THE PRESIDENT AS PRISONER
A Structural Critique of the Carter and Reagan Years

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—CHAPTER TWO—

The Structure of the Presidency

> The life of the nation has grown infinitely varied. It does not centre now upon questions of governmental structure or of the distribution of governmental powers. It centres upon questions of the very structure and operation of society itself, of which government is only the instrument.
>
> — Woodrow Wilson

The idea of structure

Woodrow Wilson's cogent 1912 observation belies his conventional intent in moving beyond governmental structure. This slice of campaign rhetoric—taken from his speeches and subsequently compiled in book form—introduces a critique of the rise of monopoly corporations in the American political economy around the turn of the century.[1] His attempt to redirect people's attention to the structure underlying the operation of governmental institutions involved, at times, very harsh words for the giants of U.S. capitalism, as this classic Progressive Era indictment of monopoly power shows:

> The masters of the government of the United States are the combined capitalists and manufacturers of the United States. It is written over every intimate page of the records of Congress, it is written all through the history of conferences at the White House, that the suggestions of economic policy in this country have come from one source, not from many sources. The benevolent guardians, the kindhearted trustees who have taken the troubles of government off our hands, have become so conspicuous that almost anybody can write out a list of them.[2]

But the venom Wilson reserved for big manufacturers, bankers, the great railroad combinations and other trusts shoud not, of course, be mistaken for a general rejection of the business ethos or the basic structural arrangements of the political economy. He sought to preserve all of that. What he opposed—what progressives opposed, in word if not deed, as a movement—was the pernicious effect of monopoly on market competition and business opportunities for smaller enterprises. "I am for big business, and I am against the trusts," he added, drawing a distinction which reveals the limits of his examination of "the very structure and operation of society itself." He elaborates on this distinction in a passage that fetishizes big business:

> Big business is no doubt to a large extent necessary and natural. The development of business upon a great scale of cooperation, is inevitable, and, is probably desirable. But that is a very different matter from the development of trusts, because the trusts have not grown. They have been artificially created; they have been put together, not by natural processes, but by the will, the deliberate planning will, of men who were more powerful than their neighbors in the business world.[3]

Big business is "natural," even organic; trusts are a contrived impediment to the "natural" forces of the market. With this understanding it becomes clear how Wilson could campaign on a platform calling for " the emancipation of business" which would usher in the "The New Freedom" of capital, of free enterprise, of individuals' human energies, and still often have the flavor of a progressive, or even a populist, politician.

For Wilson, then, his focus on the structure of society beneath the mere governmental structure entailed an essentially conservative reading of the political economy. He admits as much in an explanation of what it means to be a "progressive," stating that "if I did not believe that to be progressive was to preserve the essentials of our institutions, I for one could not be a progressive."[4] As a consequence it can be said that Wilson had a thin notion of structure, or better yet a shallow notion. Were trusts the *lone cause* of skewed economic policy in the halls of Congress and conferences in the White House? Or must politics in capitalist society necessarily favor the interests of capital over the interests of others? Would the elimination of monopoly and concomitant preservation of big business cure "the problem," or would this simply leave different, perhaps less self-conscious elites as " the masters of the government?" Did Wilson's version of progressivism

really look forward, or was it actually a lapse into a supposedly pristine past when markets, and the government, were free of coercion from mammoth combinations of capital?

Obviously many other questions could be posed concerning Wilson's position. The point, though, is to draw attention to the idea of including an explicitly structural dimension in one's analysis of political, economic and social phenomena. And further, to note how muddled the concept of "structure" can become, even when correctly treated as something more than simply the way government institutions are arrayed, as with Wilson. Structural analysis, in short, has not received adequate attention in the discipline of political science as a whole, nor in the specific subfield devoted to study of the presidency. The latter area is notable for its blind spot when it comes to the structural relationship between the political economy and the chief executive.

James MacGregor Burns' writing on the presidency is a case in point. Burns' role as a leading exponent of the expansivist theory of the presidency has already been touched upon in Chapter One. His book *Presidential Government* is regarded as one of the very best treatments of the subject. For Burns, the problems confronting the presidency in its necessary (in his view) drive for expansion of its purview are mainly structural in nature. This point was forcefully argued in his well-known work, *The Deadlock of Democracy*, and has been renewed in his book, *The Power to Lead: The Crisis of the American Presidency*. The basic premise of the latter text is that presidential leadership (and leadership at other levels as well) today faces a severe crisis. "The roots of the crisis lie in structural problems that have been noted since the start of the system two hundred years ago," he contends. "The symptoms of the crisis take the long-observed form of political disarray, institutional stalemate, and governmental ineptitude and impotence."[5]

This is familiar turf for Burns. He is redeploying his argument that the constitutional system of divided powers inherited from the framers makes unified, programmatic government a rarity in the U.S., and that the solution to this dilemma requires consideration of a more parliamentary-style reshaping of power to render centripetal the forces that currently pull apart governmental authority. In particular, often-antagonistic relations between the executive and legislative branches must be harmonized, while concurrently reviving the role of political parties as vital centers of debate and disciplined action. The problem for the presidency thus is "structural" for Burns in the sense that it is embedded in the very structure of institutions either erected in the Constitution or flowing out of the founding period. He refers to those advocating a wholesale adoption of a parliamentary system in the U.S. as "structuralists." And he terms his own more modest version of strengthened parties, collective leadership and constitutional reform "gradual structuralist."[6]

To be sure, there is nothing wrong per se with probing the institutional machinery of government for flaws and speculating on how to remedy them. Burns has made a lifetime of valuable contributions to our appreciation of the high price paid for the fragmented allocation of constitutional powers. Whatever political direction one would like the nation to take—and Burns clearly favors Democratic presidents (supported by principled parties) advancing a liberal agenda—an understanding of how and why institutions function the way they do obviously enhances the prospects of beginning the journey. Where Burns comes up short is in his *preoccupation* with government structures. For him, analysis of the president is confined to an understanding of institutional structure and processes, and the constitutional theory undergirding them. Such a focus is too exclusive, the examination too shallow. The equation of structure with *political* institutions leaves uncovered myriad issues of fundamental importance to making sense of the presidency. It neglects the fact that the office itself is situated within a deeper structure of power and privilege which shapes and constrains those who occupy it, regardless of whether or not the president operates in greater, or lesser, cooperation with Congress. Questions addressed by the structure-as-institutions perspective certainly are not unimportant. They simply do not confront a host of alternative questions that shed light of a different hue on the office.

Burns, it should be noted, is not alone in his treatment of the presidency as comprehensible through an exploration of government structures. Political science generally has not had an easy time figuring out how to study the office, or how to theorize about it.[7] When the discipline has thought in terms of structure it has done so almost exclusively in terms consonant with those

of Burns. So, for instance, we get books devoted to the crisis in American politics that explore the "structural matters" and contemplate "structural change," with "structure" referring to the institutional division between the president and Congress.[8] Proposals for constitutional reforms to unify divided government typically flow from such studies. Similarly, we get surveys of research approaches which cite various perspectives on the office—empirical, legal-constitutional, psychological and institutional are common ones—with structural concerns discussed as a variant of the institutional orientation.[9] Or, we see responses to the growing cry to make presidency research more empirically grounded, which designate "structural variables" as elements describing the constitutional composition of different political systems (in the case of comparative studies), such as type of executive, party systems, power of dissolution, re-eligibility for office, and the like.[10]

Again, the importance of these issues is not in question. All of them can be useful in furthering our understanding of the office. However they stop short of locating it within a broader and deeper setting of the political economy and the social and ideological structures within which institutions operate. They tend, almost uniformly, to offer atheoretical, descriptive accounts of political mechanics. Such limitations are evident, as well, in the major works of those theorists discussed in Chapter One as representing expansivist and restrictivist schools of thought. This is the case even though some of them implicitly, and at times even explicitly, display a Wilsonian regard for the force of a structure beneath government institutions.

Harold Laski illustrates the problem nicely. As noted in the first chapter, Laski includes some elements of a broader structural analysis in his book on the presidency. He refers to the need of chief executives to maintain the confidence of the business community, and sees political parties as captured by propertied interests. Both of these insights suggest a structure of economic power more fundamental than the office itself. But the points remain on the level of suggestion. They are sprinkled throughout his work, never fused into anything approaching a coherent argument. His most critical insights thus trail off into obscurity, while the president appears as someone able to transcend whatever obstacles to effective action emerge. The potential for a more meaningful structural analysis is lost, curiously abandoned. For such potential to be realized, Laski would need to face squarely the implications of business power. The structural approach I am advocating would ask Laski whether the president is in fact compelled to value the interests of business above all others, how such compulsion actually manifests itself, and what this implies about the quality of democracy in the U.S.

Much the same may be said of Clinton Rossiter's work. An expansivist like Laski, Rossiter is most comfortable simply enumerating and celebrating the chief executive's diversity of roles, a job he does well. Even he alludes to real structural constraints. His repeated references to "private liberty and public morality" as restraining a president's course of action imply, but do not explore, substantive limits placed on the office by public opinion. Moreover, his famous metaphor of the president as "a kind of magnificent lion" also includes boundaries to presidential roaming, since the chief executive is warned against trying to "break loose from his broad reservation." The *nature* of this reservation, though, is left unexamined, perhaps because Rossiter assumes it as a given, an unassailable truth. But whatever the reason, precisely at the point where thin notions of structure draw away from inquiry—where cherished commitments to "free enterprise" or conventional defenses of America's national interests abroad are asserted—deeper structural analysis forges ahead.

Arthur Schlesinger's restrictivist critique of the imperial presidency runs into a similar problem of depth. One cannot help but be impressed with the scope of Schlesinger's genealogy of presidential-congressional relations in foreign affairs. His grasp of the constitutional issues involved in the changing cycles of executive and legislative balance of power is impressive. But for all the depth he incorporates into his account of presidential usurpation of power, he forecloses a host of other questions that penetrate more deeply into the dynamics of the office. The rationale behind American foreign policy, in general and specifically in Southeast Asia; the economic, political and ideological dimensions to traditional definitions of U.S. "national security" concerns; the authenticity of frequent postwar invocations of the threat of communism; the morality of U.S. behavior in Vietnam, and at home in defense of that behavior abroad—such issues are not addressed, and in some cases are dismissed, in Schlesinger's

elucidation of the imperial presidency. All complex, deeply troubling questions are reduced to their singular effect on the central (for Schlesinger) issue at stake, the constitutional balance of power between the White House and Congress. The causes of the imperial president thus boil down to congressional timidity in the face of challenges to its institutional integrity, or are turned into accounts of Nixon's psychology. Such a theoretical strategy reinforces conventional foreign policy assumptions and doctrines by confining analysis to tactical, in this instance institutional, questions. And it assumes—wrongly, on a structural reading—that a more active, resistent Congress would have made national security judgments based on criteria different from those of the aberrant Nixon. Left unexamined, such an assumption is a particularly weak peg on which to hang a theory of the presidency.

The proclivity of expansivist and restrictivist theorists to either ignore outright, or mention in passing without investigating in depth, structural questions that implicate the office in an ensemble of political, economic and social relations should be clear at this point. We need only think of Thomas Cronin's observation near the end of his *The State of the Presidency*:

> The reality is that all too often on the long road to the White House our sometime-to-be-presidents become the servants of what is, rather than the visionary shapers of what could be. In the long process of working their way up and learning to operate within the system they become rewarded for playing along with the dominant interests and for playing within the traditional rules of the game.[11]

These pregnant sentences hold out the promise of, but do not in fact reflect, an analysis of the presidency that fully considers structural issues beyond governmental institutions, even though Cronin skillfully exposes many myths surrounding the office, and even though he does make mention of some "extragovernmental pressures" that influence the president's policy agenda. In sum, structural concerns are not wholly absent in mainstream theories of the presidency. They simply are so marginal, so underdeveloped, that they appear only as afterthoughts, not meriting close elaboration.

A brief example will help illuminate the difference between mainstream approaches to the presidency and an approach that puts structural concerns at the forefront. Consider President Ronald Reagan's decision to seek $100 million in lethal aid to the contras attempting to overthrow the Sandinista government in Nicaragua, part of his ceaseless two-term campaign to oust a regime he views as a great menace to U.S. national security. Spanning the spring and summer of 1986, this initiative received considerable coverage in the media and involved Congress actively as the body whose approval of the money was needed to complete the program. What, if anything, can we learn about the presidency from this one presidential initiative? Expansivist and restrictivist theories probably would draw fairly similar lessons.

Rossiter's orientation would direct our attention to Reagan's role as chief legislator, guiding Congress in its lawmaking duties. Or, he might point to the aid package as a manifestation of the president's job as commander-in-chief, developing our military strategy. Similarly, he might see Reagan wearing his "hat" as world leader, warning the western world of the dangers of communism encroaching into our territory and threatening our freedom. His framework would be very congenial to the Reagan program since its ostensible goal is to protect the liberty and assert the morality of U.S. objectives. If he dissented at all it would be because of the Reagan administration's decision to ignore the World Court's ruling against the U.S. mining of Nicaraguan harbors, thus flouting the rule of law which Rossiter cherishes highly in his work. But this does not bear directly on the aid question, and Rossiter might well support the administration against the Court anyway, since its legitimacy has been denied by U.S. officials.

Neustadt's expansivist analysis would focus on the tremendous persuasive ability of the president. As he did so often during his first and second terms, Reagan deftly exercised his power to persuade within the Washington community (though his success in the public at large is more questionable), winning support for the military funds, after much debate, in both the House and the Senate. His victory reconfirmed his professional reputation as "the great communicator." Neustadt might ponder why it is that President Reagan usually wins his case on issues related to Nicaragua (or Central America in general), and accordingly might study his information-gathering systems within the executive

branch, his personal power drive, his mastery of television as a medium of communication, and the like. More generally, Neustadt certainly would wonder about Reagan's ability to use Rooseveltian means to achieve decidedly un-Rooseveltian ends, for instance in regard to social welfare policy. Overall, like Rossiter, Neustadt would see Reagan's victory on contra funding as at least a short-term triumph of the governmental bargaining process led by a powerful president, although since the ultimate outcome of the U.S.-sponsored fight against the Sandinistas is in doubt, the "viability" of administration policy cannot be determined.[12]

Restrictivists might consider the contra aid bill as an example of balanced executive-legislative interaction. Reagan did get his way on the measure. He did act powerfully to protect his version of the nations's security interests. But the bottom line for the restrictivists would be that the president worked his will *in concert with* the coordinate branch of government. Like the expansivists, restrictivists would have to concede that the process was sound. Certainly some degree of caution would creep into their analysis. Schlesinger and Lowi both might be concerned that President Reagan's method is highly personal, tending toward plebiscitary in style. Lowi especially would be likely to voice concern that Reagan had too much power to set the entire agenda for contra aid, linking approval or denial of aid to approval or denial of his administration's overall goals and, indeed, linking approval or denial to congressmen's sense of patriotism (an aspect of what Lowi calls the "oversell syndrome"). As an issue of the balance of power between Congress and the White House, though, restrictivists—regardless of their personal view of the contras—would have to agree that the process was reasonably balanced. Congressional opponents had ample opportunity to voice their vociferous opposition to the program. And supporters succeeded in making the case that contra aid would help preserve democracy in "our own backyard." A bipartisan commitment was affirmed.

Given the factors orthodox theories might explore, how would a truly structural view of the presidency handle this case? First of all, structural inquiry would put the issue of contra aid in the perspective of the history of U.S. relations with Nicaragua, noting repeated U.S. interventions there to assert our will in the name of preserving our concept of "democracy" and "freedom." It would assess those claims of preservation against the kind of political, economic and social life Nicaraguans have had since our involvement there, noting the generally abysmal level of political freedom and material sustenance gained under the regimes supported by the U.S. Next, a structural view would examine the economic context of our historic interaction with Nicaragua, to locate our relationship with this third world nation within the overall U.S. strategy toward the world economy. A structural orientation also would assess the nature and uses of anticommunist appeals to engender a domestic climate receptive to the goals of U.S. policy, appeals invoked repeatedly and long before the Sandinistas achieved their victory over Somoza's forces in 1979. Relatedly, the geopolitical assumptions corresponding to such appeals would receive attention, especially the premise of a zero-sum superpower struggle which fuels assertions of the Soviet threat in Central America. Finally, touching all these concerns but in a sense rising above them, a structural analysis would open to question the whole notion of "national security" as used to defend the conduct of U.S. policy in relation to the contras.[13] This is the policy foundation of President Reagan's approach to the issue and, as such, merits closest scrutiny.

A full accounting of the structural view would, of course, involve a lengthy development of all these points, contrasted with the mode of analysis expected in the expansivist-restrictivist debate. I am not pretending to undertake such an endeavor here; the second part of this chapter goes into the structural interpretation in much more detail and Chapters Three and Four are case studies intended to apply it. What I would suggest, though, is that having combined these lines of inquiry, a structural position would conclude that what is remarkable about President Reagan's handling of the contra aid bill is not so much his mastery of Congress, or his continued success at drawing from the well of persuasion. The remarkable aspect is not that he could win approval of $100 million for rebel forces regarded as murderers, rapists and thugs—"freedom fighters" in Reagan's parlance of persuasion—by virtually every respected international human rights monitoring group and a sizable number of U.S. allies. What *is* remarkable is the degree of *continuity* between the interventionist policies pursued by the Reagan administration and those pursued by every administration since the mid-nineteenth century. Presidential consistency of purpose and strategy in regard

to Nicaragua would be the structural insight. And as for the orthodox concern for the balance of power between the president and Congress, the crucial point here is how Congress has accepted the values and assumptions that *all* presidents have had toward Nicaragua, regardless of whether any given president was more or less plebiscitary in character. In the case of contra aid, of particular note is the extent to which even the most forceful and articulate opponents of the president's position—Senator John Kerry, (D.-Mass.) is the best example—accepted his basic premises regarding the nature of the Sandinista regime, their alleged "betrayal" of the revolution and the geopolitical implications of further Sandinista leadership.[14] In sum, while a structural reading of contra aid would not dismiss the contributions of expansivist and restrictivist theories, it would give primacy to other factors and ask a host of different questions bearing upon the nature of U.S. aims and interests vis-a-vis Nicaragua.

From the preceding discussion we can distill the elements of a broader critique of conventional approaches. Specifically, there are *three interrelated deficiencies* in the expansivist-restrictivist debate. The first shortcoming of mainstream theories is hyper-institutionalism. The two variants seek to explain government institutions largely by studying their internal composition, their political-constitutional dynamic, and the balance of power between them. Often this leads to analyses that are mainly descriptive in nature, with too little regard for the importance of what I am calling structural dynamics.[15] Second, conventional accounts of the presidency stress means over, and almost to the exclusion of, ends. They view the office instrumentally, focusing on how to make it "work better,"instead of investigating the fundamental reasons why it works the way it does, and subjecting the goals of the presidency to rigorous inquiry. Such approaches at least implicitly assume the goals of presidential leadership to be, ipso facto, beyond question and reconsideration, thus ruling out the structural possibility that the pursuit of those very ends may produce, or contribute to, the profound troubles all analysts see plaguing the office. Ira Katznelson and Mark Kesselman's comment—aimed specifically at Neustadt's thesis on presidential power as the unifying ingredient of executive authority—thus seems generally applicable to the entire debate between expansivist and restrictivist positions:

> In our view, Neustadt is correct in stressing the need to understand the overall coherence of presidential activity. Yet he does not specify what ends are served by the successful exercise of presidential power. Unless one can supply an answer, the exercise of presidential power appears meaningless, like a dog chasing its tail.[16]

Third, the expansivist-restrictivist spectrum offers an exceedingly narrow range of debate. A president is located, analytically and normatively, somewhere between the poles of relative activity and relative restraint. Such a cramped intellectual space provides little room for perspectives that question the assumptions upon which previous theories have rested. Some scholars have noted that the difference between the two schools is more apparent than real, a shift in emphasis rather than substance. They are, in fact, two sides of the same coin. As Bruce Miroff has argued concerning what some call "revisionist" theories of the presidency, "This supposedly 'revisionist' literature is soft at the core; despite their disillusionment, most presidential scholars cannot conceal the fact that they are still in love with the Presidency."[17] He adds that since such theories are rooted in an uncritical analysis of the office, and cling to the illusion of the president as an historic agent of progressive change, they "will survive no longer than the arrival of the next liberal in the White House."[18] Genuinely structural analysis avoids such pitfalls by broadening the scope of debate currently confining the conventional approaches.

Structure, the state and the presidency: The missing links

Mainstream political science has been reluctant to acknowledge the challenge posed to its theoretical enterprise by alternative views of the presidency. Theorists on occasion will briefly mention a structural approach. Sometimes such an approach receives a modicum of respect, albeit while being woefully underdeveloped and inadequately contrasted with the preponderant mainstream theories. At times a solid structural contribution is noted, but subsequently ignored in what should be its most salient capacity as a basic challenge to the reigning orthodoxy and, further, jettisoned as an avenue warranting future exploration.[19] But more common is intellectual invisibility. For instance, in his recent work

Lowi—while perhaps the widest ranging theorist still operating within the parameters of the debate between the two hegemonic schools of thought—employs what he terms an "institutionalist approach" to the presidency. This approach is in accord with the conventional structure-as-institutions position within the discipline. He makes his case for proceeding along institutionalist lines by asserting its superiority to the other available model, the "psychology/character approach."[20] The impression he leaves is that these two approaches exhaust the realm of the possible as far as studying the office is concerned. Elsewhere I have argued that the psychological approach, which gained a wide following among presidency scholars in the early 1970's, fits easily within the expansivist-restrictivist range of debate.[21] The point here, though, is simply that Lowi seems to bar the emergence of truly structural perspectives.

An ironic opening can be found, though, if one looks beyond Lowi's stated institutionalist framework. For while on the one hand, his work confirms the widespread, historic invisibility of critical orientations within the presidency literature, it also supplies some of the matter out of which a structural approach could materialize. In making his argument that the presidency has grown too personalized, untied from its traditional institutional moorings, Lowi contends that the American people have come to hold gargantuan expectations of the office. These expectations place enormous pressure on the president to solve the nations's problems. Recognizing this burden, modern presidents quite logically have sought to claim power commensurate with such awesome responsibility and in the process have assumed—regardless of their political party—that the office is "tantamount to the state."[22] This view of the president as "state personified" raises a number of vital questions. What is the state? What is the nature of the relationship between the state and the president? How does the state constrain the presidency? Can the president influence and shape the state as well?

One could come up with other queries. Interestingly enough, Lowi pursues none of them. The equation of state and presidential power evidently raises no important issues beyond those of the institutional balance of power between the president and Congress. The nexus between state power, private power and the president remains a dark area. A structural theory of the presidency throws open this dark area to the light of critical inquiry. It accepts Lowi's position on the state-presidency connection and draws the inference that if the president is the state personified, then it must embody the goals of the state. The presdidency must marshal *its* power to pursue ends consonant with state power. Therefore, theories of the state must be brought to bear on theories of the presidency. An encounter needs to take place. But herein lies a problem for conventional theories of the presidency.

Traditional theories of the presidency share a common foundation (whether acknowledged or not) in the pluralist theory of democracy.[23] In large part this accounts for the deficiencies of the works discussed in Chapter One. The ideological assumptions of the theorists predispose them against questioning the core assumptions of liberal democratic capitalism. Instead, in discussing the office they strongly tend to reinforce what is familiar to readers within an American context, making accounts often laden with apparently "mere" description of the office and its responsibilities seem unbiased, and giving their analyses the undeserved appearance of being neutral. But despite what is at least an implicit positivism in conventional theories, pluralism is hardly a non-ideological approach.[24]

Pluralism holds that the social order is best understood as a collection of multiple, voluntary interest groups competing over a variety of policy areas. Through these groups, or acting as individuals through the use of other democratic freedoms such as elections, representative institutions, civil liberties and the like, citizens can become involved in political life. The role of the state is to serve as an umpire, a neutral referee that sets the ground rules for group conflict and for the continued vitality of political rights. Beyond the maintenance of a relatively stable setting for bargaining and compromise, the state has no specific purpose, no interests of its own. Democratic government, by definition, serves the interests of the people. The policy process is thus viewed as a reasonable approximation of the "public interest." Power is diffuse so that no one group has an undue influence on the government. Therefore, pluralists detect no underlying pattern or class bias to state behavior.

For pluralists, then, the nature of the state has not been the focus of sustained analysis. To find such attention to the state as an object of inquiry, one must move beyond scholarship wedded

to the concerns of liberal democracy and into the orbit of the Marxist and non-Marxist left.[25] It is here that we find the state situated in the framework of the larger social and economic order. The state is not viewed as a neutral judge presiding over the relatively fair, and immanently open democratic game of group competition. Rather, the state is intimately involved in making and protecting what Cronin referred to above (though vaguely, without any accompanying analysis) as the "rules of the game." Understanding these rules is analogous to understanding the operation of the political economy, understanding, in short, the articulation of democracy and capitalism. To have such an understanding, and to give it primacy in explaining the social order, is to bring a structural perspective to bear on whatever is being studied. In this case, the presidency is being explored. But with a structural analysis, the presidency can only be explained within the broader, more enduring interaction of the democratic state and the capitalist economy.

Joshua Cohen and Joel Rogers, for example, provide an excellent account of structural analysis in their book *On Democracy*.[26] For them, the workings of American politics cannot be seen as just the outcome of the exercise of constitutionally-granted political rights, whether by individuals or groups. Those rights and civil liberties, absolutely essential to any kind of genuine democracy, are severely limited by the capitalist context of our "capitalist democracy." As Cohen and Rogers point out, "the political rights granted to all citizens, workers among others, are formal or procedural, and not substantive. That is, they do not take into account in their own form and application the inequalities in the distribution of resources, characteristic of capitalism, which decisively affect the exercise of political rights and importantly limit their power of expression."[27] Such "resource constraints" give the owners of capital enormous structural advantages in the gathering of information about, and the coordination of, their shared interests, contributing to substantive political and economic inequality despite formal political equality of rights.

Moreover, the structure of capitalist democracy encourages people to seek fulfillment through the satisfaction of short-term material gain. Such "demand constraints" powerfully encourage calculations of economic rationality as the normal way of thinking, a logic that privileges, by necessity, the interests of capital before the interests of all other groups in society. Because of the inherent link between the control of investment decisions, production and employment, the accumulation of private profits must be the condition upon which the interests of all members of society rest. It is likewise the basis of capital's power over state policy—a kind of veto power over public policy that has come to be known as "capital strike."[28] The authors conclude, "Under capitalism, therefore, the welfare of workers remains structurally secondary to the welfare of capitalists, and the well-being of workers depends directly on the decisions of capitalists."[29] And this condition for national politics has ramifications for the world arena as well, since the accumulation of capital requires the state to pursue certain fundamental foreign policy goals. Within this milieu, then, citizens' motivations, their horizons, are structurally constrained to the pursuit of short-term material gain, rendering seemingly irrational the demand for longer-term political and economic struggle against capitalist democracy, or for a system based on other forms of human motivation. This is hardly a set of conditions conducive to the pluralist notion of democracy as the open competition between groups, involving free and equal citizens.

This digression into the work of Cohen and Rogers is intended to show how much deeper a notion of structure can be found in critical accounts of the political economy. The institution of the presidency only makes sense, on a truly structural reading, if located within the environment of capitalist democracy, an environment which the state defends and extends through the exercise of public authority and power. Theories of the state enrich our comprehension of this environment and, hence, further our knowledge of the presidency. Generally speaking there are three approaches to theories of the state that have vied for preeminence within left scholarship. These can be classified as *instrumentalist, structural-functionalist,* and *social struggle* theories.[30] Despite their important differences, these approaches do shade into one another at times. What follows is a brief discussion of these points of contact and diversion.

Instrumental theories of the state are most often associated with the work of Ralph Miliband and G. William Domhoff, although both are heavily indebted to the path-breaking career of C. Wright Mills and his studies of the "power elite."[31] The essence of the instrumentalist perspective can be found in its explosion of the pluralist paradigm through a careful detailing of the influence of members of the corporate capitalist class on the activities of government. Domhoff makes the case directly:

> Contrary to this pluralist view of power . . . there is a social upper class by virtue of its dominant role in the economy and government . . . [T]his ruling class is socially cohesive, has its basis in the large corporations and banks, plays a major role in shaping the social and political climate, and dominates the federal government through a variety of organizations and methods.[32]

Instrumentalism holds that the capitalist class dominates state policy in two ways. On the one hand, members of the ruling class have inside influence by virtue of the direct participation of class members in the state apparatus. Class participation hinges on a complex set of interlocking relationships between members of the corporate community, the banking sector and the government.[33] The state is, in this sense, the instrument of corporate capital. On the other hand, the dominant class has outside influence through a network of policy planning organizations that shape the range of acceptable thought on the leading issues of the day. This context of "reasonable" thought is reinforced by secondary aspect of outside control, the conferral of large sums of money to political candidates through the proliferation of business-related political action committees.[34] In this outside sense, capital expresses its will through the state.

Instrumentalists do not argue, however, that elite domination of the state is total. As Domhoff explains, corporate domination means "the ability of a class or group to set the terms under which other classes or groups within a social system must operate."[35] Within these terms, some social mobility occurs. Non-ruling class people do occasionally work their way up through the class system, but at the price of being assimilated into the norms and beliefs of the upper class along the way. Domination also does not negate the importance of interclass and intraclass conflict over state policy. But to the extent such conflicts exist, they "do not involve challenges to the rules that create privileges for the upper class and domination by its leadership group."[36] It is, in short, conflict within a shared consensus, a consensus to a significant extent manufactured through class power.

Structural-functionalist theorists consciously defined themselves in opposition to instrumental theories. Within Marxian thought, a classic debate occurred between Miliband and Nicos Poulantzas.[37] Poulantzas contended that Miliband placed far too much emphasis on the social background of state members and the direct links between corporate and state officials. By contrast, he argued, the relationship of the state to the capitalist class is an objective one.

> The relation between the bourgeois class and the State is an *objective relation*. This means that if the *function* of the State in a determinate social formation and the *interests* of the dominant class in this formation *coincide*, it is by reason of the system itself."[38]

He went on to assert that the state serves as a "factor of cohesion" in a social formation, reproducing the conditions necessary for capital accumulation. This is the function of the state, a function performed independent of whether members of corporate capital actually have direct or indirect influence in government. And he argued further that "the capitalist State best serves the interests of the capitalist class only when the members of this class do not participate directly in the State apparatus, that is to say when the *ruling class* is not the *politically governing class*."[39] The state, Poulantzas contended, is "relatively autonomous" from any class or class fraction. It performs its function of maintaining capitalism and its system of power because objective structural constraints compel it.

Other structual-functional theorists have tried to specify how and why these structural constraints operate. Fred Block cites two prime "structural mechanisms" that limit the options of state managers. Both constraints rely on pressures other than the individual or collective designs of capitalists. One constraint is the need to maintain a high level of "business confidence." Governments must do everything in their power to ensure that businessmen have confidence in the stability of the country's "general political/economic climate." Investment decisions of firms, the level of employment and inflation, tax rates and many other factors are linked to the overall health of the economy. And it is that health which is essential to the existence of any regime, since economic decline could spark an accompanying decline in business confidence and the withdrawal of productive investment.

Without such investment, no government can hope to function from a position of strength, or even remain in power, for long. Notice that this threat of "capital strike" does not assume a class conscious elite. "[T]he chain of events can unfold without any members of the ruling class consciously deciding to act 'politically' against the regime in power ... since decisions made by individual capitalists according to their own narrow economic rationality are sufficient to paralyze the regime ..."[40]

Samuel Bowles and Herbert Gintis concur with Block's position, stating the case for capital's "veto power over public policy" this way:

> The power of capital—its command over state policy—thus derives not so much from what it does but from what it might not do. As in many other situations, power resides with the party that can effectively (and without great cost) withdraw resources and thereby inflict large costs on an opponent.[41]

The mobility of capital is at the root of its power. The "freedom to move" wherever the business climate looks most promising gives capital a power which labor can approach only under extraordinary circumstances. Concerning the different nature of capital and labor, hence, their different kinds of power, Bowles and Gintis add:

> Capital is owned by people and alienable from them; it can be invested or withdrawn or sent around the world by nothing more than the touch of a computer keyboard. Labor is embodied in people. The withdrawal of labor services from an employer requires an alternative source of income, which workers generally lack. The withdrawal of labor from an entire economy requires the costly and often jarring and politically or culturally obstructed physical movement of the workers themselves.[42]

To return to the second, and secondary, structural constraint noted by Block, class struggle also impinges on the options of state managers. Concerted pressure from below can force state managers to expand the state's role into areas that reduce the hardships of the economy for various constituencies. Such reforms are most likely to occur in periods of economic crisis or postwar reconstruction. But as crisis conditions diminish, the impetus for further changes wanes and what reforms have been enacted serve, ultimately, to rationalize the system.

This dimension of Block's structural-functionalist argument shows an affinity with the third approach to state theory, the social struggle school. Social struggle theories recognize the importance of the state's need to secure and maintain business confidence, often referred to as the accumulation function (promoting the accumulation of capital).[43] But they also see this functional requirement conflicting with the need for state policies to be legitimate in the eyes of the public. If the state favors the interests of capital to the extent that people no longer can endorse the systemic bias toward business, causing widespread disaffection—whether overtly-articulated or more implicit—from the established order, citizen allegiance to state institutions and goals can weaken.[44] The state therefore walks a fine line. It must balance its capitalist accumulation function and democratic legitimation function. This opens up a space for social struggle to have an impact on the outcome of state decisions. The state at times may be forced to do things that are *dysfunctional* to the accumulation process, a point Bowles and Gintis make to critique the structural-functionalist tendency to assume the state always reproduces the conditions for capital accumulation. Bowles and Gintis contend that the relationship between the capitalist economy and liberal democratic state can best be understood as "a contradictory rather than a functional totality."[45]

The contradictory nature of this articulation of state and economy means that the state does more than just respond to crises generated by capitalism, as structural-functionalists assume. It "is integral to the production of a crisis as well as to its resolution."[46] Bowles and Gintis cite the success of social struggle on many fronts in the postwar period as forcing the state to make concessions to, among others, the labor movement—costly concessions that seriously limited the profitability of capital by increasing the "citizen wage" (socialized consumption) and reducing the negative impact of the reserve army effect on wages. In this way the state helped create the crisis of capitalism which was manifest in the early 1970s and whose effects are still with us today. Popular pressure thus must have a place alongside other factors in explaining the operation of the state. The state helps set, as well as protect, the "rules of the game" governing liberal democratic capitalism. Bowles and Gintis believe that both instrumental and structural-functionalist theories of the state do not appreciate the fact that those rules can change.

There are important differences in emphasis and particulars between instrumental, structural-functionalist and social struggle theories of the state, and I am in no way trying to resolve them here. But despite these differences, they share a common premise that the basic structure of capitalism profoundly and inseparably influences democratic political life. All the elements of these theories—the class background of state actors, the role of the policy planning network, the functional imperative of accumulation, social struggle and the tension between democracy and capitalism—are vital to what I am broadly calling structural analysis. Yet while the literature on theories of the state is large and growing, the number of analysts who have attempted to use such theories, or elements thereof, to uncover the dynamics of the presidency is modest by comparison.[47] Two efforts do stand out, though, as offering a promising structural blend of these scholarly areas. Both Miroff and Alan Wolfe explicitly examine the specifics of presidential policy-making to glean insight about the nature of the office. They ask what presidents have done and why. And in seeking answers they explore the relationship between the goals of the presidency and the goals of the state.

Miroff's study of the Kennedy administration, *Pragmatic Illusions*, debunks the myth of JFK as a progressive chief executive and the larger myth of the office as a progressive institution in the twentieth century. Focusing on foreign and domestic policies (the Berlin crisis, the Cuban missile crisis, the Alliance for Progress, Vietnam, the New Economics and civil rights), Miroff concludes that Kennedy's tenure was essentially conservative in character and substance:

> Kennedy's presidential record cannot . . . sustain his reputation as a progressive. Behind the image of the popular hero lies the reality of service to established power and established values.[48]

Kennedy's leadership style was premised on the liberal belief in pragmatic, hard-headed adherence to objective facts, free from the taint of ideology. This illusion of pragmatism, of being above the fray—reinforced by the veneer of empirical social science so fashionable in the 1950s and 1960s, and highly touted by the corporate executives Kennedy brought into top administration positions—concealed the thoroughly conventional intent of Kennedy's policy objectives. These objectives, according to Miroff, in no way departed from the basic, and politically-laden, goals of liberal ideology, goals all presidents must endorse in their role as the "central figures in the maintenance of established socioeconomic arrangements."[49]

Despite JFK's lofty rhetoric, then, Miroff maintains he held to the earthly interests of the status quo. Those interests were supported by the economic and ideological context of the American political economy. Within that context, the principle domestic function of the Kennedy presidency—and, to extrapolate, all presidencies—was the "stabilization of corporate capitalism." Miroff elaborates:

> It has not mattered greatly that recent Chief Executives have been relatively unlearned in economics; the imperatives of giant corporations who dominate the American economy impose themselves on the Presidency with a force that cannot be misunderstood . . . . The complex partnership between the White House and the corporate community thus transcends personalities and party lines.[50]

Activity on the foreign policy front complements the stabilization of domestic corporate power by facilitating an accommodating climate for international capital. The expansion of U.S. military power and the concomitant perpetuation of cold war assumptions about the threat of communism are crucial features of this objective. Toward this end, Miroff contends that the president can be much more openly assertive in style than in the sphere of domestic policy, even though the chief executive is the most visible national voice on virtually all important public questions.

What Miroff leaves us with is a picture of the president (Kennedy, or any other) as the "chief stabilizer" of political and economic order in the U.S. He probes the structure of power in the U.S. and finds two major intertwined areas—the domestic economy and its international, defense-related equivalent—where the president serves as the dominant supporter of systemic maintenance.[51] In contrast to Miroff, Wolfe looks at successive administrations from FDR onward to discern the underlying imperatives they faced. His work is at once broader in the sense of covering more presidents, and broader in the sense of containing a more highly developed account of the phenomena he finds. But in his basic assertion that "there are only two issues at work

in American politics most of the time: economic growth and military strength," he is in substantial agreement with Miroff.[52]

Wolfe arrives at this conclusion by tracing the development of American democracy and the relationship of the presidency to it. Late eighteenth and early nineteenth century debates about the nature of democratic society—crystalized in the competing visions of America held by Jefferson, who favored republican government, and Hamilton, who was an early advocate of modernist expansion and commerce—were settled at the turn of the twentieth century. Searching for a means to rationalize the unsteady growth of capitalism, Progressive Era presidents solidified the Hamiltonian conception. The impetus for the victory of nationalist economic expansion was the need to tame the uneven rhythm of the industrial economy. The chief tool for the job was a strengthened presidency at the helm of a state with its reach broadened to an unprecedented degree. Wolfe posits the presidency as "the major instrument by means of which modernizing elites have sought to overcome or remove obstacles to the expansion and revitalization of American capitalism."[53] People increasingly put their faith in the institution of the presidency as the surest available solution to the maladies facing them.

By the time of FDR and the exigencies of depression, a political bargain of sorts had been struck between the electorate and the chief executive. The people got reforms and a measure of security from uncertainty, while the president got political support for the increased purview of the state. "Implicit in the bargain that made the Rooseveltian formula possible were two conditions," according to Wolfe, "continuous economic growth at home and persistent U.S. hegemony abroad."[54] The conditions fed into each other. Out national security and economic security were indissolubly united—hence the welfare-warfare state.

Wolfe devotes an entire book to exploring the effect of these twin postwar imperatives on American political life. He develops the history of what he terms the "growth coalition," a collection of centrist liberals (pragmatic to the core) spanning the Truman years through the end of the Johnson administration. These recycled elites, and the policy planning organizations with which they were affiliated, fashioned a strategy whereby hard political choices could be avoided by spreading the benefits of solid economic performance. Political challenges from social democrats seeking to expand the welfare state, and free-market conservatives trying to contract or eliminate it, could be circumvented. For as Wolfe asserts, "instead of making a political choice, America opted for an economic surrogate."[55] Wolfe exaggerates his case here, for the pursuit of corporate expansion under the umbrella of a worldwide military presence certainly *is* a choice. It is a choice to endorse the priorities of business, which in turn had reached an accommodation with the realities of state intervention into the economy. But his major point, that growth and empire constituted the primary policy objectives for all postwar presidents, is useful. It is clear that such goals appeared to them as largely technical issues, revolving around questions of means, not ends.

The price paid for this "Faustian pact" with growth politics was high. And in Wolfe's account of how different administrations dealt with various policy areas we get a sense of how the fixation on growth as the basic end of politics subverted anything truly resembling the public interest. Whether in the case of public housing that essentially tore down buildings for urban renewal, or health care policy that built hospitals without improving health care delivery, or foreign aid for "development" which sacrificed humanitarian concerns for the sake of economic indicators, growth politics often undermined the very ends it was supposed to achieve. And herein lies Wolfe's larger lesson. The fact that real domestic economic growth did occur in the postwar period served to obscure the fact that purported reforms, especially those of liberal presidents, were conceived in a way that was bound to expose them as woefully inadequate once growth abated.

Such a scenario did transpire, beginning with Nixon's presidency. All the circumstances which contributed to the growth of American power were subject to eventual diminishing returns. In particular, as the long wave of economic expansion underlying U.S. postwar hegemony came to an end in the late 1960s and early 1970s, the presidency faced mounting pressure. Presidents accustomed to being a "cheerleader for economic growth" domestically, and a "cheerleader for American power" internationally suddenly had very little to cheer about. As Wolfe writes: "The American presidency requires economic growth to work; when economic growth cannot be generated, the presidency cannot work."[56] State crisis and the crisis of the presidency

are bound together. And their collective fortunes are tied to the health of the political economy, whose basic needs shape the needs of government. Difficulties with the generation of growth, and challenges to hegemony, put the office, and the state, in a bind, leaving the nation at what Wolfe calls an "impasse."

Presidents Carter and Reagan both assumed an office under seige from the conditions sketched above. I now turn my attention to their presidencies, with the hope that an analytic approach informed by the work of Miroff, Wolfe and the theorists of the state can offer a richer account of the institution than that available within conventional frameworks. What follows are two case studies that probe the structural dynamics of the central imperatives of economic growth and national security, as reflected in the presidents' policy toward occupational safety and health, and the MX missile. Both issues are important in their own right, potentially affecting the quality of everyone's lives. But my foremost concern here is to see what these issue areas can teach us about the nature of the chief executive. Insight into the presidency, and the forces that constrain it, is what I am after. Hopefully this examination will extend, deepen and refine the tools of structural inquiry so as to provide a fuller explanation of the American presidency. And in so doing I will take seriously what Woodrow Wilson, at the outset of the chapter, called attention to—namely, "the very structure and operation of society itself, of which government is only the instrument."

—CHAPTER THREE—

The Presidency and Economic Growth: The Case of OSHA Under the Carter and Reagan Administrations

> I think OSHA can be a great program. The concept is good. I intend to enforce the law rigidly, but I also hope that we can have an acceptance of the OSHA program by the business community. But there would be no backing down on the concept or the purpose of the law concerning OSHA. I just want to make sure that it is administered with a maximum amount of support from labor and of industry.
>
> — Jimmy Carter

> My idea of an OSHA would be if government set up an agency that would do research and study how things could be improved, and industry could go to it and say, 'We have a problem here and we seem to lose more people by accident in this particular function. Would you come and look at our plant and then come back and give us a survey of what should be done?'
>
> — Ronald Reagan

On April 1, 1986 the Occupational Safety and Health Administration (OSHA) proposed what was then the stiffest penalty in its 16-year history. The fine of nearly $1.4 million was assessed against Union Carbide Corporation for "willful disregard for health and safety" at its Institute, West Virginia, plant.[1] The Labor Department accused the corporation of widespread "constant, willful, overt violations" of safety and health laws at the facility which manufactures highly toxic phosgene gas — violations including the customary practice of asking employees to detect the presence of the potentially deadly gas by sniffing the air after alarms indicate a leak.

At first glance, it might appear that the imposition of such a large penalty indicates vigilant enforcement of the nation's safety and health statute. However, such an appearance would be deceiving. In reality, under the Reagan administration OSHA has become an anemic regulatory agency, its feebleness perhaps surpassed only by the soap-operatically embattled Environmental Protection Agency (EPA).

In the case of fine levied against Union Carbide, for example, the entire proceeding was handled not by the OSHA director (officially called an Assistant Secretary of Labor for Occupational Safety and Health), but by Labor Secretary Bill Brock, along with an interim head of the agency. The reason: at the time, there was no official administrator of OSHA, and there had been none for almost a year. OSHA was awaiting Senate confirmation of its third director in six years, John A. Pendergrass of the 3M company.[2] His two predecessors had succeeded in substantially reducing the scope of the agency's standard-setting and enforcement function, immersing the already beleaguered agency into even deeper controversy.

From the very beginning of his presidency, Ronald Reagan made OSHA a primary recipient of administrative animus and ridicule. His agenda had as one of its central tenets an assault on social regulations as an impediment to economic growth. And of all the social regulations he—and the business community—depised, OSHA was singled out as the most intrusive, the worst of the worst. As the editors of *Business Week* put it, OSHA "touches more individual companies than does any other arm of government except the Internal Revenue Service."[3] Business resentment of that alleged intrusiveness helped elevate "regulatory reform" and "deregulation" to a privileged position within the economic policy debates of the late 1970s and 1980s generally, and to the status of an eternal verity within the Reagan camp.

Widespread counterattacks against the OSH Act and other social regulations did not simply commence with the advent of the Reagan years, however. There were many precursors. The story of the rise of regulatory retrenchment and the overall rightward shift in economic policy thus must include an account of the relative positions of business and labor during the economic

tumult of the mid-1970s. Moreover, and of paramount importance for this project, the Carter administration's attempt to fight inflation and revive sagging economic growth and profits in a period of deepening economic crisis must be understood. How these goals influenced the Carter administration's policy toward occupational safety and health, the extent to which Carter's tenure laid the groundwork for the Reagan years, what all of this says about the office of the presidency — such issues are the concern of this chapter.

The picture that emerges is one of a contingent presidency constrained by the imperative of ecomonic growth, one of the twin imperatives of the office. The dynamic interplay of state power and the pursuit of a vital economy, as viewed through the lens of OSHA policy, will provide the substance out of which I will build my case for a structural approach to the study of the presidency, as discussed in the preceding chapter. It is my contention that neither of the conventional orientations to the presidency — the expansivist and restrictivist perspectives — offer as rich or as revealing an account of the office as does structural inquiry. Bearing in mind, then, that the structural approach operates at the intersection of the instrumental, structural-functional and social struggle components of theories of the state, I now will focus on the query: how would a structural approach to the presidency look at the imperative of economic growth as it affects the Carter and Reagan administrations?

A brief history of the Occupational Safety and Health Act[4]

The Occupational Safety and Health Act of 1970 was the child of political and social struggle. Born amid domestic turmoil over the Vietnam War, the "War on Poverty," and the nascent environmental movement, the OSH Act is most profitably viewed as an outgrowth of a general climate of enhanced receptivity to government reform. This climate produced not only OSHA, but a host of "new regulatory agencies," such as the EPA, the Consumer Product Safety Commission and the National Highway Transportation Safety Board. The mere existence of the law thus stands as a testament to the power of sustained public pressure to affect the actions of state actors, particularly the president.

The policy agenda of that era was shaped, in great measure, by the confluence of social forces advocating an aggressive federal role in the area of workplace safety and health. Chief among this coalition of forces were labor unions, rank-and-file agitation, the environmental movement, and public interest pressure (especially the work of Ralph Nader).[5] Together they kept awareness of a workplace safety and health crisis—soaring injury and death statistics from the mid-1960's onward, coupled with rising sensitivity to the incidence of health-related problems associated with the use of toxic substances—prominantly in the public eye.

The role of workers merits special note, for it was within a tradition of struggle that they, sometimes with union support and often without it, pressed for passage of the OSH Act from 1968–1970. The mine workers' effort bears greatest notice because it was their determination to enact basic health and safety reforms that helped galvanize the national health and safety movement. Their three-week wildcat strike in the West Virginia coal mines in February, 1969, including a march on the state capital, following as it did the tragic Farmington, West Virginia mine explosion which killed 78 miners, provided the impetus for not only the 1969 Coal Mine Health and Safety Act, but for the OSH Act as well. Most active among organized labor were the United Steelworkers of America, the Oil, Chemical and Atomic Workers Union and the United Mine Workers. The ensuing union lobbying and public information effort on behalf of the OSH Act was without precedent in U.S. history.

Within this milieu of ferment, a conservative president such as Richard Nixon could only hope to channel existing energies in a direction that might prove beneficial to his political fortunes. Preventing the passage of a health and safety law was simply out of the question when he assumed office in 1969. Such a law was, by then, high on the list of congressional priorities. And Nixon, it should be remembered, was the first new president in over a century to win office without his party controlling at least one house of Congress. His interest in maintaining his political legitimacy, then, dictated that he not oppose the inevitable. Moreover, Nixon was ambivalent about the legacy of New Deal and Great Society programs. While certainly conservative on many issues, he harbored animosity toward much of big business and what he considered the "Eastern establishment," and he also

longed to be thought of as a "modern man."[6] As political scientist Charles Noble has argued, "Although President Nixon appeared to be an opponent of the welfare state at the time [of debate over the OSH Act], his administration oversaw what can only be perceived, in retrospect, as the second phase of the Great Society."[7]

Nixon's options were further limited by the general lack of a coherent business strategy to deal with the prospect of an OSH Act.[8] Rather than taking a leading role in crafting a piece of legislation to suit their needs, businesses of all sizes generally opposed the statute as unfairly weighted toward supplementing the power of organized labor. With capital unwilling to accept an expansive role for the Department of Labor in the health and safety area, they forfeited their chance to guide the outcome of legislative negotiations. In addition, here was no leading business organization to champion the cause of reform from the perspective of "enlightened" capitalists, as the corporate liberal variant of instrumental theories of the state would posit.[9] Thus, the task of articulating the prime capitalist response to the law was left to the U.S. Chamber of Commerce, whose shrill, reactionary laissez-faire rhetoric was out of step with the prevailing ethos of responsible public policy. Business disorganization left Nixon with no credible group of industry allies upon which to rest a case for an alternative approach to the issue.

For his part, President Nixon did propose three different versions of the bill which would have been much more favorable to the interests of employers than the version which ultimately passed. White House efforts centered on the strategy of dividing the authority over health and safety matters so that the Labor Department would not be unduly strengthened, and keeping provisions of workers' rights to a minimum. In this sense, the Nixon administration tried to mobilize the state to perform a coordinative function that business could not pull off collectively. But his attempts did not bear fruit. A strong version of the OSH Act finally passed, with the Labor Department obtaining the standard-setting and enforcement powers most conservatives had feared. Responding to what his Secretary of Labor termed "a new national passion, passion for environmental improvement," Nixon signed the landmark bill on December 29, 1970, hailing it as an example of "the American system at its best."[10]

The bill itself stands as the first comprehensive federal effort to deal with workplace safety and health. It is far-reaching, even potentially radical—depending on how it is interpreted and the vigor of its enforcement—in its provision of a universal right to a safe and healthful workplace.[11] Intended to "assure safe and healthful working conditions for working men and women," the act makes it the "general duty" of every employer to "furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees."[12] In the bitterly contested health area, the law goes as far as saying that in setting health standards dealing with toxic materials or other harmful agents, OSHA "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."[13]

The law establishes a tripartite institutional apparatus to meet its goals. OSHA, located in the Labor Department, promulgates rules, sets safety and health standards, and oversees enforcement. It is the organization that has the most power and has drawn the most criticism. Its research arm is the National Institute for Occupational Safety and Health (NIOSH), located in the Department of Health, Education, and Welfare (now called Health and Human Services). The third body, the independent Occupational Safety and Health Review Commission (OSHRC), adjudicates all disputed enforcement actions. The law also provides for a vast expansion of employee rights, including the right to participate in workplace inspections and standard setting, and the right to have access to information about potential safety and health dangers.

Writing more than a dozen years removed from the heady days of regulatory explosion, Herbert Stein, chairman of Nixon's Council of Economic Advisers from 1972–74, views the passage of the act as an example of governmental excess. He attributes the administration's inability to moderate the scope and expense of such social regulations to the momentum of "a tide of Congressional demagoguery and sentimentality plus bureaucratic zeal," contending that "the juggernaut of environmental regulation

proved not to be controllable by the Nixon administration."[14] His words implicitly attest to the power of social movements to pressure the state for concessions on important issues. Nixon surely was constrained in many ways. But he also used passage of the act to help his chances of siphoning off the support of labor unions and workers from its traditional home in the Democratic party. This blue-collar affiliation with the Democrats was viewed by some analysts at the time as soft, and Nixon quite consciously set out to include workers, considered to be conservative on many social issues, within his "silent majority." Therefore, the OSH Act had a positive political side for the president; it was not simply a grudging concession to popular pressure.

Moreover, few observers, least of all Richard Nixon, foresaw the economic crisis of 1973–75 on the horizon. In 1970, concern for the overall health of the U.S. economy was not as salient as other social and foreign policy issues. The public and politicians generally assumed the economy could support additional regulatory measures. The argument that social regulation constitutes a substantial impediment to economic growth did not serve as a major organizing tool of OSHA opponents. All of this changed, of course, as the economy experienced sustained downturn, the recession of 1974–75, and the onset of the previously unheard of phenomenon of stagflation.[15] As the unprecedented long wave of postwar expansion came to a rather abrupt halt—dramatized by the oil price shock, but manifested in numerous other developments of lesser visibility—government and corporate leaders began to rethink the issue of social regulation. The perspective that emerged reflected the roughly mid-decade shift to the right in the balance of political forces.[16] Corporate capital and policy planning organizations initiated a campaign to fight excessive social regulation as a costly, burdensome, irrational way to achieve public policy goals. Calls for "deregulation" have proliferated during the last decade. Economic decline thus afforded big business the opportunity to mount the kind of coherent attack on social regulation that it lacked from 1968–70.

Here a digression is needed to note the important distinction between two kinds of activities that are often placed together in the category "government regulation:" economic and social regulations.[17] *Economic* regulation involves an attempt by the state to stabilize market conditions within a given industry. Most such efforts to rationalize market behavior—through regulation of prices, rationalization of competition between firms, reduction of risk and the creation of a more predictable market environment—occured before the 1970s. The Interstate Commerce Commission of 1887, the first such agency, was a regulatory program aimed at the railroad industry. The Civil Aeronautics Board, the Federal Communications Commission and regulation of the airline and banking industries are all examples of economic regulation. Often such market-smoothing measures were welcomed by, if not substantially written by, businessmen. In the context of economic regulation, then, the call for *deregulation* means either partial reduction, complete withdrawal, or rewriting of government regulatory activity.[18] Often the "regulated" industry will oppose deregulation because it will hurt the market position of its leading firms by increasing competition.

Social regulation, by comparison, seeks to alter the non-market behavior of corporations, notably to correct for market failures or "externalities" of production, such as air or water pollution, or unsafe working conditions. Unlike economic regulations, social regulations cut across industry lines, restricting the freedom of large numbers of different businesses to injure third parties (workers and consumers, for example). They grew out of a sense of fairness and justice, to achieve social objectives. Here government is involved in the production process itself, affecting a firm's production and investment decisions. Such regulations invade the terrain of the capitalist firm and are widely seen by companies as an unwarranted invasion of privacy. In the context of social regulation, although the call for "deregulation" is heard, the more common charge is regulatory excess or *overregulation*. Virtually no one would publicly advocate the elimination of EPA or OSHA. But the claim that government has overregulated in these areas is common, to both political parties and to both liberals and conservatives. And strategies for reducing the alleged inflationary impact of social regulations—which could be termed "social deregulation" or, more humorously "de-overregulation"—are now routinely received with favor by businessmen and politicians.[19]

Within the overregulation thesis, the cost of social regulations has become a convenient scapegoat for the overall decline in the performance of the economy. The cost of regulation as a major obstacle to economic growth is, at best, a spurious claim, which will be examined in greater detail later. A more likely cause of the intense hostility of business toward social regulations—and especially toward OSHA—lies in their nature as intrusions into property rights, their violation of the inner sanctum of business.[20] Economic crisis provided the condition for corporate capital to make OSHA a lightning rod for opposition to the whole array of social regulations enacted in the early 1970s. OSHA unified corporate thinking on this issue, helping to undermine, within changed economic circumstances, the basis of its support from the state. And because so much else had changed by mid-decade—organized labor, for example, has not won a significant legislative victory in the U.S. since the OSH Act—OSHA policy retrenchment became the order of the day. The constraints on the state had shifted over time from being primarily generated by the need to respond to social struggle, to being preoccupied with the functional provision of business profitability and confidence. Into this radically altered climate of economic uncertainty, corporate mobilization and labor defensiveness stepped Jimmy Carter.

The Carter presidency: The internal tension

From the beginning of his presidency, Carter was of two minds on the issue of occupational safety and health regulations. On the one hand, he carried with him a desire to retain some degree of the traditional Democratic attachment to the concerns of organized labor. This included a commitment to enforcing the OSHA statute. As he remarked to a gathering of Labor Department employees in the first weeks of his administration:

> I think that of all the beneficial legislation that has been passed by the Congress in recent years, the one that has the best prospect of improving the lives of American workers and the one that had the most adverse acceptance has been the OSHA program.[21]

He went on to praise OSHA as "a great program."

On the other hand, having inherited an economy in trouble from a long-term growth standpoint, he wanted to please the business community and, in particular, allay their fears about the threat of inflation. In the early months of his term, Carter's remarks also reveal his ambivalence toward OSHA. "We need to have, though, some sensitive approach at the delivery end of the OSHA program," he continued in his talk cited above, stressing the need for "a minimum number of regulations" and a "maximum amount of common sense."[22] A few months later he decried as "unnecessary and burdensome" OSHA safety regulations implemented over the preceding seven years, saying that the agency would now "develop and enforce effective standards for occupational health without repeating the exesses of the past."[23] Controlling OSHA's regulatory excesses surfaced again as a theme in July of 1977 at a public meeting in Yazoo City, Mississippi, where he assured small businessmen that while the OSH Act is "a good piece of legislation," enforcement has at times gotten too fiesty. "It's important that in the working places we protect the health and safety of employees," he asserted, "but the OSHA program is going to extremes."[24] He illustrated the extremes with a story about overly detailed OSHA safety regulations for ladders and stools, concluding that the federal government ought to withdraw from such details and focus on the provision of occupational health. The president's early ambivalence toward OSHA would only increase as his presidency encountered mounting economic pressures.

In his attempt to reconcile these competing concerns Carter pursued a strategy of centralizing the regulatory process within the executive branch, where his economic advisers heavily influenced the regulatory process. This approach led to the formation of two distinct camps within the White House on questions of OSHA regulations. And these camps periodically warred over occupational safety and health policy decisions.[25] The internal administrative tension was played out between what I will call the *economic technocrats* and the *OSHA supporters*. Briefly put, the economic technocrats included members of such groups as the Council of Economic Advisers (CEA), the Council on Wage and Price Stability (CWPS), and the Office of Management and Budget (OMB), along with their informal working group known as the Regulatory Analysis Review Group (RARG). Greater

regulatory cost-effectiveness was the goal of these agencies charged with assisting in the White House review process of regulatory oversight. In order to rationalize health and safety regulations, emphasis was placed on economic incentives for safety regulations, and increasing use of cost-benefit analysis as a general guide for health standard-setting.

OSHA supporters within the administration, on the other hand, included Secretary of Labor Ray Marshall and Carter's OSHA director, Eula Bingham. This alliance contended that the OSH Act does not call for cost-benefit analysis of any type and resolutely defended OSHA regulations, existing and proposed, against its use. Bingham, in particular, pushed for stronger standards, especially for occupational health, her field of expertise. As for safety, OSHA supported vigorous enforcement practices through such measures as more accident inspections of workplaces (both initial as well as follow-up inspections), greater fines for violations, and the like. However, in a concession to the economic technocrats, and to common sense, OSHA did eliminate about a thousand of the nitpicking safety standards for which it had been chided by business groups since its inception.

The internal discord between these two camps commenced in the spring of 1977 and continued throughout Carter's term. Before examining this tension in detail, though, some background on the debate over OSHA safety standards will help put the issue in perspective. The crux of the debate over occupational safety issues is a disagreement between those who favor the enforcement of safety standards and those stressing the use of an injury tax approach to economic rationality. This disagreement turns on the question of whether safety regulations or the unfettered market is best able to prevent disabling or deadly accidents.

In 1971 OSHA adopted en masse some 4,400 existing "national consensus standards" set by the American National Standards Institute. Previously viewed as merely a nuisance, incorporation into the OSH Act as "the word" on safety gave the ANSI standards enhanced visibility and importance. OSHA's critics did not hesitate to make an issue of the frivolous nature of some of these safety rules.[26] It is, after all, tempting to ridicule the 140-odd regulations pertaining to wood step ladders or specifications for the shape of toilet seats as needless government nitpicking. In defense of OSHA it can be said that the ANSI standards appeared to be an efficient, quick way for the agency to make its mark. Unnecessary standards could be weeded out later and more relevant safety rules could be promulgated as needed. Perhaps more important, though, was the political mileage OSHA derived from meeting organized labor's desire to actively involve safety inspectors to get tough with companies that fail to comply with baseline regulations.

The problem with the enforcement of safety standards has been that this approach has failed to significantly affect the industrial injury and death rate. Indeed, in OSHA's first few years of operation, the national job injury and death statistics actually rose, and it is difficult to find a correlation between OSHA's enforcement activities and changes in the injury statistics.[27] Labor's evaluation of OSHA's impact centered on the agency's lack of adequate numbers of inspectors and the low level of fines levied. This interpretation has some plausibility given that through 1975 OSHA had so few inspectors that the average employer could expect to see one every 66 years, and the average fine was only $25 per violation.[28] The deterrent effect of such meager efforts would appear minimal, and both the probability of inspection and size of fines has not risen appreciably. Recognizing such limits on OSHA's resources, supporters of safety standards have either pushed for higher budgets to finance more inspectors issuing stiffer penalties or, more commonly, advocated that the agency target its efforts on accident inspections and on ''general schedule'' (i.e. routine) inspections in high injury rate workplaces. This strategy is not without problems, however, for it still must ensure that fines are high enough to deter dangerous workplace organization and practices. Likewise, provision must be made to prevent employers from understating their injury statistics when OSHA devises its targeting scheme, since employer self-reporting is the basis for injury data.

Opponents of safety standards have noted the failure of injury and death trends to decline with a predictable ''I told you so'' attitude. They propose instead a system of injury taxes to provide incentives for firms to bear all the costs of accidents resulting from the production process. This is the familiar cry of the market approach to economic management—''internalize the externalities"—raising the marginal benefits of injury prevention by raising the costs of accidents.[29] American Enterprise Institute (AEI) economist Robert Smith, a leading critic of OSHA, advocates such an approach, viewing it as a way to achieve economic rationality, especially efficient resource allocation, while minimizing (if not obviating altogether) the weight of moral issues, trade-offs among policy objectives and distributional questions.[30]

However "natural" the injury tax appears, though, (natural, in the sense of being more market-like) it has several political drawbacks which underscore the tension between economic rationality and political feasibility. Organized labor has vehemently opposed injury taxes for fear that they would not supply enough incentive to prevent injuries, hence by implication some injuries will be allowed to occur. Labor leaders characterize such taxes as "a license to maim." Injury taxes might also replace a union's power to call in safety inspectors, and in nonunion plants they might lead employers to replace workers with bad accident records. In addition, unions see any weakening of mandatory standards and enforcement procedures as an encouragement to favor risk-taking workers over risk-averse workers, an ethically questionable practice. Ironically, many businessmen also are wary of injury taxes, noting that once established tax rates could be subject to politically-motivated fluctuation, perhaps becoming a source of general revenue rather than a method internalizing social costs. One final argument against tax plans highlights the potential they have for engendering a layer of government bureaucracy to monitor corporate compliance with injury reporting requirements. While such monitoring would be necessary for any serious tax plan —given the motivation to fudge occupational accident reporting, inherent in the microeconomic "free-rider" problem—it also defeats one of the purposes of such market measures, namely getting the government "off the backs" of business.[31]

The stakes involved in the dispute within the Carter White House over these kinds of occupational safety issues were evident in the first internal flare-up, which occurred as a result of a May 27, 1977 memorandum to the president on OSHA reform. Signed by Charles Schultze, chairman of the CEA, Stuart Eizenstat, director of Carter's Domestic Policy Staff, and OMB director Bert Lance, the memo calls for "major changes" in OSHA, arguing that "serious consideration should be given to totally eliminating most *safety* regulations and replacing them with some form of economic incentives."[32] While the ostensible reason for the elimination of safety standards was to free OSHA resources for use in tackling health problems, an OMB issue paper attached to the memo made it clear that the economic advisers were calling for retrenchment in that area as well, of which more below.

The memo, which Carter accepted in its entirety, provides clearer reasons why the technocrats saw OSHA reform as a top priority for the new administration, the primary one being the link between OSHA reform and the broader effort to apply economic incentives to all social regulatory agencies. This link meant that OSHA reform would not be confined to the purview of the Labor Department. "Social regulations have pervasive impact on the economy," the memo continues, "and those concerned with economic policy and your anti-inflation program should be involved."[33] Noting that OSHA supporters would be concerned, if not outraged, by the proposed "reform" measure—which included a recommendation to establish an interagency taskforce on OSHA reform—Schultze and others stressed the importance of keeping foremost in mind the growing perception of the agency as an economic burden.

> OSHA is, as you know, the leading national symbol of over-regulation; not to act decisively would be perceived outside the labor movement as a retreat from your commitment to major regulatory reform.[34]

Ironically, for the economic technocrats the *perception* of OSHA was as crucial as the agency's actual impact on the economy. The credibility of Carter's reform program as a major component of his strategy for economic growth was at stake. OSHA had, in short, enormous symbolic value. It was a symbol aimed at securing business confidence—a symbol of the administration's determination to fight inflation and create prosperity.

This frontal challenge to one of OSHA's principle areas of interest as not presented as an attack on the agency. Rather it was couched in terms of making the agency more cost efficient. Nonetheless, it generated immense internal conflict, which eventually became public when someone in the Labor Department leaked the memo to the press. The administration

devoted considerable time and energy to damage control in the ensuing months.[35] The primary objection to the "reform" campaign of the economic technocrats was its suggestion that OSHA rely in large part on stiffening payment of compensation to injured workers as a means of motivating employers to provide safe workplaces. Such incentive plans place the active prevention of injuries in a secondary position, and have all the aforementioned problems associated with injury taxes as well.

It was, of course, coincidental that while the Carter administration was taking its lumps (mainly in July) over the OSHA reform strategy, the American Enterprise Institute was busy preparing the premier issue (July-August, 1977) of its bimonthly journal *Regulation*, a publication which would provide a forum for the very ideas that Carter was finding so controversial. The AEI was a leading conservative policy planning organization in the coordination of the business case against OSHA, helping to create a climate receptive to the corporate perspective on the relationship between government and economy.[36] *Regulation* was one of AEI's carefully conceived tools for use in this ideological offensive against social regulations, an offensive fought within industry, government, academia and the mass media in the name of liberating market capitalism. Given its ideology, the journal more appropriately might have been titled *Deregulation*. As we will see, President Reagan selected many of his top economic advisers from the ranks of the AEI and *Regulation's* staff.

It is revealing to point out that Carter's economic technocrats—above all Schultze—supported much of AEI's overregulation argument. The organization even excerpted in *Regulation* Schultze's paean to the free-market, his Brookings Institution study *The Public Use of Private Interest*, in which he opines that "Market-like arrangements not only minimize the need for coercion as a means of organizing society; they also reduce the need for compassion, patriotism, brotherly love, and cultural solidarity as motivating forces behind social improvement."[37] This happy thought accords well with the economic ethics of the Reagan administration, whose views the Carter economic advisers foreshadowed. While there were important differences between the two administrations, there were substantial and fundamental areas of agreement. The major difference was the existence of genuine supporters of OSHA within the Carter White House to counterbalance the views of the technocrats.

Reaction to the May 27 memo eventually subsided and few concrete results ever came from it. The Interagency Task Force on Workplace Safety and Health that it recommended—approved by Carter and co-chaired by Labor Secretary Marshall and OMB director James T. McIntyre—produced recommendations (released in the summer of 1978) that had little real impact on OSHA.[38] For the remainder of the year, relative calm prevailed on the OSHA front. The agency did propose its comprehensive carcinogens policy in the fall, but the major criticism of it from the Council on Wage and Price Stability and the Regulatory Analysis and Review Group came in 1978. By the end of 1977 a relaxed Carter thus could stand before a meeting of the Business Council and joke: "I understand this is where I was supposed to come to restore business confidence."[39] Peppered with deferential, almost fawning, remarks to the leaders of corporate America, Carter's address focused on conveying his personal sense of confidence in the course of the nation, and especially the economy. He stressed the "remarkable harmony" within the various departments of the government, singling out Charles Schultze as a trusted private voice on economic affairs. And as if to underscore the theme of harmony and confidence, the president brought along OSHA director Eula Bingham to make the point that his administration was reducing "unnecessary paperwork and regulations and intrusion into the business lives by Government." The president added that "Dr. Bingham has brought forward revisions in those administrative procedures that have helped to remove this burden on your shoulders."[40] OSHA and other regulations were being pared back, the administration was in harmony on its basic goals, the economy was experiencing "no serious or major imbalances or distortions"—all in all it was, officially, a rosy picture for the president's first year in office.

If the president seemed to forget the contentious internal debate over OSHA reform, he would not be afforded that luxury in 1978. In March of that year he signed Executive Order 12044, codifying the shift toward emphasizing increased use of cost-benefit analysis as a general guide for regulatory standard-setting—most importantly, for this study, in the area of occupational health.[41] Entitled "Improving Government Regulations," the order required

an assessment of the economic impact of regulations because, as Carter put it, "we want to be sure that they don't contribute to inflationary costs." Specifically, E.O. 12044 mandated that all new "significant regulations" be proposed only after assurance could be given to White House reviewers that alternative approaches had been carefully considered and the "least burdensome" of the acceptable alternatives had been selected. Moreover, regulatory analysis was required for all regulations projected to have "an annual effect on the economy of $100 million or more."

The intent of this regulatory centralization was to ensure that new regulations be cost-effective. The administration did not explicitly call for cost-benefit tests as the method of regulatory analysis until one year later in proposing its Regulation Reform Act of 1979.[42] But cost-benefit criteria were used as standard operating procedure. As Kitty Bernick, Assistant Director of the Domestic Policy Staff, described the use of such analysis:

> The idea is that the agency [OSHA] should be informed of the costs and benefits of its actions but not that the substantive statute should be overruled by such analysis. Our point is that cost-benefit analysis is a useful tool, but it is not the only factor the decisionmaker can consider.[43]

The OMB was nominally in charge of overseeing the White House review process, but in practice the agency delegated responsibility for the program to a rather loose coalition of CWPS, RARG and the CEA, with OMB providing input on occasion. This group, it should be noted, had no veto power over proposed regulations. But the implementation of its oversight activity did spur the internal administration battle once again, this time extending the debate over economic incentives and the appropriateness of cost-benefit techniques to the health area, a much more heated arena of conflict than that of job safety. While this conflict arose over health standards for benzene, arsenic, DBCP, acrylonitrile and lead, it was the controversy surrounding the proposed revision of the cotton dust standard that received the most attention.

The dispute over cotton dust generally was indicative of the others, except for the *intensity* of hard feelings it invoked. Its inclusion here draws attention to the level of in-fighting and bureaucratic maneuvering within the institutional confines of the executive branch—involving conflict which eventually worked its way up to President Carter himself. Conventional accounts of the presidency would be likely to focus exclusively on this intra-institutional discord, drawing lessons about the personal and political impediments to the smooth implementation of the president's program. The need for better management of the policy process is the kind of insight we could expect to be derived from such a mainstream inquiry. While there may be some value in such institutional, process-oriented insights from the cotton dust story, conventional accounts omit the more important *structural* point that, as we will see, the imperative of economic growth eventually consumes other domestic policy agenda items, in this case OSHA policy, relegating the administrative give-and-take to a secondary (though not unimportant) status.

The cotton dust case revolved around OSHA's plan to release its final standard on permissible levels of exposure to cotton dust, which causes a respiratory disease kown as byssinosis or "brown lung." First proposed in 1976, OSHA's standard was subject to a lengthy period of public comment and written opinions on how best to achieve reductions of cotton dust concentration in workplaces in all segments of the industry—ginning, milling, yarn and fabric manufacturing, and waste processing.[44] OSHA's final standard was to be a revised version of this original standard. In the late May memorandum to the president, Eizenstat and his Domestic Policy Staff aide Simon Lazarus warned him rather starkly of the consequences of endorsing a revised cotton dust standard. If a version suitable to the economists was endorsed, organized labor and other OSHA advocates "will explode." Mentioning Labor Department rumors of Bingham's "vague resignation threats," Eizenstat and Lazarus asserted that in the event of the promulgation of a more cost-effective option, "the resulting propaganda—alleging that you care more about cotton industry profits than workers' health—could be ugly."[45] Yet the alternative, from the economic technocrats' perspective, was worse: "On the other hand, permitting OSHA to promulgate could damage the credibility of your anti-inflation commitment and of Charlie's [Schultze] Review Group process."[46] This type of linkage would surface repeatedly on this issue.

By June of 1978 the disagreement between the OSHA supporters and the economic technocrats had narrowed to one

over the cost of reducing cotton dust concentration in the ambient air of workplaces in just the yarn-producing segment of the industry. In brief, Labor Secretary Marshall and Bingham favored mandating plant-wide *engineering controls* (such as ventilation equipment), while Schultze and Eizenstat argued for *performance standards* that set target goals for dust reduction to be met in any way the industry saw fit. In practice, Schultze admitted, performance standards would allow heavy reliance on personal protective equipment, namely respirators worn by employees. The lone virtue of respirators is their low cost. Indeed, virtually everyone agrees that they are the most cost-effective way to reduce exposure to airborne pollutants. The problem is, as Marshall and Bingham contended, an enormous body of evidence exists to show that, for a variety of reasons, respirators are demonstrably ineffective in keeping harmful substances out of workers' lungs.[47] The technocrats' response was a very vague "that can be worked out." For them the bottom line was that the proposed standard's reliance on engineering controls confronted industry with excessive costs, placing a "major burden of uncertainty on the industry." And perhaps most important for Schultze, as head of both the CEA and RARG, "the credibility of our anti-inflation and regulatory reform effort requires some modification—even if only a modest one—in the draft OSHA [cotton dust] regulations."[48]

Once again sensing the *symbolic* value of OSHA regulations to Carter's larger economic program, Schultze decided to challenge the agency's new cotton dust standard. It was, to him, a matter of preserving the mettle of the administration's anti-inflation commitment. Unable to convince Marshall to modify the OSHA regulation in a direction favorable to the position of those engaged in the regulatory review process, a meeting was called for June 7 to take the issue directly to Carter. In attendance were the president, Vice President Mondale, Schultze, Eizenstat, Bingham and Marshall.

An exhaustive accounting of this important meeting is not necessary. The upshot is that after hearing Bingham deliver what Eizenstat describes as an "impassioned discussion" of engineering standards, President Carter "much to our surprise . . . seemed to embrace this alternative and to push Charlie [Schultze] to accept it."[49] The exact degree of warmth of Carter's embrace immediately became an issue, however. Participants seem to agree that the president suggested a compromise plan that would have phased in a new cotton dust standard in two stages over a four-year period. But after that, disagreement and misunderstanding abounded. Schultze interpreted the meeting as resulting in a compromise regulation which, while requiring engineering controls to be installed on an industry-wide basis at the end of the four-year period, would have allowed firms to receive an extension beyond four years for economic reasons. More importantly, he thought there had been consensus on allowing firms to develop performance standards using alternate means of protecting workers (eg. respirators) if they could demonstrate their plan was at least as effective as more costly engineering controls. This would, of course, be a vindication of Schultze's orientation toward health regulations.

Bingham and Marshall, by contrast, interpreted the meeting as vindication for their position. They judged Carter's reaction to their proposals as a "reversal" of his earlier stand and a "victory" for them—and said so publicly at a post-meeting press briefing. The newspapers played the story as a major Labor Department victory and a "turnabout" on the president's part, with him "apparently reversing an earlier decision." One account of the affair, appearing in the *New York Times*, carried this passage that particularly upset the White House staff:

> As for the inflationary impact of regulations, Dr. Bingham commented that "my ignorance of economics is comparable to the ignorance of the Council of [sic] Wage and Price Stability and the Council of Economic Advisers of industrial safety and health." She added that the Occupational Health and Safety Law mandated the protection of workers and said nothing about inflation.[50]

Acting on her understanding of the June 7 meeting, Bingham two days later signed an new cotton dust regulation which Schultze and Eizenstat viewed as in "flat contradiction" of the principles agreed to. They were angry at provisions for OSHA to cite firms for noncompliance before the four years had expired, the difficulty of firms obtaining a waiver under the rules, and the lack of a provision for firms to show they have an equally effective alternative to engineering standards. They informed the president that they "consider this a flagrant and deliberate attempt by OSHA to frustrate an express agreement reached directly with you."[51]

From the perspective of the White House review team, the cotton dust decision was an absolute disaster. As Eizenstat expressed it to Carter's chief administrative assistant Hamilton Jordan:

> The way in which this has now come out makes it look like the Administration is not serious about fighting inflationary regulations .... Barry Bosworth [CWPS director] is depressed about what this means for the regulatory process—as is Charlie. It will make everyone less likely to tackle these tough regulatory issues in light of the results of this debacle.[52]

Surveying the damage done, Lazarus wrote to Eizenstat of the importance of "modifying the perception that the President reversed himself," and of "re-establishing CEA's and the White House's authorization to review this and other regulations." Clearly for these advisers, the legitimacy of the White House review effort was on the line. And the first step toward regaining that legitimacy was to dispell "the notion of discord within the administration that OSHA has generated."[53] This notion proved difficult to dispell.

In fact, in December of 1978, Bingham was still something of a loose cannon on the Carter ship, this time in regard to OSHA's lead standard. Speaking before a United Steelworkers' conference on lead regulations, the OSHA director reemphasized her personal commitment to stringent workplace health rules. Executive branch insiders were upset about her remark that "Marshall and I have been through the palace guard once to see him [Carter] about a standard [for cotton dust] and we are ready to do it again."[54] She was especially critical of economists—the strong implication is administration economists—who argue that health and safety regulations are inflationary. Suggesting that the lead standard was being delayed within the administration, she commented, "These economists never look at the working men and women I look at." "I prize men and women more highly than the GNP," she added, charging that many industrial leaders and economists "are complacent about cancer in the workplace." Bingham concluded by urging the unionists to lobby Washington and the administration to "free the lead standard." Roughly one year after Carter spoke to the Business Council about the harmony within his staff, discord reigned over the relationship between OSHA regulations and economic vitality.

Despite Bingham's convictions, the end of 1978 marked a major domestic policy shift for Carter's presidency. As structural analysis highlights, his presidency henceforth was held hostage to the unsuccessful quest to promote economic vitality and restore business confidence. Therefore, while OSHA did successfully fend off the economic technocrats' challenge to the cotton dust standard, the agency actually issued no *new* health standards after January of 1978 and existing proposals continued to be subject to the scrutiny of economic cost-effectiveness tests, often with more success than in the cotton dust case. In effect, Bingham and OSHA won the battle but lost the war, a war whose importance eclipses the specifics of administrative turf battles.

OMB and CEA tightened up regulatory review considerably after 1978, seriously blunting OSHA's earlier activism. As Charles Noble has pointed out:

> Particularly after 1978, OSHA found it difficult to set new health rules or intensify enforcement. But the shift in agency strategy is clear in standard setting and, to a somewhat lesser extent, in enforcement.[55]

The shift toward greater use of White House reivew of regulations and overall retrenchment in OSHA activity was not prompted so much by the power of the technocrats' arguments, as by rising fear over economic downturn. Specifically, by 1979 Carter's concern over economic growth, especially as threatened by rising inflation, became a major domestic policy preoccupation, lasting the duration of the second half of his term. Noble points out that there is a strong correlation between changes in the business cycle and changes in White House regulatory policy. As the economy worsens, regulatory initiatives become harder to justify. This relationship is confirmed by the Carter experience. Business leaders were making the case that regulation was hampering economic growth. In the new economic context of the 1970s businessmen considered it a cost of production no longer affordable.

Restoring economic growth and fighting inflation are ubiquitous objectives in administration documents and public pronouncements of the period. The level of administration anxiety over the economy is clear in the words of Treasury Secretary Michael Blumenthal, who wrote to the president in late May of

1979 that attention needed to be focused on "how best to sell publicly a policy of long-term economic austerity."[56] He attached to his presidential memorandum another memo he wrote for the Economic Policy Group Steering Group, in which he outlined his thoughts on how to accomplish this task. Basically, Blumenthal saw Carter's entire presidency, and his re-election chances, hinging on convincing the public to accept "continuation of tough and austere macroeconomic policies, requiring sacrifices by many." He strongly believed that Americans would swallow the bitter pill of deferring liberal spending programs, deferring expensive environmental and health and safety regulations, and other (eight in all) painful executive economic decisions if a program of economic austerity was infused with a spirit and an exciting theme "that engages the imagination and deep convictions of the people." And he offered the idea of America's economic preeminance in the world as such a theme. America could be number one again, he reasoned, if a "frank appeal to national pride" was carefully crafted, "creating genuine excitement and commitment for economic policies that would otherwise cause him [Carter] great political problems." He elaborated on his plan to put Carter on the political offensive "as a responsible visionary":

> This new approach attempts to lend shape, color, and excitement to the general interest—by associating it with widespread anxieties about our economic position in the world and about our productivity and economic discipline at home. A "strong economy" has, I believe, the same political potential as a "strong defense."[57]

Blumenthal was dismissed as Treasury Secretary only a few months after writing these words—in the wake of Carter's July retreat to Camp David and subsequent fabled "crisis of confidence" television address.[58] But his thoughts on the psychology of damage control—getting the body politic enthused about austerity—perfectly capture the domestic dilemmas confronting Carter as the economy headed into a tailspin. Public confidence, as well as business confidence, was waning. Eizenstat echoed Blumenthal's strong economy/strong defense theme in a confidential memorandum to President Carter in March of 1980, at a time when, coincidently, the Labor Department and organized labor were reduced to trying to defend OSHA against a series of bills in Congress that would have made the most dramatic cuts ever in the agency's jurisdication.

In his memo, Eizenstat warns that "we truly are on the verge of an economic crisis which is as severe for the country as the foreign policy crises you have been dealing with over the last several months."[59] Citing a "growing national sense that things are out of control," he urges Carter to "get out and let people know *you* are the general in personal charge of this war"—the war being the war against inflation and general economic malaise. Like Blumenthal, Eizenstat believed the psychological dimension to economic decline was crucial. If people expected routine rises in the inflation rate, they would get them. Carter, it seems, needed to break the psychic grip of hard times through judicious exercise of presidential leadership.

As we know, the results of the 1980 election, held in the midst of a recession, in part attest to his failure on this score. The nation's economic indicators by election day were predominantly ominous, continuing the trend of the previous year and a half.[60] Inflation was hovering around 10 percent, driven in part by the second oil price shock of the decade which saw OPEC double petroleum prices in 1979. Moreover, unemployment had risen to more than 7.5 percent, real wages had dropped almost 3 percent from a year earlier, and interest rates, fueled by the Federal Reserve's vacillating tight money policy, were gyrating upward. Within this overall context it is no wonder that OSHA initiatives of all kinds, for the most part, languished in Carter's latter years. They were overwhelmed by the force of the structural imperative to maintain economic growth in the face of conditions mitigating against it.

The Reagan administration: Unity in opposition

President Carter established the centralization of regulatory policy as the administrative norm. This effort was not a smooth one; there was a certain contradictory nature to it as different wings of the administration worked at cross-purposes. Yet while not given the legal authority to single-handedly squelch new regulations, the White House reviewers were able to have a substantial impact on the regulatory environment. When coupled with the overriding problem of economic crisis, the impact was

nothing short of chilling. It should come as no surprise, then, that things got tougher for OSHA after 1981, since Ronald Reagan was welcomed to Washington by an economy in even worse shape than the one Carter had inherited. As a candidate for president, Reagan had expressed his relaxed concept of OSHA—quoted at the outset of the chapter but worth repeating—in these terms:

> My idea of an OSHA would be if government set up an agency that would do research and study how things could be improved, and industry could go to it and say, 'We have a problem here and we seem to lose more people by accident in this particular function. Would you come and look at our plant and then come back and give us a survey of what should be done?[61]

Notice here the omission of any notion of workers or organized labor actively using OSHA as a resource to protect their interests, although the law expressly establishes workers' right to "safe and healthful" workplaces. Notice also the passive role for the nation's primary guardian of workplace safety and health. On this reading of OSHA's purpose, industry assumes the active role, going to the agency when it suits the needs of business. This is part of what came to be known as Reagan's "voluntary" approach to OSHA. There is a peculiarly uneven quality to his notion of voluntarism, though, as one safety specialist has pointed out:

> No one in the Reagan administration has ever proposed a "voluntary" approach when it comes to food stamp fraud or illegal immigration. "Law and order" in these areas is a brisk, menacing enterprise that has thousands of federal enforcers vigilantly patrolling their turf for violations of the law.[62]

To understand why the situation is so radically different when it comes to OSHA enforcement, we can begin by looking at Reagan's very first address to a joint session of Congress. There he outlined the basic components of his economic program that remained relatively unchanged throughout his presidency.

In his February 18, 1981 speech outlining his economic recovery program, President Reagan attempted to sum up the nation's dire economic predicament. High on his list of culprits was overregulation, "a mass of regulations imposed on the shopkeeper, the farmer, the craftsman, professionals and major industry that is estimated to add $100 billion to the price of things we buy and it reduces our ability to produce."[63] The result of this "virtual explosion in Government regulation during the past decade," has been "higher prices, higher unemployment, and lower productivity growth." It was quite a damning indictment. He went on to make "a far-reaching program of regulatory relief" one of the four pillars of his recovery package.

Reagan's speech is instructive for at least two reasons. First, he prominently cited the figure of $100 billion for the costs of regulations and has done so on numerous occasions. This figure—sometimes increased to upwards of $115 billion, or even $126 billion—is the handiwork of Murray Weidenbaum, a leading AEI economist and the first chairman of the CEA under Reagan, who calculated the number from a 1976 study. Weidenbaum's purpose was to charge that regulations in general are too costly, and that social regulations in particular make up the lion's share (roughly four-fifths) of the excessive cost. Neither charge has stood the test of close scrutiny. Many subsequent analyses have exposed these calculations as deeply flawed, for reasons which include the double counting of costs, failure to distinguish between different types of regulations, and the use of a constant multiplier to estimate costs into future years.[64] His work on regulatory costs is of dubious real value, beyond its reflection of his ideology. More telling, his figure is derived without any regard for the benefits of social regulations, as even *Business Week*—a publication hardly unsympathetic to Weidenbaum's ideas—had to concede. All costs and no benefits—that is the view of social regulations espoused by Weidenbaum and President Reagan. And that the facts speak otherwise has not deterred them from continuing to use this fabricated claim. Given Weidenbaum's penchant for less than rigorous economic analysis, perhaps this should be expected. After all, it was his "visceral computer" that concocted the mendacious "rosy scenario" economic forecast in 1981, exposed as a fraud by one of its principle perpetrators, former OMB director David Stockman.[66]

The second important element of Reagan's talk was its insistence that rampant regulation was responsible for a host of macroeconomic ills. This claim is an outgrowth of the mid-decade mobilization of business against social regulations. It reflects a strategy shift on the part of corporations and many think tanks, such as AEI.

As mentioned earlier, the OSH Act and related statutes originally were justified by the *micro*economic principle that the market failed to hold individual firms accountable for all the costs of production, such as the "external" costs of pollution or hazardous work conditions. Regulation was viewed as a vehicle for inducing companies to bear all the costs of doing business, and disputes revolved around different methods of providing such inducement. In other words, some regulation could help make the market fairer.

Increasingly, however, OSHA opponents deployed the *macro*-economic argument that the law fueled a greater kind of market failure—that it inhibited the operation of the market *system* as a whole. Thus, OSHA threatened the general interest of society, not just the narrow interests of a given firm, or industry.[67] The Carter administration made this kind of argument in its insistence on the connection between OSHA regulations and rising inflation. But the Reagan economists associated the law with a much wider variety of maladies, the list being almost limitless. And it did so with dizzying frequency, with the assertion of regulations as manifestations of the evils of "Big Government" appearing in seemingly every domestic speech the president delivered. But as with Weidenbaum's cost figure, the connection between OSHA and broader economic decline is substantially overdrawn.[68] This is why it is essential to point out the *symbolic* value of White House regulatory reforms, as I did with the Carter administration. As a symbol of overregulation, OSHA's impact is enormous; as a substantive, quantifiable drain on economic growth, its impact is considerably more modest. Yet again, this has not stopped OSHA's detractors from making their case against the agency. Some presidency scholars also have accepted the Reagan position uncritically.[69]

With regard specifically to OSHA, President Reagan's attempt to remedy the problem of overregulation with his "voluntary" approach has taken shape in the form of the pursuit of a "cooperative" regulatory strategy. His first, and longest-standing (of the three), OSHA director Thorne Auchter proclaimed the advent of this new attitude to the New York Chamber of Commerce and Industry in September of 1981:

> OSHA has always been in an adversarial position. This adversarial spirit has hampered the effective functioning of the agency long enough. . . . The OSHA of today is a cooperative regulator.[70]

Raymond Donovan, Reagan's first Secretary of Labor, underscored this ongoing change of attitude at the agency in his submission of *The President's Report on Occupational Safety and Health for 1982*, stating that OSHA had "continued its campaign to change the focus of the Agency from one of adversarial enforcement to one of cooperative assistance."[71] In practice this orientation has been "cooperative" in a double sense: OSHA has been cooperative *internally*, in its relations with the economic technocrats of Reagan's regulatory review team, while at the same time being cooperative *externally* with the business community it seeks to unfetter from government intrusions. Understanding the two dimensions of OSHA's cooperativeness is the key to grasping the relationship between Reagan and OSHA.

Reagan resolved the *internal* tension that plagued the Carter administration by appointing an OSHA director who was openly hostile to the program. This point cannot be overemphasized. As head of the agency, Auchter's credentials as a small businessman, whose company reportedly had many OSHA violations, were a far cry from those of Eula Bingham, an eminent industrial toxicologist. Whereas Bingham made clear from the outset her desire to have OSHA and its research arm at NIOSH deeply probe the dangers of occupational health hazards, Auchter began his tenure at the agency by challenging its previous efforts in this regard. Two of his initial acts upon assuming his post serve as stark illustrations; both involve the health issue which proved so contentious in the Carter administration—cotton dust.

First, he shocked organized labor by ordering the destruction of 100,000 booklets pertaining to cotton dust because he found the cover, showing a gravely ill textile worker, "offensive" and "obviously favorable" to labor.[72] He justified his act of censorship (which later included withholding distribution of several films and slide shows pertaining to workers' health and safety rights) by referring to his oft-stated desire to keep OSHA "neutral" with regard to business and labor. For him, that meant espousing market-oriented, laissez-faire ideology as the best way to provide protection for the nation's workforce. It was the manifest failure of this type of approach, of course, which led to the need for an OSH Act in the first place. Nevertheless, such market "neutrality" meshed well with the aims of the technocratic side of the administration at OMB and the CEA, agencies which now

worked in relative harmony with their OSHA-Labor Department counterparts to promote deregulation.

Auchter's second major act complemented this attempt to reverse the "adversarial spirit" at OSHA. He threw the Supreme Court into disarray by issuing a "notice of proposed rulemaking" announcing that OSHA was disavowing its position against cost-benefit analysis in the cotton dust case—the textile industry's legal appeal of the Carter administration's 1978 cotton dust standard. In a highly unusual move, the OSHA chief pulled the government's lawyers off the case as they had argued it (along with union lawyers) two months earlier and instructed them to re-examine the cotton dust standard to "evaluate the feasibility and utility of relying on cost-benefit analysis in setting occupational health standards."[73] Auchter, in effect, asked the High Court not to decide the case and instead allow the Labor Department to reconsider it in light of President Reagan's new cost-benefit policy, thus switching the government's stance on cotton dust rules in the middle of the judicial proceeding. And while the court eventually ruled against the textile industry-Reagan administration position in June of 1981, upholding the Carter administration's OSHA standard, this specific decision has not prevented OSHA, OMB and other regulatory reviewers from embracing cost-benefit criteria generally as a major component of their campaign against overregulation.[74]

The Reagan administration's endorsement of cost-benefit analysis in the cotton dust case is symptomatic of its larger purpose in promoting economic analysis of regulations. Reagan fostered internal administrative cooperation most markedly by further centralizing executive oversight of OSHA and other social regulations, putting OMB in charge of White House review via Executive Order 12291 in February of 1981.[75] This measure went far beyond Carter's centralization effort, giving the OMB the power to rewrite or veto rules as they are being formulated. E.O. 12291 has as a general requirement the stipulation that "regulatory action shall not be undertaken unless the potential benefits to society for the regulation outweigh the potential costs to society." Only regulations "involving the least net cost to society" can be promulgated. The order also established a Task Force on Regulatory Relief, headed by Vice President George Bush, to assist OMB in weeding out "burdensome" regulations, monitor industry views on regulatory matters, and urge executive agencies to cut back certain regulations by requesting OMB to undertake regulatory reviews. In practice, though, OMB wielded much more influence on OSHA matters, and the Task Force was eventually disbanded.

Above all, the major outcome of the executive order was to mandate strict cost-benefit analysis as an explicit *rule* for regulatory decisions. This represented an important shift in emphasis: while President Carter's executive order encouraged cost-benefit criteria as a *guide* to analysis, President Reagan enshrined them as a rule of operation.[76] CEA chairman Weidenbaum made the case for the widespread use of cost-benefit analysis this way:

> Benefit-cost analysis is inherently a neutral concept, giving equal weight to a dollar of benefits as to a dollar of costs. Those who quiver at the thought of subjecting their favorite program to such analysis may know more than we do. Do they inherently fear that the regulatory activity would flunk the most elementary benefit-cost test?[77]

For some, Weidenbaum's words might have an air of reasonableness at first blush. After all, who could oppose a "neutral" concept. And if one does oppose the technique, perhaps they are trying to hide something. On closer inspection, however, his words can be seen as transparent ideology, pure and simple.

There are a host of problems associated with cost-benefit analysis generally, and most of them belie the claim that it is merely a neutral technique. One major area of uncertainty involves the problem of how to quantify the benefits of alternative regulatory strategies. In the case of OSHA, this entails placing a dollar value on human life or various lifesaving programs, in order to determine of a level of "socially acceptable risk." Economists have devised analytic techniques for determining levels of socially acceptable risk, all of which use cost-benefit calculation to impute dollar values to non-marketed things such as human life. Perhaps the most widely accepted of such measurements is the "willingness-to-pay" criterion, which seeks to gauge how much money a worker would be willing to pay for marginal decreases in his or her exposure to a health hazard on the job. However, this economic device is fraught with technical and ethical ambiguity.[78]

In the first place, people typically are not fully informed about all the risks involved in such decisions. Secondly, the workers in question may not have alternative job prospects, throwing off any true measurement of their willingness. Third, willingness-to-pay assumes there is no difference between how people value certain things in private individual transactions and how they might value those same things in decisions for the larger public. Fourth, some people believe that to put a value on something cheapens its worth, and thus might claim that life has an intrinsic value that is priceless. Finally, to the extent that occupational health is viewed as a *right*, it may not be deemed socially acceptable to put a price on it, even if the costs outweigh the benefits. This point was driven home succinctly by a steelworker who commented at an OSHA hearing that the Emancipation Proclamation was not subjected to an inflationary impact statement.[79] For these reasons and others, the ambiguity surrounding efforts to determine acceptable risk cannot be clarified simply by the use of economic calculations.

Indeed, the uncertainties in the area of benefit calculation are so great that when the Congressional Office of Technology Assessment (OTA) studied various estimates for the implied value of a life, they found no fewer than a dozen. And they varied so widely that the choice of one over the others would itself be a highly political act, dramatically altering the outcome on the benefit side of the equation. Estimates are based on no greater certainty on the cost side of the equation either. Industry estimates of the cost of compliance with OSHA health regulations are notoriously exaggerated—the classic case being the chemical manufacturers' dire predictions of the imminent collapse of the industry if OSHA's standard for vinyl chloride was implemented in the early 1970s. Ultimately the regulation was adopted and the industry has since flourished, its predictions of economic ruin and technological infeasibility enormously overstated.[80]

All this is to say that cost-benefit analysis, far from being a neutral tool, easily can serve as a weapon with which corporations combat the often glaring need to clean up health hazards in the nation's workplaces. The Reagan administration aided this effort internally with its emphasis on the use of respirators as the cost-effective alternative to plant-wide engineering controls. The aforementioned inadequacies of respirators notwithstanding, they remain the preferred method of compliance with OSHA health standards for big business. James C. Miller III, co-director of the AEI's Center for the Study of Government Regulations, a member and subsequent chair of Reagan's OMB, and executive director of the administration's Task Force on Regulatory Relief, expressed his view of prevalent worker complaints about the inconvenience and discomfort of respirators (among the *many* drawbacks of them), this way: "Perhaps we should rename the agency the Occupational Safety, Health and Comfort Administration."[81] Auchter responded with similar disregard for the concerns of workers: "Well, employers are asked to do things under the government's safety and health act and under OSHA regulations that are not always comfortable for them."[82] The equation of monetary discomfort on the part of business with the physical discomfort of workers displays a particularly callous attitude on the part of Reagan technocrats and regulators. This is especially true when, as was the case with the cotton dust standard, the lives of an estimated 74,000 textile workers, at risk of contracting brown-lung disease, are at stake.

In the final analysis, then, the cost-benefit criteria so beloved by both the OSHA-Labor Department side and the economic technocratic side of the Reagan administration served to augment their conservative political agenda. As an economic tool of the Reagan presidency, cost-benefit analysis was used to conceal political ends behind reams of seemingly objective data. But the objective appearance is an illusion. And the illusion has a cynical hue when we consider that the Reagan technocrats at OMB saw to it that the budget for NIOSH—as OSHA's research arm, the one government agency capable of generating reliable, non-corporate data for cost-benefit studies—was dramatically reduced between 1981 and 1985.[83] This forces OSHA to rely even more heavily in industry-dominated economic analysis at precisely the time when a premium is being placed on cost-benefit analysis. The conclusion reached by the OTA after an exhaustive review of the literature on cost-benefit criteria and economic analysis in regard to OSHA policy decisions thus seems especially salient here:

> [W]here moral, political, and cultural values—not simply economic ones—are at stake, we need to make moral, political, and aesthetic judgments. Cost-benefit analysis does not replace these "subjective" judgments with "objective" or "neutral" ones. Rather, it distorts or ignores the noneconomic values it cannot handle.[84]

Or as Mark Green bluntly put it during the Carter years, in words even more appropriate today, "Given the current state of economic art, mathematical cost-benefit analyses are about as neutral as voter literacy tests in the Old South."[85]

By increasing the use of cost-benefit analysis while tightening the centralization of OSHA policy in the executive branch, the president further insulated the policy process from outside pressures. As one analyst—who served as both Deputy Director of CWPS under Carter, and as a consultant to OSHA for Reagan—has favorably commented, "By reviewing regulations before they are formally proposed, [Reagan's] OMB can limit the role of external political actors." Along these lines he added, "the criteria being applied to new regulations will be less transparent and the possibilities of informed public participation more limited."[86] This essentially anti-democratic impulse—"negotiations between the White House and the [regulatory] agencies have gone underground"—jibes well with the president's larger strategy of isolating organized labor as a political force. Labor obviously has far less access to personnel and processes in OMB than it does in the Labor Department. Moreover, by subjecting OSHA regulations to greater economic rationality, the hope is that the introduction of new regulations will be inhibited.

The inhibition of new regulations was but one part of President Reagan's strategy for promoting *external* cooperation on the OSHA front, the second dimension of his cooperative approach. During his presidency, OSHA dramatically reduced its ability to do the job it was empowered to do, leaving business feeling good about cooperation, while labor feels concern for workers has been drastically slighted. As a leading agency on Reagan's oft-noted regulatory "hit list," OSHA has cut back in a variety of ways on the number of general schedule health and safety inspections, the number of follow-up inspections, the frequency and amount of fines levied for violations, and workers' right-to-know about information on occupational hazards.[87]

For instance, under Auchter the agency began exempting companies from inspections on the basis of their lost workday injury rate (called an LWDI—basically the injuries that result in days away from work and/or days of restricted work activity). If a company's LWDI falls below the national average for manufacturing industries, they are in effect guaranteed inspectors will not set foot inside. This is justified as a targeting program that rewards "safe" workplaces, even though "OSHA has never published any statistical study showing that an adequate relationship exists between lost workday injury rates and the hazardous conditions at a workplace."[88] Such "paper inspections," as they are called (they rely on examination of company injury logs), are fraught with pitfalls, not the least of which is their reliance on businesses to faithfully and truthfully record injury data. The incentive (and means) to fudge on these numbers has been noted earlier. But with a cooperative approach, such problems are not seriously considered.

Auchter also has championed the use of "informal conferences" during which OSHA area directors can reduce the severity of fines and citations and receive extensions on hazard abatement deadlines. While both inspection targeting and informal conferences were used with greater caution in Bingham's OSHA, under Reagan they have become mechanisms for avoiding the teeth of the agency. And attempts by Reagan's OSHA to claim credit for the decline in injury statistics during the first few years of the administration are overdrawn, if not cynical, given that slowdowns in economic growth are a well-established causal factor in injury rate declines, and the U.S. economy experienced a sustained drop in the business cycle from 1979 through 1983.[89]

Of a perhaps more serious nature in the area of external cooperation with the business community, OSHA has cut back on the promulagation of new health standards. Only two new major OSHA rules—covering ethylene oxide and farmworker field sanitation—were issued in Reagan's first term, and both of them occurred only after intense wrangling and court pressure. OSHA likes to boast that it will propose a host of health regulations within its own regulatory timetable. But to date, virtually all proposed standards would *weaken* existing regulations, not develop tough new standards. Often the delay in issuing regulations has been a function of the agency's own insistance on the use of regulatory review and cost-benefit analysis—an approach promoting "paralysis by analysis." OSHA now pursues health regulations at a glacial pace. While there are less than two dozen

OSHA exposure limits for hazardous and toxic substances, there remain more than 2,000 known and suspected carcinogens used in the workplace. If President Reagan's ideological orientation toward social regulation endures, the outlook for the welfare of the nation's workforce, on this score, is not bright.

We now can better understand how, as discussed at the outset of the chapter, the Reagan administration could reach a juncture whereby in 1986 it could issue a record penalty against Union Carbide Corporation, yet still not have such an action be indicative of the vigor of a healthy agency. Auchter gave OSHA a directon, albeit a negative one. Since his departure in 1984, the agency has been adrift. And while Pendergrass, Reagan's third OSHA director, may have begun "rekindling OSHA" as one publication speculated, it will not soon return to even the level of activity under Bingham because of federal budgetary constraints."[90] The agency certainly will not, in its current configuration, escape the fluctuation of presidential expansion and contraction of its activity, a fluctuation most dependent on the executive branch's assessment of the prevailing economic climate and, especially, the prospects for economic growth.

Conclusion: The triumph of economic structure

After examining the policies of Carter and Reagan, the picture we are left with is one of both divergence and continuity between their strategies toward OSHA. The divergence lies in the genuine commitment to workplace safety and health on the part of Carter's OSHA apparatus. The agency certainly was relatively more active, and in some respects arguably more effective, during his term. But it also was in deep conflict with another part of the administration, and eventually the concerns of that economic-technocratic side took precedence over the concerns of the other side. Indeed after 1978, the Carter approach begins to look like it is paving the way for Reaganism, as worried attention to the generation of economic growth virtually overwhelms all other domestic priorities. Alan Wolfe's structural insight into Carter's macroeconomic policy is applicable here to his OSHA policy as well: "In pursuing a centrist strategy, Carter learned that in an age of austerity the center shifts to the right."[91]

The solidification of centralized and insulated OSHA policy stands as a chief *continuity* between the two presidencies. In a sense, President Reagan simply sustained and deepened this weakening of OSHA with his vocal advocacy of deregulating the workplace. During his presidency the structural imperative of economic growth was nearly the only issue on the domestic agenda. With his business-dominated approach to OSHA, the concerns of workers were minimalized and, at times, trivialized. OSHA has not disappeared, although that might be a goal in President Reagan's heart of hearts. More effective is a strategy that keeps the agency on the books, but renders it essentially impotent. This allows OSHA to be figuratively invisible, while not having literally vanished.

The desire to promote economic growth and satisfy the business community thus has effectively torpedoed the pursuit of vigorous safety and health enforcement for the foreseeable future. OSHA appears caught in a cycle of liberal presidents—who want to retain some health and safety regulatory programs, but who also need economic growth for political survival—and conservative presidents, who focus almost exclusively on the growth side of the equation. Such a cycle will always tend to subordinate the need for safe and healthful workplaces to the needs of the economy, ensuring that commitment to OSHA will only be as strong as the priorities of business will allow. For as Noble has correctly observed:

> [T]he relationship between the development of the White House review program and changes in the economy suggests a clear relationship between presidential concern for business confidence and the subordination of social regulation to White House review.[92]

Having been burned in the early 1970s, corporate capital is not likely again to fall into a state of disorganization over social regulations.

As for the presidency as an institution, the fundamental point seems to be the *contingent* nature of the office, dependent as it is on the dynamic interaction of state power and economic vitality. The extent of the dependency becomes clearer when the structural constraints on the state shift from accommodating social struggle to the generation of economic growth, as they had by the time Carter assumed office. His roughly mid-term rightward shift

attests to this fact. President Reagan happily moved with the tide, all the while helping to quicken its speed. This, then, is the *overriding domestic continuity* of the Carter and Reagan years—a continuity which reminds us that the liberal democratic state is in the bind of being publicly accountable for the performance of a private economy over which it has only a very limited set of tools for achieving public purposes.[93] In the case of OSHA policy, if those purposes hang in the balance, the lives of workers quite literally may as well. This is the structural bind of the presidency. Political science—above all, presidency scholars—would do well to devote greater attention to the exploration of this bind as it envelops the chief executive.