GM, for example, demanded tax reductions from eighteen communities in Michigan alone, threatening to move if it did not get them. By mid 1986 four communities cut GM's taxes by 30 percent (Borden, p.853). Nader and Taylor also document the tax benefits and concessions that GM has received, see pp. 128-132. No doubt, as GM is forced to consolidate its capacity it will be able to exert greater leverage against local communities. For a general discussion of these themes see Robert Goodman, The Last Entrepreneurs: America's Regional Wars of Jobs and Dollars (Boston: South End Press, 1979).

The power of corporations to exact benefits from local communities is nothing new. In fact, the image of public officials going "hat-in-hand" to corporate executives is reminiscent of James Bryce's discussion of the power of railroad "monarchs," who he believed had more power than anyone in the nation. Bryce wrote:

When the master of one of the greatest Western lines travels toward the Pacific on his palace car, his journey is like a royal progress. Governors of States and Territories bow before him; legislatures receive him in solemn session; cities seek to propitiate him, for has he not the means of making or marring a city's fortunes.

James Bryce, The American Commonwealth, (NY: Macmillian Company, 1897), vol. II, p.653.

55. Nader and Taylor, p.122. For a detailed breakdown of the costs and sources of revenue for the project see Jones, pp. 89-101.

56. When the plant opened it employed 5,000 workers. In December of 1986, GM announced the indefinite layoff of 2,500 due to lagging sales.

57. See the testimony of Karl Griemel, Dean of the Lawrence Institute of Technology School of Architecture, Poletown Neighborhood Council v. City of Detroit, No. 80-039-426 CZ (Wayne County Circuit Court, 1980), cited in Emily Lewis, "Corporate Prerogative, "Public Use" and a People's Plight: Poletown Neighborhood Council v. City of Detroit," Detroit College of Law Review winter 1982, No.4, p. 907.

58. A documentary was made as the residents mobilized to save Poletown. It vividly captures the odds they faced and is entitled "Poletown Lives." It is available through Information Factory, 3512 Courville, Detroit, MI., 48224. Nader and Taylor capture some of the emotion of the issue and the insensitivity of GM, see pp. 121-128.

59. Poletown Neighborhood Council v. City of Detroit, 304 N.W. 2nd 455 (1981), p. 458. Hereafter referred to as Poletown Case.

60. Poletown Case, p. 460.

61. Poletown Case, p. 462.

62. Poletown Case, p.464, footnotes omitted.

63. Poletown Case, p.465.

64. Poletown Case, p. 467, emphasis in original.

65. Poletown Case, p.465. Jones uses the Poletown case as an example of political initiative. The project was spearheaded by Detroit Mayor Coleman Young. Jones argues that it is a good example of how local officials can use their position to bring jobs to their communities. Anticipating the criticism that political leaders are forced to act on the behalf of private corporations, Jones responds:

If the city had acted as an instrument of capital, the working class heartily approved. To the extent there was a majority opinion on the project, it was doubtless favorable, even though it had been mobilized by Young's symbolic appeal to the need for jobs during a recession that was matched only by the Great Depression. (p.127).

Contrary to Jones' interpretation, the Poletown case is an illustration of how little power local leaders have. Surely, Coleman Young did not enjoy destroying Poletown. However, in order to retain jobs there did not seem to be another choice. To argue that the working class "approved," is equally faulty. In a contracting economic environment, this kind of "consent" is really a form of coercion.

66. Poletown Case, p. 468.

67. Poletown Case, p. 470, footnotes omitted.

68. Poletown Case, p. 481.

69. Edward Lapham, "Repeal of regulations a likely Reagan goal," Automotive News July 21, 1980, p.2.

CHAPTER 6

REGULATORY POLICY

By the time Ronald Reagan took office in January 1981 few questioned that the auto industry was in crisis. With the shift in automotive policy under Carter, and the subsequent election of an explicitly conservative and pro-business administration, the auto makers did not have to wait long for the government to act. On April 6, 1981, Reagan announced a comprehensive plan to aid the industry. It included regulatory rollbacks, discussions leading to import quotas on Japanese cars and the relaxation of antitrust policy. The industry's reaction "bordered on euphoria."¹

Central to this plan was the rollback of thirty-four regulatory standards. Documenting the changes in each of these standards in a detailed fashion is well beyond the scope of this dissertation. After outlining the Reagan plan, this chapter focuses on one policy in each of the three automotive regulatory areas -safety, emissions and fuel economy- to evaluate the shift in automotive regulatory policy culminating with the Reagan Administration. The three examples are the air bag (safety), the Clean Air Act Amendments of 1981 (emissions) and the rescission of fuel economy requirements from 27.5 to 26 mpg in 1985 (CAFE).

The attempt to amend the Clean Air Act is chosen because the Act is the bedrock of auto pollution control. Unable to get Congressional approval, it is one of the most striking failures of the Reagan Administration's deregulation effort. The air bag is chosen because it is the longest running controversy in automotive regulatory policy history and has the largest potential for preventing injuries and death of any single regulation. Its evolution involves all three branches of the federal government, as well as the individual states. Finally, the 1985 NHTSA decision lowering CAFE is chosen because it has the most far reaching consequences of any bureaucratic fuel economy decision, signaling almost the complete abrogation of the law. It is a decision largely within the hands of regulators since the Energy Policy and Conservation Act (EPCA) established CAFE standards only through 1985, delegating subsequent CAFE policy to the NHTSA.

The rollback of regulatory standards is striking evidence of the political consequences of economic decline. Standards which had been contested, debated and delayed, but in the end promulgated, were now open game. What the industry had been previously unable to block, it was now able to reverse. Concerns for cleaner air, and safer, and more efficient cars were overwhelmed as the industry used its economic troubles to political

advantage. Government officials now responded to the industry's requests, unlike the pattern of the previous twenty years.

The regulatory rollbacks of the Reagan plan support the hypothesis of this dissertation. This is not to suggest, however, the industry can get whatever it wants just because government officials are increasingly vulnerable to corporate pressure in times of moderate economic decline. A closer examination of the three sample regulatory cases indicates that the relations of power are more complex, even though the basic direction of regulatory policy changed. There are political and legal limits to corporate success.

A clear example of these limits was the unsuccessful legislative attempt to modify the Clean Air Act. The industry and its allies ran up against environmental forces entrenched in Congress and unwilling to sacrifice clean air. Political support for pollution control curbed the industry's efforts.

The air bag case is another example of the limits to corporate success. This time the courts overturned the Reagan Administration's rescission of the standard. After years of almost continual opposition to the air bag, it seemed that it would finally be implemented in 1981. However, the Reagan Administration blocked the rule, giving the industry what it had long wanted. Only

a court challenge saved the air bag. Failing to repeal the air bag was not an indication of the limits of corporate power but that the procedural formalities of regulatory policy cannot be simply ignored.

Fuel economy policy is another regulation the industry has long objected to. The 1985 rollback decision was made in light of threats by GM and Ford to shut down its plants rather than pay fines for non-compliance. Chrysler argued these threats were just a bluff. Given the size of these two firms, the economic consequences of shut downs are so large that policy makers would be hard pressed to ignore them. In the context of a shrinking manufacturing base, these threats have an added significance. Nevertheless, the fact remains that the 1985 CAFE decision was a rollback, not a new standard, and would have been largely unthinkable apart from the changed economic context and the overall redirection of automotive policy.

Precursors to the Reagan Plan

The recommendations made to Jimmy Carter, less than two weeks before the Reagan inauguration, presented the incoming Administration with a challenge and a framework. At the same time, Congress moved quickly and started its own deliberations on the industry's problems. Just one week before the inauguration the

Senate Finance Committee's subcommittee on International trade held extensive hearings on the industry's plight. Senator John Danforth (R-Missouri), the chair of the subcommittee, captured the committee's mood in the first line of his prepared statement: "The US auto industry is in a state of crisis."² Senator Robert Dole, (R-Kansas) Chairman of the Finance Committee, reiterated this theme, adding, however, that possible solutions to this crisis were the subject of considerable debate.

It is clear to every member of this committee and I am certain to the members of the new Administration as well, that this country will not and cannot accept the destruction of this industry. Short of total dissolution of this industry, however, there is considerable controversy on how the needs of both the country and the industry can be met.³

At these hearings a wide range of industry related groups testified, offering different proposals to help the beleaguered automakers. The companies asked for regulatory relief, relaxed anti-trust enforcement, and import restrictions.⁴ The UAW recommended a five point plan: import relief, reduced interest rates, auto tax credits, scrappage bounty, and a targeted 10-20 percent investment tax credit.⁵ Douglas Fraser, President of the UAW, echoing industry officials, stated:

The auto industry needs special help to raise the enormous amounts of capital it needs to survive in the future. In part, the difficulty of the transition to the new era results from government policies: the failure

to protect industry from unbridled imports, the lack of a consistent and comprehensive energy policy, some regulatory mandates as important and desirable as they may be. We hope that now, with the industry's capital needs so great, government will step in and assist the financing of the transition.⁶

The Automotive Materials Industry Council of the United States (AMICUS), representing 40,000 companies supplying the auto industry, offered its own plan, suggesting more rapid depreciation rates, extension of the net operating loss carry back period from three to six years, extension of investment tax credit carry back provisions from three to six years, and the creation of a special and immediately refundable investment tax credit for equipment used in the auto industry.⁷

Others focused on trade policy. The American International Automobile Dealers Association (AIADA) and the Automobile Importers of America (AIA) were mainly concerned with countering the growing protectionist sentiment in Congress.⁸ Several bills had been introduced limiting the number of Japanese car imports. The AIADA responded by suggesting direct assistance to the industry through the tax system and increased assistance to workers in the form of a seven point plan: a special refundable tax credit of 10 percent for investments in new plant and equipment, and research and development; a refundable 10 percent energy tax credit for investment in energy related capital equipment;

faster depreciation; temporary moratorium on federal income tax for foreign earnings repatriation by U.S. auto makers; reduction in federal regulations; direct assistance to unemployed auto workers. The AIA endorsed AIADA's suggestion for a tax holiday on foreign earnings, for accelerated depreciation, and regulatory relief.

The Reagan plan emerged from these suggestions by way of an Automotive Task Force appointed by the President less than one week after taking office.⁹ According to Robert Leone, a former staff member of the Reagan CEA, the Reagan Administration had three objectives: to aid the troubled industry; to demonstrate a successful regulatory relief effort; and to avoid congressional pressures for trade restraint.¹⁰ The outline of the plan paralleled the Carter plan.

The plan was rooted in a "wish list" given to Carter in early 1980, a list he subsequently rejected. The MVMA sent a letter to Reagan on February 3 requesting help, with a detailed set of requests reiterating the earlier request. It included requests for import restraints, accelerated depreciation and extended tax credit carry forward provisions, less stringent air pollution standards, an easing of testing standards, the abolition of fuel economy standards after 1985, a reduction of the 5 mph bumper standard to 2.5

mph, and a reevaluation of the air bag standard.¹¹ During February industry officials met with several key Reagan officials and exchanged a series of letters concerning regulatory changes.¹²

Details of the Reagan Plan

Stressing the revitalization of the economy as the single most important remedy for the industry, the plan involved several components. It emphasized the importance of the President's Economic Recovery Program, but acknowledged that the industry's problems were more than a reflection of cyclical fluctuations in the economy.¹³ The plan covered a range of policy areas for long term changes in automotive policy. Billed by the Administration as the largest attempt to ease federal controls over a single industry, changes in regulatory policy included thirty-four regulatory rollbacks, with estimated savings of \$1.3 billion in capital costs over the next five years and consumer savings of \$8 billion.¹⁴ See Table 6-1 for a list of regulatory rollbacks.

In addition to these executive branch regulatory decisions, the program included asking Congress to eliminate requirements that all passenger cars meet 1984 emissions standards for high altitudes. Estimated savings for this one change was \$38 million in capital

Table 6-1. Summary of Reagan's Proposed Regulatory Rollbacks.

EPA

1. Revise hydrocarbons and carbon monoxide standards for heavy duty trucks
2. Relax assembly-line test procedures
3. Delay assembly-line testing for heavy-duty engines
4. Relax nitrogen oxides emissions limits for heavy-duty engines
5. Institute nitrogen oxides averaging for trucks
6. Institute emissions averaging for diesel particulates
7. Eliminate 1984 high-altitude requirements
8. Adopt self-certification for high altitude vehicles
9. Forgo assembly-line testing for high altitudes
10. Consolidate nitrogen oxides waiver proceedings
11. Consolidate carbon monoxide waiver proceedings
12. Adopt equivalent non-methane hydrocarbon standards
13. Do not require controls of emissions while fueling
14. Streamline certification program
15. Relax test vehicle exemptions
16. Reduce number of assembly-line test orders

NHTSA

17. Explore deferral of paintshop standards
18. Delay passive restraints for large cars
19. Review all passive restraints
20. Modify bumper standards
21. Rescind "field of view" requirements for cars
22. Terminate "field of view" rule making for trucks and buses
23. Withdraw post-1985 Corporate Average Fuel Economy mileage proposals
24. Amend tire grading regulations
25. Amend seat-belt comfort regulations
26. Terminate rule making for multipiece tire rims
27. Rescind speedometer/odometer standards
28. Defer theft protection standards
29. Modify brake standards
30. Terminate rule making on low-tire-pressure warning devices
31. Eliminate tire information requirements
32. Terminate rule making on batteries
33. Streamline fuel economy reporting
34. Change vehicle identification requirements

Source: Leone, p. 90.

costs and \$1.3 billion in consumer costs.¹⁵ The plan reaffirmed the administration's commitment to "free trade," stressing the need for other nations to respect this commitment. Despite this rhetorical flourish, discussions were underway with the Japanese leading to "voluntary" import quotas, announced within a few weeks of the April plan.

Other elements included general antitrust relaxation, vacating the smog decree and waiving the prohibition of joint statements by the industry. The administration also wanted to accelerate federal procurement of motor vehicles by \$100 million in the current fiscal year. Finally, the Department of Labor proposed to increase assistance for worker retraining, although there were no specifics attached.

Results

Within two years the industry converted record losses into record profits. However, the contribution of these policy changes to the industry's economic turnaround is questionable. Clarence Ditlow, for example, contends that regulatory changes had virtually no impact on the turnaround.¹⁶ Robert Leone also argues that the industry's turnaround cannot be attributed to the Reagan plan. "The turnaround resulted mainly from improved productivity and actions by auto industry

management to create lower breakeven levels of production in U.S. manufacturing facilities."¹⁷ By March 1983 the U.S. automakers produced the same number of cars as in April 1980 but with 70,000 fewer workers.¹⁸ Yet, Leone argues, the Reagan program did help the industry. He attributes 40 percent of the industry's increase in income to the Reagan policy changes. Nevertheless, neither sales or employment forecasts made by the administration analysts came true. In fact, auto unemployment increased, something Leone sees as inevitable and predictable. See Table 6-2.

Table 6-2. Actual and Projected figures of Key Auto Industry Statistics

Year	Actual	Administration Forecast
	Sales	
	(millions of passenger cars)	
1980	9.0	--
1981	8.5	--
1982	9.0	11.0
1983	9.0	12.0
	Unemployment	
1980	580,000	--
	657,000	290,000 or less
	Industry Income	
	(billions of dollars)	
1980	-4.3	--
1983	+3.0	+1.7

Source: Leone, p. 93.

Leone estimates that the \$7.30 billion turnaround in industry income can be attributed to the following sources.¹⁹

-Capital savings due to deregulation	\$1.13 billion
-Industry capture of consumer savings	\$1.44 billion

due to deregulation	
-Benefits of auto import restraint billion	\$0.44
-Productivity, price, consolidated corporate earnings improvements billion	\$4.29

For a detailed breakdown of the savings projected by the Reagan Administration for each rollback see Table 6-3. Although the \$7 billion turnaround in the industry's income appears dramatic, the capital needs of the industry, estimated at \$60 billion for the years 1983-8, dwarf these savings.²⁰ Accordingly, the contribution of the Reagan plan to the industry's long term future seems minor. Moreover, Leone's assumptions in calculating the benefits of the rollbacks are admittedly generous. He assumes that the industry completely realized the savings estimated by the Reagan Administration when the plan was announced.

Leone's speculations concerning the limited economic benefits of the Reagan plan are not surprising. Despite industry claims that its problems stemmed from excessive government regulation, few independent observers agreed. The ITC ruled in November 1980 that the major cause of the industry's downturn was the recession, the deepest since the 1930s. Furthermore, changes in regulatory policy affect all car makers, not just domestic producers. If anything, federal regulations may have helped the domestic industry

Table 6.3. Major Elements of Reagan Regulatory Rollbacks.

Issue	Action (date of completion)	5-Year Savings (millions)	
		Industry	Public
RULES ACTED ON			
Gas-tank vapors	Declined to order new controls on cars (April 1981).	\$103	\$1,300
Emissions tests	Streamlined certification of industry tests on vehicles (October 1981, November 1982).	5	—
	Raised the allowable "failure rate" for test of light trucks and heavy-duty engines from 10 to 40 percent (January 1983).	19	129
	Reduced spot checks of emissions of vehicles on assembly lines by 42 percent; delayed assembly-line tests of heavy-duty trucks until 1986 (January 1983).	1	1
High-altitude autos	Ended assembly-line tests at high altitude, relying instead on industry data (April 1981).	0.2	—
	Allowed industry to self-certify vehicles as meeting high-altitude emission standards (April 1981).		
Pollution waivers	Consolidated industry applications for temporary exemptions from tougher emissions standards for nitrogen oxide and carbon monoxide (September 1981).	—	—
Paint shops	Delayed until 1983 tougher hydrocarbon pollution standards for auto paint shops (October 1981).	300	—
Test vehicles	Cut paperwork required to exempt prototype vehicles from environmental standards (July 1982).	—	—
Driver vision	Scrapped existing 1981 rule and second proposed rule setting standards for driver's field of view (June 1982).	160	—
Fuel economy	Decided not to set stiffer fuel economy standards to replace those expiring in 1985 (April 1981).	—	—
Speedometers	Revoked rule setting standards for speedometers and tamper-resistant odometers (February 1982).	—	20

Issue	Action (date of completion)	5-Year Savings (millions)	
		Industry	Public
Tire rims	Scrapped proposal to set safety standards for explosive multipiece tire rims (February 1982).	\$300	\$ 75
Brake tests	Eased from 30 to 20 percent the steepness of grades on which post-1984 truck and bus brakes must hold (December 1981).	—	1.8
Tire pressure	Scrapped proposal to equip vehicles with low tire pressure indicators (August 1981).	—	130
Battery safety	Scrapped proposal to set standards to prevent auto battery explosions (August 1981).	—	—
Tire safety	Revoked requirement that consumers be told of reserve load capacity of tires; eased tire makers' reporting requirements (June 1982).	—	—
Antitheft protection	Eased antitheft and locking steering wheel standards for open-body vehicles (June 1981).	—	—
Fuel economy	Streamlined semiannual reports of auto makers on their progress in meeting fuel economy goals (August 1982).	—	0.1
Tire ratings	Suspended rule requiring industry to rate tires according to tread wear, traction, and heat resistance (February 1983).	—	10
Vehicle IDs	Downgraded from standard to administrative rule the requirement that all vehicles have ID numbers as an aid to police (May 1983).	—	—
Seat belt comfort	Scrapped proposal to set standards for seat belt comfort and convenience (June 1983).	—	—
RULES WITH UNCERTAIN FUTURES			
High-altitude emissions	Failed to revise Clean Air Act order ending weaker high-altitude emissions standards in 1984; eased through regulatory changes.	37	1,300

Issue	Action (date of completion)	5-Year Savings (millions)	
		Industry	Public
Emissions reductions	Failed to revise Clean Air Act order to cut large trucks' hydrocarbon and carbon monoxide emissions by 90 percent by 1984; standard was delayed until 1985.	\$105	\$536
	Failed to ease Clean Air Act order reducing nitrogen oxide emissions from light trucks and heavy-duty engines by 75 percent by 1984. Regulatory changes under study.	150	563
Particulate pollution	Delayed a proposal to scrap specific particulate standards for some diesels in favor of an average standard for all diesels. Stiffer standards delayed from 1985 to 1987.	40	523
Methane standards	Shelved because of "serious" cost; questions a plan to drop methane as a regulated hydrocarbon.	—	—
Passive restraints	Delayed and then revoked requirement that post-1982 autos be equipped with passive restraints; revocation overturned by Supreme Court in June 1983.	428	981
Bumper damage	Cut from 5 to 2.5 mph the speed at which bumpers must resist damage; change is on appeal.	—	308

SOURCE: Michael Wines, "Reagan Plan to Relieve Auto Industry of Regulatory Burden Gets Mixed Grades," *National Journal*, July 23, 1983, pp. 1534-1535.

because, unlike foreign competitors, American automakers can spread the costs of regulation across more vehicles, thereby lowering the unit cost of compliance.²¹

Clean Air Act

Revising the Clean Air Act (CAA), "the flagship of environmental regulation," was one of the first major challenges for the Reagan Administration.²² The Act, with its origins in the environmental movement, was passed in 1970 and amended in 1977. With the environmental movement on the wane, Congressional support for environmental control lessened. Yet, the basic thrust of the law was left intact. The 1977 amendments made the law one of the most detailed environmental laws written, totaling more than 180 pages, three times longer than the 1970 law. It contained a timetable for renewal in 1981, providing the Reagan administration with a clear target for its deregulatory efforts. The bill's financial authorization expired on September 30, 1981, presenting the administration with a limited time to seize the initiative to reform the bill.²³

The Reagan Administration largely failed in its efforts to reform the law. In fact, it decided not to offer specific proposals for changing the law, choosing instead to offer "basic principles" to guide reform. As

a result, according to Richard Tobin, the administration relinquished its opportunity to play an influential role in the revision process. Three factors explain this failure. To begin with, administration officials could not agree upon concrete changes. Since the revision process was already underway, with many of the necessary oversight hearings already completed, delay was fatal. Also support for environmental control was far stronger than the Reagan Administration originally thought. But, most importantly, failure was due to the administration's preoccupation with other issues. Murray Weidenbaum, who in 1981 was the Chairman of the CEA and a leading advocate of deregulation, regrettably acknowledged,

the major reason the administration was so extraordinarily timid in providing leadership [to reform the Clean Air Act] was its desire to avoid raising controversial legislative questions that could impede the speedy enactment of its tax and budget initiatives. The administration, in practice, gave regulatory reform a low priority....²⁴

The effort to amend CAA also confronted major obstacles outside the administration's internal workings. As part of the 1977 amendments, Congress created the National Commission on Air Quality to prepare a comprehensive assessment of the air pollution control effects of the 1977 law. In a March 1981 report it urged the continuation of pollution control as a "national priority... requiring substantial investment"

through the 1980s.²⁵ No fundamental changes were needed in the law, only refinements. With momentum against major changes in the law, prospects for rollingback the law worsened during the summer.

Without a clearly defined position concerning possible changes in the law, the administration considered a number of courses of action. Drafts of these possible changes were obtained by unsympathetic members of Congress. The drafts included the total elimination of national air quality standards, application of cost-benefit analysis, elimination of federal sanctions for localities not achieving federal standards, elimination of requirements that automobile pollution control devices be maintained in proper working order, relaxation of limits on car exhausts, and proposals to allow polluted areas to assess their own progress in abating air pollution and to make EPA enforcement discretionary. Critics reacted sharply. The administration was put on the defensive even before formal proposals were made.

With these currents running against the Reagan efforts at changing the law, the administration withdrew its attempt to directly influence the legislative process. Without any White House direction, proponents of change in the House of Representatives introduced their own bill.²⁶ Despite support from Rep. John

Dingall (D-Michigan), as well as the Business Roundtable, the NAM, the Chamber of Commerce, the MVMA, and the Reagan administration, the bill never emerged from committee. Environmentalists labeled it the "dirty air" bill, arguing it would double auto emissions, extend the deadline for meeting national air quality standards by as much as eleven years, and allow for substantial increases in pollution near national parks and wilderness areas.

The growing scandal surrounding the administration's environmental policies, symbolized by the controversies associated with Rita Lavelle, Ann Gorsuch Burford and James Watt, coupled with the difficulty of reversing popularly entrenched legislation, prevented the administration from other attempts at altering the legislative foundations of the CAA. Indeed, after the 1982 Congressional election and the scandals at EPA, the Reagan Administration attempted to delay legislative action, afraid the law would be strengthened. Nevertheless, the legal complexity of environment control, with its wide administrative discretion, allowed the administration to "reform" the law through interpretations of "compliance," granting of waivers and determination of deadlines.

Passive Restraints

The air bag is the longest debated auto safety standard. Potentially, it could be one of the most important public health action taken by the U.S. government, saving an estimated 9,000 lives and preventing 65,000 serious injuries each year, when fully implemented.²⁷ Yet the air bag has been a source of controversy since 1970. It has received NHTSA approval, been amended, rescinded, reimposed, rescinded, subject to potential abolition depending on state action, and postponed. Along the way a substitute to the passive restraint regulation was added, allowing automatic seat belts as a substitute.²⁸ Meanwhile, the federal courts, including the Supreme Court, have ruled over the years on various aspects of the air bag. At the same time, each branch of the Congress has voted on the air bag and several presidents have taken visible public stances toward this safety standard. Clearly, the history of the air bag is intricate.

Debate over the air bag recapitulates the long standing question of how much safety should be "imposed" on the public. Opponents of mandatory restraints argue the individual, not government, should decide how safe products should be by "voting" in the marketplace through consumer choice. Advocates of the air bag argue that the social consequences of accidents outweigh this concern for "consumer sovereignty" and few car buyers or

passengers are equipped to evaluate the technical claims made by the industry. In addition, the way cars are sold enables manufacturers and dealers to steer car buyers away from certain concerns and towards others, presenting what is "on the lot" as the only practical sale.²⁹

With minor exception the auto industry has consistently opposed the standard, expending more energy against the standard than any other regulatory proposal. It has argued at various times it is unnecessary, it should be left to the car buyer's discretion, and it is both too expensive and impractical.³⁰ During the 1970s the industry stressed technological problems with the air bag, but each objection was in turn found to be without foundation by the NHTSA. When the auto makers encountered economic hardship, the emphasis shifted to costs.³¹ This change in emphasis is another example of how the industry shaped its lobbying strategy to take advantage of economic decline.

The vigor of the industry's opposition to the air bag cannot be explained, however, by these arguments alone, which are no different from those marshalled against other regulatory standards. Nor can its opposition be explained by the costs of the air bag, since it could easily be passed on to car buyers and is relatively small.³² What separates the air bag from

other safety standards is that it has become a symbol of government "intrusion" in the industry. A New York Times editorial explained why the industry targeted the air bag for such unrelenting opposition. It works.

The real mystery here is why the auto industry fights safety so hard....The explanation for the mystery may be as simple as it is sad: American auto makers, always ready to underestimate consumer sophistication and ever resentful of interference by Government, oppose air bags because they would give regulation a good name.³³

Another factor contributing to the industry's opposition is its qualitative difference from previous safety standards. Joan Claybrook asserts the passive restraint standard is the first safety standard which does not just measure the strength of a particular system or the capability of the structure, but determines whether injury would occur when a particular vehicle crashes. It shifts safety regulation toward a more comprehensive notion of crash protection. "This standard represents a giant step forward in the concept of vehicle safety performance"; automatic restraints, particularly the air bag, are technological vaccines dwarfing the Salk vaccine by comparison.³⁴ And as Gary Nash of the NHTSA stated: "the automatic crash protection system is based on one of the most fundamental scientific principles of public health: that passive measures designed to protect public health are more successful than active ones."³⁵

The history of the air bag has never been smooth, although the Reagan Administration escalated the controversy. The Reagan NHTSA decision made a fairly typical case of regulatory delay and lobbying into a notorious example of corporate influence and government disregard for public safety. When the case reached the Supreme Court it ruled the agency's rescission was arbitrary, capricious and without any sound reasoning, remanding it for further action.³⁶ The agency responded with a novel twist to the federal regulatory repertoire, ruling that it would drop the passive restraint rule if states with two-thirds of the nation's population passed mandatory seat belt laws that conform to certain criteria.³⁷ Supporters of the air bag threatened to challenge this decision in court if it is ever implemented.

The legal aspects of the air bag's history, fascinating in itself, should not obscure the gruesome reality of death and injury due to car accidents. Delaying its implementation over the years has allowed as many as two hundred thousand unnecessary deaths, as well as countless injuries. Moreover, the air bag is not a new technology with research originating in the 1970s. The auto industry began working on air bags in the 1950s. Between 1952 and 1955 four patents were issued on the air bag. In 1958 GM was showing films to

its staff on crash tests with air bag prototypes.³⁸ According to Ford, its air bag research dates back to January 1957. However, an installable design was not developed until 1968.³⁹ In a 1972 confidential memo by John Delorean, written shortly before he left GM, he noted that air bag technology was demonstrated about 10 years earlier by GM Research. When funding was not continued he unsuccessfully tried to promote outside research. About a year and a half before the memo Delorean tried to obtain copies of his correspondence on the air bag but was told that all his correspondence promoting air bags was taken from the files and destroyed.⁴⁰ In light of this long history it is important to remember that the industry has been notorious for dragging its feet on safety. It is likely that the air bag could have been developed long before the late-1960s.

Federal regulatory efforts began soon after the practicality of the air bag was established. In addition to a number of court cases and numerous Congressional hearings and reports, the NHTSA has filed over 60 separate notices. Briefly outlining its history is essential to highlight the significance of the actions taken by the Reagan Administration. It is a sobering lesson in the politics of corporate delay.

History of the Standard

Federal Motor Vehicle Safety Standard (FMVSS) 208, occupant crash protection, was one of the first standards issued under the National Traffic and Motor Vehicle Safety Act of 1966. In 1967, lap and shoulder belts were required for all new cars.⁴¹ In 1969, after it became apparent that manual belt usage was low, the NHTSB, the forerunner of the NHTSA, announced its intention to issue a passive restraint amendment to FMVSS 208.⁴² At that time, a passive restraint rule could only be met with air bags since no other technology was available. The automatic seat belt was not recognized by the NHTSA as meeting the standard until 1971.⁴³ At this point the industry took the debate outside the NHTSA, seeking President Nixon's help to overwhelm the NHTSA's technical deliberations with political influence. A picture of this emerged as the result of a law suit which uncovered a transcript of a tape recorded discussion in the Oval Office with Nixon, John Ehrlichman, Henry Ford II, and Lee Iacocca, then President of Ford. According to an examination of the transcript by Greg Mitchell, Ford and Iacocca wanted Nixon to quash the pending air bag requirement. The air bag was subsequently delayed for two years.⁴⁴ There was no question as to the connection between these two events. A 1976 report by a House subcommittee concluded

that Ehrlichman, in a confidential memo, had ordered the department to stop the rule.⁴⁵

Meanwhile the industry took its battle against the air bag to the courts. The first court test was decided in 1972 by the Federal Court of Appeals.⁴⁶ The challenge was based on several grounds, with the manufacturers arguing that: (1) the Safety Act did not authorize the NHTSA to establish safety standards that cannot be met with existing technology; (2) air bags were not practicable; (3) seat belts provided better protection than air bags; (4) the standard was not stated in objective terms. Ruling against the challenge in all but the last count, the Court stated that the crash test dummy was insufficiently defined and therefore did not meet the test of objectivity. As a result, the standard was remanded to the NHTSA with instructions to develop an objective compliance test. The industry won a temporary reprieve on a technicality, but lost the real issue of NHTSA authority, establishing a major precedent in auto safety regulation and the basis for subsequent regulations. The court affirmed the NHTSA's authority to issue safety standards that advanced safety technology, the very reasoning behind the Safety Act in the first place.

During 1973-1975 the NHTSA developed the objective compliance tests required by the court. In December

1976, after a series of hearings, and a NHTSA recommendation to reinstitute the standard, Transportation Secretary William Coleman sidestepped the issue by deciding to implement a large scale demonstration program to promote public acceptance.⁴⁷ Coleman's plan never took effect. With the election of Jimmy Carter, the NHTSA and Transportation Department received more activist administrators, most notably Joan Claybrook. Rulemaking proceedings were reopened and in July 1977 a final passive restraint standard was issued with compliance to begin in 1981.⁴⁸

The battle against the air bag was also waged in Congress, although never successfully. In 1974, legislation was considered banning the mandatory restraint standard as part of the interlock device debate, a substitute proposed by the industry. It overwhelmingly passed in the House of Representatives and a substitute amendment removing the restriction on passive restraints was defeated. However, in the House-Senate conference the ban on passive restraints was replaced by a legislative veto provision.⁴⁹

In 1977, after the standard was issued, veto resolutions were introduced in both the House and the Senate. Each subcommittee and committee of the House and the Senate rejected the veto resolutions. The full bodies of each tabled the resolutions.⁵⁰ Yet, the air

bag rule continued to be a subject of congressional actions for the next three years. In 1978 and 1979 Congress restricted funds from being spent on implementing or enforcing the standard.⁵¹ However, since the standard was not effective until 1981, it only had symbolic value. In late 1980, efforts failed to give the automakers a one year extension in meeting the standard. President Carter and Transportation Secretary Neil Goldschmidt supported the extension, as did a conference report, but to no avail.⁵²

In the end, the standard, "one of the most extensively reviewed standards ever promulgated by the federal government," was intact and scheduled for implementation in fall 1981.⁵³ However, the incoming Reagan Administration moved quickly to block the standard. One of the first actions by the new Transportation Secretary, Drew Lewis, just three weeks after the inauguration, was granting a one year delay for compliance with the regulation and re-opening the issue.⁵⁴ In October 1981, Raymond Peck, head of the NHTSA, announced its rescission.⁵⁵ Peck's ruling stated,

The automatic restraint requirements are being rescinded because of the uncertainty about the public acceptability and the probable usage rates of the type of automatic restraints which the car manufacturers planned to make available to most car buyers. This uncertainty and the relatively substantial cost of automatic restraints preclude the

agency from determining that the standard is at this time reasonable and practicable. The reasonableness of the automatic restraint requirement is further called into question by the fact that all new car buyers would be required to pay for automatic belt systems that may induce only a few additional people to take advantage of the benefits of occupant restraints.

The agency is also seriously concerned about the possibility that adverse public reaction to the cost and presence of automatic restraints could have a significant adverse effect on present and future public acceptance of highway safety efforts.⁵⁶

In announcing the decision at a press conference, Peck added the following justification, described by Joan Claybrook as "perplexing logic and characteristic doublespeak." "It is time to stop the uncertainty about this standard, It is only by rescinding the standard and proceeding with... 'a full court press' on technology, that we will be able to make material, substantial impact on reducing death on the highway."⁵⁷ Peck acknowledged that his decision was made over the objections of the agency's staff. "I think it would be fair to say in some way or another, they [the staff] all argued to retain the standard."⁵⁸

The State Farm Mutual Automobile Insurance Company and the National Association of Independent Insurers challenged the rescission in the Federal Court of Appeals. The court ruled the decision was arbitrary, capricious and an abuse of discretion. The Supreme Court heard the case on appeal and agreed with the lower

court. The language and issues discussed by the courts are so striking that the reasoning behind the decisions merits of attention.

As outlined by Graham and Gorham, Peck's decision was based on three findings: (1) most car manufacturers were planning to install detachable passive belts in order to comply with FMVSS 208; (2) detachable belts, when detached, become identical to manual belts; (3) they could not predict even a 5 percent increase as the minimal level of incremental belt use under the standard as written.⁵⁹ The Court of Appeals agreed with the first two findings, rejecting the third. There was no supporting evidence for this conclusion and simple logic indicates that with the force of inertia on the side of leaving the detachable belt in place, usage would increase. More importantly, however, the Court rejected the very idea that detachable belts were passive restraints.

The Court of Appeals decision stated: "essentially, the agency seems to conclude that because some technology will not meet the passive restraint standard, it need not mandate compliance by technology that will. The absurdity of this Orwellian reasoning is obvious."⁶⁰ In 1977 the agency had assumed that 60 percent of new cars would have air bags and 40 percent detachable automatic seat belts. By 1981 the industry's plans

changed and now it intended to install automatic seat belts in 99 percent of new cars. Accordingly the Supreme Court stated: "[the] NHTSA maintained that it was no longer able to find, as it had in 1977, that the automatic restraint requirement would produce significant safety benefits.... The judgement reflected not a change of opinion on the effectiveness of the technology, but a change in plans of the automobile industry."⁶¹

The change in plans, with detachable automatic belts replacing air bags, can be traced to the early 1970s. At the industry's request the standard was modified in 1971 to include nondetachable automatic seat belts. In 1974 it was modified once more to include detachable belts coupled with the ignition interlock device to prevent motorists from disconnecting the belts.⁶² The ignition interlock device was installed in all cars and was very unpopular. Congress repealed the interlock device, but the NHTSA continued to allow detachable belts to be substituted for air bags. As a result, the industry was able to comply with the passive restraint rule with technology similiar to regular seat belts.

The Reagan Administration seized upon this development to reverse the entire standard. The Supreme Court was adamant concerning what should have been the

NHTSA's response. If detachable belts would not increase usage, it would only justify amending the requirement to disallow compliance through this particular technology. "The agency has no basis at this time for changing its earlier conclusions in 1976 and 1977 that basic air bag technology is sound and has been sufficiently demonstrated to be effective in those vehicles in current use...."⁶³

Joan Claybrook argued that previous administrations had rebutted diverse objections to the air bag including its cost, reliability, effectiveness, and public acceptability. Consequently, the Reagan NHTSA had to search for a new rationale, regardless of its merits.⁶⁴ Indeed, the Reagan Administration's rescission was actually a detachable automatic seat belt decision. However, by flagrantly abusing its administrative discretion, alleged problems with the detachable belt were used to destroy the air bag, although there is no reasonable connection between the two.

In rebuking the NHTSA, the Supreme Court's decision directly criticized the auto industry itself.

The automobile industry has opted for the passive belt over the air bag, but surely it is not enough that the regulated industry has eschewed a given safety device. For nearly a decade, the automobile industry has waged the regulatory equivalent of war against the air bag and lost - the inflatable restraint was proven sufficiently effective. Now the automobile industry has decided to employ a seatbelt system which will not meet the safety

objectives of Standard 208. This hardly constitutes cause to revoke the standard itself. Indeed, the Motor Vehicle Safety Act was necessary because the industry was not sufficiently responsive to safety concerns.⁶⁵

The NHTSA's attempted rescission would have afforded the industry unparalleled leverage for managing regulation through its own design plans.

Although the Supreme Court ruled that the NHTSA had failed to supply the requisite reasoned analysis, it did not reinstate the air bag. Instead, it remanded the decision back to the NHTSA for further consideration. The court concluded that the agency could change its view of what is in the public interest, with or without a change in circumstances, but it must be based on a reasoned analysis. The Reagan Administration's response was not unexpected. An automotive trade magazine quoted a highranking aide to President Reagan as boasting: "the administration plans to fight this challenge [the Supreme Court decision] all the way. If we lose, the worst the carmakers should expect might be an automatic seat-belt requirement some years down the road."⁶⁶

The following year, with new leadership at the Department of Transportation and the NHTSA, a passive restraint requirement was issued for all cars by 1990, with a phase in period beginning in 1987. However, the NHTSA's new standard included a novel wrinkle to the seemingly endless decisionmaking process with regard to

the standard: if states with two-thirds of the nation's population passed mandatory seat belt laws by 1989 it would waive the air bag requirement.⁶⁷

This action guaranteed more litigation, as well as an intensive industry lobbying effort directed at the states.⁶⁸ Ironically, the industry, previously opposed to the mandatory installation of seat belts, was now be forced to argue for mandatory usage legislation. The industry's effort is a fascinating example of the lobbying techniques available to large corporations. It used traditional one-on-one lobbying as well as threats over plant location.

The industry created a nonprofit group, Traffic Safety Now, Inc., through its trade association, to lobby states to enact mandatory seat belt laws. The money the industry has been willing to spend is considerable. The Washington Post reported that the industry planned to spend \$15 million annually on lobbying.⁶⁹ Part of this money was spent on grants to state organizations involved in mandatory usage campaigns like Connecticut's Safety Belt Coalition which received \$137,000.⁷⁰ The lobbying effort also involved direct appeals to state officials by some of the industry's most visible personalities.

Lee Iacocca, a staunch opponent of the air bag, met with Illinois Governor James Rhodes at Chrysler

headquarters in Michigan. Rhodes said Iacocca made "a very strong pitch" for passage of a mandatory usage bill, and said that "it would forestall the mandatory use of air bags, which he claims are not all they are cracked up to be and which he also claims are virtually useless without using seat belts as well."⁷¹ In addition to sending its own representatives to lobby Illinois legislators, Chrysler and GM hired a former Illinois Secretary of State and a former majority leader of the State House to further its cause. One Illinois legislator said: "the big heaters were all over this one. We had Chrysler, Ford, GM. We had banks they run their financing through....I haven't seen a bill this heavily lobbied in a long time."⁷² To influence California legislators, the most valuable state due to its size, automakers flew several of them to Detroit to tour auto plants.

Dwarfing the resources available to safety advocates, these activities are fairly standard lobbying techniques. However, GM reportedly used a far more unusual tactic. Opponents charged that GM told states they would not be considered as possible sites for its new Saturn plant unless they passed a mandatory usage law. GM denied the charges. The charge was verified by Senator John Danforth (R-Missouri) who stated that Missouri legislators received this threat.⁷³

Despite the industry's efforts it seems very unlikely that enough mandatory usage laws will pass to allow the NHTSA to waive the air bag requirement. Even though 26 states and the District of Columbia have passed such laws, as of fall 1986, questions remain whether these laws comply with NHTSA requirements.⁷⁴ In March 1987, the NHTSA apparently made the final air bag decision. In response to a Ford petition it granted the car makers yet another delay, postponing compliance another four years until September 1993.⁷⁵ In granting the delay, the NHTSA announced the industry would be able to meet the standard during the phase-in period by using a driver-only air bag, with front seat passengers having the standard manual belt.⁷⁶ The NHTSA believed allowing for the driver-only provision would accelerate air bag installation. The decision split supporters of the air bag. Insurance groups approved of the decision, despite the changes, because it seemed to signal an end to the air bag merry-go-round. Several safety organizations criticized the ruling and Public Citizen, headed by Joan Claybrook, is considering challenging it in court.⁷⁷ Perhaps by the mid-1990s, twenty-five years after air bag technology was perfected, the debate over air bags will finally be over. Assuming the standard is implemented, the long delay is vivid evidence of how an

industry can shape safety policy, using its control of technology and its central economic position.

The NHTSA Under Reagan

The air bag case is not an unique example of the Reagan Administration's regulatory behavior. As Joan Claybrook wrote: "The Reagan Administration's distaste for standard 208 is not an isolated example of antiregulatory zeal. Removal of that standard is only the centerpiece of the administration's broader attack on crucial safety standards to improve the crashworthiness of cars."⁷⁸ The administration stopped publication of comparative data on cars for consumers, drastically undercut the recall efforts of the NHTSA, and literally delegated to the industry the responsibility for research priorities.

The discontinuation of The Car Book was the most obvious element in the administration's attack on information. It is a guide listing crash tests results, fuel economy, insurance discounts and defect recalls by make and model. Initially published in December 1980, 1.7 million copies were requested, making it the single most requested government consumer publication.⁷⁹ The NHTSA also cancelled distribution of 12 of 13 free auto and highway safety publications, some of the most frequently requested consumer publications. No new

consumer publications were developed or planned in the first 19 months in office compared to a single year of the Carter Administration when there was an average of 40-50 new publications.⁸⁰ This restraint of information tarnishes the Reagan Administration's profession in a belief in consumer sovereignty, predicated on fully informed decisions.

Recall actions during the first five years of the Reagan Administration were also dramatically different than past practice. During Reagan's first two years the number of recalls of motor vehicles, equipment and tires dropped below 200 for the first time in 12 years. Annual recalls initiated between 1981 and 1985 averaged 195, compared to 306 during the Carter Administration and 239 during 1971-6 under the Nixon and Ford Administrations.⁸¹ See Table 6-4. Reagan regulators, unlike previous administrations have preferred "voluntary" recalls. Thus, while 27.86 million cars, light trucks and vans were recalled between 1981 and 1986, the manufacturers refused NHTSA requests to recall another 25.44 million, and no further action was pursued.⁸² The Center for Auto Safety concluded that,

The Department of Transportation's dismal record on auto safety defects and recalls is no accident. Instead, it is the result of comprehensive changes in the way the DOT investigates defects and interprets the law, changes designed to make sure that virtually no investigation will ever lead to a recall

TABLE 6-4. Number of motor vehicle, equipment and tire recalls by year initiated by the NHTSA.

1985.....	214
1984.....	209
1983.....	182
1982.....	175
1981.....	196
1980.....	220
1979.....	341
1978.....	351
1977.....	310
1976.....	262
1975.....	266
1974.....	292
1973.....	278
1972.....	331
1971.....	254

Source: U.S., Congress, House, Appropriations hearings, Department of Transportation and Related Agencies, various years.

unless the manufacturer is already predisposed to calling the cars back.⁸³

Controversy over two particular recall actions by the NHTSA led to separate congressional hearings. One involved GM brake defects, the other Ford transmissions. The NHTSA was accused of general incompetence, disregarding safety and the law, misleading members of congress, and pursuing action only after congressional investigations had begun. In fact, Rep. Timothy Wirth, one of the leading safety advocates in Congress, charged that Diane Steed, the head of the NHTSA, had become the Rita Lavelle of highway safety.⁸⁴

According to Joan Claybrook, the recall actions and constraints put on information are part of the NHTSA

unstated policy of avoiding displeasing the industry. She called the Reagan NHTSA "a wholly owned subsidiary of the Detroit manufacturers."⁸⁵ One of the most revealing actions in this regard was the establishment of a "secret" cooperative research project with the auto makers, virtually "merging" the NHTSA with the industry. The NHTSA first eliminated two public advisory committees, one concerning biomechanics and the other accident investigation and statistical analysis. However, these issues were not dropped. In 1982, the NHTSA secretly initiated a cooperative automotive research project with the MVMA with these two areas as the primary programs for the project.

The meetings were held in private without any prior public announcement or invitations to other interested parties. No other organizations were allowed to participate, making it, in essence, a handpicked secret advisory committee. Claybrook charged the Federal Advisory Committee Act prohibited such actions, requiring a public charter, balanced membership, public notice of meetings and transcripts or minutes of the meetings be kept. The secret program was not disclosed until demands were made under the Freedom of Information Act (FOIA).⁸⁶

There was no public docket until May 19, 1982 six months after the first meeting. Subsequent materials

were not placed on the public record until November, almost a month after Public Citizen's FOIA request.⁸⁷ Claybrook argued the cooperative project enabled the auto makers to avoid taking any initiative, undermining any future safety standards since the NHTSA's agenda was now set by the project. "Thus, the automotive industry behind closed doors is helping to "guide" and "design" research for the development of... rulemaking proposal[s]."⁸⁸

Despite the lack of formal notices concerning meetings of the group, officials of the industry and NHTSA maintained it was not secret. In fact, David Martin, Director of Automotive Safety Engineering of GM, responding to questions during a Congressional hearings contended: "I am simply indicating that if it were a secret, we wouldn't be talking about it publicly."⁸⁹ Raymond Peck, head of the NHTSA, claimed the group had been referred to in the Federal Register, although no notice was entered. However, he did not give any examples.⁹⁰ The agency continued the cooperative project until 1983 when Public Citizen sued in Federal District Court.⁹¹ Then, the Justice Department, representing the NHTSA, settled the case by dissolving the group.⁹²

Fuel Economy

The Environmental Policy and Conservation Act of 1975 (EPCA) established fleet fuel economy standards, culminating in a 27.5 mph corporate average fuel economy (CAFE) requirement in 1985. After 1985, the NHTSA had the authority to establish future fuel economy standards guided by the basic principles of maximum feasibility and economic practicality. The NHTSA also had the power to lower the standard to 26.0 if the higher standard could not be met. The industry had little difficulty meeting the interim standards in the late 1970s. As it downsized its vehicles there was also a demand for small cars. In the early 1980s, however, problems emerged, in part due to the import quotas on Japanese cars and the decline in gasoline prices. GM, for example, was unable to meet CAFE requirements in 1983, 1984 and 1985. Taking advantage of a creative addition to the fuel economy laws in 1980, it used carry forward and backward credits to cover years when the standards were not met.

In 1983 and 1984, GM avoided fines by using credits from past years when it had exceeded the standards. In 1985, it used expected credits from future years when it predicted it would again exceed the standards. There was no such solution for 1986. Thus, the stage was set for a battle over fuel economy standards. In 1986, both GM and Ford claimed that the 27.5 mpg CAFE standard was

impossible. Faced with fines for noncompliance, both auto makers claimed that production of larger less efficient cars would be cut to bring fleet fuel economies within required limits. In effect, the two automakers converted fuel economy policy into an employment issue.

Ostensibly, however, the fuel economy debate was about the free market, with opponents of the standards arguing market demand should be allowed to determine the efficiency of cars. Defenders of the standards argued that allowing market signals alone to determine the efficiency of cars was inappropriate considering the economic and national security consequences of oil consumption. The decisions made concerning fuel economy were not simply the product of an ideological dedication to the principles of the free market, however. They were, in fact, intimately related to trade policy and import quotas on Japanese cars.

Two related factors explain the connection between trade policy (import quotas) and fuel economy standards. At the industry's request fuel economy standards are in the form of fleet averages, not minimum mileage requirements. As a result, auto makers can sell cars with fuel economies that do not meet CAFE standards. Automakers must balance these cars with others exceeding the standard, giving the industry the flexibility to

market a full line of vehicles, including larger more profitable inefficient cars. The law also stipulated that only cars with 75 percent or more domestic content would be counted as part of a firm's domestic fleet, erecting a barrier against outsourcing. Cars with less than 75 percent domestic content would be counted toward its "imported" fleet's fuel economy.

When import quotas were imposed on Japanese cars, limiting the supply of smaller more efficient cars, car buyers were, in effect, forced to buy American made cars. By increasing the sale of American small cars, the fleet fuel averages of domestic producers increased. Thus, the industry was able to continue selling older less efficient models, instead of introducing new more efficient cars as planned. Continuing to sell these cars was highly profitable for a variety of reasons, including larger size, established market and recovered investment on tools and dies.

Consequently, domestic car makers protected from competition during the years of the VRA (1981-5), slowed the introduction of new technology and earned record profits. With the end of the VRA, competition for smaller cars increased. Balancing CAFE became a problem. The auto makers did not waste time in trying to rectify this situation. In fact, immediately after the VRA's announced end, GM and Ford, on the same day,

petitioned the NHTSA for a rollback of the standard. In a petition the day before the end of the VRA Ford urged the NHTSA not to consider higher CAFE standards but did not ask for a rollback.⁹³

To justify the rollback, GM and Ford emphasized the inevitability of layoffs, giving the Reagan Administration an economic basis for the rollback. However, the law allowed for the sale of cars that did not meet the standard, establishing a penalty of \$5.00 for each one-tenth of a mile a firm's fleet was under the standard, multiplied by the total number of cars sold. The automakers had two choices if the law was not changed. Larger cars could be sold and the penalty paid, or sales of these cars could be restricted bringing the fleet within compliance, requiring layoffs and plant shutdowns. Needless to say, GM and Ford claimed the only possible choice was layoffs. The NHTSA needed little else to act.⁹⁴

Examining the 1985 decision to roll back the CAFE standard from 27.5 mpg to 26.0 mpg in greater detail will clarify how GM and Ford used their control over capital to enable the NHTSA to undercut CAFE policy. It illustrates the difficulty regulating a concentrated industry where two firms account for almost two-thirds of sales, virtually defining what is practical and feasible for an entire "industry." Clearly, the NHTSA

could have refused the two auto makers, but in turn they might have shut down plants, blaming it on this refusal.

In formulating CAFE standards after model year 1985, Congress required that the NHTSA consider four factors in the determination of maximum feasibility: economic practicality, technological feasibility, the effect of other motor vehicle standards on fuel economy, and the need to conserve energy.⁹⁵ The law also included a legislative veto provision for any action that lowered the standard below 26.0 or raised it beyond 27.5 but did provide for a legislative veto if the standard was lowered to 26.0. Accordingly, the NHTSA argued lowering the standard to this level was not something unexpected or inappropriate.⁹⁶

When the NHTSA established the interim standards for 1981-4, levels in excess of the 27.5 standard were seen as achievable after 1985.⁹⁷ Even in January 1981, when the NHTSA published an advanced notice of proposed rulemaking (ANPRM) for increasing CAFE after 1985, it assumed the auto makers would achieve their announced goal of 30 mpg by 1985.⁹⁸ This notice was one of the last actions taken by Joan Claybrook as head of the NHTSA. With Raymond Peck installed as the new head of the agency things changed quickly. In April, the ANPRM was withdrawn, 11 days before the end of the comment

period. Peck's justification is a classic example of market rhetoric. "This action is being taken in recognition of market pressures which are creating strong consumer demand for fuel-efficient vehicles and sending clear signals to the vehicle manufacturers to produce such vehicles. It is expected that the market will continue to act as a powerful catalyst...."⁹⁹

By 1985 these market pressures changed, according to the NHTSA, due to the decline in oil prices. GM and Ford petitioned the agency for a rollback because it was apparent that meeting the standard was impossible. However, these market changes were not sudden. In fact, the NHTSA admitted both GM and Ford acknowledged as early as mid-1983 their inability to meet the standard. Neither petitioned the agency for a rollback at that time. The petition in March 1985 came a few months before the new model year, after it was too late for corrective action. Waiting until it was too late to modify product design helped GM and Ford force CAFE policy into a debate over plant shutdowns.

Chrysler, unlike its brethren, supported the CAFE standards and opposed the rollback. The reason is simple. It could meet the standard. Chrysler invested millions of dollars modernizing its fleet as part of its reorganization after the federal bailout. It felt a rollback was tantamount to changing the rules during the

game. For Chrysler, the issue was not whether GM or Ford were capable of meeting the 27.5 standard, but whether they did everything possible to comply. Threatened plant closings were not part of the NHTSA's rulemaking responsibility. Indeed, the law did not require shutdowns; it prescribed civil penalties for non-compliance. Not only did GM or Ford not take corrective action after 1983, each made product decisions lowering CAFE.

Agreeing with Chrysler in part, the NHTSA argued the question was not whether the standard could be met, but if appropriate steps for compliance were followed. The agency believed GM and Ford intended to comply. However, circumstances changed preventing implementation of their respective plans. Consequently, the NHTSA argued, product restrictions and layoffs were "inevitable."

...GM and Ford...had sufficient plans to meet the 27.5 standard, made significant progress toward doing so, and were prevented from fully implementing those plans by unforeseen events. The agency's analysis further indicates that the only actions now available to GM and Ford to improve their fuel economy levels for MY [model year] 1986, would involve product restrictions likely resulting in significant adverse economic impacts, including sales losses well into the hundreds of thousands and job losses well into the tens of thousands, and unreasonable restrictions on consumer demand.¹⁰⁰

The unforeseen event referred to by NHTSA was the drop in gasoline prices shifting consumer demand. The basic

cause of GM's and Ford's failure were product plan changes made between 1980 and 1985.

GM's 1985 cars weighed 360 pounds more than anticipated in 1980. The NHTSA attributed the GM failure to five factors: a substantial drop in diesel sales; no new introduction of subcompact economy or electric car; slowdown in the rate of replacing existing cars with lighter weight front wheel drive models; sales shift toward larger models and engines; continuation of several existing lines. As a result of these failures GM's 1985 CAFE was 25.5, compared to its 1980 prediction of 31 mpg.¹⁰¹

Ford also fell short of its projections. The NHTSA explained the difference between the 1980 Ford plan and its actual 1985 CAFE by the continuation of the sale of large cars and station wagons comprising 20 percent of its sales mix instead of their complete elimination; delay in introducing new front wheel drive models; continuation of V-8 engines in significant number instead of elimination; lower than expected diesel sales; and lower than expected sales of more fuel efficient cars.¹⁰²

Given the long lead times that characterize product planning, lower CAFE was fully anticipated. The agency acknowledged this in its October 1985 decision: "GM's and Ford's mid 1983 projections for MY 1985 were not

substantially different from what they are today."¹⁰³
Subordinating CAFE policy to changes in market conditions

raises legal questions that goes to the heart of EPCA. The reason for mandated fuel economy standards in the first place, was to lead, not follow, the market.

In light of the vulnerability of gasoline supplies, as seen in the abrupt shifts in prices and availability occurring in the 1970s, the long term consequences of increased gas usage amplifies the potential for economic instability and disruption if supplies are impeded. Congress established fuel economy standards because car users often do not change driving habits with price increases. The Reagan Administration, however, has ignored this intent. It has consistently argued that price should be allowed to shape demand for gasoline. During a congressional hearing a few months before the NHTSA rollback William Silvey, Deputy Assistant Secretary for Policy, Planning and Analysis of the Department of Energy expressed this view, stating: "in a free economy, the best way to determine the appropriate price for conserving energy is to allow that choice to be made by individual consumers operating under market price signals." Diane Steed, head of the NHTSA added: "it is the administration's position that market forces, rather than CAFE standards, are the most efficient means

of achieving appropriate levels of fuel economy in the long run."¹⁰⁴

The relationship between "market forces" and product plans, was criticized by Chrysler.¹⁰⁵ The NHTSA disagreed.

NHTSA cannot agree that product plan changes that decrease CAFE are necessarily inappropriate for companies which are having difficulty meeting CAFE standard. Given that consumer demand has always been a major determinant of what is economically practicable for manufacturers to sell, since consumers need not buy what they do not want, it is axiomatic that a change in consumer demand (all other things held constant) will change what is economically practicable for manufacturers to sell. The fact that GM and Ford once believed they could delete certain models or engines without significant adverse economic impacts does not mean that they would be able to do so after conditions have changed, e.g., after fuel prices begun to fall.

Holding manufacturers to product plans which are no longer consistent with current market conditions would have the same result as requiring product restrictions....result[ing] in serious harm to the industry and the economy as a whole.¹⁰⁶

The NHTSA's formulation of this relationship stands the law on its head. By defining economic practicality as consumer demand it has undercut any potential for the law to lead the market as intended. Further, it ignores the effects of import quotas on Japanese cars in shaping market demand.

Because equating economic practicality with consumer demand was new for the NHTSA, it felt obligated to justify its decision. According to the NHTSA: "the

agency's traditional interpretation of the statutory criteria, with respect to consideration of economic factors, is that "economic practicality" requires standards to be within the financial capability of the industry, but not so stringent as to threaten substantial economic hardship."¹⁰⁷

In shifting this definition the agency relied heavily on the conference report of the EPCA, but was selective in citing the report. According to the NHTSA, the conference report on EPCA states that the statutory criteria for determining maximum feasible fuel economy levels require industry wide conditions be considered, and not a single manufacturer which might have the most difficulty. Such difficulties should be weighed against the benefits to the nation as a whole and given the appropriate weight in light of the small number of auto makers and possible implications for reduced competition.¹⁰⁸ This paraphrase of the excerpt quoted by NHTSA ends without finishing the paragraph. Examining the excluded passage reveals that the NHTSA version significantly alters the meaning of the report.

The passage continues: "however, it should also be noted that provision has been made for granting relief from penalties under Section 508(b) in situations where competition would suffer significantly if penalties were imposed." Section 508(b) gives the authority to

"compromise, modify, or remit, with or without conditions, any civil penalty- only to the extent of three conditions": to prevent bankruptcy or insolvency; when violation has been due to an act of God, strikes or fire; or if the FTC certifies that modification of the penalty was necessary to prevent substantial lessening of competition.¹⁰⁹ None of these conditions existed.

Without the necessary conditions for waiving the fines, the NHTSA focused on the industry's collective inability to meet the standards since it was prevented from basing its decision on the least capable manufacturer. Chrysler all along argued it was living proof that the standards were both technically feasible and economically practical. Getting around this hurdle required the agency to define the "industry's capability" as GM's and Ford's ability because of their share of the U.S. auto industry.

Given the substantial share (more than 60 percent) of car sales by GM and Ford, the agency believes that a standard set at a level above the maximum feasibility of these manufacturers would by definition not be at the maximum feasible average fuel economy of the industry, i.e., such a standard would exceed that level.¹¹⁰

The NHTSA, in effect, delegated fuel economy policy to the marketing strategy of these two firms. Rep. Edward Markey (D-Massachusetts), chairman of the subcommittee on Energy Conservation and Power of the

Energy and Commerce Committee, and a defender of the 27.5 mpg standard, noted this "delegation."

To hold the auto makers to anything less, to merely set the standard at a level which they say is achievable, would be a corruption of the law since it would transfer the power to set CAFE standards from the hands of government, which has an interest in fuel efficiency, to the offices of the auto manufacturers, which rightfully have a strong interest in lower costs and higher profits.¹¹¹

In a concentrated industry like automobiles, where two firms control two-thirds of the market, arguments based on the logic of competition obfuscate the power to control supply and demand. Rep. Markey made this point as well in opposing the 1985 rollback. "In this age of multimillion-dollar advertising campaigns, the claim that 'market forces beyond our control' dictate corporate policy is fatuous."¹¹²

Chrysler noted that in the spring of 1985 while GM and Ford argued consumer demand had shifted toward larger cars, both firms were running advertising campaigns announcing reduced financing for its largest cars, Lincoln Continental and Continental Mark VII, and Cadillac Eldorado and Seville. Special incentives undercut the claim of consumer "demand" for fuel inefficient cars.¹¹³

Furthermore, the claim that demand for large cars hurt manufacturers efforts to comply with CAFE was challenged by a Society of Automotive Engineer's

publication. It indicated "consumers shifting to smaller cars did not improve car mpg very much, and the recent shift to larger cars has not reversed new car mpg very much, either. In short, the majority of consumers have stayed with the same size mix of new cars throughout the 1978-1984 periods."¹¹⁴

CAFE Legal Requirements and Fines

Central to the rollback debate was the issue of fines versus shutdowns. GM and Ford contended plants would be shutdown instead of paying fines. Both firms claimed that paying civil penalties was not viable. As a result product availability would be curtailed and jobs lost. Marina Whitman, GM vice president for Public Affairs and Chief Economist, put the matter bluntly.

...to the extent that such standards do not reflect energy market trends, they deny consumers the kind of performance and comfort that they want and are willing to pay for, and transfer American jobs abroad. The ultimate losers from such a policy are American consumers, workers and taxpayers.¹¹⁵

The NHTSA accepted this claim. Chrysler, along with others, said the claim was merely a form of pressure used by the two firms to change the law.

The projected economic affects of layoffs were significant. The Department of Commerce estimated that retention of the 27.5 mpg standard would cost between 80,000-110,000 jobs. Projected sales losses were between

750,000-1,000,000 units.¹¹⁶ However, Chrysler argued against this analysis, contending neither firm would curtail production, despite protests to the contrary. There was simply too much money to be made selling large cars, even with the fines.

GM's potential fine was approximately \$400 million, while Ford's was approximately \$80 million. These figures are insignificant in comparison to the profits the companies earn on large cars. Chrysler estimated that GM earns \$8 billion in variable profits from its large cars, while Ford earns \$3 billion.. When the fines are viewed as an investment, Chrysler suggested, GM's return was approximately 2000 percent. Ford's return was even higher, 3800 percent.¹¹⁷

Canceling production was not the only economic threat made. Ford, for instance, claimed it was considering shifting more than 25 percent of production of its largest cars to Mexico. By increasing the foreign content of its cars to this level they would be considered imports for CAFE purposes. Consequently, Ford's domestic CAFE would increase while avoiding penalties.¹¹⁸

But this effort did not end here. G M s p e n t hundreds of thousands of dollars contacting its shareholders, employees, dealers and retirees, suggesting they write to the NHTSA, their Congressmen

and Senators. Estimates of the cost of postage alone to contact its 957,000 shareholders was more than \$200,000. Added to this cost would be the letters sent to these groups, as well as the computer costs for the four page personalized letter. Chrysler, on the other hand, ran an ad in major newspapers asking for letters to Washington.¹¹⁹

Aside from the economic improbability of shutdowns, Chrysler emphasized that the law explicitly acknowledged the acceptability of noncompliance, providing for fines in that event. Before a Senate subcommittee Chrysler testified: "the language and the history of the Act and the administrative practice under it make clear that a manufacturer has the option of paying the penalties and continuing to sell a noncomplying mix of vehicles."¹²⁰ Congress specifically rejected an amendment to the law permitting the Attorney General to seek a court order barring a manufacturer from selling a non-complying mix of vehicles.¹²¹ The only sanction is payment of civil fines.

Chrysler further argued that if Congress intended that noncomplying manufacturers have no choice but withholding products from the market to bring them into compliance, it would not have chosen civil penalties. Congress declared noncompliance "illegal" in attempting to reconcile two competing objectives: increasing fuel

economy and protecting employment. It wanted to force car makers to increase CAFE but not at a price of substantial adverse economic impact. Moreover, in two other separate instances the NHTSA "did not entertain the slightest doubt that a manufacturer would elect to pay the penalties and go on selling a noncomplying mix of vehicles."¹²²

Another legal aspect involved in the fines versus shutdown debate was the question of shareholder derivative suits alleging that management's decision had caused the corporation "loss or damage." GM, for example, argued it would be liable to such a suit if it continued selling a noncomplying mix. On the other hand, Chrysler contended such a suit was more likely if GM and Ford withheld production since it would cause greater harm. The Senate subcommittee asked the American Law Division of the Congressional Research Service for a legal opinion on the matter. Robert Poling wrote such a suit was not a realistic possibility.¹²³

Fuel Economy Improvements

The NHTSA claimed that higher CAFE standards were unnecessary due to fuel economy improvements made during the past ten years. "Overall, the nation is much more energy independent than it was a decade ago...."¹²⁴

Supporting this claim were the following statistics. From 1975-84 energy efficiency in the economy improved by 21 percent; passenger car petroleum use is actually lower than in 1975, although travel is up 25 percent; domestic oil production has increased and total imports have dropped 20 percent since 1975; the value of the nation's imported oil bill decreased 40 percent in the last five years; the amount of imported oil from OPEC dropped by 67 percent since its 1977 peak; as a percentage of GNP the net oil import bill is down from 2.8 percent in 1980 to 1.5 percent in 1984.

Yet, the NHTSA acknowledged estimates that domestic production is expected to decline from 10 MMB/D to 8.5 MMB/D by 1995 (MMB/D million barrels a day), assuming current drilling patterns by the oil industry. At the same time, net imports are expected to rise from 4.5-5 MMB/D to between 7.5-9.0 MMB/D by 1995 and approach 50 percent of U.S. petroleum use.¹²⁵ Dismissing these estimates, the NHTSA asserted that future energy projections were difficult to assess and could be overtaken by new domestic discoveries. However, given the acknowledged difficulty in estimating future energy supplies, the need for tighter CAFE is just as reasonable, if not more so. In the January 1981 NHTSA notice on post-1985 fuel economy Joan Claybrook noted the role CAFE standards can play.

The issue is not whether consumer demand will produce some level of increased fuel economy after 1985. The issue is, absent federal standards to set a floor on new vehicle fuel performance, will market demand be stable and strong enough, and will industry response be timely and adequate, to assure that this country minimizes its reliance on imported oil.¹²⁶

The benefits of CAFE standards were outlined by the NHTSA in a 1981 report to Congress. According to Claybrook the standards saved the average 1980 car buyer \$1,700 compared to the 1976 car buyer. Cumulative fuel savings by the year 2000 will reach approximately 16 billion barrels of fuel. The standards contributed to the stabilization of the dollar and reduction of inflation rate; enhanced national security by lessening growing dependence on foreign oil; loosened the hold of OPEC; provided stable planning targets for auto makers and pushed them to more quickly to compete with imported vehicles; and stimulated substantial innovation in design and production technology.¹²⁷ The claim that fuel economy increases were solely due to market pressures was even refuted by Henry Ford II. During an October 30, 1977 "Meet The Press" Ford stated "we wouldn't have the kind of safety, fuel economy or emissions controls without the federal laws."¹²⁸

Conclusion

After the 1985 CAFE rollback the Reagan Administration continued its opposition to the standards. In 1986 it again granted a petition by GM and Ford to keep the 1987 and 1988 standard at 26.0 mpg.¹²⁹ In March 1987 the Reagan Administration's opposition to any CAFE standards was formalized in a request to Congress for its complete repeal.¹³⁰ For the time being this request has little support. With the relatively low price of gas the prospects for higher CAFE levels are dim. In the future, however, if there should be disruptions in oil supplies resembling the 1970s, or a sudden rise in prices, the NHTSA's CAFE decisions will have ruinous consequences. For the moment, it represents the marriage of corporate power and government authority.

Endnotes

1. Michael Wines, "Regulatory Plan to Relieve Auto Industry of Regulatory Burden Gets Mixed Grades," National Journal July 23, 1983, p.1535.

2. U.S., Congress, Senate, Committee on Finance, Issues Relating to the Domestic Auto Industry. Hearings before the subcommittee on International Trade. 97th Cong., 1st sess., January 14-5 1981, Part 1, p.28. Hereafter known as the Finance Committee hearings. Danforth's concern for the auto industry is simple to explain. Missouri is the number two auto producing state in the country with 12.74 percent of domestic production in 1986. For a percentage breakdown of auto production by states, as well of a list of auto plants in the country see "1987 Market Data Book," Automotive News April 29, 1987, p.18.

3. Finance Committee hearings, Part 1, p.3.

4. See the respective statements of Ford vice president Will Scott, p.114, Chrysler financial liaison executive Pierre Gagnier, p.136, and GM vice president David Potter, p.150, Finance Committee hearings, Part 1.

5. UAW President Douglas Fraser, p.75, Finance Committee hearings, Part 1.

6. Finance Committee hearings, part 1, p.88.

7. Statement by AMICUS, p.179, Finance Committee hearings, Part 1.

8. AIDA represents 4,500 small businesses who employed 140,000 individuals selling and servicing imported cars, with an annual payroll of over \$2 billion--exceeded only by the ten largest industrial corporations. Its combined assets were over \$86 billion and its annual taxes were more than \$607 million. AIA is an association of auto importers in the U.S. except for Volkswagen and Mercedes-Benz, with combined employment in the U.S. of 140,000. They were joined by non-auto industry groups such as Consumers for World Trade and the Council for a Competitive Economy arguing against import restrictions.

9. The task force, announced on January 28, 1981 by Secretary of Transportation Drew Lewis, included Secretary of the Treasury Donald Regan, Secretary of Commerce Malcolm Baldrige, Secretary of Labor Raymond

Donovan, U.S. Trade Representative William Brock and CEA Chairman Murray Weidenbaum.

10. Robert Leone, "Regulatory Relief and the Automobile Industry," in George Eads and Michael Fix, The Reagan Regulatory Strategy: An Assessment (Washington: Urban Institute, 1984), p.91.

11. A detailed summary of this letter can be found in Helen Kahn, "Makers tell Reagan of worry, recommend actions to help," Automotive News February 9, 1981, p. 2.

12. See Ralph Nader and William Taylor, The Big Boys (NY: Pantheon Books, 1986), pp. 100-102; U.S., Congress, House, Committee on Government Operations, The Administration's Proposals to Help the Auto Industry. Hearings before the subcommittee on Government Activities and Transportation, 97th Cong., 1st sess., May 13-14, 1981, p.110. (Hereafter referred to as The Administration's Proposals to help the Auto Industry).

13. White House, Office of the Press Secretary, "President Reagan's Program for the U.S. Automobile Industry," p.2, reprinted in U.S., Congress, House, Committee on Energy and Commerce, The Role of OMB in Regulation. Hearings before the subcommittee on Oversight and Investigations. 97th Cong., 1st sess., June 18, 1981, Serial No. 97-70, p.419.

14. Wines, p.1532.

15. There were also a number of regulations that would be studied for future revisions. See p. A-28 of the White House press release (p.455 of the Finance hearings) for the EPA regulations to be studied and p. A-58 (p.483) for NHTSA regulations.

16. Interview September 26, 1986, Washington, D.C.

17. Leone, p.95.

18. Leone, p.94.

19. Leone, p.95.

20. Wines, p.1532.

21. The Japanese are well aware of this and recently sponsored a conference to discuss setting international safety and emissions standards. See Geoff Sundstrom, "Nations to discuss safety, exhaust standards," Automotive News November 10, 1986, p.44.

22. Murray Weidenbaum, "Regulatory Reform Under the Reagan Administration," in George Eads and Michael Fix, eds., The Reagan Regulatory Strategy: An Assessment (Washington: Urban Institute Press, 1984), p.19.

23. The summary of the events surrounding the 1981 renewal of the Clean Air Act closely follows Richard Tobin, "Revising the Clean Air Act: Legislative Failure and Administrative Success," in Norman Vig and Michael Kraft, eds., Environmental Policy in the 1980s: Reagan's New Agenda (Washington: Congressional Quarterly Press, 1984).

24. Weidenbaum, p.19.

25. Cited in Tobin, p.232.

26. HR. 5252.

27. Joan Claybrook, Retreat From Safety (NY:Pantheon Books, 1984), p.168. Claybrook cites NHTSA estimates from

42 F.R. 34,289 (1977), the "final" air bag notice eventually rescinded by the Reagan Administration. William Nordhaus, a former member of the Reagan Council of Economic Advisors estimates that 6,400 highway deaths and 120,000 moderate to critical injuries per year would be prevented with the air bag. See Comments of William Nordhaus on Notice of Proposed Rulemaking on FMVSS 208-Occupant Crash Protection, NHTSA Docket No.74-14, Notice 22, May 26, 1981, cited in Claybrook, p.171. Nordhaus also argued the ultimate costs of rescinding the standard would be 3.5 times the benefits, raising doubts about the Reagan Administration's dedication to cost-benefit analysis.

28. An air bag is an automatically inflating device which is imbedded in a cars dashboard and steering column that inflates upon impact in frontal crashes. These crashes are responsible for 55 percent of highway deaths, (Claybrook, p.168). An automatic seat belt is one that fastens when an occupant is seated. Neither requires any action to be effective unlike current seat belts which must be actively buckled to be effective, giving rise to the general term "passive restraint."

29. Despite the longstanding claims by the industry that car buyers are not interested in the air bag, there is clear evidence that air bag sales have been discouraged. Two articles in the Wall Street Journal by Albert Karr, one written in 1976, the other in 1986,

make this point. In 1976 Albert Karr described the difficulty car buyers encountered when attempting to purchase the air bag, at the time offered by GM as optional equipment, even those who were eager to buy. "A Wall Street Journal survey of car buyers, GM dealers and some close watchers of the auto scene show that the air bag received no wholehearted promotion; instead the company and its dealers actively discouraged sales," Albert Karr, "Saga of the Air Bag, or the Slow Deflation of a Car Safety Idea," Wall Street Journal November 11, 1976, p.1. GM subsequently dropped the option for lack of buyer interest.

In 1986 a similar picture emerged, this time describing the difficulties encountered by Ford customers in purchasing the air bag option. Various car buyers were told the air bag were dangerous, unnecessary, too expensive, or unavailable. According to Karr, Ford dealer's attitudes were similar to those of GM dealers ten years earlier in their hostility to the air bag. Albert Karr and Laurie McGinley, "Auto Shoppers Encounter Stiff Resistance When Seeking Air Bags at Ford Dealers," Wall Street Journal July 31, 1986, p.27.

30. The most notable industry advocate of the air bag was GM President Edward Cole. In May 1970 he said: "the development of passive restraints should be a top priority in our national efforts to reduce highway deaths and injuries," (quoted in Mark Green and Norman Waitzman, Business War on the Law (Corporate Accountability Research Group, 1981), revised 2d edition, p.134). In 1975-6 GM offered the air bag as an option on some models but by 1977 when Cole retired GM dropped the air bag option.

31. David Bollier and Joan Claybrook, Freedom From Harm: The Civilizing Influence of Health, Safety and Environmental Regulation (Public Citizen/Democracy Project, 1986), p.81.

32. There have been wide variations in estimates of the price of the air bag. In 1977 GM stated the cost to the car buyer for an air bag was \$193. Ford's price was slightly higher, \$235. At the same time, in a study for the insurance industry, John Delorean estimated the price was \$112. More recently, the industry has dramatically increased the price of the air bag, charging between \$800-1,100, a figure advocates of the air bag label as ridiculous. Since the insurance industry claims it will lower premiums for car equipped with the air bag, the costs will be paid for over the life of a car. See The Administrations Proposals to Help

the U.S. Auto Industry, p.221; Jake Kelderman, "Insurers cut premiums for passive restraints," Automotive News March 17, 1986, p.42.

33. "Don't Deflate Auto Safety," New York Times September 23, 1981, p.A 30.

34. The Administrations Proposals to Help the U.S. Auto Industry, p.211.

The hostility toward safety is nothing new as any examination of the industry's early safety policies illustrate. Discussions which makes the buyer confront the potential for death or injury raise concerns that the industry is afraid will tarnish its image as purveyors of happiness, freedom and comfort, the essence of its marketing strategy.

35. Gary Nash, "Passive Restraints: A Regulators View," in Robert Crandall and Lester Lave, eds., The Scientific Basis of Health and Safety Regulation (Washington: Brookings Institution, 1981), p.54.

There are some forms of "human behavior that no traffic safety efforts will ever be able to correct". See William Schmidt, "A Rural Phenomenon: Lying-in-the-Road Deaths," New York Times June 30, 1986, p. A 17, for a rather bizarre report of the phenomenon of "prone pedestrian" deaths. Scores of people each year are killed when they lie down on roads and are run over. This occurs mostly on summer nights in the poorer rural regions of the south and southwest. "In most cases the victim is intoxicated to the point of being comatose."

Of course, any discussion of human behavior and traffic accidents raises the issue of drunken driving. More than 25 percent of all drivers in fatal crashes are drunk. Efforts to curb driving while intoxicated, typically geared to the social drinker, have been questioned by studies that indicate the majority of those picked up by police show signs of alcohol dependence or alcoholism, problems unlikely to be solved through stepped up enforcement or current advertising campaigns. See Matthew Wald, "Battle Against Drunken Driving Should Focus on Alcoholics, Experts Say," New York Times January 3, 1987, p.5.

The focus of this problem, however well intentioned, returns the debate on traffic safety to the old theory of the nut-behind-the-wheel. While getting drunken drivers off the road is laudable, preventing "accidents" will always remain impossible. In fact, safety officials estimate only 1 in 2,000 drunken drivers are picked up by police, (Wald). Preventing injuries, on the other hand, is possible through vehicle design. Moreover, even those who drink and drive should

be afforded the protection of a crashworthy vehicle, despite their behavior.

36. MVMA v. State Farm Mutual, 463 U.S. 29 (1983).

37. 49 F.R. 28,962 (1984).

38. Mark Green and Norman Waitzman, Business War on the Law (Corporate Accountability Research Group, 1981), revised 2d edition, p.134.

39. U.S., Congress, Senate, Committee on Commerce, Science and Transportation, Motor Vehicle Safety and the Marketplace. Hearings before the subcommittee on Surface Transportation. 98th Cong., 2d sess., February/March 1983, Serial No. 98-16, p. 198.

40. Cited in Ralph Nader and William Taylor, The Big Boys (NY:Pantheon, 1986), p.74. Nader and Taylor comment: "sitting on engineering innovations and destroying documents are themes that recur again and again in GM's postwar history." They also report that in April 1981, the time of the Reagan announced regulatory rollbacks, GM shutdown its air bag development unit and shredded some of its files (p.74).

41. 32 F.R. 2,408, 2,415, (1967). The following history of FMVSS 208 is taken from John Graham and Patricia Gorham, "NHTSA and Passive Restraints: A Case of Arbitrary and Capricious Deregulation," Administrative Law Review vol.35, Spring 1983; Carl Nash, "Passive Restraints: A Regulators View," in Robert Crandall and Lester Lave, eds., The Scientific Basis of Health and Safety Regulation (Washington: Brookings Institution, 1981); Joan Claybrook; State Farm Mutual Automobile Insurance Co. v. Department of Transportation, 680 F.2d. 206 (1982); MVMA of U.S., Inc., et. al. v. State Farm Mutual, 463 U.S. 29 (1983).

42. 34 F.R.11,148, (1969).

43. 36 F.R.12,858, 12,859 (1971)

44. 36 F.R. 19,266 (1971). In addition to the delay, the NHTSA enabled the manufacturers to comply with the rule with the ignition interlock device. This device, preventing the car from starting unless seat belts were buckled, was so unpopular that soon after it went into effect in 1974 Congress prohibited the NHTSA from requiring any interlock or buzzer device as part of the Motor Vehicle and Schoolbus Safety Amendments of 1974, P.L. 93-492.

45. U.S., Congress, House, Committee on Interstate and Foreign Commerce, Federal Regulation and Regulatory Reform Report by the subcommittee on Oversight and Investigation. 94th Cong., 2d sess., October 1976, p.188. See also Greg Mitchell, "Iacocca's Untold Story: Puncturing the Air-Bag Rule," The Nation February 16, 1985, p.171; Helen Kahn, "Tape Tells of Ford Pitch to Nixon," Automotive News December 6, 1982, p.6.

46. Chrysler v. Department of Transportation, 472 F.2d. 659 (1972).

47. 42 F.R. 5,071 (1977).

48. 42 F.R. 15,935 (1977).

49. Motor Vehicle and Schoolbus Safety Amendments of 1974, P.L. 93-492.

50. For the respective committee reports see, U.S., Congress, House, Committee on Interstate and Foreign Commerce, Department of Transportation Passive Restraint Rule. Report by the subcommittee on Consumer Protection and Finance. Committee print 95-23, 95th Cong., 1st sess., 1977;

U.S., Congress, Senate, Committee on Commerce, Science and Transportation, Automobile Crash Protection. Report by the subcommittee on the Consumer. Senate Report 95-481, 95th Cong., 1st sess., 1977.

51. P.L. 95-335 (1978); P.L. 96-131 (1979).

52. Judy Sarasohn, "Congress Declines to Let Automakers off the Hook in Meeting Safety Standards," Congressional Quarterly Weekly Report December 27, 1980, p.3676; "NHTSA Agreement is Stalled When Members Bog Down in Air Bag, Bumper Dispute," Congressional Quarterly Weekly Report October 4, 1980, p.2907.

53. Nash, p.60. In addition to the extensive political review of the standard, cars with air bags have over a billion miles of actual on the road use and 5,000 crash tests, (Claybrook, p.176).

54. 46 F.R. 21,172 (1981). The Reagan Administration claimed there would be a \$30 million savings in capital investments from the one year delay. Claybrook compares this figure to the salaries of top executives at Ford and GM. If 150 executives at these firms who earn \$300,000 or more yearly were paid \$100,000, the savings would exceed the \$30 million. The Administration's Plan to Aid the Auto Industry, p.195.

55. 46 F.R. 53,419 (1981).
56. 46 F.R. 53,419 (1981).
57. Quoted in Claybrook, p.169, News Conference October 21, 1983.
58. Quoted in Graham and Gorham, p.222.
59. Graham and Gorham, p.205.
60. State Farm Mutual v. Department of Transportation, 680 F.2d. 206, 234.
61. MVMA v. State Farm, 463 U.S. 29, 36.
62. 39 F.R. 14,593.
63. MVMA v. State Farm, 463 U.S. 29, 46.
64. Claybrook, p.169.
65. MVMA v. State Farm, 463 U.S. 29, 47.
66. Quoted in Claybrook, p.173.
67. 49 F.R. 28,962.
68. In September 1986 the Court of Appeals for the District of Columbia dismissed a challenge to the NHTSA ruling since it was premature to rule on its legality before it took effect (State Farm v. Dole 802 F.2d.474). However, the Court added that it seemed unlikely that the rule would be rescinded as a result of state action because none of the laws passed appeared to comply with the specific requirements established by the Secretary of Transportation. See also Reginald Stuart, "U.S. Policy on Air Bags Withstands a Test in Federal Court," New York Times September 19, 1986, p.A 20; Helen Kahn, "Court dismisses suit on air bags," Automotive News September 22, 1986, p.1.
69. Warren Brown, "GM to offer air bags," Washington Post February 21, 1985, p. C 9.
70. Irvin Molotsky, "States Debate Laws on Seat Belt Use," New York Times February 28, 1985, p.B 5.
71. Quoted in Molotsky.
72. Quoted in Molotsky.

73. Cited in Molotsky.

This type of threat, whether actual or implied, can also be seen in efforts by GM to have its property taxes lowered by local communities. Rep. Dale Kildee (D-Michigan), representing Flint, described the situation local officials can find themselves in given the ability of large corporations to relocate.

They are able to play on fears. There's no question....The community has to keep people working there. They're afraid to say no, even if they should say no, for fear that maybe they are going to build a plant or move a plant someplace else. So the corporation plays upon those fears. Now the law - in 1976, that was passed in Michigan - on the [tax] breaks left it up to the local city councils to decide whether they wanted to give the breaks or not. But the pressure put on the local city council is very severe.... If they miscalculate and say no we're not going to give [the abatement], and [GM] does close down a [production] line, whether the line would have closed down or not, the city council is afraid they're going to be blamed for not having given the tax abatements.

Quoted in Nader and Taylor, p.84.

74. See Reginald Stuart, "U.S. Aide Faults Laws on Seat Belts," New York Times January 19, 1986, p.16; "Auto Makers Granted Extension on Air Bag Rule," New York Times March 26, 1987, p.A 18.

Evaluating state mandatory usage laws is further complicated by the fact that there have been attempts to repeal recently passed seat belt laws. In November 1986, Massachusetts voters repealed its 11 month old law with a ballot referendum. More than \$1 million was spent to influence voters in the campaign. Despite a vigorous effort by the industry it lost. In fact, the winners were outspent by a 70 to 1 margin, with half of the losers money coming from the auto industry. See "Massachusetts Changes Its Seat-belt Signs, but the Message Stays the Same," New York Times, December 7, 1986, p. 68.

The NHTSA stipulates that the following provisions must be met for mandatory usage laws. The laws must require front seat passengers to wear seat belts, with exemptions only for medical reasons. Violations must be fined \$25 and can be used to mitigate any damages sought by violators in litigation due to accidents. The states must establish education programs to encourage

compliance and evaluation programs to monitor the overall effects (49 F.R. 28,962, 28,997).

75. 52 F.R. 10,096 (1987).

76. 52 F.R. 10,096 (1987).

77. See Helen Kahn, "Makers get 4-year delay on passive restraints," Automotive News March 30, 1987, p.58.

78. The Administration's Proposals to Aid the Auto Industry, p. 180.

79. It is currently published privately and available through the Center for Auto Safety.

80. U.S., Congress, House, Committee on Science and Technology, Small Car Safety Technology. Hearings before the subcommittee on Transportation, Aviation and Materials, and the subcommittee on Investigations and Oversight. 97th Cong., 2d sess., November 30, December 3, 1982, pp.159-61.

81. In 1983, Clarence Ditlow, head of the Center for Auto Safety, commenting on this trend argued that the drop off could not be explained by improved quality in cars. Although the NHTSA does not issue information on the number of complaints received from consumers, the FTC saw a rise in the number of complaints. See U.S., Congress, House, Committee on Energy and Commerce, NHTSA's Defect and Recall Procedures: The GM X-Car Case. Hearings before the subcommittee on Telecommunications, Consumer Protection and Finance. 98th Cong., 1st sess., March 2, August 5, 1983, Serial No. 98-50, p.154.

82. Helen Kahn, "Reagan regime rapped on recalls," Automotive News January 5, 1987, p.15.

83. Quoted in Helen Kahn, January 5, 1987.

84. See U.S., Congress, House, Committee on Energy and Commerce Committee, NHTSA's Conduct in the Ford Transmission Case. Hearings before the subcommittee on Telecommunications, Consumer Protection and Finance. 99th Cong., 1st sess., August 1, 1985, Serial No. 99-78, p. 2; NHTSA's Defect and Recall Procedures: The GM X-Car Case.

85. Small Car Safety Technology, p.205.

86. Claybrook, p.193.

87. Small Car Safety Technology, p.179.
88. Small Car Safety Technology, p.179.
89. Small Car Safety Technology, p.272.
90. Small Car Safety Technology, pp.320, 461.
91. Public Citizen v. NHTSA, Complaint for Declaratory and Injunctive Relief, Civil Action No.83-1720 (June 15, 1983), cited in Claybrook, p.194.
92. Public Citizen v. NHTSA, Civil Action No.83-1720 (Stip. settlement filed October 12, 1983), cited in Claybrook, p.194.
93. Helen Kahn, "More makers seek CAFE relief," Automotive News March 11, 1985, p.11.
94. At the same time the NHTSA considered the industry's petition for a rollback, the EPA announced CAFE adjustments due to changed in its fuel-economy test procedures. Jake Kelderman described the adjustment as a "windfall" for GM and Ford, "EPA provides windfall for makers," Automotive News July 15, 1985, p.6. The retroactive adjustments could save the automakers up to \$500 million in potential fines. Clarence Ditlow complained that the EPA used the back door to relax CAFE, a fundamentally dishonest approach. See Reginald Stuart, "U.S. Alters Mileage Rules, Aiding Ford and G.M.," New York Times June 27, 1985, p.1.
Ditlow promised to challenge the adjustment in court. In December 1986 the Court of Appeals for the District of Columbia overturned the EPA formula for measuring fuel economy and ordered adjustments that could cost the automakers approximately \$300 million, Center for Auto Safety v. Lee Thomas, 806 F.2d. 1071 (1986). See also Reginald Stuart, "Court Faults E.P.A.on Rating Fuel Efficiency," New York Times December 3, 1986, p. A 23; Helen Kahn, "GM, Ford big losers on CAFE," Automotive News December 8, 1986, p.6.
The suit was filed by the Center for Auto Safety, Public Citizen, Environmental Policy Institute and the Union of Concerned Scientists. See Helen Kahn, "EPA sued on CAFE adjustment," Automotive News December 16, 1985, p.50.
95. P.L. 94-163 section 502(e).
96. While the NHTSA considered the rollback the Senate defeated a resolution urging the retention of the standard. See Helen Kahn, "Senate defeats bid for 27.5

MPG," Automotive News August 5, 1985, p.2. Part of the opposition to the resolution was based on the belief that "it was not Congress' place to interfere in an agency action that had been provided for by Congress in case of need."

97. 42 F.R. 33,534, 33,552.

98. 46 F.R.8,056.

99. 46 F.R. 2,243.

100. 50 F.R.40,528, 40,533.

101. Helen Kahn, "GM, Ford CAFE estimates listed," Automotive News September 23, 1985, p.73.

102. 50 F.R. 40,528, 40,539.

103. 50 F.R.40,528.

104. U.S., Congress, Senate, Committee on Energy and Natural Resources, Automobile Fuel Economy Standards. Hearings before the subcommittee on Energy Regulation and Conservation. 99th Cong., 1st sess., May 14, 1985, S.hrg.99-138, pp.21, 23.

105. 50 F.R. 40,452.

106. 50 F.R.40,528, 40,542.

107. 50 F.R. 40,528, 40,545.

108. 50 F.R.40,528, 40,546 citing U.S., Congress, Environmental Policy and Conservation Act of 1975. Conference Committee Report. 94th Cong., 1st sess., S.Rpt. 94-576, pp.154-5.

109. P.L.94-163 Section 508(b).

110. 50 F.R. 40,528, 40,546.

111. Quoted in Helen Kahn, "CAFE rollback faces tough going," Automotive News September 2, 1985, p.44.

112. Quoted in Helen Kahn, "CAFE rollback faces tough going," Automotive News September 2, 1985, p.44.

113. See, for example, Wall Street Journal, May 13, 1985, p.7 for a Ford ad.

An Automotive News editorial ("Mileage and marketing," July 8, 1985, p. 10) also noted the

duplicity of incentives being offered for cars with less than average fuel economy.

We are seeing too many incentives for cars that have less than average fuel economy. If we believe in a free economy, we should not create artificial marketing standards to pump up sales of larger, less-fuel-efficient cars by using rebates and other marketing devices that are designed to inflate sales. If an auto company wants a free marketplace, it should let the marketplace exist without promotions and incentives for cars that don't meet the standards and the public didn't want in the first place.

If the public doesn't want big cars, then don't help to change its mind. The auto makers are talking out of both sides of their mouths.

114. Cited in Auto Fuel Economy Standards, p.135, by Senator Howard Metzenbaum.

115. Auto Fuel Economy Standards, p.66.

116. Auto Fuel Economy Standards, p.264.

117. Auto Fuel Economy Standards, p.74.

118. Helen Kahn, "Ford faces tough road on CAFE," Automotive News August 19, 1985, p.2; Richard Johnson, "Big Ford's may become 'imports' to meet CAFE," Automotive News September 2, 1985, p.1.

119. Helen Kahn, "War of Words on CAFE," Automotive News September 16, 1985, p.6.

GM pursued a similar strategy the following year when the NHTSA approved the 26.0 standard for 1987 and 1988. See Helen Kahn, "27.5-MPG rule could cost billions, FTC says," Automotive News March 31, 1986, p.1.

120. Auto Fuel Economy Standards, p.93.

121. 121 Congressional Record H 5381, (daily edition, June 12, 1975) cited in Auto Fuel Economy Standards, p.93.

122. Auto Fuel Economy Standards, p.95, 42 F.R. 58,938, 58,946 (1977); NHTSA, Report on Requests by GM and Ford To Reduce Fuel Economy Standards for MY 1981-1985 Passenger Automobiles (Docket No.FE-76-02), June 1979, p. IV. 16.

123. Auto Fuel Economy Standards, pp.320-333. For another discussion of the legal details of shareholder derivative suits see pp. 97-101 of the hearings for material submitted by Chrysler.

124. 50 F.R.40,528, 40,544.

125. 50 F.R. 40,528, 40,545. These estimates are from the Energy Information Administration and Data Resources, Inc. Recently there has been several predictions of oil shortages in the 1990s that could be as disruptive as those of the 1970s. See Robert Hershey, Jr., "U.S. Oil Shortages Seem Unavoidable to Many Analysts," New York Times February 17, 1987, p. A 1; Lee Daniels, "Report Warns of Oil Crisis in 1990s," New York Times February 23, 1987, p. D 1.

126. 46 F.R. 8,056, 8,057 cited in Auto Fuel Economy Standards, p.154.

127. Auto Fuel Economy Standards, pp. 169-170.

128. Quoted in Auto Fuel Economy Standards, p.170.

129. 51 F.R. 35,594 (1986)

130. See Matt DeLorenzo and Helen Kahn, "White House urges repeal of CAFE laws," Automotive News March 2, 1987, p.1.

CHAPTER 7

REGULATORY ROLLBACKS AND THE DECLINE OF LAW

It is impossible to assess the full scope of the shift in automotive regulatory policy without looking at changes in the regulatory process itself. A controversial alteration in regulatory procedures accompanied the substantive changes in regulatory policy. These changes threatened the rule of law in the regulatory process. Indeed, Joan Claybrook commented on the uniqueness of the Reagan plan.

The new proposals marked a major departure in the conception of the federal auto safety program. Safety improvements in cars, the very heart of the NHTSA's mission, were now redefined as economic burdens to be avoided. This shift flouted the agency's statutes, scientific evidence, and even the economic realities of auto safety regulation.¹

The focus of this chapter shifts to the regulatory process itself and the methods used to implement the Reagan plan. Accomplishing the regulatory "relief" promised by Reagan required rollbacks of previously promulgated standards. This was implemented through a number of newly established bureaucratic mechanisms. The regulatory process increasingly came under White House control.

Parallel to the increase in business influence over the substance of government policy, there were

corresponding changes in regulatory procedures. Presidential control of the regulatory process was at the center of this shift. Although the Reagan Administration was not the first to attempt to control executive branch regulatory agencies, it was the most ambitious and successful. Critics charged that the integrity of the regulatory process, rooted in procedural safeguards, was threatened, raising fundamental questions concerning the rule of law in American politics. Before analyzing changes in the regulatory process made by the Reagan Administration, it is first necessary to discuss the nature of regulation and its relation to law.

The Regulatory Process and the Rule of Law

From its inception, the regulatory process has been controversial. Regulatory agencies, particularly independent regulatory commissions, exist in the space somewhere between the three formal branches of government (legislative, executive and judicial). Accordingly, regulatory agencies have powers that are described with ambiguous terms such as quasi-legislative and quasi-judicial. Partially insulated from the process of checks and balances, bureaucratic decision makers are involved in a complex set of relations with each of the three constitutional branches of government.

Congress establishes the scope of an agency and often oversees its actions; the president appoints regulatory officials; and the courts frequently subject its decisions to judicial review.² Yet, in large measure the regulatory process is outside the patterns of political control and accountability that is the hallmark of representative government.

Scholars have described the Congressional delegation of authority as one of the defining features of twentieth century American government. Indeed, according to Theodore Lowi, this delegation is so ubiquitous that the nation now operates under an unwritten constitution based on the rule of the bureaucrat and the clerk, rather than the rule of law. For Lowi, the theme of the so-called "Second Republic" is policy without law. Appropriately, he labels this change the decline of law.

Another commentator noted this shift in terms of the increasing importance of administrative agencies as compared to Congress and political parties.

In the years since the New Deal, politics over the distribution of wealth and investment and the debate over corporate power and discretion have progressively shifted from political parties and Congress to administrative agencies and other public bureaucracies. Administrative regulation has become, more and more, an arena for political struggle over health and safety risk in advanced industrial society, over the location and substance of investment, and over the social responsibility of business in American life.³

Samual Hays, in fact, argues that "in twentieth century America the politics of administration is the emerging central focus of the entire political system."⁴

Lowi explains this development with his concept of interest group liberalism. He sees this "public philosophy" as replacing the laissez-faire ideology of nineteenth century capitalism. Pluralism legitimizes the role of government in shaping and regulating society through the concept of political bargaining. As such, Lowi sees liberalism as hostile to law. The new public philosophy avoids law by parceling out public authority to bureaucratic agencies with few, if any, guidelines. The regulatory process becomes a substitute for the legislative process, removing elected officials from fundamental decisions affecting virtually every aspect of life.⁵

Lowi concedes that the scientific complexity of some issues may make the regulatory process necessary. He is alarmed, however, because delegations of authority are no longer seen as necessary evils but as positive goods. Moreover, delegating authority to bureaucrats to formulate policy in conjunction with corporate interest groups does not solve the problem of power. Instead it creates a "new feudalism," where private power becomes "legitimized privileged." Business, supposedly the

object of most government regulation, becomes, in essence, the subject.

The delegation of authority is, for Lowi, largely the result of voluntary choices based on the mistaken assumptions of interest groups liberalism. He does not believe it is the outcome of changing economic relations, requiring corresponding political and legal changes. We choose interest-group liberalism and we can just as easily choose to avoid it, subscribing to clear standards enunciated by elected officials. Lowi's explanation of American political structures has been criticized for its lack of understanding of the complex interplay between law and social power as well as its overly voluntaristic view of political development.⁶ Unlike the traditional legislative process, the regulatory process is less exposed to public attention, with the scope of conflict constrained. Rarely are regulatory issues reported by newspapers or television, nor do they usually become the focus of public discussion. When vital issues of public importance are made without such scrutiny the "public interest" often suffers.⁷ Exacerbating this tendency is the fact that it is not unusual for regulatory agencies to draw regulators from the very industry's they are charged with regulating.

Until the new "social" regulation of the 1960s, regulation was typically instituted on the behalf of business to stabilize markets and rationalize the economy. Thus, Gabriel Kolko, for example, describes regulation as political capitalism and the triumph of conservatism.⁸ Other critics of business regulation have stressed the symbolic nature of regulatory policy which placates public concern that "something should be done," and the life cycle of regulatory agencies.⁹

The regulatory state has undergone a series of changes, each expanding the issues under its domain: the progressive era, the New Deal; and the 1960s-1970s. Regulation was born as an attempt to stabilize particular industries, and to regulate against unfair methods of competition. By the 1930s regulation was directed at stabilizing the economy as a whole and expanding the federal government's role in the distribution of income. Government was forced to respond to the crisis of the Great Depression by providing legal protection to workers and unions and by implementing national welfare programs. By the 1960s the regulatory state took a different turn, requiring a new term --social regulation-- to distinguish it from traditional economic regulation. New regulatory agencies focused on the issues of health, safety and

environmentalism, not simply economic growth or stability.

The tremendous expansion of the regulatory apparatus in the 1930s put strains on the legitimacy of bureaucratic agencies. As a result, it became necessary to rationalize the regulatory process itself. Part of this rationalization came in the form of the Federal Register, created to collect the regulatory actions of the federal government in one source.¹⁰ After the WW II the Administrative Procedures Act was passed, establishing formal procedures for bureaucratic decision makers to follow, while at the same time maintaining the "flexibility" of the administrative process.¹¹

This codification of rules was an attempt to solve the problem of legitimacy of the administrative process by establishing procedural safeguards. Although decisions are still made by unelected bureaucrats, it ensured a more predictable process and allowed for the presentation of opposing points of view. Thus, the APA was an attempt to reconstitute the rule of law, albeit on a contracted basis.

Although regulatory agencies are often seen as extensions of the legislature, presidential involvement in the regulatory process has a long history. One of the standard cases in constitutional law, Humphrey's Executor, formalized the independence of regulatory

commissioners, when Franklin Roosevelt's attempt to remove an FTC commissioner was ruled unconstitutional.¹²

Despite this sanctioned independence for independent regulatory commissioners, most regulatory agencies fall within the executive branch.

Compared to the twenty-two independent regulatory agencies, there are over ninety executive branch agencies with regulatory powers.¹³ Officials in these agencies serve at the pleasure of the president. Yet, because regulatory decisions are based on a complex, often technical, process, regulatory decisions have typically been independent of presidential control. Also, enabling legislation frequently delegates regulatory responsibility directly to agency heads, a reflection of the Congressional desire to maintain this independence.

During the past twenty years, however, there has been a growing concern that regulatory officials are too independent, leading to a series of attempts to insert presidential control into the regulatory process. A concerted effort by the business community to frame the debate over regulation in terms of "strangling red tape" has fueled these efforts.¹⁴ In order to understand the reasons for this effort it is necessary to discuss the substantive changes in regulation occurring in the 1960s.

In their discussion of recent the attacks on regulation, Susan and Martin Tolchin remind us that:"it is important to recall that virtually the entire regulatory system [prior to the 1960s] was built in response to the needs of the business community."¹⁵ However, the new "social" regulation of the 1960s was different. Now, the mission of a series of agencies was to regulate the public health, safety, and environment. Several of these new agencies' responsibilities extended beyond a particular industry -- for example EPA and OSHA, -- and became the most controversial. The entire regulatory apparatus affecting the auto industry developed during this time in response to concerns over the "social" consequences of automobiles.

The distinctiveness of the most recent period of regulation was, in part, due to the tremendous expansion of regulatory responsibility. David Vogel contrasts the number of laws passed during the Progressive Era and the New Deal to the 1960s-1970s.

In the broad area of consumer safety and health, five new laws were enacted by the federal government during the Progressive Era, eleven during the New Deal, and a total of sixty-two between 1964-1979. Job safety and other working conditions were the focus of a total of five pieces of national legislation during both the Progressive Era and the New Deal; from 1960-1978, twenty-one laws were approved in this area. Two statutes regulating energy and the environment were enacted by the federal government during the Progressive Era, five during the New Deal, and thirty-two during the most recent period....¹⁶

Government expenditures for these programs increased dramatically. "Between 1970 and 1980, annual government expenditures on the enforcement of social regulation increased from \$539 million to \$5,036 million, while the number of personnel staffing these agencies increased from 9,707 in 1970 to 63,574 in 1980."¹⁷

With these new agencies the regulatory process, historically business' domain, developed an adversarial tenor. Growing out of the social movements associated with the 1960s (i.e. civil rights, environmentalism, consumer protection) the autonomy exercised by bureaucrats became problematic. Regulatory politics, traditionally beneficial to business, now challenged corporate behavior. With new "shadow" groups acting as watchdogs of the public interest, business was less able to influence regulatory decisions than in the past.¹⁸ Instead of the narrow rule by "experts" and the quiet lobbying of corporate officials, public interest advocates increasingly challenged agency decision makers. At the same time, beginning in the mid-1960s the Supreme Court broadened the rules governing standing, granting numerous public interest groups the right to file suits against regulatory agencies.¹⁹ A number of regulatory statutes also authorized private citizens to sue to secure their enforcement.²⁰

Two of the most celebrated examples of the new adversarial tone of regulatory politics occurred during Michael Pertschuk's 1977-1981 tenure as FTC Chairman. The outcry against the FTC's proposals requiring used car dealers to list all known defects and funeral directors to itemize costs was ferocious. Congress, inundated by local businessmen upset by the FTC, overturned these proposals. In these cases, "political control" served business interests. The FTC, with its "unelected faceless bureaucrats," were the defenders of the public interest.²¹

Reacting to the rise of social regulation, the Executive branch at the behest of the business community, began efforts to subject executive regulatory decisions to presidential control. These efforts were not motivated by concerns that particular agencies were failing to carry out their mission. They were attempts to control the regulatory process on behalf of business. If, as David Vogel argues, social regulation is perceived by the business community as the most important contemporary threat to wealth and power, then the development of parallel bureaucracies by the president to control the process is one of the most important attempts to protect wealth and power.

Presidential Control

Both Jimmy Carter and Ronald Reagan responded to the growing anti regulatory sentiment generated by the business community. With anti Washington campaign rhetoric, each presented himself as an outsider, pledging to rein-in the runaway bureaucracy. Reagan went further than Carter when he publicly blamed the nation's economic woes on "government red tape." Although less extreme, Nixon and Ford also attempted to shape the regulatory process. Thus, the Reagan Administration's attempts at controlling the regulatory process must be located within the context of these earlier efforts.

Needless to say, in the past presidents and their aids have had occasional interests in regulation. "However," according to Eads and Fix, "continuing White House interest in the impact of federal regulatory activities either on the economy as a whole or on important industries and sectors dates only from the early 1970s."²² Richard Nixon began systematic presidential involvement in regulatory affairs by becoming "the first president to introduce a formal management system into the regulatory arena, a process known as the Quality of Life (QOL) review."²³

It required agencies involved in health, safety or environmental regulation to advise other affected agencies of all conceivable impacts of proposed

regulations -- economic, intergovernmental, environmental. The OMB mediated interagency conflicts. The focus of attention for these changes was the newly formed EPA, establishing the precedent of agency accountability to the president.²⁴ Nixon's plans for strengthening presidential control, as well as a general administrative reorganization, were cut short by his resignation.²⁵ Subsequent presidents have continued in his footsteps, each moving closer to direct presidential control of the regulatory process.

Gerald Ford justified his involvement in regulatory affairs as a response to inflation. He redirected regulatory management from an environmental to an economic focus, through Executive Order (EO) 11821 requiring "Inflation Impact Statements" from all agencies.²⁶ OMB's enforcement and coordinating role was replaced by the newly formed Council on Wage and Price Stability (COWPS). Ford extended this order with EO 11949 requiring "Economic Impact Statements." OMB and COWPS were given a largely advisory oversight role. Results from this effort were uneven. Part of Ford's ambivalence toward direct presidential involvement was a reaction to Watergate and the controversy generated from Nixon's use of various agencies for "political" purposes.

Jimmy Carter also inherited a post-Watergate reluctance to become directly involved in agency politics, at least at first. Eventually, however, his economic advisors convinced him of its necessity. The Tolchins argue that "Carter's efforts represented the first strong move by a President to intervene directly in the day-to-day operations of regulatory agencies."²⁷ Slow in starting, Carter's involvement did not develop until 1978. During this period Bert Lance, his director of OMB, was preoccupied with his own problems and OMB's role faded. With the moderation of presidential oversight, agencies acted relatively autonomously. By 1978, however, the CEA convinced Carter to renew efforts at regulatory management, leading to two new management structures: the Regulatory Council and the Regulatory Analysis Review Group (RARG).²⁸ Carter used EO 12044 to require agencies to provide an economic analysis of all proposals when they would have a "substantial" impact on the economy. The RARG would review them.

The intent of RARG was not governmental efficiency. According to the Tolchins "by any name, RARG was there to modify regulations, to relax them, and ultimately to make them less expensive for the business community...."²⁹ It was a front for the President to influence the regulatory process without appearing overly involved.³⁰ The RARG included all cabinet level

departments except State, Treasury and Defense, top officials from OMB, EPA, and the White House Office of Science and Technology Policy. It was run by an executive committee chaired by Charles Schultze, its original architect and Chairman of the CEA. With the bulk of the analytical work was done by economists from the COWPS and Schultze's economic orientation, RARG represented the ascendancy of economists over lawyers in the presidential management of regulatory affairs, resulting in a quantitative orientation.³¹

The Regulatory Council operated independently with far less power. It included officials from the cabinet and leading regulatory agencies and was essentially a research and discussion group to coordinate common regulatory approaches among agencies with overlapping responsibilities. Publishing a semi-annual calendar listing major forthcoming regulations was its chief responsibility. RARG then used the calendar to identify candidates for review. Douglas Costle, head of the EPA, chaired the Council.³²

President Carter's efforts at controlling the regulatory process were vigorously opposed by public interest groups. In a letter sent by Richard Ayres of the Natural Resources Defense Council and cosigned by over 30 environmental, health and labor groups, Ayres characterized White House oversight as a "serious threat

to the interests of million of Americans." In words foreshadowing criticism of the Reagan Administration, Ayres charged, "on questions of work place and environmental health and welfare," the judgement of CEA and COWPS was substituted "for the technical and legal judgement of agencies that Congress explicitly created and directed to make such decisions."³³

The controversy surrounding Carter's regulatory oversight reached the federal courts. The Environmental Defense Fund filed suit in Sierra Club v. Costle charging that there had been an "ex parte blitz" by the coal industry, with White House officials acting as conduits for information supplied by the industry.³⁴ The case involved new source performance standards for steam electric power plants, requiring a revision of regulations effecting emissions and operating costs for all new coal burning electric power plants. RARG, and eventually Jimmy Carter, became involved. After a series of meetings the EPA's final rule weakened the standard. Nevertheless, dissatisfaction characterized all sides, with environmentalists, and the electric power and coal industry upset.

Central to the Environmental Defense Fund's legal challenge was the issue of presidential oversight in the post-comment period (after interested parties have had the opportunity to submit relevant information). The

D.C. Court of Appeals rejected the suit, arguing that agencies within the executive branch should not be immune from presidential scrutiny. However, the case was decided on narrow grounds: the legality of discussions during the post comment period. The Reagan Administration used this case to justify its actions, although its procedures were different. The differences between the Carter and the Reagan Administration's understanding of regulatory oversight are significant. Examining these differences demonstrates how law has been sacrificed under the Reagan Administration.

Eads and Fix describe the ground rules that were established under Carter and subsequently approved by the Court. During the post comment period presidential advisors could not introduce considerations clearly outside the agency statutory bounds. If they wished to raise permissible issues the information had to be part of rulemaking record. Introducing impermissible information from outside parties was also barred. Finally, summaries of all relevant conversations had to be placed on the rulemaking record.³⁵ Despite these restrictions, Carter established the precedent of close White House control of the regulatory process. Mark Green and Norman Weitzman conclude that the pressure Carter put on consumer and environmental law enforcers

was to do less, never more, and cite a Wall Street Journal

article: "Mr. Carter has turned the screws on social regulators more effectively than either of his Republican predecessors."³⁶

The Reagan Administration went further. It aimed at a bold insertion of presidential control.³⁷ There were three major aspects to the Reagan policy: creation of a highly visible task force on regulatory relief chaired by Vice President Bush; formal centralization of regulatory oversight in newly created Office of Information and Regulatory Affairs (OIRA) within OMB; and promulgation of uniform cost-benefit standards for all regulations to the extent permitted by law.³⁸ The Reagan Administration wasted no time in acting. The Task Force was established during its first full day in office, January 21, 1981.³⁹ In February Reagan issued EO 12291 to help carry out its mission. The Regulatory Council, RARG and COWPS were abolished.

Absorbing the functions of the Regulatory Council, RARG, and COWPS, OIRA had the power to designate proposed rules as major, previously the responsibility of the regulatory agency. With this designation it received a draft regulatory impact analysis before the agency published a notice of proposed rulemaking. Further agency action could be delayed if OIRA was

dissatisfied with the regulation or its justification. OIRA's comments were not made part of the regulatory record. Critics charged this obscured public knowledge of the differences between the White House's views and those of the agency's. It destroyed safeguards against secret, undisclosed and unreviewable contacts by government and private interests seeking to influence regulatory decisions.

Discretionary authority of agency decision makers was replaced by the power of White House aides, corrupting the "neutrality" of the regulatory process, the basis for the Administrative Procedures Act itself. Decisions were now largely made by individuals unfamiliar with the substance of an agency's mission, often in response to complaints from the business community. Douglas Parker, Director of the Institute for Public Representation at the Georgetown Law Center, (a public interest law firm representing groups in the administrative process) said of EO 12291:

We are concerned about the extent to which it actually makes the whole process less responsive, to which it obscures responsible decision making, to which it opens the process to special interests with particular political access, and in general the way it dilutes the traditional rights of public participation in the administrative process.⁴⁰

According to George Eads, a member of Carter's CEA, and chairman of the RARG, these changes signal that analysis is really unimportant in determining what

regulations are allowed to proceed. The litmus test is political acceptability. For Eads, the clearest example of this problem is the Auto Relief program of April 1981, "where, regardless of what you think of the individual numbers that are claimed, the agencies are being given the signal that the results should come out a certain way before the necessary analysis has ever been begun."⁴¹ Clarence Ditlow, the Director of the Center For Auto Safety similarly commented on the Reagan Administration's early regulatory decisions. "The rulemaking conducted to date appear to be conducted more to ratify preordained decisions by unidentified decisionmakers than to examine the issues and render a reasoned decision."⁴² The preordained decisions and signals that were sent concerning auto industry regulations were unmistakable. Regulatory policy was to be redirected. The industry was to be left alone and excused from past decisions.

C. Boyden Gray, counsel to the task force on regulatory relief, gave credence to fears that the Reagan Administration was institutionalizing an appeals structure for the business community. In a speech before the U.S. Chamber of Commerce he told them not to worry if they went to an agency and did not receive an adequate response to their complaints, and reminded them, "that's what the task force is for." He then gave

an example of an agency that was not responding to a request, the business group came to the task force and after a few phone calls the matter was cleared up.⁴³ Although OMB officials claimed they would hear the appeals of any group, they did not produce a list of meetings until the House Committee on Energy and Commerce issued a subpoena. A staff member of the committee commented that the list read "like a list of the Fortune 500."⁴⁴

The Reagan changes in executive branch regulatory procedures alarmed several members of Congress. Hearings were held in the House on the role of OMB. Morton Rosenberg of the American Law Division of the Congressional Research Service was requested to prepare a report on the constitutional issues of the Reagan executive order. Rosenberg concluded:

The Order...appears to establish a formal, comprehensive, centralized, and substantively oriented system of control of informal rulemaking that is without precedent.... and in the context of the unfettered authority that may be wielded under the Order, the inevitable effect could be the displacement of ultimate agency discretion in contravention of any statute vesting discretionary rulemaking authority in any agency official.⁴⁵

Rosenberg based his conclusions on three major objections to the Reagan plan involving the separation of powers, the APA, and due process within the regulatory process.⁴⁶

(1) Since rulemaking is an extension of Congressional law making, when presidential intervention is not specifically authorized by statute, the Constitution or Congressional practice, it displaces authority reserved to administrative agencies, thereby thwarting Congressional will and the separation of powers.

(2) The president's order runs counter to the APA in four ways:

(a) By permitting the Director of OMB rather than the agency head to determine when the agency can promulgate a rule;

(b) By prescribing procedures to be uniformly applied across all agencies violating the flexibility that the APA sought to engender in the informal rulemaking process;

(c) By requiring the use of substantive cost-benefit analysis, which is not consistent with the Act's intent to require only "neutral, value-free" procedures; and

(d) By superimposing a central coordinating authority overall agency rulemaking in direct contravention of the APA's legislative history.

(3) It fails to provide safeguards against undisclosed contact by interested parties and executive staff. This failure violates the constitutional due process rights of participants in the regulatory process. There are two dangers with ex parte contacts.

(a) White House officials would act as conduits for influencing interagency rulemaking;

(b) They would act on their own to influence rulemaking in the post-comment period.

The Reagan Administration justified its order claiming that the president was seeing to it that the laws were faithfully executed.⁴⁷ Although Sierra Club v. Costle had acknowledged the legitimate presidential role in regulatory decisions, the scope of the decision

was far narrower than the Reagan order. The issue in Sierra Club was presidential involvement in the post comment period. Even then only issues that were already on the regulatory docket could be legitimately raised. It did not deal with OMB as a regulator of the regulatory process, with the power to stop regulations without justification.⁴⁸

Controversy over the Reagan plan forced modifications in its implementation. More careful record keeping was initiated concerning meeting between OMB officials and business lobbyists. However, the central power of OMB to stop proposed regulations remained. By the summer of 1983 the Task Force on Regulatory Relief disbanded, with the administration abandoning its earlier commitment to an ambitious legislative agenda of social deregulation. The Reagan administration falsely assumed that support for dismantling economic regulation was matched in the area of social and environmental regulation. The controversies surrounding the EPA under Anne Gorsuch Burford and the Interior Department under James Watt were vivid examples of how mistaken they were. Public reaction led to a retreat.⁴⁹

Conclusion

Business mobilization in the 1970s set the agenda for presidential control over the regulatory process and deregulation. Coupled with the economic instability and long term decline in the economy since 1973, the regulatory state has been redefined, in large measure, as problems of government red tape.⁵⁰ While there may be many regulations that are nuisances, little attention is given to the positive benefits of health safety and environmental regulations.⁵¹

Despite the broad support for social regulation that exists for particular programs, the Reagan Administration has effectively contained the regulatory process through budget cuts, appointments and OMB control. Since these changes shape the formulation of proposed rules it is difficult to quantify the full extent of its effects.

The Reagan Administration's success in subordinating regulatory policy to White House control will leave an ambiguous legacy. On the one hand, it demonstrated the possibility of political control over diverse bureaucratic decision makers previously seen as virtually autonomous. However, political control was restored at a tremendous cost to the rule of law, and with a narrow orientation. Sacrificing procedural safeguards, it institutionalized political pressures from the business community. It did not open the

process to public debate and in fact excluded political accountability by obfuscating responsibility for decision making. If political control over bureaucratic decision makers is no more than a conduit for corporate interests, the regulatory process loses any potential for protecting the public from corporate behavior. It transforms the regulatory process into nothing more than a symbolic check on corporate abuse, strengthening corporate control over public health and safety.

Endnotes

1. Joan Claybrook, Retreat From Safety (NY: Pantheon Books, 1984), p.180.

2. Before the Supreme Court declared the legislative veto unconstitutional in 1983, (INS v. Chadha 103 S.Ct. 2764), Congress used this provision to preserve its right to disapprove regulatory decisions.

3. Gerald Berk, "Approaches to the History of Regulation," in Thomas McCraw, ed., Regulation in Perspective (Cambridge: Harvard University Press, 1981), p.200.

4. Samuel Hays, "Political Choice in Regulatory Administration," in Thomas McCraw, ed., Regulation in Perspective (Cambridge: Harvard University Press, 1981), p.127.

5. Lowi was not the first to discover this troubling aspect of the regulatory process. During the debate over the creation of the FTC in 1914 opponents raised the issue of the insulation of independent regulatory commissions from political influence. Senator Borah argued:

I do not believe you can take a commission and separate it from the rest of the world so that it will not feel the influence and power that effect other men.... I, as one, am not willing to take the currency question, the industrial business of this country, and the transportation business, and place all of those things entirely away from the electorate, entirely away from the recall of the people. In the end it will result in their moving to a very large extent in one groove and the people in another groove. I am not willing that the most tremendous affairs of government shall be wholly separated from the recall, which the people have at stated time with reference to the election of their officers.

Robert Cushman, The Independent Regulatory Commission (NY: Oxford University Press, 1941), p.192.

6. William Scheuerman, The Steel Crisis (NY: Praeger, 1986), directly challenges Lowi, arguing that the delegation of authority and the decline of law are

the result of the structural relations of capitalism, where business finds such "flexibility" more conducive to its needs. Scheuerman examines the case of trade policy and steel imports, pursuing the idea of law and its relation to social power theoretically articulated by Franz Neumann in "The Change in the Function of Law in Modern Society," The Democratic and the Authoritarian State (NY: The Free Press, 1957).

7. Similar criticisms of the regulatory process can be seen in some of the early works done by scholars. See, for example, E. Pendleton Herring, Public Administration and the Public Interest (NY: McGraw-Hill, 1936); Marver Bernstein, Regulating Business by Independent Commission (Princeton: Princeton University Press, 1955).

8. Gabriel Kolko, The Triumph of Conservatism (NY: The Free Press, 1963); Railroads and Regulation (Princeton: Princeton University Press, 1965); Main Currents in Modern American History (NY: Pantheon Press, 1984).

9. Murray Edelman, The Symbolic Uses of Politics (Urbana: University of Illinois Press, 1964); Marver Bernstein.

10. William Leuchtenburg, Franklin D. Roosevelt and the New Deal (NY: Harper and Row, 1963) argues that in the aftermath of the Supreme Court's ruling in Panama Refining Co. v. Ryan, 293 U.S. 388 (1935), which attacked the sloppy procedures and delegation of power of the NIRA, and as a result of well-founded criticism of administrator-made law, the Federal Register was launched (p.144, fn.5).

11. Complaints over administrator-made, and enforced, law are virtually as old as the process itself. For a discussion of early criticisms of the process and the move toward the APA see Peter Woll, American Bureaucracy, 2 ed. (NY: Norton, 1977), pp.135-144; Louis Kohlmeier, The Regulators (NY: Harper and Row, 1969), pp.267-8.

12. Humphrey's Executor v. United States, 295 U.S. 602 (1935).

13. See Federal Regulatory Directory (Washington: Congressional Quarterly Press, 1985).

14. Murray Weidenbaum, who became chairman of Reagan's CEA at the beginning of the Reagan Administration is one of the leading proponents of this view. See Business, Government and the Public (Englewood Cliffs: Prentice Hall, 1977); The Future of Business Regulation (NY:Amacom, 1979). Weidenbaum's estimates of the costs of regulation to the economy have been cited to demonstrate how government is ruining the competitive position of American business. For a critique of Weidenbaum's "estimates" see Mark Green and Norman Waitzman, Business War on the Law (Corporate Accountability Research Group, 1981) revised 2d. edition, pp.130-3.

15. Susan and Martin Tolchin, Dismantling America: The Rush to Deregulate (Boston: Houghton Mifflin, 1983), p.15.

16. David Vogel, "The 'New' Social Regulation in Historical and Comparative Perspective," in Thomas McCraw, ed., Regulation in Perspective (Cambridge: Harvard University Press, 1981), p.162.

17. Vogel, p.163.

18. Vogel, p.173.

19. Vogel, p.172.

20. Vogel, p.173.

21. For a fuller discussion of Pertschuk's experiences see Michael Pertschuk, Revolt Against Regulation: The Rise and Pause of the Consumer Movement (Berkeley: University of California Press, 1982).

22. George Eads and Michael Fix, Relief or Reform: Reagan's Regulatory Dilemma (Washington: Urban Institute, 1984), p.45.

23. Tolchin and Tolchin, p.44.

24. Tolchin and Tolchin, p.45.

25. See Richard Nathan, The Plot That Failed (NY: John Wiley, 1976).

26. Tolchin and Tolchin, p.45.

27. Tolchin and Tolchin, p.45.

28. Tolchin and Tolchin, p.45.

29. Tolchin and Tolchin, p.47.

30. Tolchin and Tolchin, p.46.

31. Tolchin and Tolchin, p.47.

32. Tolchin and Tolchin, p.48.

Congress added to the power of the OMB to influence the regulatory process by passing two laws in 1980: Paperwork Reduction Act of 1980 (P.L. 96-511) and the Regulatory Flexibility Act (P.L. 96-354). The former gave OMB the power to limit paperwork and other information request requirements, while the latter supported the OMB's use of cost-benefit analysis in certain kinds of regulations.

33. Cited in Tolchin and Tolchin, p.50.

34. Sierra Club v. Costle, No. 79-1565, D.C. Court of Appeals, April 29, 1981.

35. Eads and Fix, p.66.

36. Mark Green and Norman Weitzman, Business War on the Law, 2d. revised edition (Corporate Accountability Research Group, 1981), p.xxiii.

37. Eads and Fix, p.107.

38. Eads and Fix, p.108.

39. Its members included Vice President Bush, as Chairman, Treasury Secretary Donald Regan, Attorney General William French Smith, Commerce Secretary Malcolm Baldrige, Labor Secretary Raymond Donovan, OMB Director David Stockman, Assistant to the President for Policy Development Anderson, CEA Chairman Murray Weidenbaum. James Miller 3rd, was the Executive Director and Rich Williamson, Assistant to the President for Intergovernmental Affairs, was the Associate Director. C.Boyden Gray, Bush's counsel served as counsel to the task force.

The Task Force's responsibilities, according to James Miller, included the review of major proposals by executive branch regulatory agencies, especially those with major policy significance or where there was overlapping jurisdiction among agencies; the assessment of executive branch regulations already on the books, especially those particularly burdensome to the national economy or to key industrial sectors; to oversee development of legislative proposals in response to congressional timetables and more importantly to codify

the President's views on the appropriate role and objectives of regulatory agencies. See U.S., Congress, House, Committee on Energy and Commerce, The Role of OMB in Regulation. Hearings before the subcommittee on Oversight and Investigations. 97th Cong., 1st sess., June 18, 1981, Serial No.97-70, p.44.

40. Statement by Douglas Parker, The Role of OMB in Regulation, p.30.

41. Statement of George Eads, The Role of OMB in Regulation, p.15.

42. U.S., Congress, House, Committee on Government Operations, The Administration's Proposals to Help the U.S. Auto Industry. Hearings before the subcommittee on Government Activities and Transportation. 97th Cong., 1st sess., May 13-4, 1981, p.110.

43. Cited in The Role of OMB in Regulation, p.53.

44. Cited in Tolchin and Tolchin, p.64. The list was compiled after the meetings and did not include those held outside the OMB offices, or phone calls.

45. Morton Rosenberg, "Presidential Control of Agency Rulemaking: An Analysis of Constitutional Issues that May be Related to Executive Order 12291," a report prepared for the use of the U.S., Congress, House, Committee on Energy and Commerce, June 15, 1981, 97th Cong., 1st sess., Committee Print 97-0, p.70.

46. This is a summary by Eads and Fix, pp. 112-3.

47. A legal justification of the Administration's view was presented by Theodore Olson, Assistant Attorney General, Office of Legal Council, and can be found in The Role of OMB in Regulation, pp.142-152.

48. The limitations of Sierra Club as a precedent for the Reagan executive order is discussed by Eads and Fix, pp. 114-117.

49. Eads and Fix, p.259.

50. There are several new journals devoted to regulation which argue against regulation, Bell Journal of Economics, Journal of Law and Economics, Regulation, cited in Thomas McCraw, ed., Regulation in Perspective.

51. David Bollier and Joan Claybrook, Freedom From Harm (Washington: Public Citizen, 1986) attempt to fill this gap and document the human benefits of regulation. They survey six different agencies with the responsibility for health and safety regulation: The Food and Drug Administration; The U.S. Department of Agriculture; the National Highway Traffic Safety Administration; the Environmental Protection Agency; the Occupational Safety and Health Administration; The Consumer Product Safety Commission.

CHAPTER 8

TRADE POLICY

The final aspect of the Reagan program aiding the auto industry was the import quotas on Japanese cars. Actually, the import limit on Japanese made cars was not a policy imposed through the formal mechanisms of American trade policy. Instead, the Japanese "voluntarily" limited the export of their cars to the U.S. Of course, this decision was "encouraged" by Reagan Administration trade negotiators with the effect of formal sanctions, but lacking legal backing or review. The formation of this cartel-like arrangement came despite an ITC ruling that imports were not the main cause of the industry's economic decline.

This chapter examines auto trade policy, particularly, the Japanese import restraints and the unsuccessful attempt to gain passage of a domestic content law. The latter, a UAW backed proposal, required car manufacturers to increase the domestic content of cars sold in the country proportionally with increasing sales. In attempting to restrain Japanese imports, the union hoped the Japanese would open auto plants in the U.S. In addition a domestic content law would restrain domestic manufacturers from "outsourcing"

production, slowing the shrinkage of domestic employment.

Automotive trade policy illustrates the complex relationship between government policy and corporate power. Import restraints were shaped by and for the industry. Yet this was done outside the formal channels of trade policy. With little legal or economic justification, an explicitly pro-business administration acted to limit competition, enabling the auto makers to reap large profits. There were no guarantees that the industry would reinvest the money earned from this protection and "promises" to this effect were not kept. The controls were an example of the blatant use of government authority to further private interests, and had few, if any, employment benefits. However, without the industry's downturn, which was seen as requiring government's response, restrictions would have been unthinkable.

Auto workers were not satisfied with the Reagan Administration's trade policy and lobbied for domestic content legislation. The union's proposal explicitly focused on the problem of declining employment in the industry. By requiring auto manufacturers to invest in the U.S. if they wanted to sell cars in what is the largest market in the world, the bill was a direct challenge to the corporate control over investment

decisions. With their investment autonomy threatened the auto makers, predictably, opposed the idea.

The Executive branch vigorously sided with the industry. However, the bill received a surprisingly positive reception from the House of Representatives. Indeed, the bill provided a classic illustration of the different economic forces influencing different branches of the national government. Local concerns for employment received greater attention in Congress, while the Executive represented corporate desires. Although the import restraints were very beneficial to the industry and the domestic content bill never became law, the fact that it was passed by the House during two Congressional sessions indicates that public power can be turned against corporate ends during times of economic decline.

These two aspects of auto trade policy present different patterns of the industry's ability to shape government policy. Import quotas follow the basic pattern of government policy in the post-1979 era. With the industry's downturn, government officials became increasingly vulnerable to corporate lobbying efforts to use government policy to arrest this decline. Even an administration in principle dedicated to free trade imposed import restraints. In part, this response was an attempt to defuse growing protectionist sentiment in

Congress and the fear that legislated quotas would escalate pressures for trade barriers across a number of industries.

Yet, the economic consequences of the industry's downturn were not only apparent in changes in regulatory policy or the imposition of import quotas. As a result, auto workers were able to capitalize on concerns for the consequences of job losses by seeking a domestic content bill. The conditions which helped the industry's political efforts could also work against its interests. Arguments invoking the same goal which the industry invoked in support of its agenda--a healthy domestic industry providing jobs-- were employed to attract wide spread attention. However, for the auto workers a healthy domestic industry was one that employed American workers. For the auto makers, on the other hand, a healthy industry was one that earned profits. Whether American workers were employed or not was largely irrelevant, except when it came to public relations efforts or lobbying rhetoric. And in the end, the industry prevailed, not the union.

Increase in Imports

As the industry's economic condition worsened in 1980, domestic losses and layoffs were coupled with surging Japanese imports. With the rise in gasoline

prices in 1979, and the recession of 1980, imports claimed a share of the American car market previously thought impossible. However, the threat of imported cars was not new. Volkswagen had successfully imported cars in the 1950s and the Japanese followed suit in the early 1970s. Nevertheless, the import share of the market through the 1970s remained fairly steady. In 1970, imports comprised 14 percent, rising to 18.2 percent in 1975. Imports temporarily declined in 1976 to 14.9 percent. In 1979, however, imports soared to 22.7 percent of the market and in 1980 increased to 28.2 percent.¹

International Trade Commission Decision

In June 1980 the UAW petitioned the ITC under section 201 of the Trade Act of 1974, the so-called escape clause, providing for relief for domestic industries injured by imports.² Ford soon joined the petition.³ The petition argued that Japanese imports were the substantial cause of serious harm to the industry. If an affirmative ITC ruling is followed by corresponding recommendations, it allows the President to choose from a variety of trade restrictions to help an injured industry, including the imposition or increase of tariff rate quotas, quantitative restriction quotas and, or, orderly marketing agreements.

Section 201(b) of the Trade Act requires each of the following conditions be met before an affirmative determination for import relief.

(1) There are increased imports (either actual or relative to domestic production) of an article into the U.S.;

(2) The domestic industry producing an article like or directly competitive with the imported article is being seriously injured, or threatened with serious injury; and

(3) Such increased imports of an article are a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article.⁴

These conditions were included in the law in return for granting the president discretionary authority to negotiate trade relief. Even with a affirmative ITC ruling there is no requirement that the President implement any trade relief.

In December 1980, the ITC ruled 3-2 against the petition, finding only the first two conditions applicable to Japanese imports. Imports were increasing and were directly competing with domestic products. However, the vital third element, that imports were "the substantial cause of serious harm" did not apply.⁵ As a result it did not recommend import restrictions on Japanese cars.

The ITC's analysis of the industry's economic problems explains why the industry did not use its years of protection, when it reaped record profits, to modernize its plants. It chose instead to pay out

dividends, bonuses, raises, as well as begin diversifying out of auto production. Seemingly shortsighted, this strategy was fairly predictable, since Japanese competition was not the cause of the industry's losses in the first place. The industry's economic downturn generally mirrored the nation's recessionary economic conditions. Also, with all industry analysts predicting accelerating competition with foreign producers and excess capacity of domestic plants, reinvesting in domestic auto production was not seen as financially prudent. Reviewing the Commission's reasoning in more detail is essential to explain the industry's decline in 1979 and 1980. When the Reagan Administration decided to ignore the ITC, it raised fundamental questions concerning the accountability of trade policy.

ITC Chairman Alberger outlined the noticeable increase in Japanese imports during the late 1970s. In order to evaluate the impact of rising imports the Commission had to decide with which domestic market segment to compare Japanese cars. Accepting the petitioners claim that the large-car and small-car market should be separated would have magnified the impact of Japanese imports on the American car market. Alberger asserted there was no persuasive basis to segment passenger automobiles into more than one market.

For commercial purposes they were roughly equivalent. The industry itself claimed there was a consumer shift from large to small cars. Accordingly, Alberger concluded the passenger car market may be heterogeneous but it is still a single one, allowing for an overall comparison of imports and domestics, despite the difference in the average size of each.

Once the principle of comparability was decided the Commission turned to the essence of the controversy, whether imports were the substantial cause of serious harm. To determine serious injury section 201(b)(2) of the Trade Act requires the Commission take into account all economic factors that it considers relevant, including but not limited to "the significant idling of productive facilities in the industry, the inability of a significant number of firms to operate at a reasonable level of profit, and significant unemployment or underemployment within the industry."⁶ To this list, the Commission added declining domestic sales and increases in inventories.

Unquestionably, according to the ITC, the American passenger car industry was suffering serious injury. By virtually any measure the industry's losses were dramatic. But the decline in shipments of passenger cars was almost entirely due to the drop in large cars sales. Because domestic producers historically had

concentrated on large car sales this decline was devastating and rather sudden. The sudden nature of the industry's decline can be seen in the drop in a number of indicators: the utilization of domestic capacity, net operating profits, cash flow, and employment. Utilization of domestic capacity peaked in 1978 at 86.2 percent, but declined to 79.5 percent by 1979. During January-June 1980 it fell to 66.5 percent. Net operating profits from domestic operations from 1978-9 fell by 76 percent, from \$5.6 billion to \$1.3 billion, and continued to fall to a net loss in January-June 1980 of \$2.9 billion. Cash flow substantially dropped for the domestic auto makers, declining from \$8.9 billion in 1978 to \$5.1 billion in 1979, to a negative \$356 million in January-June 1980. Employment also dropped from 1,003,430 in 1978 to 971,929 in 1979. The first six months of 1980 saw another 22 percent drop.⁷

Despite the industry's distress, the ITC ruled that increased imports were not the substantial cause of such injury, when "substantial cause" is defined as "a cause which is important and not less than any other cause."⁸ According to the ruling, a far greater cause of the industry's plight was the general recessionary conditions of the economy. The rapid shift to smaller cars represented still another but less important factor.⁹

Central to the ITC reasoning was the apparent lack of correlation between growth in import volume and the vitality of domestic producers. During 1976-1978, domestic sales were strong and the industry earned record profits. At the same time imports significantly increased from 2 million units in 1975 to 2.9 million in 1978. In 1979, on the other hand, imports actually declined. However, during January-June 1980 Japanese imports increased by 200,000 units, although imports from other countries declined. The Commission noted, "this juxtaposition of events becomes even more curious when we consider the testimony of petitioners that the injury began in early 1979 and has deepened over the past 18 months."¹⁰ Considering the robust sales before 1979, at the same time imports increased, the industry's problems were seen lying elsewhere.

In stark contrast to marginal import increases, there was a large decline in overall sales in 1979. Sales slipped by one million units from 1978 and continued to slump during January-June 1980 by 1.1 million units compared to the same period in 1979.¹¹ Alberger ruled that while the import's market share did improve, by maintaining constant or slightly increasing volume in the face of falling demand, the downturn in demand was obviously an independent factor. Thus, the downturn had to be analyzed separately to account for

its effects on the decline in demand of domestically produced cars.

To assess the impact of general recessionary conditions and the increasing market share of imports, the ITC compared the actual decline in domestic shipments to the decline that would have occurred if imports had not increased their market share in 1979-1980, in other words, if imports and domestic vehicles equally shared the overall decline in sales. The difference represents the maximum loss solely due to increased imports. This amount can then be compared to the loss attributable to reduced demand. The ITC concluded that declining demand accounted for over 80 percent of the net decline in U.S. producers shipments, while less than 20 percent of the decline was due to increasing imports. Between January-June 1979 and January-June 1980 about two-thirds of decline in domestic producers shipments was attributable to declining demand and only one-third to the increased share of imports. See Tables 8-1 and 8-2.

Thus, although imports were an important cause of harm to the domestic auto industry, according to the ITC, it was not a "substantial cause" or a "substantial threat."¹² The minority based their dissent upon a different method of comparing the effects of imports to

subscribed to the petitioners claim rejecting the aggregation of economic factors in defining "declining demand." The petitioners did not want the ITC to compare the impact of imports to effects of the general economic recession, arguing instead the proper comparison was with the component parts of recession: unemployment, high interest rates, and higher energy costs, for example. When compared to the consequences of each of these factors separately, imports were the Table 8.1.

Passenger automobiles: U.S. apparent consumption, U.S. producers' domestic shipments, imports for consumption, imports' share of consumption, 1978 and 1979, and relative increases or declines in imports and producers' shipments in 1979, if the share of imports is held constant at the 1978 level

Item	1978	1979
Actual 1978 and 1979 data:		
Apparent consumption-----1,000 units--	11,185.0	10,315.3
U.S. producers' domestic shipments-----do--	8,256.9	7,518.2
Imports for consumption-----do--	2,928.1	2,797.1
Ratio of imports to consumption-----percent--	26.2	27.1
Estimated data for 1979, holding import share of consumption constant at 1978 level and using actual 1979 consumption data:		
Imports, if held at 1978 share of consumption-----1,000 units--	1/	2,702.6
U.S. producers' domestic shipments, if held at 1978 share of consumption-----1,000 units--	1/	7,612.7
Net change from 1978 to 1979:		
Total actual decline in U.S. producers' shipments-----1,000 units--	1/	738.7
Net decline due to increasing import share----do--	1/	94.5
Net decline due to declining demand-----do--	1/	644.2
Share of declining shipments due to declining demand-----percent--	1/	67.2
1/ Not applicable.		

Table 8-2.

Passenger automobiles: U.S. apparent consumption, U.S. producers' domestic shipments, imports for consumption, imports' share of consumption, January-June 1979 and January-June 1980, and relative increases or declines in imports and producers' shipments in January-June 1980, if the share of imports is held constant at the January-June 1979 level

Item	January-June	
	1979	1980
Actual January-June 1979 and January-June 1980 data:		
Apparent consumption-----1,000 units--	5,807.7	4,731.7
U.S. producers' domestic shipments-----do--	4,369.8	3,099.9
Imports for consumption-----do--	1,437.9	1,631.8
Ratio of imports to consumption-----percent--	24.7	34.5
Estimated data for January-June 1980, holding import : share of consumption constant at January-June 1979 : level and using actual January-June 1980 : consumption data:		
Imports, if held at January-June 1979 share of : consumption-----1,000 units--	1/	1,168.7
U.S. producers' domestic shipments, if held at : January-June 1979 share of consumption----do--	1/	3,563.0
Net change from January-June 1979 to January-June 1980:		
Total actual decline in U.S. producers' : shipments-----1,000 units--	1/	1,269.9
Net decline due to increasing import share of : consumption-----1,000 units--	1/	463.1
Net decline due to declining demand-----do--	1/	806.8
Share of declining shipments due to declining : demand-----percent--	1/	63.5

1/ Not applicable.

most significant cause of harm. Rejecting this claim, the majority contended that these individual factors were all interrelated elements of general recessionary conditions. With an economic recovery they would all dissipate.

The dissenters, on the other hand, argued that the Trade Act "clearly and unequivocally provides" for the Commission to isolate each of the economic factors relevant to the matter of serious injury.

We believe that there are a number of other individual causes of injury, such as increased

cost of passenger automobiles, the shift in consumer preferences from large to small cars, high interest rates, a shortage of consumer credit, increased gasoline prices, shortages of gasoline (in 1979), the failure of domestic producers to anticipate current conditions, and costly government regulations. We find that none of these other causes, even if considered an important cause of injury, are a more important cause of serious injury to the domestic industry than increased imports.¹³

Accordingly, they argued this was a classic case for an affirmative determination that imports were injuring a domestic industry, and for a recommendation for import relief.¹⁴

Nevertheless, with a negative ruling by the ITC President Carter assumed there was no legal grounds to pursue import relief. Without an affirmative ruling, the Justice Department believed pursuing import restrictions violated antitrust law.¹⁵ The forces of protectionism had to look elsewhere. Attention shifted to Congress and the incoming Reagan Administration.

Congressional Responses

Prior to the ITC decision, the industry had resolutions introduced in both houses of Congress authorizing the president to negotiate a limit on Japanese cars and to immunize agreeing parties from antitrust liability.¹⁶ Until the ITC's ruling these resolutions received little attention. However, afterwards the House moved immediately. On December 2 it

overwhelmingly passed by a 317-57 margin a resolution calling for a limit on imports. After a threatened filibuster prevented the Senate from voting on the resolution, the 96th Congress adjourned, thereby killing the resolutions.

Concern over auto trade escalated as the 97th Congress convened in January. The industry's friends in Congress introduced a number of new resolutions. However, these were quickly overshadowed by efforts to legislate quotas. Senator John Danforth (R-Missouri), chairman of the subcommittee on International Trade of the Senate Finance Committee, introduced a bill to limit annual Japanese imports to 1.6 million cars.¹⁷ Danforth, who rapidly became the leading advocate of trade protectionism for the industry, explained his support for import restrictions in what became a constantly repeated refrain among many supporters of import restraints. "As much as I believe in free trade, I also believe automobile import restrictions are necessary for the health of this basic American industry."¹⁸ Danforth's interest in the auto industry is understandable. Only in the state of Michigan are more cars produced than in Missouri.¹⁹

Meanwhile, the economic condition of the industry appeared perilous. In mid-February Ford announced its 1980 losses of \$1.54 billion, the largest loss for a

single corporation in American history. A few days later this record was surpassed when Chrysler announced its \$1.71 billion loss. In light of these losses, support for restricting Japanese imports quickly developed and included Chrysler, Ford, the UAW, and the domestic parts industry. GM's support was less firm; not surprising considering that nearly 85 percent of its cars are large and therefore would be less affected by restricting the small car market.²⁰ Some, however, thought even the 1.6 million figure too high. Senator Carl Levin (D-Michigan) suggested an annual limit of 1 million cars.

Many Congressional supporters saw the bill as a necessary gesture, sending a clear signal to the Japanese and the Reagan Administration that something had to be done about car imports. Senator Lloyd Bensten (D-Texas), a co-sponsor of the bill, was one of them.

Without the hammer of S.396 I am convinced there would be the real danger that the problem of automobiles would be treated as just another item on the platter of United States-Japanese trade issues. We would voice our concern and the Japanese would acknowledge there might be a problem. Then they would negotiate for as long as possible and give up as little as possible. By the time we had a joint communique the most important industry to our economy and our national security might be battered beyond repair, sacrificed on the altar of free trade.²¹

Despite the ITC's analysis, the belief that imports were the cause of the industry's problems persisted.

However, it did not linger by itself. It was the product of a sophisticated lobbying effort.

One notable example of this effort was the efforts of the Automotive Materials Industry Council of the United States (AMICUS) which represents 40,000 companies involved in supplying the auto industry. George Schwartz outlined the lobbying effort of AMICUS, developed by the Washington legal firm Collier, Shannon, Rill and Scott.

- prepare point of view articles signed by representatives of supplier industries for Business Week, New York Times, Nations Business, plus letters to the editor by supporting members of Congress;

- lobby members of Congress who have automotive supplier plants in their district and members of the Senate Finance Committee and House Ways and Means Committee;

- have AMICUS representatives seek to be interviewed by network newscasts- 60 Minutes, Good Morning America, Today Show;

- arrange discussions on the floor of the House and Senate where each supporting member gives a short speech;

- write speeches favoring the imposition of import curbs for inclusion in the Congressional Record by friendly members;

- secure meetings with syndicated columnists and editorial writers of leading papers and give information;

- ask supplier companies political action committee to support candidates sympathetic to problems of domestic industry;²²

These activities were coordinated with the appropriate unions. Notwithstanding these efforts, attempts to

convert public opinion toward protectionism met stiff opposition. The American International Automobile Dealers Association (AIADA), one of the groups with the most to lose from import restrictions, argued against restricting imports.²³ AIADA's arguments, made before the VRA's announcement, prefigured much of the debate that followed the VRA. There were several elements to AIADA's objections. The Association asserted that restricting imports would cost more jobs in the import industry than would be saved in the domestic industry; each job saved would cost \$245,000 in higher prices to consumers; the ITC's authority would be undermined as would the credibility of its procedures; Congress would be subject to increased political pressures from particular industries; efforts to seek more open foreign markets would be hurt; and provisions of GATT would likely be violated.²⁴ AIADA emphasized that the actual threat to the domestic industry was not that foreign manufacturers would displace American producers, but that American-based multinationals would produce cars abroad for sale in the United States.²⁵

The Reagan Response

The import issue presented the newly elected Reagan Administration with a serious dilemma. Dedicated to free trade, the President faced a Congress that was

becoming increasingly protectionist. After the ITC ruling against import restraints, it appeared that Congress would take matters into its own hands. Legally the the free trade agreements embodied in GATT and American trade law seemed to constrain the President. Reagan turned to the Japanese themselves to solve the problem. However, this presented additional difficulties because of the negative ITC ruling. Participating in discussions with the Japanese to restrain imports potentially violated antitrust law. Consequently, according to Michael Lochman, "the administration offically maintained that it never entered into negotiations with Japan regarding import restraints. All government-to-government contacts were intentionally characterized as talks, briefings, or discussions."²⁶

The legal complexities of "convincing" the Japanese to "unilaterally" limit car imports to avoid the appearance of violating GATT and American antitrust law, required a series of "discussions" between American and Japanese officials, held during March and April in Washington and Tokyo.²⁷ A central participant in these meetings was Donald deKieffer, General Counsel to the United States Trade Representative, who later described the efforts negotiators took to develop a defensible legal basis for the quotas.

These meetings could best be characterized as technical consultations concerning the subtleties of antitrust law, and the vagaries of Japanese commercial statutes. Experts in both disciplines attempted to reconcile the two systems to provide for Japanese action which would constitute adequate "compulsion" to conclusively permit the foreign defense to be raised by the Japanese companies.²⁸

In a footnote, deKieffer acknowledged that these "experts" actually were lawyers representing the UAW and various Japanese and American auto industry trade groups, including manufacturers, dealers and parts makers.²⁹ On May 1 the Japanese announced a Voluntary Restraint Agreement (VRA) with import quotas of 1.68 million cars.³⁰ At the same time it circumvented treaty obligations under GATT and American antitrust law, it avoided the precedent of Congressionally mandated trade sanctions and the escalation of protectionist sentiment.

The Ministry of International Trade and Industry (MITI) issued written directives to each automakers stating the maximum number of units it could export to the U.S.³¹ The quotas were based on a pro rata allocation of the respective market share of the previous two years. To monitor compliance each firm reported its exports to MITI. Initially lasting three years, the VRA was extended for a fourth year in 1984, an election year in both the U.S. and Japan. Prudence dictated keeping it out of the headlines with a "quiet"

renewal. The number of cars permitted under the quota increased to 1.85 million.

The unusual nature of this "voluntary" agreement was parodied in a New York Times editorial which observed that since the Reagan Administration had volunteered to inform the Japanese of the poor condition of the U.S. auto industry and the Japanese voluntarily agreed to restrict imports to the U.S., "all that remains is for the American consumer to volunteer to pay a billion dollars more for all the cars they buy this year."³²

Legal Implications

Despite the participation of the Japanese government legal scholars debated the implications of the VRA, with three major areas of controversy: its relationship to the GATT, the Trade Act of 1974, and American antitrust law. Lochman argues the VRA was a violation of GATT because it circumvented the Most Favored Nation (MFN) principle stipulated in Article I(1) where,

any advantage, favor, privilege, or immunity granted by a contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like products originating in or destined for the territories of all other contracting parties.

Because the VRA restricted only Japanese cars to the U.S. it gave other contracting parties a relative advantage. They could import an unlimited number of Japanese cars and could export an unlimited number of cars to the U.S. In essence, both Japan and the U.S. were excluded from an advantage or privilege given to other contracting parties.³³ Further, "by using VER [voluntary export restraint] imposed by the Japanese, rather than direct import quotas imposed by the United States, the President insured that objections to United States violation of the GATT could not be effectively raised."³⁴

The U.S. made an offer the Japanese could not refuse. Either they could impose import quotas and collect the "scarcity rent" that inevitably results when prices rise due to limits in supply, or they would face the possibility of Congressionally mandated quotas where the U.S. would be in the position to sell import licenses to Japanese firms. Because Japan had imposed the quotas they had no grounds to object under GATT and no other nation had standing. Technically the U.S. could retaliate against Japan for violating GATT, but would not since it had requested the restraints in the first place.³⁵

The VRA also side-stepped compliance with Article XIX of GATT which allows for import restrictions when

imports are a direct threat to a domestic industry, the so-called escape clause mechanism. However, the ITC had ruled this was not the case. The domestic procedures for complying with the escape clause, section 201 of the Trade Act of 1974, were also circumvented. The significance of this was noted by Spenser Weber Waller. "The legislative history of the Trade Act of 1974 suggests that Congress intended to make the escape clause the exclusive mechanism for import relief unrelated to unfair foreign competition."³⁶

The escape clause mechanism was a large part of the Trade Act and central to the 1974 revisions. Efforts at reforming a comprehensive trade bill had been stymied since the Trade Expansion Act of 1962 (TEA) had expired in 1967. The TEA required firms seeking to use the escape clause to prove imports were a major cause of harm. The new standard was a "substantial" cause of harm, which was understood as less stringent. Due to the stricter requirements of the earlier act, VRA's were negotiated to get around the restrictions. The most notable example was steel.³⁷ The Senate Finance Committee report for the Trade Act of 1974 expressed its displeasure with the use of "voluntary" agreements.

One result of this inadequacy [the former escape clause language] has been a number of special 'voluntary' agreements for industries deemed by the Congress or the Executive to be suffering from excessive imports. The Committee believes it is better to provide a

fair and reasonable test for any industry which is being injured by imports-a determination made by an independent factfinding body, such as the International Trade Commission- than to rely on ad hoc agreements for a few select industries.³⁸

The final legal question of the VRA involves American antitrust law. Because Japanese producers limited exports, they in effect conspired to restrain trade. Opponents of this view contend that the "act of state" doctrine and the foreign sovereign compulsion defense (FSCD) insulate the VRA from antitrust investigation. According to these doctrines each sovereign state is bound to respect the independence of every other sovereign state. This bars the American courts from inquiring into the validity of the governmental acts of a recognized foreign state within its own territory, even if such acts violate international law or the foreign sovereign's own law.³⁹ Thus, the VRA, negotiated and implemented by MITI, protects Japanese car makers from antitrust prosecution since they were compelled by acts of state.⁴⁰ Disagreement among legal scholars arose concerning the applicability of the FSCD because the Japanese acted through informal administrative guidance, not compulsory directives. On the other hand, presumably the Reagan Administration was protected from future antitrust prosecution because it did not impose the quotas. This reasoning is based on the the Reagan Administration's

insistence that it did not "negotiate" with the Japanese and the quotas were voluntary and unilateral.⁴¹

Economic Evaluations

Those who supported the quotas argued that it would give American car makers the necessary "breathing space" to modernize plants and equipment without the pressure of import competition, thus enabling the Big Three to catch up with the Japanese. Quotas were seen as a temporary measure facilitating the transition to a more competitive and modern domestic industry.

With the profits that would accompany the VRA, an increase in plant and equipment investments was expected. However, the industry's investment decisions did not fulfill these expectations. Investments actually decreased. After the VRA investment declined by 30 percent. In contrast, between 1975-6 and 1979-80 real investment outlays increased by 88 percent. Investment in plant, equipment, and special tooling rose by more than 87 percent. See Table 8-3. As consumers paid more for cars, profits mushroomed and the industry rewarded itself with bonuses, raises and began diversifying out of car production. With competition temporarily abated, the domestic industry had less need to modernize its plants or product.⁴²

TABLE 8-3. U.S. Motor Vehicle and Equipment Producers'
Gross Investment Expenditures 1970-1983 (\$/million)

Year	Current \$	1972 \$
1970	3050	3341
1971	2420	2516
1972	3000	3000
1973	3830	3630
1974	4300	3726
1975	3350	2534
1976	3620	2612
1977	5820	3978
1978	7215	4590
1979	8305	4862
1980	9060	4866
1981	10078	4992
1982	7920	3777
1983	7233	3496

Source: Crandall, p.12. Department of Commerce.

The expectation that restraining Japanese imports would reverse the industry's downturn was based on the mistaken assumption that the car market suddenly changed in 1979 and 1980, as imports surged, catching the American auto makers off guard. However, the U.S. industry was already adjusting to international competition and the rise in gas prices before the VRA. Automakers decreased the average weight of domestic cars by 30 percent from their 1972-3 high. At the same time, by 1980 the domestic industry sold 40 percent of its cars with four-cylinder engines, compared to only 9 percent in 1972-3, while simultaneously improving the fuel economy for cars of the same weight and horsepower by 25 percent.⁴³

By restricting the supply of Japanese cars, domestic producers, as well as importers, were able to raise prices. Estimates of the added costs to car buyers resulting from the restrictions vary. Virtually all analysts agree that the American car buyer paid a steep "tax" to the auto industry as a result. David Healy, an auto analyst with Drexel Burnham Lambert put it bluntly: "the American consumer is paying through the nose and getting rooked by the wise people in Detroit and Washington. Quotas don't hurt importers and they've driven up prices. Everyone is benefiting except the American consumer."⁴⁴ Robert Crandall of the Brookings Institution, a former Reagan Administration aide, estimated the aggregate cost in higher prices resulting from the VRA was \$26 billion for the five years of import restraints.⁴⁵ Yoshi Tsurumi, Professor of International Business at Baruch College, estimated that the added cost to consumers in 1984 alone was \$13 billion.⁴⁶ A study done by the ITC estimated the cost over the first 4 years of the restraints was \$15.7 billion. Wharton Econometrics' estimate was \$5 billion per year.⁴⁷ A study for the Federal Reserve Bank of Cleveland of the first three years of the quotas estimated the cost was \$2.5 billion.⁴⁸ These aggregate figures translate into an extra cost of between \$650 and \$2500 per car.

The quotas also affected used car prices. According to the ITC study, used car prices went up dramatically between 1981 and 1984. Admitting it was impossible to quantify the economic effects of the VRA on used car prices, the ITC cited Bureau of Labor Statistics figures that used car prices increased 81 percent during this time. Yoshi Tsurumi estimated that the VRA was responsible for 15-20 percent of the rise in used car prices.

Needless to say, the auto industry rejected the suggestion that it took advantage of the import restrictions and inflated its prices. It explained the rise in prices as the result of the "improved quality" of new cars. However, as Yoshi Tsurumi argues, it would have been difficult to trade American consumers up to higher priced cars with "improved quality" without import protection. "Even if we accept Detroit's arguments and discount the price index for new American cars by their "improved quality factor," Detroit's price-gouging behavior is captured by U.S. government statistics."⁴⁹ A comparison of the consumer price index (CPI) and the auto price index (API) shows that prior to the VRA, 1976-1980, the two stayed together with the auto index slightly above the CPI, except for 1980 when U.S. car makers were exposed to accelerated Japanese competition. However, after 1981 the auto price index

annually exceeded the CPI at an increasing rate. See Table 8-4. The price of the average new car continues to rise. Currently, the average price for new cars sold in the U.S. is \$12,600.⁵⁰

TABLE 8-4. Consumer Price Index, Auto Price Index and Price of New Cars (\$), 1976-1983.

	<u>1976</u>	<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>
CPI	100	106	114	121	144	159	169	175
API	100	112	118	127	137	162	181	196
\$	5470	6120	6470	6950	7530	8850	9910	10700

Source: Yoshi Tsurumi, p.31, from Economic Indicators for appropriate years, Survey of Current Business, Department of Commerce.

Just as estimates vary for the total cost of the VRA, so do estimates of the number of jobs retained due to the VRA, as well as the "cost" to consumers for each job saved. A number of factors explain the variation: differences in the number of jobs added as a result of increased demand for American cars, and the higher prices of both American and Japanese cars. The ITC estimated each job "cost" American consumers \$90,000⁵¹; Robert Crandall's estimate was \$160,000⁵²; the FTC's \$240,000⁵³; and Yoshi Tsurumi's \$520,000⁵⁴. Regardless of which estimate best approximates the cost of each job, it is an inefficient employment policy. More jobs can be created for the same "cost" through direct

government outlays. Moreover, its costs were not unexpected. Before the VRA was formally announced AIADA predicted that the cost for each job saved by the VRA would be \$245,000.⁵⁵

When the Reagan Administration decided to allow the VRA to lapse the Japanese continued limiting car exports, although raising the level to 2.3 million cars, a 24.3 percent increase.⁵⁶ Despite the fact that demand for Japanese cars was high, there was a fear that unrestrained increases in exports to the U.S. would aggravate trade relations and fuel protectionist sentiment in the U.S. As a result, the Japanese chose to proceed with moderation.

For American auto makers the "end" of the VRA accelerated plans to import more cars from their foreign affiliates. Detroit geared up to import hundreds of thousands of Japanese and Korean-made cars for sale under domestic labels.⁵⁷ Forecasts of the impact of the end of the VRA on domestic employment in the auto industry, as with earlier estimates concerning the VRA, were wide ranging. The FTC estimated 15,000 jobs would be lost; Merrill Lynch Econometrics put the figure at 50,000; Chase Econometrics at 150,000; the UAW at 200,000 and Chrysler at 750,000.⁵⁸

Domestic Content Legislation

The other side of trade policy for the auto industry was a proposed domestic content law requiring that all sellers of cars in the United States have an increasing proportion of domestic content with increasing volume. The UAW saw this requirement as an effective weapon preventing the outsourcing of jobs and forcing high volume Japanese exporters to open plants in this country. GM, Ford, as well as several business lobbies were vehemently against the idea. Chrysler, the weakest of the three with the fewest foreign affiliates, supported the bill. Despite House passage, the Senate withheld its approval. As the industry rebounded and general unemployment diminished, support for a domestic content law waned and has disappeared.

This was one of the rare times in automotive public policy when the cleavage over an issue almost matched divisions along class lines. Temporarily, the union jettisoned its junior partner stance toward the industry and framed its debate in oppositional terms. But the issues surrounding domestic content legislation were more complex than a simple model of class conflict. To begin with, Chrysler, among others in the business community, supported the bill. The corporation felt vulnerable, as did workers. Critics of the bill charged that a domestic content law was a violation of GATT, and the longstanding commitment to "free trade," central to

American international economic hegemony since WW II. Even if passed many thought it would be struck down by the courts.

Formally known as the "Fair Practices in Automotive Products Act," the domestic content bill was originally introduced during the early winter of 1982. It was not voted on by the House until December 15, as the 97th Congress was adjourning. Never making it out of committee in the Senate, the bill died. Reintroduced with the start of the new session, the union made a concerted effort to ensure its passage.⁵⁹ For a second time the House approved the bill, but again it was not reported out of committee in the Senate. Throughout its entire unsuccessful history, President Reagan threatened to veto it.

On the surface the bill was fairly straightforward. For each 100,000 cars a manufacturer sold in the U.S., 10 percent of the value of the car had to be American content. The manufacturer could choose how to comply, selecting any aspect of auto production as long as the percentage of domestic value added corresponded to the proportional requirements. According to Alice Rivlin, director of the Congressional Budget Office (CBO), only the two largest Japanese exporters would be significantly affected, given 1981 import sales volume. Other exporters, annually selling 250,000 or less, would

have little difficulty in reaching 25 percent domestic content; consequently they would not have to consider opening new American plants to maintain sales.⁶⁰

The CBO estimated that a minimum of 15 percent of the wholesale value of an imported car already qualifies as domestic content, comprising expenditures in the U.S. for advertising, transportation, raw materials and accessories. Domestic content could be increased by another 10 percent relatively easily if foreign car makers purchased additional American built components. Thus, only the three Japanese auto makers with annual sales over 250,000 (Toyota, Nissan, Honda) would have to worry about the domestic content law. Since the smallest of the three, Honda, already had an American facility it would not have to change its investment strategy to comply with the law. Whether Toyota or Nissan would shift the necessary investment to the U.S. was debatable.⁶¹

Prospects for the bill seemed dim at first but the bill quickly gained wide support in the House. In fact, a Commerce Department official stated: "we never thought the bill would get out of subcommittee. Now all of a sudden, it has over 200 co-sponsors."⁶² Support was due to several factors. Not only was 1982 an election year, but the nation was in the deepest recession since the 1930s and the auto industry at an historic low.

Advertised as increasing jobs, the bill was a response to these pressures. The UAW, calling it its highest legislative priority, tirelessly lobbied for the bill, and its moderate success was attributed, by at least one commentator, to its efforts.⁶³ Several other unions supported the bill.⁶⁴ On the other hand, some supporters saw the bill as mainly symbolic, expressing the growing concern with the trade deficit. Also, there was an undercurrent of racism and resentment toward the Japanese.⁶⁵ Known as "Japan bashing," it reflects the fact that it is simpler to blame "foreign" competition than to analyze the failures of American corporations or the inevitable dynamics of international capitalist competition.

Rep. Richard Ottinger (D-NY), the original sponsor of the bill, expressed its symbolic message before the first House vote. "This bill is a shot across the bow to alert the administration and foreign countries that there is some concern about the decline of the American auto industry. The U.S. has been a sucker in this trade business and has generously given away free access."⁶⁶ Ottinger hoped the ultimate consequence of the bill would be to open markets for U.S. exports.

The debate over the bill was dramatic. Supporters contended it was the only thing standing between economic and military decline, while opponents argued it

was the beginning of protectionist policies that would destroy the international trading system. Supporters like Rep. John Dingell (D-Michigan), Chairman of the House Energy and Commerce Committee, typically one of the industry's chief allies in Congress, saw the bill as saving jobs. "This legislation...is one of the most important jobs protection and economic revitalization bills that [we]...will consider this year."⁶⁷ For Richard Ottinger it combated economic decline and preserved national security. "From a national security standpoint it would be suicidal to lose our industrial base so critical to sustaining any prolonged military effort. From an economic standpoint, we cannot hope to be competitive in the spectrum of world markets if we lose our industrial base..."⁶⁸

Opponents appraised the bill with equal vigor. William Brock, the USTR, called the bill "the worst threat to the international trading system and our own prosperity to be put before the Congress in a decade."⁶⁹ The Department of Commerce called it "blatantly protectionist" and a "legal and administrative nightmare."⁷⁰ Rep. Sam Gibbons (D-Florida, and Chairman of the subcommittee on Trade of the Ways and Means Committee) stated his opinion bluntly, "this bill has to be the worst piece of economic legislation that this Congress has seriously entertained in 50 years."⁷¹

Thomas Brilleck, writing during the summer of 1983 after the first House passage, suggested the House had "adopted the strongest piece of protectionist legislation since the Smoot-Hawley Tariff in 1930."⁷²

House opponents were armed with dozens of amendments to weaken or kill the bill. All were dropped after the close passage (195-194) of an amendment offered by Millicent Fenwick (R-NJ), stipulating the bill should not supercede any treaty. Amendment supporters believed this would enable the courts to invalidate the measure for violating GATT. Rep. Phil Graham, (D-Texas), a vigorous opponent of the bill, said after the amendment passed: "we just gutted the bill."⁷³ In looking forward to the next session when victory could be more than symbolic, John Dingell told union lobbyists that "we will get it [the Fenwick amendment] out in final passage."⁷⁴ When the bill was reintroduced in February 1983 it did not include the amendment.

However, the amendment was added to the bill as it made its way through the labyrinthian committee system. After being approved without amendments by the subcommittee on Commerce, Transportation and Tourism, the full Energy and Commerce Committee reported the bill with the Fenwick amendment. Meanwhile, the subcommittee on Trade of the Ways and Means Committee, holding its own hearings, came out in opposition to the entire bill.

The full Ways and Means Committee reported the bill unfavorably. Despite being presented with conflicting committee reports, the bill passed for a second time. Yet supporters were frustrated since the bill's final version contained the Fenwick amendment, leaving the bill with an ambiguous standing even if it became law.

Some opponents of the bill believed it violated the free trade principles of GATT. A study done by Arlene Wilson, of the Congressional Research Service International Trade and Finance Economics Division, for the Ways and Means subcommittee on Trade, argued that local content requirements were generally in violation of GATT paragraphs 1 and 5 of Article III and paragraph 1 of Article XI.⁷⁵

Paragraph 1 Article III

The contracting parties recognize that... internal quantitative regulations requiring the mixture, processing or use of products in specified amounts or proportions, should not be applied to imported or domestic products so as to afford protection to domestic production.

Paragraph 5 Article III

No contracting party shall establish or maintain any internal quantitative regulation relating to the mixture, processing or use of products in specified amount or proportions which requires directly or indirectly, that any specified amount or proportion of any product which is the subject of the regulation must be supplied from domestic sources. Moreover, no contracting party shall otherwise apply internal quantitative regulations in a manner contrary to the principles set forth in paragraph 1.

Paragraph 1 Article XI

No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licenses or other measures, shall be instituted or maintained by any contracting party on the importation of any product of the territory of any other contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party.

Although the Ways and Means Committee believed the bill violated GATT, the Energy and Commerce Committee did not.⁷⁶ It cited another report from the Congressional Research Service, this one from the American Law Division. In a June 6, 1983 memorandum it questioned the legal nature of GATT itself.

Some ambiguity surrounds the precise legal nature of the...GATT. [It] came into force for the United States on January 1, 1948 pursuant to a Protocol of Provisional Application to which the United States agreed to by way of an executive agreement. Some courts apparently refuse to give full legal effect to GATT since Congress never ratified it....

The Conference Report...concerning the Trade Act of 1974 notes a provision was added to section 121 of the Act stating that the authorization of appropriations for payment by the United States for its share of the expenses to GATT 'does not imply approval or disapproval by the Congress of all articles of the GATT'.⁷⁷

The legal status of both GATT and a domestic content bill are by no means clear. Fear that Japan would retaliate against the U.S. is also questionable. After meeting with MITI officials during the winter of 1983, members of a delegation from the House Energy and

Commerce Committee had varied opinions. Rep. Norman Lent (R-NY), for instance, believed the Japanese would retaliate, hitting agriculture first. Rep. John Dingell, who led the group, thought the Japanese would accept a domestic content law.⁷⁸ He noted Japan has never protested to GATT or retaliated against other nations with domestic content laws.⁷⁹

In addition to the controversy over GATT, there was substantial disagreement over the bill's net impact on employment. Again, the House Energy and Commerce Committee, and Ways and Means Committee came to opposite conclusions; supporters arguing there would be a net gain in domestic employment and opponents contending either there would not be a net gain, or that the gain would be minimal, with car prices rising dramatically. The most optimistic projections came from the UAW and Rep. Ottinger, estimating a net gain of one million jobs with no increase in prices.⁸⁰ On the other hand, the CBO estimated a net loss of jobs of 104,000, because increases in auto and related employment would be offset by losses in other sectors of the economy, (agriculture, ports, aerospace and transportation). The CBO based its projection on several assumptions challenged by supporters: American auto firms would not outsource production, the Japanese would not open production facilities in the U.S. and the Japanese would retaliate

against other industries. Still another estimate by the Commerce Department predicted the net job gain would be minimal, 6500, but at a cost of substantially higher prices, costing \$740,000 per job added.⁸¹ The Congressional Research Service saw short term employment gains but long term ruin.⁸²

Not surprisingly, much of the opposition to the bill came from those businesses oriented toward exports or directly engaged in importing foreign products. Lining up against the bill was the International Longshoremen's Association and the American Association of Port Authorities, as well as a number of farm groups, including the National Farmers Union and the National Grange.⁸³ According to the National Grange, annual exports of agricultural products have exceeded \$40 billion in recent years and are "extremely vulnerable to retaliatory action by our trading partners." Added to this support were three of the largest corporate interest groups, the Business Roundtable, the National Association of Manufacturers and the U.S. Chamber of Commerce. They were concerned that the bill tampered with corporate autonomy over investment decisions. However, not all members of the business community opposed the bill. Both Business Week and Automotive News believed domestic content legislation was a sound

way to handle increasing imports and cope with declining employment in the industry.⁸⁴

In general, importers and exporters feared the restriction of auto trade would threaten trading relations in other industries.⁸⁵ Yet, neither the immediate threat of retaliation nor a concern for "free trade" fully explains business opposition to the bill. Domestic content legislation represents, in embryonic form, the social control of investment. It restricts the prerogatives of corporate officials. A group of 50 progressive economists praised this attribute of the bill in a letter included in the Congressional Record during the final House debate. The letter stated, in part, that the bill:

would regulate, to some extent, the investment activities of giant multinational autocompanies, domestic and foreign. This may be seen as a first step toward democratic control over the investment activities of giant multinationals, which, if unhindered seek to play off country against country and community against community in the search for maximum profits.

In conclusion, we support this domestic content law as a step to preserve a domestic auto sector, as a step toward planned international trade and investment that is preferable to tariffs and quotas, and as a step toward making multinational corporations...more accountable to the citizens of the countries in which they operate.⁸⁶

Conclusion

The industry's ability to shape trade policy can be seen in both the failure of the domestic content bill, and the "success" of the VRA. Despite a negative ruling by the ITC, the industry was able to use its political influence to restrict Japanese imports. Without the industry's economic decline, restricting imports would have been impossible. With this protection, profits reached historic levels as prices rose. The industry did not use these profits to increase productivity or to compete with the Japanese for the small car market. Instead, it gave its executives huge bonuses, its workers raises and went on a "buying spree" of diversification.

Although the domestic content bill never became law, its limited success was rather remarkable. Given the alignment of forces against the bill, its passage by the House is testimony to the possibilities for alternative courses of action. Corporate influence is not monolithic. Using government mechanisms to shape the economic landscape always contains the potential for a "questioning rich in practical consequences."⁸⁷ However, challenging corporate prerogative as the only solution to the problems of economic growth required the deepest recession in fifty years and unparalleled losses to the nation's largest industry. In the end, the ability of the industry and its allies to invoke the

rhetoric of free trade, as well as the complexity of the bill itself, prevented it from passage. What the UAW saw as its only hope to save jobs in the U.S. was defeated.

Coupled with the end of the VRA, the failure of the domestic content bill means that the percentage of domestic content of cars sold in America will continue to decline. Between imported vehicles and parts, the import share of the car market is approaching 60 percent. Recent success of Korean car makers, undercutting the Japanese for the low end of the market, and the Big Three's move to outsource production and import vehicles under domestic labels, signal an internationalization of the car market few expected twenty years ago. The prospect for domestic employment in the industry is bleak. Communities dependent on the auto and its related industries increasingly find themselves deserted and deindustrialized.⁸⁸ At the same time, the large auto companies, foreign and domestic, continue to reap profits.

Endnotes

1. See Table 2-3.
2. P.L. 93-618.
3. The UAW petition came on June 12, 1980, while the Ford petition was received by the ITC on August 4, 1980. They were then joined together as copetitioners. The ITC's public notification of the investigation came on July 7, 1980 through the Federal Register (45 F.R. 45,731). On July 22, 1980, in response to President Carter's request, the ITC accelerated its investigation (45 F.R. 48,996). Public hearings were held October 8-11, 1980.
4. Cited in "Certain Motor Vehicles and Certain Chassis and Bodies Thereof," Report to the President on Investigation TA-201-44 Under Section 201 of the Trade Act of 1974, U.S. International Trade Commission, USITC Publication 1110, December 3, 1980, p.4. Hereafter referred to as ITC Decision.
5. The majority was comprised of Bill Alberger, Chairman, Micheal Calhoun, Vice Chairman, and Paula Stern. The minority was comprised of George Moore and Catherine Bedell.
6. ITC Decision, p.16.
7. ITC Decision, p.18.
8. Trade Act of 1974 Section 201(b)(4).
9. ITC Decision, p.21.
10. ITC Decision, p.22.
11. See Table 2-2, for sales of new cars.
12. ITC Decision, p.35.
13. ITC Decision, p.172.
14. ITC Decision, p.177.
15. George Schwartz, "Auto Import Quotas: A Case Study in Protectionism," Business and Society Review #39, Fall 1981, p.65.

16. Micheal Lochman, "The Japanese Voluntary Restraint on Automobile Exports: An Abandonment of Free Trade Principles of the GATT and the Free Market Principles of the United States Antitrust Laws," Harvard International Law Journal Vol.27, No.1, Winter 1986, p.103. The resolutions were S J Res 193 and HR J Res 598, 96th Cong., 2d sess.

17. The resolutions included S.J. 5, HR. J.5, HR. Con. Res. 80. The efforts for legislated quotas included S. 396/ HR. 1823 (the Danforth bill), HR. 2049, HR. 1999, HR. 1954. Lochman, p.103.

18. U.S., Congress, Senate, Committee on Finance, Issues Relating to the Domestic Auto Industry. Hearings before the subcommittee on International Trade. 97th Cong., 1st sess., March 9, 1981, Part 2, p.5, Hereafter referred to as Finance Committee hearings.

19. Missouri accounts for approximately 13 percent of domestic production. See the "1987 Market Data Book", Automotive News April 29, 1987, p.18 for information on the geographical distribution of auto production in the United States.

20. David Moberg, "Will Japan flood U.S. with autos if quotas end?," In These Times Febuary 27-March 12, 1985, p.3.

21. Finance Committee hearings, Part 2, p.7.

22. Schwartz, p.68.

23. Nevertheless, AIADA supported helping the industry and made several recommendations to Congress. See, Finance Committee Hearings, Part 1, p.186.

23. Finance Committee hearings, Part 1, p.186.

25. CAFE regulations inhibit this trend, requiring fuel economy for foreign and domestic made cars be calculated separately. By defining domestic vehicles as those with a 75 percent domestic content, the investment flexibility of the domestic industry is limited. In fact, Ford reportedly dropped plans to import its German made Fiesta in the late 1970s because its potentially large market would steal sales from its American made Escort, thereby lowering the overall corporate average fuel economy for Ford's domestic cars. See David Henderson, "The Economics of Fuel Economy Standards," Regulation vol.9, #1, January-February 1985, p.46.

26. Lochman, p.104. (footnotes ommitted).
27. For a brief summary of these discussions see Lochman, pp.104-5.
28. Donald deKieffer, "Antitrust and the Japanese Auto Quotas," Brooklyn Journal of International Law vol.VIII, #1, Winter 1982, p.67.
29. deKieffer, p.65, fn.36.
30. Lochman sketches the variety of trade barriers that can be erected (p.113). Under a tariff, part but not all, of the loss to consumers due to price rises is recouped by the government. Under a quota this same amount, termed the scarcity rent, can be collected by the government if it levies fees for the right to import the restricted good. If the government does not collect such fees in the form of import licenses the scarcity rent accrues to whoever hold import licenses. In the case of an Orderly Marketing Agreement (OMA) or Voluntary Restraint Agreement (VRA), any scarcity rent accrues either to the foreign government, if it sells export licenses, or to the foreign exporters. Obviously, a tariff or import quotas with licenses are preferable to the importing country, otherwise the scarcity rent goes to the foreign country or companies. The Japanese assigned, but did not sell, car export quotas. Regardless of the form of trade restriction, prices to consumers inevitably rise.
31. In addition, as Lochman writes, "the Japanese government publicly threatened to impose complusory export licensing under the Japanese Foreign Trade Control Law if the industry did not comply with MITI's written directives on auto exports." (p.105).
32. Cited in Lochman, New York Times May 2, 1981, p. A 22.
33. Lochman, p.117.
34. Lochman, p.130.
35. Lochamn, p.130.
36. Spenser Weber Waller, "Redefining the Foreign Compulsion Defense in U.S. Antitrust Law: The Japanese Auto Restraints and Beyond," Law and Policy in International Business vol.14, #3, 1982, p.761.

37. See William Scheuerman, The Steel Crisis (NY: Praeger Press, 1986) for an analysis of the trade protection received by the steel industry and the politics of ad hoc decision making of trade policy.

38. U.S., Congress, Senate, Committee on Finance, Trade Act of 1974. Report. 93d Cong., 2d sess., Senate Report 1298, p.119 cited in Waller, p.762.

39. Richard Yao, "Japanese Car Quotas and Antitrust-A Reexamination," New York University Journal of International Law and Politics vol.15, No.3, Summer 1983, p.699.

40. Lochman; Barbara Ann Sousa, "Regulating Japanese Automobile Imports: Some Implications of the Voluntary Quota System," Boston College International and Comparative Law Review vol.V, No.2 Summer 1982.

41. Richard Yao.

42. The behavior of the steel industry through the late 1960s and 1970s was similiar.

43. Robert Crandall, "Import Quotas and the Automobile Industry: The Costs of Protectionism," Brookings Review Summer 1984, p.12.

44. Cited in Leslie Wayne, "The Irony and Impact of Auto Quotas," New York Times April 8, 1984, Section 3, p.1.

45. Cited in Geoff Sundstrom, "Import demand seen falling; quotas called irrelevant," Automotive News March 24, 1986, p.6.

46. U.S., Congress, House, Committee on Banking, Finance and Urban Affairs, Competitiveness of the U.S. Automobile Industry. Hearings before the subcommittee on Economic Stabilization. 99th Cong., 1st sess., February 19, 1985, Serial No.99-2, p.28.

47. Cited in Wayne, p.12.

48. Cited in Geoff Sundstrom, "Study eyes first 3 years of VRA," Automotive News October 15, 1984, p.41.

49. Testimony of Yoshi Tsurumi in Competitiveness of the U.S. Automobile Industry, p.30.

50. "1987 Market Data Book," Automotive News April 29, 1987, p.77.

51. Cited in "The Auto Quota: We Asked for It...", New York Times editorial, March 6, 1985, p.22.

52. Crandall, p.16.

53. Cited in Geoff Sundstrom, "Fate of VRA still up in the air," Automotive News February 25, 1985, p.70.

54. Competitiveness of the U.S. Auto Industry, p.35.

55. Finance Committee hearings, Part 1, p.185.

56. Susan Chira, "Japan Flow May Rise 24.3%," New York Times March 28, 1985, p.D 1.

In a front page article in the Wall Street Journal reporting the end of the VRA even the pretense that it was voluntary was gone. The article began: "President Reagan said he ended the restraints on Japanese auto imports to spur free trade...." See Urban Lehner, "Quotas' End," Wall Street Journal March 4, 1985, p.1.

57. Lehner; Francis Gawronski, "Chrysler, GM to import more cars as VRA ends," Automotive News March 25, 1985, p.68.

58. William Hampton and Edward Mervosh, "More Japanese Cars: How Much Will They Hurt?," Business Week March 18, 1985, p.117.

59. The domestic content bill was numbered HR. 5133/S. 2300 for the 97th Congress and HR. 1234/S. 770 for the 98th Congress.

60. See the statement of Alice Rivlin, Director of CBO, in U.S., Congress, House, Committee on Ways and Means, Fair Practices in Automotive Products Act. Hearings before subcommittee on Trade. 97th Cong., 2d sess., September/October 1982, Serial No. 97-30, p.247.

61. Although the CBO believed that neither Toyota or Nissan would shift their production facilities, in effect establishing a quota of 250,000 cars per year, the UAW argued that the U.S. market was too important to walk away from. At the time Toyota's annual American sales was 714,000, while Nissan's was 580,000.

62. Cited in Gordon Lee, "Detroit's Advocates in Congress Want To Stamp Cars with 'Made in America'," National Journal July 10, 1982, p.1221. The final vote on the amended version of the bill was 215-188.

63. Alan Murray, "House Passes Auto Domestic Content Bill," Congressional Quarterly Weekly Report December 18, 1982, p.3072.

64. Among unions supporting the bill were the Amalgamated Clothing and Textile Workers, the International Union of Electrical, Radio and Machine Workers, the United Rubber Workers, and the AFL-CIO.

65. One example of this can be found in a 1985 Business Week article that followed the Reagan decision allowing the VRA to lapse. Commenting on the "growing hysteria" over foreign competition, the article stated: "in the view of Chrysler Corp. Chairman Lee Iacocca, lifting quotas poses a threat to the U.S. that rivals the "yellow peril" that many people feared would engulf the Western world in the late 19th century." See William Hampton and Edward Mervosh, "More Japanese Cars: How Much Will They Hurt," Business Week March 18, 1985, p.117.

66. Cited in Gordon Lee, p.1221.

67. U.S., Congress, House, Committee on Energy and Commerce, U.S. Auto Trade Problems. Hearings before the subcommittee on Commerce, Transportation and Tourism. 98th Cong., 1st sess., April 12,28 and May 6, 1983, Serial No. 98-47, p.18.

For a profile of Dingell see Nathaniel Nash, "How a Huntsman Stalks His Legislative Prey," New York Times June 4, 1986, p.A 24. His district contains the Ford World Headquarters and ten auto plants.

68. U.S. Auto Trade Problems, p.36.

69. Cited in Gordon Lee, p.1221.

70. Statement by Robert Dederick, Under Secretary of Commerce for Foreign Economic Affairs, U.S. Auto Trade Problems, pp. 67,71.

Part of the complication that would arise with the law would involve U.S.-Canadian auto trade. In 1965 both nations entered the Canada-U.S. Automotive Products Trade Agreement, known as the Auto Pact. It allows for duty free new cars and parts to pass between both countries for qualifying companies. Canada dropped its 25 percent duty, but in return manufacturers were required to make one vehicle in Canada for each one sold there. The Pact allowed for the rationalization of the North American market and led to billions of dollars of investment in Canadian plants by the American auto makers.

The agreement would have to be renegotiated, or

Canada given an exemption if the domestic content law became law. The stakes over maintaining the pact are high for Canada. It had a \$4.2 billion auto trade surplus in 1985, and the treaty covers one-third of the \$124 billion trade between the two nations, or 12 percent of Canada's GNP. See Edith Terry, "From Working Stiff To Political Hero," Business Week March 30, 1987, p.61. Moreover, renegotiating the pact would further strain trading relations between the two nations, which have already degenerated with the imposition of countervailing duties on other products. In 1986, the U.S. leveled duties on red cedar shakes and shingles leading Canada to retaliate on a number of items. See Christopher Wren, "Mulroney Assails Reagan Imposition of Lumber Tariffs," New York Times May 24, 1986, p.1; Douglas Martin, "Canada Sets Tariff Retaliation," New York Times June 3, 1986, p.D.1; Douglas Martin, "Big Canada Duty Put on U.S. Corn," New York Times November 8, 1986, p.37.

In addition to the difficulty in renegotiating the pact, exempting Canada from the law would create a loophole for Japanese car makers and others to avoid a domestic content law. Since the agreement states that an automobile product must not have more than 50 percent foreign content in order to qualify for duty-free status, an exemption would allow foreign firms to use Canada as a springboard, to use the 50 percent limit regardless of the total volume of exports. See Richard Johnson, "Toyota seeks revised U.S.-Canada trade pact," Automotive News March 24, 1986, p.66; Douglas Martin, "Canada-U.S. Pact On Cars Is Strained," New York Times April, 28, 1986; Richard Johnson, "Canada wants auto pact rules to apply to Asian makers there," Automotive News June 2, 1986, p.55. For a general discussion of the Auto Pact see "The U.S.-Canadian Automotive Products Agreement of 1965: An Evaluation For Its Twentieth Year", A Report by the U.S.-Canada Automotive Agreement Policy Research Project, LBJ School of Public Affairs, University of Texas at Austin, No. 68, 1985.

71. Fair Practices in Automotive Products Act, p.2.

72. Thomas Brilleck, "The Growing Shadow of Trade Protectionism," Journal of Legislation vol. 10, #2, Summer 1983, p.391. For an analysis of the Smoot-Hawley tariff see E.E. Schattschneider, Politics, Pressures and the Tariff (NY: Prentice-Hall, 1935).

Rep. William Dannemeyer (R-Calif.) agreed with Brilleck's assessment and offered an amendment to the bill changing its title to "The Smoot-Hawley Trade Barriers Act of 1982." The House rejected the amendment 92-301, December 15, 1982. The following year he

proposed a different title, "The UAW Wage Differential Protection and Anti Auto Consumer Act of 1983." This amendment was rejected by voice vote November 2, 1983.

73. Cited in Alan Murray, p.3072.

Although Graham soon switched to the Republican party, the domestic content bill did not have the full support of the Democratic party. During the 1984 presidential election candidates for the Democratic nomination were divided over the bill. For a report on this division see Robert Pear, "Democratic Candidates Sharply Split on Bill to Help Auto Makers Compete," New York Times February 2, 1984, p.8.

Walter Mondale's support of the bill was called into question when Robert Strauss, former national chairman of the Democratic party and a Mondale supporter, claimed that Mondale's support was merely offered to get the presidential nomination and did not represent his true stance on the bill. See "Robert Strauss on U.S. Mood," New York Times April 12, 1984, p.B 13.

74. Cited in Alan Murray, p.3072.

75. U.S., Congress, House, Committee on Ways and Means, Domestic Content Legislation and the U.S. Automobile Industry: Analyses of HR. 5133, The Fair Practices in Automotive Trade Act. Committee print prepared at the request of the subcommittee on Trade by the Congressional Budget Office, Congressional Research Service and the United States Trade Representative, 97th Cong., 2d sess., August 16, 1982, Committee Print WMCP 97-33, pp.82-3.

76. Ways and Means also cited Kenneth Damm, then Deputy Secretary of State, and author of The GATT: Law and International Economic Organization (Chicago: University of Chicago Press, 1970), that the bill would be a violation of GATT. See U.S., Congress, House, Committee on Ways and Means, Fair Practices and Procedures in Automotive Products Act of 1983. HR. 1234, Report. June 30, 1983, House Report 98-287, Part 2, p.9.

77. Cited in U.S., Congress, House, Committee on Energy and Commerce, Fair Practices and Procedures in Automotive Products Act of 1983. HR. 1234, Report. June 30, 1983, House Report 98-287, Part 1, p.24.

The court case referred to is Sneaker Circus, Inc. v. Carter, 457 F. Supp. 771, 795 (E.D.N.Y. 1978), aff'd 614 F.2d 1290 (2d Cir. 1979).

78. U.S. Auto Trade Problems, pp.16-7.

79. See testimony of Robert Dederick, U.S. Auto Trade Problems, p.100. For a detailed sketch of foreign domestic content laws see pp. 117-167, summarized on pp. 128-135.

80. Statement of Douglas Fraser, President of the UAW, U.S. Auto Trade Problems, p.180. Statement of Richard Ottinger, p.45.

81. U.S. Auto Trade Problems, p.84.

82. Domestic Content Legislation and the U.S. Automobile Industry, pp.78-80.

83. See U.S. Auto Trade Problems, p.630. For a list of groups against the bill see pp. 602-3.

84. See "A better way to handle auto imports," Business Week April 13, 1981, p.178; "Now is the Time," Automotive News February 11, 1980, p.24.

85. The value of foreign trade is a significant element of the U.S. economy. In 1981, the value of foreign trade was equal to 24 percent of U.S. GNP. In 1980, the export of manufactured products accounted for 4.8 million jobs, an increase of 46.7 percent since 1977. These jobs comprised 5 percent of total civilian employment and 6 percent of private sector employment. Within the manufacturing sector exports played a greater role, accounting for 13.7 percent of all jobs and 8.3 percent of total shipments. These figures are cited in the statement of J. Ron Brinson, President of the American Association of Port Authorities, in U.S. Auto Trade Problems, p.673.

86. Congressional Record, House of Representatives, November 2, 1983, p. H9057. The list of economists included: Gar Alperovitz, Barry Bluestone, Martin Carnoy, Jeff Faux, David Gordon, Michael Harrington, Bennett Harrison, Robert Heilbroner, David Kotz, Robert Lekachman, Ann Markusen, David Moberg, Michael Piore, Michael Reich, Derek Shearer and Tom Weisskopf. The letter was submitted by Rep. Richard Ottinger.

87. Jurgen Habermas, Legitimation Crisis (Boston: Beacon Press, 1973).

88. For a report on one such community, Flint, Michigan, "the quintessential company town," see Michael Moore, "General Motors Pulls Out: In Flint, Tough Times Last," The Nation June 6, 1987, p.753.

CHAPTER 9

CONCLUSION

The problem of modern democracy is much less the fencing of political power than its rational utilization and provision for effective mass participation in its exercise.

Franz Neumann

This dissertation has examined the history of government policy toward the auto industry as a means of exploring the dynamics of power in America. Its aim was to clarify the contours of public and private power and how variable economic conditions shape the policy process. It is also a contribution to the debate between pluralists and neomarxists concerning the study of power. As the nation's largest industry, the lessons that can be drawn from studying the auto industry are many, involving the relationship between democracy and corporate power.

The hypothesis of this dissertation is simple. Government officials are more vulnerable to corporate political power during times of moderate economic hardship. As a result, when large corporations mobilize their political resources in the context of economic decline, they are able to further their political goals.

Through the control over capital, large corporations are responsible for the economic reproduction of society. This strategic economic position translates into political power. Concentrated instrumental power is thus enhanced by a structural context in which state officials depend upon business for tax revenue and economic growth. Although always formidable, because of the absence of alternative approaches to investment, corporate political power is further enhanced by economic decline as policy makers attempt to stimulate economic growth.

It is clear, however, that the power of the auto industry is not something simply directed at the state. It is evident in transportation networks, air pollution problems, vehicle safety, oil consumption, not to mention international trade deficits, and changes in the manufacturing base of the American economy. Its private decisions shape the context and the "problems" that government responds to. Indeed, the power of the industry confirms Robert Lynd's point that "power is no less 'political' for being labeled 'economic'; for politics is but the science of 'who gets what, when, and how.'"¹

The patterns of automotive policy illustrate the changes in business-government relations that have occurred in the post WW II era. These policies reflect

both the changing ideological parameters of American politics and the changing economic context of policy-making. Without locating these changes in the context of the business cycle it is difficult to fully explain the three periods of automotive policy discussed above, or, indeed, the general changes in business-government relations in the last fifteen years.

Beginning with a long period of corporate political hegemony, the auto industry was able to "manage" the issue of traffic safety, avoiding attention on vehicle design. With the rise of opposition in the late 1950s and early 1960s concerns were increasingly raised over the built-in design failures of cars. The development of federal safety regulations, followed by emissions control and fuel economy standards, transformed this hegemony into defensive maneuvering, as government now participated in shaping product performance standards. However, when the industry suffered economic losses in the late 1970s and early 1980s, it was able to redirect government policy. With the industry losing money or perceived to be in a financially unstable position, advocates of greater government regulation were put on the defensive.

The absence of federal safety regulations before 1966 was not the result of oversight or a belief that traffic safety was not a problem. For decades the

industry had systematically organized the traffic safety establishment to deflect attention away from vehicle design. By establishing "front organizations" to carry out its strategy, the industry was able to insulate itself from public scrutiny. As a result, the auto makers enjoyed profits and political protection.

The rise of opposition ended this arrangement. Advocates of federal safety standards labored for years to topple the industry's control over traffic safety. By the mid-1960s the time was ripe. Coupled with a growing concern for corporate accountability and product safety throughout American society, the death toll on the nation's roads was increasing. At the same time the industry was harvesting profits with a three-way shared monopoly of the car market. Even those steadfastly opposed to federal regulation did not doubt that the industry could afford to comply with government standards.

After this turn in the industry's political fortunes it shifted its lobbying strategy away from the claim that regulatory standards violated corporate autonomy and managerial freedom. Increasingly, attention was directed to the costs of regulatory standards and the claim made that unemployment and inflation were caused by regulation. This new emphasis proved to be successful in the 1970s as the industry and

the economy overall went through periods of economic decline. As a result, the industry realized how to best maximize its central economic position within the political arena. Nevertheless, despite the instability of the 1970s, the industry had several good years, selling record numbers of cars. In the end, regulatory requirements on the industry increased, although the auto makers were often able to delay or modify proposed government initiatives. As long as the industry was making money, fending off regulatory efforts was made more difficult. The corporate mobilization of the mid-1970s had to wait until industry losses were dramatic before its full effectiveness would be seen.

The financial losses of the 1979 and 1980 dramatically altered the context of policy making. For the first time since the early 1920s the nation's largest industry lost money. Although there was little evidence to support the claim that government policies had caused or even exacerbated the industry's problems, the auto makers used this opportunity to their advantage. The direction of regulatory policy was altered as legislative and administrative battles that were previously lost were now reopened and reversed. New policies were pursued which helped the industry earn millions of dollars, at the same time prices were raised and thousands laid off.

The most notable examples are the Chrysler bailout and the import quotas on Japanese cars.

The conclusions that emerge from these patterns are clear. Public interest advocates can win, particularly under certain circumstances. However, even when large corporations are on the defensive and regulatory policy is expanded, they are able to delay and modify government initiatives. When large corporations start losing money and laying off workers, pursuing the public interest, in terms of health and safety, is subordinated to corporate requests in the hope of stimulating economic growth. Yet, even under these circumstances, by invoking the same concern for domestic employment, challenges to corporate prerogative are possible, as the history of the domestic content bill demonstrates.

These shifts in policy are inadequately explained by the pluralist perspective because power is not conceptualized in terms of contextual conditions. Indeed, one of the long standing weaknesses of the pluralist approach is the lack of attention to how economic conditions shape the context of policy debates. As a result an overly voluntaristic explanation of the political system is offered. This failure is not the product of an oversight on the part of pluralist researchers. It is the result of an ideological orientation to the relationship between politics and

economics. Pluralists, and the liberal tradition in general, have long posited the separation of politics and economics into distinct spheres.² One practical consequence of this conceptual separation has been the insulation of economic and property relations from politics and political control.

For some neomarxists this has also been a problem. All too often the notion of state dependence is posited and left undeveloped. Locating one's analysis within an historical context, both economic and ideological, can avoid this problem. It concretely develops the notion of relative autonomy by demonstrating the conditions under which state dependence is exposed and autonomy constrained, underlining the imperatives of accumulation on policy makers.

Currently, the industry is undergoing a fundamental transformation. Gone are the days of a stable profit making oligopoly with little foreign competition. Indeed Davis Dyer argues, "the shift from national to global competition is an accomplished fact in the auto industry. In the very simplest of terms, there is no longer an American auto industry--there is only a world auto industry."³ Although the changes in the industry over the last decade have been dramatic, the Big Three are far from becoming fully international in orientation. American auto makers still gear their

final product to the American market, even as joint ventures and foreign sources for parts and components increase. Nevertheless, as a result of rising imports of parts and vehicles, prospects for domestic employment in the auto industry are bleak. From 1979 to 1985 automakers closed or announced the closing of over 40 plants. Since 1985 plant shutdowns have continued, most dramatically with GM's announcement in December 1986 that 12 more plants would be closed.

Given the industry's economic importance, this decline is having national repercussions. According to Davis Dyer, the future for the industry will likely be one where there will be "fewer and smaller American-based automakers, fewer jobs for autoworkers, fewer economic spinoffs into allied industries, and, ultimately, a diminished standard of living for the American people."⁴ The auto industry's experience is an ominous signal for the future of American business.

The broader implication of the decline of the auto industry is a powerful warning to the rest of American industry. For the principles and practices embedded in the auto industry are embedded throughout the national economy as the American way of doing business.⁵

Much has been made of late of the changes in the American auto industry. Chrysler heralds itself as the "New Chrysler Corporation." Ford emphasizes its new sleek cars where quality is "job one." GM claims it is a leaner more entrepreneurial company, capable of

quickly responding to the market. Although its market share continues to decline, GM sees its investments in computers, robots and artificial intelligence as eventually enabling it to build the "car of the future."

Unquestionably, the American auto makers have changed since the dark days of the late 1970s and early 1980s. Throughout the industry there is more attention to "quality." However, the bulk of the industry's attention has been directed toward productivity and cosmetic improvements of "trim and fit." Despite the press's acceptance of the industry's well orchestrated public relations effort to present itself as reborn, the products sold to the public are remarkably unchanged. For all the investment in "high technology," cars are basically no safer, more efficient or less polluting. The industry has concentrated its energies on improving the production process rather than the product. Each of the auto makers can produce cars with significantly fewer man-hours, but seem "unable" to stem the fouling of the air or the death toll on the nation's roads or noticeably improve fuel economy.⁶

For the workers and communities dependent on the auto industry, layoffs and shutdowns are increasingly common. The United Auto Workers seems content to ride-out an orderly shrinkage of employment. Contract bargaining of the 1980s has focused on job security and

"cooperation" as workers fight to slow the decline in industry employment.⁷ Politically, the union has increasingly aligned itself with industry over various government policies or has remained oddly silent. Instead of fighting the industry for safer more responsible cars, furthering public awareness of the consequences of auto design, the union has typically adopted the industry's position that government regulations are burdens to be avoided in the short term pursuit of profits.

The union's focus on wage benefits has prevented it from leading the fight for industry accountability. Producing more responsible cars, at a reasonable price, would help the industry's competitive position. With the largest car market in the world in the United States, the domestic producers could spread the costs of these new developments across more vehicles putting foreign producers at a disadvantage. Notwithstanding the successes of foreign manufacturers, Chrysler, the smallest of the Big Three, still far outsells the largest foreign import, Toyota.

As the industry consolidates its operations and outsources its production, communities which have grown along side the industry are being abandoned. Following the pattern of the steel industry, plant shutdowns and indefinite layoffs are devastating local economies, and

destroying the interpersonal networks of neighborhood and community. In its wake are left alcoholism, child abuse, suicide and loneliness.

Whether the political impetus exists to respond to the increasing de-industrialization of America is unclear.

Recently, the debate on industrial policy resurfaced, although slightly recast in terms of "competitiveness." The Harvard Business School's Project on the Auto Industry and the American Economy is a classic example of this position. It calls for an Office of National Economic Competitiveness in the White House. In addition, it calls for a new set of relations among management, labor and government to ensure the future of the auto industry because

...despite record profits in 1983-4 and a robust year in 1985, it does not appear that a revitalized Big Three will be able to restore their competitiveness as full-line, domestic producers by relying upon traditional competitive strategies and relationships with labor and government.⁸

Part of the new relations the Project calls for is a new concept of the corporation. "The driving force for change is as fundamental as a new concept of the corporation. In many ways the old concept of the corporation has been the bedrock of the traditional American enterprise system. It is a concept that finds expression in the notion of 'management's rights'...."⁹

On the other hand, the new concept must be based on "legitimacy and trust." Accordingly, the project calls for strategic planning and cooperation among the triad of parties involved in systems of "industrial governance." However, as with all corporatist solutions, there are contradictions inherent in this "cooperation." Guided by the traditional goal of profits, management does not have the same interests as labor and often neither have the same interests as government.

In fact, the Project acknowledges the problem of winning the confidence of workers at the same time as corporate size is pared down. It cites a less cheerful assessment of the prospects facing the industry by William Chew, head of strategic planning of GM's Industrial Relations Department. Chew illustrates that in any new understanding of corporate behavior and group "bargaining" the bottom line is the corporate balance sheet.

Our major problem is to define an economically viable configuration and then figure out what this means for the size and nature of the work force of the future. Either we become more productive and need fewer people or we stay as is and lose market share. Either way we lose people. Once that is known, then the question of a declining work force becomes one which has implication for and consequences on employees, on union leadership, on the community, on local tax structure, on government policy and so on.¹⁰

The Harvard recommendations raise the problems inherent in the concept of the "public interest." With different assumptions and different goals, the "public interest" remains the justification for virtually all policy directions. One of the conclusions of this study is that the "public interest" has for too long been identified with corporate health. It is not difficult to understand why policy makers in the past were guided by this notion, appropriately enshrined in the often quoted dictum: "What's good for GM is good for the country."¹¹ Given the size of the auto industry, its economic vitality does directly concern government. Currently, however, "what's good for GM has become what's bad for America...."¹²

A notable example is the move to "outsource" production. It presents a dilemma between the industry's desire for cheaper parts and the impact of disinvestment on the American economy. As Chevrolet advertises its cars as "the heartbeat of America," GM enters into joint ventures in foreign nations to obtain parts. As Chrysler wraps its image in the flag, boasting its cars are "born in America," it scrambles to buy foreign components. Due to the linkages involved in auto production, dismantling the nation's largest industry strikes at the heart of facilities essential for economic stability and national security.

The divergence between the industry's interest and the public interest is also illustrated by industry investment decisions during the time of Japanese import quotas. The Voluntary Restraint Agreement was justified as giving the automakers "breathing space" to catch up with the Japanese. Unfortunately, after the quotas were established, the industry's gross investment expenditures declined by 30 percent. In the five years before the quotas investment expenditures increased by 88 percent.¹³

The resistance to regulatory standards, whether safety, pollution emissions or fuel economy, is yet another challenge to the public interest. Conflict over regulatory standards is an inevitable outgrowth of the corporate concern for autonomy and profits. For the industry, regulations are a burden to be avoided. Only grudgingly have regulatory standards been complied with, and then typically after long delaying battles. For the public, regulations are often vital protections of safety and health. To expect the auto makers to develop a "social conscience" and to willingly produce safer cars is to ignore the basic orientation of the corporation--profits.

Throughout the changes in regulatory policy at least one theme remains constant. The industry has consistently exhibited little regard for anything beyond

the bottom line. Its long standing unwillingness to consider anything other than corporate growth and profits recurs in virtually every policy area. This pattern points to the "incompatibility of a socially irresponsible system of power with the goal of a truly democratic society."¹⁴

The conclusions that emerge from this dissertation that go beyond the immediate issues of the case study raise fundamental concerns on a variety of issues, including the role of the social scientist. Currently it is fashionable for discussions of public policy to be problem solving in orientation. However, the definition of "problems" is inherently ideological. It involves particular political assumptions and goals. Typically, the "policy analyst" adopts the "problems" articulated by major institutions. Robert Lynd identified this trend with the term "technician"-- someone who too often constructs "the definition of his problems too narrowly in terms of the emphasis of the institutional environment of the moment."¹⁵

The danger of this perspective is that it leads to an uncritical acceptance of the structure of power and the status quo. This dissertation has tried to avoid this pitfall. It has not been oriented to the problems of the auto industry, whether in responding to government initiatives or to its future profit making

prospects. Nor has it tried to explain how particular regulatory or legislative efforts can best be pursued.

On the other hand, this study has also tried to avoid the other trend Lynd identified--the "scholar," who becomes "remote from and even disregards immediate relevancies."¹⁶ Despite the insights of neomarxist theory, it all too often is overly abstract and suffers from such a "scholarly" flaw. This dissertation examined automotive policy in order to explain the dynamics of power in American society in terms of the instrumental resources available to large corporations and the structural conditions that enhance these resources. It has tried to demonstrate the conditions under which state autonomy is constrained by and subject to the full force of economic power. The basic relationship between corporate power and economic hardship has several implications for the future of automotive policy and American political system in general. Given the inevitable cycles of capitalism, downturns will continue to periodically occur. What is often known as the "business cycle" will further the political fortunes of the nation's largest corporations and hurt the public interest groups involved in public policy debates. The auto industry's control over capital, dwarfing most nations, will continue to provide it with the ability to modify, delay and frequently

avoid even the best intentions of public spirited officials.

Explaining the resurgence of corporate political power

since the mid-1970s has received the attention of a number of commentators, for example, Thomas Edsall, and Ferguson and Rogers.¹⁷ In each of these works, this resurgence is explained by business mobilization. Ferguson and Rogers even go so far as to offer a theory of "investment blocs," in contrast to voting blocs, to explain the rise and fall of party systems. In each case, a model of politics is posited that gives inadequate attention to how variable economic conditions affect power relationships. Although the backdrop of economic stagnation is acknowledged, it is not integrated into either analysis. If anything can be learned from this dissertation it is the necessity of conceptualizing power relations with attention to contextual conditions, and, in particular, variable economic conditions. Failure to do so hinders a comprehensive understanding of economic power and the political process. It substitutes a perspective that divorces the understanding of power as rooted in the structure of economic relations, thereby fragmenting, rather than integrating, levels of analysis.

While the goal of this study has been to explain how economic decline shapes corporate political power, even a cursory examination of the issues confronting the industry leads to a series of recommendations to promote the public interest. Currently the prospects for invigorated regulatory action seems small, although it will be hard for the successor to Ronald Reagan to appoint officials who are more opposed to the mission of protecting public health and safety. In light of the dynamics of corporate power identified throughout this study, without a tremendous upsurge in public demands for stricter government controls, at best the future will likely be one of creeping incremental improvements.

The following recommendations for automotive policy are presented to indicate the directions that might be pursued. Whether they can be accomplished ultimately depends on political organization and demands. To begin with, there need to be more stringent safety regulations and the full implementation of the air bag. Standards are needed that evaluate the overall crashworthiness of motor vehicles instead of piecemeal performance standards for individual components of automobiles. Cars that do not protect passengers from serious to fatal injuries should not be sold. It is inexcusable that thousands continue to needlessly suffer from auto accidents because vehicles lack structural integrity.

Similarly, pollution emissions and fuel economy policy need to be vigorously enforced and expanded to mitigate the fouling of the environment, with its attendant health consequences, and the waste of natural resources. The smog that continues to plague our cities despite the passage of the Clean Air Act almost twenty years ago, is just one indication of the inadequacy of the law. Almost two-thirds of the nation's urban areas fail to meet the ozone standards, endangering more than 80 million people. Minimally, there should be annual inspection of all vehicles on the road and stricter protocols for pollution equipment to ensure compliance over the vehicle's life.

More vigorous regulatory policies will require changes in the regulatory apparatus itself. Currently, regulatory policy is largely divorced from any democratic accountability, due to the institutional framework of regulatory agencies and the lack of public discussion of regulatory issues. Rarely does either major political party present regulatory issues as part of campaigns. The closest most politicians come are vague pronouncements about "protecting the environment" or "excessive red tape." Unless regulatory issues are brought to the center stage of American politics, policy decisions will continue to be made by officials lobbied by large corporations with endless resources and by

understaffed public interest groups. This situation usually works to the benefit of business.

With the increasing internationalization of the auto industry, trade policy remains locked within the traditional parameters of the alternatives of free trade and protectionism. Workers and consumers, as well as domestically oriented and internationally oriented corporations, are pitted against each other. Neither course offers a viable solution to current economic problems. "Free trade" by itself sacrifices domestic employment to the vicissitudes of international trade in the hope of long term benefits. "Protectionist" policies, in the form of tariffs and quotas, hope to preserve domestic employment, but enable large corporations to raise prices, without any restrictions or requirements for reinvestment. Without any legislated guarantees, protectionism is tantamount to a blank check for diversification and price hikes.

Outside the parameters of traditional trade policy, alternative options do, in fact, exist. Both domestic content and plant closing legislation are necessary protections for the individuals and communities dependent on the auto industry. Needless to say these are aspects of the social control of investment, and a form of "protectionism." Although they are "radical" by American standards, so is what is happening to our

communities. As the nation's industrial base and communities are devastated by the profit seeking decisions guiding deindustrialization, "new" solutions are called for. Until there is control over the flow of capital, government attempts to stimulate economic activity will aid corporate efforts to diversify and disinvest. Domestic content legislation is not a final solution to this problem, but it offers a beginning, and explicitly introduces a notion of "responsibility" to the nation in which corporations sell their products.

With the industry's increasing use of robots and automation, "productivity" is increasing but at the expense of employment. Slowing the introduction of such labor saving technologies is not in the public interest. Neither is sacrificing workers and communities to such progress. Closed plants can be used for a variety of social needs. Plant closing legislation requiring notification is necessary to provide workers and communities adequate time to explore alternative uses for these facilities. As long as state and local governments continue to offer tax breaks and other benefits to attract corporations, they should require that these monies be returned if the company subsequently closes shop.

Some will argue that worker ownership of shutdown plants will only result in pouring good money after bad.

Usually closed plants are the oldest and least viable. Moreover, all analysts seem to agree that an increasing problem for the world wide auto industry is over capacity. Expecting single plants, particularly assembly plants, to engage in auto production is unrealistic. Besides as traffic chokes the nation's highways the last thing we need is more cars. Even producing parts for the industry is unlikely, due to the limited number of potential buyers as well as the problem of overcapacity. However, shut down plants can be converted to meet other needs: for example, recycling, mass transportation, and housing. Seed money provided for plant conversion and modernization would be essential for these efforts to succeed. Part of this money could come from the corporations that are leaving.

A potential harbinger of a notion of corporate obligation to local communities occurred just recently as a result of Chrysler's announced closing of its Kenosha, Wisconsin plant. Following the announcement that 5,500 workers would lose their jobs there was a tremendous reaction from workers, the local community and the State of Wisconsin. Chrysler was charged with breaking its "promise" to keep the plant open for 5 years which it made when it obtained the plant as part of its acquisition of American Motors. Many workers who had been laid off from American Motors came back to work

at the plant with this understanding. Soon after Wisconsin Governor Tommy Thompson asked the state Attorney General to initiate a law suit against the company, Lee Iacocca announced Chrysler would put aside \$20 million to assist the laid off workers pay rent or mortgage payments for 12 months and help with the education of their children. The money represents Chrysler's profits from sales in Wisconsin for one year. Although the money will not create new jobs or open avenues for other uses of the plant, the "moral obligation" that Iacocca claimed the corporation felt could be legally formalized to do so.¹⁸

Given current political and party alignments most, if not all, of these ideas are speculative. Indeed, on the left today there is no shortage of recommendations for change or programs which entail economic rights.¹⁹ However, there is a shortage of strategies for change. Obviously it is beyond the scope of this study to prescribe a course of action. However, at least one thing is clear. Since the early 1970s the American economy has lurched through stagnation and severe recession. Despite several years of economic "growth" the official unemployment rate today is approximately what it was before the most recent recession. In the 1980s the gap between the rich and and poor increased and the middle class has shrunk. Meanwhile the

standard of living for the average American has declined during the last decade. With the end of the Reagan years and the sustained "experiment" with supply side economics, the opportunity exists to move the debate in American politics away from the politics of greed. Given the class based patterns of non-voting there exists the potential to forge a movement of those disaffected from current political and economic arrangements.²⁰

Conclusion

Ultimately the most important lesson that emerges from this study concerns the relationship between private power and democracy. Throughout American history there has been a long and vibrant debate concerning the compatibility of concentrated economic power and political democracy. It was central to the populists, the largest mass democratic movement in the nation's history.²¹ One achievement of the populists was the passage of the antitrust laws. However, antitrust is an idea that has largely fallen out of public discussion and is increasingly ignored by public officials. Although motivated by legitimate concerns, antitrust is basically a backward looking movement, trying to recapture a mythical free market as the solution to the problem of power. While vigorous

enforcement of the antitrust laws, something never really tried, would slow down the merger activities that consume so much of the resources of American corporations, it is a far cry from democratic control of private power.

Although by no means a new conclusion, concentrated economic power is incompatible with representative government. The unparalleled concentration of economic power in the corporate sector challenges the possibility of democracy due to its pervasive and unfair "influence" over government and society in general. This point recapitulates one of the traditional conclusions of political theorists, that democracy and equality are inextricably bound together. However, in an era which worships bigness, it needs repeating.

If corporate planners retain the prerogative to control investment, cyclical fluctuations in the economy will continue to lead to the subordination of government to the needs of corporations. Representative government will be diminished as political decisions are shaped by the needs of the business community. Growing world economic competition will increase the pressures on government to respond to corporate demands.

Moreover, as long as economic investment remains a private right, democratic accountability for the basic

directions of American society will be contained. The debate over economic power and its relationship to democracy must be rekindled, if democracy is to have a chance. The *raison d'etre* of the corporation is profit. Expecting corporations to be concerned with anything else, particularly as international economic competition accelerates, is unrealistic. Again Robert Lynd is instructive. "To attempt fundamental change in institutions, of a kind that affects the basic character of organized power in a given society, without changing the social structure of that society is like trying to drive a car forward with the gears set in reverse."²²

The problem of power in American society is to make economic decisions accountable and democratic. Although democracy is no panacea for the problems confronting American society, nor are current arrangements based on the prerogatives of corporate power. Democratic accountability and control over corporate power offers the only course for improving and protecting the lives of the overwhelming majority of Americans, while maintaining and expanding freedom.

Endnotes

1. Robert Lynd, Forward to Robert Brady, Business As A System of Power (NY: Columbia University Press, 1943), p.viii.

2. For an invaluable account of this development see Karl Polanyi, The Great Transformation (Boston: Beacon Press, 1957). See also C.B. Macpherson, The Life and Times of Liberal Democracy (NY: Oxford University Press, 1977) and Democratic Theory (NY: Oxford University Press, 1973).

3. Davis Dyer, et.al., Changing Alliances: The Harvard Business School Project on the Auto Industry and the American Economy (Boston: Harvard Business School Press, 1987), p.249.

4. Dyer, pp. 282-3.

5. Dyer, p.283.

6. The one noticeable change has been the introduction of electronics into a variety of vehicle components. Unfortunately, this has further centralized the industry's control over repairs as the backyard tinkerer or local service station is confronted with problems that only expensive dealer owned diagnostic equipment can solve.

7. For an analysis of the problems with this strategy see Eric Mann, "Cooperation For What?: U.A.W Backs the Wrong Team," The Nation February 14, 1987, p.171.

8. Dyer, p.147.

9. Dyer, p.250.

10. Quoted in Dyer, p.254.

11. Actually, the correct statement made by Charles Wilson, Chairman of GM, during his confirmation hearings as Secretary of Defense was, "...for years I thought what was good for our country was good for General Motors, and vice versa. The difference did not exist. Our company is too big. It goes with the welfare of the country. Our contribution to the nation is quite considerable." New York Times Jan.24, 1953, section 1, p.8, col.8.

12. Michael Moore, "General Motors Pulls Out: In Flint, Tough Times Last," The Nation June 6, 1987, p.753.

13. Robert Crandall, "Import Quotas and the Automobile Industry: The Costs of Protectionism," The Brookings Review Summer 1984, p.12.

14. Robert Engler make this point in a much broader analysis of the oil industry. See The Politics of Oil (NY: Macmillian, 1961), p.485.

15. Robert Lynd, Knowledge For What? (Princeton: Princeton University Press, 1939), p.1.

For a theoretical analysis of the issues involved in "methodology" see Sheldon Wolin, "Political Theory as a Vocation," in Martin Fleisher, ed., Machiavelli and the Nature of Political Thought (NY: Antheneum, 1972).

16. Lynd, 1939, p.1.

17. Thomas Edsall, The New Politics of Inequality (NY: Norton, 1984); Thomas Ferguson and Joel Rogers, Right Turn: The Decline of the Democrats and the Future of American Politics (NY: Hill and Wang, 1986).

18. See John Holusha, "Chrysler Plans Fund In Layoffs," New York Times February 17, 1988, p. D 1; "Wisconsin Plan on Chrysler," New York Times February 15, 1988, p. D 3.

19. See for example, Gar Alperovitz and Jeff Faux, Rebuilding America (NY: Pantheon Books, 1984); Samuel Bowles, David Gordon and Thomas Weisskopf, Beyond the Waste Land (Garden City: Anchor Books, 1983); Martin Carnoy and Derek Shearer, Economic Democracy (Armonk, NY: M.E. Sharpe, Inc., 1980); Martin Carnoy, Derek Shearer and Russell Rumberger, A New Social Contract (NY: Harper and Row, 1983); Kenneth Dolbeare, Democracy At Risk (Chatham, N.J.: Chatham House, 1984); Robert Goodman, The Last Entrepreneurs (Boston: South End Press, 1979).

20. For an analysis of the potential for a class-based realignment see Frances Fox Piven and Richard Cloward, The New Class War (NY: Pantheon Press, 1982); and a series of articles on the experience with voter registration, "Trying to Break Down the Barriers," The Nation November 2, 1985, p.433; "How to Get Out The Vote in 1988," The Nation November 23, 1985, p.547.

21. Lawrence Goodwyn, The Populist Moment (NY: Oxford University Press, 1978).

22. Robert Lynd, "Power in American Society as Resource and Problem," in Arthur Kornhauser, ed., Problems of Power in American Democracy (Detroit: Wayne State University Press, 1957), p.26.

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