

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

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## 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.<sup>1</sup> 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.<sup>2</sup> 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."<sup>3</sup> 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 economic 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 expansionist 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<sup>4</sup>**

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).<sup>5</sup> 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—prominently 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."<sup>6</sup> 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."<sup>7</sup>

Nixon's options were further limited by the general lack of a coherent business strategy to deal with the prospect of an OSH Act.<sup>8</sup> 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.<sup>9</sup> 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."<sup>10</sup>

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.<sup>11</sup> 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.”<sup>12</sup> 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.”<sup>13</sup>

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.”<sup>14</sup> 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.<sup>15</sup> 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.<sup>16</sup> 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.<sup>17</sup> *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—occurred 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.<sup>18</sup> 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.<sup>19</sup>

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.<sup>20</sup> 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.<sup>21</sup>

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."<sup>22</sup> 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 excesses of the past."<sup>23</sup> 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."<sup>24</sup> 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.<sup>25</sup> 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.<sup>26</sup> 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.<sup>27</sup> 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.<sup>28</sup> 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.<sup>29</sup> 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.<sup>30</sup>

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.<sup>31</sup>

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."<sup>32</sup> 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."<sup>33</sup> 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.<sup>34</sup>

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.<sup>35</sup> 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.<sup>36</sup> *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."<sup>37</sup> 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.<sup>38</sup> 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."<sup>39</sup> 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."<sup>40</sup> 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.<sup>41</sup> 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.<sup>42</sup> 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.<sup>43</sup>

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 known 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.<sup>44</sup> 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."<sup>45</sup> 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."<sup>46</sup> 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.<sup>47</sup> 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."<sup>48</sup>

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."<sup>49</sup> 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.<sup>50</sup>

Acting on her understanding of the June 7 meeting, Bingham two days later signed a 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."<sup>51</sup>

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.<sup>52</sup>

Surveying the damage done, Lazarus wrote to Eizenstat of the importance of "modifying the perception that the President reversed himself," and of "re-establishing CEAs 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."<sup>53</sup> 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."<sup>54</sup> 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.<sup>55</sup>

The shift toward greater use of White House review 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."<sup>56</sup> 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 preeminence 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."<sup>57</sup>

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.<sup>58</sup> 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, coincidentally, 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 jurisdiction.

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."<sup>59</sup> 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.<sup>60</sup> 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?'<sup>61</sup>

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.<sup>62</sup>

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."<sup>63</sup> 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.<sup>64</sup> 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.<sup>65</sup>

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 *microeconomic* 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 *macroeconomic* 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.<sup>67</sup> 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.<sup>68</sup> 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.<sup>69</sup>

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.<sup>70</sup>

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."<sup>71</sup> 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, Aucter'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, Aucter 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.<sup>72</sup> 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.

Aucter'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."<sup>73</sup> Aucter, 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.<sup>74</sup>

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.<sup>75</sup> 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.<sup>76</sup> 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?<sup>77</sup>

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.<sup>78</sup>

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.<sup>79</sup> 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.<sup>80</sup>

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."<sup>81</sup> 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."<sup>82</sup> 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.<sup>83</sup> 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.<sup>84</sup>

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."<sup>85</sup>

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."<sup>86</sup> 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.<sup>87</sup>

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."<sup>88</sup> 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.<sup>89</sup>

Of a perhaps more serious nature in the area of external cooperation with the business community, OSHA has cut back on the promulgation 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 insistence 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 direction, 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.<sup>90</sup> 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."<sup>91</sup>

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.<sup>92</sup>

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.<sup>93</sup> 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.