Corporate Resources and Regulatory Pressures: Toward Explaining a Discrepancy

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This paper presents a preliminary framework for understanding why politically and legally strong corporations face significant regulatory pressures. Three general factors are addressed. First, divisions within and between industries bring about unlikely proregulation coalitions. Second, the responses of agencies to pressures do not reflect the balance of resources among interested organizations because (1) the marginal values of technical lobbying decline significantly after a point because of agency standardization of responses, and (2) regulatory organizations do not react in neutral ways to competing claims because of their cultures and stability. Third, proregulation litigation, the diverse dispositions of federal courts, and rules of judicial review interact to considerably offset better endowed corporate litigation. Studies are suggested on the variance of units within sectors and on the development of dialectical and decision-making perspectives on regulation.•

INTRODUCTION

Current theories of government regulation deal with how producers, consumers, capitalists, workers, professional social reformers, regulators, and other groups benefit or suffer from regulation. They focus on the commitments, resources, interests, and power positions of the groups (Stigler, 1971; Posner, 1974; Peltzman, 1976). The emphasis on the structure of resources and interests has been useful historically, but this approach does not explain patterns of regulatory behavior in the past two decades adequately (Joskow and Noll, 1981; Peltzman, 1981). This paper considers one problem in theories of regulation — the frequent impact of regulatory pressures on resistant and politically strong corporations. It reviews, and criticizes, two attempts to resolve the problem with current structural approaches to regulation. Then a framework is considered which, while retaining a structural approach, more heavily emphasizes the problems of organization and information processing within and among private organizations, regulatory agencies, and the judiciary. Specifically, it is argued that regulatory behavior reflects (1) disorganization, coalitions, and differential mobilization among affected organizations, (2) the information-processing and organizational properties of regulatory agencies, and (3) variability in the courts' dispositions toward regulation. The framework is not a competing theory of regulation; rather, it is a series of issues that must be addressed in developing a theory that would link organizational theory more adequately with economic explanations of regulation.

THE IDEA OF CORPORATE DOMINATION OF REGULATION

The idea that large organizations dominate power in society is almost an axiom in organizational research (Blau, 1974; Coleman, 1974). Most examples of such influence involve large private corporations and trade associations (McNeil, 1978; Perrow, 1979: 194–195). Even those authors who maintain that large private corporations do not substantially control their environments and the conditions of production would usually concede that they do dominate government regulatory agencies. True, in the 1960s and 1970s several groups lobbying for

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control of corporate decisions through regulation were either established or strengthened (McCarthy and Zald, 1973, 1977; Berry, 1977; Handler, Ginsberg, and Snow, 1978; Weaver, 1978). But private corporations and trade associations tried to offset the new political competition by expanding their own activities and, in terms of absolute resources for political work, were successful in doing so (Quarles, 1976: Ch. 9; U.S. Senate Committee on Governmental Affairs, 1977; Berry, 1977: 225–230; *Washington Post,* 1977a, 1977b; Useem, 1982). Various authors argue that because of such resources, corporations and trade associations enervate regulation (Bernstein, 1955; Landis, 1960; Edelman, 1964; Krause, 1977: 317; Schnaiberg, 1977; Berman, 1978; McCaffrey, 1982b). Former Environmental Protection Agency head Douglas Costle supportingly noted that "You win very few victories; it's only varying degrees of defeat" (*Washington Post,* 1980c), and other officials have made similar comments (Quarles, 1976: Ch. 9; McGarity, 1979: 754, ftn. 115; Bingham, 1980).

There is more regulation of corporate decisions, however, than one would expect in view of the disparate distribution of technical, lobbying, and legal resources among private organizations. Corporations presumably weaken agencies to avoid regulatory expenses, but, in fact, they do spend much, coping with regulation. For example, in fiscal year 1973 the total penalties proposed by the Occupational Safety and Health Administration (OSHA) totaled $4.78 million; in fiscal year 1980 the total (in constant dollars) was $14.71 million.[1] Similarly, the total business expenditures for pollution control (in constant dollars) increased from $10.72 billion in 1972 to $15.02 billion in 1979 (Rutledge and Trevathan, 1981: Table 1). Moreover, regulation has induced major technological changes in industries such as chemicals, textiles, and plastics (Royston, 1980; Center for Policy Alternatives, 1980: 14; Perry, 1980; *Wall Street Journal,* 1981). Such significant, increasing costs and technological changes are not consistent with the view that corporations ward off regulation by dominating regulatory agencies (Weidenbaum, 1978, 1979; Arthur Andersen & Co., 1979; U.S. Council on Environmental Quality, 1980: 387).

In the first fiscal year of the Reagan administration, OSHA's proposed penalties (in constant dollars) dropped to $7.1 million. Data on shifts in pollution control expenditures are not yet available. But even declines in series in 1981 would not demonstrate a corporate domination of regulation, for two reasons. First, in 1981 the administration tried to virtually shut down significant rule-making and enforcement activity (a statistical profile of the EPA under President Reagan is described in the National Wildlife Federation, 1982). Under such sustained pressure, declines in regulatory costs were inevitable. Several economists argued that declines would probably be reversed with a change of administration or even later in Reagan's term (Crandall, 1981; Guzzardi, 1982; *Washington Post,* 1982a, 1982b). Second, although in 1982 industry as a whole projected future declines in health and safety spending, industries heavily affected by health and safety regulation (e.g., textiles, chemicals) projected continued high spending (McGraw-Hill Economics Department, 1981).

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Computed from data provided by OSHA Office of Management Data Systems, March 1982. Such penalties are only a small part of the costs of OSHA to corporations. For example, Edward Denison (1979: 73) estimated that firms spent $522 million in 1975 on capital equipment to comply with OSHA's regulations. Reliable time-series information on such compliance costs are not available.

RECONCILING REGULATORY ACTIVITY WITH CORPORATE RESOURCES

There are two attempts to reconcile corporate regulatory expenses with the argument that corporate power, or at least the needs of capitalism, determine the extent of regulation. One argument claims that public regulatory activity is *relatively* insignificant, the second that aggressive agencies actually support capitalism.

Regulatory Activity is Relatively Insignificant

One could argue that public regulatory control is relatively insignificant. For example, taking seriously the deadlines of the Clean Air Act of 1970 and the Federal Water Pollution Control Act of 1972 (both as amended in 1977) would cost industry far more than $15 billion annually. Actually purchasing equipment to eliminate occupational disease would certainly cost more than the sums currently spent. The current expenditures, the argument goes, simply represent the costs of residual regulatory activity, which large corporations find relatively inoffensive.

There is some accuracy to the point. Certainly the agencies have not tried to eliminate all polluting discharges into the nation's waterways, and so forth, as their enabling laws direct (Marcus, 1980: 141). While one reason is technological, an at least equally important reason is that regulatory organizations have backed off from many actions under industry pressure. But the argument goes too far in slighting the many major EPA and OSHA regulations which *are* in effect. Corporations were not indifferent to these regulations, challenging, for example, proposed controls on vinyl chloride (Society of Plastics Industry v. OSHA, 509 F. 2d 1301 [2d Cir.], cert. denied 421 US 992 [1975]); coke oven emissions (American Iron and Steel Institute v. OSHA, 577 F. 2d 825 [3rd Cir., 1978], cert. dismissed, 101 S. Ct. 38 [1980] [industry withdrew petition to Supreme Court]); cotton dust (American Textile Manufacturers Institute, Inc., et al., v. Donovan, 617 F. 2d 636 [D. C. Cir., 1979], S. Ct., No. 79–1429 [slip copy]); lead (Ethyl Corporation v. EPA, 541 F. 2d 1 [D. C. Cir.], cert. denied, 426 U.S. 941 [1976]); and the technology for water pollution control (EPA v. National Crushed Stone Association, S. Ct., No. 79–770).

Furthermore, if the regulatory activities of the EPA, OSHA, and other agencies had been insignificant, then corporations would not have eagerly anticipated the Reagan administration's efforts to weaken them (*Washington Post,* 1981b). Thus, the claim that regulatory activity is relatively insignificant is not credible.

One could respond that businesses want "insignificant" regulatory pressures to be even more insignificant than they are. But this argument is nonfalsifiable. The proponent of the argument can simply separate the insignificant from the substantial at the point where government regulation stops, regardless of corporate sentiments or activities regarding the current regulations. Granting the ability of lobbyists to sell the importance of their activities (Reich, 1981), it can be responded that corporations would not be willing to sustain their extensive lobbying and legal efforts over economically insignificant matters. A more satisfying test, of course, would specify quantitatively the insignificant

and the substantial in advance of a proposed regulation and then compare the final regulation to the specifications.

Regulatory Activity and the Needs of Capitalism

Two interpretations of regulatory pressures are implicit in the structuralist literature on state policy (Wright, 1979: 230–231, ftn. 7): (1) that the programs serve capitalism, and (2), a more persuasive notion, that the programs are established to serve capitalism but go out of control.

Programs functional for capitalism. In the first interpretation, the argument is that regulatory agencies serve an indispensable function in a capitalist society by moderating the oppressive aspects of capitalism enough to prevent labor or consumer agitation or environmental disasters, both of which retard the long-run accumulation of capital (Poulantzas, 1973; Offe, 1974). Capitalist state theorists have argued that officials of bureaucracies depend on a healthy capitalism for their jobs (Lenin, 1932: 26–27) and on tax revenues for their programs (O'Conner, 1973: 6; Offe, 1975: 126).

But regulatory policy, either as consciously formulated or structurally shaped, follows no such logic. Officials often behave inconsistently. When new, they often issue regulations that they admit are economically inefficient, strongly protecting the environment, workers, and consumers; however, one or two years into their terms these officials become much less active (U.S. Department of Labor, OSHA, 1976: 46750–46751; 1978a: 27378; White, 1981; McCaffrey, 1982b). Other officials respond more to professional or organizational considerations than to the costs or benefits of regulations. Moreover, whether or not a regulation persists frequently depends on the particular federal court obtaining venue in the case, a selection that is made haphazardly, as discussed later. It is difficult to see a coherent support of capitalism in such erratic decision making.

The programs go out of control. A second, and more plausible, structuralist interpretation of regulation focuses on the erratic formulation of policy by regulatory agencies (Poulantzas, 1978: 194). The argument is that capitalist societies require some minimal level of regulation to prevent egregious competitive excesses (e.g., the uncontrolled use of asbestos, the free dumping of waste pesticides in rivers, conspicuously predatory pricing, etc.). However, regulatory agencies bring together people from different professions, choice opportunities, and organizational interests in such a way that the agency may go beyond simple maintenance of capitalism to aggressive efforts to control capitalism. Offe (1976: 46–47) notes that the "main problem" of late capitalist social systems is "the problem of preventing the regulatory processes of administrative power . . . from becoming autonomous and overshadowing the dominance of privatized exchange relationships, whether through parasitic dysfunctionalization or their revolutionary suspension." The effort to restrain regulation frequently fails (Habermas, 1973: 61–68; Offe, 1975, 1976). However, the structuralist literature has not yet clearly outlined how regulatory agencies have come to exert significant pressure on politically strong and resistant corporations. This article is a preliminary attempt to do so.[2]

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Considering the erratic formulation of policy to be an important issue does not imply endorsement of the entire structuralist position on regulation, even the more plausible second version. A decision-making perspective on regulation would be concerned with the issue of erratically controlled regulation also (McCaffrey, 1982a).

Another interpretation of regulatory costs — the "new class" argument — suggests that liberal single-interest groups consistently pressure agencies to control corporations through regulation (e.g., Weaver, 1978). But this interpretation does not account for the frequency with which agencies abandon proposed regulations. Although public interest groups and unions do win a substantial minority of the time, they do not win consistently. The interesting question, and that addressed here, is why they win at all.

A plausible interpretation of patterns of regulatory behavior must reconcile corporate domination of political resources with the sporadic but significant regulatory pressures that they face. Current treatments of the "purpose" or "direction" of regulatory agencies do not do this. The remainder of this paper proposes an alternative framework emphasizing the problematic organization and information processing of private organizations, regulatory agencies, and the judiciary. There are three parts to this framework. First, private corporations frequently to not use their resources as efficiently as they might. Second, organizational properties of regulatory agencies weaken the relationship between the efforts of private corporations and their actual influence. Third, reviews of agency actions by the courts do not mirror the relative political or legal strength of those affected by regulations, because of diverse judicial attitudes and the structure of judicial review.

STRUCTURE OF PRESSURES ON REGULATORY AGENCIES

According to the corporate domination theme, powerful corporations and trade associations learn of and understand pending regulations. Once they learn of a proposed, strong regulation they unite to pressure the agency into discarding the regulation or severely weakening it.

The first observation — that corporations quickly learn of regulatory developments — is the easiest to defend. True, corporations have often failed to comprehend the implication of environmental laws and regulations, with major consequences (Ingram, 1978: 36; Mendeloff, 1979: 55). But these errors occurred in the early 1970s as regulation increased. After a period of learning, firms expanded their Washington offices and their trade associations to monitor regulatory developments and avoid such information failures (Reich, 1981).

Corporate Division and Coalition Formation

The notion of unified corporate pressure is less defensible. Strong regulations could force many corporations to retool or supplement equipment, alter hiring or labor practices, and raise prices — weakening competitive positions — without their gaining additional profit. Such firms will indeed try to prevent or weaken regulations (McNeil, 1978: 68–69). However, one corporation's problem is another's opportunity, since regulations affect organizations in different ways. Thus, corporations do not always act in concert, and often oppose each other.

Several Marxist (Poulantzas, 1973; Offe, 1974: 33) and pluralist theorists (Dahl, 1961: Ch. 24; Polsby, 1963: Ch. 7) noted the potential for divisions within elites or the capitalist class that may weaken sustained, effective organization. Poulantzas (1973: 284) noted

> . . . the internal fractioning of the bourgeois class; the continued existence of the classes of the small producers and their complex reflection at the political level; the rise and organized political struggle of the working classes; the institutions of the capitalist state (for example, universal suffrage), which hurl all the classes or fractions of society on to the political scene, etc. In short, everything happens as if the specific coordinates of the struggle of the dominant classes contribute to prevent their political organization.

Ideologically dissimilar groups, such as corporations and public interest groups, may form issue-specific coalitions if they share a common functional goal (Bacharach and Lawler, 1980: 93–95). For example, eastern coal interests combined with environmentalists — opposing western coal and other industries — in the debate on the Clean Air Act amendments of 1977. They argued that utilities ought to be required to use scrubbing devices to eliminate sulfur emissions. Eastern producers of high sulfur coal wanted to prevent utilities from relying on low-sulfur western coal to meet emissions standards, while environmentalists saw scrubbers as an enforceable, easily understood technology (Ackerman and Hassler, 1980).

Similarly, because some corporations can comply with regulations more easily than others they may gain competitive edges from strong regulations. Leone and Jackson (1981), for example, discussed how water pollution regulation gave some firms in the pulp and paper industry competitive advantages over others, although Leone and Jackson did not investigate whether or not corporations' likely competitive changes influenced their positions on pollution control. Insurance companies joined the Consumers Union in opposing looser automobile bumper endurance standards (*Washington Post,* 1981e). Sellers of natural gas joined the Consumer Federation of America and others opposing deregulation of natural gas (Stuart, 1981; *Washington Post,* 1981g). Producers of pollution control devices opposed efforts to weaken the Clean Air Act in 1981 (Bureau of National Affairs, 1981b). Most of the Federal Trade Commission's cases have historically arisen from the complaints of aggrieved businesses (Stone, 1977); small businesses opposed the Reagan administration's efforts to divest the FTC of its antitrust powers, a position also endorsed by public interest groups (*Washington Post,* 1981c). The number of such examples could easily be increased.

Mobilization of Groups Favoring Regulation

An organization or interest group that is weaker than political opponents can partly compensate for its weakness by effective mobilization. External pressure may, at least in the short run, increase organizational or group cohesiveness and efficiency (Coser, 1956; March, 1981a: 231; Staw, Sandelands, and Dutton, 1981: 507–508, 513–515). Contributions to and memberships of environmental groups increased dramatically after it became clear that the Reagan administration would try to weaken environmental agencies substantially (Bureau of National Affairs, 1981c). Labor, environmental groups, and consumer organizations formed new coalitions to resist the administration's effort to weaken health and safety regulation (Bureau of National Affairs, 1981a; *Washington Post,* 1981a, 1981h).

Summary and Qualifications

Because of divisions within and between industries, corporations may not resist regulations as effectively as they might. Public interest groups or unions, with fewer resources than industry, may combine with supportive corporations and trade associations and efficiently mobilize, should corporations and trade associations seem to be in a position to dominate agencies.

These considerations do not mean that public interest groups or unions can necessarily match the leverage that corporations exert on regulatory agencies. Large corporations and trade associations may have resources enough that they will still have great influence despite their having used their resources inefficiently. Also, agencies, public interest groups, and others favoring regulations may anticipate that industries will act in concert and may conserve their own resources by avoiding confrontations (Bacharach and Lawler, 1980: 25).

Finally, public interest groups themselves compete for resources of the social movement sector (Berry, 1977; McCarthy and Zald, 1977); relatively little is known about the integration of the public interest group sector (Berry, 1977: 204–211). But the divisions and coalitions discussed earlier do modify the exercise of corporate power. On many issues, those favoring regulation will be substantially more successful than one might suspect from comparing their staffs and operating budgets with those of corporations opposing regulations.

RESPONSES OF THE AGENCIES TO PRESSURES

The actions of agencies may not mirror the balance of power among private organizations interested in regulations. First, the marginal values of additional lobbying resources may decline significantly after some minimum level; second, because of the cultures and rigidities of agencies, officials may not react in neutral ways to competing claims.

Marginal Values of Resources

Pluralists tend to treat the relation between active political resources and influence as linear, intimating that corporations, having far more resources, will have far more influence. Certainly a group must have some technical, lobbying, and legal resources to influence a regulatory agency; however, having three times the resources of another group will not provide three times the influence, because the marginal impact of similar technical arguments or lobbying will decline.

Uncertainty and offsetting claims. There are usually a few central technical issues in regulatory conflicts. These involve the strengths and faults of the technical studies used by the agency, the feasibility of particular technologies that the regulation would require, and the extent of benefits from the regulation. When the consequences of alternative regulatory actions are uncertain — and most consequences of health, safety, or environmental decisions are uncertain — arguments will tend to cancel each other out (Sabatier, 1978: 409). Such uncertainty therefore amplifies the importance of political and organizational influence on decisions (Pfeffer, 1977: 253). Summarizing five case studies, Crandall and Lave (1981: 13–14, 17) noted that

> Scientific evidence was not the determining factor in the regulatory actions, and in only one instance — that of passive restraints — were scientists able to estimate risks with reasonable confidence. The underlying scientific base for each regulation was far from complete in each case; anyone asserting that scientific evidence determined the regulation simply did not have the correct information. . . . Regulators have learned that scientific data and analysis often cannot provide firm answers to their questions. With few scientific constraints, regulators find themselves driven by political forces, using an intuitive decision-making process.

Crandall and Lave do not specify the meaning of "political forces." Their cases, and the regulatory literature in general, implicitly refer to (1) the effects of private groups' lobbying through the exhaustive documentation of particular technical arguments (Aplin and Hegarty, 1980; Culhane, 1981: 25–26; McCaffrey, 1982b: Ch. 6), and (2) the effects of organizational characteristics and occupational compositions of the agencies on regulatory policies.

Aggregate and marginal effects of technical lobbying. Technical lobbying is designed to influence an agency's decision by raising the costs of rejecting one side of an issue. As the time and money needed by the agency to rebut technical objections increase, the agency tends to compromise on the policy at issue. Thus, the quantity of filings, testimonies, and favorable studies could arguably shape regulators' decisions.

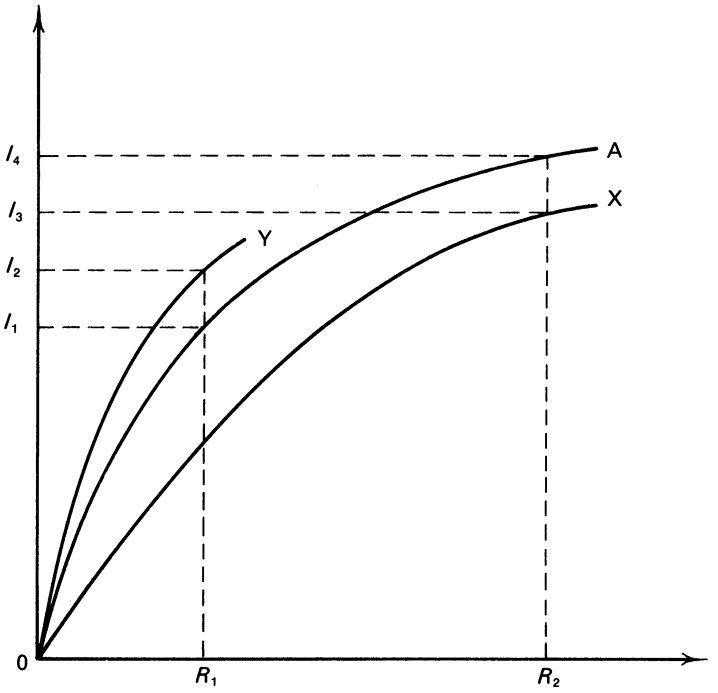
But although the quantity of information gives some advantage to corporations, the advantage may not be decisive. Although the Natural Resources Defense Council, the occupational health staff of the AFL-CIO, and other groups favoring regulations have far fewer resources for regulatory disputes than corporations affected by regulations, they are able to "enter the game" — to intervene in administrative proceedings and therefore force the agencies to respond to the arguments on one side of an issue. They are also able to prepare and file the legal claims challenging decisions.

An interest group perhaps can increase its aggregate influence by generating a large volume of activity, even if this activity revolves around a restricted set of issues. However, after encountering the first wave of these objections, the agency can standardize its responses in formal and informal proceedings. For example, the *Federal Register* notices, which ultimately explain and justify the decisions of agencies, are addressed to arguments, not to each version of an argument. An agency can therefore legitimately dismiss numerous corporate filings when it dismisses a single issue (e.g., U.S. Department of Labor, OSHA, 1980: 5048); alternatively, an agency may justify a decision by citing every supportive piece of testimony. Thus, the marginal costs of responding to the last corporation's objections are lower than the costs of responding to the first corporation's objections; they are also presumably lower than the marginal costs of responding to initial arguments of public interest groups. The relative influence of organizations on the agencies will therefore be closer than their relative total resources. This point is illustrated in the Figure.

The x axis indicates the volume of resources expended by organizations favoring (R_1) and opposing (R_2) regulatory proposals. The y axis represents the total influence exerted over a regulatory organization by those favoring (I_1, I_2) or opposing (I_3, I_4) the controls.

According to the pluralist argument, an interest group can increase its influence on the agency by making proposals to which it objects costly to the agency. Regulatory officials find themselves spending large amounts of time and money coping with the exhaustive documentation of the group's objections. Imbalanced compromises become administratively rational when resources of groups are unequal.

But I have argued that, because an agency can standardize its responses after some point, a resource influence curve OA may be curvilinear. Thus, R_2's having three times the resources for technical lobbying than R_1's may in fact result in only 1.5, and not 3.0, times the influence (I_1, I_4). But even this may overstate



R_1 = Resources of organizations favoring regulations
R_2 = Resources of organizations opposing regulations
I_1 to I_4 = Levels of influence
OA = Constant resource-influence relation
OY = Resource-influence relation, with weighted pressures
OX = Resource-influence relation, with discounted pressures

Figure. Relation of resources to influence.

the influence gap, for it is assumed that there is one resource-influence curve (OA), sensitive only to the costs of responding to the objections of a group. The agency may in fact not be neutral. For a variety of reasons it may initially regard one class of arguments as being more credible and reasonable than another and thus heavily weight the one and discount the other (Feldman and March, 1981: 177). If so, two resource-influence curves are necessary, one for the weighted (OY) and one for the discounted (OX) arguments. The curve OY of the favored arguments is steeper than the curve OX of the discounted arguments because the agency is more easily persuaded by those arguments it already tends to agree with. (It is assumed here, of course, that the agency agrees with those favoring the proposed regulation.) This adjustment narrows even further the gap in actual influence implied by very unequal resources (I_2, I_3, compared to I_1, I_4).

Characteristics of Regulatory Agencies

Four characteristics of regulatory agencies encourage such a discounting of corporate arguments and a weighting of proregulation arguments: (1) the regulatory orientations of officials, (2)

the stability of their program offices, (3) the occupational paradigms of their employees, and (4) their resistance to external pressures.

Regulatory orientations. "Regulatory orientation" means that officials are usually more interested in maximizing regulatory benefits, by extending regulatory controls, than in minimizing regulatory costs. Edelman (1964: 52–53) and others have suggested that organizations acquire ideologically committed workers through selective recruitment. Certainly it is true that public interest workers or activist academics and lawyers take jobs in "social" regulatory agencies and push them into their distinctively active periods. But such early or strong ideological commitment is not necessary for the development of a sense of mission. More often, a new official will not originally feel strongly about the agency's policies. Lawyers in the FTC or the Antitrust Division of the Justice Department come to support the value of competition, but they probably took their jobs as a way to prepare for a corporate law career (Weaver, 1977: 37–48; Katzmann, 1980). Leaders of the Environmental Protection Agency, who are lauded by environmental groups as conscientious and aggressive, subsequently head industrial lobbying efforts (Quarles, 1976; Alexander, 1981; Quirk, 1981: 171). James Wilson (1980: 388–389) suggested that appointing officials usually do not have a good idea of where their new appointees stand on regulatory issues, if the appointees have any definite ideas about the agency at all.

Despite such early ambivalence, officials often acquire opinions and concerns favoring regulation (Kohn and Schooler, 1978). Enabling laws move the agencies toward certain missions, such as "enforcing the anti-trust laws," "preventing consumer and worker injury and illness," "improving the environment," and other general goals around which officials must structure their behavior and accounts. Officials have incentives to take missions seriously, for the media, the Congress, and others are apt to criticize them should conspicuous occupational diseases, environmental disasters, or predatory competition persist. Also, constructing and defending arguments for regulations may convince the decision makers of the value of regulations (Aronson, 1978). Finally, officials become familiar with market failures or social problems to which they must react. Constant exposure to stories of occupational disability, environmental problems, the difficulties of the handicapped, or extremely anticompetitive behavior legitimate the agency's concerns to members. Organizational veterans and the agency's lore also help newcomers develop this appreciation (Aldrich, 1979: 49–50). Thus, the need to defend its actions or inaction, and selective exposure to information, tend to encourage officials to extend regulatory controls (Downs, 1967: 103–05; Quarles, 1979: 67).

For example, some officials of the Food and Drug Administration, finding that drug companies do not always assess testing data in New Drug Applications accurately, explicitly assume an adversarial role vis-à-vis drug companies (Quirk, 1980: 208–209). In the late 1970s, OSHA's offices for standards development resisted any efforts to trade off lives for dollars when setting safety and health standards. Mendeloff (1979: 69) noted that officials in OSHA "generally find the assertion of a preeminent commitment to lifesaving tremendously appeal-

ing.'' They also discounted what they considered industries' exaggerated estimates of the costs of regulations (Mendeloff, 1979: 55, 79–80). James Miller III, President Reagan's deputy director of the Office of Management and Budget (OMB), claimed that the EPA's personnel were '' 'mission-oriented' — advocates of aggressive regulation, rather than analysts of what fits into important national policy considerations.'' OMB director David Stockman added that, at EPA, ''They've got rules that would practically shut down the economy if they were put into effect. This is the critical agency. You need a whole new mindset down at EPA or you're not going to do anything about regulation'' (*Washington Post,* 1980b). Stockman made similar comments about the Federal Trade Commission (*Washington Post,* 1981d). Obviously, one must discount statements of the Reagan officials as political rhetoric, but the rhetoric flows from deregulators' problems with the agencies.

In such cases, corporations and trade associations, which may well have large legal staffs and lobbying budgets, do not confront neutral agencies. Prior to 1981, at least, corporations accused the FDA, FTC, OSHA, and the EPA of ideological or irrational resistance to their appeals for relief from regulation.

Stability of program offices. The most familiar type of government office is the program office, where services and operations are designed and executed. Program offices are characteristically stable, being usually run by career civil servants (Heclo, 1977: 148–149); these officials develop standard operating procedures and program emphases that they only reluctantly change (March and Simon, 1958: 150; Cyert and March, 1963: 101–113; Heclo, 1977: 148).

A common complaint about program offices is that they slight alternatives to their established policies and pay little attention to the secondary effects of their actions. These complaints imply that program officers may heavily discount the claims of interest groups, however influential one might expect the groups to be. For example, corporations and some economists criticized OSHA for its insistent effort to control chemical exposure levels through machine design specifications. They charged that OSHA refused to bend this traditional approach in favor of less expensive personal protective devices (masks, earmuffs, and the like) because of organizational rigidity, with businesses and presumably the economy suffering the consequences (Nichols and Zeckhauser, 1977).

Since 1974, the Executive Office of the President has tried to make heads of agencies control program offices more tightly. In 1979 Wayne Granquist, an assistant director of the OMB, argued that these political appointees had to control program office more tightly because ''they generally have broader perspectives and more awareness of potential overlaps and conflicts than do narrow-focused program managers'' (U.S. Senate Committee on Governmental Affairs, 1979: 23). If lobbying corporations want to influence or change regulatory agencies, they have to overcome the specialized focuses of the agencies' program offices.

Occupational paradigms. People in a profession to some extent share working orientations. They are interested in certain categories of problems and data. The criteria of a worthwhile policy differ across professions (Toulmin, Rieke, and Janik,

1979: Ch. 13–16), and structured activities in an organization reflect these paradigmatic frameworks (Ranson, Hinings, and Greenwood, 1980). In regulatory agencies such orientations may produce decisions conflicting with corporate preferences.

Anti-trust operations of the Federal Trade Commission and the Anti-trust Division of the Justice Department illustrate the impact of professional orientation on regulatory actions. An anti-trust agency selects cases for prosecutions in two ways: (1) a competitor or consumer may complain about a business practice, and the agency will investigate and possibly prosecute (this is called a ''reactive'' or ''mailbag'' approach). (2) The agency can investigate a market structure that it suspects is potentially anticompetitive and economically significant (this is the ''proactive'' approach). Anti-trust lawyers tend to prefer that their agency rely on competitors' complaints, because these will go to trial quickly, giving lawyers the trial experience for which they joined the agency. Anti-trust economists, on the other hand, tend to prefer that the agency search out and prosecute only economically significant cases, which may take years of research and preparation prior to trial (the AT&T and IBM cases exemplify this proactive approach). The mixes of cases that lawyers and economists would select are, therefore, quite different. At a given time, the organizational strengths of professions in an agency (given the background of the agency head and other factors) help to explain the policies of the FTC or the Justice Department's Anti-trust Division, to some extent independently of interest group pressures (Weaver, 1977; Katzmann, 1980).

Industrial safety professionals have argued that engineering controls are the best way to control occupational exposures to chemicals or noise. They contend that personal protective devices like respirators and ear plugs are flawed and incomplete safeguards, ''band-aids'' that conceal but do not solve problems. On the other hand, government economists defend personal protective devices because they are less expensive than engineering controls for the firms that must comply with the regulations. The personal protective device-engineering control issue has been a central conflict in occupational health regulation (Kelman, 1980; McCaffrey, 1982b). Similarly, Alfred Marcus (1980: Ch. 4) maintained that the early EPA was divided among lawyers who wanted to quickly prosecute violators of environmental laws, research scientists who resisted quick prosecutions that might be based on inconclusive research, and economists who wanted the agency to consider the costs and benefits of its regulations and prosecutions more thoroughly. Regulated corporations have had allies among agency economists, but they have frequently had difficulties with the industrial hygienists and lawyers, and often the research scientists, at OSHA, EPA, the FDA, and the FTC.

Organizational resistance to coercion. Organizations resist attempts at coercion by other groups. Randall Collins (1975: 298–299) noted that within and between organizations, ''coercion leads to strong efforts to avoid being coerced'' and others have noted a similar tendency (Bacharach and Lawler, 1980: 126). Thus, interest group pressures may prompt resistance rather than acquiescence to demands.

Certainly agencies would resist unwanted pressures from public interest groups or unions as well as those from corporations. However, agencies tend to favor maximizing regulatory benefits, and public interest groups and unions tend to favor regulations as well. Therefore, this organizational property probably disadvantages corporations more often than it disadvantages these other groups.

PROCESSING LEGAL PRESSURES: JUDICIAL REVIEWS OF REGULATIONS

Groups can appeal the regulations of agencies in federal courts; they can also ask courts to force agencies to issue some regulation if inaction allegedly violates the law. The restrictions on who can sue agencies have been relaxed; in most regulatory issues the suing party need no longer show material damage to interests (Stewart, 1975: 1725–1747; Orren, 1976; U.S. Senate Committee on Governmental Affairs, 1977).

Arguably, corporations and trade associations substantially control regulatory policy because, by having far more legal resources than public interest groups or unions, they dominate regulatory litigation. John Quarles (1976: 171) noted that "Industry can almost always afford litigation if it thinks a suit may be helpful, and it can hire the best and most expensive lawyers to argue its case. Environmental organizations are usually strapped for funds. They have won a large number of striking court victories, but they have overcome tremendous odds in doing so."

Though public interest groups or unions may frequently have won regulatory cases by "overcoming tremendous odds," three factors in the system of judicial review may systematically benefit such groups. First, as "repeat players," public interest groups and labor are able to support a significant number of cases. Second, some courts are particularly supportive of regulatory benefits, just as others are concerned with regulatory costs. Third, the marginal values of additional legal resources may decline in courts just as they decline in administrative proceedings.

The Scope of Activities

Although public interest groups and unions are less well endowed than corporations for legal activities, the larger public interest groups and unions use the courts often. Like corporations and trade associations, they are "repeat players" rather than "one shotters" (Galanter, 1974). Repeat players accumulate experience and records and thus have low start-up costs for a suit. Organizations, such as the Natural Resources Defense Council and the Environmental Defense Fund, develop useful informal networks in agencies and courts and reputations as forces to be reckoned with. Public interest law firms have often influenced agencies simply by organization for a law suit (Galanter, 1974: 98–103; Handler, Ginsberg, and Snow, 1978; Weisbrod, 1978: 555).

It is granted that public interest law groups or unions do not have the staying power of large corporations or trade associations. They are not able to litigate every relevant issue. Their trade-offs of resources among judicial, administrative, and congressional proceedings are more painful (Trubek and Gillen,

1978; Weisbrod, 1978: 554–556). But they are sufficiently strong to usually insert arguments in favor of environmental, health, or safety regulations into judicial proceedings. Once these groups activate a set of arguments on one side of an issue, the attitudes of courts and rules of judicial review may compensate for the limited intensity of their involvement.

The Attitudes of Courts

Drawing on Weber's discussion of formally rational legal systems, McNeil (1978: 71–72) noted that laws have historically worked to the advantage of those in power: "Without any state interference in the bargaining on behalf of weaker parties, the party with the stronger bargaining position in the market dictated the terms of the contract." Although the state did not define the terms of such agreements, it presumably did enforce substantively exploitive, though formally legal, arrangements.

But Congress expanded the range of legal possibilities when it passed laws requiring agencies to drastically reduce environmental, health, and safety hazards. True, the Congress did not deeply consider the economic implications or administrative feasibility of the laws (Ingram, 1978; Mendeloff, 1979: 20–24; Leone and Jackson, 1981: 240–241), and in passing them arguably expressed sentiments that the goals of the laws were generally desirable rather than overriding commitments to the goals (Stewart, 1978: 90; American Textile Manufacturers Institute, Inc., et al., v. Donovan, S. Ct. No. 79–1429 [slip copy, Justice Rehnquist dissenting]: 2–6). In these respects the laws resembled what Murray Edelman (1964: 47) has critically labeled "virtuous generalizations." But virtuous generalizations may be consequential, for they may formally legitimate rulings that work against those considered to be powerful. Federal courts are diverse, and those sympathetic to the goals of such laws may interpret their sweeping language quite strictly.

When public interest groups and unions sue an agency or support an agency decision, they may benefit from the attitudes of certain courts. Federal courts differ in the weight that they give environmental, health, or safety considerations versus the economic costs of regulations. In view of the records of various courts, attorneys believe that the Federal Appeals Courts in Philadelphia, New York, and the District of Columbia tend to favor public health considerations, whereas the courts in New Orleans, Richmond, and San Francisco give far greater weight to the economic costs of regulations (Smith, 1979; *Washington Post,* 1980a; Bureau of National Affairs, 1981d; *Regulation,* 1982). For example, the New York, Philadelphia, and D.C. courts have rejected arguments that OSHA has to compare the benefits to the costs of regulations, affirming regulations, while the New Orleans court decided otherwise (McCaffrey, 1982b: Ch. 6). Similarly, the EPA has had far more trouble in the Richmond and San Francisco courts than elsewhere (*Washington Post,* 1980a, 1981f).

Groups therefore "forum shop." A principal method of forum shopping is called the "race to the courthouse." When multiple parties file for a review of a government regulation, the court where the first suit was filed is favored to hear all of the suits (28 U.S.C. 2112[a]). Consequently, after an agency formally announces a decision, conflicting parties literally "race to the

courthouse'' to establish a sympathetic court as the court with jurisdiction in the upcoming case. Even if a party does not oppose an action it will want all suits consolidated in a certain court (Smith, 1979; *Washington Post,* 1980a; Bureau of National Affairs, 1981d; *Regulation,* 1982) and so will make a largely artificial objection to a part of the agency's decision for filing in that court. For example, organized labor did not oppose OSHA's standards for benzene and lead, but sued for review in the Third Circuit Court in Philadelphia to try to establish that court's jurisdiction in the cases. Whether a regulation is ultimately accepted or rejected on appeal may, therefore, turn on the outcome of such races.

Such races insert a large element of chance into regulatory litigation; Alan Morrison of the Public Citizen Litigation Group compared the allocation of venue to a ''lottery'' among competing jurisdictions (*Washington Post,* 1980a). Max Weber (Rheinstein, 1954: 227–299) noted that calculable, formally rational legal systems tend to support conservative sectors because they ratify existing societal arrangements. As legal systems become less calculable and more responsive to substantive principles (e.g., that government intervention in the market is usually harmful and should be avoided; or, conversely, that public protection of the environment is a purpose of critical importance) they develop openings that frequently favor less powerful sectors. The attitudinal diversity of the federal courts and the loosely controlled allocation of cases to courts afford such openings to groups favoring regulation of corporate decisions.

The Declining Marginal Values of Legal Resources

It is argued that groups lobby a court by submitting multiple amicus curiae (''friend of the court'') briefs in cases. Amicus curiae briefs are submitted for four reasons. First, a party may be dissatisfied with the argument of the primary party to the case or may want to add material and a somewhat different perspective. Second, a primary party may be politically or technically unable to advance a particular argument and so requests another to do so. Third, a party may want to demonstrate broad support for its side of the case, independent of any desire ''to contribute to the intellectual and legal debate on the issue'' (Burke, 1980: 18–19). Fourth, the leadership of an organization may want to appear legally active to its members (O'Conner, 1980: 4–5). Rates of participation as amicus in federal courts are quite high, indicating that attorneys believe that such filings have an impact on cases (Burke, 1980: 18–19).

If amicus curiae briefs substantially affect court decisions, then corporations and trade associations have a large advantage in regulatory litigation. Presumably, with their greater legal resources, they would be able to mobilize a more extensive amicus campaign, whereas public interest group or labor participation would be more restricted. But it is unclear whether or not amicus curiae briefs do substantially affect decisions (Burke, 1980: 40–41). If parties want to improve on or diversify the arguments on one side, the uncertainty of technical knowledge in environmental, health, or safety regulations allows the same dynamics that work on agency officials to work in court as well. Multiple amicus briefs may lengthen the list of reasons from which to select a justification for a decision, but, conceiv-

ably, judges are not more likely than regulatory officials to be swayed from intuition by a particular argument; they may, through cues, solicit a particular argument (Miller and Barron, 1975: 1209). That courts of appeals vary fairly consistently in the weight they give to public health versus economic considerations, while presumably the intensity of arguments on behalf of both does not differ in cases across circuits, supports this speculation.

If a court has historically tended to lean toward one side of the public health and economic stability trade-off, it is also unclear whether or not multiple filings for one side could demonstrate sufficiently broad support to sway the court from its usual sentiments (that is, fulfill the third purpose for mobilizing multiple amicus briefs). Even by filing many amicus curiae briefs a group of corporations or trade associations cannot demonstrate social consensus on an issue, for someone always argues the other side. The issue is whether or not the lobbying of multiple corporate filings, beyond the level public interest groups or unions can generate, is strong enough to alter court attitudes. There is no published empirical evidence on this point either way.

SUGGESTED LINES OF INQUIRY

Theories of government regulation suggest that regulation operates in favor of particular groups or interests. One view argues that industries enervate regulation; a second maintains that agencies preserve capitalism by modifying its egregiously oppressive activity. The first view implies little consequential regulation; the second allows for coherent regulatory development. Neither adequately explains the sporadic character of regulation. Agencies do back off from many, perhaps most, regulatory proposals, as one would expect in a system where regulated corporations dominate technical, lobbying, and legal resources. But in such a system the issue of why agencies sporadically establish controls and force corporations to spend a great deal altering technologies is of interest.

Two lines of empirical inquiry suggest themselves. First, studies of the variance of interests within industries could begin to identify the prevalence and dynamics of unlikely coalitions. Second, studies of regulation from dialectical and decision-making perspectives could identify issues and factors obscured by the current deterministic interorganizational control models in the field.

Variance of Interests

As noted at the outset of this paper, discussions of regulation typically focus on industries, organized labor, the public interest sector, and so forth. Implicitly, they suggest that the interests of units in each sector are homogeneous, and that the resources of the sector are mobilized in consistent directions. It is obviously necessary and useful to frequently rely on such generalizations; one cannot analyze each unit in a group before suggesting structural tendencies. Generalizations, however, move from convenience to distortion when there are critical differences among units.

The diverse interests of corporations within an industry could affect the response to regulation in several ways. Diverse interests would arguably increase the volume of activity, as

conflicting corporations defended their own stakes (Stigler, 1974: 362–365). With such conflicting intra-industry activity regulatory agencies could play some corporations off against others. For example, agencies argue for the feasibility of regulations in preambles to rules. In preambles, they consistently cite corporations that at hearings or in written submissions reported installing some of the newly mandated technologies (U.S. Department of Labor, OSHA, 1976: 46759–46776; 1978a: 27362–27369). Furthermore, corporations that may have their relative competitive position improved by the regulation may estimate low compliance costs, implying the economic feasibility of the regulation. For example, Inland Steel was expected to show a 5.2 percent increase in net per-share earnings after OSHA implemented a uniform industry standard for coke oven emissions, while the average change for the industry would be –4.0 percent. Inland was the only corporation to estimate compliance costs below an OSHA contractor's estimate for their firm and the only corporation, providing cost data, that was expected to profit from the standard. Inland's estimates were lower by 10 percent for annual costs and 70 percent for operating costs (U.S. Council on Wage and Price Stability, 1976: 3–4). Similarly, Leone and Jackson's (1981) study of the pulp and paper industry identified many firms that gained competitive advantages from the EPA's effluent regulations, although Leone and Jackson did not study the firms' response to the regulations.

There are obvious interindustry divisions over regulation, but the prevalence and impacts of such intra-industry diversity are less obvious. There have been vague suspicions that some corporations within an industry might rely on health-safety regulation to suppress competition, but there has been little systematic research on the issue. After reading the Leone and Jackson paper, Allen Kneese, who certainly knows more about the impact of pollution controls than most, commented that "I blush to admit that it never occurred to me that some (or, as the authors show, perhaps many) firms in an industry could actually benefit from pollution regulation" (Kneese, 1981). If some firms competitively benefitting by regulation actively support, subtly encourage, or acquiesce in strong regulations, then one cannot assume that industry will mobilize its resources against proposed regulations.

Of course, here also there are complications of information and mobilization. Obtaining information about competitive shifts could be difficult; firms might substitute a general suspicion of regulation or fear of what strong agencies could do for such short-run competitive calculations. Also, trade associations or other industry agents may frequently level the reactions of firms by manipulating members' information (Reich, 1981). But these are possible complications, not documented criticisms, of the point that intra-industry diversity could substantially affect regulatory activity.

Data to explore such variance in interest are accessible. Since 1974, the agencies have collected a substantial amount of information on the impacts of regulation on different industrial sectors (See U.S. Council on Wage and Price Stability, 1981). Many of these analyses have company-specific information (U.S. Department of Labor, OSHA, 1978b: 19600–19612). Furthermore, the positions of corporations on particular regula-

tions, filed with the agencies' dockets on proposals, are also public records. Such studies of variable impacts and the positions of differentially affected corporations on regulations could be more informative than generalizing analyses of an industry's stakes in regulations. They would help identify those situations where unlikely proregulation coalitions are, in fact, formed.

Dialectical and Decision-making Perspectives

Studies on regulation typically draw on deterministic interorganizational control models. According to the corporate-dominance theme, for example, private pressure and inducements shape structurally neutral agencies and courts. Corporations dominate regulatory policy because of the undeniable fact that they are able to pressure and induce responses much more than other groups. But, as this paper suggests, attention and mobilization vary, and agencies and courts deflect, use, or otherwise process environmental pressures rather than merely reflect them (Pfeffer and Salanick, 1978: Ch. 4).

Increases in participation or political leverage, such as those that deregulators enjoy during the Reagan administration, are probably at least partially offset because they encourage allies to slack off and opponents to mobilize (March, 1981a: 231).

Also, agencies will at least try to manage pressure by standardizing responses to redundant arguments and by other efficiencies (Posner, 1974: 337–339). These efficiencies will frequently deflect corporate objections, because agency officials often come to appreciate regulatory benefits, belong to professions whose paradigmatic frameworks may clash with the regulatory preference of corporations, and frequently resist external pressures (Staw, Sandelands, and Dutton, 1981).

The corporate-dominance argument also does not take into account the fact that the federal courts are ideologically diverse, that the ideological inclinations of courts enter into decisions, and that the allocation of cases to courts is not tightly controlled. Although these factors certainly do not prevent corporate pressures, they do frequently disrupt, deflect, or weaken them.

These factors also indicate why, contrary to the regulation-serves-capitalism argument, the regulatory agencies are a highly unreliable component of capitalism. Once established, agencies may move beyond modifying the competitive excesses of capitalism to attempts to control it.

So it is useful to think of agencies as being only tenuously controlled and as creating problems for corporations and the system they are, by some theorists, alleged to protect. Dialectical (Benson, 1977: 4–5; Zeitz, 1980: 81–84) and also decision-making (March, 1981a, 1981b) perspectives on organizational action are frameworks that lend themselves to the analysis of such problematic organization and control. Indeed, the structuralist Nicos Poulantzas (1978: 127–139) argued that the "relative autonomy" of the state derives from the choice opportunities provided by its inherent internal contradictions and fragmented organization. Studies from these perspectives would investigate, for example, how contradictory professional paradigms in the agencies (economics, public health, engineering, etc.) reflect societal conflict and how these conflicts work themselves out in the agencies (Brown, 1978; Ranson, Hinings,

and Greenwood, 1980); or how the timing of normal events and processes, failures or neglects of controls, or the second- and third-order effects of routine actions may substantially affect regulatory decisions (March, 1981b; McCaffrey, 1982a). Breaking away from deterministic models, studies would consider how contradictory structures and interests, and praxis (Benson, 1977: 5–6), produce strong regulations surprisingly frequently.

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