Policy Analysis

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Executive Summary

The deregulatory wave of the 1970s and early 1980s freed the railroads, the airlines, air cargo carriers, and interstate trucking and buses from the most onerous federal restrictions. The receding tide, however, left almost untouched the intricate web of controls on intrastate trucking. In all but eight states, restrictions on entry, combined with prescribed rates and routes, continue to circumscribe the industry.

Efforts to deregulate at both the state and the federal level have run into the same arguments that were used against the Motor Carrier Act of 1980. Opponents contend that service to small communities will decline drastically and that cutthroat competition will compromise highway safety. Study after study has proven those charges baseless, but intense lobbying by organized labor, the National Association of Regulatory Utility Commissioners, and the small number of truckers who operate exclusively intrastate has succeeded in frustrating decontrol.

Regulation inhibits innovation, curtails the expansion of markets, reduces competition, and drives up prices. The inefficiency of circuitous routing and empty backhauls imposes heavy costs. Deregulation would produce major benefits. Removing federal economic controls on trucking brought U.S. industry an estimated savings of from $38 billion to $56 billion a year in shipping, merchandising, and inventory costs.

Leaving state economic regulations on trucking in place costs American businesses and consumers $5 billion to $12 billion annually. That regulatory chokehold saps the economic vitality of the entire country and undermines its competitiveness in world markets.

Introduction

Shipping paper products from Richmond, Virginia, to Raleigh, North Carolina, a distance of 146 miles, costs slightly over $200. Shipping the same cargo the same distance within the state of Virginia, for example, from Ricmond to Danville, costs well over twice as much. Tobacco products travel the 125 miles from Shreveport, Louisiana, to Sulphur Springs, Texas, for $450. For the 85-mile trip from Sulphur Springs to Dallas, the tab rises to $714.[1]

Federal Express picks up a package in Terre Haute, Indiana, bound for nearby Gary. Although FedEx has a state-of-the-art national hub in Indianapolis, it is cheaper to fly the package to the company's hub in Memphis, Tennessee, sort it there, and fly it back to Indiana, even at twice the cost of transporting it directly, than to comply with state regulations governing intrastate carriers.[2]

In 1988 testimony before the House Subcommittee on Surface Transportation, Rep. Tom DeLay (R-Tex.) presented a vivid picture of the tangled intrastate regulatory web.

In Texas, if you're shipping, say, from San Antonio to Texarkana, the Texas side of Texarkana, you send it to Lafayette, Louisiana, then to Texarkana because it's cheaper to do that across that border than it is to send it straight to Texarkana.[3]

Such anomalies burden both shipper and taxpayer. Texas taxpayers spend nearly $2 million per year to regulate trucking. Despite California's complaints of fiscal drought, according to a U.S. Department of Transportation report by Bruce Allen and others, the state lays out over $17 million per year for the same purpose.[4] The explanation lies in a neglected chapter of regulatory history.

Background

The wave of regulatory reform of transportation in the late 1970s and early 1980s brought with it six major achievements: the Railroad Revitalization and Regulatory Reform Act (4-R Act, 1976),[5] the Air Cargo Deregulation Act (1977), the Airline Deregulation Act (1978), the Staggers Rail Act (1980), the Motor Carrier Act (1980), and the Bus Regulatory Reform Act (1982). In each case, legislation eliminated or modified federal controls, opening up the economy and contributing substantially to the economic growth of the 1980s.

Passage of the MCA, in particular, signaled a major victory for those who had for decades opposed the carteliing behavior of the Interstate Commerce Commission, the trucking industry, and organized labor. With the MCA, Congress limited collective ratemaking, eased entry restrictions, and all but eliminated the ICC's authority to set rates. The act also stimulated competition by allowing unregulated private trucking firms, formerly forbidden to carry other firms' freight, to transport freight from wholly owned subsidiaries of their parent companies.[6] Elimination or modification of the circuitous routing and empty backhauls characteristic of the regulated environment made the trucking industry much more efficient, lowering trucking rates and benefiting both shippers and consumers.

The gains from deregulation of interstate trucking have outstripped the rosiest projections. A 1990 study estimated that the MCA had resulted in savings of about $10 billion annually.[7] Another source puts potential gains to producers and distributors at more than six times that figure. Most of those gains are attributable to savings in inventory cost as a result of more reliable transportation.[8] Rates have fallen dramatically, benefiting both shippers and, eventually, consumers. Between 1979 and 1984, the last year for which data are available, truck rates fell 14 percent in real terms.[9] Another study claims that competition has caused a decline of at least 20 percent.[10]

The advent of a deregulated, highly competitive environment, in rail as well as in trucking, has fostered not only competition but technological innovation. Growing emphasis on container traffic, for example, is forcing truck firms to equip their fleets for hauling containers rather than trailers. The application of previously existing technologies, such as bar-coded package labels, satellite tracking of vehicles, database tracking of shipments, and computerized route selection, has created an increasingly sophisticated industry.[11]

Newly demanding shippers have stimulated the development of fast, reliable service. From delay and uncertainty, the industry has moved rapidly toward just-in-time delivery, which represents a saving for manufacturers, distributors, and, ultimately, consumers.[12] Ensured delivery within one to three days has led to more rapid turnover in inventory and a sharp drop in logistics costs, that is, the expense of moving and storing both raw materials and manufactured goods. Robert V. Delaney claims that the nation's logistics costs in 1985 were $56 billion below the 1980 level: $30 billion represented savings from reduced inventories; $26 billion, economies stemming from improved transportation efficiency.[13] Also according to Delaney, U.S. logistics costs as a percentage of gross national product fell 4 percentage points over 12 years as a result of deregulation (from 14.3 percent in 1980 to 10.3 percent in 1991), despite two recessions and fluctuations in interest rates. Total savings attributable to improved physical distribution are now estimated to have totaled $100 billion for that period, and such savings are increasing as production responds more rationally to market demands.[14]

Those claims have stimulated considerable debate, since it has long been accepted economic wisdom that higher real interest rates and economic growth, rather than deregulation, account for reductions in investment in inventory.[15] According to that scenario, an inventory buildup heralds emergence from a recession, while declining stock indicates the imminence of a downturn.[16] Conflicting studies suggest that the exact relationship between inventory and the economic cycle may never be completely clear, but it seems reasonable to posit a form of synergy: increased

efficiency in the trucking sector encouraged business to cut back on inventory, and the steep rise in interest rates and the recession of the early 1980s accelerated the experiment. By the time the recession ended and interest rates dropped, just-in-time delivery was becoming accepted practice, and firms saw no need to return to their old habits of hoarding. Certainly, inventories have never climbed to preregulation highs, suggesting that the stockpiling of assets may no longer be a reliable economic bellwether.[17]

Academic debates on the effects of deregulation and the methodology used to evaluate them could continue for years, but people with hands-on experience have already cast their ballots. Logistics managers nationwide "believe that deregulation has allowed them to capture substantial savings. Whether the number be $50 or $90 billion may not be of great moment. . . . They believe the number to be significant for their own operations."[18]

Whatever the net benefits attributable to the MCA of 1980, long discussions have obscured one critical fact: deregulation has fallen short. The interstate trucking industry constitutes only the tip of the iceberg. The bulk of truck freight still moves intrastate, trapped in a complex web of regulations that impedes competition, increases costs, frustrates shippers, and penalizes consumers.[19]

Relatively few studies have focused on that component of the industry, and they have received only modest atten tion. Drawing on the research available, this paper will attempt to outline the problem, point out a number of the more egregious excesses, and suggest approaches that might secure complete deregulation.

The savings could be staggering. A 1987 estimate suggested that they would amount to $28 billion by 1990. Increased competition among trucking services would account for half that figure, and reduced carrying and holding costs would bring in another $13 billion. The remaining $1 billion would come from savings in the administrative costs of producers and distributors.[20] Critics have called that amount "speculative"; the author himself terms it an "educated estimate."[21] Given the magnitude of the trucking industry and the effects of its operations on virtually every segment of production and distribution, however, the forecast seems reasonable.

A comparison of the 42 states that regulate intrastate freight and the 8 that are deregulated also suggests that the savings from total deregulation would be highly significant. Allen et al. estimate the aggregate national savings from state economic motor carrier deregulation in the 20 states studied at $2.82 billion. Those 20 states, whose intrastate rates are higher than interstate rates, would realize the lion's share of the savings ($2.25 billion). The remaining 31 states would receive the benefit of the balance, $611 million.[22]

The present regulatory confusion exacts a heavy price. A report on the package express industry includes an overview of several state studies that estimate the cost of intrastate regulation of the motor carrier industry. The figures are impressive.

A 1987 study estimated that Texas shippers paid approximately $3.4 billion for intrastate trucking services in 1982. Assuming that intrastate rates were 30 percent higher under regulation than they would have been otherwise, the excess cost to Texas shippers was $800 million. The estimate of the annual cost to Texas consumers since 1982 is about $1 billion.

-- In Indiana deregulation would bring savings of more than $300 million per year, in addition to improving the competitiveness of goods manufactured within the state.

-- Deregulation would save Michigan manufacturers, retailers, and consumers $45 million per year in freight charges. Overall logistics costs would decline about $90 million annually.

-- In Washington State potential annual benefits to carriers and consumers would run between $373 million and $576 million per year in 1987 dollars.[23]

The dollar figures tell only part of the story. Far more memorable is the anecdotal evidence that emerges from contrasts between the deregulated and the regulated states, particularly the glaring discrepancies in efficiency and competitiveness. Of the eight deregulated states, Delaware and New Jersey are especially remarkable in that they never regulated common or contract motor carriage of freight. Alaska, Arizona, Florida, Maine, Vermont, and Wisconsin all

deregulated in the early 1980s.[24]

Florida and Arizona: Freedom to Compete

Florida

In Florida deregulation came about through legislative accident. In 1980, while the state legislature was debating a pending sunset of the state Public Service Commission's authority to regulate motor carriers, the sunset occurred automatically, leaving Florida completely deregulated.[25]

Regulatory constraints had previously burdened the trucking industry in the state. Intrastate rate bureaus determined prices or price schedules; the resulting rate submissions went to the Public Service Commission for review and approval. The commission strictly controlled entry into the regulated sector of the trucking industry.[26] Various operating restrictions limited geographic areas served, backhauls, types of vehicles used, and commodities carried. Florida, like most other regulated states, also imposed a common carrier obligation on truckers to provide service to all customers willing to pay the approved rate, even if that necessitated, at least in theory, serving small and unprofitable markets. (In practice, such an obligation always proves difficult to enforce.)[27] Deregulation removed those constraints with the expected result, a sharp drop in rates attributable, it seems reasonable to infer, to a substantial increase in competition.

A careful study of 10 intrastate carriers before and at three points in time after deregulation supported that inference. It showed that the deregulation of intrastate trucking led to a 15 percent average reduction in motor carrier rates.[28] The firms observed varied in their pricing response to the lifting of controls, but deregulation did force prices downward over time. Although only three firms reduced their prices in the first period following deregulation, by the third period only one firm had been able to sustain a price increase.[29]

Price differentials across product classifications diminished somewhat in the unregulated, competitive market, but they did persist. More important, prices charged in the larger markets fell approximately 3 percent below prices charged in the smaller markets.[30] Although gains did go disproportionately to big cities, small communities never mounted an effective protest, which suggests that they benefited as well.

In summary, Florida achieved a success. According to a 1981 survey, a majority of users perceived increased competition. One-third had been offered discounts; more than 60 percent had received offers of new service; nearly three-fourths felt that deregulation had resulted in generally lower rates.[31]

Arizona

Arizona deregulated in 1982 with similar results, but the drive to deregulate faced fearsome odds. To begin with, Arizona considered transportation a "regulated monopoly," claiming that "experience has shown that in transportation, monopoly is the only viable market structure." "Experience has never shown anything of the sort," critics remarked tartly; nevertheless, Arizona law explicitly prohibited competition.[32]

The Arizona Corporation Commission (ACC), an independent agency established by the state's 1912 constitution to regulate all public service corporations, including trucking, wielded its preemptive authority with a heavy hand. Like many other regulated states, Arizona required a certificate of public convenience and necessity for entry into the industry, but the conditions governing issuance of certificates were anti-competitive in the extreme. An existing carrier had to be given the option of providing any new service or correcting any deficiency in its existing service before a new certificate could be awarded. "In effect, the statute authorized the 'existing' carrier to expropriate any innovative service proposal that might be made for his 'territory.'"[33] Since a mere show of "willingness" to perform the service proposed by a potential entrant sufficed to bar a new entrant, carriers already in the business had no need to respond to consumer demands. As one highly critical study noted, "Nowhere in America has competition been as effectively suppressed via legal means as it has in Arizona."[34]

The legislature consistently broadened the commission's powers and the courts upheld them. In effect, an existing carrier was ensured "preemptive rights in his territory."[35] A 1966 Arizona Supreme Court decision carried absurdity

to new extremes. In siding with existing firms seeking to block a new entrant, the court ruled that "it had to be shown that existing carriers had refused to provide service, but their failure to do so was not proof of their refusal to serve." Thus, no matter how many times an existing carrier might allow a specific service to lapse, "no new firm could be permitted into the market without the acquiescence of the existing carriers."[36]

Given such arrant market distortions, the forces of deregulation at the state level gathered strength. In 1977 then-attorney general of Arizona Bruce Babbitt and ACC chairman Bud Tims recommended easing controls on the motor carrier industry. The regulatory system, they asserted, was inimical to the state's economic growth and to satisfaction of consumer needs. Upon becoming governor in 1978, Babbitt proposed easing entry and reducing ratemaking controls, and the legislature's favorable response encouraged proponents to broaden the measure.

Supporters of the regulatory system claimed that deregulation would bring about rising rates and declining service, particularly for rural communities and small shippers. They voiced concern as well about overexpansion of the industry, the growth of large trucking firms able to drive out competitors, and a rise in energy consumption.

The Arizona Department of Transportation generally favored deregulation, however, and the ACC followed the lead of Chairman Tims. Staff employees at the ACC and the ADOT conducted extensive research that demonstrated deregulation's favorable effects; a professor at Arizona State University's law school testified repeatedly before the legislature in support of deregulation. Finally, in 1979 the legislature mandated complete economic deregulation of the motor carrier industry.[37] Deregulation was, however, to be subject to voter approval in a 1980 referendum.

Voters approved deregulation by a two-to-one margin, but the regulatory forces were far from spent. Opponents of deregulation were able to postpone the legislation's effective date to July 1, 1982. Unfortunately, the concurrent implementation of higher truck taxes made it difficult to study the effects of deregulation in isolation. Nevertheless, a study commissioned by the ADOT in November 1982, and published in January 1983, indicated substantive benefits.[38]

Surveying carriers and shipper-receivers nearly six months after the implementation of deregulation, Professors Richard Beilock and James Freeman of the universities of Florida and Kentucky found that overwhelming majorities of users and providers reported increased competition following decontrol. New service offerings and discounts reflected the newly competitive climate. Although many shippers failed to perceive a change in basic rates, a majority of those who did reported a decline. Users of trucking services in rural communities benefited almost as much as those in cities. Small shippers also gained.[39]

A more comprehensive study, published by the Arizona Department of Transportation in February 1984, confirmed those results.

The evidence ADOT has collected to date in all of its studies leads to the inescapable conclusion that the optimistic picture is much closer to reality than the more pessimistic view. . . . Regulatory change . . . does cause certain problems, but they do not appear to be serious or long-term in nature. Service remains steady or improved to practically all shipper/receivers, and rate differences do not appear to be significant nor out of line with cost variations. . . . A majority of shipper/receivers and carriers surveyed by an independent polling organization favor continued deregulation.[40]

Moreover, competitive pressures kept rates from being increased to reflect the higher truck taxes. At least equally significant, under deregulation intrastate rates continued to decline relative to corresponding interstate rates, a trend that appeared around 1980.[41] At the same time, "deregulation has not meant radically higher rates for rural areas and small communities. On the contrary, . . . shipper/receivers in these areas have benefited."[42] In other words, the havoc confidently predicted failed to materialize. Undaunted, advocates of control began working strenuously to reregulate the taxi industry. That the availability of taxis in Phoenix had improved dramatically under deregulation evidently made no difference.[43]

Regulation Is Alive and Well

As the struggle in Arizona demonstrates, the fight to deregulate is long and bitter; often it is also fruitless. Fortunately,

Delaware and New Jersey have historically been free of regulation. In the 1980s four other states followed the lead of Florida and Arizona: Maine (1982), Wisconsin (1983), Alaska (1984), and Vermont (1986).[44] Despite those successes, however, only six states considered deregulatory legislation in 1988; in each case the proposal met with defeat. The following year deregulation again found supporters in six states, but the legislation failed. Five states did introduce legislation to partially deregulate trucking, but that legislation was still pending at the end of 1989. Michigan and Wyoming attempted to deregulate motor carriers completely, but in those states as well the attempt was unsuccessful.[45]

Iowa, Kansas, Missouri, and Nebraska: Benign Neglect

The patchwork quilt of controls now governing intrastate motor carrier traffic in the 42 regulated states has produced frustration, inefficiency, and confusion, to say nothing of higher costs and less-than-adequate service. Those 42 states are generally classified as "moderate" or "strict," but states in each category differ widely in the extent of regulatory control applied to entry and exit, rates, service, and mergers and acquisitions. A recent study of four states in Federal Region VII (Iowa, Kansas, Missouri, and Nebraska) underscores the differences.[46]

Overall, the MCA of 1980 has had a trickle-down effect on at least three of those states. With the exception of Nebraska, there was much less economic regulation of intrastate trucking in 1990 than there had been in 1980. Budget reallocations and the concomitant shrinking of staff in Iowa, Kansas, and Missouri resulted in de facto deregulation. Regulation of service has all but disappeared, but shippers rarely complain. When they do, the complaints are handled informally. Administrative perspectives have shifted: the mandate to protect has diminished, while concerns with safety regulation have grown.[47]

A closer look at those four states, however, suggests that continuing controls, coupled with administrative incon sistencies, still burden truckers and that the controls ultimately penalize consumers. Strict entry restrictions in Nebraska have changed little since 1980: only one carrier has authority to transport all commodities in the state. Iowa and Missouri have substantially liberalized entry.[48] In Kansas, the most liberal of the four, entry into the trucking industry is virtually unregulated,[49] but there has been no corresponding loosening of rate regulation.[50] Although Iowa and Kansas do appear to accept discounts readily if they are filed with the state regulatory agency, Missouri constrains discounting; Nebraska, the most restrictive with respect to rates and ratemaking, refuses to allow discounting at all.[51] All four states prohibit "arbitraries," and all four grant immunity to carriers that participate in rate bureaus, although the carriers themselves often bypass the bureaus.[52]

Thus, the situation in those four states is relatively benign but still disturbing. It is unclear, for example, why Kansas and Nebraska should have diverged so widely. Missouri's retreat also raises questions. The Missouri legislature reregulated general and specialized freight carriers in 1986 and carriers of bulk agricultural commodities in 1987. However, judicial interpretation and statutry changes in the application process eased entry, shifting the burden of proof for the need for service from the applicant to the challenger.[53] Januslike, the state looks both to the regulated past and to the deregulated environment of the future and seems unable to decide which of the two it prefers.

The pattern of exemptions in all four states reflects the economy of each more than it does the welfare of the consumer. Kansas and Nebraska exempt stone and construction materials; Iowa narrows the exemption to stone and road-building material. As one might expect of predominantly agricultural states, Kansas, Missouri, and Nebraska exempt agricultural products. Curiously, Iowa has no blanket exemption, though it gives special treatment to dairy products.[54] In sum, at least two large sectors of the trucking industry--agriculture and, to a lesser extent, construction--operate without regulation.

Despite Nebraska's stolidity and Missouri's backsliding, it might seem that total deregulation would arouse little opposition. Administrative staffs are too small to protest deregulation effectively; small communities evidently find service adequate in the present, partially deregu- lated environment. As a result, however, the gains from deregulation, at least for Iowa, Kansas, and Missouri, are unlikely to be dramatic, although changes in carriers' marketing and operations would certainly increase efficiency.[55]

In other regulated states, gains could be much more substantial. In conjunction with the study of the four midwestern states, the Midwest Transportation Center reviewed 14 studies addressing the effects of economic regulation on

intrastate trucking. The five studies dealing with Texas found that state regulations made it difficult for firms, particularly new firms, to enter new markets, enhancing profits of existing carriers. Rates were higher than they would have been under deregulation. One study estimated that deregulation would increase the incomes of agricultural producers by nearly $40 million, mainly by transferring income from transportation services; another study estimated the total annual burden of intrastate regulation to businesses and consumers at $1 billion. That report also noted that lower interstate trucking rates had caused massive relocations, involving thousands of jobs in retailing and distribution, to states bordering on Texas.

One study of Texas and one of Michigan found that traffic had shifted from regulated intrastate common carriers to unregulated private carriers or less regulated contract carriage. The Michigan study concluded that intra- state regulation may deter producers from locating in the state and that intrastate regulation had proved unable to protect employment in the state's trucking industry. Two Oregon studies produced different results: one declared that continued regulation was essential to the state's growth; the second found that the total costs of intrastate regulation, including transportation and inventory, amounted to more than $100 million.[56]

The figures cited support the estimate that close to $3 billion could be saved by deregulation in the 20 states whose intrastate rates are higher than interstate rates on comparable movements. In an economy straining to be competitive, the drag represented by the cost of regulation merits consideration.[57]

California: Uncertainty in Moderation

To describe California's intrastate trucking policy as vacillating would be kind. Officially classified as "moderate" in its regulations, the California Public Utilities Commission (CPUC) has changed course with the frequency of a weather vane. It moved toward deregulation in the mid-1970s only to move back toward regulation a decade later.

In 1975 the commission declared that it intended to abolish rate regulation in all trucking sectors; but the order roused controversy in the industry, and the commission subsequently agreed to "go slow" and to review each trucking sector separately. In 1980 it instituted a program called "reregulation," a hybrid of full deregulation and minimum rate tariffs (MRTs) for general freight carriers. Under that program, carriers could elect either to file individual tariff rates or to adopt the commission's "transition tariffs." The program thus allowed greater flexibility in pricing since carriers could deviate from the benchmark (transition) rates simply by showing cost. Competing carriers ("me-toos") could adopt those rates without any cost showing.[58]

Reregulation is a misnomer, since the program was intended to provide a transition to a deregulated environment in which there would be no MRTs. The transitional provisions did promote competitive pricing, but they also exacerbated industry problems occasioned by the nationwide recession of the early 1980s. In 1983 the California Trucking Association and the California Manufacturers' Association asked that the program be reviewed, arguing that reregulation was damaging the industry by permitting carriers to price below cost. Union leaders claimed that reregulation had also led to unemployment among union drivers, as well as to lower wages and benefits packages.[59]

Three years later, under a new commissioner who was also a past employee of the Teamsters, the CPUC caved, scrapping the transitional program and adopting new rate- setting policies. The 1986 scenario, also a hybrid, canceled the transition tariffs and those of most of the competitive me-toos, requiring carriers to cost justify all rate changes outside a "rate window," which permitted them a quarterly deviation of as much as 5 percent up or down from their base rates. In contrast to past practice, which had required cost justification only once, all rate reductions below the old transition tariff rates and all future changes had to be cost justified. To drive home the new reregulatory message, general freight carrier rates were increased by 10 percent. Moreover, the CPUC issued mandatory rate increases in each of the three succeeding years.

Under the 1986 revisions, operators also had to adjust their rates annually, raising or lowering them according to a commission-established index based on prevailing market conditions.[60] Finally, in a bow to the commissioner, it was decreed that carriers had to use "prevailing," that is, union-scale, wages in their cost justifications, the rationale being that the Teamsters should not be disadvantaged.

To compound the rate-setting problems, the deregulation of certain trucking sectors and the retention of regulation in

others continues to defy all logic. "Exempt" commodities, those never subject to regulation, include bulk wine, telephone directories, and voting booths. The commission has discontinued rate regulation of fresh fruits and vegetbles, petroleum, and hay and grain but continues to regulate a number of other sectors, to the detriment of the consumer. A partial catalogue follows.

-- Household goods: The commission cited the "relative unsophistication of the shippers involved" as justification for continued minimum rate regulation. Entry regulation is strict; obtaining authority to operate requires passage of a written and an oral examination.

-- Rates: In 1986 the commission updated MRT rates for carriers by 5 percent (hourly) and 10 percent (distance); in 1987 it increased those rates again by an additional 16 percent and 13 percent, respectively.

-- Cement carriers: In 1984 the legislature ensured higher rates by prohibiting the use of backhaul revenues in cost estimates required for deviations from the MRT. (To the commission's credit, it objected.) In 1986 the commission decided that it would deny certification of new carriers or expanded service areas unless the applicant could prove that it would not injure existing carriers. Rates are about 32 percent higher than they were in 1980.

-- Dump trucks are subject to strict entry regulation; would-be carriers must demonstrate public need. Rates increased about 30 percent in the 1980s.

-- Livestock haulers are exempt from Interstate Commerce Commission regulation. Carriers have cartelized the industry by subscribing to a gentlemen's agreement under which they use California intrastate rates for interstate hauling. Rates are up about 32 percent since 1980.[61]

California's economy has paid dearly for such inconsistency. The governor and the legislature cry "hard times," but support for regulation has contributed to the flight of distributors from the state and has penalized, among others, small businesses and all consumers. Regulatory compliance imposes heavy costs. A single cost justification, which may apply to a shipment of a single truckload, costs between $200 and $3,000, not including the expense of estimating costs and traffic flows. Consultants, who charge for drafting and filing tariff sheets, make a profit. Large and medium-sized firms may charge regulatory costs to affiliated companies, which makes it possible for those firms to cost justify lower rates. Small carriers cannot do that, nor can they afford to hire outsiders to do the expensive paperwork. Forced to compete mainly on service, they find that their less sophisticated operations put them at a disadvantage.[62]

Under the relaxed regulation of general freight and petroleum tank trucks in the early 1980s, the California shipping public saved well over $1 billion. General freight cost savings totaled roughly $950 million from 1982 to 1986 alone.[63] The 10 percent rate increase mandated in 1986, however, translated into rates that increased the "take" about $80 million annually for truckload (TL) shipments and another $100 million for less-than-truckload (LTL) shipments.[64] To circumvent the high costs of transportation, shippers began warehousing inventories in Nevada and Oregon.[65] A haul between San Francisco and Reno (200 miles) was less expensive for most rate categories than a haul between San Francisco and Oakland (15 miles). Under LTL rates, for example, it could cost $136 to move a 2,000-pound shipment from Oakland to San Francisco. To move the same shipment from Reno to San Francisco, under a far-from-unusual 60 percent discount, could cost as little as $70. Even a 30 percent discount would bring the load in at $123.[66]

Those anomalies drew much fire, not only from academics but from at least one sector of the CPUC itself. The 1988 report of its Strategic Planning Division, although presented as a dispassionate policy analysis, is highly critical of the CPUC. The report recognizes that deregulation imposes penalties, mainly on organized labor, but notes that overall employment in the trucking industry increased under partial deregulation.[67] Moreover, services in rural areas were adequate.[68] Disposing quickly of another objection to deregulation, the authors indicate a strong preference for direct enforcement of safety requirements as a means of promoting safety.[69] Ultimately, the report declares:

> conomic regulation allows the industry to sustain higher wages, profits and level of capacity than is possible without regulation. As a result, it leads to higher costs to shippers and consumers of their products. . . .

Deregulation is the most economically efficient option. In the long run, it is probably the best option for all affected groups, although it is likely to hurt unionized labor and individual carriers that cannot adjust to a competitive market environment. Should the Commission decide to move toward deregulation, it should consider the transitional effects.[70]

In summary, the report adds:

> The CPUC's current mixture of trucking regulation and unclear policy objectives impedes program effectiveness, and affects the state's busness environment. . . . Lack of clear and consistent program and policy direction may promote political solutions to regulatory problems, and unnecessary animosity between carriers and shippers.[71]

There could scarcely be a clearer blueprint for reform. It may also have had some effect. The CPUC's Division of Ratepayer Advocates, citing Florida and Arizona, has recommended decreased regulation. Partially in response, the CPUC, in October 1989, relaxed regulation by establishing a "zone of reasonableness" within which carriers would be allowed to increase rates without the commission's approval if the increase were less than 10 percent over the rates charged during the preceding 12 months. Carriers could also decrease rates without approval if the rates were not below the floor price.[72]

Implemented early in 1990, that relaxation, or "the Decision," as it is usually called in official reports, proved generally beneficial. CPUC staff, required by the order to study postimplementation economic and service conditions in the trucking industry, issued two reports. The first monitoring survey, released in April 1991, reported no serious difficulties.

In short, the staff could not identify any major problems in the year following implementation of the Decision. It found that service levels and prices remained stable overall, with slight differences between truckload (TL) and less-than-truckload (LTL) shipments, as well as between rural and urban shipments.[73]

It is worth emphasizing the report's findings on exit and entry. "The staff found no evidence of net exodus of carriers from small and rural communities. In fact, it appeared that there had been more entry than exit."[74]

The 1992 edition of the monitoring survey echoed the earlier appraisal. It indicated that prices were rising, but by less than the rate of inflation, and that shippers in all geographic regions were "happy" with the service provided by TL and LTL carriers. The report did note that shippers of large volumes paid less than smaller firms, a result that was far from surprising in a competitive market.[75]

Hard on the heels of the Decision and the monitoring survey, the California Coalition for Trucking Deregulation, a group of major industry organizations, scored a signal victory. More than two years of effort culminated in the CPUC's issuing two major decisions that took effect on June 18, 1993. The first specified that special contracts would no longer be subject to the public protest process. Moreover, they would be effective on the date they were signed by both the carrier and the shipper, a provision that eliminated the 20-day public notice. In addition, special contracts would no longer be limited to one year, nor would they have to be renewed annually.

At the same time, the CPUC expanded the upper limit of the zone of reasonableness for common carriers from 10 percent to 30 percent. Although all other common carrier tariff rules remain unchanged, including the 10-day public notice requirement to effect new rates, the expanded zone of reasonableness will give common carriers more flexibility in pricing. It seems just possible, although unlikely, that the commission has experienced a change of heart and will eventually deregulate all carriers.

Colorado: The Struggle Continues

Colorado is one of the most restrictive states. State law provides for full regulation of all motor carriers, and the state Public Utilities Commission (PUC), which controls rates, entry, service territories, service, and safety, interprets applicable statutes strictly. Individuals or companies seeking to transport goods or people must obtain a certificate of public convenience and necessity from the commission. The burden of proof is on the applicant, who must demonstrate

that current service is inadequate or that there is room for another carrier. Obstacles multiply: the PUC notifies potential competitors to give them a chance to protest. The application process is not only lengthy but costly. To succeed, an applicant must employ an attorney to deal with the attorney or attorneys of his potential compeitors. The tens of thousands of dollars in legal fees, however, carry no guarantee of success.[76] To change an existing service or add a new one, carriers already certificated must go through the same process.

The highly restrictive regulatory environment has produced agitation for reform, and Colorado has haltingly deregulated specific areas. In 1984 the legislature patially deregulated carriers of household goods, eliminating the need for a certificate of public convenience and necessity, as long as the carriers registered, complied with the commission's safety regulations, and provided proof of insurance. In 1985 the Colorado State Assembly partially deregulated luxury limousines, scenic and charter bus tours, and small-package delivery under the same conditions.[77]

For each deregulatory move, the legislation mandated that the Office of Regulatory Reform, a division of the Department of Regulatory Agencies, carry out a survey of deregulation's effects. The results of even partial deregulation were highly positive: service to the state's consumers increased in many markets; new markets and new businesses flourished--over 700 businesses entered the dereglated areas; consumer complaints were few and settled with relative ease; most companies surveyed reported lower rates.[78]

Carriers and shippers interviewed generally supported further deregulation in the belief that it would benefit the Colorado economy, their consumers, and the intrastate trucking industry as a whole. They thought that greater efficiency would improve service to rural areas and claimed that safety would remain a top priority.[79]

Figures gleaned from bills of lading and invoices indicate the inefficiency of the present regulatory structure, highlighting the need for reform. In one case, shipping 3,000 pounds a distance of approximately 80 miles within Colorado (Fruita to Denver) cost $292, while a shipment more than three times heavier, shipped approximately 1,077 miles interstate (Fruita to Davenport, Iowa) cost $455. The distance was 13 times as great; the cost, less than double. In another instance, shipping 520 pounds from Grand Junction, Colorado, to Painsville, Ohio, cost $16,075, while a shipment approximately half that size traveling from Grand Junction to Denver carried a price tag almost as large, $14,139.

Encouraged by those reports, proponents of deregulation have continued to push for the lifting of controls. Rep. Penn Pfiffner of the Colorado State Assembly has been one of the most outspoken and persistent advocates of deregulation. During the 1993 legislative session, he introduced two bills, H.R. 1298 and H.R. 1300, that would have increased competition in the taxi and trucking industries. Audiotapes of the hearings on H.R. 1298 before the House Business Affairs and Labor Committee in February 1993 provide yet another example of the obstacles to deregulation.[80]

Supporting deregulation of taxicabs, Pfiffner asked the committee

to take a brave step and to make some real policy. . . . Right now we have a closed system which benefits a few privileged special interests. By voting for H.R. 1298, you're going to be able to open up the system to create more opportunities for people.

The bill, he added, would "allow consumers to have a say in how things are run." But the bill would not completely deregulate transportation, since applicants would still have to file with the PUC, pay a fee, pass safety inspections, and carry insurance. The significant modification would concern entry. The opportunity for "openness and opportunity" could only be opposed with "constrained and convoluted arguments."

The most poignant testimony, however, came from LeRoy Jones, representing the Quick Pick Cab Company "and all the company abused drivers in Denver and surrounding areas." "I'm here to implore the committee members to get the bill out of committee," said Jones, "so that the drivers and the consumers that we serve can be served properly." The system, according to Jones, "does not work."

Noting that he had filed suit against the PUC and the state to force the granting of a license, Jones added that, for many, cab driving was the "last rung before they become street people."[81] Deregulation would give the occupation dignity, in addition to according the cab driver "the right to the proceeds of his investment: companies are getting it;

cab drivers are just getting whupped." Under deregulation, "everybody can have the chance to fail or succeed at their own merit."[82]

Despite Jones's eloquence and Pfiffner's closing assurances that the bill would simply enhance competition and would in no way undermine safety, the "self-serving testimony" to which he had referred in his opening statements prevailed. The bill was defeated by a vote of seven to three.

The debate on H.R. 1300, the bill to deregulate the trucking industry, produced more of the same. Opponents urged postponement, claiming that the present system was working well and did not need a "legislative fix." Norm Weintraub, chief economist of the International Brotherhood of Teamsters, led the charge. Calling H.R. 1300 an "oil company relief act," he claimed that deregulation of trucking had been "a complete unmitigated disaster for the people we represent." On behalf of the 1.5 million Teamsters, he opposed further deregulation. Skillful in manipulating his audience, he conjured up a nightmare of "unemployment, layoffs, bankruptcy, terminations, lower wages, and lower standards of living." The tens of billions of dollars in savings attributable to the MCA of 1980 naturally found no place in his rhetoric. He preferred to focus on "the workers who have been displaced and will be displaced if you pass this."

Laying great stress on the 42 states still regulated, he claimed that there were no current studies of the effects of deregulation. That is patently untrue. Weintraub found it convenient to gloss over the possibility of lower prices for consumers, preferring to focus on the "human sacrifice" of workers outlined by two International Labor Organization studies of North Carolina. He also took a swipe at airline deregulation by complaining about the $1,000-plus fare he had paid to travel to Denver on short notice.

Another opponent, an attorney, claimed that "public-interest-imbued business like transportation" required regulation. He had worked for the PUC, he noted, and he also owned a small trucking company. Nevertheless, he gave the committee to understand that his opposition was motivated by conviction and was wholly disinterested.

In an impassioned closing statement, Pfiffner pointed to the report by the Department of Regulatory Agencies, which basically favored deregulation. Then he added:

We have had 60 years in which this is the worst, probably the most egregious example of how the government has skewed the way consumers want to operate, the way shippers want to operate, the way we want business to operate. And you've heard one person after another--special pleadings--say ing we've invested money. Make sure we don't lose our money. We have an ability to keep our competition out; make sure we don't get any more competition.

And I can't imagine a moral justification or an economic justification for any of it.

The special pleadings prevailed. By a vote of eight to three, the bill was postponed indefinitely.

Package Express: Entrepreneurial Strategy at Its Best

As the Colorado testimony suggests, the odds against deregulation are daunting. Rather than oppose the system outright, businesses have often creatively challenged the regulatory structure. The clearest examples of that come from the package express industry, freed to expand by the Air Cargo Deregulation Act of 1977 but still facing agencies seeking to impose intrastate regulations that are costly, conflicting, and irrational.

A recent report written for Congress by the Department of Transportation details a number of the problems.[83] The study defines "package express service" as "transportation of packages of 150 pounds or less, with overnight or second day delivery." Several types of carriers offer that service, but the most familiar are the "integrated carriers," those with an air-ground network, such as United Parcel Service and Federal Express.[84] Following the Air Cargo Deregulation Act of 1977, additional regulatory changes at the federal level--the Airline Deregulation Act of 1978, the Motor Carrier Act of 1980, and the Bus Regulatory Reform Act of 1982--effectively removed package express movements from state regulatory control. The MCA played a particularly important role. Although it did not wholly deregulate trucking, it exempted all truck transportation movements with a prior or subsequent movement by air from Interstate Commerce Commission regulation.[85]

The Bus Regulatory Reform Act further loosened controls by permitting the ICC to overrule state regulatory action regarding entry, rates, and exit of motor carriers of passengers.[86] In other words, individual states no longer have jurisdiction over surface movements that are part of a continuing movement in interstate or foreign commerce.[87]

Nevertheless, intrastate regulation continues to create operating inefficiencies. Express trucking costs only about 25 percent as much as movements by air. Express delivery firms could expand by "bleeding off" traffic from saturated hubs and using trucks to complete deliveries. Unless a firm has intrastate trucking authority, however, all movement must be by air, which raises costs. Unable to carry intrastate shipments, motor carriers that do not have state authority run with lighter loads, a waste of time and fuel that pushes up costs and adds to air pollution.

The Department of Transportation's report outlines six areas in which state regulatory policy has increased industry costs: entry regulation, rate regulation, operating restrictions, enforcement, potential enforcement problems, and regulatory instability. The package express industry has shared all of those costs with other motor carriers attempting to operate intrastate. Enforcement, whether actual or potential, is, however, in some ways different and far more onerous.

Entry regulations for carriers that decide to operate within a state are time-consuming and costly. It took United Parcel Service decades and millions of dollars to acquire operating authority in all the states.[88] Roadway Express took the opposite course and simply refuses to carry intrastate traffic in most jurisdictions.[89] Integrated air carriers fly their traffic, even though air service is four times more expensive than trucking.

Another solution to entry restrictions is to assert that federal regulations have preempted the states' and that no regulatory authority is needed. Federal Express, which has followed that route, has been in litigation almost constantly over whether the Airline Deregulation Act covers all its operations, both air and stand-alone surface.[90] Each of those attempts to solve the problem of entry distorts traffic flows and increases costs.

Rate regulation necessitates the filing of tariffs, which takes time and generally entails legal fees.[91] It can also lead to disputes about the services allowed. For instance, Federal Express was advised that it could not offer a money-back guarantee for intrastate shipments in California.[92] By raising costs, such difficulties have a "ripple effect" on the rates charged by the carrier in many other states.

Operating restrictions limit package size and weight, as well as routing, forcing inefficiencies on the carrier. Roadway Package Service, for example, could acquire Virginia authority to transport packages up to 70 pounds, but its other operations are geared to an upper limit of 100 pounds, so it has bypassed the opportunity.[93] Texas limits UPS to the transport of packages weighing 50 pounds or less, obliging the company to engage in costly sorting operations. (If the package is overweight, UPS returns it to the shipper.) Circumventing the Texas regulations by flying the packages out of state to be processed and then flying them back would raise costs and might result in litigation.[94]

States' enforcement of their regulatory authority is potentially the most onerous of the obstacles faced by package express firms. In response to a complaint by Puro-lator Courier, itself a package express firm, the Tennessee Public Service Commission stopped two Federal Express trucks to determine whether they were carrying any intrastate freight. (Federal Express does not have authority to opeate intrastate in Tennessee.) The searchers found no contraband, but the inspection resulted in a series of delays and the potential exposure of Federal Express to the payment of thousands of dollars in money-back guarantees had it failed to meet its delivery commitment.[95]

As package express carriers expand into warehousing and distribution, they are also encountering potential enforcement problems, instances in which regulatory authorities assert jurisdiction over the intrastate portion of the service. Over the past five years, there have been a number of such cases, but the ICC has generally declared the disputed movements to be continuations of movements in interstate or foreign commerce. The touchstone seems to be "a fixed and persistent intent on the part of the shipper that the goods continue to move to their ultimate destination."[96] In warehousing and distribution services, the exact destination may be unknown, which poses difficulties for carriers. If the goods "come to rest" for a lengthy period, the state authority may view that as "breaking the interstate movement."[97] Even if state jurisdictional claims are set aside, litigation is likely to be costly and the effect on service disruptive.[98]

Regulatory instability makes it difficult for carriers to plan. California provides a frightening instance. In March 1990

the CPUC once more moved to allow considerable rate freedom, but the decision is being appealed and the state legislature could overturn it.[99] Indiana, however, is the prime example of instability. In 1988 the state passed legislation to deregulate intrastate trucking, beginning in 1990. Federal Express then proceeded to set up a hub for its operations in Indianapolis. In 1989, however, Indiana rescinded the deregulatory legislation. It did provide an exemption from regulation for carriers maintaining a hub in the state; Federal Express and one other carrier were affected. In 1991 that exemption was repealed, leaving FedEx with a substantial investment and higher operating costs.

In August 1991 the Indiana Department of Revenue issued a show cause order, asserting that FedEx was continuing to truck intrastate without operating authority. The Indiana Motor Trucking Association then filed a complaint also arguing that FedEx should not be allowed to operate intrastate without obtaining the requisite certificate. FedEx responded that all packages moving in Indiana involved movement to or through other states by aircraft or motor vehicle. FedEx argued, in part, that all state economic regulation of its operations was preempted under the Federal Aviation Act (49 U.S.C. 1305) because of its status as a federally certified all-cargo air carrier. In denying FedEx's motion to dismiss, the IDR held it had subject matter jurisdiction to resolve the issue of whether FedEx's interstate truck movements were a sham operation and whether FedEx was exempt from state regulation under 49 U.S.C. 1305. The proceeding before the IDR, now two years old, has resulted in extensive legal fees and inconvenience to Federal Express, to say nothing of the costs imposed on the company's shareholders.[100]

In September 1993 Federal Express filed a complaint for declaratory and injunctive relief in federal court in Indiana to prevent the continuation of the IDR proceeding. FedEx continued to assert its position that the state of Indiana lacks jurisdiction over the company's activities, given FedEx's status as a federally certified all-cargo air carrier. The state has moved to dismiss the complaint on the grounds of abstention. The motion is still pending, and the court recently directed the defendants to brief the issue of why the attempted regulation under consideration by the IDR regarding Federal Express would not constitute economic regulation.

A recent victory, however, may clarify the debate and bring industrywide deregulation a step closer. In 1991 the Ninth U.S. Circuit Court of Appeals overturned a lower court's decision in California and ruled that FedEx's entire operation within California could not be economically regulated by the CPUC. In 1992 the U.S. Supreme Court refused to hear the state's appeal and remanded the case to the district court for entry of an order consistent with the Ninth Circuit's decision. A permanent injunction was entered in 1993.

The proceeding established federal preemption of state regulation of the rates, routes, and service of FedEx's air and surface operations. The decision allows the cutting of costs, for it exempts the company from the requirement that truckers file rates, financial reports, and other detailed financial information with the CPUC. FedEx conceded, however, that state safety regulation, including vehicle and driver licensing, was not preempted. The extent to which other firms will be able to benefit from the decision is unclear, but crucial to future debate will be the rejection of the state's argument that some of the information that firms no longer need to file was essential to the monitoring of safety.[101] By explicitly breaking the link that often binds safety to deregulation, the recommendation of the presiding judge should open the door to more rational debate.

In the best of all possible worlds, of course, the company's victory would have sweeping consequences. In addition to clarification of the federal preemption of state economic regulation of its operations in California and other states under the jurisdiction of the Ninth Circuit, FedEx should win broader rights to operate its ground service unregulated nationwide.[102]

A recent development in Texas suggests that the decsion has indeed had significant repercussions. In a letter opinion to David Cain, chairman of the Committee on Transportation of the Texas House of Representatives, Dan Morales, Texas's attorney general, concluded that "the Airline Deregulation Act does preempt state economic regulation of intrastate ground transportation of packages by an integrated air-ground express delivery service such as Federal Express." Citing both the CPUC case and the related Trans World Airlines litigation in Texas as the basis for his conclusion, Morales stated his belief that the U.S. Code preempts the Texas Railroad Commission from economically regulating FedEx's truck movements between points in Texas because of FedEx's status as an air carrier operating an integrated air-ground system.[103] Texas has been, heretofore, one of the most strictly regulated states in the union.

The long-term view is, however, sober. Beyond the jurisdiction of the Ninth Circuit and Texas, which is in the Fifth Circuit, FedEx and other integrated carriers still face entrenched opposition from organized labor, from the relatively few exclusively intrastate trucking firms, and from the regulatory agencies.[104] All fear the erosion of their power and the loss of jobs. Attempts to declare movements by integrated carriers movements in intrastate commerce and therefore subject to the jurisdiction of the individual states are the ultimate in harassment tactics. Faced with such obstacles to logical expansion, FedEx and the other integrated carriers have little choice but to engage in long and costly state-by-state litigation. Given the enormous drain on resources, FedEx is, of course, leading the fight for federal preemption of state-level regulatory controls.

It is difficult to determine to what extent regulatory controls distort the package express market. A number of reports have estimated the burden of intrastate regulatory policy in particular states, but those studies have not isolated the effect on package express.[105] A study conducted by Federal Express, cited in the Department of Transportation's report, does estimate the annual benefit of exempting overnight express carriers from intrastate regulations at "about $100 million per year."[106] That figure is probably an underestimate, however, since it covers only the overnight air express market, which "represents only about 33-45 percent of the entire industry."[107]

The authors of the DOT report to Congress are somewhat more cautious: "Although we have been unable to quantify the impact of state regulation on the package express industry, we believe there is substantial evidence that the impact is significant." The report does note, however, that the 1988 domestic volume of the package express industry was about $21 billion, of which nearly $3 billion represented intrastate surface carriage. Over 90 percent of that figure, or well over $2.5 billion, was subject to state authority. Given the structure of the industry, that is, the use of sorting hubs, "state regulation affects the costs and rates of the entire industry."[108]

The report also underscores the potential effect of increased costs attributable to regulation on the ability of U.S. firms to compete in the world market. Canada, Mexico, and the European Community have been reducing regulatory barriers. If deregulation can lower the costs of their goods relative to those manufactured in the United States, it will be more difficult for this country to compete, both here and abroad.[109] It is a sad commentary on U.S. economic policies, a reader of the report would conclude, that we are handicapping our own industries at a time when the rest of the world is moving toward free markets.

Voluntary deregulation, which would do much to "level the playing field," has been slow. Noting the difficulty, the report concludes that, at a minimum, Congress should step in to prohibit the states from regulating package express traffic within their borders, as well as all trucking service provided by interstate carriers. Unless the country is willing to accept the high costs imposed by regulation, federal preemption may furnish a solution.

Expanding federal power in that way should inspire caution, but hampering the efficiency and further growth of a very large industry may prove increasingly costly. As electronic mail and facsimile machines become more common and as consumer dissatisfaction with the U.S. Postal Service grows, private carriers of letters, documents, and small packages are increasing their share of the market. Airborne, Federal Express, and United Parcel Service generate impressive revenues: Airborne chalked up $584 million for domestic operations in 1988; Federal Express and UPS combined exceeded $14.8 billion.[110]

Express service actually dates back to the 1920s, but the "extraordinary growth in traffic volume and the number of carriers offering this service are recent phenomena directly attributable to the freedom of carriers to bring service to an untapped consumer demand."[111] There is no telling how much more it might grow without the hindrance of state economic regulation.

Objections to Deregulation

The guiding principles of deregulation are few and simple: lifting controls will promote competition, which, in turn, will lower costs, benefiting shippers, distributors, consumers, and indeed the national and even the international economy as a whole. The objections are also few and simple and are all rooted in self-interested protectionism. Fearful of change, the supporters of continued regulation cling to their perquisites, heedless of the harm inflicted by their inefficiency and waste.

The "Small Community" Argument

Advocates of regulation commonly rely on two major debating points: First, service to small communities will decline, and the inhabitants will have to pay a higher price for the service they are able to obtain. Second, safety will suffer as defective trucks careen along the intestates, leaving mangled bodies in their wakes. Both arguments are red herrings. There is little empirical evidence that deregulation will diminish service to small communities; on the contrary, service has in many cases improved. Indeed, under regulation, suburban areas often pushed the ICC to establish "commercial zones," which would be free of trucking regulation, around major cities.

Eight years after interstate deregulation, Rep. Tom DeLay provided a telling anecdote. Referring to Texas, his home state and arguably the state with the heaviest intrastate regulation, he declared:

I represent several small communities that are in very close proximity to Houston. . . . The small communities are asking to get into what we call in Texas "commercial zones," . . . deregulated zones in trucking. And they want to be put into the deregulated zones because the present service is not adequate for their needs and they know in a deregulated market they will get better service. . . . Deregulation works and the shippers want it.[112]

The studies cited in this analysis are unanimous on that point. Reviewing service to small communities in Arizona, an Arizona Department of Transportation report concluded:

> ith respect to the premium necessary to receive service in out-of-the-way localities, the results suggest that this penalty has virtually disappeared since deregulation. . . . Contrary to the fears of many, deregulation has not meant radically higher rates for rural areas and small communities. On the contrary, it now appears that shipper/receivers in these areas have benefitted.[113]

A less academic review underscores the same point.

As it turns out, Arizona's rural trucking- service users perceive almost as much benefit from deregulation as their urban counterparts. . . . Almost 40 percent received offers of new service, and more than a third have been offered discounts. . . . A slight plurality of those who did see a change [in rates] thought rates had come down.

Speaking of small shippers, the article continues:

The data show that the market provides better protection for everyone, including the little guy. . . . Almost 40 percent received offers of new service, and more than a third were offered discounts. . . . Those who saw a change in competition thought competition had increased. . . . More than twice as many saw rates declining as saw them rising.

Moreover, "the positive results of deregulation in Arizona parallel those in Florida."[114]

After assessing the effects of regulation of intrastate trucking and the impacts of deregulation at the state level, the two-year project of the Midwest Transportation Center concluded:

Although some evidence was found indicating shippers in urban areas gained more than shippers in small, rural communities, the differences in impacts on these two types of shippers were small and some studies found no differences.[115]

The California report is equally emphatic.

The provision of adequate trucking services does not appear to be a problem in either interstate or intrastate markets, and does not appear to be compromised by deregulation. . . . During the early 1980s when general freight was partially deregulated in California, services were adequate even in rural areas, and service options increased for shippers generally.[116]

The Colorado report cites a 1985 analysis showing "no evidence of significant decreases in quality or quantity, despite deregulation. In some rural areas . . . there have been actual increases in the total number of competing carriers." That

report underlines the 1985 testimony of then-secretary of transportation Elizabeth Dole before the Senate Subcommittee on Surface Transportation. Dole re- ported that 98.5 percent of shippers surveyed in remote areas, some 25 miles from any interstate, found service to be as good as or better than it had been. The report con- cludes:

> Nearly ten years have passed since the Motor Carrier Act of 1980 was enacted. There is still no evidence . . . to demonstrate that service to small communities has vanished or even significantly decreased. . . . In fact, most published studies show increased service to rural communities.[117]

The parade of Colorado witnesses opposed to deregulation of either taxis or trucks begins to sound self-serving in the extreme. The reader is entitled to wonder as well about the motives of the legislative committee that permits regulation to continue.

An analysis of the effects of both interstate and intrastate deregulation on small communities in the late 1980s reviewed the literature and came to the same conclsions: "Surveys indicate that deregulation of trucking at the state level has also benefited small and rural shippers." The author cited two well-known researchers, Richard Beilock and James Freeman, as saying, "If anything, small rural shippers appear to be more bullish about deregulation than their larger, urban counterparts." Without qualification the report asserts, "Service to small and rural communities has improved or remained unchanged."[118]

In dealing with the "small community" argument, the more broadly based study by Allen et al. notes "the claim that truck service to small communities is inherently unprofitable and that without regulation these places would not be served." It then adds: "Numerous studies have shown cases where the obligation is not enforced [the common carrier obligation to service small communities], yet rural service is provided. The implication is that much of the rural service is profitable and is provided without compulsion."[119]

Those who claim that small communities will pine away and die from deregulation have never read or have chosen to ignore the evidence. Given the Colorado testimony and the numerous studies, it is difficult to avoid the conclusion that such claims must be self-serving.

The Specter of Safety

The second red herring is trucking safety. Increased competition, opponents argue, will force firms to lower costs. To do so, they will "reduce wages, operate older vehicles, cut maintenance, and force drivers to extend their working hours."[120] The data, however, fail to substantiate those fears. They indicate that deregulation has little or no effect on safety; even if it did, economic regulation would fail to address the issue effectively.

In sweeping terms, the broad study by Allen et al. of the effects of regulation on motor carriage, both intrastate and interstate, concludes:

The link between unsafe operations and economic regulation is also inappropriate. Unregulated carriers would have an interest in viable cost savings, but heavy loss and damage claims and accidents would tarnish their reputation, and higher insurance costs would absorb their profits. . . .

Safety regulation can be enforced without inflated rates and non-free entry. . . . Society has mandated certain safety standards and law enforcement agendas should enforce them.[121]

In other words, it is in the best interests of truckers themselves to drive safely. Standards of safety and their enforcement are the appropriate means of assuring safe trucking. Attempts to ensure safety by imposing economic regulations are both cumbersome and ineffective.

The same study answers opponents by noting the decline in accidents and then cataloguing the risk factors faced by truckers.

The accident level throughout the 1980's (except for 1984) has been less than that of 1979 (the last full year before the MCA--1980). Given more vehicle miles driven due to the emergence from the recession and lower . . . gasoline prices,

the downsizing of automobiles, the deterioration of the highway system, weather idiosycrasies, etc., it is difficult to attribute causality (in only one year--1984) to deregulation. This is pointed out by established truckers who favor deregulation.[122]

The enumeration of problems beyond the industry's control makes the decrease in accidents after deregulation even more impressive.

At least two other major studies substantiate those claims. In November 1987 the CPUC and the California Highway Patrol issued a joint legislative report on truck safety. The study team concluded: "We have been unable to prove the hypothesis that CPUC economic regulation of trucking is significantly and positively linked to improved highway safety. . . . Other, more direct actions [than economic regulation] (for example those that improve driver quality, improve road conditions, reduce congestion and remove unsafe equipment from service) appear to have far more potential for improving highway safety."[123]

A comparison of California truck accident rate trends with those of other western states and the nation as a whole proved revealing. In the nation as a whole, truck-at-fault fatal and injury accident rates generally declined after 1981; with the exception of an upward blip in 1984, the four western states surveyed (Nevada, New Mexico, Oregon, and Washington) exhibited a similar pattern. A separate survey of Arizona showed that its accident rates "followed the same trends as other western states, even though that state's trucking was deregulated in 1981. These findings suggest that factors independent of regulation may have had an influence on accident rates."[124]

California, however, proved an anomaly, for its truck-at-fault and fatal injury accident rates failed to match the declines after 1981 in the western states surveyed.[125] Using data from 1976 to 1986, the researchers found that California's rates were highest during the most intense period of regulation, 1976-80, then declined steadily through 1982. The following two years, however, saw a return to the 1980 level, "but truck-at-fault accident rates have not generally increased since 1980 as would be expected if economic regulation significantly impacts highway safety, nor have they decreased. Therefore, based on these data, it is not possible to conclude that highway safety as measured by truck-at-fault accident rates is significantly influenced by economic regulation."[126]

The study also contains another significant observation and conclusion.

For the period 1982-86, "carriers falling under CPUC jurisdiction appear to be disproportionately responsible for truck-at-fault fatal accidents relative to miles traveled in the state. Interstate for-hire carriers appear to be responsible for a lower proportion of such accidents."[127]

"We conclude from this data that the nature or level of California regulation does not appear to have an effect on carrier compliance with CHP (California Highway Patrol) equipment safety regulations."[128]

Comparing accident rates for trucks with rates for all other vehicles in California, the report noted, "Since the overall trends are somewhat similar, and regulation of trucks has decreased during the period studied, it is more likely that variables that affect both cars and trucks alike explain accident rate trends, rather than regulation."[129]

Enforcement of safety regulations by the CHP emerged as the single most important factor in highway safety for all vehicles. As inspections climbed after 1977, accident rates dropped precipitously; in 1984, when inspections decreased, the accident rate blipped upward, only to level off as inspections climbed upward once again.[130]

As the report notes, "Of all the factors studied, the evidence points to CHP enforcement as the most effective deterrent to accident occurrence."[131] Congestion was the second most important element; road type and automobile size were also significant. Although the report does not mention Corporate Average Fuel Economy standards, more recent studies have established a clear link between smaller, lighter cars and severe accidents. Given the disparity in weight, it is scarcely surprising that a modern automobile encountering a loaded tractor-trailer generally winds up looking like the Roadrunner on a bad day. Opponents of deregulation, however, rarely make the connection.

The California study is notable for its thoroughness and attention to detail, and several members of its advisory group submitted favorable comments. The counsel for the California Teamsters Public Affairs Council, however, was sharply

critical, claiming "a causal link between the economic disruption since deregulation and this deteriorating highway safety record."[132] On the other hand, the Califonia Manufacturers Association, another group represented on the advisory group, supported the report strongly and noted that the Legislative Analyst, "a non-partisan office which provides impartial analysis to the legislature," was advocating total deregulation of for-hire trucking.[133] Given such sharply differing views, the vacillation of the CPUC becomes somewhat more understandable as an attempt to avoid offending powerful interest groups.

A second important source of information, the three-day conference on "Transportation Deregulation and Safety" held at Northwestern University in June 1987, focused on the effects of deregulation on both the airlines and the motor carrier industry. Noting that "maintenance and safety are important in a competitive market," Thomas Gale Moore, a keynote speaker, declared: "The claim that poor profits or losses will reduce safety is not plausible. Consumers value safety." Moreover, "both the shipper and the insurance firm have a strong interest in safety standards. Fly-by-night firms have great difficulty in attracting cargo." As for accident rates, Moore added, "Since 1977 and especially since 1979, fatality rates have declined." He concluded:

> Although data on accidents and miles driven are poor for motor carriers, the figures that are available do not substantiate any claim that deregulation has reduced safety. The data, if anything, indicate that trucking is safer today than before deregulation.[134]

Conference papers on motor carriers weighed four major concerns: profitability, that is, financial pressure on firms from increased competition that might lead them to cut corners on safety; new entrants, who might hire inexperienced drivers and use old equipment; mode shifts, that is, the transfer of freight from railroads to highways induced by lower rates; and congestion as a result of increased use.[135] Participants could adduce no conclusive evidence linking those factors to safety performance.

In "Summary and Policy Implications for Motor Carriers," the review of papers presented on safety, profitability, and carrier management, Paul Jovanis, then associate professor of transportation and civil engineering at North- western University, and Kenneth Thompson, vice president for safety, Yellow Freight System, noted, "There are no studies that show a conclusive link between changes in carrier profitability with deregulation and safety performance (accident outcomes)." A financial analysis presented at the conference indicated "no clear pattern linking financial condition and safety investment and none linking either to safety performance."[136] The author of that analysis came to the unsurprising conclusion that "carriers that have gone bankrupt exhibit conduct that is least conducive to highway safety." He advocated only an increase in "government resources allocated to safety," not reregulation.[137] In their discussion of another paper, Jovanis and Thompson opined that high accident rates for new entrants suggested a "'learning curve,' . . . an important finding for government oversight and policy."[138] In the conclusion to the paper on new entrants to which the summary refers, the authors asserted: "It would be a serious mistake to interpret our study's results as a plea for reregulation. . . . To the contrary, they should serve as a basis for prioritizing safety monitoring efforts."[139]

As for the shift from railroads to motor carriers and airlines, "attempts to quantify increased accidents due to modal shift induced by a more competitive motor industry also show marginal to insignificant effects."[140] Contrary to the CPUC-CHP report, the conference report found "no empirical evidence of a congestion externality in carriers."[141]

The executive summary of the conference report underscored the statistics: "The index of truck accidents per truck mile fell by 12 percent between 1978 and 1985. The decline is 30 percent if obvious deficiencies in the index are eliminated." Although making no claim that the entire decline resulted from deregulation, the summary reported another telling number: "Automobile fatalities in truckrelated accidents (per mile of auto travel) actually fell by 21 percent in the deregulated period."[142]

Although conference participants failed to reach a consensus on the effect of economic deregulation on motor carrier safety performance, "there seemed to be no general support for reimposing economic regulation."[143] Jovanis, the academic member of the team, went further: "One is led to conclude that there is no objective evidence to directly link economic deregulation with a change in safety performance in the U.S. motor carrier industry."[144] Seeking a balanced and reasonable approach, the authors of the conference report sounded a cautionary note: "While a research

perspective calls for a conclusion of no evidence linking deregulation and safety, our policy recommendations call for continued and expanded safety vigilance."[145]

A later paper dealing with the conference stated more strongly:

> The essential conclusion regarding the motor carrier industry is that no objective evidence has been found to support a position that economic deregulation has caused a degradation of highway safety. . . . There is no basis for a return to economic regulation. The trucking industry feels strongly that safety difficulties that are identified should be addressed by safety measures, not economic regulation.[146]

The findings of leading research groups dealing with accidents involving trucks bolster that conclusion.[147]

The research findings and the evidence provided by the trucking industry itself underscore the critical importance of decoupling economic controls from oversight connected with safety. Indeed, economic controls have tended to obscure the underlying issues, such as highway design and driver qualification. The conference summary did note significant legislation in the 1980s dealing with motor carrier safety. In 1982 the Surface Transportation Assistance Act initiated the Motor Carrier Safety Assistance Program, which enhances state programs by providing federal funding for additional inspectors. Expanded funding in 1986 was projected to result in an increase in road safety ispections from 159,000 in 1984 to 1.2 million in 1987.[148] The Motor Carrier Safety Act of 1984, according to the Colorado study, provided "the missing link between the deregulated trucking environment and its safety component" through the development of a centralized and uniform set of safety regulations and the establishment of increased enforcement efforts.[149] The prospect of fines or downtime could reasonably be expected to stimulate the practice of safety.

In 1986 the Commercial Motor Vehicle Safety Act set in motion a process designed to lead to a single commercial vehicle driver's license and penalties for drug abuse while driving.[150] The effectiveness of legislative measures coupled with enforcement became evident in "Roadcheck '92," a three-day, U.S.-Canadian truck and bus inspection blitz that resulted in sidelining 26 percent of the nearly 47,000 vehicles checked and just over 4 percent of the drivers. Although the numbers may sound high, they reflect a four-year downward trend in violations that put vehicles out of service. Ninety-six percent of the drivers checked held a valid commercial driver's license, required as of April 1; over three-quarters were using seat belts.[151]

The report prepared for the Federal Express Corporation in 1990 had predicted just such a result. It, too, found "no significant relationship between net operating income and accident rates" or between regulatory status and safety performance.[152] Given the potential negative effect on other highway users, however, "there remains a legitimate role for government safety regulation. . . . Direct safety regulation, with vigorous enforcement, is the most efficient means of inducing trucking firms to meet minimum safety standards."[153]

As competition among trucking firms has increased, shippers have come to demand a high degree of reliability. That, in turn, has stimulated a concern with safety. Self- interest dictates small tolerance for failures or interruptions traceable to driver carelessness, accidents, equipment failures, or enforcement delays.[154] The study notes speciically the role of U.S. Department of Transportation hours of service regulations, which reduce the likelihood of acci dents caused by driver fatigue.[155] (Indeed, protests from public-interest and insurance groups, as well as the Teamsters Union, killed the Federal Highway Administration's recent proposal to let long-haul truckers drive up to 100 hours in any eight-day period, 30 hours more than the current limit.)[156] Citing a 1981 study that found no significant difference between accident rates observed for regular and irregular route carriers, the Gellman report concluded emphatically, "Again, this finding does not suggest any relationship between economic regulation and safety performance among motor carriers."[157]

The Resisters

Both academic studies and testimonials from shippers and truckers testify to the benefits of deregulation at the interstate level and in the eight deregulated states. They report ease of entry, increased competition, lower rates, declining costs, and declining prices for consumer goods. Stepped-up enforcement of measures to ensure highway safety have bolstered, in practice, the theoretical decoupling of safety and economic constraints. Given the panoply of evidence, one wonders why it is so difficult to deregulate the remaining 42 states.

Two primary groups maintain their opposition. Speaking for the National Association of Regulatory Utility Commissioners in the 1988 hearings on the Moody-DeLay bill, Keith Bissell, member of the Tennessee Public Service Commission and chairman of NARUC's Transportation Committee, laid great stress on safety. Pointing to the difficulty of acquiring reliable data on trucking, he proposed, of course, "a coprehensive study of national trucking safety issues, policies, and programs." Later in his testimony, without citing his sources, he observed that "the numbers that I have seen since 1983 indicate that there has been a significant increase in the number of accidents and deaths related to those accidents involving big trucks." Reputable research actually shows a downward trend, but the witness ignored those findings. "Speaking purely from a safety point of view," Bissell continued, "we think that the States need to continue to have jurisdiction over transportation companies."[158] Continued jurisdiction translates into continued employment (status, money, and power) for members of the Tennessee Public Utilities Commission.

Organized labor constitutes the second opposing faction. The Motor Carrier Act of 1980 inflicted losses on the Teamsters, and the union adamantly opposes expanded decon trol. The 1988 congressional testimony of Walter J. Shea, international vice president of the International Brotherhood of Teamsters, painted the changes in the most horrific light.

As our economic survey points out, there is only a limited number of goods to be shipped in this country, but we have an unlimited capacity to ship them. The economic gurus say this should mean a competitive industry; it has only meant rate wars, lapsed insurance coverage, lean equipment maintenance, and overworked, underpaid drivers. It has meant an unsafe transportation system replete with bankruptcies, foreclosures, and unemployment.[159]

The strange (and outdated) mercantilism of that world- view aside, neither theory nor abundant practical evidence--dramatic declines in logistics costs, improved quality of service combined with lower rates, reduced costs to consumers, stepped-up safety enforcement--support that apocalyptic view. The motivation behind the desperate illogic emerged later in the testimony: "I do know that we've lost probably 200,000 members as a result of what's happening to this industry since 1980." Shea went on to declare that "we are going through a dramatic transportation [sic] in the trucking industry today in this country and I am not convinced, for one, that it's healthy for this country or healthy for the economy or healthy for the shippers or healthy for the consumers."[160] Clearly, it is not healthy for the Teamsters.

Chinks in the armor are beginning to appear, however. In April 1993 Texas governor Ann Richards signed into law a bill, hammered out by the trucking industry and the shipping community, that did much to deregulate the truckload segment of the industry by easing entry requirements and increasing allowable flexibility in pricing. New contract carrier entrants need only prove that they are "fit, willing, and able" to transport general commodities by the truckload. Proof of public need is no longer required. Allowable rate deviations have been increased from 25 to 40 percent on general commodity truckloads, and backhaul restrictions have been eased.

Liberalization is far from synonymous with deregulation, however. Although the Texas Railroad Commission, the regulatory agency, must grant uncontested applications for authority to operate intrastate 10 days after the protest deadline and the protest period for rate applications has been reduced to 10 days, the opportunity to contest rates and authority to operate intrastate remains. Moreover, the support voiced by a spokesman for Central Freight Line, long an opponent of deregulation, seems curiously qualified. Tom Clowe, chairman, president, and chief executive officer, lauded the "flexibility and responsiveness" brought to the Texas Railway Commission by the statute, but he added that it maintained the commission's ability "to ensure reasonable rates and service . . . and a high standard of truck safety on Texas highways."[161] Clearly, he believes that reasonable rates are the domain of a government agency, not the marketplace; he also seeks to preserve the link between economic controls and safety despite the many studies suggesting that there is little or no connection.

Of potentially greater significance is the rift developing within the trucking industry itself. The American Trucking Associations has traditionally opposed preemption of states' rights to impose intrastate controls, as well as further interstate deregulation, but many of its members are now breaking ranks to voice their support for increased freedom. Donald J. Schneider, president of Schneider National, the nation's largest truckload carrier, is working actively with Americans for Safe and Competitive Trucking, a coalition of large shippers and private carriers, to push for

deregulation. An articulate spokesman, Schneider testified before Congress in support of H.R. 4406, the Trucking Regulatory Reform Act of 1992, which would have resulted in total deregulation. He declared:

> We at Schneider are "haves" in that we hold extensive operating authority in over 30 states. . . . Yet I'm here to tell you Schneider is one of the "haves" that is not seeking to preserve the status quo. . . . Why? Stated simply, artificial barriers to competition are just plain wrong. They distort the marketplace and create inefficiencies that rob our industries of their competitiveness.[162]

Although H.R. 4406 went down to defeat, as did the five other deregulatory bills introduced in the 102nd Congress, it may prove a portent for the future. Following the lead of the shippers, the logisticians, and the academics, the trucking industry itself is beginning to apply pressure to broaden the benefits of deregulation.

Conclusion

The costly inefficiencies and waste of the current system of intrastate trucking regulation confound rational debate. It is cheaper for people in Oregon to eat Washington State apples and for people in Washington to eat Oregon apples. It costs twice as much to ship fire hydrants from Beaumont, Texas, to Texarkana, Texas, as it does to ship them from Beaumont, Texas, to Texarkana, Arkansas.[163] Daniel A. Witt, director of transportation policy, Citizens for a Sound Economy, reported that CSE had tracked the odyssey of a peanut for at least one popular brand of peanut butter.

It took six truck trips to reach the grocery shop in a jar. Some of these trips are regulated at the Federal level; some were regulated at the State level; and some were exempt from regulation. As a result of this confusing and out-of-date maze of regulations, you can bet consumers are paying more for their peanut butter.[164]

That level of idiocy cries out for change. CSE cites impressive statistics to support its plea for total deregulation on both the state and the federal level. Industry sources, it claims, estimated savings from comprehensive deregulation at $87 billion over the following five years, or approximately $300 for every citizen.[165] The study by Allen et al. lists three alternatives: maintain the status quo, maintain the present jurisdictional division between the federal government and the states but encourage the states to voluntarily seek uniformity of federal and state laws, or preempt state jurisdiction in whole or in part.[166]

The difficulties outlined in this analysis suggest that the status quo is a self-defeating choice and that the opposition to deregulation in states such as Colorado, Texas, and California indicates that a voluntary move toward uniformity between federal and state regulations qualifies as wishful thinking. Obtaining authority to operate intrastate is a long and costly process, damaging to shippers, consumers, and, ultimately, the economy as a whole. Regulation, however, has its beneficiaries, the commissioners of the regulatory agencies, the relatively few firms operating exclusively within a state, and organized labor. The rules provide them with power, prestige, and income--a formidable trio. They are well financed, politically active, and impressively well organized. The Teamsters alone contributed $4 million to the Clinton campaign. As one analyst noted, "That buys a lot of access."[167] That kind of access contributed to the defeat of six deregulatory bills by the 102nd Congress. All sank without a trace.[168]

There remains the possibility of federal deregulation, as was the case for the package express industry, the ailines, the railroads, interstate motor carriers, and intestate passenger vehicles. In those instances, the constitutional justification was ready at hand in the interstate commerce clause. The rationale enunciated for preemption was the burden placed on interstate commerce by the conflicting, often contradictory state regulations, to say nothing of the anti-competitive spillover effects on the individual states.

The same rationale holds for intrastate trucking. Although its effects are difficult to quantify, the regulatory chokehold slows the entire economy. The inefficiency and waste traceable to circuitous routing, empty backhauls, and distorted siting of plants and sorting facilities drain the entire system, the few deregulated as well as the many regulated states. If the present administration wants "to get the economy going again," strong support for eliminating controls would be a substantive move in the right direction.

Furthermore, the patchwork of state controls seems strangely out of date in an increasingly global economy. National barriers are becoming increasingly porous, intensifying competition. Canada, Britain, and indeed the European Community as a whole are lowering or abolishing restrictions. In the United States, however, 42 states are asserting their dominion as medieval fiefdoms. If possible, it seems clear, each would dig a moat around its boundaries, stock it with piranhas, and pull up the drawbridge. To put it somewhat less graphically, vocal groups of self-interested bureaucrats and union members are holding an entire industry hostage to the detriment of the country as a whole.

Given the explosive growth of the airlines, of trucking, and of companies such as Federal Express and United Parcel Service since federal economic deregulation, it may be time to revisit the vexing question of states' rights. It is certainly time for officials at all levels of government to recognize the benefits of deregulation and clear away the regulatory obstacles that raise prices to consumers and guarantee inefficiency.

Notes

[1] Jonathan Marshall, "Bust States' Trucking Trusts," Wall Street Journal, April 28, 1992.

[2] Frederick W. Smith, president of Federal Express, letter to Robert V. Delaney, executive vice president of Cass Logistics, Inc., a subsidiary of Cass Commercial Corp., July 8, 1993. Copy in author's files.

[3] Tom DeLay, Testimony before the House Subcommittee on Surface Transportation of the Committee on Public Works and Transportation, 100th Cong., 2d sess., March 16, 1988, p. 9. Delay was cosponsoring with Jim Moody (D-Wis.) a bill (H.R. 2591) that would have removed the remaining restrictions on interstate motor carriers, for example, tariff-filing re quirements. Although the bill sidestepped the vexing ques tion of preempting state trucking regulation, it would have obviated many of the conflicts now brought before the Inter state Commerce Commission by prohibiting the states from regulating rates, routes, or services of a vehicle trans porting property in interstate commerce. In the long run, it would have facilitated further deregulation, but it was defeated.

[4] W. Bruce Allen et al., The Impact of State Economic Regulation of Motor Carriage on Intrastate and Interstate Commerce, Final Report, DOTT9012 (Washington: U.S. De partment of Transportation, May 1990), Table 21, "Budgets for State Economic Regulation of Trucking."

[5] A less sweeping piece of legislation, the Household Goods Transportation Act of 1980, addressed the concerns of a particular portion of the industry. It also eased moving worries for untold thousands of consumers.

[6] Clifford Winston et al., The Economic Effects of Sur face Freight Deregulation (Washington: Brookings Institu tion, 1990), pp. 4-5.

[7] Interstate Commerce Commission, Office of Economics, The U.S. Motor Carrier Industry Long after Deregulation (Washington: ICC, March 1992), p. 6. The ICC report cites the study

by Allen et al., which gives an estimate of sav ings "in the range of $1011 billion annually" (p. i).

[8] Robert V. Delaney, "The Disunited States: A Country in Search of an Efficient Transportation Policy," Cato Insti tute Policy Analysis no. 84, March 10, 1987. Delaney cites gains to producers and distributors ranging "from a conser vative $56 billion to a high of $90 billion" (p. 2).

[9] Thomas Gale Moore, "Regulation, Reregulation, or Dereg ulation: The Issue for the 1990s," in Thinking about Ameri ca, ed. Annelise Anderson and Dennis I. Bark (Palo Alto, Calif.: Hoover Institution, 1988), p. 327.

[10] Robert V. Delaney, in HighwayRelated Transportation Industry Productivity Measures Symposium (Arlington, Va.: Federal Highway Administration, 1992), p. 1.

[11] Interstate Commerce Commission, The U.S. Motor Carrier Industry, pp. 113, 118.

[12] Robert V. Delaney, "Fourth Annual 'State of Logistics Report,'" National Press Club, Washington, June 14, 1993, p. 8. The percentage of products shipped in a "just in time/quick response environment" climbed from 18 percent in 1990 to 23 percent in 1992, and increases are projected to continue through 1995.

[13] Delaney, "The Disunited States," p. 9.

[14] Robert V. Delaney, "Warehousing: Entering the 21st Century," Paper presented at the 15th Annual Conference of the Warehousing Education and Research Council, Atlanta, Ga., June 1, 1992, pp. 2, 4, Figure 6. See also Robert V. Delaney, "Third Annual 'State of Logistics Report,'" Nation al Press Club, Washington, June 15, 1992, p. 3; and Tim W. Ferguson, "Deregulation Delivers the Goods," Wall Street Journal, June 29, 1993, p. A15.

[15] See Delaney, "Warehousing," p. 3; and Winston et al., The Economic Effects, pp. 29-30. The argument turns mainly on an article by Alan S. Blinder and Louis J. Maccini, "Taking Stock: A Critical Assessment of Recent Research on Inventories," Journal of Economic Perspectives 5, no. 1 (Winter 1991): 7396. The authors claim that "inventories are not leaner now than they were decades ago" and that "the economywide ratio of real inventories to real sales has been trendless for 40 years" (p. 75).

However, the analyses of Delaney, an outspoken propo nent of deregulation, show a "consistent year over year decline of inventory investment since the 198182 reces sion." The slide coincides with the passage of the MCA in 1980 and the development of fast, reliable truck delivery. Delaney, HighwayRelated Transportation Industry, p. 2.

The crux of the dispute may be a change in estimating procedures effected by the Department of Commerce in 1987. In response to a provision in the Tax Act of 1986 intended to increase business taxes, Commerce directed that certain elements of inventory carrying cost be capitalized rather than expensed and revised inventory valuations retroactively to 1982.

Delaney claims that the revision aimed at raising $35 billion in revenue between 1987 and 1991, but, whatever the cause, the retroactive adjustments resulted in a fiveyear increase in inventory value of $348 billion, or an average increase of 13 percent. They also effectively eliminated all the inventory investment efficiency reported between 1982 and March 1987. See Delaney, HighwayRelated Trans portation Industry, pp. 2, 5-6.

[16] Delaney, of course, argues that inventories have lost their predictive power. If one accepts his figures, the consistent decline in investment in inventory since 1980 de flates the

traditional view. See Delaney, "Third Annual 'State of Logistics Report,'" p. 5.

[17] Delaney, "The Disunited States," pp. 912.

[18] U.S. Department of Transportation, Economic Analysis Division, Review of the DelaneyEvans Debate, Project memo randum DTS-42 (Cambridge, Mass.: U.S. Department of Trans portation, Economic Analysis Division, January 1988), p. 8. This review was prepared by Frederick J. Beier, a professor of transportation and logistics at the University of Minne sota.

[19] The percentage of truck traffic moving intrastate has long been the subject of debate. Allen et al. note the difficulty of making estimates but assert that "approximate ly twothirds of all truck tonnage manufactured goods shipped in the United States is intrastate traffic. . . . Thus the state role in motor carrier control is at least as important as the federal role" (p. 8).

[20] Delaney, "The Disunited States," p. 15.

[21] U.S. Department of Transportation, "Introduction," in Review of the DelaneyEvans Debate, p. 4. Handwritten notation by Delaney; copy in the possession of the author.

[22] Allen et al., p. iii. In effect, intrastate regulation burdens interstate commerce since "about 20 percent of the burden of current state motor carrier regulation falls on the other 31 states" (p. iii).

[23] U.S. Department of Transportation, Report to Congress: Impact of State Regulation on the Package Express Industry, DOTP16 (Washington: U.S. Department of Transportation, September 1990), pp. 44-45.

[24] Allen et al., p. i.

[25] Ibid., p. 14.

[26] Even before the MCA of 1980, raw agricultural products were exempt from federal regulation, an exemption often reflected at the state level. Commercial zones of major cities were exempt as well. Private carrier fleets owned and operated by large corporations also enjoyed relative freedom from control.

[27] Roger D. Blair et al., "Motor Carrier Deregulation: The Florida Experiment," Review of Economics and Statistics, February 1986, p. 160.

[28] Ibid., pp. 16062. Employing for the first time indi vidual shipments as the units of observation, the authors compiled a database consisting of more than 27,000 observa tions on individual shipments by the 10 firms in the sample.

[29] Ibid., p. 162.

[30] Ibid., pp. 163-64.

[31] John Semmens, "Taking It on the Road," Reason, January 1984, p. 49. Semmens cites the 1981 Florida survey con- ducted by Richard Beilock and James Freeman for the Arizona Department of Transportation.

[32] Arizona Department of Transportation, Transportation Planning Division, Legal Foundations of Arizona's "Regulated Monopoly" Concept as Applied to Intrastate Transportation (Phoenix: Arizona Department of Transportation, January 1979), pp. 4-6.

[33] Ibid., pp. 5-6.

[34] Ibid., pp. 46.

[35] Ibid., p. 19.

[36] Semmens, p. 38.

[37] Arizona Department of Transportation, Motor Carrier Deregulation and Tax Issues in Arizona (Phoenix: Arizona Department of Transportation, February 1984), pp. 37. Pre pared for the Arizona Department of Transportation by the Commonwealth Group, Lexington, Kentucky.

[38] Cited in Semmens, pp. 38-39.

[39] Ibid., pp. 39-40.

[40] Quoted in Blair et al., p. 129. Emphasis in original.

[41] Ibid., pp. 135, 137.

[42] Ibid., p. x.

[43] Semmens, p.

49.

[44] Thomas H. Maze et al., The Changing Role of Freight Transportation Modes and Intermodal Freight, Final report (Ames, Iowa: Midwest Transportation Center, October 1990), p. 45.

[45] Ibid.

[46] Thomas H. Maze et al., Economic Regulation: An InDepth Examination of Iowa, Kansas, Missouri and Nebraska (Ames, Iowa: Midwest Transportation Center, August 1992). Classi fications come from U.S. Department of Transportation, Report to Congress, Table 7, "State Regulation of Intrastate Motor Carriers," p. 31.

[47] Maze et al., Economic Regulation, pp. 4-5, 9-10.

[48] Ibid., p. 6.

[49] Ibid., p. 5.

[50] Maze et al., The Changing Role, p. 55.

[51] Maze et al., Economic Regulation, pp. 6-7.

[52] Ibid., p. 7. An "arbitrary" is an additional charge for delivering a shipment to a location that is difficult to service.

[53] Ibid., pp. 53-54.

[54] Maze et al., The Changing Role, pp. 49-50.

[55] Maze et al., Economic Regulation, pp. 10-12.

[56] Ibid., pp. 26-28, 31. Economic Regulation contains an invaluable list of studies on intrastate regulation. It should be emphasized that a regulatory agency, the Oregon Public Utility Commission, evidently funded the study advo cating controls.

[57] Ibid., p. 17.

[58] California Public Utilities Commission, Strategic Plan ning Division, California's Trucking Industry: A Review of Regulatory Policies and Objectives (Sacramento: CPUC, Febru ary 1988), pp. 7, 9, 11.

[59] Ibid., p. 50.

[60] Maze et al., Economic Regulation, pp. 50-51. Regula tion of entry is much less of a problem. Except cement carriers or firms wishing to expand, carriers must show only minimal financial and technical fitness and a willingness to abide by the rules.

[61] California Public Utilities Commission, pp. 52-54.

[62] Ibid., p. 21.

[63] Ibid., p. 68

[64] Ibid., p. 26.

[65] Ibid., p. 27.

[66] Ibid., p. 29.

[67] Ibid., p. 18.

[68] Ibid., p. 34.

[69] Ibid., pp. 37-38.

[70] Ibid., p. 3.

[71] Ibid., p. 48.

[72] Colorado Department of Regulatory Agencies, Policy and Research Section, Deregulation and the Colorado Motor Freight Industry (Denver: Colorado Department of Regulatory Agencies, June 1991), p. 18.

[73] California Public Utilities Commission, "Service and Price in the California General Freight Trucking Market, 1989-1990," April 1991; cited in Transportation Division, "Service and Price in the California General Freight Truck ing Market, 1990-1991," Report to the California Public Utilities Commission, December 1992, pp. 1-1 and 1-2. The differences between the TL and LTL sectors were, indeed, slight. After adjusting for inflation, prices for TL ser vice from 1989 to 1990 decreased 10.3 percent; the LTL sector showed an inflation-adjusted increase of 0.3 percent. Moreover, "fully two-thirds [of shippers in small and rural areas] experienced lower transportation costs" (p. 1-1).

[74] Ibid., p. 1-2.

[75] Ibid., "Executive Summary."

[76] Colorado Department of Regulatory Agencies, p. 18.

[77] Ibid., pp. 18-19.

[78] Ibid., p. 19.

[79] Ibid., p. 20.

[80] Audiotapes of hearings on H.R. 1298 and H.R. 1300. All quotations in the remainder of this subsection are from the audiotapes.

[81] Jones noted later that he had been blacklisted as a result of his political activity and could no longer drive a cab.

[82] The Washingtonbased Institute for Justice filed a lawsuit in January 1993 on behalf of LeRoy Jones and his associates, challenging the constitutionality of the Denver taxicab oligopoly. The case is now on appeal to the Tenth Circuit.

[83] U.S. Department of Transportation, Report to Congress.

[84] Ibid., p. 1.

[85] Ibid.

[86] Ibid.

[87] Ibid., p. ii.

[88] Ibid., p. 34.

[89] Ibid., p. 33.

[90] Ibid., p. 34.

[91] Greyhound estimates its filing cost at about $150,000 per year. Ibid., p. 35.

[92] Ibid.

[93] Ibid., pp. 36-37.

[94] Ibid., p. 37.

[95] Ibid., p. 38.

[96] Ibid., p. 39.

[97] Ibid.

[98] Ibid., p. 40. To date the ICC has refused to issue a blanket pronouncement on cases involving warehousingin transit, preferring to consider the issue on a casebycase basis. Although the ICC has generally ruled that the dis puted traffic is interstate, the uncertainty of the lengthy decisionmaking process is unlikely to inspire confidence in the heart of a shipper. See also Allen et al., p. 11.

[99] U.S. Department of Transportation, Report to Congress, p. 41.

[100] Ibid., p. 40. See also Allen et al., p. 40; and Smith, letter.

[101] "FedEx Finds Unregulated Ground in Calif. Opinion on Intrastate Traffic," Traffic World, May 31, 1993, p. 42; and Transportation Division, "Service and Price in the Califor nia General Freight Trucking Market, 1990-1991," pp. 2-4 and 2-5.

[102] "FedEx Finds Unregulated Ground in Calif. Opinion," p. 42.

[103] John D. Schulz, "Texas Move toward Intrastate Deregula tion Likely to Give Big Boost to FedEx, UPS, RPS," Traffic World, December 27, 1993, pp. 7-8; and Dan Morales, attorney general, state of Texas, Letter Opinion no. 93-112, December 14, 1993.

[104] In California the Teamsters were able to subvert a bill that would have deregulated the delivery of packages under 150 pounds. Intense lobbying resulted in an amendment excluding carriers that receive more than 10 percent of their revenues from subhaulers. Essentially, the amendment targeted Roadway Package System, whose 477 nonunion owner- operators operate under five-year contracts with the coordi nating company. By signing the bill in October 1993, Gover nor Wilson awarded a virtual monopoly to United Parcel Service, a unionized monolith.

[105] U.S. Department of Transportation, Report to Congress,

p. iii. Like many others, this report cites the study by Allen et al., which estimates the cost at $3 billion per year. It also notes the slightly lower figure of the Brook ings Institution: $2.4 billion per year, or $1.2 billion per year in 1977 dollars adjusted for inflation to 1988.

[106] Ibid., p. 47.

[107] Ibid., p. 48.

[108] Ibid., pp. iii-iv.

[109] Ibid., p. iv.

[110] Ibid., p. 7. UPS has long been considered primarily a surface express carrier, but the company owns more than 100 aircraft.

[111] Ibid., p. 24.

[112] Delay, Testimony, p. 5.

[113] Arizona Department of Transportation, Motor Carrier Deregulation and Tax Issues in Arizona, p. x.

[114] Semmens, pp. 40, 49.

[115] Maze et al., Economic Regulation, p. v11.

[116] California Public Utility Commission, p. 34.

[117] Colorado Department of Regulatory Agencies, pp. 4-6. Emphasis in original. The 1985 report cited was prepared by Alice Kidder for the D.C. Department of Transportation and is referenced by John F. Due et al., in Transportation Service to Small Rural Communities, Effects of Deregulation (Ames: Iowa State University, 1989), Proof copy, p. 61.

[118] Federal Trade Commission, Bureau of Economics, Deregu lation in the Trucking Industry, Prepared by Diane S. Owen (Washington, D.C.: FTC, May 1988), pp. 9-10, 32. The

Bei- lock and Freeman study cited, "Deregulated Motor Carrier Service to Small Communities," appeared in Transportation Journal, Summer 1984.

[119] Allen et al., p. 101.

[120] Colorado Department of Regulatory Agencies, p. 9.

[121] Allen et al., p. 99.

[122] Ibid.

[123] California Public Utilities Commission and California Highway Patrol, Joint Legislative Report: Final Report on Truck Safety, AB 1678 (Sacramento: CPUC, November 1987), pp. 3-4. The staffs noted that the report had not been formally considered by the public utilities commission.

[124] Ibid., pp. 13-15.

[125] Ibid., p. 14.

[126] Ibid., p. 16.

[127] Ibid., p. 18.

[128] Ibid., p. 25.

[129] Ibid., p. 33.

[130] Ibid., graph 2.16, pp. 36-37.

[131] Ibid., p. 36.

[132] Ibid., p. 63.

[133] Ibid., pp. 65-71.

[134] Thomas Gale Moore, "The Myth of Deregulation's Negative Effect on Safety," in Transportation Safety in an Age of Deregulation, ed. Leon N. Moses and Ian Savage (Oxford University Press: New York, 1989), pp. 11, 20.

[135] Ibid., p. 6.

[136] Paul P. Jovanis and Kenneth A. Thompson, "Summary and Policy Implications for Motor Carriers," in Transportation Deregulation and Safety: Summary Reports on a Conference (Evanston, Ill.: Northwestern University, Transportation Center, 1987), p. 18. The citation refers to Garland Chow, "Deregulation, Financial Distress, and Safety in the General Freight Trucking Industry," in Transportation Safety in an Age of Deregulation, pp. 21940.

[137] Chow, p. 240.

[138] Jovanis and Thompson, p. 18.

[139] Thomas M. Corsi and Philip Fanara, Jr., "Effects of New Entrants on Motor Carrier Safety," in Transportation Safety in an Age of Deregulation, p. 256.

[140] Jovanis and Thompson, p. 16. The summary refers to Kenneth D. Boyers, "The Safety

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[142] "Executive Summary," in Transportation Deregulation and Safety.

[143] Jovanis and Thompson, p. 16.

[144] Ibid.

[145] Ibid., p. 17.

[146] Leon N. Moses and Ian Savage, "Summary and Policy Implications," in Transportation Safety in an Age of Deregu lation, p. 326. Emphasis in original.

[147] Ibid., p. 326.

[148] Jovanis and Thompson, p. 19.

[149] Colorado Department of Regulatory Agencies, pp. 12-13.

[150] Jovanis and Thompson, p. 20.

[151] "Vehicle Safety Crackdown Parks 26.4 Percent of Trucks," Traffic World, May 25, 1992, p. 35.

[152] Gellman Research Associates, Inc., "The Economic Cost of Intrastate Trucking Regulations," Final report, Jenkin- town, Pa., June 5, 1990. Prepared for Federal Express Corporation.

[153] Ibid., p. 4-1.

[154] Ibid., p. 4-4.

[155] Ibid., p. 4-15.

[156] "Protests Kill a Proposal," Wall Street Journal, Febru ary 2, 1993, p. A1.

[157] Gellman Research Associates, p. 4-17.

[158] Keith Bissell, Testimony before the House Subcommittee on Surface Transportation of the Committee on Public Works and Transportation, 100th Cong., 2d sess., March 16, 1988, pp. 105, 108.

[159] Walter J. Shea, Testimony before the House Subcommittee on Surface Transportation of the Committee on Public Works and Transportation, 100th Cong., 2d sess., March 16, 1988, p. 170.

[160] Ibid., pp. 176-77.

[161] "Texas Legislature Liberalizes Trucking Regulations," Regional Regulatory Update 2, no. 35 (May-June 1993): 2-4.

[162] Quoted in John D. Schulz, "ATA, Key Members Go Separate Ways in Newest Deregulation Posturing," Traffic World, April 13, 1992, p. 9.

[163] "ASCT: A Trucking Agenda for America's Future," Weekly memo, Americans for Safe and Competitive Trucking, November 19, 1992, p. 2.

[164] Daniel A. Witt, Testimony before the House Subcommittee on Surface Transportation of the Committee on Public Works and Transportation, 100th Cong., 2d sess., March 16, 1988, pp. 348-49.

[165] Ibid., p. 349.

[166] Allen et al., p. 301.

[167] Letter from an analyst to the author.

[168] There have been previous attempts at preemption. In 1986 and again in 1987, for example, Sen. Robert Packwood (ROreg.) sponsored two bills that would have deregulated intrastate trucking. Neither obtained sufficient support.