

CHAPTER V

CONSISTENCY/INCONSISTENCY AND AGREEMENT/DISAGREEMENT BETWEEN IDEOLOGUES AND NORMALLY ALLIED INTEREST GROUPS

In this chapter we examine two major topics. The first is liberal and conservative ideological consistency and inconsistency in policy positions. The second is agreement or disagreement between ideologues and the interest groups with which they are usually allied. To probe both subjects we use the Janda, Berry, Goldman (JBG) model, our modified market failure model, the editorials of our four barometer publications, case histories of policy initiatives, and specialized social science literatures.

For a large majority of initiatives liberals were ideologically consistent, and they agreed with all or most of their usual interest group allies. The same was true of conservatives. We theorized earlier that when liberals formulate initiatives inconsistent with core liberal values, something is askew and those initiatives are likely to be ineffective or not worthwhile. The same applies to conservatives. We also speculated that inconsistency between liberal initiatives and positions held by interest groups usually allied with liberals signals problems of some sort including the potential ineffectiveness of initiatives. The same applies to conservatives.

Throughout this work we distinguish between initiatives that concern business and economics versus non business and economics. In a short preliminary section immediately below we review this distinction and why it is important for understanding policy-formulation.

Categorizing Initiatives

Most domestic initiatives (we are not covering defense and international policy anywhere in this study) can be categorized as

concerning business and economics or not. Two different but sometimes related models of ideology and policy formulation work best with one category or the other. For example, freedom of speech, privacy, voting rights, and prayer in public schools do not primarily concern business and economics. Freedom of unprotected speech relates to publishing and mass media industries, but courtroom and congressional debates in this field are dominated by the JBG values of freedom and order, not the market. In contrast, antitrust and pollution initiatives fall almost entirely in the realm of business and economics. Policy-formulation for these initiatives is best understood using our market misbehavior/breakdown model. Deciding which category an initiative occupies depends on the debate that surrounds it especially the public statements of its sponsors and opponents and the editorial pages of our four barometer publications. Six initiatives fall into both categories, and they will be discussed in a later chapter. We anticipate that patterns of conflict resolution will be different depending on whether ideologues and interest groups are thinking about initiatives using a single model or both simultaneously.

Ideological Consistency and Inconsistency:

Non Business-Economics

The JBG model specifies that ideological consistency for liberals entails their ranking equality over freedom and freedom over order. For conservatives ideological consistency means their ranking order over freedom and freedom over equality. Liberals and conservatives value all three, but they weight them differently.

We found only five instances of liberal inconsistency regarding non business-economics. Two concerned discrimination—enacting and ending affirmative action. These two affirmative action initiatives could have been counted as one (enactment and deletion), but the first was a liberal initiative and the second was sponsored by conservatives, so we treat them as separate. Two other instances of liberal inconsistency were in the field of education and concerned

charter schools and school vouchers. Liberals also exhibited inconsistency in their formulation and implementation of urban renewal. This initiative spans business-economics and non business-economics, but we will cover it in this section (and later) since many urban renewal themes concerned equality and order. There were four cases of conservative inconsistency, all of which concerned liberal initiatives regarding discrimination—protecting voting rights, ending racial discrimination, ending discrimination against women, and ending discrimination based on sexual preference. In the following discussion we use segregation as a stand-in for all forms of racial discrimination such as voting discrimination because the dynamics of policy creation are basically the same.

Racial discrimination

Banning racial segregation is an example of liberal consistency as well as consistency between liberals and their normal interest group allies especially civil rights groups such as the National Association for the Advancement of Colored People (NAACP). This collection of initiatives was highly effective in eliminating *de jure* if not all *de facto* racial discrimination. When major civil rights legislation was enacted in the mid 1960s, liberals had been long-time opponents of racial discrimination in all forms, and they championed efforts to bring about desegregation and end voting discrimination (*NYT* Church and civil rights, 1949; A keynote for the South, 1/15/61 and countless others). This position is consistent with the liberal primary emphasis on equality and its secondary emphasis on freedom.

Conservatives and racial discrimination

In the 1950s and 1960s many conservatives were critical of or opposed to civil rights legislation and U.S. Supreme Court civil rights rulings. Some liberals regard those positions or the logic used to defend them as racist, and it is likely that for some conservatives they were (Hogeland, 2012; MediaMatters; Critchlow 2007).

Contemporary conservatives see opposition to the expansion of federal authority, not racism, as the key to understanding conservative civil rights policy positions (Voegeli 2008; Antle 2010; Ponnuru & Goldberg 2013). However, Ramesh Ponnuru and Jonah Goldberg (2013, 36-37) writing in *National Review* admit that: “many conservatives including William F. Buckley, Jr. and *National Review* were grievously wrong about the civil rights movement.”

Although opposition to federal government growth was doubtless one reason for conservative civil rights positions in the 1950s and 1960s, our view is close to the one expressed by Ponnuru and Goldberg especially with regard to *National Review*. We will see that *National Review* was close to arguing that African-Americans were racially inferior, and it defended segregation and voting discrimination, arguing that they were part of a southern culture that was unchangeable in the near term and with which southern African-Americans were generally satisfied. The *Wall Street Journal* took no part in speculation regarding racial differences although it occasionally asserted that the African-American southern culture was inferior. Both conservative publications argued for a go-slow approach to desegregation, but only *National Review* supported southern tactics of resistance such as eliminating public school systems and putting segregated private schools in their place.

In the late 1950s and middle 1960s the *Journal* and *National Review* became increasingly critical of segregationist leaders such as Alabama Governor George Wallace. Both publications condemned their brutal tactics and their hypocrisy in opposing the expansion of federal power in their states while simultaneously courting federal monies for state programs.

Conservatives and racism

We should note again that, except for short one paragraph long news items, everything in *National Review* can be considered the

equivalent of an editorial. Although some signed articles by authors other than the editor-founder William F. Buckley, Jr. may not have been entirely consistent with his views, they reflected the perspectives of the *National Review* team.

Probably the *National Review* piece that liberals cite most widely in their criticism of the early history of conservative civil rights policy positions appeared in 1957 (*NR* Why the South must prevail 8/24/1957, 148-149). This unsigned article began with the observation that some southern whites intended to win using “whatever measures are necessary...” Few liberals would have disagreed. But the article moved from reportage and prediction to advocacy:

The central question that emerges... is whether the White community in the South is entitled to take such measures as are necessary to prevail, politically and culturally, in areas in which it does not predominate numerically? The sobering answer is Yes—the White community is so entitled because, for the time being, it is the advanced race. It is not easy, and it is unpleasant, to adduce statistics evidencing the median cultural superiority of White over Negro: but it is a fact that obtrudes... (p. 149)

This article raises several questions the most serious of which is whether *National Review* regarded African-Americans on average as innately inferior or, instead, as inadequate at that time in the South due to poor schooling. Considering the quality of many, if not most, schools attended by African-Americans in the South at that time and many years thereafter, the latter observation is obvious and trivial. But did *National Review* regard African-Americans as genetically inferior? Such a view is racist, but the 1957 piece is ambiguous on this point.

There is more in the 1957 article that we will examine below, but for now we will explore others to determine whether *National Review* and the *Wall Street Journal* were racist. Another widely cited non

attributed *National Review* piece on this point (*NR* Let there be darkness 10/7/1969, 996-997) cites a 1969 *Harvard Educational Review* article written by Arthur R. Jensen, a University of California at Berkeley professor. The *National Review* piece summarized Jensen's views: "The article maintained with impressive scholarship that a) Negroes as a group test out poorly where abstract reasoning and problem-solving are concerned, and that b) this aspect of intelligence is mostly inherited, a matter of genes, and therefore beyond the reach of compensatory education and other kinds of environmental amelioration." (pp. 996-997) The reader will have noted the phrase "impressive scholarship" and the point that abstract reasoning and problem solving skills are "mostly inherited."

At this juncture *National Review* tried to distance itself from Jensen by noting that an attempt had been made to smear Jensen as a conservative, but that he was not a conservative. No evidence was given to support that assertion (p. 997). The magazine then took another step away from Jensen: "His conclusions, to be sure, may one day be successfully challenged—all scientific truth is provisional..."(p. 997) But then, finishing that sentence, *National Review* took a step toward Jensen by saying that his "scientific truth" had as yet not been successfully rebutted.

National Review then qualified its near endorsement of Jensen by citing an article published earlier than Jensen's written by psychologist Ernest van den Haag, a *National Review* regular. The article stated that: "superiority in 'intelligence,' as defined by current standards, is not necessarily human superiority. Even if Dr. Jensen is proved accurate, millions of Negroes would be more 'intelligent' than millions of whites. And—as van den Haag points out—who is to say that intelligence is the supreme virtue?" (p. 997)

The van den Haag (1964) article began by defending I.Q. tests as valid and reliable measures of intelligence. It then reviewed tests of identical twins raised together and separately and concluded that twins raised separately produce test results that are almost as similar

to one another as twins raised together. From these results van den Haag concluded that: "Intelligence (even if we define it simply as that which is measured by I.Q. tests) is very largely genetically inherited." (p. 1059)

We have no intention of wading into the subject of intelligence testing nor the meaning of the word intelligence, but it is a long leap from the examination of twins to the evaluation of the results of a test written by white psychologists and administered to poorly educated African-Americans. As Van den Haag noted: "There are many unanswered questions on the relation of I.Q. tests to intelligence, and the legitimacy of the concept of general intelligence. Further, there are many questions on the relationship between performance in actuality and test performance, etc." (p.

1060) He added: "there are too few twin studies; and the differences between the environments of twins reared apart, and of Negroes and whites, are hard to compare. Finally there are intangible differences. The Negro-white environmental difference simply does not parallel the environmental difference experienced by twins reared apart." (p. 1061)

Van den Haag favored separating school children by ability which he notes would often in practice mean separating them by race. He justified this position by arguing that putting blacks in a white majority school could be disruptive and that segregation should continue: "unless there is evidence in specific cases that the learning of neither group suffers from congregation and that neither group objects." (p. 1061) Furthermore: "Instruction in schools for Negroes should attempt to remedy the disadvantages suffered by students coming from a culturally deprived home environment. This cannot be done except by separate education." (p. 1061)

Given that van den Haag frequently contributed to *National Review*, it is not surprising to find, as we will see below, that for some years the magazine supported segregation and by implication voting

discrimination or at best refused to endorse effective federal action to end these practices. Van den Haag barely avoided saying that African-Americans were genetically inferior.

Returning to “Why the South must prevail” (8/24/1957, 148-149) and the *National Review* assertion that out of self-defense southern whites were justified in preventing African-Americans from voting, the magazine evaded the question of what might occur if universal suffrage were implemented in the South. At one point it speculated that a majority might enact “what is socially atavistic” and wondered how “the Negro—and a great many Whites” can be equipped to “cast an enlightened and responsible vote.”

Readers might note that southern states and localities, which for decades maintained poor quality schools for its African-American (and a great many White) students, have little about which to complain if the products of those institutions were to vote irresponsibly—whatever irresponsible voting might mean in a particular context. After a fashion, *National Review* responded to this point with what it referred to as a “grave moral challenge” facing the South:

It must not exploit the fact of Negro backwardness to preserve the Negro as a servile class. It is tempting and convenient to block the progress of a minority whose services, as menials, are economically useful. Let the South never permit itself to do this. So long as it is merely asserting the right to impose superior mores for whatever period it takes to effect a genuine cultural equality between the races, and so long as it does so by humane and charitable means, the South is in step with civilization (pp. 148-149)

The problem with this primely expressed hope is that the South was in fact blocking African-American educational, political, social, and economic progress and had been doing so since the Civil War.

In 1965 William F. Buckley, Jr. asserted that the Negroes of Alabama “should have the vote” to the same extent as whites or anyone else. He added that there was no argument for depriving Negroes of the vote: “none moral, and certainly none constitutional.” However, Buckley would have limited the vote using the equivalent of a literacy test. He neglected to mention that *as administered* (i.e., as manipulated) by southern states African-Americans and many poor whites failed literacy tests. They more closely resembled a cruel joke than a test (Gillespie 2014, 113-114; see www.pbs.org/wnet/jimcrow/voting_literacy.html for a sample of an Alabama literacy test).

The *Wall Street Journal's* editorial approach to civil rights was closer to professional reportage than the staunch defense of the status quo typical of *National Review*. For example, after the Supreme Court's *Brown v. Board* decision the *Journal* neutrally portrayed the southern position opposing integration but suggested that it would be inequitable to require the South to: “tear down overnight the whole social structure which, though we are apt to forget it today, is rooted in ancient social necessity.” (*WSJ* Society and the law, 5/20/54) The meaning of the last phrase is not clear, but as far as we can determine, the *Journal* never engaged in speculation regarding the innate inferiority of African-Americans.

Both conservative publications stressed that school segregation was: “not a matter of prejudice about race as such. Rather it is a concern over a conflict of cultures, and an honest conviction on the part of Southerners that their children will be injured in many areas by submergence in a culture that has not had time fully to mature.” (*WSJ* Society and the law, 5/20/54) Here the *Journal* came close to suggesting that no aspect of school segregation had its origins in racism.

A few days after the *Journal's* initial editorial on *Brown v. Board* William Henry Chamberlin (Conflict of principles, 5/24/54, 8), a regular *Journal* columnist, described the contradictory

principles of the individual's constitutional rights versus states' rights, but he came down against states' rights in this case, describing the Court's decision as both prudent and bold. He saw *Brown* as part of a larger trend "toward the removal of old discriminations" such as the military eliminating racial discrimination. He blasted: "Crude theories of inherent racial inferiority and incapacity (apart from the obvious handicaps imposed by the historical background of the American Negroes)." Chamberlin concluded by quoting the *Brown* decision: "Segregation is a denial of the equal protection of the laws." At the same time, he advised caution: "An ounce of persuasion will be worth a pound of force."

The need for gradual change

A year after Chamberlin's call for using persuasion instead of force, the Supreme Court ruled in "*Brown II*" (1955) that lower courts should oversee "a prompt and reasonable start toward full compliance" with *Brown* (1954), taking into account the local specifics of administrative, transport, and personnel problems, campuses and catchment areas, and the geography of school districts. The *Journal* (The segregation problem, 4/15/55) advocated this course before the decision and applauded it afterward (*WSJ* The segregation decision, 6/2/55). For the next decade many other *Wall Street Journal* editorials counseled gradual change.

In 1958 President Eisenhower called for a slower approach to resolving problems of school segregation. The *Journal* again endorsed this sentiment, noting disapprovingly that some states appeared intent on closing their public schools rather than submitting to the *Brown* ruling (*WSJ* Logic and wisdom, 8/29/58). According to the *Journal*, the extremity of such a policy was indicative of the intensity of feeling against desegregation. Dismissing resistance as the work of "fools, knaves or bigots" was pointless, argued the editorial. Even if villainy was the root cause of the southern defense

of segregation, the president understood that: “here is a situation where legal logic must give way to wisdom about human affairs. What must be avoided at all costs is a head-on collision between unyielding forces.” The *Journal*’s call for gradualism contrasted sharply with *National Review*’s support of resistance.

Public funding for private segregated schools

In 1956 Virginia voters approved a referendum authorizing a constitutional convention that would allow public monies to fund private (presumably all-white) schools; these institutions would replace public schools. The two conservative publications treated this vote differently. While the *Journal* was sympathetic with the situation in which the southern states found themselves, it did not endorse this tactic. On the other hand, *National Review* in a non attributed piece expressed its support for it (Segregation and democracy 1/25/1956, 5).

The *Journal* saw the Virginia vote as a protest against the sudden reversal by the Supreme Court of its long standing “separate but equal” policy that legitimized segregated schools (*WSJ* The voice of Virginia, 1/11/56). In addition, it argued that the vote was a rejection of the idea that: “in every place, and without regard to circumstances, the whole burden of solving the most difficult of social and political problems should be thrust upon a single generation of school children.” The *Journal* added: “It’s a perilous business for a nation to thrust by force great social changes upon a part of it determined to resist.”

National Review’s thinly disguised justification for segregation and voting discrimination

In the 1950s *National Review* appeared to favor segregation and voting discrimination, often framing its position as an explanation of the white southern position on segregation: “The South believes that segregation is the answer to a complex situation not fully understandable except to those who live with it. (The issue here is not whether it is the answer, merely the fact that the

South *believes* it to be.)” (NR Sailing not so plain, 9/22/1956, 6) In effect, the reader was invited to conclude that segregation was acceptable as long as “the South” believed it to be. In the same article *National Review* wrote about a North Carolina referendum that amended the state constitution so as to: “maintain its traditional system of separate schools for Negroes and whites...” The word “traditional” often seems used to soften racial discrimination.

National Review's idyllic South

National Review sometimes presented an idealized, fanciful portrait of southern culture. For example, Richard Whalen (1958, wrote: “Unlike fluid, incohesive city life, rural life is closely knit and follows rigid, time-honored forms.” He continued: “racially separate schools seem irrefutably logical to those born and bred in a society which compels social separation of the white and Negro.” (p. 229) He then described an African-American farmer named Pack: “His children attend a new elementary school, far better than the one they started in. Many Negro schools have been built in the last few years, and Pack knows why. But he isn’t anxious to push the white folks too far. When his kids hop from the school bus every afternoon, laughing and shouting at their school-mates, Pack is satisfied. There are no issues, crises or causes in his life, and he sleeps soundly at night.” (p. 230)

Other dead-end tactics

Interposition was a widely discussed southern tactic of opposition to integration. Felix Morley (1956) defined it as a device by which a state inserts itself between its citizens and the federal government. In this case a state would protect its citizens from the federal government ordering integration. Under interposition, desegregation would be delayed until its constitutionality could be decided. Morley, a frequent *Wall Street Journal* contributor, discussed the theory of interposition and instances when it was successfully applied. Despite the fact that *Brown v. Board* appeared to short-circuit interposition by saying that

school segregation was unconstitutional, Morley treated the concept seriously, but he neither supported nor opposed its use.

After *Brown* many bills were introduced in the U.S. House and Senate to limit the Supreme Court's authority. The *Journal* opposed all of these attempts, observing that every member of the Court had been approved by the Senate (*WSJ* Curbing the Supreme Court, 5/17/56). *National Review* also opposed changing the Supreme Court's authority, pointing out that Congress already had the ability to reverse a specific ruling with a statute or by starting the constitutional amendment process (The last say 6/6/56, 6-7).

Contrasting approaches

The *Wall Street Journal's* characterization of national sentiment on segregation was usually quite different from that of *National Review's*. For example, a 1957 *Journal* editorial saw U.S. public opinion turning against the southern states: "the majority of Americans have now become uneasy under a system which in parts of the country enforced racial segregation not simply as a matter of social custom or of preference but as a matter of law." (The tragedy of Little Rock, 9/25/57) Similarly, *Journal* reporter William E. Giles (1960) saw southern public sentiment for closing down public schools instead of desegregating them dissipating.

National Review Bulletin, a short supplement to *National Review*, described, in a celebrity manner, instances of a hardening of white attitudes against the civil rights movement (Revolt, counterrevolt, 4/26/64, 4-5). For example, in Seattle a fair housing ordinance was overwhelmingly defeated, and Alabama Governor George Wallace's capturing a large portion of the vote in a Wisconsin Democratic presidential primary was described as "impressive." (p. 5) Similarly, William F. Buckley, Jr. (1964, 348) interpreted Wallace's showing in the Wisconsin primary as whites not wanting to be pushed around by radicals promoting "coercive integration."

The *Journal's* view of the Wisconsin vote was similar to *National Review's* but with an emphasis less on policy and more on

the often abrasive style of civil rights demonstrators (Surfeited with disorder, 4/10/64). It saw Wallace's surprising strength in Wisconsin as a protest: "against the excesses that have increasingly accompanied the civil-rights drive." The editorial elaborated on this point: "The civil-rights leaders, in pursuit of many legitimate aspirations for the Negro people, have flouted law and authority time and again; obstructed the commerce of peaceful people and disrupted the education of children; repeatedly instigated violence in the name of non-violence. Reactions inevitably have begun to set in."

In 1960 a *Journal* editorial (Some racial facts and fallacies, 3/25/60) attacked voting discrimination: "the Negro is obviously entitled to the rights and protections the law provides other citizens. Part of the civil rights debate in Congress is concerned with strengthening Negro voting rights in the South, and of course they should be strengthened when necessary to assure equality before the law." Still, the *Journal* again urged that everyone understand the subtleties of the situation and compared segregation to prejudice against immigrants: "it is unimaginable in human society that the coming together of radically different cultures will not cause difficulties."

The *National Review* portrait of widespread support for segregation reinforced its editorial position of opposing federal anti-segregation policy beginning with *Brown*. The *Journal's* view was that segregation was coming to an end and should do so in a timely and carefully arranged manner. Its version of public sentiment was consistent with that perspective.

The *Journal* never attempted to employ humor in its treatment of civil rights problems, but *National Review* did. It used an account of 500 troops protecting two African-American children attending a previously all-white school as a crude vehicle for humor and a way to trivialize what occurred. The format of this tasteless piece is that years later one of the troops is telling his grandchildren about these

events as if they were a major military battle. The author included a version of southern argot such as: “Well, young ‘uns, it was back in the summer of ‘56... ”(*NR Tales from the Kentucky woods*, 10/6/1956)

Disorder and civil rights demonstrations

Many *National Review* pieces focused on the disorder caused by civil rights demonstrations while ignoring the reasons for the demonstrations (*NR Black madness*, 4/7/1964, 263; *NR Bulletin Intoxication*, 4/13/1965, 1; and Meyer 1965). In “The Selma campaign” (3/23/1965, 227-228) *National Review* appeared to follow this pattern but then blasted State of Alabama and Dallas County police: “Sheriff Clark and his boys, the white toughs and the posse men are a trigger for nausea, all right; and those Alabama state cops, in appearance and behavior, are no Prince Charmings.” Then, the editorial turned back against civil rights demonstrators: “so much self-righteous selective moralizing is shoveled out through every global medium that it becomes, one would think, a duty to mention, in a phrase or two, that the lineup of the contest is not precisely Good Angels vs. Bad. ...some citizens have come to wonder just where the moral as well as legal line is to be drawn between using violence and—knowingly, deliberately—provoking violence that the nature of the given situation makes sure to come (p. 227).

Once again, the *Journal*’s (The tragedy of Little Rock, 9/25/57) take on civil rights violence was more nuanced than *National Review*’s. For example, the *Journal*’s examination of violence in Little Rock began with “nine men who decided to remake the country,” a criticism of *Brown*. But in the next paragraph the editorial retreated from criticism by observing that the Court: “did not ask overnight enforcement everywhere.” The Little Rock school system developed a plan that would have moved a short distance from the status quo “without attempting anything that could be called complete integration.” White families in Little Rock appeared to accept it. However, the NAACP and the federal court that first

reviewed it rejected it. According to the *Journal*, the mob action that followed was encouraged by Governor Orville Faubus, inflamed by U.S. District Judge Ronald N. Davies who refused to delay desegregation, and the NAACP that “would not wait even a day to test the mob.” The *Journal* concluded: “The tragedy of Little Rock is that no one has been willing to give its decent and honorable people the time to order their own affairs. And that error, if it be now compounded, could turn out to be tragic for the whole nation.”

William F. Buckley, Jr. (1963) exhibited a shift in *National Review*'s position when he addressed attacks against civil rights demonstrators in Birmingham, Alabama: “We need to say now to the South: You have an obligation then to protect the right to peaceable demonstrations. Continued failures to do so will as a matter of hard political fact have the effect of easing over into the hands of a strong Federal Government, whose symbol is the paratrooper with bayonet, a greater and greater role in the evolution of Southern affairs.” The *Wall Street Journal* (The wages of incitement, 9/17/63) discounted the argument that civil rights demonstrations were causes of the Birmingham violence. The editorial maintained that civil rights leaders would not sit by and fail to use one of their most effective tools. In Birmingham: “Under the previous city administration both the mayor and the chief of police were openly in sympathy with the most rabid of the segregationists.” The editorial continued: “When those leaders were removed in an election there was good reason to hope that peace would return until Governor George Wallace essentially took over city and school board functions. At the same time, newspapers and political leaders throughout Alabama were preaching resistance to the courts of the land.” The *Journal* concluded: “it would have been a miracle if the seeds of this disobedience had not borne tragic fruit.”

In 1964 *National Review* (What says the South? 10/20/1964, 898-899) characterized a long series of church bombings and burnings in the South as “a primary symbol of barbarism” and called on law enforcement to track down the perpetrators and for private

funds “instantly to rebuild the razed churches.”

Criticism of southern hypocrites or demagogues

Liberal critics of *National Review*'s early stands against federal civil rights policies and the civil rights movement often neglect the magazine's attacks on what it saw as the hypocrisy, demagoguery, and evil of some defenders of racial discrimination. For example, it criticized the hypocrisy of opponents of federal civil rights policy who invoked John C. Calhoun's concept of states' rights while eagerly accepting federal economic assistance (*NR* Return to states rights, 4/18/1956, 4).

National Review also criticized whites in Montgomery, Alabama who attempted to maintain a segregated bus system while preventing African-Americans from starting their own bus company: “the white residents of Montgomery gave away their case last winter when they refused to license buses to be operated by Negroes for Negroes. It is one thing to take the position that the government has not the power to compel integration; it is another to take the position that Negroes should be made to support a legally constructed monopoly (How much is it worth? 1/19/1957, 55).

A 1962 *Journal* editorial ruminated on mobs at the University of Mississippi chanting repeatedly the word “never.” (The moral issue in Mississippi, 10/2/62) What the mob, “led by the governor of the state” meant by this was that there would never be any change no matter what Negroes did to “lift themselves by character and intelligence.” The editorial concluded: “For any man to say this to another man is immoral. For an institution of government to elevate it to a policy of state is something that good men cannot tolerate.”

Regarding the openly racist Mississippi governor Ross Barnett, William F. Buckley, Jr. (1962) observed:

Governor Barnett, it appears to me, encourages still further doubt respecting his sincerity when one considers the braggadocio with which he announced his absolute determination to keep James Meredith [Buckley described him

later in this column as a “courageous human being”]out of the University of Mississippi, and his subsequent capitulation under pressure. If you tell the world you will go to jail rather than comply with a court order because you consider it a matter of principle, why then go to jail, dammit, or incur the contempt of those you asked to believe you when you said you were willing to fight to the end. The only honorable alternative course of action for Governor Barnett to have taken, as he saw himself overwhelmed, was to resign his office: on the grounds that he could not, as things developed carry out his oath to defend the constitution of the State of Mississippi as he and the people understood that constitution.

An entry in “The week” section of *National Review Bulletin* (1/10/1963, 1) described Alabama Governor George Wallace as entering a presidential primary without success: “Wallace’s factitious popularity quite literally exploded in his face, and today it is widely supposed that his noisy opposition was responsible for galvanizing the demon who went to church to kill little children, in the name of racial integrity.” The entry ended sarcastically: “His reliance on the Federal Government in matters of material interest to his state, and his refusal to permit local school boards to make their own decisions on the matter of integration or segregation, weave together a kind of philosophical and opportunistic ambiguity from which statesmanship is seldom cut.”

Peter Witonski (1966), writing in *National Review*, saw populist racists like Wallace as increasingly repellent to a growing southern middle class, and William F. Buckley, Jr.’s 1968 interview with George Wallace was also far from flattering to the governor.

In “The Mississippi dilemma” (12/29/1964, 136-137) *National Review* commented on: “The comings and goings in Mississippi, the jailings and unjaillings of the 21 men accused in effect of killing the three civil rights workers...” (p. 136) *National Review* asserted that Byron de la Beckwith was guilty of killing the civil rights leader Medgar Evers. But, unfortunately, de la Beckwith was in fact tried

by a jury of his peers who “do not recognize that a crime against a Negro falls under generic category of ‘crime.’” (p. 136)

This piece went on to discuss a solution. Should the Constitution be changed allowing federal troops to dispense justice? Not surprisingly, *National Review* rejected that idea. It saw charging de la Beckwith and the others with depriving the victims of their civil rights as a picayune response that would yield inadequate prison terms. The article concluded that there was no acceptable answer.

In 1965 when Hammermill Paper, Inc. announced its intention to build a manufacturing facility in Selma, Alabama, *National Review* described the company as being in utter contempt of equal rights by supporting the racist governor George Wallace (Let them eat civil rights, 2/23/65).

Conservative defenses of some civil rights demonstrations and economic boycotts

A 1956 *National Review* article (Foul, 4/18/56, 6) defended convicted leaders of the Montgomery bus boycott. The article argued that the law under which the prosecution occurred was: “obviously, a bad law—as is any law that penalizes human beings for exercising, in legitimate fashion, their right to protest whatever laws or customs they deem offensive.” The piece concluded: “We believe that the force of law ought not to be used by the federal government to force integration. And we believe that the force of law ought not to be used by the states to deprive Negroes of the right to protest, or of the right to compete with established institutions or businesses.”

National Review often framed civil rights conflict as an issue of property rights of some versus the property rights of others (Distinguamus, 3/26/1960, 193). Private property is private and “therefore a Negro does not have the right to enter a privately owned restaurant whose proprietors choose, for whatever reasons, to bar access to it to non-whites.” However, “the boycott the Negroes have instituted against business concerns which discriminate against Negroes is a wholly defensible—we go so far as to say

wholly commendable— form of protest; it is a form of social assertiveness which we must understand, and can sympathize with.

Conservatives and civil rights

Conservatives in the 1950s and early 1960s were only partly consistent with their own values with regard to racial discrimination. They were more concerned than liberals over the disorder associated with demonstrations, the potential disruptions that might be caused by the Civil Rights Act, and what they saw as a sharp increase in federal power vis-a-vis the states. Even conservatives who accepted the wisdom or at least the reality of civil rights court rulings and legislation advocated the gradual application of the new policies. This greater conservative emphasis on order and the growing federal government presence in the states taken alone is entirely consistent ideologically, but for many years conservatives chose to ignore or in some cases support racial discrimination in the South which is to say that they disregarded gross violations of core conservative values of freedom and equality. Furthermore, segregation and other elements of racial discrimination in the South were themselves examples of disorder, that is, state sponsored disorder. Overall, conservatives were ideologically inconsistent or unprincipled.

National Review's position either asserted that African-Americans were genetically inferior or skirted the edges of that position. The *Wall Street Journal* did not engage in speculation along those lines. *National Review* also defended segregation and voting discrimination for roughly a decade. Even when it opposed voting discrimination *National Review* did so by advocating literacy tests while ignoring the discriminatory manner (class as well as race) in which they administered. The *Journal* stayed well clear of these positions.

Both conservative publications tried to explain the southern defense of school segregation as primarily cultural, not racist. The effect was to excuse segregationists.

National Review and to a far lesser degree the *Wall Street*

Journal revealed what often seemed like willful ignorance of life in the South. For example, they often ignored the impact of inadequate schools (as run by whites) on measures of African-American performance such as I.Q. tests. When *National Review* noted the possibility that whites were intentionally blocking the educational progress of African-Americans to limit them to menial work, the magazine unrealistically called on the South to “never permit itself to do this” (8/ 24/1957, 148-149). *National Review* advocated the use of objectively administered literacy tests for voting, ignoring the fact that such tests and their grading were grossly manipulated to prevent African-Americans and poor whites from voting. And, *National Review* tried to portray segregation as a time honored way of life to which African-Americans had little objection.

Both publications advocated a gradual approach to civil rights reform which is entirely consistent with conservatism and the JBG model. In turn, civil rights interest groups and liberals tended to be suspicious of what they saw as foot dragging (Novak 1961; *NYT* No time for a let-up, 11/3/63; *NYT* The measure of “good faith”, 4/5/64; *NYT* The school plan, 6/8/64; *WP* Shabby compromise, 8/14/64).

National Review, but not the *Journal*, often served as a cheerleader for southern resistance against integration which doubtless reinforced the suspicions of liberals and civil rights organizations regarding the sincerity of conservative calls for gradual change.

National Review and to a lesser degree the *Journal* criticized the disorder caused by civil rights demonstrations while ignoring the reasons for those activities. For example, conservatives questioned Martin Luther King Jr.’s blockage of public buildings and roads in the Selma to Montgomery march, a point that liberals rarely made about any civil rights demonstration.

The *Journal* rarely addressed the theme of civil rights demonstrations causing disorder. When it did so, it pointed to problems on both sides: “those who would lead have a responsibility

not to add to the incitement against law and order. Our society provides ways for the adjustment of grievances be they those of Negroes who feel oppressed or white people who feel overwhelmed. Those ways are often slow, and in the best of circumstances there will be some so impatient as to prefer lawlessness to law. There is no magic to make this an easy road (The wages of incitement, 9/17/63).”

Conservatives were also critical of George Wallace’s (or Wallace’s inept aides’) violent tactics in interfering with the Selma to Montgomery march while also censuring civil rights tactics. Where, conservatives asked, was the moral line between provoking violent action as marchers appeared to do and responding violently as state and local governments often did (NR The Selma campaign, 3/23/65)?

Conservatives especially *National Review* criticized what they saw as hypocritical government officials who welcomed federal dollars tied to inevitable federal controls while envying against the application of federal authority to bring about desegregation and the enforcement of voting rights. This position was also consistent with conservatism as it has been practiced before and since.

The liberal *New York Times* could be inconsistent in its coverage of civil rights demonstrations depending on their locale. When Martin Luther King was jailed for breaking laws regarding demonstrations, the *Times*, instead of decrying disorder, noted that peaceful resistance in the manner of Ghandi in India was an effective weapon (NYT Georgia’s reply to Dr. King, 7/12/62). But the *Times* opposed civil rights demonstrations in New York while supporting them in the South. It opposed the blockage of the Triborough Bridge by a civil rights demonstration, justifying their criticism by saying that sit-ins and similar activities were the only recourse available to African-Americans in the South who were excluded from the political process and due process. The *Times* also objected to demonstrations led by Martin Luther King in Albany, New York (The courts and Dr. King, 7/23/62).

Civil rights policy positions

Liberals advocated new federal legislation ending segregation in schools, housing, and public places (*NYT* View from Lincoln Memorial, 9/1/63; No time for a let-up, 11/3/63; The civil rights bill--I, 5/4/64; Showdown on civil rights, 6/8/64; *WP* Jury-trial compromise, 4/25/64; Debating the rights bill, 3/29/65; and many more.) In contrast, conservatives criticized the 1964 Civil Rights Act for giving the federal government excessive power (*NR* Whose right? 12/1/64). *National Review* characterized the Civil Rights Act as threatening: "to be the source of much legalistic confusion, civic chaos and bureaucratic malpractice." (Whose right? 12/1/64; see also *WSJ* Open housing, 4/19/68)

The politics of civil rights

Blindness to or support of segregation probably benefitted conservatives and Republicans in the South in the short run, but this gain came at the cost of the long term hostility of African-Americans. That the majority of southern congressional opponents of civil rights were Democrats and often liberals in other areas of public policy was soon forgotten as they were replaced by Republicans who were uniformly conservative. Also dismissed from memory were liberal northeastern Republicans who supported civil rights but were largely supplanted by liberal Democrats. We will see below that conservatives adopted the liberal civil rights position immediately after liberals abandoned it for affirmative action.

Ideologically speaking, banning racial discrimination in all its forms falls almost completely outside the realm of business and economics although racial discrimination benefitted some whites financially. However, this aspect of discrimination was motivated by self-interest, not ideology. Policy debates focused almost entirely on equality, freedom, and order.

Discrimination not based on race

As with racial discrimination, conservatives were initially inconsistent with regard to discrimination against women and

homosexuals. Because the liberal and conservative positions with regard to women and homosexuals were essentially identical, we will confine our discussion to women's rights. Liberals favored equality and greater freedom for women. Conservatives, while not opposing the general principle of equality for women, placed greater emphasis on traditional order and wanted to move (if move at all) at a slower pace.

The women's rights movement in the 1960s was an offshoot of the civil rights campaign. Liberals favored early efforts to guarantee women equal pay, but soon women's rights went beyond simple equality. The *Wall Street Journal* caught the change of tone as well as the reaction of many conservatives when it characterized radical feminism as "curious and startling" and described militant feminists as shifting their focus from such mundane matters as job opportunities for women to restructuring society and "changing its definitions of masculine and feminine, of work and the family." (*WSJ* Awareness, yes, but..., 9/30/69) This editorial mocked feminism: "with our own household still relatively under control, we can't feel especially threatened by these mutterings on the feminine left." A year later a seemingly chastened *Journal* quoted from an 1870 issue of *Scientific American* that argued that women were able to perform a wider variety of jobs than was ordinarily permitted. The *Journal* added contritely: "It's no wonder so many women have grown impatient." (Impatience, 10/1/70).

Throughout the 1970s and part of the 1980s the campaign for the Equal Rights Amendment (ERA) was at the center of the women's rights movement. The ERA was a proposed constitutional amendment to grant women equal rights. The ERA was introduced in Congress in 1923 and reintroduced in every Congress since then until it passed and was submitted to the states for ratification in 1972. It was approved by both chambers with overwhelming majorities. A total of 38 states was needed for approval by 1979 (later extended to 1982) on state action, but it fell three states short.

In full the ERA read: “Section 1. Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex. Section 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article. Section 3. This amendment shall take effect two years after the date of ratification.”

Initially, the *Times* expressed doubts about this initiative because it might inadvertently weaken the protections of working women and the property rights of wives (The liberated woman, 8/27/70), but the *Times* came to favor the ERA as did the *Post*. Serena Mayeri (2009, 1230) observed that the early 1970s saw opposition to the ERA by civil rights advocates and support by former segregationist Senator Strom Thurmond, the Nixon Administration, and women in the Nixon Administration. Soon, however, support and opposition lined up along familiar ideological lines.

Conservatives were unsympathetic to the ERA on the grounds that improving the lot of women could be accomplished without a constitutional amendment and would not be helped by one (*WSJ* ERA death watch, 6/17/82). Phyllis Schlafly, a prominent conservative activist and the most visible ERA opponent, concentrated on specific objections such as those raised by the *Times* in 1970 and added the possibilities that it would lead to women being sent into combat, women workers being deprived of protective labor legislation, abortion rights being strengthened, taking rights to Social Security from wives and widows, and the legalization of homosexual marriage (eagleforum.org/era). At first glance, the connection between the ERA and abortion seems tenuous, but the National Organization of Women (NOW) used state ERA laws in Hawaii and Massachusetts as foundations for strengthening abortion rights (Critchlow & Stachecki (2008, 169).

Conservatives were especially wary of Section 2, suspecting that it would give congressional liberals authority to expand federal power in many pernicious ways. As Schlafly expressed it: “It would...give federal courts and the federal government enormous new powers to

reinterpret every law that makes a distinction based on gender, such as those related to marriage, divorce and alimony.” (Schlafly, 2007). In 1983 congressional hearings on an ERA redo, ERA critics: “would not allow feminists to promote the ERA as an abstract guarantee of equality, but rather would force them to account for the amendment’s concrete effects on law and jurisprudence.” (Mayeri 2009, 1240)

Liberal women’s rights advocates continue to pursue ERA passage even though as of 2017 there appears to be no aspect of women’s rights that would be strengthened by it. At first glance, it is not clear that the ERA would have made a difference even in 1972, although it could be argued that the campaign to make it part of the Constitution had roughly the same impact as enactment. By this speculative standard, the ERA could be considered a success—it was effective, thoughtfully considered, and worth while (Mayeri 2009). On the other hand, the current ERA campaign conveys the impression of forlorn activists who know little but campaigning for a cause that is already won.

Part of the problem in trying to gauge the success of the ERA campaign is that advocates’ goals changed between 1972 and 1983. In the early 1970s the main focal point was intentional discrimination, but by the 1980s as intentional discrimination was being outlawed at both federal and state levels, women’s rights advocates’ attention shifted to: “unintentional perpetuation of inequality through laws and policies that appeared neutral on their face...” (Mayeri 2009, 1226) This conception led to the application of disparate impact analysis and affirmative action as a remedy (see next section below) (Mayeri 2009, 1240-1241). The pro-ERA website run by the Alice Paul Institute (equalrightsamendment.org) declares: “We need the ERA because we do not have it yet.” It continues: “We need the ERA because the 14th Amendment’s equal protection clause has never been interpreted to guarantee equal rights in the same way the Equal Rights Amendment would. The 14th Amendment has been applied to sex discrimination only since 1971. Supreme Court Justice Antonin Scalia said in September 2010 that he does not think the Constitution

prohibits sex discrimination.”

The Scalia comment appeared in 2011 in an interview in *California Lawyer*. He was asked whether current interpretations of the 14th Amendment (ratified in 1868), to the effect that equal protection applied to sex discrimination and sexual orientation were in error. He replied that the Constitution does not prohibit sex discrimination (and presumably discrimination based on sexual orientation) because no one in 1868 thought that such a meaning was part of the 14th Amendment: “Nobody ever voted for that.” He added that prohibiting sex discrimination can be accomplished by the passage of laws: “All you need is a legislature and a ballot box.” An objective Alice Paul Institute could have added that this was only one justice’s opinion, and that there was no indication that state and federal courts were poised to eliminate women’s rights. Instead, it references an imaginary: “rollback of the significant advances in women’s rights achieved over the past half century.”

Almost prefiguring the 2016 presidential election, Donald T. Critchlow and Chynithia L. Stachecki (2008, 158) indicate that many ERA supporters blamed the defeat on well funded interest groups such as insurance companies that subverted democracy with the help of conservative ideologues. In addition, major opposition came out of what many ERA supporters regarded as the backward Bible-belt South and Western states heavily influenced by Mormons. ERA opponents emphasized that they were defending Middle America against political elites who were trying to slip an “out-of-the-mainstream” initiative into the Constitution. Fitting the 2016 presidential election template even more closely, some observers: “argued that by relying on centralized organizations based in Washington, D.C., ERA proponents failed to organize their supporters at the grassroots.” (p. 159) Another vivid 2016 parallel saw *national* public opinion polls reflecting ERA popularity even as the ERA failed in state legislatures.

Serena Mayeri (2009) described the 2007 congressional reintroduction of the ERA (this time called the Women’s Equality

Amendment) as provoking: “reactions ranging from enthusiasm to derision to incredulity.” (p. 1224) Predictably, conservatives were critical, but some women’s rights advocates were as well. Mayeri noted the similarity of the 2007 proposal to a reintroduction of the ERA almost immediately after its failure in 1982.

Comparable worth, another women’s initiative that arose in the 1980s, was fully supported by liberals on the basis of equality (*WP* Comparable worth and the EEOC, 6/24/85; Comparable worth: what now? 9/6/85). Comparable worth means that all jobs requiring equivalent education, skills, responsibilities, and working conditions should be paid equally. Women’s groups argued that jobs traditionally held by women (e.g., secretaries) offered lower compensation than similar positions usually held by men (e.g., truck driving). Comparable worth failed in judicial rulings in the mid 1980s, and in 2012 another effort seeking to restart it failed.

Conservatives were opposed to comparable worth and have never changed that position. They argued that any comparable worth standard is impossible to implement in a market economy. Determining administratively or legislatively which jobs are comparable and what criteria should be used to compare them would lead to endless disputes in a rapidly changing economy. Furthermore, comparable worth was built on a dubious reading of the pay gap between men and women. That there was a substantial gap was indisputable, but conservatives argued that the cause was not necessarily discrimination.

Conservatives cited research that pointed to differences between the way men and women conduct their lives and careers. Men tend to work full time throughout their adult lives until retirement. On the other hand, women are more likely to work part-time or leave the job market to raise children only to return years later, if at all. Thus, women tend to have less experience and fewer skills than men and therefore receive lower wages (*WSJ* Its not worth it, 2/7/84). As our market misbehavior/breakdown model predicts, liberals saw market breakdown in male-female

compensation differences while conservatives saw the market as working correctly.

Comparable worth is another example of a proposal that at least partly bridges the JBG and market breakdown/misbehavior models. Liberals, emphasizing equality, relied on the former and conservatives, focusing on what they see as the lack of market breakdown, saw the issue as a matter of business and economics together with the JBG value of traditional order. With conservatives the JBG stress on order and their emphasis on market economics reinforced one another. The two sides, using different theoretical frameworks, talked past one another.

As with racial discrimination, liberals and conservatives favored equal rights for women, but they disagreed regarding what equal rights meant and how it should be achieved. Those differences hinged on conservatives' greater regard for traditional order and their slowness to appreciate the depths of feeling behind the women's (and gay rights) movement. As with racial discrimination, conservatives moved leftward toward the liberal position except for the ERA and comparable worth. With the latter their market economics orientation prevented them from modifying their position.

Recently, gay marriage became the most prominent homosexual rights issue. Conservatives believe that they have fully accepted gay rights even though they do not favor gay marriage. A *National Review* editorial expresses the thought this way: "All people, whatever their sexual orientation, have equal dignity, worth, and basic rights, by virtue of being human beings. We do not believe that this premise entails the conclusion that the marriage laws should be changed." (The devolution of marriage, 6/11/12)

A *National Review* piece on a proposed U.S. constitutional amendment that would forbid gay marriage rejected defending the draft amendment on moral grounds, arguing that defining marriage requirements is inherently a political enterprise (*NR* Same-sex amendment? 7/3/06, 59). Specifically, moral arguments

about what constitutes marriage should be raised at the state level. This article avoided discussing value arguments except to make the obvious point that gay marriage (as opposed to civil unions) is a direct challenge to traditional assumptions. This article assumed that the legalization of civil unions was relatively uncontroversial. Also in 2006 William F. Buckley, Jr. writing in *National Review* observed that many opponents of gay marriage have no interest in limiting gay rights and that...there are sanctuaries that are naturally, and organically, reserved for traditional arrangements between men and women.” There are two lynchpins to the conservative position on gay marriage. First, the constitutional division of labor between the federal government and the states forbids federal action in this area and, second, at the state level civil unions can provide whatever rights gays can negotiate in a state legislature and court system but that the term marriage should be confined to a male-female relationship as a matter of settled tradition (*National Review* Marital strife, 6/16/08; *WSJ* Democracy and gay marriage, 11/9/12). A third (weak) lynchpin in the conservative case against gay marriage is the familiar point that the original purpose of male-female marriage is to support human reproduction (Steorts 2011; *NR* The devolution of marriage, 6/11/12). Advocates of gay marriage counter that a homosexual couple can fulfill essentially the same function by adopting, using surrogates, or applying other alternatives.

The states’ rights argument appears similar to conservative opposition to federal civil rights legislation, except that many states were moving toward legalizing gay marriage until the U.S. Supreme Court essentially stopped the conflict in favor of gay marriage. No comparable progress (or any progress) was occurring in the South in the 1950s and 1960s. In addition, conservatives maintain that their opposition to gay marriage is not discriminatory in the sense that segregation was. Jason Lee Steorts, writing in *National Review* notes that discrimination means to treat like cases differently. Opposing gay marriage is to treat unlike cases (traditional male-female marriage and gay marriage) differently.

Affirmative action

Affirmative action and the related initiative of forced busing of students across school district boundaries (Timiraos 2009, A3) represent a surprising and odd reversal for liberals. Among all of the initiatives we have examined, affirmative action, with its overt discrimination against some racial or gender groups in favor of others, is the clearest case of internal liberal inconsistency. This ideological inconsistency is accompanied by policy consistency between liberals and civil rights organizations, their usual allies in this area.

The phrase affirmative action appears to have originated in the New Deal where it concerned unjustly terminated workers (Graham 2002, 139-140). Its meaning changed considerably in subsequent decades. Earlier civil rights initiatives, such as those discussed above, sought to end discrimination perpetrated by governments, businesses, or individuals. Affirmative action effectively assumes that *de jure* discrimination is over but seeks remedies for so called disparate impacts of discrimination against protected groups defined by race, gender, and ethnicity. Remedies are realized via discrimination in favor of protected groups in such matters as hiring decisions, student admissions, and minority business contracts (Leiter & Leiter 2002, 1). Samuel Leiter and William M. Leiter (2002, 53) add that affirmative action is meant to compensate for: “a congenital handicap that every member of the impacted group inherits at the moment of birth, namely, an inability to compete deriving solely from the immutable fact of minority/gender status.” (See a similar definition in Sabbagh 2003, 414)

Executive Order 10925 issued in 1961 by President John F. Kennedy directed federal contractors to: “take affirmative action to ensure that applicants are employed and that employees are treated without regard to their race, creed, color, or national origin.” In 1964 Congress as part of the Civil Rights Act created the Equal Employment Opportunity Commission (EEOC) to administer Title

VII equal employment opportunity provisions. In 1965 President Lyndon Johnson reissued Kennedy's executive order with a new prohibition on sex discrimination and gave administrative responsibility to the Office of Federal Contract Compliance Programs (OFCCP) in the Department of Labor (Executive Order 11246). The OFCCP and EEOC played central roles in the history of affirmative action. As established the EEOC lacked all but minimal enforcement authority and had an inadequate budget and staff (Pedriana & Stryker 2004, 712).

Daniel Sabbagh (2003, 413) correctly observes that Kennedy and Johnson employed the term affirmative action in its 1930s usage meaning equal treatment of everyone regardless of race, gender, and so forth, but a 1963 *New York Times* editorial saw it as meaning reverse discrimination (the title of the editorial), and the newspaper opposed such a policy: "The President made it plain that he believed any assignment of quotas on the basis of color would create more division and turmoil in our society, not less." (*NYT* Reverse discrimination, 8/23/63) The *Times* went against this position a few years later.

Some accounts such as those of Leiter and Leiter (2002, 41) and Charles V. Dale (2005, 5) convey the mistaken impression that the formulation of affirmative action in the mid-1960s grew logically and inevitably from the realization among the staff of the EEOC and OFCCP that ending discrimination implied not just stopping discrimination but improving the educational and economic circumstances of minorities. All but ignored by such narratives was the problem that allocating jobs, contracts, and educational opportunities according to racial, ethnic, and gender considerations flew in the face of decades of civil rights political action the objective of which was the eradication of discrimination.

Making the account of an inevitable transition to affirmative action even less credible is the wording of Section 703(j) of Title VII of the 1964 Civil Rights Act which declares that nothing in the statute shall be interpreted to require any employer to grant:

preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area.

In addition, Section 706(g) specifies that if an employer has intentionally engaged in discrimination, a court may “order such affirmative action as may be appropriate, which may include reinstatement or hiring of employees, with or without back pay.” The exclusive focus of Section 706(g) is on an employer who consciously discriminates and on redressing wrongs done to specific individuals who suffered damage. Section 706(g) does not suggest the possibility of preferences for individuals who have not suffered discrimination nor is there any indication of discriminating against individuals who played no part in past discrimination.

Dale’s (2005) version of affirmative action’s origins is consistent with that of Leiter and Leiter (2002) except that he claims that the inevitable drift into affirmative action can be found in the Civil Rights Act: “The Title VII remedial scheme rests largely on judicial power to order monetary damages and injunctive relief, including ‘such affirmative action as maybe appropriate,’ to make discrimination victims whole...” (p. 5) Dale glosses over the Civil Rights Act’s sole concentration on individuals who personally suffered discrimination, not members of groups defined by race, ethnicity, or sex against whom no wrong had been done.

In a more realistic vein, Leiter and Leiter (2002, 38-45)

describe EEOC staff working in the late 1960s in close association with civil rights groups. Similarly, Hugh Davis Graham's (1992, 118) account of early decision-making in the EEOC portrays a staff: "dominated not surprisingly by liberals and members of the protected classes [who] resented the tight restrictions that Title VII imposed." Nicholas Pedriana and Robin Stryker (2004, 718), who describe the EEOC's lack of authority, small staff, and minimal budgets, emphasize the importance of the EEOC's link with such organizations as the NAACP, the National Urban League, the Congress of Racial Equality, and the Leadership Conference on Civil Rights in explaining EEOC's success given the agency's lack of authority and its small staff and budget. The EEOC staff wanted, not a complaint driven case-by-case approach, but "wholesale remedies." (Graham 1992, 118).

At least in part, the EEOC developed the theory of disparate-impact which refers to adverse effects against groups that deserve redress. The EEOC theory required new legislation (which seemed unlikely to pass) or court endorsement. A court imprimatur of sorts came in *Griggs v. Duke Power Co.* (1971). The Duke Power Company had a program by which laborers could supposedly be promoted to higher paying positions if they had graduated from high school or passed two general aptitude tests. The plaintiffs were 13 African-Americans who had been hired without diplomas, and who were unsuccessful in achieving sufficiently high test scores. In its *Griggs* opinion, written by the new Republican chief justice Warren Burger, the U.S. Supreme Court observed that tests or other requirements for hiring or promotion were legitimate as long as they measured skills needed for a job. In this instance, however, neither the high school diploma nor the test related to the jobs in question. Since the *Griggs* case dealt with wrongs done to a specific set of employees, it is difficult to see how it justified the quotas and discrimination that affirmative action became.

Even though there was no overt discriminatory intent, Duke's procedures produced, in Burger's words, "built-in headwinds"

against minorities. He added: "Congress directed the thrust of the [1964 Civil Rights] Act to the consequences of employment practices, not simply the motivation." Burger also observed that blacks could not advance at Duke Power because of the poor quality of black schools in North Carolina.

As Sabbagh (2003, 423) explains it, *Griggs* added to the Civil Rights Act recruitment and promotion practices that were not illegal in themselves, but which, regardless of the employer's intent, worked against protected groups. Evidence would be minority employment data that showed disproportionately low numbers of minorities being hired or promoted—disparate impact (Naff 2004, 406). The burden of proof lay on the employer to demonstrate a justifiable and nondiscriminatory purpose behind the procedures and standards that generated apparent discrimination. The fact that Duke Power's educational and testing requirements replaced outright discrimination but served the same function, reinforced Burger's opinion. The *Griggs* decision was inconsistent with the legislative history of the Civil Rights Act, but Congress failed to over ride it (Graham 1992, 185).

After *Griggs* the EEOC ordered employers and labor unions to develop personnel data that included racial, ethnic, and gender categories. Failure to do so meant that federal agencies could infer that adverse impact was occurring. Percentages of employees or union members in these categories would be compared to the labor market, or if jobs were being filled from within the organization, the comparison would be to the representation of these categories in the organization (Leiter & Leiter 2002, 49).

The Office of Federal Contract Compliance (OFCC), another leader in developing affirmative action, turned its attention first to construction labor unions in Philadelphia. They were virtually all-white with minority memberships under two percent. The Johnson administration made an effort to attack this discrimination, but it failed. Nixon administration officials and the OFCC staff formulated a program called the Philadelphia Plan (established by

executive order) that set goals for hiring specific percentage ranges of minorities in the Philadelphia construction industry. The penalty for missing targets was the cancellation of a federal construction contract.

By the early 1970s the *New York Times* was no longer describing affirmative action as reverse discrimination, and the newspaper supported the initiative (*NYT* Mr. Califano on quotas, 4/4/74), even though it was sometimes critical of how specific affirmative action programs were implemented. The *Post* also favored affirmative action. Conservatives fought every aspect of it, describing it as state-sponsored racial and gender discrimination that violated the principle of equality before the law (*NR* Goals or quotas, 1/27/70; Goldwater wins, 7/20/79).

Through the late 1980s the Supreme Court continued to rule sometimes for and sometimes against various affirmative action plans. Katherine C. Naff (2004, 415) describes this period entirely in ideological terms:

A liberal group of justices, Brennan, Blackmun, and Marshall, consistently ruled in favor of these plans while a conservative group, Rehnquist, Stewart, Burger, and later Scalia consistently ruled against them. Justice Stevens tended to join the liberals when the benefit of the racial classification and the procedures from which it transpired were clear to him. The only cases in which the liberals were not able to generate enough support from the “swing” voters (e.g., Powell, O’Connor, White) to form a majority were those that involved taking away employment from (that is, laying off) white employees in order to retain minorities.

Beginning in 1989 the two decade old conservative counter-attack against affirmative action took hold, and the balance of Court rulings shifted against it. In *Wards Cove v. Antonio* (1989) the Court overturned *Griggs* when it ruled that racial imbalance did not by itself constitute evidence of discrimination. Furthermore, the responsibility of documenting a discriminatory practice belonged to

the plaintiff, not the defendant. When a case had been made that discrimination existed, it would be the responsibility of the employer to document the business necessity of the questionable practice.

In *Adarand Constructors v. Peña* (1995) the Supreme Court ruled against a Department of Transportation practice of providing incentives to contractors to hire minority-owned subcontractors even if they did not submit the lowest bid on a contract (Naff 2004, 417). The Court, now with a conservative majority, ruled that race-based programs would be subjected to strict judicial scrutiny. The opinion noted that “narrowly tailored” affirmative action programs could still be used but only to correct “pervasive, systematic, and obstinate discriminatory conduct.” Even this ruling did not satisfy conservative justices Thomas and Scalia who argued that any race-based program should be regarded as unconstitutional. In his dissent Thomas wrote: “In my mind, government-sponsored racial discrimination based on benign prejudice is just as noxious as discrimination inspired by malicious principle. In each instance, it is racial discrimination, plain and simple.”

After the strict scrutiny ruling, affirmative action advocates retreated to a position sometimes called diversity theory. This approach makes no reference to past discrimination. Instead, it finds value in racial, social, economic, and gender variety in, for example, university student bodies. It plays an especially important role in college admission decisions.

The Reagan administration’s hostility to affirmative action in all its forms earned it frequent criticism from liberals. The *Times* objected to the Reagan administration’s position that “race conscious remedies” should not be ordered even where efforts to eliminate discrimination had been resisted (*NYT* When racial quotas are reasonable, 3/7/87). Needless to say, conservatives applauded the Reagan counterattack (*WSJ* Reverse reverse discrimination, 2/4/83; A.K.A quotas, 11/29/85). Among

conservatives, quotas were an especially unpopular element of affirmative action programs. Meanwhile, some liberals disingenuously argued that quotas were not a part of affirmative action (*NYT* End of the quota non-issue? 4/24/91).

It is difficult to understand why liberals shifted and shifted so quickly from their long standing ideal of racial equality and nondiscrimination to the discrimination by race, sex, or ethnicity represented by affirmative action. The argument made by Leiter and Leiter (2002), Dale (2005), and others that affirmative action flowed naturally from the logic of the Civil Rights Act of 1964 is not credible. The Civil Rights Act explicitly forbids the practice.

Advocates of affirmative action sometimes characterize these policies as representing a public opinion majority, but they do not. Francine Romero (2002) reviews National Election Studies (NES) surveys on this point. She concentrates exclusively on white non Southerners. Her justification for ignoring African Americans and white southerners is that their positions are obvious and rigid. She distinguishes between public opinion regarding three categories of civil rights policy: ending state sponsored discrimination; ensuring equal opportunities; and ensuring equal outcomes. Affirmative action (and related initiatives) falls into the third category. Romero finds strong support among white non Southerners for the federal government bans of state sponsored discrimination with regard to school integration in the years 1962-66. However, the year 1968 marked the beginning of opposition to federal school integration efforts. It is probably no coincidence that 1968 also saw the beginning of urban riots that turned some whites against civil rights efforts. Opposition continued to grow until it peaked in 1978; by 1990 opposition to federal school integration efforts dropped to the 1970 level that could again be characterized as thin (p. 32).

Romero's second category of civil rights policy (ensuring equal opportunities) centered on the survey question: "Some people feel that if black people are not getting fair treatment in jobs, the government in Washington ought to see to it that they do. Others feel

that this is not the federal government's business. How do you feel?" In 1964 non southern whites registered substantial opposition to federal enforcement of equal employment opportunity, but that opposition weakened to a bare majority in 1986 and a slightly larger majority in 1988.

The pattern Romero found for the first two categories of civil rights policy is in marked contrast the to overwhelming opposition to busing reflected in responses to the following question: "Some people think achieving racial integration of schools is so important that it justifies busing children to schools outside of their own neighborhoods. Others think letting children go to their neighborhood schools is so important they oppose busing. Where would you place yourself on this scale?" Answers favoring busing were scored a zero and answers favoring neighborhood schools were scored a 1. The mean responses held at 0.90 plus or minus .01 from 1972-1984.

The widespread unpopularity of affirmative action is also documented in state referenda. In 2006 Michigan voters approved by a 58 percent majority an amendment to the state Constitution preventing affirmative action in employment, contracting, or public education admission decisions (Lewin 2006, 16). This referendum invalidated a 2003 Michigan Supreme Court ruling that approved a University of Michigan Law School admissions procedure that included affirmative action. Two years later voters in Nebraska approved (also by 58 percent) a similar ban on affirmative action, but in Colorado an affirmative action ban was rejected by just over 1 percentage point (Frosch 2008, A19). In 2010 Oklahoma voters passed a ban on affirmative action (HR.BLR.com, 11/7/2012, accessed 1/4/13). For descriptions of other affirmative action referenda see the National Conference of State Legislatures (www.ncsl.org/research/education/affirmative-action-state-action).

As we saw above, in the 1950s and 1960s conservative civil rights public policy positions placed greater emphasis on order than did liberals. This tendency emphasized order in the narrowest

sense of the word, but conservatives were trying to maintain the status quo, and the status quo of segregation and voting discrimination was unacceptable to ideologically consistent conservatives. If nothing else, conservatives stress equality before the law. The state of affairs for blacks in the South and throughout the nation was far removed from that standard. Conservatives' overall lack of ideological consistency gave aid to racial discrimination that could have continued indefinitely had it not been for the liberal majority.

So with liberalism and conservatism in the 1950s and 1960s the greater liberal emphasis on equality and freedom which was consistent with liberalism won out against an ideologically inconsistent conservatism exhibiting a form of tunnel vision by ignoring equality and freedom. But having won a long fought victory, liberals turned their backs on core liberal values and in the bargain took an unpopular political position. This liberal blunder was almost a mirror image of the conservative failure that had come before. Liberals went from balancing equality, freedom, and order to accepting their own tunnel vision of a distorted rendering of equality while ignoring freedom and order.

Parenthetically, another problem with affirmative action, busing, and the rest was that these initiatives led to complex and difficult to administer programs that to this day must be managed with constant oversight accompanied by messy publicity. For example, in 2009 affluent Westchester County, New York was forced to settle a lawsuit brought by a liberal housing advocacy group (Timiraos 2009, A3). The settlement required that Westchester spend more than \$50 million to build or buy 750 homes for low income residents especially in cities with few minorities. A U.S. Housing and Urban Development (HUD) official portrayed the settlement as a precedent that will affect all suburbs that accept federal housing redevelopment funds. Well over 1,000 state and local governments accept such monies. The HUD official warned that the settlement would require "vigilant enforcement." (Timiraos 2009,

A3) *New York Times* reporter Peter Applebome (2012) describes the Westchester County-HUD relationship as “an often rancorous tug of war, complicated by politics and real estate prices...” Among other barriers to integration, many of the newly built housing units are “far from the heart of affluent white communities.” One such unit is described as the tallest building in Chappaqua (a town in Westchester County and home to Bill and Hillary Clinton) “dropped into a no-man’s land between railroad tracks, a highway and a bridge.” Another was located “in a virtually unpopulated block behind a strip mall, squeezed in against railroad tracks and Interstate 95.” (Applebome 2012)

As is the case with other forms of discrimination, conflict over affirmative action often concerned monetary values, but the center of debate was discrimination, not the market. The substance of debate turned on equality, freedom, and order, not market breakdown or misbehavior.

Urban renewal and public housing

Urban renewal and public housing programs are closely related and often intertwined; editorial writers, politicians, and policy analysts sometimes treat them separately and on occasion as a single program. Both initiatives are examples of liberal ideological inconsistency. They are also examples of policy thoughtlessness to be covered in the next chapter.

Aside from comparable worth, this is the first policy area we have discussed that had both a significant business-economics component and an important non business-economics aspect with its liberal sponsors seeing it as enhancing equality and to a lesser degree order (Gotham 2000).

A 1964 *Times* editorial (The issue: Crowded cities, 10/15/64) listed slums as one of the major problems plaguing the nation’s cities. Among other improvements, the newspaper sought decent housing for every family, a condition that had been an equality-based liberal objective since the 1930s. Liberals regarded improvements in low income or affordable housing as difficult to achieve partly because

many with taxable incomes who worked in large cities lived in suburbs where their earnings could not easily be tapped by the cities. In addition, many jobs migrated from the core cities to the less expensive and more pleasant suburbs. Aside from a recent trend of a few suburbanites returning to some cities, these conditions still exist.

Although public housing can be traced to the Public Works Administration in 1933 and even earlier (Martens 2009; von Hoffman 2009), federal urban housing aid in its present form started with the Housing Act of 1937 enacted by the Roosevelt administration during the Great Depression (Bingham 1975, 30; Marcuse 2001). This statute began the emphasis on federal-local-private sector partnerships that has characterized this field ever since. The Housing Acts of 1949 and 1954 provided federal funding for slum clearance and low rent public housing (Bingham 1975, 32). These programs were administered by the Urban Renewal Administration located in the Housing and Home Finance Agency (HHFA).

Slum clearance generally required the purchase of adjoining land parcels owned by several different individuals or corporations. Acquiring the necessary grouping of properties often proved difficult because holdout owners would demand compensation well above the ordinary market value. The result could be inaction. The Housing Act of 1949 created a new process designed to encourage movement. It began with a city, county, or public renewal authority applying to the federal government for a federal loan to fund feasibility studies and planning (Anderson 1964, 16; Bingham 1975, 32-33). If approved by the federal government, this process would lead to the development of what was called a workable program, a comprehensive and detailed plan of the project. After several more steps a project could proceed, usually beginning with land acquisition by private developers. Holdouts refusing to sell could be forced out by the local urban renewal agency's exercise of eminent domain.

Urban renewal is a costly enterprise. Martin Anderson (1964, 20-22) estimated that an average of 67 percent of total project costs were for land acquisition, and he calculates that the average federal contribution to land acquisition costs for 555 projects approved through the end of 1962 was approximately 70 percent. Thus, private developers secured blocks of urban property for substantially less than what it would have cost without federal assistance. Local governments also made financial contributions. Anderson and many others emphasize that the cost of a new building is not just land acquisition, the cost of construction, and various incidentals. The cost of the new building includes the value of the old building usually expressed as the present value of annual income generated by that building for the foreseeable life of the building. As soon as renters are evicted that income stream ends. So, to be economically feasible, the new building must generate sufficient income to cover all of the direct costs plus the lost income from the old building and a profit margin. A common justification for the first wave of urban renewal demolition was that slums cost a city more in municipal services (for policing and public health) than they generated in tax revenue (Vale 2013, 8). However, we are unaware of studies that compare all of these benefits and costs.

Without the federal and local subsidies many buildings would not have been built, a source of pride for early liberal urban renewal advocates. Conservative (and later liberal) critics of the program interpreted this point differently. They believed that without federal interference the market allocated scarce resources optimally by not demolishing existing properties until it was profitable to do so. Urban renewal generated waste by prematurely destroying buildings.

Anderson (1964, 52) observed that urban renewal advocates' intentions were often good but that the impact, especially on those forced out of their homes and businesses, could be ruinous. Bingham (1975, 35) concurs, seeing urban renewal producing many destructive unintended consequences. After the sometimes

decade-long process of eviction, demolition, and construction, the replacement was a sometimes starkly unpleasant public housing project or at the opposite extreme, luxury housing beyond the means of the former renters. Many conservatives and liberals some years after the fact also pointed out that, since urban renewal targeted relatively poor neighborhoods, the program's negative impacts were felt disproportionately by minorities.

A search of Academic Search Premier, a large database of refereed journals and non-refereed general news and business news weeklies, for the years 1961-2009 revealed few positive descriptions of urban renewal. There were some by political sponsors of urban renewal in the 1960s and two in 2009 by a self-interested public housing advocate and an academic who is also a public housing advocate (Martens 2009; von Hoffman 2009). Given the hundreds of articles covering this topic, we probably missed some positive references, but even so, the proportion is overwhelmingly negative with criticism coming both from liberals and conservatives. In recent years, the left and right appear equally critical of urban renewal and for almost the same reasons discussed here.

Urban renewal was based on a simple sounding liberal notion that in the words of Guy Greer and Alvin H. Hansen (1941, 3), two pioneering theorists and advocates of urban renewal, "slums and blighted areas" should be eliminated. A quarter century later in congressional testimony William L. Slayton (1966), a commissioner of the Urban Renewal Administration, had not amended the Greer-Hansen justification. It was not clear what constituted a slum or exactly what blight was or why advocates of urban renewal thought that they knew better than residents of so-called slums and blighted areas how they should live.

Lawrence J. Vale (2013) views the history of urban renewal and public housing as a multi-stage "social experiment" consisting of razing slums, providing public housing to rigorously screened working families in the years 1935-1960, "consolidating" the poor

into public housing in the period 1960-1990, slowing of public housing construction starting in the 1960s and 1970s, development of housing vouchers for low income tenants and construction of privately operated public housing, and finally, demolition of government-created public housing ghettos.

Many studies of urban renewal contain photographs of buildings before and after urban renewal. We are not the first to observe that almost invariably the before images show deteriorating and ugly structures and the after pictures display gleaming modern multi story buildings. We are invited by this juxtaposition of images to conclude that new and shiny represents an improvement for those forced out of the original properties when it is possible, if not likely, that they cannot afford to live in the new apartments or that the replacement buildings may soon deteriorate and become crime ridden and dangerous. Especially manipulative before and after photographs may be found in Martens (2009, 7-8). The first image is undated but appears to be many decades old and shows a narrow, unpaved street with what appear to be dismal tenements on both sides and poorly clothed children staring blankly at the camera. The second much more recent photo (which may or may not be the same location) shows clean and pleasant looking two story structures in the background with happy children in bathing suits playing in a fountain.

Even public housing proponent Alexander Von Hoffman (2009, 232) characterizes early urban renewal advocates as destroying buildings and paying “no heed to their owners or occupants.” He continues: “Like other reformers of the [Progressive] period, they endeavored to impose their vision of a better city on others.” (p. 232) That vision featured the dispersal of residences and workplaces, and the addition of suburbs connected to the central city via mass transit (p. 234). Many contemporary liberal opponents of a condition called urban sprawl described above as a goal work in the opposite direction trying to compress populations into central cities while constraining development of suburbs.

Martin Anderson’s *The Federal Bulldozer* (1964) was an early

criticism of urban renewal. Anderson (p. 52) began his attack with the charge that residents and businesses were forcibly evicted in the name of a public interest that did not include those selfsame residents and businesses. He estimated that as of March 1962 more than 200,000 families and individuals (plus more than 100,000 businesses) had been moved with several times those numbers to come in later years (pp. 62-63, 68). Roughly 60 percent of the displaced were minorities (pp. 64-65). Anderson synthesized academic studies and media accounts that indicated that the displaced people moved (often with no help from urban renewal officials) into housing approximately equal in quality to what they had vacated but at higher rents (p. 62; see also Gans 1965). Making matters even worse, as of 1964 the program had reduced the number of low-rent housing units. Two factors may have caused that reduction. First, since buildings had to be demolished before being replaced, there might have been a lag in the early and middle stages of the program's history. In addition, a substantial portion of the new housing was unaffordable to the evicted (Anderson 1964, 67, 69, 93-95).

Kevin Gotham (2000) examines urban renewal in Kansas City, Missouri from its inception until the 1960s. Like Anderson, Gotham observes that urban renewal destroyed many more housing units than it replaced and dislocated tens of thousands of residents and businesses. Gotham blames urban renewal on business and real estate interests (p. 269; see also Christy & Coogan 1969). He provides no direct evidence that business interests instead of liberals (or together with liberals) originated urban renewal, but the Housing Acts of 1949 and 1954 were supported by the Americans for Democratic Action (ADA), and other historians list construction unions as well as builders as supporters (see Vale 2013 for case studies of urban renewal in Chicago and Atlanta).

We investigated the question of liberal sponsorship of urban renewal. There is a strong statistically significant relationship between members' ADA scores and how they voted on the Housing

Acts. Doubtless, measures of urbanization of the congressional districts would explain some of the pro Housing Act votes by those with low ADA scores and anti Housing Act votes by those with high ADA scores. In any event, the suggestion that urban renewal was initiated and supported exclusively by real estate and construction interests instead of ideology is without merit. Conservatives overwhelmingly opposed both Housing Acts and liberals supported them.

Peter Marcuse (2001, 721) explores the question of liberal-conservative housing policy differences. He begins with an especially careful definition along several dimensions of liberal and conservative housing policy beginning with attitudes toward government and the market. According to Marcuse, conservatives prefer to rely on the market while liberals are more inclined toward direct government action. His second dimension is redistribution. Liberals favor higher subsidies distributed on a need basis, and relatively progressive taxes to raise revenues. Conservatives opt for relatively low subsidies, housing allocated based more on ability to pay, and relatively flat tax rates. The reader will note the consistency between Marcuse's definition and the JBG model together with our market misbehavior/breakdown model. Marcuse's third dimension is ideological rigidity, but he offers little new or useful here, so we will ignore it. His fourth dimension is the interest groups with which liberals and conservatives are allied. Not surprisingly, conservatives tend to side with real estate developers, builders, banks, and property owners while liberals can be found with renters, welfare recipients, trade unions, and social service workers (Marcuse 2001, 723).

Marcuse (p. 725) views the Housing Act of 1937 as revealing the clearest separation of liberal and conservative positions of any subsequent housing legislation (see also von Hoffman 2009, 234). This statute was formulated and promoted by labor unions for its job creation potential and for union members' housing. According to Marcuse (2001, 725), conservatives were bitterly opposed to the

legislation. Unlike some scholars in this field, Marcuse makes a clear distinction between liberal and conservative ideologues and interest groups. In particular, many property owners were happy to unload real estate that because of the Great Depression was unprofitable while builders and banks would realize substantial opportunities in the program. Meanwhile, labor unions saw the possibilities of multiple benefits as could various local government entities.

Marcuse (p. 726) argues that, although the statute had been opposed by conservatives, its implementation did not seriously challenge conservative values on any of his ideological dimensions. For one thing, it impacted only a small fraction of the overall real estate market. And, projects were designed not to interfere with local real estate markets.

The Housing Act of 1937 was converted to a war housing program during World War II. Liberals including low income housing advocates, civil rights organizations, labor unions, and liberal members of Congress worked actively to revive it after the war. Conservatives were more supportive than they had been a decade before: "Conservatives wanted a mechanism to assist the private market reclaim downtown real estate in which business expansion downtown was made difficult, more expensive, by the presence of 'incompatible' land uses, often working-class housing and older industrial and warehousing activities (Marcuse 2001, 726). Nevertheless, relatively few conservatives in the House of Representatives favored the 1949 and 1954 urban renewal bills.

Subsequent urban renewal/public housing statutes have attempted to correct the side effects of the original programs with mixed success. Larry Keating (2000, 384) sees little improvement: "From the 1950s through the 1970s, frequently in response to local business-led political coalitions, urban renewal programs forcibly displaced poor minority people without allowing their meaningful participation in redevelopment planning, without allowing their adequate compensation, without sufficient replacement housing, and without the possibility of their returning to the redeveloped area."

Vale's (2013) description of the early years of urban renewal is consistent with Keating's but more detailed. He makes the point that despite political rhetoric such as President Franklin Roosevelt's call to assist the "ill-housed, ill-clad, ill-nourished" and even statutes such as the Housing Act of 1937 promising to help the poor, public housing in the 1935-1960 period rarely extended to the bottom rungs of the economic ladder. He describes housing authority staffs interviewing applicants, verifying employment, checking police records, and making home visits to insure that families would make sound tenants. Among other characteristics, applicants' incomes had to be low but also sufficiently high to pay the rent. Authorities also strongly preferred married couples with children. According to Vale, for a number of years public housing projects managed in this manner were quite liveable.

In the 1950s working class demand for public housing began to decline, so in many cities housing authorities were obliged to accept less affluent and less orderly tenants. Then, in the years 1960-1990 the civil rights movement, U.S. Housing and Urban Development rules, federal welfare changes, and law suits from single parents forced local housing officials to abandon the selectivity they had exercised in earlier years. Even under these new circumstances criteria had to be developed by which applicants could be accepted or rejected. The new admission standards were the subject of intense public debate. Vale does not explore the ideological origins of the 1960-1990 public housing changes, but their sponsors were liberal Democrats. Vale describes these changes as a: "de facto decision to concentrate the poor in public housing..." (p.18) Keating charges that as recently as the 1990s Atlanta, Georgia real estate and business interests used federal urban renewal funding and authority to demolish dwellings occupied by African-Americans and then to push them to other locations.

One of the worst elements of urban renewal/public housing projects was the construction of so-called high rise ghettos. According to Vale (2013), the Chicago Housing Authority (CHA)

avored two story structures as conducive to family life with children. The federal government wanted high rise buildings supposedly because construction costs were lower on a per unit basis, and it forced this policy on the CHA and similar agencies throughout the U.S. The federal policy was reinforced by architects ignorant of the realities of public housing (pp. 218-219) and strengthened still further by complex Chicago political deal-making and its equivalent in other cities (pp. 219-222). The CHA warned repeatedly of the “grave and serious problems” that would arise with children in high-rise housing, but it was ignored (p. 219). Making the use of high-rise structures even more questionable and Vale’s suspicions regarding local politics more plausible was the likelihood that two story buildings were *less costly* or *no more costly* than high rise alternatives (pp. 219-220). He describes in grim detail the impact of high-rise public housing on human lives.

Liberals, especially those living in large cities, could witness the affect of urban renewal by the early 1950s. Liberals could only have committed their ideological inconsistency by consciously averting their eyes from the racial and class discrimination inherent in urban renewal, an act comparable to that of conservatives ignoring racial discrimination in the South. Liberals fixated on inequality leavened with some attention to disorder; the resulting initiative backfired by both standards.

Conservatives delayed enactment of the Housing Act of 1937 for a few years and opposed the 1949 and 1954 urban renewal legislation. Early conservative opposition was mostly confined to program costs and the involvement of the federal government in local government. As the initiative developed, conservative arguments increasingly relied on benefit-cost logic and then the realization that the poor were hurt, not helped by urban renewal. Liberals came to accept much of the conservative position. Roberta Brandes Gratz’s *The Nation* magazine description of the products of urban renewal would be accepted by liberals and conservatives: “miserable, overscaled public housing projects—effectively ware-

houses for poor people...” (2002, 36) This vivid portrait does not even include the luxury homes that supplanted buildings previously occupied by the poor.

The early 1990s witnessed the nadir of traditional government-operated public housing projects and the beginning of what Vale calls the third experiment in public housing which was a collection of approaches for supplying public housing including the voucher and private sector techniques begun with the Housing and Community Development Act of 1974. A large part of the still on-going third experiment was incorporated under HUD’s HOPE VI program. Liberal Democratic HUD Secretary Henry Cisneros pressed for these reforms with special emphasis on mixed-income (a.k.a. mixed-use) housing to avoid the high concentrations of poverty that characterized what Vale describes as the “dangerous and tragic failure” of the second experiment (p. 22). Cisneros himself referred to public housing as having reached “rock bottom in the court of public opinion.” (As quoted by Vale, pp. 22-23) This period was marked by widespread public housing demolition funded in part by 287 federal grants.

By ignoring the business-economics element of urban renewal, liberals neglected a key weakness of the program (Christy & Coogan 1969). Aside from the damage it did to many urban poor and the fact that significant numbers of housing units constructed under the program quickly became ghettos, it was at best economically marginal as evidenced by the large subsidies required to support it. However, for a number of years conservatives also failed to appreciate the program’s weakness from a benefit-cost perspective. For a long time, conservatives essentially confined their opposition to grumbling about costs and federalism. Conservatives were correct in their opposition, but they did not make their case convincingly. In the early years of urban renewal liberals and conservatives talked past each other with liberals focused on equality and order and conservatives relying on prudent-spending boiler plate.

Freedom of Information

By way of contrast, Freedom of Information is an example of liberal and conservative ideological consistency and cooperation. The Freedom of Information Act of 1966 (FOIA) created mechanisms by which individuals and groups can force federal agencies to release information as long as it does not threaten national security or interfere with law enforcement. There is also an exemption if the requested information concerns only government agency internal personnel rules and practices. Confidential personal or private organizational information such as Social Security numbers, medical files, or trade secrets also are exempt.

It need hardly be said that there have been differences of opinion concerning virtually all exemptions contained in the FOIA. Over the years, some of these disagreements have made their way into FOIA changes, most notably the Privacy Act Amendments of 1974. There is bound to be tension between the openness promised by the phrase freedom of information and the confidentiality implied by the concept of privacy (Gilles 2007; Halstuk & Chamberlin 2006). Some of the exemptions in the original 1966 statute concerning national security and law enforcement illustrate a third source of tension—this one between openness and order.

The 1966 passage of the FOIA (with a House vote of 307-0) was given little coverage by our barometer publications. Our samples of editorials caught none. A search using the print version of the *Times* index found no editorials or news stories in the years 1966-68. In 1969 there were no *Times* editorials and only one short news item on freedom of information. In 1970 there were no editorials or stories, and in 1971 just a single brief news account. The years 1972 and 1973 produced no editorials and only four and two news items, respectively. When the FOIA was amended in 1974, the *Times* wrote about it in only one editorial, but there were 27 news items. Nearly all of the news accounts concerned specific information that reporters and others were trying to discover about policy areas such as atomic energy, Vietnam, education, and oil prices or office holders

such as John F. Kennedy. The Americans for Democratic Action (ADA) also neglected the FOIA, not scoring votes on either the original 1966 legislation or the 1974 amendments. The *Journal* (Keeping track, 9/15/64) favored the principle of freedom of information but with the jejune caveat that it would not be needed if government were not so big. Also, the *Journal* wanted a drastic reduction in secret congressional committee meetings and favored the creation of C-Span with its comprehensive television coverage of congressional operations.

The *Washington Post*'s and *New York Times*' positions on government secrecy in general were virtually identical to the *Journal*'s. *National Review* also favored openness, but its view was usually balanced with the need for secrecy to maintain order. For example, as *National Review*'s James Burnham (1978, 265) expressed the tension between openness and national security: "Openness and accountability are of the essence of constitutional democracy. Secrecy—and therefore, in some measure at least, lack of accountability—are of the essence of an intelligence organization. There can be no full reconciliation between the two principles." It is probably fair to say that in this area *National Review* placed greater emphasis on order than the other three publications (*NR* The week 6/11/82, 3rd item, 669).

Despite liberal and conservative disinterest when the FOIA was first enacted, over the years it enjoyed considerable support from both sides, although enthusiasm for it predictably waxed and waned depending on which party controlled the White House. The FOIA's first major advocate may have been a Democratic member of Congress from California named John Moss who introduced the idea in the mid -1950s when the president was a Republican. At that point Republicans evidenced little interest. When the presidency shifted to the Democrats, Republicans became more enthusiastic, and Republican Congressman Donald Rumsfeld was a co-sponsor. The FOIA was enacted despite President Lyndon Johnson's opposition. A decade later Rumsfeld as Republican President

Gerald Ford's chief of staff opposed the 1974 amendments, and Ford vetoed them, but congressional Democrats, now vigorous supporters of FOIA, overrode his veto.

As the years passed, a broad liberal-conservative consensus developed favoring the principle of freedom of information. This agreement was occasionally tempered by privacy concerns on both sides and conservative worries that national security could be compromised with the release of military or diplomatic data. Both sides also agreed that as administered by federal agencies often reluctant to release information, the FOIA left much to be desired. The *Times* (More open government, 10/17/74) reflected some of these attitudes when privacy was the primary concern. The newspaper complained that the original Freedom of Information statute: "hasn't functioned particularly well since it went into effect because of the federal government's use of obstructionist tactics." Similarly, the *Journal* (Word Processing, 1/6/82) complained that under the terms of what it described as the "inane" 1974 amendments the Nixon tapes would be locked up until 1987. The *Journal* wanted them released immediately. The *Journal* also favored using the FOIA to obtain information relating to the Clinton administration (Release the Foster Report, 1/31/94).

In 2011 the *Washington Post* (Time to reinforce FOIA, 7/27/11) joined the other newspapers' criticism of government foot-dragging in releasing documents: "In May, in a rare moment of bipartisanship, Senators Patrick Leahy (D-Vt.) and John Cornyn (R-Tex.) won unanimous Senate passage of the Faster FOIA Act, which would establish an advisory panel to examine the backlog of more than 69,000 FOIA requests. It's time for the House to take it up." The *Post* continued: "Despite a 2009 executive order that instructed all federal agencies to open more documents to the public—to err on the side of openness when deciding whether to release documents—government offices have classified more documents since President Obama took office, according to the Federation of American Scientists." (See also *WP* Where's the openness, Mr. President?

4/1/11; Time to reinforce FOIA, 7/27/11; Still too many secrets; The Obama administration promises more open government—sometimes, 6/1/09).

E. Sam Overman and Anthony G. Cahill (1990, 805) argue that public policy for information is largely driven by values and normative structures—what we understand to be ideologies. The major values that Overman and Cahill associate with information policy include openness, privacy, secrecy for national security, and intellectual property. All of these considerations have appeared in editorials and news stories in our barometer publications. Overman and Cahill (p. 805) observe that a consensus among the three branches of government concerning these values is close to nonexistent. However, considering the unstable three-way tension among openness, privacy, and order, it is surprising that there is a rough consensus at least among ideologues, if not the branches of government. Liberals and conservatives value openness, privacy, and order and often agree in specific instances on what information should be made public and what should not.

Overman and Cahill (1990, 811) group information policy values into only two categories that they label restrictive (secrecy) and distributive (freedom of information). However, they combine in their “restrictive” category two very different reasons for not distributing information: national security and law enforcement (the maintenance of order) and privacy (personal information and intellectual property). As we have just seen, there is a continuing, unresolvable tension between these two justifications for secrecy, so their two category layout fails to capture the three-way dynamics of this policy area.

Dennis F. Thompson (1999, 182) shares the view that a central dynamic of public policy for information is incompatible values that are “not readily resolvable.” He also sees the structure of opposing values as unstable: “democracy requires publicity, but some democratic policies require secrecy.” He points to foreign policy and law enforcement as examples. Thompson (p. 184) searches for

ways that democracy's occasional need for secrecy can be moderated. One is to reveal a secret in time for citizens and their representatives to evaluate the effectiveness of the secret policy.

Freedom of information does not readily fit the JBG framework, nor does this initiative have much to do with business and economics except in particular instances. However, openness, secrecy, and privacy engage the JBG values of freedom and order. Equality is rarely mentioned, although equality before the law is assumed by liberals and conservatives. Aside from *National Review's* somewhat greater tendency to justify secrecy to protect national security, liberals and conservatives both want a working system of freedom of information that protects privacy, national security, and law enforcement efforts. Both sides are ideologically consistent with their value cores and histories. Liberal-conservative disagreements, to the degree that they even can be identified, arise out of differences in how openness, legitimate secrecy, and privacy can be protected simultaneously.

The most important disagreements in this area are not ideological. They concern journalists, private citizens, attorneys, and business people versus government officials disputing specific cases most of which feature officialdom trying to suppress openness. Congressional-presidential disputes over congressional oversight and executive privilege is an especially rich source of conflict particularly when there are election implications.

Liberals and conservatives agree that the freedom of information system is not very effective. Trying to write statutes that will guarantee the release of information that will not hurt privacy, national security, and law enforcement has proven challenging. Formulating a workable openness policy in the face of bureaucrats who use privacy, national security, and law enforcement concerns as excuses to prevent potentially embarrassing information from being revealed, makes the situation even more difficult.

Education

With few exceptions, liberals have long supported increased

spending on public primary and secondary schools whenever the question arises. We are stretching the meaning of the word initiative to include almost automatic liberal support of increased education spending. Because it is a significant element in an important policy field, we feel bound to cover it. In addition, two conservative education initiatives were introduced well after 1961. Understanding them requires familiarity with the liberal pattern of supporting increased spending on schools regardless of evidence published in liberal newspapers that they were failing. Since 1961 and well before, the *Post* and *Times* consistently favored public school funding increases. In 443 editorials in our sample and from electronic searches, we located no liberal editorials advocating funding reductions.

Liberals view regular public schools through the lens of the JBG model as a major vehicle for achieving greater equality by giving poor and middle class students an opportunity to better themselves and build successful careers. Through the 1960s and 70s liberals constantly pushed for local and state educational spending increases and federal aid to education to enhance societal equality. Conservatives opposed both liberal lines. They opposed most proposals for increased spending because there appeared to be little relationship between funding levels and school quality. In particular, some of the worst performing schools in the nation were also some of the most generously funded although this was partly because those schools were in large cities that had a higher than average cost of living. Conservatives also opposed federal aid to schools as a device by which liberals in the federal government could gain control of school curricula, a theme that continues today. In the 1960s and 70s the conservative position was almost entirely one of opposition to what conservatives saw as ineffective and educationally destructive programs.

Probably the most important event in the contemporary history of public education was the launching of the Soviet Union's earth satellite Sputnik in 1957. The U.S. and U.S.S.R. had been competing

to be the first nation to put a satellite into orbit and with Sputnik the U.S.S.R. won. It is no exaggeration to characterize Sputnik as a shock to the American psyche. Ryan Boyle (2008, 373-375) called it the “Sputnik panic.” The launch convinced many that U.S. primary and secondary schools were inferior to those of an economically impoverished dictatorship. Responses to evidence of low public school quality continued for more than a half century. Liberals wanted more spending; conservatives did not believe that it would help because of characteristics of those doing the spending.

As the 1960s and 1970s passed, conservative and liberal concern over the poor quality of some public schools increased. In 1983 as part of the continuing conservative critique of public schools, the Reagan administration produced the report titled *A Nation at Risk*. Authored by an 18-member commission chaired by David P. Gardner, president-elect of the University of California, the report constituted a broad indictment of education in the U.S. The commission found that approximately 23 million adults and 13 percent of all 17 year olds were functionally illiterate. Furthermore, average Scholastic Aptitude Test (SAT) scores had dropped almost continuously in the years 1963 (after Sputnik) through 1980. Commission recommendations included: a general stiffening of academic standards including requiring that high school graduates take four years of English, three years of mathematics, three years of science, three years of social studies, and a half year of computer science; wider use of standardized tests; much higher academic standards for primary and secondary teachers; and increased but performance-based teacher salaries.

The report, which overall remains a conservative touchstone in the field of education, supported various forms of federal aid to primary and secondary schools. The liberal response to *A Nation at Risk* was more positive than negative although liberals, like conservatives, doubted whether the report’s call to action, with its cautious, incremental changes, would have any real effect.

Many observers place ideology at the center of debates over

public education (e.g., Finn 1991, 275-276; Bracey 2004). Funding aside, probably the major liberal-conservative policy difference is that since the late 1980s conservatives have been more willing to experiment with alternatives to regular public schools such as vouchers for private school tuition and charter schools (Meyer, Tyack, Nagel, & Gordon 1979; Nelson, Palonsky, & McCarthy 2007, 50-53). If nothing else, these alternatives would compete with regular public schools, enhancing the quality of schools in general. In addition, private schools and charter schools could provide promising students an escape from dead end regular public schools.

Despite broad liberal support for regular public schools, a proposition accepted by many liberals and nearly all conservatives is that significant numbers of public schools have been performing badly for several decades. A 2007 *New York Times* editorial reported that more than half of 12th grade students could not interpret what they read (A bad report card, 2/27/07). Another *Times* editorial described public schools as a “mess” and blamed “educational bureaucracy and top-down management.” (Wrong surgery for sick schools, July 3, 1990; see also *WP* Low scores, higher expectations, 7/24/97; As city leaders dawdle 2/24/04; and many others). More recently in the *Times* Kate Taylor (2014) described newly designed State of New York exams (based on Common Core) for middle-school students as “inching up” from the previous year and reading scores as “flat.” The New York teachers’ union offered the excuse that teachers had not been adequately trained. The New York legislature passed legislation that protected teachers from being fired or denied tenure because of test results. Similar portraits of public school failure regularly appear in the *Wall Street Journal* and *National Review*. Indeed, there is little difference between liberal and conservative descriptions of the quality of public education; disagreements lie in their prescriptions for improvement and the core values underlying the policies advocated.

Standardized tests

The New York legislature’s move to shield teachers from poor

standardized test results was not surprising. Caroline Porter (2014), writing in the *Wall Street Journal* focusing on scores on the 2013 National Assessment of Educational Progress (NAEP) administered by the U.S. Department of Education, observed that there had been no improvement since 2009. Only approximately 38 percent scored “proficient or higher” in reading and only 26 percent did so in math. The executive director of the National Assessment Governing Board interpreted the results as meaning that: “Too few students are achieving at a level to make our country competitive at an international level.” (Porter 2014) Porter added that 2013 SAT scores showed that only 43 percent of test takers were ready for college work. Furthermore, results from the 2012 Programme for International Student Assessment, administered by the Organization for Economic Cooperation and Development, (OECD) reflected diminishing U.S. student capabilities in math, science, and reading compared to those of other countries (Porter 2014).

News coverage in the *Washington Post* carried a similar tone. For example, Valerie Strauss (2011) observed that reading and math SAT scores had been declining for “years” and that “critical reading scores are the lowest in 40 years.” (See also Layton & Brown 2012; Chandler & Brown, 2014) The *Post* also reported poor results for the State of Virginia’s Common Core examination comparable to those described above in New York (Shapiro & Strauss 2014). In 2014 approximately 600 of the state’s 1,800 schools lost full accreditation status as the result of a precipitous drop in reading and science scores, although the long term effect of this downgrade was not clear.

It is important to remember that SAT data are not meant for time series analysis. Over the years, the SAT’s structure has been modified by dividing it into verbal and quantitative sections, adding an essay component, eliminating analogies, adding material covered in “Algebra II” courses, and modifying time limits for the exam (Peterson Staff 2014). Also, SAT participants are self-selecting so a particular year’s results do not reflect a random sample of students. On the other hand, the interpretation of SAT scores need not depend

on changes in scores over time. For example, based on SAT results for a single year, the College Board (the organization that operates the SAT) President Gaston Caperton interpreted results in terms of likely student performance in college: “When less than half of kids who want to go to college are prepared to do so, that system is failing.” (Layton & Brown 2012)

As Porter (2014) illustrated, international comparisons are another way to evaluate various test results. For example, in the 2012 Programme for International Student Assessment, U.S. students fell below average in math and roughly on the mean in reading and science among 34 OECD countries (Lorin & Staley 2014). In the same vein, Olga Khazan (2012) examined scores of the Third International Mathematics and Science Study (TIMSS). It included a half million students in 41 nations. U.S. high school students fell near the bottom. Math Grade 12 results had the Netherlands with a top score of 560 and the US in 19th place behind the Czech Republic and ahead of Cyprus. Science Grade 12 results had Sweden is in 1st with 559 and the US is in 16th place with a score of 480 sandwiched between the Russian Federation (481) and Italy. In advanced math and advanced science US students were in 15th and 16th place, respectively.

Teachers’ unions and a number of scholars criticize some standardized tests as unreliable and invalid (Balf 2014; Brown 2015a). In particular, they argue that the tests are able to explain only a small portion of student grade point averages once they are in college. This is a fallacious criticism. Andrew J. Coulson (2014, 3) describes studies that arrive at this conclusion as comparing student SAT scores to their grades in their first and second years in college within a particular institution. But, Coulson argues, universities tend to admit applicants in a narrow band of SAT scores. It would be surprising if there was a statistically significant relationship between SAT scores and grades under these circumstances. If a random sample of all SAT test-takers throughout the nation were to be admitted to elite universities, SAT scores would probably predict

GPA's with considerable accuracy (p. 3).

Many argue that standardized tests discriminate against the poor because students from wealthy and middle class families can afford test preparation books or tutoring (Balf 2014) and discriminatory against minorities (Strauss 2011) due to low minority school funding (Bui, Shapiro, Svrluga, & Wiggins 2015). According to Todd Balf (2014), the College Board which produces the SAT is developing outreach programs that facilitate test preparation for economically disadvantaged students. It is also redesigning the SAT to more closely fit classroom course content (Balf 2014).

Coulson (2014, 4) argues that gaps in scores between white and some nonwhite test-takers may have more to do with the validity of the tests than their racial bias. The tests are measuring academic preparedness which is what they are supposed to measure. Some civil rights groups support testing essentially because tests are valid and object to a recent trend of parents opting-out of testing (Brown 2015b). A statement issued by the Leadership Conference on Civil and Human Rights, NAACP, National Council of LaRaza, National Disability Rights Network, and National Urban League supported testing: "We cannot fix what we cannot measure. And abolishing the tests or sabotaging the validity of their results [by eliminating a large block of students] only makes it harder to identify and fix the deep-seated problems in our schools." (Brown 2015b) They continued: "For the civil rights community, data provide the power to advocate for greater equality under the law. Until federal law insisted that our children be included in these assessments, schools would try to sweep disparities under the rug by sending our children home or to another room while other students took the test. Hiding the achievement gaps meant that schools would not have to allocate time, effort, and resources to close them." The Obama administration also supports testing (Layton 2015).

Even allowing for some measurement problems with standardized tests, it is clear that student performance is not improving much or at all over a period of decades and that U.S. students are significantly

inferior to their counterparts in many other countries. This disappointing performance is occurring despite decades of spending increases in the U.S. Andrew J. Coulson (2014, 2) addresses this point with revealing time series plots that display National Assessment of Educational Progress (NAEP) (U.S. Department of Education) results for 17 year olds in reading, math, and science from 1970-2012 together with the total cost of K-12 schooling for a student graduating in a given year adjusted for inflation, the number of school employees, and enrollment totals. The NAEP test, widely regarded as valid, is administered to representative samples of students in each state. Scores range from 0 to 500 with higher scores representing higher academic performance. The vertical axis measures percentage change in all six variables. The total cost increases rapidly over time as does the number of school employees. All of the test results including reading and mathematics scores are essentially level with slight negative or positive changes from year to year.

Raw data from the National Center for Education Statistics support Coulson's presentation. For example, average reading scores for 17 year olds in the 2012 *Trends in Academic Progress* began at 285 in 1971, moved to a high point of 290 in 1988-1992, dropped to a low of 283 in 2004, and went up to 287 in 2012, an increase of a mere 2 points over four decades (p. 1). Average mathematics scores began at 304 in 1973, dropped to 298 in 1982, peaked at 308 in 1999, and ended at 306 in 2008 and 2012. Again, this is a difference of only 2 points in roughly the same period of time.

Average NAEP reading scores for 17 year old whites ran from 291 in 1971 to 295 in 2012. For African-Americans the 1971 score was 239 points or 52 points lower than for whites (p. 18). In 2012 the average reading score for African-Americans was 269 or 26 points lower than for whites, a marked narrowing in the gap. A similar narrowing occurred with Hispanic students.

Average NAEP mathematics scores for whites ran from 310 in 1973, to a peak of 315 in 1999, and down to 314 in 2012. For African-Americans the average score in 1973 was 270 (40 points

lower than whites), to a peak of 289 in 1990, and 288 (26 lower) in 2012. So as with reading, the gap diminished with African-Americans as it did for Hispanics.

Turning to Coulson's point that enrollment did not increase much in this time period, according to the 2013 *Digest of Education Statistics* published by the National Center for Education Statistics (U.S. Department of Education), total enrollment in public elementary and secondary schools in 1980 was 40,877,000. In 2011 it was 49,522,000. The projected figure for 2015 is 49,839,000 (Table 203.10). This is an increase between 1980 and 2015 of approximately 22 percent.

Moving to school staffing and Coulson's observation that it has increased substantially over time, in 1980 the total number of public school teachers was 2,485,000 and in 2011 it was 3,103,000. The estimated figure for 2015 is 3,123,000 (Table 208.20). This is an approximate increase of 26 percent in numbers of teachers, not much greater than the increase in enrollment.

Expenditures of public schools in 1980-81 in current dollars was \$104,125M (Table 106.20). In constant 2012-13 dollars it was \$278,090M. In 2010-11 in current dollars it was \$652,215M and in constant 2012-13 dollars it was \$632,000M. Estimated for 2012-13 it was \$621,000M in both current and constant 2012-13 dollars. So in constant dollars from 1980-81 to 2012-13, the increase went from 278,090M to 620,000M or approximately 123 percent higher.

Looking at school spending in terms of per pupil expenditures in constant dollars, in 1980 it was roughly \$278,090M divided by 40,877,000 students or roughly \$6,800 per pupil. In 2012-13 it was roughly \$621,000M divided by 49,839,000 students or \$12,460 per pupil. This represents an increase of approximately 83 percent.

To sum up, the U.S. has seen modest gains in numbers of students, modest public school enrollment gains, modest gains in numbers of teachers, large increases in funding, and stagnant reading and math scores except for minorities.

Coulson produces plots similar to those he ran for the NAEP for

the SAT for each U.S. state. He calculates that the correlation between funding and academic performance over four decades for all 50 states is a minuscule 0.075 (p. 4). We examined the same question using the NAEP and data from the U.S. Department of Education. Our own regression analysis using NAEP reading scores for 2013 for Grade 8 (high school scores were not available) for all states and per pupil expenditures produced an r-squared of 0.04 and for math 0.05. We performed the same analysis omitting the outliers Alaska (\$17,390,261) and Washington, D.C. (\$17,468,248) which produced an r-squared of 0.21 for reading and 0.17 for math. Per pupil funding and reading scores ranged from Alabama (\$8,562; 257) to Massachusetts (\$14,142; 277). The four states that spent below \$8,000 per year had reading scores that varied from 260 to 270: Arizona (\$7,559; 260), Idaho (\$6,659; 270), Oklahoma (\$7,466; 262), and Utah (\$6,206; 270). The states that spent above \$16,000 had reading scores that varied from 266 to 276: Vermont (\$16,040; 274), Connecticut (\$16,274; 274), New Jersey (\$17,266; 276), and New York (\$19,552; 266). Overall, increasing funding appears to have only a modest impact on test scores. As a crude example, using the regression equation generated by our analysis, an additional \$1,000 per pupil would result in less than a 1 point gain.

David Grissmer (2000, 224) argues against using aggregate SAT results to measure the quality of schools and school systems for the reasons discussed above. He observes that declines in SAT scores are contradicted by gains in NAEP results from the 1970s to 1990. However, as we just saw, more recent NAEP data reflect only tiny improvements. While it is true that time series analyses of SAT scores are methodologically flawed (at least without statistical corrections), NAEP scores provide little comfort for advocates of increased spending on U.S. public primary and secondary education without reforms.

Unions especially object to tests being used to evaluate teachers (Brown 2015a). The National Education Association website accessed on 5/30/15 had as one of three featured images a placard

being held aloft at a rally which read: “Testing =/ Learning.” (Neatoday.org) An essay by John Rosales highlighted on the NEA website described a “burgeoning movement of educators, school administrators, parents and students” that has “blossomed in the fight against high-stakes standardized testing.” There follows descriptions of lobbying efforts in state capitals against testing.

Doubtless, myriad social or cultural problems partially cause weak student and school performance. But one major ingredient is a public school system operated by a multi-layered subgovernment of state and local bureaucracies and boards of education, teachers’ unions, and legislators at state and federal levels.

Since the 1990s mayors, dissatisfied with poor standardized test results, have begun taking over school districts. Boston appears to be the earliest major instance of this intervention when in 1991 the mayor substituted a board of education chosen by him for an elected board. Similar changes followed in Chicago, Baltimore, Cleveland, Harrisburg, PA, Philadelphia, New York, Providence, RI, and Washington, D.C. (Hess 2008; Wong 2015; Moscovitch, et al 2010). *Boston and Massachusetts: A case study*

Given the presence of outstanding universities and sophisticated research firms, the people of Boston and Massachusetts arguably demand and can appreciate especially high levels of school quality. Our primary source for this account is the liberal *Boston Globe* and studies performed by academics and think tanks.

Mayor Raymond Flynn took control of Boston public schools in 1991. Diego Ribadeneira (1990a) reported in the *Globe* that even though some Boston public schools were of good quality, others had high dropout rates. Meanwhile, the Boston School Committee (an elected board of education) had been: “embroiled in a string of controversies, from the tumultuous ouster of Laval S. Wilson as superintendent to the heated battle with City Hall over the committee’s budget, which is still unbalanced, and the slow-paced search for Wilson’s replacement.” (Ribadeneira 1990a) Reporter Muriel Cohen (1992a) described the system as “long-troubled and

unstable,” and operating in “a climate of suspicion and distrust...” The mayor and School Committee frequently blamed each other for increased school spending (Rezendes 1991). In 1985 columnist Mike Barnicle described the School Committee with this faux riddle: “What has 26 legs and no spine? What has 13 heads and no brain?” The Boston school system also had organizational flaws including substantial numbers of employees not being answerable to the superintendent.

The emotion-laden conflict within and surrounding the School Committee originated in racially discriminatory policies on the part of the School Committee leading to a 1974 desegregation court order issued by U.S. District Judge W. Arthur Garrity. The desegregation program was followed by a white exodus from Boston public schools as students transferred to parochial schools or parents moved to the suburbs. Before the court order white enrollment was 57 percent, but eleven years later it stood at 28 percent. These movements in turn resulted in the often controversial closings of under utilized public schools. The *Globe* asserted in a 1985 editorial (Bad news for Boston’s schools 2/22/85, 14) that the: “Boston school system has not been improved by the judge’s supervision or most of his orders. There is a lack of stability; enrollment has declined by a third; and dozens of schools have been closed.” The newspaper argued that: “Garrity’s preoccupation with numerical racial balance led to a decline in the quality of education.” Making matters worse, Superintendent of Schools Robert R. Spillane resigned in July of 1985. He had held office since August 1981. When he was hired he was the seventh superintendent in a decade.

The search committee’s work to find Spillane’s replacement was saturated with racial politics and a gross lack of professionalism. During the committee’s interview of a finalist, a committee member asked whether candidate, who was from the Bronx, could “get rid of that New York accent.” The conversation deteriorated from that point (Hernandez 1985). The search committee also violated the Massachusetts open meeting law. Finally, an African-American

named Laval S. Wilson accepted the position.

The next few years brought difficult to interpret but not outstanding standardized test results (Metropolitan Achievement Test) for Boston (Hernandez 1986, 1987). Fewer than half of the students took the test and between 1985 and 1986 it had been modified.

Early in 1990 the School Committee fired Wilson, exacerbating already raw racial divisions. Race also divided the Boston Teachers Union with the white-majority (amid a black-majority student body) challenging an order by Judge Garrity that layoffs be based on affirmative action and not seniority. Seven months later reporter Diego Ribadeneira (1990) gave one of his stories a 44 word title: "Can anyone save the Boston public schools? The Mayor blames the School Committee, the School committee blames the mayor, the teachers' union blames them both, and parents blame everyone. And the city still doesn't have a new superintendent. No wonder Boston kids can't learn." After reading this title, it is hardly necessary to look at the story itself, but it is worth noting that Ribadeneira described the previous year and a half as being: "beset by turbulence unmatched since the worst days of desegregation in the mid-to-late 1970s." He also observed that: "About 40 percent of last year's seniors could not read at an eighth-grade level as determined by the Metropolitan Achievement Test."

A bungled search for a new superintendent confirmed Ribadeneira's description of the Boston School Committee. Among the final six candidates, one had withdrawn his name only to change his mind and reapply, another turned out to be white when the search committee believed him to be African-American, another had just been fired from his previous position, and two lacked sufficient experience begging the question how they had been placed on the final list (Lupo 1990). In 1991 the School Committee selected Lois Harrison-Jones, formerly associate superintendent in Dallas.

In 1991 Mayor Flynn announced his desire to replace the School Committee with a smaller body entirely appointed by him. Many

African-American city councilors and state legislators opposed the mayor's proposal (Rezendes 1991). At the same time, influential state Senate President William M. Bulger wanted the new system to include freedom of school choice, allowing parents to enroll their children in any public school with an eye toward enhancing competition. This was an anti-bureaucratic and anti-educational subgovernment proposal. Bulger's idea was apparently not included in the final plan. In July 1991 the state legislature approved Mayor Flynn's all-appointed board proposal, and in January 1992 the new board assumed control. One of the board's first decisions was an \$8 million budget cut resulting in the layoffs of 269 staff and faculty. Ribadeneira (1992) described the meeting as careening out of control "with the audience bursting forth with boisterous chants and blistering attacks on committee members, who were never able to restore order and left the meeting to a cascade of jeers."

Boston schools had been experimenting with a reform called school-based management under which school principals were given authority, constrained by budgets, to decide on such matters as class size and textbooks. Principals complained that funding shortfalls rendered school-based management moot (Ribadeneira 1991). Furthermore, negotiating contracts with staff and teachers was described by *Boston Globe* reporters as so cumbersome that it too rendered school-based management meaningless (Cohen, Mooney, & Ribadeneira, 1991).

Periodically, Massachusetts business leaders complained about the poor quality of the state's schools while recommending generic improvements that could have been culled from introductory management text books. For example, the Massachusetts Business Roundtable asserted that the schools must utilize "quality control, competition and long-range planning" together with strengthened leadership and performance goals (Cohen 1992b). The Roundtable also called for decentralization and competition but was vague on specifics.

As business and Democratic legislative leaders contemplated

school problems, the State Department of Education reported that three-quarters of Massachusetts students in grades four, eight, and 12 fell below “proficiency levels” in reading, mathematics, science, and social studies (Ribadeneira 1992b). This news account did not specify what the exam was—only that it was conducted state-wide. Vague but unfavorable news accounts of this sort have been common from the mid-1980s to the present.

Late in 1992 Democratic legislative leaders, Republican Governor William Weld, and many business leaders arrived at a near consensus on education reform. A *Boston Globe* editorial (Passing grade for the school bill, 12/21/92) wanted funding increases with priority given to poor school districts. The newspaper also mentioned an early-childhood education program for students with low-income parents, new procedures for firing ineffective teachers, and professional development plans for teachers. These ideas were treated as routine.

Virtually every state had (and has) funding disparities between poor and affluent districts driven by property tax differences, and Massachusetts was no different. For example, Ribadeneira, (1993) reported on school districts in Wellesley which spent more than \$7,000 per pupil and Winchendon that spent less than \$3,000. The contrast in physical plant, libraries, and text books was substantial. The education reform bill being considered in January 1993 would have provided an extra \$483,000 to Winchendon and \$147,000 to Wesley.

As the legislature, governor, and interest groups wrestled with the distribution of education dollars early in 1993, State Senate President Bulger, by now a long standing advocate of school choice (and earlier a vocal opponent of Judge Garrity’s desegregation policies), took the strategic opportunity to essentially require that choice be part of any reform bill, while blasting the Massachusetts Teachers Association as interfering with reform (Howe 1993; *BG* Questions about school choice, 4/2/93). Bulger framed his advocacy of choice as a way to help “children of the poor and especially those of minorities...” who, he asserted, were being “sacrificed” to bolster the public school

establishment (Howe 1993a). The *Globe* (The choice for school reform, 3/31/93) described the Senate version of the education reform bill as having choice open to all Massachusetts public school students as the center of the bill. For example, Boston students would be: “able to attend schools in 13 contiguous communities.” Transportation for low-income students would be provided by the state. The newspaper cautioned that the program would not be cost-free, but it concluded that the plan represented: “an exciting innovation that could markedly increase options for some students.”

The House opposed unlimited choice and as of May 12 the bill was in stalemate with Governor Weld attempting to broker a compromise. Early in June both chambers passed a bill. The *Globe* account concentrated almost entirely on how funding would be distributed among school districts, not choice or any other operational elements such as how inadequate teachers could be removed (Howe 1993b; Cohen 1993; & others). Bulger’s specifications for choice were watered down to include only communities that wanted to participate. Furthermore, charter schools would be limited to only 25 with a total enrollment of only approximately 6,500. Governor Weld complained about both compromises when he signed the legislation (Howe 1993d). Peter J. Howe (1993c) added that with the compromise: “For the first time, the state will publish a specific list of what students should know at every grade level in subjects such as English, mathematics, history, sciences and foreign languages. Students’ success in meeting those standards will be evaluated on statewide tests and school-by-school results publicized by the state.” Beginning in 1998 high school graduation would be contingent on student passage of a state-wide examination. In addition, the state would have the authority to seize under-performing schools and fire their principals and teachers. Finally, tenure for teachers was to be formally ended, but few believed that this element would be implemented as sponsors desired. Indeed, Weld asserted that teacher dismissal would be made more difficult by the changes (Howe 1993d).

In 1993 reporter Peter Canellos (1993a) wrote that Mayor Flynn's efforts to improve Boston's schools were making little difference. The *Boston Globe* printed accounts of parents trying to transfer their children out of regular Boston schools to private or charter schools or public schools outside the city. The commonly expressed belief that suburban public schools were better was over the years confirmed by standardized test results. In some suburban areas, education bureaucracies controlled by boards of education elected by highly attentive parents can administer schools that are good enough to satisfy the parents even if they might be inferior to counterparts in other countries (Hart 1993).

In 1995, 1996, and 1998 the *Globe* reported that Boston public high school students had performed badly in the Metropolitan Achievement Test and the Stanford 9 Achievement Test neither of which was widely used in other cities or states (Lopez 1995; Avenoso 1996; Daley 1998), making time series analysis and interstate or international comparisons problematic. However, Massachusetts began participating in the U.S. Department of Education's more widely used National Assessment of Educational Progress (NAEP) test in 1992. Grade 8 mathematics scores reported by the Massachusetts Department of Education for 1992 showed that Massachusetts scores were only 273 compared to 268 for the Northeast and 267 for the nation. Expressed in terms of student accomplishment, 37 percent of test takers scored "below basic," and 63 percent were "at or above basic." Just under one quarter scored "at or above proficient" and 3 percent scored "advanced." According to *The Condition of Education 2015* (National Center for Education Statistics, Department of Education, 140), "basic" in mathematics means partial mastery of fundamental skills and "proficient" means competency over challenging subject matter. A state that placed as much emphasis on learning as Massachusetts could not have been happy with these results. Scores improved in 1996 and 2000. In 2000 the Massachusetts Grade 8 mathematics score was 283 compared to the national average of 274. This substantially reduced

the percentage of those scoring “below basic” (24%) and doubled the percentage of those scoring “advanced.” By 2013 Massachusetts had raised its Grade 8 mathematics score to 301.

In 2003, the first year for which we could locate NAEP scores for cities, Boston’s 8th graders scored 262 which was identical to the mean for large cities (populations of 250,000 or more). This meant that 52 percent of Boston students fell into the “below basic” category, 31 percent had basic skills, 14 percent were “proficient,” and 4 percent were “advanced.” Between 2003 and 2013 Boston Grade 8 mathematic scores steadily improved to 283 compared to an average of 276 for large cities. This score reduced the percentage of those at “below basic” to 35 and increased those in the remaining categories (*The nation’s report card*, 2013 trial urban district snapshot report).

Boston’s Grade 8 NAEP reading scores reflected relatively little progress between 2003 and 2013. In 2003 Boston’s score was 249 and the mean for large cities was 252. This meant that in Boston 39 percent had reading skills at the “below basic” level. By 2013 Boston 8th graders had only improved to 257 (compared to 258 for the large cities mean). This meant that 32 percent were still “below basic.” In 2013 four percent of Boston 8th graders were categorized as “advanced” readers.

In 1999 Boston responded to indications that 6,000 students were “failing or struggling” by requiring that they attend a five week summer school (Dabilis 1999). This was the second year that summer school had been ordered. Those refusing to participate would not be promoted. A year later the Boston system again ordered summer school with the same requirement (Vaishnav 2000). In the year 2000 one in five (over 12,800) students were required to attend. In 2001 yet another summer school session was held, but as reporter Anand Vaishnav (2001a) observed, results were mixed. For example, nearly two-thirds of ninth grader assigned to summer school were still required to repeat Grade 9. This was partly because only about half of those ordered to attend did so. However, in the system as a whole

approximately 54 percent of those required to attend summer school were promoted, a substantial increase from the previous year (Vaishnav 2001).

In 1999 the state Board of Education announced that it intended to expand usage of a test called the Massachusetts Comprehensive Assessment System (MCAS). Passing the MCAS would be a condition of graduation from high school beginning in 2003 (Daley 1999). Had passing the MCAS been a requirement in 1999: “32 percent of 10th graders would fail in English and language arts, 38 percent would fail in science, and 53 percent would fail in mathematics.” (Jackson 1999)

In 2001 Anand Vaishnav (2001b) reported improved MCAS scores. This was the first class that would be required to pass the MCAS to graduate: “After four years of watching their peers wither under the tough exam, the first class of students who had to pass MCAS to earn a high school diploma finally faced it. And passed it, for the most part.” A year later just over three-quarters of students passed the examination (Vaishnav 2002). Of course, that meant that slightly under one-quarter failed. Students were given a second chance to take the examination.

Occasionally, reporters tried to glean lessons in school administration from MCAS results. A major theme was the importance of what might be termed fundamentals. Scott S. Greenberger, and Anand Vaishnav (2001) did this by examining the successful Taunton High School:

Like many schools, Taunton High struggles to energize parents—only eight showed up for last week’s PTO meeting. The district’s per-student spending is close to the state average. When it comes to MCAS, however, Taunton High is extraordinary: Out of 318 Massachusetts high schools, Taunton is one of only six that has raised its English and math scores, and reduced failure rates in those subjects each of the past four years, according to a *Globe* analysis. Between 1998 and 2001, Taunton’s passing rate soared from 28 to 71 percent in math and from 47 to 74 percent

in English. That impressive record isn't the result of cutting-edge computer software, or creative motivational events... Instead, it is rooted in a simple principle: If you want better English and math scores, give students more English and math.

There was also an implied lesson in the MCAS examination and mandatory summer school: when students face severe sanctions for failing to learn, at least some learn more than they would otherwise or at least learn enough to get through an examination.

Ann Allen and Michael Mintrom (2010) observe that in the last few years changes in school systems have taken two different approaches. One has been toward greater centralization of school control (p. 452). This was exemplified by Mayor Flynn's substitution of an elected school board with one appointed by him. No Child Left Behind (NCLB) and similar state-level initiatives represent other examples of centralization. Part of the core of NCLB, to the degree that it had a core, was the use of standardized testing. The other approach discussed by Allen and Mintrom is decentralization as exemplified by various forms of school choice which is the other part of the NCLB core; if a school was found to be sub par students could at least theoretically escape and seek an alternative.

The importance of school choice was another recurring theme in news accounts and editorials exploring successful schools. The reliably liberal *Boston Globe* (Charter schools' worth, 2/13/03) chastised the Massachusetts Teachers Association and local government officials for trying to strangle charter schools. The newspaper presented the standard case often made by conservatives: "Longer school days, flexible scheduling, and freedom from union and bureaucratic rules—the core operating principles of charter schools—are making a difference. Roughly two-thirds of the state's 39 charter schools outperform their districts on standardized tests, many dramatically so. Eighth-graders at Community Day Charter School in low-income Lawrence, for example, outperform many students in the state's wealthiest towns."

As we saw earlier, poor student performance on standardized tests

generated multiple sources of pressure on the educational system and its elected governors including the state legislature. On one hand, parents demanded improvements in Boston regular public schools or more ways to escape them. On the other, teachers and critics of standardized tests pointed out that the best single predictor of test results was parental income both because more affluent parents can effectively motivate their children to excel in school and because they can afford to provide test coaching. In addition, test critics complained that “teaching to the test” produced a sterile and narrow uncreative classroom environment. In addition, some critics claimed that such tests drive students out of school. Still, tests had defenders especially among conservatives. For example, the *Globe* reported on a study by the Manhattan Institute, a conservative think tank, that found the examinations such as the MCAS accurately measure learning (Kurtz 2003). In addition, the *Boston Globe* was a regular cheer leader for standardized testing if only by the strong emphasis the newspaper placed on test results.

The SAT was also in use in the late 1990s and into the new century. As we noted earlier, one of the problems with using the SAT as a measure of student or school performance is that there were substantial differences among school districts and states in the percentage of students taking it. Higher percentages meant that a relatively broad range of students participated including low-achieving students. In locations where relatively low percentages of students participated, those students tended to earn relatively high scores. To some degree, statistical techniques can be used to deal with varying participation rates, and reporter Shari Rudavsky (2003) roughly corrected for the SAT participation problem by comparing Massachusetts with other states where at least 60 percent took the examination. Massachusetts students (with 82 percent participating) scored 516 on the verbal section (4 points higher than the previous year) and 522 in mathematics (an increase of 6 points). Massachusetts students outscored all other states except New Hampshire where only 60 percent of students took the examination.

In Boston the verbal and math scores were only 434 and 453, respectively, although these scores represented substantial improvements over the previous year. Only 65 percent of Boston students took the SAT.

In all years for all standardized tests whites on average outperformed African-Americans and Hispanics. This disparity was a never ending source of worry and remains so today. Abigail Thernstrom was a member of the Massachusetts State Board of Education and a senior fellow at the Manhattan Institute and Stephan Thernstrom was a professor of history at Harvard University who coauthored a book entitled *No Excuses: Closing the Racial Gap in Learning* (2004) on which they based a *Boston Globe* essay (Thernstrom & Thernstrom 2003). They focused on Cedarbrook Middle School in a Philadelphia suburb. The students were two-thirds and one-third white and African-American, respectively. The area had relatively little poverty and a solid African-American middle class, but there were no African-American students in an 8th grade advanced algebra class. In contrast: “The class in which the teacher was explaining that the 2 in number 21 stands for 20, though, was 100 percent black. A few black students were taking accelerated English, but no whites were sitting in the English class that was learning to identify verbs.” The Thernstroms asserted that this school was typical of many in Massachusetts.

The Thernstroms explored and rejected the thesis that the most fundamental cause of these differences was social class, not race. They argued that such class-related factors as parental income, education, and residence account for only about one-third of the gap in white-black test scores although this is not a trivial amount. They also rejected assertions that such factors as more funding, improved student-teacher ratios, greater racial integration, and more teachers with education masters degrees would substantially reduce the gap.

The Thernstroms’ central thesis was that charter schools were the best answer to closing the racial academic gap even in or especially in inner cities. The Thernstroms ran through the standard argument

for charters that we described above. They agreed with critics that not all charter school produce good results, but when they fail they can be shuttered. The Thernstroms asked: “When did you last hear of a regular public school that was shut down because it wasn’t teaching its students well enough?”

Echoing William Bulger from a decade before, a *Globe* (Greater expectations, 9/16/04) editorial also saw charter schools and other forms of choice as an ingredient in reducing the racial academic gap. It cited NCLB as requiring that both schools and subgroups such as minorities must demonstrate yearly improvement in academic proficiency. The editorial observed that 384 of the state’s 1,860 public schools had failed to achieve NCLB targets. It described 51 schools as exhibiting “chronic low performance.” Twenty-six schools were facing “administrative restructuring,” although the *Globe* appeared uncertain as to what such a process might entail. It noted that NCLB allowed students to leave chronically underperforming schools, but added that the process was lengthy with no certainty that other schools would constitute an improvement. The newspaper also called for an end to “tiresome attacks” on charter schools which had consisted of legislation to stop the creation of new ones to “questionable union-sponsored studies suggesting that the movement is a failure.” It cited a Harvard University study that found that charters were superior to the nearest regular public school. It also complained that the legislature was shortchanging funding for charters.

Still, regular public schools in middle class districts outside of Boston could perform relatively well. For example, students from Braintree High School regularly outperformed schools in other middle class districts and equaled many in wealthy districts (Abelson 2004).

In 2005 the *Globe* (Vaosjmav 2005) reported continuing progress in MCAS examination results in regular public schools, but: “37 percent of incoming college students had to take a remedial course in the state’s public colleges last year, even though they had passed the

MCAS test.” The Boston school system also showed substantial improvement in the national NAEP mathematics examination, although the score was slightly below average among 11 urban areas, and a large gap between white and minority students remained (Tracy 2005a).

Boston created a number of “pilot” schools in 1995. These institutions occupied a position between regular public schools and charter schools. They gave principals greater control over scheduling, curricula, and staffing with less interference from unions and the school district bureaucracy than regular public schools. A report issued in 2006 by the Center for Collaborative Education, a nonprofit that supported pilot schools, found that pilot school students on average did better on state tests and other measures of school performance than counterparts in regular public schools (*BG Report* says pilot school students top peers, 1/18/06) The *Globe* supported the pilot school idea enthusiastically, calling on the Boston superintendent of schools to expand them from the 20 operating in 2007. According to the *Globe*, the Boston Teachers Union was resisting further growth in pilots partly because the union wanted to maintain control over teaching vacancies (*BG Clipped wings for pilot schools*, 12/8/07).

In 2006 the New Bedford, Massachusetts mayor and the city’s school committee rejected the MCAS as a graduation requirement. In a sharply worded editorial the *Globe* (New Bedford’s MCAS mutiny, 5/12/06) attacked the New Bedford officials as harkening back to:

the days of low expectations and low achievement in urban school systems. The MCAS graduation requirement is a mainspring of education reform. The test helps focus the attention of both students and educators on the state’s sensible learning standards in English and mathematics. Teachers use MCAS to diagnose students’ academic weaknesses. Though it is difficult to score in the top category on the test, it is fairly easy to pass, especially with the help of remedial courses. Statewide, 93 percent of

students in the class of 2006 have passed. At New Bedford High School, 91 percent of students in the class of 2006 have passed.

That's a respectable rate in a city with many low-income families.

Charter schools continued receiving positive coverage in the *Globe* and support from the State Department of Education. According to a study commissioned by the Department of Education, 60 percent of charter school students were indistinguishable from regular public school in MCAS exams, 30 percent had significantly higher scores, and 10 percent of the charter students had significantly lower scores (Sacchetti 2006). The president of the Massachusetts Teachers Association rejected the study's findings because in some cases the charter schools' demographics failed to mirror those in the schools' locations.

A Nation at Risk urged university schools of education to increase the rigor of their mathematics and science programs. Decades later in 2007 the Massachusetts Board of Education made the same point by creating a more demanding mathematics component in the teacher license test. Michael Klugerman, director of math training for Mass Insight Education tested 200 elementary school teachers and fewer than half could divide 14 by $\frac{1}{2}$ or perform other elementary calculations (Sacchetti 2007).

In 2009 the *Globe* (The schools, 15 years later, 6/1/09) ran an editorial that reviewed Massachusetts educational progress since the 1993 reform legislation was enacted. The editorial was based on a study by think tank MassINC. The editorial pointed to the familiar gap between students from relatively affluent suburbs versus low-income students and those lacking in English skills. The MassINC report described progress in poor districts as "striking." In 2008, 74 percent of Grade 10 African-American students passed the MCAS mathematics and English examinations on their first attempt. That figure was 37 percent in 2001. The *Globe* concluded that: "Extending the school day with academic and enrichment programs works wonders in low-income schools. But the state Senate's current budget plan shortchanges that effort." (see also Lehigh 2009)

In 2010, against opposition by the teachers union, both chambers of the Massachusetts legislature passed a bill that allowed a doubling of the number of charter schools in low-performing districts and granted school superintendents authority to overhaul the worst schools (Vaznis 2010). Demand for Boston charter school openings was very strong with applicants far out numbering openings. Placements were determined by lottery (Johnson 2011b).

Despite the efforts of parents, some politicians, and some interest groups, Massachusetts schools were not outstanding on an international scale. James Vaznis (2010) reported that: “Massachusetts graduated the largest percentage of students in the nation with advanced math skills last year, but trailed more than a dozen countries in Europe and Asia...” For example, the percentage of Massachusetts 12th graders with advanced math skills was dwarfed by their counterparts in Taiwan, Hong Kong, and South Korea. Vaznis (2011) continued: “Overall, the United States ranked 31st among 56 countries...” See also Johnson 2011a and Schworm 2012.

Charter schools

Many individuals and groups dissatisfied with Boston and Massachusetts regular public schools saw school choice as an alternative. One approach was sending Boston students to suburban schools whose students performed relatively well on standardized tests. Another was so-called pivot schools, occupying a mid point between regular public schools and charters. Private especially Roman Catholic schools were also a popular choice, and charter schools were as widely used as the state legislature’s severe constraints (as per teachers’ union demands) would permit.

The first charter school was founded in Minnesota in 1992. Chester E. Finn, Jr., an early advocate of charter schools, explains that a charter is a kind of contract between the school’s operator and a public body that licenses the school to operate (NR, All aboard the charters? 10/9/06). Charter schools can use textbooks not employed by the traditional public schools, adjust teacher pay according to performance, and avoid the cost of

unionized ancillary workers (Buchen 2004, 177, 181-193). The result is competition with traditional public schools. There is growing evidence that competition improves school quality in both traditional and charter institutions (Loveless 2003; Witte 2004).

The central question regarding charters is whether their students achieve higher scores on standardized tests than students from regular public schools? Teachers' unions often cede this ground with only token resistance by admitting that charters are more effective at least when raw comparisons are made. But teachers' unions argue that charter students do not achieve higher scores if comparisons take into account the self-selecting nature of charter students. Another union fall back position is that even if charter students perform better, standardized tests are invalid measures of educational accomplishment. Joshua D. Angrist, Parag A. Pathak, and Christopher R. Walters (2012), who focus on Massachusetts, acknowledge charter school opponents' argument that charter students are more affluent and higher-achieving than those in regular public schools. Angrist, Pathak, and Walters neutralize this criticism by the neat methodological technique of focusing on charters that have more applicants than they can admit. When this commonly occurring condition arises (again, partly due to limits enacted by the state legislature), those admitted are selected by lottery. Angrist, Pathak, and Walters then compare the subsequent performance of those randomly admitted to charters with those randomly not selected and attending regular public schools. Their surprising finding (one replicated by other researchers in other settings) is that those most likely to benefit from charters are: "minority students living in high-poverty areas." (p. 1) Improvements are statistically significant and substantial (see also Dobbie & Fryer, 2011; Curto & Fryer, 2011; Hoxby & Rockoff, 2004; Hoxby, & Murarka & Kang, 2009) (p. 1) Angrist, Pathak, and Walters (2012, 1) also found: "little evidence of achievement gains at [charter] schools outside of high-poverty urban areas. Some of the estimates for non-urban Mass charters show significant negative effects."

How charters are operated greatly affect student performance. Angrist, Pathak, and Walters (2012) credit much of charters' impact on an approach to teaching called No Excuses," which they describe as emphasizing more instruction time, teacher quality, and mathematics and reading (p. 2, 4). They found that: "Two-thirds of urban charter administrators identify somewhat or fully with No Excuses, while no non-urban charter in their study identifies with this approach." (Angrist, Pathak, and Walters 2012, 4) Our interpretation of this result is that the relatively poor performance of non-urban charters may be due to their failure to use No Excuses.

Philip Gleason, Melissa Clark, Christina Tuttle, and Emily Dwyer (2010) examined 36 charter middle schools in 15 states. They too compared what they called lottery winners and losers in oversubscribed charters. Overall, they found that: "Participating schools had no significant impacts on math or reading test scores either a year or two years after students applied..." (p. xvii) However, charters: "serving more low income or low achieving students had statistically significant positive effects on math test scores, while charter schools serving more advantaged students—those with higher income and prior achievement—had significant negative effects on math test scores..." (p. xvii) Charters had statistically significant negative effects on reading skills with advantaged students and no effects on reading skills of disadvantaged students (pp. xvii-xviii).

Charters attended by 78 percent of the lottery winners were smaller (484 students compared to 736 students) and ran longer school days (7.2 hours compared to 6.7 hours) than regular public schools attended by lottery losers. Only 64 percent of charters had libraries compared to 88 percent of regular public schools (Gleason, Clark, Tuttle, & Dwyer 2010, xix). Racial or ethnic differences were not statistically significant, but there were more white students at charters (56 percent) than regular public schools (46 percent) attended by lottery losers (p. xix).

The Stanford University Center for Research on Education Outcomes (CREDO) (2015) study covered 41 urban areas in 22 states

for the school years 2006-2007 through 2011-2012. Its focus was academic advancement for one year measured in days of learning comparing a charter student to what the study referred to as a virtual twin in a regular public school in the same school district. The virtual twins were identical or nearly so demographically and had the same English skills. They were also identical in participation rates in special education programs and subsidized lunch programs. By using virtual twins CREDO dealt with the criticism that charters cherry-picked superior students from regular public schools which Angrist, Pathak, and Walters (2012) handled by comparing lottery winners and losers in oversubscribed charters.

CREDO based its comparisons on student test data given to it by the states. Unfortunately, CREDO is vague regarding what test data it uses. When we asked CREDO personnel about the sources of test data, we received the following non response: “The states share their data with us including their state assessment results for all tested grades and End of Course exams. Within each study we describe which grades are included based on the data received from the state.” (e-mail 7/24/15) Does this mean that if a state uses the SAT that CREDO uses it? Is an End of Course exam the same as a final exam for a class? We do not know.

In whatever manner CREDO collected test results, it found that charter schools benefitted urban students providing the equivalent of 40 days of additional learning per year in mathematics and 28 days in reading (p. iv). Even more importantly, gains for charter school students were especially great for black, Hispanic, low-income, and special education students.

We have noted several times that Massachusetts teachers’ unions are opposed to charter schools and critical of standardized testing. Barbara Madeloni who in 2014 was elected president of the Massachusetts Teachers Association (MTA) describes herself as a social justice activist and vigorously opposes teacher assessments, Common Core, standardized testing, and charter schools (Levenson 2014). According to reporter Michael Levenson (2014) she describes

teacher assessment and standardized tests as part of the: “general assault on public education by people who are looking to privatize it, to profit off the public dollar, and to bust our unions.” She sees programs of this sort as run by “rich white men” determining educational policies for “black and brown children.” (Levenson 2014) Madeloni was elected to a second term as MTA president in 2016.

Conservatives also have proposed a private school initiative known as the voucher system (Friedman 1962, 127). Government-funded vouchers allow poor families the alternative of a private school that they otherwise could not afford. As with charters, the result may be greater competition and higher quality all around although there are clearly no guarantees in specific cases (Nelson, Palonsky, & McCarthy 2007, 61). Liberals usually oppose all government aid to private schools or to the parents of children attending them, especially when those schools have a religious affiliation that could violate church-state separation. They, therefore, oppose vouchers more intensely than they do charter schools (*WP* The politics of education, 6/2/83; and many others). Liberals also argue that vouchers drain resources from funding-strapped public schools that are supposedly doing their best to serve the poor. They lodge the same criticism against charters. Nevertheless, on occasion liberals have been willing to experiment with vouchers. In 1992 the *Post* (School choice in Milwaukee, 3/30/92), while strongly opposing government aid to parochial schools in any form, suggested that the efficacy of “carefully crafted choice programs” such as Milwaukee’s should be tested (See also *WP* Vouchers without politics, 2/12/03).

Since Sputnik the central mistake in liberal educational policy has been not *rigorously* attending to equality, the most important liberal JBG value. In the field of education trying to provide equality of opportunity means focusing on the educational opportunities offered to all students but especially the poor and middle class. According to *Times* and *Post* editorials, many regular public

schools fail to offer anything near a quality education. Reading these editorials and viewing standardized test scores, it is impossible to escape the conclusion that simply providing additional funding to these schools will not make a significant difference in the lives of their students nor will most other change in public school district educational monopolies. The evasive maneuvers employed by local and state school officials in the face of No Child Left Behind requirements make clear that the worst of these monopolies have little interest in improving educational quality. However, despite their withering criticism of public schools, liberals have continued to favor increased funding while requiring little in return.

Ideological Consistency and Inconsistency Concerning Business and Economics

When thinking about business and economics liberals and conservatives share a basic theoretical position that the market left to balance economic forces without interference produces and distributes private goods more efficiently and fairly than any other economic system especially those containing central government command elements. However, the market cannot provide public goods at levels that society as a whole deems necessary. Also, it cannot control externalities such as pollution. Nor can it handle potentially damaging information asymmetry in highly technical and dangerous areas such as pharmaceuticals. And, it cannot control monopolies that result from particular technologies such as railroads in some locales in their early years.

Our economic misbehavior/breakdown model described in Chapter III characterizes liberals as quick to mistake market misbehavior for market breakdown and consequently sponsor initiatives to correct the situation when inaction would be a better choice. In a mirror image, conservatives tend to mistake market breakdown for market misbehavior and oppose needed liberal initiatives to correct the damage. We are labeling both patterns ideological inconsistency.

Liberals should be able to recognize market misbehavior for a

situation that does not require government action, and conservatives should be able to see that market breakdown needs a government response. However, there have been many instances of these patterns of ideological inconsistency. Examples described below or in later chapters include:

- barriers to international trade advocated by some liberals;
- wage and price controls favored by liberals in the early years of the Nixon administration when inflation appeared to resist normal monetary and fiscal remedies;
- minimum wage legislation favored by liberals;
- many cases of antitrust promoted by self-interested businesses and liberals;
- regulation of railroads, trucking, and airlines that liberals defended beyond the time they were needed if they ever were;
- conservative opposition to the passage of consumer protection laws;
- conservative opposition to the passage of pollution control legislation;
- agribusiness as a special case needing subsidies favored by liberals;
- energy price controls and rationing favored by liberals after the Arab oil boycott and so-called energy crisis;
- prevention of large business failures—assistance for select economic activity such as subsidies for railroads to preserve rail service (mostly passenger)—this around 1970;
- providing low interest mortgages (Fannie Mae and Freddie Mac);
- Car Allowance Rebate System (a.k.a. Cash for Clunkers) favored for a short time by liberals;
- enhancing nontraditional energy sources (especially wind and solar) favored by liberals; and
- required use of gasohol plus corn subsidies.

International trade

At the beginning of the time period of this study and for many years before and after liberals and conservatives shared a policy position on international trade that was part of their consensus on the utility of the market economy. In particular, with some exceptions on the left, they believed that interference with free international trade using such devices as tariffs hurts nearly everyone in the long run. Those who favor barriers to international trade are often called protectionists, although that term carries such strong negative connotations, they usually deny that it applies to them. Interest groups such as labor unions and manufacturers can be found on both sides of particular international trade debates depending on whether they benefit or suffer from exports or imports. Also, in this area President Donald Trump can best be thought of not as a conservative but as a pragmatist.

The central theoretical concept in this field is the law of comparative advantage probably first expressed in its complete form by David Ricardo in *On the Principles of Political Economy and Taxation* (Chap 7, para 16) published in 1817. Ricardo, using a simplified example of England and Portugal, assumed that each country produced wine and cloth. He showed that even if *both* wine and cloth could be manufactured with less labor in Portugal, it would nevertheless be mutually beneficial for Portugal to produce all of the wine needed by both countries and England to produce all of the cloth and for the two countries to trade wine for cloth and vice versa. As Alan Shipman (1999, 313-314) expressed it, total welfare among international trading partners is: “raised under free trade because nations can buy more with the surplus from producing only what they are best at than they could make if they continued producing what they are less good at.” Still, in Ricardo’s example cloth manufacturers in Portugal and wine manufacturers in England would be hurt by free trade.

Economists and scholars in related fields overwhelmingly

support free trade although they recognize that particular businesses and workers sometimes suffer in the near term because of it. These scholars document many ways that trade stimulates economic growth (Venables 2009; Krueger 2009; Kaya 2010; Clark 2010; Findlay & O'Rourke 2007). For example, capital flowing into developing countries that have functioning markets tends to enhance productivity and economic development (Woo 2009; Brock 2009; Vadlamannati & Tamazian 2009; Naim 2009, 32; Kapstein, 2009; Parameswaran 2009; Groizard 2009). The work cited in this paragraph represents a small fraction of the scholarly support for international trade published in just the last few years.

Although opponents of free trade have been active throughout much of U.S. history, the beginning of what might be termed the contemporary era of international trade began with the Smoot-Hawley Act of 1930. The sponsors, Senator Reed Smoot of Utah and Representative Willis C. Hawley of Oregon, were Republicans as was President Herbert Hoover who signed the bill. The president and the bill's sponsors can be characterized as conservatives, but their primary motive was probably self-interest and the conservatism they represented is not closely related to current versions.

John M. Rothgeb, Jr. (2001, 2) describes advocates of Smoot-Hawley as conservative Republican isolationists who regarded international trade as entangling the U.S. in foreign problems that could lead to war. We see below that contemporary protectionists on the left also have agendas that do not concern trade itself; these agendas are best understood using the JBG model.

Smoot-Hawley opponents tended to be liberal Democrats who believed that the international relationships developed through trade benefitted all countries both economically and politically. Because Smoot-Hawley doubled tariffs on thousands of products, economists generally opposed it because of likely reprisals by other countries.

Smoot-Hawley became law after the stock market crash of

1929. Most economists believe that it intensified the Great Depression when, as economists predicted, other countries retaliated with increased tariffs resulting in plummeting international trade (Madsen 2002). In 1932 imports and exports were only approximately 30 percent of 1929 levels (Rothgeb 2001, 38). This reduction was a disaster for U.S. exporters and foreign firms that sold products in the U.S. It also represented a substantial loss to U.S. consumers who wanted to buy foreign goods.

Cynthia Hody (1966, 11) describes the ideological consensus that Smoot-Hawley was a failure as liberal Democrats and conservative Republicans after WWII pushed for reduced tariffs. Despite characterizing the history of international trade in ideological terms, Hody correctly cautions that such a narrative must include self-interested businesses and labor unions threatened by imports and other businesses and labor unions that benefit from imports and exports.

In 1961 the Americans for Democratic Action (ADA) and all four of our barometer publications favored free trade. President John F. Kennedy pushed for passage of the Trade Expansion Act of 1962 which gave the president substantial tariff reduction powers, and in fact tariff cutbacks followed its passage (*ADA World Congressional Supplement*, 10/62, House vote 2 & Senate vote 11; *NYT* Ending the gold rush, 2/7/61; Protectionism and the dollar, 5/9/61; *WP* World export shares, 3/29/65; A compromise? 8/17/65; *NR* The new protectionism, 10/9/62; *WSJ* Dumping a definition, 3/3/64; and many others from all four publications). Throughout the 1960s and 70s many self-interested labor unions and businesses continued to work against free trade. President Ronald Reagan was essentially a free trader who wanted to end trade with communist bloc nations as a way to weaken them. Meanwhile, he saw trade as a way to strengthen western and friendly third world nations. On the other hand, Congress, as portrayed by Rothgeb (2001, 178), was dominated by: “ardent free traders who believed in leaving international markets alone.” This majority consisted of liberals

and conservatives in both parties together with self-interested unions and businesses that benefitted from international trade.

The free trade consensus weakened when President Reagan advocated passage of the North American Free Trade Agreement (NAFTA). NAFTA began as a trade agreement with Canada that was expanded to include Mexico. Pay and working conditions were much poorer in Mexico than they were in the U.S. and Canada, and labor unions, some liberals, and some populists (many observers categorize Donald Trump as a populist at least as far as international trade is concerned) saw NAFTA as threatening U.S. jobs as companies moved manufacturing facilities south of the Rio Grande. Similarly, lax air and water pollution regulations and toxic waste policies in Mexico were seen as luring manufacturing away from the U.S. as well as worsening the environment in Mexico.

The fight against NAFTA marked the beginning of a new protectionism among some on the left that continues today. This phenomenon appears confined to the most extreme left wing of the political spectrum together with populists of various stripes reinforced by some self-interested labor unions and businesses. It also marks an unusual split between the ADA and our two liberal barometer newspapers; as we showed in Chapter III the ADA, *Post*, and *Times* usually agree.

Two points appear to be at the heart of contemporary radical and some liberal protectionist positions (Shipman 1999, 316-330). One is that competition between an affluent industrialized country and a poor one allows manufacturers to take advantage of workers in both nations by playing them off one another. In turn, Donald Trump's protectionist position sees less affluent countries as victimizing the U.S. Another protectionist theme is that manufactures in an affluent country relocate polluting factories to a poor country lacking environmental laws.

After many years of ignoring international trade, the ADA took its first protectionist position on the 1983 House Automobile

Domestic Content Requirement (*ADA 1983 Voting Record* 1984, 1983 House vote 11). The bill required various percentages of U.S. labor and parts in new automobiles sold in the U.S. The ADA took its next protectionist position on a 1987 Senate vote (*ADA Today* 1986, 1987 Senate vote 18). This time it opposed what it characterized as unfair trade practices in foreign countries (see also *ADA Today*, House vote 19). The ADA continued on its protectionist path in 1991 when it opposed the so-called fast-track trade agreement procedures (*ADA Today*, 02/92, Senate vote 3; House vote 6), in 1993 when it opposed implementation of the North American Free Trade Agreement (NAFTA) (*ADA Today*, 3/94, Senate vote 20; House vote 17), and later when it opposed other free trade policies (*ADA Today*, 1/99, House vote 18; 2/00, House vote 1; 3/01, House vote 9 and Senate vote 19; and others in 2005, 2006, 2006, 2007, and 2008).

Jeff Faux (2006, 25) writing in the liberal/radical *The Nation* magazine seeks “social justice” in the world economy in part via constraints on international trade. Faux characterized NAFTA as protecting corporate interests and undermining democracy. NAFTA, Faux wrote: “reinforced inequality and insecurity in all three countries—most visibly demonstrated by the daily migration of Mexicans across the border, desperately seeking jobs.” Adhering to Faux’s logic, NAFTA should have reduced this migration since U.S. factories would be employing Mexicans in Mexico. Faux continues: “NAFTA’s failure makes North America a microcosm of globalization’s Catch-22: Bringing social justice to global markets requires global institutions to regulate global business, but these institutions are dominated by elites who oppose social justice.” (p. 24)

International trade primarily occupies the policy area of business and economics, although it touches on the JBG model as well. Adam Smith, David Ricardo, and countless other economists have made rigorous theoretical cases documented by empirical data that a free international market benefits everyone except for

isolated businesses and their employees. Trade barriers damage the public interest by raising the cost of imports and sometimes triggering retaliation by foreign governments (as Smoot-Hawley did) that also harms particular companies, often the ones that barriers are meant to protect. This is the economics-based position that most contemporary conservatives and liberals hold. Although free traders rely primarily on economics, they also make an equality-based argument that some impoverished third world countries have rapidly developed economically by their participation in international trade. Advocates of protectionism essentially ignore economic theory as they argue that U.S. workers are hurt by competition from poorly paid foreign workers including children laboring in polluting factories.

International trade is an example of most conservatives and liberals thinking about an issue almost exclusively using a business/economics based model and some liberals focusing almost exclusively on equality. The two sides (conservative and liberal free traders versus liberal protectionists) are aware of each other's positions, but they essentially ignore them as they talk past each other.

Because this initiative bridges our two models by at least touching on JBG, a flawed case can be made that radical left protectionists are ideologically consistent. Although we have not formally defined what it means to be on the radical left, those occupying that part of the ideological spectrum have always distrusted the market economy, so a position such as Jeff Faux's is not ideologically inconsistent on its face. However, the substantial documentation showing that international trade has benefitted the poor in many underdeveloped nations together with most workers and consumers in the U.S. makes them vulnerable to a charge of inconsistency. Faux's lament for social justice in global markets is an anachronism given the substantial benefits that international trade has produced in South Korea, Vietnam, China, India, and many other less developed but growing economies. And the radical

left's blindness to the lessons of Smoot-Hawley suggests ideological inconsistency.

The first *Times* editorial that we can find that hinted at a slight liberal shift toward protectionism observed that public concern about foreign apparel sweatshops had resulted in White House intervention; the *Times* supported that action (Watching the Sweatshops, 8/20/97). Recently, the *Times* sided with those who want to tie international trade to global warming concerns. It argues that trade agreements must include commitments on emission reductions (Trade and climate, 7/19/09). However, recent *Times* and *Post* editorials also show that both newspapers are still solidly pro-free trade (*NYT* The case for trade, 7/27/07; Mr. Schumergoes to China, 3/27/06; Free trade begins at home, 11/5/05; Pro-trade Democrats go AWOL, 6/13/05; Tangled trade talks, 7/11/09; The rage against trade, 8/7/16; Jobs and trade on the campaign trail, 4/3/16; Donald Trump's Mexico tantrum, 1/27/17; and many more; *WP* Progress on trade?; Congressional Democrats signal approval for a deal with Peru"; Trade offensive; The Bush administration suddenly embraces tough tactics with China, 4/12/07; Are these the last days of free trade? 9/21/16; The end of globalization? 9/20/15; Trade pact showdown, 4/20/15; and many more). A slight deviation from the *Post*'s free trade position occurred when the newspaper showed some sympathy for negotiations requiring changes in other nations' labor laws to meet international standards (Progress on trade? 9/24/07). Nevertheless, the *Post* remains committed to free trade (Cotton brawl; Brazil's victory exposes America's waste, 6/3/10; The case for Korea; A key Democrat's free-trade plea to Mr. Obama, 5/14/10; and several more). See also the *New York Times* emphasizing the need to help U.S. workers displaced by foreign competition and building environmental protection into trade agreements (On trade, don't leave workers behind, 5/22/15; After Mr. Obama's Big Trade Victory, 6/24/15).

International trade constitutes a significant split on the left both

because of its inherent importance and what it implies about intellectual differences. Unlike the *Times* (The rage against trade, 8/7/16; Jobs and trade on the campaign trail, 4/3/16; Donald Trump's Mexico tantrum, 1/27/17; and many more) and *Post* (Are these the last days of free trade? 9/21/16; The end of globalization? 9/20/15; Trade pact showdown, 4/20/15; and many more), the *ADA* and *The Nation* among others on the left appear to be abandoning market models for thinking about business and economics. (Nichols 2009, 19). Contemporary protectionists think of themselves as having a broader perspective than their free-trading opponents. Instead of merely thinking about the economic well-being of American workers and consumers, contemporary protectionists on the left worry about workers' rights and air and water pollution in third world countries. John Nichols (2009, 19), writing in *The Nation*, prefers the term "fair traders" to "free traders," phrasing adopted by Republican President Trump (Ponnuru 2016). This terminology and Nichols' thesis reflect a communitarianism that frequently appears in the work of *The Nation's* authors (e.g., Barber 2011; Sennett 2011; Weissman 2011). By and large, conservatives and most liberals regard such concerns as the responsibilities of those countries, not the U.S. Conservatives and most liberals (the *Times* and *Post*) point out that increased economic growth in third world countries contributes to worker income and gives governments the surpluses required to enforce environmental regulations.

Conservatives oppose trade barriers (Ponnuru 2016), but some are contemplating what could be described as protectionist responses to Chinese subsidies of its domestic producers, currency manipulation, and theft of intellectual property (Cass 2014). Oren Cass (2014, 33), writing in *National Review*, characterizes ignoring these practices as "a nonsensical form of economic pacifism."

Robert D. Atkinson (2016, 20), also in *National Review*, questions the beliefs of what he calls "Washington's pro-trade establishment" to the effect that international trade is entirely beneficial. Atkinson attacked the pro-trade position expressed by

Cambridge University economists Willem Buiter: “Remember: unilateral trade liberalization is not a ‘concession’ or a ‘sacrifice’ that one should be compensated for. It is an act of enlightened self-interest. Reciprocal trade liberalization enhances the gains, but is not necessary for the gains to be present.” Atkinson interpreted Buiter’s statement this way: “it doesn’t matter if other nations massively subsidize their exporters, require U.S. companies to hand over the keys to their technology in exchange for market access, or engage in other forms of mercantilist behavior.” We would add that a policy position that asserts its virtues by claiming that any outcome supports it, is suspect on its face. Then Atkinson sought to reassure the reader of his free-trade bonafides: “reciprocal free trade between two nations is the optimal condition, as both of the trading nations and the global economy will benefit. But one-sided trade (with nations that are mercantilists) has not produced net gains for the U.S. economy over the last 15 years.” (p. 20)

It is revealing that the Cass-Atkinson criticism of what might be termed the radical free trade position is similar to Donald Trump’s and appeared in a publication that has been as unfavorable toward Trump as any major liberal or conservative magazine or newspaper. Scott Lincicome (2016, 27) also in *National Review* encapsulates this point: “It is virtually impossible to tune in to political TV or radio without hearing presidential hopeful Donald Trump promise to restore American manufacturing glory by imposing punitive tariffs on imports from China, Mexico, and any other country that pops into his golden dome. Trump’s shtick, repeated ad nauseam since he first started toying with a presidential run in the 1990s, is replete with errors and myths. But buried therein is an important kernel of truth about America’s labor market and its distressing lack of dynamism—a problem exposed, though certainly not caused, by free trade.”

The *National Review* deviation from conservative free trade positions has not been joined by the *Wall Street Journal* (Trade and the Presidency, 6/17/15; A Trade Tutorial for Trump, 3/11/16; Trump’s Antitrade Warriors, 1/17/17; and many more).

Incomes policies in the Kennedy and Johnson administrations and wage and price controls in the Nixon administration

Monetary and fiscal policies are the most important federal government tools used to combat inflation, but sometimes they cause inflation. So-called incomes policies employed by the Kennedy, Johnson, and especially the Nixon administrations were supposed to provide additional inflation control. Incomes policies include persuasion, voluntary guidelines, jawboning, and mandatory wage and price controls.

The most vivid example of an incomes policy initiative during the Kennedy administration was the president's sharply worded criticism (i.e., jawboning) of a price increase by U.S. Steel Corporation in 1962. The Kennedy action, which received widespread news coverage, had no long term impact, but it was supported by the *Times* (Storm over steel, 4/15/62). Inflation intensified during the mid and late 1960s due to Johnson administration attempts to simultaneously fund the Vietnam War and new domestic programs while also pursuing expansionist monetary policies (Saulnier 1968). Economist Herbert Stein (1988, 143) characterizes incomes policies as: "part of the standard doctrine of liberal intellectuals during the Kennedy-Johnson years..." However, Johnson administration attempts to influence wages and prices with voluntary guidelines and negotiation resulted in criticism, not praise, from the *Times* (Whose job is restraint? 8/26/66; Demise of the guideposts, 8/5/66). The reason for the criticism was that, according to the newspaper, few economists believed that voluntary wage and price controls and negotiation could work in the face of the administration's own inflationary fiscal policy. The *Times* (Tax debate, 12/19/66) soon advocated a tax increase to control inflation, a policy which conservatives opposed.

President Richard Nixon who was elected in 1968 was against incomes policies including mandatory wage and price controls (De Marchi 1975, 295, 299). Initially, his conservative and moderate

appointees shared this view. By mid-1969 the *Post* (Banker in the briar patch 7/6/69) suggested the possibility that unspecified “government controls” might be necessary to curb the continuing inflation. Then, in the period 1969-71 liberals became unenthusiastic advocates of mandatory wage and price controls (*NYT* Incomes policy needed, 2/28/71; *WP* Applying corporate breaks, 7/12/69 and Yes, the freeze is unfair, 7/18/71). Surprisingly, Nixon administration economist Arthur Burns, a moderate, became convinced that the market had partially broken down and became probably the most influential advocate of wage and price controls in the United States (De Marchi 1975, 310-311). It is rare for an ideological moderate to spearhead such a radical effort.

Not surprisingly, wage and price controls became a vehicle for political opportunism by congressional Democrats and President Nixon. In August 1970 Congress with Democratic majorities in both chambers passed the Economic Stabilization Act giving the president authority to control wages and prices. This move is often explained as the Democrats’ way to avoid responsibility for inflation. They had supposedly given the president the tools with which to stop inflation; if he chose not to use the authority and inflation continued, he could be blamed. If he used it and failed to stop inflation, he could also be blamed. And, if he used it and particular workers or businesses were hurt—an almost certain result given the multifarious effects of wage and price controls—he could be blamed.

In August 1971 Nixon announced a 90 day comprehensive wage, price, and rent freeze. His turnabout is explained by most observers as arising from his fear of reelection defeat, not from ideological considerations. In November 1971 so-called Phase II price controls began with an allowance for 2-3 percent price increases per year, but with domestic oil prices remaining at Phase I levels.

Conservatives opposed liberal proposals for controls and highlighted flaws in their operation after they began (*WSJ* Cheers, 12/5/69; Success for controls, 8/3/72; Remembering the basics,

8/18/71). Always tepid, liberal support for controls continued for only a short time (*NYT* Ceiling unlimited, 9/22/73; *WP* Small business, big business, and controls, 5/6/72; On prices: An unpleasant surprise, 6/9/72).

It soon became clear to nearly everyone that federal wage and price controls were not reducing the rate of wage and price increases or at best that controls were suppressing inflationary forces that would be explosively released upon the cessation of controls (Rockoff 1984, 210-214; Jones 1975, 7-9; Kusters 1975; Weber & Mitchell 1975, 380; Pohlman 1976). Finally, conservative pressure to end controls was essentially unopposed. Nixon abandoned them in January 1973; however, in March of that year price controls were reimposed on large oil companies. Additional oil price controls followed in August.

Nixon era wage and price controls are a fine example of liberals and moderates mistakenly believing with no evidence that market breakdown had occurred and trying unworkable and unwieldy market interventions. Indeed, the market response to the inflationary public policy of the Johnson administration was inflation as it should have been. A functioning market could produce no other result. Market misbehavior is defined in part as economic performance that produces widespread unhappiness (e.g., inflation and stock market downturns), and that is what was occurring.

Liberal wage and price control advocates expected little from the initiative except a temporary respite from inflation. Even in this limited objective they were disappointed. In promoting controls liberals were deviating from their core belief in the effectiveness of free markets. Their moral/value and policy theories were little more than the belief that inflation was bad (shared with conservatives) and the hope that controls would work for a short time. The controls failed, and liberals retreated.

Although wage and price controls were an example of temporary liberal ideological inconsistency, this initiative remained almost completely in the realm of business and economics.

Liberals and conservatives fully understood and addressed each other's positions and to a significant degree agreed with each other's positions.

The minimum wage

The Fair Labor Standards Act of 1938 was the first federally mandated minimum wage law. Its passage was supported by liberals and President Franklin Roosevelt (Roosevelt 1937) and opposed by conservatives and most business interests. Neither side has wavered since. In our 1961-1981 sample of editorials (years not covered in electronic data bases), all six *New York Times* editorials on the subject of the minimum wage favored its increase or application to more workers (e.g., Sub-minimum, 2/9/74). The same sample contained four *Washington Post* minimum wage editorials; all four favored increasing it (e.g., Forgotten minimum wage, 4/2/66). A post-1981 electronic search revealed 17 *Post* editorials on the minimum wage, and all but two (concerning a special case of a local government minimum wage) favored expanding it in some way. The 23 *Times* editorials gathered in our electronic search were also overwhelmingly supportive of the minimum wage.

Our non-electronic data base sample caught only 10 *Wall Street Journal* minimum wage editorials and only two in *National Review*. In our electronic search we located an additional 16 *Wall Street Journal* and 10 *National Review* article-editorials. All of these articles and editorials were opposed to the very existence of the minimum wage. To this day, liberal and conservative positions on the minimum wage continue to be separate and unchanging.

The politics of the minimum wage follow a multi-year cyclical pattern. As inflation erodes the relative value of the minimum wage, liberals argue that those at the minimum wage are paid too little. For reasons that they have never convincingly explained, liberals believe that the market does not correctly value the worth of those at the bottom of the economic ladder—a form of market breakdown. After some years of liberal campaigning, an increase is

enacted, followed by more inflation and erosion, and the cycle continues (Levin-Waldman 1998, 789-79; *WP Workers held hostage*, 1/31/07; *NYT A fair day's pay*, 1/3/06). In recent years some liberal leaning states and localities have supplemented the federal minimum wage with higher minimum wage laws of their own and some are indexed against inflation (*NYT A fair day's pay*, 1/3/06).

The majority of studies of the minimum wage by economists largely support George J. Stigler's (1946, 358-359) early conclusion that an effective minimum wage law will either increase unemployment among those whose services are worth less than the minimum wage or increase the productivity of low efficiency workers (see literature reviews by Brown, Gilroy, & Kohen 1982; 1983). Both effects can occur simultaneously in various segments of the economy. Increases in productivity might occur because some employees work harder due to higher wages or fear that new production techniques such as automated equipment might be introduced to replace them because their pay would have to be increased (see literature review on international comparisons by William F. Maloney and Jairo Nunez Mendez 2003). New production techniques could supplant some workers resulting in additional unemployment. Stigler (1946) concluded that the minimum wage would not help the poor, but he suggested that there were alternatives that would.

Richard Freeman (1996), an advocate of the minimum wage, offers seemingly unintentional support for Stigler's observations. Freeman explores ways that an increase in the minimum wage shifts resources from some to others; it is, with one minor exception, a zero sum game with no net increase in total output. The specifics of who pays depend on the industries in question and the magnitude of the increase. In general, there are three possibilities. One potential category of payers are customers. After an increase in the minimum wage if a business raises its prices, customers must pay more. Depending on the nature of the business those customers may be affluent, middle class, or relatively poor. At the

margin, customers may find additional costs excessive resulting in their reducing or ending patronage, sometimes causing job losses. A second category of potential payers are the owners of the businesses who must pay an increased wage. Some owners will absorb higher costs, or pass them onto customers (who may then reduce or end purchases), or cut staff. Mirko Draca, Stephen Machin, and John Van Reenen (2008) found evidence of a negative relationship between a minimum wage introduction in the UK and firm profitability. The third category of potential payers are employees who lose employment because customers exit or because business owners reduce staff. The beneficiaries of a minimum wage hike are staff whose salaries are increased, and who remain employed.

In a sense, David Lee and Emmanuel Saez (2008, Abstract) reinforce Freeman with their finding that even though a minimum wage increase leads to unemployment, it is: “nevertheless desirable if the government values redistribution toward low wage workers and if unemployment induced by the minimum wage hits the lowest surplus workers first.”

Joseph E. Stiglitz (1996, A21), another minimum wage supporter, noted that the effects of the minimum wage depend: “on the level at which it is set and on the structure of the labor market.” He explained that if almost no one’s pay is as low as the minimum wage, a small increase will have almost no effect. In other words, an increase in the minimum wage will not hurt (or help) if its impact is insignificant.

The *Post* denied that minimum wage increases had a significant impact on employment and asserted with virtually no evidence that it helped more than it hurt (The minimum-wage increase, 9/27/99). Peculiarly, the *Times* Boost the minimum wage, 4/5/96) in its most thorough editorial treatment of the subject that we have found admitted that the minimum wage had the potential to generate unemployment:

Will low-paid workers lose their jobs if employers must pay

higher wages? Yes, but there is widespread agreement among economic studies that the impact would be very small. A 90-cent wage hike would probably wipe out fewer than 100,000 of the approximately 14 million low-paid jobs in the economy— less than a 1 percent loss. Indeed, 100,000 represents only about half the number of jobs the economy typically creates each month.

This editorial went on to describe the importance of an increase in the minimum wage to a family of four, and it attempted to refute a Republican party criticism that 40 percent of minimum wage recipients are teenagers, not adults with families.

The nature of minimum wage recipients is a source of considerable conflict between liberals and conservatives as well as labor unions and businesses. For some years liberals and labor unions have framed their campaign to increase the minimum wage as supporting a “living wage” suggesting that those at the minimum wage are adults supporting families (Fox 2006). Conservatives and businesses portray minimum wage earners as teens and young adults working at their first jobs or adults whose earnings are supplemented by the Earned Income Tax Credit and other government programs.

Bureau of Labor Statistics (2013, Table 8, p. 10) figures largely support the conservative-business narrative. In 2012 of those workers making the minimum wage or less, 24.1 percent were 16-19 years old, 26.5 percent were 20-24 years old, 20.3 percent were 25-34 years old, and 21.3 percent were 45-54 years old. (Pay below the minimum wage does not necessarily violate federal law because of legal exemptions.) Of all those at or below the minimum wage 65.2 percent were never married. Those who were married at the time the data were gathered constituted 21.9 percent of those earning the minimum wage or less (Bureau of Labor Statistics 2013, Table 8, p. 10).

Of all those earning the minimum wage or less 51.2 percent worked in the leisure and hospitality industry, 16.4 percent in wholesale and retail, and 9.3 percent in education and health

services. Of those at or below the minimum wage 27.9 percent had not graduated from high school and 29.5 percent only held a high school diploma (Bureau of Labor Statistics 2013, Table 5, p. 7).

The *Times* (Boost the minimum wage, 4/5/96) noted that many Republicans and Democrats prefer Earned Income Tax Credits (covered in a later chapter) to the minimum wage as a way to target assistance to poor families. The *Times* argued that the Earned Income Tax Credit had its uses, but that it easily hurts motivation to work, a long standing conservative theme severely criticized in other *Times* (and *Post*) editorials. The *Times* concluded that a mixture of an earned income tax credit and minimum wage was best suited to help the poor.

Stigler (1946) and the large number of economists who agree with his conclusion that the minimum wage causes job losses at the bottom of the economic ladder assumed that those sectors of the economy for which the minimum wage is especially important (e.g., fast food and hotel industries) were competitive or approximately so. Oren Levin-Waldman (1998, 776) attacks this assumption as a: “theoretical construct with characteristics that simply do not exist in the real world.” However, he does not show why the market model (often called the neoclassical model in debates over the minimum wage) does not apply to the industries that employ relatively low paid workers. Indeed, fast food restaurants and hotels appear to be highly competitive. There are many of both types of establishments, and patrons are free to choose among them. Instead of providing evidence, he resorts to an emotional appeal: “How low do wages have to drop in order for the supply and demand for labor to intersect? What happens, after all, when wages completely bottom out?... Is this not the source of poverty—that people do not receive enough in wages to provide for themselves, and in turn are unable to demand goods and services?” (Levin-Waldman 1998, 776) Levin-Waldman fails to demonstrate that competition is not present and also fails to show that those near the bottom wage levels are earning less than they are worth.

Liana Fox (2006) also attacks versions of the neoclassical model. She does so by ridiculing and exaggerating the assumptions built into these models (e.g., perfect information and hiring and firing without cost). She ignores the function of a model (in economics, physics, engineering, or any other scientific or applied field) as allowing an investigator to understand the basic dynamics of a situation. Models are by their nature simplifications of reality necessary to guide scholars and government policymakers; they are constructions of narrow utility and not to be believed uncritically. Models of bridges in undergraduate mechanical engineering classes should not be built and opened to traffic, but they are useful nevertheless.

Worse yet, Fox does not offer a counter model even along the lines of Freeman's neoclassical variant where two of the three possible outcomes of a minimum wage increase are not job losses or at least not immediate ones. Some who believe that the minimum wage can be increased without hurting the employment of some workers counter the neoclassical model with a theory that centers on monopsony. Readers may be more familiar with a monopoly in which one seller (such as an electrical utility) faces many buyers. When an industry is structured this way and there are no government regulators in place, the monopoly will over charge and/or under deliver. Under a monopsony the situation is reversed: there is one buyer and many sellers. A theory of monopsony applied to the minimum wage or any employment situation features a single employer and many potential employees who are selling their labor. Theoretically, monopsony can arise in small and isolated towns where there is only one employer. A monopsony can profit from its position by underpaying employees.

Like Fox, Alan Manning (2003, 13) ridicules empirical deviations from the neoclassical model as rendering the neoclassical model almost invalid. He sees an admission that the neoclassical model is imperfect as a slippery slope since: "once one concedes that the competitive model is not literally true, it

becomes an empirical matter just how good an approximation it is.” (p. 13) Of course, this is true of any scientific or applied science model. Later, he promotes monopsony models that are easily as simplified as the neoclassical model that he characterizes as unrealistic (Manning 2003, Chaps. 2-3). For example, one monopsony model assumes that a firm’s employees are all paid the same wage (p. 117).

Manning bases his advocacy of monopsony models on two assumptions. One is that “there are important frictions in the labor market,” a point with which few if any neoclassical theorists would disagree (p. 3). He asserts that the existence of frictions means that: “if an employer and worker are forcibly separated one or, more commonly, both parties would be made worse off.” (p. 3) From this reasonable observation he concludes that this situation “gives employers some market power over their workers as a small wage cut will no longer induce them to leave the firm.” (p. 3) But Manning downplays the implication of his own definition: friction also means that employers do not want to lose productive employees because the cost of replacing them (including the expense of hiring and training) may be far from trivial. That expense will vary with economic circumstances, among businesses, and among employee skill levels.

Manning’s second basic assumption is that “employers set wages.” (p. 3) It is not clear how Manning defines the word “set,” but he uses it to mean substantial market power in some sense. He is not saying that employers dictate wages, but his use of “set” establishes employers as superior in power to workers.

Early in his book Manning admits that frictions can work in favor of employer or employee and that there is no theoretical reason to believe that one side or the other holds an advantage, but he quickly repeats that the relationship is one-sided in favor of employers (p. 5). He quotes Alfred Marshall, commonly regarded as the father of neoclassical economics: “labour is often sold under special disadvantages arising from the closely connected group of

facts that labour power is perishable', that the sellers of it are commonly poor and have no reserve fund, and that they cannot easily withhold it from the market.'" (Manning 2003, 5 from *Principles of Economics* 1920, 471) Manning adds that manual workers are less skilled at negotiation over salaries than more sophisticated employers. However, employees do not necessarily need to negotiate for raises; they can locate better jobs elsewhere if they are available and then move.

The importance of neoclassical or monopsony models to a discussion of the minimum wage is that under competitive circumstances employees are essentially paid what they are worth. An increase in the minimum wage forces the kinds of changes that Freeman describes, and directly or indirectly a result can be unemployment for some workers. Under monopsony an employer is paying less than would be the case in competitive circumstances. If it is not extreme, an increase in the minimum wage can bring pay up to the levels they would be under competition, and the employer can absorb the extra cost without releasing employees. A theoretical argument can be made that in the right circumstances an increase in the minimum wage can *increase* employment under conditions of monopsony. Even Stigler (1946, 360-361) in his original study demonstrates that employment could increase following an increase in the minimum wage. However, he argues that the selection of the minimum wage amount would have to be unrealistically perfect. Among other conditions, it must be set at different correct points that would vary among industries rather than applying across the board to all sectors and all hourly employees. Manning (2003, 345) makes essentially the same observation.

The most important point regarding monopsony is that it rarely exists especially in the highly competitive restaurant and hotel businesses upon which economists investigating the minimum wage focus. We have yet to read an advocacy of the minimum wage that documents the existence of a significant monopsony in the United States. Manning (2003, 360-361) admits that attempts to document

the existence of monopsonies through “direct evidence” have proven “not so easy to achieve in a credible way.” He then lists 15 symptoms of the presence of large employer market power including: “substantial wage dispersion in the labor market;” lower separation rates “for high-wage workers;” and “equal pay legislation does not harm the employment of women.” (p. 361) It is difficult to understand why these and other supposed symptoms on this list constitute indications of monopsony and not just occurrences in a competitive market with common-place explanations.

Instead of detecting the presence of monopsonies via symptoms of questionable validity, Charles Brown, Curtis Gilroy, and Andrew Kohen (1982) relied on direct observation. They cited a 1962 study by Robert Bunting who examined 1,774 U.S. labor markets (mostly counties) to determine the frequency with which a few businesses dominated labor markets. In only 3.7 percent of the labor markets did the four largest companies employ half or more of the unskilled and semi-skilled workers (p. 101). We see no reason to believe that monopsonies are more common today.

Many minimum wage studies through the late 1980s utilized time series analysis that tried to discover whether an event (sometimes called an interruption) had a statistically significant impact on the dependent variable such as employment. Time series models included variables that sought to control for such factors as business cycles, changes in economic activity, labor supply, and school enrollment that might affect employment independent of the minimum wage (see literature review by Brown, Gilroy, & Kohen 1982, 497). With few exceptions, the studies discovered statistically significant drops in employment following a minimum wage increase. Such a direct and clear finding repeated many times would seem to be convincing or at least plausible evidence of the minimum wage’s negative impact on employment. However, these studies typically lacked a control group—a geographical area in which the minimum wage had not been increased. Since this early work was conducted before the advent of state and local minimum

wages above the level of the federal minimum wage, no comparison group was available. Nevertheless, the results of many time series studies with appropriate statistical controls over a period of years is not to be dismissed.

In a study cited approvingly by liberals, David Card and Alan B. Krueger (1995) criticized time series studies as not including control jurisdictions (counterfactuals). With the later proliferation of state and local minimum wages above the federal level, the use of control jurisdictions became feasible, but Card and Krueger (p. 183) maintained that, among other faults, time series studies are unable to apply adequate statistical controls to changes in the economic environment that are likely to occur for the multi-year time span encompassed by time series studies.

Card and Krueger (1995) sought to rectify the weaknesses of time series studies with a different research design consisting of comparisons of a state or locality that increases its minimum wage and a control state or locality that does not. They surveyed fast food restaurants in New Jersey and eastern Pennsylvania before and after the minimum wage was increased in New Jersey but not Pennsylvania. Comparing the two adjoining and perhaps similar regions, they concluded that the minimum wage did not cause job loss and may even have increased employment.

A serious problem with using geographical pairs as Card and Krueger and other authors do is whether the two are sufficiently similar for one to serve as a valid control. Card and Krueger and other authors discussed below do not make convincing cases for the comparability of their geographical pairs. This is easily as important as the central criticism that Card and Krueger raise against time series studies. In one instance, the variables that must be controlled may change over time and in the other the variables constitute geographical differences. It is not clear that managing geographical differences can be done more rigorously. We return to this point in a few paragraphs.

Another drawback with Card's and Krueger's and other authors'

geographical comparisons is that, to avoid time effects that they believe plague time series analysis, their time spans run just before the minimum wage increase and only a few months after. This is a problem because employment effects may easily extend two years and even more before or after a minimum wage increase for a total span of four or more years (Neumark & Nizalova 2004). It seems likely that businesses require considerable time to respond to the cost increase of a major factor of production by perhaps investing in labor saving equipment (Brown 1995). Another problem arises in the period before the minimum wage increase: some businesses, aware of the likelihood that a minimum wage increase will occur, make changes before the event. Those changes will be missed by the short pre-event time span that is part of Card and Krueger's study and others with similar research designs. Also, there usually is a period of months after a minimum wage increase is signed into law before it is implemented. Arindrajit Dube, T. William Lester, and Michael Reich (2010, 956), who are methodologically and ideologically allied with Card and Krueger, make this point observing that in studies of federal minimum wage increases: "restaurant employment is both unusually low and falling during the two years prior to the minimum wage increase, and it continues to fall subsequently." Recall also that two of Freeman's three scenarios that might follow a minimum wage increase suggest that a time period of indeterminate length could end in job losses.

The Card and Krueger work also suffers from implementation weaknesses. Their data were drawn from amateurishly worded telephone surveys of restaurant managers. In a detailed critique Finis Welch (1995) makes clear that the survey questions almost guaranteed unreliable information. Reinforcing Welch's critique, David Neumark and William Wascher (2000) examined payroll records from the same kinds of restaurants in both states and discovered a significant decrease in fast food employment in New Jersey after the increase in the minimum wage compared to Pennsylvania.

Yet another weakness in the Card and Krueger (1995) study is that the only explanation they offer for their finding that minimum wage increases employment is monopsony, but the fast food restaurants they examine (Burger King, Kentucky Fried Chicken, Wendy's, and Roy Rogers) are in fact highly competitive not only with one another but with many additional chains, local independent restaurants, and other establishments such as grocery stores that offer take-out food.

The Card and Krueger study was the first of a number that found no relationship between minimum wage increases and job losses. David Neumark and J. M. Ian Salas (2013) point to two such studies as important and typical. They were written by Arindrajit Dube, T. William Lester, and Michael Reich (2010) and Sylvia A. Allegretto, Dube, and Reich (2011). Dube, Lester, and Reich concentrate on comparisons of adjoining counties in two states, only one of which has increased the minimum wage above the federal level. This returns us to the problem of geographical comparisons discussed a few paragraphs above. Dube, Lester, and Reich (2010, 950, Table 1) present descriptive statistics of their sample of contiguous border county pairs. We see no justification based in these statistics for their observation that these pairs are "relatively similar" and represent "good control groups for estimating minimum wage effects." (pp. 949- 950) Furthermore, Neumark and Salas (2013, 26) identify a substantial unexplained difference in the number of cross- border county pairs identified and the number that were actually used. In addition, Neumark and Salas (p. 27) suggest that even when adjoining counties are similar, workers responding to the minimum wage increase may move from one county to its neighbor across the state border thus complicating the analysis. At the same time, price changes between the two counties may occur resulting in more analytical difficulties.

Allegretto, Dube, and Reich (2011) also offer unconvincing statistical techniques that erase evidence of a negative minimum wage impact on employment. For example, they display a plot for the

years 1990-2009, a period of multiple minimum wage increases (p. 219, Figure 2), that shows employment dropping eight quarters before increases in the minimum wage, then dropping at an accelerated rate eight quarters after the increase, then dropping at a slower rate for another four quarters, and finally dropping again at an accelerated rate from eight to twelve quarters after the minimum wage increase. They are unhappy with what they describe sarcastically as the “response” prior to the implementation of the minimum wage increase (p. 220).

We addressed this point earlier: considering that minimum wage increases typically become law months before they take effect, this response seems quite reasonable, and even Allegretto, Dube, and Reich admit that possibility. However, their preferred explanation is that: “the measured effects prior to the policy reflect spurious pre-trends due to unobserved heterogeneity: that minimum wage changes have tended to occur at times and places of unusually low teen employment growth.” (p. 220) They do not indicate why the second explanation is better. The authors (p. 220) then correct for what they call “state-linear trends” and “division-specific time effects” which strip away the minimum wages’ reduction in employment. The authors’ data, uncorrected for “unobserved heterogeneity,” appears to show clear negative employment effects.

A recent more straightforward study by Joseph Sabia, Richard V. Burkhauser, and Benjamin Hansen (2012) provides further evidence of employment reduction following minimum wage increases. They took advantage of three State of New York minimum wage increases from \$5.15 to \$6.00 to \$7.15 in the years 2005-2007. The New York changes were compared to the unchanged minimum wages of Pennsylvania, Ohio, and New Hampshire. Their data showed a substantial negative impact on the employment of New York high school drop-outs of 16-29 years of age. A time series plot of New York and combined data for the three control states shows a substantial increase in the employment of high school drop-outs in New York from 2002-2004, the period before the

minimum wage increase (Figure 1, p. 363). In the same period the combined figures for the other three states were relatively level. From 2004-2007 employment for New York dropouts went down sharply while those in the three control states drifted slightly lower in 2005, slightly higher in 2006, and slightly lower in 2007. Overall, New York employment among 16-29 year old high school drop-outs fell much more than in the other states.

The destructive impact of the minimum wage on employment levels of the low wage workers it is supposed to help is only part of the case against the minimum wage. Richard V. Burkhauser and T. Aldrich Finegan (1989; 1993) show that contrary to imagery employed by minimum wage advocates, there is a very weak relationship between workers' hourly wage rates and whether their family is in poverty. One reason was discussed earlier: a large percentage of low wage workers are teenagers and young adults who live at home with their parents. Furthermore, many low wage workers are part of households in which more than one person works (Burkhauser & Finegan 1989, 60). If the minimum wage primarily increases the pay of teenagers and young adults in middle-income families, it is an ineffective and inefficient device for attacking poverty. In addition, many low income families have no employed workers because they are single-parent households on welfare or disability; a minimum wage does not benefit them (Saltsman 2012).

David Neumark (1995) also studies the effect of the minimum wage on teenage job seeking. He finds that an increase in the minimum wage substantially reduces the employment prospects of low skill teenagers who are displaced by more highly skilled teenagers. In addition, some of the high skill teenagers, attracted by higher wages, leave school before graduation, a damaging unintended effect of the minimum wage.

Others have also examined the broader impact of the minimum wage on poverty. Robert B. Nielsen and Joseph J. Sabia (2012) studied the relationship between the minimum wage and poverty

directly. They used the U.S. Bureau of the Census Survey of Income and Program Participation (SIPP) to gauge the impact of minimum wage increases from 1996-2007 on such indicators of poverty as financial insecurity, housing insecurity, and food insecurity (p. 5). They found little evidence that minimum wage increases improved the economic conditions of those of working age (16-64) or workers. There was also little indication that the minimum wage improved the conditions of those without high school diplomas or young workers (16-29 years of age).

Like many other researchers who have looked at these or similar questions, Nielsen and Sabia (2012) concluded that a major reason for the minimum wage's lack of impact was that so many of the poor do not work. In addition, the minimum wage reduces employment among low-skilled workers and is "poorly targeted to the working poor." (p. 6)

Beginning in 1961 nearly every time the subject arose liberals favored increases in the minimum wage. This stance may have given them the feeling that they were not obliged to justify the minimum wage in principle. Liberals provide little theory of market failure justifying the minimum wage. Their arguments are mainly expressions of sentiment. Only four editorials from the *Times* or *Post* that we could locate contained any theory or data making the fundamental case that the minimum wage should exist.

Partly because they often advocate eliminating the minimum wage, conservatives may feel the need to address its theoretical foundations. As a result, conservative editorials are much more searching and make more sophisticated theoretical points and contain greater informational content. For example, one *National Review* article (Pay hazard, 5/1/95) cited a Congressional Budget Office estimate that a minimum wage increase proposed by President Bill Clinton would cost 500,000 jobs. The same article also discussed the high correlation between minimum wage increases and teenage and nonwhite unemployment, cited a study by two Ohio University economists who found a relationship between increases

in the minimum wage and recessions, and summarized the Neumark and Wascher (2000) study cited above. This *National Review* article contains more analysis and data than all of the *Post* and *Times* editorials on this subject combined that we have been able to locate.

The dominant liberal position favoring the minimum wage appears to be ideologically consistent as liberals press for greater equality, but this is an illusory consistency. The minimum wage often harms those it is supposed to help. Furthermore, liberals are ideologically inconsistent in their support of the minimum wage if they favor applying government power to market operations only when market breakdown has occurred. Typically, when liberals advocate initiatives intended to resolve mere market misbehavior, after a passage of time they recognize their mistake and withdraw. That pattern has not emerged in the case of the minimum wage.

The conservative position against the minimum wage is ideologically consistent in terms of conservatives' preference for minimal government involvement in the market. However, conservatives emphasize the damage done by the minimum wage on employment at the bottom of the economic scale even though conservatives usually pay little attention to economic equality and often oppose liberal egalitarian initiatives. It could be that conservatives added the equality theme because it is attractive and part of sound economic theory. However, the odor of self-interest permeates the conservative position. As we noted above, the business community with whom conservatives are often allied generally opposes the minimum wage.

The minimum wage is another initiative that spans the market breakdown/failure model and the JBG model. Liberals emphasize equality as they point to what they describe as shamefully low wage levels. They explain low wages as market breakdown in the form of an unmeasured and unexplained lack of competition in the industries that employ the most low wage workers, but they do not look to this questionable thesis with its lack of empirical evidence for much support. Instead, they dramatize the plight of those at the

bottom of the economic scale, and assume that the government can successfully dictate higher pay. Conservatives believe that market dynamics result in people being paid what they are worth. On occasion, some are paid more than they are worth and others less, but mistakes are adjusted. Liberals almost never address this point.

With few exceptions liberals with their emphasis on inequality and conservatives with their reliance on the market think about the minimum wage differently, and they usually talk past each other. Liberals are consistent with the JBG model when they emphasize equality (except that the minimum wage does not in fact enhance equality), but they are ideologically inconsistent when they ignore a functioning competitive market. Conservatives think about the minimum wage using the logic of market economics, and that approach leads them to place an unusually heavy emphasis on equality.

Antitrust

The first antitrust initiatives were responses to the monopolies and oligopolies that developed during the early to middle stages of the Industrial Revolution. Lacking effective competition, monopolies and oligopolies tend to charge more than they could if they had competition and/or tend to provide less effective service or products than they would under competition. In other words, as we have pointed out in other policy areas, monopolies and oligopolies over charge and under deliver (Epstein 1999).

In general, competition prevents the formation of monopolies and oligopolies. Ordinarily, the profits that a monopoly or oligopoly generate attract companies that enter a field and compete, resulting in lower prices and improved products or services. However, a few fields can become dominated by a monopoly because of high capital requirements and the fact that only one company can operate profitably in a given geographical area. Railroads before the turn of the previous century are an example. In some cases only one company served a given region. Pack-horses or horse drawn wagons were not competitive on a cost or speed basis (Robertson 1973, 137-138). The

potential for the railroad to abuse its power while still undercutting the cost of horses was manifest, and railroads realized that potential in geographical areas lacking competition from water transportation (Anderson & Wilson 2008). Interestingly, the U.S. shipping industry enjoyed monopoly power that was substantially reduced by the development of railroads (Holmes & Schmitz 2001). Presumably, in areas where water transportation was an option, it also reduced railroad rates below what they would be without competition. According to Ross M. Robertson (1973, 268), in the period 1860-1920 when railroad construction boomed: “most companies were at one time or another in financial difficulties...” Albert Fishlow (1996, 596) reports that in the period 1870-1910 passenger ticket prices were cut by 32 per cent and shipping rates dropped over 51 percent. Even accounting for a general drop in prices in this period, railroad costs were dropping. In later years trucks, airfreight, and pipelines drove rail transport costs still lower (Zeis 1969).

Despite the general reduction in railroad costs, rates in particular uncompetitive locations were high and the subject of intense complaint especially on the part of farmers who alleged discrimination in favor of large shippers. Furthermore, by the turn of the century seven organizations controlled two-thirds of the track mileage and 85 percent of the earnings (Fishlow 1996, 599).

The first federal antitrust statute, passed in 1890, was the vaguely worded Sherman Antitrust Act. It targeted monopolies and trusts (two roughly synonymous terms) that restrained trade unfairly. Mathew O. Tobriner and Louis L. Jaffe (1932) describe the Sherman Act’s wording as inveighing against monopolies more than attacking them effectively. Amid the bombast, the act fails to define any of its own key terms including restraint of trade, trust, and monopoly. Ernest Gellhorn (1994, 121) observes that: “There was no connecting thread for identifying the line between...undue exercises of private market power and competitive activities that should be promoted or allowed to go unchecked.”

Northern Securities v. United States (1904) was the first substantive anti-trust case decided by the Supreme Court. There appears to be little doubt that the Northern Securities Company's sole reason for existence was to facilitate collusion between two formerly competing railroad operations. By any dictionary definitions of restraint of trade and monopoly, Northern Securities fit the specifications of the Sherman Act, and it was declared illegal (Bickle 1904; Breit & Elzinga 1989, 120, 123-131). While this ruling appeared clear and unassailable, subsequent decisions in the next decade concerning such matters as toilet manufacturing and distilleries appeared arbitrary and political. There followed two major cases against Standard Oil and American Tobacco in 1911.

Standard Oil was a combination of companies in several states all under a single board of directors. It grew partly by acquiring competing companies, arranging favorable rates with railroad companies, and forcing competitors out of business. These and other aggressive practices helped to cut the price of kerosene (at the time the company's primary product) which was used for lighting. Ultimately, Standard Oil reduced the price of kerosene below that of whale oil, kerosene's primary competitor. These cuts may have been implemented to destroy the whaling companies, but the lower prices were welcomed by consumers. Standard Oil also operated more efficiently than rivals through economies of scale and more sophisticated use of technology. For example, most competitors discarded gasoline then regarded as a useless byproduct of kerosene production, but Standard Oil used it to fuel production equipment. The company also found ways to employ other byproducts viewed as waste by competitors. Examples included synthetic beeswax and Vaseline (after having bought the company that invented it). By the turn of the century Standard Oil was responsible for roughly 90 percent of the production of petroleum products and 85 percent of their retail sales.

In 1911 the U.S. Supreme Court declared Standard Oil a monopoly under the Sherman Act and ordered it broken into 34

separate companies. Standard Oil probably constituted a monopoly at least when the case was originally filed, and some of the ways it achieved that status could be characterized as unfair restraint of trade, although again, this phrase was defined in the Sherman Act. By the time the case was decided, the company's share of various petroleum markets was dropping, and it faced growing competition.

American Tobacco Company was formed in 1890. Between then and 1907 when anti-trust charges were filed against it, tobacco companies and their output expanded and the retail price of many tobacco products dropped. American Tobacco grew partly by buying out competitors, and it appears that the company did not utilize tactics that were as harsh as those employed by Standard Oil. American Tobacco did not behave like a monopoly, but if it had, consumers not wanting to pay excessive prices could have stopped using its products. Also, the amount of capital required to enter the tobacco business was trivial compared to oil drilling, refining, and retailing. It is difficult to see how American Tobacco could have been regarded as a monopoly. However, the company was found guilty of violating the Sherman Act and divided into four separate parts.

The Sherman Act's weaknesses were manifest, leading Congress to pass the Federal Trade Commission (FTC) Act and the Clayton Act in 1914. Both statutes were intended to address the problem of monopoly by banning so-called unfair competition (Bunn 1949, 987-988). Like the Sherman Act, the Clayton Act was no model of clarity. For example, Section 2 prohibited price discrimination between purchasers of identical commodities where the pricing would substantially "lessen competition or tend to create a monopoly..." (Breit & Elzinga 1989, 2-3) Section 3 made it unlawful to lease or sell a product under the condition that the lessee or purchaser shall not use or deal in the goods of a competitor where the effect of the condition will be to "substantially lessen competition." (Breit & Elzinga 1989, 5) Section 8 forbade interlocking directorates between companies with resources totaling

more than \$5 million. However, as late as the 1980s definitions of monopoly and monopolization were still murky (Malina 1987, 997-998). Furthermore, phrases such as “substantially lessen competition” leave considerable room for interpretation. More than a century after passage of the Sherman Act William J. Baumol and Janusz A. Ordover (1994, 16) described antitrust laws as obscure and ambiguous making them “convenient tools for those enterprises on the prowl for opportunities to hobble competition.” (See also Posner 1969)

One problem in applying the Sherman and Clayton Acts and subsequent statutes and court decisions is that of specifying the relevant market over which a supposed monopoly holds sway. For example, in their early years in geographical areas not served by water transportation, railroads were the only practical means of long distance shipping in reasonable periods of time. However, as trucks, airplanes, and pipelines became practical alternatives, the markets in which railroads operated were expanding drastically as did competition; railroad companies continued to enjoy a monopoly of railroads but not of transportation. Another example of specifying the relevant market came in the late 1940s and middle 1950s when the Justice Department charged DuPont with monopolizing cellophane. When the case was filed the company controlled all of the cellophane market if the production of a licensee is included (Williamson 1995, 46-47). But DuPont argued that the market at issue was not just cellophane but flexible wrapping materials including wax paper and that the company’s share of this wider market was less than 20 percent (Williamson 1995, 47). The courts sided with DuPont.

Another problem in applying antitrust regulations is specifying what constitutes a monopolization offense (Malina 1987, 998). When this issue arises, it often concerns a company that has won a high level of market power legally by, for example, offering unique or extraordinarily high quality services or products. Standard Oil was an example, and we will see several more below.

The FTC's responsibilities in the 1914 legislation that created it appeared not to be precisely defined except that it would act in some way against price discrimination, interlocking directorates, and other devices widely used in restraint of trade. As the years passed, the FTC concerned itself less with ill-defined anti-trust issues and more with what would later be called consumer protection. Writing in 1949 Charles Bunn observed that the Federal Trade Commission Act had not "been thought to embody a uniform law applicable to suits involving unfair competition." (pp. 990, 998).

Anti-trust was of little importance in the immediate post WWI years (Kovacic 1994a, 239-240). In the 1920s in *United States v. United States Steel Corp.* (1920) and *United States v. International Harvester* (1927), the Supreme Court ruled that neither company was guilty of anti-trust violations. Both controlled roughly half of their respective markets (Keller 1981, 75; Williamson 1995, 9-10). United Shoe Machinery Company which dominated 90 percent of its market also escaped censure in the 1950s. The District Court's position in *United States v. United Shoe Machinery Company* (1953) was that size alone did not prove anti-trust guilt; bad behavior also was required.

Antitrust legislation and antitrust cases are often initiated by competing corporations cheered on by liberals (in cases that are sufficiently consequential for ideologues to pay attention); however, during the Great Depression many liberals including some in Franklin Roosevelt's administration also advocated industrial collaboration to fight some of the effects of the economic downturn (Tobriner & Jaffe 1932; Hillebrand 1981). This sort of "good cartel" could legally violate anti-trust laws and even the spirit of anti-trust (Hillebrand 1981). The National Industrial Recovery Act of 1933, the best example of New Deal encouragement of cartels, was held unconstitutional in 1935. The balancing of antitrust law versus other laws allowing or even mandating cartel-like behavior is an extraordinarily complex corner of the legal system that we will not visit, but these laws' inconsistency to the point of incoherence is

clear.

The New Deal reversed its friendly attitude toward good cartels with an antitrust prosecution of the Great Atlantic and Pacific Tea Company (A&P) which invented the modern supermarket and reduced food prices through the efficiency of its operations and economies of scale (Gellhorn 1994, 122-123). Although consumers benefitted from A&P's operations, small traditional stores were suffering from the competition. The company was fined and placed under federal restrictions.

In 1937 the Department of Justice also pursued the Aluminum Company of America (Alcoa). Due to patent protection, control over U.S. and Canadian hydroelectric facilities required to generate the power needed to make aluminum, and ownership of bauxite mines, Alcoa was the only producer of aluminum in the U.S. Nevertheless, Alcoa did not behave like a monopolist probably because it faced competition from foreign manufacturers. A 1944 federal court ruling found that Alcoa was a monopoly, but it was not broken up perhaps due to the war effort. By the end of the war Alcoa successfully argued in court that it was facing domestic competition from the Reynolds and Kaiser corporations, so it no longer constituted a monopoly (Blanch Law Firm 2009). According to William E. Kovacic (1994a, 243), the Alcoa case was followed by government successes extending into the mid 1950s, but those victories were relatively insignificant.

In 1969 the U.S. Department of Justice filed the first of four prominent recent antitrust cases—this one against International Business Machines (IBM). The government maintained that the company practiced predatory pricing, arbitrarily changing its products to weaken competitors, and used lease agreements to keep customers tethered to the company. The case generated tens of thousands of pages of testimony and documentation and ran 13 years. As it ground through the 1970s, the computer marketplace changed drastically, and IBM, while still an important company, faced competition in markets that did not exist or barely existed

when the case was filed. The *Times* (Too big for antitrust, 6/17/81) concluded that the case was a bust, and in 1982 the Reagan administration's Department of Justice dropped it. *National Review*, referencing a Charles Dickens novel centering on an interminable law suit (Bleak House revisited, 2/5/82, 93-94), hailed the decision with sarcasm: "IBM had been accused of keeping its prices too low and its customers too happy" (p. 94)

In the second major recent anti-trust case, the Ford administration's Justice Department filed against AT&T in 1974. There is no question that AT&T together with its equipment manufacturing subsidiary Western Electric monopolized telecommunications in the U.S., but it had done so since the 1930s with the encouragement and complicity of the federal government. The Justice Department suggested dividing AT&T into regional telephone companies and an independent Western Electric, and a settlement along those lines was reached in 1981. The agreement created seven regional companies that came to be known as Baby Bells and barred them from long-distance service, manufacturing, or providing information services. A later court ruling removed the ban on providing information services. It is almost universally acknowledged that when this case was filed AT&T was a major barrier to technological progress as would be expected of a monopoly. There seems little question that the breakup was a success; however, there was no justification for the federal government's creation of this monopoly in the first place. The *Times* (New genie, old duty, 1/3/82) gingerly celebrated the breakup arguing that it would bring beneficial competition, but the newspaper worried that local service quality might suffer. *National Review* (Bleak House revisited, 2/5/82, 93-94; AT&T: What was broken, and why it was fixed, 2/10/84, 18-19) viewed the breakup with equanimity, observing that it would prevent AT&T's abuse of its "legal monopoly." (Bleak House revisited, 2/5/82, 94) Kovacic (1994a) describes the 1969-1982 time period during which IBM and AT&T were notable examples as failing to achieve anti-monopoly

objectives. The AT&T case was an exception to Kovacic's generalization, but given AT&T's monopolistic federal government origins, it was not a victory from which we can draw lessons.

Microsoft was the target of the Justice Department's third and fourth prominent recent anti-trust cases. According to Mark Lewyn (1994), the first case had its origin in a 1989 announcement that Microsoft would end its Windows operating system with version 3.0 due to be released in 1991 in favor of IBM's OS/2 which the two companies were developing jointly. Federal Trade Commission staff viewed the agreement as possible collusion. By the end of 1990 FTC investigators were leaning toward the conclusion that the two companies were colluding, but by then the agreement was falling apart. Microsoft was still promoting Windows and publicly criticizing OS/2 while IBM was consorting with Apple. Meanwhile, news of the FTC investigation became public early in 1991, and the FTC was hearing complaints about other aspects of Microsoft's behavior especially the possibility that the company was using its knowledge of obscure features of Windows to develop applications such as Word and Excel to perform better than competing programs such as WordPerfect and Lotus 1-2-3. The FTC turned the case over to the Department of Justice. The case was settled in 1994 to the satisfaction of the *Times* (A fair settlement on Microsoft, 7/21/94). The agreement prohibited Microsoft from forcing computer manufacturers to enter into exclusive contracts with the company. Also, Microsoft could no longer charge computer manufacturers based on the number of machines they produced regardless of whether they contained Windows.

Soon after the 1994 settlement the Justice Department filed suit against Microsoft to stop it from bundling software such as its Internet browser with the Windows operating system. The *Times* (How to control Microsoft, 11/18/97; Markoff 1997) supported the Justice Department's case. In 1997 Federal District Judge Thomas Penfield Jackson agreed with the Justice Department's charges and

ordered Microsoft to delink its browser from Windows.

Many conservatives sided with Microsoft. Writing in *National Review* D. T. Armentano (1998) argued that Microsoft did not have a commanding position in the PC industry due to a government grant (e.g., AT&T) or because of the nature of its technology (e.g., early railroads). Instead, like Standard Oil and IBM, Microsoft had flourished by satisfying customer needs, and the government was merely punishing superior performance.

In 1998 a federal appeals court panel reversed Jackson and ruled in Microsoft's favor. The *Times* (A mistaken Microsoft ruling, 6/25/98) version of this decision was revealing: "The three judge panel seemed to adopt Microsoft's arrogant claim that it has the right to incorporate its browser, or any other software, into its Windows operating system as long as doing so offers certain advantages to consumers." Again, an antitrust case hinged on a defendant meeting customers' needs, and again, the antitrust argument was that once such predatory behavior swept competitors away, the company could then proceed to overcharge and under deliver even though there was no evidence that it had done so yet. The company was to be punished for possible future occurrences and behavior intuited by judges while, according to the *Times*, offering advantages to consumers.

In 1999 Judge Jackson again ruled against Microsoft, finding that it constituted a monopoly in the Intel PC market. He argued that the company's position could allow it to set a price for Windows substantially higher than it could charge in a competitive market. This was the *Times*' argument. Jackson's exclusion from the Windows universe of competitors such as Apple, Sun, and the Linux operating system was entirely arbitrary. It is akin to accusing General Motors of monopolizing the Chevrolet market. This is the "relevant market" problem that has plagued antitrust theory and cases from the beginning. In fact, in later years Apple, Linux, web-based software, and various mobile operating systems have competed against Windows at least to the degree that they prevent Microsoft from abusing its position. Apple charges substantially more for

comparable computers than do PC companies that build Windows machines, and some versions of Linux and web-based programs are given away. Microsoft's competitors are guilty of the behavior of which Microsoft was accused. Judge Jackson also ignored competition from older versions of Windows. In later years customers refused to buy unsatisfactory new versions of Windows (e.g., the infamous Vista), waiting for better ones, and many potential customers refused to purchase Windows 8 because they found its predecessors adequate for their needs.

In 2000 Judge Jackson decided that Microsoft should be divided into two separate companies. One would manufacture Windows and the other applications programs. The *Times* (Stern justice for Microsoft, 6/8/00) approved; the *Journal* did not (The Microsoft appeal, 3/1/01). Judge Jackson's ruling was rejected by the United States Court of Appeals for the District of Columbia Circuit. Later decisions also supported Microsoft. A disappointed *Times* (Settling the Microsoft case, 11/5/01) described the subsequent settlement between Microsoft and the Justice Department as a "triumph" for the company. A jubilant *Journal* (Back to Microsoft's future, 11/4/02) observed that "Microsoft, taxpayers, and computer users" should celebrate and added: "We've always argued that Microsoft's sin, if you'd call it that, was primarily in giving consumers what they wanted—a standard operating system for hardware and software makers alike." For more than a century technological change rendered quaint many antitrust cases in technologically sophisticated industries after the passage of only a few years (Lewyn 1994). Alan Reynolds (1998, 49) observed that when the FTC began its investigation of Microsoft the Internet was an "obscure academic curiosity."

The Microsoft case is an example of what William J. Baumol and Janusz A. Ordover (1994, 9) describe as the: "use of antitrust to subvert competition." Their study was originally published in 1985, but they could have been describing Microsoft when they wrote: "a firm by virtue of superior efficiency or economies of scale or scope

is able to offer prices low enough to make its competitors uncomfortable is all too likely to find itself accused of predation” (p. 9)

Our four barometer publications lined up as expected with the *Times* and *Post* favoring the Democratic Clinton administration’s case against Microsoft and *National Review* and the *Journal* opposed. However, conservative Republican *politicians* could be found on both sides in ways that appeared largely explainable by self-interest; Republican members of Congress from districts or states containing Microsoft or its opponents lined up in predictable patterns (Bork 2000; *WSJ* The Microsoft portent, 11/11/02). Liberal Democrats appeared more unified in their opposition to Microsoft (*NYT* Left and right with Bill Gates, 5/20/98; Buckley 1999).

A recent case also undermines confidence in antitrust prosecutions. Amazon introduced the Kindle e-reader in November 2007. The Kindle, with its low price, high resolution display, long battery life, and the quickness with which periodicals and books can be wirelessly downloaded made it a success. Amazon quickly followed up with improved models while lowering the price of the original. The company seemed determined to maintain its domination of the e-reader space not only by offering excellent and reasonably priced hardware but by offering e-books for in some cases below production cost. Amazon offered newly published books for \$9.99, widely reported to be below production costs (Killeen 2013, 342). Over the decades, federal antitrust regulators have characterized this pattern as predatory behavior. It was comparable to Microsoft’s bundling of programs with Windows that brought it to the attention of antitrust forces. Given Amazon’s size and below cost e-book pricing this market was unattractive to potential competitors. By 2012 Amazon controlled 90 percent of the e-book market, but the Justice Department did nothing.

As Jared Killeen (2013, 386) explains it, the Sherman Act contains a two part definition of monopoly: “(1) the possession of

monopoly power in the relevant market and (2) the willful acquisition or maintenance of that power as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident.” Amazon appeared to fit both standards.

Many book publishers disliked Amazon’s pricing because it tended to degrade book prices in general. At this point, Apple released its iPad tablet which can also be used to read e-books, but the company hesitated to challenge Amazon. Until this time the relationship between publishers and retailers was similar to that between most manufacturers and retailers: publishers sold to retailers at wholesale prices and the retailers offered the products at whatever price they wanted. Apple and apparently all publishers shifted to an approach by which publishers appointed Apple as their agent. Here Apple would sell e-books at prices set by publishers. Apple (or other retailers) received 30 percent on each book (Killeen 2013, 345). Amazon had no choice but to agree and e-book prices were generally increased.

Having ignored Amazon’s actions, in April 2012 the DOJ sued Apple and five major publishers (*United States v. Apple, Inc.*) claiming that they had conspired to limit competition in the sale of e-books. In a preliminary hearing presiding Judge Denise Cote predicted that the DOJ would win. A year later her prophesy was confirmed when she ruled that Apple and the publishers had colluded to fix prices. The pricing approach that Apple and the publishers took was not unusual, but there seems little doubt that they had cooperated to raise prices. On the other hand, the increased competition may have resulted in a drop in the price of trade e-books (defined as a general interest book) to \$7.34 from \$7.97 in the two years after Apple and the publishers began the new regime (*WSJ* Guilty of competition, 7/11/13). Judge Cote was not convinced by the price drop because, she said, Apple did not perform an analysis that demonstrated a causal relationship between greater competition and prices.

Even the *New York Times* (Apple pays dearly for price-fixing,

8/9/13) was skeptical of the government's case. In a hearing in August 2013 the DOJ announced that it would institute a plan that would "restore lost competition." Meanwhile, the DOJ: "ignored the potentially bigger anticompetitive force in the e-book market—Amazon..." (*NYT* 8/9/13)

Apple appealed the case to the U.S. Supreme Court, but it refused to hear it. The *Times*' view of this case was that Apple engaged in price fixing but that Amazon was at least as bad. The *Journal*'s (Apple's antitrust anticlimax, 3/8/16) version was that Apple was punished for "letting publishers set the prices of their own intellectual property on the iPad."

The DOJ's and Judge Cote's handling of Amazon, Apple, and the publishers in the early stages of a technological revolution demonstrate that neither knew what they were doing. Judge Cotes prejudged the case, the DOJ ignored what may or may not have been a temporary Amazon monopoly, and they appeared to have little understanding of the arrangement between Apple and the publishers. Doubtless, Apple and the publishers were trying to increase book prices, but it is possible that the greater competition that they introduced reduced prices. The history of antitrust suits launched in the middle of technological change suggests that corporate customers and the economy as a whole would be best served by the federal government doing nothing instead of acting in ignorance.

We considered including a recent antitrust case against Visa and MasterCard, but it morphed into multiple cases involving several issues, so we decided that it was not worth the space we would be obliged to devote to it (them). In brief, the first case was filed in 1998 by the DOJ against Visa and MasterCard (Gilpin 1998). The DOJ accused them of restraining competition and limiting consumers' choices. The suit charged that both companies were controlled by the same large banks, a situation that the government argued stifled competition. In addition, both companies ban member banks from offering competing products such as American Express and Discover. When the suit was filed Visa and MasterCard had 75

percent of the credit card business. The trial began in 2000 and was heard by Federal District Judge Barbara S. Jones.

In 2001 Judge Jones ruled that Visa and MasterCard must stop barring their member banks from offering competing credit cards (*NYT* Visa and MasterCard Ordered To Allow Rival Cards at Banks, 10/10/01, C17). However, Jones ruled against the government in refusing to order that Visa and MasterCard change their governing structure: “The court finds that the government has failed to prove that the governance structures of the Visa and MasterCard associations have resulted in a significant adverse effect on competition or consumer welfare.” (*NYT*, 10/10/01) If this had been the end of Visa’s and MasterCard’s antitrust problems, we would have a case of an anti-competitive practice halted by a decisive ruling combined with the same judge unaccountably allowing the continuation of a governing structure that seemed to be a perfect example of a small but powerful trust. We are not sure what conclusions we can draw from this combination. Making these matters even murkier, more issues and suits appeared involving Visa and MasterCard debit card policies and so-called interchange fees. Elements of these cases extended into 2016, marking almost two decades, and they might continue beyond that point.

William E. Kovacic (1994a, 229) is consistent with much of the large antitrust literature in describing the history of antitrust efforts as: “largely a chronicle of costly defeats and inconsequential victories.” Some antitrust cases are examples of market misbehavior, a few represent market breakdowns in the form of real monopolies, and still others are examples of efficient markets operating as they should. There have been remarkably few instances of actual monopolies that can accurately be described as instances of market breakdown. The best on-going example is electric utilities, but their pricing is regulated at the state level which is outside the purview of this study. Among major national antitrust cases the only ones to qualify aside from the Visa-MasterCard-bank governing structure, are early railroads, possibly (and possibly not)

Standard Oil, and Alcoa for a short time. Aside from *Northern Securities v. United States*, railroad monopolies were managed via regulation (described in the next section) rather than antitrust. Antitrust was generally not the correct approach to the railroad industry because railroads tended to form localized and temporary monopolies. Breaking apart a railroad company (in the manner of Standard Oil) that served a single geographical area would have been impossible. AT&T was a true monopoly, but that condition was the result of government policy, not market breakdown.

Kovacic (1994b, 276) rightly highlights what he calls the “power of intellectual visions” in shaping antitrust policy. He points to two especially important works: Carl Kaysen’s and Donald Turner’s *Antitrust Policy* (1959) and Robert Bork’s *Antitrust Paradox* (1978). Kaysen and Turner were trust-busters and Bork was a conservative critic of antitrust efforts. In the antitrust field ideology appears to have its largest impact by way of scholars such as these who establish new intellectual frameworks that guide the thinking of lawyers concerned with antitrust.

Most antitrust cases are initiated by corporate competitors, not ideologues. In major cases such as IBM, AT&T, and Microsoft ideologues weigh in once a case has begun with liberals tending to support accusations of antitrust violations and conservatives defending supposed monopolies (Kovacic 1994b, 297-298). Generally, antitrust is another example of liberals seeing market breakdown where markets were operating efficiently or at worst where market misbehavior is occurring. It also is another example of liberals in major cases pushing for federal action to resolve nonexistent problems or difficulties that competition and technological change would sort out. We suspect that the federal government’s involving itself in the e-book space nearly at its beginning will be another example. Liberal antitrust policy was superficially consistent ideologically in the sense that it appeared to represent attacks on elite corporations, but it was inconsistent in terms of the normal liberal belief in the efficacy of market mechanisms.

It was also inconsistent in that consumers rarely benefitted from the major antitrust cases. The slight JBG element in the liberal position on antitrust represents little more than sentiment.

Regulation of transportation

Regulation is a government function that requires specific individuals or institutions to do or not do certain things (Reagan 1987, 14). By this definition regulation appears to be indistinguishable from criminal law especially since in some regulatory situations criminal law may be invoked. But, ordinarily, in criminal law the police step in when suspicion of criminal activity arises, whereas a government agency performing regulatory functions continuously oversees and intervenes in the activities of specific subjects.

As we discussed above, antitrust was a public policy response to a few real but mostly imagined oligopolies and monopolies that grew out of the Industrial Revolution and later the development of computers and the internet. However, policy makers singled out for different treatment companies such as electrical utilities, telephone systems, railroads, truckers, and airlines that appeared to have a central economic role as well as a special potential to restrain trade unfairly. Matters of service such as prices and functions were central to governmental concerns with these companies.

Early regulatory initiatives at both the federal and state levels were supported by combinations of progressive ideologues and large, self-interested corporations that sought to use government regulatory authority to hobble their competition. Conservatives are hostile to many regulatory activities as interfering with competition to the detriment of the economy as a whole and customers of regulated businesses. As a matter of policy, economic regulators sometimes created and supported inefficient cartels that sought and won governmentally enforced barriers to potential competitors (Horwitz 1986, 141).

During the Great Depression it was commonly said that railroads, trucking companies, and airlines suffered from so-called

destructive competition, an ill-defined theme we will explore later. Congress established regulatory regimes with the authority to prevent new companies from entering a field, determine which companies could service what routes, and set pricing and other detailed operational procedures. Early in the time period of this study in the 1960s liberals were still supporting some elements of regulatory regimes created in the 1870s-1930s.

Railroads

Railroads are the oldest of the regulated public transportation systems. As we outlined previously, in the early days of railroading when a location lacked competition from water transportation, a single railroad company functioned as a monopoly, and conflict especially over discriminatory rates quickly developed between the railroad and its customers. The federal government responded with the creation of the Interstate Commerce Commission (ICC) in 1887. A plethora of state railroad commissions were also brought into existence around the same time and for the same reason. The ICC and state regulators generated a large and confusing array of regulations.

The Transportation Act of 1920 expanded the ICC's authority over railroad rates, profits, and operations. Under this statute the ICC divided the country into four districts, established rates in each, and redistributed earnings from more profitable to less profitable companies. The Transportation Act also created the Railway Labor Board composed of consumer, corporate, and employee representatives to deal with labor disputes (Keller 1990, 53).

In the early 1960s liberals supported continued ICC control over the railroads. For example, in 1963 the *Times* (Railroad survival, 1/4/63) reported that the ICC had allowed the takeover of the Baltimore & Ohio by the Chesapeake & Ohio. The *Times* agreed with the decision, justifying it on the grounds that east coast railroads were engaged in "ruinous competition" with each other and other forms of transportation. Following a long tradition among those who use this phrase, the *Times* failed to define it. The *Times* editorial

sought to allay fears that the merger would produce a monopoly with the power to raise rates excessively by noting that the ICC's regulatory powers and competition with other forms of transportation would keep rates at reasonable levels whatever those might have been. A similar editorial in the *Washington Post* (Too many cooks, 2/16/63) had an unexamined central premise that the regulation of railroads was necessary.

After 1920 the numbers of railroad passengers began to decline as did passenger revenues. WWII troop movement and war-related gasoline rationing brought a temporary upsurge, but passenger service quickly became unprofitable after the war. One reason for the drop was the construction by the states and the federal government of a good quality road system allowing more convenient and cost-effective use of cars and trucks. Interstate highways further hastened the railroads' decline. In addition, conservatives (and increasingly liberals) argued that railroads were suffering economically because they were working under restrictive rules established by the ICC while some trucks all barges, and all automobiles were unregulated. Meanwhile, airlines which later provided added competition were also subsidized by federal, state, and local governments.

One of many examples of damaging ICC interference in railroad operations concerned the elimination of unprofitable routes. Cancellations had to be approved by the ICC, which took some eight months to act on the requests; even then it often did so only partially and sometimes in ways that caused declines in service quality. The ICC also delayed proposed company mergers by many years while the separate companies bled red ink.

Conservatives opposed railroad regulation and favored virtually complete deregulation throughout the time period of this study (e.g., see *WSJ* The car before the iron horse, 3/21/61; Lucky Pakistanis, 8/24/64; *NR* The rail con, 3/28/75; The great train robbery, 5/26/78; A competitive reminder, 10/23/70).

By the 1970s railroads, weighed down by complex regulations

and competition from trucks and airlines, generated their lowest earnings in a quarter century. The *Wall Street Journal* (Railroad diversification, 7/12/71) observed: “if the railroads are to survive they need, among other things, far greater flexibility to alter rates and to rearrange service.” In 1970 Congress attempted to rescue passenger service with the Rail Passenger Service Act which led to the creation of a government-private railroad company named Amtrak. The new entity began operations in 1971 and cut the number of trains that would have been operated by the participating companies in half.

In 1975 the *Wall Street Journal* (A rational rail plan, 5/13/75) endorsed a 1973 report by the Nixon Administration’s Task Force on Railroad Productivity which recommended that railroads be required to compete with one another and other modes of transportation such as airplanes and trucks. This would be done partly by federal regulators permitting railroads to run their own trucks or any other method of transportation. This change would allow a given company to handle a package from origin to destination rather than having it passed from, for example, a trucking company to a railroad. The *Journal* also observed that intermodal systems would facilitate the abandonment of unprofitable tracks. A town located on an abandoned track would still have access to trucks that would connect directly to a railroad owned by the same company. The Task Force’s recommendations were put into effect by Congress in the years 1976-1980.

In 1975 the *Times* (Short haul, 5/22/75) approved President Gerald Ford’s characterization of the U.S. rail system’s physical plant as deteriorating and its finances near collapse. However, the newspaper was not impressed by the President’s proposal that the ICC’s authority over railroads be reduced. The *Times* characterized Ford’s proposed policies as “mundane and familiar” and commented sarcastically that railroads were to be “reinvigorated by an infusion of the bracing air of competition.” The ideologically inconsistent *Times* offered no proposals of its own. The *Post* (Nationalizing the

railroads, 4/8/75) was not as reticent. The *Post* described the condition of railroads in the Northeast as “bleak.” The newspaper saw no option but nationalization with the federal government supporting the rail systems for at least a decade. The *Post* admitted that in general government should not own and operate private businesses, but the newspaper continued, when what amounted to a utility was at the brink of financial disintegration, government was obliged to intervene. At the time this editorial was published, Amtrak was already in operation, and proposals to create the freight-oriented Conrail were on the public agenda.

Congress passed the Railroad Revitalization and Regulatory Reform Act in 1976. Most of the new statute was devoted to the creation of Conrail. The law also transferred to Amtrak the northeast corridor extending from Boston to Washington, D.C. The northeast corridor was extremely busy, but nevertheless ran large deficits. During the presidency of conservative President Ronald Reagan, subsidies were drastically reduced. Today, Amtrak continues to log annual deficits exceeding \$1 billion.

By 1979 the *Washington Post* (Liberating the railroads, 3/24/79) partially reversed its support for regulation and nationalization by endorsing Democratic President Jimmy Carter’s phased in (over five years) railroad rate deregulation. The newspaper opposed a sudden and complete rate deregulation out of fear that it would apply a “sudden jolt” to the economy. The Carter plan kept some limits on route cancellation, and it also applied antitrust laws to railroad mergers.

A year later the *Post* (Tied-up railroads, 6/28/80) had become a full-fledged supporter of railroad (and trucking) deregulation going so far as to complain that a bill being considered by the House did “not go far enough in freeing up an industry that has been hobbled by government regulation for decades.” The alternative to deregulation, according to the *Post*, which was sounding increasingly like the *Journal* and *National Review*, was continued undesirable government subsidies. A few months later the *Post* (Who

gives a toot for Conrail, 3/27/81) diagnosed Conrail's financial problems as caused by trying to operate unprofitable lines due to continued ICC regulations and probable congressional pressure and being saddled with labor contracts dictated by Congress (See also *WP* Free the railroads, 7/26/80).

The Staggers Act of 1980 loosened ICC regulations on railroads allowing increased competition with trucks. In 1981 Conrail ran its first profit. The *Post* (Conrail rolls out of the red, 6/1/83) credited deregulation for Conrail's healthy financial condition: "with less red tape, Conrail could sell services to shippers more easily, and did." In addition, according to the *Post*, labor union concessions also helped as did the abandonment of underused routes. The *Post* did not go so far as to support the Reagan administration's proposal to sell Conrail to Norfolk Southern, but it was trending in that direction (The sale of Conrail, 2/12/85; How to sell Conrail (Cont'd.), 8/25/86). The newspaper's primary concern with such a sale was that it would create the nation's largest railroad raising questions about antitrust. Nevertheless, the *Post* (How to sell Conrail (Cont'd.), 8/25/86) wanted Conrail sold: "You know what will happen if it remains a permanent federal ward. Successive administrations, and various congressmen, will succumb to the temptation to use it as a great well of patronage into which to dip whenever other sources run dry. Conrail would cease to stand for service to its customers, and would increasingly come to mean jobs and favors to be dispensed by people in politics." Again, this editorial was similar to many that appeared in the *Wall Street Journal* and *National Review*. In 1997 two private corporations, Norfolk Southern and CSX, were finally allowed to acquire Conrail.

It took liberals far too long to realize that railroad regulation was counterproductive, but finally they did. The original regulation of railroads in the late 1800s was justified. Market breakdown was a reality in many localities. However, as trucks and airplanes developed into viable competitors, railroad regulation turned into a money losing monstrosity. By 1950 railroad regulation was no

longer needed, and by the mid 1950s that fact was obvious. A condition of market breakdown had become a functioning competitive market as transport technologies developed, and government road construction and airline/ airport subsidies accelerated competition. It should be noted that conservatives questioned and continue to question the need for airline/airport subsidies. Well before 1961 conservatives clearly understood the wastefulness of railroad regulation because it was clear that competition existed.

Destructive or ruinous competition

The concept of destructive or ruinous competition was used to justify many kinds of governmental regulatory programs. For more than a century liberals and self-interested business leaders asserted that regulation would protect against destructive competition that would weaken competitors, either rendering them unable to provide needed services or resulting in oligopoly or monopoly (Wallison 2006, 1; Deneckere, Marvel, & Peck 1997). The destructive competition thesis seemed to be especially applicable to industries such as railroads where extremely large capital investments are required just to begin operations. A monopoly, oligopoly, or cartel generated by destructive competition would be nearly immune from challenge because potential new competitors would face insurmountably high capital requirements and unfair competitive practices that would ruin them. It is an oddity of the destructive competition arguments that cartels were sometimes seen as the unfortunate result of destructive competition as competitors fell by the wayside and at other times as a way to prevent destructive competition as the cartel managed competition, often under government oversight, (Hovenkamp 1989).

Chris Sagers (2006) describes the many decades of international shipping price-fixing cartels regulated in the U.S. by the Federal Maritime Commission and defended using the destructive competition thesis. According to Sagers, in 1914 the view was commonly expressed that shippers could only survive using a

combination of mergers and price collusion exercised by cartels. The assumption that businesses in a given sector have high fixed costs and that these costs serve as a large part of barriers to the entry of the field by new companies, clearly fits shipping.

Overcapacity is another problem that is said to contribute to destructive competition. In shipping, business cycles are a cause of overcapacity as are containerization and other technological developments of recent years. The argument is made that because ships are large, the addition of a single new vessel expands overall capacity non incrementally which can cause the industry to jump from the status of full capacity to overcapacity. Thus, unregulated expansion can supposedly lead to losses and then rate wars. All of this assumes that a company with sufficient capital to buy a large ship is so poorly informed that it pushes the industry into overcapacity and a price war. But, according to Sagers (2006), in recent years the shipping industry developed vessel sharing and other techniques legal even under strict antitrust laws that allow relatively incremental expansion of shipping capacity.

Technological developments in manufacturing are often presented as triggering destructive competition. For example, in the early 1800s the mechanized production of nails generated excess capacity at least briefly. A cartel could temporarily protect the status quo, but if that protection involved increasing the price of nails, more companies would be attracted to the field thus exacerbating the problem. In practice, the answer to the problem of excess capacity due to mechanization was that some manufacturers would leave the field either by going out of business or switching to a different area of manufacturing. The result in the case of nails would be less expensive nails and less costly houses and everything else in which nails were used. This is the history of advancing technology and competition (Smith 1953/1776, 2-22). For the losing companies this competition was ruinous or at least disruptive, but for the economy as a whole the result was a higher standard of living.

Despite the widespread popularity of the ruinous competition

thesis in the late 1800s, early 1900s, and even the mid-1930s, economists and jurists increasingly saw price fixing and the other accouterments of cartels from the customers' point of view. According to Herbert Hovenkamp (1989), by the 1910s and 1920s economists had dismissed the idea of ruinous competition except as a localized and transitory phenomenon. Well run corporations would be able to see that they were investing in areas where over production would arise, and they would stop investing (Isaac & Smith 1985). It is not necessary to assume perfect information and rationality, common features of classical economic models, in order to believe that business managers are not stupid. Nevertheless, the theories of overproduction and destructive competition arise periodically usually as a liberal trope. They played an especially important part in the regulation of railroads long past the time when railroads no longer constituted monopolies (Schweitzer 1986).

There was an almost tender hearted defense of the status quo in some destructive competition arguments. It was said that the fine, hardworking companies in a given field should not be forced out of existence by a Hobbsian war of all against all (Baskoy 2003). But Joseph Schumpeter (1934/1983) made clear that economic development was far from a painless process. By economic development he did not mean the incremental change that might occur as the result of, for example, population growth or compound interest. In his usage, economic development meant revolutionary change. Schumpeter observed that adding limitless numbers of horse drawn mail coaches would not create a railroad. The railroad, an example to which he turned often, constituted a revolutionary innovation and was the basis for true economic development (pp. 65-66). Innovation can take the form of a new good, new quality of an existing good, new manufacturing technique, new markets, a new supply source of raw materials, or a new organizational technique (p. 66). Schumpeter failed to fully define the word "new," but his meaning is clear.

A common characteristic of a true innovation is that it tends to be

developed and introduced by new businesses (Schumpeter 1934/1983, 66). This pattern frequently results in old businesses being supplanted by the new (p. 67). As a destructive force innovation faces opposition. Schumpeter observed: "This reaction may manifest itself first of all in the existence of legal or political impediments." (p. 86) Schumpeter was correct, but his wording was too passive. Impediments do not just exist; defenders of the status quo actively deploy legal and political systems to stop or inhibit an innovation, and regulation is one of their favorite weapons.

Destructive competition is not an appropriate basis for regulation. The replacement of the new with the old is inevitable in the marketplace; it is an integral part of progress. To reuse Schumpeter's favorite example, the coming of railroads doomed horse drawn vehicles at least for long distance travel and freight. The thesis that destructive competition can lead to the demise of relatively weak businesses and the formation of monopolies, oligopolies, and cartels has some limited validity where high capital costs inhibit new entry into a market, but the problem is not destructive competition but monopolies, oligopolies, and cartels. For some decades railroads fit this description in particular geographical areas lacking competition from water transportation, and temporary rate regulation at the federal level was a reasonable response. However, the regulation of railroads went far beyond rate regulation and continued much too long after motor vehicles, pipelines, and airplanes developed into effective competition.

Airlines

When airplanes became a practical means of transportation, the federal government essentially subsidized airlines by using them for airmail. When the awarding of airmail contracts produced a scandal, the Interstate Commerce Commission was assigned the job of overseeing the contract system (Horwitz 1986, 149). Later, federal oversight expanded. John R. Meyer and Thomas R. Menzies (1999/2000) observe, as have many others, that early airline regulation was justified out of fear that destructive competition

between airlines would lead to skimping on maintenance and safety and that competition would end in oligopoly and monopoly at least in some regions (Tretheway & Waters 1998, 48).

The 1938 Civil Aeronautics Act dealt with both air mail contracts and safety and created the Civil Aeronautics Board (CAB). The CAB developed a regulatory regime intended to avoid route duplication and destructive competition. The CAB controlled and discouraged the entry into the airline industry of new companies, assigned routes to particular companies, and established air fares and freight rates. The Board even dictated what airplanes could be used and how their seating would be configured (Meyer & Menzies 1999/2000). Not surprisingly, the CAB was slow to respond to changing technologies from the 1930s to the 1960s. Almost all of the CAB's many critics would agree with Robert B. Horwitz's (1986, 149) conclusion that the result of its activities was high and sometimes arbitrary fares and rates, rigid market shares, and inefficiency (Meyer & Menzies, 1999/2000).

We were unable to find *New York Times* editorials critical of the federal airline regulation system in the 1960s and early 1970s. We might have missed one because for these dates we were obliged to rely on our sample and the paper *New York Times Index*. The first *Times* editorial in our sample critical of the CAB regime appeared in 1975 (The C.A.B. experiment, 7/12/75). It expressed doubts about the usefulness of the CAB's "traditional approach" of controlling airline companies, routes, and fares. The newspaper favored airline deregulation experiments. All of the *Washington Post* editorials in our sample favored deregulation (Airline control, 7/8/77; Toward airline competition, 9/25/77; A setting sun, 7/15/79; Sen. Byrd's complaint, 4/27/79; Sky's the limit, 4/12/79). Conservatives were always opposed to airline regulation (*WSJ* Movies and meals in the sky, 5/3/65; Free the gridlocked skies, 8/17/87; *NR* No parachute for Mr. Keck, 1/26/71; Dole for the airlines, 8/16/74).

Economists regardless of ideological orientation were almost entirely hostile to CAB regulation. Some of these scholars (Caves

1962; Levine 1965; Jordan 1970; Douglas & Miller 1974) performed quantitative analyses comparing intrastate air transport companies in California, Texas, and Florida over which the CAB had no rate setting or routing authority with similar interstate companies over which the CAB had full authority. Unregulated intrastate freight and passenger operations were far more efficient.

Conservative economists in the Ford administration, liberals such as Senator Edward Kennedy and consumer protection advocate Ralph Nader constituted an informal airline deregulation alliance. Kennedy held hearings that jump-started airline deregulation, and Presidents Ford and Carter appointed commissioners to the CAB who experimented with deregulation to the extent possible within the law. The trial runs proved successful, and in 1976 the CAB endorsed deregulation legislation. The first deregulation law for airlines was enacted in 1978 (Airline Deregulation Act).

Although its effects have not been entirely beneficial, most economists join Horwitz (1986, 151-152) in concluding that deregulation brought competition between existing and new airline companies that reduced fares and shipping rates. Deregulation forced substantial concessions from labor unions and resulted in the cancellation of unprofitable routes which left some areas without air service. Michael W. Tretheway and W. G. Waters II (1998, 47) observe that mergers and alliances raised the fear that oligopoly and cartels might be able to overcharge, but they note that weak airline financial profiles do not justify those fears. As of this writing, that is probably still true, although airlines appear to be merging so the formation of oligopolies is a possibility at least temporarily, but railroads, trucks, automobiles, and water transport compete with airlines.

Liberals were somewhat slow to publicly oppose airline regulation, but they and conservatives were both ideologically consistent in this field. Liberals may not have clung to outdated airline regulations the way they did with railroad regulations

because they had been learning lessons from the long, dismal history of railroad regulation.

Trucking

The Interstate Commerce Commission (ICC) began regulating interstate trucking during the Great Depression. In granting the authority Congress lacked the antitrust or safety concerns that arose with railroads and airlines. The cost of entry into the trucking business was trivial compared to those industries, and unlike railroads, trucks could range virtually anywhere. Established trucking companies lobbied for regulation, arguing with no logic, evidence, or any other objective justification that destructive competition would generate oligopolies and monopolies. The argument was also floated that regulation would allow trucks to serve customers in rural areas at a loss by charging relatively high rates on more frequently traveled routes. Railroads also favored the diminution of the trucking industry through regulation (Horwitz 1986,152; Wallison 2006, 5).

Like the CAB with airlines, the ICC could prevent a new company from starting a trucking business. The applicant had to be able to show that the new operation would serve the public without threatening existing truckers. In addition, the ICC established rates and set rules regarding routes and the nature of cargo for each existing company. The result was the same as it was with airlines. The status quo was rigidly protected, prices were higher than they would have been under competition, and myriad inefficiencies prevailed. Of all those inefficiencies the one that probably generated the most journalistic and scholarly ire was a wasteful practice called backhaul. Since the ICC gave trucks licenses allowing them to carry only certain kinds of freight, a truck would sometimes deliver its load and, unable to find an approved type of freight, be forced to make the return trip with a needlessly empty truck.

The Ford administration proposed deregulation in 1975, but opposition came from the wealthy regulated truckers and the well-

financed Teamsters Union. A 1977 court ruling against ICC procedures forced the agency to loosen entry and route procedures. The court held that the ICC must consider the benefits of increased competition to the consumer. Despite continuing opposition from established trucking companies and the Teamsters, President Jimmy Carter and Senator Edward Kennedy began pushing a deregulation bill which became the Motor Carrier Act of 1980.

The Motor Carrier Act transformed the trucking industry by partly eliminating the federal regulation of rates, routes, and the entry of new companies. Within a few years more than 350 established trucking companies closed their doors while thousands of new carriers came into existence. Rates were reduced by 25 percent within three years of deregulation. Full deregulation of trucking took place in 1994 with the cancellation of state regulation of interstate trucking and the elimination of the ICC (Wallison 2006, 5). Further savings followed.

We were unable to locate *Times* or *Post* editorials on trucking regulation in our sample before the mid 1970s or in the *Times Index*—this topic appeared to be a very low priority for both newspapers. We could find no evidence that liberals defended the regulations during the time period of this study, and the presence of liberals such as Ralph Nader and economist Walter Adams on the side of deregulation constitutes additional evidence of liberal ideological consistency. Conservatives were long-time opponents of trucking regulation.

Regulation of transportation: Conclusions

In many locations in the 1800s railroads constituted monopolies or oligopolies; often they took advantage of their position. This situation constituted market breakdown. Governmental intervention was necessary. However, the morass of regulations that followed the creation of the ICC had little or nothing to do with protecting shippers from high rates, and everything to do with preserving the status quo. Furthermore, the advent of trucks and the construction of good quality roads together with water

transportation and pipelines should have spelled the end of railroad protection, but it did not.

Airlines brought with them novel safety problems including the possibility, much discussed in the early history of aircraft, that a crash into populated areas could occur. The need for a federal presence to regulate safety constituted market breakdown and federal regulation, but that concern did not justify the railroad-like regulatory regime that wrapped airlines in a status quo cocoon.

The trucking industry offered no threat of monopoly or safety, but railroads and existing trucking companies were challenged by new trucking companies. The fantasy of destructive competition served to justify yet another status quo preserving regulatory regime.

The regulation of transportation to protect established railroad, airline, and trucking concerns occurred under the progressive/ liberal banner and with the support of self-interested transport companies. By the early 1960s liberals continued to support railroad regulation, but they turned against airline and trucking regulation aside from standard airline safety regulations that conservatives also favored. Ideologically, liberals by the late 1930s should have turned against railroad regulations and should have opposed the enactment of the airline and trucking regulations from the beginning. It took decades for liberals to recognize that market breakdown was not present in this field, and they eventually abandoned regulations as predicted by our market misbehavior/ breakdown model.

Consumer protection

Liberals are too quick to propose government intervention in the face of market misbehavior but generally retreat after the passage of time as they did with transportation regulation. As a mirror image, conservatives are too slow to recognize market breakdown, but later usually adopt the liberal position. Consumer protection is a good example of conservative resistance to needed government action followed by acceptance of the liberal position at least in part.

In this chapter we have devoted considerable space to economic regulation. Consumer protection and economic regulation share

some common elements, but they are sufficiently different to justify separate treatment. Mark Nadel's (1983, 417) definition highlights both similarities and differences. He describes consumer protection as government intervention between consumers and providers of goods and services to protect consumers from physical or economic harm. In contrast, economic regulation such as transportation regulation is part of the framework for economic activity even though safety concerns may also play a role.

In the U.S. at the national level consumer protection can be traced to the Biologics Control Act of 1902 that prohibited interstate shipment and sale of medical products derived from living organisms for human use without licensing by the U.S. Public Health Service. The Pure Food and Drugs Act of 1906 created the Food and Drug Administration (FDA) making it responsible for safe food and the efficacy and safety of drugs (Kantor 1976). The statute's passage was supported by the American Medical Association and the American Pharmaceutical Association. Opponents included some canning and drug companies as well as liquor manufacturers. The campaign for the Pure Food and Drugs Act was energized by the publication in 1905 of Upton Sinclair's *The Jungle*, a stomach-turning expose of the meat packing industry. Passage of the Pure Food and Drugs Act was followed by many additional laws adding further restrictions on food and drug quality and package labeling. Many other federal agencies such as the Federal Trade Commission also have been given consumer protection responsibilities.

The 1960s and 1970s were a golden age for the expansion of federal consumer protection authority: the 1966 Fair Packaging and Labeling Act prohibited distribution of consumer products whose package labels did not conform to standards set by the Secretary of Health, Education, and Welfare and the Federal Trade Commission; the National Traffic and Motor Vehicle Safety Act of 1966 gave the federal government authority to establish safety standards for motor vehicles; the Highway Safety Act of 1966

essentially required states to develop highway safety programs; meat and poultry inspection laws were tightened in 1967; a 1968 truth in lending law required lenders and others extending consumer credit to provide complete and clear information on the cost of loans and credit; and the Consumer Product Safety Commission (CPSC) established in 1972 was, among other things, given responsibility for establishing product safety standards regarding flammable fabrics and poison prevention packaging (Flickinger 1983).

In large part, the CPSC was brought into existence by lobbying of the Consumer Federation of America (CFA) and like minded consumer advocates. However, the CFA was not happy with the way the CPSC was run. In 2008 the CFA, the Consumers Union, and others published a report called “Total Recall: The Need for CPSC Reform Now” which criticized a lack of presidential and congressional support for the CPSC especially in the form of weak funding and inadequate staff. This report reflects consumer activists’ and liberals’ high regard for the CPSC (*NYT* Consumer watchdogs, 3/3/08). A bill mostly consistent with the wishes of consumer activists and liberals was passed and signed by the president later in 2008. Among other features it: required independent testing of particular children’s products; gave the CPSC authority to inspect manufacturers’ labs; banned children’s products containing any but minute quantities of lead accessible to the child; with some exceptions banned phthalates, an ingredient in plastic; created safety standards for all-terrain vehicles; increased CPSC funding; and develop a public database of dangerous products with information submitted by consumers, doctors, child care professionals, and government agencies. It passed by overwhelming majorities in the House and Senate (*NYT* Lawmakers agree on bill for toy safety, 7/29/08). Manufacturers protested the new law’s testing requirements as being imposed too quickly, so the CPSC allowed a one year delay until February 2010 (Dahl 2009, A436). Rachel Weintraub, senior counsel at the Consumer Federation of America, described the new law as important because the CPSC had never had jurisdiction over

products before they were marketed.

The *Journal* grudgingly favored the more business-friendly House version of the CPSC update, arguing that increased civil penalties in the Senate bill would create perverse incentives for trial lawyers, and that by distributing enforcement powers to state attorneys general there would be a patch-work of rules that only the largest companies could accommodate (Lawyers 'R' us, 3/4/08). The *Journal* also argued that the public database would damage the Commission's credibility, presumably by its publicizing inaccurate information. However, the *Journal* did not repudiate the concept of the CPSC. There was no *National Review* article on the CPSC in 2008.

David Berman (1983) identifies three competing ideologically-based paradigms that specify how consumers can be protected: market, progressive, and pluralist. The market paradigm, which most closely approximates the position of conservatives and manufacturers, sees consumers being protected when businesses that fail to produce safe products are punished by dissatisfied customers who refuse to buy more. The market supplies information regarding product quality in many ways including privately published periodicals that allow consumers to make informed choices without relying on government. However, nothing in the market is as technically sophisticated as the FDA and a number of other government bodies, and few people want to see consumers suffer from ineffective or damaging drugs (or any other products) as a form of feedback to discipline businesses.

Berman describes the progressive paradigm as giving little credence to information supplied by the market. Instead, progressive government officials must actively intervene to protect consumers (p. 456). Berman's progressives are suspicious of consumer protection agencies because of their vulnerability to capture by the interests they are supposed to regulate (p. 457). We would add that conservatives often express the same fears except that they emphasize that regulatory legislation is often formulated with the cooperation of dominant business groups who use the regulatory

mechanism to crush smaller opponents; we have previously discussed examples of this pattern. When capture occurs, regulatory bodies can sometimes be pushed into protecting the public by sustained publicity and political activity (p. 457).

Berman's pluralist paradigm assumes that consumer protection arises from a standard interest group struggle with consumer protection groups competing against businesses (p. 458). The liberal consumer protection position is an amalgam of the progressive and pluralist paradigms.

The first *Washington Post* (Consumers' report, 1962) editorial in this policy area in our sample supported President John F. Kennedy's consumer protection proposals. The Kennedy-sponsored bills covered food and drugs (efficacy and safety), housing and lending, and product packaging. The first *Times* editorials in our sample appeared in 1964 and concerned the federal government's role in ending smoking. A number of *Post* editorials in our sample appeared in 1967-1969. They favored the protection of consumers against real estate fraud, home improvement fraud, elements of common stock trading, air carrier liability, credit gouging, and smoking. This period also produced a substantial number of *Times* pieces covering many of the same topics along with truth in lending and the need for the federal government to regulate summer camp safety. Every *Post* and *Times* editorial (ten and nine respectively) in the 1960s that we could find wanted to expand federal power to protect a wide variety of consumer interests and favored virtually all of the consumer protection laws passed during the decade. Their basic moral/value and policy theories emphasized market breakdown (without using that phrase) with particular emphasis on information asymmetry regarding such matters as food package labels, lending contracts, investment information, flammable clothing, and ineffective or overtly harmful drugs.

The *Wall Street Journal* was sometimes sympathetic in principle with liberal consumer protection positions but was critical of specifics. For example, the *Journal* supported President

Kennedy's argument that product packaging ought to display accurate and usable information, but the newspaper, writing before the advent of modern computing, doubted that federal regulations could keep up with the nearly infinite variety and rapidly changing nature of consumer products (A question of semantics, 3/28/62). The *Journal* also supported allowing consumers to file class action law suits in federal courts under the logic (supported by liberals) that individuals suffering relatively small damages could not afford the cost of a law suit while an entire group could (Consumer power, 9/9/69). In the 1960s our sample did not capture a single *National Review* article on consumer protection.

Liberals and conservatives disagreed about the maturity and intelligence of consumers and to some degree still do. Liberals saw consumers as easily manipulated and unable to sort through the technical information associated with many products and in need of protection. Conservatives held the opposite view, arguing that more often than not market competition provided adequate consumer protection (*WSJ* Protecting the consumer, 3/25/66).

All but one of the nine *Journal* editorials in our sample in the 1970s opposed liberal consumer protection positions. In particular, the *Journal* (together with *National Review*) opposed creation of a Consumer Protection Agency. Bills to create the agency had passed in one chamber of Congress but had been defeated in the other over a period of more than half a decade. The *Journal* argued that the new body would merely add another bureaucratic layer atop the dozen federal agencies already there and staffed with consumer zealots. Liberal Mark Green (1978) writing in *The Nation* defended the Consumer Protection Agency explaining that when regulatory agencies held hearings, more than half the time no one was representing the consumer. This agency was intended to provide such representation. Oddly, in 1978 after having supported similar bills in earlier years, the *Post* reversed its position. Our sample caught only three *National Review* articles on consumer protection in the 1970s; all three opposed liberal positions.

In the 1980s liberals were largely occupied defending consumer protection programs created in the previous two decades from attempted cuts by the Reagan and Bush administrations. For example, the *Times* defended the Consumer Product Safety Commission's budget against reductions (Product safety is a valid concern, 6/4/81). Overall, conservatives showed no indication of wanting to return to the low levels of consumer protection that the country had in the early 1960s. Product recall requirements, clearer labeling, increased attention to safe design, and a regulatory structure to protect consumers had become part of the ideological consensus. The two sides still differ but it is over an ideological divide that has moved in the direction of greater federal power over the business community.

Conservatives virtually ignored consumer protection issues in the 1980s. A computer search of the *Wall Street Journal* in the last half of the 1980s (the first half is unavailable in searchable form) revealed only one editorial which covered the need for the Consumer Product Safety Commission to employ rigorous testing before initiating product recalls (The 'consumer protection' balance, 4/29/85). Our sample located one more *Wall Street Journal* consumer protection editorial published in the first half of the 1980s. An electronic search of *National Review* throughout the 1980s revealed only one article on this subject.

Liberals from the 1990s to the present sometimes successfully expanded what had been constructed in the 1960s and 70s while fighting off efforts by congressional Republicans to weaken consumer protection. For example, the *Times* (Telling the truth about food, 2/17/90) supported new FDA rules to stop food manufacturers from making false or exaggerated claims about the nutritional value of their products and opposed an attempt to weaken product liability law suits (Misguided legal "reform", 5/6/95). The 1990s were especially notable for liberal consumer protection initiatives in the area of health care insurance and managed care (*NYT* The politics of patients' rights, 7/13/99).

Conservative behavior was consistent with our market model. The contemporary market offers many examples of information asymmetry, and private organizations such as *Consumer Reports* can only partly redress the balance. Especially in the 1960s conservatives failed to see or refused to see the many examples of market breakdown in this field. By the 1980s they had moved to the liberal side at least in its 1970s form.

Pollution control

Conservatives also adhered to our model by initially failing to perceive market breakdown in the field of environmental protection. J. Clarence Davies III & Barbara S. Davies (1975, 4) define a pollutant as a substance that hinders the use of air, water, or soil. This definition implies that, aside from dangerous toxins, what is regarded as a pollutant depends on human use, so determining what is or is not pollution is a social and political decision, and the definition suggests a fairly direct relationship between pollution and pollution's interference with human comfort and activity. For example, smog stings the eyes and exacerbates breathing problems, and water-borne bacteria can sicken or kill. Global warming may require a broadening of this traditional idea of pollution. As it is commonly expressed the theory of global warming has people generating carbon dioxide and other green house gases at levels that do not directly interfere with human activity but which cause generalized temperature increases which in turn produce potentially destructive warming.

Pollution's effects on human activity are often discussed using the concept of negative externalities or external costs taken from the field of economics. As we defined it earlier, negative externalities are costs inflicted by one entity (which can be an individual, a private sector business, or a division of government such as a county, city, or state) on another without the recipient's permission. Externalities are a form of market breakdown. Without government intervention anyone near a polluter suffers from air or water borne impurities. "Near" can mean a few feet, in the next state, or several

states distant depending on the pollutant. The suffering represents a monetary cost such as medical bills resulting from exposure to pollution or a reduction in quality of life of the sort reported by those living near commercial hog farms. Without government intervention polluters use air and water as public dumps inflicting disposal costs on the public.

In the United States the history of pollution control extends back well over a century, but the concern for pollution surged in the post WWII period. Population growth and increased urbanization are often cited as reasons, and both factors certainly contribute. But Barry Commoner (1971) pointed out that the increased sophistication of chemistry after WWII is especially important in that it led to the formulation of toxic synthetic materials that do not degrade naturally. Major developments of this sort are sometimes brought to the attention of the public via dramatic events or skillful journalism like Upton Sinclair's *The Jungle*. For pollution this occurred with the publication of Rachel Carson's book *Silent Spring* (1962) that highlighted the dangers to birds of the pesticide DDT. An oil spill six miles off shore from Santa Barbara in 1969 and accidents at the Fermi and Three Mile Island nuclear power plants probably accelerated a general movement toward environmental protection. The more recent explosion of an offshore British Petroleum drilling rig in the Gulf of Mexico may affect public policy toward off shore drilling for many years.

The earliest *Washington Post* and *New York Times* editorials from our sample that concern the environment were case specific. Except for a 11/22/65 *Post* editorial which contained intimations of global warming, they did not portray environmental problems as a widespread phenomenon (*WP* Preserving the wilderness, 2/23/61; New start, 2/25/61; Plan for the Potomac, 5/3/65; Half way on the dunes, 6/23/65; The air supply, 11/22/65; *NYT* Forest preserve in danger, 2/23/61; The not-so-bountiful sea, 10/10/61; Watch their smoke, 5/25/63).

The first generalized non-case specific *Times* editorial in our

sample was “Good year for conservation” (8/23/64). It celebrated the passage of several environmental protection statutes. The foundations for water and air quality programs were established with the Water Quality Act of 1965 and the Air Quality Act of 1967. The *Times* in “The pollution slowdown” (9/23/65) complained that the Water Quality Act was a weak bill that would probably not allow the federal government to take effective action against polluters. In 1968 the *Times* (Saving man’s environment, 12/30/68) remained dissatisfied with pollution control laws and called for a comprehensive diagnosis of and attack on pollution.

Our sample found no 1960s *Wall Street Journal* editorials on environmental protection. In the early 1970s the *Journal* concentrated on criticizing environmental initiatives. For example, in 1970 (Unaccustomed confusion, 8/27/70) the *Journal* accused the *Times* of hypocritically favoring rigorous environmental protection in places other than New York while protecting electrical generating plants that served the city. In “Back to nature” (8/18/71) the *Journal* accused some environmentalists of wanting an impossible-to-achieve return to nature, erasing the impact of humankind’s presence. *National Review* (Conservation: High priority, 1/27/70) had a clearer vision of the importance of what it still called the conservation movement, arguing that conservatives should gain control of the agenda. Like the *Journal*, *National Review* argued that the left was twisting conservation into an anti-capitalist weapon (Conservation and the economy, 3/10/70). More than the *Journal*, *National Review* saw that technology-generated market breakdowns required regulation. Meanwhile, the moderate Republican President Richard Nixon attempted to stake out pollution as his own issue (Davies and Davies, 1975, 53, 107-109; *NR* The polluticians, 2/24/70).

Nixon’s first term coincided with the Santa Barbara, California off shore oil spill, debates over a proposed Alaska pipeline, the reported death of Lake Erie, detergent phosphates causing river water to foam, and bald eagles threatened by DDT (Train 1996). In

1970 the Republican Nixon administration created the Environmental Protection Agency (EPA) by executive order. Quick congressional assent followed. By 1971 the *Post* (Environment: Self-interest vs. public welfare, 2/9/71) was supporting Nixon administration environmental protection initiatives. Despite Nixon's efforts, liberal Democrats, especially Senator Edmund Muskie (D-Me) had a head start which they maintained.

The EPA's charter spans a broad range of environmental protection responsibilities. It sets air pollution quality standards, levels of stationary source pollutants, new motor vehicle emission standards, levels of toxic gasoline additives, and supervises state air pollution plans. Its water pollution authority is similarly wide, and it has substantial authority to order hazardous waste cleanups.

In the 1970s conservatives continued to criticize liberal environmental initiatives. The *Journal* (Oh yes, one more thing..., 11/15/73) argued that banning leaded gasoline would be overly expensive, and it maintained that the auto industry would be unable to keep up with increasingly rigorous EPA regulations (Shut down Motown! 10/18/75). In 1976 the *Journal* (Clearing the air, 8/24/76) admitted that, under government pressure, the auto industry had made substantial progress in reducing pollution. However, the editorial asserted that the marginal value of additional changes would be very slim. Six years later the *Journal* (Market response, 1/14/82) cheered on General Motors and the United Auto Workers as they pressed for the suspension of environmental regulations that made their products less competitive. In 1983 the *Journal* (The dioxin scare, 2/25/83) observed that, while residents near Love Canal in Niagara Falls, NY had benzene seeping into their basements, fears of long term damage to health were overblown. Liberals happily took the other side in all of these cases.

By the mid-1980s conservatives stopped their attacks on what might be termed basic pollution control contained in the air and water pollution control statutes of the 1960s and 70s and associated regulations. A notable *National Review* piece (Pollution & politics,

9/30/88) observed that one of the magazine's editors had just returned from a vacation on a New Jersey beach. The author reported that a few weeks earlier high pollution levels had resulted in a 40 percent reduction in tourist traffic. The economic damage along the coast was enormous: "the lives of millions of people are affected by pollution, and the same thing is happening in other parts of the country and the world." The article continued: "there is also the matter of what Wordsworth called natural piety. This is not quantifiable. The dolphins are no longer seen off the shores of Long Island and New Jersey, and the bluefish are leaving, too..." The conservative journal closed with the observation: "The environment is no longer a cult issue for Sierra Club types."

After hesitation and criticism conservatives adopted liberal environmental positions in whole or in part. Although conservatives alluded to market solutions to environmental problems, they did not develop much that was substantive and workable. As increasingly strict environmental legislation and regulations were proposed, conservatives highlighted weaknesses, but they essentially migrated toward liberal positions even as liberals continued to move toward the application of increasing federal power to enforce higher standards. As with consumer protection, neither the *Journal* nor *National Review* proposed anything like a wholesale retreat to the era of the early 1960s.

There continues to be a pattern of liberals wanting to extend environmental protection and conservatives criticizing those proposals while simultaneously questioning what they see as a liberal anti-business bias. Jongkon Lee (2014) complains of a long-standing congressional standstill on the environment. The reason, according to Lee, is congressional disinterest in the environment. He explores the possibility that Republican control of the Senate has been responsible, but he finds that: "the number of environmental agendas increased from the 98th Congress to 100th Congress when Republicans controlled the Senate, and decreased from the 101st Congress to the 103rd Congress, when Democrats controlled both

houses.” (p. 43) He continues: “One other alternative explanation was that important environmental laws were already enacted.” (p. 43) He rejects this hypothesis citing studies that describe laws as not reflecting current science, being unintegrated into the overall legal system, and not regulating new pollutants (p. 43). However, Lee notes that an exclusive focus on the passage of legislation provides only a partial picture of environmental policy-making (or most other policy-making). EPA rule-making is also important. Jeffrey J. Cook and Sara R. Rinfret (2013) present an image of EPA rule-making as balancing and compromising multiple conflicting interests. For example, regarding pollution threshold levels environmental interest groups wanted a relatively strict 10,000 metric ton threshold, but industry groups wanted limits of 25,000 or 100,000 metric tons. The EPA decided on 25,000 as a compromise (p. 274). After the rule was established a business group (refiners) and an environmental group filed conflicting law suits protesting the decision. Cook & Rinfret (2013, 275) comment that the: “ability of interest groups to derail a policy proposal by filing lawsuits represents a particularly strong bargaining chip for interest groups...”

However environmental policies are determined, the liberal-conservative gap remains and continues to move in the direction of increasingly stringent environmental protection (Rosenbaum 2002, 27-28).

Consumer protection and pollution control

Both consumer protection and pollution control fall almost completely within the realm of our modified market failure model and not the JBG model. Equality arises as a liberal concern with both initiatives in the form of protecting the average consumer and environmental justice, respectively, but a content analysis of editorials of our barometer publications would show that these are relatively minor concerns. Since liberals and conservatives are thinking about these initiatives using the same framework, we would expect that even in disagreement they talk to each other instead of past each other, and in fact that is what occurred.

Agribusiness subsidies, preventing large business failures, energy price controls after the Arab oil boycott, and providing low interest mortgages

The business and economics initiatives in this heading were characterized by liberal ideological inconsistency. They will be covered in detail in later chapters, but to be complete we will summarize them here.

Agribusiness subsidies and preventing large business failures

As per our market misbehavior/breakdown model liberals are generally opposed to business subsidies as wastefully distorting market behavior. However, dating back to the New Deal, liberals had convinced themselves that agriculture deserved subsidies. At the beginning of the time period of the study the *Times* was just beginning to abandon this position; by the 1980s both liberal newspapers had given it up. The continuing presence of massive agribusiness subsidies is a testament to self-interest, not ideology.

Periodically, liberals attempt to rescue large businesses that appear to be in danger of failing. Like agribusiness subsidies, this position is ideologically inconsistent for liberals (as it would be for conservatives). Liberal attempts to support East Coast passenger trains described earlier in this chapter are typical. Other examples will be covered in the next chapter. With most of these initiatives liberals admit their own inconsistency but believe that an exceptional case justifies special treatment. Years later they usually reverse themselves.

Energy price controls after the Arab oil boycott

The politics of energy price controls were similar to those of Nixon administration wage and price controls except that for a number of months the actions of the Organization of Petroleum Exporting Countries (OPEC) provided apparent justification for the liberal preference for federal government action. Liberal energy price control proposals provide a better example of a thoughtless policy initiative than of ideological inconsistency.

Providing low interest mortgages through Fannie Mae and Freddie Mac

In 1989 congressional liberals began to pressure federal authorities to reduce mortgage requirements to allow low and moderate income families to buy homes. In 1992 President Bill Clinton took up the cause. The result was a rapid increase in mortgage delinquencies and other problems that contributed to the economic collapse of 2007-2008.

The central problem with this initiative was that there was no evidence of market breakdown or even market misbehavior. It appears that liberal policy-makers simply decided that traditional market-based bank lending standards were excessively rigorous. However, the resulting defaults and the economic tsunami that followed demonstrated that they were mistaken. We cover this initiative in some detail in Chapter VI.

Ideological Consistency and Inconsistency: Conclusions

Among initiatives that did not concern business and economics there are few instances of ideological inconsistency. When ideological inconsistency occurred, the inconsistent ideologues tended to hurt their own causes. For example, conservative positions on civil rights and discrimination in the 1950s and most of the 1960s were inconsistent and unprincipled. Their criticism of the disorder surrounding some civil rights demonstrations was consistent and may have been a useful corrective to a care-free attitude toward street disorder exhibited by liberals, but conservative refusal to seriously acknowledge discrimination violated basic standards of equality and freedom. Those positions yielded short term political gains, but they probably damaged conservatives in the long run by alienating many minorities, women, and homosexuals. Worst of all, they may have delayed desegregation and the ending of other forms of discrimination.

After winning historic civil rights victories, liberal and interest group promotion of affirmative action violated decades of support for equality and allowed conservatives to take the high ground. The

speed of the liberal reversal from championing equality to promoting discrimination and the conservative turnaround from ignoring discrimination to adopting the former liberal position of opposing discrimination was breath taking. In addition to allowing conservatives a substantial political advantage on which they continue to capitalize, liberals allowed what the *Times* once called reverse discrimination to poison race relations for many years.

Conservatives were slow to recognize discrimination against women and discrimination based on sexual preferences, but they were much quicker to reverse themselves. The civil rights movement probably eased the path for those seeking to end other forms of discrimination.

With urban renewal liberals supported mass evictions of the poor and minorities while telling themselves that they were aiding the evicted and improving blighted areas. Conservatives were consistent opponents of urban renewal although many of their interest group allies took advantage of the business opportunities that urban renewal offered. After the passage of some years many liberals reversed themselves on urban renewal while flip-flopping on the virtues of what is sometimes called suburban sprawl. Urban renewal fueled race and class discrimination at the local level and resulted in enormous economic waste.

Ideological inconsistency is more common in areas of public policy concerning business and economics. It takes three forms: liberals needlessly advocating government action against irritating but transitory problems; liberals refusing to dismantle initiatives that may have been worthwhile at one time but which technological and economic change have rendered obsolete; and conservatives refusing to accede to government action against real problems caused by market breakdown. The results have been substantial waste and harm to people and/or sluggish government responses to real problems.

Disagreement between Ideologues and Allied Interest Groups

We distinguish between two kinds of disagreement between ideologues and interest groups with whom they are normally allied. One kind is exemplified by the *Wall Street Journal* and both liberal newspapers that took businesses to task when they lobbied for government protection from international trade. These publications simultaneously sided with other businesses who wanted reductions in trade restrictions for equally self-seeking reasons (*WP* Infant or infantile, 2/11/67; A courageous veto, 6/1/68; and many others). The conservative publications also criticized corporations such as large trucking companies that used government regulations to ward off smaller competitors or small companies that attempted to use anti-trust suits to hurt large competitors. Such mixtures of agreement and disagreement with interest groups in the same policy area shed relatively little light on ideologue-interest group dynamics. By the nature of economic diversity and self-interest disagreements of this kind are inevitable.

The second kind of ideologue-interest group disagreement pits ideologues against a more united set of interest groups over a relatively long period of time. For example, conservatives who uniformly opposed urban renewal broke with businesses pursuing work and profit at the expense of former residents and businesses of an area being razed and “renewed.”

Here we highlight cases of long term disagreement between ideologues and all or most normally allied interest groups in a given policy area. We would expect to find some examples of ideologue-interest group disagreement on both the left and the right because ideologues value ideological consistency and seek to improve the public well-being while interest groups care only about achieving narrowly defined self-seeking goals.

Liberals, teachers' unions, accountability, standardized testing, and choice

Long term disagreement between ideologues and their usual

interest group allies suggests problems of some sort. As we saw earlier in this chapter, the default liberal position on education is to favor increased spending for regular public schools. This is, of course, a position with which teachers' unions agree.

Tension between liberals and their usual union/school administrator allies can be found in the expanded use of standardized testing, greater school accountability, and increased school choice that culminated in passage of No Child Left Behind (NCLB) in 2002. NCLB originated with an unusual ideological and self-interest compromise. It was the descendant of President Bill Clinton's Goals 2000 program and was sponsored by the Bush administration with the support of Senator Ted Kennedy and Representative George Miller, two of the most liberal members of Congress. It was also supported by the American Federation of Teachers (AFT) and the National Education Association (NEA). According to *National Review*, conservatives were in the minority when NCLB passed the House 381-41 with stronger Democratic than Republican support. We were unable to locate *New York Times*, *Washington Post*, or *Wall Street Journal* editorials on NCLB during 2001 and found only one *National Review* piece (pro NCLB) which was written by Representative John Boehner (Making the grade, 4/6/2001). The Americans for Democratic Action did not take a position on NCLB in either 2001 or 2002. Overall, NCLB appears to have been a mixed bag ideologically and not a high priority for liberals or conservatives.

After its passage and initial implementation, the *Times* endorsed elements of NCLB. One *Times* editorial criticizing the NEA's lobbying against NCLB was indistinguishable from conservative opinion. Using strong language, the editorial asserted that the NEA was encouraging its congressional minions to: "gut accountability standards, preserving the disastrous status quo." (Gutting education reform in Congress, 11/24/03) A few weeks later the *Times* (Rescuing Education Reform, 3/2/04) wrote that with NCLB the Bush administration was: "tackling one of the

nation's most critical problems: the substandard educational opportunities offered to poor and minority children." The *Wall Street Journal* also supported NCLB (Some Students Left Behind, 4/25/05, A14; Fixing No Child Left Behind, 3/6/07).

Liberals and conservatives agree that implementation of NCLB was highly uneven. The *Times* (A few children left behind, 3/16/04) noted that the Department of Education was: "slow in clarifying the rules the states must follow to comply with it." Furthermore, in some of the worst urban school districts such as those in Los Angeles, Chicago, and New York the *right* to transfer from badly performing schools did not translate into the *ability* to transfer. Overcrowding in the small number of better schools was a major problem. For example, in Chicago 270,000 students were eligible to transfer, but only 19,000 registered to transfer, and of those only 1,097 won the right to transfer which was granted by lottery (Schemo 2004). In the words of the head organizer for the liberal Acorn organization: "In a district like Chicago, there aren't enough good schools to go to." (Schemo 2004) This admission from a liberal group is symptomatic of the liberal-teachers union split (*NYT* How to Rescue Education Reform, 10/10/04).

Three years after its enactment the *Times* was still complaining that school districts were finding it difficult to follow confusing elements of the original NCLB statute and associated regulations (Fixing 'No Child Left Behind,' 4/5/05). Furthermore, although NCLB required states to file data allowing interstate school performance comparisons, many states provided information designed to make their schools look better than they were (*NYT* False data on student performance, 6/7/05). In 2005 national standardized test scores in mathematics and reading showed little or no improvement. The *Times* characterized the results as "dismal," arguing that teacher quality should be improved. Instead, applying no standards whatsoever, many states blithely labeled teachers as "highly qualified." The *Times* asserted that university schools of education would need to produce teachers of much higher quality and

complained that the federal government had been avoiding this issue for many years (Happy talk on school reform, 10/22/05). The “happy talk” to which this editorial refers was coming from the Bush administration that tried to pick its way through the test results finding ways to spin them positively.

Meanwhile, teachers’ unions continued to oppose NCLB. In Michigan the National Education Association (NEA) and a number of school districts filed a law suit seeking to invalidate the federal government’s right to require states to administer standardized tests and increase standards in exchange for federal funding. The suit was dismissed. Again, the *Times* (A victory for education, 11/29/05) ridiculed the NEA for arguing that “its members were being stigmatized when the schools where they worked were found to be performing poorly under federal law.”

The division between liberals and primary and secondary education interest groups has been long lasting, but liberals supported the educators’ major policy positions throughout the 1960s-1980s, and in many respects still do. Liberals criticize public school quality but consistently support increased funding and other education interest group positions.

Strains in this alliance were also evident in recent battles over pensions and health insurance programs for public employees including teachers. In 2006 a *Times* article reported that New York City teacher and other public employee pension plans were not actuarially sound (Walsh & Cooper 2006). What might charitably be called non standard accounting techniques made the city’s pension plans appear fully funded when they were not. The *Times* reported that New York City’s chief actuary regarded pension plan financial reports that he helped prepare as “meaningless.” (Walsh & Cooper 2006). Variations of these revelations would be reported at state and local levels from then until the present. An especially noteworthy example arose in 2009 when New Jersey Governor Jon S. Corzine ordered that \$1.5 billion owed to public employee pension accounts be withheld. Corzine explained that he could not justify funding

pensions when teachers' salaries and other immediate needs were not being met. According to the director of the New Jersey Division of Investments, even before Corzine's action, pension funds were paying out hundreds of millions of dollars a year more than they were collecting (McNichol 2009). Compounding the deficit, the New Jersey legislature followed Corzine's example by allowing local governments to delay depositing millions of dollars into their pension systems (McNichol 2009).

In 2010 Illinois was suffering a \$76 billion shortfall in its public employee pension funds (Greising 2010). The state attempted to camouflage the red ink with unreasonably optimistic interest rates: it assumed that pension funds would earn 8 percent at a time when bond markets were offering less than 4 percent for corporate bonds carrying relatively sound ratings. Estimates that assumed interest rates equal to those of U.S. Treasury securities produced shortfall calculations in excess of \$200 billion. According to the *Times*, New Jersey state officials: "pretended that a stock market windfall from 1999, which had disappeared with the breaking of the dot-com bubble, was still on the books. They also counted funds earmarked for health care as pension contributions." (Not just New Jersey, 4/6/07). California public employee pension funds were hiding shortfalls totaling more than \$500 billion (Walsh 2010). This situation was uncovered by an independent analysis commissioned by Governor Arnold Schwarzenegger and conducted by Stanford University graduate students. California pension funds also used optimistic interest rates of roughly 8 percent to project future fund totals. A still overly positive 4.14 percent interest rate assumption caused large increases in shortfall estimates (Walsh 2010; Stober 2011). California local governments were similarly plagued by enormous retirement and medical insurance debt (Duhigg 2011).

Masachusetts, Rhode Island, Maryland, Pennsylvania, Virginia, and many other states contributed to similarly grim news accounts. Nationwide, an estimated 100,000 education employees were laid off in the years 2009-2011 (*WP* Virginia's ticking time bomb,

12/18/11; *NYT* The beleaguered middle class: As austerity bites, pink slips roll in for teachers and cops, 6/13/12).

In part, the shortfalls were caused by the economic downturn that began in 2007, a point raised repeatedly by the *Times* and downplayed by conservatives. The 2011 debt showdown which the *Times* blamed on congressional Republicans also played a part (*NYT* A growing gloom for states and cities: The Republican-led debt crisis will only add to budget cutbacks in capitol and city halls, 8/14/11)

Part of the *Times'* and *Post's* basic editorial position was that some over-extended pension and health insurance funds should be reduced, a stance opposed by teachers unions and other public employee unions (*NYT* The beleaguered middle class: As austerity bites, pink slips roll in for teachers and cops, 6/13/12; *WP* Virginia's ticking time bomb, 12/18/11; and Maryland's silent tsunami; Facing \$33 billion in unmet retirement bills, the candidates for governor are mum, 10/13/10). For example, New York Governor Andrew Cuomo earned praise from the *Times* for proposing reduced retirement plans for new employees, an approach replicated in many other states and localities (Gov. Cuomo's sound budget, 1/18/12). The *Post* favored a proposal by the governor of Virginia to change pensions from being based on defined benefits to defined contributions (*WP* Virginia's ticking time bomb, 12/18/11). Defined benefits can be difficult to control when, for example, retirees live longer than expected. Defined contributions are set by fixed formulas that determine contribution sizes coming from employees and their employers. Conservatives also supported this approach (*WSJ* GOP pension scrap, 6/13/12). The *Journal* pointed to Michigan's dramatic cost reductions when it shifted to defined contributions for non education state employees.

The *Post* was often critical of union over-reaching in pursuit and defense of generous pension and health insurance programs (*WP* Teachers over students, 5/25/12; The buck stops nowhere, 2/24/12). The newspaper characterized one county's public employee unions as: "Arrogant, coddled for years by politicians and

possessed of swollen sense of entitlement...”(In Montgomery, MoCo, unions in retreat, 8/7/11). In one editorial (Maryland’s pension bill comes due, 4/26/11) the *Post* congratulated Maryland legislators for confronting what the newspaper described as powerful public sector unions, especially the teachers union. Maryland public employee unions were angry that employees and retirees would be required to pay for a larger percentage of their benefits while also having benefits reduced. The *Journal* and *National Review* portrayed public employee unions with phrasing similar to that employed by the *Post*.

One element in the tangle of overextended public employee pension and health insurance programs is the ability of public sector unions in some states to negotiate with governments over salaries and benefits when in many cases the unions put the government officials in office who are sitting across the bargaining table. The *Post* described the situation in Montgomery County, Maryland where the Republican Party is of so little consequence that the only important elections are the Democratic primaries. Primaries usually attract few voters, so well organized unions virtually dictate who will win (*WP* The Wisconsin impasse, 2/25/11). The *Post* attempted to justify this situation by arguing that unions using collective bargaining rights can win high salaries for government personnel and those salaries make it possible to attract talented people who are best able to serve the public interest. Furthermore, the *Post* argued, many states lacking strong unions also have underfunded pensions. The *Post* concluded that it is up to politicians to stand up for actuarially sound pension systems, and if they fail, voters can replace them. This rationalization for public employee union influence might have been more convincing had the *Post* not so effectively made the case that in venues controlled by unions and the Democratic Party, collective bargaining overwhelmingly favors unions and their members. Even though the *Times* and *Post* frequently criticize teacher and other public employee unions for defending unsustainable pension and health

insurance programs, they often qualify their disapproval.

On-going disagreement between ideologues and self-interested groups does not by itself mean that the interest groups are wrong, but teachers' unions and public school officials seemed to go out of their way to support that thesis as they attempted to evade accountability and inflate retirement and health care programs to financially precarious levels.

Workfare

A conservative reform idea often called workfare floated in and out of the welfare debates from the 1960s to the near present. It appears in various forms, but the basic concept is to require welfare recipients to be employed, sometimes in public service jobs, in order to receive welfare funds. Liberals at various times opposed workfare or supported it in limited ways. Welfare interest groups such as social workers regard workfare in all its forms as a substantial threat to their interests and those of their constituents (Wiseman 1986; Mittelstadt 2005).

Workfare made its first appearance in the national news media in a program initiated in Newburgh, New York (*NR* Newburgh nationalized? 8/14/62; *WSJ* The "great living program" 10/27/61). Liberals characterized one such proposal as degrading to the poor, wasteful, and overly complex administratively (*NYT* Welfare reform wreck, 4/29/72; *WP* More on the welfare hangup, 8/27/70). At that point the liberal and welfare interest group positions on welfare were fully compatible. However, nearly a decade later liberal opposition to workfare softened while the position of welfare interest groups remained opposed. The major condition for liberal support of any version of workfare was that the work required of recipients should lead to meaningful employment (*NYT* Making "workfare" work, 6/14/80; Pay Welfare for Work? 4/13/91). The *Post* declared that it was not opposed to the idea in theory, but that its proper design was not established and that states should experiment with various implementation approaches (Does workfare work? 5/22/84; see also *WSJ* Slaves of New York, 7/31/97).

By the late 1980s a near ideological consensus on welfare reform appeared to have been established. It was approved by Congress in 1988 in the Family Support Act (*WP* The House welfare reform bill, 4/17/87; Time to vote on welfare, 12/14/87). The *Times* (Real welfare reform, at last, 10/1/88) described the program as furnishing decent levels of financial support while also providing training that would help move people out of welfare and into work. The *Times* characterized the program as representing an ideological consensus:

The principles underlying this consensus are that welfare ought to be a temporary expedient, not a permanent way of life; that self-sufficiency is the desirable norm and work is the means to attain it... The last principle is embodied in new rules to tighten child support enforcement. If these rules achieve their purpose, they will lift a huge cloud over welfare—the fathering of children by men who take no financial responsibility for them. The law also ends another outrage against family values by requiring all states to offer welfare to two-parent families in which the customary breadwinner is unemployed. Such coverage is now optional and 24 states choose not to offer it. In effect that requires families to break up in order to qualify for welfare. The price for this change was a requirement that at least one parent perform 16 hours a week in a community service or similar “workfare” job. That was a bitter pill for House liberals, but the House and Senate conferees seem to have shaped the requirement so that it will not be a drain on funds better devoted to training the hardestcore welfare cases, young single mothers with limited education and work experience. Education and job training, leading toward employment, are the heart of welfare reform. States must offer them, and able-bodied adults with children over age 3 must accept them to get public aid.

The *Post* (An Experiment in Welfare Reform, 7/24/89) also endorsed the version of workfare in this bill, adding that workfare programs in several states had successfully removed some people

from welfare (Deprez 2008).

The editors of the *Times* and *Post* overestimated the degree to which the Family Support Act represented an ideological consensus because six years later agreement had dissolved. *National Review* (Welfare as we'll know it, 2/7/94) blasted the law describing it as "a social worker's briar patch, into which the Democrats pretended they did not want to be thrown," and asserting that instead of reducing numbers of welfare recipients the 1988 bill increased them. The *Times* (Welfare Reform Proves Sluggish, 4/4/92) was also critical of the 1988 legislation although the substance of its critique was the opposite of *National Review*'s: the *Times* found that the states had simply reduced benefits and tightened eligibility requirements.

After a sweeping Republican congressional victory in 1994 conservative Republicans considered something close to the elimination of the federal welfare system (*NR* Welfare reform, 12/31/94). This conservative approach was known as devolution and would have bundled federal welfare programs, transferring them to the states as block grants. For example, the conservative Heritage Foundation's proposal would have compressed 65 welfare programs and their 10,000 pages of regulations into one block grant and a few guide lines. Liberals opposed devolution as did welfare worker interest groups, and the reform was not enacted.

A renewed consensus coalesced among conservatives, centrists, and moderate liberals as they joined in support of President Bill Clinton's welfare reform. On August 22, 1996 Clinton signed the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) (P.L. 104-193). Among other features, it replaced Aid to Families with Dependent Children (AFDC) with Temporary Assistance for Needy Families (TANF). (We will discuss AFDC in some detail in a later chapter.) After two years of assistance, welfare mothers would be required to work, and a five year lifetime limit on assistance was established (Besharov & Germanis 2007; Daguerre 2008). Many liberals hated the Clinton reform.

Conservatives strongly supported TANF's implementation,

citing a 50 percent reduction in welfare rolls, lower poverty rates for minority single mothers and children, and declining rates of births to single mothers (*NR* The state of welfare, 2/11/02). A decade after Clinton's program became law the *Times* again demonstrated its acceptance of the conservative position (without admitting to doing so), observing that few people would want to return to the: "old system of open-ended welfare eligibility with no serious emphasis on work requirements." (Mission unaccomplished, 8/24/06) The editorial added that for the first five years after its passage unemployment rates for single mothers declined as did child poverty. At this point liberal-conservative disagreement appeared to have almost disappeared. But after 2000 indicators of poverty and unemployment began to rise while welfare caseloads continued to drop, suggesting that more children in poverty needed help. Making matters worse, many other forms of assistance such as child care assistance and increases in the Earned Income Tax Credit were reduced by the Bush administration.

Martha N. Ozawa and Stuart A. Kirk (1996, 195) appealed to social workers and welfare scholars to "debunk welfare myths" that they believed underlay Clinton administration-Republican welfare reforms. The Ozawa and Kirk call to arms would have come as no surprise to interest group scholars. Idit Weiss-Gal and John Gal (2007, 349) describe codes of ethics of social worker professional associations as calling on "social workers to support the ideal of the welfare state in which the role of the market would be limited." They then portray the social work scholarly literature as one: "in which writers variously urge a more equal redistribution of wealth, a stronger safety net and the provision of social benefits as a 'right', and call upon social workers to promote this vision and oppose welfare policies that run counter to these principles." (p. 349)

In their initial hostility to workfare and related reforms, liberals were united with social workers, but years later liberals joined conservatives in criticizing the continuing growth of welfare

programs and then demonstrated a willingness to experiment with reforms such as workfare. Social workers defended the programs that guaranteed their employment and criticized reforms that might reduce their numbers and force them to change their approach to work. All the while, social workers probably remained convinced that they were representing their clients' best interests.

Disagreement between ideologues and their normal interest group allies: Conclusions

We are not arguing that disagreement between ideologues and their usual interest group allies implies that the policies favored by the interest groups are incorrect, but ideologues nearly always bring a broader view of an issue area, and long term disagreement suggests that policy problems of some sort exist. This was the case with education and welfare. Interest group leaders are expected by their members to elevate their concerns above everything else, and this is how teachers and welfare workers behaved as liberals criticized their opposition to reform. We are also not arguing that agreement between ideologues and their normal interest group allies means that the policies under discussion are effective and worthwhile. However, a sharp change in interest group policy followed by a sudden move in the same direction by ideologues (e.g., affirmative action) at minimum signals that something odd is afoot.

Chapter Conclusions

When ideologues support initiatives that are inconsistent with their core values, they often hurt their cause. Why do ideologues go astray? At this point we can only speculate.

During the civil rights movement in the 1950s and 1960s conservatives concentrated on order to the exclusion of equality and freedom (except the freedom to discriminate). Although conservatives rank equality below order and freedom, equality *before the law* is critical to them because it is tied to their conception of order. Nevertheless, they all but ignored this aspect of equality. Furthermore, southern state governments were sometimes perpetrators of disorder instead of the guarantors of order that any

government should be. Conservatives paid little attention to segregation and voting discrimination or swept it under a states' rights rug. Conservatives virtually ignored freedom and equality before the law while stressing a blinkered, distorted version of order that they defined narrowly as street order and little else.

When liberals swerved into affirmative action less than a decade after the *New York Times* characterized it as reverse discrimination, they virtually duplicated the mistake that conservatives had just committed. Liberals embraced a bastardized caricature of equality while they ignored both equality before the law and order. The fact that affirmative action contradicted decades of the civil rights movement's emphasis on equality that had just been achieved in the civil rights and voting rights statutes, makes this reversal all the more surprising and confusing. In making this abrupt policy change liberals maintained their ties with civil rights interest groups that apparently formulated affirmative action.

The most immediate and obvious damage done by affirmative action from the liberal perspective was the strengthening of conservatives and the Republican Party. This occurred in two ways. First, many whites were outraged (and remain so) by this new version of discrimination, and many shifted rightward. Second, moments after liberals voluntarily abandoned the mantle of racial equality, conservatives took it up. Conservatives pointed out that liberals and civil rights interest groups also hurt themselves in another way: affirmative action stigmatized African Americans who won prestigious positions such as admission to elite university programs and professional schools. The question hangs in the air: Did they succeed on their merits or because of quotas? George W. Bush caught the bitter flavor of these doubts when he referred to affirmative action in school settings as: "the soft bigotry of low expectations." (*WP Text: President Bush's acceptance speech to the Republican National Convention, 9/2/04*)

Conservatives appeared seized by a kind of tunnel vision as they opposed the civil rights movement, and to this day liberals exhibit a

similar tunnel vision as they promote affirmative action. Each side was unmoved by the other side's critiques. The conservative civil rights tunnel vision was only penetrated by the astounding liberal move to affirmative action. Liberal affirmative action tunnel vision remains intact except to the degree that it has been displaced by diversity as a tactical retreat.

Although it hurt a great many individuals and businesses, urban renewal represents a somewhat more salutary pattern. Liberals designed a program that they believed would attack inequality and to a lesser degree enhance order by forcing people from their homes and coercing businesses into relocating and then roughly a decade later inviting them back to unaffordable palaces or structures that became hell holes—all with substantial taxpayer support. Liberals had fastened onto an initiative that they believed would enhance equality and to a lesser degree order while not just ignoring freedom but trampling it and later enhancing *inequality* and *disorder*. Responding to vivid and inescapable reality and perhaps conservative criticism, many and perhaps most liberals recognized their mistake.

It is understandable that in 1961 liberals almost automatically favored funding increases for public schools. Historically, public schools had been successful, and Sputnik could have been plausibly interpreted to mean that public schools were suffering from funding shortfalls. Furthermore, at that time and throughout the next quarter century all that conservatives offered was opposition to public school funding increases while they favored private school vouchers that appeared to violate separation of church and state. After too many years liberals began to recognize that great numbers of regular public schools were failing. By that point conservatives were refining school vouchers to avoid direct challenges against church-state separation, and the charter school initiative was also taking a workable form. Liberals continued to lodge objections against both ideas, and they still do, but in circumstances of extreme educational inadequacy they sometimes relent.

We regard the liberal reflexive support of increased funding for

regular public schools and their usual opposition to charter schools and vouchers as ideological inconsistency. Liberals are supposed to be advocates of greater equality, and in the field of education that should mean greater real opportunities for students, not protection of educational monopolies and teachers.

Ideological inconsistency with regard to business and economics is different in that liberals and conservatives think about policy using the same market model. So, for example, with international trade they believe (except for some far left liberals) that economies perform best when trade barriers are minimized: the market determines which countries should produce what goods and services. However, they differ over what to do when things go awry or seem to go awry: liberals are quick to call for government intervention and conservatives are opposed. If the problem is only the market responding correctly if unpleasantly to a temporary situation, liberals tend to retreat from their call for government action. If, however, the problem is one of market breakdown, conservatives later relent and accede to the liberal initiative. In the first instance the economy would be better off if liberals did nothing; in the second the economy would be better off if conservatives responded to market breakdown more promptly.

We are calling these mistaken liberal and conservative responses to market misbehavior and breakdown ideological inconsistency. Liberal attempts to control inflation with wage and price controls during the Nixon administration are a model of liberals being too quick to call for government intervention to restrain the market's correct response to inflationary fiscal policy. Peculiarly, liberals had little confidence that their initiative would help. This may have made them more open to conservative criticism of the controls, and their retreat in the face of the controls' operational failure occurred quickly. Another aspect of the failure of wage and price controls is that they were soon followed by liberal demands for oil price controls after the Arab oil boycott and related OPEC oil price increases (natural gas price controls were also part of the story). In

this case liberals had a plausible case for their initiative (although conservatives never thought so) in the form of an Arab dominated cartel that appeared to have a strangle hold on international oil prices. Nevertheless, liberals were attempting to use a device that had just failed. In addition, we will see in the next chapter that the forms their actions took were quite unwieldy. After far too long liberals abandoned oil price controls as they had wage and price controls.

Sometimes the liberal reaction time in the face of failed initiatives targeting market misbehavior can be measured in decades. There were slender justifications for anti-trust, regulation of transportation, and agribusiness subsidies when they began in the late 1800s and 1930s, but by the 1950s, if not sooner, it was clear that these programs had been discredited. By 1961 liberals continued to support them or were not actively trying to get rid of them. While liberals think about economics using the market model, little market misbehavior is required for them to call on government to correct a (non) problem and continue with the failed results for many years. The minimum wage is probably the most vivid example. Its reason for being is sentimentality and self-interested labor unions, not economic theory or the minimum wage's performance, but liberals appear wedded to it.

The remaining liberal business and economics initiatives that were ideologically inconsistent are described in other chapters. They include: the Car Allowance Rebate System a.k.a. Cash for Clunkers; requiring the use of gasohol plus corn subsidies; and enhancing non traditional energy sources (especially wind and solar). Cash for Clunkers and the required use of gasohol produced from corn were justified as aiding the environment, but both did more harm than good, and the gasohol requirement continues to do so. In some applications wind and solar power are useful, but in most large scale installations they are not cost-effective, and they bring their own forms of environmental damage.

Conservative responses to market breakdown constitute a mirror image of liberals and market misbehavior. There are certain things

that markets simply cannot do, and conservatives sometimes fail to recognize the limits. For example, the market alone cannot protect the environment or consumers. There was no theoretical or empirical reason for opposing reforms in these areas, but conservatives did so for years.

These liberal and conservative blind spots appear to be permanent elements of both perspectives. The only treatment is debate and willingness of someone—perhaps moderates—to listen and evaluate the relative merits of the cases presented.

We end this chapter with the relatively unusual phenomenon of dissonance between ideologues and their normal interest group allies. Disagreement between ideologues and *some* of their interest group allies occurs occasionally. We see this, for example, with international trade when conservatives favor free trade and some corporations lobby for restrictions. It is much less common for disagreement to arise when all or most of a set of normally allied interest groups are unified. Rare cases pitted liberals against teachers' unions which opposed competition, performance assessment and accountability, and standardized testing and social workers fighting workfare and other welfare initiatives. Sincere ideologues think about issues from a public interest perspective; interest groups do so only accidentally however much they may claim otherwise. Disagreements do not guarantee that the interest group positions are inconsistent with the public good, but they highlight problems of some sort.

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