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Diverging Approach: Railroad Regulation, the Staggers Act and Path Dependence

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Chapter 1

"Penn Central was created by a merger six years ago, and for the past four years it's been a downhill run."[1] Such were the words voiced by a throaty narrator in a video released by the Penn Central Corporation—the daughter of a merger of the northeastern railroad giants and former rivals New York Central Railroad and Pennsylvania Railroad—in 1974. Immediately following these ominous words, the picture displays a road-weary box car coasting through turnouts and switch points in a gravity hump yard somewhere on the vast system, which subsequently leaves the rails in abrupt fashion and comes to a grinding and screeching halt in the tainted snow. This video, now infamous among transportation scholars and enthusiasts across the country, constitutes a plea, and one that is almost painful to watch. The nearly 30-minute film presents itself as the antithesis of an infomercial. Instead of offering the viewer with pleasant images of satisfaction, one is instead bombarded with jarring scenes of decay, disuse and despair. Machine shop employees gripe about the cold and ineffective repair facilities and engineers tout the ramshackle state of the company's motive power, and all of the dialogue is complemented by a cascade of the crashing and grinding destruction of the corporation's physical assets. The film is surreal throughout and its mood depressingly dark, especially in light of the usual images of living, breathing, teeming industry to which the American is typically exposed.

Just over a hundred years prior, American railroads claimed the unprecedented feat of traversing the entirety of the North American continent. At Promontory Point, Utah, two locomotives, the Jupiter and the No. 119 met pilot to pilot in an event which was broadcast

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[1] Penn Central, "This is the Penn Central," YouTube, accessed November 10, 2016, https://www.youtube.com/watch?v=GHmyYqfNYnc

nationwide via telegraph and is still memorialized today. In the years following, the railroad industry gained unprecedented power. In the late 19th century and the opening years of the 20th, much policy-making impetus was focused on checking the power of the railroads. Public sentiment largely opposed the monolithic strength wielded by the industry, and the federal government both strove to keep the power in check through regulating policies such as rate-setting as well as attempting to maintain the railroads as a public good through mandating equity of infrastructure among communities and setting standard rates. The importance of these regulations is demonstrated through the multitude of jurisprudence and lawmaking dedicated to the rail regulation. For the next half century, the regulatory scheme oscillated somewhat between ideological poles, but all the while avoiding what could be described as a laisses-faire approach.

However, by the mid-1970s, the railroad industry was on its proverbial knees. Crippled by the expansion and subsidization of automobile transport and hampered by antiquated regulations, railroad companies were merging, deferring maintenance and cutting service across the country in an attempt to stay solvent. The aforementioned film highlights the railroad industry in this period; its purpose was to entice the federal government into "saving" the railroads through financial assistance. However, what occurred between 1971 and 1980 was distinctly more drastic. In a series of acts of heretofore unseen scope, Congress widely deregulated railroads through the passage of the Staggers Rail Act of 1980, while nearly simultaneously nationalizing intercity passenger rail service through the creation of the National Railroad Passenger Corporation, or Amtrak, and northeastern freight rail transport through the Consolidated Rail Corporation (Conrail).

The 1970s represent a pivotal point in the ongoing saga of railroad history and policy. While it might be viewed simply as a disparate set of regulation modifications, this work views it much differently--as a time during which much of the railroad industry as it had come to be known became modified, mutated and, in some cases, vanished completely. To even the casual observer, the public face of railroads across the nation changed. Passenger transportation across the nation lost much of its extensive infrastructure, service which was once ubiquitous in small towns and villages across the nation vanished, and that transportation was no longer carried out by a vast variety of motive power and rolling stock owned by numerous railroad corporations, but instead by homogenous silver, red and blue equipment that remains the hallmark of intercity passenger rail service to this day. The freight railroad industry, likewise, was characterized by service to progressively fewer destinations operated by fewer and larger entities.

While these changes may seem slight or insignificant to the disinterested observer, the ramifications of the regulatory changes of the 1970s have remained relevant in the public policy realm since their implementation, and continue to provide the basis for often contentious and heated debates today. Freight railroad corridors, which once constituted a dense network, have become vastly reduced in number, posing issues both for the handling increases in commodities such crude oil and natural gas and for their reactivation in communities which have become opposed to their presence, sparking complex conflicts between citizens, corporations and multiple levels of government. Amtrak has been perennially at issue in Congress, both as the basis of touted policy initiatives and a favorite whipping boy. It elicits as disparate opinions as Vice-President Joseph Biden, who has long advocated on its behalf and utilized it as a means of

transport, to Representative John Mica, who has labeled it a "Soviet-style" operation and called for its immediate privatization.[2]

The railroad policies of the 1970s fundamentally changed the ways in which the railroad industry interacts with both American citizens and all levels of government. However, while much scholarship has been devoted to the formulation of railroad regulatory policy in the early days of policy creation especially in the early twentieth century, precious little scholarly energy in the discipline of Political Science has been dedicated to the pivotal time period in question. Largely, scholars have shied away from approaching the topic of railroad deregulation because of its unclear nature and the nonlinear nature of its trajectory. For example Derthrick and Quick, in their study of deregulatory policy, note that they avoided addressing the issue of railroad deregulation because its institution was "less pure" than that of other industries, such as airlines and telecommunications.[3] Nonetheless, this work will seek to address the phenomenon of bifurcated policy change through the lens of path dependency literature.

The literature which does exist on this time period is, for the most part, tangential to the fundamental changes affected by the policies themselves and fails to account for basic questions surrounding these policies. Largely, the policy changes are chalked up to increased competition from the automobile or growing inefficiencies in the methods of transportation used by the railroads. However, these explanations fail to account for the dualistic approach of both nationalization and deregulation which occurred in this period, as well as the political ideologies of both actors and constituents which underlie these changes. I will attempt to explain this conundrum of the dualistic policy approach through the application of literature on railroad

[2] Diamond, Alexandra and Jeremy Jaffe, "GOP Rep. John Mica: Amtrak 'Soviet-style operation'," CNN, accessed November 10, 2015, http://www.cnn.com/2015/05/15/politics/shuster-defends-amtrak-spending/
[3] Derthrick, Martha and Paul J. Quirk, *The Politics of Deregulation* (Washington, DC: Brookings, 1985), 14.

regulation, especially those on earlier eras of railroad regulatory policy as well as original research into the congressional attitudes which precipitated these changes.

In attempting to explain the "diverging approach" of the federal government to railroad policy in the 1970s, this work argues that the policies of intense regulation and national control led to a continuation of that policy through the nationalization efforts of the Rail Passenger Service Act and the Regional Rail Reorganization Act.[4] Faced with a nearly a century of nationally oriented railroad policy, the costs of divergence from established policy would have been high. However, by the end of the 1970s, I argue that several factors, including the exogenous shock of the northeastern railroad meltdown, the impetus of the president and the interaction of other institutional policy with established regulatory regime and changing attitudes toward the railroads as an industry caused a change in regulatory policy.

Review of Literature

To say that the phenomenon of railroad deregulation and nationalization in the 1970s has not sparked scholarly interest would be untrue. Numerous works have been written concerning this pivotal era, as well as the politics, history and economics thereof. However, what is lacking from the body of literature is a comprehensive analysis which considers both nationalization and deregulation together. Furthermore, analysis of the political side of the deregulatory saga has been rather lacking.

Authors who discuss railroad regulatory policy from the mid-19th to mid-20th century do so using two main streams. Primarily, much of the research relies on economic theory with political undertones, suggesting that regulatory schemes are based on rational decisions on the

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[4] In case it is lost on the reader, the title of this work refers to a specific railroad signal aspect which governs the changing of tracks at reduced speed.

part of the government that can largely be explained through a monetary lens. The second, more applicable body of literature consists of analyses by policy and legal scholars on the trajectory and ramifications of railroad regulatory policy.

The first body of literature on railroad regulation focuses primarily on the economic side of railroad deregulation. Authors such as Theodore Keeler[5] analyze the governmental regulation of railroads, however, these studies are less useful in that their research comes through the lens of transportation economics, and focuses specifically on the formation of the Interstate Commerce Commission and the railroad industry's response to regulation. However, while Keeler does shed some light on the 1970s railroad reorganization, his work occurs at a time so close to the nexus of this tumultuous era that his analysis is less insightful, and his comments on deregulation form more of a post-script than an actual continuation of his analysis. Steven Usselman's book *Regulating Railroad Innovation* also fails to continue his analysis of railroad regulation to the era in question.[6] Interestingly, however, Usselman sets the stage for further developments in railroad policy by connecting political motivations with technological innovations and business practices, a narrative which is continued by Colin Leach concerning technocratic political actors and government policy in the Kennedy and Johnson administrations in the years directly preceding the ones in question.[7]

Other authors have specifically focused on the era of deregulation and reorganization, such as Friedlaender and Spady.[8] Their work on freight regulations contains in-depth analysis of

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[5] Keeler, Theodore E. *Railroads, Freight and Public Policy: Studies in the Regulation of Economic Activity,* (Washington: Brookings, 1983).
[6] Usselman, Steven W. *Regulating Railroad Innovation: Business, Technology and Politics in America 1840-1920,* (Cambridge: Cambridge, 2002).
[7] Leach, Colin. "Waiting for Supertrain: Trains, Technocracy, and the Great Society." NA, 2014.
[8] Freidlander, Ann F. and Richard H. Spady, *Freight Transport Regulation: Equity, Efficiency and Competition in the Rail and Trucking Industries,* (Cambridge: MIT Press, 1981).

the effects of railroad deregulation, while its focuses more heavily on its industrial and technical economic effects. Richard Saunders of Clemson University has penned multiple books on the railroad industry, and several specifically on the period in question. His 1978 work *The Railroad Mergers and the Coming of Conrail* provides a careful look at specifically the formation of the Consolidated Rail Corporation, and while he does so from largely a historical and economic perspective, he does provide some insights into the political process of its formulation.[9] Two other works by Saunders, *Merging Lines* and *Main Lines*, provide an analysis of the 1970s and its precipitating events from an industry perspective. [10] [11] Similarly, James Burns (1988) focuses on industrial side of railroad reorganization, while providing occasional forays into the political realm.[12] A similar analysis of the industrial side of railroad reorganization comes in the form of Gallamore and Meyers' 2014 work *American Railroads.* [13] Several other works provide direction in the broader history of the railroad industry in the 1970s. *The Wreck of the Penn Central* by Daughen and Bizin is a seminal work in the realm of railroad history, and provides guidance on some of the specifics of the northeastern railroad crisis not readily available elsewhere.[14] Stover's 1970 book *The Life and Decline of the American Railroad* is also key in providing insights concerning the industrial history of the railroad prior to deregulation.[15] Holbrook's 1947 work also provided historical insights for this research, albeit with less applicability.[16]

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[9] Saunders, Richard, *Railroad Mergers and the Coming of Conrail,* (Westport: Greenwood, 1978).
[10] Saunders, Richard, *Merging Lines: American Railroads 1900-1970*, (DeKalb: Northern Illinois University, 2001).
[11] Saunders, Richard, *Main Lines*, (DeKalb: Northern Illinois University, 2003).
[12] Burns, James. *Railroad Mergers and the Language of Unification*. (Portland: Greenwood, 1998).
[13] Gallamore, Robert E. and John R. Meyer, *American Railroads: Decline and Renaissance in the Twentieth Century*, (Cambridge: Harvard, 2014), 188.
[14] Daughen, Joseph R. and Peter Bizen, *The Wreck of the Penn Central,* (Boston: Little, Brown, 1971).
[15] Stover, John F. *The Life and Decline of the American Railroad*, (New York: Oxford, 1970).
[16] Holbrook, Stuart H., *The Story of American Railroads* (Crown: New York, 1947).

One of the more fascinating politically-oriented works to analyze the specific period of deregulation and reorganization is Wesley and Wilson's study of individual motivations within Congress concerning rail regulations.[17] These authors begin to probe at the heart of political motivations during this period, providing a glimpse of both ideology and calculus missed by many other scholars of this period. In a similar vein, Southern and Cosenza provide a comparative analysis of rail service abandonments and preservations under the separate regulatory structure of the Interstate Commerce Commission and the Surface Transportation board.[18]

Scholars have also sought to address more recent developments in railroad regulations, as well as the ramifications of the drastic change thereof in the 1970s. Marc Levinson provides such a narrative in his piece "Two Cheers for Discrimination."[19] Levinson deftly provides new insights therein by addressing the under-studied effects of rate-setting discrimination under the two distinct regulatory regimes. While Levinson's study is inherently rooted in political analysis, it stands apart from earlier political analyses and focuses more closely on economic outcomes. Overall, however, the economic point of view is less useful for this analysis as it provides little insight into the policy aspects of deregulation.

The second body of scholarship in the aggregate describes railroad policy as a function of policy-making decisions which are focused on maintaining railroads not so much as a solvent industry but rather as a public good and in the public interest. The broad trajectory of railroad

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[17] Wilson, Kevin and Wesley Hendrickson, "Voting, Regulation and the Railroad Industry: An Analysis of Private and Public Interest Voting Patterns." *Review of Industrial Organization*, (2013): 22-39.
[18] Cosenza, Robert and Neil Southern, "Regulation of Rail Line Abandonments: A Perspective of the Policies of the Interstate Commerce Commision and the Surface Transportation Board," *Journal of Transportation Law*, (2011): 225-270.
[19] Levinson, Marc, "Two Cheers for Discrimination: Deregulation and Efficiency in the Reform of U.S. Freight Transportation, 1976-1998," *Enterprise and Society*, (2009): 178-215.

policy, as described by these authors, is one that describes railroad policy as becoming increasingly restrictive over time, especially in light of the trust-busting measures of the early 20th century in which railroads were highly implicated. While these works are illustrative of early trends in railroad regulation, the main shortcoming of this body of work is that it fails to account for the drastic changes in question. Works that do focus specifically on the 1970s railroad policy changes are mainly works of industrial history, and fail to provide any real analysis of policy development.

Authors and scholars of early railroad policy tend to frame their analyses within a specific narrative arc, focusing largely on state-building and the role of political institutions, with minor emphasis on political ideology. Multiple scholars and authors have analyzed the topic of railroad reorganization and many of their works follow a similar narrative—typical of this analysis are the works of Colleen Dunlavy, Zachary Callen, Vagel Keller and Theodore Keeler.[20] [21] [22] [23] In particular, scholars of this early period identify a fairly distinct policy arc, in which railroad regulation moves progressively to a greater scope with more national control of railroad strategic business decisions, especially regarding geographic placement and rate-setting. Colleen Dunlavy provides a useful summation of early American railroad regulatory policy in her comparison of the United States and Prussia. She states:

> Both states sought, moreover, to regulate the new transportation technology in the "public interest." Prevailing practice in both countries treated railroads as quasi-public enterprises, even when capital lay entirely in private hands. This reflected the twin facts that the railroads were organized as corporate enterprises and that they served as

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[20] Dunlavy, Coleen, *Politics and Industrialization*, (Princeton: Princeton UP, 1994).

[21] Callen, Zachary, "Congress and the Railroads: Federalism, American Political Development, and the Migration of Policy Responsibility," *American Politics Research*, 2011.

[22] Keller, Vagel C. "Capitalism, Politics and Railroads in Jacksonian New England," *Business History Review*, (2004): 514

[23] Keeler, Theodore E. *Railroads, Freight and Public Policy: Studies in the Regulation of Economic Activity,* (Washington: Brookings, 1983).

> "common carriers," offering transportation services to the public…a grant of incorporation implied that the company had passed a test of public usefulness, while their status as common carriers gave them a distinctive legal position. As Lemuel Shaw, Chief Justice of the Supreme Judicial Court of Massachusetts, remarked in 1836, because a railroad was privately owned and operated, it was 'not the less a public work…the public accommodations is the ultimate object." [24]

Viewed a public good, although one that could be less than benign when allowed to flourish without supervision, the railroads became the subjects of some of the most comprehensive early regulation in history. As mentioned above, regulatory policy was not completely stagnant—it fluctuated somewhat given administration at that time. At one level or another, most literature on the subject of early railroad regulation acknowledges this pattern of increasing regulation over time, while, unlike other scholarly work, the sources maintain little connection with one another.

Dunlavy's work, *Politics and Industrialization*, typifies much of the work on early railroad regulation. Although part of a larger opus regarding various forms of industrial regulations, what is particularly useful about her book is that it discusses the politics and ideology of railroad promotion within the United States, especially in the early years of the formation of railroad policy.[25] Her analysis is particularly useful in that she specifically ties railroad regulatory policy to political parties and their respective ideologies, particularly in the area of state-level policy formation, highlighting some of the change in policy over time. Zachary Callen also focuses on the interaction of state and federal policy within American federalism, focusing on how the United States' dualistic governmental system influenced

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[24] Dunlavy, Coleen, *Politics and Industrialization*, (Princeton: Princeton UP, 1994), 72-73.
[25] Dunlavy, Coleen, *Politics and Industrialization*, (Princeton: Princeton UP, 1994).

railroad infrastructure formation in the rapid expansion of railroads in the antebellum period.[26] Also typical of this analysis is a focus on state-building ; an early period study by Vagel Keller provides insights into railroad policy formation in the Jacksonian era, providing insights into the very formative years of regulatory policy.[27] Nice provides a similar analysis, although focusing chronologically later on state policy decisions regarding the preservation of railroad corridors within their borders.[28] Dilger's book *American Transportation Policy* also explicates the changes of railroad policy over time.[29]

Closer analyses of the development of transportation regulation are found in works such as Berk's *Alternative Tracks*, which explores the relationship between the development of public policy and the American industrial system. Specific insights into the role of the Interstate Commerce Commission's role in railroad development comes from Hoogenboom and Hoogenbloom's work on the history of the railroad regulatory regime.[30] Fishlow, in addition, gives further analysis of regulatory policy and early American economic history.[31]

This thesis, therefore, explores a mostly untapped area of important policy change. In order to provide a broader analysis of this area, I will look to other repositories of research, particularly that concerning path dependency and American political development. These fields provide useful insights into the American political system and will allow it to probe further into the implications of this issue to the wider field of study.

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[26] Callen, Zachary, "Congress and the Railroads: Federalism, American Political Development, and the Migration of Policy Responsibility," *American Politics Research*, 2011.
[27] Keller, Vagel C. "Capitalism, Politics and Railroads in Jacksonian New England," *Business History Review*, (2004).
[28] Nice, David C, "Incremental and Nonincremental Policy Responses: The States and the Railroads." *Polity*, (1987: 145-156).
[29] Dilger, Robert Jay, *American Transportation Policy,* (Westport: Praeger, 2003).
[30] Hoogenbloom, Ari and Olive Hoogenbloom, *A History of the ICC: From Panacea to Palliative,* (Toronto: Norton, 1976).
[31] Fishlow, Albert, *Railroads and the Transformation of the Ante-Bellum Economy,* (Cambridge: Harvard, 1965).

What is evident from this review is not the paucity of literature regarding railroad regulation and reorganization in the 1970s, as indeed a body of work on this subject exists. However, what is clear is that arc of policy which was identified by authors of early railroad regulation cannot easily explain the rapid transition to a deregulated system within their models. This analysis of the reorganization of railroad regulation will seek to rectify this lack of continuation in the literature by continuing the narrative begun by scholarly treatment of earlier railroad regulations. However, in order to do so, another body of literature must be tapped to help to provide an explanation. Gaining a sufficiently analytical image of the trajectory of railroad policy in the United States, and especially within the conflictual dynamics of the 1970s and 80s, necessitates a theoretical framework within which to work.

This research looks at railroad policy through the lens of path dependency, In this vein, I will also look to scholars of temporal politics and path dependency. At the forefront of this field is Paul Pierson of the University of California, Berkeley. His seminal work, *Politics in Time*, will heavily inform the analysis of this research.[32] The concept of path dependency as developed in this book will provide direction to the narrative of this work, particularly regarding the development of policy up to the Staggers Act. are Stephen Skowronek of Yale University and Karen Orren of the University of California, Los Angeles. Their field-defining book, *The Search for American Political Development,* has proven to be critical to the APD field [33]. In this work, they explore the concept of "paths," or familiar trends which public policy tends to follow. As this work seeks to analyze not only a specific period in political history but also the larger trends in railroad regulation, the model which Orren and Skowronek propose will be integral to my

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[32] Pierson, Paul, *Politics in Time,* (Princeton: Princeton, 2004).
[33] Orren, Karen and Stephen Skowronek, *The Search for American Political Development,* (Cambridge: Cambridge, 2004).

work. Orren and Skowronek also engage with other American Political Development scholars, such as Paul Pierson.

The work of these scholars will provide an analytical lens which will be used to continue the narrative begun by other authors on earlier incarnations of railroad regulatory policy, applying established concepts of political thought and development to this under-investigated area of radical policy change. Primarily, I argue that path dependency, which is defined as the tendency of policy to follow set "paths," with an increasing likelihood of maintaining course over time. While path dependence can describe the continuation of nationalistic policy, we must also call upon the theory of "intercurrence" espoused by Orren and Skweronek, or the clash between institutions, in order to describe the simultaneous change in the industry.

Methodology

In order to accomplish a comprehensive analysis of the topic at hand, the methodological approach used in this work will be based in a detailed survey of the primary sources available concerning the debate over the implementation of the various laws in question. Primarily, this approach will consist of holistic consideration of the transcripts of debates, proposals and hearings surrounding the movement of the bills through Congress. Primarily, I will use the Congressional Record to investigate the content of speeches, hearings and other discussions on the passage of these acts, which are extensive and yet largely unexplored by the published literature. While some limited previous scholarship has attempted to analyze support of the acts through the application of vote-counting and analysis of key talking points, my research will follow a much more qualitative approach, using inductive methods to draw new conclusions from the available data and looking at the broader scope of the framing of the acts within the

context of their passage. This methodology sets work apart from others which have touched on this subject—most other authors have merely considered the public manifestations of the these acts, while this analysis will consider them from introduction to adoption. This will entail focusing specifically on the legislation, especially inside the institution in its presentation to political actors.. Given the ideological nature of this analysis, probing sources for the motivations of political actors is fundamental to this work. Unlike past works, which have consisted more simply of counting the votes of individual members of Congress or assessing their geographic distribution, the approach used in the remainder of this work will present a set of findings which probes at the heart of the motivations and justification behind the rapid change in policy.

Given that what is perhaps so surprising about policy change in this period is its distinct break with the regulatory trajectory which preceded it, my analysis of primary sources will also look closely at normative policymaking and path-dependent approaches to regulatory issues. While this paper argues that what we see in the 1970s is both path dependent and intercurrent, it is necessary also to look to the sources for evidence of normative trajectories in order to continue the narrative of railroad policy begun by other scholars, looking for the ways in which previous legislation has impacted the current regulatory regime instituted in this period.

On a more macro level, this approach will not fail to look at the broader pressures, beyond ideology, which must be considered to take into account institutional queues and other influences on the behavior of the actors involved. While not apparent directly from the transcripts of hearing presentations or floor speeches, these motivations can be fleshed out through other historical records. Although other authors have used this approach to some extent in their analysis of these events, this paper would be remiss not to take factors beyond ideology

into account. In short, the remainder of this work will present a previously unseen depth of analysis and probing of the record in order to get at the heart of the ideological and institutional factors at play in this time period.

Chapter Outline

The subsequent chapters of this work will be dedicated to a systematic analysis of the source material which follows a historically logical progression. Chapter 2 will be dedicated to an overview of past regulation, beginning with the early regulatory structure and focusing on regulation under the Interstate Commerce Commission (ICC) through the 1960s. In the third chapter, the work will highlight the policy changes which precipitated the formation of Amtrak, inclusive, but not limited to, the Passenger Rail Service Act and subsequent clarifying acts which further modified the relationship between the government and the passenger rail industry. Chapter 4 will provide analysis of the freight railroad regulatory changes, particularly the Railroad Reform and Revitalization Act of 1976 and the Staggers Rail Act of 1980. Chapter 5 will discuss the calculus of Congressional actors on railroad deregulatory acts, focusing specifically on the Congressional debates. In conclusion, Chapter 6 will provide overall conclusions and findings from the analysis, synthesizing policy trajectories over time and applying scholarly literature to the conclusions of this work.

Chapter 2

Regulation Under the Interstate Commerce Act: Private Roads, Public Interest

The early history of railroad regulation in the United States is generally marked by slow development and gradual change toward more progressive and nationalistic ideals. Beginning with small, state-level restrictions, railroad regulation proliferated and nationalized along with popular sentiment against the industry. Throughout the later part of the 19th century and through the 1920s, the level to which the federal government regulated grew, and as railroads progressively became a more integral part of American life, so too did the aspects of the industry which the government sought to regulate, ranging from rates to trackage abandonment.

The purpose of this chapter is not to outline the specific provision of railroad regulatory cases and acts, but rather to provide an overview of the general trajectory of railroad regulation up the era of deregulation. This will provide the background for the primary analysis of this work, specifically providing insight as to the nature of regulation of railroads as a public good under the Interstate Commerce Act.

Early Regulation

While railroads in the early part of the 19th century consisted of but a few miles of unstandardized trackage and infrastructure, the rapid growth of the new form of transportation over the ensuing decades resulted in a massive, largely standardized network of competing companies, each with largely exclusive rights-of-way. The rapid growth of railroads began to supplant and largely succeeded in obviating the need for other modes of transportation, particularly canals. As railroad networks rose to the fore as the primary means of transportation,

and more importantly, the shipping of commodities, railroad shipping rates, and the fixing thereof, become a pertinent and contentious political issue.[34] Because many cities across the nation were served by more than one railroad company, while smaller communities normally only had a single road from which to choose, the rates charged by the companies became paramount to those who relied on the railroads for subsistence, and especially farmers, and their respective granges, whose livelihood was tied largely to the railroad.[35]

The first regulation of railroads originated in state regulatory commissions, first in Connecticut and New Hampshire and later, in stronger iterations, in states such as Iowa and Illinois.[36] While the first commissions simply sought railroad compliance with their charters, and, in some instances, mandated safety procedures and inspections, later, particularly Midwestern commissions began to regulate rate setting between destinations within the state.[37] The strong agricultural base of the Midwest provided the incentive for the respective states to enact rate-setting regulation, especially in light of the investments of many of the state's' farmers in the railroad system. When the railroads continued to expand and favor larger markets over smaller towns, infuriated landowners supported state legislation against rate discrimination and the monopolistic practices of railroads.[38]

However, state regulation of proved to be untenable rather quickly. The railroad network began to become more comprehensive and national in scope, suggesting more federal regulation; more importantly, however, railroad companies began to challenge the state's' right to regulate

[34] Hoogenbloom, Ari and Olive Hoogenbloom, *A History of the ICC: From Panacea to Palliative,* (Toronto: Norton, 1976), 2.
[35] Hoogenbloom and Hoogenbloom, *A History of the ICC,* 3.
[36] Strub, Whitney, With Iron Interlaced: The Tangled Knot of Early Regulation*, University of Wisconsin at LaCrosse*, 2001.
[37] Hoogenbloom and Hoogenbloom, *A History of the ICC,* 6.
[38] Hoogenbloom and Hoogenbloom, *A History of the ICC,* 7.

commerce. The tension between individual states and railroads was first manifested in *Munn v. Illinois*, in which the railroad sued the state in the Supreme Court for interference with business. [39] The Court decided in favor of the state, and the era of regulation of railroads was officially ushered in. Specifically and importantly, the Court upheld the states' right to set rates, stating that the railroads were "engaged in a public employment affecting the public interest" and that they could "charge only a reasonable sum."[40] The result of the *Munn* case was wide latitude for states in regulating commerce, and even interstate commerce given the lack of federal regulation. However, more importantly, the case set the precedent for regarding railroads as private entities which functioned in the public good, essentially as public utilities. In short, *Munn* declared that railroads were "agents of the state." [41]

Quickly, however, regulation became a salient issue on the national level. William P. Hepburn, as chair of the Committee of Interstate and Foreign Commerce, led an investigation of commercial railroad practices, which produced a stinging indictment, centering around "rate discrimination, stock watering and favoritism towards monopolies." [42] Nonetheless, even with the introduction of a bill in the House in 1879 propelled by Representative John H. Reagan, federal railroad regulation would not be instituted until 1887.[43] The groundwork for this bill lay in the Supreme Court case *Wabash, St. Louis & Pacific Railroad Company* v. *Illinois,* which

[39] Finkelstein, Maurice, "From Munn v. Illinois to Tyson v. Banton: A Study in the Judicial Process," *Columbia Law Review,* 27 (1927): 773.
[40] Hoogenbloom, Ari and Olive Hoogenbloom, *A History of the ICC: From Panacea to Palliative,* (Toronto: Norton, 1976), 7.
[41] Berk, Gerald, *Alternative Tracks: The Constitution of the American Industrial Order, 1865-1917,* (Baltimore: Johns Hopkins, 1994), 83.
[42] Strub, Whitney, With Iron Interlaced: The Tangled Knot of Early Regulation*, University of Wisconsin at LaCrosse*, 2001, 252.
[43] Buck, Solon Justus, *The Granger Movement: A Study of an Agricultural Organization and Its Political, Economic and Social Manifestations, 1870-1880,* (Omaha: University of Nebraska, 1913), 229.

narrowed the extent to which states could regulate railroad rate-setting, placing that prerogative in the hand of Congress.[44]

The progeny of the 1887 compromise between the House and Senate was the Interstate Commerce Commission, the first national regulatory body.[45] Nevertheless, due to the compromise affected by the House and Senate reconciliation of the provisions of the Reagan Bill and the Senate's alternative, the Cullum Bill, the actual powers of the Commission were slight. Furthermore, jurisprudence toward the Commission was less than favorable, and several court decisions over the ensuing decade continued to further weaken the body .[46]

Growth of the Interstate Commerce Commission

With the onset of depression in 1893, and the national attention attuned to more pressing matters, railroads began to perpetrate open violations of the ICC's provisions. The Court further weakened the ICC in *Alabama Midland v. Interstate Commerce Commission* and *Smyth v. Ames*, with the later completely eradicating the remaining little rate-setting power possessed by the ICC.[47]

Under the Roosevelt administration, national railroad regulation again came to the fore, particularly through the Northern Securities Case and the Elkins Act. Instigated by Roosevelt, the Court ruled in *Northern Securities Co. v. United States* against the agglomerated railroad companies in the northwest.[48] Furthermore, the Elkins Act of 1903 stipulated that freight rebates

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[44] "Wabash, St. Louis & Pacific Railway Company v. Illinois 118 U.S. 557 (1886)," Justia.com, accessed January 26, 2016, https://supreme.justia.com/cases/federal/us/118/557/.
[45] Fishlow, Albert, *Railroads and the Transformation of the Ante-Bellum Economy,* (Cambridge: Harvard, 1965), 11.
[46] Berk, Gerald, *Alternative Tracks: The Constitution of the American Industrial Order, 1865-1917,* (Baltimore: Johns Hopkins, 1994), 103.
[47] Strub, Whitney, With Iron Interlaced: The Tangled Knot of Early Regulation*, University of Wisconsin at LaCrosse*, 2001, 252.
[48] "Northern Securities Co. v. United States," Cornell Legal Information Institute, accessed January 26, 2016, https://www.law.cornell.edu/supremecourt/text/193/197

were illegal; however, it granted the ICC no further rate-setting power. Both the Elkins Act and the *Northern Securities* case had little effect on the railroads in practice, serving more symbolically as a means of easing the public angst against the growing power of the railroad companies and as a purported victory for the Roosevelt administration .[49]

However, the ire of shippers against the railroads continued to grow in ensuing years, and by 1905, shippers and business groups had drowned congress in requests for action in augmentation of ICC power. Congress, on the contrary, was reluctant to empower the ICC any further, and Roosevelt similarly made clear his opposition to granting the Commission rate-fixing power. While a bill in response to the shippers' outcry initially languished in Congress, Roosevelt's recommendation that the ICC be able to set maximum rates guided the parameters of the bill which was finally passed in 1906.[50] Known as the Hepburn Act, the bill was propelled by the Republican contingent in Congress by means of the attachment of the Allison amendment, which provided for judicial review of the law.[51]

Nevertheless, even the relatively strong Hepburn Act failed to affect significant change in the industry given that it was difficult to implement and that the judicial review provision made the ICCs rulings able to be easily struck down by the courts. The already wary public recognized the ineffectiveness of the law, and the act's sponsor, William Peters Hepburn, was accordingly and swiftly defeated in the following election.[52] Yet, despite the ineffectiveness of the Hepburn

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[49] Strub, Whitney, "With Iron Interlaced: The Tangled Knot of Early Regulation," *University of Wisconsin at LaCrosse*, 2001, 252.
[50] Fiss, Owen M., *A History of the Supreme Court of the United States, Volume 8*, (Cambridge: Cambridge, 2006), 229.
[51] Dixon, Frank Haigh, "The Mann Elkins Act, Amending the Act to Regulate Commerce," *Quarterly Journal of Economics*, 24 (1910): 602.
[52] Marin, Albro, *Enterprise Denied: Origins of the Decline of American Railroads 1897-1917*, (New York: Columbia, 1972), 148.

Act, the depression which followed in 1907 turned the national attention from railroads once again. The remaining years of the Roosevelt administration were marked by little attention to the issue of railroad regulation, and even ignoring of a large part of the Hepburn Act on the part of the Roosevelt administration.[53]

The Taft administration's conservative leanings guided the trajectory of railroad regulation toward a restriction of ICC powers. Nonetheless, due to a proposal by a unified group of Southern railroads to Congress for a rate increase. The proposal angered both Congress and the Taft administration, and the result was a greatly strengthened ICC by means of the provisions of the Mann-Elkins Act, which was passed in the wake of the Southern railroads' proposal, as well as a an amendment to the 1887 Act to Regulate Commerce.[54] [55]

The Mann-Elkins Act proved to be the single most progressive piece of legislation in the history of railroad regulation, and the authority it provided to the Commission provided the necessary framework for the ICC to finally provide regulatory oversight to the railroads. Following World War I, during which railroads were temporarily nationalized, Congress passed the Transportation Act of 1920. Aimed at attempting to successfully return the railroad industry to its previous privatized state, the act modified some of the existing prerogatives of the ICC, specifically in four distinct ways. It allowed for the ICC to set minimum rates, it elevated the regulation of entry and abandonment of rights of way to the ICC from the states, it allowed for

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[53] Strub, Whitney, "With Iron Interlaced: The Tangled Knot of Early Regulation," *University of Wisconsin at LaCrosse*, 2001, 253.
[54] Strub, "With Iron Interlaced: The Tangled Knot of Early Regulation,"253.
[55] Dixon, Frank Haigh, "The Mann Elkins Act, Amending the Act to Regulate Commerce," *Quarterly Journal of Economics*, 24 (1910): 596.

the ICC to promote mergers and to issue direct subsidies to railroad companies (Keeler 1983, 25).[56]

The regulatory structure of the 1920 act was left largely intact for the next three decades. The Motor Carrier Act of 1935 and the Transportation Act of 1940 both enlarged the ICCs power in the realm of other forms of transportation, specifically in barge and truck transportation and amended the 1920 act, charging the ICC with bringing what the act called “sound economic conditions” by means of the regulations of the various industries.[57] The 1948 Bullwinkle Act approved the use of rate-setting bureaus by the railroads, which had long been in practice, but nonetheless questionable from the perspective of antitrust laws.[58]

Industry Collapse

The seeds of deregulation were first sown in the 1950s. While much of the regulation prior to this era seemed to be relatively favorable to the railroad industry, especially following the first World War, competition from the trucking industry began to incise the railroads’ previously formidable lead in commodity transportation.[59] Moreover, while railroads sought to innovate and integrate with other transportation modes using technologies such as intermodal and trailer-on-flatcar service, the ICC frequently denied railroad requests for rate-lowering.[60] While truck and barge transportation relied primarily on subsidized transportation infrastructure, railroads continued to privately maintain exclusive rights-of-way, and ones which were subject to abandonment and market-entry regulation. In addition, highway and canal transportation

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[56] Keeler, Theodore E. *Railroads, Freight and Public Policy: Studies in the Regulation of Economic Activity,* (Washington: Brookings, 1983), 25.
[57] Keeler, *Railroads, Freight and Public Policy: Studies in the Regulation of Economic Activity*, 27.
[58] Keeler *Railroads, Freight and Public Policy: Studies in the Regulation of Economic Activity*, 27.
[59] Keeler *Railroads, Freight and Public Policy: Studies in the Regulation of Economic Activity*, 28.
[60] Scribner, Marc, *Slow Train Coming: Misguided Economic Regulation of Railroads, Then and Now,* (Washington: Competitive Enterprise Institute, 2013), 11.

lobbies pushed for the continuation of the current regulatory scheme, as the comparatively lenient regulation toward those industries produced favorable financial results at the expense of the railroads.[61]

By the mid-1950s, railroads began a concerted push for greater self-determination in rate-setting.[62] Their lobbying efforts, combined with the 1958 recession, produced the Transportation Act of 1958, which primarily prevented the ICC from instating rate-setting in order to protect a particular industry under its purview.[63] It also allowed for the ICC to grant direct loans to the railroads, and for the Commission to allow for the discontinuation of passenger service, a privilege which had up to that point, fallen to the states.[64] The profitability of passenger service, always a tenuous venture for railroad companies, had risen nearly to the point of excess, swallowing up two-fifths of all railroad revenue.[65] Yet, in practice, the Commission continued to mandate the operation of clearly unprofitable passenger service, and the loans to railroads such as the Erie-Lackawanna Railroad and New York, New Haven and Hartford Railroad proved to be nothing more than a temporary stopgap.[66]

By the 1960s, the American railroad industry, particularly in the northeast, was characterized by bankruptcy, unprofitability and massive financial losses, and deferred maintenance and resultant deterioration of physical plant. Throughout the decade, an increasing number of the former mammoths of the railroad industry fell, and much of the nation's rail

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[61] Keeler, Theodore E. *Railroads, Freight and Public Policy: Studies in the Regulation of Economic Activity,* (Washington: Brookings, 1983), 27.
[62] Keeler *Railroads, Freight and Public Policy: Studies in the Regulation of Economic Activity*, 29.
[63] Harbeson, Robert W. "The Transportation Act of 1950," *Land Economics* 39 (1959), 156.
[64] Harbeson, "The Transportation Act of 1950," 157.
[65] Keeler *Railroads, Freight and Public Policy: Studies in the Regulation of Economic Activity*, 30.
[66] Keeler *Railroads, Freight and Public Policy: Studies in the Regulation of Economic Activity*, 31.

infrastructure seemed in jeopardy. It was within this context that the regulatory changes of the 1970s were set to occur.

Conclusion

The regulation of railroads under the Interstate Commerce Commission, while not always steady in its trajectory, was defined by restrictive regulatory practices which regulated railroads in a way more analogous to a public utility than a private corporation. The Court's jurisprudence in *Munn* ensured that the concept of railroads as a public good was solidified in federal policy.

There are multiple theories concerning the purpose and origin of the restrictive regulation of railroads. Often, scholars have considered regulation to be an outgrowth of an interest in populist policies and guaranteeing rates for farmers and other agriculturalists.[67] Still other scholars have argued that regulations were primarily beneficial to railroads themselves, guaranteeing them steady incomes from the frozen rates.[68] Regardless of the underlying purpose of the regulation, its results were clear--railroads were subject to an intense regulatory regime which treated railroads as a public good. It was this mentality which, this work argues, led to the development of nationalization policies in the early 1970s, a phenomenon which will be explored in later chapters. The continuation of railroad policy in a manner which favored heavy regulatory regimes can easily be explained as a product of path dependency, with changes to the regulatory system becoming less likely over time. With railroads continuing to be integral to the national transportation system through the late 1930s, it is no wonder that the regulatory regime

[67] Freidlander, Ann F. and Richard H. Spady, *Freight Transport Regulation: Equity, Efficiency and Competition in the Rail and Trucking Industries,* (Cambridge: MIT Press, 1981), 2.
[68] Harbeson, Richard W. "Railroads and Regulation 1877-1960: Conspiracy or Public Interest?," *Journal of Economic History* 27 (1967): 230.

continued to favor heavy regulation, and the unlikelihood of divergence from this trajectory can be explained through path dependence.

Chapter 3

Precipitation and Nationalization:

Industry Collapse and the Formation of Government Corporations

While the Staggers Act was first major federal measure since the 1920s that was aimed specifically at deregulating railroads on a major scale, its enactment was far from isolated. Nearly a decade before the passage of Staggers, the federal government was already deeply involved in seeing to the well-being of the United States' rail network. Precipitating factors were key in the developments which lead to the passage of the Staggers Act in 1980, and while there were a host of changes which arose during the decade prior, there were two specific government-led measures which constituted this intervention. The formation of Amtrak in 1970 and the creation of the Consolidated Rail Corporation in 1976 marked the first major nationalization efforts related to railroads outside of emergency wartime scenarios in the nation's history. The genesis of these two entities was indicative of both the precipitous decline in the conditions of American railroad service at this time and the continued interest on the part of the federal government in preserving a robust railroad network. Additionally, both corporations played a critical role in the configuration of current railroad conditions and continue to remain salient in the national political debate. Yet, the changes which occurred during these decades were not issues which were merely of issue on the national level, but are also interwoven with national attitudes towards railroads on the part of the general public. Ideology, while critical to the national debates over the formation of these entities, was also intrinsic to the underlying conditions which led to the necessity of their institution.

In this chapter, I will outline in a chronological fashion the critical changes in the national rail system which began around 1968 and continued to the passage of the Staggers Act. While the examination of this era will be less analytical and more historical than that which is presented concerning the Staggers Act itself in subsequent chapters, this analysis will serve to set up the conditions in which Staggers was executed as well as explicate the underlying factors which necessitated regulatory change.

Northeastern Meltdown: Mergers and the Collapse of the Penn Central

By 1968, the condition of railroads in the Northeastern United States was a in a state of severe decay. Deferred maintenance, caused by a lack of funds on the part of the railroads which operated in this traditionally industrialized area, made efficient shipping difficult, revenues almost non-existent, and the rehabilitation of the facilities and infrastructure necessary to return to efficiency nearly impossible.[69] The continuous failure on the part of the railroads to improve conditions perpetrated a constant feedback loop of instability, inefficiency and exponential decay. The railroad companies themselves attempted to better themselves in multiple ways, but betterment appeared continuously more unattainable.[70]

The northeast had once been a bastion of the nation's most prestigious, profitable and active railroads. Railroad corridors crisscrossed the region, backboned by key decades-old carriers such as the Delaware and Hudson Railroad, the New York Central Railroad and the Erie Railroad.[71] These companies served both major markets and diminutive towns, providing critical service to both. Cities were criss-crossed by a web of steel, and it was not uncommon for even

[69] Daughen, Joseph R. and Peter Bizen, *The Wreck of the Penn Central,* (Boston: Little, Brown, 1971), 48.
[70] Perritt, Henry H. Jr. "Ask and Ye Shall Receive: The Legislative Response to the Northeast Rail Crisis," *Villanova Law Review*, 28 (1983): 272.
[71] Gallamore, Robert E. and John R. Meyer, *American Railroads: Decline and Renaissance in the Twentieth Century*, (Cambridge: Harvard, 2014), 137.

medium-sized cities to be served by a half-dozen or more railroads.[72] For decades, railroads had been the preferred mode of transportation for both shipping and passenger travel.[73]

However, by the middle of the twentieth century, the outlook of American railroads had changed. Joseph Daughen and Peter Binzen describe the situation in the late 1950s relative to changes in technology:

> On October 4, 1957, the Soviet Union fired a twenty-three-inch aluminum ball into earth orbit...To compete with the Russians, the United States began pouring billions into this new means of rapid transit. The Space Age had dawned and it was all very exciting. Meanwhile, back on the ground-hugging railroad tracks, things were going to pot. Train service was a mockery and a joke, a bitter joke for riders and shippers who couldn't understand why the world's most technologically proficient nation had to put up with such abominable railroads.[74]

The situation of the railroads, especially those in the northeast, was truly dire. Between 1956 and 1957, the New York Central Railroad, one of the primary carriers in the northeast, dropped $19 million in earnings from $28 million to a mere $9 million[75] . Other railroads concurrently experienced similar earning losses at this time, and the ridership of the nation's passenger service was declining precipitously. Between 1948 and 1968, the non-commuter ridership of American railroads had fallen from 35 billion passenger miles to less than 10 billion. [76] The loss of freight traffic, including coal and other natural commodities, also contributed to the loss in revenues. In New York State alone, the Delaware and Hudson Railroad, Erie-Lackawanna Railroad and the Lehigh Valley Railroad lost a significant portion of their coal-based revenues, with anthracite coal, a primary component of each of the railroad's revenues, declining to 15 to

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[72] Stover, John F. *The Life and Decline of the American Railroad*, (New York: Oxford, 1970), 240.
[73] Stover, *The Life and Decline of the American Railroad*, 243.
[74] Daughen, Joseph R. and Peter Bizen, *The Wreck of the Penn Central,* (Boston: Little, Brown, 1971), 48.
[75] Daughen and Bizen, *The Wreck of the Penn Central*, 52
[76] Stover, *The Life and Decline of the American Railroad*, 223.

20-percent of all freight tonnage by 1966, a number which had dropped from nearly 49-percent in 1900.[77]

There were several major factors which precipitated the losses which were experienced by the railroads at this time, primary of which was the growth in the trucking industry.[78] As the highway system expanded, so did the network which road-based carriers had at their disposal.[79] Furthermore, while railroads were increasingly taxed on their rights of way, the trucking industry was built upon government-funded infrastructure which was largely devoid of tax burdens on the part of the trucking companies.[80] In June of 1956, President Dwight Eisenhower's watershed $25 billion bill that created the Highway Trust Fund was passed.[81] While the bill was funded through both an increase in the federal gas tax (from 2 ₵ to 3 ₵) and a slight tax on truck infrastructure itself, the bill opened up major possibilities for long distance road haulage, and the industry reacted accordingly.[82] Shipping by truck experienced a massive boom following the passage of the highway funding and the commencement of the construction of the highway system.[83] By 1930, the United States government had spent almost $1.8 billion on highways and the highway network, at 90,250 miles, greatly exceeded the mileage of all major "Class I" railroads.[84]

The passage of the interstate highway system bill package was linked with rhetoric which not only glorified the highway, automobile and truck as an integral part of American culture, but

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[77] Carson, Robert B. *Main Line to Oblivion: The Disintegration of New York Railroads in the Twentieth Century*, (Port Washington: Kennikat, 1971), 216.
[78] Daughen and Bizen, *The Wreck of the Penn Central*, 52.
[79] Gallamore, Robert E. and John R. Meyer, *American Railroads: Decline and Renaissance in the Twentieth Century*, (Cambridge: Harvard, 2014), 110.
[80] Gallamore and Meyer, *American Railroads: Decline and Renaissance in the Twentieth Century*, 110.
[81] Rask, Kevin, N., "Ethanol Subsidies and the Highway Trust Fund," *Journal of Transport Economics and Policy*, 38 (2004): 29.
[82] Federal Highway Administration, "50th Anniversary Interstate Highway System," *Highway History*, (Federal Highway Administration, 2015).
[83] Gallamore and Meyer, *American Railroads: Decline and Renaissance in the Twentieth Century*, 97.
[84] Gallamore and Meyer, *American Railroads: Decline and Renaissance in the Twentieth Century*, 83.

also painted them as necessary to the movement of the nation forward. President Eisenhower stated in his report to Congress on February 22, 1955:

> Our unity as a nation is sustained by free communication of thought and by easy transportation of people and goods. The ceaseless flow of information through the Republic is matched by individual and commercial movement over a vast system of interconnected highways crisscrossing the country and joining it at our national borders with friendly neighbors to the north and south.[85]

Eisenhower's arguments for the passage of the highway legislation were laden with Jeffersonian rhetoric on the importance of transportation .[86] In the wake of the second World War and the growth of American hegemony, the Interstate Highway System represented an outgrowth of American primacy on a global scale.[87] In addition, the American belief system, which often equates freedom with mobility vis à vis the automobile, underlies the proclivity of the federal government in building the Interstate Highway System.[88]

The problems of the railroads were not limited to that caused by adversarial government policy which promoted the use of alternate modes of transportation over the railroad network. It was compounded simply by a decrease in industrial production in the Northeast, coupled with a simultaneous movement of industry to other parts of the nation.[89] Much of the factory production which had for decades fueled the Northeastern economy simply was no longer present. New

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[85] Vega, Gina, *Managing Teleworkers and Telecommuting Strategies*, (Westport: Greenport, 2003), 3.
[86] Weingroff, Richard F., "Moving the Goods: As the Interstate Era Begins," *Highway History,* (Federal Highway Administration, 2015).
[87] Hopkins, Terrence K. and Immanuel Maurice Wallerstein, *The Age of Transition: Trajectory of the World System, 1945-2025,* (Basingstoke: Palgrave MacMillan, 1996), 13.
[88] Kazman, Sam, "Auto-mobility and Freedom," *The Atlas Society*, 2010.
[89] Daughen, Joseph R. and Peter Bizen, *The Wreck of the Penn Central,* (Boston: Little, Brown, 1971), 48.

factories in the midwest and south outcompeted the older, dated factories, to the point to which when recession hit around 1957, the northeast was adversely affected first, and the railroads along with it.[90]

As external forces appeared increasingly adversarial toward the survival of railroads, many companies began looking within the industry for solutions.[91] While the merging of railroad companies was by no means a new concept, as railroads had toyed with the idea of major consolidation since the 1920s, the prospect of alliances among companies took on a new allure for the ailing railroads.[92] Most hypothetical railroad mergers focused on the merging of railroads with little infrastructure redundancy, however James M. Symes, the CEO of the Pennsylvania Railroad, defied conventional thought on railroad mergers and saw an opportunity to merge with his company's greatest and longest-standing rival, the New York Central Railroad.[93]

The Pennsylvania Railroad and the New York Central constituted the two main east-west rail corridors in the Northeast at the middle of the twentieth century.[94] Themselves each the progeny of a slew of mergers around the turn of the century, both companies were at the time massive systems with trackage stretching from the eastern seaboard to Chicago and St. Louis.[95] Each company's flagship passenger service, the Pennsylvania's *Broadway Limited* and the New York Central's *20th Century Limited*, were among the most iconic names in passenger railroading and competed with one another in the New York-to-Chicago market for over 65

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90 Daughen, Joseph R. and Peter Bizen, *The Wreck of the Penn Central,* (Boston: Little, Brown, 1971), 48.
91 Saunders, Richard, *Railroad Mergers and the Coming of Conrail,* (Westport: Greenwood, 1978), 81.
92 Saunders, Richard, *Merging Lines: American Railroads 1900-1970*, (DeKalb: Northern Illinois University, 2001), 262.
93 Saunders, *Merging Lines: American Railroads 1900-1970*, 251.
94 Holbrook, Stuart H., *The Story of American Railroads* (Crown: New York, 1947), 84.
95 Holbrook, *The Story of American Railroads*, 93.

years.[96] The proposed merger between the two companies was of unprecedented scale in the history of railroads up to that point. While through the late 1950s and early 1960s the negotiations between Symes and New York Central chief executive Albert Perlman were somewhat rocky due to Perlman's trepidation to join forces with the long-time rival.[97] However, by the mid-1960s interest in the merger had rebounded due to a change in the management of the respective companies.[98]

The merger of the two companies was approved by the Interstate Commerce Commission on April 17, 1966, and was predicated upon the acquisition of the failing New York, New Haven and Hartford Railroad, a smaller failing road based in New England.[99] Despite the promising beginnings of the Penn Central Railroad, as the newly created entity was christened, multiple factors contributed to its early unprofitability. Primarily, the mandated acquisition of the unprofitable New Haven Railroad, for which the Penn Central had to pay $125 million, added to the company's losses.[100] [101] In addition, the management teams from both companies (known as the "red" and "green" teams for the Pennsylvania and New York Central, respectively) maintained an adversarial attitude toward one another, which manifested itself in not only a rocky beginning for the company, but continued problems throughout the company's continued operation past its formation in 1968. [102] In essence the company continued to operate as two separate entities.[103]

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[96] Holbrook, Stuart H., *The Story of American Railroads* (Crown: New York, 1947), 94.
[97] Saunders, Richard, *Merging Lines: American Railroads 1900-1970*, (DeKalb: Northern Illinois University, 2001), 255.
[98] Daughen, Joseph R. and Peter Bizen, *The Wreck of the Penn Central,* (Boston: Little, Brown, 1971), 100.
[99] Daughen and Bizen, *The Wreck of the Penn Central,* 67.
[100] Daughen and Bizen, *The Wreck of the Penn Central,* 133.
[101] Gallamore and Meyer, *American Railroads: Decline and Renaissance in the Twentieth Century*, 153.
[102] Daughen and Bizen, *The Wreck of the Penn Central,* 91.
[103] Saunders, Richard, *Railroad Mergers and the Coming of Conrail,* (Westport: Greenwood, 1978), 267.

Other factors which were even further out of the company's control also plagued Penn Central's quest for solvency. The regulatory climate under the Interstate Commerce Act precluded the abandonment of redundant infrastructure, making reductive efforts nearly impossible.[104] The operation of passenger service was, however, one of the most onerous requirements which the company had to bear.[105] Given its prime access to nearly every northeaster market, Penn Central was required to operate extensive passenger service over its trackage, including over the high-traffic Northeast Corridor as well as the long distance trains to midwestern terminals. [106] Passenger service had long been a requirement of railroads under the Interstate Commerce Act.[107] While passenger service had rarely generated a profit for any of the railroads which offered it, it did at least produce significant revenue due to its necessity as a means of transportation for most of the population prior to the proliferation of the automobile.[108] Even after road transportation became a significant portion of the national transportation system, railroads still succeeded in attracting a modicum of ridership using luxury services.[109] It also served as a point of pride for many American railroads, as railroads competed to provide the most prestigious service and accommodations.[110] However, by the early 1970s, passenger service had become nothing more than a burden for American railroads. In an attempt to preserve passenger rail service nationwide and to alleviate railroads such as the Penn Central from this

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[104] Murray, Roger F.., "The Penn Central Debacle: Lessons for Financial Analysis," *Journal of Finance*, 26 (1970): 328.
[105] Gallamore and Meyer, *American Railroads: Decline and Renaissance in the Twentieth Century*, 154.
[106] Gallamore and Meyer, *American Railroads: Decline and Renaissance in the Twentieth Century*, 154.
[107] Bleakney, Robert G., Jr, "The Interstate Commerce Commission," *Boston College Law Review,* 11 (1970): 787.
[108] Stover, John F. *The Life and Decline of the American Railroad*, (New York: Oxford, 1970), 124.
[109] Gallamore and Meyer, *American Railroads: Decline and Renaissance in the Twentieth Century*, 104.
[110] Stover, *The Life and Decline of the American Railroad*, 123.

increasingly burdensome service, Congress created Amtrak in 1971, the institution of which will be explored later in this chapter.[111]

However, the alleviation of passenger rail service from Penn Central did little to slow its impending demise. The winter of 1970 took a major toll on the railroad's physical plant, crippling the railroad's major rail yard at Selkirk, NY, and paralyzing the entirety of the system. [112] Losing over $375,000 per day, the railroad sustained the worst first quarter for any railroad in American history.[113] Although the company was able to negotiate with banks to secure finances which it hoped to stop the bleeding from its proverbial wounds, the Penn Central was unable to recover from the continued collapse of its infrastructure.[114] By 1970, the railroad had accrued long-term debt amounting to almost $1.6 billion.[115]

The issue of the Penn Central's impending demise did was not limited only negotiations within the business community itself. The issue of the collapse of the company and its potential impact on the rest of the economy spurred a meeting between the Attorney General, Federal Reserve Board Chairman, the Secretaries of Commerce and the Treasury, the Budget Bureau Director and the chairman of the Council of Economic Advisors at the White House. While no specific plans were laid out at the engagement, it demonstrated the ascendence of the issue of freight railroad collapse to the national level.[116]

In June of 1970, the Department of Transportation, headed by Secretary of Transportation John A. Volpe, announced an official, two-stage plan that was to save the Penn Central from

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[111] Gallamore, Robert E. and John R. Meyer, *American Railroads: Decline and Renaissance in the Twentieth Century*, (Cambridge: Harvard, 2014), 312.
[112] Daughen, Joseph R. and Peter Bizen, *The Wreck of the Penn Central,* (Boston: Little, Brown, 1971), 255.
[113] Daughen and Bizen, *The Wreck of the Penn Central,* 255.
[114] Daughen and Bizen, *The Wreck of the Penn Central,* 274.
[115] Daughen and Bizen, *The Wreck of the Penn Central,* 256.
[116] Daughen and Bizen, *The Wreck of the Penn Central,* 274.

bankruptcy.[117] Primarily, the plan would have allowed for the company to receive $200 million in short-term loans from the Department of Defense under the Defense Production Act of 1950.[118] The justification for the use of such loans was based on the Penn Central's status as an essential piece of infrastructure for the transportation of defense-related freight.[119] In addition, it proposed that Congress authorize the Department of Transportation to grant loans up to $750 million to failing railroads.[120]

However, the Department of Defense, lead by David Packard, declined to issue the loans to the Penn Central.[121] With the collapse of this critical element of the plan, Secretary Volpe distanced himself from the assistance of the railroad. With no end to the crisis in sight, the Penn Central Company filed for bankruptcy on June 20, 1970.[122] The failure of the company constituted the largest bankruptcy of a company up to that point.[123]

Beginnings of Nationalization: The Formation of Amtrak

Spurred on by the impending demise of the Penn Central Company, the first main effort by the federal government to salvage rail service came in the form of the creation of the new nationalized rail network, namely the National Railroad Passenger Corporation, or Amtrak.[124] In May of 1970, Congress began to consider the Rail Passenger Service Act, which authorized the formation of a publicly funded corporation proposed by the National Association of Railroad

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117 Rose, Mark H., Bruce E. Seeley and Paul F. Barrett, *The Best Transportation System in the World: Railroads, Trucks, Airlines, and American Public Policy in the Twentieth Century,* (Philadelphia: University of Pennsylvania, 2010), 159

118 Daughen, Joseph R. and Peter Bizen, *The Wreck of the Penn Central,* (Boston: Little, Brown, 1971), 287.

119 Daughen and Bizen, *The Wreck of the Penn Central,* 287.

120 Daughen and Bizen, *The Wreck of the Penn Central,* 287.

121 Daughen and Bizen, *The Wreck of the Penn Central,* 299.

122 Daughen and Bizen, *The Wreck of the Penn Central,* 299.

123 Securities and Exchange Commission, *The Financial Collapse of the Penn Central Company, 92 Congress, US Senate* (1972).

124 Gallamore and Meyer, *American Railroads: Decline and Renaissance in the Twentieth Century*, 312.

Passengers as "Railpax," which would later come to be known as Amtrak, or the National Railroad Passenger Corporation.[125] [126] The new entity officially went into operation on May 1, 1971 with the departure of Clocker number 235's departure from New York's Penn Station. According to House Report No. 91-1580, the express purpose of the newly formed entity was "to revitalize rail transportation service in the expectation that the rendering of such service along certain corridors can be made a profitable commercial undertaking."[127]

Legally, Amtrak was created as a for-profit corporation registered to the District of Columbia. It was defined as a "mixed-ownership government corporation." and had the stipulation that it was not expressly a government entity, both of which were defined under the amendment to the act. [128]

While there was no one specific incident or organization which precipitated the creation of the new national entity; the major push for the creation of Amtrak was primarily from the railroad industry itself. [129] Seeking to be free of the growing burden of providing passenger rail service, railroad companies had been petitioning the Interstate Commerce Commission since the early 1960s to allow them to eliminate major parts of their passenger rail service network, or allow them to abandon it wholesale.[130] However, the commission remained adamant on the continuation of passenger service, and only allowed for railroads to forego passenger service on

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[125] Pasuik, Laurie, *Vault Guide to the Top Transportation Industry Employers,* (New York: Vault, 2006), 20.
[126] Gallamore, Robert E. and John R. Meyer, *American Railroads: Decline and Renaissance in the Twentieth Century*, (Cambridge: Harvard, 2014), 312.
[127] Amtak Reform Council, "A Summary of the Current Legislative Provisions Prescribing the Legal and Regulatory Framework Governing the National Railroad Passenger Corporation (Amtrak)," 2000, 3.
[128] Amtak Reform Council, "A Summary of the Current Legislative Provisions Prescribing the Legal and Regulatory Framework Governing the National Railroad Passenger Corporation (Amtrak)," 2000, 3.
[129] Saunders, Richard, *Railroad Mergers and the Coming of Conrail,* (Westport: Greenwood, 1978), 299.
[130] Gilschinski, Steven, *The Santa Fe Railway,* (London: Voyaguer, 1997), 96.

a select few lines.[131] While passenger rail service remained profitable only in a few select densely populated corridors, namely those surrounding the Boston-Washington Northeast Corridor, Chicago and Los Angeles, the commission's mission precluded allowing railroads to abandon their intercity passenger service, and forced railroads to maintain service upon threats of revoking their charter if they failed to provide it. [132]

Despite the commission's insistence on the continuation of service, the Penn Central's request to discontinue a large portion of its passenger service, namely that west of Buffalo, NY, and Harrisburg, PA, triggered the realization for the need of federal action on the issue of passenger rail service. [133] Primarily, the proposal was the result of three main competing ideals regarding passenger rail service. First, the railroad industry itself, wanting to be rid of the burden of passenger service entirely, urged Congress to force the ICC to allow them to shed all of their responsibility for providing passenger rail service.[134] However, opposition came from environmental groups, who believed that the loss of operating railroad service would increase the demand for much more land-use heavy transportation methods, largely through the increased construction of roadways and the proliferation of airports to accommodate the overflow of displaced transportation users.[135] Railroad unions also advocated for the continuation of intercity passenger service by means of federal funding of railroads for reasons that are not unclear.[136]

However, a Department of Transportation proposal called for an entirely different solution--the creation of a government corporation which would operate the nation's passenger

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[131] Hillstrom, Kevin and Lauria Collier Hillstrom, *The Industrial Revolution in America: Iron and Steel*, (Santa Barbara: ABC-CLIO, 2005), 265.
[132] Dilger, Robert Jay, *American Transportation Policy,* (Westport: Praeger, 2003), 78.
[133] Dilger,, *American Transportation Policy*, 78.
[134] Dilger,, *American Transportation Policy*, 78.
[135] Dilger,, *American Transportation Policy*, 78.
[136] Dilger,, *American Transportation Policy*, 78.

rail service while increasing efficiency and modernization at a lower cost.[137] However, the Nixon administration wavered in support of this proposed solution, and finally ordered the Department of Transportation to refrain from submitting the proposal to Congress.[138] The Democratic Congress was unrelenting in its support of the continuation of railroad passenger service, and produced a bill which would fully subsidize all passenger railroad service.[139] The Nixon administration, wary of the bill's potential costliness, reneged on its moratorium of the Department of Transportation proposal, and allowed the department to enter into negotiations with congressional leaders.[140] Passage of the bill, known as the Rail Passenger Service Act of 1970, occurred rather swiftly, and Nixon signed the bill into law in October of that year, with its provisions set to be enacted beginning May 1, 1971.[141] [142]

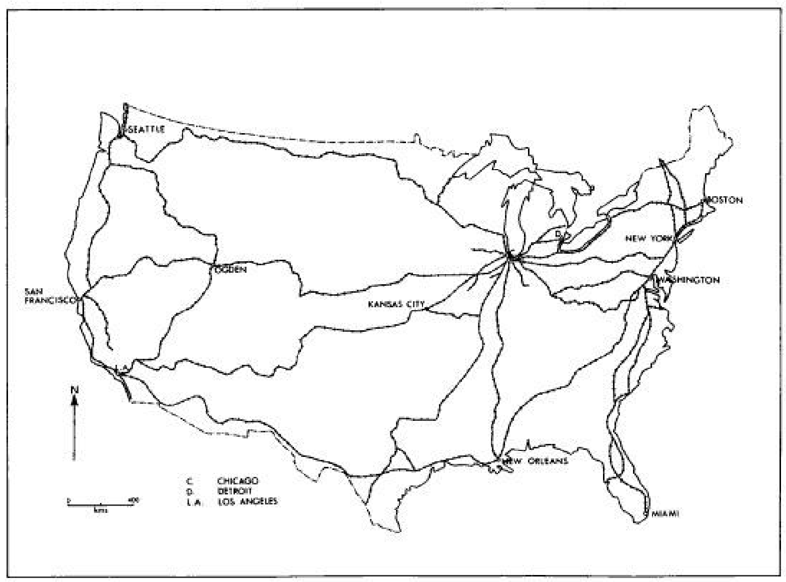

Fig 3.1 Preliminary Amtrak System[143]

The creation of Amtrak is revelatory of the United States' curious relationship to passenger

[137] Gallamore, Robert E. and John R. Meyer, *American Railroads: Decline and Renaissance in the Twentieth Century*, (Cambridge: Harvard, 2014), 312.
[138] Dilger, Robert Jay, *American Transportation Policy,* (Westport: Praeger, 2003), 79.
[139] Dilger,, *American Transportation Policy*, 79.
[140] Dilger,, *American Transportation Policy*, 79.
[141] Gold, J.R., and Margaret Gold,"Amtrak and the Resuscitation of American Passenger Railways," *Geography*, 66 (1981): 136.
[142] Congressional Quarterly, "Corporation Created to Operate Rail Passenger System," (Washington: CQ Press, 1970).
[143] Gold, J.R., and Margaret Gold,"Amtrak and the Resuscitation of American Passenger Railways," *Geography*, 66 (1981): 137.

rail service specifically and nationalization more broadly. Even into the 1970s, despite all indications that railroad passenger service had become unpopular among the wider public, unfavored by the railroad companies themselves, and unsustainable under private management, both Congress and the Presidency provided support not just for maintaining the status quo of railroad operations, but also for bringing under the purview of the federal government itself. As will be explored in greater detail in Chapter 5, Congress, in debating the passage of the Rail Passenger Service Act, largely supported the ideal that passenger rail service was not only essential to the wider transportation system as a whole, but also as an institution which it was responsible for maintaining in order to forward the public welfare. Though the outworking of the legislation itself was quite different from earlier laws regarding railroads, the underlying purpose was quite similar--to maintain a national rail system which was primarily geared toward the well-being of consumers. The relationship of the formation of the National Railroad Passenger Corporation to the conceptualization of railroads as a public good is clear from the United States Railroad Association's preliminary system plan goals, which stated that one of Amtrak's main goals was the preservation of "essential rail passenger services despite dismal recent trends and wide anticipation of accelerated discontinuances."[144] Furthermore, Amtrak was also considered to be an essential piece of the national infrastructure, especially in respect to national security.[145]

Even Nixon's ambiguous proclivities are also demonstrative of the deep-seated relationship of railroads to the larger national ethos. The president's motivations for the passage of the bill were conflicted by his party's deep-seated opposition to the bill's tenets, coupled with

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[144] Gallamore, Robert E. and John R. Meyer, *American Railroads: Decline and Renaissance in the Twentieth Century*, (Cambridge: Harvard, 2014), 313.
[145] Nice, David C. *Amtrak, The History and Politics of a National Railroad*, (Boulder: Lynne Rienner, 1998), 100.

his push for fiscal responsibility.[146] However, anecdotal evidence suggests that the Nixon's upbringing as the son of a streetcar operator and his personal fascination with railroads may have played a part in his calculus of ensuring the continued operation of passenger rail service and deterred him from blocking the salvage of the passenger rail network.[147] While Nixon's sentiments are largely irrelevant in light of the larger policy debates over the act, they may be at least indicative of a similar sentiment on the part of the American people. Polls from the time indicated that while ridership of American passenger trains was near its nadir, there was still a public preference for at least the existence of such service.[148]

Nationalization Continues: 3R, 4R and the Formation of Conrail

Despite the efforts of the federal government to salvage the national rail system, by the mid 1970s American railroads were still in extremely poor health. Besides the cataclysmic fall of the Penn Central in 1970, many other northeast roads succumbed to insolvency during subsequent years. The Central Railroad of New Jersey had met an early demise due to its lack of a long-haul freight route and assets which were subject to high taxes.[149] Similarly, the Boston and Maine Railroad was coerced into court in March of 1970 after defaulting on an interest installment.[150] However, the collapse of the Penn Central also triggered the fall of multiple other railroads. The Lehigh Valley Railroad, which was highly dependent on the Penn Central collapsed in mid-1970, and the Pennsylvania-based Reading Railroad followed in November of 1971, due largely to new environmental concerns surrounding the high-sulphur coal which was a key commodity for the railroad, which had lead to the precipitous decline in the shipping

146 Dilger, Robert Jay, *American Transportation Policy,* (Westport: Praeger, 2003), 80.
147 Dilger, *American Transportation Policy*, 79.
148 Dilger, Robert Jay, *American Transportation Policy*, 79.
149 Saunders, Richard, *Main Lines*, (DeKalb: Northern Illinois University, 2003), 54.
150 Saunders, Richard, *Railroad Mergers and the Coming of Conrail,* (Westport: Greenwood, 1978), 294.

thereof. [151] The Erie-Lackawanna Railroad, which was one of the larger merged systems in the northeast, was smothered by Hurricane Agnes in 1972 and left to ruination by its parent company Dereco, which was in no financial to repair the massive damage to the railroad's southern New York mainline.[152]

In short, the northeast's rail network was in an unprecedented state of disrepair. While railroad mergers and prior bankruptcies had served to stem the problem off to an extent, the imminent collapse of a key portion of the United States' required further measures to mitigate this impending disaster.[153] Throughout the beginnings of the railroads' respective falls, the federal government in general, and the Interstate Commerce Commission specifically, failed to provide an immediate response.[154] However, as the possible liquidation of the Penn Central drew nearer, the northeastern railroad system was in greater jeopardy than ever. Given that the remaining competitor railroads were either in precarious financial conditions or completely insolvent, there seemed little chance that a private entity would affect the salvage of the Penn Central's rights of way, and a nationalization scheme similar to that of Amtrak became an increasingly tenable solution.[155]

Despite the apparent need for solutions other than that which were based in the private sector, the concept of nationalization has nearly always run counter to the underlying ideologies of the American people, and was often characterized as socialism.[156] In the 1970's, in the midst

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[151] Guetschow, Gregg,"The Creation of Conrail and its Impact on Railroad Regulation," *Policy Perspectives*, 8 (2000): 17.
[152] Grant, H. Roger, *Erie Lackawanna: The Death of an American Railroad, 1938-1992*, (Stanford: Stanford UP, 1996), 176.
[153] Saunders, Richard, *Railroad Mergers and the Coming of Conrail,* (Westport: Greenwood, 1978), 298.
[154] Guetschow,"The Creation of Conrail and its Impact on Railroad Regulation," 17.
[155] Gallamore, Robert E. and John R. Meyer, *American Railroads: Decline and Renaissance in the Twentieth Century*, (Cambridge: Harvard, 2014), 163.
[156] Saunders, Richard, *Railroad Mergers and the Coming of Conrail,* (Westport: Greenwood, 1978), 305.

of the Cold War, the prospect of nationalization was an especially unpopular one, and not one which the Nixon administration was eager to espouse.[157] While the nationalization of passenger service through Amtrak was certainly a move toward more nationalistic policy, the salvation of the northeastern railroad situation represented something even more fundamental.[158] The movement of freight railroads into the purview of the federal government represented the near elimination of all private railroad competition in the northeast. Despite the initial opposition to such proposals by Congress and private businessmen, the need for a nationalized system became was evident. Even the Nixon administration, continuously the proponent of private business, supported the plan, however, it attempted to cover itself under the guise of maintaining a staunchly capitalist front.[159]

The preliminary formation of Conrail came in the form of the Regional Rail Reorganization Act, better known as "3R," which created the United States Railway Association (USRA), non-profit corporation charged with revitalizing the flagging railroads through the infusion of federal loans. The act recognized the need for "rail service system in the region adequate for the needs of the regional and national rail system," and laid the groundwork for the establishment of the Consolidated Rail Corporation for running the northeastern rail system.[160]

The Railroad Revitalization and Regulatory Reform Act ("4R"), which was enacted in 1976, was the offspring of 3R. Implementing the Final System Plan developed by the USRA, the act consolidated the vast majority of the failing failing northeastern railroads into one

[157] Saunders, Richard, *Railroad Mergers and the Coming of Conrail,* (Westport: Greenwood, 1978), 305.
[158] Gallamore, Robert E. and John R. Meyer, *American Railroads: Decline and Renaissance in the Twentieth Century*, (Cambridge: Harvard, 2014), 163.
[159] Saunders, *Railroad Mergers and the Coming of Conrail,* (Westport: Greenwood,, 306.
[160] Gallamore and Meyer, *American Railroads: Decline and Renaissance in the Twentieth Century*, 163.

nationalized system under the brand name of Conrail.[161] The only modicum of private competition which remained in the system was the comparatively small Delaware and Hudson railroad, which was explicitly left out of Conrail to provide the illusion of competition.[162]

While the 4R Act also contained some deregulatory elements, they were relatively weak. [163] In addition, their implementation was executed poorly.[164] However, their enactment fundamentally reshaped the landscape of the railroad industry and laid the groundwork for the large-scale deregulation of railroads in the Staggers Act.

Conclusions

The decade of the 1970s was not only pivotal in the history of the railroad industry and transportation related policy, but it also constitutes a curious chapter in national politics in general. Casting aside the minutia of the collapse of the industry itself and the various attempts by public and private actors to maintain viability in the northeastern railroad network, the essence of 1970s railroad policy is that of increasing nationalization. The situation which surrounded the nationalization of the railroads is both predictable and surprising. The political climate of the era surrounding the passage of the nationalization bills, particularly the conservative leanings of the Nixon administration, was particularly unfavorable to such actions. Yet, the path dependant federal policy on railroads, predicated on the underlying conceptualization of railroads as a critical piece of national infrastructure, seems to have driven

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[161] Guetschow, Gregg,"The Creation of Conrail and its Impact on Railroad Regulation," *Policy Perspectives*, 8 (2000): 21.
[162] Saunders, Richard, *Railroad Mergers and the Coming of Conrail,* (Westport: Greenwood, 1978), 321.
[163] Gallamore, Robert E. and John R. Meyer, *American Railroads: Decline and Renaissance in the Twentieth Century*, (Cambridge: Harvard, 2014), 188.
[164] Guetschow,"The Creation of Conrail and its Impact on Railroad Regulation," 21.

policymakers to continue the push to treat railroads as a public good, rather than simply another private industry which could be allowed to fail.

The creation of Amtrak and Conrail were both unprecedented in the history of railroads up to this point, excepting the wartime incidences, nevertheless, they represent a continuation of the policy of maintaining strict control over the railroad industry. The changes to the regulatory system affected by the federal government prior to the passage of the Staggers Act demonstrate a reluctance on the part of federal actors to diverge from the course of considering railroads as a public good which needed to be preserved and maintained in order to promote national health, a fact which is evidenced through the language of the acts themselves, and particularly the Rail Passenger Service Act.

The thrust of the Nixon administration in creating not one, but two, nationalized railroad organizations is, however, rather surprising given the trajectory and legacy of his presidency. While the Nixon administration has been characterized as somewhat of an enigma, especially when it comes to transportation policy, Nixon's advocation for the nationalization of the railroads, albeit under a capitalistic guise, may be indicative of the pervasiveness of this conceptualization of railroads, even at a time in which they were becoming increasingly irrelevant. Furthermore, although the utilization of passenger railroads had declined precipitously, there is also evidence that the general public also viewed railroads similarly as a public good, and desired their continued use, even in the face of decreasing utilization.

In short, the 1970s presents an instance of a strong exogenous economic shock to the railroad industry. Nevertheless, the nationalistic policies enacted during this time period are

largely path dependant, continuing in the wake of earlier policies which regulated and controlled railroads as a public good.

Chapter 4

Forces of Deregulation:

The Presidency, Intercurrence and Agenda Setting

The saga of railroad deregulation in general, and the Staggers Act in particular, is one which is inextricably intertwined with a larger impetus for deregulation of private industry, and especially the transportation industry, across the board. As highlighted in the previous chapter, throughout the mid-1970s, the railroad industry experienced a multiplicity of financial challenges and subsequent policy changes which would set the stage for the wholesale deregulation of the industry. Deregulation of the railroad industry did not occur without corollaries or within a vacuum, and therefore cannot be studied in such a manner. The following two chapters, which constitute the core of this work, will attempt to highlight the major political forces behind the railroad deregulatory movement with particular focus on the narratives and motives which drove it. First, this chapter will focus on the role of the presidency in the deregulation initiative. It will hone in particularly on the ways in which presidents from Nixon to Carter provided the impetus for deregulation, with particular focus on the media framing of the rail freight deregulatory movement.

This chapter is critically important to the study of railroad deregulation because it provides insights into the most prominent and public of the deregulatory rhetoric--that which emanated from the executive office. In addition, it provides a unique perspective on the push for deregulation, as it illustrates the efficacy of presidential influence in the drive for policy change.

Origins of Railroad Deregulation

While railroad regulation was most certainly part of a larger push for deregulation across American industries, several aspects of railroad regulation set it apart from other initiatives for less federal control in other industries. Primarily, railroads have been much more closely, arguably inextricably, linked to federal control than any of the other industries which were deregulated in the same period. From the very beginning of the railroad industry's growth, railroads were regulated as infrastructure that was critical to the national interest. As seen in the previous chapter, railroads contributed critically to the development of the national regulatory structure as a whole. Even as railroads lost pertinence on the national stage, the federal government saw it fit to preserve the national passenger rail system through the creation of the National Railroad Passenger Corporation, or Amtrak, which essentially once more nationalized railroad service, if only for passenger service. Similarly, the creation of the Consolidated Rail Corporation, or Conrail in 1976, demonstrated further nationalization efforts and a reluctance to free railroads to the whims of the market. Trepidation to allow railroads a wide breadth of self-determination has remained constant through American legislative history. As will be demonstrated later in the chapter, the narrative of allowing to fail was not prevalent even in the debates surrounding deregulation.

Second, the structure of the railroad network itself makes it distinctly different than other modes of transportation which were deregulated. Because airlines and road freight transportation operate almost solely on public infrastructure with flexible routing possibilities, the deregulatory efforts resulted in broad changes to the ways in which both industries operated following passage of the respective acts. However, railroads operated, and still operate, on primarily private

rights-of-way. Apart from a few select segments of trackage in the northeast which are held by the federal government and a smattering of state-owned corridors nationwide, railroad own, maintain and operate upon private routes. The implications of private ownership are that even when the federal government did choose to deregulate, ease of market entry and exit was not greatly modified. Given that much of railroad infrastructure was bestowed upon the railroads via land grants in the first place, the federal government's divestment from railroad routing is rather surprising in comparison to that of other transportation industries, in which federal and state governments largely retained control over the infrastructure itself. As a corollary, while the deregulation of airlines, trucking companies and even banks implicitly entailed expansion into new markets and increased competition, railroad deregulation implied decreased competition. Without the watchful oversight of the federal government, railroads would be able to readily abandon infrastructure which served unprofitable markets, effectively both decreasing competition and eliminating large swaths of the national network.

Yet, despite the marked differences between railroads and other industries on the deregulation docket, Congress readily took up the issue of railroad deregulation alongside that of other industries. In the wake of the Railroad Revitalization and Regulatory Reform Act, the so-called "4R Act," which was considerably more oriented towards nationalization than deregulation, the 96th Congress moved to consider the Rail Act of 1980, later renamed the Harley O. Staggers Rail Act of 1980, commonly known as the Staggers Act, in the fall of 1979. While Carter's initiative must be accounted for as a major force in the push for deregulation, underpinnings of deregulation came from the presidency of Richard Nixon.

Nixon and Early Deregulatory Efforts

Ushering in the decade of the 1970s, the presidency of Richard Nixon was predicated upon conservative, free market values. "Nixon's victory was less of a vote for a program of for himself personally than a vote against big government, taxes, inflation, welfare, riots, liberals, and pornography and obscenity," noted historian Melvin Small.[165] With economic regulation as a centerpiece of "big government" policy, Nixon administration support for deregulatory policy would have been unsurprising. However, Nixon espoused nearly the opposite. Nixon's August 15, 1971 address to the nation on economic policy, while focusing on cutting taxes, federal funding and stabilization of the dollar, failed to even touch upon intent to decrease the regulatory regime.[166] In short, the Nixon presidency was one which, in fact, greatly enhanced the regulatory regime. Scholar Andrew Downer Crane writes, "Nixon [presided] over the apogee of economic regulation in American history," overseeing the institution of "the most extreme peacetime regulations since Jefferson embargoed foreign trade."[167] Far from from decreasing the programs against which Nixon postured himself "welfare state programs and government regulatory bodies, against which Nixon railed during the 1968 campaign, actually flourished on his watch."[168]

Despite Nixon's proclivities for increased regulation, the precipitous decline of the Penn Central spurred him on to consider other potential remedies. According to Nixon's economists, the economy was on the brink of collapse, and the failure of the Penn Central "just might bring it

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[165] Small, Melvin, *The Presidency of Richard Nixon* (Lawrence: University of Kansas, 1999), 30.
[166] Nixon, Richard, "Address to the Nation Outlining a New Economic Policy: 'The Challenge of Peace.'"
[167] Crane, Andrew Downer, "Ford, Carter and Deregulation in the 1970s" *Journal on Telecommunications and High Technology Law,* volume 5, issue 2 (2007), 414.
[168] Small, *The Presidency of Richard Nixon*, 153.

down."[169] Initially, Nixon began to consider an effort to shift regulatory power away from the Interstate Commerce Commission and back into the hands of the industries themselves. Nevertheless, unable to find support for his deregulatory measures among industry interest groups or industry constituencies, Nixon turned his focus early away from deregulatory efforts to more issues more salient to the political climate of the time.[170]

However, Nixon was unable to ignore completely the problems in the railroad industry. In June of 1970 when the Penn Central Company officially entered court for bankruptcy protection, Nixon, even before the official bankruptcy announcement, realized the critical nature of the collapse of the system, stating that "the railroad must be saved."[171] As outlined in the previous chapter, the massive system, while the first in a slew of other northeastern railroads which would similarly become insolvent, was critical to the infrastructure of the northeast, and an interruption in service would entail a huge boost to unemployment figures as well as the practical implications of the inability of factories to ship and receive products and components.

In this vein, Nixon initially approved federal loans that would keep the system operating.[172] However, given the precarious nature of the transportation industry at this juncture, Nixon sought to address the problem on a more fundamental level than simply attempting stopgap measures. The need for more fundamental reforms was echoed by Stuart Saunders, chairman of the board of Penn Central, who stated that while the company had been impacted by "recession, inflation, tight money and high interest rates," the fundamental problems with the

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[169] Rose, Mark H., Bruce E. Seeley and Paul F. Barrett, *The Best Transportation System in the World: Railroads, Trucks, Airlines and American Public Policy in the Twentieth Century* (Philadelphia: University of Pennsylvania Press, 2006), 152.
[170] Crane, Andrew Downer, "Ford, Carter and Deregulation in the 1970s" *Journal on Telecommunications and High Technology Law,* volume 5, issue 2, 415.
[171] Rose et al.,, *The Best Transportation System in the World*, 152.
[172] Rose et al.,, *The Best Transportation System in the World*, 152.

railroad lay in "problems which were unmanageable," and not because of poor management on the part of the company.[173]

Urging the current Secretary of Transportation John Volpe to study transportation issues in a broader fashion, Nixon sought to pursue deregulating the transportation industry. While Nixon believed that deregulation could gain traction through consumerism that would appear "sexy" to the general public.[174] However, this salience in the public mind for deregulation proved to be more a figment of the president's imagination than reality, and the administration failed to garner support from consumer groups for deregulatory efforts. Therefore Nixon began to go about coalition-building efforts, seeking out industry leaders, shippers and unions beginning in 1971.[175]

In meeting with industry leaders, who were focused on continued mergers of railroad companies as the solution to insolvency woes, Nixon urged them to back his deregulatory agenda in order to spur action in Congress in disempowering the Interstate Commerce Commission going so far as to call for its complete abolition altogether.[176] Support from the industry, although at first somewhat tepid, gathered enough speed to spur on the proposal of a bill, known as the Transportation Regulatory Modernization Act of 1971.[177] The act, supported by the Department of Transportation, called for the loosening of the regulatory system, changing the employee work rules of railroad companies, and increasing ability of railroads to have self-determination in the

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[173] Rose, Mark H., Bruce E. Seeley and Paul F. Barrett, *The Best Transportation System in the World: Railroads, Trucks, Airlines and American Public Policy in the Twentieth Century* (Philadelphia: University of Pennsylvania Press, 2006), 152.
[174] Rose et al.,, *The Best Transportation System in the World*, 154.
[175] Rose et al.,, *The Best Transportation System in the World*, 154.
[176] Rose et al.,, *The Best Transportation System in the World*, 155.
[177] Derthrick, Martha and Paul J. Quirk, *The Politics of Deregulation* (Washington, DC: Brookings, 1985), 38.

abandonment of rail corridors.[178] However, the Nixon administration failed to back promote the bill in Congress, and the initiative floundered, receiving minimal action through 1972.[179] Despite Nixon's early aggressive stance on the need to salvage the railroad network through deregulation, anecdotal evidence indicates that he was cowed by the power of the Teamsters, who remained a powerful voice for the trucking industry.[180] Furthermore, the distancing of the Nixon administration from deregulatory efforts may have also been an indication that the executive branch no longer perceived the collapse of the Penn Central to be as pressing an issue as once supposed, at least from the perspective of political expediency.[181] If anything, the sudden stagnation of the administration of the Penn Central issue could be indicative of the lack of salience of both the issues of deregulation and the collapse of the freight railroad industry to the larger public.

Following the failure of the administration's deregulatory efforts, Nixon largely shied away from involvement in the freight railroad crisis. With the presidential election looming and the industry moving closer to the brink of collapse, the Nixon administration's solution to the railroad crisis was to move away from deregulatory efforts and instead continue to allocate loans to railroad companies, a move that was backed by shippers who also faced continued uncertainty with the railroads in flux.[182] The main thrust against deregulation in 1972 and 1973 was political. The loss of a massive number of jobs which an unaided industry, or one which responded unfavorably to deregulation, would have been catastrophic for the Nixon administration.

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178 National Transportation Safety Board, "Safety Recommendation I-72-1," Washington, DC, 1972.
179 Rose, Mark H., Bruce E. Seeley and Paul F. Barrett, *The Best Transportation System in the World: Railroads, Trucks, Airlines and American Public Policy in the Twentieth Century* (Philadelphia: University of Pennsylvania Press, 2006), 152.
180 Derthrick, Martha and Paul J. Quirk, *The Politics of Deregulation* (Washington, DC: Brookings, 1985), 39.
181 Derthrick and Quirk, *The Politics of Deregulation*, 39.
182 Rose et al.,, *The Best Transportation System in the World*, 159.

If the Nixon administration did little to actually forward deregulatory transportation policy, it did succeed in bringing the Interstate Commerce Commission under closer control of the president. securing the nomination of the head of the Interstate Commerce Commission as a presidential prerogative, paving the way for later administrations to hold greater sway in the commission's business and paving the way for later deregulatory efforts.[183] In the words of Nixon himself, actions such as bringing the chair of the ICC under presidential purview was necessary to his strategy of "bringing power to the White House in order to dish it out."[184] While Nixon himself may not have affected deregulatory policy, he at least brought it into the public conversation. As Rose et al. state, "although Nixon ultimately failed to support his own deregulation proposals, he at least helped move the idea of deregulation into the realm of the thinkable...into the mainstream of American politics."[185]

Ford and Deregulation

Nixon's successor, Gerald Ford, pushed for the same deregulatory initiatives as his predecessor. Yet, unlike Nixon, much of his policymaking efforts were relatively effective. His proclivity for deregulatory policy took shape early in his presidential career, as he exploited anti-government sentiment which was prevalent following Watergate.[186] Although Ford is rarely remembered for his deregulatory efforts, he made deregulation one of the core tenets of his administration, he "capitalized on it, to his credit, and made it his plank."[187] In a speech before

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183 Rose, Mark H., Bruce E. Seeley and Paul F. Barrett, *The Best Transportation System in the World: Railroads, Trucks, Airlines and American Public Policy in the Twentieth Century* (Philadelphia: University of Pennsylvania Press, 2006), 164.
184 Rose et al.,, *The Best Transportation System in the World*, 159.
185 Rose et al.,, *The Best Transportation System in the World*, 151.
186 Mieczkowski, Yanek, *Gerald Ford and the Challenges of the 1970s* (Lexington: University of Kentucky, 2005), 185.
187 Mieczkowski, *Gerald Ford and the Challenges of the 1970s*, 185.

the National Federation of Independant Business, Ford called for the freeing of "the business community from regulatory bondage so that it can produce," and he followed through on his proclamation by initiating studies of the regulatory regime.[188] Largely, however, the Ford administration's push for regulatory reform came as a result of the problems of inflation which plagued the nation during his administration.[189]

Ford initiated the formation of the Domestic Council Review Group on Regulatory Reform (DCRG) in 1974, a task force charged with studying potential deregulatory measures.[190] The DCRG's priorities were underdeveloped, and while Ford continued to use deregulatory rhetoric, the review group's progress was sluggish at best. [191] Nevertheless, the Ford administration brought the concept of deregulation closer to the public consciousness, especially in the area of transportation. In his 1975 State of the Union speech, Ford emphasized the need for transportation regulatory reform, stating, "Now we badly need reforms in other areas in our economy: the airlines, trucking, railroads and financial institutions. I have submitted concrete plans in each of these areas, not to help this or that industry, but to foster competition and bring down prices for the consumer."[192]

The Railroad Revitalization and Regulatory Reform Act was submitted by Ford to Congress in 1975, and, as discussed previously, represented the first effort to deregulate the freight railroad industry.[193] Although deregulation under the bill was modest at best, it

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188 Mieczkowski, Yanek, *Gerald Ford and the Challenges of the 1970s* (Lexington: University of Kentucky, 2005), 185.
189 Derthrick, Martha and Paul J. Quirk, *The Politics of Deregulation* (Washington, DC: Brookings, 1985), 45.
190 Derthrick and Quirk, *The Politics of Deregulation*, 46.
191 Derthrick and Quirk, *The Politics of Deregulation*, 49.
192 Ford, Gerald R., "Address before a Joint Session of the Congress Reporting on the State of the Union" (Jan. 19, 1976).
193 Crane, Andrew Downer, "Ford, Carter and Deregulation in the 1970s" *Journal on Telecommunications and High Technology Law,* volume 5, issue 2 (2007):, 415.

represented a first step in the progress of regulatory reform. Perhaps even more importantly, Ford initiative in forwarding deregulatory policies was critical in forming an organized coalition dedicated to regulatory reform.[194]

Deregulation and the Carter Administration

While Carter's administration was a distinctly liberal one, the president sought a transition away from the earlier presidencies of Gerald Ford and Richard Nixon. The Ford and Nixon Administrations, both of which were marked by what has been termed "imperial" presidential policy, used the office of the president to hand down decisions which were often structured by federal solutions, while Carter sought to steer the administration in a distinctly more populist direction.[195] At the outset of his presidency, Carter indicated his intent to diverge from the attitudes of previous presidents by keeping inauguration ceremonies to a minimum and presenting an overall modest appearance to the presidency.[196]

Carter's distinct approach to the presidency was largely influenced by his upbringing, a background was unlike those of many previous presidents. Raised in a southern home of modest means, Carter was deeply religious and predicated much of his policy on his value-based belief system.[197] As such, he diverged considerably from typical Democratic politics, and built the narrative of his presidency upon the worthiness of the American people and the shortcomings of government.[198] His relationship with Congress, although he tended to avoid compromise and often held himself aloof from policy debates, was one which was characterized largely by

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194 Derthrick, Martha and Paul J. Quirk, *The Politics of Deregulation,* (Washington, DC: Brookings, 1985), 48.
195 Dumbrell, John, *The Carter Presidency: A re-evaluation,* (New York: Manchester, 1993), 4.
196 Dumbrell, *The Carter Presidency: A re-evaluation*, 4.
197 Kauffman, Burton I. and Scott Kauffman, *The Presidency of James Earl Carter, Jr.* (Lawrence: University of Kansas, 2006), 12.
198 Kauffman and Kauffman, *The Presidency of James Earl Carter, Jr.* (Lawrence: University of Kansas, 2006), 12.

success on the part of the president's' policies. However as the president's term in office progressed, his relationship with Congress became progressively more strained.[199] Although many of Carter's later initiatives were blocked by Congress, Carter successfully passed railroad deregulation with a largely sympathetic Congress behind him.[200]

At the outset of his administration, President Jimmy Carter announced that a main thrust of his administration would be cutting "red tape" in government through the deregulation of certain private industries which were, at the time, heavily regulated by the federal government. In his 1978 State of the Union address, Carter called for the reduction of government regulation "that drives up costs and drives up prices."[201] Carter echoed calls for further deregulation in his 1979 address, indicating his intent to deregulate surface transportation, including rail, bus and trucking transportation.[202]

Carter first targeted the airline industry for deregulation.[203] Having experienced growth throughout most of the 1950s and 60s largely due to rapid advances in airline technology, air carriers were the first target of deregulatory policy due to the growing difficulties for airlines to serve effectively new markets and for new airlines to compete effectively with existing ones. The regulation of airlines had extended back to the 1920s, and the federal Civil Aeronautics Board (CAB) was responsible controlling entry into markets, instituting passenger fare controls and stipulating airline routes.[204] While the push for the deregulation of airlines extended back to

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199 Fink, Gary M. and Hugh Davis Graham, *The Carter Presidency: Policy Choices in the Post-New Deal Era* (Lawrence: University of Kansas, 1998), 103.

200 Crane, Andrew Downer, "Ford, Carter and Deregulation in the 1970s" *Journal on Telecommunications and High Technology Law,* volume 5, issue 2 (2007): 436.

201 Carter, James, E., "Address before a Joint Session of the Congress Reporting on the State of the Union" (Jan. 19, 1978).

202 Carter, James, E., "Address before a Joint Session of the Congress Reporting on the State of the Union" (Jan. 23, 1979).

203 Crane,"Ford, Carter and Deregulation in the 1970s," 432.

204 Crane,"Ford, Carter and Deregulation in the 1970s," 433.

previous administrations such as that of Nixon, the abolition of federal regulation of airlines was accomplished under the Carter administration, largely helped by the appointment of deregulation-friendly regulators to the CAB.[205] A bellwether for the deregulation of other industries which would follow, the returning of airlines to more market-based controls eliminated some of the more exorbitant aspects of airline travel, such as high fares, the wide availability of accommodations and high salaries for airline pilots, but ultimately freed the industry to expand into other markets and stimulate increased competition in existing ones.[206]

The deregulation of other industries followed suit. The Motor Carrier Act of 1980, also spurred by initiatives which reached back to the Kennedy and Nixon administrations, deregulated the trucking industry to a large extent, removing similar price controls and entry barriers to trucking companies, resulting in the proliferation of road surface transportation companies following its passage.[207] Similarly, the Carter administration oversaw the initiation of deregulation of telecommunications, and similarly pushed for the deregulation of the banking industry which allowed for the easier entry of banks into markets.[208] Naming it the "capstone" of his drive for deregulation, Carter pushed for the passage of the Staggers Rail Act through Congress, stating that it effectively abolished "needless and burdensome Federal regulations which harm all of us. This effort is crucial to promote more competition, to improve productivity and to hold down inflation."[209]

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[205] Derthrick, Martha and Paul J. Quirk, *The Politics of Deregulation,* (Washington, DC: Brookings, 1985), 89.
[206] Crane, Andrew Downer, "Ford, Carter and Deregulation in the 1970s" *Journal on Telecommunications and High Technology Law,* volume 5, issue 2, 434.
[207] Crane, "Ford, Carter and Deregulation in the 1970s," 435..
[208] Derthrick, and Quirk, *The Politics of Deregulation,* (Washington, DC: Brookings, 1985), 188.
[209] Carter, James E. "Staggers Rail Act of 1980 Remarks on Signing S. 1946 into Law," (Oct. 14, 1980).

Although Carter's legacy as a proponent of market-based solutions for private industries has been somewhat ignored in comparison to his successor Ronald Reagan, the Carter administration's impetus given to and proclivity for deregulatory practices cannot be overlooked when it comes to the analysis of the changes in the railroad industry in the 1970s. Carter provided a majority of the impetus for deregulation through his aggressive use of appointments to regulatory boards and his invocation of American ideals in his public appeals for deregulatory policy.

Conclusion

Carter's influence on the state of affairs in the regulatory scheme demonstrates both the powerful position which the presidency holds over the direction of federal regulatory policy as well as the tenuous nature of path dependence to explain the direction of federal policy. While earlier presidencies, particularly that of Nixon and Ford, made some attempt at regulatory change, their efforts were largely muted by the continuance of trajectory toward regulating railroads in the public interest. However, the Carter administration's wholehearted espousal of deregulatory policy is largely accountable for the change in policy which we see in the deregulation of the railroad industry through the Staggers Act.

The change from nationalization to deregulation and a divergence from path dependency can be described by the theory of intercurrence, as proposed by Orren and Skowronek. The force of the executive office on the trajectory of railroad regulation can be described as an institutional clash and "reciprocal interactions," which contributed to the decisive policy change.[210]

[210] Orren, Karen and Stephen Skowronek, *The Search for American Political Development,* (Cambridge: Cambridge, 2004), 17

Chapter 5

Consideration and Passage of the Staggers Rail Act:

Congressional Calculus and Temporal Comparisons

The signing of the Harley O. Staggers Rail Act into law on October 14, 1980 marked a seminal and pivotal point in the history of the American regulatory system. Deregulating the railroad system to a massive extent, the act was not only part of a larger flow of deregulatory legislation, but the railroad system was governed by the first and most comprehensive set of regulations, and thus marked one of the most fundamental regulatory policy shifts in American history. This act composes the central analysis of this work, and therefore a considerable portion of this chapter will be dedicated to characterizing the nature of the bill itself and the Congressional deliberations related to its passage.

This chapter will first provide an overview of the details of the legislation itself and its progress through Congress, and will move to a closer analysis of the debates themselves, providing selections from the arguments of the Congressional actors. This analysis will be compared to the the debates over earlier, related legislation in order to illustrate the variations on narrative which occurred among the considerations of the respective acts.

Outline of Staggers Act Provisions

The provisions of the Staggers Act focused primarily on the ratemaking abilities of railroad companies. Fundamentally, it removed the requirement that similar routes on different railroads had to be priced in a similar fashion.[211] This allowed railroads to compete more

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[211] "Impact of the Staggers Act of 1980," (Washington: Association of American Railroads, 2015), 2.

effectively with one another and maximize the efficiency of their route usage. Furthermore, it allowed railroads to enter into private and confidential contracts with shippers.[212] The ability of railroads to abandoned trackage and particularly sell corridors to the proliferating Class III railroads was also enhanced, giving railroads more freedom to liquidate assets which were a burden to the financial well-being of the respective companies.[213] While rate regulation was still possible in the case of insufficient competition from other railroad companies, the act broadened the definition of competition to encompass other viable alternate modes of transportation, such as trucking. However, what perhaps differentiated the Staggers Act from earlier regulatory acts was the explicit acknowledgement by Congress that revenue-making was a paramount necessity for the industry.[214]

The express purpose of the act, according to its text, was to "provide for the restoration, use, maintenance and improvement of the physical facilities and financial stability of the rail system of the United States."[215] The act itself laid out several means by which it sought to accomplish these ends. First, by assisting the "railroads of the Nation in rehabilitating the rail system in order to meet the demands of interstate commerce and the national defense;" second, by reforming "Federal regulatory policy so as to preserve a safe, adequate, economical, efficient and financially stable rail system;" third by assisting "the rail system to remain viable in the private sector of the economy;" fourth, providing "a regulatory process that balances the needs of

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212 Saunders, Richard, *Main Lines: Rebirth of North American Railroads 1970-2002,* (DeKalb: Northern Illinois University Press, 2003), 176.
213 "Impact of the Staggers Act of 1980," (Washington: Association of American Railroads, 2015), 2.
214 "Impact of the Staggers Act of 1980," 2.
215 S. 1946, 96th Cong. (1980)

carriers, shippers and the public;" and finally, assisting in "the rehabilitation and financing of the rail system."[216]

While a cursory glance at the goals of these provisions, in light of former regulatory legislation, might not seem to be considerably different than its predecessor acts, a closer analysis reveals that the underlying attitudes of federal actors was considerably different from that of former acts. While it is clear from these stated purposes that Congress viewed the railroad system as vital to the national transportation network, it is also clear that the railroads in the bill were considered to be valued as private entities which possessed the prerogative of accruing monetary gains and profits. This lies at the heart of the differentiation between this and earlier legislation, which will be brought to greater light in the following sections.

Consideration and Passage of the Staggers Act

Sponsored by Senator Howard Cannon (D-WV) and with bipartisan co-sponsorship from Senators Bob Packwood (R-OR) and Russell Long (D-LA), S. 1946 was introduced into the Senate on October 29, 1979.[217] After being considered by the Committee on Commerce, Science and Transportation on December 7, 1979, the bill moved to consideration by the Senate.

The opposition to the bill in the Senate revolved primarily around the rates and abandonment provisions of the bill, which afforded to railroads greater flexibility rate-setting and in choosing to discontinue service on select lines. Lead by Milton Young (R-ND) and Bob Dole (R-KS), a group of senators, particularly from rural states, argued against the bill based on its potential effects on rural upper Midwestern states, from which the price of the transportation of

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[216] S. 1946, 96th Cong. (1980)
[217] Saunders, Richard, *Main Lines: Rebirth of North American Railroads 1970-2002,* (DeKalb: Northern Illinois University Press, 2003), 176.

critical products such as wheat, was already high.[218] Citing railroads' ability to make greater determinations in these rates, especially in the face of the rising price of diesel fuel, the opposition argued that rate-making deregulation would be detrimental to markets in those states, and especially for smaller manufacturers. Similar concerns were voiced by William Cohen (R-ME), who argued that rate changes could have a detrimental effect on the poultry market, especially in rural New England.[219]

A second major concern of opponents in the Senate centered on the potential abandonments which would come as a result of a deregulated rail network. Primary to this consideration was the Illinois Central Gulf, the company which had resulted from the merger of Illinios Central and Gulf, Mobile and Ohio railways.[220] While the ICC had blocked the proposed abandonment of the old GM&O main line through Mississippi, under the deregulated system, abandonment of such corridors would be imminent. Thad Cochran (R-MS) argued that abandonment, if left to the hands of the railroads, would result in a major loss of national infrastructure, especially due to the "domino effect" which would occur if railroads began eliminating trackage which rendered connecting corridors from other railroads irrelevant.[221] The Cochran Amendment (UP No. 1030) would have amended the bill so as to make abandonment more difficult, thereby arguably protecting communities from loss of rail service. Introduced on April 1, 1980, the Cochran Amendment was nevertheless defeated 37-59.[222]

Proponents of the bill in the Senate focused their arguments on the dilapidated state of railroad infrastructure at the time, and the necessity of a profitable railroad industry to ensure

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[218] 126 Cong. Rec. 7279 (1980).
[219] 126 Cong. Rec. 7281 (1980).
[220] Saunders, Richard, *Railroad Mergers and the Coming of Conrail*, (Westport: Greenwood, 1978), 222.
[221] 126 Cong. Rec. 7284 (1980).
[222] 126 Cong. Rec. 7286 (1980).

continued operation. Specifically, supporters of deregulation argued that not only was profitability a necessity for the survival of the railroad companies, but their continued operation was necessary to handle the increase in coal transportation. They argued that the domestic production and transportation of coal was integral to combating the necessity of importing more foreign oil, and that doing so required a strong national railroad infrastructure fueled by competitive rates and not the proposed coal slurry pipelines which would require hefty amounts of water which was necessary to the drought-stricken western states.[223]

Despite the controversy over several of the provisions of the act, in a nearly unanimous final vote of 91 to 4, S. 1946 was passed in the Senate as the Railroad Transportation Policy Act of 1980 on April 1, 1980.[224]

The debates over the act in the House were more extensive and controversial than those of the House. Primary considerations of the bill encompassed mainly its ratemaking provisions. Opposition to some of the ratemaking stipulations came in the form of the controversial Murphy and Eckert Amendments, which, if passed, would have allowed the ICC to retain much of its regulatory power over rates. [225] These amendments represented attempts by representatives, such as Congressman Nick Rahall (D-WV), of largely rural states which were heavily reliant on agriculture and mining, and expressed reservations concerning the fairness of railroad rates in shipping if the carriers were allowed a wide latitude of determination. Given the re-regulatory nature of such amendments, there was considerable opposition from much of the House toward them, and the ratemaking limitations were defeated. [226]

[223] 126 Cong. Rec. 7291 (1980).
[224] 126 Cong. Rec. 7294 (1980).
[225] 126 Cong. Rec. 19402 (1980).
[226] 126 Cong. Rec. 19413 (1980).

The bill was passed in the House on September 9, 1980 as the Railroad Transportation Policy Act of 1980 instead of the similar House bill, H.R. 7235, which contained nearly the same provisions.[227] Throughout September of 1980 the bill was reconciled, and finally passed again in the House on September 30, 1980.[228]

Analysis of Congressional Debates

In order to analyze the nature of the calculus of Congressional actors on railroad deregulation, this chapter will examine the key deliberations surrounding the passage of the Staggers Act. Specifically, this chapter will delve deeply into the essence of the debates, attempting to probe the underlying motivations and considerations of the legislative actors involved. While the entirety of the extensive Congressional debates can in no way be completely summarized within a single chapter, this work will seek to highlight the primary elements of the those debates. In order to provide more illumination to the changes in Congressional calculus which characterized the Staggers Act, the debates will also be contrasted with the Congressional deliberations concerning the creation of Amtrak and Conrail and the Interstate Commerce Commission, specifically considering the passage of the Regional Rail Reorganization Act, the Railroad Reorganization and Regulatory Reform Act and the Interstate Commerce Act.

In light of the provisions of the bill itself, analysis of the Congressional debates revealed three key elements which were common to arguments in favor of passage. These elements can be categorized as 1) a focus on changing policy in favor of the industry and its need to accrue revenues, 2) the need to maintain the national rail infrastructure, but in a way which was done by the industry itself and not through the regulatory regime, and 3) a need for the reestablishment of

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[227] 126 Cong. Rec. 24883 (1980).
[228] 126 Cong. Rec. 28231 (1980).

market principles for competition between modes of transportation. These elements were not only key to the debates, but are indicative of a marked shift in the ways in which Congress considered the railroad system as a whole and its relationship to the state. While earlier debates, including those concerning the Interstate Commerce Act, 3R and 4R shared many of the same elements as those of the Staggers Act, these three areas encompass the key areas of change.

I. Industry Orientation, Consumer Protections and the National Interest

During the congressional debates, a main thrust of the calculus in both the House and the Senate was the protection of the railroad industry itself.[229] This presented a marked shift from the ways in which Congress considered railroads in the deliberation on the Interstate Commerce Act of 1887, and even from the consideration of the Rail Passenger Service Act and, to some extent, the Railroad Revitalization and Regulatory Reform Act of 1976. Close consideration of the language of the debates demonstrates that Congress' attitude towards railroads was largely sympathetic.

The treatment of railroads by the majority of congressional representatives is especially evident in the debates surrounding the Murphy and Eckert Amendments. The amendment, which failed passage, would have limited many of the ratemaking provisions of the Staggers Act by requiring rates to be uniform between cities, and was based on the rationale that the consolidation of railroads made open competition between railroads an ineffective means of maintaining equitable rates due to the disparate nature of corridors between cities.[230] Opposition to this amendment was strong, and arguments against the amendment were focused on the ability of the amendment to cripple the act to the point to which deregulation would be all but null.[231]

229 "Impact of the Staggers Act of 1980," (Washington: Association of American Railroads, 2015), 2.
230 126 Cong. Rec. 19389 (1980).
231 126 Cong. Rec. 19395 (1980).

A major element of regulation under the ICC prior to the passage of the Staggers Act was port-rate equalization, which standardized rates between destinations, regardless of the routing of the shipment and the port utilized, and a major thrust of the Eckert Amendment was to preserve this prerogative.[232] Representative John Murphy (D-NY) expressed the view of the proponents of the bill relative to the debate over the continuation of port-rate equalization espoused in the Eckert Amendment by stating, “Port rate equalization has other undesirable consequences as well. For example, it inhibits railroad from making efficient market adjustments based on costs and competitive conditions. Carrier costs and market forces should determine rate relationships, between common origins and competitive ports, rather than relying on a policy of rate equalization--a policy which is void of either legal justification or economic merit.”[233] Concern for the well-being of railroads themselves was also evident from his remarks, as he stated, “In fact, many others would be adversely affected, including the very railroads and railway workers whom we are helping with this deregulation legislation today. As Mr. Florio, Mr. Madigan and the other members of the Transportation and Commerce Subcommittee have already pointed out to this committee, the regulatory system is in large part responsible for the poor financial condition of the railroad industry today.”[234]

Concern for the well-being of the railroad industry itself was pervasive throughout the debates, especially the need for the railroads to once again become financially solvent. Congressman Dan Glickman (D-KS) stated “from my work in this area, it has become abundantly evident that the railroads need additional revenues if they are to be able to get their backlog of maintenance taken care of. Industry estimates indicate that those repairs will cost in

[232] Wood, Donald F., Anthony Barone and Paul Murphy, *International Logistics*, (New York: Springer, 2012), 159.
[233] 126 Cong. Rec. 19394 (1980).
[234] 126 Cong. Rec. 19394 (1980).

the range of $4 billion. Other estimates run as high as $10 billion or even higher. Clearly that will take more money."[235] In addressing the intent of the bill to enhance intermodalism, or mixed-mode coordinated transportation, Congressman Allen Ertel (D-PA) stated that the bill would improve conditions for railroads because, "intermodalism will be good for the railroads themselves by reducing the amount of empty car mileage. A reduction of just 10 percent of empty car mileage reduces the total rail operating costs by 4 percent."[236]

Arguments for the passage of the act also focused on the ways in which the transportation industry at large had changed so that the railroad industry was no longer able to compete effectively with other modes of transportation. Congressman James Florio (D-NJ) stated "the problems with the rail industry are extensive...Overregulation has, in fact, contributed to the inability of the railroad to attract traffic back and to enable it to compete for traffic back and to enable it to compete for traffic from other modes of transportation."[237]

In addition, Congress focused on maintaining the health of the industry through deregulation. Congressman Edward Madigan (R-IL) argued for the bill on the basis of its mitigation of the infection which was spreading throughout the industry. He stated "The railroad industry as a whole earns a rate of return of 2.7 percent, those that are making money. In my part of the country, they are not making money any more. The two bankruptcies we are we are handling this year cause us in each case to be putting more tax dollars into the system. Both have been midwestern railroads. Somebody might think that they can keep this railroad problem confined to the Northeast and to the Midwest. I assure you, you cannot. Either we solve the problems of the railroad industry with this bill or this problem spreads on to the West and

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[235] 126 Cong. Rec. 19397 (1980).
[236] 126 Cong. Rec. 19397 (1980).
[237] 126 Cong. Rec. 16758 (1980).

Southwest as well." [238] Attitudes such as this were relatively pervasive throughout Congress, and are indicative of the urgency which was felt by many members of Congress in addressing the problem of railroad insolvency. Barber Conable (R-NY) related the issue specifically to the issue of Conrail's insolvency. "There are a flock of reasons," he stated "for this rather dismal performance, but the most pervasive of these seems to be the problem of governmental regulation of a sort that has turned topsy-turvy the normal incentives that drive businesses forward into innovative channels and some portion of this problem can be corrected through changes in tax policy of the kind being considered by the Ways and Means Committee...In the meantime, however, we can do something about the railroads by approving the bill now before us...One cannot say what the passage of this legislation will specifically do for Conrail, on which my area of New York must depend for freight services. It will probably not put it back on the track toward profitability--only an early end to the Carter recession could do that. But deregulation could give Conrail, and our other struggling railroads--some badly needed breathing room and a new spark of life that might serve to postpone the day when other, more costly kinds of Federal relief could be needed."[239] Other members of the house, including Congressman Madigan concurred, stating, "Several major major railroads serve the State of Texas. Two of those railroads oppose the rail bill, in part because they can see that other railroads will soon be out of business under the present regulatory system. That, Mr. Speaker, is the concern all of us must have in considering the [Staggers] Rail Act of 1980. It is not a 'ConRail relief bill.' ConRail will be a problem whether or not this bill is passed. It is a bill that can prevent

[238] 126 Cong. Rec. 18296 (1980).
[239] 126 Cong. Rec. 18296 (1980).

duplication of the ConRail problem in the West, the Midwest, the South, and even in the State of Texas." [240]

Congress was also concerned with the health of Class III, or "shortline," carriers in its calculus on the bill. This push for equity to shortline railroads was largely sparked by the impetus of the American Shortline Railroad Association, who worked closely Senator Staggers and others to develop legislation which would insulate shortline railroads to some extent from the whims of the larger companies.[241] The Broyhill Amendment, which was successfully amended to the act, sought a modicum of state-level regulation which afforded intrastate Class III railroads protection as part of the larger rail network. [242] In arguing for the passage of the amendment, Congressman David Emory (R-ME), echoed the sentiments of the amendment, arguing that, "the vital importance of all short-line carriers, whether listed as class III or class II [regional], should be understood by all concerned with a healthy railroad industry. Failure to protect all of these railroads will be a serious flaw in this issue of deregulation." [243]

As concerned as Congress was with the well-being of the railroad industry, protection of the consumer was largely devoid from the deliberations, and where it was present, it was typically intertwined with the need for the well-being of the railroads themselves. The consideration of consumers was most apparent in the consideration of the abolition of port-rate equalization, concerning which Congressman Michael Meyers (D-PA) argued, "[The Eckert

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[240] 126 Cong. Rec.16952 (1980).
[241] Stagl, Jeff, "Association makes big contributions to small railroad industry over the past century," *Progressive Railroading,* February 2013, http://www.progressiverailroading.com/short_lines_regionals/article/Association-makes-big-contributions-to-small-railroad-industry-over-the-past-century--35120
[242] Illinois Commerce Commission v. Interstate Commerce Commission. 1984 749 F.2d 875. US Court of Appeals for District of Columbia Circuit.
[243] 126 Cong. Rec.18299 (1980).

Amendment] would only serve to reduce competition among ports. The real losers would be consumers and shippers." [244] Congressman Thomas B. Evans, Jr. (R-DE), matched this characterization of the amendment, call it "nothing more than an attempt to have the consumers of America pay subsidies in than an attempt to have the consumers of America pay subsidies in the form of higher prices to big ports such as New York City...The purpose of the bill before us, as I understand it, and I think everyone in this body does, is to reduce excessive regulations in the railroad industry. This amendment moves in the opposite direction." [245] Despite the modicum of concern for consumers and railroad rate setting which manifested itself in the Eckert Amendment debate, the Congressional record is largely devoid of consideration of consumer well being under a deregulated rail industry.

II. National Infrastructure

Inherent in the debate was a discussion of the necessity to maintain the national rail infrastructure due to its essential nature to international competition and domestic productivity. However, the consideration of national infrastructure took place largely within the context of free market maintenance of that infrastructure, as well as the necessity of the infrastructure for a healthy railroad industry, rather than for the public good. Presenting evidence in favor of the Ertel Amendment, a modification of the act which sought to encourage intermodal transportation by exempting railroads of any rate regulation where multiple modes of transportation were involved, the amendment's sponsor, Allen Ertel argued, "Railroads, trucking companies, airlines and barge companies wishing to cooperate with one another are often faced with a new set of regulations. In many cases, the cost of compliance is simply too high. By explicitly giving the

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[244] 126 Cong. Rec.19395 (1980).
[245] 126 Cong. Rec.19395 (1980).

ICC the authority to eliminate some of this redtape, my amendment is the first step toward a coherent national transportation system."[246] Congressman Harley O. Staggers, for whom the bill was named, also lauded its potential impact on the national rail network, while contextualizing the desire for a healthy system with the well-being of the industry itself. He stated, "I have traveled in practically every country that has railroads. Ours is a system that is less than healthy, right here in America; even in China they have far better railroads than we have. So I don not understand why we do not try to pass a bill that will see that the railroads are healthy."[247]

The railroad's role as part of the larger national infrastructure was also contextualized by the declining state of the railroad's assets. Congressman Glickman called for the improvement of the national rail network through ensuring that the railroads earned sufficient revenues. "During the decade of the seventies," he remarked, "rail accidents due to bad tracks and rail-beds cost over $500 million, and it has been estimated that derailments and collisions took place last year at a rate of about one every hour...From my work in this area, it has become abundantly clear that the railroads need additional revenues if they are going to get their backlog of maintenance taken care of." [248] Congressman Rahall, speaking on the subject of the shipping of critical materials, stated, "Regulatory reform, as most speakers this afternoon have agreed, is really needed to improve the conditions and services of our Nation's railroad system. The financial health of many railroads and the upgrading of railroad transportation services available to shippers and the public is, indeed, a needed service in this country."[249]

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[246] 126 Cong. Rec. 19395 (1980).
[247] 126 Cong. Rec. 24825 (1980).
[248] 126 Cong. Rec. 19397 (1980).
[249] 126 Cong. Rec. 19404 (1980).

III. Market Forces

"The major thrust of this legislation is to get away from regulation to a large extent and to let the marketplace forces determine the allocation of resources, capital and marketing decisions," argued Congressman Madigan on April 1, 1980.[250] A third major element of the debate was the need for competition and market forces, and not the federal regulatory regime, to determine pricing. This largely was rationalized as a result of the increased competition from other modes of transportation, which rendered the railroads a significantly less monopolistic enterprise. Arguing against the provisions of the Eckert Amendment, Congressman Florio stated, "This whole approach [of the Eckert Amendment] is in opposition to the approach of this bill, which is to say that market conditions should determine what the rates are."[251] Congressman Florio later continued by remarking, "I think it is clear that what we have here is a balance, that certainly the railroads are very much in favor of increased flexibility to allow them to make marketing decisions free from governmental restraint or freer from governmental restraint...there is a legitimate position that the [Eckert] amendment will result in even more regulation than we have now."[252] Congressman Madigan echoed these sentiments, arguing, "Where there is that competition, the marketplace, rather than Congress, should be used to determine the price level."[253]

Early Debates: Change in Focus

In order to illustrate sharply the change in narrative which differentiates the calculus of earlier nationalization efforts from the push for deregulation in the Staggers Act, it is illustrative

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[250] 126 Cong. Rec. 19397 (1980).
[251] 126 Cong. Rec. 19392 (1980).
[252] 126 Cong. Rec. 19402 (1980).
[253] 126 Cong. Rec. 19404 (1980).

to provide a similar analysis as was presented above for those earlier acts. Specifically, the following sections will take a close survey of the debates surrounding the passage of the Interstate Commerce Act of 1887, the Regional Rail Reorganization Act (3R) of 1973 and the Railroad Reorganization and Revitalization Act (4R) of 1976.

I. Industry Orientation, Consumer Protections and the National Interest

In contrast to the industry-oriented narrative which was pervasive in the debates on the Staggers Act, Congress, in considering the Interstate Commerce Act, took a much different approach to how it conceptualized the interaction between railroads, shippers and even the common individual. The record of the bill's consideration is riddled with adjectives such as "unjust," "oppression," "demands," and "pressures." Arguing against the bill, Senator George Frisbie Hoar made a scathing indictment of the conception of railroad companies' oppression of the common man through their unfair pricing mechanisms. He stated, "There is not an hour of the day's life of a Massachusetts workingman in which he does not feel the pressure of the unjust demands of the railroad when those unjust demands exist anywhere. There is not an article of his necessity or of his luxury into the cost of which the price of transportation over the continent does not enter. There is not a product of his skill, there is not an ambition of his life, whether for wealth, for honor, or for usefulness, which is not affected by the railroad and upon which it does not press as a burden when it is permitted to make an unjust charge." [254]

Despite the opposition of some members of Congress, such as Senator Hoar, the idea of railroad-as-oppressor was a relatively common one. Hoar's comments were specifically directed at the conference report on the bill, which identified railroads as a largely oppressive and

[254] 18 Cong. Rec. 634 (1887).

adversarial force to consumers. A focus on the protection of consumers was pervasive throughout the debates, and was paramount to the consideration of the Interstate Commerce Act.

However, this narrative largely changed during the debates over the Rail Passenger Service Act. While the explicit emphasis on the railroads' need to remain solvent was not present, Congress still acknowledged the need for railroads to be relieved of their passenger service burdens. Congressman William Springer (D-IL) emphasized the responsibility of Amtrak to the financial relief of freight railroads in stating that "Amtrak was created to take up the burden of providing passenger service on the rail lines and relieve the carriers of a crushing economic loss which threatened the continued existence of all rail service."[255] The framing of the issue, as embodied in this quote and in the debates at large, was that rail service needed to be maintained, despite the industry itself. In the consideration of the the 3R act, this narrative was present as well. Congressman Hudnut (R-IN) posited, concerning the creation of Conrail, "While I am under no illusion that the current legislation, as embodied in H.R. 9142, will be a complete solution to the problems experienced by the railroad industry in the United States, it will maintain essential services in an important region of the nation. It is in the public interest that this bill be adopted to meet the urgent needs which prompted its consideration." [256] This conceptualization of the railroad network, as an industry which serves the "public interest," harkens back to the structure of the nature of the debates over the Interstate Commerce Act. While some concern for the industry's well-being is evident, the majority of the concern in the debates lay in the maintenance of the rail system in serving the national good.

[255] 118 Cong. Rec. 8489 (1972).
[256] 119 Cong. Rec. 36346 (1973).

II. National Infrastructure

While the issue of national infrastructure was not as explicitly stated in the Interstate Commerce Act debates, the concept of railroads as the backbone of national infrastructure was latent in the narrative, both in the bill and in the Congressional deliberations. Scholar Stephen Dempsey notes that the intent of the Interstate Commerce Act was to maintain the national infrastructure, and the continuation of regulation thereof was an outgrowth of the desire to utilize the national rail network as a means for stabilizing the national economy.[257]

In the subsequent debates over the Rail Passenger Service Act, the Regional Rail Reorganization Act and the Railroad Revitalization and Regulatory Reform Act, there is a continuation of the narrative concerning the integral nature of the railroad system to the national infrastructure. The text of the 3R Act itself describes that the law is in pursuit of maintaining "essential rail service in the northeast and midwest" which was provided by "railroads which are today insolvent and attempting to undergo reorganization."[258] Likewise, the Passenger Rail Service Act echoed similar sentiments, stating at the outset of the bill that "the Congress finds that modern, efficient, intercity railroad passenger service is a necessary part of a balanced transportation system; that the public convenience and necessity require the continuance and improvement of such service between crowded urban areas and in other areas of the country."[259] This was reflected in the floor statements concerning the passage of the 3R Act, during which Congresswoman Holt (R-MD) stated that "the continued operation of the Northeast rail system is of vital importance to the nation both economically and environmentally. This transportation

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[257] Dempsey, Stephen, "The Rise and Fall of the Interstate Commerce Commission: The Tortuous Path From Regulation to Deregulation of America 's Infrastructure," *Marquette Law Review*, 95 (2012), 1166.
[258] United States Government, *U.S. Railroad Law 2015 (Annotated),* (Washington: United States Government, 2015).
[259] Rail Passenger Service Act, Public Law 91-518 (1971).

network must be preserved and strengthened in a manner that benefits rail creditors, rail employees and the general public."[260]

III. Market Forces

The enactment of the Interstate Commerce Act was predicated on the very fact that the market had failed in the maintenance of just and fair pricing. As the regulatory regime had developed, there had been a continued infatuation with the financial health of the industry as controlled via hefty regulation.[261] While the consideration of market forces were not extremely prominent in the debates around the Rail Passenger Service Act, 3R and 4R, there was acknowledgement that the current market conditions were not favorable to railroad profitability, and therefore government takeover of the industries was necessary. Congressman Robert Tiernan acknowledged that while government takeover of the railroads was not a desirable long-term outcome, the takeover was necessary to maintain the national rail system.[262]

Absent from the debates over these three acts was the possibility of leaving the railroad network to the whims of the market. Senator Vance Hartke (D-IN) expressed the views of the chamber and the intent of the act when he stated that the passenger rail network was better operated as a unified public organization than a fragmented, competitive, private one.[263] This type of calculus is distinctly divergent from that of the Staggers Act passage, which focused completely on market principles for the efficient operation of the rail network.

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[260] 119 Cong. Rec. 36360 (1973).
[261] Dempsey, Stephen, "The Rise and Fall of the Interstate Commerce Commission: The Tortuous Path From Regulation to Deregulation of America 's Infrastructure," *Marquette Law Review*, 95 (2012), 1166.
[262] 119 Cong. Rec. 36358 (1973).
[263] 116 Cong. Rec. 14279 (1970).

Conclusion

The differences in the attitude of federal legislators concerning the Staggers Act from those on earlier regulatory bills, particularly the Interstate Commerce Act, the Passenger Rail Service Act, the Regional Rail Reorganization Act and the Railroad Revitalization and Regulatory Reform Act are clear from a close examination of the debates themselves. Primarily, the differentiation lies in attitudes concerning the perceived oppression of the railroad industry upon consumers as opposed to an interest in the well-being of the railroad industry itself, a necessity to maintain the national railroad infrastructure and the use of market forces to maintain both. Specifically, earlier legislation which focused on increasing regulation considered railroads to be an integral, even primary piece of the national transportation infrastructure, while later bills treated railroads as simply a piece of the larger network. Furthermore, because of the singular and hegemonic nature of the railroad system, earlier legislators considered railroad rates to be integrally connected to the well-being of consumers, who had no choice but to rely on the railroads for transportation and delivery of goods. Later legislation, and particularly the Staggers Act, considered the ability of railroads to obtain sufficient revenue to be paramount, more so than the perceived equity of shipping rates. Finally, because of the nature of the relation between railroads and other forms of transportation, later legislation, and in particular Staggers Act, relied heavily on market forces to maintain effective competition and equitable rates, whereas earlier legislation relied on the regulatory regime in order to achieve the same ends.

The changing nature of the debates is illustrative primarily of the changing relationship between railroads and the general public. As highlighted in previous chapters, the railroads salience to public life was greatly magnified in the late 19th Century in comparison to the 1970s,

at which point railroads had largely faded from the public's collective conscience. Furthermore, the efforts of the federal government in promoting alternative forms of transportation aided in this respect. Therefore, shifts in the nature of the debate are reflective not only of changing mindsets, but also of changing federal policies. Analysis of the nature of the debates and the attitudes of federal actors is paramount in this work as it illustrates the swift and decisive change which was brought about by the Staggers Act as a result of the changing nature of the interaction between railroads, national well-being and public life. The change in the focus of the debates is best described as the result of intercurrence--the interaction of other institutions, particularly the presidency, on the Congressional calculus can be charged for the divergence of rhetoric.

Chapter 6

Conclusion:

Toward a Rationalization of Regulatory Change

The 1970s present an intriguing and confusing era in both the history of railroads and the development of regulatory policy. The turbulence of the era is evidenced by the collapse of the northeastern freight railroad industry, the precipitous decline of passenger rail ridership and the frantic merging of railroad corporations to attempt to stave off the effects of the industry's decline. While the study of the collapse of the freight railroad industry presents an interesting investigation both as a study of the economics of freight and passenger railroading as well as the history of the railroad as an American institution, the study of the public policy response arguably presents an even more revelatory and fascinating facet of this turbulent period.

The study presented here is not unique in its interest in this era. Multiple histories of the American railroad system in this period have been penned, and studies of the economic ramifications of both the collapse of the industry and regulatory changes are proliferous. However, political scientists have been loathe to investigate this era. The muddied and bifurcated nature of the regulatory changes of this era make the investigation of their significance as the outworkings of political institutions rather difficult.

The saga which was related in the previous chapters seems to leave the reader with almost as many questions as answers. Why did railroad deregulation occur at the time at which it did? Why was a Democratic president responsible for providing the impetus for dismantling the railroad regulatory scheme, while a Republican executed the largest permanent railroad nationalization effort in American history? Why did deregulation and nationalization occur in

such close temporal proximity to one another? Why did the federal government diverge from its path of regulating railroads as a public good, and thereby use the regulatory scheme to even the competition?

It was these questions which first intrigued the author of this work and which this paper set out to explore. However, in the enigma that is United States politics, the answers to such questions are not always clear. Yet, throughout this work political science academic literature has been brought to bear on the analyses of the railroad deregulation phenomena, and this chapter will seek to synthesize that information in order to provide the reader with relevant conclusions surrounding the nature of the deregulatory movement.

The previous chapters attempted to lay out a comprehensive overview of four major elements of the regulatory changes of the 1970s, namely, the formulation of policy and the regulation of railroads as a public good, the precipitation of nationalization policy through the economic collapse of the northeastern railroad industry, the force of the executive in agenda setting and developing deregulatory policy, and finally the nature of the Congressional debates in light of the changing narrative regarding railroads in the public sphere. More specifically, this research found that the Staggers Act debates centered around public policy (or the lack thereof) as a means to maintain the health of the industry, rather than to regulate railroads as a public good. This conceptualization stands in opposition to earlier acts, including the Rail Passenger Service Act and the Regional Rail Reorganization Act, as well as the Interstate Commerce Act, which stipulated, both through their provisions and their respective Congressional consideration, that the railroad needed to be kept in check through federal control in order to ensure its efficient service to the nation and the protection of the citizenry from its potential tyranny.

As outlined in Chapter 3, the state of the railroad industry at the time of the passage of the Staggers Act was extremely dire, and the railroads themselves had fallen out of favor as a primary mode of transportation; both of these factors largely precluded its ability to exert oppressive force over the citizenry more broadly. Nonetheless, in the nationalization acts of the early 1970s, Congressional considerations still indicate that there was broad consensus that the railroad should be regulated and controlled as a public good. While Congress and the President expressed interest in saving the railroad, it was largely due to the potential economic fallout and the salvaging of railroad jobs. However, throughout the decade of the 1970s, the previous railroad-related legislation was oriented more towards preserving railroad service because of its integral relationship to the public interest and as a component of the nation's vital transportation network. These bills largely followed in the path of the Interstate Commerce Act and *Munn* in portraying the railroad as vital to the national well-being.

In short, the 1970s represents sharp and drastic change in policy. Furthermore, this change was not only surficial, but seems to reflect a more fundamental change in the mindset of political elites towards the railroad industry. However, much of the research in political science seems to fall short when attempted to be applied to the changes of the 1970s. Primarily, the literature on path dependence, mainly developed by Orren and Skowronek, seems to account for the development of railroad regulation and nationalization policy up until the passage of the Railroad Revitalization and Regulatory Reform (4R) Act. However, the regulatory change under the Staggers Act was anything but path dependent.

Paul Pierson, in his work *Politics in Time*, defines path dependence as a phenomenon in which specific patterns of timing and sequence matter, and under which "particular courses of

action, once introduced, can be virtually impossible to reverse."[264] While scholars acknowledge that there can be some amount of unpredictability inherent in path dependency, Pierson notes that "each step along a path produces consequences that increase the relative attractiveness of that path for the next round. As such affects begin to accumulate, they begin a powerful cycle of self-reinforcing activity."[265] However, the scholarly literature on path dependence has generally been applied only in what could be described as "loose" interpretations of the theory itself. The essence the argument of path dependence, that historical policy sets a course for future legislation is limited in its applicability, and scholars have often noted that this is so. Margaret Levy, in her her 1996 piece on path dependence notes "path dependence has to mean, if it means anything, that once a country or region has started down a track, the costs of reversal are very high. There will be other choice points, but the entrenchments of certain institutional arrangements obstruct an easy reversal of the initial choice."[266] Furthermore, Sewell notes that prior policies can affect future policy, but stops at this juncture.[267] Policies are path dependant insomuch as they may provide direction for later policy, but this description is by no means applicable in all scenarios, let alone railroad regulatory policy.

The concept of path dependence has been cited throughout this work, especially when describing the trajectory of railroad regulatory and nationalization policy between 1887 and 1976. However, this concept, at least as it has been presented in political science literature thus far, does not adequately describe the change in railroad policy from nationalization to

[264] Pierson, Paul, *Politics in Time,* (Princeton: Princeton, 2004), 18.
[265] Pierson, *Politics in Time*, 18.
[266] Levi, Margaret, "A Model, a Method and a Map: Rational Choice in Comparative and Historical Analysis," *Comparative Politics: Rationality, Culture and Structure*, (Cambridge: Cambridge, 1997), 28.
[267] Sewell, William H., "Three Temporalities: Toward an Eventful Sociology," *The Historic Turn in the Human Sciences,* (Ann Arbor: University of Michigan, 1996), 262.

deregulation in the period between 1973 and 1980, between the Regional Rail Reorganization Act and the Staggers Act. However, bringing to bear the circumstances of railroad regulatory change to bear upon the conventional definitions of path dependency and thereby both modify the current definitions of path dependence and also provide a better lens through which to understand the regulatory changes of the 1970s. Furthermore, the theory of path dependence in this context is best understood in conjunction with Orren and Skowronek theory of intercurrence, which can be described the conflict between concurrent institutions which can lead to policy changes.[268] Of the factors described below, the second is best understood in light of the theory of intercurrence.

Exogenous Shocks

While Pierson accounts for a modicum of change under his theory of path dependence, he defines this change as "critical moments or junctures that shape the basic contours of social life."[269] However, elaboration upon the types, causes and effects of such "critical junctures" are largely absent from Pierson's work. However, given that path dependence is primarily an economic theory, utilization of the economic definition of path dependency is useful for a fuller appreciation thereof. While Pierson does apply economic definitions of path dependence to his definition of the theory as a whole, he fails to account for the economic concept of "exogenous shock." Tatum defines exogenous shocks as unforeseen events that have the capacity to modify existing political arrangements, stating that path dependence demonstrates why it is that change is often resistant, while also implying that predicting stability with any certainty is impossible

[268] Orren, Karen and Stephen Skowronek, *The Search for American Political Development,* (Cambridge: Cambridge, 2004), 17.
[269] Pierson, Paul, *Politics in Time,* (Princeton: Princeton, 2004), 18.

because of the power of random events." [270] Aklin and Urpelainen note that governments provide strategic responses to exogenous shocks, such as a change in oil prices.[271] However, they note that the phenomenon of exogenous shocks has been insufficiently treated among political science research.

The collapse of the northeastern railroad system seems to be a clear example of an exogenous shock, and the response of the federal government to the crisis in the Staggers Act presents a policy which does not seem to conform to the standard definition of path dependant policy, even though policies had developed in a path dependent manner for almost a century and for nearly a decade after the initial shock. Application of Pierson's temporal process research, in which he states that causes and path dependant outcomes may be separated temporally, helps us to partially understand this.[272] Development of this concept in light of the precipitous nature of exogenous shocks would help to explain the phenomenon of railroad deregulation.

Executive Influence and Institutional Interaction

In addition to exogenous shocks, the change in railroad policy was largely precipitated by the influence of the presidency. While the Nixon administration affected nationalization policies, Nixon laid the groundwork for deregulation through his manipulation of Interstate Commerce Committee appointments. The subsequent administrations of Ford and Carter provided further, even more forceful pushes toward deregulatory policies and ultimately enacted them. Feasibly, the change in railroad regulatory policy could have occurred at an earlier date, as the problems of northeastern railroads had been accruing for a considerable amount of time. However, it was the

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[270] Tatum, Dillon, "The Paradox of Path Dependence: The Problem of Teleology in International Theory," *E-International Relations* (2012).
[271] Aklin, Michael and Johannes Urpelainen, "Political Competition, Path Dependence, and the Strategy of Sustainable Energy Transitions," *American Journal of Political Science*, 57 (2013), 643.
[272] Pierson, Paul, *Politics in Time,* (Princeton: Princeton, 2004), 96.

drive given to deregulatory policy by the presidencies of Ford and Carter which ultimately lead to its enactment. Railroad deregulation was certainly not inevitable--the continuation of regulation and nationalization could very well have been a viable option.

In his book “The Politics Presidents Make,” Stephen Skowronek explains the concepts of presidential regimes, and defines the order thereof as either adversarial to, or sympathetic with, the established regime.[273] In either circumstance, the ways in which the president relates with the established order determines many of the ways in which they act.[274] Interestingly, Nixon, who largely opposed the principles of the establish Republican regime, was much less effective than Ford and Carter in establishing policies which matched his, and his party’s, political preferences, instead affecting the continuation of policy in a nationalistic direction.

The effect of the power of the presidency should not be overlooked when it comes to the ways in which path dependency determines the outcomes of public policy. Given that there was only a small period of time between the enactment of nationalistic legislation in Congress and deregulatory policy and that the composition of Congress did not change significantly, it is not illogical to attribute much of the shift in policy to the rhetoric forwarded by each of the respective presidents. In order to provide a complete interpretation of the regulatory changes in light of the narrative of path dependency, it is necessary to consider the role of other governmental institutions, including the presidency. Orren and Skowronek in their book, “The Search for American Political Development,” state that policy is developed in a historically-determined fashion, but also advocate for the observation of cross-institutional

[273] Skweronek, Stephen. *The Politics Presidents Make,* (Cambridge: Harvard, 1993), 8.
[274] Skweronek, *The Politics Presidents Make*, 8.

interaction in the development of public policy.[275] Furthermore, the intercurrent relationship between institutions, especially Congress and the presidency, can be cited as responsible for the policy shift.[276] Intercurrent relationships, note Orren and Skowronek, take place within the uneven nature of political change, and therefore their timing and appearance can be irregular.[277] The changes in the railroad regulatory system are not simply the outgrowth of a single institution, and the nature and timing of their appearance can be attributed to the interaction between the presidency and Congress.

In addition, the interaction between different policies forwarded by the federal government can be a major factor in the determination of public policy. In large part, as demonstrated in Chapter 3, the underlying problems of the railroad system can be attributed to the enactment of policy which contributed to their downfall. The proliferation of the automobile and truck transportation thanks to federal policy favorable to the construction of roads was a major contributor to the collapse of the railroad industry. In addition, federal and state subsidies for air travel also helped to cripple the industry.

While, according to Pierson, path dependency can accrue over time creating a feedback loop, there is little discussion in the studies of temporal politics concerning the ability of one policy to influence the path dependency of another.[278] In the case of the railroad industry, the onset of the railroad crisis may have been diverted had the federal government not enacted policy which created an environment hostile to railroad profitability.

Ideological and Conceptual Shifts

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[275] Orren, Karen and Stephen Skowronek, *The Search for American Political Development,* (Cambridge: Cambridge, 2004), 101.
[276] Orren and Skowronek, *The Search for American Political Development,* (Cambridge: Cambridge, 2004), 17.
[277] Orren and Skowronek, *The Search for American Political Development,* (Cambridge: Cambridge, 2004), 108.
[278] Skowronek, Stephen. *The Politics Presidents Make,* (Cambridge: Harvard, 1993), 8.

Research in this work has indicated that there were significant ideological shifts over time which contributed to the changes in railroad policy. These were largely evident from the discussion of the Congressional debates, in which there were notable changes in the ways federal actors considered railroads. Primarily, these changes were concerned with the ways in which Congress viewed railroads, either as an essential component of national infrastructure or as a private industry which possessed the prerogative to accumulate wealth for its own gain. In addition, the perceived salience of the railroad to the national transportation system also played a role in how Congressional actors considered railroads.

Literature on path dependency and temporal politics is largely devoid of discussions of ideological changes, despite their importance to the continuation of policy. The persistence of the railroad regulatory regime can be attributed largely to path dependence and increasing returns on change of the system, but the alteration of the conceptualization of railroads in public life was largely responsible for the changes in the law.

Conclusion

The bifurcated nature of railroad policy in the 1970s can be attributed largely to the concept of path dependency. Congress, since the enactment of the Interstate Commerce Act in 1887, had considered railroads to be a public good, and had regulated them as such. Faced with the cataclysmic downturn of the railroad industry in the 1970s, the initial legislative reaction on the part of the federal government was nationalization. An outgrowth the regulatory policy of the late 19th century, the legislation continued, in a path dependant manner, to treat railroads as a public good providing an essential public service. However, by 1980, a divergent line of legislation had appeared in the form of the Staggers Rail Act, which took regulatory power away

from the federal government, acknowledged that railroads were a private industry which had a right to accrue wealth and gave the railroads a wide breadth of self-determination in the disposal of infrastructure which had formerly been considered critical to the nation's transportation network.

According to this work, the key to understanding the conundrum of the divergence of railroad policy into two streams lies not only in the path dependant nature of railroad regulatory policy, but also in the severe exogenous economic shock of the collapse of the northeastern railroad system, the interaction of political institutions through the influence of presidential agenda setting and the conflict of federal transportation policy. The concept of the intercurrent relationship between institutions and the limitations of path dependence in political science help us to understand not only why railroad policy became divergent in the 1970s, but also why it had continued uninterrupted for such a considerable period of time. As a result, divergent railroad policy was enacted which exists to the present in the form of a deregulated freight rail network and nationalized passenger rail service.