

Chapter VI

Thoughtfulness and Whether Initiatives are Effective and Worthwhile

An initiative should be both effective and worthwhile. Effectiveness means that an initiative achieves its sponsors' objectives. An initiative can be effective and still not be worthwhile. Few matters in politics and government are as subjective as judging whether a policy initiative is worthwhile—this, after all, is the dividing line between ideologies when they are divided. Rotten

Objectively determining initiative effectiveness based on liberal-conservative agreement is often straightforward. There is no significant disagreement as to whether *Roe v. Wade* is effective. Those who favor it and those who detest it agree that it achieved its sponsors' objective. Because ascertaining whether an initiative is worthwhile is much more problematic, we are guided by debates among liberals, conservatives, and interest groups together with policy analyses in individual policy areas.

We theorize that an effective initiative must be built on thoughtful moral/value theories and policy theories. Our definition of a thoughtful moral/value theory is broad. We require only evidence that moral or value implications of an initiative were considered by initiative sponsors. For example, both sides of the abortion debate have thought about its moral implications for decades. Agree with them or not, the editorials, articles, and books advocating either side contain ample evidence of thought. Regardless of one's position on abortion, it is clear that the other side has considered its moral implications. By our admittedly low standard moral/value theories for most initiatives were thoughtfully developed.

Our definition of a thoughtful policy theory is much more restrictive. For a policy theory to be thoughtful there must be good reason, often based on formal analysis, to believe that a policy founded on its moral/value theory will improve the status quo. Policy analyses supporting one or both ideological positions for a given initiative are common and often constitute substantial literatures—

studies of gun control, charter schools, health insurance, the minimum wage, immigration, bank and financial deregulation, and international trade are a few examples of sophisticated bodies of work on which entire careers are built. However, we must remember our variant of the Marmor, Mashaw, and Harvey (1992) rule that ideology and self-interest drive analysis. Self-interest and ideology may bias policy theories in ways that lead to ineffective initiatives that are also not worthwhile.

A policy theory describes how an objective will be accomplished. With many areas of public policy for business and economics the basic policy theory for liberals and conservatives is market economics. For example, as we saw in Chapter V, market theory specifies that the objective of high economic growth is accomplished in part by maximum international trade which translates into free international trade with no tariffs, quotas, or hidden barriers such as subsidies. A valid policy theory must be supported by data, and there is considerable evidence that free trade is widely beneficial and that trade barriers harm many and help only a few.

We have already seen examples of thoughtful and thoughtless moral/value and policy theories. Urban renewal is an especially vivid example of thoughtless theories of both types—in this instance on the part of liberals. The liberal urban renewal moral/value theory was little more than sentimental value judgments that proponents mistook for obvious truths. Urban renewal policy theories were equally thoughtless, and they hurt the poor.

An important feature of the thoughtlessness of urban renewal was the utter certainty with which liberals looked at slums and blight, found them ugly, and decided that residents would be helped by forced removal, building demolition, and the construction of structures that were for previous residents forced out of their homes unliveable because they were unaffordable or because the new structures quickly became ridden with crime. Liberals also decided that workers should live in suburbs, and years later reversed themselves arguing that suburbs constituted wasteful sprawl. Urban renewal was guided by unexamined value/moral and policy

theories. Even worse, this pattern continued for several decades with evidence of urban renewal failure glaringly visible to New York and Washington, D.C. editorial writers whose work appeared in two of our barometer publications. We are confident of our evaluation of urban renewal partly because most liberals came to oppose this initiative.

Ideological change and even reversal are fairly common. Movement occurs when ideologues observe evidence contrary to their moral/value theories and (more commonly) their policy theories. Ideological change can also occur when the other ideological side develops compelling evidence and arguments.

In the case of urban renewal and many other instances of ideological movement the sources of change are not easy to pin down. With urban renewal, the obvious rapid decay of high rise public housing with associated increased crime must have been a factor. Liberals almost never admit that conservative arguments stimulate a reversal, and conservatives almost never admit that liberal arguments stimulate a reversal. Nevertheless, there are enough references in editorials to the other sides' views that it is clear that ideologues attend to their opponents' opinions even though they rarely credit them with changing their policy positions. We will return to the theme of ideological change later.

Throughout this study we distinguish among initiatives that concern business and economics, non business and economics, and both. This distinction is important because the ideological model applicable to business and economics is different from the one that best explains policy formulation for non business and economics. In turn, a different dynamic may be set in motion when initiatives span both models.

Non Business and Economics: Thoughtfully Developed Initiatives

Table 6.1 lists the 26 initiatives that do not concern business and economics and to which the JBG model applies. The second, third, and fourth columns contain our assessments of whether initiative sponsors were thoughtful and whether initiatives were effective and

worthwhile. Evidence for these assessments is presented below. The second column labeled “Initiative sponsors thoughtful?” combines moral/value theories and policy theories. We did this because initiatives supported by thoughtless moral/value theories are relatively rare, and we wanted to reduce the clutter in Table 6.1 (and the other tables below). When thoughtless moral/value theories are a factor in our analysis we highlight them.

A major objective throughout this chapter is to discover the relationship between thoughtfulness and initiative effectiveness and whether initiatives are worthwhile.

We count six initiatives as concerning both business-economics and non business-economics. Both the JBG model and our market misbehavior/breakdown models apply to them.

We count 20 initiatives not involving business and economics supported by thoughtful moral/value and policy theories. Twelve of these were effective and worthwhile. Two more were worthwhile but their effectiveness was open to question. Counts such as these are not meant to represent anything like statistical precision because how initiatives are defined is a matter of judgment. Our basic approach was to delineate them as our four barometer publications do.

Thoughtfully developed initiatives that were effective and worthwhile

The 12 initiatives in this heading, taken from Table 6.1, concern racial and other forms of discrimination, freedom of information, privacy rights, freedom of speech, abortion, and restarting federal aid to stem cell research. The effectiveness of two of these initiatives and whether they are worthwhile is qualified as we will see below.

Table 6.1 Non Business and Economics Initiatives: Thoughtful, Effective, and Worthwhile?

Initiative:	Thoughtful?	Effective?	Worthwhile?
Expand rights of those accused of crimes	Disagreement	Effective	Disagreement
End affirmative action	Thoughtful	Disagreement	Disagreement

Initiative:	Thoughtful?	Effective?	Worthwhile?
Reduce gun control	Thoughtful	Disagreement	Disagreement
Ban prayer in public schools	Thoughtful	Effective	Disagreement
Ban religious iconography on government property	Thoughtful	Effective	Disagreement
End age discrimination	Thoughtful	Effective	Worthwhile
End discrimination based on mental and physical characteristics	Thoughtful	Effective	Worthwhile
End discrimination against women	Thoughtful	Effective	Worthwhile
End discrimination based on sexual preference	Thoughtful	Effective	Worthwhile
End racial discrimination	Thoughtful	Effective ¹	Worthwhile
Extend freedom of information	Thoughtful	Effective ¹	Worthwhile
Extend freedom of protected speech	Thoughtful	Effective	Worthwhile
Extend freedom of unprotected speech	Thoughtful	Effective	Worthwhile
Extend privacy rights (excluding abortion)	Thoughtful	Effective ¹	Worthwhile
Legalize abortion	Thoughtful	Effective	Worthwhile
Protect voting rights	Thoughtful	Effective	Worthwhile
Restart federal aid to stem cell research	Thoughtful	Effective	Worthwhile
Basic approaches to reducing crime	Thoughtful	Largely effective	Worthwhile
Enact gun control	Thoughtful	Ineffective	Disagreement
Initiate and support charter schools	Thoughtful	Varies	Worthwhile
Initiate and support school vouchers	Thoughtful	Varies	Worthwhile

Initiative:	Thoughtful?	Effective?	Worthwhile?
Ban federal aid for Almost automatic support for increased regular public school spending	Thoughtless	Effective	Not worthwhile
Enact and support No Child Left Behind	Thoughtless	Ineffective	Worthwhile ²
Enact deinstitutional- ization of mentally ill	Thoughtless	Ineffective	Disagreement

¹Effective with qualifications. ²Implementation poor. Elements of NCLB may yet prove effective.

Ending racial and other forms of discrimination

In Chapter V we discussed racial discrimination as a stand-in for all forms of discrimination. We saw that liberals had a long history of championing civil rights legislation, and that this position was consistent with their high ranking of equality. The liberal opposition to discrimination was a model of ideologically consistent thoughtfulness.

We described the initial conservative opposition to the civil rights movement as ideologically inconsistent if not unprincipled. However, over a period of years, conservatives shifted to accepting the liberal position on racial discrimination and they did so quickly with regard to other forms of discrimination that came later as political issues such as discrimination against women. Even in the 1950s through the late 1960s conservatives had few important differences with liberals over civil rights moral/value and policy theories; disagreements primarily concerned potential implementation problems and disorder associated with civil rights demonstrations. Since the late 1960s the major liberal-conservative disagreements in this area have concerned affirmative action and related initiatives to be covered later. Our rating of civil rights initiatives as effective and worthwhile is the product of a liberal-conservative consensus, not our opinion. Conservatives oppose discrimination and have done so for more than four decades.

Racial discrimination: Implementation

Liberals and Democrats are critical of what they regard as conservative and Republican efforts to make it unnecessarily difficult to vote using such techniques as limiting when and how voting may occur, requiring photo identification to vote, and disenfranchising felons. In the study of voting rights it is virtually impossible to distinguish between party and self-interest versus ideology. Party is especially prominent because voting rights directly affect politicians' ability to win elections. As much as any area of public policy, the reader can substitute the words liberal for Democrat and conservative for Republican. However, when we use the word liberal we mean the *Times* or *Post* and conservative the *Journal* or *National Review*. Democrat and Republican refer to politicians and self-interest.

Looking first at limiting when and how voting may occur and using one state as an example, Ohio had a 35 day early voting period, but the Republican legislature eliminated the first week which was the only week permitting same day registration. Then the Republican secretary of state eliminated voting during the evening, Sundays, and the day before election day. These changes would have a disproportionate but as far as we know unmeasured impact on low income and minority voters especially in urban areas (*NYT* More voting games in Ohio, 6/10/14). However, even after reducing the voting period by five days nearly a month remained, surely enough time to register. Furthermore, the Sunday closure appears reasonable considering that almost no government offices of any kind are open that day. But eliminating evenings was indefensible; many cannot take time off in a normal working day to reach a government office. Nevertheless, liberal critiques of these changes rarely include discussions of how long voting periods should be. For liberals and Democrats, reducing voting periods appears to be automatically bad and extending them is good. Diminishing returns should be but rarely is considered. At some point an additional voting day must produce no measurable extra convenience. We have seen no studies sponsored by either side that examine the benefits and costs of an extra day of early voting, making rational analyses of adding or

reducing voting days impossible. Also, it is rare to see liberal discussions of early voters being unable to respond to late-breaking elements of an election campaign that would cause them to change their minds.

Liberals want to eliminate Photo ID requirements. A *Washington Post* editorial (The right to vote, 7/8/12) reported that after the Republican legislature in Pennsylvania passed a requirement that voters prove their identities, officials found that roughly nine percent of registered voters lacked a valid photo ID. Such editorials rarely mention that in many jurisdictions photo ID cards are available at no charge. In the case of Pennsylvania the photo ID requirement was delayed by a court ruling, and photo ID cards were made available at no charge (www.senatorkitchen.com). As another example, in Alabama the secretary of state sends vans throughout the state to locations such as shopping centers and small town squares for this purpose, and in a public presentation the secretary of state claimed that his office will produce ID cards at individuals' homes. In addition, those entitled to vote by absentee ballot are not required to present a photo ID. In North Carolina a photo ID requirement was to be enforced for the first time in 2016. The law establishing this program had been passed three years before and included a wide variety of ID types. Despite this long lead time, it was challenged by NAACP lawyers (Horwitz 2016a). According to Sari Horwitz (2016b) writing in the *Washington Post*, in Texas photo ID cards were extremely difficult to obtain by those with complicated histories involving such events as name changes, parental divorce, loss of documents due to natural disasters, and being born outside a hospital without standard record keeping. However, a little over three months after this story appeared, a federal district court substantially loosened requirements which are presently listed on the Texas secretary of state web site (votetexas.gov).

In addition to arguing that photo ID requirements are intended to reduce voting, liberals maintain that they do little or nothing to enhance election security: "As reported in *Rolling Stone* last fall, of the 300 million votes cast between 2002 and 2007, federal

investigators charged only 86 individuals with any type of fraud –and the vast majority of these cases concerned ex-felons and immigrants ignorant of their own eligibility. Not one person was convicted for impersonating another at the polls.” (*WP* The right to vote, 7/8/12) This argument is beside the point. Is it too much to ask that a person attempting to vote is registered and voting with a verifiable identity? Such a requirement is no more than is required for virtually all transactions in financial institutions, obtaining medical treatment using Medicare, Medicaid, or other insurance programs. Whenever something of value is at stake, proof of identity is the norm. Liberal editorials and news coverage of election administration rarely touch on security except to accuse Republicans of using it as an excuse to make voting difficult for the poor and minorities (for example, *NYT* The big lie behind voter ID laws, 10/13/14, Horwitz 2016c, Wines 2016, and many others).

Liberals also want many if not all felons to vote. The website *procon.org* maintains a list of state felon voting laws that range from allowing imprisoned felons to vote to permanent disenfranchisement (under various conditions). Attorney General Eric Holder accused states that disenfranchise felons who have served their sentences of defying principles of rehabilitation fundamental to the criminal justice system (*NYT* 6 million Americans without a voice, 2/12/14). Saul Brenner and Nicholas J. Caste (2003) make the case for enfranchising felons in prison as well as those who have completed their terms. Much of their argument rests on John Stuart Mill’s contention that the right to vote contributes to democracy by enlisting the energies of nearly all adults in society. Furthermore, voting enhances the character of participants. It is good for society and the individual, according to Mill.

Brenner and Caste (2003) review the reasons for punishment, emphasizing that felons do not lose all rights even when imprisoned, suggesting that abridging the right to vote should not be considered automatic (see also Dawson-Edwards 2008). As Holder suggested, rehabilitation is one reason for punishment. Permanently disenfranchising released prisoners or even ones still in custody is

inconsistent with rehabilitation at least in those cases in which rehabilitation is a realistic objective. Retribution is another justification for punishment, a position that Brenner and Caste, with little justification, describe as absurd. However, they make the reasonable point that a consistent “retributivist” wants the punishment to fit the crime, so not all felons should be denied the right to vote. Another justification for punishment is to incapacitate career criminals to protect society from their future misdeeds. Brenner and Caste argue that *because* felons are being held in prison, there is little chance that they will commit “election offenses” which ordinarily require access to the outside world. This argument misses the point that the possibility of felons committing *election* offenses almost never appears as a concern in arguments for disenfranchising them. The basic problem is that felons have committed serious illegal acts that make them unreliable voters since they are untrustworthy in other ways. Brenner and Caste respond to this line of argument by observing that many non-felons cast votes based on such irrational considerations as candidate name recognition or manipulative advertisements (pp. 236-237). Furthermore, they argue, it is the essence of democratic governance that all interests be part of the voting mix.

Another problem with the honest administration of elections is faulty computer systems. Computers made their first appearance in this realm in the U.S. in 1964. Since then computer usage in election administration has grown rapidly, and the potential for undetected fraud is substantial especially when computers are networked allowing access from outside (Fleischer 2005). Writing in 2005 Robert J. Fleischer observed: “Today’s computerized voting systems are very poorly designed with regards to security—passwords are widely known and are rarely changed, breakable forms of encryption are used, and systems are connected to networks, phone lines, and memory devices without “best practices” in security. Once they are delivered, election systems are rarely under tamper-proof seal from the point at which known certified software is loaded.” There is reason to believe that many of these defects or new versions of them

are present today. Fleischer's fix for them and one that he shares with other experts is that paper ballots—usually ones that can be scanned—are essential to providing documentation. J. Alex Halderman (2016), professor of Computer Science and Engineering at the University of Michigan, echoed Fleischer's observations in an article titled "Want to know if the election was hacked? Look at the ballots." (<https://medium.com>) Fleischer proposed the following scenario for election fraud: "First, the attackers would probe election offices well in advance in order to find ways to break into their computers. Closer to the election, when it was clear from polling data which states would have close electoral margins, the attackers might spread malware into voting machines in some of these states, rigging the machines to shift a few percent of the vote to favor their desired candidate. This malware would likely be designed to remain inactive during pre-election tests, do its dirty business during the election, then erase itself when the polls close. A skilled attacker's work might leave no visible signs..." A mordant description of what Halderman and his team did to a new Internet-connected voting system during a public test may be found at Simons & Jones (2012, 69-70).

Halderman emphasizes that voting machines need not be connected to the Internet for fraud to occur: "Shortly before each election, poll workers copy the ballot design from a regular desktop computer in a government office, and use removable media (like the memory card from a digital camera) to load the ballot onto each machine. That initial computer is almost certainly not well secured, and if an attacker infects it, vote-stealing malware can hitch a ride to every voting machine in the area." Halderman also maintains that as of 2016: "many states continue to use machines that are known to be insecure—sometimes with software that is a decade or more out of date—because they simply don't have the money to replace those machines."

Like Fleischer, Halderman prefers optically scanned paper ballots which can be physically examined to determine whether the scanned vote count is accurate as compared to paperless electronic systems that require more difficult forensic analysis. In addition, Halderman

judges as secure voting on computers that keep track of votes and print them on paper that voters can verify and which provide a paper trail (see also Simons & Jones 2012). Recently, the *Times* and *Post* have published a number of stories confirming the observations made by Fleischer, Halderman, and other computer specialists some of which are referenced just below (Zeynep 2016).

Absentee voting also offers potential for fraud when combined with computers. Jenna Portnoy (2015) reporting for the *Washington Post* described a process used in Virginia that supposedly facilitates absentee voting. Voters were allowed to apply using electronic absentee-ballot requests instead of paper forms. Republicans charged that the system would allow anyone to pose as actual voters. Democrats responded that Republicans were trying to disenfranchise voters. Similarly, Josh Hicks (2016), writing in the *Post* reported on warnings issued by cybersecurity experts that Maryland's online absentee is vulnerable to tampering. Among other features the Maryland system allows for electronic absentee voting. Despite warnings from experts that Maryland's system made it vulnerable for major election tampering, the Maryland State Board of Elections certified it as useable (Hicks 2016). Again, liberals demonstrate little concern for election security.

On-line registration provides another example of liberals ignoring the danger of election fraud. In a 2014 editorial, the *Times* (Where voting is now easier, 8/12/14) lauded six states that had begun using on-line registration, described as: "a big improvement over unreliable and inconvenient paper systems."

Malapportionment offers additional opportunities for racial discrimination. Section 5 of the Voting Rights Act required that nine states and a number of smaller jurisdictions with histories of racial discrimination seek approval from the U.S. Justice Dept or a court before changing districts or voting procedures such as photo ID requirements. The standard of judgement was (and remains) that a proposed change not be discriminatory in purpose or effect. This process was called pre-clearance. The jurisdictions that fell under pre-clearance were specified in Section 4: as of November 1, 1964

the jurisdictions in question had used a test or device (e.g., a literacy test) restricting suffrage or that less than 50 percent of those of voting age were registered on that same date or that fewer than 50 percent of those of voting age voted in the presidential election of November 1964. In 1975 pre-clearance was expanded to include language minority groups, and the definition of “test or device” was expanded.

On June 25, 2013 the U.S. Supreme Court in *Shelby v. Holder* (Shelby County, Alabama vs. Attorney General Eric Holder) struck down Section 4 while leaving Section 5 untouched. Pre-clearance is still in place, but, with one exception, there is no standard that determines to which jurisdictions it applies. The exception is that a federal court can still require pre-clearance if a jurisdiction demonstrates that it is inclined to discriminate. In practice, this means that changes in election procedures can only be challenged after they are enacted by a state or lesser jurisdiction. The Supreme Court objected to Section 4 on the grounds that its standards for requiring pre-clearance were more than four decades old and that conditions in the jurisdictions specified in Section 4 had changed substantially. Some conservatives object to Section 5 on the grounds that it encourages segregation and protects incumbents (*WSJ* Voting rights surprise, 6/22/06).

Congressional, city council, county commission districts, and the like must adhere to the standard of one-person-one vote. Sometimes, population movement, evident in the decennial census, forces adjustments because some districts contain more voters than others, and the resulting redistricting is often used to strengthen one party or race over another. Especially egregious examples of redistricting for this purpose are called gerrymanders, a term that originated some 200 years ago with a newspaper cartoon showing a salamander-shaped district named after Massachusetts Governor Elbridge Gerry (Mackenzie undated). Like the original, contemporary gerrymanders are easy to spot on a map because of their odd, snake-like shapes. The California 23rd congressional district drawn in 2001 measured a maximum of five miles wide and as narrow as roughly 100 yards. The *Times* likened New York state legislative gerrymanders to

Rorschach ink blots (Gerrymandering, pure and corrupt, 11/12/09). Danny Yadron writing in the *Journal* (2011) characterized a Pennsylvania House district as resembling a “deformed, backward capital ‘E.’”

Redistricting may be directed by a usually partisan state legislature or a supposedly nonpartisan commission. Some commentators accuse Republicans of perpetrating gerrymanders more often than Democrats (Wang 2013; Dickinson 2013), but since Republicans hold majorities in both chambers of 32 legislatures, they are likely to be responsible for more gerrymandering. For example, in 2011 North Carolina Republicans proposed congressional districts that replaced a 7-6 Democratic majority with a 10-3 Republican majority (Draper 2012). In 1996 the U.S. Supreme Court ruled that districts should be as compact as possible while also respecting governmental subdivisions such as counties (*Bush v. Draper*, 1996), but at least eight of the North Carolina districts make fine examples of the opposite. Robert Draper (2012) describes the logic behind the changes: “Recognizing that North Carolina’s many Democratic voters had to be put somewhere, the [Republican] map-makers shoveled as many as possible into the Democratic districts of Mel Watt and of David Price, a former Duke professor who represented the liberal bastion of Chapel Hill. Most of those Democrats, however, were stripped from the districts of the moderate Democratic incumbents Mike McIntyre, Larry Kissell, and Brad Miller. In the Democrat Heath Shuler’s 11th District, the map-makers simply gouged out the progressive core, Asheville, and affixed it to the 10th, the state’s most Republican district over the previous 60 years. The new maps have made quite an impact. Shuler and Miller have announced that they will not seek another term.” In the 2016 election North Carolina Democrats won 51 percent of the U.S. House vote but only four of the state’s 13 congressional spots (*NYT* Where unfair voting practices begin, 12/4/16). Even with many examples of Republican redistricting evil-doing, instances of Democratic manipulation are not hard to find (Horowitz 1988; *WSJ* The gerrymander gauntlet, 3/11/05). Conservatives and Republicans tend

to blame GOP gerrymanders on reversals of previous Democratic gerrymanders (*WSJ* No contest, 11/12/04) while liberals and Democrats concentrate on their contemporary racial implications (*NYT* Redistricting Tom Delay, 12/14/05). Both sides rightly blame gerrymanders on incumbents protecting themselves from honest electoral competition (*WSJ* The gerrymander gauntlet, 3/11/05; *NYT* Ending the gerrymander wars, 5/30/05; *NYT* Political mapmaking, done right, 7/9/06; and many more).

Despite many examples of gerrymanders such as those perpetrated in North Carolina, Jowei Chen and David Cottrell (2016, 339), found that: “in most states gerrymandering has little to no effect on the partisan outcome of congressional elections.” To arrive at this unconventional conclusion they used “computer simulated districting plans that mimic the districting decisions performed by the states. The simulations draw compact, contiguous and equally apportioned districts around the unique geographic distribution of partisans in each state. The only difference between the simulated and actual districts is that the simulated districts are not subject to intentional partisan or racial gerrymandering. Thus, any difference between the computer produced plans and the actual plans should reliably be due to gerrymandering.” (p. 339) According to Chen and Cottrell: “most of the outcomes can easily be explained by an unbiased districting procedure, where gerrymandering has been completely removed from the districting process [by computer simulation].” (p. 339) Michael P. McDonald (2004, 371-372) summarized earlier studies as showing mixed results. Similar to Chen and Cottrell, some scholars found electoral benefits to parties that controlled redistricting and others discovered no appreciable gains. One complicating factor was that advantages of incumbency overshadowed the impact of attempted gerrymanders (p. 372).

We noted earlier that some states utilize congressional redistricting commissions promoted as being nonpartisan or bipartisan. According to the website Ballotpedia.org, only four states have such commissions; two others with only one congressional district use commissions to redistrict state legislatures. The

remaining states have only one congressional district making congressional redistricting moot or give primary responsibility for redistricting to the legislatures, sometimes with politician-commissions or procedures for managing the task in case of a legislative logjam.

The four states that use nonpartisan commissions for congressional redistricting are Arizona, California, Idaho, and Washington. Congressional district maps are easily found on the Internet. Are there cases of gerrymanders among the four states? Without applying a quantitative measure of compactness and just searching for oddly shaped districts, Arizona's congressional districts appear to be relatively compact. Most of California's 53 congressional districts also appear compact except for the 21st, 22nd, 23rd, and 42nd (currently held by Republicans) and the 30th, 31st, 33rd, 51st, 52st, and 53rd (Democratic). Idaho has only two congressional districts both of which appear compact. The State of Washington has 10 districts and all appear compact, allowing for geographical irregularities.

Alabama and Illinois provide gruesome examples of states without a redistricting commission. Six of Alabama's seven congressional districts are characterized by odd shapes with snake-like extensions or narrow corridors connecting two peculiarly structured segments, and ten of Illinois' 18 districts are as suspicious looking as Alabama's. Ten of Ohio's 16 districts as well as six of Maryland's eight districts strain credulity even allowing for geographical irregularities. West Virginia, Virginia (before a 2012 court ruling found its redistricting unconstitutional), Tennessee, Texas, South Carolina, Pennsylvania, Mississippi, Kentucky, Florida, Colorado, and Arkansas also provide vivid examples of irregular shapes. On the other hand, Kansas' districts appear compact with few irregularities, and the same applies to Wisconsin, Rhode Island, Oregon, Missouri (with the possible exceptions of two), Minnesota, Indiana, and Georgia.

Overall, the four states that use commissions appear substantially less gerrymandered than those that rely on their legislatures.

However, Andrew Karch, Corrine M. McConnaughy, and Sean M. Theriault warn that commissions can run aground if reformers orient themselves to one party (2007, 823). State legislatures will always be tempted to make redistricting a partisan battle ground.

As we observed at the beginning of this discussion, it is difficult to distinguish between partisan redistricting, ideological disagreements, and race-based redistricting. Ideologues line up almost perfectly with partisans and civil rights advocates or opponents. Motives seem entirely intertwined. It is legal for legislative majorities (Republican or Democratic) to gerrymander legislative, congressional, or other districts as long as they adhere to the standard of one-person-one-vote. Gerrymandering based on race is not legal. No doubt some defenses of race-based gerrymandering falsely use the argument that the redistricting in question is just the rough-and-tumble of partisan politics, but proving it in court is difficult (Hansen 2013).

Neither liberal advocates of extending (or not reducing) early voting periods nor conservatives who take the opposite side document their positions with evidence of the benefits and costs associated with their positions. Meanwhile, liberal opponents of photo ID requirements ignore election security and almost universal photo ID requirements for transactions whenever something of value is at stake. Liberals strengthen suspicions that they do not care about election fraud with their uninformed advocacy of vulnerable computerized voting systems. Meanwhile, gerrymandering is an evil often practiced by both sides when their parties control state legislatures. Overall, with some exceptions, liberal and Democratic charges that conservatives and Republicans are undermining equal ballot access by minorities are thinly supported, and liberals and Democrats are showing little concern for election fraud that benefits them.

Freedom of information

We covered freedom of information in the previous chapter. We described this initiative as a model of liberal and conservative ideological consistency and cooperation. Liberal and conservative

moral/value theories and policy theories were thoughtfully developed and are all but indistinguishable. Both sides see freedom of information as being of central importance to the health of U.S. democratic governance. Only with complete and accurate information about government operations can the electorate hold officials accountable.

In Table 6.1 we describe freedom of information as effective with qualifications. Our reasons for this description appeared in the previous chapter. One problem with this initiative is that it must be balanced against privacy rights. There is a tension inherent in freedom of information and privacy that will never be fully resolved. Another major problem is that all presidents actively resist openness. One more difficulty concerns national security and law enforcement which require some levels of secrecy. Nevertheless, freedom of information is supported by a sophisticated body of moral/value and policy theory, and liberals and conservatives agree that it is critical to the survival of democratic government.

Privacy rights

Privacy rights are one of the most highly studied and debated areas in all of public policy. Privacy is essential to the preservation of democracy as well as being an important value in and of itself. The theory of privacy rights has been developing since 1888, but what might be termed the modern era of privacy rights began in 1965 with the U.S. Supreme Court's ruling in *Griswold v. Connecticut* which struck down a statute that made it illegal to dispense contraceptive devices or information about birth control even to married couples (Garrow 2001, 57; Roth 1999). *Griswold* led directly to *Roe v. Wade* (1973), and constitutional scholars often discuss the two decisions together, but editorial writers generally treat abortion rights and privacy as two different matters, and so will we. Among the JBG values, freedom is the one that most closely relates to privacy (Garrow 2001, 56).

The U.S. Constitution makes no direct reference to privacy, and in the *Griswold* ruling Justice William O. Douglas explained that the Bill of Rights contained "penumbras, formed by emanations" that led

to the discovery of a right to privacy. Many legal scholars, including a large number who agreed with the substance of the *Griswold* ruling, criticized Douglas for his imaginative or fanciful justification of privacy rights (Garrow 2001, 61). Conservatives have been especially critical (Bork 1971; Jaffa 1989). Debates over constitutional theory notwithstanding, conservatives and liberals agree on the need to protect privacy except for its application to abortion. Government eavesdropping in aid of national security has also divided liberals and conservatives. In addition, it has divided liberals and liberals as well as conservatives and libertarians.

In recent years the most intense debates about privacy have concerned electronic data acquisition in the realm of foreign intelligence. The Foreign Intelligence Surveillance Act (FISA), enacted in 1978, authorized government electronic foreign intelligence data gathering. FISA was passed by a House and Senate controlled by Democratic party majorities. The final votes were 293-129 in the House and 73-23 in the Senate. Surprisingly, the ADA did not score members of the House or Senate on FISA votes. Under FISA the federal government was permitted to conduct electronic surveillance of anyone in the U.S. including citizens without using standard criminal probable cause procedures. Authorities were authorized to conduct surveillance if they could demonstrate to a special court that surveillance subjects were acting as agents of foreign powers. Since passage of amendments in 2004, subjects could also be lone wolf terrorists.

William C. Banks (2010, 1634, 1638) explains that FISA was established to conduct surveillance on “specific, narrowly targeted” subjects. In time, FISA was rendered obsolete by advancing communications technology, especially the Internet, and ordinary criminals were replaced by terrorists. Instead of focusing on individuals, officials began processing millions of e-mails and telephone calls in search of suspicious activity. This wide net captured the communications of U.S. citizens who had nothing to do with terrorism. After 9-11 the Bush administration attempted to expand electronic surveillance beyond FISA’s scope. Revelations of

these activities on the front page of the *New York Times* (Risen & Lichtblau, 2005) were followed by protracted negotiations between the Executive Branch and Congress that led to the passage of the FISA Amendments Act of 2008 (FAA). The ADA opposed the FAA, and only Democratic Senators voted against it (27 Democrats plus 1 Independent who caucused with Democrats). Forty six Senate Republicans, 22 Democrats, and one Independent voted for it. The *Times* (Because they said so, 2/10/08) opposed it, writing that it needlessly expanded “the president’s ability to spy on Americans without a warrant...” (See also *NYT* Compromising the Constitution, 7/8/08). The *Washington Post* (Time for legislating; President Bush should allow Congress to fine-tune legislation on surveillance, 2/14/08) weakly supported it. The *Wall Street Journal* (Wiretap showdown, 2/11/08) favored the bill as did *National Review* (A most dangerous game, 3/10/08, 22-23).

The FAA allows surveillance coverage based on questionable activities without reference to individuals. According to Banks (2010, 1646):

non-U.S. person targets do not have to be suspected of being an agent of a foreign power nor, for that matter, do they have to be suspected of terrorism or any national security or other criminal offense, so long as the collection of foreign intelligence is a significant purpose of the surveillance. Potential targets could include, for example, a non-governmental organization, a media group, or a geographic region. That the targets may be communicating with innocent persons inside the United States is not a barrier to surveillance.

The FAA was renewed in 2012. The Senate vote on the renewal was 73-23, the House vote was 301-118, and President Obama supported it (Pear 2012). Chief opponents of the bill were some liberal Democrats and conservative Republicans including Senator Rand Paul (R-KY), a libertarian. Dianne Feinstein (D-CA), a liberal, was the primary supporter of the bill in the Senate. The debate over the renewal struck the same themes as FAA’s original passage, but the vote in 2012 was close to a consensus. The *Times*, which remains

opposed to FAA, described the House vote as occurring with “little in the way of real debate or scrutiny.” (A post-9/11 conundrum, 9/14/12) The *Post* favored the renewal (Security vs. liberty, 10/29/12) as did the *Journal* (A wiretapping miracle, 1/2/13). *National Review* did not take a position that we could locate. Oddly, the ADA’s ratings for 2012 are not available on-line even though ratings for later years are.

The potential for invasion of privacy under FAA is manifest, but so is its potential to hamper U.S. anti-terror operations (*WSJ* Wiretap showdown, 2/11/08). As the *Post* (Security vs. liberty, 10/29/12) wrote: “the 2008 FISA amendments sought a compromise between two essential goals: preserving American liberty and robustly defending Americans’ lives and property.” FISA and FAA could have marked a classic division between liberals and conservatives, but divisions within both sides produced a murky separation. The value and policy theories of both sides (or more precisely all sides) have been thoughtfully developed through decades of analysis and debate.

In Table 6.1 we list privacy rights as effective with qualifications and worthwhile. Privacy rights are similar to freedom of information in this regard. Both require a balancing of important values that results in continuing debates and policy instability. We cannot say whether the 2008 and 2012 balance of privacy and security is in the public interest, but the fact that the 2012 renewal occurred without the partisan and ideological rancor that marked the passage of the 2008 bill suggests that it is not a failure and perhaps somewhat successful.

Freedom of speech

We discussed freedom of protected speech in Chapter IV as an example of an effective simple initiative. The same applies to freedom of unprotected speech, although it is a more difficult topic (*NR* First Amendment pixilation, 11/25/77; Sobran, 1978). In the 1970s conservatives were again favoring order over freedom and liberals ranking freedom over order. As the debate developed, conservatives found that they could not defend the imposition of government authority that censorship required and they surrendered

at the level of national government if not state and local (*NR* You figure it out, 3/25/96; Nordlinger 2001; *WSJ* Putting porno in its place, 2/28/86). Conservatives were especially uneasy with the tension between traditional order and individual freedom that censorship implied. Lacking objective standards by which to distinguish pornography from what they regarded as legitimate content, they resolved the dissonance in favor of freedom (Berns 1993; Buckley 2001).

Both freedom of protected and unprotected speech are supported by many centuries of thoughtful moral/value and policy theories. Currently, liberals and conservatives agree on the importance and virtues of freedom of protected speech, and liberals and most conservatives agree that censorship of unprotected speech is unwise or impractical.

Abortion

The modern history of the legalization of abortion in the U.S. began in the 1930s when it had been illegal in most states for half a century. Some doctors observed that dangerous so-called back alley abortions were occurring and that the women suffering these procedures were financially disadvantaged. Due to Depression era unemployment and poverty, women increasingly asked doctors to terminate unwanted pregnancies.

In 1933 two politically radical physicians published books that essentially called for the legalization of abortion. A more moderate advocacy of abortion legalization by the physician Frederick J. Taussig was published in 1936. Taussig proposed a law that would permit abortions for the retarded, victims of rape, underage girls, and the poor (Reagan 1997). World War II interrupted the organization of groups that advocated abortion legalization. In 1955 Planned Parenthood sponsored a national conference which issued a statement calling for a liberalization of abortion laws (Reagan 1997, 219-220). A proposal by the American Law Institute (ALI) for a model law followed the outlines of the Planned Parenthood statement. These actions predated by years editorial positions taken by the *New York Times*.

Times news coverage in the period 1950-1960 treated abortion as it did any crime such as robbery. In 1959 the *Times* printed its first stories (not editorials) that appeared to be inclined positively toward abortion rights. The first post WWII *Times* editorials regarding abortion were published in 1965; they favored the ALI model (Dilemma is seen in abortion law, 7/28/1965). By 1969 the *Times* advocated that state abortion laws be struck down by federal courts. This amounted to a position favoring outright legalization (Changing the abortion law, 11/10/69).

On the right there was a split between *National Review* and the *Wall Street Journal* immediately after *Roe v. Wade*. While *National Review* opposed legalization and does so today, the *Journal* was unenthusiastically supportive (Abortion and privacy 1/26/73).

Ethicists exploring the issue and abortion advocates and opponents offered thoughtful moral/value theories developed over a span of decades (Reagan 1997; Callahan 1970; Williams 1957; Labby 1968; Clouser 1973; Schur 1965). Since the legalization of abortion falls into the category of a simple initiative that allows a given behavior, its policy theory is straightforward and thoughtful: its legalization freed women to have abortions and many did. By our definition that makes the legalization of abortion effective. Even conservatives who oppose it agree that it is effective or perhaps we should write that *especially* conservatives who oppose its legalization agree that it is effective. They would not oppose it as vigorously as they do were it not effective.

In Table 6.1 we describe the legalization of abortion as worthwhile. This clumsy wording is the result of our need for a few descriptors to keep the table manageable. In fact, liberals support abortion as a matter of freedom and equality. In their view, it is worthwhile to move away from the pre-*Roe* era of dangerous illegal abortions for the poor and better but still imperfect alternatives for the middle class and wealthy.

Restarting federal aid to stem cell research

A 2001 Bush administration executive order severely reduced federal support for embryonic stem cell research. In Table 6.1 we

describe this initiative as thoughtless, effective, and not worthwhile. Stem cell research offers myriad opportunities to create medical treatments. Federal support was blocked because of the mistaken belief that harvesting embryonic stem cells depends on abortion. A 2009 Obama administration executive order restarted federal aid for this research. We are describing the Obama initiative as thoughtful (although little mental effort was required to develop it) and effective although medical treatments that utilize stem cells are still being developed. That this initiative is worthwhile does not require explanation.

Thoughtfully developed, worthwhile initiatives whose effectiveness has been questioned: charter schools and school vouchers

Two initiatives, charter schools and school vouchers, were thoughtfully developed and were worthwhile, but their effectiveness has been questioned. Because they are so closely related, we cover them in one segment.

The USSR's launch of the earth satellite Sputnik called attention to the apparent inferiority of U.S. public schools especially in the realms of science and mathematics. At first, public school teachers and administrators succeeded in taking advantage of the widely perceived U.S. educational deficit by attracting increased funding.

As the 1960s and 1970s passed, conservative and liberal concern over the poor quality of some public schools increased even as teachers' unions continued to push for increased funding but minimal accountability. In Chapter V we described the impact of the 1983 Reagan administration report *A Nation at Risk* that documented the overall poor quality of the nation's public schools. As evidence of public school failure mounted—much of it documented in the *Times* and *Post*—liberals appeared rooted in a policy of increased funding and incremental administrative changes of little apparent effectiveness. However, conservatives introduced the idea of competition using charter schools and private schools partly paid for by government-funded vouchers. Charter schools are a form of public school relatively unconstrained by school system

bureaucracy. Vouchers are issued by the government to parents who transfer them to the private schools in which their children are enrolled. In turn, the private schools receive funds from the government for each voucher. Sometimes parents must supplement vouchers with additional tuition.

Conservatives rarely use the terminology of complexity theory, but with these initiatives they are attempting to transform school districts from Weberian bureaucracies to complex adaptive systems. Conservatives argue that the resulting competition can in the long run improve regular public schools as well as in the short run provide an escape hatch for children trapped in failed schools.

Liberals often argue that, in addition to unfair advantages such as skimming the best students, charter schools and voucher supported private schools are of no better quality than regular public schools. Often this is true. Examples of low quality charter and private schools are easy to find (MacIver & MacIver 2006; Barr, Sadovnik, & Visconti 2006). This is why we have categorized them as varying in effectiveness which is to say quality (CREDO 2009a; Nathan 2004). Conservatives respond by arguing that the key to conservative educational reforms is competition not the superiority of each and every charter and private school nor the inferiority of each regular public school. Finding that some schools are of poor quality is no more important than discovering that some automobile models are lemons. The key to manufacturing high quality vehicles is competition. In a review of *Politics, Markets, and America's Schools*, a book by John Chubb and Terry Moe, the *Times* wrote that the authors were: "right when they say that educational bureaucracy and top-down management contribute to the present mess." The *Times* also admitted that "more choice and less bureaucracy" was needed, but then it added: "a free market approach by itself is a treacherous path to the goal of insuring a quality education to each child in each school." (*NYT* Wrong surgery for sick schools, 7/3/90) Thus the *Times* holds charter and private schools to an impossible standard of perfection to which it never has held regular public schools.

The advocates of educational competition have devoted many years to developing their initiatives (Bohte 2004; Ellig & Kelly 2002; Brighthouse 2002; Sweetland 2002; Fowler 2002; Stewart 2002; Reich 2007; Hillman 2008; Bailey & Cooper 2009) usually in the face of criticism from teachers, regular public school administrators, and liberals (Foster 2002; Howe & Welner 2002; Sarason 1998; Godwin, Leland, Baxter, & Southworth 2006; Weissberg 2009; and numerous *Times* and *Post* editorials). There is no doubt that they are thoughtful (*NYT* School choice, by charter, 10/15/92). Nor is there any doubt that educational choice initiatives are worthwhile, an assertion that we documented in the preceding chapter. Charters are especially good at improving educational outcomes of inner city African-Americans and Hispanics. The *Times* and *Post* (and the liberal *Boston Globe* have reported that some public schools are dreadful, and alternatives that can help students escape and that provide competition to raise the overall level of education in a school district are worthwhile. On occasion, the *Times* and *Post* have endorsed at least experimenting with competition.

A thoughtfully developed initiative that is worthwhile and largely effective: basic approaches to reducing crime

Constitutionally and in practice crime is a local, state, and federal responsibility with the federal government being least important. Nevertheless, major justice and public safety issues are debated nationally. In the time period covered in this study liberals and conservatives agreed that crime was an extraordinarily serious problem. In 1981 the *Times* (The measured view of crime, 4/19/81) declared that the nation had been hit by a “tidal wave of crime.” (See also *NYT* Finally, a good agenda on crime, 1/25/81; To fight crime, fight drugs, 4/17/81; *WP* The crime rates, 8/12/83) A decade later the *Post* (2/31/91) in an editorial titled “Our local killing fields” decried the high murder rates in Washington, D.C. *National Review* (How to cut crime, 5/30/94) reported sharp increases in crime rates beginning in the 1960s with the rates of all crimes tripling and violent crimes quadrupling in the period 1966-1990. To a substantial degree, the liberal and conservative value/moral theory was simply that crime

was bad, too common, and that it should be reduced. Few liberal or conservative ideologues paused to define the term crime or any of its synonyms partly because everyone appeared to understand its meaning except in marginal areas such as marijuana use and pornography production and distribution.

Liberals and conservatives also agreed on the need to increase funding for law enforcement agencies and courts, although partial dissonance, common many policy fields, arose regarding federal aid to states and localities with liberals favoring such assistance and conservatives opposing it as a wasteful detour of tax revenues from individuals to the federal government and then back to states and localities. Many liberal proposals to reduce crime could have come from conservatives including stream-lining the arraignment process (*NYT*, Finally, a good agenda on crime, 1/25/81; *WP* Bogging down on crime control, 2/14/81) and the *Post*'s endorsement of preventive detention of violent offenders (Locking up dangerous suspects, 2/17/81). Even some liberal proposals to enhance the federal role in law enforcement did not provoke conservative opposition. For example, in 1981 the *Times* advocated a division of labor between the federal government and state governments with the federal government attending mainly to such matters as national and international drug enforcement and large scale organized crime (Coping with crime, 7/23/81). Also, the *Times* and *Post* could have been or were joined by conservatives in supporting: a Manhattan police program that focused on career criminals (*NYT* Fighting arrest 'decay'—and crime, 9/22/81); improving computerized police data bases (*NYT* What criminal justice system? 11/26/82); assigning specific judges to process above average numbers of arrests of drug dealers when the existing system resulted in ending up back on the streets sometimes in only a few hours (*WP* Round two of drug wars, 9/24/81; see also Action on crime control, 6/18/81). As with value/moral theories, liberal and conservative criminal justice policy theories were straightforward and thoughtful: locate criminals, prove their guilt, and imprison them. There were disagreements at the margin, especially with regard to

proof of guilt and the legitimacy of confessions, but we will cover those later as a matter of individual rights.

The liberal-conservative criminal justice theory consensus has not translated into unalloyed success, but nationally crime rates have been declining since the early 1990s. Except for a few years, on a per capita basis crime in the forms of murder and robbery increased rapidly in the 1960s and 1970s. Most crime rates dipped a bit in the first half of the 1980s, increased again from the mid-1980s to the early 1990s, and then dropped through 2014. The peak murder rate occurred in 1980 (102 murders per million population) and the peak robbery rate in 1991 (2,727 robberies per million). Murder rates in 2014 were lower than in 1965 (45 murders per million population in 2014 versus 51 in 1965) but robbery rates were higher (1,022 robberies per million population in 2014 versus 717 in 1965) (U.S. Bureau of Justice Statistics Crime & Justice Data Online, <http://bsdata.govojp.usdoj.gov> accessed 2/5/17; <https://ucr.fbi.gov>).

Since the early 1990s, national debates regarding law enforcement focus on New York City. For example, John MacDonald, Jeffrey Fagan, and Amanda Geller (2016, 1/13) in a description of policing in New York observe that: “Notable changes to police in the U.S. since the 1990s include the expansion of police forces, stronger accountability measures of command staff, the adoption of crime analytics (ComStat), and the aggressive enforcement of misdemeanor and traffic laws. These tactical and management innovations by police have been termed the ‘new policing’ model.” Strict enforcement of misdemeanor and traffic laws is associated with investigative stops, stop, question, and frisk, and the broken windows or quality of life approach. The theory behind this collection of techniques was first given widespread circulation in a 1982 *Atlantic Monthly* article titled “Broken Windows” written by George L. Kelling and James Q. Wilson. They argued that crime and disorder (even in a seemingly trivial form such as broken windows) are usually connected. For example, a broken window not repaired will lead to more broken windows. The first one left broken indicates a lack of concern and no consequence for more damage. Kelling and Wilson

disagreed with the then commonly expressed desire to ignore what they call disreputable behavior such as public intoxication or vagrancy. They argued that doing so leads to the appearance of more drunks and vagrants and a general decline in a neighborhood ending in increased serious crime.

New York City murder rates peaked in 1990 (306 murders per million population) as did robbery rates (13,676 robberies per million) (Bratton 2015, 1). The downturn in New York violent crime since 1990 coincided with the initiation of the new policing model. William Bratton (2015, 1-2), an architect of this approach explains its application to subway policing: “Fare evasion and graffiti would no longer be considered too petty to address. In fact, we’d focus on them as vigorously as on serious crimes like robberies, if not more so. Why? Because serious crime was more likely to occur in a lawless environment—and ubiquitous low-level disorder signaled lawlessness even more than serious crime, which was less common. We also quickly learned that the serious criminals committed petty crimes, too.”

The reversal of decades of increased crime just as quality of life policing was initiated and continued reductions in crime after that point, has attracted the attention of police, criminologists, politicians, political activists, defense attorneys and editorial writers. Although it appears that the new approach to policing reduced crime in New York and elsewhere, questions of research methodology remain. Many variables that can and probably do interact with one another complicate analysis. For example, extra police deployment in one neighborhood can induce criminals temporarily to shift their operations to other areas producing a difficult to measure net result (MacDonald, Fagan, and Geller (2016, 2/13). As another example, the greater use of investigative stops (a.k.a. stop, question, and frisk) may reduce crime not because of the stops themselves but because of the increased presence of police. Chauhan, Cerda, Messner, Tracy, Tardiff, and Galea (2012) provide more examples of methodological complications. Despite continuing debates among researchers, the initiation of quality of life policing followed by an abrupt reversal of

increased crime and its continuing reduction cannot be ignored from a public policy perspective. The debate over quality of life policing resembles arguments in the 1960s over the causal link between smoking and lung cancer. The strong statistical relationship between the two did not *prove* cause and effect, but even when the correlation was first documented and causal mechanisms were not precisely known, it provided sufficient grounds for governments to move against smoking. Evidence for sound public policy need not necessarily be scientifically rigorous.

The *Times* applauded the start of quality of life policing. For example, the newspaper was critical of a U.S. District Court decision that struck down a prohibition on pan handling in subways (*NYT Riders' rights, beggars' rights*, 1/31/90). This editorial was followed by another complaining that transit police allowed sleeping on subway stations and cars but credited them with reducing graffiti (Subways are not for sleeping, 4/11/90). A month later the *Times* (Clean up New York for free, 5/20/90) decried graffiti on walls and trash accumulating in public spaces. It mocked city officials who claimed that they lacked resources to fund labor-intensive clean-up efforts, recommending that petty criminals could be sentenced to doing the work at virtually no cost.

The *Times* linked quality of life offenses and violent crime. In "Making sense of senseless crime" it described in dramatic terms a summer of violence generating "frustration, fear and demands for action." (8/4/90) The editorial listed a growing number of "bloody incidents" beginning with "four young children killed by stray bullets..." The editorial endorsed the police commissioner's "bold plan" labeled community patrol which appears to be the early stages of quality of life policing. Police on community patrol duty would be: "relieved from responding to emergency calls. Instead they canvass neighborhoods to identify potential crime problems and deal with them before they turn violently real." In addition, they could: "drive out prostitution, drug dealing and street violence..." (8/4/90) The *Times* (Deferred maintenance, and murder, 9/6/90), observing that the number of murders in 1990 might exceed 2,000, called for a

large increase in police personnel (5,000 officers), an expansion in city jails, more judges, and an expanded probation system. A month later Mayor David N. Dinkins proposed an ambitious criminal justice expansion consistent with the *Times*' editorial (*NYT* Early returns for a police strategy, 4/29/91). Gun control was another part of the *Times*' prescription for crime reduction.

In 1992 the *Times* (The tides of crime, 4/25/92) spotted a possible downturn in crime, but, the editorial asked: "Can it be true, after all these years of pain, cost and fear?" Three years later the *Times* (Mr. Giuliani's energetic first year, 1/3/95), citing new data, described the law enforcement approach of Mayor Giuliani and Police Commissioner William Bratton as: "working better than either would have predicted." Later in 1995 the decline appeared to be real (*NYT* Bringing the murder rate down, 7/17/95): "the decline in the murder rate in New York City—a 31.8 percent drop so far this year as compared with last—is little short of amazing. True, some other cities have also experienced big drops, suggesting broader forces at play. But few can match New York's record of a sustained and accelerating decrease in the last five years, achieved despite an increase here in teen-agers, one of the age groups most apt to commit violent crimes. If the current pattern holds up, the murder rate will drop close to 40 percent from two years ago to a level that it was 25 years ago. Burglary, robbery, auto thefts and other crimes have also fallen dramatically." The *Times* strained to find sociological explanations such as the aging of the crime-prone population but admitted that a doubling in the state's prison populations, removing violent gang members from the streets in addition to quality of life policing and sophisticated data analysis were largely responsible: "the growth in the number of police officers, combined with more aggressive strategies, must be considered a significant factor. The days of cops simply responding to 911 calls are long gone. Using computerized maps, the department has speeded and improved the assembling of crime data in order to learn precisely when and where surges of crime are taking place." (*NYT* Bringing the murder rate down, 7/17/95; Crime is down, again, 12/23/95)

From 1990 through at least 1995, aside from the *Times*' advocacy of gun control and perhaps tax increases to support the hiring of more police, conservatives could have written virtually every word of its editorials on crime and police administration. But by 2000, after still more progress in crime reduction but also alleged police harassment of minorities, *Times* editorials were questioning potential tradeoffs between crime reduction and civil rights abuses (*NYT* New York's police commissioner, 8/10/00).

By at least 2012 the *Times* was rejecting the validity of what *Times* editorial writer Brent Staples referred to as zero tolerance policing. Staples asserted: "There is no proof that the zero-tolerance policing adopted by New York and other cities in the 1990's had anything to do with the decline in violent crime across the nation. Crime also dropped in jurisdictions that did not use the approach." Staples devoted most of his criticism to marijuana arrests which numbered roughly 50,000 a year in 2011. An arrest for possessing even a small amount could cause people to lose their job or land them in family court. Furthermore, according to Staples, 87 percent of those arrested for marijuana possession were African-Americans or Hispanic.

It is unclear how Staples could declare that there was "no proof" of a relationship between zero-tolerance or quality of life policing and the abrupt decline in violent crime that occurred immediately after its adoption and the continued drop in crime for the next 25 years. Recent *Times* editorials on this subject assert that New York City quality of life policing or elements of it such as stop, question, and frisk cannot have caused the post-1990 crime rate reduction because many other cities that do not adhere to New York police practices have also seen a decline in crime (*NYT* The mayor on stop-and-frisk, 5/4/13). These editorials do not specify the cities in question or methodologically sound research that supports this thesis.

Perhaps no element of quality of life policing drew more criticism than stop, question, and frisk. According to *Washington Post* writer Dylan Matthews (2013), this phrase means that police can stop, question, and sometimes search pedestrians if there is a "reasonable

suspicion” that the pedestrians “committed, is committing, or is about to commit a felony or a ... misdemeanor.” In 1968 in *Terry v. Ohio* the U.S. Supreme Court ruled in favor of a police officer stopping someone when, in the words of Chief Justice Earl Warren, the officer: “observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot.” Jeffrey Toobin (2013) makes clear that a stop of this nature is based not on probable cause but the lesser standard of reasonable suspicion.

Mayor Michael Bloomberg who the *Times* supported for reelection, supported the policy (*NYT* Can stop-and-frisk be “mended”? 6/19/12). As with marijuana arrests, a large majority of those stopped, questioned, and frisked were minorities. Bloomberg defended the program by arguing that minorities were caught up by it because they tended to live in high crime areas, not because of their minority status. The *Times* (Can stop-and-frisk be “mended”? 6/19/12) countered with an analysis by Jeffrey Fagan (2012) that demonstrated that minorities are also more likely to be stopped in low crime districts. This editorial added: “Officers who stop citizens because they see ‘suspicious bulges’—suggesting guns—actually seize guns only 0.15 percent of the time. And city statistics show that more than half of all stops last year were carried out because the individual displayed ‘furtive movements—a meaningless term.” The *Times* ignores the possibility that the low percentage of stops for suspicious bulges that yield guns is due to potential criminals knowing that police are especially alert for suspicious bulges. Furthermore, experienced police officers might be able to define and detect furtive movements more precisely than an editorial writer.

Responding to criticism of stop, question, and frisk, the Bloomberg administration instituted police training programs and reduced the number of stops from 200,000 in the first quarter of 2012 to 21,000 in the third quarter of 2013, and murders continued to drop (*NYT* More disclosures about stop-and-frisk, 11/30/13). By this point the *Times* Editorial Board was taking the position that stop, question, and frisk as employed by the New York City police department violated constitutional rights (*NYT* Walking while black in New

York, 3/23/13). The *Times* also denied Bloomberg's assertion that this program was responsible for crime reductions. The newspaper repeated the thesis that crime was dropping throughout the U.S. "including in places that have not used New York's aggressively invasive techniques." (*NYT* The mayor on stop-and-frisk, 5/4/13) Later in 2013 Federal District Judge Shira Scheindlin ruled in *Floyd v. The City of New York* that stop and frisk violated the Fourth Amendment rights of minorities (*NYT* Racial discrimination in stop-and-frisk, 8/13/13). The ruling did not strike down stop, question, and frisk, but it required that it be applied in a non-discriminatory constitutionally sound manner, a point that the *Times* made repeatedly (*Policing the police on stop-and-frisk*, 6/23/15): "police officers can legally stop and detain people only when they have a reasonable suspicion that the person is committing, has committed or is about to commit a crime."

The *Journal* (Stopping and frisking the cops, 8/13/13) suggested that Scheindlin's ruling was based on a long standing anti-police bias. For example, the police stopped David Floyd who: "was observed trying numerous keys and jostling a door in an area where a series of burglaries had recently been reported. Because burglary is often a violent crime, the judge thought the cops were justified in stopping and frisking the mens' outer garments but went too far in checking Mr. Floyd's pockets." In another instance a man was stopped and frisked: "because he matched the description of a homicide suspect from a wanted poster distributed to officers that morning—right down to his red leather Pelle Pelle jacket. Here again the judge saw a reasonable stop and even a reasonable frisk, but a frisk that went too far and created another alleged Fourth Amendment violation."

In 2014 the *Times* (Broken windows, broken lives, 7/26/14) attacked the entire idea of quality of life policing with the possible exception of the use of statistics to intelligently direct law enforcement resources (CompStat). It argued again that the connection between policing seemingly minor crimes and reducing serious offenses were only hypothetical since: "many cities and towns across the country have enjoyed historic decreases in violent

crime since the 1990s, whatever strategies they used.” The *Times* (Broken windows, broken lives, 7/26/14; New York’s unfair summons system, 4/28/15; Moving past “broken windows” policing, 8/10/15) maintained that broken windows policing: “was embraced in the crime-plagued New York of 20 years ago,” not mentioning that the newspaper itself was an enthusiastic advocate of that very approach. Once more, the *Times* did not specify what other cities enjoyed reductions in violent crime without using quality of life policing.

Again, we emphasize that ignoring the sudden and continuing decline in violent crime after the initiation of quality of life policing is as unsound from a public policy perspective as ignoring the correlation between smoking and lung cancer would have been decades ago. Furthermore, quality of life policing includes a number of techniques that undoubtedly vary among cities in many ways. In addition, cities have many different characteristics. We have searched for studies that make the rigorous comparisons among cities hinted at by the *Times* with no success.

In 2015 the *Times* announced sarcastically that New York tabloids, television news, and “other elements of the city’s early-warning system for the apocalypse...” were highlighting increases in violent crime (Crime and confusion in a safer city, 6/6/15). This editorial reported Police Commissioner Bratton’s explanation that the violence was primarily “career criminals, killing and shooting other career criminals.” The mayor responded to the statistics by saying that, overall, crime was well under historic highs. Modest increases in violent crime occurred in 2015, but the downward trend continued in 2016 (Crime and gratitude in New York, 1/8/17). The U.S. as a whole saw the murder rate peak in 1980 (102 murders per million population) and then decline through 2014 (45 murders per million population). In 2015 it increased to 49 murders per million population. In 2015 the *Washington Post*, apparently unconcerned about being associated with the early-warning system for the apocalypse, pointed to a 30 per cent increase in Washington, D.C. murders and substantial increases some other

U.S. cities (Los Angeles, Milwaukee, and Baltimore) but not in all (A deadly summer in the cities, 8/23/15; King 2015). However, a few months later the *Post* tried to downplay what it calculated to be a 17 percent increase in murders in 2015 (Why Americans shouldn't panic over the 17% increase in homicides, 2/2/16). The *Post* observed, as the *Times* did in several editorials, that the increases were low in historical terms, but it admitted that Chicago had experienced an estimated 281 murders per million in population in 2016 (How to deal with violent crime in 2017, 1/3/17).

Not surprisingly, the *Wall Street Journal* objects to every element of the recent *Times* criticism of quality of life policing. The *Journal's* position is that this technique reversed a multi-decade long upward trend in violent crime and that its continued application has reduced crime from 1990 to 2015. The *Journal* also rejects the *Times'* arguments that quality of life policing discriminates against minorities. To the contrary: "79% of the decline in homicide victims since the 1990s have been black or Latino. Had rates stayed the same, the city would have buried over 30,000 more minority individuals." (*WSJ* Stop and regress, 7/26/13)

In 2016 the New York City council decriminalized quality of life offenses such as: "littering, drinking or urinating in public and loitering in parks after dark. The package of new laws downgrades such misdemeanor citations to civil summonses" (*WSJ* Back to the future in New York, 5/27/16) The *Journal* predicted a spike in violent crime, citing the original Wilson and Kelling *Atlantic* article.

Newspaper and governmental accounts of reductions in quality of life policing are rarely clear regarding exactly what practices are being reduced. In 2014 roughly one year after Judge Scheindlin's cut-back in stop, question, and frisk, Stephanie Francis (2014), writing in the *ABA Journal*, asked whether the practice had been stopped. She provided only anecdotal evidence, and she posed the question in an unnecessarily narrow manner. The question should have been whether the practice has been changed.

Until the *Times* began to deny the relationship between crime reduction and quality of life policing, whatever that might entail in

particular circumstances, there were few differences between liberals and conservatives regarding policing except for civil rights concerns which we are treating under a different category. The rejection of quality of life policing represents a disturbing shift in contemporary liberalism.

Incarceration

Criminologists appear to have explained some movement in crime rates in the years 1960-2007 as a function of age cohorts where disproportionately large numbers of young males generate relatively high crime rates. James Q. Wilson (1975) argued that by imprisoning large numbers of criminals for relatively long sentences society prevented them from committing additional crimes especially for the age brackets when they would be especially prone to criminal activity.

Mitch Pearlstein (2011), writing in *National Review*, argued that the U.S. had overdone imprisonment largely because of drug convictions, although he qualified his position by observing that: “More than 90 percent of inmates in state prisons are either violent offenders or convicted recidivists. This is no small matter: A significant reason that crime rates have decreased, often dramatically, over the last two decades is that a lot of potential murderers, robbers, and rapists have been behind bars.”

In addition to suggesting that too many were in prisons, Pearlstein recommended that states reduce what he called collateral sanctions such as preventing former inmates from holding certain jobs especially when convictions concerned (presumably nonviolent) marijuana crimes. Pearlstein also observed that widespread availability of criminal records on the Internet damaged employment possibilities of those arrested but not convicted or arrested for minor offenses. He recommended ways of aiding some former inmates in removing their names from records that appear on the Internet. Another possible reform would be for police to make greater use of citations that would not appear on the Internet.

Citing a 2014 study performed by the National Academy of Sciences, *The Times* (End mass incarceration now, 5/25/14) rejected

Wilson's thesis noting that more than half of those in state prisons were there because of nonviolent crimes including mandatory sentences for nonviolent drug offenses. The *Times*, citing a Brookings Institution study, also pointed to a cost of \$80 billion a year in corrections expenses plus societal costs incurred due to released prisoners being unable to find employment.

The *Journal* (Obama's prison breakout, 7/18/15), agreed with the *Times* and *National Review* positions, pointing to an eightfold increase in federal inmate numbers in the years 1980-2015 with comparable increases in state prisons. The *Journal* described the efforts of Republican governors of Texas, New Jersey, and Georgia to find ways to handle nonviolent offenders without resorting to prison. For example, Republican Governor Chris Deal of Georgia favored: "giving judges more leeway in sentencing for low-level offenders and allowing charter schools into prison to help inmates get a high school diploma." (Obama's prison breakout, 7/18/15) The *Journal* cited a Pew Charitable Trust study that reported that: "from 2008 to 2013 the 10 states that instituted prison reforms and cut their incarceration rates the most saw a greater drop in crime rates than the 10 states that increased their prison populations most."

Root causes of crime

Extending back to the beginning of the time period of this study, liberals sought to alleviate what were often called root causes of crime which liberals held to be poverty (inequality), unemployment (inequality), bad schools (inequality), weak family structure (inequality and disorder), racial discrimination (inequality), and the easy availability of guns (disorder) *NYT*, Youth in the parks, 5/25/63; Crime and corrections, 10/8/73; Taking the measure of crime, 6/7/82; *WP*, Who the shoplifters are, 10/2/86; Our local killing fields, 12/31/91; Murders: View from the bench, 12/11/93). This policy theory appeared to be well documented with countless academic studies finding strong relationships between poverty and crime, and liberals relied heavily on these findings to formulate policy.

The basic liberal prescription to reduce root causes of crime was

a variety of social welfare programs (Euchner & McGovern 2003, 246-247). Charles C. Euchner and Stephen J. McGovern (2003) characterize the liberal root cause theory of criminal behavior as macro in nature with the social environment generating criminality. They describe conservatives as relying on a micro theory that explains criminal behavior as rational actors calculating the benefits and costs of crime and in the 1960s-70s determining that they would avoid prosecution at the hands of the permissive liberal criminal justice system.

Despite the apparent clarity of the distinction between liberals seeking to reduce crime by attacking root causes and conservatives focusing on the apprehension and imprisonment of criminals, liberal editorials during the time period of this study rarely promoted the root cause model; those that did became even less common with each passing decade. Outnumbering liberal root cause editorials by a ratio of at least 25-1 are liberal pieces recommending increased spending on police, expansion of jails, more efficient judicial procedures, and many other policies with which conservatives are comfortable.

Conservatives exaggerated the liberal commitment to the root cause model at least in its original form, using it as a cudgel to portray liberals as “soft on crime.” By our count there are more conservative editorials accusing liberals of championing the root cause theory than there are liberal editorials promoting it. We have, for example, *National Review* (Blacks, jews, liberals, and crime, 5/16/94) describing the *New York Times*: “traditional role of denigrating jail time for criminals and always seeking to identify the ‘root causes’ of crime.” Or another (*NR* How to cut crime, 5/30/94): “The main reason crime has skyrocketed since the 1960s is that the risk of punishment has plummeted. [U.S. Attorney General and liberal Democrat] Janet Reno is so busy looking for root causes of crime that she has no time to look for solutions.” (See also *NR* Causes, root causes, and cures, 6/8/92) These and many other conservative editorials and articles are caricatures of the liberal position. Liberal editorials arguing that the reduction of unemployment, discrimination, and the rest will reduce crime are not only rare, they

are usually accompanied by numerous qualifications.

By the late 1970s and early 1980s liberals had almost completely retreated from the root cause model. Here we have the *Washington Post* (Getting at crime, 3/5/81) in 1981 contrasting the approaches to crime of Chief Justice Warren E. Burger and Judge David L. Bazelon. The *Post* characterized Burger's central approach as that of a classic law and order conservative stressing: "the deterrent effect of swift and certain consequences." This strategy implied more police, prompt trials, short appeals, and reliable punishment. The *Post* summarized liberal Bazelon's views as: deterrence fails because criminals not only do not fear prison, they regard a prison term as a certificate of their toughness (sounding much like the conservative micro view described by Euchner and McGovern 2003). Thus, crime can only be reduced by attacking root causes such as poverty, bad housing, poor schools, and unhealthy family environments. Bazelon's rational actor premise could easily have led to a conservative law and order conclusion. The *Post* correctly interpreted the Burger-Bazelon disagreement as representing a conservative-liberal debate that had been ongoing for decades. But, the *Post* sided with the conservative Burger: "In the short run, the focus has to be on the administration of justice." By this the *Post* meant: "a more efficient apparatus for catching and convicting those who still commit crime." And in 1983 the *Post* (Hard times, less crime, 2/17/83) observed that crime rate reductions were partly caused by the fact that many criminals were behind bars unable to commit more crimes. In other words, it did not matter whether criminals feared incarceration if they were in prison. This was conservative James Q. Wilson's (1975) position.

In 1983 the *Post* (Sign the crime bill, 1/5/83) endorsed a law and order crime bill devoid of root cause programs but containing tougher penalties for drug offenses and a career criminal provision that would shift repeat offenders to the federal system (see also *WP* Chronic offenders, 10/9/82). Liberals did not entirely abandon the root cause model, but for a time it morphed into an argument that summer jobs for youth, housing and social programs, and better schools were good

things in and of themselves, not just helpful in reducing crime (*WP* The next mayor: Crime, 9/2/82). Also in 1983 the *Post* (Good news about crime, 4/23/83; Hard times, less crime, 2/17/83) disowned another part of the root cause model when it observed that crime had not increased in the face of high unemployment in 1982. Order had become the preeminent liberal value with regard to crime with equality making an occasional appearance.

In the early 1980s the root cause model staged a comeback of sorts. This updated version, which remains popular, may have made its first appearance in liberal or socialist Michael Harrington's *The Other America* (1962). Oddly, the current version of the liberal root cause theory has a conservative counterpart which might be called the underclass or social disintegration root cause theory. One version originated with Daniel Patrick Moynihan who could be found in liberal or conservative camps and sometimes both simultaneously. He warned in the mid-1960s that black families were experiencing widespread disintegration. Conservative Charles Murray (1984) built on Moynihan's work when he warned that rising rates of white illegitimate birth signaled the presence of a new white underclass. Both underclasses were prone to crime (Lykken 2000).

Even though liberals and conservatives essentially agree regarding the existence and characteristics of an underclass, they sharply differ regarding its origins and prescriptions for its reduction. This difference derives from liberal and conservative core values and policy theories. For liberals poverty, unemployment, bad schools, weak family structure, racial discrimination, and the easy availability of guns remain the root causes of crime because they reinforce the underclass, and they require government corrective action even though liberals do not rely on such programs to reduce crime (except for gun control). Conservatives do not regard racial discrimination as a significant cause of crime and completely disagree with liberals on gun control, but these are separate points to be discussed elsewhere. The major thrust of the conservative version of the underclass root cause model is that the very welfare programs that liberals want to use to reduce social decay are major causes of that

decay.

For conservatives minimizing welfare and attacking other causes of disorder constitute a long term partial strategy for reducing crime. Here liberals emphasize equality and the alleviation of at least the extremes of inequality and conservatives stress order while seeing efforts at reducing inequality as not only ineffective but as contributing to disorder. It is difficult to miss the similarity between these ideas and theories of education failure and welfare growth in the 1960s-80s: liberals attack an especially difficult-to-change form of inequality with direct action (the equivalent of supporting increased spending on regular public schools or increasing AFDC payments); in turn, conservatives criticize the liberal solution as ignoring the dynamics of a problem and worsening it with direct, simplistic action.

A liberal root cause/underclass anti-crime bill introduced in 1993 and 1994 included funding to alleviate poverty, reduce drug addiction, and to pay for education and youth activities (of which a widely debated midnight basketball program became a symbol). Liberal Michigan House Democrat John Conyers' explanation was more a throwback from the 1960s than it was a reflection of underclass theory: "Instead of trying to figure out new ways to punish people who act illegally, we're trying to do something to prevent them from entering into antisocial behavior." (NR John Conyers's root causes, 5/16/94) Conservatives predictably opposed almost every element of this proposal, but, more interestingly, the *Times* and *Post* virtually ignored it. In 1994 it was the topic of eight *Times* editorials, but that figure exaggerates *Times* coverage because the newspaper turned against it. Early in 1994 the *Times* (Truth in crime packaging 2/18/94) described the bill as a "valuable plan." The *Times* (Racial injustice in the Senate, 5/13/94) liked federal funding for state and local prisons and police, new drug court procedures, prison drug treatment programs, an assault weapons ban, and a provision to reduce racial bias in the administration of capital punishment. The *Times* (Pull the plug on this crime bill, 7/22/94) disliked some conservative provisions including the

invention of new federal death penalty crimes and a three strikes life sentence provision for three time felony offenders, but it was also unenthusiastic about some of the root cause components:

Many of these are social programs that should not have had to sneak into law under the protection of the anti-crime label. They varied greatly in quality. Some—like the Model Intensive Grant program—are thoughtfully crafted and could truthfully be called crime prevention. Others seem to be traditional pork: efforts to funnel money into communities under the questionable rationale that any form of community support will somehow decrease crime.

By July 1994 the bill had been amended to a point where the *Times* saw the negatives (new death penalty crimes and the lack of gun control) as outweighing the positives and turned against it (*NYT* Back to basics on the crime bill, 8/13/9). Meanwhile, only one *Post* editorial that we could locate addressed the bill (Real funding for crime prevention, 6/11/94). The *Post* editorial devoted considerably more space to funding mechanisms than it did the contents of the bill. [The *Post* search parameters were editorial AND crime AND bill, limited to the years 1993 and 1994]

Crime: Conclusions

Liberals and conservatives mostly agree regarding values and crime: crime is bad and must be reduced. They also agree in large part on one order-centered crime policy theory: criminals must be caught, prosecuted, and imprisoned. Criminals in prison cannot commit more crimes against society at large until they are released, and by that point their proclivity toward crime is reduced by aging. We saw above that the alternate liberal crime policy theory—the root cause theory—comes in two versions. Both call for reductions of poverty, improvements in schools, and gun control. The liberal root cause policy theory asserts that such programs will in the very long run alleviate the root causes of crime directly (original version) or indirectly by shrinking the underclass (current version). Both versions were supported by a substantial body of research; so, we

must conclude that both were thoughtfully developed. However, there is little convincing empirical evidence that either root cause theory constitutes a sound basis for a crime reduction policy, even though diminishing the underclass is a worthwhile goal in and of itself.

Until recently, liberals and conservatives largely agreed on law enforcement efforts that needed to be pursued to reduce crime. The quality of life approach including statistics-intensive allocation of law enforcement resources appeared to work and from the early 1990s until

No area of public policy has been subjected to more thoughtful analysis and debate than crime, and there is no question that reducing crime is a worthwhile enterprise, but few are entirely happy with the policy results.

Thoughtfully developed initiatives marked by disagreement regarding whether they are worthwhile and/or effective

Four initiatives fit the description in this heading: ending affirmative action; reducing gun control; banning prayer in public schools; and banning religious iconography on government property.

Ending affirmative action

We examined affirmative action and conservative attempts to end it in Chapter V. Affirmative action is summarized in Table 6.1 as thoughtlessly developed, and it is marked by liberal-conservative disagreement regarding whether it is worthwhile and effective. We categorize ending affirmative action as thoughtfully developed but also subject to ideological disagreement regarding its effectiveness and whether it is worthwhile. We justified these descriptions in Chapter V. Affirmative action is inconsistent with many decades of liberal moral/value theory, and constitutes racial or gender discrimination. Eliminating it would mark a return to equality before the law. Liberals and conservatives disagree about nearly every aspect of this initiative.

Reducing gun control

This policy initiative is another case of a conservative counter-attack against a liberal initiative. We describe it as thoughtfully

developed, but marked by disagreement regarding its effectiveness and whether it is worthwhile. Probably many readers will object to our describing its development as thoughtful.

Gun control refers to laws and regulations that constrain gun ownership. At their most extreme such laws and regulations make gun ownership illegal. For example, in the U.S. the private possession of fully automatic firearms is illegal except for licensed dealers. Gun control also refers to the conditions under which a concealed gun can be carried, regulations regarding the registration of a firearm with a government agency, and conditions under which a gun may be purchased (e.g., a waiting period or a criminal background check).

No issue more cleanly separates liberals and conservatives. Gun control advocates are with few if any exceptions liberals—gun control and liberalism appear inseparable. All 22 *New York Times* and 63 *Washington Post* editorials on this subject from our sample and an additional 116 *New York Times* and several hundred *Washington Post* editorials located in electronic searches (we do not have an exact count of *Post* editorials because of the 2,006 that we located many were signed pieces and the *Post* sometimes publishes duplicate versions of editorials on-line) favored gun control in some form. Conservatives are not as interested in this subject as liberals at least as measured by our two barometer publications. This assertion may strike the reader as incorrect, but our sample caught only one editorial on this subject in each of our two conservative publications. The comprehensive electronic search covering roughly the same time period as our search of the liberal newspapers found only 25 *National Review* articles and 14 editorials in the *Wall Street Journal*. Conservatives oppose gun control except for laws increasing penalties when a gun is used in the commission of a crime. Gun owners represented by the National Rifle Association, fire arms manufacturers (also represented by the NRA), and conservatives are typically allies. Liberal interest group allies are primarily gun victims groups which are not nearly as well financed as gun owners,

manufacturers, and the NRA. The reader is doubtless familiar with the broad outlines of the debate, so there is no need for a review here. Despite the clear liberal-conservative separation, gun control is surprisingly difficult to understand in terms of moral/value theories and policy theories.

Given the strong commercial interest that gun manufacturers and dealers have in weakening or eliminating gun control laws and the close ties between these business interests and the National Rifle Association, it would be easy to conclude that the major opposition to gun control is primarily commercial and self-interested. But in the course of a review of the history of gun control R. J. Spitzer (2004, 112), borrowing from Richard Hofstadter (1970), observes that the most important source of gun control opposition is: “deep-seated, personal feelings of opponents that these bills would impinge on the values identified here as the gun culture.” In other words, if Spitzer and Hofstadter are correct, opposition to gun control is at least as much ideological as it is self-interested.

Whatever the ratio of self-interest and ideology engaged by this issue, gun control advocacy is located on the liberal end of the spectrum and opposition on the conservative end. Even so, gun control is difficult to bring into focus in terms of core values. First, in this area liberals uncharacteristically focus almost exclusively on order. Liberals want gun control as a deterrent against violent crime. As we have observed several times, the JBG model does not rule out order as a consideration for liberals only that it is ranked third after equality and freedom. Liberals, however, utterly ignore freedom to own a gun (although liberals might respond that they are upholding the freedom to not be killed or injured by a gun) and pay little attention to equality except to note occasionally that the poor and minorities are most likely to be victims of gun violence.

The gun culture is based on a frontier history perhaps exaggerated by the NRA and layered on top of hunting customs (DeConde 2001, 31-87). Hunting is especially important in rural and low income states where it is used to supplement a family's food budget. Some of these

states have long histories of National Guard membership which is another source of income. Reinforcing hunting and a romanticized frontier tradition was the a failure of law enforcement to keep up with crime in rapidly growing cities in the nineteenth century and the attendant use of guns for self-defense (Kenneth & Anderson 1975). Conservatives defend order with gun ownership and the Second Amendment. Many liberals find the gun culture loathsome, and many conservatives revel in it or at least accept it.

The primary conservative value is order, so conservatives should perhaps favor gun control. Conservatives maintain that guns owned by law abiding citizens enhance order. Freedom appears to be just as important for conservatives in this area, and conservatives occasionally bring equality into the debate arguing that well protected liberal elites can afford to oppose gun ownership while the poor and middle class are obliged to fend for themselves unarmed against criminals. Conservatives, who in the eyes of liberals are willing to cut civil liberties corners with regard to crime, become strict civil libertarians when guns are in question (Kleck 2001a, 76).

Liberals are dissatisfied with the ineffectiveness of gun control although that unhappiness is due partly or largely to the fact that they have not been able to win legislation that goes as far as they would like. For this they blame the firearms industry, the gun culture, and conservatives. Liberals argue that gun control has been at least somewhat effective where it has been tried (a thesis that conservatives dispute), but they recognize that full gun control in the U.S. would not eliminate the millions of firearms already in private hands.

Liberal and conservative moral/value theories in this area are identical. Gun deaths and other crimes are bad and should be minimized. The two sides are separated by their policy theories. The liberal policy theory is straightforward—guns kill people, so guns should be banned to the degree practicable. Conservatives deny that gun control is a deterrent to crime. As we saw above, conservatives argue that guns in the hands of honest citizens reduce crime. While conservatives oppose gun control in the liberal sense of

preventing everyone from owning handguns and controlling the ownership of long guns, conservatives favor stiff criminal sanctions against the use of guns in the commission of a crime. Liberals join conservatives in wanting especially severe punishment for the use of guns in the commission of a crime, but not as a substitute for gun control.

Few areas of public policy are the subject of debates as methodologically sophisticated as those surrounding gun control. We cannot come close to fully covering this debate. Even book length treatments are barely able to manage the topic (Nisbet 2001). Instead, we will try to isolate a few of the key pro and anti gun control hypotheses and one assertion as a way to access this complex topic.

Perhaps the most fundamental hypothesis of the pro gun control literature is that the nature of the weapon used in the commission of a crime affects the lethality of the crime, and when a gun is used, the probability that the crime victim will be killed is greater than with any other weapon (Cook, Moore, & Braga 2000, 11; Spitzer 2004, 50; Reiss & Roth 2001, 189; Zimring & Hawkins 2001, 222-229). This is called the instrumentality hypothesis.

The instrumentality hypothesis is the theoretical foundation of the National Firearms Acts of 1934 and 1938 and other federal, state, and local laws that sharply limit the ownership and manufacture of fully automatic guns, sawed-off shotguns, cheap Saturday night special handguns, and so-called assault weapons. These are called design regulations, and there is evidence that they can be effective (Vernick, Webster, & Hepburn 1999).

Confirming the instrumentality hypothesis generates immediate methodological complications (Cook 2001a, 249-254). Albert J. Reiss and Jeffrey A. Roth (2001, 194-195) ask about the degree to which apparent differences in lethality among weapons is due to differences in lethality inherent in weapon designs (instrumental effects) versus differences in perpetrators' intent. Perpetrators with especially deadly intent might select guns over other weapons, pick especially effective guns (e.g., an automatic or semi-automatic with

a large clip), and especially lethal ammunition. The perpetrators' intent theory suggests that lethality is due in large part to intent and that lacking guns, potential murderers will use other weapons. The instrumentality hypothesis might raise theoretical barriers to gun control advocacy, but it is clear that lacking a gun those intent on killing, especially those whose purpose is mass murder, would experience less success.

There are additional complications associated with the instrumentality hypothesis. For example, guns are often used to threaten, and if used successfully, no harm need come to the victim if the intent is robbery, not murder. On the other hand, possession of a gun may encourage robberies (Reiss & Roth 2001, 195). Police and court records show that there are many gun use scenarios that present a complicated picture. Other major hypotheses regarding guns and crime suffer from even greater conceptual, data, and statistical complexities.

A second hypothesis closely related to the first is that there is a positive relationship between availability of guns and the number of gun related crimes. Cook, Moore, and Braga (2000, 15) define availability as the cost of obtaining a gun. International comparisons yield a strong positive relationship between gun ownership and the percentage of homicides committed with a gun (Spitzer 2004, 45-48; Killias 1990). Comparisons among U.S. cities can produce similar results (Cook 1979). However, international and inter-city comparisons are of questionable value because of the many differences among them (Kleck 2001c, 331-334). One study compared Seattle and Vancouver which are geographically close and are similar demographically and sociologically. Seattle had less strict gun laws, a 60 percent higher homicide rate, and a 400 percent greater gun homicide rate (Sloane et al 1988). Although these figures are highly suggestive, they do not establish the direction of causation. Gun availability may be driving higher homicide rates, but high homicide and other crime rates may be encouraging people to arm themselves for self-protection. Also, differences between cultures in

U.S. and Canadian cities, despite their apparent similarity, may be responsible for both crime rates and gun ownership (Reiss & Roth 2001, 200-201). The gun control literature is filled with knotty methodological questions of this sort (Kleck 2001, 289-292).

Yet another hypothesis in this field is that the ease with which those with criminal backgrounds or those who are immature or mentally unstable can obtain guns is positively related to gun related crimes. At first glance, this hypothesis and the preceding ones appear to be closely related, but ideologically they are not. Liberals tend to embrace and conservatives reject the first two, but both agree on this one even though they often disagree about the correct design and implementation of laws based on it. Recent occurrences of gun violence by mentally ill perpetrators have revived interest in identifying and forcibly treating dangerously unstable individuals, a point we will cover in a later section.

The Gun Control Act of 1968 was formulated with the preceding hypotheses in mind. It is intended to minimize interstate transfers of guns to prevent the importation of guns into states with stringent gun control laws from states with less restrictive laws. Only federally licensed dealers are allowed to ship guns between states, and they must observe state and local laws in the sale of guns. Furthermore, the Gun Control Act makes the sale of guns illegal to undocumented aliens, felons and those under felony indictment, individuals convicted of domestic violence, illegal drug users, and those who have been committed to a mental institution. It is also illegal for a dealer to sell handguns to those under 21 years of age and long guns to minors under 18 years of age. Buyers are required to sign a form declaring that they do not belong in a category that would prevent them from legally buying a gun, and the dealer must perform a criminal history check. Dealers must record each sale and assist police in tracing the history of a gun used in a crime.

Layered on top of the Gun Control Act and subsequent federal legislation are a variety of state and local regulations (such as the State of New York's Sullivan Act) most of which also have the

preceding hypotheses as theoretical foundations. Some require that gun owners have licenses with various fees and waiting periods attached. In most states people outside of the categories proscribed in the Gun Control Act can legally own a gun, but in some localities owning or carrying a handgun is highly restricted.

The Gun Control Act of 1968 had little measurable impact, but even so, self-interested and conservative gun control opponents weakened it a year after its passage and then mounted a full counterattack a decade later (Spitzer 2004, 116-117). The culmination of this effort came with the passage of the Firearms Owners Protection Act of 1986 (also known as McClure-Volkmer). This statute permitted interstate sales of long guns if the sales were legal in the buyers' and sellers' states. It also weakened controls on ammunition and gun dealers (p. 118).

Keeping guns out of the hands of minors, felons, and others judged to be unfit to possess them depends critically on gun dealers. The job of issuing licenses to gun dealers belongs to the U.S. Bureau of Alcohol, Tobacco, and Firearms (ATF) which until 1993 was grossly underfunded and understaffed. The ATF granted dealer licenses almost automatically so by 1993 over 280,000 people held licenses, and the ATF was so small that it would have taken the agency more than a decade to inspect each dealer (Wintemute 2006, 63). Gun dealers could and did provide massive numbers of weapons to criminals (pp. 63-65).

With the passage of the Brady Handgun Violence Prevention Act of 1993 the Clinton administration and Congress made the dealer license application process more rigorous and drastically increased the application fee. The result was a sharp drop in the number of license holders although dishonest dealers remain a major source of gun transfers.

The Brady Act required that gun buyers be subjected to a criminal history and mental health history check. This process is only as reliable as the data bases that are utilized, and the crime data bases are poor and the mental health data largely inaccessible. Making matters

more complicated, processes such as legal buyers reselling guns to illegal buyers probably undermine the effectiveness of the Brady Act. Nevertheless, some proscribed buyers are turned away; others are probably discouraged from even attempting an illegal purchase (Cook, Moore, & Braga 2000, 37-38). However, a study by Ludwig and Cook (2000) shows that the impact of the Brady Act was not statistically significant.

In the 1994 election the NRA devoted considerable energy and millions of dollars to opposing the reelection of members of Congress who had supported the Brady Act, and many of them were defeated and replaced by gun control opponents (Carter 1997, 85-86). Of course, the 1994 election outcome was partly the result of Newt Gingrich's Contract with America which covered a much broader set of issues than gun control.

Another anti-gun control hypothesis is that the number of guns in the hands of law abiding people is negatively related to crime rates. This hypothesis is usually supported by conservatives who argue that crime is suppressed when potential malefactors consider the prospect of facing armed victims. Over half of the states have what are called shall-issue or shall-carry laws that require authorities to issue concealed-carry permits to anyone who meets basic requirements such as not having a prison record (Spitzer 2004, 59).

Like the other hypotheses discussed above, this one appears straightforward at first but turns out to be complicated. For one thing, statistics on incidents of self-defense by some using a gun are irregular partly because even the definition of the term self-defense is not settled (Reiss & Roth 2001, 198-200). Studies of homicide rates after passage of permissive concealed-carry laws and crimes committed by permit-holders show little reason to believe that these changes reduced crime (Spitzer 2004, 59-60). However, a study by John R. Lott and David Mustard (1997) and a book by Lott (2000) found reductions in violent crimes after passage of these laws. They used multiple regression analysis on county and state level data year by year for 1977-1994. But Dan A. Black and Daniel S. Nagin (1998)

show that, among other weaknesses in the Lott and Mustard methodology, when just the state of Florida is removed from the data the apparent benefits of shall-issue or shall-carry laws vanish. In addition, Cook, Moore, and Braga (2000, 23) point out that Lott and Mustard do not date the adoption of shall-issue laws consistently and that when consistent dates are used the effect on homicide and rape rates is no longer statistically significant. Hashem Dezhbakhsh and Paul H. Rubin (1998) come to similar conclusions regarding several elements of the Lott and Mustard models, and Spitzer (2004, 62) Spitzer (2004 criticizes Lott's peculiar use of election exit polls to determine gun ownership instead of public opinion data. Ted Goertzel (2002) observes that most murders occur, not in the universe of counties that Lott and Mustard study, but in a few urban areas lacking shall-issue or shall-carry laws; so, there is no variation in their major independent variable where it matters the most.

When potential crime victims are able to defend themselves with a gun, they are often able to prevent crimes, but such cases are rare because victims are not present when their homes are being burglarized or often are not armed or cannot gain access to their weapon when they are attacked away from home. In robberies, assaults, and residential burglaries fewer than five percent of victims defend themselves with guns, although when guns are used for self defense there appears to be a reduced risk of injury (Reiss & Roth 2001, 199). Another complication is that gun ownership comes with risks of its own including accidental discharge and use against family or neighbors in emotional circumstances. One more complication is that guns owned by law abiding citizens are frequently stolen and then used in crimes.

Yet another gun control hypothesis is that punishing those who carry a concealed gun without a permit will reduce the number of concealed guns carried by potential criminals. This hypothesis tends to be supported by liberals and opposed by conservatives. According to Cook, Moore, and Braga (2000), states that require permits for someone to carry a concealed gun do not punish violators severely.

One exception is Massachusetts where someone convicted of possession of a concealed gun receives a mandatory prison sentence of one year. When this law went into effect in 1975, thousands applied for permits. According to Pierce and Bowers (1981), the percentage of assaults and robberies in which guns were used dropped as did death rates when these crimes were committed. Sherman, Shaw, and Rogan (1995) report an experiment in which police aggressively enforced a law against illegal concealed guns in a high-crime area and as a control did not in another high-crime area. The test area saw a 49 percent reduction in gun crimes while the control area experienced a four percent increase.

Still another hypothesis is that the number of gun related crimes is negatively related to the severity of punishment for the use of a gun in the commission of a crime. Conservatives have demonstrated considerable enthusiasm for laws that add mandatory sentences for anyone found guilty of committing a crime such as robbery with a gun, preferring them to liberal supported programs designed to reduce the number of guns in circulation (Kleck 2001a, 83). Liberals often do not oppose laws based on this hypothesis, but they object to such laws as an exclusive alternative (Kleck 2001a, 83). Although laws based on this hypothesis can probably do no harm, there seems to be little evidence or at best mixed evidence that they help (Reiss & Roth 2001, 206-207).

Accompanying these hypotheses is an assertion that is as controversial as the hypotheses: the Second Amendment of the U.S. Constitution (“A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”) guarantees to each individual the right to keep and bear arms. Gun control advocates focus on the reference to a militia, arguing that the right to keep and bear arms is dependent on membership in a state militia (Henigan 1991; Wills 1995). In the early years of America’s history state militias were seen by many as a way for states to counter balance the power of the national government, and militiamen were required to provide their own guns

and ammunition. State militias quickly deteriorated as fighting forces and were ineffective in the War of 1812 (Spitzer 2004, 27). Militias as originally organized were all but eliminated by the Militia Act of 1903 (National Guards are not the same thing) thus ending peoples' constitutionally protected right to keep and bear arms, according to gun control advocates. In 1939 (*United States v. Miller*, 307 U.S. 174) the U.S. Supreme Court agreed, asserting that the "obvious purpose" of the Second Amendment was to protect state militias (Cook, Moore, & Braga 2000, 28). This interpretation was overturned in 2008 in *District of Columbia v. Heller* and in 2010 in *McDonald et al. v. City of Chicago, Illinois*. In *Heller* the Supreme Court: "held that the Second Amendment protects the right to keep and bear arms for the purpose of self-defense and struck down a District of Columbia law that banned the possession of handguns in the home." (*McDonald et al. v. City of Chicago, Illinois*, Syllabus, 1) In *McDonald* the Court ruled that the Fourteenth Amendment makes the right to keep and bear arms applicable to the states.

Another criticism of the applicability of the Second Amendment compares the right of individuals to keep and bear arms to freedom of speech which is constrained in several ways. By this logic the issue is not one of an absolute right to keep and bear arms but how such a right will be regulated. This train of thought is reinforced by the fact that most conservatives support specific gun controls such as making gun ownership by felons illegal, making the use of a gun in the commission of a crime subject to extra penalties, and not allowing general ownership of fully automatic guns.

Liberals and conservatives disagree only a little on gun control value/moral theory: they want to minimize crime and violent death. Most liberals would probably phrase their value/moral theory as wanting to minimize gun violence along with other kinds of crime, while conservatives would allow for the possibility that gun owners could use their weapons to prevent crime.

Neither liberal nor conservative policy theories in this area can be described as thoughtless; however, the extensive and sophisticated

policy and legal research superstructures regarding the many dimensions of gun control carry the odor of conclusions drawn before the research designs were begun. Overall, crime and gun related violence is an incredibly difficult policy area. For differing reasons, neither liberals nor conservatives regard public policy in this field as effective.

Banning prayer in public schools and banning religious iconography on government property

In Table 6.1 we list both of these initiatives as having thoughtful sponsors because they have long intellectual histories. Conservative opponents testify to their effectiveness by the vigor of their opposition. Both are marked by liberal-conservative disagreement on whether they are worthwhile; this is a value difference that will never be resolved.

Non Business and Economics:

Expanding the Rights of those Accused of Crimes

Table 6.1 describes the initiative that we call “expanding the rights of those accused of crimes” as subject to “disagreement” regarding the thoughtfulness of its advocates, but effective and marked by disagreement regarding whether it is worthwhile. Scholars, journalists, and politicians delineate this initiative in a variety of ways. It can include several different topics that are sometimes treated separately or related or merged. These topics include arrest criteria, right to counsel, and illegally obtained evidence. In turn, each topic can be broken down in many ways. For example, major sub topics in the category of illegally obtained evidence include confessions, electronic eavesdropping, and the use of the exclusionary rule. For purposes of brevity, we will focus on illegally obtained evidence via confessions which ideologically speaking is similar in both moral/value theory and policy theory to arrest criteria and right to counsel.

With few exceptions, liberals initiated changes that favored defendants by making it more difficult for police to obtain evidence. This area represents another classic distinction between liberals and

conservatives with liberals favoring equality and freedom over order and conservatives valuing order over equality and freedom, but these differences are matters of degree. Liberals do not want to release hordes of criminals into society, and conservatives have no intention of enforcing order by abandoning the rights of those under investigation or accused of crimes. We have already seen these differences arise with regard to police tactics. When crime in New York City peaked in 1990 liberals vigorously supported quality of life policing, but as crime rates dropped, their enthusiasm was overtaken by concerns that minority rights were being infringed. Conservatives have continued to endorse the effectiveness and civil rights correctness of this package of techniques.

The issue of confessions centers on *Miranda v. Arizona* (1966). The facts of the case are well known and not disputed. In 1963 Ernesto Miranda was arrested near Phoenix for the kidnaping and rape of an 18 year old girl. She identified him in a lineup, he was questioned, and he confessed in writing. There were no allegations of force employed to secure the confession. Miranda was convicted, but the U.S. Supreme Court threw out the confession. The decision hinged on the admissibility of a confession or other information given by a suspect interrogated while deprived of his freedom, i.e., a custodial confession. Miranda was not warned of his rights before questioning began. The Supreme Court's decision emphasized that, although force was not used to obtain the confession, psychologically sophisticated techniques could produce pressures that can weaken a suspect's will to resist resulting in his speaking against his own interest. In other words, the Court found that a custodial confession given without the suspect having been informed of his rights against self-incrimination amounted to a compelled confession. To realistically exercise his Fifth Amendment right against self incrimination a suspect must be informed of his rights and allowed to exercise them. One of those rights is the right to remain silent.

Liberals together with their trial lawyer allies favored *Miranda* as

a deterrent to coerced confessions while conservatives and their law enforcement allies opposed it on the grounds that sufficient protections were already in place and that *Miranda* accomplished nothing except to make law enforcement more difficult and allow some criminals to go free (*WSJ* The rights of the guilty, 4/26/65; *NR* Don't say a word Mac, 6/28/66). Liberals deny that *Miranda* has hurt law enforcement (*NYT* No shackles on the law, 8/15/66).

The liberal-conservative differences here are classic. In defending *Miranda* liberals are promoting equality: the poor and minorities are relatively ill equipped to defend their rights in the intimidating environment of a police station. In supporting *Miranda* liberals and trial lawyers are also placing less emphasis on order although they deny that this is the case. In opposing *Miranda* conservatives and law enforcement officials are promoting the maintenance of order while denying that they are victimizing the poor. Conservatives oppose the use of coercion by police to obtain confessions. However, they point to the Fifth Amendment as promising only that no person "shall be compelled in any criminal case to be a witness against himself." The conservative interpretation of the Fifth Amendment is that we are protected against coercion, but we are not insulated from the consequences of a freely given confession (*WSJ* Heeding *Miranda*'s warning, 2/2/87).

In this debate both sides deploy anecdotes and statistics gathered in complex but sometimes methodologically unsound studies. Among many examples of anecdotes, the *Journal* covered the case of *Colorado v. Spring* (1987) in which a man was *Mirandized* after being arrested on firearms charges. The police asked if he had shot anyone with the gun, and he confessed to murder. After his conviction his lawyers argued that his *Miranda* rights had been violated because the police had failed to list all of the crimes about which he might be asked. The Colorado Supreme Court agreed that the confession could not be used, an example of *Miranda* weakening law enforcement in the eyes of the *Journal*. The *Journal* applauded the U.S. Supreme Court's reversal.

The Court found that he had “voluntarily, knowingly and intelligently” confessed (*WSJ* Heeding Miranda’s warning, 2/2/87; see also *WSJ* Why Crime Keeps Winning, 12/10/90; and many more).

National Review (True confessions: The long road back from *Miranda*, 10/18/85) observed that after *Miranda*, trial convictions remained unchanged which could mistakenly lead to the conclusion that the new warnings did not hurt law enforcement. A 1967 study (Seeburger & Wettick, 1967), sponsored by Philadelphia District Attorney Arlen Specter’s office and cited in the *Wall Street Journal* (*Miranda* vs. Jogger, 2/1/91), found that after *Miranda* only 41 percent of people arrested made statements of some sort. This represented a 49 percent reduction, according to District Attorney Specter in testimony before the Senate Judiciary Committee’s Subcommittee on Criminal Laws and Procedures (Hearings on S. 674, S. 917, et. al., 90th Cong. 2-3, 1967). At the same hearings, Charles E. Moylan, the State’s Attorney for Baltimore, reported pre *Miranda* confessions in 20-25 percent of cases and post-*Miranda* confessions in only 2 percent of cases.

Determining valid quantitative estimates of the impact of *Miranda* on the criminal justice system is an extraordinarily difficult methodological problem. The estimates presented at the 1967 Senate Judiciary Subcommittee hearings compared data before and just after *Miranda*, well before police had a chance to adjust to it. In addition, one must view the sponsorship of this research as potentially biased. Making matters worse, initial interest in measuring the impact of *Miranda* disappeared after a few years.

Paul G. Cassell, a vigorous critic of *Miranda*, attempted to revive efforts to measure its impact. He criticized studies that appeared in the late 1970s that found that fewer than 0.1 percent of cases were lost because of *Miranda* suppression motions (Cassell 1998). Liberals use this small figure to argue that *Miranda* has had little impact on law enforcement. Analysis of suppressed confessions is by its nature limited to cases in which confessions are obtained. In cases where police fail to obtain confessions, in some instances that

failure may be due to *Miranda*. In those cases there may be sufficient evidence to win a conviction without a confession. So, to estimate the percentage of cases lost because of *Miranda* the analyst needs two figures: the change in confession rate caused by *Miranda* and the percentage of cases in which a confession is required.

Cassell's research examined the three-decades-old before and after *Miranda* studies. His data covers eight urban jurisdictions that reportedly experienced reductions in confession rates of 18.6, 34.5, 24.6, 2.0, 16.0, 6.0, 15.5, and 11.8 percent with an overall average reduction of 16.1 percent. The first three percentages belong to Pittsburgh, New York County, and Philadelphia; the others are for much smaller jurisdictions. Using statistics on numbers of cases in which confessions are needed to convict, Cassell concluded that *Miranda* caused the loss of approximately 28,000 cases against violent offenders and 79,000 cases against those accused of property crimes (Cassell, 1998).

According to *National Review*, *Miranda* not only resulted in lost cases but increased the use of plea-bargaining to reduce charges (True confessions: The long road back from *Miranda*, 10/18/85). Cassell also addressed this point. He observed that a confession can strengthen the prosecution's case, so fewer confessions translates into more weak cases and more plea-bargaining. He estimated that in 1993 tens of thousands of plea bargains led to reduced charges in both property cases and cases involving violence.

Cassell's estimates were all but ignored by liberal editorial writers, but they produced a substantial scholarly response most notably from Stephen J. Schulhofer (1997). In addition to the obvious point that Cassell's analyses are based on biased data from the mid 1960s and that police have adapted to *Miranda*, Schulhofer observes that Cassell ignored data from Los Angeles where confession rates increased after *Miranda*.

Conservatives were appalled by *Miranda*'s potential to hurt law enforcement, and that feeling was only accelerated by increasing crime rates at the time of the decision. However, conservative

attempts to link *Miranda* to increasing crime rates were problematic partly because statistically it is a difficult case to make. Violent and property crimes had been increasing before *Miranda*, and they continued to do so for more than a decade after it. In addition, property crime peaked in 1979 and declined except for an upward movement in the period 1985-1991. Violent crime peaked in 1990 or 1991 and declined fairly steadily afterward. These trends probably helped to deflate the conservative case against *Miranda*. The conservative argument also was undermined by an increasing sophistication of police in dealing with *Miranda* warnings.

The conservative response to *Miranda* displayed a naive or studied ignorance of what could happen to an ill informed and innocent suspect in police custody. However, the liberal embrace of *Miranda* reflected a seemingly casual attitude toward its potential to damage law enforcement. Conservatives appeared to underweight the importance of equality before the law and liberals paid too little attention to the maintenance of order. Both sides' moral/value theories could have been more thoughtful.

The liberal *Miranda* policy theory was simple. Liberals wanted to defend the rights of vulnerable citizens, and this requirement, as far as it went, was met. More people understand their rights, and those who do not are informed by arresting officers. As a result, fewer confessions are offered now than before *Miranda*. However, the liberal policy theory all but ignores order, the main reason we describe initiative sponsor thoughtfulness as subject to disagreement. The conservative *Miranda* policy theory was equally simple. Conservatives did not want confessions elicited by coercion, but if someone chose to volunteer a confession against his or her own self interest, that was one less criminal at large, not a violation of the Constitution. Conservatives' main concern, based on their primary regard for order, was that police effectiveness would be degraded. Just as liberals paid little attention to order conservatives all but ignored equality. The sometimes heated liberal-conservative debate that surrounded *Miranda*, especially immediately after the ruling,

should not obscure the high degree of consensus on the basic point that both sides oppose the use of coercion to obtain confessions.

What gives teeth to *Miranda* and many other criminal rights protections is the exclusionary rule which requires that evidence gained from illegal procedures may not be used against a defendant (*Mapp v. Ohio* 1961). Liberals and conservatives are probably more divided on the exclusionary rule than they are on *Miranda*. Conservatives object to the exclusionary rule as a way for criminals to escape justice (*WSJ* An alternative needed, 7/12/71; Failed experiment, 12/7/82; *NR* Stirrings on the Court, 8/24/84). Liberals endorse it as a way to prevent police from violating rights (*NYT* The Supreme Court apologizes, 6/5/83). One conservative solution is to allow illegally obtained evidence to be admitted in trial and for police responsible for obtaining the evidence to be disciplined (*WSJ* And what about justice? 9/1/95). It need hardly be said that liberals reject such an approach.

Liberals and conservatives were ideologically consistent in this area, which has been subjected to intensive and sophisticated policy analysis, but both sides' positions were characterized by tunnel vision. Conservatives, emphasizing order, appeared not to consider or care about the possibility that the poorly educated would be unable to defend themselves against manipulative law enforcement personnel while liberals, emphasizing equality, seemed too willing to free criminals even as crime rates increased. Viewed exclusively from the perspective of criminal rights, the set of liberal initiatives such as *Miranda* were effective. But in a policy area as complex as this one a single objective makes policy evaluation incomplete and misleading. It would be equally misleading and incorrect to conclude, as some conservatives have, that liberal initiatives caused crime rates to increase.

This area appears not to be the subject of the intense debate that it was in years past. This is probably due not to a narrowing of the liberal conservative divide, but exhaustion. Neither side has much new to say, and crime rates appear to have dropped.

Non Business and Economics: Thoughtlessly Developed Initiatives

This category includes five thoughtlessly developed initiatives characterized by mixtures of ineffectiveness and worthlessness: enacting affirmative action; banning federal aid for stem cell research; almost automatic support for increased funding for regular public schools; enacting and supporting No Child Left Behind; and enacting deinstitutionalization of the mentally ill.

Enacting affirmative action

We discussed affirmative action in Chapter V, so we will try to avoid repetition here. Affirmative action and a related initiative that would force busing of students across school district boundaries (Timiraos 2009, A3) represent a sudden reversal for liberals. Among all of the initiatives we have examined, affirmative action is the most clear cut case of internal liberal inconsistency. This ideological inconsistency is accompanied by policy consistency between liberals and civil rights organizations, their usual allies in this policy area.

Earlier civil rights initiatives sought to end discrimination perpetrated by governments, businesses, or individuals. Affirmative action effectively assumes that these initiatives were successful but tries to discriminate in favor of protected racial, gender, or ethnic groups in such matters as hiring, college admissions, and employing businesses owned by protected groups (Leiter & Leiter 2002, 1, 53). A 1963 *New York Times* editorial saw it as “reverse discrimination,” and the newspaper was opposed to such a policy which it associated with quotas assigned based on color (*NYT* Reverse discrimination, 8/23/63). The *Times* came to favor affirmative action a few years later, while denying that quotas were part of it.

In Chapter V we reviewed the argument put forth by Leiter and Leiter (2002, 41) and Charles V. Dale (2005, 5) among others that affirmative action was the product of the 1964 Civil Rights Act, but in fact the statute forbade discrimination in favor of individuals or

groups based on race or any similar characteristic. Affirmative action was developed by civil rights organizations and staffs of the Equal Employment Opportunity Commission (EEOC) and the Office of Federal Contract Compliance Programs. The EEOC and OFCCP, with their limited staffs and budgets, believed that their work would progress slowly if at all using the complaint-driven process required by the Civil Rights Act, and they lacked the legal authority to embark on affirmative action enforcement. They received the authority they needed with the U.S. Supreme Court ruling in *Griggs v. Duke Power Co.* (1971). After *Griggs*, evidence of discrimination could be adduced from disproportionately low numbers of protected classes hired or promoted. This logic quickly translated into hiring, promotion, and university admission decisions that discriminated in favor of protected classes.

In Table 6.1 we describe affirmative action sponsors as thoughtless. We should amend that assessment by distinguishing between self-interested civil rights groups and liberal ideologues. In pivoting from ending racial discrimination to advocating it, the interest groups were simply being normal interest groups: they were supporting a program that benefitted them. In this respect there is little difference between civil rights groups and any other self-interested groups. But liberals, who quickly turned their backs on many decades of anti-discrimination advocacy, were thoughtless. Our entries in both the “Effective?” and “Worthwhile?” columns in Table 6.1 are “Disagreement,” indicating liberal-conservative discord. Liberals regard affirmative action as effective and worthwhile, and conservatives do not.

Banning federal aid for stem cell research

The moral/value theory underlying this initiative was that abortion constitutes murder and that the destruction of embryonic stem cells is morally indistinguishable from abortion. However, the stem cells in question are discarded if they are not used for research. There is no equivalence between stem cell destruction and abortion. In a narrow and meaningless sense, the religious right’s stem cell policy theory

was thoughtful in that it wanted to end federal support for embryonic stem cell research and found a way to do so in 2001 when George Bush was president. However, what was accomplished was to slow lifesaving research on the basis of an invalid moral/value theory rejected by many conservatives. Once again, we see a thoughtlessly developed initiative founded on a single value and a distorted one at that. This initiative was effective for a short time, but it was destructive.

Almost automatic support for increased funding for regular public schools

We covered this topic earlier in this chapter when we discussed charter schools and school vouchers, and we did so as well in Chapter V. For many decades liberals have almost automatically supported funding increases for regular public schools even as liberals themselves repeatedly documented the poor quality of those schools and especially declining or stagnant results on standardized test scores and as they flirted with conservative choice initiatives. There was no reason to expect that increased funding without substantial reforms would produce improvements. Editorials in the *Times* and *Post* demonstrate that this policy was ineffective. In the “Worthwhile?” column we list “Disagreement” because liberals and conservatives continue to be widely divided on this matter.

Enacting and supporting No Child Left Behind

A school initiative called No Child Left Behind (NCLB) was enacted in 2002. We discussed its origins in Chapter V. NCLB had several objectives: student testing allowing school comparisons nation-wide; improved academic standards; school choice for students attending failing schools; standards for teacher quality; student tutoring; aid to states and localities to establish charter schools; and reducing interracial student performance differences. The use of standardized national student tests is widely regarded by liberals and conservatives as an excellent idea, but its implementation in NCLB was clouded by states that manipulated their tests to make schools appear better than they were and federal waivers that allowed

delaying target dates for achieving academic goals. By 2012 over one half of the states had received NCLB waivers. Still, rigorous national testing may become a reality if federal officials, parents, and those concerned with improving school quality insist. Most of the remainder of NCLB was not thought through. For example, the school choice component neglected the reality that where this feature is most needed there will probably be few real alternatives to which children can move. Charter schools and private school vouchers are potential alternatives, but in many states teachers' unions and school officials block their establishment.

Elements of NCLB were thoughtful but only in principle. As implemented, NCLB had few defenders. We give it a qualified "Worthwhile" in Table 6.1 only because its objectives were worthwhile and because elements of it may still be well implemented in other programs.

Enacting deinstitutionalization of the mentally ill

Deinstitutionalization of the mentally ill refers to a movement in the 1960s and much of the 1970s of some mental health professionals, liberal attorneys, and civil libertarians to free inmates of mental hospitals and to guarantee mental patients the right to refuse treatment (*WSJ* Psychosis and civil rights, 9/28/90). This initiative took its first statutory form in the passage of the Community Mental Health Centers (CMHC) Act of 1963. President John F. Kennedy enthusiastically supported the bill which had as its central policy theory that the mentally ill should be treated in the "least-restrictive setting," rather than in traditional mental hospitals (Raspberry 1983, A17). Conditions in many mental hospitals, dramatized in the 1948 film *The Snake Pit*, were horrible, but patients were given the financial wherewithal by Medicare and Medicaid and the legal support by the CMHC to escape from these facilities into nursing facilities and group homes. States used the "least-restrictive setting" notion as a justification for releasing patients from state facilities by the tens of thousands, sometimes with little concern for what their lives would be like after that point

(Raspberry 1983, A17; Rubin 2007).

The first federally funded CMHC came into existence in 1966. Saul Feldman (2003) describes the CMHC program as riven with professional, political, and organizational divisions. For example, the American Medical Association was suspicious of federal funding of CMHCs as a step toward socialized medicine. Furthermore, the mental health field was characterized by disagreement regarding the nature of mental illness and the efficacy of various treatments (p. 663). Feldman (p. 664) depicts mental health professionals as “fractious and argumentative.” There was also widespread disagreement about the meaning of the word community and how various definitions would translate into specific CMHC operations. Furthermore, the federal government was unprepared to manage a national mental health program.

Lillian Rubin (2007) describes how the wholesale release of mental hospital patients overwhelmed the community mental health centers. She quotes a mental health professional: “We had no choice but to turn people out into the street.” (p. 54) She continues: “Yet deinstitutionalization continued, ultimately closing nearly half the hospitals in the country and dramatically reducing bed capacity in those that are left, leaving uncounted tens of thousands of people to fend for themselves.” (p. 54) Meanwhile, law suits filed by advocates of deinstitutionalization resulted in additional mental patients being incautiously released (*WSJ* Psychosis and civil rights, 9/28/90).

The earliest *Times* item we could locate on this subject (Churchill 1974) was a news account that covered legislation in New Jersey that would prohibit involuntary commitment to mental hospitals except when an individual could endanger the public welfare. Apparently, the bill was a response to a Federal District Court suit. Aside from details about funding and restrictions on particular medical treatments, that is all that the article contained. The next *Times* item, another news account, appeared two years later. It is a cheerful unsigned piece (Project Haven is giving new start to mentally ill, 3/15/76, 64) describing a new community psychiatric

center in Paramus, NJ: “The rooms are bright and airy, with colorful murals, comfortable sofas and bulletin boards noting the activities for the day.” A state senator described the facility as “a dream come true.” The remainder of the piece had the same tone.

The next article in this area appeared in the *Times* after another two years and carried a radically different quality reflected by the title “Mentally ill, ‘dumped’ and isolated.” (Olivieri 1978) Written by Antonio G. Olivieri, councilman at large for Manhattan, the first sentence is consistent with the title: “Over the last 10 years, more than 50,000 mental patients have been released from New York State psychiatric hospitals and dumped into residential communities—with little regard for either the needs of the patients or the communities affected.” The entire article continues in this manner, noting, for example, that: “State and city officials admit that they don’t know where 70 percent of discharged mental patients are.”

A relatively early *Washington Post* (Locke 1978) news account presented the community mental health situation in a relatively positive light as challenging but manageable. A year later another *Post* story by Ruth Daniloff (1979) was, like the Olivieri article, dramatically different. As Daniloff described the situation, mental hospitals: “under pressure to cut budgets and empty wards, have dumped people on a society with inadequate aftercare provisions. Victims of chronic mental illness simply cannot provide for their own needs—food, shelter, work, medicine, friends, recreation—without strong community backing.” (p. 11) She reported that mental health experts described deinstitutionalization as “a national scandal.” (p.11)

At least in part, *Times* and *Post* editorials quickly turned against the program as it was implemented. In 1989 the *Times* wrote of “Hordes of the mentally ill living on New York City streets” due to “a vast failure called deinstitutionalization.” (Supported S.R.O.’s’ for the deranged, 5/8/89) The *Post* (...but no cheap cures, 9/15/84) referred to deinstitutionalization as “tragic” and observed that blame for this initiative could be distributed widely:

Mental health professionals underestimated the treatment needs

of severely disturbed patients and overestimated the extent to which new mood-altering drugs could enable them to function in the larger community. State administrators and legislators were only too glad for an excuse to save money on mental institutions, especially as courts ordered more adequate treatment for patients. Legal advocates for the mentally ill pressed to establish their client's rights to be released without much thought to what would happen to them next.

Many liberals blamed the failure not on deinstitutionalization itself but on the lack of government follow-through in providing outpatient and group home care (*NYT* Civil liberty for what? 4/8/74). In a similar vein, the *Washington Post* (Virginia's \$140 million consensus, 9/1/87) praised a State of Virginia program that sought to treat alcohol and drug addicts, the mentally ill, and mentally handicapped near their homes rather than committing them indefinitely to state institutions. However, funds voted by the legislature were insufficient to support it. The *Journal* (Psychosis and civil rights, 9/28/90), reviewing half way house and group residence proposals, objected that they did not meet the contradiction that "the mentally ill require treatment which they are incapable of seeking for themselves." Making matters worse were court rulings generated by civil libertarians that made it "nearly impossible to commit patients involuntarily, without offering the most compelling and extreme proof that they pose a danger to themselves or others." Along these same lines the *Post* (The death of Rebecca Smith, 2/16/82) recounted the story of a previously institutionalized woman who died of exposure in the winter even after social workers had tried to get her to a shelter.

Lillian Rubin (2007, 52) characterized deinstitutionalization as a good idea with "lofty goals." However, the CMHC, she continues, was legislation that began a "social debacle." (p. 53) It appears that liberals believed without careful consideration that the values of equality and freedom *implied* the policy of deinstitutionalization. Civil libertarians felt that equality and freedom

were being served by liberating the mentally ill from institutional bondage, but this ethical position should not have been separated from the issue of what would happen to the former patients after their deliverance. Deinstitutionalization was often accompanied by the frequently repeated policy theory that the newly released patients would be accepted by local half way houses and group residences. Perhaps advocates of deinstitutionalization believed or hoped that state and local politicians would be embarrassed into adequately funding local facilities. The politicians seemed invulnerable to shame, and the local treatment option never fully addressed the conundrum raised by conservatives and some liberals that many who need treatment refuse it because they need treatment.

Our description of deinstitutionalization sponsors as thoughtless is justified. Deinstitutionalization was ineffective. Its goals were worthwhile, but little consideration was given to what seemed to be the inevitable consequences of releasing tens of thousands of severely mentally ill people. This initiative caused much suffering, but the status quo was also horrible, and doubtless some patients benefitted from their release. We cannot describe it as worthwhile without attaching major qualifications. Similarly, given the status quo, we cannot characterize it as worthless, so we fence-straddle by describing it as worthwhile/worthless.

Business and Economics: Thoughtfully Developed Initiatives

The following eight business-economics initiatives were thoughtfully developed with five of them being effective and worthwhile: enacting bank and financial deregulation; reducing barriers to international trade; enacting and supporting Brownfields; enacting and expanding federal health insurance (Medicare, Medicaid, and Obamacare); enacting and extending the Family and Medical Leave Act; initiating and supporting pollution control; protecting workplace safety; and enacting and supporting consumer protection. Three other initiatives are marked by disagreement regarding effectiveness or being worthwhile. All are listed as part of

Table 6.2.

Table 6.2 Business and Economics: Thoughtful, Effective, and Worthwhile?			
Initiative:	Thoughtful?	Effective?	Worthwhile?
Enhance non-traditional energy sources	Disagreement	Disagreement	Disagreement
Reduce global warming	Disagreement	Too soon to tell	Disagreement
Enact financial dereg.	Thoughtful	Disagreement	Disagreement
Enact & extend Family & Medical Leave Act	Thoughtful	Effective	Worthwhile
Enact & support consumer protection	Thoughtful	Effective	Worthwhile
Enact & support pollution control	Thoughtful	Effective	Worthwhile
Protect workplace safety	Thoughtful	Effective	Worthwhile
Reduce barriers to international trade	Thoughtful	Effective	Worthwhile
Enact & support Brownfields	Thoughtful	Marginal(1)	Worthwhile

Initiative:	Thoughtful?	Effective?	Worthwhile?
Enact & expand health insurance	Thoughtful	Disagreement	Worthwhile
Require use of gasohol + corn subsidies	Thoughtless	Ineffective	Not worthwhile
Enact Cash for Clunkers	Thoughtless	Ineffective	Not worthwhile
Enact energy price controls & rationing	Thoughtless	Ineffective	Disagreement
Enact Nixon era wage & price controls	Thoughtless	Ineffective	Not worthwhile
Enact & support Superfund	Thoughtless	Ineffective	Not worthwhile
Support agribusiness subsidies	Thoughtless	Ineffective	Not worthwhile
Support regulation of transportation	Thoughtless	Ineffective	Not worthwhile
Support antitrust	Thoughtless	Ineffective(2)	Disagreement
Prevent large business failure-subsidize econ. activity	Thoughtless	Ineffective	Not worthwhile
Provide low interest mortgages (Fannie Mae & Freddie Mac)	Thoughtless	Ineffective	Not worthwhile

(1)Implementation has been slow. May yet prove effective.

(2)The threat of antitrust may prevent the formation of some monopolies

Reducing barriers to international trade

We saw in Chapter V that for many years conservatives and most

liberals shared policy positions on international trade that constitute part of their consensus on the basic utility of the market system. In particular, they believe that interference with free international trade with such devices as tariffs hurts everyone in the long run. Those who favor barriers to international trade often are called protectionists although they commonly deny that this pejorative term applies to them at least in the classic sense of shielding particular domestic industries.

We also saw that the liberal-conservative moral/value theory on international trade (and the market economy in general) is that free trade benefits more people than it hurts and that it helps a broad range of interests at the top, middle, and bottom of the economic scale including many in third world countries.

Reducing barriers to international trade is based on a long-standing and sophisticated policy theory extending back to Adam Smith and David Ricardo. The usefulness of this theory has been confirmed countless times over a period of centuries (see Chapter V). This is an effective and worthwhile initiative as we have indicated in Table 6.2. Conservatives oppose trade barriers (Ponnuru 2016), but, as we saw in Chapter V, 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; Atkinson 2016; Lincicome 2016).

International trade marks an important intellectual split on the left and to a much lesser degree on the right. Unlike the *Times* and *Post*, the ADA, *The Nation* magazine, and others on the left, appear to be abandoning market models for thinking about this and perhaps other elements of economics (Nichols 2009, 19).

The alliance of conservatives, most liberals, and most economists has developed thoughtful moral/value and policy theories in this area that have been confirmed when trade barriers are low and when they are increased. However, increasing criticism of free trade by the ADA, *The Nation*, some conservatives, and President Trump, who is more pragmatic than ideological, signals continuing political conflict

in this area.

Pollution control

When economists explain the concept of negative externality or external cost, they usually turn to the example of air and water pollution, a major form of market breakdown. After World War II chemistry produced a cornucopia of new toxic substances many of which naturally degrade very slowly. Growing populations further intensified pollution levels. In the 1960s liberals enacted laws and regulations governing air and water pollution, hazardous waste, and endangered species. After a mixture of denial and abortive attempts to take the environmental lead, conservatives criticized and then largely adopted initial liberal positions while liberals proposed ever more ambitious standards. Liberal and conservative value/moral theories in this field are primarily different only in degree. No one wants to breathe polluted air or drink water laced with toxins. Differences primarily concern what levels of protection can be attained at a reasonable cost. Policy theories are also similar: laws and regulations limit pollution to particular levels. Liberals were quickest to recognize that the negative externalities caused by pollution were a form of market breakdown, but conservatives came along fairly quickly.

Benefit-cost analysis

Fundamentally, environmental protection requires that the government sets limits on the maximum amount of a pollutant or toxin allowed in air, water, or soil. A technique called benefit-cost analysis asks the kinds of questions that government should pose: What benefits do we obtain from achieving a given limit, and how much will it cost to do so? Benefit-cost analysis views a decision as a choice of one future from an array of two or more futures. At its simplest the choice is a go or no-go decision—to do something (one future) or do nothing (the other future representing the status quo). Attached to each future including the status quo are benefits and costs. If all goes well, benefit-cost analysis allows its practitioners to choose the future with the best benefit-cost relationship. Probably the

most widely used measure of the benefit-cost relationship is the net benefit calculated by subtracting costs from benefits. Another commonly used measure is the benefit-cost ratio calculated by dividing benefits by costs. To be worth doing, a project's net benefit must be greater than zero and its benefit-cost ratio greater than 1.0. The benefit-cost analyst tries to select the future with the highest net benefit or highest benefit-cost ratio. The two measures do not necessarily yield the same decision, and net benefit is the more useful of the two (Stokey & Zeckhauser 1978).

This discussion suggests that benefits and costs can be reduced to dollar (or any other currency) amounts. Benefit-cost analysis is widely used in private and public capital investment decisions such as determining whether to construct an office building or widen a road. In the private sector benefits and costs can be translated into dollars with relative ease although cost overruns and the uncertainty of future benefits (e.g., whether a new office building will generate predicted rents) make benefit-cost analysis a gamble even when costs and benefits are quantifiable and relatively predictable. In many, if not most, governmental applications benefits are substantially more difficult to express as dollars than are costs. This is especially true when benefits are important but difficult to quantify such as life-years extended, animal species not rendered extinct, or obnoxious odors eliminated—all of which are common elements of environmental protection. The literature on the dollar valuation of human lives does not encourage optimism about the usefulness of an analysis that includes this factor (Nas 1996; Levin 1983), and translating other imponderables into dollars is little easier. Depending on what assumptions and techniques are used, benefit-cost analysis can produce a wide range of results favorable or unfavorable to a policy. The self-interest or ideological orientation of those performing the analysis is critical.

Although benefit-cost analysis is a useful framework for organizing data to make a decision, it can be an exercise in what Alabama Governor James E. Folsom, Sr. disdainfully described

as “taking the politics out of politics.” Environmental protection is politics which is to say that it is conflict among interest groups and ideologues struggling to control policy initiatives and implementation.

Command-and-control

In an earlier chapter we examined the relative merits of initiatives implemented by chain of command bureaucracies versus complex adaptive systems or markets. In the field of environmental protection the first is often referred to as command-and-control or standards-and-enforcement (Rosenbaum 2002, 168-69). Most environmental protection programs operate through chain of command bureaucracies: essentially, limits on pollutants are established and then enforced. Both liberal and conservative critics of command-and-control pollution abatement charge that it is entirely negative, providing companies or individuals few rewards for reducing pollution levels although this criticism could also be applied to the entire body of criminal law and regulations in fields as diverse as banking and consumer safety. In addition, according to Walter A. Rosenbaum (2002, 173-174): “Penalties are often not assessed or are severely weakened by negotiation with regulatory agencies. Some firms find it more profitable to pay penalties and to continue polluting in violation of the law than to assume the far steeper costs of compliance.” Also, he argues that the federal government has tried to specify the pollution control methods in some detail, but neither Congress nor executive branch agencies possess the technical capability to do so correctly especially when control technologies rapidly change (p. 174).

Intelligent command-and-control and cap-and-trade

The Environmental Protection Agency (EPA) moved a short distance away from detailed command-and-control with an approach that assumed that a polluter resided within a virtual bubble; pollution limits were set for the bubble as a whole, and it was the polluter’s responsibility to determine how to meet those limits. If, for example, a manufacturer generated pollution from multiple sources, it might

find it least expensive to severely limit some while not touching others. Whatever the mix, the polluter would decide how to meet government-established limits. We do not characterize the bubble policy as a market or complex adaptive system (CAS) approach. It is simply intelligent command-and-control where the government sets limits and delegates to polluters how they will meet them.

Congress experimented with market mechanisms with its cap-and-trade program established in the 1990 Amendments to the Clean Air Act. The objective was to reduce sulfur dioxide emissions to 1980 levels by 2010. This goal was to a substantial degree an arbitrary command decision. It focused on 292 industrial facilities that generated the most sulfur dioxide. Every year each source was granted sulfur dioxide emission allowances; those allowances could be bought and sold among the plants. At the end of the year each plant was required to own allowances equal to or greater than actual emissions. Excess allowances could be saved or sold. Industrial plants were allowed to decide for themselves whether they would meet emission limits by reducing emissions and how those reductions would be accomplished. In the year 2000 the program was expanded to more than 2,000 facilities. Although it is probably the case that the many different kinds of facilities working under this program are better able to determine the correct methods to reduce pollution than the federal government, it is unclear whether this program improves on command-and-control. The cap-and-trade system represents at least a partial market approach, but fundamentally cap-and-trade begins with a command in the form of the cap.

Although conservatives have largely gravitated toward liberal air and water pollution control positions, newer liberal initiatives have provoked firm conservative opposition. One area of conservative resistance concerns hazardous waste. The need to clean hazardous waste sites such as abandoned chemical plants is not a matter of ideological contention; however, the legal and administrative framework for doing so demonstrates that conservatives are unwilling to agree to every ill-considered liberal environmental initiative. The

theory of human-caused global warming and its policy implications has also elicited rigid conservative opposition.

Hazardous waste sites: Brownfields

Later we will describe the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), commonly known as Superfund. It authorizes the EPA to compel those responsible for contaminating hazardous waste sites to clean them. We will see that Superfund has resulted in little cleanup and numerous complicated and pointless law suits many of which entangled individuals and organizations that have little or nothing to do with hazardous waste disposal. Superfund was thoughtlessly developed, ineffective, and not worthwhile.

Thousands of sites listed as contaminated under Superfund (Holusha 1995) were not sufficiently tainted to receive immediate EPA attention. So, they remained in limbo: mildly toxic chemically, but utterly poisonous financially. Sites of this sort came to be known as brownfields.

In 1993 the EPA began a pilot program to bypass the ponderous, unfair, and ineffective Superfund (Greenberg & Hollander 2006). Then, in 1995 the agency shifted 25,000 sites from Superfund to brownfields status. Brownfields sites still required work, but at standards less stringent than those applied to Superfund sites especially if the locations were to be used for purposes other than housing or education. In 2002 President George Bush signed an amendment to CERCLA called the Small Business Liability Relief and Brownfields Revitalization Act. The Brownfields Act, a compromise between environmental and business groups, was supported by many urban and civil rights interests (often under the banner of the environmental justice movement) (Burnham-Howard 2004; Greenberg 2006). Under the Brownfields Act an individual or business that gains ownership of a site after January 11, 2002 is not liable for cleanup costs simply by virtue of that ownership. Despite broad ranging political support, brownfield cleanups moved slowly. This is why in Table 6.2 we describe its effectiveness as marginal.

The hazardous waste site problem is a clear case of market breakdown with liberals taking the lead in promoting cleanups amid conservative criticism. The value theory underlying liberal initiatives was thoughtfully developed except to the degree that some liberal environmentalists behaved as if hazardous waste sites could be returned to pristine condition at anywhere near an affordable cost. A quarter century passed after CERCLA's passage before the reasonable Brownfields initiative became law. By that point the body of federal and state programs and associated law suits surrounding hazardous waste sites had reached enormous proportions and perhaps worst of all were not resulting in cleanups to a degree desired by anyone.

Enacting and expanding federal health insurance (Medicare, Medicaid, and the Affordable Care Act)

Medicare, enacted in 1965, provided funding for a large part of the medical expenses of the elderly. Medicare is part of Social Security, but the two are nearly always treated separately by scholars, editorial writers, and policy makers. Because the programs that are part of Social Security are highly complex, the following discussion must be simplified.

Social Security is not an annuity or savings account. Instead, the federal government taxes current workers to pay retirees, surviving dependents of deceased workers, and the disabled. Social Security is not actuarially sound. Medicare is financed the same way, but Medicare benefits are increasing much more rapidly and dangerously. Conservatives frequently compare both programs to Ponzi schemes which pay existing investors not as they should with investment earnings but with monies provided by new investors. As Ponzi scheme perpetrator Bernard Madoff demonstrated, such an operation can function for many years before it runs out of new investors.

Like Social Security, Medicare, which partially funds health care for those 65 years of age and older, is highly popular, and both programs have experienced periodic funding problems caused by their actuarial unsoundness and in the case of Medicare benefits

being driven upward by the costs of medical technology and malpractice insurance plus substantial losses due to fraud and processing errors. Some liberals would add that doctors and other health care professionals are overpaid (Bodenheimer 2008).

Health insurance appeared on state government agendas during the Progressive era under the sponsorship of a labor union, but it foundered against opposition by the American Medical Association (AMA), insurance companies, and, oddly, the American Federation of Labor (Oberlander 2003, 18). The Roosevelt administration began considering federal health insurance in 1934, and a line in the legislation creating Social Security authorized a study of health insurance. The AMA regarded federal health insurance as leading inexorably to federal control of the medical profession, fears that were well founded given the contents of the first health insurance bill. That legislation, introduced in 1943, would have required patients to use only certain doctors and would have given the Surgeon General authority to set fees and constrain the number of patients each doctor could treat (Derthick 1979, 325). The bill was not enacted. President Harry Truman also failed to pass health insurance bills.

Social Security administrators began serious work on a health insurance proposal in 1957 (Derthick 1979, 320). Stimulated by the presidential race between Nixon and Kennedy, a modest bill, called the Kerr-Mills Medical Assistance for the Aged Act, passed in 1960. Kerr-Mills was a means-based extension of the welfare system (p. 327). Liberals preferred a broad non means-based program, and they argued that not all states were participating in the Kerr-Mills program or at least not at levels they regarded as adequate (Oberlander 2003, 28; Subcommittee on Health of the Elderly 1963).

In the 1960s medical costs increased to levels that the middle class could not handle. At first, conservatives seemed content to ignore the problem. President Kennedy proposed a non means-based insurance system for the aged modeled after and part of Social Security. His bill faced the opposition of the AMA, the conservative coalition of Southern Democrats and most Republicans, and the

powerful Democratic Chair of the House Ways and Means Committee Wilbur Mills. The AMA portrayed the Kennedy bill as the first step toward socialized medicine similar to what existed in Great Britain with impersonal government-run clinics, rationing of care, and delays for treatment (*WP* Bad medicine, 6/23/65). Liberal supporters of the Kennedy plan argued that it would not interfere with an individual's choice of physician, hospital, or any other element of health care (*NYT* Illness won't wait, 3/16/62). Its sole purpose was to pay medical bills. Mills correctly foresaw much steeper costs than were being projected by the bill's advocates. Social Security benefits were relatively manageable, but Medicare was clearly going to be more difficult to control.

Conservatives protested the idea that the Kennedy plan would cover everyone regardless of wealth, and they predicted that its cost would be far higher than Kennedy administration projections (*WSJ* One man's modesty, 2/23/61; *Progress* on a problem, 4/12/61). To the degree that they favored a government-provided insurance program at all, conservatives tended to favor one that was means tested. Liberals were suspicious of conservative motives on this point, fearing that conservatives would want appropriations for a program geared just for the poor to be kept to an absolute minimum. Kennedy's comprehensive program would receive political support from nearly everyone near or over the age of 65 and most of their children. Meanwhile, conservatives were also suspicious of liberal motives—fearing that initial health insurance plans would end in a government-run single payer system for everyone regardless of age.

Early in this debate and many times through the years conservatives (*WSJ* Neglecting human nature, 6/13/61; *NR* Medicare is coming, 12/1/64) highlighted problems experienced by Great Britain and Canada with their all-encompassing government health systems. However, one of the most damning critiques of the British system came from the *Times* (The N.H.S. dilemma, 10/28/75) which observed that British "socialized medicine" was in "deep trouble."

Wait times for surgery extending more than a year were common, and some advanced diagnosis and therapeutic techniques were unavailable. While some liberals were probably inclined toward the English system, the *Times* and *Post* detailed its many drawbacks and denied that the Kennedy plan contained any of its elements. For example, they argued that the Kennedy initiative would not interfere with a patient's choice of physician or hospital nor would it give the government authority over what treatment would be provided (*NYT* *Illness won't wait*, 3/16/62).

A 1961 *Journal* editorial (Progress on a problem, 4/12/61) observed that roughly half of those over 65 were covered by a private health insurance policy of some sort. It admitted that some could not afford such policies and that government at the state or federal level would be obliged to provide assistance, but the need for such a program did not imply the need to "throw the blanket of Federal welfare over everyone." Nevertheless, despite their admission that something needed to be done, conservatives made little effort to initiate a non means-based federal health insurance program for the elderly. Conservatives did not appreciate the degree to which market breakdown had changed health care.

Kennedy was unable to win passage of his proposal, but it was enacted in 1965 by the large liberal congressional majorities elected in 1964 and led by President Lyndon B. Johnson. In a complex series of events Medicare was passed as Part A (hospital costs, nursing home care for recovery and rehabilitation, home health care after hospitalization, and some outpatient services) and Part B (Supplementary Medical Insurance (SMI) covering doctors' bills). Part B is voluntary and is funded partly by monthly premiums paid by the beneficiaries and general revenues from the federal government. Part B with time has added a means based premium pay level. Parts C and D were added later (Kaiser Family Foundation 2008, 306).

Medicaid is a health insurance program for those of low income. Beneficiaries are not limited by age. It was part of the same legislation that created Medicare, but Medicaid was almost an

afterthought and was little discussed at the time. We cover it later.

Originally, Medicare and Medicaid provided hospitals' and doctors' reimbursements at "reasonable" amounts, wording that invited exorbitant costs and charges (Smith 2002, 15). David G. Smith (2002, 15) notes, as has nearly everyone else who has addressed this point, that cost control was not an important part of these programs.

Jonathan Oberlander (2003, 23-25) observes that Medicare's design was based on a number of critical decisions. First, beneficiaries would be limited to the aged not the population as a whole. Many people obtained health insurance through their employers, but large numbers of retirees lacked coverage. Their plight elicited widespread concern especially with rapidly increasing health care costs. Doubtless, sympathy was supplemented by self-interest as the children of elderly parents calculated the impact on their own financial condition of their parents' potential hospital and doctor bills. The second decision was to model Medicare after the popular and familiar Social Security. Oberlander (p. 25) concludes that Medicare's structure reflected liberalism circa 1965 which he takes to be: "universalism, government responsibility for social welfare provision, and public accountability."

As Wilbur Mills and conservatives predicted, funding has been a much larger concern for Medicare than for Social Security. Following pessimistic reports by Medicare trustees, news media stories of rapidly increasing costs began to appear during the Carter years only a little more than a decade after Medicare's passage (*NYT* Yawning gap in health insurance, 3/13/79; *WSJ* Bad for our health, 5/18/77). In 1977 Medicare and Medicaid expenses were increasing at a rate of roughly 13 percent a year although much of this was due to inflation. As we saw above, a central conservative critique of federal health insurance and subsidized private health insurance was that medical bills were paid by a third party thus eliminating any motivation by hospitals and medical staff to operate economically or patients to comparison shop (*WSJ* Drifting to national health,

7/10/89). Citing economist Martin Feldstein, the *Journal* suggested increasing patient co-pays to a level of roughly 10 percent of their annual income to motivate patients to demand efficiency. The *Journal* recognized that politicians would be unlikely to adopt this proposal, and the newspaper further undercut its own position by observing that people who need serious medical treatment are in no condition to search for the most cost-effective care.

According to the Congressional Budget Office (CBO) in a report issued in 1983, Medicare payments were growing more rapidly than revenues from payroll taxes and premiums paid by beneficiaries (Pear 1983a; Oberlander 2003, 47). Causes included increased longevity and ever more costly medical technology that had partly led to the enactment of Medicare. The answer in the view of liberals was a matter of simple arithmetic somewhat like the solution to Social Security's financial problems: reduce payments by, for example, covering fewer services; increase taxes or fees; increase efficiency; increase the age of eligibility; and reduce questionable financial practices and outright fraud (Pear 1983a; *NYT* Medicare's whirring money machines, 2/16/84; Smith 2002, 21).

Supposedly as a conservative, President Ronald Reagan's preferred response to Medicare's financial problems was a market oriented transformation that would have shifted beneficiaries to HMOs while providing them with vouchers to purchase private insurance policies on the open market (Oberlander 2003, 122). However, in the end Reagan opted for regulation rather than a market-based solution. Oberlander speculates that one reason for this ideologically inconsistent choice was that Reagan wanted quick budget reductions that a thorough-going reform would not provide (p. 123). Especially important was a Reagan administration policy, called the prospective payment system, that would change how hospitals would be compensated. Medicare would pay hospitals a flat fee for each of 467 categories of medical problems and procedures called diagnostic related groups (DRGs). Under this arrangement, hospitals are paid on a per case basis depending on

the diagnosis. If hospitals treat patients for less than the DRG rate, the hospitals pocket the difference. If hospitals incur expenses greater than the DRG rate, the hospitals absorb the difference (Pear 1983b). This arrangement was intended to motivate hospitals to reduce costs. The prospective payment approach enjoyed strong liberal support as well as some conservative backing (*NYT* Medicare's race against time, 7/11/83; A new era in Medicare, 9/12/83; *WP* Who pays health costs, 2/3/83; Smith 2002, 19). After these reforms were instituted, average hospital stays for Medicare patients dropped dramatically as did other cost factors (Musgrave 2006, 73-74).

The pattern of conservatives wanting market solutions such as private insurance plans, vouchers or medical savings accounts, and health maintenance organizations (HMO) and liberals preferring regulation and centralized bureaucracies was apparent in 1965. It appeared again in 1983, and it would remain to the present (Barrilleaux & Brace 2007). Another pattern visible in 1983 that continues to the present is conservative ideologues advocating market solutions and politicians usually labeled as conservatives paying lip service to market solutions but actually supporting policies more closely resembling those favored by liberals. This pattern reappeared in 1984-86 when Congress enacted a freeze on Medicare physician fees (Oberlander 2003, 126), in 1989 when Congress instituted, with the support of Republican President George W. Bush, a fee schedule for doctors similar to the hospital DRG system (Oberlander 2003, 128; Smith 2002, 20), and it has popped up again in 2017 with conservatives branding the House Republican healthcare plan *ObamaCare 2.0*.

Health insurance programs enacted in some states during the 1990s repeated the liberal-conservative distinction between market-based programs versus what Barrilleaux and Brace (2007) refer to as state-based policies. Using market-based programs state governments motivate individuals and organizations to obtain insurance by, for example, providing vouchers with which insurance may be purchased in whole or in part. With a government-based policy a state

government assumes at least part of the risk as an insurer (p. 657). Barrilleaux and Brace assert that:

Distinct assumptions about the nature of health insurance underlie each approach. The market-based approach assumes that health insurance can be provided via a free-market mechanism when the correct incentives are in place. The state-based approach assumes market failure in health insurance and relies upon the state in place of a free market. The market-based approach relies on voluntary behavior by individuals, firms, and insurers, and the state-based approach relies on coercion (p. 657).

We would word a description of the market-based approach differently. It does not so much rely on voluntary behavior, a phrase that carries an unwarranted hint of idealism, but instead it utilizes the disciplines of market competition and self-interest. Furthermore, we have already seen that conservatives view third party payer *private* insurance plans subsidized by the federal government as only somewhat more market oriented than third party payer government approaches, so Barrilleaux and Brace appear to be comparing and contrasting apples and apples.

Barrilleaux and Brace's (p. 663) operational definition of market-based programs features a sizeable element of government control. For example, it includes regulations that insure open access to care. This means that insurers must offer coverage to any group regardless of the health of group members. There are also standards limiting how an individual can be excluded from insurance due to a preexisting condition as well as common restrictions on how rapidly insurance premiums are permitted to increase. Government-based programs may also include low income insurance subsidies (p. 662) and universal coverage. Probably all government-based programs are redistributive.

In 1995 the liberal-conservative tension remained with the Republican sponsored Medicare Preservation Act with its medical savings accounts (MSA) and a cap on Medicare spending (Smith 2002, 93; Oberlander 2003, 178). The distance between conservative

ideologues and conservative Republican members of Congress almost vanished in 1995 although that disappearance would prove temporary. The year 1995 followed the election of a Republican majority in both the House and Senate. The Republican House victory was notable for a unique conservative-themed national campaign orchestrated by Congressman Newt Gingrich under the rubric Contract with America although health care was not part of the contract.

One type of Medical Savings Account would cover catastrophic expenses with a high deductible for routine care. This proposal was modeled after MSAs offered by more than 1,000 companies and the United Mine Workers (*WSJ* Rescue medical savings accounts, 11/2/95). These programs apparently work because patients are responsible for ordinary, non-catastrophic care with accounts they would keep and could accumulate from year to year. Thus patients are motivated to shop for competitively priced medical services. MSAs could also be used to pay for managed care plans. Liberals charged that the MSAs would be expensive and would benefit only the affluent and healthy (*NYT* Drop the medical savings accounts, 11/13/95). The liberal argument was that the Medicare insurance pool would consist of relatively poor and sick enrollees. One feature that would make the MSAs a burden on Medicare is that participants might choose MSAs while they are healthy and switch to traditional Medicare if they become ill. The Republican Medicare bill passed in relatively narrow party line votes and was then vetoed by President Bill Clinton. Liberal health care analysts are generally opposed to the higher patient cost sharing (high deductibles and/or copayments) that conservatives favored in the 1990s and today. After arguing that low patient cost sharing contributes to “high and rising costs,” Bodenheimer (2008, 269-270) in evaluating the conservative case for high patient cost sharing, maintains that: “the distancing of patients from health care costs accounts for only 5-10 percent of spending increases.” He argues that 70 percent of health care costs are incurred by 10 percent of patients suffering from severe injury or illness. Such individuals are not able to seek cost-effective services,

although often their spouses or friends can. In any event, the competitive market does not require that all consumers shop vigilantly. For example, competition among auto companies insures that even buyers who do not bargain effectively will receive better value than they would without a competitive market.

The next major development in the history of Medicare was the Balanced Budget Act of 1997 (BBA 97) which contained spending cuts but more importantly an option called Medicare+ Choice that included MSAs, fee-for-service plans, and managed care plans (Oberlander 2003, 177). Oberlander (pp. 177-78) observes that in many respects the BBA 97 was similar to the 1995 conservative Republican bill. It appeared that liberals had moved toward the conservative position. Nevertheless, BBA 97 did not fully transform Medicare into a voucher system. Furthermore, it contained increased regulation.

Oberlander (pp. 178-79) argues that BBA 97 included something for all parts of the ideological spectrum and interest groups or at least it contained features that all parties could imagine favored their views or interests (Patel & Rushefsky 2006, 56). But the old liberal-conservative divisions remained. The *Journal* (The GOP spins Medicare, 5/9/97) expressed the difference as liberals wanting to retain a “command and control” bureaucracy versus opening Medicare to “more private competition and choice.” The *Journal* interpreted BBA 97 as a Republican failure with the “socialist ethic” permeating the legislation (*WSJ* Medicare balances the budget, 8/1/97). Despite its objections to BBA 97, the *Journal* found something it liked: Medicare recipients would be able to establish MSAs with which they could purchase health insurance with high deductibles—what amounted to major medical policies—giving them the incentive to shop for medical services that would meet their needs.

The *Times*’ (Fraud and waste in Medicare, 8/1/97) take on developments in 1997 again suggested that liberals were to some degree moving toward conservative market oriented approaches to

Medicare. Not for the first time, the newspaper highlighted Medicare administrative shortcomings: “The amount of fraud and waste is huge, and supervision of the quality of medical care provided recipients is largely nonexistent.” The editorial continued: “In recent weeks, Federal auditors have estimated that \$23 billion in Medicare payments last year—about one dollar in every seven—was due to fraud or mistakes.” It concluded: “the Health Care Financing Administration, the Federal oversight agency for Medicare, has neither the financial means nor the ability to tightly supervise the numbingly complex system.”

More telling than the *Times*’ denunciations of fraud and waste was its solution: Medicare converted into one of the conservatives’ favorite object lessons—the system serving federal employees including members of Congress. As the *Times* described it:

Medicare would provide the elderly with a voucher worth a fixed dollar amount to cover the cost of quality health plans, and the elderly would then choose from among local health plans, including traditional fee-for-service coverage. Federal overseers would collect and publicize information about the quality of rival plans so that Medicare enrollees could make informed choices about their health insurer. The overseers would also provide legal help for Medicare enrollees who believe their health plans failed to live up to their contracts (Fraud and waste in Medicare, 8/1/97).

This editorial could easily have appeared in either of our conservative barometer publications, but its apparent rightward shift was short-lived as liberals quickly returned to their default command and control orientation.

Writing in 2003 Oberlander (194) concluded that Medicare+Choice was a failure. Not only were Medicare beneficiaries not utilizing MSAs and other choices, they were withdrawing from them. The *Journal* made a similar observation but blamed it on Congress providing inadequate funding for these programs (*WSJ* Entitlements are forever, 11/20/03).

Another recent major change in Medicare has been the addition of prescription drug coverage (Kaiser Family Foundation undated; Patel & Rushefsky 2006, 58-59, 62). The *Journal* (Medicare drug folly, 6/16/03) hated it: “the new Medicare entitlement is nothing more than a wealth transfer (from younger workers to retirees) estimated to cost \$400 billion over 10 years, and everyone knows even that is understated.” The *Journal* agreed with President Clinton’s Medicare administrator that the new program represented the “biggest expansion of government health benefits since the Great Society.” Costly as it would be, coverage (in the form it took in 2003) would be only half of routine drug expenses (*WSJ* Medicare drug folly, 6/16/03). The *Journal* objected that the new program would be inferior to many employer-sponsored programs, and that employers would cancel their drug programs and allow Medicare to take up the burden. It also noted that retirees own more than half of the nation’s wealth and that their portion was increasing. To transfer wealth from hard working taxpayers to affluent retirees did not represent social justice.

Liberals favored the bill but with reservations. The *Times* (The Medicare choice, 11/19/03) echoed conservative fears regarding the program’s high cost and large impact on federal budget deficits; it also noted that it would provide only partial support for drug expenses. In addition, the program was extraordinarily complicated making it difficult to understand. However, the *Times* concluded, the program would be helpful to poor retirees with especially high drug bills. Three years later liberals and conservatives found good things to say about the new benefits. For example, liberals liked coverage for people who had none before (*NYT* The drug benefit: A report card, 6/5/06; Report card on Medicare’s drug plan, 9/3/07), and conservatives saw it as costing less than early estimates (*WSJ* Markets and Medicare, 10/4/06).

The prescription drug bill also modified Medicare+Choice renaming it Medicare Advantage. The *Journal* (Markets and Medicare, 10/4/06) saw an increase in participation in non traditional

health maintenance plans through this program, but the newspaper accused liberal Democrats of trying to “strangle” options that went beyond standard centralized Medicare. The *Times* version of this debate was that these private health plans were receiving “lavish subsidies” that should be eliminated (*NYT* Medicare’s troubling prospects, 4/26/07; Constraining the Medicare debate, 2/25/08; Medicare’s too costly private plans, 11/29/08).

According to the 2016 annual report of the Boards of Trustees, Federal Hospital Insurance and Federal Supplementary Medical Insurance Trust Funds (Annual Report 2016) Medicare continues to be in poor financial condition. The Medicare Hospital Insurance Trust Fund (HI) helps pay for hospital expenses, home health care, and similar costs (Part A). The Supplementary Medical Insurance Trust Fund (SMI) includes Part B (physician and other costs) and Part D which includes subsidized drug insurance. The Medicare trustees warn that there are substantial differences between current law and plausible future versions that make cost estimates problematic (Annual Report 2016, 5). For one thing the Obama administration’s Affordable Care Act (ACA) contains approximately 165 provisions that affect Medicare. The trustees assume that the ACA will help Medicare’s financial condition, but they conclude that: “Medicare still faces a substantial financial shortfall that will need to be addressed with further legislation.” (p. 4)

Medicaid is intended to provide medical care for the poor especially children and the disabled (Loebs 1979, 5-6; Rowland 2008). It also serves the elderly poor. Medicaid, unlike Medicare, is a means based welfare program. The burden of funding Medicaid is shared by the states and the federal government, and it is administered by the states. Within limits established by the federal government the states determine eligibility, medical services provided, and reimbursement levels for individuals and institutions that provide medical services (Patel & Rushefsky 2006, 76-78).

The first 12 years of Medicaid’s existence saw rapidly accelerating cost increases (Holahan & Cohen 1986, 2). Indeed,

Congress began considering cost control efforts only two years after Medicaid was signed into law, but in 1971 and 1972 Congress added coverage and new services which, of course, made spending increase even more rapidly (Smith 2002, 25; Rowland 2008, 294).

Continuing dissatisfaction with Medicaid's increasing costs and the election of conservative Republican Ronald Reagan as president resulted in passage of the 1981 Omnibus Budget Reconciliation Act (OBRA) which tightened eligibility criteria, cut the federal government's financial support, and increased the states' managerial flexibility (Holahan & Cohen 1986, 1). OBRA sharply reduced the rate of increase of Medicaid expenditures, but soon Congress again expanded coverage, placing additional financial burden on the states (Holahan & Cohen 1986, 9; Smith 2002, 28-29; Patel & Rushefsky 2006, 79-81). This pattern of incremental expansion and cost shifting from the federal government to the states has continued to the present with overall expenditures increasing (Smith 2002, 30). Medicaid has grown to be an enormous and highly complicated set of 54 different programs in the states and territories (Smith 2002, 48).

Many liberals regard Medicaid as inadequate and perpetuating "two-class medicine to the permanent detriment of the poor." (*WP* National health insurance, 8/26/74) In 1990 liberals were still pushing for an expanded Medicaid more highly centralized in Washington (*WP* Small steps on health insurance, 11/23/90).

In 2005 the *Times* (Medicaid in the cross hairs, 3/14/05) complained about increasing Medicaid costs which the newspaper listed as having gone from \$200 billion to \$300 billion in the period 2000-2005. The newspaper blamed broadening coverage (more people and more services) for the largest part of the increases, a diagnosis identical to that offered by conservatives. The *Times* agreed that costs of "this fiscal albatross" had to be controlled, but it cautioned that Medicaid was performing many critical services such as delivering medical care to poor children and working families. The *Times* insisted that Medicaid was in many ways efficient and effective with spending per enrollee increasing at a slower rate than

spending in private insurance programs. It did not deny the existence of waste and fraud, such as Medicaid mills that emphasized speed and volume at the cost of quality care or any care, but it maintained that these problems represented a small percentage of Medicaid costs.

As we noted above, many liberals regard Medicaid as supporting inadequate medical care for the poor compared to that made available to the rest of the population and want universal health care that would treat everyone identically. Many believed that the plan formulated by First Lady Hillary Clinton and sponsored by her husband would be the national health insurance system toward which they had been working for decades. It failed to pass and for that reason should perhaps not be included here, but when introduced, it was widely discussed and debated, and it continues to be referenced, so it deserves a brief mention. HillaryCare, as it was dubbed by some in the news media, failed at least in part because of the secretiveness with which it was developed and the manner in which it was introduced (*NYT* Ambiguous salvo on health care, 8/18/93). In addition, it was a behemoth that few understood (*NYT* Health reform—Dead for now, 9/27/95). The *Times* (Compromise on health care 1/16/94) also blamed Hillary Clinton for failing to compromise with Representative Jim Cooper (D-TN) who had offered his own plan. The Cooper plan was simpler than Clinton's and contained the possibility of more competition among the health care purchasing cooperatives created by both plans.

Many conservatives preferred the Nickles-Hatch-Mack Consumer Choice Plan, written in part by conservative Heritage Foundation personnel (*NR* Contrasting conservative plans, 12/13/93). Nickles-Hatch-Mack would have required individuals or families to buy catastrophic insurance with high deductibles. It also contained a variety of private insurance options. Classic liberal-conservative differences in this field remained.

A reason for the development of Clinton's program (and the later Affordable Care Act) was that there were supposedly 37 million people in the U.S. lacking health insurance. The Kaiser Commission

on Medicaid and the Uninsured (2008) estimated that in 2003 between 41.1 million and 46.0 million of non elderly were uninsured at any point in time. Conservatives regarded these figures as an inflated excuse for an expanded federal health insurance program. John F. Cogan, R. Glenn Hubbard, and Daniel P. Kessler (2005, 18) observe that depending on data sources, the definition of uninsured, and the time period used (e.g., uninsured over one year or more) estimates of the number of uninsured range between 21 and 44 million. The authors (pp. 20-21) divide the uninsured into three groups of roughly equal size with each numbering approximately 14 million. Members of one group are low income and eligible for programs such as Medicaid or the State Children's Health Insurance Program (SCHIP), but for some reason do not participate. Another one-third of the uninsured have incomes of at least \$50,000. Cogan, Hubbard, and Kessler (p. 20) speculate that some members of this group do not want to pay rapidly increasing health insurance premiums. The last group have low incomes that are nevertheless too high to qualify for programs such as Medicaid. A significant percentage of the uninsured in all income categories are between jobs and therefore between health insurance programs, but illness or injury striking during this period would be a disaster for an individual or family. Furthermore, some uninsured in all income categories are relatively young. These individuals spend considerably less in cash on medical services than they would paying for insurance (*WSJ* Dissecting the uninsured, 4/15/93). Whatever the number of uninsured and the reasons for their being uninsured, conservatives argue that health insurance reform should have focused on the uninsured rather than on transforming the entire system. The uninsured remained a major justification for health care policy initiatives after the year 2000.

The Patient Protection and Affordable Care Act, often called ObamaCare, in an uncomfortably appropriate homage to HillaryCare, was passed in 2010. It is more than 2,000 pages long and extraordinarily complicated, so summarizing it is difficult. Its core

is a modification of the private insurance system. The law forbids insurance companies from dropping from coverage those with pre-existing conditions. Also, life time coverage caps are forbidden. Beginning in 2014 all citizens and legal residents were to be required to buy insurance. Those lacking coverage were to pay a penalty according to complicated rules, but how many did is uncertain. The U.S. Supreme Court, while invalidating the Interstate Commerce Clause as the underlying support base for this mandate, declared it a tax and therefore constitutional under Congress' taxing authority. Those with incomes between 133-400 percent of the federal poverty level (\$18,310 for a family of three in 2009) would receive subsidies for insurance policies. Employers with 50 or more employees that do not provide coverage are assessed a penalty. Supposedly, the new law does not supplant Medicare or Medicaid although it reduced payments to hospitals, doctors, and other medical entities (Lubell & DoBias 2010). Also, it was to substantially expand Medicaid, but the Supreme Court placed limits on this aspect of the law, and a number of states have not cooperated with that expansion. The ACA did nothing to reduce costs associated with malpractice suits and insurance.

The ACA expanded coverage from 16 percent of the populace lacking health insurance to the current 9.1 percent (*NYT* Obamacare's kindest critic, 7/17/16). However, it increases taxes including \$2.3 billion in excise taxes on pharmaceutical products, \$2 billion on medical devices (Congress passed a two year moratorium on this tax that is scheduled to end on the last day of 2017), and \$6.7 billion on health insurance. Also, there appears to be little in this law to control rapidly increasing health care costs (RAND Policy Brief 2010). In 2015 and 2016 Humana, United Health Group, Aetna, and others announced that they were in whole or in part withdrawing from the ACA. Since 2014 Aetna lost \$430 million from its participation. In addition, remaining insurers offering policies in 49 states announced rate increases ranging from 18 percent to 23 percent (*WSJ* ObamaCare sticker shock, 8/12/16). Robert Litan (2016) describes

the ACA's condition as a death spiral: "attracting disproportionate numbers of older, sicker patients, whose health-care costs drive up premiums, which in turn prompts younger, healthier customers to drop the insurance (even with subsidies) or to opt out of enrolling (and choosing to pay a modest 'tax' penalty).

Liberals and conservatives agree that in its present form the ACA cannot continue indefinitely. Litan (2016) reviews plans for replacing and/or repairing it. For example, the conservative American Enterprise Institute would: "assist low-income Americans in buying insurance with age-adjusted refundable tax credits, and allow insurance companies to design plans to meet the resulting demand." However, Litan speculates that such a plan would lead to the federal government subsidizing: "only catastrophic plans with very high deductibles, an outcome Democrats almost certainly would not accept." Another approach would create federal subsidies that would support policies for high risk populations. But, Litan sees objections from both parties.

A third approach that Litan (2016) summarizes would force everyone into the insurance pool. Those who object would pay considerably higher penalties than they do now. Litan also sees bipartisan objections to this plan. Litan's last approach would eliminate the ACA and replace it with Medicare for everyone, a.k.a. single payer. He suspects, as many conservatives do, that this is what liberal Democrats have wanted from the beginning, and as of 2017 it has no chance of winning a majority in either congressional chamber.

As of this writing House Republicans introduced a bill opposed by most if not all Democrats and a substantial number of Republicans especially those with a libertarian orientation. It was also opposed by important health care interest groups such as the American Hospital Association (Harrison & Harris 2017). In addition, many if not all governors of the 16 states that expanded Medicaid under the Obama administration were opposed. Under the GOP bill Medicaid would become a state block grant proportional to the size of a state's Medicaid population in 2020. Governors of the 16 states believe with

good reason that federal support for Medicaid would drop (Hackman, Armour, & Hughes, 2017). The Republican plan barely resembled any of Litan's approaches, demonstrating the perils of speculating about the future of health care policy even less than a year into the future. Knowing that he lacked a majority, Republican House Speaker Ryan refused to allow a vote on the bill.

In Table 6.2 we characterize government health insurance as thoughtfully developed. This arguably overly generous rating means that the history we have just recounted demonstrates that sponsors considered the initiatives' moral/value foundations and had plans for how the nation would move toward the objective of more complete medical insurance coverage even if such considerations as increasing program costs, waste, and fraud were not granted the weight that we might have given them. Implementation problems such as cost control primarily derive from the fact that these are incredibly complicated programs administered by centralized bureaucracies not strongly motivated to police waste and fraud rather than being medical savings accounts requiring less bureaucratic oversight. In Table 6.2 we describe the programs as worthwhile. Despite myriad costly implementation problems, Medicare, Medicaid, the ACA, and the other programs described here have helped many people.

Family and Medical Leave Act

In recent decades the number of women in the workforce has greatly increased. Well over half of women with children work, and roughly three quarters of those with children age six and above work. In 1960 only 39 percent of those with children six and above worked. (Stacey, Knight, Koob, & Kraus 2004, 40; Grosswald & Scharlach 1999, 188-189) Working women giving birth and taking care of their children raised complications in the workplace that some employers addressed and others did not. The Pregnancy Discrimination Act (PDA) of 1978 was an early step toward addressing some of these problems. According to Patricia Dorman (2001, 190), it required that: "if an employer provides benefits for other medical disabilities

they must include pregnancy. Specifically, they must provide health insurance that covers maternity with hospitalization and major medical provisions, disability plans which prescribe salary continuation, reinstatement without loss of seniority, and paid sick leave for pregnant employees **if** other employees are so covered.” [Bold face in original.] Dorman adds: “Basically, the PDA is not a maternity leave policy but an antidiscrimination policy.” (p. 191)

Since passage of the PDA there has been increasing recognition that pregnancy is not the only family problem that can demand employee time away from work (Grosswald & Scharlach 1999, 188-189). Furthermore, the number of single-parent households has increased substantially. In 1985 Representative Patricia Schroeder (D-CO) unsuccessfully introduced more ambitious legislation called the Parent and Disability Leave Act which almost a decade later became the Family and Medical Leave Act (FMLA). Jeffrey A. Mello (2005-2006, 151) summarizes the legislative history of this legislation: “The FMLA, as signed into law, was the result of eight years of Congressional debate, thirteen separate previous votes, and two earlier vetoes by President George H. W. Bush.” Congress passed it again in 1993 and newly elected President Bill Clinton signed it.

With some exceptions and conditions, the FMLA requires employers to grant up to 12 weeks of unpaid leave per year to employees to handle family medical problems or other family emergencies including those of the employee. Situations covered by FMLA include giving birth and caring for a newborn, adoption, and medical problems of an employee’s parents. The law requires that during an employees’ leave, employers must continue to provide health care coverage if that coverage is part of the basic compensation package (Rigler 1995).

The FMLA is limited in a number of respects. First, it grants an *unpaid* leave, and that feature prevents some from participating because they cannot afford to be without a salary. Second, it does not apply to businesses employing fewer than 50 people, part time

employees, or those employed for less than one year. Overall, eligibility limits work against single women with lower incomes (Roog, Knight, Koob, & Kraus 2004, 48-49; Rigler 1995). Some authors emphasize the fact that only a small fraction of those eligible to take leaves do so (Grosswald & Scharlach 1999, 189-190). Blanche Grosswald and Andrew E. Scharlach (1999, 189-190) concentrate on anecdotal evidence that: “utilization of family leave is constrained by fears of job loss, demotions, or other deleterious consequences...” They also cite employer failure to provide employees with information about their rights (p. 190). Erin L. Kelly (2010, 36), reviewing published studies, finds “substantial levels of noncompliance” by employers. Reasons for noncompliance include institutional momentum, inattention to changes in the law, and rational calculation by businesses that find compliance inconvenient or unprofitable (Kelly 2010, 38-39; Nussbaum 1998). In addition, the FMLA contains only modest penalties for noncompliance. Despite evidence of underutilization and noncompliance, Jeffrey A. Mello (2005-2006, 153) reports that as of 2005: “more than 35 million employees have taken FMLA leave, with a surprising 40 percent of these individuals being men.” Mello (p. 153) also asserts that many elements of the FMLA are “ambiguous” and that “specialized medical or legal expertise” on the part of employers is required to correctly apply the law. For example, terms in the law such as “serious medical condition” are not defined or not clearly specified. Adding to the complexity, some state laws: “provide more generous leave provisions than those found in the FMLA, which can create confusion for employers relative to compliance.” (Mello 2005-2006, 154) State laws are an even bigger problem for multi-state businesses. FMLA continues to be adjusted by Congress, the Department of Labor, and the courts. Changes focus both on employer noncompliance and employees’ taking advantage of FMLA loopholes (Jacoby & Squire 2012; *WSJ* Fixing family leave, 2/5/08).

The FMLA was proposed by liberals and labor unions, and they

continue to defend it. Stacey Roog, Toli A. Knight, Jeffrey J. Koob, and Mary J. Kraus (2004, 41) list supporters of the FMLA as: “women’s groups, such as the Women’s Legal Defense Fund; labor groups, such as the National Education Association; and special interest groups, such as the Child Welfare League.” Linda Greenhouse (1986, B6) described a 1986 version of the legislation as an: “ideological lightning rod, drawing fierce attack from the business community and from conservative legislators who appear concerned as much about what the bill would accomplish as a symbol as about what it would require in practice.” No change in this description would have been required in 1993. Greenhouse (p. B6) continued:

Principal opposition to the bill comes from the U.S. Chamber of Commerce. The organization wrote to every member of the Education and Labor Committee to warn that the bill would “destroy the flexibility employers and employees need to tailor benefits to their own needs.” The organization said the “current voluntary and flexible approach to employee benefits” is working well, while countries are finding that more generous benefits “have discouraged growth, entrepreneurial activity and job creation.”

Business groups also believed that even though the FMLA leaves were unpaid, productivity could suffer and that locating and training temporary substitutes could be costly in several ways. Businesses were also concerned that the FMLA might represent a thin edge of the wedge that could expand workers’ rights in myriad costly ways (*WP* Your baby or your job, 5/15/90).

The Chamber of Commerce’s opposition seemed not to affect public opinion; the Gallup polling organization found that 83 percent of respondents favored the bill (Clymer 1992). Not surprisingly, the FMLA had the support of the *NYT* (Family values from family leave, 9/12/92; Women, children and work, 1/12/93) and the *WP* (Finally, family leave, 2/2/93). *National Review* showed little interest in the FMLA, but the *Journal* opposed it when it was being considered by Congress primarily on the grounds that it was too expensive for

businesses and would discourage new hiring (Mandated labor costs, 2/16/88; Job destruction bill, 2/8/93). As of 1997 the *Journal* was still against it (Taking liberties with leave, 5/8/97) mostly for the original reason of costs to businesses and because other employees not on leave had to make up for the absent employees. In 2007 the *Journal* (Paid not to work, 6/20/07) had stopped complaining about FMLA, and was opposing a liberal extension that would require that employers pay for a certain number of leave days per year. A year later the *Journal* (Fixing family leave, 2/5/08) was supporting Department of Labor FMLA rule changes that tightened abuses. Under the rules as they existed then an employee could without giving notice fail to appear at work for up to two days before claiming leave. Again, the *Journal* appeared to accept the basic principle behind FMLA.

A 1993 Senate vote on the FMLA (H.R. 1, ADA Senate vote 1, 2/4/93) revealed that, not surprisingly, all liberals (defined as the upper third of ADA scores) supported the bill while conservatives were split with 10 favoring it and 27 opposing. Moderates overwhelmingly favored it.

We describe enacting and expanding the Family and Medical Leave Act as thoughtful, effective, and worthwhile. The original legislation went through a decade-long process of liberal-conservative and labor-business debate that produced a law that was far from perfect (if only measured by subsequent implementation complications and law suits), but which has aided countless employees suffering family problems without businesses experiencing the high costs predicted by the Chamber of Commerce. It is probably fair to say that the Chamber supports the basic objectives of the FMLA even though its members continue to experience implementation problems (www.uschamber.com/issues/labor/absence-abuse-and-medical-leave).

Even though FMLA concerns the realm of business and employment, it does not comfortably fit our modified market failure model. Prior to the passage of FMLA some, but by no means all,

businesses were discriminating against employees with family problems that required time away from the job. This organizational behavior perhaps more closely resembles civil rights discrimination than market problems. In this sense, we point to Patricia Dorman's (2001, 191) observation that FMLA's predecessor legislation constituted anti discrimination policy. Perhaps this is also an accurate description of the Family and Medical Leave Act.

Workplace safety

Workplace safety is most commonly associated with the Occupational Safety and Health Administration (OSHA), created in 1970 as part of the Department of Labor. This department was a logical home for OSHA because it had been conducting workplace health and safety inspections for many years (Rugaber 1970). The same statute that brought OSHA into existence also created the National Institute of Occupational Safety and Health (NIOSH) which was placed in the Department of Health, Education and Welfare (now, Health and Human Services). According to the NIOSH web site (www.cdc.gov/niosh/about.html), the agency is confined to conducting research and making recommendations. Standard setting and enforcement are entirely within the purview of OSHA. According to the *New York Times* (Industry-labor battle line is emerging over pending job-safety legislation, 7/13/70, 17), labor unions and Democrats wanted all workplace safety responsibilities housed in the Department of Labor, while Republicans and business groups favored a division of labor with standard setting in the hands of an entity such as NIOSH less tied to labor unions than OSHA. We speculate that Republicans and business groups also believed that dividing responsibilities between two agencies would reduce their effectiveness. The Democrats and labor unions won.

The politics and economics of workplace safety closely resemble those of environmental protection and consumer protection (Gray 2000). Before 1970 among 80 million workers there were 14,500 workplace fatalities and 2.2 million injuries per year. Liberals believed that many of these deaths and injuries were preventable

(*Nation's Health* 1992). Long before OSHA was created, the Department of Labor attempted to protect workers from poorly ventilated and unsanitary work places, toxic chemicals, and many other potential sources of injury, but with limited success (Rosner and Markowitz 2001, 366). As Walter Rugaber (1970) explained in the *New York Times*: "Thousands of American industrial concerns violate the Federal Government's occupational safety and health requirements every year, but the available penalties are almost never invoked against corporate offenders." Rugaber continued: "While inspectors discover hazards in more than 90 percent of the factories they enter, only about 1 per cent of the companies responsible are ever called to formal account, and barely one in a thousand is ever punished." Conservatives regarded workplace injuries as a sad fact of life and something that rational businesses would strive to prevent; new federal regulations were not needed, according to this view.

OSHA represents a substantial expansion of federal technical sophistication and authority in the field of workplace safety. It establishes and enforces safety standards in the use of chemicals and air quality standards such as the permissible maximum concentration of cotton dust as well as noise levels. According to Beryl E. Pettus (1982, 599), when OSHA began: "federal experience was limited mainly to longshoring, mine safety, and relations with government contractors." Initially, OSHA relied on what Pettus (1982, 599) described as a junk pile of industry safety guidelines many of which turned out to be: "unenforceable, petty, out-dated, and irrelevant to the larger objectives of the program." (p. 599) For example: "One prohibition against ice in drinking water...stemmed from the unhealthful nineteenth century practice of cutting ice from frozen lakes and rivers and storing it under unsanitary conditions." (p. 599)

During Jimmy Carter's presidency, with its emphasis on deregulation and then with the election of Ronald Reagan, conservative academics criticized OSHA for regulations that cost more than the benefits they yielded (Pettus 1982, 596). Regulatory expenses include the cost of equipment, new personnel, and

procedural changes that OSHA requires. They also include costs associated with OSHA inspections such as production downtime and fines. In 1979 OSHA was ordered to conduct a benefit-cost analysis of proposed rulings, but, according to the *Journal*, there were no economists on its staff to perform the work (That explains it, 10/17/79). Criticism by academics was accompanied by complaints to members of Congress by business people regarding “arrogant, inexperienced, [and] inept safety inspectors.” (Pettus 1982, 601) This observation is reinforced by a *Washington Post* (Safety success, 12/5/81) editorial that described the Carter administration as strengthening OSHA by ending “nitpicking” by OSHA inspectors.

When Ronald Reagan took office an OSHA cotton dust limit was the subject of a law suit that had reached the U.S. Supreme Court (*American Textile Manufacturers Institute v. Donovan*, 1981). Inhaling excessive amounts of cotton dust causes a debilitating respiratory disease known as brown lung. President Carter’s secretary of labor working through OSHA had established a standard for cotton dust exposure; the operators of cotton mills wanted it invalidated. The American Textile Manufacturers Institute represented the cotton industry, and in the words of the Supreme Court’s majority opinion written by Justice William J. Brennan, Jr., the Institute contended that: “the Act requires OSHA to demonstrate that its standard reflects a reasonable relationship between the costs and benefits associated with the standard.” Justice Brennan rejected this argument as he highlighted language in the Occupational Safety and Health Act that provides that:

The Secretary [of Labor], in promulgating standards dealing with toxic materials or harmful physical agents under this subsection, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life.

Thus, wrote Brennan:

Congress itself defined the basic relationship between costs and benefits, by placing the “benefit” of worker health above all other considerations save those making attainment of this “benefit” unachievable. Any standard based on a balancing of costs and benefits by the Secretary that strikes a different balance than that struck by Congress would be inconsistent with the command set forth in 655(b)(5) [in the 1981 statute].” (*Donovan* 1981)

The *Donovan* ruling is widely interpreted as representing the demise of benefit-cost analysis in OSHA (Fisher 2010). In Brennan’s words: “cost benefit analysis by OSHA is not required by the statute because a feasibility analysis is.” Reviewing the 1981 decision, the *Times* concluded that the Occupational Safety and Health Act: “requires OSHA to give nearly complete pre-eminence to health and not to balance the health benefits of regulation against the costs. Instead, it must issue the strictest possible standards insuring that no worker suffers material impairment of health from toxic substances like cotton dust.” However, the year before, the Supreme Court ruled that: “a standard that is prohibitively expensive is not feasible.” (*Industrial Union Department, AFL-CIO v. Hodgson* 1980) That opinion added: “Congress does not appear to have intended to protect employees by putting their employers out of business—either by requiring protective devices unavailable under existing technology or by making financial viability generally impossible.”

Soon after taking office, Reagan’s OSHA team postponed the starting date of a new workplace noise regulation and cancelled a toxic chemical labeling regulation (Curran, Hyg, & Boden 1981, 1264). According to the *Times* (Guarding the OSHA chickens, 10/7/83), Reagan crippled OSHA with his appointment of businessman Thorne Auchter as OSHA head. The *Times* editorial found that Reagan’s OSHA was: “granting broad exemptions, reducing fines, diluting existing standards and delaying needed new ones.” The editorial cited evidence: “In 1980 there were 98 fines of \$10,000 or more. In 1982 there were just 18.” (*NYT* Guarding the OSHA chickens, 10/7/83; also see *NYT* Looking for loopholes at

OSHA, 6/9/84)

Although we regard workplace injuries in an essentially unregulated pre-OSHA environment as an instance of market breakdown like air and water pollution, injurious or ineffective pharmaceuticals, and dangerous consumer goods, debates over OSHA have tended to focus on: specific workplace dangers (Whelan 1981); OSHA's many politically tone-deaf and easily ridiculed regulations (Gygi 1978a; *NYT* At last, a worker's right to know, 8/25/87); the growing compliance costs of government regulations (Hopkins 1996); and OSHA as an example of a liberal-sponsored growth in federal authority (Lowry 1996, 58).

By the mid-1970s the *Journal* (A cool look at OSHA, 2/23/76) appeared to have accepted OSHA's legitimacy when it observed that the biggest problem with OSHA was not its mission but the way it was being administered. By the time the *Journal* made this point, OSHA was attempting to enforce 4,400 rules while adding more. A decade later in a front page news item that read more like an editorial than news, the *Journal* (Risky proposition. 8/17/87, 1) admitted that the number of workplace injuries and illnesses had declined since 1972. This story was a classic example of conservatives finding that a liberal response to market breakdown was useful and less destructive than they had feared. It is similar in tone to relatively recent *Journal* editorials on the Family and Medical Leave Act.

According to both of our liberal barometer newspapers, conservatives or business interests in the George W. Bush administration conducted a guerilla action against OSHA regulations. A *Times* editorial (Crippling government from within, 4/27/07) described the Bush administration as assigning industry foxes to guard the regulatory chicken coops including South Carolina Republican Party chair Edwin Foulke as OSHA head. The *Times* argued that the foxes undermined: "restraints on everything from strip miners to long-haul truckers..." A *Washington Post* editorial (A toxic proposal, 8/18/08) accused the administration of neglecting "the workers it's supposed to protect." One way it did so, according

to the *Post*, was by not issuing new health rules for chemicals except for one that it was forced to do by a court order. Another was to reduce OSHA's workforce.

Liberal support for OSHA and conservative opposition to it followed our modified market failure model, although neither side expressed its position using market failure terminology. After initial opposition to the whole concept of workplace safety regulations, conservatives largely confined their opposition to OSHA implementation. The *Journal's* 1976 acceptance of OSHA's mission was relatively quick. Both the moral/value theory and the policy theory of workplace safety regulations were thoughtful despite the ragged beginning of OSHA's regulatory implementation, and the workplace safety initiative is worthwhile and effective, although no one is claiming perfection.

Consumer protection

We described consumer protection in Chapter V. In Table 6.2 we characterize its sponsors as thoughtful and the initiative as effective and worthwhile. Many products have the potential to kill or injure. Pharmaceuticals are also dangerous not only for the injuries they can produce but for what can occur if they are ineffective. Few consumers possess the technical or scientific expertise to evaluate products such as flammable clothing. The information asymmetry that places consumers at a strong disadvantage against manufacturers is a form of market breakdown, and the consumer protection initiatives that we described in Chapter V go a considerable distance toward equalizing the balance.

Business and Economics—A Thoughtfully Developed Initiative Characterized by Disagreement Regarding Its Effectiveness and Whether it is Worthwhile: Banking and Financial Deregulation

Bank regulation dates back to the country's origins, but the contemporary era of financial regulation began when Franklin Roosevelt and Congress, responding to the Great Depression, created

much of the architecture that governed banks and related entities until the conservative deregulation reforms of the 1980s. Even after deregulation many of the agencies and programs created during the New Deal remain.

New Deal banking reforms began in 1933 when Congress passed the Glass-Steagall Act. Among other features, Glass-Steagall sought to constrain what was regarded as excessive competition among banks by limiting the interest rates that banks could offer depositors. It also forbade banks from actively participating in non-banking activities such as insurance or dealing in stocks. Glass-Steagall separated banks that accepted deposits and lent money from institutions such as brokers that underwrote and traded securities. Glass-Steagall also established the Federal Deposit Insurance Corporation (FDIC) to insure depositors against bank failures. In addition, the Securities Act of 1933 increased securities market transparency through such requirements as regular corporate reports and rules established to prevent fraud.

The regulation pendulum began to swing in the opposite direction when the Garn-St.Germain Depository Institutions Act of 1982, with Reagan administration backing, passed with bi-partisan support. Garn-St.Germain went a long way toward deregulating savings and loan institutions, allowing commercial lending, and creating an instrument that could compete with money market mutual funds.

In 1986 the Federal Reserve interpreted Glass-Steagall to mean that a traditional bank could earn up to five percent of its revenues from investment banking. Reinforcing the trend toward deregulation, in 1987 Alan Greenspan, a classical liberal economist, was appointed chair of the Federal Reserve. Through the late 1980s and into the 1990s the Federal Reserve continued to loosen Glass-Steagall restrictions. Deregulation continued with the bi-partisan passage of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 which eliminated restrictions on interstate banking and allowed branches to be established in multiple states.

In 1996 the Federal Reserve reinterpreted Glass-Steagall to allow

bank holding companies to earn up to one-quarter of their revenues from investment banking, and three years later the Financial Modernization Act (Gramm-Leach-Bliley Act) repealed Glass-Steagall. An indication of the bipartisan support for this proposal is the 90-8 Senate vote. In 1998 Citicorp and Travelers Insurance merged a bank and an insurance company to form the largest financial services company in the world. In 2000 the Commodity Futures Modernization Act, supported by the Clinton administration and both parties in Congress, removed regulations on derivative contracts. In 2004 the Securities and Exchange Commission allowed investment banks to hold lower capital reserves.

Mergers such as Citicorp and Travelers and the diversification of other financial institutions were accompanied by the development of financial instruments called derivatives which added complexity to financial markets. Derivatives are devices that give their owners claims on other assets. One of the simplest examples is a covered call where the owner of shares of a common stock sells calls which give the call owner the right to buy the stock at a specific price (the strike price) if the value of the stock exceeds the strike price before a particular date (commonly when the market closes on the third Friday of a month). Selling covered calls can benefit the stock holder who receives a premium, but if the stock's price increases well above the strike price, the stock holder will suffer a loss. In this example the call owner benefits by controlling the right to buy shares at below market value. The call option adds flexibility to stock investing as does a companion option referred to as a put which is often used as insurance against a stock price decline. The derivatives that became popular in the mortgage field (described in our treatment of Fannie and Freddie) were far more complex and abstract than puts and calls, and federal regulators had difficulty keeping up with their proliferation.

Editorial writers line up along a fairly clear ideological line regarding the role financial deregulation played in the 2007-2008 mortgage crisis and recession. Liberals believe that financial

deregulation played a destructive role; conservatives highlight the actions of Fannie Mae and Freddie Mac and associated Democratic congressional and presidential attempts to artificially stimulate home buying while also pointing out that congressional support for deregulation came from liberals and conservatives.

The conservative policy theory behind financial deregulation was that Glass-Steagall and other constraints on banks, financial services companies, and insurance companies inhibited the free operation of the market and therefore the efficiency of the market. This is the standard conservative free market position applicable to all other parts of the economy not subject to market breakdown.

Any assessment of deregulation is made difficult by its complexity; it was not a single program. Eliminating ceilings on interest rates that banks could pay depositors (especially in the 1970s when inflation rates exceeded 10 percent) was no more than common sense. Breaking down barriers between traditional banks, investment banks, insurance companies, and stock brokers was a different, more complicated matter.

Derivatives trading is another ingredient in the deregulation puzzle. Matthew Sherman (2009, 11) theorizes that derivatives trading expanded five-fold because the market was unregulated. It is just as likely that derivatives trading grew because derivatives are useful devices with many different applications. In any event, Sherman charges that the derivatives market: “overwhelmed the legal and technological infrastructure of the industry. Commercial banks—the major players in the market—could make trades by computer using complicated algorithms so quickly and enter contracts so freely that oftentimes no firm was certain who owed exactly how much to whom.” (p. 11)

It is misleading to blame all kinds of derivatives for the complicated real estate securities collapse. The problem centered on impossibly abstract mortgage backed securities which were partly the purview of Fannie and Freddie (see later). Months before the collapse began, the sophisticated hedge fund manager Karen Finerman on a

CNBC financial news program reviewed a printed prospectus for one package of such securities and observed that she could not understand what it contained—probably because the prospectus had been written not to inform but to conceal.

Sherman (2009, 12) describes some of these instruments:

by a process of securitization, assets could be pooled together and repackaged into securities. Financial institutions could turn the illiquid assets on their books into highly-liquid securities that could be sold off to investors. Other financial obligations mixed aspects of options and futures and insurance contracts, and they allowed financial firms to bet on or hedge against all sorts of possible outcomes.

He then observes that:

The first securitized assets, mortgage loans, were packaged into mortgage-backed securities in 1970 at the Government National Mortgage Association (Ginnie Mae). The Federal Home Loan Mortgage Corporation (Freddie Mac) and the Federal National Mortgage Association (Fannie Mae) soon followed suit in the nationwide push to foster home ownership; these government sponsored agencies (GSEs) bought up mortgage loans to facilitate a secondary market. The securities carried an implicit guarantee from the federal government, and *they were required to conform to underwriting standards that ensured loan quality and limited risk.* (p. 12, Italics added)

Sherman is probably correct regarding the high standards of loans in the 1970s, but as we will see in our description of Fannie and Freddie, congressional liberals and highly aggressive Fannie and Freddie leaders together with opportunistic bankers oversaw a drastic and ultimately destructive loosening of lending standards.

In the sense that the proliferation of complex and destructive mortgage-backed securities was allowed by deregulation, then deregulation is partly to blame for the collapse. However, the creation of these securities appears to have as much to do with the active encouragement of the federal government including

Democrats, Republicans, liberals, and conservatives.

In Table 6.2 we describe bank and financial deregulation as thoughtful but as marked by disagreement concerning whether it was effective and worthwhile. Up to a point, the movement away from the New Deal straightjacket into which financial institutions had been strapped was overwhelmingly supported by liberals, conservatives, Democrats, and Republicans. In our view, the point at which failure began was the creation of government sponsored mortgage-backed securities and the federal government's encouragement of low mortgage standards both of which were the antithesis of deregulation. Nevertheless, we list deregulation effectiveness and whether it was worthwhile as subject to ideological disagreement.

The Wall Street Reform and Consumer Protection Act a.k.a. Dodd-Frank, signed into law in 2010, was meant to be a response to the Great Recession of 2007-2008. The *Times* and *Post* editorial pages virtually ignored it. In 2010 there were five editorials in the *Times* and only one in the *Post*. They were supportive with little enthusiasm. *National Review* and the *Journal* devoted considerably more attention to it and were energetically opposed (*NR* Trust us! Really!, 7/19/10).

The Dodd-Frank legislation is over 2,000 pages long, and the many rules it requires make it effectively far longer. We focus on only its most important features which are those aspects emphasized by financial reporters and law makers. Dodd-Frank is implemented by the Federal Deposit Insurance Corporation (FDIC), the Federal Reserve, the Securities and Exchange Commission (SEC), and the Consumer Financial Protection Bureau (CFPB) (created by Dodd-Frank). Dodd-Frank also created an entity called the Financial Stability Oversight Council (FSOC) made up of the Treasury Secretary as chair and heads of the Federal Reserve, Office of the Comptroller of the Currency, SEC, U.S. Commodity Futures Trading Commission (CFTC), FDIC, Federal Housing Finance Agency (FHFA), National Credit Union Administration (NCUA), and the CFPB. These agencies are responsible for writing the rules needed

to implement Dodd-Frank.

The fact that multiple agencies are tasked with transforming more than 2,000 pages of complicated legislation into working rules, suggests that the resulting structure would not work well even ignoring the possibility that the agencies listed above might engage in territorial disputes. Nor was there any doubt that the rule-making processes would constitute battle grounds for well financed lobbyists, sometimes opposed to one another and usually fighting regulators. For example, according to Adam Levitin, a Georgetown University law professor, there has been an important disagreement among bank regulators on the definition of the term “qualified residential mortgage” which he believes contributed to uncertainty in housing finance (Konczal 2013). Expensive disputes in conference rooms, courts, and Congress over thousands of other aspects of the original legislation and implementation rules are likely to be a permanent feature of Dodd-Frank if it is not repealed by the Republican Congress. Gary Rivlin (2013), writing in the liberal *Nation* magazine described the process as: “a slow-moving horror movie called ‘The Unmaking of Dodd-Frank’...” Frank Sorrentino (2016) in the conservative business-oriented *Forbes* magazine, seems to support Rivlin as he observes that “much” of Dodd-Frank has not yet been implemented. Writing in 2016, he adds that 139 bills had been introduced in Congress to amend or repeal parts of Dodd-Frank (*NYT* Banks still too big to regulate, 4/14/16).

According to Rivlin (2013), after Dodd-Frank’s passage financial industry lobbyists and attorneys organized around 18 elements of the new law to find ways to reduce its impact. We list just a few:

- **Designating supposedly risky nonbanks as “systemically important.”** This judgement is made by the Financial Stability Oversight Council. Being placed on this list means that substantial costs are incurred. Some financial institutions have modified their operations to lower their profiles to get off the list.
- **The Volcker Rule.** Named after Paul Volcker a former chair of the Federal Reserve. Dodd-Frank prohibits banks from

participating in proprietary trades in which profits or losses would be sustained by banks and not their customers. The Volcker rule is intended to reduce speculation by banks that can result in losses for which tax payers would be responsible. However, Dodd-Frank allows banks to trade securities (nonproprietary) for customers. The *Times* (Not what Paul Volcker had in mind, 2/28/12) regarded the distinction between the two types of trades as insufficiently precise, allowing banks to in fact engage in proprietary trading. Henry (Hank) M. Paulson, Jr., the Secretary of Treasury during the Great Recession, did not regard proprietary trading as a significant factor in bringing about institutional failures that were part of that crash (Sorkin 2010). As of August 2016, major banks were asking the Federal Reserve to give them roughly seven more years to rid themselves of billions of dollars in investments forbidden by the Volcker Rule (*NYT* Banks' bid to delay Volcker Rule compliance encourages foes, 8/13/16).

- **Mortgage lending standards.** This was a major reason for the Great Recession, but there is little reference to it in newspaper coverage of Dodd-Frank. After the Great Recession some federal regulators and many conservatives argued that substantial down payments on home mortgages would prevent the defaults that led to the crash (Eavis 2014). However, in 2014 the Housing Finance Agency and other regulators issued new mortgage rules with *no* down payment requirement. Before that the down payment was set at 20 percent. Some banks and liberals favored the lack of a down payment requirement arguing that down payments prevent housing purchases by those unable to pay a down payment. We will see that this was the perspective that contributed to many defaults that led to the 2007-2008 crash.
- **Swaps push-out rule.** This rule essentially prohibited banks from trading some derivatives, credit-default swaps, and other financial instruments associated with the 2007-2008 recession unless the swaps were used for risk mitigation among other exceptions (Cross 2015).

- **Bank capital standards.** The Federal Reserve requires that banks having assets in excess of \$50 billion must pass stress tests that determine if they have sufficient capital and liquidity together with management controls and other characteristics that would allow them to survive worst-case scenarios without relying on bail-outs from the government. In 2016 all U.S. banks passed except Morgan Stanley which passed partially. Although they make banks more stable, the higher capital requirements probably reduce profitability (Popper & Corkery 2016; Eavis 2016). The *Times* (A better way to control the banks, 2/27/16) regards the new capital standards as a substantial improvement over the pre-Dodd-Frank environment but also believes that banks should be downsized to reduce the risk to the system as a whole if any one of the resulting smaller organizations failed (*NYT* Too big to regulate, 8/10/14). The institutional downsizing argument is made in different ways by liberals and conservatives.
- **Consumer Financial Protection Bureau (CFPB),** intended to prevent consumer fraud perpetrated by banks. Liberals appear to regard the CFPB as a major Dodd-Frank success, but so far we have found no objective reason for this view (*NYT* An uncertain future for Dodd-Frank, 1/25/15). Congress has no control over the CFPB's funding which comes from the Federal Reserve, and the director who serves a five year term can only be removed by the president (Hiltzik 2016).
- **Failure resolution authority.** This refers to the orderly winding down of a failed financial institution. The FDIC has long had this authority applied to banks, but Dodd-Frank extends it to encompass a variety of financial institutions in addition to traditional banks. One device that financial institutions were supposed to use to facilitate ending their existence was a so-called living will, but as of April 2016 several large banks had not prepared them to the FDIC's satisfaction and were being given extra time to complete them. The *Times* (Banks still too big to regulate, 4/14/16) described these extensions as an "act of pure

indulgence.”

The rule-making that followed the passage of Dodd-Frank makes it appear that the 2,000 plus page law with its hundreds of regulations, consists of only one sentence: Let the rule making commence. There were many possibilities for the wording of rules, leaving many liberals frustrated that not enough was being done to rein in financial institutions (Eisinger 2014).

Criticism of Dodd-Frank

Some congressional Republicans want to eliminate at least parts of Dodd-Frank (Finkle 2016) such as its capital and liquidity requirements (while simultaneously *increasing* such requirements in some cases), the Volcker Rule, and the FSOC’s ability to designate some nonbanks as systemically important (Calomiris & Meltzer 2014). Many congressional Republicans would also restructure the CFPB “and other agencies as bipartisan commissions and subject them to congressional appropriations.” (Weisman, 12/17/14) Both changes would reduce liberal Democratic influence.

Many Republican moves to weaken Dodd-Frank might be described as stealthy. For example, Republicans added a feature to the 2014 Treasury Department appropriations bill that eliminated the push-out rule that prohibited banks from trading some derivatives such as credit-default swaps (Weisman, 12/17/14). Because it was part of a large and important bill, the president signed it (Engler 2014). Massachusetts’ liberal Senator Elizabeth Warren and other liberals protested, but they were unable to unify the Democrats many of whom receive campaign contributions from financial institutions (Parker & Peters 2014).

Paul H. Kupiec (2014), writing in the *Wall Street Journal* observes that many Republicans want to repeal Dodd-Frank, but he speculates that parts of the law are so deeply imbedded in the financial system that eliminating it would be impractical. Furthermore, veto-proof congressional majorities are not available. He suggests a number of small scale repairs. He believes that the bank capital standards should be increased from the Dodd-Frank level

of \$50 billion to \$250 billion. He argues that the U.S. financial system could easily handle the failure of a \$50 billion company, making the requirement that financial institutions over that size but under \$250 billion must pass stress tests and prepare a living-will, wasteful.

Kupiec would also end the Financial Stability Oversight Council's authority to designate a financial institution as a systemically important. He observes that the Council's methodology for making this designation has not been made public.

Evaluations of Dodd-Frank re-regulation

Conservatives dislike most elements of Dodd-Frank largely because they believe it to be costly and ineffective. They argue that had it been in place in 2007 it would not have prevented the recession. Liberals like some aspects of Dodd-Frank but believe it to be insufficiently rigorous. They are close to agreeing with conservatives that it would not have prevented the 2007-08 recession because effectively the largest financial institutions are still too big to fail and would have been in 2007.

Charles W. Calomiris and Allan H. Meltzer (2014) observe that when liberal Senator Elizabeth Warren asked a bipartisan group of four economists if Dodd-Frank had cured the too big to fail syndrome, they all answered no. Calomiris and Meltzer, writing in the *Journal*, fault Dodd-Frank for trying to prevent the failure of individual institutions instead of focusing on the system as a whole. Jeb Hensarling (2015), also writing in the *Journal*, points out that Dodd-Frank undermines stability by encouraging the growth of large (too big to fail) financial institutions and bringing about a reduction in the number of small banks thus making the system as a whole less stable. Hensarling describes small banks as "overwhelmed by the law's complexity," adding that roughly one bank or credit union is disappearing every day. In fact, from the first quarter of 2015 to the first quarter of 2016, 242 insured commercial banks disappeared (Federal Reserve Bank of St. Louis. 2016. All insured U.S. commercial banks). From 2010 to 2016, an average of 245 per year

went out of business. However, the number of banks in the U.S. had been dropping since well before Dodd-Frank. In the period 1984-1989 the average loss per year was 2.19 percent. In the 1990s the annual loss increased to 3.88 percent. In the 2000s it dropped to 2.14 percent, but during 2010-2016 it jumped to 3.96 percent. With more than 100 banks disappearing each year from 1985-2016, and losses of more than 400 per year in the years 1988-90, 1992-96, and 1998, it would be difficult to make a convincing case that Dodd-Frank enacted in 2010 was the cause, but the percentage losses since Dodd-Frank were above average.

In 2014 Tim Johnson the Democratic chair of the Senate Committee on Banking, Housing, and Urban Affairs (2014) opined that Dodd-Frank had put the economy on “much more stable footing,” but he offered no evidence (p. 1). Furthermore, he boasted that when regulators learned that the Volcker Rule might result in large and unexpected losses for small banks, the regulators took corrective action. Democrat Mike Crapo explained that the damage that would potentially have occurred resulted from a change in accounting practices required by the rule, and that regulators fixed the problem (p. 2). In other words, small banks would have been better off without Dodd-Frank, and regulators, according to Crapo, failed to see the problem after three years of promulgating the potentially destructive rule but repaired it just before damage was about to be done.

Elizabeth Warren seems to agree with conservatives that the persistent existence of too big to fail financial institutions represents a continuing source of systemic instability, but, unlike conservatives, she views re-regulation as enhancing stability. And she advocates greater regulation with the reestablishment of Glass-Steagall which she believes would reduce the size of financial institutions and thereby make the system as a whole less prone to collapse (Senate 2014, 25).

In the 2014 Senate Committee on Banking, Housing, and Urban Affairs’ extensive hearings on Dodd-Frank there is little evidence of

a policy theory of how the law will enhance stability except perhaps for the higher capital requirements for financial institutions. As it was making its way through Congress *National Review* (Trust us! Really!, 7/19/10) attacked it because of its lack of theoretical underpinning: “it assumes that policymakers are able to predict financial crises, which are as severe as they are because they upend widely shared assumptions.” This appears to be a variation of armies preparing to fight the last war.

Perhaps because Dodd-Frank was supported by such a flimsy policy theory, much of the testimony in the 2014 Banking committee hearings was irrelevant. For example, SEC Chair Mary Jo White testified that the SEC was proposing a rule to publish the ratio of what corporations pay their CEOs to median pay of other employees (p. 11). She did not explain how this statistic will enhance financial stability or improve any other aspect of the economy’s performance.

Liberals believe that a large part of the Great Recession was caused by illegal banking practices that have gone unpunished except for a few fines. In the Banking, Housing, and Urban Affairs (2014) hearings Senator Warren listed illegal J. P. Morgan practices including: “its sale of fraudulent mortgage-backed securities, its illegal foreclosure practices, like robo-signing, its manipulation of energy markets in California and the Midwest, and its handling of the disastrous London Whale trade.” (p. 25; see also *NYT Talking tough with the banks*, 5/21/15) The J. P. Morgan president Jamie Dimon, having presided over these activities was given a large boost in pay for having negotiated \$17 billion in settlements with federal agencies. Warren reacted angrily: “this raises questions about whether our enforcement strategy is working or whether it is actually so bad that we are making it more likely for big banks to break the law.” (p. 25) She then concluded: “Does anyone on this panel seriously think that the Government’s current enforcement system for financial crimes is actually working in the sense of deterring future law breaking?” (p. 26)

Conservatives did not agree with Warren that J. P. Morgan

engaged in criminal activities. For example, in 2013 J. P. Morgan settled for \$13 billion with the U.S. Attorney for the Eastern District of California Benjamin Wagner over the sale of mortgage backed securities that included toxic loans. Of the many oddities in this settlement (including how the \$13 billion was disbursed), perhaps the most peculiar is that just under 80 percent of the bad securities were not sold by J. P. Morgan but by two failing companies it bought at the federal government's request or insistence (*WSJ* J. P. Morgan and its "victims," 11/20/13). Something similar happened to Bank of America in 2014 when it agreed to a \$16.65 billion settlement with the Justice Department. Roughly 95 percent of the sub prime loans in question were issued by two companies that Bank of America rescued from bankruptcy at the federal government's behest. In addition, the two companies issuing these bad securities did so in cooperation with Fannie and Freddie (*WSJ* Banking in a time of cholera, 8/22/14). And as with the J. P. Morgan agreement, the distribution of the settlement funds seems arbitrary.

Liberals believe that Dodd-Frank has probably improved the nation's financial stability, but they generally regard it as insufficiently rigorous. Conservatives argue that the statute has done little or nothing to improve the financial system and has been very costly. The liberal re-regulation value theory is simple: sudden, large scale economic downturns should be avoided. The liberal re-regulation policy theory as represented by Dodd-Frank and proposals for a return to Glass-Steagall, consists of several parts listed here in no order. First, financial institutions should have large amounts of cash on hand to weather economic turmoil and to avoid turning to tax payers for help. Second, there should be greater numbers of financial institutions of smaller size so that the failure of any one does not damage the economic system as a whole. Third, banks should be prohibited from participating in proprietary trades in which profits or losses would be sustained by banks and not their customers (the Volcker rule). Fourth, lending standards should be made more rigorous. Fifth, banks should be prohibited from trading some

derivatives such as credit-default swaps. Sixth, the Consumer Financial Protection Bureau is supposed to prevent fraud perpetrated by financial institutions.

Regarding the first element of our version of the Dodd-Frank policy theory, it has increased cash reserves but at a substantial cost; the greater the cash on hand, the less is available for loans and other profit-making activities. No one knows whether the cost is worth the benefit. The second element of re-regulation policy (larger numbers of smaller financial institutions) is a failure. There are substantially fewer financial institutions than there were in 2010 and on average they are larger. The third element concerning proprietary trading appears not to have significantly contributed to the 2007-08 recession, so banning this practice may not help prevent another crash. Making lending standards more rigorous, the fourth element, was part of the early response to the 2007-08 recession, but liberal Democrats have retreated to relatively relaxed standards thus inviting another recession. It is unclear whether the fifth element (prohibiting some derivatives trading) would have been useful, but Republicans eliminated it.

Regarding the Consumer Financial Protection Bureau, agencies in place before Dodd-Frank (including state attorneys general, the U.S. Department of Justice, and the FTC) could have discovered or prevented the same consumer fraud. One of the early successes that the agency claims was an \$80 million judgment against Ally Financial for racial discrimination in auto loans using a technique called dealer reserve by which dealerships add interest to a car loan for arranging the loan. The CFPB argued that minorities were charged higher rates, but proving it was not easy. Dealerships and financial entities such as Ally do not record the race or ethnicity of their customers, so the CFPB was obliged to apply indirect measures of race and ethnicity to gauge discrimination. Essentially, the agency used customer addresses and surnames (from the Census Bureau) to estimate race and ethnicity. Many complications emerge when this methodology is employed: addresses cannot always be attached to a

particular geographic area; not all surnames are listed by the Census Bureau; and hyphenated and compound surnames must be treated consistently. In examining data bases unrelated to auto loans where race and ethnicity was self-identified, Arthur P. Baines and Marsha J. Courchane (2014,56) find that “geography alone does a poor job of identifying minority groups.” Surnames add accuracy to identification of Hispanics and Asians but little to African-Americans. For example, how would the CFPB categorize an Armstrong, Davis, Fitzgerald, or Harris?

Baines and Courchane (2014, 6) conclude that this methodology is characterized by significant bias and estimation error which could generate: “overstated disparities and overstatements of alleged consumer harm.” (p. 6) The CFPB won the case against Ally but not legitimately.

The CFPB and state attorneys general also won a \$2.1 billion settlement against Ocwen Financial for a breathtaking array of deceptive mortgage servicing practices such as failing to apply payments made by borrowers in a timely manner (with resulting problems for the borrowers), charging unauthorized fees, requiring borrowers to buy unneeded insurance policies, and providing false or misleading information to borrowers (consumerfinance.gov; Shin 2013). In 2012 state attorneys general arrived at a 25 billion settlement with five other mortgage companies for similar practices, suggesting that attorneys general perhaps with the assistance of the U.S. Justice Department would have been able to handle the entire mortgage fraud problem without CFPB’s help. In these cases methodologies of dubious validity were not required.

An added dimension to the deceptive mortgage servicing problem is that to some degree it was caused by the federal government. Relatively unknown organizations such as Ocwen entered the business because established banks such as Bank of America were forced out by Dodd-Frank regulators who were trying to reduce bank mortgage defaults (Armour, Johnson, & Copeland 2014). The Financial Stability Oversight Council described this chain of events

in its 2013 annual report adding that the expanding mortgage service companies were not subject to the rigorous capital requirements of banks (Armour, Johnson, & Copeland 2014). The superintendent of the New York Department of Financial Services referred to this shift in risk as an unintended consequence of changing federal bank regulations.

The CFPB also concerns itself with credit card malpractice such as retroactive interest-rate increases. In an interview the CFPB director said that his agency would “monitor” practices of this sort (Singletary 2016). The agency’s first credit card report was issued in 2013 and the second in 2015. It is safe to say that the most recent mind numbing 297 page report will not be widely read (CFPB The consumer credit card market, 2016). The CFPB director also claimed to be responsible for over a billion dollars in “relief” to victims of credit card add-on products. We have been unable to locate evidence for this figure even on the CFPB website.

Recently, Wells Fargo was issued a \$185 million fine plus \$5 million for customer remediation for opening more than two million credit card and deposit accounts for Wells customers without their knowledge. Employees were rewarded for opening accounts (Back 2016; Glazer 2016). Often employees would quickly close the unrequested accounts, but in some cases they were left open and customers only learned about them when they were charged fees (Corkery 2016). This case involved both the CFPB and the Los Angeles city attorney.

Asked about pay-day loan abuses, the CFPB director said: “Our proposed rule would establish strong consumer protections that will keep borrowers’ short-term needs from becoming long-term burdens.” (Singletary 2016) He appears to ignore state laws that are already in place.

Few advocates of re-regulation claim that it significantly reduces the chances of another financial breakdown. Not surprisingly, their primary strategy is more regulation. The advocates of re-regulation lack a coherent policy theory beyond breaking up existing financial

institutions via a new Glass-Steagall, and requiring financial institutions to have greater capital reserves than they did before 2007-08. Everything else is ad hoc. Advocates of re-regulation have not diagnosed the causes of 2007-08 which were, as we will see later, a mixture of liberal Democrats in Congress pushing eager-to-please Fannie Mae and Freddie Mac and financial institutions into offering mortgages to many unable to afford them and financial institutions creating financial instruments that almost no one could understand.

Business and Economics:

Thoughtlessly Developed Initiatives

The following ten initiatives were thoughtlessly developed and were largely or completely ineffective and worthless: agribusiness subsidies; regulation of transportation; antitrust; Nixon era wage and price controls; Nixon-Ford-Carter era energy price controls and rationing; preventing large business failures; requiring the use of gasohol plus corn subsidies; enacting Superfund; providing low interest mortgages (Fannie and Freddie); and enacting Cash for Clunkers.

Agribusiness subsidies

Few areas of public policy are as complicated as agricultural subsidies. These programs date back to World War I when farmers were encouraged to increase production to support the war effort. After the war, high production levels continued, resulting in wasteful surpluses and price reductions. Legislative attempts to resolve these problems only worsened them. For example, the Agricultural Adjustment Act (AAA) of 1933 attempted to reduce and control production with quotas established by the Secretary of Agriculture and payments to farmers in return for reducing acreage devoted to surplus output. The U.S. Supreme Court declared elements of the AAA unconstitutional after which wheat and cotton production surged. These events resulted in passage of the Agricultural Act of 1937 which established the framework for subsidies (a.k.a. price supports) that continues today. It is impossible to summarize the history of these programs since 1961 or even as they exist today with

any brevity. Instead, we focus on their value and policy theory logic.

Generally, liberals are hostile to business subsidies (as are conservatives), but as of the early 1960s liberals (especially the *Post*) regarded agribusiness as a special case needing subsidies, price supports, and tariff protection. Eventually, the *Times* and later the *Post* agreed with conservatives that most such devices should be eliminated because they increase taxes unnecessarily, distort the market by encouraging inefficient operations, hurt businesses that could otherwise stand on their own, and generate wasteful surpluses.

As early as 1962 the *Times* (Revolt on the farms, 8/31/62) began questioning the desirability of agricultural subsidies. The newspaper called for radical reform, not the patchwork changes that had been made since 1933. The *Times* wanted either a highly controlling plan offered by President John F. Kennedy or a reduction in subsidies with a heavier reliance on the market. How the *Times* could be indifferent between these extremes is a mystery. Conservatives experienced no difficulty making this choice. The *Journal* (Mr. Freeman's lonely road, 7/23/62) blasted the Kennedy plan as "the most rigid farm regimentation in history."

By 1964 the *Times* (Wooing the farm bloc, 3/3/64) had become relatively hostile to agricultural subsidies. It accused the Democratic president and Congress of attempting to buy the farm vote with increased subsidies for wheat and other crops. The *Times* also argued that subsidies only served to keep too many farmers growing excess crops and that poor agricultural practices by marginal farmers kept solvent by federal dollars were leading to soil erosion (*NYT* Reaping the whirlwind, 3/23/65). This was a perfect example of how subsidies could distort a market and lead to waste. Resources in the form of land, labor, and capital were being diverted from more efficient applications. The *Times* called for a gradual reduction of subsidies and help for those farmers who could not survive in a competitive environment.

In one of many similar editorials on agriculture the *Post* (The wheat plan, 8/17/65) defended wheat subsidies with this dubious

assertion: “There is not much argument about the wheat farmers’ right to a better return.” Evidence for this proposition was that wheat farmers earned less on an hourly basis than factory workers. Only a few years later the *Post* (Uncowed by the politics of milk, 5/5/71) tried to make sense of milk subsidies, characterizing the system as convoluted and reeking of self-interest. The editorial contained no direct policy recommendations, but its tone suggested that milk subsidies should be reduced or eliminated. Four years later the *Post* (Wheat, corn and milk, 3/16/75) advocated trimming, not eliminating, milk subsidies because there were surpluses. Seven years after that little had changed. The *Post* (Milk, money and politics, 7/25/82) described huge surpluses in dairy products and blamed the excess on subsidies which were soon due to increase. The editorial asked how this “mess” had developed. Liberals especially the *Post* were culpable, but self-interest was probably far more important. One dairy industry response to the 1982 “mess” was to contribute large sums to congressional election campaigns. Milk subsidies found the *Post* uncharacteristically siding with the conservative Reagan administration that had prevented an increase in subsidies in 1981 and that wanted to give the Secretary of Agriculture authority to lower them if surpluses continued. The *Post*, noting that subsidy reduction would generate hardships for some farmers, agreed that aid should nevertheless be reduced. Conservatives consistently opposed milk subsidies (*WSJ Dairy dementia*, 3/22/83).

In 1970 the Americans for Democratic Action (ADA) supported an amendment to the Department of Agriculture appropriations bill that placed a \$20,000 annual limit on farm subsidy payments (making unexplained exceptions for wool and sugar). This position suggested that the ADA was aware that substantial percentages of farm subsidies were paid to large agribusiness operations, but it did not question the virtue of subsidies per se (*ADA World*, 2/71, Senate vote 33). The ADA took its next position on farm subsidies three decades later when it supported a bill providing emergency agriculture assistance (*ADA*, no month, 2003, Senate vote 1). In 2008 it

avored a congressional override of a veto of a farm bill containing subsidies that would be limited to small farmers (*ADA World* Spring 2009, 2008 House vote 13 & Senate vote 12).

By 1981 the *Post* (Inflationary sweeteners, 10/24/81), in addition to questioning milk subsidies, opposed subsidies for sugar. But the *Post* (Farm bill compromise, 12/12/81) still had good things to say about subsidies in general, seeing them as a way to avoid shortages even while admitting that abuses would arise. The newspaper then listed abuses that in fact had occurred including surpluses over many years, excessive food prices, and payments to undeserving large agribusiness concerns. A farm bill that was under congressional consideration represented what the newspaper regarded as a realistic compromise between the Reagan administration's market orientation and self interested agriculture lobbyists. Even so, the *Post* predicted that sugar prices would increase by "at least 25 percent" because of the bill.

By 1985 the *Post* had become more critical of subsidies, but it seemed unwilling to abandon them. The newspaper's (Farm fight, 1/24/85) portrait of subsidies could hardly have been more negative:

Even the most die-hard supporter of farm-subsidy programs would be hard-pressed to say they are working well. Despite record government outlays, farmers are plagued by big debts, high interest rates, weak prices, dwindling export markets and falling land prices. Thousands of farmers face foreclosures in the coming months, and bank failures in rural areas are already at post Depression highs. While failing to support farm incomes, government programs have also built up costly surpluses and promoted over-intensive farming and soil erosion. Quite a record.

And yet, the *Post* declared that subsidies or something like them should be maintained to stabilize the erratic agricultural marketplace.

Once again in 1985 the *Post* in part sided with the Reagan administration. It portrayed the conservative president as waging a principled fight to reduce subsidies while congressional Democrats

appeared to the *Post* to be opportunists siding with farmers for the sole purpose of winning their votes (*WP* That farm bill, 9/23/85). Nevertheless, the newspaper opposed the outright elimination of subsidies—agriculture required “gentler treatment and longer-term support” than the Reagan administration wanted. The year 1985 also brought a continuation of milk subsidy politics with, as the *Post* (The House milk vote, 9/30/85) described it, the cows trampling the people. In fiscal year 1985 the federal government had purchased \$2 billion in dairy surpluses. A move in the House to reduce these subsidies was defeated overwhelmingly. Fiscal 1985 subsidies for all products and crops totaled more than \$25 billion (*WP* Whose farm bill? 12/26/86).

In 1987 the *Post*, appearing to signal that it had shifted rightward on this issue, printed a long article by conservative economist Milton Friedman (1987) titled “The advantage of being few; How farmers and other vocal minorities get their way.” Friedman observed that even though farmers represented a smaller percentage of the total workforce than ever, their political influence was at an all-time high. How could this be?

Friedman explained that a group that seeks benefits through political pressure is handicapped by being too numerous and, at least up to a point, benefitted by being few. Government can spend a dollar per member of a majority only by collecting more than a dollar from each member of the minority, each of whom will therefore squeal louder than each of the majority will applaud. On the other hand, government can spend a dollar per member of a small minority by collecting only a few cents from each member of a large majority—the applause is then far louder than the squeal (Friedman 1987). Friedman also described the damage that farm subsidies generated. Not only did taxes pay for the subsidies, farm support programs forced commodity prices far above world levels. Contradictions in the morass of federal programs were everywhere: “With one hand, the government provides subsidies to indigent mothers to enable them to buy milk for their children; with the other,

it doubles the price of the milk. Make sense of that if you can.”

Despite these contradictions, the *Post* (Fixing farm supports, 8/18/87) continued to favor modest reform instead of eradicating this system, although the newspaper performed a service by explaining the hideously complex body of subsidy programs: “Farmers now get two layers of support from the government. First is a loan: a farmer can turn his crop over to the government if the market price is below the so-called loan rate. Second is an outright income supplement or deficiency payment, making up the difference between the market price or loan rate—whatever the farmer gets for his crop—and a target price or income goal.” The editorial favored separating the two parts and then slowly reducing support levels: “The purpose would be not just to stop subsidizing surpluses but to give farmers time to adjust by either leaving the land or turning to other crops.” So, again, the *Post* wanted incremental change, not the elimination of a failed policy (A window on the farm, 11/28/88).

Years later the *Post* (A pretty good farm plan, 11/18/95) position was still the same:

Farm supports shouldn’t be abandoned entirely. There needs to be a net beneath producers to protect them, and ultimately consumers, from what would otherwise be destructive swings in price and supply. But in most years supports should not be paid. The purpose should not be to provide producers with a steady source of income but in emergencies to prevent efficient farmers from failing through no fault of their own. The present system has grown beyond that.

By 2001 the *Post* (Rethink the farms, 10/1/01) appeared almost to favor eliminating subsidies, but still not quite: “In an ideal world, the farm bill would be thrown out, and a cheaper one that focused on environmental protection, food safety and poverty reduction would replace it.”

Overall, the *Post* editorials of the 1960s and 1970s reflected a distrust of the market economy as a system for coordinating food production and distribution. For example, in 1973 the

newspaper asserted that the world hunger was partly caused by the lack of a comprehensive food production policy in the U.S. (Wanted: An international food policy, 9/16/73). It argued that the market system had a short term orientation that failed to take the world's poor into account. This editorial contained no indication of what a better program would look like. In 1975 the *Post* (A national food policy, 12/28/75) was still pursuing the notion of food coordination, observing that: "food deserves as much coordination as we would give to energy or the environment..." How these three areas of public policy are similar or how coordination (whatever that meant) would help was not explained. It is, after all, the market's function to coordinate, and, unless market breakdown is present, no system performs better. The *Post* summarized a report published by the Senate Select Committee on Nutrition and Human Needs which faulted the federal government for not adequately surveying U.S. nutritional needs, something the *Post* favored. What such a survey would accomplish or how it would be used was not explained. The survey would be handled by a new food and nutrition policy board that would include someone from the Executive Office of the President as well as the secretaries of HEW, State, and Agriculture. It is easy to imagine these cabinet officers sending low level functionaries to the board's meetings and rarely if ever attending themselves.

Since 1961 the *Times* had been more critical of agricultural subsidies than the *Post*, but as late as 1983 it was still grudgingly supporting subsidies. For example, the newspaper disliked the practice of paying farmers to not grow food, but good harvests had resulted in substantial surpluses, and simply ending subsidies would generate a "glut induced depression." (*NYT* Fat years, lean years and PIK, 3/27/83) Two years later the *Times* (Put strings on the great farm bailout, 2/22/85) criticized the Reagan administration budget director David Stockman's thesis that farms are businesses like any others and no more deserving of subsidy. It would be unrealistic and inhumane to require farmers to stop accepting subsidies cold turkey,

according to the *Times*. Like the *Post*, it wanted a gradual reduction. A year later (The farmers beat the president, 12/22/85) the *Times* sided with the Reagan administration's efforts to abolish what amounted to welfare for agriculture and industry. By this point the *Times* had adopted the conservative formulation of farming as simply a type of businesses (see also Farm subsidies grow like weeds, 11/4/85 for the same farming-industry formulation). However, in an example of self-interest trumping ideology, Congress sided with farmers. Nevertheless, in the mid-1980s even the more critical *Times* (Rich farmers and the rest of us, 7/25/86) left the door open for subsidies in some form. The newspaper blasted the rapid growth of subsidies to \$35 billion a year with most of that going to wealthy farmers and large corporations and concluded that the remedy was obvious: "phase out farm-income supports to affluent farmers." Apparently, subsidies for less affluent farmers would continue.

Conservatives consistently opposed all kinds of business subsidies including those benefitting farms (Murdock, 2008; *NR* Robber barons, 3/13/87). For example, the *Journal* (The problem of kings, 11/8/61) observed that cotton was suffering competition from synthetic materials, and instead of allowing the market to determine how much cotton was needed, the federal government had foolishly intervened to protect it.

In 2007 the reliably liberal *Atlanta Journal-Constitution*, sounding like the *Wall Street Journal* and *National Review*, published a farm subsidy expose entitled "Farm fiasco" (Foskett 2007). Its author observed that Norman Rockwell family farms no longer existed in significant numbers: "Mom and Pop have traded tractors for minivans and full-time jobs in town, while field work has been taken over by multimillion dollar farming operations." (p. 19) Some of Georgia "farmers" receiving subsidies included multimillionaire CNN founder Ted Turner and a retired CEO of Coca-Cola (p. 21). Adding to the waste, some agricultural operations gamed subsidy programs to gain unfair advantage: "one farmer increased his legal subsidy limits fourfold simply by

reorganizing into multiple entities that were each eligible for subsidies.” (p. 20) Half of USDA “subsidies go to just 5 percent of eligible farmers.” In addition, “subsidies drive up rural land prices and prevent small growers from farming more land.” (p. 20)

The liberal position on farm subsidies in the 1960s, 1970s, and sometimes the 1980s calls into question our characterization of liberals as believing in the virtues of the market economy (Hadwiger 1985). The liberal agricultural aid moral/value theory was that farmers deserved aid partly because agriculture was different from other businesses. Food was seen as more important and more basic than the products of other businesses, and it is, but food production was not in danger of dropping to starvation levels. In addition, farmers were portrayed as somehow more noble and deserving of assistance than other business people. The fact that farms were transforming from cozy family operations to mammoth agribusiness enterprises dawned slowly on urban liberals. Even so, family farms were no more deserving of support than any other businesses. The liberal agriculture moral/value theory consisted largely of thoughtless family farm myths, and whatever policy theories generated the hideously complicated subsidy programs were anything but thoughtful except on the part of self-seeking agribusiness interest groups. The only market misbehavior that can be discerned in this area is that in some years farmers lost money, but that is the nature of this risky enterprise and to a considerable degree farmers can mitigate it by using futures and taking out crop insurance. Again, as in most other liberal attempts to rectify the impact of market misbehavior, most liberals retreated, but it took many of them far too long to appreciate the waste and market distortions produced by their programs.

Our rating in Table 6.2 of agribusiness subsidies as thoughtlessly developed, ineffective, and not worthwhile is justified by a conservative and liberal consensus.

Antitrust

Based on our analysis of antitrust policy in Chapter V, in Table

6.2 we describe this initiative as thoughtless and ineffective with the speculation that the threat alone of antitrust action might prevent monopolistic practices. Liberals and conservatives usually disagree regarding whether antitrust programs have been worthwhile.

Regulation of transportation

We covered the regulation of transportation in Chapter V. This is another initiative whose origins far predate our 1961 starting point. As of 1961 liberals were still actively defending the long outdated regulation of railroads, but they were turning against the regulation of airlines (excluding safety regulations which everyone favors) and trucking that their liberal and progressive predecessors supported.

In Table 6.2 we describe transportation regulation sponsors and defenders as thoughtless. Also, most transportation regulation was ineffective in terms of anything but the self-interest of railroads, airlines, and trucking companies, and transportation regulation was highly wasteful and not worthwhile.

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

We also covered this topic in Chapter V. Under pressure from congressional Democrats, President Nixon imposed wage and price controls to manage the inflation that he inherited from the Johnson administration. Liberals understood that economic theory did not support the imposition of controls. At best, controls would temporarily suppress inflation until they were discontinued at which point price increases would abruptly return. Liberals supported controls with little enthusiasm, and conservatives opposed them. When liberals understood that the controls were not even doing a credible job of inhibiting inflation on a temporary basis, they ended their support. Nixon cancelled them in January 1973, but they quickly reappeared in the form of price controls over large oil companies. We cover that policy immediately below.

Wage and price controls are an example of liberals believing that market breakdown had occurred when it had not. As a response to this imagined problem, liberals tried unworkable and unwieldy

market interventions. Inflation in the last months of the Johnson administration and into the Nixon administration was not the product of market breakdown. Inflation was caused by the market responding to the Johnson administration's inflationary policies, and it was nothing but market misbehavior.

In Table 6.2 we describe Nixon era wage and price control sponsors as thoughtless, and it is clear that the initiative was based almost entirely on hope, not economic theory or history. It did not fulfill even the liberals' limited objectives, and it was not worthwhile.

Energy price controls and rationing

In 1970 the Arab-controlled Organization of Petroleum Exporting Countries (OPEC) essentially ordered a substantial oil price increase. It followed that action with more of the same in 1971. In August 1971 President Nixon, responding partly to OPEC, invoked the Economic Stabilization Act of 1970 and ordered a 90 day freeze on all wages, prices, and rents (Bennett, Cole, & Dym 1980-81, 36). More OPEC (and allied oil producers) price increases followed in 1972 which OPEC justified by a loss in value of the U.S. dollar. Perhaps more frightening for Western nations, in June 1972 Iraq nationalized concessions worth more than one billion dollars owned by British Petroleum, Royal Dutch-Shell, and other Western companies. More nationalization followed in later years.

The Nixon administration abandoned general price controls in January 1973. A sharp increase in heating oil prices occurred immediately. In March price controls were reimposed by the U.S. government on the largest oil companies. April brought yet another OPEC oil price increase again justified by a decline in the dollar. In June 1973 Nixon ordered a 60 day price freeze applicable throughout the economy and superseding oil price freezes. In August the president's Cost of Living Council established a dual price ceiling on crude oil. This system created two categories of oil—old and new. Old oil (produced from existing wells) could be sold only at March 1973 prices plus 25 cents. New oil (produced from new wells) could be sold at whatever price the market allowed. The logic behind this

distinction was that new wells are more expensive and drillers would not explore for oil unless it could be sold at market prices. However, this policy acted as an incentive for owners of old oil to keep it in the ground awaiting expiration of controls, thus giving rise to artificial shortages and greater reliance on imported oil (Helbling & Turley 1975, 5). The dual price system quickly became extraordinarily cumbersome. According to Hans H. Helbling and James E. Turley (1975, 3):

With the implementation of domestic oil price controls [old oil and new oil], the FEA [Federal Energy Administration] recognized that some refiners depended heavily...on relatively high cost foreign crude, while other refiners had access to comparatively large quantities of the cheaper domestic "old" oil. In an attempt to equalize input costs to all refiners, the FEA adopted the "Old Crude Oil Entitlement Program." This program is designed to allocate "old" oil proportionately among all refiners such that apparent cost differentials are reduced.

Shortages led to ineffective attempts at gasoline rationing. One such undertaking consisted of an odd-even system with vehicles having license plates ending in odd numbers only able to buy on odd numbered days and even plates on even numbered days. A better example of a thoughtless policy theory would be difficult to find in any area of public life.

In October, 1973 Syria and Egypt attacked territories occupied by Israel after the 1967 Six Day War. A few days later the U.S. airlifted weapons and supplies to Israel. Many Western European countries also supported Israel. In retaliation, six Arab oil producing countries increased the price of oil. Then, in October and November Arab countries, following an OPEC recommendation, initiated an oil embargo against the U.S., Western Europe, and Japan, an immediate cut in production, and future production cuts in 5 percent increments. The market price of oil quickly increased from \$3 a barrel to \$12, and shortages appeared to develop in the U.S. According to the Massachusetts Institute of Technology petroleum economist M. A.

Adelman (1997, 30), the perceived shortages were an illusion created by precautionary purchases and speculation (Hughes 1986, 724). A few months later oil was plentiful. However, the retail price of gasoline in the U.S. increased from approximately 38.5 cents a gallon in May 1973 to 55.1 cents a gallon a year later.

Many politicians responded to these developments with panicky calls for bans on relatively trivial but visible power usage such as decorative Christmas lighting. Meanwhile, President Nixon asked service stations to refrain from selling gasoline on Saturday nights or Sundays, producing long lines at stations on weekdays and incidents of violence.

In November 1973 Nixon signed the Emergency Petroleum Allocation Act (EPAA) which authorized a variety of petroleum price, production, and allocation controls. The *New York Times* (The “energy recession,” 12/1/73) advocated full-fledged gasoline rationing. The editorial pointed out that left alone prices would rise “as high as a jittery market will take them.” The *Times* opposed a hands off policy as representing a bonanza for oil companies. Instead, gasoline taxes should be increased to discourage purchases while coupons would be issued: “permitting all individuals and families to buy a necessary minimum amount of gasoline.”

Late in 1973 and early in 1974 OPEC and various Arab oil producers announced a doubling in the price of crude, but on the positive side in March-June 1974 Arab oil producers except Libya ended most elements of the embargo. The *New York Times* (Energy gap..., 11/27/73) complained that Nixon was not doing enough to deal with energy shortages. The result was that Americans would squander scarce petroleum on “low-priority indulgences.” More than anything else, the president should be favoring rationing, according to the *Times*. Conservatives continued to prefer decontrol (*WSJ* Welcome news on oil, 12/27/73).

In 1974 Nixon vetoed an emergency energy bill. The *Times* (After the energy veto, 3/8/74) scored Nixon’s strategy of permitting the price of oil to increase thus dampening demand and encouraging

more efficient energy usage and alternative energy sources. Providing no evidence, the *Times* objected that the demand for gasoline is inelastic, and therefore to eliminate excess demand of 15 percent (there was no evidence that this figure was correct) would require doubling the price of gasoline (no evidence for this either). Such an increase would cause widespread hardship. The *Times* concluded that Congress should:

restrain oil prices...to prevent monopolists from fully exploiting their opportunities. This will require continued surveillance and restraints on the prices of domestically produced oil and gasoline. At the same time the U.S. should impose import taxes on oil...as a means of preventing too heavy a transfer of income from American oil consumers (and taxpayers) to foreign owners of crude oil.

A second *Times* editorial on that day complained that Nixon's distribution of gasoline supplies was unfair (Back to the gas lines? 3/8/74). The equitable distribution of such a critical resource by government constituted a series of value and operational problems of enormous complexity by the *Times*' own examples.

The *Times* was incorrect regarding the inelasticity of demand for petroleum. Paul Bennett, Harold Cole, and Steven Dym (1980-81, 39) observed that: "higher prices reduce United States petroleum use. After the first major oil price hike in 1973-74, the rate of growth of United States petroleum consumption slowed dramatically to 1.7 percent annually during 1973-78, compared with 4.7 percent over 1979-73. During 1978-80, total consumption declined at a 5 percent annual rate." By late in 1974 Gerald Ford had become president, and the *Times* (A real WIN program, 10/17/74) noted approvingly that Senate Majority Leader Mike Mansfield had proposed: "mandatory controls on wages, prices, rents and profits; steps toward rationing of energy and other scarce materials; tight curbs on credit..." The *Times* grumbled that the Democrats, with their large congressional majorities, should have been able to pass legislation to this effect. Nine months later the *Times* (Mr. Ford's oil program, 6/2/75) was still

complaining of congressional inaction. The newspaper favored a bill that would have added a tax on gasoline to reduce its use and a tax on low mileage automobiles. The *Times* also wanted to substitute coal for petroleum in electrical power generation, develop synthetic fuels (presumably from coal), and grant emergency rationing authority to the president. Congress refused, earning it additional criticism by the *Times* (Abdication by Congress, 6/13/75). A few weeks later the *Times* was arguing for restraining wages and prices in key industries with increases permitted only as productivity increased. The newspaper added that: "The failure of prices to fall during the severe recession of recent months demonstrates that the nation cannot rely upon competition to defeat inflation." (*NYT* ...will Congress act? 9/3/75) The newspaper explained that static prices were caused by oligopolies allied with powerful trade unions frustrating normal market forces. It concluded that only the government can prevent further price increases.

In 1975 Congress and President Ford extended price controls on oil together with the new/old oil system and its complicated crude oil entitlements program. The *Washington Post* (The Failure of Oil Policy, 11/19/1975) characterized this action as a "disingenuous straddle" that would force prices down before the next election. The *Post* described the crude oil entitlements program as "inordinately complex" and accused Congress of deliberately making its operation uncertain.

Writing in 1975, Hans H. Helbling and James E. Turley noted that in the near term oil price controls could be considered successful since the average price of oil within the U.S. was below world market levels. They predicted that in the long term the controls would lose their ability to constrain prices and would make it easier for OPEC and other foreign sources to influence domestic prices. Their forecast of increased oil prices was based on the logic that as owners of old oil declined to pump it and imports and new oil took up the slack, more expensive oil would increase as a fraction of the total. And, of course, when domestic price controls were lifted the price of petroleum

would increase almost instantly. On the other hand, such a price increase would result in increased domestic oil production, a drop in imports, and increased competition for OPEC. From 1974-1978 the price of world crude in constant dollars dropped slightly.

Generally speaking, economists were critical of oil price controls. Kenneth J. Arrow and Joseph P. Kalt (1979, 38-45) agreed with Helbling and Turley, arguing that any advantages in fairness due to price controls were offset by distortions in the petroleum production and distribution system which among other problems resulted in import increases with associated greater dependence on unstable foreign sources (See also Kalt, 1981; Smith & Phelps, 1978; Hall & Pindyck, 1977).

The 1976 election of Jimmy Carter as president continued the debate between those liberals who wanted to maintain oil price controls and many liberals who favored increased taxes on gasoline to discourage consumption versus conservatives who favored decontrol and no tax increases. Conservatives maintained that taxes would do nothing to encourage domestic production increases (*NR* Millions in taxes, 5/16/77) and that decontrol would not substantially increase the price of gasoline because OPEC recognized that more increases would damage Western economies. With decontrol, oil producers would tap old oil and resume domestic drilling for more (*WSJ* How on gasoline? 4/4/77). Debates concerning price controls on oil were accompanied by similar argumentation concerning price controls on natural gas. The *Times* (Getting serious about energy, 5/25/78) and *Post* (A fragile compromise on gas, 6/15/78) favored decontrolling natural gas to prevent shortages. In January 1979 the Shah, a Western ally, fell victim to an Islamic revolution and fled Iran. In response, Congress passed a provisional rationing plan. The *Post* criticized the plan as implying that a short term expedient would be sufficient to handle an emergency (Gasoline rationing? 2/28/79). Instead, what was required, according to the *Post*, was long term planning and higher taxes that would increase the price of gasoline. The *Times* (Crying MEOW? 5/10/79) also disliked Carter's

rationing plan. Part of the problem was that exemptions it contained were inconsistent. There were exemptions from rationing for farm vehicles, but no exemption for trucks used to ship food to market and no exemption for vehicles that produce energy such as those used in coal mines. Predictably, the Carter rationing plan drew fire from conservatives who also blasted Carter's "arbitrary notions of fairness" (*WSJ* Flunking the fairness test 5/10/79). In addition, conservatives attacked rationing on the more fundamental basis that rationing discourages the production of additional oil.

Into May and June service stations experienced shortages of gasoline with more long lines and violence at filling stations. The *Times'* solution was, again, rationing and a substantial tax increase on gasoline (The Alternative to Gas Pump Anarchy, 6/19/79). In June 1979 a gradual oil price decontrol began in the U.S. It was scheduled to last through October 1981. Late in June OPEC raised prices again. Noting this increase, the *Times* called for limiting the demand for oil by using alternatives such as natural gas, coal, and oil drilled in Alaska and California (The OPEC tiger in our tank, 6/4/79), positions it would later reverse.

By 1979 liberals, recognizing price control implementation difficulties, were tending toward decontrol of oil, but they predicted that the result of decontrol would be huge undeserved profits for oil companies (*WP* The oil windfall tax, 11/23/79). If the oil companies invested all of the resulting profits into exploration and drilling they would, in the words of the *Post*, "rapidly push exploration far beyond the point of diminishing returns." Why the oil companies would be so unwise was not made clear nor was the *Post's* methodology for determining the point of diminishing returns. An alternative fear was that oil companies would use windfall profits to take over other businesses with resulting damage to the economy. The liberal policy thesis was that a windfall profits tax would eliminate both temptations.

The years 1979 and 1980 saw more destabilizing events in the Middle East: Western hostages were taken by the Iranian government,

Saudi Arabia raised the price of crude to \$24 per barrel, Iraq invaded Iran, and the price of crude increased to \$35 per barrel.

Early in 1979 President Carter announced the gradual decontrol of oil prices partly to alleviate U.S. oil shortages. In 1981 newly elected President Ronald Reagan removed the remaining controls on oil. By this point, the *Post* (First Decisions for Mr. Reagan, 12/28/80) and *Times* (The wages of inflation, 2/3/80) supported decontrol.

What were the effects of oil price controls? One study (WTRG Economics 2009) compared mean international oil prices to U.S. wellhead prices over time. U.S. prices were substantially below the world price after the Yom Kippur War and the Arab oil embargo probably because of U.S. price controls. In the years 1974-1980 U.S. prices were lower than world prices by 74%, 66%, 52%, 52%, 37%, 52%, and 40%, respectively. After the events in the Middle East in 1979-1980 oil production dropped in Iran and Iraq increasing U.S. and international prices to approximately \$65 and \$71, respectively. After the removal of U.S. price controls in the early 1980s world and U.S. prices merged and dropped to roughly \$20. A simple inspection of these data suggests that U.S. price controls kept U.S. oil prices well below the world price from 1975-79, and slightly below from 1979 until the end of U.S. price controls. A more sophisticated analysis of these data by WTRG Economics (2009) yields the same conclusion along with the observation that the relatively low prices paid by U.S. consumers resulted in a less severe economic downturn than that faced by most other economies. On the other hand, U.S. exploration and production were probably discouraged and excessive consumption encouraged by price controls (Bennett, Cole, & Dym 1980). Furthermore, the absence of price controls and consequent higher prices would have encouraged the production and purchase of higher mileage automobiles and other energy efficiencies, a point that some liberals recognized with their advocacy of gasoline tax hikes. Thus the U.S. would have been less dependent on imported oil when the Iranian revolution and

Iran-Iraq war began and the resulting supply reductions would have been less important (Bennett, Cole, & Dym 1980).

The sharp drop in oil prices after U.S. price controls ended confounded liberal forecasters. The *Post* (First Decisions for Mr. Reagan, 12/28/80), while supporting decontrol, warned before the controls were lifted that the Reagan administration would need to deal with the panic that sharply increasing prices would generate.

From the time of the Yom Kippur War until the late 1970s liberals assumed that OPEC was a cartel that could effectively control oil prices and production levels. In practice, OPEC's effectiveness was fleeting. Its members are a highly diverse lot with differing interests. Its ability to prevent members from cheating and producing too much oil and selling it below official OPEC price levels has proven limited. Meanwhile, consumers, responding to higher prices, learned to use energy more efficiently than they did before the Arab oil boycott. Simple federal government actions such as encouraging states to pass right turn on red light laws also helped. Weakening OPEC even more, higher prices encouraged increased exploration and the application of more efficient drilling and production techniques by oil companies.

Liberals were unenthusiastic supporters of general wage and price controls. They were more solidly behind oil price controls and rationing, but ultimately they abandoned them as well. There were some liberal holdouts. Early in 1980 Democratic Senator Ted Kennedy proposed a six month freeze on wages and prices. The *Times* (The wages of inflation 2/3/80) objected: "As everyone might have learned in 1971, when the Nixon Administration plunged the economy into a freeze, such actions can only stop inflation for a while. When the freeze melts, as it must, into regulations that eventually disappear, it leaves a bitter residue of shortages and pent up price pressures that invariably lead to more inflation." The newspaper neglected to mention that it had pushed for Nixon's actions that "plunged the economy into a freeze." Our four barometer publications rarely admit to making mistakes of any sort.

OPEC-induced market breakdown was the basic liberal premise in the field of energy. In addition to price controls, liberals advocated the application of efficiency standards to reduce wasteful energy usage along with research and development programs to discover alternative energy sources. A problem with these approaches was that they were inconsistent. Price controls encouraged energy usage whether wasteful or not, and they discouraged private sector research and development. An alternative liberal approach recognized some of this inconsistency. Here price controls would still be enacted but the price of petroleum at the pump would be forced upward by taxes. Government sponsored research on alternative energy sources would be supported by these tax revenues. Another liberal variant would have cancelled price controls and allowed petroleum prices to increase on their own. Again, energy usage would be discouraged by higher prices. However, liberals opposed allowing oil companies to pocket the presumably huge profits that would accrue from higher prices, so an excess profits (a.k.a. windfall profits) tax would be enacted. Presumably, oil companies would be left with enough to conduct research and development, and additional research could be conducted via government grants with revenues from the windfall profits tax.

Conservatives never accepted the thesis that OPEC produced long term market breakdown (*NR* See and raise, 11/30/84). Still, OPEC-caused market breakdown was a plausible thesis. At its brief prime, OPEC frightened Western nations by appearing to control the quantities of oil produced and price. The conservative position vis-a-vis OPEC was to assert with little evidence or convincing arguments that OPEC members were dependent on the economic well-being of the West. Therefore, went the conservative narrative, OPEC members would ultimately restrain price increases formally or by cheating on their compatriots. In fact, conservatives were right, but at the time it was not clear to many that OPEC members would behave rationally. Often, conservatives ignored the problem of OPEC as a possible case of market breakdown and blandly argued

the classical economics case that competition was superior to price control—a valid argument unless one is dealing with an entity with near monopolistic power (which it turned out that OPEC lacked) that was dominated by irrational fanatics in the bargain. Conservatives also followed their normal pattern of not seeing market breakdown, but this time they were correct. However, they offered no clear argument for why OPEC did not represent the threat of monopoly power colored by religious hysteria. It was not enough for conservatives to be right. They also needed to be convincing, and they did not even try.

Liberal advocacy of price control and rationing after OPEC price increases and the Arab oil boycott had a much more solid foundation in political and economic theory and reality than general wage and price controls during the Nixon administration. Liberals, who were always dubious about their Nixon era initiatives, were convinced that price controls and rationing were prudent responses to the rising power of OPEC. In the 1970s the petroleum situation looked like market breakdown. There were also rumblings on the far left that the world would soon exhaust its finite sources of crude and that price controls and strict rationing would soon be needed regardless of OPEC. However, liberals whose views were reflected by the *Times* and *Post* rarely fell into that mistake.

The dual price system (old oil/new oil) and the considerable administrative and political complications associated with it should have been a clue as to what was in store for the federal government under a full energy price control/rationing regime. The dual price system was relatively simple in theory, but it quickly became a morass. It was clear that oil producers gamed the system by reducing production of old oil and preserving as much of it as possible toward the day when the dual system would end.

Strengthening liberal resolve, oil price controls worked for seven years in that the price of petroleum in the U.S. was lower than the world price. However, price controls also probably resulted in shortages and long lines at service stations or at least exacerbated

those problems. Controls also probably encouraged dependence on foreign oil.

Liberals adhered to their normal pattern of seeing market breakdown where there was only market misbehavior, albeit especially menacing misbehavior. Meanwhile, liberals paid little attention to the damage that price controls inflicted on domestic oil exploration, and they ignored research and development performed by oil companies and drillers. Liberals also failed to think through their price control exit strategy. They reverted to a windfall profits tax which again ignored the need for oil companies to explore for oil and develop new drilling techniques.

Even though it is understandable that liberals believed OPEC to be an instance of market failure, their responses to OPEC were not thoughtful even granting the false assumption that OPEC would be an effective and long lasting monopoly. Energy price controls and rationing were ineffective and not worthwhile.

Providing low interest mortgages (Fannie and Freddie)

The Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) had their origins in the 1934 creation of the Federal Housing Administration (FHA) to insure lenders against mortgage defaults. In 1938 the FHA administrator chartered Fannie Mae which was authorized to buy, hold, and sell FHA insured mortgages. After World War II Fannie Mae's charter was expanded to include Veterans Administration (VA) mortgages. In 1968 Fannie Mae was divided into the Government National Mortgage Association (Ginnie Mae) and a somewhat privatized Fannie Mae. This change is usually interpreted as a way to strip Fannie Mae debt from the federal budget, although no one doubted that the federal government was still responsible for that debt (Kling 2009, 22 and many other observers). Fannie Mae's operations were overseen by the Department of Housing and Urban Development (HUD), but it was insulated from the Securities and Exchange Commission. In addition, Fannie Mae was not obliged to hold as much capital as competitors and was not required to pay state

and local income taxes among other financial advantages that it enjoyed over private sector competitors. In 1970 Freddie Mac was created as a way to avoid federal restrictions preventing primary lenders from working with Fannie Mae.

Fannie and Freddie did not issue mortgages. They operated by selling bonds and issuing stock and then using those revenues to buy conventional mortgages from banks or other lenders (Government Accountability Office 2009, 2-5). Those institutions used the funds from Fannie and Freddie to issue new mortgages (Perry 2009, 1758-1759). Fannie and Freddie assembled most of the mortgages they owned into mortgage-backed securities (bonds, varying in maturity length and risk levels) which they sold to investors who then paid Fannie and Freddie to guarantee the securities against default (Mathews 1994, D9; Werkmeister 2009-10, 92). As Carol J. Perry (2009, 1759) explains it: "This process of buying mortgages from originating banks, repackaging them, and selling them to investors, creates liquidity in the mortgage market by indirectly providing capital for home loans from sources who would not otherwise invest in the mortgage market." Meanwhile, financial rating entities such as Moody's gave mortgage-backed securities high scores indicating that they were sound investments. Rating entities believed them to be sound because they were insured by Fannie and Freddie.

Pressure from liberal Democrats such as Representative Joseph Kennedy and the Association of Community Organizations for Reform Now (ACORN) in 1989 encouraged an erosion of lending standards (Yeaman 2009/2010, 683, 686-687). In 1992 Congress required Fannie and Freddie to meet goals established by the Department of Housing and Urban Development to generate mortgages for low and moderate income families known as targeted groups. Increasingly, families that could not meet standard financial requirements to obtain mortgages were provided them despite the increased risk of default. In 1993 President Bill Clinton asked regulators to reform mortgage requirements with an eye toward

facilitating home ownership in inner cities and distressed rural areas (Yeaman 2009/2010, 683-84; Werkmeister 2009-10, 94). The resulting lowering of mortgage standards, including reduced down payment requirements and special mortgages for which borrowers were not obliged to document their incomes, generated a large increase in the volume of mortgages being issued (Wallison 2010, 399-400).

Even though this initiative was intended to extend home ownership to the poor and middle class, many borrowers were relatively affluent. Some bought houses with extremely low down payments using adjustable rate mortgages that featured modest initial rates. In many cases, they planned to sell (flip) the houses for a quick profit. In many other instances, families were simply buying a second home or more expensive houses than they could afford.

Before the year 2000 homes cost an average of four times the purchasing family's annual income. In the years 2000-2005 that figure doubled. All of this caused housing prices to increase still more. In the years 2001-2006 median home prices in constant dollars went up by 50 percent. As long as housing prices increased, mortgage securities performed well, which generated more lending, which brought more demand for homes, which increased housing prices and stimulated house construction, and so forth in a Ponzi-like positive feedback loop that could not continue indefinitely (Poole 2010, 425426). Arnold Kling (2009/2010, 29) observed that in the years 2005 and 2006 more than 15 percent of mortgages were used to buy homes for investment purposes and not for occupancy. This was triple the rate of the previous decade (p. 29).

By 1993 the number of mortgage delinquencies had increased to such a point that Freddie Mac initiated a program by which some borrowers could refinance to more affordable payment schedules (Harney 1994, E3). However, a few months later Fannie Mae announced a \$1 trillion increase in funding for low and moderate income housing to be accompanied by what *Washington Post* reporters diplomatically described as "more flexible credit standards."

(Vice & Crenshaw 1994, A28; Swisher 1994, D11). In 1994 the *Post* (Lenders taking greater credit risks, 6/25/94) observed that prospective “home buyers with credit problems will find a growing number of lenders ready to give them loans.” Citing the manager of a mortgage issuer, the editorial blandly explained that: “More lenders are willing to make these loans because economic problems and job losses in recent years have increased the number of people rated as credit risks...”

In the mid-1990s an unfavorable news story appeared regarding Fannie and Freddie “wrestling” with a new regulator (Vice 1995d), and when the respected Congressional Budget Office released a detailed report critical of Fannie, a spokesman for the company dismissed it as the work of “digit-heads” and “pencil-brains.” (*WP* Taking on Fannie Mae, 6/10/96, A18) In 2003 when George W. Bush’s Treasury Secretary attempted to create a new regulator for Fannie and Freddie in the Department of Treasury, Democrats, most notably Congressman Barney Frank of Massachusetts, resisted. Frank asserted that Fannie and Freddie were financially healthy, a stance he maintained until only a few months before the beginning of their collapse (Yeaman 2009/2010, 687).

As the housing and mortgage situation began to spin out of control, Fannie and Freddie bent accounting rules to make themselves appear billions of dollars more profitable than they were (Government Accountability Office (GAO) 2009, 6; Wallison 2010, 403; *WP* Brazen, 12/17/04 and Accountability pays, 1/3/05). In January of 2005 the Fannie Mae CEO Franklin Raines resigned as did his chief financial officer. The *Times* (Fannie Mayday, 12/23/04) tried to interpret these events in the sunniest possible way: “The accounting restatement, enormous as it is, may in fact be recouped by subsequent accounting entries. And the departure of the top executives will probably improve Fannie Mae’s infamous arrogance and the outside-the-rules exceptionalism it spawned.” The editorial defended Fannie and Freddie’s many legal advantages over purely private sector organizations such as banks and argued that the two

organizations exert a “downward pressure” on mortgage rates that benefit home buyers. An investigation commissioned by the Fannie Mae board of directors and chaired by former senator Warren Rudman found that Fannie’s accounting was “grossly inadequate” and inconsistent with standard accounting principles and that “in many instances, management was aware of the departure.” (*WP* Watching Fannie Mae, 3/1/06; see also Yeaman 2009/2010, 687-688).

Beginning in 2004 and 2005, Fannie and Freddie had bought what the GAO (2009, 6) described as a “large volume of questionable mortgage assets.” These assets: “typically did not have documentation of borrowers’ incomes and had high loan-to-value or debt-to-income ratios.” (GAO 2009, 6) A decade earlier in a *Washington Post* story David A. Vice (1995) made the prescient observation that: “some volatile Fannie Mae securities known as derivatives have been dubbed ‘toxic waste’ on Wall Street because their unpredictable trading patterns have cost Orange County, Calif., and other investors billions of dollars.”

Fannie and Freddie together with liberal congressional Democrats encouraged a reduction in mortgage lending standards that significantly contributed to the 2007-2008 economic collapse when artificially increased housing values dropped, leaving many mortgage holders without the means or motivation to continue paying off their mortgages (Aronson 2009). The number of foreclosures skyrocketed (Wallison 2010, 401-402). By 2008 losses were costing the two organizations billions of dollars (*WP* Bolstering Fannie and Freddie; As the mortgage giants grow, so do the risks to taxpayers, 5/21/08; The Fannie-Freddie Dodge; The costs and contradictions of bailing out housing, 7/17/08). In July 2008 the *Washington Post* (Structurally Unsound; A housing bill’s costs and contradictions, 7/25/08) was describing Fannie’s and Freddie’s balance sheets as “bloated” and their capital reserves as “thin.” At that point the two owned or guaranteed roughly \$6 trillion of the nation’s mortgage market. A few weeks later both entities were placed in temporary

conservatorship (GAO 2009, 1; Perry 2009, 1754-1755).

The *Washington Post* (Tough Decision Coming; Barack Obama is inching away from his party's orthodoxy on Fannie Mae and Freddie Mac, 8/28/08) described Fannie and Freddie's "close ties" to the Democratic Party and characterized Democrats as:

not only politically but intellectually committed to the companies, seeing them as innovative public-private institutions that have been a boon to home ownership. In the current crisis, their biggest backers have been Democrats such as Senate Banking Committee Chairman Christopher J. Dodd (Conn.) and House Financial Services Committee Chairman Barney Frank (Mass.). Two members of Mr. Obama's political circle, James A. Johnson and Franklin D. Raines, are former chief executives of Fannie Mae.

Raines was an executive in Clinton's Office of Management and Budget and Obama's presidential campaign co-chair.

Over the years, Fannie and Freddie were the subjects of criticism from many sources, but an iron triangle or subgovernment of Fannie and Freddie together with home builders, financial institutions, and some members of Congress fended off reform by, among other tactics, contributing to the election campaigns of their supporters and the opponents of their critics (Higgs 2010, 541-42; Wallison 2010, 400-401; Vice & Crenshaw 1994, A28). According to Vice (1995a) in a front page *Washington Post* article: "on Capitol Hill some congressional staff members fear the company's [Fannie] clout. The company uses its political power and multimillion-dollar philanthropy to preserve its growing financial franchise and to do good deeds. Through aggressive tactics and careful cultivation of relationships, Fannie Mae minimizes competition, neutralizes opponents and blunts critics." Vice added: "as Cabinet secretaries and D.C. Council members alike have learned, picking a fight with Fannie Mae can result in a most unpleasant experience."

In another front page *Post* article Vice (1995b) described Fannie

Mae's response when a D.C. Council member proposed elimination of the company's \$300 million per year tax break. Fannie Mae organized D.C. charities to which it contributed, hired lobbyists to convince the City Council to refuse to consider the proposal, and threatened to leave the District.

Vice (1995b, A1) portrayed Fannie Mae's national lobbying activities this way:

Fannie Mae does mortgage business in every congressional district and sends members of Congress letters each year outlining the benefits to the voters back home. The firm sponsors numerous events that honor members of Congress and give them opportunities to hand out Fannie Mae checks and take credit for local housing initiatives. The legislators are not picked at random for these honors. Rep. Henry Gonzalez (D-Tex.), who has chaired the House subcommittee that oversees Fannie Mae, proudly displays the firm's "Housing Hero" award in his congressional office. He once helped defeat a congressional effort to repeal Fannie Mae's D.C. income tax exemption.

A decade later the Fannie CEO still appeared to be benefitting from his far flung lobbying efforts as he faced a House investigation conducted by Democrats and Republicans who had benefitted from his support. *Washington Post* writer David S. Hilzenrath's (2004) description of the House hearings was titled: "Deep political support often blunted efforts to step up regulation."

By the middle of 2010 firm plans for the future of Fannie and Freddie had yet to be established, and the Treasury Department had covered roughly \$150 billion of their losses with more to come (*WP* Mortgage giants in limbo; In housing, a dangerous policy vacuum grows, 2/7/10; Keep bailing; Reform is deferred for Fannie Mae and Freddie Mac, 5/15/10). In May 2010 Senate Republicans failed to enact a two year deadline to shut them down; the vote was largely along party lines (*WP* Keep bailing; Reform is deferred for Fannie Mae and Freddie Mac, 5/15/10). In October 2010, amid estimates of still higher losses, the *Post* (Structural redesign; Housing policy and

the future of economic growth, 10/25/10) noted the:

government encouragement of overinvestment in housing has done deep, structural damage to the U.S. economy, by distorting patterns of employment, land use, energy consumption and infrastructure development. The cumulative inefficiencies could take many years to unravel. Developers, builders, real estate agents and advocates of low-income housing may plead their various cases for more and more subsidy. But America is overbuilt. In the second quarter of 2010, 10.6 percent of all apartments and 2.5 percent of houses stood empty, according to Census Bureau statistics. Both rates are roughly double what they were 30 years ago.

In February 2011 the Obama administration issued a white paper on housing finance that foresaw a gradual shutdown of Fannie and Freddie beginning later in 2011 with their elimination projected some years after that (*WP* Housing loans made sensible, 2/13/11). In August 2012 the U.S. Treasury Department ordered Fannie and Freddie to reduce the number of mortgages that they held by 15 percent per year. As reported by the *Washington Post* this is a highly ambiguous end time, and Congress might resist Fannie and Freddie's elimination (Fixing Fannie and Freddie, 8/24/12; Bhattacharai 2012). Even mortgage specialists were unsure how the 15 percent amount would be calculated. For example, if the calculation would be based on 15 percent of remaining mortgages, and Fannie held 3 million mortgages (in 2012 Fannie held 2.6 million single family mortgages and 423,000 mortgages in units in multifamily buildings) roughly 80 years would pass before the marginal reduction in mortgages became less than 1.0 per year. On the other hand, if the reduction would be based on 15 percent of the number of mortgages held in 2012, they would be gone in roughly six years. A 2017 visit to the Fannie and Freddie web sites suggests that both are thriving and intent on operating for a long time.

Conservative Republicans and Liberal Democrats blame each other for the Fannie and Freddie debacle. Liberals point to the 1999

Financial Services Modernization Act (a.k.a. Gramm-Leach-Bliley (GLBA)) for allowing the mixing of commercial and investment banking previously prohibited by the Glass-Steagall Act. They blame the George W. Bush administration for failing to regulate financial services companies together with Fannie and Freddie. However, liberal Democrats were enthusiastic and energetic supporters of the system established by Fannie and Freddie that GLBA facilitated. The second accusation is only superficially valid since liberal Democrats resisted all attempts including those of Bush and his Treasury Secretary to hold Fannie and Freddie accountable (Yeaman 2009/2010, 687-688). Conservative Republicans add that pressure from liberal Democrats to force banks to make unsound mortgage loans to people unable to maintain payments was the most important problem. This pattern continued through 2005-2007 as Democratic members of Congress pushed Raines' successor to buy more subprime loans. According to Yeaman (p. 688): "As a result, between 2005 and 2007, Fannie's acquisition of loans with less than 10 percent down tripled."

One of our central points is that Fannie and Freddie were liberal responses to perceived market misbehavior. Prior to Fannie's and Freddie's debasement of lending standards it was the responsibility of banks to provide mortgages only to those able to repay them, and, with one exception, there is no reason to believe that they were failing in that assignment. That exception was redlining, a form of racial and class discrimination by which some and probably most banks determined that entire geographical areas containing minorities or the poor would be denied mortgages. This practice was made illegal by the Community Reinvestment Act in 1977. Banks opposed the legislation, but they learned to live with it (Yeaman 2009/2010, 682-683). Congressional and executive branch requirements that Fannie, Freddie, and lenders relax lending standards came many years later.

The market breakdown that liberals imagined was that time tested financial standards for making loans did not allow sufficient numbers

of the poor to buy houses. These standards existed to protect the banks from offering mortgages on which defaults would occur, and the standards also protected unqualified potential borrowers. As many headlines made dramatically clear, foreclosure is an expensive and painful process for all concerned, and pre-Fannie and Freddie banking trade craft prevented all but a few.

The instruments that liberals chose for the expansion of home ownership were two highly centralized bureaucracies with accompanying subgovernments that attempted to operate in a dynamic environment using an invalid policy theory. Some might disagree with our characterization of Fannie and Freddie as Weberian bureaucracies perhaps because they appeared to operate as part of the market economy with their own stock holders, mortgage lenders, and investors who purchased mortgage backed securities. But these two enormous and by all accounts bureaucratic organizations, operating according to directives from Congress and the White House, were distorting the market, generating nonrational decisions by home buyers (flippers as well as the poor and those able to afford a house and attempting to buy one beyond their means), banks, and investors. That this Rube Goldberg machine appeared to work for a number of years even as it was stripping its gears only encouraged more of the behaviors that ultimately brought it down if only temporarily.

Fannie and Freddie lobbying activities were broadly typical of all subgovernments. Government agencies and their associated subgovernments vary widely in the resources they bring to their attempts to maintain and expand themselves. The Department of Agriculture with its numerous offices and regular distribution of funds and technical assistance together with agricultural interest groups is ideally situated. Prison systems are sometimes cited as an example of the opposite. Fannie and Freddie commanded lobbying resources comparable to those of the Department of Agriculture. Their political assets made ending their destructive ways especially difficult as their continued existence makes clear.

Conservatives believe that even democratic governments have

their own interests that are separate from voter preferences (Dionne 1998). This perspective also can be found in political science interest group theory, the theory of iron triangles or sub governments, and other scholarly approaches to explaining politics and public policy formulation. Broadly speaking, interest group theory and related ideas view government agencies as interest groups distinguishable from private interest groups only by their command of governmental authority. At times an agency's interests are best served by adhering to voter preferences (to the degree election results generate a readable signal) or seeming to do so. On other occasions agencies are primarily concerned with responding to the interests of their subgovernments or their own leaders. Who they try to satisfy is situational. Viewing government from the perspective of subgovernments or similar models, agencies are only partially responsive to voter preferences.

Decisions made and implemented by Fannie and Freddie and many other large bureaucracies also illustrate the important point that these organizations must constantly be maintained with human intervention. If their policies begin to fail, organizational leaders will try to maintain their own positions. In the process, original organizational objectives may be forgotten. Businesses competing in markets can also lose their way, but when they do, they are punished as customers desert them for other businesses that more fully meet their needs. No propaganda or pressure can convince or force customers to continue buying from poorly run businesses.

The point has been made many times that there is no counterpart in government to the merciless standards of the market. Businesses that run out of ideas may falter slowly or just die. But failed government initiatives such as Fannie and Freddie hang on, aided by articulate politicians and news media unable or unwilling to investigate what is occurring. As of this writing, there are no indications that Fannie and Freddie will be dissolved. It is an inherent failing of government programs that ineffective and inefficient ones must laboriously be dragged down against the

protests of their leaders, interest group supporters, and politicians. There is no counterpart to this iron fortress for failure in the market where the demise of incapable businesses is automatic and quick.

A last point regarding Fannie Freddie has broad implications. In Chapter IV we highlighted the work of Geoffrey P. Miller and Gerald Rosenfeld (2008) who argue that what they call intellectual hazard contributed to the mortgage backed security debacle. Intellectual hazard describes: “the tendency of behavioral biases to interfere with accurate thought and analysis within complex organizations.” (p. 808) They blame intellectual hazard for impairing: “the acquisition, analysis, communication, and implementation of information within an organization and the communication of such information between an organization and external parties.” (p. 808) The decision-maker: “will tend to see a confirmation of his previous expectations, even if the evidence is more consistent with a different state of affairs.” (p. 813) Mistakes made under its influence would not be made by a single individual performing the same task.

The phrase intellectual hazard is meant to resemble the older term moral hazard. Moral hazard arises when governments or influential financial entities: “provide implicit or explicit insurance against the failure of financial firms.” (p. 811). For example, when depositors are insured against bank failure by the federal government, they are not motivated to monitor the financial health of their bank. Meanwhile, bankers are inclined to assume more risk than they otherwise might. Federal deposit insurance is limited to accounts under a specific dollar amount, but in the recent crisis that level was increased, and federal protection was extended to entire financial institutions that were deemed too big to fail. Up to a point, protection such as that provided by federal deposit insurance is by no means a bad thing, but it encourages dangerous behavior when protection covers all possibility of failure.

Moral hazard arises when risk is transferred away from the point where decisions may be damaging. Intellectual hazard can occur when there are divisions of labor in organizational operations, and

Weberian bureaucracies partly exist for the specific purpose of facilitating division of labor (p. 811-813).

In Table 6.2 we describe the sponsors of low interest and low down payment mortgages as thoughtless, and we just made the case for that assessment. This initiative was not worthwhile because it was not responding to any need generated by a failing market. It could only be described as effective in the sense that it generated many mortgages; however, many of those loans resulted in financial disaster for individuals and taken together they helped trigger the Great Recession. The benefit was not worth the cost.

Preventing large business failures

From the late 1970s to the near past the federal government, sometimes with bi-partisan support and sometimes not, has prevented the failure of large financial institutions and auto companies. These efforts include the so-called rescue of the Chrysler Corporation in 1979 (Chrysler Corporation Loan Guarantee Act–CCLGA). At that time Chrysler was nearing bankruptcy and asking for help. The CCLGA pressured Chrysler's creditors to accept payment at 30 cents on the dollar, and it allowed the company to trade ordinary common stock for a new and undesirable offering that was unredeemable for a number of years. In addition, the company laid off more than 42,000 workers. Liberal Senator William Proxmire (D-WI) complained that this number was probably larger than it would have been had the company gone through bankruptcy. He had a point. Indeed, even though the bailout is often described as allowing the company to avoid bankruptcy, what it went through was almost indistinguishable from that process. The *Washington Post* (Bail-out with add-ons, 11/18/79) described a late draft of the bail-out legislation this way: "By the time Congress is finished with the Chrysler bail-out bill, the company may wish it had chosen a clean, simple bankruptcy instead."

The *Washington Post* (A Chrysler Bail-Out? 8/2/79) favored the bail-out with no enthusiasm: "The bail-out is bad in principle, but it's probably inevitable." (See also *WP* Chrysler: A European model?

10/30/79) Four months after the bill's passage, the *Post* turned against it (Chrysler: Bad to worse, 4/13/80). *Times* editorials were more negative: "neither the [Carter] Administration nor Chrysler has demonstrated that denying all aid would seriously damage the economy or other national interests." (The haste to bail out Chrysler, 8/19/79) Prophetically, the *Times* also asked whether the company could not be sold to a foreign corporation, and why it continued to pay dividends. Sounding much like the *Wall Street Journal*, the *Times* concluded: "If large corporations are not allowed to fail, competition in America will have been replaced with the worst of all systems—state support for the least efficient private producers." As Congress was poised to pass the CCLGA, the *Times*, matching the *Post* in prescience, wrote: "Chrysler's problems are largely of its own making, and so should be the solutions. Helping the company out of its jam is a bad precedent, one that will make it harder to resist the next corporate bailout, and the next." Conservatives also opposed the bail-out.

We covered a large part of the economic crisis in our description of the federal government's attempt to widen home ownership by lowering mortgage standards (Werkmeister 2009-2010, 94) and our treatment of banking deregulation and re-regulation. The attempt to broaden home ownership was primarily initiated by the Clinton administration, liberal Democrats in Congress, Fannie Mae, and Freddie Mac. The major instrument of this policy was mortgage backed securities, and banks, real estate appraisers, and bond rating agencies happily allowed themselves to be pushed along by the federal government (Werkmeister 2009-2010, 96). The first symptoms of a recession can be traced back to a decline in housing prices late in 2006. As housing prices dropped, foreclosures increased sharply and the mortgage backed securities which were widely held declined in value. Bear Stearns, a large investment bank, held mortgage-backed securities and was in danger of failing. In March 2008 the Fed forced the sale of Bear Stearns to JP Morgan Chase which it facilitated with a \$29 billion guarantee. This action

was justified by the fear of a chain reaction that could have damaged the many other financial institutions with which Bear Stearns was connected.

The months following the Bear Stearns sale saw a continuing and accelerating decline in real estate prices with a resulting collapse in mortgage backed security values. Employment also dropped precipitously (Evans, Maher, & Aeppel 2008). In September 2008 the Fed rescued AIG, the nation's largest insurance company and a large holder of mortgage backed securities, with \$85 billion for which the government took 79.9 percent of the company. Simultaneously, the Fed allowed Lehman Brothers, the country's fourth largest investment bank, to enter into bankruptcy. What has been characterized as a panic followed.

According to Sonya Ravindranath Waddell, Anne Davlin, and Edward Simpson Prescott (2011, 2), toward the end of 2009 9.7 percent of mortgages were seriously delinquent. In the years before the decline this figure averaged only 1.9 percent (p. 2). In the course of the panic Merrill Lynch, with Fed encouragement or arm twisting, sold itself to the Bank of America. There followed more federal assistance funneled to AIG, Citigroup, and Bank of America through the newly created Troubled Assets Relief Program (TARP), enacted in October 2008. As the federal government helped institutions deemed too big to fail, it allowed hundreds of relatively small banks to die. Federal criteria for assistance or non-assistance were murky, and the resulting uncertainty caused further turmoil (Story 2009a). For example, as some institutions regarded as central to the financial system were recovering, CIT Group, a lender to small and medium sized businesses, still needed help. CIT was not an especially important company and it appeared to be poorly managed, but well after the panic had dissipated the federal government was still attempting a rescue (*WSJ* A tale of two bailouts 7/15/09).

In the years 2007-2010 banks raised \$812 billion to compensate for mortgage related losses in excess of \$1 trillion (Smith 2011, 19).

By June 2009 American Express, Capital One, two regional banks, and other financial institutions had returned \$69 billion from TARP (Sidel 2009). Six months later the Bank of America, Citigroup, Wells Fargo, and JP Morgan Chase announced that they were ready to pay back their bail-out money (Story 2009b). By the end of 2010 the largest banks had attained stability. As of October 2012 most of the \$313 billion TARP funds that the federal government used to aid financial institutions had been repaid (Congressional Budget Office (CBO) 2012, 3). In addition, the federal government bought more than \$200 billion in preferred stock from 707 financial institutions, and as of October 2012 much of it had been repurchased. The CBO estimated that the federal government would realize a net gain of approximately \$18 billion (CBO 2012, 4). There were other assistance packages going to financial institutions, but the overall cost to the federal government was smaller than was forecast when the aid was rendered (Solomon 2010).

Roy C. Smith (2011, 21) reflects on the disadvantages and virtues of bail-outs. He notes that they are costly to taxpayers who are in effect subsidizing financial risk taking while gaining none of its rewards. Furthermore, they ignore market self-correction that fully takes risks into account. However, these valid arguments ignore the fact that to a significant degree U.S. financial institutions were induced by liberals in Congress together with Fannie and Freddie to reduce lending standards that led to the mortgage bubble that in turn led to the decline.

Smith also reviews the arguments in favor of bank and other financial institution bail-outs. The basic problem is that the largest banks and related institutions are central to the economy. Failure of one can spread like a contagion throughout the economy. This point is reinforced by Waddell, Davlin, and Prescott (2011, 2) who observe that: “although the national rise in foreclosure was initially concentrated in riskier, subprime loans, defaults have become increasingly common among prime borrowers. In the fourth quarter of 2007, 37 percent of all U.S. mortgages in foreclosure were prime

loans. That number jumped to 54 percent by the fourth quarter of 2009 and has since increased further.” (p. 2) Smith (2011, 22) suggests that bail-outs or something similar are virtually inevitable during a severe downturn: “The irony of bailouts is that whether a government carries one out or not, the government will still be involved economically in the situation that created the demand for a bailout.” The bail-out of a troubled large financial institution is a complex operation, but it is clear that the federal government should not encourage policies such as subprime mortgages that lead to trouble.

As Smith suggests, practically speaking in the midst of the 2007-2008 downturn it would have been difficult to defend the position that there should be no bank and financial institution bail-outs. The major disagreements centered on bail-out specifics and implementation. Neil M. Barofsky (2011), the special inspector general for the Troubled Asset Relief Program from 2008 until March 2011, was highly critical of the program he oversaw. Thanks to TARP, the largest financial institutions returned to record profitability, but that success was due in substantial part to the competitive advantage of being regarded as too big to fail. However, Barofsky argued, the Emergency Economic Stabilization Act that created TARP had the additional goals of: “protecting home values and preserving home ownership.” (Barofsky2011) This promise was quickly abandoned: “Treasury’s plan for TARP shifted from the purchase of mortgages to the infusion of hundreds of billions of dollars into the nation’s largest financial institutions, a shift that came with the express promise that it would restore lending.” (Barofsky 2011). When the Obama administration took over TARP it promised to create a program to reduce foreclosures and impose requirements that banks increase lending (Solomon & Hitt 2009). However, TARP funds were in fact supplied with no requirements that they be used for lending, and lending continued to decline. The burden of helping homeowners facing foreclosures was shifted to the Home Affordable Modification Program passed in February 2009, but its

implementation was badly flawed.

Liberals tended to be somewhat critical of the bank bail-outs. For example, the *Times*' liberal columnist Paul Krugman (2009) cited the TARP inspector general as finding that the federal government: "made no serious attempt to extract concessions from bankers, even though these bankers received huge benefits from the rescue." The *Wall Street Journal* made a similar argument when it complained that the Treasury Department failed to use TARP to impose "discipline" on errant banks (Rolling up the TARP, 10/27/09). This failure, argued Krugman, made the public lose faith in the government thus undermining the economic recovery.

The report of the TARP inspector general focused on AIG, and Krugman concentrated on it as well. AIG sold what amounted to insurance policies for mortgage backed securities that banks held. However, AIG lacked the resources to pay the insurance claims when the downturn occurred. Krugman asked why the federal government chose to protect bankers from the results of their mistakes. His answer, which was the same as that provided by many other analysts, was that by the time everyone understood AIG's inability to meet its obligations, the judgment was made that allowing it to go bankrupt would produce an economic crash. So the federal government bought nearly 80 percent of AIG for roughly \$85 billion. At this point Krugman had little criticism of the rescue. But, he argued, why could the federal government not have demanded that other financial institutions help pay for AIG since they had been so unprofessional as to take its insurance at face value? Krugman's answer is that the banks refused to accept responsibility, and the federal government (especially Obama's Secretary of the Treasury Timothy Geithner) failed to challenge them.

The *Washington Post*'s and *Wall Street Journal*'s TARP editorials basically took the tone that the program was a necessary evil in a difficult situation (*WP* Breathing more easily; government intervention seems to have stopped economic free fall, but hard choices lie ahead, 8/16/09; Mr. Geithner unwinds; but the hardest

decisions about withdrawing government support of financial markets remain, 9/12/09; *WSJ* Rolling up the TARP, 10/27/09). Paul Atkins, Mark McWatters, and Kenneth Troske (2011), writing in the *Wall Street Journal*, observed that almost 30 months after TARP was created more than 550 banks and financial institutions together with GM and Chrysler still owed the federal government roughly \$160 billion. They also argued that TARP losses were understated by the Treasury Department and that TARP was only part of the federal government's response to the crisis and by no means the most expensive.

Financial institutions were not the only endangered corporations in the period 2007-2009. Chrysler was in trouble again as was General Motors whose president informed Congress that without federal help it would cease to continue. Ford was also experiencing problems, but it did not seek government help. The House of Representatives responded with the Auto Industry Financing and Restructuring Act (H.R. 7321) which passed the House on December 10, 2008 but failed in the Senate. The ADA (Senate vote 20) favored this bill as did *The Nation* (Dumping on Detroit, 12/17/08) and President Bush. In 2008 conservatives showed a marked preference against auto company assistance while liberals favored it. Acting against the advice of his Secretary of the Treasury Hank Paulson, Bush made the surprising move of using TARP to support GM. Paulson argued that the language of the law creating TARP did not permit extending aid outside banks and other financial institutions.

From the onset of the GM and Chrysler crisis there was a widespread assumption that some sort of government assistance would be forthcoming (Whoriskey 2009, D1). In its last days in office the Bush administration began devising loan packages that would, among other things, require worker wage cuts that would make GM and Chrysler more competitive with Japanese auto company plants operating in the U.S. However, union leaders did not cooperate as they awaited the swearing in of the new and presumably more compliant liberal Democratic president. But, the weeks leading

to and following Barak Obama's inauguration brought a steeper economic decline resulting in more urgent GM and Chrysler requests for assistance. The companies sought to demonstrate that they deserved aid by volunteering to cut workers, eliminate brands, and close manufacturing facilities (Whoriskey & Marr, 2009a). In May 2009 GM notified 1,100 dealers that their franchise contracts would not be renewed and announced that more cuts would come before the end of the year.

By the end of March 2009 the Obama administration was zeroing in on policies for GM and Chrysler. Since December 2008 the federal government had transferred more than \$17 billion to them, but such support could not continue indefinitely. The administration determined that Chrysler could not maintain itself as an independent concern, so it pushed the company to merge with Fiat, offering \$6 billion if it did and threatening a funding cutoff if the deal fell through (*WP* Tough but fair; President Obama's response to the auto companies offers a narrow path forward, 3/31/09). On April 30, 2009 Chrysler filed for bankruptcy with terms dictated in detail by the White House (Whoriskey, Marr, & Brady 2009). The federal government's approach to GM would be more complicated (Whoriskey 2009b).

Pushed by the Obama administration, GM filed for bankruptcy late in May (Whoriskey 2009c). The objective of this maneuver was the transformation of the company into a smaller entity. During the bankruptcy process the new company was referred to as the New GM. By the end of the bankruptcy the total U.S. commitment to GM would be \$50 billion. The restructuring called for approximately 60 percent of the new company to be owned by the U.S. government, 12 percent by the governments of Canada and Ontario, 17.5 percent by the United Auto Workers retiree health trust, and 10 percent by current bond holders. The company's bond holders argued in court that they were being treated unfairly by this arrangement (Whoriskey 2009d).

Conservatives objected to the GM/Chrysler interventions

(Krauthammer 2009). They argued that in the long run the health of the economy would have been better served by allowing bankruptcy to take its course without federal intervention (Welch & Kiley 2008a; 2008b; Wallace 2008). Conservatives were especially irritated that TARP was transformed from a program to deal with toxic real estate assets into a rescue device for auto companies and the United Auto Workers (*WSJ* Rolling up the TARP, 10/27/09).

Liberals were more positively inclined than conservatives toward the GM/Chrysler rescue, but not by much. The *Washington Post* reported President Obama as saying that taxpayers could not be committed to supplying the companies with an unending flow of funding: “These companies—and this industry— must ultimately stand on their own, not as wards of the state.” (The GM quagmire; Congress should question the need for nationalization, 5/31/09) The *Post* editorial then asked how the country had gotten from that position to one of essentially nationalizing GM. “When,” the newspaper asked, “would the government exit the stage?” The *Post* added that it found the bailouts “distasteful from the beginning,” but when they were first considered the economy was so fragile that General Motors’ collapse might have had a disastrous impact on the economy as a whole. It concluded:

But is a massive, unbounded federal commitment to a company that evidently still can attract no private capital really the only option? It doesn’t take much imagination to forecast the political pressures that will buffet the government-as-auto- executive. We’ve seen one effect already in the preferential treatment of the auto workers’ union at the expense of private creditors. The government sweetened its offer to creditors in the past couple of days, but they’re still getting less return on their debt than the union is. Meanwhile, the union can boast that it has been promised no loss in “base hourly pay, no reduction in...health care, and no reduction in pensions.” Influential members of Congress will insist on jobs in their districts; environmentalists will want electric cars; overseas sourcing will be frowned upon.

How such decisions affect profits could become secondary. Given the bailouts of major financial institutions, the auto company rescue efforts were inevitable. Some liberals groused about coming to the aid of banks run by high living Wall Street denizens and some conservatives complained about helping mismanaged auto companies and greedy labor unions, but probably majorities of ideologues in both camps, not to mention self-interested members of Congress, favored doing something. If only one bank or auto company had run into trouble, aid might not have been forthcoming. The core problem in 2007 and 2008 was the massive, interconnected chain reaction of failure with the likelihood that not throwing up a defense would lead to worse. Even in the face of this financial tsunami many conservatives and liberals wanted to let economic nature take its course. This is to say that their basic perspective was one of viewing the events as market misbehavior that would be better left alone.

Once TARP and the other aid programs began, liberals and conservatives found much to dislike, and their criticisms were often identical or at least similar. There appears to be a liberal-conservative consensus that these programs were thoughtlessly thrown together. Since then, there have been countless analyses of what could have been done better or how much it all cost. But that is not our concern. Policy-makers were facing an extraordinarily fast moving and dangerous situation. Of course, mistakes were made.

Of greater importance was how the nation fell into this situation—or perhaps we should write how carelessly the nation fell into this situation. As we saw in our discussion of Fannie and Freddie, the failures of financial institutions were due to liberal Democratic policies as well as mismanagement on the part of the financial institutions themselves. The financial institutions were happy to profit from the excesses that Fannie and Freddie and their liberal supporters concocted. Some liberals add that the deregulation of financial institutions was also at fault, but conservatives disagree while adding that many liberals had supported

deregulation over a period of more than two decades. In any event, the truly thoughtless and destructive actions occurred well before Chrysler and General Motors were in trouble because they and the United Auto Workers were unable or unwilling to compete against myriad efficiently run foreign companies (*NYT* Not so fast on Chrysler, 11/4/79; Helper & Collopy 2009). The market correctly signaled that Chrysler and GM were not offering products that customers wanted at quality levels and prices competitive with other companies. However, the auto companies were also damaged by the recession that started with the breaking of the mortgage bubble.

Requiring the use of gasohol plus corn subsidies

A federal subsidy for ethanol production was one element of the government's response to the so-called energy crisis in the 1970s as well as air pollution (*WP* Wrong way on ethanol, 5/16/98; Johnson & Runge 2007, 25). The subsidy consists of income tax credits to ethanol/gasohol manufacturers and taxing gasohol at lower rates than pure gasoline. The policy theory was that the use of gasohol would improve air quality and reduce U.S. dependence on foreign oil. However, in 1997 the U.S. General Accounting Office found that ethanol accomplished neither objective to any significant degree and also caused increases in corn, beef, and chicken prices.

The gasohol initiative accelerated with the passage of the Clean Air Act Amendments of 1990 signed into law by George H. W. Bush. Jonathan H. Adler (1992, 116) explains that, unlike previous attempts to reduce automobile emissions by focusing on motor vehicles, the 1990 Amendments concentrated on the composition of fuel. Specifically, gasoline supplemented with alcohol (gasohol) sold in the nine smoggiest cities supposedly would: "reduce toxic emissions and volatile organic compounds (VOGs) by 15 percent. Beginning in 1992, gasoline sold in cities that failed to attain the federal standards for carbon monoxide and ozone would have to contain a minimum of 2 percent oxygen." (p. 117) It was also suggested that gasohol would aid the cause of U.S. energy independence. Adler claims that these requirements could not significantly improve air

quality. So, he wonders, how did this bill pass?

The Bush administration, including the Environmental Protection Agency (EPA), justified this initiative as improving air quality and reducing U.S. dependence on imported oil. Initially, the administration favored methanol, a form of alcohol that can be synthesized from coal or natural gas. Its use could reduce reactive hydrocarbon emissions and smog. However, methanol does not cut carbon monoxide emissions (compared to gasoline), might increase the emissions of formaldehyde, and is costly. Ethanol is a type of alcohol made from corn or other plant materials. It could reduce carbon monoxide emissions, but because it is highly volatile, it might increase ozone formation and smog. Ethanol is also expensive.

From the beginning it was clear that the fight over whether the use of gasohol would be required and if so what its formulation would be had at least as much to do with self-interested groups as it did environmentalists. The ethanol industry consisted of some of the largest agribusiness enterprises including farmers and the Archer Daniels Midland Company (ADM) which operated primarily through front organizations such as the Renewable Fuels Association (RFA) and the National Corn Growers' Association (NCCA). It would have been inelegant for these groups to promote their cause by arguing that ethanol based gasohol would line their pockets, so in House and Senate committee hearings they touted technical requirements of dubious utility that could only be met by ethanol (Adler 1992, 123). An amendment offered on the Senate floor by Tom Daschle (D-SD) took the same approach. Daschle's amendment was supported by senators representing farmers, ADM, and environmentalists. Opponents of the amendment and the bill viewed it as a poison pill that might produce a stalemate with the House or a veto from the president; however, the Daschle amendment passed as did the basic legislation. Agribusiness-environmentalist House members (especially Edward Madigan (R-IL), Terry Bruce (D-IL), Henry Waxman (D-CA), and Bill Richardson (D-NM)) won passage of a similar bill. After compromise in the conference committee, the

Clean Air Act Amendments of 1990 failed to set a clear policy on clean fuels. According to Adler (p. 126), the legislation could be implemented using a number of alternative fuels or even just reformulated gasoline.

Congress' failure to set a clear direction left ethanol policy-making to the EPA which established a framework of negotiation among environmentalists, agribusiness, the states, and various industries. During this process ethanol supporters solicited a letter from Senator Bob Dole (R-KS), Daschle, and 25 other senators couched in the language of technical specifications promoting ethanol. The letter worked and the result, according to Adler (1992, 129): "was a regulatory regime of mind-boggling complexity, a web of standards, mandates, requirements, and timetables that is incomprehensible to all but a handful of bureaucrats and to the representatives of the interests being served." Adler argues that, if anything, the use of gasohol formulated as per the EPA specifications would do more harm than good to air quality.

From an early point liberals and conservatives understood that the addition of ethanol to gasoline offered few, if any, environmental benefits, would not significantly reduce oil imports, and would be very costly. The *Times* (This clean air looks dirty, 7/8/94) asserted that all the EPA's gasohol requirement would simply transfer large sums from taxpayers and consumers to ADM, noting in passing that ADM's president had donated \$100,000 at a recent Democratic funding raiser. According to S. Robbin Johnson and C. Ford Runge (2007, 26):

Direct corn subsidies equaled \$8.9 billion in 2005, but fell in 2006 and 2007 as high ethanol-driven corn prices reduced subsidy payments. These payments may soon be dwarfed by transfers to ethanol producers resulting from production mandates, tax credits, grants, and government loans under 2005 energy legislation and U.S. farm policy. In addition to a federal ethanol tax allowance of 51 cents per gallon, many states provide additional subsidies or have imposed their own mandates.

Beyond that, Congress protected U.S. ethanol producers from foreign competition, further increasing the cost of ethanol to U.S. consumers (Johnson & Runge 2007, 26).

Early liberal and conservative conclusions that gasohol was little more than a boondoggle were valid, but they paid insufficient attention to the fact that the physics of its production and use make no sense. Engineers can calculate an energy source's output-input (OI) ratio, an indicator similar to the widely used benefit-cost ratio. So, for example, an OI of 1.0 indicates that as much energy goes into producing a source as end users get out of it. The net effect is zero. This is not a fatal objection to an energy source if relatively inaccessible energy is put into a more useable form. The energy that goes into the production of batteries might be an example. However, with ethanol this exception does not arise because ethanol's OI can be directly compared to gasoline. Fossil fuels have OI ratios ranging between 13 and 20 while corn ethanol's OI is a mere 1.1 (Giampietro & Mayumi 2009). These figures together with data regarding the amount of labor required to produce equal amounts of fossil fuels (measured by a unit of energy) versus ethanol lead to the conclusion that roughly 50 percent of the workforce would be needed to produce only three percent of U.S. fuel needs using only ethanol. Another way to express these kinds of relationships is that ethanol production could consume half of domestic corn production within the near future. All of this production would be the equivalent of increasing motor vehicle economy only five miles per gallon (Johnson & Runge 2007, 26).

Added to the inefficiency inherent in corn-based ethanol production, is the fact that it has forced up the prices of staple foods throughout the world, harming developing countries (Johnson & Runge 2007, 25). Department of Agriculture figures showed that in 2001, seven percent of corn produced in the U.S. was used for ethanol, but in 2010 that figure had jumped to nearly 40 percent (*WSJ* Amber waves of ethanol, 1/22/11). Meanwhile, the price of corn futures increased by more than 66 percent in one year.

During congressional budget bargaining in December 2010 the *Times* and *Post* complained that the farm lobby was succeeding in preserving ethanol subsidies (*WP* A good place to start cutting, 12/9/10; *NYT* Good energy subsidies, and bad, 12/9/10). The *Post* observed that opposition to ethanol subsidies was coming from such ideologically diverse sources as the Tea Party (conservative), MoveOn.org (liberal or radical), Senator Jim DeMint (R-SC) (conservative), and former Vice President Al Gore (liberal environmentalist), but the newspaper held out little hope that they would prevail against the extraordinarily well organized ethanol lobby.

A drought in 2012 caused a sudden shortage in corn which in turn generated a large price increase which consumers felt directly in corn prices and indirectly in meat prices. The *Times* did not editorialize on this topic, but it published two op-ed articles by agricultural specialists advocating at least a temporary suspension of ethanol production (Carter & Miller 2012; Moseley 2012; see also Wald 2012). The *Post* published three editorials with roughly the same thesis (Political energy, 8/17/12; Bad seeds, 8/6/12; Parched politics, 7/25/12). Probably no initiative covered in this study has been opposed by a wider range of the ideological spectrum, but it continues nevertheless. Clearly, the agribusiness interest groups that created the gasohol initiative were extremely thoughtful but only in service to self-enrichment. In terms of the public interest, as viewed by liberals and conservatives this initiative was thoughtlessly developed, ineffective, and not only worthless but destructive. Even today, empirical evidence of the harm it does is widely ignored.

Hazardous waste sites and Superfund

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) is commonly known as Superfund. It authorizes the EPA to compel those responsible for contaminating hazardous waste sites to clean them. Superfund was Congress' response to widely covered news stories about toxic

waste including benzene seeping into residential basements at Love Canal in Niagara Falls, NY and dioxin pollution elsewhere.

With the passage of CERCLA and 1986 amendments Congress was attempting to force polluters to pay for cleanups. But 12 years after its passage only 156 toxic waste sites had been processed (Daley & Layton 2004; Schneider 1992, A12), and by 1998 only approximately 500 sites (out of an estimated 77,000) had been cleaned up (*Civil Engineering* 2005; Wernstedt & Hersh 1998, 461).

Many cleanups were delayed or stopped by seemingly interminable multi-party lawsuits (Lee 1996; Aeppel 1994). Writing in the *Washington Post* in 1994 Estelle Fishbein characterized CERCLA as a “miserable failure.” Walter A. Rosenbaum (2002, 259) described its pace as “plodding” and its costs as “bloated.” For example, he describes the case of a New Jersey landfill (p. 259). The EPA awarded \$55.7 million for cleanup costs. To recover this amount the federal government sued 25 companies and then the State of New Jersey sued the same companies and 25 more. Some of these companies then sued 239 others together with the City of Philadelphia and other municipalities. Many of these parties in turn sued their insurance companies.

The central problem was CERCLA’s sweeping and draconian liability standards as interpreted by courts. Superfund liability is usually described as retroactive, strict, joint, and several meaning that parties can be held liable even if the waste they produced was disposed of before 1980, and even if they were not negligent by the laws and standards of the time. In addition, the federal government could hold parties liable for an entire site’s cleanup even if others were also liable (Wernstedt & Hersh 1998, 461).

In 1986 the Superfund Amendments and Reauthorization Act (SARA) expanded the CERCLA-EPA-court interpretation of liability far beyond common law. In practice, parties with any connection to a site, even a distant one such as banks, could be held liable (Burhnam-Howard 2004; Swallow 1987; Hamilton 1990). The result was that large and valuable sites in cities remained uncleaned, empty,

and unproductive for many years. These waste lands were not generating jobs, profits, or tax revenues. They were eyesores, used as illegal trash dump sites, and they lowered surrounding property values and often bred crime (Burnham-Howard 2004). Banks, investors, and potential purchasers wanted no part of the liability potential associated with these sites (Holusha 1995).

Corporate executives offered many accounts of having been entangled in Kafka-like law suits even when by normal standards of liability and ethics they had done nothing wrong (Cox 1993). For example, according to Estelle Fishbein (1994), before CERCLA became law Johns Hopkins University sold three electrical transformers to a company that reconditioned them. The company's facility became a Superfund site, and the university was held partly liable for the multimillion dollar cleanup costs even though the university's transformers were not proven to have contributed to the pollution. In the early 1990s federal courts began broadening the Superfund liability net to include banks that held hazardous waste sites as collateral or owned them outright. The alarmed banks appealed to the EPA to protect them, and the agency quickly established rules to do so. But in 1994 a federal appeals court invalidated the EPA rules thus leaving the banks completely exposed (Schmitt 1994).

Although banks and developers were avoiding contact with thousands of sites listed as contaminated under Superfund (Holusha 1995), many of these sites were not sufficiently tainted to receive immediate EPA attention. So, they remained in a limbo: mildly toxic chemically, but utterly poisonous financially. Sites of this sort came to be known as brownfields, and in 1993 the EPA began a pilot program to bypass the ponderous and ineffective Superfund process (Greenberg & Hollander 2006).

In 1995 the EPA shifted 25,000 sites from Superfund to brownfields status. Brownfields sites still required work, but at standards less stringent than those applied to Superfund locations especially if the sites were to be used for purposes other than housing

or education. In 2002 President George W. Bush signed an amendment to CERCLA called the Small Business Liability Relief and Brownfields Revitalization Act. The Brownfields Act, a compromise between environmental and business groups, was supported by many urban and civil rights interests (often under the banner of the so-called environmental justice movement) (Burnham-Howard 2004). Under the Act an individual or business that gains ownership of a site after January 11, 2002 is not liable for cleanup costs simply by virtue of that ownership. Despite broad ranging political support, brownfield cleanups moved slowly. Other federal and state laws remained as a dense legal thicket containing significant remaining liabilities (Burhnam-Howard 2004).

The hazardous waste site problem is a clear case of market breakdown with liberals taking the lead in promoting cleanups amid conservative criticism. The value theory underlying liberal initiatives was thoughtful except to the degree that some liberal environmentalists expected that hazardous waste sites could be returned to pristine condition at anywhere near an affordable cost. Initial liberal policy theories behind CERCLA and especially SARA were utterly thoughtless. This was another in what has become a substantial list of liberals ignoring or miscalculating their initiatives' behavioral incentives and impacts. By itself CERCLA was terrible, but by the time SARA was enacted, CERCLA's destructive characteristics were well known. A quarter century passed after CERCLA's passage before the reasonable Brownfields initiative became law. By that point the body of federal and state programs and associated law suits surrounding hazardous waste sites had reached enormous proportions and perhaps worst of all were not resulting in cleanups to a degree desired by anyone.

Superfund was a thoughtless attempt to ignore normal standards of responsibility in favor of what was probably thought to be environmental rigor. The result was that little cleanup occurred and at a high cost.

Cash for Clunkers

During this 2009 initiative's short life, owners of qualifying low gas mileage automobiles could trade them toward the purchase of a high mileage vehicle. The federal government would contribute a voucher worth up to \$4,500 for the replacement car. No market breakdown or even market misbehavior was evident in this field; the market was able to discount the value of low mileage used cars. Aside from the lack of market breakdown or misbehavior, the biggest problem with this initiative was that it required that the low mileage "clunkers" be destroyed. The logic was that the program would conserve gasoline by removing low mileage cars from the marketplace, and some sponsors also wanted to aid the U.S. auto industry in a period of recession.

Cash for Clunkers was so popular that it exhausted its funding. This wide acceptance demonstrates in a limited way how effective incentives can be (Ahrens 2009). The program was applied to the sale of nearly 700,000 high gas mileage cars at a cost of roughly \$3 billion to the federal government. In the narrow sense that this initiative removed some low mileage cars from the road and replaced them with high mileage models, it was effective. Some members of Congress such as Rep. Betty Sutton (D-OH) also wanted a requirement that replacement cars be assembled in the United States (*NYT* Cash for clunkers, 4/7/09). Language to this effect did not make it into the statute due to constraints such as international trade agreements. Eight of the top ten car brands purchased were manufactured by Korean and Japanese companies (although some of those cars were built in plants located in the U.S.).

Cash for Clunkers resulted in substantial waste because of the requirement that the trade-ins be destroyed. This meant that the value of the trade-ins would be lost—part of the energy, raw materials costs, and environmental damage resulting from automobile manufacturing was discarded. In addition, used car prices increased because of diminished supply thus hurting low income used car buyers (Milbank 2009). Finally, while the program temporarily increased new car

sales, that figure was not sustained once it ended.

This initiative was thrown together with no thought given to its basic justification or its overall impact on the automobile market. Initially, it enjoyed lukewarm liberal support (e.g., *WP* Goodbye, gas guzzlers? 4/13/09; *NYT* Cash for Clunkers, 4/7/09). Of course, conservatives opposed it (Spruiell 2010). The *Times* turned against it before the end of 2009 (A bad way to spend money, 11/6/09). The *Post* covered the program almost exclusively as impacting auto sales, not as improving the environment (A bad time for high expectations, 10/12/09). The *Post*'s approach in these editorials and many signed columns was that Cash for Clunkers was not a stimulus as much as it was a time shift of car sales from the future to 2009, and a distortion of the market (Mr. Obama's jobs plan; How much bang would he get for the borrowed bucks? 12/9/09). The *Post* did not entirely turn against the program. Instead, it ignored its supposed purpose and undercut estimates of its economic impact.

Business and Economics: Disagreement on Whether Initiatives Were Thoughtfully Developed

Two initiatives fall into this category: reducing global warming and enhancing nontraditional energy sources.

Global warming

Global warming refers to the theory that the earth and especially the oceans are warming due to increases in carbon dioxide, water vapor, and other gases in the atmosphere that absorb energy radiating outward just as the glass in a greenhouse prevents heat from sunlight from escaping. Many scientists believe that this greenhouse effect is caused in significant part by human activity especially the burning of coal and petrochemical products. Usually, the phrase global warming implies human-caused global warming. Those who believe that global warming is occurring warn of rising sea levels due to melting polar ice and impacts on agriculture and increasingly violent weather (*NYT* Forecasting for the greenhouse effect, 6/15/86). Most anti-warming policy initiatives consist of constraining industrial

activity and reducing the production of greenhouse gases by individuals.

The theory of human-caused global warming consists of several highly complex and unstable interconnected parts. First, there is an extremely noisy and short data set consisting of temperature estimates and measurements over relatively brief periods of time. Some temperature data extend back centuries, but systematic and comprehensive temperature measurements more than a few decades old are only approximations, and serious questions have been raised even about recent data. Second, there are theories in the form of computer models attempting to link greenhouse gas emissions to the noisy and short time-series temperature data (Shabecoff 1989; Stevens 1989). Third, there are additional theories (also in the form of computer models) that seek to link human activity (as opposed to natural phenomena such as water vapor, volcanic eruptions, forest fires, and solar activity) to greenhouse gas production and temperature changes (Shabecoff 1989; Stevens 1989). The climate computer models consist of dozens of interconnected equations. Slight changes in the constants contained in the equations and small modifications in the relationships expressed in the equations can produce widely varying predictions (Stokey & Zeckhauser 1978; Roberts 1976; Land & Felson 1981; Rapoport 1983). The devil is in the many assumptions used in specifying the equations and setting the values of constants.

The *Post* (Double atmospheric trouble, 11/24/79) appears to have been the first of our four barometer publications to take editorial notice of global warming when it summarized a National Academy of Sciences study on the subject. The editorial argued that the federal government must take it seriously. An early *Times* editorial (Heating Up the Atmosphere, 8/29/81) and another in the *Post* (Warming up, 9/5/81) were similar in tone.

The *Times* came close to taking an editorial position advocating still undefined policies to limit carbon dioxide emissions in "How to live in a greenhouse" (10/23/83). In "The warming trend" (6/12/86)

the *Post* took a much firmer position. The newspaper had determined that global warming was real, probably destructive, and that human activity was a major cause. Because of global warming major energy conservation measures would be required including U.S. aid programs to South American and African countries to assist them with energy conservation. Two years later the *Times* was advocating still unspecified limits on energy usage (The burning of Rondonia, 8/29/88). Both newspapers and virtually all prominent liberals have since accepted the validity of temperature measurements that appear to show warming, the theory that warming is caused by greenhouse gases especially carbon dioxide, the theory that human activity is a significant cause of greenhouse gas production, the theory that global warming if real is highly destructive, and the theory that reducing greenhouse gases can reduce warming. If only by ignoring it, they reject the idea that global warming is a natural phenomenon.

New federal programs would be required to reduce carbon emissions. For example, in 2009 the *Times* (The House and global warming, 6/26/09) supported the American Clean Energy and Security Act which would put a price on carbon emissions and use a cap-and-trade mechanism similar to one for sulfur. The ceiling on emissions would be “steadily declining.” According to the *Times* editorial, initial compliance costs would be relatively low, but as the ceiling dropped, heavy investments in “cleaner energy sources and new technologies” would be required. The bill also contained mandates for more efficient buildings and clean energy sources such as wind turbines and subsidies for new clean energy technologies. The *Times* provided no evidence that this expensive initiative would significantly diminish carbon emissions or that those reductions would substantially aid in reducing warming.

Conservatives have consistently argued that temperature data are suspect due to myriad measurement problems, and that even if temperatures are rising that the cause may be many different natural phenomena with increasing levels of carbon dioxide being less important than some of the others. Conservatives are also not

convinced that if global warming is occurring that it will be destructive. Global warming carries benefits as well as costs and neither has been measured with sufficient care to justify expensive green house gas reduction programs.

Late in 2009 a scandal broke concerning hacked or leaked e-mails among leading advocates of the theory of human-caused global warming. They were associated with the University of East Anglia (UEA) Climate Research Unit (CRU) and Pennsylvania State University (PSU) among others. This group was a major provider of climate information to the United Nations. The e-mails revealed a pattern of data falsification, cover-ups, and manipulation of scientific journal editorial processes to support the global warming position. We reproduce several of the e-mails below because some of their authors have claimed that they have been quoted out of context. We located all of them on the Internet (*Times [London]online* 12/2/09 link at www.eastangliaemails.com. Accessed 3/28/10. As of 8/30/12 they were no longer available at that address.) They may also be found in a volume edited by Steven Mosher and Thomas Fuller (2010).

In an e-mail (duplicated in part below) to a PSU faculty member, the director of the CRU expressed concern that researchers critical of the theory of global warming were seeking raw data used in CRU publications. Most and probably all of these data were gathered under British and U.S. government grants and were therefore in the public domain. In e-mails CRU and PSU researchers discussed how to resist U.S. and British freedom of information laws that outside researchers were using to gain access to CRU data. The CRU and PSU researchers also contemplated destroying the data rather than allowing the critics to analyze it. In fact, significant quantities of raw data are missing, although those responsible deny wrong doing. Coverups and data destruction are highly unethical and also illegal if the data collections are government funded.

The first e-mail replicated below appears to describe data manipulation to obscure evidence of global warming during the 1500s

and 1700s. Obviously, warming that occurred before the Industrial Revolution does not fit the human-caused global warming thesis.

The e-mail follows. E-mail addresses have been deleted, but the subject and date lines remain.

Subject: Re: For your eyes only Date: Thu Feb 3 13:11:46 2005
It would be good to produce future series with and without the long instrumental series and maybe the documentary ones as well. The long measurements can then be used to validate the low-freq aspects at least back to 1750, maybe earlier with the documentary. There are some key warm decades (1730s, some in the 16th century) which the Moberg reconstruction completely misses and gives the impression that all years are cold between 1500 and 1750. . . . [Moberg, Sonechkin, Holmgren, Datsenko, & Karlen 2008] Cheers

The following e-mails deal with the other data issues.

At 15:26 02/02/2005, you wrote: Yes, we've learned our lesson about FTP. We're going to be very careful in the future what gets put there. Scott really screwed up big time when he established that directory so that Tim [apparently a critic] could access the data.

Yeah, there is a freedom of information act in the U.S., and the contrarians are going to try to use it for all its worth. But there are also intellectual property rights issues, so it isn't clear how these sorts of things will play out ultimately in the U.S. I saw the paleo draft (actually I saw an early version, and sent Keith some minor comments). It looks very good at present--will be interesting to see how they deal w/the contrarian criticisms--there will be many. I'm hoping they'll stand firm (I believe they will--I think the chapter has the right sort of personalities for that)...Will keep you updated on stuff...talk to you later,

At 09:41 AM 2/2/2005. I presume congratulations are in order - so congrats etc ! Just sent loads of station data to Scott. Make sure he documents everything better this time! And don't leave stuff lying around on ftp sites - you never know who is trawling them. The two MMs [Canadian critics Stephen McIntyre and Ross McKittrick who had long been seeking raw CRU data] have been after the CRU station data for years. If they ever hear there is a Freedom of Information Act now in the UK, I think I'll delete the file rather than send to anyone. Does your similar act in the US force you to respond to enquiries within 20 days? - ours does! The UK works on precedents, so the first request will test it. We also have a data protection act, which I will hide behind. Tom Wigley has sent me a worried email when he heard about it - thought people could ask him for his model code. He has retired officially from UEA so he can hide behind that. IPR should be relevant here, but I can see me getting into an argument with someone at UEA who'll say we must adhere to it!

According to the *Times [London] Online*, 1/28/10 (accessed 3/28/10), the University of East Anglia CRU violated the British Freedom of Information Act by refusing to provide data upon request. However, the complaint under the Act was filed after the statute of limitations had expired.

The following e-mail discusses data manipulation to hide more evidence damaging to the global warming thesis:

Subject: Diagram for WMO Statement Date: Tue, 16 Nov 1999 13:31:15 +0000 Dear Ray, Mike and Malcolm, Once Tim's got a diagram here we'll send that either later today or first thing tomorrow. I've just completed Mike's Nature [scientific journal] trick of adding in the real temps each series for the last 20 years (ie from 1981 onwards) and from 1961 for Keith's to hide the decline.

The global warming theorists were frustrated that some of their data and computer modeling failed to support the global warming thesis. The following e-mail had 11 recipients:

Subject: Re: BBC U-turn on climate Date: Mon, 12 Oct 2009 08:57:37 -0600
Hi all Well I have my own article on where the heck is global warming? We are asking that here in Boulder where we have broken records the past two days for the coldest days on record. We had 4 inches of snow. The high the last 2 days was below 30F and the normal is 69F, and it smashed the previous records for these days by 10F. The low was about 18F and also a record low, well below the previous record low. This is January weather (see the Rockies baseball playoff game was canceled on saturday and then played last night in below freezing weather)...

The fact is that we can't account for the lack of warming at the moment and it is a travesty that we can't. The CERES [Clouds and the Earth's Radiant Energy System—a five-satellite NASA system designed to monitor heat in the upper atmosphere] data published in the August BAMS [*Bulletin of the American Meteorological Society*] 09 supplement on 2008 shows there should be even more warming: but the data are surely wrong. Our observing system is inadequate.

The following e-mail dated 8/10/04 describes modifying MATLAB computer code to avoid criticism. Of course, there is nothing wrong with revising software or any other analytical tool as long as it is done openly. The computer code being described below constitutes theories or models in operating form. MATLAB is a simulation language that can include statistical components.

Dear Phil and Gabi, I've attached a cleaned-up and commented version of the matlab code that I wrote for doing the Mann and Jones (2003) composites. I did this knowing that Phil and I are

likely to have to respond to more crap criticisms from the idiots in the near future, so best to clean up the code and provide to some of my close colleagues in case they want to test it, etc. Please feel free to use this code for your own internal purposes, but don't pass it along where it may get into the hands of the wrong people.

As criticism mounted, this group tried to cover its tracks by deleting e-mails:

Subject: Re: IPCC & FOI
Date: Thu, 29 May 2008 08:12:02-0400
Hi Phil, laughable that CA would claim to have discovered the problem. They would have run off to the Wall Street Journal for an exclusive were that to have been true...mike Phil wrote: Mike, Can you delete any emails you may have had with Keith re AR4?Keith will do likewise. He's not in at the moment--minor family crisis. Can you also email Gene and get him to do the same? I don't have his new email address. We will be getting Caspar to do likewise.

AR4 refers to the United Nation's Intergovernmental Panel of Climate Change's Fourth Assessment Report published in 2007. It presented a highly pessimistic picture of global warming.

On top of everything else, CRU scientists admitted to having discarded raw temperature data ([London] *Timesonline*, 11/29/09. Accessed 3/31/10), claiming that the data were thrown away to save space when the CRU moved to a new building. Thus other researchers are not able to independently evaluate CRU analyses especially ones supposedly documenting global warming. The data came from weather stations throughout the world and were then adjusted supposedly to take into account ways they were measured. According to the CRU, available data are: "value-added (quality controlled and homogenised) data." ([London] *Timesonline*, 11/29/09. Accessed 3/31/10) Considering that the CRU is the world repository

of these temperature data, this behavior is irresponsible and suspect. Phil Jones who in most regards was at the center of the scandal was not in charge of the CRU when the raw data were discarded.

Scientists critical of the global warming thesis often were prevented from having their research published thus projecting the illusion of unanimous agreement among scientists that the human-caused global warming theory was valid. When a journal called *Climate Research* published articles that were not to their liking, the global warming researcher-advocates considered trying to discredit the publication by discouraging colleagues from submitting articles to it or citing articles published in it.

The CRU/PSU group enjoyed a close relationship with the United Nations Intergovernmental Panel on Climate Change (IPCC) which issued a widely circulated and Nobel Prize winning report about global warming in 2007. Once again, the CRU/PSU group excluded dissenters. Phil Jones wrote to Michael Mann: "I can't see either of these papers being in the next IPCC report." Jones continued: "Kevin and I will keep them out somehow—even if we have to redefine what the peer-review literature is!" (Eilperin 2009)

The 2007 IPCC report contained exaggerated estimates of the impact of global warming. It predicted the disappearance of Himalayan glaciers within 30 years and claimed "that nearly half of the Amazon jungle was at imminent risk of destruction from warming." It also asserted that there were clear links between warming and economic losses. These claims came not from scientific reports but from global warming interest groups. The Himalayan glacier warning was grossly inaccurate even with regard to the current size of the glaciers. It claimed that the glaciers would shrink by 80 percent by 2035. The glacier claim apparently originated from an interview of Syed Iqbal Hasnain, an Indian glaciologist who denies having made the prediction. Also, only approximately 50 Himalayan glaciers had been studied closely. There are roughly 9,500 Himalayan glaciers many at high altitudes and located in India, Pakistan, and China, making them doubly inaccessible (*Christian*

Science Monitor, Himalayan glaciers gone by 2035? Scientist recants date, 1/21/10). In addition, melting rates among glaciers vary considerably. On the other hand, satellites provide evidence of glacier melting.

In a February 13, 2010 BBC interview Phil Jones appeared to retreat on many critical points that he had been defending for years (<http://news.bbc.co.uk/2/hi/8511670.stm>. Accessed 4/1/10). He was asked: “Do you agree that according to the global temperature record used by the IPCC, the rates of global warming from 1860-1880, 1910-1940 and 1975-1998 were identical?” The point of this question is that if warming is caused by human activity warming rates in these three periods should be successively higher.

Jones qualified his response by noting that he was referencing combined CRU land temperature estimates with that of another group that produced marine data. Combining two such different data sets (not to mention that over time the land data come from differing sources) is typical of the complexities involved in estimating global temperatures. This is Jones’ response to the question:

Temperature data for the period 1860-1880 are more uncertain, because of sparser coverage, than for later periods in the 20th Century. The 1860-1880 period is also only 21 years in length. As for the two periods 1910-40 and 1975-1998 the warming rates are not statistically significantly different [see numbers below]. I have also included the trend over the period 1975 to 2009, which has a very similar trend to the period 1975-1998. So, in answer to the question, the warming rates for all 4 periods are similar and not statistically significantly different from each other. Here are the trends for each period (adapted from the table provided by the BBC):

Period	Length trend	(Degrees C/ decade)	Statistically significant
1860-80	21	0.163	Yes

1910-40	31	0.150	Yes
1975-98	24	0.166	Yes
1975-09	35	0.161	Yes

Jones was then asked: “Do you agree that from 1995 to the present there has been no statistically-significant global warming? He responded:

Yes, but only just. I also calculated the trend for the period 1995 to 2009. This trend (0.12C per decade) is positive, but not significant at the 95% significance level. The positive trend is quite close to the significance level. Achieving statistical significance in scientific terms is much more likely for longer periods, and much less likely for shorter periods.

He was also asked about temperature trends in the time period 2002-10 and responded that the trend is a negative 0.12C per decade, but that figure is not statistically significant, again because the period is so short.

Asked whether natural factors could have contributed to global warming in the period 1975-98, Jones answered:

Natural influences (from volcanoes and the Sun) over this period could have contributed to the change over this period. Volcanic influences from the two large eruptions (El Chichon in 1982 and Pinatubo in 1991) would exert a negative influence. Solar influence was about flat over this period. Combining only these two natural influences, therefore, we might have expected some cooling over this period.

He added in his next answer that he was confident that warming has occurred since the 1950s and that “most of the warming” that has occurred since then is due to human activity.

Richard Lindzen (2009), an atmospheric physicist who is the

Alfred P. Sloan Professor of Meteorology at the Massachusetts Institute of Technology, is the author of more than 200 scientific papers and books in his field. He pointed out that some of the evidence of global warming has its origins in a little ice age that occurred from the 15th to 19th centuries and ended just as the Industrial Revolution was beginning. Since then GATA (globally averaged temperature anomaly) has increased roughly 1.5 degrees Fahrenheit. As we have seen, temperature data are suspect, and it is difficult to believe that a 1.5 degree difference is statistically significant. Lindzen agrees that greenhouse gas emissions have increased by approximately 30 percent since the Industrial Revolution, but he argues that naturally occurring water vapor is a much more important greenhouse gas because of its greater volume, so that even a doubling of carbon dioxide would produce a change in the difference between incoming and outgoing radiation of only approximately 2 percent (Lindzen 1990).

Lindzen (2009) makes the important point (to which Jones refers in his BBC interview) that the conclusion that humans are significantly responsible for warming is founded on computer models that are unable to generate warming results based entirely on natural causes. Human-caused warming advocates conclude that the only alternative to natural causes is human activity. Of course, this argument assumes that the temperature measurements are accurate and that the computer models can reproduce the complexity of world climate conditions. This is the same point that Kevin Trenberth makes in his e-mail: “The fact is that we can’t account for the lack of warming at the moment and it is a travesty that we can’t.” (10/12/09 reproduced above) Trenberth then adds that data showing no warming must be incorrect.

The chain of data, theory, and logic that runs from temperature measurements, the relative importance of potential causes of warming, computer climate models, estimates of damage that might be done by warming, and policy initiatives is long, complicated, and fragile. Temperature measurements older than a few decades are by

their nature spotty or approximations. And many who promote the human-caused global warming campaign are critical of recent temperature data. Computer climate models are complicated representations of intricate physical systems containing far from fully understood relationships. To assert as many theorists do that humans are responsible for whatever the models fail to explain seems closer to personal opinion than science. Meanwhile, the idea that increases in human-generated carbon dioxide are as important as global warming advocates suggest appears fanciful when this relatively small factor is compared to water vapor and other naturally occurring gases and solar phenomena. At the end of this causal chain are myriad estimates of the damage that warming may produce without balancing damage against benefits. Nothing as widespread as global warming is portrayed as being devoid of benefits somewhere.

Furthermore, the conspiratorial and unethical tactics used to defend the human-caused global warming thesis should not be needed to defend empirically and theoretically sound conclusions. Finally, liberals seem all too eager to enact costly carbon reduction initiatives requiring vast increases in government size and authority.

Global warming is different from air and water pollution. Pollution irritates and sickens. It is the direct result of market breakdown, and only government can reduce it. Global warming may or may not be statistically significant, may or may not be caused to by human activity, may or may not be damaging or beneficial, and public policy throughout the world may or may not be able to reduce it if indeed it needs to be reduced. At this point, the complicated and tendentious chain of observations and theories that constitutes the theory of human-caused global warming does not add up to the expensive policies that liberals advocate. It is clearly too early to conclude that global warming is a case of market breakdown or even market misbehavior.

The moral/value theory behind the human-caused global warming initiative is thoughtful. An enormous amount of effort has gone into formulating the policy theory, so we must conclude in a highly

qualified way that it appears to be thoughtful even though it is based at least partially on questionable data some of which have been manipulated toward apparently prejudged conclusions and highly complicated models that appear unsuited to the task of generating firm policy conclusions.

Enhancing nontraditional energy sources

What we are calling nontraditional energy sources include solar, wind, and nuclear power—all used to generate electricity. Our nontraditional energy category is the equivalent of what the federal government refers to as renewables plus nuclear. Although solar and wind are used for specialized jobs such as powering isolated weather stations or pumping well water on farms, we will focus on electrical power generation for significant numbers of customers. Also, to keep the subject manageable we will concentrate on solar power with passing references to wind and nuclear power.

Solar energy is transformed into electricity directly via photovoltaic cells or indirectly using heat from the sun to generate steam to turn turbine powered electrical generators (Childress 2011). For some years the liberal case for solar (and wind) power was partly built on the notion that limitations in oil and natural gas supplies, dependence on foreign oil, and pollution problems with coal would force us to shift away from those sources. This was also the argument for nuclear power although in recent decades it has been out of favor with liberals due to safety concerns and problems with radioactive fuel rod disposal. Limitations on coal are largely the product of EPA regulation of coal fired electrical generating plants and competition from natural gas. In recent years hydraulic fracturing (fracking) and related technologies suddenly produced dramatic increases in accessible oil and gas supplies. Use of the new technologies also became feasible as the price of oil rose dramatically only to plummet as fracking became successful. Another part of the liberal case for nontraditional energy sources is that they do not contribute to global warming (McKibben 2005; Childress 2011, 12). After the upsurge in oil and gas availability, one element of the case for nontraditional

energy disappeared, and the global warming theme has grown in importance. As we observed above, conservatives place little stock in the theory that global warming is occurring or if it is occurring that it is caused to any significant degree by humans, and if it is occurring and caused by humans that it is destructive, and if it is occurring, caused by humans, and destructive (on balance), that reducing warming is cost-effective.

Solar and wind are useful sources of electricity in some applications, but except perhaps for some land-based wind turbines, they are not cost-effective for large numbers of customers. They were not even cost-effective before the recent improvements in drilling that suddenly generated vast new quantities of inexpensive oil and gas. There is no serious disagreement on this point. It is the reason why liberal advocates of nontraditional energy sources emphasize the importance of global warming. We have, for example, the *Times* (Big oil's friends in the Senate, 5/5/08) complaining about the potential expiration of tax credits to support investments in wind and solar power: "These credits are necessary to attract new investment in renewable sources until they become competitive with cheaper, dirtier fuels like coal." Here the *Times* assumes that wind and solar will at some point be widely competitive with coal, oil, and gas. Perhaps they will, but there is no reason to believe that subsidizing *existing* solar or wind technologies will hasten that event. In some settings the construction of large facilities would demonstrate economies of scale that would make them competitive with traditional sources, but that argument is rarely documented with hard data (Childress 2011, 12). It is more likely that improved technologies shaped by science will lead to the development of more efficient and less expensive facilities. For example, Sean Davies (2013, 52-53) notes that new designs allow solar cells to convert a larger percentage of the sun's energy than has been possible until recently. This is the kind of research and development that will make a difference.

The first step in understanding the conflict between advocates of

traditional and nontraditional energy sources for generating electricity is to compare their costs. This is best accomplished using levelized costs. The levelized cost of any kind of electrical generating plant is the annual cost of building and operating it throughout its expected life including the time value of money. The U.S. Energy Information Administration (USEIA) (Levelized cost and levelized avoided cost of new generation resources in the annual energy outlook 2016, 12) calculated these costs in 2015 dollars for plants entering service in 2018. This report makes clear that myriad assumptions go into estimates of this sort, and we cannot do them justice, but a major set of assumptions concerns the fact that traditional technologies (confined in this report to various kinds of gas-fired plants) are able to operate whenever they are needed regardless of whether the sun is shining or the wind blowing. In contrast, solar and wind plants lack this capability and must be back-stopped by traditional plants. Furthermore, solar and wind plant capabilities vary regionally. This report lists four kinds of gas-fired plants that range in average levelized cost from \$48-\$92.6/megawatthour (p. 12). The report also lists three solar and wind technologies (onshore wind and thermal and photo-voltaic solar) which range in average levelized cost from \$51.9-\$175.6/ megawatthour (p. 12).

The USEIA report (2016) ignores coal. The same agency's Annual Energy Outlook (2017, 69-71) explains that declining natural gas prices and government regulations will force coal utilization down and appears to assume that no new coal plants will be constructed. The USEIA report (2016) also ignores hydroelectric power and nuclear power apparently assuming that no new hydroelectric plants and few nuclear plants will be constructed (USEIA 2017, 77-81).

Using U.S. government data the Institute for Energy Research (2015) calculated the expected levelized costs of electrical generating technologies for 2020 in 2013 dollars. Its estimates of gas-fired plant levelized costs ranged from \$75.2-\$141.5 megawatthour, higher than the USEIA (2016) report which estimated costs for two years earlier

in 2015 dollars. Given these differences, the two sets of estimates are not far apart. The IER (2015) estimates for wind and solar ranged from \$73.6-\$239.7/megawatthour, again not far from the USEIA (2016) report.

The IER (2015) report included levelized costs for coal, biomass, and nuclear. Conventional and two categories of advanced coal ranged in levelized cost between \$95.1-\$144.4/megawatthour, higher than the IER and USEIA report estimates for gas-fired plants. The IER estimate for biomass was \$100.5/megawatthour and for nuclear \$95.2/megawatthour. The only technologies that were substantially above the rest were offshore wind and solar thermal.

In their analysis of the operation of a large photovoltaic plant in India, H. Mitavachan, Anandhi Gokhale, B. R. Nagaraju, A. V. V. Reddy, D. C. Krishnamurthy, and J. Srinivasan (2012, 844) estimated that if a larger and more sophisticated plant can be built, the cost can be brought down to a level that is “about twice as expensive as a coal-based thermal power plant.” They add that the “effective cost” can be “brought down even further if subsidy is sought from international agencies...” A subsidy does not reduce the cost; it is merely a way to help pay the (excessively high) cost. However, they add the valid point that solar might be functional in this location because of supply problems with coal, diesel oil, or gas. In addition, a solar plant might supplement the power generated by a nearby hydroelectric facility.

The costs of wind and solar are probably understated because they operate intermittently. When the wind is not blowing or the sun is not shining over extended periods, backup by traditional sources is required. Backup power may be available from the electrical grid, but cost estimates of wind and solar should include that element. In addition, it is often necessary to extend expensive high voltage transmission lines from geographically isolated wind farms and solar facilities to customers (*WSJ* The wind power tax, 2/11/13). In some cases, these new lines and other elements of solar and wind facilities have been the subject of environmental protests resulting in delays and increased costs (Lovich & Ennen 2011; *WSJ* Wind jammers,

8/18/08; Stein 2012).

Like many advocates of nontraditional energy sources, Frank Kreith (2012) employs the global warming argument with no evidence that shifting from traditional energy sources to wind or solar will measurably affect the climate. He adds: “Fossil fuels will eventually become too depleted to use profitably.” (p. 28) “Eventually” seems an insufficiently precise estimate on which to base a shift to technologies much more expensive than existing ones. It is the job of the market, balancing the costs of myriad energy sources and technologies and demand for energy, to determine how they should all be deployed.

The U.S. Energy Information Administration (2015) compiles amounts directed by the federal government at energy subsidies in the form of direct expenditures, tax expenditures (i.e., targeted tax breaks), and loan guarantees. Unfortunately, this report covers only through 2013, and we are unable to locate anything more recent. Also, because of myriad methodological difficulties, the data are only approximations. In Fiscal 2013 the total funding for coal was \$1.08 billion of which only \$202 million was for R&D (Table ES2, p. xv). Because of coal’s decline in the face of competition with natural gas and federal environmental regulation, the current figure is probably close to zero.

The total funding for natural gas and petroleum liquids was \$2.35 billion, and only \$34 million was for R&D. For nuclear the total was \$1.66 billion, and \$406 million was for R&D. Renewables which includes biomass, geothermal, hydro, solar, wind, biofuels, and others totaled \$15.04 billion but only \$1.05 billion for R&D. The R&D funding for renewables was distributed among five technologies with geothermal receiving the least (\$2 million). In contrast, the federal government in FY 2016 devoted \$4.4 billion to computer sciences and mathematics, \$4.6 billion for environmental sciences, \$31.9 billion for life sciences, and \$6.5 billion for physical sciences. (National Science Foundation 2016, Table 2). Recognizing that these categories are quite broad, the amounts for energy R&D

seem quite small. Using narrower categories in FY 2016 federal obligations for astronomy were \$1.2 billion, chemistry \$1.0 billion, and physics \$3.6 billion (National Science Foundation 2016, Table 27). We have no way to determine the correct spending levels for research in any field, but these comparisons suggest that the federal government is placing little emphasis on developing new or improved energy technologies.

As we have seen, what we are calling the nontraditional energy initiative is really multiple programs, and doubtless elements of those programs are worthwhile especially those engaged in research and development to create new, cost-effective, and relatively non-polluting energy technologies. However, the spending levels appear very small compared to other (worthwhile) areas of research.

Initiatives that Concern Both Business-Economics and Non Business-Economics Elements

The six initiatives listed in Table 6.3 bridge our business-economics and non business-economics distinction: enhancing immigration control; the Earned Income Tax Credit; workfare; the minimum wage; urban renewal; and almost automatic support for increased welfare spending. Both the JBG and modified market failure models apply to them. Three were thoughtfully formulated and three were not, but all are troublesome in some way partly because of their dual model characteristics.

Table 6.3 Business and Economics: Thoughtful, Effective, and Worthwhile?

Initiative:	Thoughtful?	Effective?	Worthwhile?
Enhance immigration control	Thoughtful	Ineffective	Worthwhile
Initiate and support Earned Income Tax Credit	Thoughtful	Disagreement	Disagreement
Initiate and support workfare	Thoughtful	Varies	Worthwhile
Increase minimum wage	Thoughtless	Ineffective	Not worthwhile
Initiate and support urban renewal	Thoughtless	Ineffective	Not worthwhile
Almost automatic support for increased welfare spending	Thoughtless	Ineffective	Not Worthwhile

Immigration control: thoughtfully developed and worthwhile, but ineffective

We are stretching the meaning of thoughtfulness, but immigration control is an oddity in that it is thoughtfully developed and worthwhile but ineffective. We list it as being worthwhile, but only because immigration control is a necessity. Few are happy with the condition of immigration policy in the United States, and it has been a frequent source of irritation across the political spectrum and in both parties for well over a century.

A nation-state must be able to control who and what crosses its borders. The problem of aliens entering the U.S. illegally centers on the border with Mexico, although the long Canadian border offers many challenges. Immigration has business, civil libertarian, and national security implications, and it often divides liberals against liberals as well as conservatives against conservatives. Within either

ideological category it is common to find more than two immigration camps. Furthermore, immigration sometimes separates interest groups and their usual ideological allies as well as interest groups and other normally allied interest groups. No other major policy area splits political strata in more ways, and no other major policy area has seen more ideological and interest group movement over time.

Some liberals appear motivated by a compassionate civil libertarian concern for poor minority immigrants. These liberals are allied with some labor unions who see migrants as potential members and Democrats who view them as future supporters. Other liberals place greater emphasis on stopping illegal border crossing, although this liberal element appears to be shrinking. They are allied with other labor unions that see these migrants as threatening the jobs and pay levels of existing union members. Likewise, some conservatives, especially those with a classical liberal orientation, take a civil libertarian line close to that of some liberals; they are allied with businesses that utilize low paid migrant workers. Many social conservatives, splitting with classical liberal and business allies, see migrants as aliens bringing disorder to the U.S. (Bethell 1983, 802). Making this policy area even more complicated, most of the groups described here have changed their positions through the years.

From the 1960s until the 1980s the conservative barometer publications paid little attention to illegal immigration, and our sample caught only one *Post* editorial in this period, when in 1975 it cautioned that burdening employers with the task of determining the legal status of workers might be unfair to the employers, a position that the newspaper later reversed.

We have access to a *New York Times* electronic database that extends back to well before 1961, but we have nothing comparable for our other barometer publications. Using this database we determined that in the two decades extending from 1960-1980 the *Times* devoted 20 editorials to immigration with 16 of the 20 appearing in the years 1960-1965. We began with 1960 (a year before this study's normal starting point) because important events

concerning immigration occurred that year.

Four closely related themes appeared in the *Times* in the 1960-1980 time period: limits on immigration; country-of-origin immigration quotas; the importation of temporary farm workers; and, using a *Times* editorial title, “the illegal tide,” the dominant subject during the entire time period of this study (*NYT* Sweeping back the illegal tide, 8/8/77).

Limits on immigration and country-of-origin immigration quotas

In the early 1960s a maximum of roughly 150,000 immigrants could legally be admitted to the U.S. In 1960 President Dwight Eisenhower suggested that the number be doubled to roughly 300,000 which he described as one-sixth of one per cent of the current population (*NYT* One-sixth of one per cent, 3/18/60). The *Times* applauded Eisenhower’s proposal, noting that low immigration limits were partly maintained by the McCarran-Walter Act (Immigration and Nationality Act) of 1952 which was passed in part to prevent communists from entering the U.S., an objective that the *Times* did not regard as achievable or important. In 1962 the *Times* took a different approach to limits when it expressed its support for a bill that would permit the U.S. to admit one refugee for every four admitted to other countries—all with no reference to quotas (A modest proposal for refugees, 6/6/62). The United Nations High Commissioner for Refugees would keep track of refugee admissions.

Although the *Times* viewed the limits on total numbers of immigrants as important, it was more concerned that the U.S. immigration program favored people from northern Europe, a policy that the *Times* described as racist (A new immigration law, 7/25/63). In addition, according to the *Times*, the Immigration Service used what the newspaper described as police state tactics to track down and deport illegals (*NYT* A humane Immigration Service, 11/28/61).

President John F. Kennedy asked Congress to abolish the quota system and replace it with an arrangement that would consider an immigrant’s skill or talent. This proposal also took into account reuniting separated families (*NYT* A new immigration law, 7/25/ 63).

Kennedy was unable to get his bill past Democratic-majority congressional committees and subcommittees. One year later the new president Lyndon Johnson continued to press for a bill similar to Kennedy's, but it too was blocked (*NYT* Reopening the door, 1/18/65).

In 1965 Congress passed and the president signed the Hart-Cellar Immigration Act, a law that abolished the national origins quota system. The new law created a quota of 170,000 per year for all countries except those in the Western Hemisphere. The quota operated on a first come first served basis with a 20,000 immigrants per year limit for any one country. The law also established a ceiling of 120,000 immigrants per year from the Western Hemisphere with some exceptions for family members (Phillips, 1965).

According to Kiera LoBreglio (2004, 938), Hart-Cellar limited "western hemisphere immigration for the first time in U.S. History." Mexican and Caribbean immigration suddenly increased causing long backlogs in visa applications producing delays in family reunification. LoBreglio speculates that as a result of the backlogs Mexican families turned to illegal immigration. According to James Goldsborough (2000, 92-93), the 1965 statute vastly increased immigration with family reunification becoming the most important device for increases, although at various times political refugees also constituted an important source of immigrants. In later years legal immigration limits were substantially increased (Goldsborough 2000, 94; Durand, Massey, & Zenteno 2001, 107-108).

Since 1965 U.S. government immigration policy categories have variously included varieties of visas: employment-based; familybased; refugees; and diversity-based. Temporary visas for skilled workers are also part of the mix. One element of these changes was a return to congressional attempts to decide which regions and countries should receive preferential treatment. For example, the Immigration Act of 1990 instituted a diversity program that favored immigration from areas that were not fully participating in immigration or were under represented in the U.S. *Washington*

Post editorials all but ignored the 1990 bill until it became law, and that publication's news stories covering the bill ignored the diversity feature, concentrating instead on increases in visas for those with skills which increased from 54,000 a year to 140,000 (Vobejda 1990).

National Review all but ignored the 1990 bill. There were eight *Journal* editorials on it which located the newspaper in its usual position of favoring relatively open borders. For example, a *Journal* editorial (The Simpson Curtain, 2/1/90) likened the 1990 bill to the Iron Curtain. The Simpson Curtain in the editorial title was named after the bill's most prominent sponsor, Senator Alan Simpson (R-WY), and referenced the iron curtain surrounding the USSR. The editorial complained that the U.S. needed more immigrants and that the bill "would put a lid on them." It continued:

The current level of U.S. immigration is low by historical standards—as a share of U.S. population, less than 0.4%; the percentage was significantly higher when the European ancestors of America's current middle class came over. Absorbing even hundreds of thousands of immigrants into a \$3 trillion economy isn't a problem. As economist Julian Simon argued on this page last Friday, new evidence shows that immigrants and refugees contribute more in taxes than they consume in public benefits. They are an asset, not a burden.

The Simpson bill would increase legal immigration levels by only a small amount. This editorial does not mention the diversity program. A few weeks later the *Journal* (Clocking immigration sanctions, 4/16/90) jettisoned its iron curtain imagery, comparing the bill to Prohibition by which it meant "a misguided attempt" to control the borders.

The *Journal* favored a competing bill offered by Representative Bruce Morrison (D-CT) with considerably higher immigration levels. Even though the Bush administration opposed the Morrison bill, a version passed Congress and the president signed it into law. Immigration limits in the final version were not as high as those

preferred by the *Journal*, but they were significantly greater than existing limits (Immigration victories, 10/29/90). The *Journal* and the *New York Times* were both enthusiastic supporters of the version that passed (*NYT* Two reasons to rejoice on immigration, 10/29/90). The *Washington Post* editorial page ignored the bill's enactment as did *National Review*.

Farm labor

In the early 1960s the *Times* (Ban on braceros, 6/3/63) opposed a renewal of what was called the bracero guest farm worker program. Begun during World War II and continued through the Korean war, the program was justified as a temporary solution to labor shortages (Palmunen 2005, 48; Organista 2007, 193). According to the *Times*, when the Korean War ended, the bracero program was continued at the behest of agriculture interest groups so that farmers could maintain artificially low wages by playing U.S. and Mexican laborers off one another. The law (Foreign Labor Import Law) that permitted the use of guest Mexican laborers expired on the last day of 1964 (Baker 2004, 83-85). Renewal was opposed by labor unions, church groups, and welfare organizations as well as liberals (*NYT* U.S. sets \$1.50 wage rate for coast date farms, 2/6/65, 9).

Farmers, claiming that labor shortages would hinder harvests, tried to import workers in other ways. The *Times* (Squeeze on the migrants, 3/27/65) opposed these maneuvers. Foreign workers could still be brought in under the McCarran-Walter Immigration Act with a certification from the U.S. Department of Labor that the foreign workers would not hurt U.S. workers, but President Kennedy's Secretary of Labor W. Willard Wirtz did not want to issue certifications in significant numbers (Hill 1965). A month after the Foreign Labor Import Law expired the Department of Labor ordered California date farmers to offer \$1.50 an hour to U.S. workers before the farmers could apply to bring in foreign laborers. This figure was considerably more than farmers had been paying. Different rates would be established for other crops. These events are consistent with Rene Perez Rosenbaum's (2001, 27) description

of farmers' claims that laborers are in short supply versus U.S. government, labor union, and liberal counter-claims that there is an oversupply of workers who are victimized because of their poor bargaining position.

Goldsborough (2000, 99) and Philip L. Martin and Michael S. Teitelbaum (2001, 117-119) characterize guest worker programs as an underhanded way for Congress and the president to appear to satisfy all interests. Goldsborough observes that many of the workers brought in this way remain in the U.S. illegally when their visas expire. Martin and Teitelbaum assert that most programs promoted as temporary and small, last for a long time and grow to be much larger than promised. This pattern holds because the programs result in a mutual dependence between employers and migrants.

Over the years, the large numbers of illegal immigrants in the U.S. have caused policy debates to shift emphasis from the details of farm worker programs to what the *Times* described as the "illegal tide" of immigrants.

The "illegal tide"

The year 1977 brought an early example of an immigration debate that continues today. As the *Times* (Sweeping back the illegal tide, 8/8/77) expressed it: "Waves of illegal immigrants will continue to roll into the United States so long as travel is easy, borders are porous and even menial jobs here are better than squalor at home." President Jimmy Carter responded to high numbers of illegal immigrants with more Border Patrol personnel, amnesty for most illegals already in the country, and sanctions against employers using illegals. The *Times* saw Carter's amnesty proposal as worsening the social welfare cost burden on U.S. cities (Sweeping back the illegal tide, 8/8/77; Who should watch the borders, 6/3/78). During this period the *Washington Post* placed slightly less emphasis than the *Times* on border control and returning illegals to their home countries.

In 1981 the *Times* continued its emphasis on the illegal tide when it agreed with President Ronald Reagan's attorney general that United States' borders were not secure (We've lost control of our borders,

8/2/81). That year the Reagan Commission on Immigration and Refugee Policy, maintaining consistency with Carter's proposals to a surprising degree, recommended enacting an amnesty policy for illegal aliens already in the country, creating a pilot program that would allow the admission of temporary workers, and strengthening enforcement especially by penalizing employers who hired illegal aliens (*NYT* Excerpts from final report of Commission on Immigration and Refugee [sic], 2/27/81, B5; To turn the illegal tide, 1/11/81).

The Commission's recommendation regarding employers was especially important in that it defined a large part of future policy. The Commission observed that illegals come to the U.S. for jobs. Stopping the employment of illegals would drastically reduce the primary incentive motivating them to cross the border. In many respects, the Reagan Commission's proposal constituted what has become a liberal-conservative consensus on that point although there are differences on implementation and divisions within conservative ranks. The *Times* emphasized that rigorous enforcement was of great importance. In particular, temporary workers would have to be monitored to insure that they did not "go into hiding and bring their families." (Multiple choice on immigration, 5/27/81)

In the early to mid-1980s Senator Alan Simpson (R-WY) sponsored or co-sponsored immigration reform bills that grappled with several problems that still exist in 2012. The *Times* and *Post* (*WP* Illegal immigration, 1/29/77; A genuine problem..., 6/24/84) generally favored the following provisions in these bills giving us a sense of the standards they applied to this policy area:

- Allow increased numbers of skilled workers to enter the U.S. (The *Journal* and *National Review* also liked this feature).
- Permit immigrant families to be united. (*National Review* appears not to have taken a clear position and the *Journal* favored this element.)
- Forbid the hiring of illegals with fines applied to employers for violations (employer sanctions). (*National Review* agreed-

Aliens and paperwork, 6/20/83 but the *Journal* opposed-A national identify card? 4/3/90). In recent years the *Times* has partly reversed itself on this point depending on specifics.

- Amnesty for some illegals who had been in the U.S. for a number of years. Various bills contained different amnesty features. The *Journal* seemed weakly opposed depending on specific features, and *National Review* weakly favors also depending on specifics).
- Permit guest worker programs. (*National Review* and the *Journal* support).
- Increase border security. (*National Review* supports, the *Journal* has shifted from opposition to support, and as the years passed the *Times* also came to oppose.)

The stands of the barometer publications on these matters varied over the years partly because the nature of immigration problems and employment needs changed and partly because ideological positions were modified. The provisions in the sequence of immigration reform bills also differed between the U.S. House and Senate and changed from one congressional session to the next.

Overall, the *Journal* was hostile to the Simpson bills, but it has changed its position in several ways since. It characterized the 1984 version as an “anti-immigration bill” supported by an “alliance of the ‘nativist’ Americans who still dominate Mountain States politics and the “Club of Rome”elitists of the Boston-Washington corridor.” (In praise of huddled masses, 7/3/84) The *Journal* summed up its immigration position in 1984 as an advocacy of “open borders” which is to say very high limits on legal immigration and work visas. The *Journal* still essentially holds this position. The *Times* blamed the House Democratic leadership’s pandering to Hispanic interest groups for the bill’s demise in 1982, 1983, and 1984 (Hang on to immigration reform, 7/27/84). The *Times* warned that the American public was becoming frustrated with a “continued flood of illegal immigration,” and it noted that a half

million illegals a year were entering the U.S. (Psst! About that immigration bill, 1/20/84).

As of 1985 the *Times* was maintaining its strong immigration control orientation as it emphasized the virtues of employer sanctions (The Simpson-nobody bill, 5/24/85). The *Times* started one editorial with a sentence that began: “Illegal aliens keep pouring across the border...” (The immigration mess (both of them), 10/22/85) This editorial described federal immigration policy as the “Big Wink”—it is illegal for aliens to sneak across the border, but as long as employers could use them the federal government would look the other way. At the same time the editorial also was sympathetic to illegals who, after all, were victims of the federal government’s “permissive policy.” So illegals should receive minimal services such as police protection, and if they managed to remain in the country for a significant period of time, they should be permitted to stay under conditions specified by law. Also in 1985 the *Post* favored a precisely defined temporary worker program that would not allow immigrants to hurt American workers (Burdening the immigration bill, 9/20/85).

In 1986 Congress passed the Immigration Reform and Control Act (IRCA) which President Ronald Reagan signed. It contained most of the features that the *Times* and *Post* regarded as desirable (*NYT* The President’s Call on Illegal Aliens, 2/24/86). Kiera LoBreglio (2004, 939) saw IRCA as an attempt to bring illegal immigration under control or at least to create that impression. She described it as attempting to reduce illegal immigration by: granting amnesty for some illegals; punishing those who hire illegals; and providing increased funding for border enforcement (also see Baker 2004, 86). In its consideration of competing bills in 1986 the *Times* moved some distance away from its previous severe control orientation. It emphasized the virtues of amnesty, and references to illegals pouring across the border disappeared (*NYT* Congress Jump-Starts a Corpse, 10/12/86). IRCA contained a strict one year time limit on amnesty, and in 1987 the *Times* (Don’t Let the Amnesty

Door Slam, 11/3/87) appealed to Congress to extend the deadline.

The *Journal* and *National Review* opposed IRCA's control orientation. Tom Bethell (1987) writing in *National Review* ridiculed liberal editorial writers who regarded illegal immigration as a crisis and added: "High as it may seem, immigration to the U.S. today, as a percentage of the overall population, is less than half what it was in the first two decades of this century." A few years later *National Review* reversed this position. The *Journal* (A U.S. pass law? 10/13/86) wrote that the 1986 bill "would bring something like the repugnant South African system of pass laws across our borders and into our legal system. All Hispanic Americans would be subject to spot checks to prove their citizenship." Julian L. Simon (1991) writing in the conservative journal *The Public Interest* also argued that if there was an immigration problem it was too little immigration (especially of the well educated) rather than too much.

It will be no surprise to readers that IRCA did not work. According to Alice Baker (2004, 87), 1.3 million illegals applied for amnesty within 18 months of IRCA's enactment, but most abandoned harvesting for better work, and they were replaced by more illegals. William Arp (1990, 327), citing official estimates that 10 to 12 million illegals resided in the U.S., pointed out that roughly three years after the 1986 statute's passage only 1.7 million illegals had applied for legalization. Arp interpreted this figure to mean that IRCA had failed to achieve one of its critical objectives. He interviewed leaders of Hispanic and religious organizations active in representing immigrant interests in Arizona to determine why many illegals had failed to apply. He found that their lack of participation was due to excessive documentation, lack of satisfactory family unification provisions, excessive filing fees, and distrust of the Immigration and Naturalization Service (INS) (p. 331). Pessimistic as Arp's findings appeared, they could have been worse. In 1996 allegations were being investigated by the Department of Justice that border patrol officials were falsifying data by releasing illegals back into Mexico without processing or counting them, turning off ground

sensors that monitor border crossings, and altering reports to make it appear that there were fewer attempts at illegal entry than there were (*NR* The mess at the INS, 12/23/96).

James Goldsborough (2000, 94) described IRCA's employer sanctions as a "dismal failure." One reason was that Congress built a system easily defeated by counterfeit green cards, Social Security cards, and passports.

In the 1990s Congress added border patrol staff and substantially increased INS budgets (from \$1.5 billion in FY 1993 to \$4.2 billion in FY 1999). Large sums were spent on border fencing and electronic monitoring (Andreas 1998, 592; Goldsborough 2000, 94-95), although this system remained relatively porous (Krikorian 2011). In addition, Congress stiffened sanctions for hiring illegal aliens (LeBreglio 2004, 940). Working through INS reports and press releases plus the work of government study commissions and independent researchers, Peter Andreas (1998) concluded that INS efforts to prevent illegal entry have had little effect (see also LeBreglio 2004, 940). Indeed, throughout the 1990s California farms increasingly relied on illegals. One reason for the failure of INS efforts can probably be found in Andreas' estimates that only 2 percent of the FY 1996 INS budget was devoted to the enforcement of laws against the employment of illegals. In FY 1989 the INS ran 15,000 investigations of employers compared to only 6,000 in FY 1995 (Andreas 1998, 603).

Through the 1990s Congress continued to tinker with immigration regulations by increasing the number of immigrants who would be allowed into the U.S. legally with special emphasis on skilled workers and professionals. There were also efforts to facilitate the reunification of families (*NYT* Two reasons to rejoice on immigration, 10/29/90; The golden door, ajar, 10/13/90). The business oriented conservative House Majority Leader Dick Armey speculated publicly that he was tending toward increasing legal immigration (*NR* Immigration reform, 6/12/95). Many conservatives were leery of a computerized data base that would allow law

enforcement personnel and businesses to check work eligibility (*WSJ* America the vital, 3/16/90). Arney referred to such a system as “a euphemism for a national ID card” which he characterized as an “abomination.” (*NR* Immigration reform, 6/12/95) In 1990 the *Times* continued its shift away from limiting immigration (except for employer sanctions which it continued to favor) and toward humane treatment of illegals, amnesty, and allowing immigrants with skills and political refugees to enter legally (*The Golden Door*, Ajar, 10/13/90). The *Times* also celebrated the elimination of blockages against immigrants because of sexual orientation. This is not to say that the *Times* completely abandoned its long term emphasis on control. In “A better Senate bill on immigration” (5/7/96) the *Times* described what it called a “sensible” immigration bill that would reinforce border control and employer sanctions, and create a national immigration database. At the same time, the *Times* wanted public schools to admit the children of illegals. From then to the present the *Times* has expanded on the theme of illegals and their families being given legal protections and access to education and public health services. We were unable to locate any *Washington Post* editorials on the subject during the early 1990s using variations of the search terms “immigration,” “illegal aliens,” or “aliens.” In the time period of this study the *Post* never held as strong a control orientation as the *Times*.

Conservatives became increasingly divided on immigration. By at least 1996 *National Review*’s (Immigration pause, 4/22/96; A digest of myths, 6/17/96) attitude toward immigration had reversed. It now favored reductions in numbers of legal immigrants including skilled workers and professionals and intensified constraints on illegals. At this point *National Review* was reflecting social conservative attitudes, a position that we have seen before especially when it is contrasted with the *Journal*’s more classical liberal/business orientation. *National Review* saw what it called unchecked immigration as part of a new liberal challenge with its “dream of ‘diversity,’ regulated and subsidized by the state...” (The

national question, 11/11/96) The magazine noted that conservatives were divided on immigration with *National Review* seeing the *Wall Street Journal* as especially opposed to tightened immigration control (Brimelow 1996). *National Review* founder William F. Buckley, Jr. (1997, 62) sarcastically described the *Journal* as part of the “the fullhouse immigration lobby,” explaining that the label signified “the more immigrants, the merrier.”

By 2003, after many years of congressional activity, much of which had met its approval, the *Times* (Licenses for illegal immigrants, 11/26/03) described the nation’s immigration policy as a “mess.” According to the editorial, this policy failure was forcing local governments to devise their own immigration reforms such as allowing illegals to possess drivers licenses. Efforts to reform immigration continued through the 2000s with little apparent effect. In particular, employer sanctions were not working, although *National Review* (Immigration reform, for real, 7/30/07; The week, 4/11/16, 8-9; The week, 12/31/16, 4-5; Krikorian 2016) argued that existing law would permit the federal government to stop employers from hiring illegals. The *Journal* (Keeping book on immigration, 12/31/07) continued to favor a system that would allow workers to move freely across the border: “The best way to reduce pressure on the border is by providing legal ways for people to come and work. With the Bracero guest-worker program of the 1950s, illegal entries from Mexico declined to a trickle.”

By 2010 even though liberals and the divided conservatives came at the issue of immigration from somewhat different (and changing) directions, they ended up near agreement on a central policy: immigration reform should focus heavily on employer sanctions. Businesses that employ illegals should be punished with enough severity and certainty that they will stop. This liberal and partial conservative consensus policy implies the existence of a counterfeit-proof identification system, and there is disagreement regarding how this should work. At some point, the federal government’s computerized E-Verify system should be part of the mix, but the

database is far from perfect, and the system is slow (*WSJ* Government+, 8/13/14). This policy also assumes that there is an important role in our economy for relatively low paid laborers especially in agriculture, and it assumes that border controls by themselves will not stop illegal crossings (*NYT* More Immigration Non-Solutions, 7/13/09).

In 2010 the State of Arizona devised its own immigration reforms (to paraphrase the *Times* in Licenses for illegal immigrants, 11/26/03), but in a direction opposite to what the *Times* preferred. The *Times* (Arizona Goes Over the Edge, 4/18/10) described the state legislature's measure as enlisting law enforcement agencies to: "expose and expel the undocumented." The *Times'* interpretation of the bill (soon to be law) was that anyone who could not prove his or her citizenship status would be subject to arrest, and police were not required even to suspect that illegal activities had occurred. The *Times* (Arizona Goes Over the Edge, 4/18/10) viewed the bill as "harsh and mean-spirited." The *Washington Post* (Arizona's folly; A law that twists the Constitution in pursuit of illegal immigrants, 4/29/10) agreed with the *Times*, and both newspapers opposed other states' attempts to reduce illegal immigration (e.g., *WP* The rot in Alabama, 11/4/11). The *Wall Street Journal* (Arizona's immigration frustration, 4/27/10) was more sympathetic to Arizona, but it too opposed the state's immigration policy. On one hand the *Journal* saw Arizona as the focal point of the "nation's failed immigration policies." However, the *Journal* continued: "Arizona's police chiefs association opposed the new law. Local enforcement agencies don't want responsibility for enforcing national immigration laws because they say it makes them less effective at their day jobs. When people in immigrant communities see the local police as deportation agents, they become less likely to report crimes and help in investigations." Both the *Times* and *Post* made this point repeatedly. The *Journal* added:

We'd support a national immigration reform that was realistic about the fact that most of these are economic migrants who will

find a way to come here in any case if this is where the jobs are. The most effective way to reduce illegal entries and defuse these tensions is to expand legal channels, including guest worker programs. This would reduce illegal immigration and free up security resources to threats from drug gangs and the like. But so long as Republicans, Democrats and Mr. Obama mainly view immigration as an electoral weapon, the nation can expect more desperate laws like Arizona's (see also *WSJ* Trump's Fortress America, 9/2/16; Trump faces immigration reality, 8/26/16).

National Review continued to favor stricter constraints on legal and illegal immigration than the other publications (Krikorian 2011; The week 4/11/16, 8-9).

Meanwhile, the *Times* (Reform, on ice, 3/2/10) blasted what it described as President Barak Obama's intensifying George W. Bush's enforcement orientation by "unleashing the Border Patrol, Immigration and Customs Enforcement and local law enforcement agencies and setting loose an epidemic of misery, racial profiling and needless arrests." Unlike the *Times*, instead of blaming Bush for doubling the number of Border Patrol officers, the *Washington Post* (The tightening border, 9/26/11) credited him with doing so, and claimed that additional officers had a material part in reducing the numbers of illegals crossing the border. At the same time, the State of Arizona regarded the Obama administration as not adequately arresting and deporting illegals. The *Times* viewed both the State of Arizona and Obama as overly controlling, and the *Post* took a position between them, indicating a wide spectrum of disagreement in this field on the left.

By 2010 the *Times* (Dreaming of reform, 11/30/10), *Post* (Immigration impasse ahead, 12/29/10), and *Journal* (A worthy immigration bill, 11/27/10) were favoring the Dream Act which would establish legalization procedures for illegal immigrant children who attend college or serve in the military.

In August 2011 the *Times* (Toward Immigration Sanity: The Obama administration resets its deportation priorities, 8/20/11)

described the Obama administration as suddenly shifting to a “more sensible and lawful policy on illegal immigration.” Specifically: “The administration said that it would stop deporting illegal immigrants who pose no threat to public safety or national security so that it can focus on catching and expelling criminals who do.” The editorial continued: “The new approach acknowledges that this country is squandering law-enforcement resources on deporting tens of thousands of people who work hard, pay taxes and build families.” Meanwhile, the *Times* favors using E-Verify to insure that employers not hire illegals (No crackdown on illegal employers, 3/20/17). The *Post* (The limits of immigration enforcement, 1/22/11) continues to favor such sanctions.

Sanctuary cities

Jennifer Medina and Julia Preston (2015) define a sanctuary city as protecting “undocumented immigrants” with no criminal records from deportation, although recent events call into question their “no criminal records” qualifier. The *Times* favors this policy which has become linked to the the murder of Kathryn Steinle in San Francisco, a sanctuary city, on July 1, 2015 by “a repeat illegal border-crosser with a drug record” who “somehow ended up back on the street.” His name is Juan Lopez-Sanchez, and he is described by the editorial as “dark-skinned.” According to the editorial (*NYT* Lost in the immigration frenzy, 7/13/15), Immigration and Customs Enforcement (ICE) had asked the San Francisco sheriff to hold Lopez-Sanchez, but instead the sheriff released Lopez-Sanchez without notifying federal authorities (Medina & Preston 2015). The editorial characterized the federal authorities’ request as turning local law enforcement into defacto ICE agents which would heighten “fear and distrust in immigrant communities, which makes fighting crime harder.” The editorial also characterized the ICE request as unconstitutional, a position opposed by many liberals including U.S. Senator Dianne Feinstein. Edwin M. Lee, the San Francisco mayor, was quoted in the *Times* as saying that the sanctuary city idea was not intended to “harbor repeat serious offenders.” (Medina & Preston 2015).

Moderate Charles Lane, a *Washington Post* staff member saw San Francisco's (The risks of sanctuary cities, 7/23/15) sanctuary cities program and the way it was implemented in the Lopez-Sanchez case as politically and morally unwise: "San Francisco took an extreme position—it refused assistance to the Obama administration..." Lane concluded: "Consequently, a woman is dead..."

Immigration conclusions

No nation's border control can be perfectly secure. Smugglers doubtless evade the border regulations of all governments. However, according to liberals, conservatives, and scholarly experts on the subject, U.S. immigration policy has been spectacularly unsuccessful for decades. Immigration policy constitutes a failure of the U.S. government to carry out an important and basic function of a nation state. Our four barometer publications agree on that point. With regard to policy prescriptions, the *Post* and *Times* agreed with one another in most respects from 1980 until the present. Until recently, the *Journal* favored more unrestrained immigration policies than the two liberal newspapers. Initially, *National Review* and the *Journal* favored similar policies, but in recent years *National Review* reversed itself, advocating relatively restrictive policies. Interspersed with these policy changes among ideologues, many businesses favor relatively open borders so that they can import employees (especially agricultural and technological), some labor unions view immigrants as threatening members' wages and others regard immigrants as potential dues-paying members, while political parties see immigrants as potential supporters or opponents.

Immigration concerns business and economics and as such public policy is partly driven by market breakdown. The market economy cannot resolve immigration problems; indeed, to some degree the U.S. market economy *is* the problem because it attracts immigrants in great numbers. However, immigration does not fit our market breakdown model because conservatives have never denied that the federal government must control its borders.

Immigration also concerns areas of public policy that at least from

a theoretical perspective do not concern business and economics. The JBG model encompasses several immigration issues except that conservatives have sometimes favored equality more than liberals and liberals have sometimes placed greater emphasis on order than conservatives. In other words, the JBG model does not reliably predict liberal or conservative policy positions over time. This discussion is simplified in that we did not treat terrorist security problems and drug smuggling. These matters overlay all of the issues we covered, further splitting ideologues and interest groups.

Roughly speaking, from the 1960s to the present liberals equally weighted the three JBG values. They favored order by advocating border security and employer sanctions and equality and freedom by advocating procedural fairness and access to social services for illegals. Throughout this time period they valued the economic importance of employing migrant labor.

From the 1960s to roughly the mid 1990s conservatives were united behind a policy of relatively free flow of immigrants into the U.S. At present, the *Wall Street Journal*, some businesses, and some labor unions maintain this position, but many social conservatives represented by *National Review*, favor relatively restrictive policies. Over the years, conservatives with their generally open border approach have promoted equality, freedom, and order while also considering the need of farmers and other businesses for migrant labor. Adding another dimension to this ever changing field, conservatives of all stripes at various points in time have opposed or been highly critical of the counterfeit-proof national identity cards that might be required to operationalize employer sanctions using a system like E-Verify.

Liberals and conservatives have been thoughtful if not always consistent regarding immigration moral/value theories. As we observed a few paragraphs above, liberals and some conservatives have arrived at a near policy consensus based more on observation of empirical data than values. Stopping all illegal border crossings is not cost-effective. Instead, some liberals and some conservatives

advocate employer sanctions via E-Verify. Since employer sanctions as enforced by the federal government may be ineffective, some state and city governments are passing employer sanctions of their own under the protest of liberals and the U.S. Justice Department.

Earned Income Tax Credit

In 1975 Congress enacted a program called the Earned Income Tax Credit (EITC) which was designed to offset increasing Social Security taxes paid by the working poor with children. The *Post*, which was becoming increasingly critical of welfare programs such as AFDC, approvingly characterized the credit as a limited version of the negative income tax. EITC languished until Republican President George H. W. Bush proposed its expansion in 1986 (*WP* All-purpose increase for the poor, 7/5/89). Bush promoted the EITC as an alternative to bureaucratized welfare proposals sponsored by congressional Democrats, and more importantly in the long run he saw it as a precisely targeted alternative to the scatter shot minimum wage with its undesirable side effects (covered in Chapter V) which many economists view as hurting the poor more than it helps them.

The *Post* liked Bush's EITC expansion (*WP* The Child Care Bill, 3/20/90). The *Journal* did not write an editorial on the change, but it ran four news accounts and one opinion piece in the next four years. Three of the news accounts presented the EITC as part of a compromise between congressional Democrats and the Bush administration on the minimum wage with the minimum wage remaining unchanged (Saddler 1989; Wessel 1989; Gigot 1989). The opinion piece written by an economist (Foster 1988) recommended the EITC as superior to the minimum wage in aiding low wage individuals and families. *National Review* did not cover the EITC in the late 1980s. Another EITC expansion in 1993 passed the Senate with no Republican votes (Hotz & Scholz 2002, 8). Despite its partial conservative origins, from this point on EITC effectively became a liberal Democratic program (Hotz & Scholz 2002, 8).

As of 2014 the EITC was the federal government's largest program for direct financial assistance to the poor (Tach & Edin 2015). The EITC supplements income on a sliding scale that is calibrated to encourage work. The program has different structures for individuals with no children, one child, and two or more children and depending on whether recipients are single or married. Those with no income are ineligible for EITC. As income increases (in EITC terminology the phase-in region), so do EITC payments until a given income is reached at which point EITC payments plateau. For example in 2008, recipients with one child reached the plateau when their income hit roughly \$9,000 at which point they received \$2,917 for that year. The \$2,917 level was maintained as income increased until income reached (for married filers) approximately \$20,000 after which EITC payments dropped (the phase-out region) with further increases in income. It should be noted that there is considerable variation among EITC payment structures among the states. When income reached roughly \$37,000 EITC payments hit zero (Athreya, Reilly, & Simpson 2010, 233-34). Peter S. Arno, Nancy Sohler, Deborah Viola, and Clyde Schechter (2009, 200) point out that: "the EITC would give a minimum wage worker with two children a 40 percent increase in annual earnings." That is no small benefit. Unlike the minimum wage, the EITC delivers aid to low wage workers and no one else without also damaging its beneficiaries, a point discussed at length later in this chapter.

The EITC, which is operated by the Internal Revenue Service, is widely regarded as an effective and efficient program for aiding the poor. Administrative costs are considerably lower than they were for AFDC or other programs that involve labor-intensive investigations (Hotz & Scholz, 2000). Furthermore, there is empirical evidence that it encourages employment by single mothers at least during the phase-in region (Eissa & Hoynes 2004; 2009; Meyer 2007, 7; Hotz & Scholz, 2000, 22; Meyer & Rosenbaum 2001; Athreya, Reilly, & Simpson 2010, 245; Beverly 2002, 262). Indeed, Nada Eissa and Hilary Hoynes (2009, 2) observe that: "the labor force participation

rate of single mothers increased by an astounding 14 percentage points between 1989 and 2002, a period of substantial expansions in the size of the EITC.” Within the phase-out region there are sound theoretical reasons for predicting that participants will reduce work hours; however, empirical findings fail to support this expectation. Bruce D. Meyer (2007, 9-10) describes this finding as puzzling but robust. He lists two plausible explanations. First, workers cannot vary their hours due to employer schedule requirements. Second, given the complexity of program structure and multi-page explanations of that structure, workers may not fully understand the impact of additional work on EITC payments.

There are relatively few studies of EITC’s impact on married couples, but Eissa and Hoynes (2009) find small negative impacts on the employment of couples. Joseph V. Hotz and John Karl Scholz (2002, 22), applying a relatively sophisticated economic analysis, find that, given the many combinations of households (e.g., number of children, income, whether one or both parents work) that can benefit and variations among states, the impact of EITC on work hours is ambiguous. It seems likely that the EITC still encourages work in the phase-in region, but in phase-out if both partners are employed, one person can stop working, and there may be more flexibility in one partner reducing work hours (Meyer 2007, 10).

With its origins in Milton Friedman’s negative income tax and widespread discussion and debate, the EITC’s sponsors must be considered thoughtful. Conservatives appear to accept the EITC in principle, but they question whether it is effective and worthwhile as it is structured. It is unclear whether there is any EITC structure that conservatives would accept. Alan Reynolds (1994, 36), writing in *National Review* observes that many hoped that the EITC: “would increase labor-force participation among the poorest of the poor, by easing their way off welfare.” However, as income increases “this subsidy declines rapidly, and is replaced by income taxes and Social Security taxes...” (p. 36) He quotes a Congressional Budget Office study that found that the marginal tax rate on families that make the

transition away from EITC support is 49 percent. He concludes that in the long run EITC: “will prevent less skilled workers from gradually working their way up the ladder, as most of us have done as our incomes increased with work experience. The EITC breaks the first rungs on the ladder of opportunity. It discourages potential second earners, in particular, from making that first step.” (p. 36) Writing in *National Review* five years later, Amity Shlaes (1999) made the same point as did a *Wall Street Journal* editorial (Compassion and taxes, 1/14/00). Liberals enthusiastically accept the EITC (*NYT* A rare break for low-paid workers, 3/11/94; Standing tougher, 11/15/12; Krugman 2013; *WP* A better deal than minimum wage, 2/19/13).

The EITC is another initiative that falls into both business-economics and non business-economics categories. As an element of the tax system and as a potential incentive or disincentive to work it is a matter of business and economics. Liberals typically regard the low private sector pay earned by those eligible for EITC as market breakdown requiring a government response. Conservatives view pay at any level as the market accurately valuing peoples’ work. The EITC can also be seen as a form of welfare with liberals favoring it because they want to enhance equality and conservatives, thinking in market terms, regarding it as dampening ambition.

Almost automatic support for increased welfare funding

Welfare is an imprecise term that designates a number of liberal initiatives whose history began not only before our 1961 starting year, but even before the New Deal. Very broadly speaking, welfare in 1961 had two moral/value objectives to which many liberals still adhere: helping the poor and finding employment for those able to help themselves. The first enhances equality by providing financial assistance to the poor. The second is partly a policy theory with greater equality and increasing the health of the economy as objectives. We confine our discussion to a few of the largest and most politically consequential programs and even then space permits only sketchy coverage.

Aid to Families with Dependent Children (AFDC) is one of the most ideologically controversial and ideologically revealing of all welfare programs (Stark 2009, 627). It started as a small part of the Social Security Act of 1935 to assist in the upbringing of children whose fathers had died. Decades later most children and their mothers receiving assistance did so not because of fathers' deaths but because fathers had abandoned their families or were never part of them. In 1962 the program's original name was changed from Aid to Dependent Children to Aid to Families with Dependent Children, and the law was amended to emphasize the provision of social services to mothers regardless of whether they were employed. The policy theory behind this version of AFDC was hazy, but basically the intention was to use social services to reduce welfare dependency, family breakdown, and ill health. In the Kennedy and Johnson years the number of AFDC families and the program's cost increased substantially (Goodwin 1983, 2).

Part of Lyndon Johnson's War on Poverty was so-called community action programs which included employment training. By most accounts these initiatives were unsuccessful in helping people find and hold jobs (Moynihan 1969). Some liberals, seeking an explanation of this failure, settled on what is sometimes called the theory of structural poverty which holds that poverty is an inherent part of the capitalist socio-economic system (Murray 1984, 26-27). Michael Harrington (1962) was probably its most prominent advocate. His thesis was that as many as 50 million people were living in more or less permanent and irretrievable poverty. They were variously elderly, untrained, ill-educated women with small children and no husbands, and others who could not benefit from economic growth because of the way income was distributed. (The reader will recognize this as a variant on the theory of the root cause of crime.) In 1967 Joseph Califano, an aide to President Johnson, informed reporters that only about one percent of those on welfare could be trained, employed, and made self-sufficient (Murray 1984, 40; *WP* Hungry children, 7/16/1967; *NYT* The new

realism on welfare, 11/30/1978). Charles Murray (1984) observes that as debates over welfare ground along through the 1960s even many with jobs came to be seen as legitimate recipients of welfare.

Work training (a.k.a. workfare), described in Chapter V, frequently reappears in versions of welfare reform. It springs up in many guises and is sometimes tied to work training, but the basic idea is to require welfare recipients to work, sometimes in public service jobs, for the funds they receive. Liberals at various times opposed workfare or in highly qualified ways supported it. Workfare made its first appearance in the national news media when it was introduced in Newburgh, NY (*NR* Newburgh nationalized? 8/14/62; *WSJ* The great living program, 10/27/61). At first liberals angrily denounced 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). However, nearly a decade later as welfare rolls continued to expand, liberal opposition to workfare softened. The major condition for liberal support was that the work required of welfare recipients 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).

Our editorial samples and comprehensive electronic searches yielded hundreds of liberal editorials that addressed welfare funding and the structure of welfare programs. Until the early 1980s nearly every one favored increases in funding amounts and program expansions to include more people or cover them for longer periods of time unless the editorials were defending programs against conservative reduction attempts in which case they opposed cuts (*NYT* The shadow of unemployment, 1/15/61; The real disgrace of welfare, 2/21/80; *WP* Jobless pay extension 9/3/62; Progress in poverty, 2/13/66; and many others). The liberal advocacy of

expanded welfare programs was consistent with the liberal emphasis on equality although order (the evils of people living in squalor) was an important secondary theme.

In one near exception to their long-standing support of welfare expansion, the *Times* favored President Lyndon Johnson's War on Poverty, but cautioned that it could become a bureaucratic nightmare (Too many poverty healers, 3/17/64). Another *Times* editorial that was not totally supportive of the War on Poverty warned that the president and the mayor of New York must insure that the corrupt Congressman Adam Clayton Powell not be allowed to siphon funds from legitimate recipients (Powell and poverty, 6/9/64). The *Times* also devoted occasional editorials to fraud such as a workmen's compensation case in which a man claimed benefits for an injury suffered while playing with a toy during an office party (*NYT* Compensation with a twist, 5/4/66). The critical *Times* pieces were similar to the newspaper's education editorials in the same era: they defended a failing status quo by advocating incremental administrative change. In contrast, conservatives regard mismanagement as a characteristic inherent in welfare programs (and most other federal operations) and see it as a reason to reduce the programs or radically to restructure them.

Conservatives have always stressed the destructive effect of means-based welfare programs on motivation to work. Republican Richard Nixon used this theme against his liberal Democratic presidential opponent George McGovern. Initially, liberals were content to simply deny this thesis. For example, the *Times* (The work ethic, 11/6/72) cited a study by Leonard Goodwin (1972) who, using interviews, found that the unemployed prefer work to accepting unemployment benefits. The *Times* praised Goodwin's work and described the book as a careful social-psychological study. It characterized Goodwin's findings as discovering that welfare recipients "have essentially the same work ethic and life aspirations as do employed middle-class people." However, Goodwin's 1972 research provides thin support for his counter

intuitive thesis. Interviews are not behavior; they do not show how individuals actually make decisions.

Goodwin produced a follow up study in 1983 that was explicitly written to rebut conservative critiques of welfare spending. In it he repeated his 1972 thesis and explored the question why some welfare recipients fail to end their dependency (p. 129). One reason is “low ability to command sufficient wages,” another is “length of time on welfare,” and still another is “psychological orientations related to work effort.” (p. 129) In other words, his position was that welfare recipients prefer higher wages than they command in the marketplace, the longer they remain on welfare the longer they prefer to remain on welfare, and many prefer not to work. He attempted to explain the last point with logic that is perilously close to circular: “low expectations to achieve economic independence lead to...low levels of achieved independence. These expectations are strongly and directly affected by experiences...of failure in the work world.” (pp. 129-130) He then reinforced one near circle with another: “welfare fathers who express high need for supportive services show low achievement of economic independence...” (p. 130)

Unwittingly, Goodwin supported the conservative critique of traditional welfare. Roughly speaking, he demonstrated that as economic actors should, recipients compare welfare benefits and wages in jobs and when the two are equal or nearly so, they tend to prefer welfare. Throughout both of his books Goodwin takes for granted that people unable to provide for children will nevertheless have children whose support must become the responsibility of taxpayers.

Conservatives believe that at the margins welfare induces some people who can work to not work (*WSJ* A new day of doles, 8/27/64). The only question is one of elasticity: how many people will be induced to not work by an additional dollar in welfare payments? Or, how many people will be induced to work by a reduction of one dollar in welfare payments? This view was burlesqued by the *Washington Post* (Expensive savings, 10/8/61) as a theory that if

government “squeezes the poor hard enough” they will disappear. A considerably more sophisticated version of the conservative view appeared in the *Wall Street Journal* (Kill or cure? 2/21/66). The *Journal* reviewed a study of a \$2 billion federal and state welfare program centered in Appalachia. The study was performed by the National Institute of Mental Health, an agency of the U.S. Public Health Service. It found that welfare payments were undermining recipients’ self-respect. Males’ status in their homes was subverted, and this change affected their children who tended to drop out of school. More than a quarter century later the *Post* adopted the conservative position that it has previously ridiculed when it advocated reforming welfare to change incentives to press welfare recipients to find employment (*WP Cutting Off the Poor*, 3/31/94).

By the mid-1960s liberals (perhaps helped along by conservative criticisms of the welfare state) agreed that welfare was far from perfect. The *Times* also castigated the: “cumbersome and costly investigative machinery associated with welfare.” (Mr. Nixon on the ‘New Federalism,’ 8/10/69; see also Target: the poor, 12/11/68). Another *Times* editorial (...and to end a stigma, 12/25/67) described welfare programs as costing billions of dollars and creating “a demeaning, even destructive way of life” and endorsed the Nixon negative income tax as a solution. Under this proposal individuals or families earning less than certain amounts instead of paying an income tax would receive money. This idea received its first widespread exposure in classical liberal economist Milton Friedman’s path breaking *Capitalism and Freedom* (1962, 191-195), and it was the theoretical foundation for the Earned Income Tax Credit. Friedman and other conservative and liberal supporters of the negative income tax hoped that, in addition to erasing the demeaning elements of welfare, it would eliminate the enormous bureaucracy that had developed around welfare programs.

The *Times* (...and to end a stigma, 12/25/67) described the negative income tax as being calibrated so that payments would be reduced as income increased in such a way as to not interfere with

work incentives. This justification constituted an admission that the basic logic of conservative critiques of the impact of welfare on work incentives was valid. The *Post* was also supportive. The logic used by both liberal newspapers could have come directly from Friedman (1962, 192) who explained that the negative income tax was: “directed specifically at the problem of poverty. It gives help in the form most useful to the individual, namely, cash.”

Conservatives were by no means united behind the negative income tax. Despite its classical liberal origins, the *Wall Street Journal* blasted the proposal as stifling initiative and demoralizing and alienating poor families from the rest of society (The guaranteed nightmare 1/31/66). In a similar editorial the *Journal* argued that government should provide opportunity, not income (Assault on a Shibboleth 3/17/67). *National Review* endorsed the negative income tax (The plan nobody loves, 12/15/70), but its support was conditional on the proposal replacing the welfare bureaucracy. At this time the proposal had been working its way through Congress for 19 months, but it became apparent that the negative income tax would not replace the existing system but instead merely add: “another tumor on the bulbous welfare body” and as such *National Review* turned against it.

In 1971 the *Times* expressed frustration at Congress’s failure to pass some form of Nixon’s “creative” negative income tax (which by this point was known as the guaranteed annual income) to “move away from the colossal failure that public welfare has become.” (Still stalled on welfare reform, 10/25/71) The *Times* especially liked Nixon’s goal of erasing the “invidious distinction between relief families and the working poor by putting a federal floor under family income.” (Still stalled on welfare reform, 10/25/71; see also Propping family income, 1/6/75) Moderate intellectual Daniel P. Moynihan (1973), widely described as the architect of Nixon’s negative income tax, reviewed the failure of Congress to pass it in his book *The politics of a guaranteed income*. He placed most of the blame on liberal social workers, welfare bureaucrats, and others dependent on

the status quo, and conservative supporters of the negative income tax agreed (*NR FAP autopsy*, 2/2/73). Joseph V. Hotz and John Karl Scholz (2002, 5) faulted liberals who viewed it as insufficiently generous and conservatives who regarded it as too expensive and lacking work requirements.

Conservatives and many liberals shared the theme of welfare dependency throughout most of the time period of this study, although they treated it differently. As the welfare debate matured, the *Times* laid out four major objectives for welfare reform: “minimum national benefit levels; coverage for families headed by unemployed fathers; job training for the poor who can work; and fiscal relief for hard pressed communities.” (The new realism on welfare, 11/30/78) The *Times* wrote: “The most destructive aspect of poverty for a child is the fact that for most of them adult life will not be significantly better. Unless government intervenes with decent jobs and humane benefits for this generation of poor parents, the vicious cycle of welfare dependency may never be broken.” (Another round for welfare reform, 9/8/79) A conservative would have agreed with the first sentence, but not the second.

The 1960s, 70s, and 80s were a kind of classical period of liberal-conservative debate over welfare with liberals constantly pushing for higher welfare benefits and conservatives opposing the increases. Liberals flirted with the Nixon administration’s negative income tax, but they denounced the conservative workfare initiative when it first appeared. The liberal welfare moral/value theory consisted of little more than the observation that the poor were living in tragic circumstances and should be helped and that anyone who opposed more help was a skinflint. The response to the stimulus of increased welfare spending was more welfare spending. Perhaps the most optimistic editorial of this era was the *Washington Post*’s “Progress in poverty” (2/13/66): “The Administration’s well-advertised war against poverty is, on its first year’s showing, a remarkable success. Its achievements already justify a forceful and steady expansion of its reach.” The specific nature of the War on Poverty’s success and

achievements was not revealed (see also *WP* The padded bull, 3/25/66; Poverty compounded, 12/16/66; *NYT* Yardstick of poverty, 4/20/66; Another rebuff for the city, 9/9/69; The work ethic, 11/6/72). In “After blood in Albany” (3/20/71) the *Times* issued a breath taking understatement: “Administrative practices that permit every single applicant at some intake centers to become a welfare recipient clearly need tightening.” Despite this admission, the *Times* asserted that welfare rolls and costs were rising and tax revenues had to keep pace (After blood in Albany, 3/20/71). Liberal references to tax payers shouldering this burden or better alternative uses for welfare expenditures were rare and indirect.

As welfare rolls expanded, liberals began to accept the conservative reform idea called workfare and liberals and conservatives reached what seemed for a short time to be an ideological consensus with the Family Support Act of 1988 which included programs designed to move people away from welfare and toward work. However, the program was criticized by some on the right as being a welfare program for welfare workers and by some on the left as a device for states to reduce benefits.

Another near consensus appeared to form with the passage of President Bill Clinton’s Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) that replaced Aid to Families with Dependent Children (AFDC) with Temporary Assistance for Needy Families (TANF). TANF sharply constrained the time that mothers could receive welfare before finding work, and it also established a five year limit on welfare payments. As we saw in Chapter V, liberals opposed TANF and conservatives favored it.

Workfare

We described workfare in Chapter V. This initiative was a thoughtful conservative response to the problem of increasing welfare rolls. Welfare recipients are a burden on tax payers, and their numbers may be, among other things, indicative of deep cultural problems summarized by the term underclass. In the 1960s and part of the 1970s liberals regarded workfare as a cruel imposition on the

poor, but as welfare programs expanded many liberals moved to the right. To quote again from the *Times*: “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...” (Real welfare reform, at last 10/1/88) Then the *Times*, sounding like the *Wall Street Journal* and *National Review* continued: “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.”

We saw in Chapter V that workfare is a worthwhile program aimed at improving the lot of welfare recipients and reducing their numbers. However, workfare can be costly and effectiveness varies depending on how states administer them. This is why we list workfare effectiveness as varying.

The minimum wage

We described the minimum wage in Chapter V. In Table 6.3 we characterize minimum wage advocates as thoughtless. Liberals justify government imposition of a minimum wage as necessitated by a lack of competition among what are in fact highly competitive low paying businesses such as fast food restaurants and hotels. Since this thesis lacks any empirical support, liberals concentrate on the immorality of pay levels. Liberals maintain that everyone should be offered what is often called a living wage which suggests that recipients must support themselves and perhaps a family. But large percentages of low wage workers are teenagers living with their parents or in households with two earners.

We also describe the minimum wage (or increasing the minimum wage) as ineffective and not worthwhile. Employers sometimes respond to a minimum wage increase by replacing employees with machinery thus forcing low wage workers into unemployment. For conservatives those in competitive industries are by the nature of competition paid what they are worth, and forcing businesses to pay more only hurts those who lose their jobs. The minimum wage is also ineffective if it is set below existing pay levels.

Urban renewal

We described urban renewal in considerable detail in Chapter V where we noted its dual business-economics and non business-economics characteristics. Our major emphasis in Chapter V was the ideological inconsistency displayed by liberal advocates of urban renewal. They claimed and believed that they were helping those they called slum dwellers, but in doing so they forcibly evicted them from their homes and businesses, destroyed those homes and businesses, and replaced them with either unaffordable palaces or what quickly became crime ridden ghettos. In Chapter V we also discussed how liberals neglected the business-economics element of urban renewal. The fact that urban renewal required large subsidies should have served as a signal that it was not worth doing. Instead, liberals viewed this fact as an obstacle to be overcome.

In Table 6.3 we describe urban renewal sponsors as thoughtless, and we provided ample evidence for that observation in Chapter V beginning with liberals assuming that they knew what slums were and what was best for the people who lived and worked in these so-called blighted areas. Another dimension of the thoughtlessness was the fact that large percentages of those being removed by urban renewal were minorities. In Table 6.3 we also describe urban renewal as ineffective and not worthwhile; liberals and conservatives agree that it not only failed to achieve its objectives, it often achieved the opposite of its objectives.

The troublesome initiatives that contain both business-economics and non business-economics aspects

Near the beginning of Chapter V we suggested that policy-formulation will be different for those initiatives that span the two models than it is for those that fit comfortably in one or the other. Six initiatives contain substantial elements of both models: enhancing immigration control; the Earned Income Tax Credit; Workfare; the minimum wage; urban renewal; and almost automatic support for increased welfare spending. This characteristic allows ideologues to think about an initiative using either model so that, for example,

liberals might emphasize equality while conservatives might focus on the initiative's business-economics elements. In other cases both sides think in terms of both models simultaneously. When both sides are thinking using both models it might be the case that liberals emphasize equality and conservatives order while conservatives view the market as operating correctly and liberals see market breakdown. Either way the two ideological groups talk past each other amid confusion and discord.

Immigration control is the most extreme example of confusion and fragmentation among these six initiatives or any of the 52 initiatives included in this study. This policy area has featured drastic movement by liberals and conservatives and ever changing disagreements within both sides. Ideological fragmentation is amplified by conflict between some ideologues and their usual interest group allies. Ideologues and interest groups mix JBG values and market concepts as they talk past each other along several dimensions.

Conflict over the minimum wage is a model of simplicity compared to immigration. Liberals primarily defend the minimum wage as a device to enhance quality while simultaneously ignoring the impact of the minimum wage on employers' market-based decision-making. At the same time, liberals partly justify the minimum wage as rectifying market breakdown. Meanwhile, conservatives attack the minimum wage using its impact on employers' market-based decision making (e.g., they make greater use of technology to reduce employee numbers) while arguing that employer actions hurt equality. For decades the two sides have been talking past each other almost speaking different languages.

Debates over the Earned Income Tax Credit (EITC) also feature both sides applying both models. The EITC is widely viewed as a replacement for the minimum wage and a partial substitute for welfare programs such as Aid to Families with Dependent Children. The debate over the EITC has been highly fluid. Its intellectual origin was classical liberal economist Milton Friedman's negative income

tax which was initially seen by liberals and conservatives as supplanting complex and intrusive welfare rules enforced by armies of bureaucrats and social workers. When it became clear to conservatives that EITC was not replacing existing welfare programs but adding to them, many turned against it. Conservatives also came to oppose it as a disincentive to work. Many liberals continue to favor it, but others view it as offering insufficient support for impoverished families. It is almost certain that a consensus between conservatives regarding it as a disincentive and liberals as inadequate will never be reached.

Throughout the 1960s liberals almost automatically supported increased welfare spending to aid the poor, especially women with children. Some liberals came to view the lowest levels of society (the so-called underclass) as a permanent product of market breakdown. Conservatives essentially ignored liberal equality-based arguments, viewing welfare programs as encouraging disorder in the form of unemployment, poverty, and family breakdown. As they came to do with the EITC, conservatives thought about welfare in market terms as a disincentive to work. Until many liberals began to note the increasing numbers of welfare recipients, they ignored conservative arguments or regarded them as heartless. The two sides talked past each other for many years.

Workfare became part of the welfare debate in the 1960s. Conservatives saw it as just. At least tax payers would receive something for supporting welfare recipients, and they also saw it as a way to push recipients into private sector employment. Initially, liberals viewed workfare as merely a product of conservative cruelty. Into the 1970s and 1980s liberals came to accept elements of the conservative position and accepted workfare if it could provide work training. Along the way, conservatives came to see liberal versions of workfare as little more than ways to employ social workers. Conservatives saw President Bill Clinton's welfare program as workfare with rigor, while liberals especially those associated with welfare workers hated it.

Urban renewal also combined business-economics and non business-economics. We saw above and in the previous chapter that for a time liberals essentially ignored the initiative's costliness and the damage it did to the poor it was supposed to help. Initially, conservative criticisms were little more than boiler plate rhetoric about cost and federalism. For many years the two sides not only talked past each other, one side barely spoke while the other side mumbled. This condition reflected the confused thinking by liberals and conservatives. Ultimately, urban renewal's failure became so obvious that both sides recognized it.

Chapter Conclusions

Objectively determining whether the moral/value theory supporting an initiative is thoughtful is relatively easy although admittedly our standard is low. Often, objectively gauging whether a policy theory is thoughtful is also relatively straightforward because liberals and conservatives agree on the question. However, sometimes liberal-conservative agreement on policy theory thoughtfulness requires many years to form as one or both sides move toward the other.

Two of our characterizations of policy theory thoughtfulness or thoughtlessness may arouse reader disagreement. One is our labeling liberals supporting the minimum wage as thoughtless. But there is little or no theoretical or empirical reason to believe that a government can raise wages by fiat and accomplish anything except to reduce employment among the least essential (and least able to defend themselves) in a workforce and generate other market dislocations. The only way that an increase in the minimum wage can do no harm is if it is set below the lowest current pay levels. In other words, an increase will not cause the unemployment of vulnerable workers if it is ineffective.

Some readers may also disagree with our description of the liberal moral/value theory and policy theory for affirmative action as thoughtless. In Chapter V we also described it as ideologically inconsistent. There is no liberal-conservative consensus on these

points. Conservatives will agree with us and most liberals will not. Nevertheless, with little apparent consideration liberals turned their back on a long standing support of equality before law in favor of racial discrimination. Nor, apparently, did they think about the continuing damage produced by government-endorsed discrimination.

We anticipate little disagreement with our assessments of initiative effectiveness if only because liberals and conservatives largely agree if only in the sense that, for example, conservatives register agreement that abortion rights are effective by continuing to oppose them energetically. Our assessments of whether initiatives are worthwhile contain 14 “disagreement” entries in our tables. This is not surprising since whether a policy is worthwhile is the heart of political conflict between ideologues.

Moving past the difficulties of objectively determining whether initiative sponsors are thoughtful and whether the products of their efforts are effective or worthwhile, it is heartening to observe the thoughtfulness, sometimes in the form of conflict, that went into the formulation of many initiatives. Even better, many thoughtfully developed initiatives are effective and worthwhile and others effective with at least ideologues on one side or the other regarding them as worthwhile. In Chapter VII, the last chapter, we try to understand how this positive result arises. On the other hand, there are by our count nine thoughtlessly developed and ineffective initiatives that are not worthwhile, and four more that were thoughtlessly developed and ineffective with disagreement on whether they are worthwhile. This totals 13 defective initiatives or 25 percent of the 52 initiatives examined in this study. Even allowing for our problematic categories (separating initiatives that readers would combine or combining initiatives that readers would separate) this assemblage accounts for substantial waste and damage to the political system and the economy. In the next chapter we will try to understand what patterns of policy-formulation lead to the sponsorship and enactment of these harmful initiatives, and how similar mistakes can be avoided in the future.

References

- Adelman, M. A. 1997. My education in mineral (especially oil) economics. *Annual Review of Energy & the Environment*. 22: 13-46.
- Adler, J. H. 1992. Clean fuels, dirty air: how a (bad) bill became law. *The Public Interest*. 6/1/92: 116-131.
- Aepfel, T. 1994. Legal swamp: Superfund site spawns a spate of litigation, though not a cleanup—residents cite health woes and oppose incinerator to burn the pollutants—passing around the liability. *Wall Street Journal*. 2/9/93, A1.
- Anderson, M. 1964. *The federal bulldozer: A critical analysis of Urban Renewal, 1949-1962*. Cambridge, MA: MIT Press.
- Anderson, S. P. & W. W. Wilson. 2008. Spatial competition, pricing, and market power in transportation: A dominant firm model. *Journal of Regional Science*. 48: 367-397.
- Andreas, P. 1998. The escalation of U.S. immigration control in the post-NAFTA era. *Political Science Quarterly*. 113: 591-616.
- Andrews, E. L. 2009. Bailout set to ride off into sunset. *New York Times*. 9/11/09, B1.
- Applebome, P. 2012. In Westchester County, doubts about commitment to housing deal. *New York Times*. 4/4/2010, 18.
- Armentano, D. T. 1998. Or broken trust? *National Review*. 5/4/98, 44-45.
- Armour, S., A. R. Johnson, & R. Copeland. 2014. Home loans find new hands—mortgage servicing shifts to nonbank firms, fueling concern among regulators. *Wall Street Journal*. 3/10/14, C1.
- Arno, P. S., N. Sohler, D. Viola, & C. Schechter. 2009. Bringing health and social policy together: The case of the earned income tax credit. *Journal of Public Health Policy*. 30: 198-207.
- Arp, W. III. 1990. The exclusion of illegal Hispanics in agenda-setting: The Immigration Reform and Control Act of 1986. *Policy Studies Review*. 9: 327-338.
- Arrow, K. J. & J. P. Kalt. 1979. *Petroleum price regulation: Should we decontrol?* Washington, DC: American Enterprise Institute for

Public Policy Research.

- Athreya, K. B., D. Reilly, & N. B. Simpson. 2010. Earned income tax credit recipients: Income, marginal tax rates, wealth, and credit constraints. *Federal Reserve Bank of Richmond Economic Quarterly*. 96: 229-258.
- Atkins, P., M. McWatters, & K. Troske. 2011. TARP was no win for the taxpayers. *Wall Street Journal*. 3/17/11, A19.
- Atkinson, R. D. 2016. Four myths about trade. *NR*. 9/12/16., 20-21.
- Back, A. 2016. Wells Fargo's questionable cross-selling strategy. *WSJ*. 9/9/16.
- Bailey, M. J. H. & B. S. Cooper. 2009. The introduction of religious charter schools: A cultural movement in the private school sector. *Journal of Research on Christian Education*. 18: 272-289.
- Baines, A. P. & M. J. Courchane. 2014. Fair lending: Implications for the indirect auto finance market. Charles River Associates. 11/19/14.
- Baker, A. J. 2004. Agricultural guestworker programs in the United States. *Texas Hispanic Journal of Law & Policy*. 10: 79-114.
- Banks, W. C. 2010. Programmatic surveillance and FISA: Of needles in haystacks. *Texas Law Review*. 88: 1633-1667.
- Barber, B. R. 2011. Toward a fighting liberalism. *The Nation*. 11/7/11, 20-23.
- Barofsky, N. M. 2011. Where the Bailout Went Wrong. *New York Times*. 3/30/11, A27.
- Barr, J. M., A. R. Sadovnik, & L. Visconti. 2006. Charter schools and urban education improvement: A comparison of Newark's district and charter schools. *The Urban Review*. 38: 291-311.
- Barrilleauz, C. & P. Brace. 2007. Notes from the laboratories of democracy: State government enactments of market- and state-based health insurance reforms in the 1990s. *Journal of Health Politics, Policy and Law*. 32: 655-683.
- Baskoy, T. 2003. Thorstein Veblen's theory of business competition. *Journal of Economic Issues*. 37: 1121-1137.

- Baumol, W. J. & J. A. Ordover. 1994. Use of antitrust to subvert competition. In R. F. Himmelberg (Eds.), *Evolution of antitrust policy from Johnson to Bush* (9-27). New York: Garland.
- Bennett, P., H. Cole, & S. Dym. 1980-81. Oil price decontrol and beyond. *Federal Reserve Bank of New York Quarterly Review*. 5 (Winter): 36-41.
- Berns, W. 1993. Learning to live with sex and violence. *National Review*. 11/1/93. html version, no page numbers.
- Bethell, T. 1983. Immigration and the economy. *National Review*. 7/7/83, 802.
- Beverly, S. G. 2002. What social workers need to know about the Earned Income Tax Credit. *Social Work*. 47: 259-266.
- Bickle, H. W. 1904. The Northern Securities Decision. *The American law register (1898-1907)*. 52: 358-380.
- Bingham, R. D. 1975. *Public housing and urban renewal: An analysis of federal-local relations*. New York: Praeger.
- Black, D. A. & D. S. Nagin, 1998. Do right-to-carry laws deter violent crime? *Journal of Legal Studies*. 27: 209-19.
- Blanch Law Firm. 2009. Famous antitrust cases. www.hg.org/article.asp?id=6025. Accessed 11/6/12.
- Bodenheimer, T. 2008. High and rising health care costs. In C. Harrington & C. L. Estes (Eds.), *Crisis and reform in the U.S. health care delivery system*. (266-274). Sudbury, MA: Jones & Bartlett.
- Bohte, J. 2004. Examining the impact of charter schools on performance in traditional public schools. *The Policy Studies Journal*. 32: 501-520.
- Bork, R. H. 1971. Neutral principles and some First Amendment Problems. *Indiana Law Journal*. 47: 1-35.
- Bork, R. H. 1978. *The antitrust paradox*. New York: Free Press.
- Bork, R. H. 2000. Against Microsoft. *National Review*. 2/7/00, 25-38.
- Bratton, W. J. 2015. Broken windows and quality-of-life policing in

- New York City. New York City Police Department.
- Breit, W. & K. G. Elzinga. 1989. *The antitrust casebook: Milestones in economic regulation*. Chicago: The Dryden Press.
- Brenner, S. & N. J. Caste. 2003. Granting the suffrage to felons in prison. *Journal of Social Philosophy*. 34: 228-243.
- Brighouse, H. 2002. A modest defense of school choice. *Journal of Philosophy of Education*. 36: 653-659.
- Brown, C., C. Gilroy, & A. Kohen. 1982. The effect of the minimum wage on employment and unemployment. *Journal of Economic Literature* 20: 487-528.
- Brown, C., C. Gilroy, & A. Kohen. 1983. Time series evidence of the effect of the minimum wage on youth employment and unemployment. *Journal of Human Resources*. 18: 3-31.
- Buckley, W. F., Jr. 2001. Porn, pervasive presence. *National Review*. 11/19/2001, 38-44.
- Buckley, W. F., Jr. 1999. Whose side are we on? *National Review*. 12/6/1999, 74.
- Bunn, C. 1949. The national law of unfair competition. *Harvard Law Review*. 62: 989-1001.
- Burkhauser, R. V. & T. A. Finegan. 1989. The minimum wage and the poor: The end of a relationship. *Journal of Policy Analysis and Management*. 8: 53-71.
- Burkhauser, R. V. & T. A. Finegan. 1993. The economics of minimum wage legislation revisited. *CATO Journal*. 13: 123-129.
- Burnham-Howard, C. E. Building on brownfields. *Journal of Professional Issues in Engineering Education and Practice*. 130: 212-225.
- Callahan, D. 1970. *Abortion: Law, choice and morality*. New York: Macmillan.
- Calomiris, C. W. & A. H. Meltzer. 2014. How Dodd-Frank doubles down on “too big to fail.” *Wall Street Journal*. 2/13/14, A13.
- Card, D. & A. B. Krueger. 1994. Minimum wages and employment: A case study of the fast-food industry in New Jersey and

- Pennsylvania. *American Economic Review*. 84: 772-93.
- Card, D. & A. B. Krueger. 1995. *Myth and measurement—the new economics of the minimum wage*. Princeton: Princeton University Press.
- Carter, G. L. 1997. *The gun control movement*. New York: Twayne.
- Cass, Oren. 2014. Fight the dragon. *NR*. 6/23/14, 30-35.
- Cassel, P. G. 1998. Handcuffing the cops: *Miranda's* harmful effects on law enforcement. Dallas, TX: National Center for Policy Analysis. Report #218.
- Caves, R. E. 1962. *Air transport and its regulators*. Cambridge, MA: Harvard University Press.
- Center for Research on Education Outcomes (CREDO). 2009a. *Multiple choice: Charter school performance in 16 states*. Stanford, CA: CREDO.
- Center for Research on Education Outcomes (CREDO). 2009b. Fact vs. fiction: An analysis of Dr. Hoxby's misrepresentation of CREDO's research. Stanford, CA: CREDO.
- Chauhan, P., M. Cerda, S. F. Messner, M. Tracy, K. Tardiff, & S. Galea. 2012. Race/ethnic-specific homicide rates in New York City: Evaluating the impact of broken windows policing and crack cocaine markets. *HHS Public Access. U.S. National Library of Medicine, National Institutes of Health*. 15: 268-290. No page numbers on-line.
- Chen, J. & D. Cottrell. 2016. Evaluating partisan gains from congressional gerrymandering: Using computer simulations to estimate the effect of gerrymandering in the U.S. House. *Electoral Studies*. 44: 329-340.
- Childress, V. 2011. Energy decisions: Is solar power the solution? *Technology and Engineering Teacher*. 2/1/2011, 9-14. [Page numbers may be incorrect—pdf was flawed.]
- Christy, L. C. & P. W. Coogan. 1969. Family relocation in Urban Renewal. *Harvard Law Review*. 82: 864-907.
- Churchill, M. C. 1974. Mental patients' rights an issue. *New York Times*. 4/14/74, 71.

- Civil Engineering*. 2005. EPA sees strong demand for remediation, but court decision clouds voluntary cleanups. February: 12-13.
- Clouser, K. D. 1973. "The sanctity of life": An analysis of a concept. *Annals of Internal Medicine*. 78: 119-125.
- Clymer, A. 1992. Family-leave bill sent to president. *New York Times*. 9/11/92, A26.
- Cogan, J., R. G. Hubbard, & D. Kessler. 2005. *Healthy, wealthy, and wise*. Washington, DC: The AEI Press.
- Congressional Budget Office. 2012. Report on the Troubled Asset Relief Program—October 2012.
- Cook, P. J. 2001. The technology of personal violence. In Lee Nisbet (Ed.), *The gun control debate: You decide* (243-273). Amherst, NY: Prometheus.
- Cook, P. J. 1979. The effect of gun availability on robbery and robbery murder: A cross section study of fifty cities. *Policy Studies Review Annual*. 3: 743-781.
- Cook, P. J., M. H. Moore, & A. A. Braga. 2000. *Gun control*. John Kennedy School of Government Harvard University Faculty Research Working Papers Series. In J. Q. Wilson and J. Petersilia (Eds.), *Crime and public policy* (263-267). 2011. Cambridge: Oxford University Press.
- Cooley, A. 2006. Reevaluating the politics and research of school choice. *Educational Studies*. 12/1: 246-264.
- Corkery, M. 2016. Wells Fargo fined \$185 million for fraudulently opening accounts. *NYT*. 9/8/16.
- Cross, A. P. 2015. The "repeal" of the swaps push-out rule: A Q&A for the buy-side. *Derivatives & Repo Report*. 1/16/15.
- Curran, W. J., S. M. Hyg, & L. I. Boden. 1981. Occupational health values in the Supreme Court: Cost-benefit analysis. *American Journal of Public Health*. 71: 1264-1265.
- Dale, C. V. 2005. Affirmative action revisited: A legal history and prospectus in J. Peterson (Ed.), *Affirmative action: Federal laws, regulations and legal history 1-86*. New York: Novinka.
- Daley, D. M. & D. F. Layton. 2004. Policy implementation and the

- Environmental Protection Agency: What factors influence remediation at Superfund sites? *Policy Studies Journal*. 32: 375-392.
- Daniloff, R. 1979. What's behind the green door? *Washington Post*. 3/25/79, 11.
- Davies, S. 2013. Making the most of it. *Engineering & Technology*. March 2013: 52-55.
- Dawson-Edwards, C. 2008. Enfranchising convicted felons: Current research on opinions towards felon voting rights. *Probation and Parole: Current Issues*. No volume number: 13-30.
- Debray-Pelot, E. H. School choice and educational privatization initiatives in the 106th and 107th Congresses: An analysis of policy formation and political ideologies. *Teachers College Record*. 109: 927-972.
- Deconde, A. 2001. *Gun violence in America*. Boston, MA: Northeastern University Press.
- De Marchi, N. 1975. The first Nixon administration: Prelude to controls. In C. D. Goodwin (Ed.), *Exhortation and controls* (295-352). Washington, DC: Brookings.
- Deneckere, R., H. P. Marvel, & J. Peck. 1997. Demand uncertainty and price maintenance: Markdowns as destructive competition. *The American Economic Review*. 87: 619-641.
- Derthick, M. 1979. *Policymaking for Social Security*. Washington, DC: Brookings.
- Dezhbakhsh, H. & P. H. Rubin. 1998. Lives saved or lives lost—the effects of concealed-handgun laws on crime. *American Economic Review*. 88: 468-474.
- Dickinson, T. 2013. How the GOP rigs the game. *Rolling Stone*. 11/21/13.
- Dionne, E. J. Jr. 1998. A new progressive era. *National Civic Review*. 87: no page numbers in HTML version. Downloaded 5/4/11.
- Dorman, P. 2001. Maternity and family leave policies: A comparative analysis. *The Social Science Journal*. 38: 189-201.

- Douglas, G. W. & J. C. Miller, III. 1974. *Economic regulation of domestic air transport: Theory and policy*. Washington, DC: Brookings.
- Draper, R. 2012. The league of dangerous mapmakers. *The Atlantic*. 10/12.
- Durand, J., D. S. Massey, & R. M. Zenteno. 2001. Mexican immigration to the United States: Continuities and changes. *Latin American Research Review*. 36: 107-127.
- Dwyer, J. 2013. Police stops are down; So is murder. *NYT*. 2/6/13.
- Eavis, P. 2016. A Dodd-Frank financial watchdog still growls, on a slightly tighter leash. *New York Times*. 4/1/16, B5.
- Eavis, P. 2014. U.S. regulators approve eased mortgage lending rules. *New York Times*. 10/22/14, B3.
- Eilperin, J. 2009. In the trenches on climate change, hostility among foes. www.washingtonpost.com. 11/22/09, accessed 8/30/12.
- Eisinger, Jesse. 2014. Tough talk on Dodd-Frank rules misses relevant points. *New York Times*. 10/9/14, B5.
- Eissa, N. & H. Hoynes. 2004. Taxes and the labor market participation of married couples: The Earned Income Tax Credit. *Journal of Public Economics*. 88: 1, 931-58.
- Eissa, N. & H. Hoynes. 2009. Redistribution and tax expenditures: The Earned Income Tax Credit. Paper prepared for the conference on Incentive and Distributional Consequences of Tax Expenditures, March 27-29, 2008, Bonita Springs, Florida.
- Ellig, J. & K. Kelly. 2002. Competition and quality in deregulated industries: Lessons for the education debate. *Texas Review of Law & Politics*. 6: 335-397.
- Enlow, R C & L T. Ealy (Eds.). 2006. *Liberty and learning: Milton Friedman's voucher idea at fifty*. Washington, D.C.: The Cato Institute.
- Epstein, R. A. 1999. Microsoft, macro-screwed. *National Review*. 12/6/99, 30-32.
- Evans, K., K. Maher, & T. Aeppel. 2008. U.S. suffers biggest jobs drop in 5 years as downturn spreads. *Wall Street Journal*. 4/5/08,

A1.

- Fagan, J. 2012. Report for United States District Court, Southern District of New York in David Floyd et al. v. City of New York et al.
- Feldman, S. 2003. Reflections on the 40th anniversary of the US Community Mental Health Centers Act. *Australian and New Zealand Journal of Psychiatry*. 37: 662-667.
- Finkle, V. 2016. Republicans unveil a plan to dismantle Dodd-Frank. *New York Times*. 6/8/16, B3.
- Finn, C. E., Jr. 2006. All aboard the charters? *National Review*, 10/9/06, 54-55.
- Fishbein, E. 1994. The failure of Superfund, and the flawed plan to fix it. *Washington Post*. 4/22/94, A25.
- Fisher, J. D. 2010. The demise of cost-benefit analysis in OSHA standards: American Textile Manufacturers Institute v. Donovan. *Golden Gate University Law Review*. 12: 448-472.
- Fishlow, A. 1996. Internal transportation in the Nineteenth and early Twentieth Centuries. In S. L. Engerman & R. E. Gallman (Eds.), *The Cambridge economic history of the United States* (543-642). Cambridge, UK: Cambridge University Press.
- Fleischer, R. J. 2005. Statement delivered to the Joint Committee on Election Laws of the Massachusetts General Court on 19 July 2005. <http://home.tiac.net/~rjf/Computers-and-Elections.html>.
- Foskett, K. 2007. Farm fiasco. *The IRE Journal--Atlanta Journal-Constitution*. March/April 2007, 19-22.
- Foster, J.D. 1988. A better alternative to a higher minimum wage. *Wall Street Journal*. 3/3/88, 1.
- Foster, S. S. 2002. School choice and social injustice: A response to Harry Brighouse. *Journal of Philosophy of Education*. 36: 291-308.
- Fowler, F. C. 2002. The great school debate. *Clearinghouse*. 76: 4-7.
- Francis, S. 2014. Has “stop and frisk” been stopped? *ABA Journal*. 100: no page numbers in Internet version.

- Frosch, D. 2008. Vote results are mixed on a ban on preferences. *New York Times*. 11/8/08, A19.
- Gans, H. J. 1965. The failure of urban renewal. *Commentary*. 39: 29-37.
- Garrow, D. J. 2001. Privacy and the American Constitution. *Social Research*. 68: 55-82.
- Gellhorn, E. 1994. Climbing the antitrust staircase. In R. F. Himmelberg (Ed.), *Evolution of antitrust policy from Johnson to Bush* (119-357). New York: Garland.
- Gigot, P. 1989. Are the Democrats now coming to their senses? *Wall Street Journal*. 10/6/89, 1.
- Glazer, E. 2016. Wells Fargo hit with \$185 million penalty over account openings and employee incentives. *Wall Street Journal*. 9/9/16. START
- Godwin, R. K., S. M. Leland, A. D. Baxter, & S. Southworth. 2006. Sinking Swann: Public school choice and the resegregation of Charlotte's public schools. *Review of Policy Research*. 23: 983-997.
- Goertzel, T. 2002. Myths of murder and multiple regression. *Skeptical Inquirer*. January-February: 19-21.
- Goldsborough, J. 2000. Out-of-control immigration. *Foreign Affairs*. 79: 89-101.
- Goodwin, L. 1972. *Do the poor want to work? A social-psychological study of work orientations*. Washington, DC: Brookings.
- Goodwin, L. 1983. *Causes and cures of welfare: New evidence on the social psychology of the poor*. Lexington, MA: Lexington Books.
- Gotham, K. F. 2000. Growth machine up-links: Urban Renewal and the rise and fall of a pro-growth coalition in a U.S. city. *Critical Sociology*. 26: 269-300.
- Government Accountability Office. 2009. Fannie Mae and Freddie Mac: Analysis of options for revising the housing enterprises' long-term structures. Statement of William B.

- Shear, Director Financial Markets and Community Investment. Washington, DC.
- Graham, H. D. 2002. *Collision course: The strange convergence of affirmative action and immigration policy in America*. New York: Oxford University Press.
- Gratz, R. B. 2002. Renewing urban renewal. *The Nation*. June 3: 36-39.
- Gray, C. B. 2000. The search for an intelligible principle: Cost-benefit analysis and the nondelegation doctrine. *Texas Review of Law & Politics*. 5: 1-47.
- Gray, N. L. 2012. School choice and achievement: The Ohio charter school experience. *Cato Journal*. 32: 557-579.
- Greenberg, M. R. & J. Hollander. 2006. The Environmental Protection Agency's brownfields pilot program. *American Journal of Public Health*. 96: 277-281.
- Greenhouse, L. 1986. Congress; Of rocking the cradle and the legislative boat. *New York Times*. 7/3/86, B6.
- Greer, G. & A. H. Hansen. 1941. *Urban redevelopment and housing: A program for post-war*. Washington, DC: National Planning Association, Planning Pamphlets No. 10.
- Grosswald, B. & A. E. Scharlach. 1999. Employee experiences with family and medical leave: A case study. *Community, Work & Family*. 2: 187-203.
- Gygi, O. 1978. Exit fees. *National Review*. 2/7/78, 10.
- Hackman, M., S. Armour, & S. Hughes. 2017. Lawmakers debate fate of Medicaid. *Wall Street Journal*. 3/11/17.
- Hadwiger, D. F. 1985. Perspectives on agricultural policy. *Policy Studies Review*. August, 5: 17-19.
- Halderman, J. Alex. 2016. Want to know if the election was hacked? Look at the ballots. <https://medium.com>.
- Hall, R. E. & R. S. Pindyck. 1977. The conflicting goals of national energy policy. *The Public Interest*. 32: 3-15.
- Hamilton, M. M. 1990. Passing the buck on toxic cleanup; lenders

- increasingly held liable for hazards on foreclosed sites. *Washington Post*. 7/6/90, C1.
- Hansen, R. L. 2013. Voter suppression's new pretext. *New York Times*. 11/16/13.
- Harney, K. R. 1994. Freddie Mac comes to the rescue of delinquent homeowners. *Washington Post*, 2/26/94, E3.
- Harrington, M. 1962. *The other America: Poverty in the United States*. New York: Macmillan.
- Harrison, D. & S. Harris. 2017. Trump administration officials defend GOP health bill amid party disagreement. *Wall Street Journal*. 3/12/17.
- Helbling, H. H. & J. E. Turley. 1975. Oil price controls: A counterproductive effort. *Federal Reserve Bank of St. Louis*. November: 2-6.
- Helper, S. & F. Collopy. 2009. Alternative auto industry bailout. *BusinessWeek Online*. 5/5/09. No page numbers.
- Henigan, D. A. 1991. Arms, anarchy and the Second Amendment. *Valparaiso University Law Review*. 26: 107-129.
- Hensarling, J. 2015. After five years, Dodd-Frank is a failure. *Wall Street Journal*. 7/20/15, A15.
- Hicks, J. 2016. Maryland moves forward with online voting despite warnings from cyber-experts. *Washington Post*. 9/29/16.
- Higgs, R. 2010. Cumulating policy consequences, frightened overreactions, and the current surge of government's size, scope, and power. *Harvard Journal of Law & Public Policy*. 33: 533-556.
- Hill, G. 1965. Day of alien labor over, Wirtz tells coast farmers. *New York Times*, 3/29/65, 1, 26.
- Hillebrand, G. 1981. The application of antitrust law to telecommunications. *California Law Review*. 69: 497-526.
- Hillman, B. S. 2008. Is there a place for religious charter schools? *The Yale Law Journal*. 118: 554-599.

- Hiltzik, M. 2016. A conservative federal judge takes an overheated slap at the Consumer Financial Protection Bureau. *Los Angeles Times*. 10/12/16.
- Hilzenrath, D. S. 2004. Deep political support often blunted efforts to step up regulation. *Washington Post*, 12/20/04.
- Hofstadter, R. 1970. America as a gun culture. *American Heritage*. October: 4-10, 82-85.
- Holahan, J. & J. W. Cohen. 1986. *Medicaid: The trade-off between cost containment and access to care*. Washington, DC: Urban Institute Press.
- Holmes, T. J. & J. A. Schmitz, Jr. 2001. Competition at work: Railroads vs. monopoly in the U.S. shipping industry. *Quarterly Review* (Federal Reserve Bank of Minneapolis). Spring, 3-29.
- Holusha, J. 1995. E.P.A. helping cities to revive industrial sites. *New York Times*. 12/4/95, A1.
- Hopkins, T. 1996. Cost-benefit paralysis. *National Review*. 9/2/96, 69-70.
- Horowitz, M. J. 1988. Dukakis as scofflaw in the Massachusetts gerrymander. *WSJ*. 9/12/88.
- Horwitz, R. B. 1986. Understanding deregulation. *Theory and Society*. 15: 139-174.
- Horwitz, S. 2016a. Closely watched North Carolina voter-ID trial gets underway. *Washington Post*. 1/26/16.
- Horwitz, S. 2016b. Getting photo ID a challenge for many would-be voters. *Washington Post*. 5/24/16.
- Horwitz, S. 2016c. Battleground states still fighting over voting laws, potential Election Day confusion. *Washington Post*. 10/25/16.
- Hotz, V. J. & J. K. Scholz. 2002. The Earned Income Tax Credit. Cambridge, MA: National Bureau of Economic Research. www.ssc.wis.edu/~schd2/Research/EITC_Survey.pdf.
- Hovenkamp, H. 1989. The antitrust movement and the rise of industrial organization. *Texas Law Review*. November 68:

105-67.

- Howe, K. R. & K. G. Welner. 2002. School choice and the pressure to perform: Deja Vu for children with disabilities? *Remedial and Special Education*. 23: 212-221.
- Hoxby, C. M. 2009. A serious statistical mistake in the CREDO study of charter schools. Stanford University and NBER.
- Hughes, B. 1986. The first two oil shocks: Policy response and effectiveness. *Policy Studies Review*. 5: 722-741.
- Institute for Energy Research. 2015. Levelized cost of new electricity generating technologies.
- Jacoby, N. L. & M. Squire. 2012. Family and Medical Leave Act potpourri: Proposed rules and recent case law. *Employee Relations Law Journal*. 38: 3-35.
- Jaffa, H. V. 1989. A right to privacy? *National Review*. 3/24/89, 51-52.
- Jenkins, Jr., H. W. 2009. The financial markets and fear itself. *Policy Review*. June & July: 3-13.
- Johnson, R. S. & C. F. Runge. 2007. Ethanol: Train wreck ahead? *Issues in Science and Technology*. Fall: 25-30.
- Jones, S. L. 1975. The lessons of wage and price controls. In J. Kraft and B. Roberts (Eds.), *Wage and price controls* (1-10). New York: Praeger.
- Jordan, W. A. 1970. *Airline regulation in America: Effects and imperfections*. Baltimore: Johns Hopkins University Press.
- Kaiser Commission on Medicaid and the Uninsured. 2008. Medicaid and the uninsured. In C. Harrington & C. L. Estes (Eds), *Health policy* (88-91). Sudbury, MA: Jones & Bartlett.
- Kaiser Family Foundation. Undated. Resources on the Medicare Prescription Drug Benefit. www.kff.org. Accessed on the Internet, 9/1/11.
- Kaiser Family Foundation. 2008. Medicare at a glance. In C. Harrington & C. L. Estes (Eds.), *Health policy* (305-310). Sudbury, MA: Jones & Bartlett.

- Kalt, J. P. 1981. *The economics and politics of oil price regulation*. Cambridge, MA: MIT Press.
- Karch, A., C. M. McConaughy, & S. M. Therault. 2007. The legislative politics of congressional redistricting commission proposals. *American Politics Research*. 35: 808-825.
- Kaysen, C. & D. Turner. 1959. *Antitrust policy: An economic and legal analysis*. Cambridge: Harvard University Press.
- Kearney, H. R. 1979. Feminist challenges to the social structure and sex roles. *Psychology of Women Quarterly*. 4: 16-31.
- Keating, L. 2000. Redeveloping public housing: Relearning urban renewal's immutable lessons. *American Planning Association*. 66: 384-397.
- Keller, M. 1981. The pluralist state: American economic regulation in comparative perspective, 1900-1930. In T. K. McCraw (Ed.), *Regulation in perspective* (56-94). Cambridge, MA: Harvard University Press.
- Keller, M. 1990. *Regulating a new economy*. Cambridge, MA: Harvard University Press.
- Kelling, G. L. & J. Q. Wilson. 1982. Broken windows. *Atlantic Monthly*. March: no pages in Internet version.
- Kenneth, L. & J. Anderson. 1975. *The gun in America: The origin of a national dilemma*. Westport, CN: Greenwood Press.
- King, C. 2015. The troubling rise in D.C. youth crime. *Washington Post*. 10/4/15.
- Killias, M. 1990. Gun ownership and violent crime: The Swiss experience in international perspective. *Security Journal*. 3: 169-174.
- Kleck, G. 2001a. Ideology, politics, and propaganda. In L. Nisbet (Ed.), *The gun control debate: You decide* (75-94). Amherst, NY: Prometheus.
- Kleck, G. 2001b. Guns and violence. In L. Nisbet (Ed.), *The gun control debate: You decide* (274-301). Amherst, NY: Prometheus.
- Kleck, G. 2001c. International comparisons and the Killias

- research. In L. Nisbet (Ed.), *The gun control debate: You decide* (331-334). Amherst, NY: Prometheus.
- Kling, A. 2009/2010. The root of the financial crisis. *Policy Review*. 21: 21-33.
- Konczal, M. 2013. Does Dodd-Frank work? We asked 16 experts to find out. *Washington Post*. 7/20/13.
- Kosters, M. H. 1975. *Controls and inflation: The economic stabilization program in retrospect*. Washington, DC: American Enterprise Institute.
- Kovacevich, R. 2014. The financial crisis: Why the conventional wisdom has it all wrong. *Cato Journal*. 34: 541-556.
- Kovacic, W. E. 1994a. Failed expectations: The troubled past and uncertain future of the Sherman Act as a tool for deconcentration. In R. F. Himmelberg (Ed.), *Evolution of antitrust policy from Johnson to Bush* (229-274). New York: Garland.
- Kovacic, W. E. 1994b. *The antitrust paradox revisited: Robert Bork and the transformation of modern antitrust policy*. In R. F. Himmelberg (Eds.), *Evolution of antitrust policy from Johnson to Bush* (275-333). New York: Garland.
- Kovacic, W. E. & C. Shapiro. 1999. Antitrust policy: A century of economic and legal thinking. Competition Policy Center, University of California, Berkeley, Working Paper No. CPC99-09. Accessed on the Internet 2/18/10.
- Krauthammer, C. 2009. Obama's ultimate agenda. *Washington Post*. 4/3/09, A19.
- Kreith, F. 2012. Bang for the buck. *Mechanical Engineering*. 5/2012, 27-31.
- Krikorian, M. 2011. To reform immigration, legal and illegal. *National Review*. 8/15/11: 36-37.
- Krikorian, M. 2016. Two immigration priorities. *National Review*. 12/19/16, 18-20.
- Krugman, P. 2009. The big squander. *New York Times*. 11/20/09, A35.

- Krugman, P. 2013. Raise that wage. *New York Times*. 2/18/13, A17.
- Kupiec, P. H. 2014. The way is clear for three easy Dodd-Frank fixes. *Wall Street Journal*. 11/6/14, A17.
- Labby, D. H. (Ed.). 1968. *Life or death: Ethics and options*. Seattle & London: University of Washington Press.
- Land, K. C. & M. Felson. 1981. Sensitivity analysis of arbitrarily identified simultaneous- equation models. In P.V. Marsden. (Ed.), *Linear models in social research* (155-177). Beverly Hills, CA: Sage.
- Lee, G. 1996. Toxic waste dump awaits cleanup as government fights over tools; Hill Republicans, EPA in tug of war on power of "Superfund" law. *Washington Post*. 5/25/96, A3.
- Leiter, S. & W. M. Leiter. 2002. *Affirmative action in anti-discrimination law and policy*. Albany: State University of New York Press.
- Levin, H. M. 1983. *Cost-effectiveness: A primer*. Beverly Hills, CA: Sage.
- Levine, M.E. 1965. Is regulation necessary? California air transportation and national regulatory policy. *Yale Law Journal*. 74: 1416-1447.
- Levin-Waldman, O. M. 1998. Exploring the politics of the minimum wage. *Journal of Economic Issues*. 32: 773-802.
- Lewin, T. 2006. Michigan rejects affirmative action, and backers sue. *New York Times*. 11/9/06, 16.
- Lewyn, M. 1994. Going after Microsoft. *National Review* 1/24/94, 30-38.
- LeBreglio, K. 2004. The Border Security and Immigration Improvement Act: A modern solution to a historic problem? *St. John's Law Review*. 78: 933-963.
- Lincicome, S. 2016. The truth about trade. *NR*. 4/11/16, 27-30.
- Lindzen, R. S. 1990. Some coolness concerning global warming. *Bulletin American Meteorological Society*. 71: 288-299.

- Lindzen, R. S. 2009. The climate science isn't settled. *Wall Street Journal*. 12/1/09, A19.
- Litan, R. 2016. Obamacare's inherent weakness, and four options for health care moving forward. *Wall Street Journal*. 8/21/16.
- Loebs, S. F. 1979. Medicaid: A survey of indicators and issues. In D. Spiegel (Ed.), *The Medicaid experience* (5-19). Germantown, MD: Aspen Systems.
- Loomis, S. R., J. P. Rodriguez, J. Honeycutt, & M. , M. Arella 2006. Public-private convergence and the special case of voucher-receiving schools. *London Review of Education*. 4: 239-252.
- Lott, J. R., Jr. 2000. *More guns, less crime: Understanding crime and gun control laws*. Chicago: University of Chicago Press.
- Lott, J. R., Jr. & D. B. Mustard. 1997. Crime, deterrence, and right to carry concealed handguns. *Journal of Legal Studies* 26: 1-68.
- Lovich, J. E. & J. R. Ennen. 2011. Wildlife conservation and solar energy development in the Desert Southwest, United States. *BioScience*. 61: 982-992.
- Lowry, R. 1996. Second chance. *National Review*. 11/25/96, 57-60.
- Ludwig, J. & P. J. Cook. 2000. *Gun violence: The real costs*. New York: Oxford University Press.
- MacIver, M. A. & D. J. MacIver. 2006. Which bets paid off? Early findings on the impact of private management and K-8 conversion reforms on the achievement of Philadelphia students. *Review of Policy Research*. 23: 1077-1093.
- MacDonald, J., J. Fagan, & A. Geller. 2016. The effects of local police surges on crime and arrests in New York City. *PLOS One*. 6/16/16: 1/1-1/13.
- Malina, M. 1987. Some thoughts on monopoly, markets, and mergers. *California Law Review*. 75: 997-1003.
- Marcuse, P. 2001. The liberal/conservative divide in the history of housing policy in the United States. *Housing Studies*. 16:

- 717-736.
- Markoff, J. 1997. Judge's ruling is a setback for Microsoft. *New York Times*. 12/12/97, 1.
- Martens, B. 2009. A political history of affordable housing. *Journal of Housing and Community Development*. 66: 6-12.
- Martin, P. L. & M. S. Teitelbaum. 2001. The mirage of Mexican guest workers. *Foreign Affairs*. 80: 117-131.
- Mathews, J. 1994. Today's special: Filet of home loan; rising rates have Wall St. Hunting new ways to slice and dice mortgages. *Washington Post*. 5/12/94, D9.
- Matthews, D. 2013. Here's what you need to know about stop and frisk—and why the courts shut it down. *WP*. 8/13/13.
- McDonald, M. P. 2004. A comparative analysis of redistricting institutions in the United States, 2001-02. *State Politics and Policy Quarterly*. 4: 371-395.
- McKibben, B. 2005. Tilting at windmills. *New York Times*. 2/16/05, A21.
- Medina, J. & J. Preston. 2015. After killing tied to deported felon, San Francisco mayor mulls policy shift. *New York Times*. 7/9/15, A13.
- Metcalf, K. K. & N. A. Legan. 2002. Educational vouchers: A primer. *Clearinghouse*. 76: 25-29.
- Meyer, B. D. 2007. The U.S. Earned Income Tax Credit, its effects, and possible reforms. Paper prepared for the From Welfare to Work Conference organized by the Economic Council of Sweden, 5/7/07.
- Meyer, B. & D. T. Rosenbaum. 2001. Welfare, the earned income tax credit and the employment of single mothers. *Quarterly Journal of Economics*. 116: 1063-1114.
- Meyer, J. R. & T. R. Menzies. 1999/2000. Airline deregulation: Time to complete the job. *Issues in Science & Technology*. 16: no page numbers. www.issues.org/16.2/pmeyer.htm. Accessed 7/31/12.
- Milbank, D. 2009. Clash of the clunkers. *Washington Post*.

- 8/7/09, A2.
- Miller, G. P. & G. Rosenfeld. 2010. Intellectual hazard: How conceptual biases in complex organizations contributed to the crisis of 2008. *Harvard Journal of Law & Public Policy*. 33: 807-840.
- Mitavachan, H., A. Gokhale, B. R. Nagaraju, A. V. V. Reddy, D. C. Krishnamurthy, & J. Srinivasan. 2012. Performance of a megawatt-scale grid-connected solar photovoltaic power plant in Kolar District in Karnataka. *Current Science*. 102: 842-844.
- Moshier, S. & T. Fuller. 2010. *Climategate: The CRUtape letters*. Self-published.
- Moynihan, D. P. 1969. *Maximum feasible misunderstanding: Community Action in the War on Poverty*. New York: Macmillan/ Free Press.
- Moynihan, D. P. 1973. *The politics of a guaranteed income: The Nixon administration and the Family Assistance Plan*. New York: Random House.
- Murray, C. 1984. *Losing ground: American social policy, 1950-1980*. New York: Basic Books.
- Naff, K. C. 2004. From *Bakke* to *Grutter* and *Gratz*: The Supreme Court as a policymaking institution. *Review of Policy Research*. 21: 405-427.
- Nas, T. F. 1996. *Cost-benefit analysis: Theory and application*. Thousand Oaks, CA: Sage.
- Nathan, J. 2004. The charter school movement: Encouraging results and a disappointing article. *Social Science Quarterly*. 85: 1062-1071.
- National Science Foundation. 2016. Federal funds for R&D. [nsf.gov](https://www.nsf.gov).
- Nation's Health* (American Public Health Association). 1992. Occupational safety rewrite is hampered by partisan differences. no page numbers—downloaded as html from Academic Search Premier. Downloaded 9/5/12.

- Neumark, D. 1995. *The effects of minimum wages on teenage employment, enrollment, and idleness*. Washington, DC: Employment Policies Institute.
- Neumark, D. & W. Wascher. 2000. Minimum wages and employment: A case study of the fast-food industry in New Jersey and Pennsylvania: Comment. *American Economic review*. 90: 1362-1396.
- Nichols, J. 2009. The spirit of Seattle lives on. *The Nation*. 12/21/28/2009, 19-20.
- Nisbet, A. L. 2001. *The gun control debate*. Amherst, NY: Prometheus.
- Nordlinger, J. 2001. Getting aroused. *National Review*. 11/19/2001, 44-46.
- Nussbaum, D. 1998. Hitting a bump in the Medical Leave Law. *New York Times*. 1/18/98, 91.
- Oberlander, J. 2003. *The political life of Medicare*. Chicago: University of Chicago Press.
- Olivieri, A. G. 1978. Mentally ill, 'dumped' and isolated. *New York Times*. 3/11/78, 23.
- Organista, K. C. 2007. Mexican migration for dummies: What social workers and the public need to know. *Journal of Ethnic & Cultural Diversity in Social Work*. 16: 189-198.
- Palmunen, A. 2005. Learning from the mistakes of the past: An analysis of past and current temporary workers policies and their implications for twenty-first century guest-worker program. *Kennedy School Review*. 6: 47-57.
- Parker, A & J. W. Peters. 2014. Battle over bill exposes Democratic rift. *New York Times*. 12/14/14.
- Patel, K. & M. Rushefsky. 2006. *Health care politics and policy in America*. Armonk, NY: M.E. Sharpe.
- Pear, R. 1983a. Medicare advisory unit seeking major changes. *New York Times*. 11/5/83, 1.12.
- Pear, R. 1983b. House panel votes fixed payments for Medicare. *New York Times*. 2/25/83, A13.

- Pear, R. 2012. Federal power to intercept messages is extended. *New York Times*. 12/29/12, 12.
- Pedriana, N. & R. Stryker. 2004. The strength of a weak agency: Enforcement of Title VII of the 1964 Civil Rights Act and the expansion of state capacity, 1965-1971. *American Journal of Sociology*. 110: 709-760.
- Perry, C. J. 2009. Rethinking Fannie and Freddie's new insolvency regime. *Columbia Law Review*. 109: 1752-1783.
- Pettus, B. E. 1982. OSHA inspection costs, compliance costs, and other outcomes: The first decade. *Policy Studies Review*. 1: 596-614.
- Phillips, C. 1965. Congress sends immigration bill to White House. *New York Times*. 10/1/65, 1.
- Pierce, G. L. & W. J. Bowers. 1981. The Bartley-Fox Gun Law's short-term impact on crime in Boston. *Annals of the American Academy of Political and Social Science*. 455: 120-137.
- Pierce, G. L., L. R. Briggs, & D. A. Carlson 1998. National report on firearm trace analysis for 1996-1997. Boston: Northeastern University.
- Pohlman, J. W. 1976. *Inflation under control?* Reston, VA: Reston Publishing Company.
- Ponnuru, R. 2016. Protection racket. *NR*. 12/31/16.
- Poole, W. 2010. Causes and consequences of the financial crisis of 2007-2009. *Harvard Journal of Law & Public Policy*. 33: 421-441.
- Popper, N. & M. Corkery. 2016. Financial firms cross Dodd-Frank hurdles. *New York Times*. 6/30/16. B1.
- Portnoy, J. 2015. Use of electronic signatures for Va. absentee-ballot requests causes alarm. *Washington Post*. 10/7/15.
- Posner, R. 1969. The Federal Trade Commission. *University of Chicago Law Review*. 37: 47-89.
- Rapoport, A. 1983. *Mathematical models in the social and behavioral sciences*. New York: Wiley.

- Raspberry, W. 1983. Providing help after the institution. *Washington Post*. 11/7/83, A17.
- Reagan, L. J. 1997. *When abortion was a crime*. Berkeley: University of California Press.
- Reagan, M. D. 1987. *Regulation: The politics of policy*. Boston: Little, Brown.
- Reich, R. 2007. How and why to support common schooling and educational choice at the same time. *Journal of Philosophy of Education*. 41: 709-725.
- Reiss, A. J. & J. A. Roth. 2001. Understanding and preventing violence. In L. Nisbet (Ed.), *The gun control debate: You decide* (182-214). Amherst, NY: Prometheus.
- Reynolds, A. 1998. Rear windows. *National Review*. 12/21/98, 49-51.
- Rigler, J. 1995. Analysis and understanding of the Family and Medical Leave Act of 1993. *Case Western Reserve Law Review*. 45: no page numbers, HTML version.
- Risen, J. & E. Lichtblau. 2005. Bush lets U.S. spy on callers without courts. *New York Times*. 12/16/05, A1.
- Rivlin, G. 2013. How Wall Street defanged Dodd-Frank. *The Nation*. 4/30/13.
- Roberts, F. S. 1976. *Discrete mathematical models*. Englewood Cliffs, NJ: Prentice-Hall.
- Robertson, R. M. 1973. *History of the American economy*. New York: Harcourt Brace Jovanovich.
- Rockoff, H. 1984. *Drastic measures: A history of wage and price controls in the United States*. Cambridge, MA: Cambridge University Press.
- Romero, F. 2002. *Civil rights policymaking in the United States*. Westport, CT: Praeger.
- Roog, S., T. A. Knight, J. J. Koob, & M. J. Kraus. 2004. The utilization and effectiveness of the Family and Medical Leave Act of 1993. *Journal of Health & Social Policy*. 18: 39-52.

- Rosenbaum, R. P. 2001. Toward a criterion for evaluating migrant farm labor policy arguments. *Policy Studies Review*. 18: 26-45.
- Rosenbaum, W. A. 2002. *Environmental politics and policy*. Washington, DC: CQ Press.
- Rosner, D. & G. Markowitz. 2001. Research or advocacy: Federal occupational safety and health policies during the New Deal. *Journal of Social History*. No vol. no.: 365-381.
- Rowland, D. 2008. Medicaid at forty. In C. H. & C. L. Estes (Eds.), *Crisis and reform in the U.S. health care delivery system* (290-299). Sudbury, MA: Jones & Bartlett. .
- Roth, L. M. 1999. The right to privacy is political: Power, the boundary between public and private, and sexual harassment. *Law and Social Inquiry*. 24: 45-71.
- Rubin, L. B. 2007. Sand castles and snake pits. *Dissent*. Fall: 51-56.
- Rugaber, W. 1970. Records show that lax government regulations allow occupational hazards to grow. *New York Times*. 1/2/70, 17.
- Russo, C. J. & R. D. Mawdsley. 2002. The Supreme Court upholds vouchers. *Education and the Law*. 14: 275-282.
- Sabbagh, D. 2003. Judicial uses of subterfuge: Affirmative action reconsidered. *Political Science Quarterly*. 118: 411-436.
- Saddler, J. 1989. Tax credits could cool interest in minimum wage. *Wall Street Journal*. 7/27/89, 1.
- Sagers, C. 2006. The demise of regulation in ocean shipping: A study in the evolution of competition policy and the predictive power of microeconomics. *Vanderbilt Journal of Transnational Law*. 39. Retrieved 1/12/11 from www.thefreelibrary.com.
- Sarason, S. B. 1998. *Charter schools: Another flawed education reform*. New York: Teachers College Press.
- Saulnier, R. J. 1968. An appraisal of federal fiscal policies: 1961-*Annals of the American Academy of Political and Social Science*. 379: 63-71.

- Schmitt, R. B. 1994. Appeals court invalidates EPA rules shielding lenders from Superfund law. *Wall Street Journal*. 2/10/94, B8.
- Schneider, K. 1992. E.P.A. urged to ease rules on cleanup of toxic waste. *New York Times*. 2/25/92. A.12.
- Schumpeter, J. A. 1934/1983. *The theory of economic development*. Piscataway, NJ: Transaction.
- Schur, E. M. 1965. *Crimes without victims: Deviant behavior and public policy: Abortion, homosexuality, and drug addiction*. Englewood Cliffs, NJ: Prentice-Hall.
- Schweitzer, A. 1986. Detrimental competition. *Journal of Economic Issues*. 20: 681-707.
- Seeburger, R. H. & R. S. Wettick. 1967. Miranda in Pittsburgh—A statistical study. *University of Pittsburgh Law Review*.
- Senate Committee on Banking, Housing, and Urban Affairs. 2014. Oversight of financial stability and data security. 2/6/14.
- Sennett, R. 2011. A creditable left. *The Nation*. 8/1/8/2011, 24-26.
- Shabecoff, P. 1989. Global warming: Experts ponder bewildering feedback effects. *New York Times*. 1/17/89, C1.
- Sherman, L. W., J. W. Shaw, & D. P. Rogan. 1995. The Kansas City gun experiment. *National Institute of Justice Research in Brief*. Washington, DC. 1/95, 1-11.
- Sherman, M. 2009. *A short history of financial deregulation in the United States*. Washington, DC: Center for Economic and Policy Research.
- Shin, A. 2013. Maryland secures \$8 million for distressed homeowners in Ocwen Financial settlement. *Washington Post*. 12/20/13.
- Shlaes, A. 1999. Discredited. *National Review*. 8/9/99, 36-38.
- Sidel, R. U.S. gets TARP payback from 10 banks. *Wall Street Journal*. 6/18/09, C1.
- Simon, J. L. 1991. The case for greatly increased immigration. *The Public Interest*. Winter: 89-103.
- Simons, B. & D. W. Jones. 2012. Internet voting in the U.S.

- Communications of the ACM*. 55: 68-77.
- Singletary, M. 2016. The Consumer Financial Protection Bureau has fought banks and debt collectors. *Washington Post*. 7/30/16.
- Slayton, W. L. 1966. The operation and achievements of the urban renewal program. In J. Q. Wilson (Ed.), *Urban renewal: The record and the controversy* (189-229). Cambridge, MA: MIT Press.
- Sloane, J. H., A. L. Kellermann, D.T. Rey, J. A. Ferris, T. Koepsell, P. Rivara, C. Rice, L. Gray, & J. LoGerfo. 1988. Handgun regulations, crimes, assaults, and homicide: A tale of two cities. *New England Journal of Medicine*. 319: 1256-1262.
- Smith, A. 1953/1776. *An inquiry into the nature and causes of the wealth of nations* (Selections, Book I). Chicago: Henry Regnery.
- Smith, D. G. 2002. *Entitlement politics: Medicare and Medicaid, 1995-2001*. New York: Aldine.
- Smith, R. C. 2011. The dilemma of bailouts. *The Independent Review*. 16: 15-26.
- Smith, R. T. & C. E. Phelps. 1978. The subtle impact of price controls on domestic oil production. *The American Economic Review*. 68: 428-33.
- Sobran, M. J., Jr. 1978. Censorship, stereotypes, and other fine things. *National Review*. 7/21/78, 901-902.
- Solomon, D. & G. Hitt. 2009. U.S. news: TARP funds' second half set for release as Senate signs off on request. *Wall Street Journal*. 1/16/09, A3.
- Solomon, D. 2010. Bailout looking much less pricey. *Wall Street Journal*. 4/12/10, C1.
- Sorkin, A. R. 2010. Paulson likes what he sees in overhaul. *New York Times*. 7/13/10, B1.
- Sorkin, A. R. 2016. The one thing both sides want: Break up banks. *New York Times*. 7/26/16, B1.
- Sorrentino, F. 2016. Six years later, what will determine the fate of Dodd-Frank? *Forbes*. 7/21/16.

- Spitzer, R. J. 2004. *The politics of gun control*. Washington, DC: CQ Press.
- Spruiell, S. 2010. Mechanical failure. *National Review*. 7/19/10, 32-34.
- Staples, B. 2012. The human cost of “zero tolerance.” *New York Times*. 4/29/12.
- Stark, A. 2009. The consensus school, its critics, and welfare policy: A study of American political discourse. *The Journal of Politics*. 71: 627-643.
- Stein, H. 1988. *Presidential economics*. Washington, DC: American Enterprise Institute.
- Stein, S. 2012. The environmentalist’s dilemma. *Policy Review*. August & September, 49-62.
- Stevens, W. K. 1989. With cloudy crystal balls, scientists race to assess global warming. *New York Times*. 2/7/89, C1.
- Stewart, B. L. 2002. Charter schools: Opportunities to extend educational models, a positive view. *Education*. 122: 777-784.
- Stigler, G. J. 1946. The economics of minimum wage legislation. *The American Economic Review*. 36: 358-365.
- Stokey, E. & R. J. Zeckhauser. 1978. *A primer for policy analysis*. New York: W. W. Norton.
- Story, L. 2009a. Report on bailouts says treasury misled public. *New York Times*. 10/5/09, B2.
- Story, L. 2009b. Bank of America ready to refund federal bailout. *New York Times*. 12/3/09, A1.
- Subcommittee on Health of the Elderly to the Special Committee on Aging, United States Senate. 1963. Medical Assistance for the Aged The Kerr-Mills Program 1960-1963, Washington, DC, U.S. Government Printing Office. 1-3.
- Swallow, W. 1987. Lenders face new risk in toxic-waste efforts; law gives EPA broad powers to recoup costs. *Washington Post* 2/21/87, E1.
- Sweetland, S. R. 2002. Theory into practice: Free markets and

- public schooling. *Clearinghouse*. 76: 8-12.
- Swisher, K. 1994. Low-income home loan plan unveiled. *Washington Post*. 4/21/94, D11.
- Tach, L. & K. Edin. 2015. When taxes aren't a drag. *Washington Post*. 4/13/15, A19.
- Timiraos, N. 2009. Wealthy suburbs accept low-income homes. *Wall Street Journal*. 8/11/09, A3.
- Tobriner, M. O. & L. L. Jaffe. 1932. Revision of the anti-trust laws. *California Law Review*. 20: 585-606.
- Toobin, J. 2013. Rights and wrongs. *New Yorker*. 89: no page numbers, 5/27/13.
- Tretheway, M. W. & W. G. Waters II. 1998. Reregulation of the airline industry: Could price cap regulation play a role? *Journal of Air Transport Management*. 4: 47-53.
- U.S. Energy Information Administration. 2015. Direct federal financial interventions and subsidies in energy in Fiscal Year 2013. U.S. Department of Energy.
- U.S. Energy Information Administration. 2016. Levelized cost and levelized avoided cost of new generation resources in the annual energy outlook.
- U.S. Energy Information Administration. 2017. Annual Energy Outlook.
- Vernick, J. S., D. W. Webster, & L. Hepburn. 1999. Effects of Maryland's law banning Saturday night special handguns on crime guns. *Injury Prevention*. 5: 259-263.
- Vice, D. A. & A. B. Crenshaw. 1994. Fannie Mae boosts low-income housing, Fair-Lending funds. *Washington Post*. 3/10/1994, A28.
- Vice, D. A. 1995a. The financial giant that's in our midst; special tax break in District adds to Fannie Mae's riches. *Washington Post*. 1/15/95, A1.
- Vice, D. A. 1995b. Fannie Mae lobbies hard to protect its tax break. *Washington Post*. 1/16/95, A1.

- Vice, D. A. 1995c. District to go after tax-exempt groups; Fannie Mae, others eyed for funds. *Washington Post*. 1/25/95, A1.
- Vice, D.A. 1995d. In Fannie Mae's culture, it's best to go with the flow. *Washington Post*. 1/16/95, A15.
- Vobejda, B. 1990. Immigration measure raises hopes, worries; businesses hail increase in visas for skilled workers, fear shortages among less skilled. *Washington Post*. 11/4/90, A4.
- Von Hoffman, A. 2009. Housing and planning: A century of social reform and local power. *Journal of the American Planning Association*. 75: 231-244.
- Waddell, S. R., A. Davlin, and E. S. Prescott. 2011. A regional look at the role of house prices and labor market conditions in mortgage default. *Federal Reserve of Richmond Economic Quarterly*. 97: 1-43.
- Wallace, E. 2008. Detroit: The real battle is politics. *Business Week Online*. 12/15/08, no page numbers.
- Wald, M. L. 2012. A fine for not using a biofuel that doesn't exist. *New York Times*. 1/10/2012.
- Wallison, P. J. 2006. Groundhog Day: Reliving deregulation debates. Washington, DC: American Enterprise Institute for Public Policy Research.
- Wang, S. 2013. The great gerrymander of 2012. *The New York Times Sunday Review*. 2/2/13.
- Weber, A. R. & D. J. B. Mitchell. 1975. *The Pay Board's progress: Wage and price controls in Phase II*. Washington, DC: Brookings.
- Weisman, J. 2014. A window into Washington in an effort to undo a Dodd-Frank rule. *New York Times*. 12/17/14
- Weissberg, R. 2009. Correctly understanding "school choice". *Society*. 46: 324-332.
- Weissman, R. 2011. The government nudge. *The Nation*. 6/27/11, 17-18.
- Welch, D. & D. Kiley. 2008a. Auto bailout: White House to the rescue? *Business Week Online*. 12/15/08, no page numbers.

- Welch, D. & D. Kiley. 2008b. Auto bailout: Money now, cuts later. *Business Week Online*. 12/22/08, no page numbers.
- Werkmeister, W. 2009-10. Financial crisis 101: A beginner's guide to structured finance, the financial crisis, and capital market regulation. *Governance*. 10: 92-98.
- Wernstedt, K. & R. Hersh. 1998. Urban land use and Superfund cleanups. *Journal of Urban Affairs*. 20: 459-474.
- Wessel, D. 1989. Expanded earned-income tax credit emerges as the anti-poverty program choice for many. *Wall Street Journal*. 7/13/89, 1.
- Whoriskey, P. 2009a. Automakers' fate is on the table; GM and its unions are negotiating pay cuts to meet terms of federal loan. *Washington Post*. 1/15/09, D1.
- Whoriskey, P. 2009b. U.S. urges GM to consider bankruptcy; government plan to split ailing brands. *Washington Post*. 4/2/09, A14.
- Whoriskey, P. 2009c. U.S. gets majority stake in New GM; firm's investors cry foul over bankruptcy plan. *Washington Post*. 6/1/09, A1.
- Whoriskey, P. 2009d. With bankruptcy behind it, GM focuses on a culture change. *Washington Post*. 7/11/09, A10.
- Whoriskey, P. & K. Marr. 2009a. GM, Chrysler seek billions more in aid; firms to cut 50,000 jobs, drop 6 brands. *Washington Post*. 2/18/09, A1.
- Whoriskey, P., K. Marr, & D. Brady. 2009b. Obama vows swift overhaul as Chrysler enters bankruptcy; union and Fiat gain major stakes in automaker; President slams holdout creditors as "speculators." *Washington Post*. 5/1/09, A1.
- Williams, G. 1957. *The sanctity of life and the criminal law*. NY: Alfred A. Knopf.
- Williamson, J. R. 1995. *Federal antitrust policy during the Kennedy-Johnson years*. Westport, CT: Greenwood Press.
- Wills, G. 1995. To keep and bear arms. *New York Review of Books*. 9/21/95. Accessed on the Internet 8/30/11. No page numbers.

- Wines, M. 2016. Jury out on impact as some states, bucking a trend, make voting easier. *New York Times*. 6/5/16.
- Wintemute, G. J. (2006). Guns and gun violence. In A. Blumstein, & J. Wallman (Eds.), *The crime drop in America* (45-96). Cambridge, UK: Cambridge University Press.
- Yeaman, H. 2009/10. The bipartisan roots of the financial services crisis. *Political Science Quarterly*. 124: 681-696.
- Zeis, P. M. 1969. Competitive rate making in the United States. *Transportation Journal*. Summer: 34-42.
- Zeynep, T. 2016. Bring back paper ballots. *New York Times*. 8/14/16.
- Zimring, F. E. & G. Hawkins. 2001. Lethal violence in America. In Nisbet (Ed.), *The gun control debate: You decide* (215-242). Amherst, NY: Prometheus.