A Problem of Corporate Convenience: A Case Study of the GM Ignition Switch Recall

by

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Abstract

In light of the overwhelming harm caused by General Motors and its failure to recall defective vehicles for nearly a decade, this thesis explores the GM ignition switch recall and the numerous errors and omissions that enabled it to occur. This thesis begins by introducing corporate criminological studies broadly, then, in the second chapter, moves to develop a history of automobile regulation specifically. Following that, in the third chapter, this thesis builds the case against GM, showcasing how at several junctures GM chose profits over safety, and how the state regulatory system permitted this to happen by allowing the corporation to define a critical safety defect as a “customer convenience problem.” Finally, in chapter four, this thesis examines the state’s response to GM’s malfeasance, situating this in its broader social context, and then moves to criticize compliance and punishment oriented regulation from Ruth Morris’s (2000) conception of transformative justice. To effectively respond to corporate crime, this thesis argues that state responses should attempt to transform the criminogenic aspects of capitalism and the corporation, rather than punish or persuade.
Acknowledgements

First and foremost I must recognize the victims of the GM ignition switch recall. By completing this thesis I have benefitted from the pain and suffering brought to you and your families, and I hope that this thesis can help illuminate the immense harm that was caused by General Motors in their pursuit of profits.

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# Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>BCM</td>
<td>Body Control Module</td>
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<tr>
<td>CPIT</td>
<td>Current Production Improvement Team</td>
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<tr>
<td>DLIS</td>
<td>Discrete Logic Ignition Switch</td>
</tr>
<tr>
<td>DRE</td>
<td>Design Release Engineer</td>
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<tr>
<td>FPA</td>
<td>Field Performance Assessment</td>
</tr>
<tr>
<td>FTC</td>
<td>Federal Trade Commission</td>
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<td>GM</td>
<td>General Motors</td>
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<td>GSA</td>
<td>General Services Administration</td>
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<tr>
<td>MCC</td>
<td>Mondragon Co-operative Corporation</td>
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<tr>
<td>NAFTA</td>
<td>North American Free Trade Agreement</td>
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<tr>
<td>NHTSA</td>
<td>National Highway Traffic Safety Administration</td>
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<tr>
<td>NSC</td>
<td>National Safety Council</td>
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<tr>
<td>ODI</td>
<td>Office of Defects Investigations</td>
</tr>
<tr>
<td>OECD</td>
<td>Organization for Economic Development and Co-operation</td>
</tr>
<tr>
<td>P&amp;L</td>
<td>Panhard and Levassor Automobile Company</td>
</tr>
<tr>
<td>PI</td>
<td>Products Investigations</td>
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<tr>
<td>PRTS</td>
<td>Problem Resolution Tracking System</td>
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<tr>
<td>SAE</td>
<td>Society of American Engineers</td>
</tr>
<tr>
<td>SDM</td>
<td>Sensing and Diagnostic Module</td>
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<tr>
<td>TREAD Act</td>
<td>Transportation and Recall Enhancement, Accountability and Documentation Act</td>
</tr>
<tr>
<td>TSB</td>
<td>Technical Service Board</td>
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Chapter 1

Introduction

For each reported homicide in North America, corporations take 30 lives (Morris 2000: 20); for every dollar stolen by traditional street criminals, between 10 and 50 dollars are taken by corporations (Snider 2008: 265; Morris 2000: 20). In 2007, 1,055 people died at work in Canada, and over the last fifteen years workplace deaths have increased in Canada, while they have decreased in almost every other OECD country (Canadian Labour Congress 2015). Yet, despite the obvious harm caused by corporations, corporate crime has not captured the collective consciousness of the public like traditional street crime. There are no moral panics when corporate executives decide safety measures are too costly, overstate corporate earnings to gain a quick boost in stock price, pollute the environment beyond repair, or exploit their laborers so much that they cannot afford the basic necessities of life (Bittle 2012; Bittle and Snider 2011; Tombs and Whyte 2007; Snider 2008; Snider 2001). In contrast to street crime, there is a collective ignorance of the immense harm caused by corporations in the pursuit of profits or the avoidance of losses (Tombs and Whyte 2007; Snider 1993).

This collective ignorance is not simply coincidental, and finds its roots in socio-economic ideologies that continually reproduce dominant understandings of crime and deviance (Bittle 2012: 39). From the Great Depression until the 1970s, Keynesian economic principles helped transform western political economies. Operating from this perspective, states attempted to reduce the deleterious effects of capitalist production by establishing a social safety net that would provide every citizen with a minimum standard of living (Bittle and Snider 2011). By the 1970s, however, two key concepts promulgated by the “Chicago School” of
economics, monetarism and neoliberalism, helped initiate the downfall of Keynesian policies and the disappearance of a plethora of corporate crimes in both law and society (Snider 2000: 182).

Neoliberalism can be understood as a political economic process that assumes human prosperity can be maximized by liberating the entrepreneurial spirits of individuals within an institutional framework that promotes strong private property rights, free markets, and free trade (Harvey 2005: 2). However, in order to ensure the stability of this institutional framework (markets, property rights, and unfettered economic exchange) the state must guarantee a stable currency, and this stability is achieved through monetarist policies that focus on reducing inflation, rather than achieving full employment – a key goal of Keynesian political economic policy (Harvey 2005: 23). It has been through this process of neoliberalization that the corporation has become the dominant vessel for capital accumulation, and that corporate crime as a concept has, in many areas, fallen into obscurity (Snider 2000).

What is important for my discussion here is not a detailed history of neoliberalism,¹ but the effects of neoliberal ideology on laws against corporate crime. Since the 1980s, throughout the world, and in particular the Anglo-Saxon west, a corporate counter-revolution has emerged from neoliberal discourse and, with the help of mainstream media,² has begun a process of decriminalizing, downsizing, and deregulating corporate crime under the auspices of neoliberal

¹ For a more thorough history of Neoliberalism see David Harvey 2005 or Foucault 2008.
² Glasbeek (2002:111) points out that newspapers derive 80 percent of their profits from the sale of advertising space on their pages, and approximately 50 percent of their total content is advertising material – a number that is only growing with the popularization of native advertising by news platforms like the Huffington Post and BuzzFeed. The detrimental effects of this entanglement of corporate interests with the news media was made no clearer than during the debates about the North American Free Trade Agreement (NAFTA). During these highly politicized debates the Toronto Star was the only major Canadian newspaper to oppose the agreement, despite the fact that two national political parties and over 50 percent of Canadians opposed NAFTA (Glasbeek 2002: 112). The primacy of neoliberal discourse and the pace at which corporate criminality has disappeared was aided, at least in part, by the mainstream media who are typically heralded as harbingers of democracy by liberal-pluralist legal scholars (Glasbeek 2002).
economic principles that see market regulation as infallible, and government oversight as clumsy (Snider 2000). Since the beginning of this social transformation, important social, political and economic changes have occurred: in almost every OECD country inequality has increased, corporate taxes have decreased, the social safety net has been diminished, public sector employees have been construed as unproductive, and unions have been demonized as promoting inefficiency. Corporations, on the other hand, have been lionized as job creators; incorporation, once a privilege bestowed onto business ventures that could clearly demonstrate a social utility, is now seen as an undeniable right, and trade liberalization has intensified intra and interstate competition, increasing the ever-intensifying pace of the race-to-the-bottom between governments at all levels (Snider 2000: 170-171).

The academic fields that study crime and deviance have not been immune from the disappearance of corporate criminology, and have helped to reproduce narrow understandings of crime and deviance. Historically speaking, the sociology of crime and deviance has focused on individualistic forms of street crime, or what Alexander Liazos refers to as “the sociology of nuts, sluts and preverts” (cited in Bittle 2012: 41). Not only has criminology focused on individualistic forms of deviance and law-breaking, it has also typically produced individual or micro level explanations for deviant behaviour (Bittle 2012: 42); that is, an individual’s lack of bonds to the community or inability to access material success is the cause of their criminality (Bittle 2012: 42). This fixation on individualistic explanations to street crime has allowed a wide range of crimes committed by the powerful to go unnoticed by academics and the public alike (Boyd, Chunn and Menzies 2001: 13). In essence, it is not that corporate crime is not studied, but that when the gamut of deviance and crime literature is viewed from afar, critical research into
corporate crime and the crimes of the powerful only appear on the periphery of academic debate (Bittle 2012: 39).

It is from this understanding of the invisibility of corporate crime, both within and beyond the sociological study of crime and deviance, that my research originates. In this thesis, I hope to make visible the crimes committed by corporations in the pursuit of their interests. In particular, I will conduct a case study of the General Motors ignition switch recall that began on February 7th 2014, and to date has killed more than 90 people and injured hundreds more (Gardner 2015). The remainder of this chapter will demonstrate the importance of the case study method to the study of corporate crime more broadly. Following that discussion, I will situate my research within the critical socio-legal literature that has inspired and informed this inquiry. From there I will outline the key debates and schools of thought regarding the regulation of corporate crime, concluding with a brief outline of the chapters that will follow.

**Case Study Method and Corporate Crime**

The case study method has been, and remains, an important method for research into corporate harm and wrongdoing. Unlike traditional street crimes, corporate crime research lacks the statistical basis for scholars to use as a springboard for their research (Tombs and Whyte 2007: 7). The comprehensive quantitative explorations that provide this necessary statistical data for research require large scale financial commitments from the government or private businesses, who do not often see corporate crime research as congruent with their interests (read as profitability) (Tombs and Whyte 2007; Snider 2003). This lack of statistical data has forced

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3 At the time of writing there remains 4,342 claims to be reviewed by GM compensation specialist Kenneth Feinberg (Gardner 2015). Currently Feinberg and his team have established 67 percent of claims as eligible (Gardner 2015); if that ratio continues over the 4,342 claims awaiting review deaths could climb well into the hundreds.
corporate crime researchers to become more pragmatic, substituting in-depth case studies of specific corporate crimes for broad-based quantitative research.

These studies have typically focused on corporate crimes that have caused significant violence or loss of life, widespread financial loss, or have a high level of political significance (Tombs and Whyte 2007: 8). Rather than making broad based generalizations through the use of statistics, or simply setting out the facts of a particular case, researchers attempt to provide a detailed reconstruction of the events and processes that helped facilitate the criminal event (Tombs and Whyte 2007:8). In order to gain a deep understanding of factors that led to the crime, researchers often have to rely on unorthodox sources, like after-the-fact accounts by journalists or whistle-blowers, to develop a detailed case-history of events (Tombs and Whyte 2007; Snider 2003). Instead of producing generalized statistical data from which to base their claims, scholars use the case-histories they produce to demonstrate why this particular offence transpired, and how it was responded to by the corporation and state (Tombs and Whyte 2007).

This method of research has several important benefits for corporate crime. First, as case studies pile up over time, they can reveal the range of offences perpetrated, or carried out in part, by corporations (Tombs and Whyte 2007: 8). Building from this first point, when these case studies are understood together, the ubiquity of corporate crime becomes more visible (Tombs and Whyte 2007: 8). Finally, while each case study will be unique – the actors, location, scale, and nature of the harm will vary from case-to-case – over time the recursive themes within each crime can be identified, and cautious generalizations can be made to advance our understanding of corporate criminality (Tombs and Whyte 2007: 8).

However, due to corporate crime’s relative invisibility amongst mainstream criminologists, researchers interested in corporate crime are often required to go beyond the
confines of criminological and socio-legal literature, and rely on research from a range of other disciplines, such as business ethics, risk management, economics, history, and political economy (Tombs and Whyte 2007). Accordingly, this case study, like many before it, uses literature from other disciplines when necessary to fill the gaps that currently exist in criminological research to fully capture the factors that enabled GM’s gross acts of omission. While using sources outside of criminology/socio-legal studies, like whistleblower or journalistic accounts, may be seen as unorthodox, or worse as politicizing and compromising scientific neutrality in research, many times the failure to heed warnings by journalists and whistleblowers allowed corporate deviance to continue until a crisis point, and ignoring these accounts again, for fear of politicizing science, would only serve to further mask corporate harm and wrongdoing (Tombs and Whyte 2007: 9).

Another unique characteristic that influences the methodology employed by corporate crime researchers is the fact that most corporate crimes are routine events (Tombs and Whyte 2007: 9); that is, the vast majority of corporate crimes do not involve a death or severe violence, so they are rarely investigated, and if investigated are not seldom newsworthy events (Tombs and Whyte 2007: 9). With this in mind, GM’s failure to recall dangerous vehicles must be understood as an atypical corporate crime, and I do not, and cannot, suggest that this particular case is representative of corporate crime generally. I will, however, identify key themes present in this case study and juxtapose them with the themes from other case studies on corporate crime and deviance, to allow for debate regarding the causation and prevention of corporate crime. Overall, this thesis will add to the gamut of corporate crime literature that attempts to pull corporate crime from the peripheries of the criminological discipline, and make visible the crimes of corporations and powerful organizations.
Understanding Crime and Corporate Crime

Regardless of the marginal status of corporate crime within the broader fields of criminology and socio-legal studies, an important body of work that examines corporate harm and wrongdoing still exists. The scholars who constitute this group of corporate criminologists draw their conceptual inspiration from critical socio-legal scholars who problematize conservative, consensual approaches to crime and deviance which take the individual and existing criminal laws as their objects of inquiry. Critical criminologists, in contrast, argue that there is no ontological reality to crime (Hulsman 1986), and that it is produced, for the most part, to further the interests of political and economic elites (Snider 1987). This problematization of the conceptual underpinnings of crime and the criminalization process has formed the intellectual cornerstone of critical studies about corporate harm and wrongdoing.

Edwin Sutherland is widely recognized as the pioneer of the sociology of corporate crime, in part, because he was the first to define it as “all offences committed by a person of respectability and high social status in the course of his [sic] occupation” (Snider 1993: 8; Sutherland 1940: 1). In his 1940 article *White-Collar Criminality*, Sutherland argued that “crime is in fact not closely correlated with poverty or with the psychopathic and sociopathic conditions associated with poverty, and that an adequate explanation of criminal behavior must proceed along quite different lines.” For Sutherland (1940: 2), consensual individualistic theories of causality were biased because they held a narrow view of what constituted crime and excluded other antisocial behaviour. In essence, by expanding the definition of crime to include law-breaking acts such as the misrepresentation of financial statements, bribery, tax fraud, and
malpractice (just to name a few), Sutherland initiated the study of deviance by respectable elites (Snider 1993; Sutherland 1940).

Sutherland’s expansion of crime beyond the confines of traditional criminalized offences was not uncontested by other academics in the field, and Paul Tappan (1947: 97), for example, argued that “the notion of antisocial conduct [was] useless for the purposes of [criminological] research, even for the rawest empiricism.” For Tappan (1947), socio-legal scholars needed to anchor their research to the law because, despite the law’s malleability and impermanence, it does not simply appear by accident, but is the embodiment of a social consensus. Moreover, if criminological studies were not grounded in officially proscribed legal definitions (for example, the legal differentiations between criminal and administrative offences), Tappan (1947:97) argued that the study of crime would reach a conceptual dead-end, and researchers would inevitably be forced to conclude that because of a lack of standards in determining criminality, the criminal few cannot be defined, and thus criminality would be unascertainable.

In effect, both of these scholars’ conceptions of corporate crime were limited. For Tappan, his normative understanding of crime ignored the ability of social elites to construct the definitions of crime and the rules that govern their own behavior: to him, crimes were the consensual product of the social collective, unaffected by the power differentials inherent to class, race and gender. Sutherland, on the other hand, anthropomorphized corporate crime by viewing the criminal actions carried out by corporations as being attributable to the rational calculations of the individual actors within the corporation – the individuals, not the organization.

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4 While Sutherland coined the term “white-collar crime” others before him had also demonstrated the harmful actions of social elites. Pioneers of sociology like Marx and Engels, muckraking journalists in the late nineteenth century United States, and the criminologist Wilhelm Bonger all demonstrated that antisocial behaviour was not contingent on class (Snider 1993:8). Instead, what this diverse group of social analysts understood was that because the capitalist class effectively controlled the political state, the deleterious actions they pursued to create surplus wealth were not included in the criminal law, and therefore, not officially proscribed as criminal (Snider 1993: 9).
or economic system, were criminogenic (Bittle 2012: 44). Thus, by individualizing his analysis in this way, Sutherland missed the organizational and socio-economic factors that enable corporate criminality (Bittle 2012:44). In essence, a nuanced understanding of corporate crime would move beyond individualized theories of causality, taking account of the complex structural matters that make corporations criminogenic (Bittle 2012: 45).

In contrast to Tappan and Sutherland, critical conceptualizations of corporate crime attempt to overcome individualistic conceptualizations of corporate harm by problematizing organizational and structural aspects of society: namely, the corporation, the market, and the profit pressures of capitalist accumulation (Bittle 2012: 44; Glasbeek 2002). To do this, some critical left socio-legal scholars, like Pemberton (2015), have attempted to broaden the definition of crime by using harm as a criminological barometer, and included unsafe legal acts like the dumping unsafe products into the markets of developing countries, or the widespread production and sale of tobacco, within definitions of crime (Snider 1993: 12). While these acts certainly reside beyond traditional understandings of crime, and differ considerably from Sutherland’s definition of white-collar crime, it is argued that they are similar to traditional crimes by the substantial harm (physical, financial, or moral) they cause to victims, and therefore, must be seen as criminal (Snider 1993: 13).

Using harm as the litmus test for criminality is not without its problems. Specifically, Snider (1993) argues that the conceptual instability of harm, a characteristic that makes its use desirable in the first place, can be plagued by individual perception. For Snider (1993: 13) there is the potential for some to claim “that they are personally harmed every time a teenager in the next county puffs on a marijuana cigarette, whenever a woman has an abortion, or whenever the name of the Christian God is taken in vain.” Defining any act that harms another person or group
as criminal, would capture nearly every conceivable human action within the scope of criminological study, only obscuring the immense harm caused by corporate crime (Snider 1993:13). In effect, using harm broadly to define criminality is susceptible to co-optation by those groups and individuals with the greatest amount of political capital, and might increase inequality under the law rather than reduce it. Thus, the problem for critical scholars centres on their ability to conceptualize crime in such a way that it is broad enough to include the crimes of corporations and powerful elites, but not so broad that corporate crime studies can be explained away as nothing more than perceptual disagreements.

It is in this vein that Pearce and Tombs (1998:107-110) define corporate crime as:

Illegal acts or omissions punishable by the state under administrative, civil or criminal law which are the result of deliberate decision making or culpable negligence within a legitimate formal organisation. These acts or omissions are based in legitimate, formal, business organisations, made in accordance with the normative goals, standard operating procedures and/or cultural norms of the organisation, and are intended to benefit the corporation itself. By making reference to omissions, Pearce and Tombs remove the burden of proving both *actus reus* (the act) and *mens rea* (intent) in order to demonstrate that a crime has occurred – a task made difficult by the organizational complexity of corporations (Bittle 2012; Tombs and Whyte 2007; Pearce and Tombs 1998). In essence, the definition proposed by Pearce and Tombs, and that which will act as the definition of corporate crime for this research, broadens the criminological lens enough to incorporate General Motors’ harmful acts of omission, and a range of other acts, but is limited to acts proscribed by law as illegal, which prevents the definition from encompassing an infinite range of behaviours. Overall, it is important to point out that definitional debates about corporate crime are much more than issues of semantics. After all, the way one defines corporate crime impacts the way in which it is measured, prevented, regulated, and represented (Pearce and Tombs 1998: 105).
Thus far, I have discussed corporate crime as if it were a homogenous entity, when in fact corporate crime research is as diverse as the research on street crime. Corporate crime can be separated broadly into financial and social crimes, with each category being subdivided into more specific categories (Snider 2001; Snider 2000). Financial crimes separate between competition/combines offences and frauds against the market, while social crimes involve occupational health and safety crimes, crimes against the environment, and the production and sale of unsafe products (Rosoff, Pontell and Tillman 2004; Snider 2000). This thesis, with its focus on the GM ignition switch recall, falls within the unsafe products category of social crimes.

Regulating Corporate Crime

The history of corporate crime control can be most effectively viewed as a bifurcated model: the state attempts to either assimilate corporate crime into the criminal law by amending the criminal process to allow for the criminalization of corporate offenders, or the state differentiates corporate deviance from street crime by constructing a separate regulatory framework (Bittle 2012; Tombs and Whyte 2007). Traditionally, states have chosen to differentiate corporate crime from street crime, rather than assimilate corporate offences within pre-existing criminal law (Bittle 2012; Tombs and Whyte 2007). In other words, in contrast to street crime where the state employs fully its monopolization of violence, when corporations are involved charges are rare, and punishment even rarer.

While states have traditionally opted for an assimilatory approach to corporate crime, I do not wish to suggest that the regulation of corporate crime has been static. On the contrary, Sally Simpson (2002) argues that in the United States there have been three waves of regulation. The first wave, which spanned from the 1890s to 1920s, and corresponded historically with the
progressive era of American history, came about as a result of the damaging effects of turn-of-the-century laissez-faire capitalism (2002). This period was characterized by social trepidation about the rising prevalence of monopolies, unhealthy working conditions, and other health hazards, and eventually led to the establishment of federal regulatory legislation with narrow mandates intended to improve health or prevent monopolization – namely, the Sherman Antitrust Act, the Food and Drug Act, and the Federal Trade Commission Act (Simpson 2002: 80).

However, with the Great Depression of the 1930s, public support for liberal capitalism began to fade as citizens blamed commerce and the excesses of capitalism for the dismal social conditions imposed upon the masses (Simpson 2002: 81). Unlike the previous periods, the Great Depression created social conditions that allowed for greater regulation of capitalism to be possible, and this sentiment was embodied in Roosevelt’s New Deal, which created new regulatory agencies with the power to regulate financial and business practices such as: the Federal Communications Commission, the Securities and Exchange Commission, the Federal Deposit Insurance Corporation, the National Labor Relations Board, and the Civil Aeronautics Board (Simpson 2002: 81). While the safety of industries and their products increased during this period, many criticized the state and these agencies for not doing enough to quell dangerous business practices (Simpson 2002: 82).

Lastly, Simpson (2002) argues that from the 1960s to the 1970s a third wave of regulation emerged and tried to limit the human costs of capitalist production. During this period legal reformers set out to establish regulatory agencies that would be less susceptible to capture by the corporations they were tasked with regulating (Simpson 2002: 82). Congress was able to pass a wide-array of statutes that focused on reducing harm to consumers and the environment, including the Environmental Protection Agency, the Equal Employment Opportunities
Commission, the Occupational Health and Safety Administration, the Consumer Product Safety
Commission, and the National Highway Traffic Safety Agency. Despite the breadth of this
regulatory wave, Simpson (2002: 82-84) argues that these regulatory efforts were plagued by an
overreliance on legal procedure (a claim rarely used to criticize street crime!), which over time
served to undermine overall safety, unite corporations against the state, and justify deregulatory
amendments to the law.

Absent from Simpson’s regulatory history is a discussion of the impact of corporate
resistance during and after every regulatory wave. Throughout the history of safety crimes, for
example, corporate managers and other actors representing the interests of capital have
consistently argued that safety improvements are too expensive, impede the agency of managers
to make the right decisions for production, and provide workers and unions with excessive
control of their working conditions (Bittle 2012: 48). For example, Snider (1993: 104) argues
that when the Ontario Factories Act of 1884 was introduced the business community did not
hesitate to openly and vociferously attack what they saw as overly intrusive controls of their
workplaces: the limiting of the work week to 60 hours, the prohibition of child labour (boys
under 12 and girls under 14), the establishment of an (unpaid) lunch break, accessibility to
toilets, among other things. Taken as a whole, corporate regulation has never been without
resistance from corporate actors; regulation has always been partial and temporary (Snider
1993).

The Two Schools of Regulation: Punishment and Compliance

Simpson puts forth her history of corporate regulation in order to demonstrate the
superiority of compliance models of corporate regulation to punishment models. In essence,
Simpson (2002) argues that using the criminal law or harsh administrative regulation is
counterintuitive, and works to increase the likelihood of corporate offending rather than reduce it. In particular, when faced with strict penalties (criminal or otherwise) corporations will adopt a tit-for-tat legal strategy to undermine the effectiveness of the law and then lobby for deregulation, thereby subverting the state’s regulatory capacity entirely (Simpson 2002). Instead, what Simpson (2002) and other compliance scholars argue is that corporations are willing to cooperate with regulators and that persuasion, education, and self-regulation, instead of punishment, are more effective means to curtail corporate harm (Bittle 2012; Gray 2006; Pearce and Tombs 1990).

Critical scholars, in contrast, argue that corporations are (by law!) profit maximizers; thus, corporate executives routinely break the law to increase profits or avoid losses, and will not self-regulate without the threat of punitive laws (Bittle 2012: 51). In reaction to the compliance school claim that punishment simply does not work, punishment scholars advance several rebuttals of the compliance school. The first is that the arguments made against punishment are purely hypothetical, since punitive legislation has never existed – elites have always employed their social, political, and economic power to avoid harsh criminal penalties (Bittle 2012:51). For punishment scholars, the compliance school conflates what “is” with what “ought to be” by describing the dominance of regulatory compliance (the “official” doctrine of many western states), rather than questioning its assumptions and dominant status within social policy (Tombs and Whyte 2007: 155-156). Simply put, compliance scholars implicitly assume the legitimacy of the capitalist system and the illegitimacy of it being policed (Pearce and Tombs 1990: 429).

Their second critique is the failure of the compliance school to recognize how concentrations of power within corporations work to undermine and prevent regulatory efforts by the state (Tombs and Whyte 2007: 156). Although some compliance studies take the effects of
broader structural phenomena on regulation into account, these factors are, for the most part, relegated to the periphery – that is, they become one of a range of secondary issues that constitute the regulatory landscape. As a result, the immense power of corporations is ignored and the tensions inherent to regulation are seen as peripheral issues, instead of defining characteristics. It is not surprising, then, that compliance scholars see corporations as important stakeholders to be included in the regulatory process, rather than opportunistic miscreants worthy of punishment (Tombs and Whyte 2007: 156). Furthermore, by ignoring the tensions inherent in regulation, compliance scholars gloss over the important resistance movements by workers and citizens that have secured meaningful regulations, and their substantial (albeit partial) legislative victories at local, national, and international levels (Tombs and Whyte 2007: 157; also Snider 1987). In essence, compliance advocates see the interests of corporations as congruent with the goals of the state and society at large.

Lastly, because compliance scholars employ this narrow view of the relationship between workers, businesses, and regulators, the consensus that their claims are built upon is largely fictitious (Tombs and Whyte 2007: 157). That is, they fail to take heed of growing public demands that corporations and their managers be held accountable for their deviant behaviour (Tombs and Whyte 2007: 157). Perhaps more importantly, the assumption that the vast majority of corporations are law abiding and responsible ignores the fact that corporate offending is severe and ubiquitous, and that regulation only becomes feasible after corporations cause immense social, economic and/or environmental harm (Tombs and Whyte 2007; Snider 2007). As a consequence, compliance scholars not only miss how the pressure to maximize shareholder value can be at odds with the safety and security of employees, consumers and markets, but also
how regulatory agencies can be captured by the interests of business, effectively nullifying the preventative capacity of regulations (Bittle 2012:52).

To briefly summarize, the compliance school counsels regulators to accept minor violations of the law in the belief that building a cooperative rapport with corporations will reduce offending in the long run. Punishment scholars, on the contrary, favour passing and enforcing strict laws with the capacity to deter corporations from committing harmful acts. Central to this debate are disagreements about the scope of corporate criminality, with compliance scholars viewing corporate crime as the result of a few recalcitrant individuals, and punishment scholars viewing corporations as amoral calculators whose activities routinely harm people, markets and the environment when necessary to maximize profits (Bittle 2012: 52).

Ultimately, this thesis will argue that the legal distinctions between corporate crime and street crime obscure the immense harm caused by corporations. But furthermore, it will argue that this distinction is influenced by the concentration of power within society, and that this concentration has only grown with the rise to dominance of neoliberalism. Thus, this work can be seen as contributing to critical socio-legal studies of corporate harm and wrongdoing.

**Outline of Chapters**

This chapter has reviewed the dominant perspectives on corporate crime and its regulation, paying particular attention to safety crimes, illegal acts that endanger employees, consumers and the public. In the second chapter, I focus on the political, economic, social and cultural shifts that occurred throughout the history of the American automobile industry, tracing the development of the automobile industry through four distinct periods: the introduction and growth of the auto industry that culminated with the rise of the Ford Motor Company; the

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5 In fact, compliance scholar Sally Simpson (2002) argues that regulatory capture can help deter corporate crime by demonstrating to corporations that administrative law is malleable, thereby nurturing cooperation and compliance.
styling turn, the concomitant rise of General Motors, and the birth of social movements for automobile safety; the creation of the scientific study of automobile travel and the ensuing resistance to market regulation; the introduction of federal regulation and the transformation of the National Highway Traffic Safety Agency; and lastly, the significance of the Transportation Recall Enhancement, Accountability and Documentation Act for contemporary automobile regulation.

In Chapter three, I set out to develop a case history of the GM ignition switch recall, and situate these events within the broader history of GM. Following this, I examine the key claims and recommendations advanced by the Report to Board of Directors of General Motors Company Regarding Ignition Switch Recalls, arguing that while the report deviates from most other accounts of corporate crime by focusing on the organizational production of corporate crime, it nonetheless remains trapped in a pluralist legal framework that neglects to question the desirability and utility of the corporation and capitalism.

In the fourth Chapter I will demonstrate how the state’s response to General Motors has followed the typical response to corporate crime. Moreover, I argue that, in order to be effective, responses to corporate crime must move beyond traditional conceptualizations of justice as punishment – embodied by some scholars of the punishment school – and attempt to transform the criminogenic social and organizational conditions of the corporation, and capitalism more broadly. To prevent my discussions from becoming overly theoretical or utopian, I critically examine the transformative potential of worker self-directed enterprises with respect to the GM ignition switch recall, and social safety crime more generally. Ultimately, this thesis attempts to illustrate how power in both the law and society works to define the harmful actions of
corporations and the powerful as non-criminal, perpetuating the immense harm wrought by corporations.
Chapter 2

How Did We Get Here?

A History of Automobile Production and Regulation

In early February of 2014 General Motors (GM) issued a recall for Chevrolet Cobalts, Saturn Ions, Pontiac Pursuits, and other models that contained a faulty ignition switch (Valukas 2014); since then the number of cars recalled by GM has increased to over 64 million vehicles worldwide (Bunkley, 2015). Although the sheer volume of recalls is problematic in itself, the fact that GM knew about the defective ignition switch as early as 2005, but chose not to issue the recall, speaks to a deeper problem in the automobile industry (Valukas 2014). These defective switches were known by GM to cause vehicles to inadvertently stall while moving; however, unbeknownst to GM at the time, these moving stalls also caused vehicles to deactivate their airbags (Valukas 2014). As a result of GM’s negligence 90 people have died including two Canadians, and hundreds more have been injured (Gardner 2015; Anderson and Subramaniam 2014).

This chapter will focus on the political, economic, social, and cultural shifts that occurred throughout the history of automobile industry that led to the development of automobile regulation. In order to provide a semblance of linearity to a history as diverse and complex as automobile regulation, I have separated this chapter into four significant periods in automobile safety regulation: first, I will discuss the importance of the introduction of the first American automobile by the Duryea brothers and Henry Ford’s revolutionary use of standardization and assembly lines, and their impact on automobile regulation; second, I will demonstrate how the introduction of styling by GM and the rise of the scientific study of automobile collisions culminated with the National Traffic and Motor Vehicle Safety Act in 1966; third, I will trace the
transition of the National Highway and Traffic Safety Agency from a proactive rulemaking agency to a reactive recall oriented agency; and finally, I will describe the impact of the Transportation Recall Enhancement, Accountability and Documentation Act on automobile regulation and the current regulatory situation. Ultimately, this chapter will help situate the GM ignition switch recall within the broader, complex history of automobile regulation.

From the Duryea to the Ford Family (1893-1927)

In 1893 Charles E. and J. Frank Duryea attached a small internal combustion engine to a modified horse carriage and sparked a revolutionary change in the transportation system in North America (Eastman 1984). Compared to horse-powered vehicles, the automobile provided a superior level of efficiency and was quickly adopted by the American public. In only a few decades road transportation had been completely converted from animal power to mechanized power, and the automobile had established itself as the preferred means of transportation for Americans (Eastman 1984). The jubilation conferred on the automobile was so intense that in 1912 Gouverneur Morris proclaimed in an article featured by Collier’s that “God gave us the automobile: that in the short life which is ours we may see a few more hills and valleys, and few more fields of flowers…” (quoted in Eastman 1984: ix). The enthusiastic reception that the automobile received in the United States is not surprising considering how well the benefits of independent travel synchronized with the liberal cultural ideals of the American public. That is, the automobile offered affordable, individualized travel to an upwardly mobile population (Eastman 1984).

These motor carriages were, however, unreliable and quite unsafe; early twentieth century manufacturing techniques did not use uniform parts (mostly because the craftspeople who made the parts did not share a standard gauge system), which caused the dimensions of a
standard vehicle design to shift, resulting in an unreliable and dissimilar product: no two vehicles were the same (Womack, Jones and Roos 1991; Eastman 1984). Because of the problems inherent in early automobile manufacturing techniques, it is not surprising that American automakers, after a short period of manufacturing motorized carriages, switched to a different automobile design. What is surprising, however, is that American automobile companies chose to adopt the French design, introduced by the Panhard and Levassor Automobile Company (P&L), because the American version was in many respects a superior design (Womack, Jones and Roos 1991; Eastman 1984). In particular, the motor carriage, which resembled a horse-drawn cart, steered by a tiller, and powered by a small horizontally mounted engine, offered superior visibility for the driver, was more efficient to operate, offered better weight distribution and was a safer design than the P&L automobile (Eastman 1984: 1). Yet, despite the benefits afforded by the Duryeas’ design, the P&L design, which placed a driver in a cabin behind the engine who controlled brakes and gas pedals, a steering wheel, and a gear selector, was adopted early on by the automobile industry and has been essentially unchanged since (Eastman 1984: 1). If the motor carriage was a superior design, then why was the P&L design accepted en masse by the auto industry?

Joel Eastman (1984:1) argues that the adoption of the P&L design was favoured because of its preferable style and marketability. At that time P&L was the world’s leading car company and its design, unlike the Duryea motor carriage, completely shed itself of the horse-powered image, and was distinctly automotive (Womack, Jones and Roos 1991; Eastman 1984). Simply put, the P&L design exuded an image of technical superiority to consumers and was therefore the more profitable, and preferred option for the captains of the auto industry.6

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6 It is important to note here that the Panhard design was not a completely defunct design. The Panhard design allowed more than one occupant to travel, its steering wheel was an improvement to the Duryea’s tiller, the weight
Despite more market competition than today (Nader 1972: 214), the American automobile industry did not deviate from the basic automobile design introduced by P&L. Yet, regardless of the paucity of stylistic change, from the creation of the Duryea’s motor carriage in the late 19th century to the late 1920s, engineering in the American automobile industry experienced a renaissance in technical innovation (Nader 1972). In 1908, Henry Ford introduced the Model-T, his twentieth model of an automobile with what became perhaps the most replicated innovation in automobile production: the interchangeability of parts (Womack, Jones and Roos 1991: 25). By making parts to exact gauge specifications, Ford was able to reliably produce massive fleets of cars in less time,\(^7\) decreasing the cost of each vehicle and expanding the market by allowing less affluent individuals to become automobile owners (Womack, Jones and Roos 1991: 27). Ford’s introduction of the assembly line in 1913 further reduced the time required to manufacture a vehicle,\(^8\) and thus, allowed car ownership to become widespread across social classes (Womack, Jones and Roos 1991: 26).

Technical innovations were not limited solely to the production methods of automobiles, however, and the two decades that followed Ford’s manufacturing innovations included the strengthening of the chassis and passenger cabins and the redesign of the suspension system, both of which provided safer and more stable travel (Nader 1972: 214). The power plant, drive train, and running gear also reached technical maturity at this time, and became dependable automotive parts (Nader 1972: 214). The focus on improving mechanical dependability was underlined in 1909 when Henry Ford announced that “any customer [could] have a car painted

\(^7\) After standardization was implemented the average amount of time a worker spent working on a vehicle decreased from 514 minutes (8.56 hours) to just 2.3 minutes (Womack, Jones and Roos 1991).

\(^8\) Ford decreased the total time a worker spent on an individual car from 2.3 minutes before the introduction of the assembly line to 1.19 minutes after (Womack, Jones and Roos 1991).
any colour that he want[ed] so long as it [was] black” (Ford 1922: 83). What was significant here, was that Ford’s changes to production and emphasis on improvements in engineering was profitable. That is, unlike with the adoption of the P&L design, which relied on style to procure profits, Ford was able to increase profitability while also increasing the reliability of vehicles (Nader 1972).

The improvements made to the fundamental aspects of the automobile (chassis, suspension system, passenger cabin, etc.) at this time made the automobile safer. Indeed, Marshaw and Harfst (1990) argue, concerns about safety became, in the early years, a guiding principle for the industry.\(^9\) This was important because social conceptions of public space and access to streets were very different than today, and pedestrians in the early 20\(^{th}\) century, who did not have the same experience with automobiles as they do today, were often struck and killed by motorists (Norton 2008). The rising number of deaths from automobile accidents gave birth to the first critics of the automobile who began to question the social utility of these new machines (Marshaw and Harfst 1990: 43; Eastman 1984: 124). In fact, in 1902, one journalist for *Horseless Age* called for not only the regulation of roads, highways, and streets, but also for the regulation of automobile production and design (Eastman 1984: x). Thus, in order to ensure the future success of the automobile industry, manufacturers had to build safer and more reliable vehicles – something that Ford achieved with his Model T in 1908, and honed in the following decades.

This openness to federal regulation was not widespread in a nation known for its historical resistance to federal powers. Yet, despite this entrenched skepticism of federal

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\(^9\) Marshaw and Harfst (1990) outline four guiding principles, or what they call the four commandments, of automobile law: one, legal rules should facilitate, not impede, automotive travel; two, the law should make safety a central concern; three, legal regulations should deter bad driving and promote good driving; four, Federal power should support, not challenge, the superior knowledge of automakers and their products.
regulation, the United States government had taken steps to make the federal regulation of automobile safety possible before the Duryea brothers had even finished building their first automobile. Two acts in particular, the Interstate Commerce Act (1887) and the Sherman Antitrust Act (1890), were instrumental in overcoming historically entrenched Madisonian resistance to federalism (Cullen et al 1987: 124). While neither was aimed at the automobile industry, both acts responded to public frustration with the immense power held by corporate behemoths. Specifically, the Interstate Commerce Act attempted to regulate the railways by creating a federal agency, the Interstate Commercial Commission, to regulate a broad range of transportation issues, while the Sherman Antitrust Act made corporate acquisitions that restrained trade illegal (Cullen et al. 1987: 124-125).

While the attempts to federally regulate the railway and oil industries by the Interstate Commerce Act and Sherman Antitrust Act failed to achieve their intended goals (Snider 1993; Cullen et al. 1987), they nonetheless mark an important point in the regulation of corporations because they laid the groundwork for the eventual regulation of automobile travel in the 1900s, and the industry in 1966. Both acts gave the American federal government the power to regulate private industry, and although the powers provided by these acts were weak, they helped to establish a discourse that accepted the notion that private businesses could be regulated by federal agencies. This fundamental shift in American political reasoning helped to reconstitute conceptions of federal power, and made the calls for regulation by grassroots safety groups possible.

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10 Marshaw and Harfst (1990) argue that throughout American legal history a strict understanding of the role of the Federal government was adhered to. For essentially one hundred years regulation of industries and individuals was based off of Madisonian concepts of the role of government set out in the Bill of Rights, which stressed the importance of individual rights, limited governmental powers, separations of power, judicial protection, and state and local autonomy (Marshaw and Harfst 1990).
While some safety critics had pointed out the dangers and rising death toll of mechanized travel quite early in the history of the automobile, it was not until 1914 that the National Safety Council emerged as the first organized effort to address traffic safety (Eastman 1984). The National Safety Council has a somewhat complicated history: its roots can be traced back to the Association of Iron and Steel Electrical Engineers who, at the First Co-operative Safety Congress (1912), sought to form a national safety organization to promote safety in American industries (Tenney 1962: 21). To reduce workplace accidents and deaths, the council developed slogans and banners to be displayed in manufacturing plants and other workplaces; accident rates declined, so the council members assumed their materials had been effective (O’Connell and Myers 1966). Furthermore, because of this perceived success, the Co-operative Safety Congress broadened its scope in 1914 to include public safety issues and switched its name to the National Safety Council (NSC) (Tenney 1962).

In 1915, when the NSC began developing a strategy to address public safety it was still deeply immersed in industrial safety strategies, and therefore took the safe use of machines in the public sphere as their focal point (Tenney 1962). Moreover, since automobile deaths constituted one of the most important social issues at that time, and because the mechanical nature of automobiles fit well with the NSC’s industrial history, automobile safety became the council’s primary public safety concern (Eastman 1984: 120-121). However, unlike the manufacturing plant or shop floor, strict control of individuals by a safety engineer could not be achieved in public space. So, to address this problem, Julien Harvey, an esteemed member of the council, introduced a three-pronged public safety strategy known as the Three E’s: engineering, enforcement, and education (Tenney 1962: 23-24). In practice, engineering referred to the design of safer streets, highways, and vehicles, enforcement meant the development of more
effective laws and regulations, and education sought to develop a strategy to teach, mainly young drivers, how to drive safely (Tenney 1962: 24).

The NSC’s Three E’s strategy was a public awareness success that quickly became a routine part of public discussions about traffic safety (Eastman 1984; Tenney 1962). Within ten years, in 1924, then Secretary of Commerce Herbert Hoover held the First National Conference on Street and Highway Safety, and made engineering, enforcement, and education the guiding principles for state intervention into the traffic safety problem (Department of Commerce 1924). However, while the conference included a wide-array of stakeholders from various organizations,\(^\text{11}\) and expressed from the outset a commitment to a multidisciplinary approach to automobile safety and enforcement, the lack of uniformity in traffic regulations, became the key focus of the conference (Department of Commerce 1924). Specifically, Secretary Hoover in his opening address pointed out that “[he] could be arrested and convicted on a dozen counts between Washington and New York [even] if [he] carefully followed either the Washington or New York traffic regulations” (Department of Commerce 1924: 10).

Although no clear strategy for educating drivers was implemented,\(^\text{12}\) and engineering was strictly limited to the environment outside of the vehicle, the seeds of automobile regulation were planted. The conference called for the licensing of all drivers of a suitable age (determined by each State), introduced penalties for reckless driving that included the revocation of licenses, mandated that State laws should prohibit municipalities from establishing speed limits lower than

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\(^\text{11}\) The organizations invited to attend the conference were: the American Automobile Association, American Electric Railway Association, American Mutual Alliance, American Railway Association, Chamber of Commerce of the United States, National Association of Taxicab Owners, National Automobile Chamber of Commerce, National Bureau of Casualty & Surety Underwriters, and the National Safety Council (Department of Commerce 1924).

\(^\text{12}\) The conference’s entire discussion of education was contained to a single sentence paragraph that asserted the importance of incorporating driver’s education into various educational institutions: public, private, parochial, night, vocational and even citizenship schools (Department of Commerce 1924).
15 miles per hour, established a prima facie speed limit of 35 miles per hour in rural areas, and provided guidelines for conducting accident investigations and obtaining statistical data (Department of Commerce 1924).

Yet, while the NSC and First National Conference on Street and Highway Safety helped to establish preliminary regulations, it was not a complete success. In formulating the Three E’s strategy, Harvey and the NSC biased their analysis to favour an individualistic conceptualization of automobile accidents by assuming, at the outset of their inquiry, that all accidents were caused by human error. This assumption was supported by the only available data at that time, motor vehicle accident reports, which assumed all accidents were caused by some breach of the law (Eastman 1984). In fact, Eastman (1984: 121) argues that because of the focus on human negligence in the Three E’s strategy, the view that automobile accidents occurred because of a few pathological drivers became institutionalized, which masked the culpability of the automobile industry in the traffic safety problem and helped to delay the regulation of automobile design.

To summarize, in the early stages of automobile production Henry Ford and his main competitors were able to increase profits through mechanical improvements (Nader 1972). The fast pace at which automakers were improving automobile safety made it difficult for interested groups or politicians to wrestle control of automobile design from the industry without appearing to be impeding the natural progress of the market (Lee 1998). The improvements made to automobile safety at this time should not, however, be viewed as the result of corporate benevolence, or free market competition. Making cars more dependable, efficient, and safe, was consonant with profitability. During this period, the profitability of individual companies and the very future of the industry depended on its ability to produce a reliable vehicle for independent
transportation, and these improvements to reliability improved vehicle safety (Marshaw and Harfst 1990). Somewhat coincidentally, because the industry made significant strides in improving the quality and dependability of vehicles, consumers and safety advocates began to assume that the auto companies were predisposed to make vehicles as safe as possible, and therefore looked at factors other than the automobile to resolve the growing traffic safety problem (Marshaw and Harfst; Eastman 1984). Moreover, given the anti-federalist political sentiment at that time, this focus on the driver fit well with the dominant cultural understandings of automobiles, accidents, and the role of the government.

**Style, Science, and the Emergence of Automobile Regulation (1927-1966)**

Throughout the high-tide of automotive improvement, Ford enjoyed a considerable lead in market share, but, in 1927, Ford lost this lead when it was bypassed by General Motors (Nader 1972). That year, General Motors tried something radically different: they introduced the first styled car, the 1927 La Salle (Nader 1972). As a result of this defeat, Henry Ford introduced his re-styled Model A, and the era of styling was born.

At the outset of the styling era, the stylist’s activities were quite basic and typically revolved around simple aesthetic changes to the automobile’s trim and colour, and occurred well after major aspects of the vehicle, like the size, shape, and materials, had been decided on by engineers and approved by management (Nader 1972). Charles Jordan, a pioneering stylist, believed the rise of styling came about when the auto industry realized that technical improvements were easily matched by competitors and management needed to find a new way to differentiate their vehicles from their competitors, the easiest and most cost effective way to accomplish this was through styling (Nader 1972: 216). However, Ralph Nader (1972) and Joel
Eastman (1984) argue that the rise of styling occurred mainly to increase sales numbers and profit margins and became institutionalized through the annual model change.

Before Ford revolutionized automobile production, car manufacturers struggled to overcome the seasonal nature of the automobile market. So, beginning in 1900, automakers began using car shows in the winter months to showcase mechanical improvements and generate consumer interest (Eastman 1984). However, Henry Ford’s introduction of the Model-T crowded-out the need for the annual model change by providing an inexpensive, mass-produced automobile that could meet the demands of most people and sustain year round sales (Eastman 1984). However, by the late 1920s, the Model T and competing versions had saturated the low-priced automobile market, and manufacturers needed to find a new way to spur sales. But since automobiles typically lasted for more than ten years, automakers needed to find a way to convince drivers to abandon their old cars for new ones before it was necessary (Eastman 1984; Nader 1972). In order to convince drivers to leave their working vehicles behind, GM developed a strategy of planned obsolescence that built upon the annual restyling of vehicles (Eastman 1984; Nader 1972). The success of GM’s styling and planned obsolescence catapulted GM to the top of the auto industry, and soon all companies were implementing the annual model change through stylistic alterations.

Harley Earl, General Motors Styling Chief, was perhaps the most instrumental in reviving the annual model change and securing planned obsolescence. By adapting to the maturation of the automobile market, and creating a continuous cycle where each year’s new model made slight changes to the previous model, Earl was able to distinguish vehicles by age, and thus make them aesthetically obsolete (Eastman 1984: 28). In effect, GM was able to use the annual model

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13 The open top design of the motor carriage did not entice people to purchase automobiles in the winter months.
change as the catalyst for the replacement cycle, which saw their market share increase as they could command increased prices, and thus profits, for their restyled cars (Eastman 1984). The increase in market share and profits that GM realized from planned obsolescence not only reoriented their position in the automobile market, but also worked to shift GM’s focus, and that of their competition, from technology and engineering to style, allure, and aesthetic design (Eastman 1984).

The primary means to outdate previous models was accomplished through redesigning the body; however, while design changes to the body can offer functional benefits, the frequent and often drastic changes to the body allowed functionality to fall victim to flair (Eastman 1984; Nader 1972). While the basic P&L design remained, modifications quickly advanced beyond insignificant aspects of the vehicle, like colour and trim, to more fundamental aspects of the vehicle, like the chassis and hood, to allow for the full realization of the stylists’ creativity (Eastman 1984). Moreover, despite the ever-present spectre of the bottom-line, automobile producers would continuously invest in the extremely expensive process of replacing assembly line machinery, known as retooling, that was necessary for the incremental changes (Eastman 1984; Nader 1972).

However, simply using surplus capital to invest in retooling did not guarantee a high rate of return or profitability. For example, while GM’s profits and market share soared after they introduced styling in 1927, they did not achieve the same success two years later. In 1929, GM unveiled the radically restyled Buick which featured a slight roll below the belt line of the car, helping it earn the nickname of the “pregnant Buick” (Eastman 1984: 27). Consumers did not respond well to the car’s style, and this was reflected by poor sales. Over time, GM’s President and CEO, Alfred Sloan, became acutely aware of the risks inherent in seeking profit through
style, explaining that “General Motors, like other automobile companies, is obliged to spend millions of dollars to devise new products, which cannot, however, be sold until a long period of time has elapsed. Meanwhile the consumers’ taste, income, and spending habits may all have changed radically (Sloan 1972: 276). Another auto industry executive observed that year-to-year “consumers’ styling preferences shift unpredictably from round, to blunt [or] sharp, or gaudy to austere” (quoted in Eastman 1984: 27). Styling, while addressing the earlier problems of market saturation and low turnover, had created new problems for the industry.

The uncertainty of consumer reaction to design was not a problem that would last for long, however, as Sloan concocted an extensive market forecasting system that aimed at preventing styling mishaps. In 1935, the Chief Executives at GM, led by Alfred Sloan, set out to devise a new procedure for producing cars, whereby all new GM models would follow a predetermined pattern for obtaining and disseminating important information to various departments, so that the financials, market position, and engineering of each new vehicle could be determined before major investments into retooling had occurred (Sloan 1972: 277). One of the most important aspects of Sloan’s new market forecasting apparatus was the use of consumer focus groups to introduce “advanced styling ideas” (Eastman 1984: 27). The use of consumer focus groups for automobile design first appeared in the 1937 line of “dream cars;” since the public responded well to these new designs, GM went ahead with production and sped up the model changes (Eastman 1984).

Despite the elaborate system of market research developed by GM, the auto industry still found it difficult to overcome the uncertainty inherent in using style as the main conduit for profit maximization, and executives often had to rely on their instincts when making decisions. In fact, as late as 1968 a journalist in Business Week explained that “the biggest styling influence
comes from the gut reactions of executives who have spent a lifetime building and selling cars” (Eastman 1984: 28). However, what the Business Week article neglected to point out was the complex system of inter-corporation espionage that ensured a base level of stylistic uniformity throughout the industry (Eastman 1984: 29). By each company having informal contacts in competing companies, each company knew what the other was producing and could alter its designs so that they had competitive features (Eastman 1984). As a result of this competition, the nature and degree of a stylist’s designs were constrained by management’s trepidation about straying too far from the automotive herd, creating a strict status quo in the industry (Eastman 1984). In effect, what was becoming clear in the latter part of the 1920s, and certainly in the postwar boom, was that styling, with its ability to spur demand and draw higher price points, was becoming not only a synonym for profits, but the guiding principle of the automobile industry.

Incremental changes or alterations to a vehicle’s body shape, length, or trim colour may not seem to be problematic, especially to the average driver who has limited knowledge of automotive engineering. However, stylistic changes to the body like the elongation of hoods or the introduction of fins, and superficial alterations like the introduction of chromium trim, wrap around windshields, dashboard designs, and even the orientation of knobs on the instrument panel, could have harmful, even deadly consequences.

For example, in 1948 Cadillac’s introduction of tail fins on its new fleet of sedans gave its cars the characteristic panache that Cadillac buyers had come to expect (Nader 1972). Inspired by a Second World War fighter plane, the tail fin was a design success and was imitated throughout the automobile industry, but as the height and sharpness of the fin increased (it reached its apex in 1959), it became more and more unsafe: the sharp points of the fins were
hazardous for pedestrians and other motorists, and often resulted in injuries and deaths (Eastman 1984; Nader 1972).\footnote{A case in point, in 1964 a motorcyclist was travelling behind a dense line of traffic that was trying to adjust to the narrowing of a four lane highway to just two lanes, caused by highway construction (Nader 1972). In the confusion of construction and merging traffic a Cadillac made a sudden stop; with nowhere to go, the motorcyclist ran into the back of the vehicle and was hurled into the tail fin, resulting in a large cut from his chest to his thigh. In another case, a nine-year-old girl was killed by a Cadillac tail fin when she bumped into the car on her bike, and the tail fin pierced her body below the throat (Nader 1972).}

When profit maximization through styling began in 1927, it was met with some resistance from both consumers (who disliked drastic changes to a vehicle’s exterior design) and the industry (whose profits could be decimated by the fickle tastes of consumers). In contrast, by the 1950s, as consumer tastes became more predictable and internal resistance from corporate executives was quashed by steadily increasing profits, styling and the annual model change had become deeply entrenched values, if not official dogma, of the automobile industry. However, as manufacturers’ abilities to procure profits through styling matured, a new group of safety critics and legal reformers began to emerge who approached automobile accidents in completely different ways than the progressive safety reformers of the 1920s.

Unlike the National Safety Council, which relied on anecdotal evidence to show the success of their upbeat slogans and banners, this new group of auto safety critics was comprised of a diverse group of scientists and medical professionals who sought to reduce automobile deaths by ignoring the driver (Marshaw and Harfst 1990). Statistically speaking, automobile accidents appeared to be no different than other public health issues, so epidemiologists began framing car accidents within their scientific conceptual triad of host (those persons killed or injured in the collision), agent (the cause of the injury or death), and environment (the space where the host and agent came into contact) (Marshaw and Harfst 1990). By viewing automobile accidents in terms of host-agent-environment, rather than as a result of human error,
the epidemiologists’ attention shifted from the moments before the collision to the moment of host-agent contact and afterwards (what was commonly referred to as the second collision) (Marshaw and Harfst 1990; Nader 1972). While this may appear to be a relatively slight change of perspective, the implications of this new way of conceptualizing automobile accidents made possible the shift in regulation from the driver to the car (Marshaw and Harfst 1990).

The scientific study of automobile accidents can be traced back to Hugh De Haven, a war veteran and safety engineer, who became intensely interested in studying the ability of the human body to survive crashes after the Canadian “Jenny” he was flying collided with another plane 700 feet in the air (Nader 1972: 81). De Haven was the only one of four pilots to survive, and from that moment on he began conducting tests to see how much force the human body was capable of withstanding, and why (Nader 1972: 82). De Haven quickly came to see that the survivability of a crash is not solely dependent on the velocity at which impact occurs, but also on the distribution of forces (Nader 1972: 82). In fact, De Haven argued that “it is reasonable to assume that structural provisions to reduce impact and distribute pressure can enhance survival and modify injury within wide limits in aircraft and automobile accidents” (quoted in Nader 1972: 84). However, the dominant understandings of collisions at that time, which assumed that the forces involved in car crashes were too severe to survive and focused on driving behaviour instead, prevented De Haven’s work from gaining any traction outside of his own discipline (Nader 1972).

The United States’ entry into the Second World War created a socio-political climate that was more open to De Haven’s work, and De Haven was provided with a funding grant by the Cornell University Medical College to research the causes of airplane deaths (Nader 1972: 87). De Haven began his research from the perspective that a majority of deaths that occurred could
have been avoided – what he termed “survivable accidents” (Nader 1972: 85). Furthermore, after reviewing several fatal crashes, he found that the sharp edges in the cockpit, inadequate pilot and seat restraints, and protruding instrument panels, all posed fatal hazards during a crash (Nader 1972: 85). One of De Haven’s first attempts to make airplanes safer was his development of improved restraining equipment (seat belts and shoulder harnesses), and this technology was picked up by aircraft manufacturers during the war (Nader 1972: 85). When the Second World War concluded, De Haven had produced numerous articles demonstrating the survivability of airplane crashes, and had inaugurated the scientific study of airplane crashworthiness (Nader 1972: 85).

Building off his success with aircraft design, De Haven hypothesized that the same techniques for investigating airplane collisions could be applied to automobile collisions (Nader 1972). Furthermore, by the end of the 1940s Sergeant Elmer Paul of the Indiana State Police helped to substantiate De Haven’s hypothesis when, after analyzing fatal car crashes, he concluded that the collision of individuals inside the vehicle (what Paul termed the second collision) was responsible for most automobile injuries and deaths (Nader 1972: 86). Sergeant Paul established a system to investigate automobile collisions from a second collision perspective within the Indiana state police, and quickly established contact with De Haven’s Cornell crash injury research project (Nader 1972: 86).

Studying automobile collisions in this way had not happened in over 50 years, and De Haven’s project remained largely underfunded (Nader 1972). However, in 1951 the United States Air Force published a statistic that changed how the public viewed the importance of automobile collision research: the U.S. Air Force was suffering more casualties as a result of automobile collisions than from the Korean War (Nader 1972: 87). Automobile safety had been
revitalized as a public issue, and De Haven’s Cornell project received an eight year $500,000 grant in 1953 from the Armed Forces Epidemiological Board (Nader 1972: 87). With adequate funds, the Cornell project implemented a national data collection program that incorporated statistical data from twenty states and focused its research expressly on the second collision (Nader 1972: 87).

Military interest into automobile deaths did not only stop with the second collision, but actually helped to make scientific inroads for automotive safety in other ways (Nader 1972: 87). In 1954, Colonel John Paul Stapp of the U.S. Air Force attached four rocket engines to a giant sled, reached a maximum speed of 632 miles per hour, and stopped in 1.4 seconds, generating 40g of force onto his body (Nader 1972: 87). Daring as this experiment was, it served an important function for automobile safety research: Stapp conclusively demonstrated that the human body was capable of withstanding the incredible forces applied to it during a crash so long as the vehicle was designed to distribute the force evenly (Nader 1972: 87-88).

At the same time that De Haven and Stapp were making important strides in automobile safety, J.H. Mathewson and D.M. Severy were creating the third pillar of crash protection research: experimental crash testing (Nader 1972: 88). Mathewson and Severy used human-like crash-test dummies to measure the impact of different deceleration rates and vehicle impacts on the human body, and in 1954, they were able to conclude that there had been no improvements in automobile safety since the beginning of World War II (Nader 1972: 88). Much to the chagrin of the auto industry, Mathewson and Severy’s claims were further substantiated by De Haven and the Cornell group a year later (Nader 1972: 88). The importance of these results, and automobile safety research broadly, was that automobile safety proponents could support their claims with scientifically verified research. However, in order to understand why the scientific study of
automobile crashes was so important I must illustrate the auto industry’s long established tradition of resisting regulation over the production and design of automobiles.

Throughout the early history of the automobile, the auto industry did not have to aggressively resist regulation because the early safety reformers, such as the National Safety Congress, framed automobile safety in individualistic terms, which helped disguise the role of the automobile in the rising traffic safety problem. Working within this early conception of automobile collisions, which focused on the moments before the collision rather than the moments after, the automobile industry positioned itself as an important stakeholder in automobile safety. For example, Eddie Rickenbacker, founder of the Rickenbacker Motor Company, argued that “even though the maker builds the best and safest car in the world, still its safety is determined by the person who handles it” (Eastman 1984: 119). By positioning itself in this way, the automobile industry was able to reinforce the notion that the traffic safety problem was caused, not by the poor design of automobiles, but by the individual “nut behind the wheel” (Eastman 1984; Nader 1972). In order to perpetuate this individualistic understanding of automobile safety, the auto industry relied on one key argument: automobile producers did not have a duty to protect drivers because accidents constituted a transportation anomaly that existed outside the intended use of automobiles, and therefore, the solution for traffic safety was regulation of the driver, not the automobile (Eastman 1984; Nader 1972).

However, by the 1950s the Air Force Statistics on automobile deaths, and the research into the second collision and automobile design, had undermined the auto industry’s long held claim that they were not responsible for the rising death toll of automobile travel. In response, the automobile industry implemented a new strategy for resistance, which still maintained that automobile accidents were a rare phenomenon, but now used scientific discourse to illustrate that
the answer to automobile safety was to be found in the redesign of highways and the removal of environmental hazards. In fact, Dr. Laurence Hofstad, Vice-President of research staff at GM was convinced that “more progress can be made in traffic safety by emphasizing the relations between the driver, the signaling system, and the road, than by any undue emphasis on the car” (Eastman 1984: 119). By the late 1950s and early 1960s, as safety critics like John Keats and Congressman Kenneth Roberts were pushing for the enactment of guidelines for the General Services Administration’s (GSA) purchase of vehicles, GM had begun investing heavily into highway design research.

In 1958, accident injury statistics indicated that the 65 mile private road at the GM proving grounds was 25 times safer than public roads and highways (Nader 1972: 177). Kenneth Stonex, GM’s Chief Automotive Safety Engineer, inferred that the low accident rate at the proving grounds was owed to the design of the site: controlled access, one-way traffic, and fewer roadside obstacles (Nader 1972:177). Armed with this new theory, from 1959-1962, Stonex began redesigning the GM proving grounds, eliminating roadside hazards by digging up trees and rocks, softening sharp ditches, and moving the location of lamp posts, utility poles and parked vehicles, to achieve safe travel through environmental manipulation (Nader 1972). Stonex believed that all of this extensive work, if applied to the entire 41,000 mile American highway system, would save 18,000 lives each year (Nader 1972: 178).

Stonex, however, did not limit his research solely to highways outside of cities; he also called for the reconstruction of all urban streets (Nader 1972: 179). For Stonex, when one flew over a city the solution to urban traffic accidents was clear, “new roads [should] be built over the buildings in commercial districts and heavily congested residential districts so that the road pavement serves as the roof deck” (quoted in Nader 1972: 179). Stonex expanded on this idea
noting that “in central business districts, we might even have to think of horizontal tunnels through the buildings to carry automotive traffic, just as we have vertical tunnels to carry elevator traffic” (quoted in Nader 1972: 179). For Stonex and GM, the complete redesign of heavily congested urban corridors and the entire American highway system was a more reasonable solution to improve automobile safety than the regulation of automobile production!

But why was such an extensive project a preferred solution for the industry? Nader (1972: 179) argues that for GM and the rest of the automobile industry, investment in environmental redesign was much cheaper (for them) than redesigning automobiles. GM only had to hire a handful of engineers to crash test vehicles into various objects to demonstrate how an obstacle free road would increase highway safety, whereas regulating preproduction standards would require expensive new tooling processes for manufacturers, shrinking their profits as a result (Nader 1972: 179). Cost was paramount in the auto industry; for example, Ed Ragsdale, a former Buick employee explained: “the difference of just two cents per car doesn’t sound like very much – but at current production rates, two cents a car may mean $10,000 for the model run. Hence the cost decision has a great bearing upon all proposed changes” (Nader 1972: 40).15 Considering this, having the state pay for automobile safety through the redesign of highways and streets was a cost effective way to prevent state intrusion into, what was at that time, a completely unregulated market.

But the auto industry did not solely rely on in-house research to resist regulation, it sponsored numerous independent research projects and public discussion papers that focused on

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15 Often times this practice of shaving pennies has resulted in serious injury or death. In fact, there is an overwhelming number of examples where automobile companies have chosen profits over safety such as: the Buick Roadmaster’s O-ring failure (Nader 1972), the Chevrolet Corvair’s propensity for tuck-under (Nader 1972), the Ford Pinto’s exploding gas tank (Dowie 1994; Cullen, Maakestad and Cavender 1987), the Ford-Firestone tire debacle (Mullins 2006), the Toyota sticky accelerator (Finch 2010), and the subject of this case study the faulty ignition switch used in GM cars from 1997-2014 (Valukas 2014).
the driving environment and undermined arguments for governmental control over production. One of the ways this was achieved was by influencing engineering standards developed by the Society of Automotive Engineers (SAE). The official goal of this organization was “to promote the Arts, Sciences, Standards and Engineering Practices connected with the design, construction and utilization of self-propelled mechanisms, prime movers, components thereof, and related equipment (Nader 1972: 189). However, the objectivity of the SAE was compromised by its close association with the American Automobile Manufacturers Association. In fact, most of those sitting on the various technical committees, subcommittees and boards of the SAE in the 1950s and 1960s were engineers involved in some way with the major automobile manufactures, and all eight members of the automotive safety committee were employees of motor vehicle companies (Nader 1972: 189).  

A clear example of the influence of the automakers on the SAE can be seen in the development of odometer standards. The odometer, which measures the distance travelled by an automobile, is a crucial instrument for automobile drivers and companies alike because the expiration of car and tire warranties, regularly scheduled maintenance, and resale/trade-in value are all linked to the miles/kilometers driven (Nader 1972: 196). In 1963, however, the Department of Commerce discovered that the mileage measured by automobile odometers was overstated by an average of three to five percent, meaning that warranties expired sooner, maintenance was scheduled before it was necessary, and vehicles depreciated in value more

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16 The SAE International’s 2013 Board of Directors lists two auto industry employees: Susan Collet, Senior Principal Engineer of Toyota Motor Engineering and Manufacturing North America, and Charon L. Morgan, Global Vehicle Engineering Operations Manager, General Motors Company. The presence of both of these employees on SAE internationals Board of Directors would suggest that the automobile industry still carries considerable clout in the rulemaking abilities of the SAE.
quickly (Nader 1972: 196). All of this resulted in lower resale values and a higher turnover rate – a huge benefit for the automakers.

Simply put, the auto industry, and General Motors specifically, used their immense budgets to capture professional groups like the SAE to further the interests of the industry. With respect to regulation, the SAE was used by automobile companies to support research that downplayed, contradicted or otherwise undermined the second-collision and or arguments to regulate automobile production (Nader 1972).

The environmental argument was not the only strategy employed by automobile companies to stave off state regulation. The industry routinely pointed to market forces to explain why incorporating safety into automobile design was unwise. Consumers, they argued, would not purchase safety options, and therefore it was not financially sound for companies to offer them (Nader 1972). To illustrate this, industry spokespeople would routinely trot out the example of the Nash Motors seatbelt. Offered in its 1949 and 1950 Statesman and Ambassador models, there was such poor demand for the feature that the company stopped offering it before the end of the 1950 model year (Nader 1972: 115). But the auto industry’s retelling of this story was not completely accurate, and some key details were absent. Most importantly, the Nash seat belt was not advertised to customers as a safety feature that could save their lives, but instead, was advertised as a way to prevent one’s body from shifting while the seat was reclined during travel (Nader 1972: 115). It was not that consumers were apathetic to safety, they were apathetic to an automobile feature that was (at least in the advertising material) only of use when the seat was reclined, but the industry used this distorted version of the Nash seat belt to support the claim that there was no demand for automobile safety.
However, when all of the above mentioned strategies failed, the automobile companies could always rely on their close political connections. As the specter of federal regulation appeared on the horizon of the auto industry, insiders would often remark that they “[knew] the state tiger and what it likes to eat” (Nader 1972: 236). What that meant was that the automobile companies had developed an effective formula for staving-off regulation at the state level. The formula worked as follows: whenever a state threatened to regulate the industry, GM, Ford, Chrysler, or a combination of them all would invite legislators to Michigan to tour their facilities and demonstrate how they were already taking measures to improve safety, remind legislators that technical progress is slow and gradual, and that nothing more could be done from a design perspective (O’Connell and Myers 1966: 195).

Even if one state succeeded in obtaining safety legislation, it would only apply to a single state and the industry could simply refuse to conform to the policy, and force consumers to pay for the necessary changes – which might not bode well for pro-regulation legislators come election time (O’Connell and Myers 1966). This was exactly the strategy employed in 1961 when New York attempted to pass seatbelt legislation; the automakers refused to absorb the 50 cent cost of seatbelt anchors and made New Yorkers pay for the installation at a higher cost (O’Connell and Myers 1966: 196). However, this time the passage of the New York law sparked other states into action and six other states (California, Connecticut, Ohio, Michigan, North Carolina, and Kentucky) passed identical legislation, eventually forcing the manufacturers to concede (O’Connell and Myers 1966: 197).

As the above example demonstrates, the industry’s success in resisting any and all kinds of regulation was fading. By the mid-1950s, various interest groups supporting automobile safety regulation had begun to organize and contest the historically dominant auto industry cartel
(Burns and Lynch 2002). In 1956, Congress passed legislation creating a national highway system, and this huge public expenditure was justified by President Eisenhower as a safety measure that would “save more than four thousand American lives a year” (Norton 2008: 253). Furthermore, John Keats’ The Insolent Chariots (1959) exposed many safety deficiencies in American automobiles, and a series of subcommittees and hearings in the U.S. Senate in 1956 culminated in the passage of the 1964 GSA purchasing standards for federal vehicles (Burns and Lynch 2002). All of these factors directed increased public attention towards automobile safety.

In the 1960s, the growth of the interstate highway system and the introduction of high horse-powered muscle cars helped spike automobile deaths from a yearly average of about 38,000 in the 1950s to over 55,000 by 1965 (Burns and Lynch 2002). Moreover, in 1962 newly elected Senator Abraham Ribicoff became aware of, and concerned about, the “second collision” (Eastman 1984: 244). This scientific research challenged Ribicoff’s previous assumption that accidents were caused by recalcitrant drivers, and peaked his interest into automobile safety (Eastman 1984: 244). Three years later, in March of 1965, Ribicoff, with a young Ralph Nader as his aide, began hearings on automobile safety (Eastman 1984: 244-245). While these first hearing garnered little public attention, they were an integral step in garnering public support, and helped lay the groundwork for the enactment of automobile safety legislation.

As pro-regulation sentiment built, and the industry was forced to comment on the rising death rates, the Automobile Manufacturers Association continued to argue for a voluntary system of regulations, legitimated by the same arguments they had employed for the previous sixty years – the driver is the problem and there is no demand for safety (Eastman 1984: 245). However, during Ribicoff’s hearings the automobile leaders could not answer the hardline questioning of Senators and fared poorly in front of government officials and media members
(Eastman 1984: 245). In particular, when GM executives tried to conflate safety with mechanical reliability, Senator Ribicoff asked for the information about recalls, and it became public knowledge that GM had quietly recalled over 8 million vehicles and invested only $1.25 million into safety research in 1964: a year in which GM profits exceeded $1.7 billion (Eastman 1984: 246). Politicians, members of the media, and the public were shocked at the disregard shown for safety by the automobile companies, and the Ribicoff hearings helped create the political climate that allowed for comprehensive automobile regulation.

Perhaps the most important spur to regulation was the publication of Ralph Nader’s *Unsafe at Any Speed* (1965), which uncovered the nature and extent of the designed-in dangers of American automobiles (Burns and Lynch 2002). After the Ribicoff hearings, where Ralph Nader acted as a key witness against the automobile companies, and after Nader’s critical examination of the design defects of the Chevrolet Corvair in *Unsafe at Any Speed*, the GM Legal Department tried to discredit Nader by investigating first his professional, and then his personal life (Eastman 1984: 246) The strategy backfired when GM’s espionage system was discovered, and the subsequent public outrage provided the social opprobrium necessary for the development of comprehensive regulation of the automobile industry: on June 24 1966 the National Traffic and Motor Vehicle Safety Act was passed (Eastman 1984). Shortly thereafter, in 1970, the Highway Safety Act was passed, which established the National Highway Traffic Safety Agency (NHTSA) as the regulatory body for automobile safety, bringing the regulatory powers set out in the National Traffic and Motor Vehicle Safety Act and Highway Safety Act within the scope of a single federal agency (Burns and Lynch 2002).

To briefly summarize this period, as the 1920s came to a close GM was able to use styling and the annual model change as a new avenue for extracting profit. However, while
styling allowed GM and other companies to achieve ever increasing profits, it also encouraged the stagnation of mechanical quality and the neglect of safety, and, in turn, deaths from automobiles increased alongside corporate profits. But unlike the early 1900s, where safety advocates relied on catchy banners and anecdotal evidence, in the decades following the First National Conference on Street and Highway Safety, and especially after De Haven received support from the U.S. Air Force, automobile safety critics began to link motor vehicle deaths to automobile design and back their claims with scientifically established evidence. With this evidence of the auto industry’s culpability, legislators and safety advocates were able to generate the political and social support necessary to regulate automobile design.


When the Highway Safety Act was passed and the NHTSA was created, the agency was tasked with the broad mandate of reducing injuries, deaths, and property damage associated with automobile collisions by enforcing newly mandated safety standards, and was given a small budget to support state and local automobile safety programs (Burns and Lynch 2002). In order to accomplish these goals, the NHTSA was given two unique powers: the power to set new rules or guidelines for manufacturing vehicles, and the ability to force recalls of defective vehicles (Burns and Lynch 2002; Marshaw and Harfst 1990). By having these two powers, the NHTSA was intended to act as both a proactive and reactive regulatory agency. However, this balance did not last long, and by 1976 the NHTSA had begun to shift from a proactive agency to a reactive one.

Early on, the agency was able to maintain a solid balance between its rulemaking and recall functions, and from 1967 to 1976 there was a continual increase in rulemaking directives from the NHTSA (Marshaw and Harfst 1987). In fact, despite an increase in automobile traffic,
from 83 million vehicles to 112 million vehicles nationally during that period, there was a six percent decline in traffic fatalities (Simon 2006). One NHTSA employee even suggested that the agency had been captured, for the better, by engineers dedicated to improving automobile design standards (Marshaw and Harfst 1990: 172).

This regulatory balance did not last, however, and in the decade following the 1976 peak, rulemaking issuances declined by more than 50 percent (Marshaw and Harfst 1987). While a decline in rulemaking issuance could be interpreted as evidence of the success of the agency, this was not the case. Marshaw and Harfst (1987: 265) point out that because automobile companies tend to download the costs of safety regulations onto consumers, the strength of the NHTSA’s rulemaking division can be most accurately measured through increases in vehicle price. From 1967 to 1986, 92% of all price increases attributable to NHTSA rulemaking occurred before 1976 (Marshaw and Harfst 1987: 265). It seems that within ten years the presence of the engineering-rulemaking arm of the NHTSA had been supplanted by the legal-recall enforcement arm of the NHTSA (Marshaw and Harfst 1990).

While this shift might not seem significant, the skewing of the agency’s powers towards recall enforcement drastically affected the NHTSA’s ability to improve vehicle safety and decrease automobile deaths. In fact, in 1972 Douglas Toms, the NHTSA’s administrator, testified at the House Appropriations Committee that “in the actual analysis of different programs, the whole defect situation of recalling cars does not have the kind of safety payoff that crash survivability of structure has” (Marshaw and Harfst 1990: 181). The agency had effectively abandoned its goal to prevent deaths, and was primarily focused on reacting to them.

This shift from proactive rulemaking to reactive recalling was made extremely clear in the staffing data from the NHTSA. Full staffing of the NHTSA was achieved in 1970 with 54
full-time rulemaking engineers and 13 defect investigators; yet as early as 1982 parity was achieved between rulemakers and defect investigators, and after 1982 defect investigators outnumbered rulemaking engineers (Marshaw and Harfst 1987). Moreover, Burns and Lynch (2002) demonstrate that a reduction in fines is clearly visible with the election of Ronald Reagan in 1980, and the introduction of his neoliberal platform. However, the NHTSA’s regulatory retreat actually began with the preceding (Democratic) Carter Administration (Marshaw and Harfst 1987), and then was accelerated by the deregulatory policies of Ronald Reagan and the first Bush Administration (Burns and Lynch 2002). By the 1990s, the key issue of the automobile safety movement of the 1960s, increasing the safety and overall crashworthiness of automobiles through legislation, had been abandoned in favour of a reactive investigative apparatus.

**TREAD Act and the Contemporary Regulatory Environment (2000-Present)**

The Transportation Recall Enhancement Accountability and Documentation (TREAD) Act was enacted in 2000 after tire separation problems with the Bridgestone-Firestone ATX and Wilderness AT tires on 1991-2000 Ford Explorers were discovered by the NHTSA (Mullins 2006). Mullins (2006) claims that the Bridgestone-Firestone tread separation case involved not only gross negligence by two corporations (Bridgestone-Firestone and Ford), but also involved gross regulatory negligence by the NHTSA. This defect was particularly serious, implicated in 271 deaths and over 800 injuries, and it highlighted the difficulties of regulating corporations in a globalized economy (Mullins 2006). In 1966 when the NHTSA was created, automobile production and sales were limited to a handful of industrialized countries; by 2000, GM and other manufacturers operated a sophisticated web of global production and distribution, one that allowed them to exploit the low wages of developing nations and increase profits (Valukas 2014;
Siemticki 2012). Ultimately, the globalized nature of production created regulatory gaps in the original Highway Safety Act, and the TREAD Act was created to address those gaps (Mullins 2006).

The Bridgestone-Firestone/Ford case had four key underlying issues: first, the tread separation of Bridgestone-Firestone tires occurred almost exclusively on two products – the ATX and Wilderness AT tires; second, the rollovers that occurred after separation were mostly limited to Ford Explorers using either the ATX or Wilderness AT tires;\(^\text{17}\) third, Bridgestone-Firestone and Ford had entered into the largest ever contract between an auto parts provider and a manufacturer just prior to the manufacturing of Explorers, one that reinforced the one hundred year relationship between the two companies; and last, the Ford Explorer became not only one of Ford’s best-selling vehicles in North America, but one of the best-selling vehicles world-wide (Mullins 2006). Thus, for both Ford and Bridgestone-Firestone, massive profits were on the line.

Internal documents from Bridgestone-Firestone indicate that company engineers were aware of tire separation issues with its ATX and Wilderness AT tires, and passed their concerns onto Ford before the Explorer had entered production (Mullins 2006). Despite this, neither company attempted to alter the design of their product (Mullins 2006: 136). The key problem with these tires was that a strip of rubber that was placed between two steel belts, known as the belt wedge, was thinner and narrower than in most other tires (Mullins 2006: 136). Over time, and typically in a shorter period than competitive tires,\(^\text{18}\) this belt wedge would wear down, allowing the two steel belts to separate resulting in complete tire failure (Mullins 2006).

\(^{17}\) While other vehicles had rollover issues, the design characteristics of Ford Explorers made them susceptible to rollovers at a much greater frequency than other sport utility vehicles (Mullins 2006).

\(^{18}\) From 1995 to 1997 Ford used the same amount (approximately 2.4 million) of Goodyear Wrangler AT/S tires and Bridgestone-Firestone tires; however, there was only one tread separation claim with the Goodyear tires compared to 486 with the Bridgestone-Firestone tires (NHTSA 2001).
Furthermore, this tendency worsened when the tires were used on heavier vehicles requiring higher inflation pressures, such as the Ford Explorer (Mullins 2006). Although rival Goodyear tires did not fail at the same rate, Bridgestone-Firestone argued that it was not the design of the ATX and Wilderness AT tires that caused the tire failure, but the design flaws inherent with the Ford Explorer (Mullins 2006).

At the time of the tread separation problem, Ford had just come out of a two-decade long period marred by continuous scandals, and Ford wanted to avoid any more public humiliation (Mullins 2006). However, 1984 Ford documents illustrate that Ford knew their sport utility vehicles (SUVs) were prone to rollovers at a higher rate than competitive models (Mullins 2006), and Ford engineers warned management that accidents would occur if fundamental design changes did not occur (Mullins 2006). Management did not want to risk delaying the release of the Explorer and ultimately decided not to make the changes (Mullins 2006).

According to Bridgestone-Firestone, Ford was not only responsible for the rollover tendency of Explorers, but also for the tire failures; in fact, a 1987 Ford document indicates that Ford approved the ATX designs before design specifications of the Explorer had been finalized (Mullins 2006). Whatever the specificities of the dispute, it is clear both companies knew that the ATX and AT Wilderness tires, when attached to a Ford Explorer, had a propensity for failure that would result in vehicle rollover and potential injury, and chose not to remedy the situation in any significant way (Mullins 2006).

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19 In the 1970s, Ford produced a small car known as the Pinto which was vulnerable to fiery explosions if hit from behind (Cullen, Maakestaad and Cavender 1987; Dowie 1994). Furthermore, Ford could have prevented this from happening by installing a one dollar piece of plastic, but ultimately chose not to (for more see Dowie 1994/1977). In the 1980s, Ford also ran into trouble with its Thick Film Ignition that was used in 22 million vehicles and could cause vehicles to inadvertently stall (Mullins 2006). During the NHTSA’s investigation, Ford withheld key documents and falsified documents, which allowed the case to be delayed past the NHTSA’s statute of limitations.
The safety standards that applied to the tires were not new, they had been in effect since 1968, but the NHTSA had received more than 24 official reports of the problem before they decided to investigate (Mullins 2006). It was not until February 7th 2000, when a news report highlighting the tread separation issues with Ford Explorers garnered a significant amount of public attention, that the NHTSA was forced into an investigation – and this was nearly a decade after the problems first emerged (Mullins 2006). And even then, the NHTSA gave both corporations continual deadline extensions for producing requested documents, further delaying resolution (Mullins 2006). Simply put, the NHTSA seemed willing to allow Ford Explorers to be sold to customers with Wilderness AT or ATX tires that put them at an increased risk of being involved in an accident (Mullins 2006).

On November 1st 2000 Senate Bill 3059, or the TREAD Act, became law, promising to fill the regulatory gaps that allowed the Bridgestone-Firestone/Ford issue to exist as long as it did (Mullins 2006). In reality, however, the TREAD act did little to change the way investigations were handled and left a large amount of the decision making process to the Director of the NHTSA (Mullins 2006). As Mullins (2006: 142) states “TREAD says something should be done, but it doesn’t say what.” That is, the Act did little to change actual investigative procedures, and instead mandated that the Secretary of Transportation calculate whether an investigation would be (financially) feasible (Mullins 2006).

Simply put, the TREAD Act has not followed through on its promises to “open up” the NHTSA, as any information on a corporation uncovered by the agency is held from the public, unless the Secretary of Transportation feels the disclosure would help achieve the requirements of the law (Mullins 2006: 142). Furthermore, since automobile companies only have to submit

20 Most NHTSA investigations are initiated with far fewer official reports, with some being initiated with as little as two reports (Mullins 2006).
information they are in possession of, regulators are still very much dependent on the cooperation of corporations for regulatory effectiveness. The TREAD Act, it seems, has failed to close investigative loopholes, and in many respects, may have legislated them wide open (Mullins 2006).

But the failure of the TREAD Act and NHTSA is not simply limited to poorly written legal mandates. The reregulation that shifted the focus of the NHTSA from rulemaking to recalls in the 1970s and 1980s has in recent years returned the focus of the NHTSA and automobile regulation to a 1920s-like focus on “the nut behind the wheel.” In addition, the NHTSA has seen its funding reduced or its priorities shifted to different areas of regulation. In 2009, 75 percent of the NHTSA’s $867 million budget was allocated to prevent drunk driving and to promote the use of seat belts, leaving just $216 million to develop safety standards, investigate defects, and issue recalls (Finch 2010: 492). By looking at the funding priorities of the NHTSA, it is clear that in the last few years the focus of automobile regulation has shifted from the corporations who design the vehicles, to the individuals who drive them.

**Conclusion**

As this chapter has shown, automobile production and regulation have undergone significant changes over the last 125 years. In the first few decades of automobile production, the calls to regulate automobile production were easily quieted by the industry because these reformers relied on anecdotal evidence and loose correlations, and as a result, state regulation was limited to the driver and the environment during this period. However, the development of second collision research after the Second World War provided safety reformers with a scientific basis for their claims, making them more difficult to co-opt or ignore. In effect, armed with concrete data showing the harms created by automobile design, reformers like Ralph Nader and
Abe Ribicoff were able to push for state regulation of automobile design and the creation of the NHTSA.

The NHTSA, and other regulatory agencies, however, have seen their powers eroded or reoriented in the past thirty or forty years. For automotive regulation, this regulatory reorientation to a more industry-friendly role began during the Carter administration (a President not typically associated with neoliberalism and its accompanying drive to deregulate). With this shift from prevention to recalls, the key thrust of earlier reformers, to improve safety through vehicle design, was abandoned. This regulatory shift has continued and by 2009 automobile regulation had returned to a focus on individuals rather than corporations.

While automobile regulation has changed over time, I do not wish to undercut the success of automobile safety reformers. Automobile deaths fell by more than a third between 2008 and 2011, and among 2011 models, nine vehicles had driver death rates of zero (Highway Loss Data Institute 2015). Moreover, because of improvements in vehicle design (not necessarily mandated by regulations) there were 7,700 fewer driver deaths (Highway Loss Data Institute 2015). From the 1970s on, despite the retreat of the NHTSA from its rulemaking position, or its preoccupation with individualistic regulation, consumer demand and public support for automobile regulation has increased considerably and automobile manufacturers have increased the safety of their vehicles (Polzer, Burns and Lynch 2013). However, these improvements were not the result of market forces or benevolent capitalists; they are the product of a continuous struggle by safety activists who have raised the bar for automobile safety.

Yet, despite these important advances in automobile safety, the state regulatory apparatus has struggled to prevent automobile companies from placing profits ahead of lives. In 2000, Toyota Motors began producing Lexus and Toyota brand vehicles with an accelerator that
was prone to sticking, causing the vehicle to accelerate without warning (Finch 2010). Toyota failed to disclose the nature of this defect to either its customers or the NHTSA, and Finch (2010) believes this deception was motivated by Toyota’s attempt to maximize its market share and profits. Because of Toyota’s decision to value market share over safety, 34 people died, and Toyota was forced to recall over 10 million vehicles (Finch 2010).

Likewise, in February 2014 General Motors issued a recall for a faulty ignition switch that could cause moving stalls, deactivating the airbags and power-steering, and has been linked to over 90 deaths (Gardiner 2015; Valukas 2014). In the next chapter I will trace the important aspects of the GM ignition switch, and situate it within this broader historical context.
Chapter 3

Where Are We Now?

Building the Case Again Against General Motors

In March of 2014, 55-year-old Danylo Kulish headed to Montreal’s Trudeau Airport in his Saturn Ion to pick up his girlfriend; unfortunately, Kulish never arrived. Enroute to the airport, Kulish’s car drove straight into a concrete pillar dividing the highway, the airbags failed to deploy and Kulish died of severe internal injuries shortly after (Anderson and Subramaniam 2014). Kulish’s death was not an isolated event, but is rather one of thousands of other cases of airbag non-deployments associated with a small car fleet produced by General Motors that included popular vehicles like the Saturn Ion, Chevrolet Cobalt, and Pontiac Pursuit. In the first section of this chapter I will develop a case history of the events that precipitated GM’s February 2014 recall of a defective ignition switch, and whose delayed recall allowed thousands of individuals to be killed or injured when their vehicles’ airbags failed to deploy. Following this, I will discuss the key findings of the Report to Board of Directors of General Motors Company Regarding Ignition Switch Recalls (henceforth Valukas report), and situate these claims within broader discussions of corporate crime. Overall, this chapter will use the Valukas report to develop a detailed case history to better make sense of the events that transpired, and allowed thousands of people to be killed or injured in crashes because their airbags failed to deploy.

A Brief History of GM

In order to provide a thorough account of the events that led to the ignition switch problem, I must provide a brief history of General Motors. GM is one of the largest manufacturing and engineering enterprises in the world, and from 1930 until 2007, and again in 2011, the company sold more motor vehicles than any other manufacturer in the world (Valukas
In fact, in 2013 alone GM produced over 9.7 million vehicles globally, bringing in a revenue of $155.4 billion and a profit of $3.8 billion (Valukas 2014: 15). GM is also deeply integrated in the global labour market, operating 396 facilities in 30 countries, employing more than 210,000 people under eleven different brands (Valukas 2014: 15). Simply put, GM has a very complex corporate structure, with any single executive having tens of thousands employees working under them, making it an excellent subject for this case study.

While GM has historically dominated the automobile industry, beginning in the early 2000s its stature in the automobile market began to decline. From 2001-2007 GM’s global market share declined from 15% to 13.3%, and year-to-year profits also declined, with large losses occurring in 2005 and continuing until GM’s bankruptcy in 2009 (Valukas 2014: 22-23). In fact, by 2007 all of the so-called “Big Three” automobile companies were posting losses for every vehicle produced in North America ($1,467 for Ford, $729 for GM, and $412 for Chrysler) (Valukas 2014: 23). In order to reduce costs, GM began trimming production, pressuring suppliers to lower costs, reduced healthcare, pensions and other benefits, and cut the number of employees and factories substantially (Valukas 2014: 23).21

Moreover, as the 2000s progressed, GM faced slumping sales in trucks and sport utility vehicles (SUVs) – the company’s top selling divisions – and sought to compensate for this by increasing its presence in the small car market by introducing a new line of small cars (Valukas 2014: 17). However, despite GM’s attempt to shift markets, by 2004 truck and SUV sales still represented over 60% of total vehicle sales (Valukas 2014: 17). Making the success of the new small car fleet even more critical, gas prices rose sharply in the early 2000s diminishing demand

21 In November 2005 GM closed GM Oshawa Plant 2 despite the fact that this plant was one of the most productive automobile manufacturing plants in the world and consistently surpassed the productivity benchmarks set by GM (Siemiatycki 2012).
for the inefficient trucks and SUVs that had supported GM’s market dominance (Valukas 2014: 17). In effect, by 2004 GM had reached a tipping point, and the companies’ top executives realized the future success of the company depended on the success of GM’s new small car line.

When developing vehicles it was common practice for GM to place similar vehicles into small groups of cars called “platforms,” and vehicles in each platform, regardless of brand, shared basic design features (Valukas 2014: 17-18). The Saturn Ion, Chevrolet Cobalt, Chevrolet HHR, Pontiac G5, and Pontiac Pursuit (available in Canada only) constituted the “Delta Platform” or GM’s new small car fleet, and as a result, all of these cars contained the faulty ignition switch originally designed for the Saturn Ion (Valukas 2014: 18). However, as is typical in the automobile industry, the ignition switch was designated as a “corporate common part” shortly after its introduction, which meant that the part was designed to be used interchangeably between GM models (Valukas 2014: 19).

One of the key barriers to the success of GM’s small car line was the view held by both customers and the public that GM’s compact cars were cheaply made (Valukas 2014: 19). The Cobalt was intended to change this perception of GM’s compact cars, and allow GM to compete with the Japanese manufacturers, like Toyota and Honda, who had traditionally dominated the market (Valukas 2014: 19). In order to outcompete the Japanese companies, GM provided their engineers with additional funds to give the car a quieter and smoother ride, and launched a marketing campaign that constructed the Cobalt as an “aspirational vehicle” with a European feel, all in an attempt to lure the interests of younger drivers (Valukas 2014: 20). Overall, GM’s

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22 As a result of being deemed a corporate common part the faulty ignition switch was widely adopted for Kappa platform vehicles, which included the Saturn Sky and Pontiac Solstice (Valukas 2014: 18).
small car line was a success, with the Cobalt exceeding sales expectations by 17.8% in its first year, despite a recessing global automobile market.23

The Issue with the Ignition Switch and Airbag Technology

All Delta platform vehicles contained a discrete logic ignition switch (DLIS) that had four positions: Crank, Run or On, Accessory, and Off or Lock (Valukas 2014: 25). The DLIS worked like most other ignition switches where the driver would rotate or “crank” the key inserted into the steering column passed the Run position to the Crank position, starting the vehicle’s engine, and then rotating back into the Run position for the duration of use (Valukas 2014: 25). However, when the switch was turned to the Accessory position, the switch would send a signal to the vehicle’s Body Control Module (BCM) to turn off the engine, thereby disabling the vehicle’s crash sensing system and airbag deployment sensors, power steering, and power brakes – although, some of the vehicles functions like the radio would retain power (Valukas 2014: 25). Two components, a plunger cap and coiled spring, control how much force is needed to move the ignition between positions (Valukas 2014: 26). These parts rest inside small notches known as “detents,” and keep the ignition in the desired position (i.e. Off, Run, Accessory, or Crank), and the resistance needed to shift from one position to another can be altered by changing the length of the plunger cap and spring, or by tightening the coils in the spring (Valukas 2014: 26). The flaw in the ignition switch was that the plunger cap and spring were not long enough, and therefore did not provide enough resistance to keep the ignition in the desired position during crashes or travelling over rough terrain.

23 Delta platform cars, and specifically the Cobalt, were lauded as “cost conscious vehicles” that were produced on slim margins and could be sold cheaply to car rental companies looking to purchase large fleets of cars at a discounted rate (Valukas 2014: 22). In fact, by 2010, car rental companies were responsible for 60% of all Cobalt sales (p. 22).
The 2005 Cobalt, and its later models, also contained an advanced airbag system that used an onboard electronic module, known as a Sensing and Diagnostic Module (SDM), to monitor the vehicle’s status and determine whether or not airbags needed to be deployed (Valukas 2014: 27). The SDM used in Delta and Kappa platforms was designed so that the airbags would only deploy if a sufficient level of force was applied to the vehicle’s longitudinal axis – this was intended to prevent airbags from deploying in unnecessary conditions and injuring drivers or passengers (Valukas 2014: 27). But the SDMs served another important function, because they recorded information about the status of the vehicle (i.e. speed, acceleration/deceleration, and impact forces), they acted as the vehicle’s “black box,” and could be used to investigate crashes and determine if there was a mechanical malfunction.

However, if the ignition was turned to the Off or Accessory positions, power would be cut to the SDM and it would power down (Valukas 2014: 27). Because of this relationship between the SDM and the ignition switch, if, during the course of a collision, power was lost, the SDM could only retain power for 150 milliseconds; after that period of time, the airbags would not deploy (Valukas 2014: 28). As a result of this design, if the ignition switch shifted to Accessory or Off, people travelling in the vehicle would not only lose their ability to steer and brake, they would only have 150 milliseconds of airbag protection.

While all Delta and Kappa vehicles utilized the same SDM, not all SDMs operated the same; for example, the Chevrolet Cobalt and some other Delta model SDMs were able to record data on the vehicle for 150 milliseconds until power was lost – allowing post collision investigators to determine what position the ignition switch was in prior to the crash (Valukas 2014: 29). The Saturn Ion, on the other hand, could not record vehicle data once the ignition was moved from the On/Run position (Valukas 2014: 29). This differentiation in recording ability
occurred because the Cobalt and other models received their power from the vehicle’s battery, while the Ion’s SDM was powered by the ignition (Valukas 2014: 29). Therefore, if power was lost because the ignition switch moved positions, the Ion would have enough power to deploy the airbags for 150 milliseconds, like the Cobalt, but not enough power to record other aspects of the vehicle’s status.

Ultimately, because of the relationship between the ignition switch and the SDM, it was imperative for the ignition switch to remain in the On/Run position for the airbag system to work properly; however, this did not always happen. The torque needed to move the ignition switch from one position to another was too low, and in turn the vehicle could shift from On/Run to Accessory or Off without the assistance of the driver, disabling the vehicle’s airbags, power steering, and power brakes. Simply put, at a moment’s notice a driver could simultaneously experience a significant reduction in the ability to avoid and survive a collision because the ignition switch had moved into the Accessory or Off position disabling the airbags, power steering and power brakes.

At the time GM was producing Delta and Kappa vehicles with this ignition switch and SDM, the National Highway Traffic Safety Agency (NHTSA) had no motor vehicle standards that regulated ignition switches or systems, stalls, or power steering problems (Valukas 2014: 30). Moreover, the motor vehicle standards that did exist only mandated that a vehicle’s brakes had to meet basic performance standards – since it was possible to engage the brake after power was lost, albeit with considerably more force, Delta vehicles met the proscribed regulatory requirements (Valukas 2014: 31). Because of this, the report argues that it is the actual reporting requirements of the NHTSA that are important for discussion, not what should have been proscribed (Valukas 2014).
After the Transportation Recall Enhancement, Accountability and Document Act (2000) amended the National Traffic and Motor Vehicle Safety Act (1966), manufacturers were required to file two new safety reports to the NHTSA: first, if a manufacturer discovers any defect that impacts motor vehicle safety they must file a “Defect Information Report” disclosing the issue at hand; and second, every quarter all motor vehicle manufacturers must submit “Early Warning Reports” that outline all incidents of fatalities and serious injuries alleged to have been caused by a vehicle defect (Valukas 2014: 31-32). The next section will focus on GM’s failure to report problems with the ignition switch and SDM to the NHTSA and consumers.

**The Development of the Ignition Switch**

GM began working on the DLIS in 1997, and this new switch was touted by the company as a cheaper, safer, and more reliable part that had the potential of becoming a corporate common part (Valukas 2014: 34-35). In the earliest stages of design Tom Utter, the project engineer at that time, specified that the tactile characteristics of the switch must include a force displacement of 20 Newton-centimeters (Valukas 2014: 35); that is, the torque required to turn the key from one position to another should have exceeded 20 newtons of force for every centimeter of rotation.²⁴ By 1999, however, Utter had transferred jobs within GM, and Ray DiGiorgio replaced Utter and was charged with getting the DLIS to production.

GM selected Eaton Corporation (acquired later by Delphi Mechtronics) to produce the DLIS and, in a fall 1999 meeting with Eaton, preliminary tests indicated that the DLIS was not meeting the torque requirements set out by Utter (Valukas 2014: 38). Two solutions to the low torque issue were proposed, adding a second detent plunger or using a customized spring, but the meeting ultimately came to a close without either solution in place (Valukas 2014: 38). Despite

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²⁴ Utter noted that since this was just a “target curve” the “actual curve was to be furnished by [the] supplier after GM Engineering approval” (Valukas 2014: 36).
the fact that Ray DeGiorgio attended the meeting with Eaton and knew of the low torque issue, on March 22, 2001, DeGiorgio finalized the design specifications of the switch, meaning that he did not anticipate making changes to a switch that was already underperforming (Valukas 2014: 38).

However, DeGiorgio did make some key changes to the DLIS after the meeting with Eaton and just prior to the part’s finalization, but these changes only decreased the standards of the switch, making it less safe. First, DeGiorgio removed Utter’s note that the 20 N-cm of torque resistance was simply a target curve, and made it the real torque requirement for the switch (Valukas 2014: 39). Second, DeGiorgio added that the “torque curve allowable tolerance shall not exceed +/- 5 N-cm” (Valukas 2014: 39). By adding a differential margin of 5 N-cm, DeGiorgio effectively reduced the standard set by Utter by 5 N-cm, but even with this reduction, DeGiorgio would still go on to approve a switch that fell well below the standards that he had established himself.

With the ignition switch finalized by DeGiorgio, the switch and the Saturn Ion were ready for prototype testing. From the time the DLIS was finalized in March of 2001 until late 2002, the switch was a resounding failure, catching on fire on several occasions, and DeGiorgio had to completely redesign the switch’s electrical components (Valukas 2014: 42). Moreover, between July and August of 2001 three reports were initiated to investigate and remedy stalling issues with the model year 2003 Saturn ZA car (the Ion prototype vehicle) (Valukas 2014: 42). Through these investigations GM discovered that the Run/On detent was too shallow, allowing the detent plunger to rest in the space between Run/On and Accessory when the ignition switch rotated back from the crank position (Valukas 2014: 42). In the end, engineers discovered that
this problem resulted from the use of soft tools,\textsuperscript{25} and the issue was resolved by using production grade tools.

While this issue was completely unrelated to the moving stalls that form the basis of this study, one of the findings of these investigations is important for this case study: engineers discovered that when the ignition interface lost power the anti-lock braking system (ABS) and SDM also lost power, disabling the brakes, power steering, and airbags (Valukas 2014: 43). However, Jim Sewell, the engineer who discovered the relationship between the ignition, SDM, and ABS, chose to define it as a non-safety concern (Valukas 2014: 43). This was an important moment in the story of the Cobalt ignition switch because the engineers who would investigate the Cobalt in the future did not recognize this connection between the ignition switch, SDM and ABS (Valukas 2014).

At the same time DeGiorgio and others were told to resolve the electrical problems with the ignition switch, other mechanical problems were beginning to come to light. In particular, the preliminary ignition switches developed by Delphi Mechtronics (henceforth Delphi) had a torque requirement of 9.5 N·cm, well below GM’s minimum of 15 N·cm (Valukas 2014: 47). Mattson, one of DeGiorgio’s subordinate engineers explained that in order to fix the switch’s mechanical problems the Design Release Team would have to redesign the entire electrical system or risk causing other problems (Valukas 2014: 47). In effect, DeGiorgio was at a crossroads: fix the mechanical issues and delay the project, or allow a substandard ignition switch to move into production. Ultimately, rather than risk delaying the car’s progression into production (a mortal sin at GM), DeGiorgio chose to allow the switch to enter production.

\textsuperscript{25} Soft tools are temporary tools used during the design stage of a vehicle and allow engineers to make alterations when necessary (Valukas 2014: 43).
Problems in Production

In 2003, the first model year of the Saturn Ion, GM received hundreds of complaints and warranty claims regarding the Ion’s ignition switch (Valukas 2014: 54). While the majority of these claims were for vehicles that would not start, these were electrical not mechanical problems (Valukas 2014: 54). There were also a small number of complaints regarding intermittent stalls while driving (Valukas 2014: 54). In response, GM initiated a Field Performance Report that identified customer’s heavy key chains and a deficient lubricant as the cause of the Ion’s no start problem, and engineers assumed the moving stalls were simply a duplicate of this problem (Valukas 2014: 54). However, this was incorrect, a substandard ignition switch was the problem (Valukas 2014: 54). Nevertheless, GM engineers believed the issue was resolved and the 2004 Cobalt, which used the same ignition switch except for a new lubricating oil, headed into production.

As 2004 Chevrolet Cobalts rolled off production lines and made their way to customers, the Cobalts, just like the Saturn Ions, experienced random engine shut-offs that resulted in moving stalls (loss of steering, braking, and airbags) (Valukas 2014: 59). In this case, GM engineers working on the issue failed to understand the relationship between a loss of SDM power and critical safety mechanisms in the vehicle like airbag deployment, defining the problem instead as an issue of “customer convenience,” not as the critical safety issue it was (Valukas 2014: 59). As a result of this simplistic redefinition, engineers deprioritized the problem and focused on cheap short term fixes.

On November 19th 2004, GM initiated a report in their Problem Resolution Tracking System (PRTS)26 to investigate the moving stalls now being reported by customers, automotive

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26 The PRTS is controlled by the CPIT, which is composed of a collection of business people and engineers (Valukas 2014: 64).
journalists, and engineers from GM’s High Performance Vehicle Operations Group (Valukas 2014: 63). However, the PRTS investigators did not question the decision of previous engineering groups to label the Ion’s moving stalls as an issue of “customer convenience” and decided not to implement any changes (Valukas 2014). This ruling by the Current Production Improvement Team (CPIT) was an important decision that allowed GM to disregard a “sure solution,” that would have relocated the ignition switch to a higher position on the steering column and make it less likely for the Cobalt to shift between ignition positions. This was seen as too expensive as no short-term fix was possible and a redesign of the key head would have cost GM $.50 per vehicle (Valukas 2014: 67). To summarize, by the spring of 2005 two solutions were available to GM that would have significantly reduced the likelihood of a moving stall, but because this was defined as an “issue of customer convenience,” cost concerns were able to trump safety concerns, and it was only after several newspaper articles criticized the Cobalt’s moving stalls that GM decided to take action and issue a Technical Service Bulletin (TSB) to dealers, indicating that if customers complained about moving stalls, advise them to remove heavy objects from their keychains (Valukas 2014).

While the definitional issues surrounding the Cobalt ignition switch can be seen as the unintentional result of ill-informed engineering and investigative groups, such a view would ignore the cultural and organizational pressures within GM that pressured employees to sanitize safety notices to customers, dealerships, and the NHTSA. According to Steve Oakley, the GM employee who issued the TSB for the Cobalt ignition switch, “stall” was considered a “hot” or unfavourable term that could potentially raise questions about the safety of GM cars, and employees drafting TSBs were encouraged to avoid using “hot” language that would disclose the complete details of a potential defect (Valukas 2014: 92). Yet, despite this, and the fact that
Oakley felt that his predecessor had been fired for fully disclosing safety issues to customers and regulators, he included the word “stall” in his original TSB – only to have it removed post facto by an unknown GM employee (Valukas 2014: 93).

In fact, Oakley and other employees claim that it was common for GM to actively suppress the full disclosure of stalls in TSBs and other important notices because the NHTSA considered stalls a safety issue, and by including them as a symptom GM could attract unwanted attention from the NHTSA (Valukas 2014: 93). Simply put, GM was producing unsafe vehicles that violated the law, but used their ability to define safety issues to prevent detection. To do this, the company intentionally downplayed the severity of issues by changing key words, like stall, and obscured the information provided to the NHTSA and customers (Valukas 2014). This system of withholding and obscuring information was so effective that for an owner to learn about the Cobalt’s deficiencies and suggested remedy, the driver would have to experience (and survive!) a moving stall, complain to the dealership, have the issue diagnosed properly by technicians, and hope that the technician could properly identify the correct TSB from GM’s reporting system without using the word “stall” – a virtual impossibility (Valukas 2014: 94).

Deaths, Litigation, and the Slow Investigation into the Root Cause

At the same time as GM was attempting to resolve the moving stall issue, Ray DeGiorgio, the DLIS’s Design Release Engineer, initiated a change for 2008 Cobalts (Valukas 2014: 95). Following discussions between DeGiorgio and Delphi, Delphi began producing a new ignition switch for 2008 Cobalts with two fundamental changes: a new Printed Circuit Board was added to prevent the no start issue that had plagued the Saturn Ion, and a longer plunger was used to increase the ignition switch’s torque requirement (Valukas 2014: 97). The new detent plunger fixed the moving stall problem and did not increase the price of the plunger;
however, DeGiorgio chose not to change the part number (Valukas 2014: 100). DeGiorgio’s decision to not change the number impeded future investigations that assumed, because the part number was the same, that there was no difference between 2008 Cobalt ignition switches and the previous models, and therefore concluded that the ignition switch was not the problem (Valukas 2014: 101).

As early as 2006, GM’s Attorneys, and the various engineering groups they worked with, noticed a pattern of Ion and Cobalt claims for airbag non-deployments (Valukas 2014: 103). However, when investigating each of these claims, no Attorney or Engineer was able to locate the 2005 TSB on moving stalls in GM’s documents, and make the link between airbag non-deployment and moving stalls (Valukas 2014: 103). While these lawyers and engineers identified a trend in airbag non-deployments, they treated each case as an independent and isolated claim, thereby preventing the investigations from finding the root cause of the problem – the faulty ignition switch (Valukas 2014: 103).

While GM had repeatedly failed to discover the true cause of airbag non-deployments, by 2007 two different analyses of the same crash – one by Wisconsin State Trooper Keith Young and another by Indiana University’s Transportation Research Center – were more successful: as they reported, the ignition switch could inadvertently be turned from Run/On to Accessory thereby disabling the airbag (Valukas 2014: 115). Despite not having access to GM’s engineers, the research group from Indiana and a State Trooper from Wisconsin were able to do what several GM investigation groups could not: they found the root cause of the moving stalls. In fact, GM would not even become aware of these reports until 2012, when they were used as evidence against the company in a separate legal case (Valukas 2014).
Although none of GM’s committees tasked with solving the moving stall issue had succeeded, in October 2010 GM was informed by their outside counsel,27 King and Spalding, that they were liable for punitive damages when a Cobalt’s airbag failed to deploy and the driver was killed (Valukas 2014: 140). The plaintiff in this case, driving a 2006 Cobalt, was struck from the side by a Volkswagen, and then collided head-on with a tree (Valukas 2014: 140). The lawyers warned GM that, when viewed alongside the large number of unresolved cases with similar airbag non-deployments (defined by GM as a sensing anomaly), a court would probably award punitive damages to the plaintiff (Valukas 2014: 141-142). Again, no immediate action was taken, and the meeting charged with discovering how many vehicles were affected by the “sensing anomaly” was postponed six months (Valukas 2014).

From 2006 to 2010 multiple failures – engineering decisions not to change the part number, the inability of investigators to gather easily accessible data, and the incompetence of GM to fully understand how its own vehicles operated – allowed numerous internal committees to fail to identify the problem or come up with a solution (Valukas 2014). After five years of investigating Cobalt moving stalls, the only strategy GM had come up with was appointing yet another group of engineers to investigate it!

By July of 2011, GM lawyers had grown frustrated with the slow pace of GM’s Field Performance Assessment (FPA) investigations and decided to transfer the investigation to the Products Investigations (PI) division (Valukas 2014: 153). Engineers there finally discovered the link between the ignition switch and loss of power to the SDM (Valukas 2014: 145). However their analysis excluded the 2003-2004 Saturn Ions, which remained on the roads even after the February 2014 recall (Valukas 2014: 145). While the transfer of investigative responsibility

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27 It was typical for GM to seek outside legal representations for cases that were not being settled out of court (Valukas 2014).
seemed to trigger a renewed sense of urgency at GM, organizational apathy towards the Cobalt’s moving stalls and airbag non-deployments continued, leaving millions of defective vehicles on the roads, putting drivers, passengers and pedestrians at risk.

Organizational apathy was not the only factor delaying a recall at this juncture; GM’s policy of finding “root causes” before issuing a recall delayed the recall for years. For example, GM’s PI team investigated a theory that the change in détente position was caused by a “contact bounce” during the course of the collision, rather than the low torque requirement identified in 2007 by the Wisconsin State Trooper and Indiana University because, for Stauffer (the lead product investigator), the low torque hypothesis did not explain all cases of airbag non-deployments. Rather than issue a recall for a part that was known not to meet GM’s own standards and had been shown to cause non-deployments in some cases, the company’s prioritizing the discovery of a root cause justified Stauffer’s delay.

However, this emphasis on the root cause was not shared by all of GM’s divisions. Specifically, when the PI team elevated the Cobalt’s moving stall issue to the Red X division (GM’s top diagnostic team), GM’s legal department barred the Red X division from investigating the Cobalts that were involved in collisions, and whose airbags did not deploy, because they were currently involved in litigation, and were therefore “quarantined” (Valukas 2014: 188). While GM’s lawyers deny providing such orders (Valukas 2014: 188), the investigative engineers believed this to be the case, and because they could not conduct investigations on defective vehicles, the discovery of the root cause and subsequent recall was delayed until February 7th, 2014 – nearly ten years after the problems first emerged.
Fixing Blame and Assigning Responsibility

The following section will outline what the Valukas Report identified as the key factors delaying the recall of Chevrolet Cobalts and other Delta and Kappa platform vehicles. When necessary, it will also identify absences in the official version, pointing out their resonance with the themes identified in more critical studies of corporate negligence and malfeasance.

Ray DeGiorgio, a low-level and relatively powerless employee, would have made an excellent scapegoat for Valukas to exonerate GM; however, the report did not choose to explain the events that precipitated the 2014 recall by focusing expressly on the transgressions of an individual engineer. Instead, and somewhat atypical for corporate investigations (see Tombs and Whyte 2007), it focused on organizational conditions, policies, and practices that helped create conditions conducive to GM’s negligent behaviour. In fact, the official report’s criticisms begin with a focus on the attitude of top GM employees who consistently offered two contradictory directives to employees regarding safety and cost – “when safety is at issue, cost is irrelevant” and “cost is everything” (Valukas 2014: 249). With such antithetical slogans, it is not surprising that a 2013 Corporate Executive Board Company survey of GM employees found that GM employees reported observed misconducts at a rate below the benchmark set by the Compliance and Ethics Leadership Council (Valukas 2014: 252). While the sample size of the survey is unknown, its results call into question GM’s prioritization of safety contained in official company documents, slogans, and other forms of official (read as sanitized) discourse.

Steve Oakley’s contention that GM actively undermined attempts by engineers to act ethically and responsibly, and even changed his TSB on the Cobalt’s ignition switch, similarly casts doubt on GM’s prioritization of safety. As noted earlier, when Oakley tried to describe the Cobalt’s mechanical problems by using the word “stall” – an accurate and concise description –
an unknown GM employee changed the language to abide by GM’s communications regulations (Valukas 2014). GM employees even received formal training on how to write about safety issues – and how not to. A 2008 PowerPoint presentation suggested that employees should be “smart,” and that employees should substitute less judgmental adjectives for words that carry a heavy or negative connotation (Valuka 2014: 254). For example, “problem” was substituted with “issue,” “condition,” or “matter,” “safety” was replaced with the phrase “has potential safety implications”, and for “defect” employees were encouraged to use the phrase “does not perform to design” (Valukas 2014: 254).

However, regulation of GM communications was not only limited to suggested words, but actually included a list of forbidden words and phrases, such as: “Dangerous…almost caused accident,” “this is a safety and security issue,” “tomblike,” “maniacal,” “rolling sarcophagus,” and “Kavorkianesque” (Valukas 2014: 254). Furthermore, this same 2008 presentation made reference to a legal case that involved a rival automobile company where the plaintiff’s lawyer used a memo from a senior manager warning employees that conducting a survey of vehicles to uncover a particular problem could give “product liability credence to a hypothesis we [the corporation] have long ignored,” to drive home the importance of disguising company communications behind a veil of ambiguity and misinformation (Valukas 2014: 254).

Another example of GM’s apathy towards safety can be seen through the no-notes practice that cycled through each new cohort of employees. A significant portion of employees claimed that they did not take notes during critical safety meetings because they understood that GM lawyers did not want notes taken (Valukas 2014: 254). While none of these employees could identify the specific lawyer who gave this directive, and no lawyer interviewed remembered providing a no-notes directive, the reality is that employees believed note-taking
was discouraged, and thus rarely took notes at safety meetings, making it virtually impossible to know who attended specific meetings and what was discussed (Valukas 2014: 255). In essence, the official report demonstrates that GM’s commitment to safety was little more than a program for producing corporate doublespeak about issues and hypotheses the corporation would rather not address.

Two other cultural factors identified by Valukas (2014) were the GM nod and GM salute. One employee described the GM salute as a process of passing responsibility off to another person by crossing one’s arms and pointing, or saluting, to others in the room that responsibility was held by some other person or division (Valukas 2014: 255). The GM nod, on the other hand, occurred when everyone in a meeting nodded in agreement that a particular issue needed to be resolved, but when the meeting closed, no one would do anything to address the issue (Valukas 2014: 256). The GM nod and GM salute were singled out as organizational phenomena that helped to explain how it was possible for the Cobalt’s ignition switch problem to pass through so many committees without being resolved. The nod and salute also provided upper level employees with a level of anonymity conducive to neglecting safety issues and avoiding accountability.

A final problematic issue identified by Valukas was the failure to find and share important information with other engineering groups and committees tasked with resolving the issues related to the Cobalt’s ignition switch, what Valukas (2014) described as “information silos.” To understand why these “silos” existed, however, one must first understand how internal competition was used to drive down costs and maximize profits.

Beginning in the early 2000s, GM implemented a cost reduction strategy that made engineers responsible for the costs associated with the vehicle they were working on (Valukas
This meant that any change made to a vehicle was taken out of that particular team’s budget. Furthermore, since GM used corporate common parts, any team that altered the design of a corporate common part, and caused other teams to alter their designs, would be forced to incur not only the costs associated with their vehicle, but other vehicles as well (Valukas 2014: 250). For instance, if the Cobalt team wanted to replace or alter the design of the ignition switch they would have to incur the cost of changing all other Kappa and Delta platform vehicles. In effect, engineering groups were encouraged to compete against each other in order to minimize vehicle cost and maximize profit. It is not unreasonable to suggest that this intense competition affected groups investigating the Cobalt’s faulty ignition switch and may have influenced the creation and maintenance of “information silos.”

This cost reduction strategy was not simply limited to fostering intra-firm competition, it also included a massive reduction of GM’s labour force. Many of the GM employees interviewed for the report claimed that from the early 2000s until GM’s bankruptcy, engineering positions were terminated and their responsibilities were downloaded to the DRE (the position held by Ray DiGiorgio) (Valukas 2014: 250). As a result, many of the engineers interviewed by Valukas (2014) felt overworked and believed the quality of their own work had declined since GM decided to get “lean.” Cost-cutting had a direct effect on the investigations into the root cause of the Cobalt’s ignition switch problems; in fact, Valukas (2014) argues that it is likely that staff reductions delayed the recall of defective vehicles by several years.

However, even when information was shared between groups, GM procrastinated (Valukas 2014: 257). There were two moments when the connection between the ignition switch and airbag non-deployments could have been discovered but were not (Valukas 2014: 257). The first occurred in 2011 when Stouffer knew of the low torque in 2005/2006 Cobalt ignition
switches and that airbags would not deploy if the vehicle shifted out of Run/ON. However, no action was taken to 2005, 2006 and 2007 Cobalts for another two and a half years (Valukas 2014: 257). The second of these moments occurred in April 2013, when court evidence from DeGiorgio made it clear why 2008 Cobalts did not have the same rate of airbag non-deployments as the 2005-2007 models. The recall was delayed for another nine months while GM engineers confirmed that this was the root cause. It seems the fifty cent per part it would have taken to change every Kappa and Delta platform vehicle’s key was too much to incur without further investigation.

Overall, the Valukas Report did offer a nuanced understanding of events, one that incorporated both organizational and cultural factors, alongside individualistic explanations of deviance. In fact, this focus on the organizational production of GM’s negligence is clearly seen in the first two recommendations, which call for organizational and cultural change (see Valukas 2014: 259-261). However, despite this more sophisticated account, the report omitted several critically important factors.

Most critically, it failed to acknowledge the role of corporate power in the construction and enforcement of automobile safety laws. Because of this, the analysis remained trapped within a liberal-pluralist perspective that downplayed, and even ignored, the power differentials between corporations, regulators, employees, and consumers. In simple terms, Valukas failed to question the legitimacy of a regulatory system that allows those being regulated to define the rules they are subjected to. This may be related to the fact that Valukas was hired by GM to conduct the report into the ignition switch, and therefore had to act in the interest of the corporation above all else, meaning GM was effectively conducting an investigation into itself,
undermining the credibility of the report and of its author. This potential conflict of interest was missed in most media reports and by the NHTSA, who both relied heavily on the Valukas report.

Another major flaw was the report’s tendency to blame the NHTSA without recognizing or criticizing the legislative and corporate factors that caused the agency to lose many of its powers. Valukas (2014: 30) argues that, since there were no regulations surrounding ignition switches, stalls or power steering problems, what was at issue “[was] the Federal Motor Vehicle Safety Act’s requirements regarding the reporting and recall of safety defects.” This view ignores historical shifts in the NHTSA that have undermined its rulemaking and enforcement powers. As noted in previous chapters, a deregulatory wave swept many western democracies in the late 1970s and early 1980s, with the United States and United Kingdom taking the lead (Snider 2015: 20). The automobile industry has not been immune from this phenomenon, and over the last forty years the agency has experienced its own unique form of regulatory retreat (Marshaw and Harfst 1990).²⁸

One way the NHTSA’s regulatory enforcement has been rendered ineffective has been through the use of vague language in crafting the laws that govern automobile safety. Specifically, under the NHTSA’s reporting guidelines, motor vehicle manufacturers must report any defect related to motor vehicle safety. However, no definition for what constitutes a safety defect is provided in the legislation. Manufacturers are instead asked to act with “common sense” and “good faith” in determining when a recall is needed (TREAD Act, United States Code § 30118). In this case, despite the fact that the legislation does allow the NHTSA to initiate its own investigations into a potential defect, GM’s decision not to define the moving stalls as a

²⁸ Tarbet’s (2004) analysis of cost and weight increases in vehicles from 1968-2001 also demonstrated that the bulk of NHTSA rules were made prior to 1976, suggesting that the NHTSA has not increased its rulemaking presence since Marchaw and Harfst’s (1990) research.
safety issue was not questioned by the NHTSA. Thus, GM’s “good faith” and “common sense” were allowed to determine whether or not moving stalls, a safety issue by NHTSA standards, actually constituted a safety problem. In effect, the TREAD Act fails to understand that the corporation is legally mandated to maximize profits for its shareholders, and thus “common sense” and “good faith” become legal loopholes that allow legal regulation to slip into market regulation.

Furthermore, this reliance on a corporation’s “common sense” and “good faith” must be viewed alongside the transition of the NHTSA from a rulemaking organization to an enforcement agency. This shift began in the 1970s, but unlike other examples of deregulation, the NHTSA’s transition occurred during the Carter administration when Joan Claybrook, a former “Nader Raider” and staunch supporter of automobile regulation, headed the agency (Marshaw and Harfst 1990: 14). But what is of interest here is how the regulatory retreat occurred. Rather than shift from regulation, the NHTSA shifted to regulation of a different, and less effective, kind (Marshaw and Harfst 1990: 14). Starting with Claybrook in the 1970s, and increasing since, the NHTSA has shifted its focus from setting standards to issuing recalls, and in the process, has increased its use of adjudicatory enforcement and civil litigation (Marshaw and Harfst 1990: 14). In effect, the agency has shifted from a proactive regulatory agency to a reactive agency, and in turn, undermined one of its key goals: the prevention of automobile deaths (Marshaw and Harfst 1990).

As discussed in Chapter 2, the NHTSA’s regulatory focus and funding has shifted over time, and only 25% of its 2009 budget was allocated to regulate corporations (Finch 2010). With

29 Deregulation of Ontario’s Ministry of Environment came with the election of the Mike Harris Conservatives and their “common sense” revolution that sought to remove government the “red tape” (regulations) that impeded private sector growth (Snider 2004; Snider 2003).
budgetary constraints like this, it is little wonder that NHTSA regulators had to rely on aggregate customer complaint data to assess the likelihood of a defect before investigating, that it failed to explore the Wisconsin State Trooper’s report, failed to identify similarities between three reports it conducted on Chevrolet Cobalt airbag non-deployments, or that NHTSA investigators lacked a basic understanding of how advanced air bag systems functioned (Energy and Commerce Committee 2014). In redefining the NHTSA’s role from a rulemaking agency focused on increasing the overall safety of automobiles, to enforcing laws that allowed corporations to define away safety concerns as “customer convenience” and allocating the majority of NHTSA budgets to individual regulation, legal regulation has been reduced to market (or corporate self) regulation.

The final oversight made by Valukas, and one typical to most mainstream discussions of corporate crime, was that the report did not discuss GM’s negligence as a criminal offence. (This may be related to the aforementioned fact that the report was commissioned and funded by GM.) By not discussing the harm caused by GM in terms of criminality, Valukas reinforced the notion, however subtly, that corporate crime differs from traditional street crime, and therefore, GM’s actions should be treated as a civil rather than a criminal offence. Ultimately, it is this assumption, that corporate crime differs fundamentally from other crimes, that has influenced the dominant responses to corporate crime and has masked the crimes of the powerful.

Conclusion

The Valukas report serves as an important document for understanding how GM allowed a defective ignition switch to continue to be produced and sold, endangering the lives of drivers,

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30 Tombs and Whyte (2007) note how corporate crime is rarely discussed by the media, government, or by other authoritative sources, and when it is, it is rarely discussed using the punitive language that accompanies violent street crime – crime that occurs at a much lower frequency.
passengers, and pedestrians alike, for more than a decade. Furthermore, unlike traditional examinations of corporate crime that individualize corporate offending, Valukas paid particular attention to the cultural and organizational factors within GM that helped create conditions conducive to negligence. But, while the report added complexity and nuance to contemporary understandings of corporate crime, it failed to identify several key contradictions in the legal regulation of corporations. The following chapter will extend this analysis by examining the strengths and limitations of current conceptualizations of enforcement, making reference to their applicability to the GM ignition switch recall along the way, and will propose that regulatory enforcement must shift its focus from punishment to transformation.
Chapter 4

Where Do We Go From Here? Compliance, Punishment, and Transformation

Following the February 2014 recall of GM vehicles and the clear evidence of GM’s negligence uncovered in the Valukas report, the Department of Transportation (the parent body of the NHTSA) meted out GM’s punishment: the company was forced to pay a $35 million fine (the maximum allowed by law) and signed a consent order mandating key changes to the company’s safety practices (Wald and Ivory 2014). In particular, the consent order requires GM to improve information sharing between its different divisions, expedite the recall system, improve its capacity to identify safety issues, and meet monthly with regulators from the NHTSA to make sure it was adhering to the specific conditions of the consent order (Wald and Ivory 2014).

In many ways, the story of the GM ignition switch recall is atypical of most other safety crimes, which tend to be mundane, lack exceptional violence or multiple news-worthy deaths, and are rarely investigated or subjected to legal scrutiny (Tombs and Whyte 2007). While the ignition switch recall can be seen as an exceptional case of corporate crime, the state’s response to GM’s negligence has, aside from recent whispers of criminalization (Matthews and Spector 2015), followed the path common to most incidences of corporate criminality; that is, rather than facing the full brunt of the criminal law, GM negotiated a relatively small fine31 and was forced to cooperate with regulators (Snider 2008).

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31 GM earned a $2.8 billion profit in 2014 (Burden 2015), that would mean that GM’s $35 million dollar fine would equate to just 1.25 percent of GM’s 2014 profits.
In this chapter, I will argue that contemporary understandings of enforcement are incomplete, and that responses to corporate crime, in order to be effective, must transform the criminogenic social and organizational conditions of the corporation and capitalism more broadly. To demonstrate why responses to corporate crime must attempt to transform the social conditions that enable corporations to cause such harm to society (people, markets and the environment), I will have to accomplish five things: first, I will demonstrate how regulatory agencies behave generally, and show how these generalizations apply to the NHTSA in the case of the faulty GM ignition switch; second, I will outline how the rise of neoliberalism, and the concomitant corporate counterrevolution has decriminalized corporate crime – leading to its disappearance both in law and society; third, I will show how this decriminalization underlies the normative approach to enforcement supported by the consensual/pluralist school of regulation; fourth, I will use critical punishment scholars to develop a criticism of consensus-based regulation, and at the same time outline the key points and assumptions that this regulatory school holds; finally, using Ruth Morris’s (2000) concept of transformative justice, I will argue that the punishment of corporations must move past contemporary notions of punishment that conflate a means to justice with an end, and transform the criminogenic contradictions inherent to the corporation and capitalism.

**General Characteristics of the Enforcement process**

Perhaps the most salient aspect of corporate regulatory agencies is their preference for non-enforcement of the law (Bittle 2012; Tombs and Whyte; Snider 1993; Snider 1987). While ferocity of enforcement varies over time, when most regulators can choose between taking formal legal action or using informal counseling, advising, and educating, regulators overwhelming choose the latter (Snider 1993: 120). However, this reality of regulation is not all
that surprising considering the fact that regulatory agencies are born out of the state, and the state has a vested interest in being lenient to corporations (Snider 1993: 21). Politicians, in order to get elected and stay in their respective positions of power, depend on corporate money, power, and confidence (Snider 1993: 21). Moreover, because the heads of regulatory agencies are appointed positions, the most senior staff of regulatory agencies must, unless they have massive political support, be supportive (i.e. lenient) of the industry they are tasked with regulating (Snider 1993: 21).

This leniency towards corporations is clearly visible in the auto industry. In 1966, as the NHTSA was attempting to develop its first set of advanced safety features, and as the deadline for these regulations was drawing close, pressure from the auto industry increased markedly. Henry Ford, with his prestigious status as the father of the industry, complained that the regulations were unreasonable and, if implemented, would result in a reduction in production jobs (Nader 1972: xvii). Shortly thereafter, the number of regulations was significantly reduced and many were eliminated. The regulation mandating that seatbelts be installed in all automobiles, however, was retained (Nader 1972: xix).

Pressure from automobile companies on the NHTSA has reoccurred many times since. For example, in 1971, Henry Ford II and Lee Iococca (then president of Ford) met with Richard Nixon in the oval office to resist the regulations then being proposed by the NHTSA (Cullen et al. 1987 155-159). Shortly after this, Ford began producing the Pinto and, despite knowing the vehicle was predisposed to explosions if involved in a rear-end collision, decided not to abide by NHTSA standards for rear-end collisions until 1976, when doing so would be profitable (Cullen et al. 1987: 159). The power and influence that automobile companies have with regulators and
politicians (even the President of the United States!) is clear, and this surely plays a pivotal role with what regulations are passed and how they are enforced.

The power and influence of the auto industry is not simply the product of the industry’s ability to access high ranking government officials, it is also rooted in the structure of the American (and Canadian) economies. Nader (1972: 325) points out, that in 1966 one in every six businesses were classified as automotive, and one of every seven American workers was, either directly or indirectly, employed by the automobile industry. The importance of the auto industry continues today despite the mass exodus of automobile manufacturing jobs to cheaper foreign markets (see Simeticki 2012), and, as of 2014, the auto industry was responsible for 7.25 million jobs in the United States, which delivered $65 billion dollars in personal taxes to government (Hill et al. 2015: 6). Even more critically, automobile production and use provided an additional $96 billion in other tax revenue to the Federal government, and another $110 billion to states in 2014 (Hill et al. 2015: 6). In a political climate that increasingly measures political success in the annual growth rate of the Gross Domestic Product, the jobs and accompanying taxes that the industry creates, puts governments, and specifically the NHTSA, in a position where they must support the industry in order to maintain their own legitimacy (and jobs!).

There is, however, another wrinkle in this relationship between the state and regulators, on the one hand, and the industries they regulate on the other. Because regulatory agencies are composed of a wide-array of individuals, the ideological predispositions and worldviews of these individuals can create conflict over the “correct” role of the regulatory agency (Snider 1993: 121). Regulators and mainstream politicians typically hold similar views – namely, that

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32 The auto industry is equally important for the Canadian economy, where one in seven workers is indirectly or directly employed by the auto industry. In fact, in 2007 12% of the national manufacturing GDP and 20% of Ontario’s GDP was directly related to automobile production (Canadian Motor Vehicle Association 2011).
capitalism and the free market are good, that, on occasion, corporations will have to cut corners to maintain profitability, and that strict adherence to the law in these cases would be intrusive. But there is seldom a seamless blend between the attitudes of lower-level regulators and their superiors: lower level employees may feel that they should strictly enforce the law, while their boss clearly supports a softer approach, or vice versa (Snider 1993: 121).

It is unlikely that any cleavages between employees would totally undermine the agency, however, because both groups have been socialized and educated in mainstream institutions, where one is not likely to find a strong antibusiness attitude, and thus, deep philosophical disagreements are unlikely (Snider 1993: 121). In effect, because both groups buy into the dominant ideas of society, which uphold the sanctity of capitalism and corporations, the differences that emerge between low-level day-to-day regulators and their superiors are little more than quibbles over the best way to skin a cat.

A second characteristic of regulatory agencies is that they overwhelmingly focus their attention on the smallest and least harmful organizations (Snider 1993: 122). Smaller firms are disproportionately fined and punished by regulators compared to large transnational corporations (Snider 1993: 122). This is not because larger corporations behave more ethically – if anything the increase in corporate power and global competition may have increased the likelihood of offending – it is because larger corporations possess more social and economic capital to prevent detection and prosecution (Snider 1993: 122). As discussed above, large corporations have a lot of political influence and this can be used to shape the laws and agencies that govern them. But large corporations also have large budgets that can be used to drag out cases, eroding the annual budgets of the agency tasked with regulating them and forcing the regulatory agency to concede or negotiate a smaller punishment (Bittle 2012; Tombs and Whyte 2007; Snider 1993).
This was exactly what happened in one of the largest and best funded regulatory agencies in the United States, the Federal Trade Commission (FTC). In the early 1970s, the FTC devoted 12 to 14 percent of its annual budget, and an even greater portion of its staff, to investigate illegal combinations and price fixing which they believed had occurred in the oil industry during the 1973 oil crisis (Snider 1993: 123). The FTC suspected that the oil crisis, which corresponded with a tripling of prices, was manufactured by an oil cartel composed of America’s largest oil companies, who intentionally limited the supply of oil to drive up profits (Snider 1993: 123). After investigating this suspicion for eight years, the case was abruptly abandoned, not because of any inherent weakness in the FTC’s case, but because the oil industry’s deep pockets and close political ties simply outmatched those of the FTC (Snider 1993: 123).

The NHTSA is not a regulatory aberration, and it too tends to focus on small businesses. Of the total fines issued by the NHTSA from 1999 until 2012, only 12 of the 90 fines issued were for large manufacturers (nhtsa.gov 2014).33 Yet it is becoming increasingly clear, in light of the recent Toyota sticky pedal (see Finch 2010) and the faulty GM ignition switch, and older cases like the Pinto (see Dowie 1994) or the Corvair (see Nader 1972), that the culture and structure of major automobile companies is criminogenic. Perhaps nothing is more indicative of the NHTSA’s preference for low hanging fruit than the following: in 2008 Bay Path Regional Vocational High School was fined $1,500 for purchasing a non-compliant 15 passenger van. In contrast, in 2002 GM was fined $5,000 for the untimely recall of a vehicle that lacked certain anti-theft standards (nhtsa.org 2014).

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33 For the purposes of discussion here, large manufacturers are those in the top ten global automobile companies according to Driving’s John Leblanc (2014). Even limiting large manufacturers this way only left out one other automobile manufacturer – Izuzu.
The example above demonstrates the third characteristic of enforcement: even when corporations are punished, their punishment tends to be marginal. It is well known in the literature on corporate crime that punishments towards corporations tend to be light in comparison to the harm caused to markets, the environment, or people (Snider 2015; Bittle 2012; Tombs and Whyte 2007; Snider 1993; Clinard and Yeager 1980), and this is demonstrated not only by the fining practices of the NHTSA mentioned above, but also by the NHTSA’s other enforcement tool, the recall of vehicles. While the recall and repair of defects can impose significant costs onto the manufacturer, these costs are rarely high enough to threaten corporate profit levels. And most recalls, despite the few that attract major government and media attention such as the GM ignition switch recall, are too small to impact the corporation’s financials or public reputation (Marshaw and Harfst 1990: 169).

To recap, three important generalizations can be made about regulatory agencies broadly: first, they prefer non-enforcement of the law to strict enforcement; second, they tend to focus on the smallest and weakest organizations – those lacking the means to resist regulatory punishment; and third, when regulations are enforced against large corporations, the punishment tends to be marginal in comparison to the harm wrought, or rendered insignificant because the fines are miniscule in comparison to the corporation’s earnings.

**Neoliberalism and the Corporate Counterrevolution**

With the rise of neoliberalism, and the election of Margaret Thatcher in the U.K. (1979), Ronald Reagan in the U.S. (1980), and Brian Mulroney in Canada (1984), came a corporate counterrevolution that recast corporate regulation as unnecessary, burdensome to business, and emblematic of a fiscally irresponsible government (Snider 2008: 266). During this period, the privilege of incorporation and limited liability came to be viewed as an inherent right of
investors to reduce transaction costs, rather than a legal vehicle only bestowed onto business ventures that would provide a social utility to the community (Snider 2008: 266; Bittle 2012: 20). This radical reconstitution of the goals of the corporation (from social utility to shareholder value maximization), and the concomitant demonization of state regulation, has fundamentally transformed the administration and enforcement of corporate crime.

Neoliberalism is most closely associated with Milton Friedman and the Chicago School of economics (Tombs and Whyte 2007), but its historical links can be traced further back to German ordoliberals like Walter Eucken, Franz Bohm and William Ropke (Foucault 2008).34 A defining feature of neoliberal ideology is that it has emerged in reaction to the Keynesian principles that dominated society in the aftermath of the Great Depression, and lasted until the early 1970s (Resnick and Wolff 2010: 172). Neoliberal economists argue that government intervention into the market obstructs, rather than facilitates, economic efficiency, and they see market forces as the only and ultimate form of regulation (Snider 2008). Since market mechanisms are constructed as a more efficient, equitable, and appropriate for allocating resources and controlling markets actors, protection from corporate crime should not come from legal regulation, but from the natural, invisible, and disciplining hand of the free market (Tombs and Whyte 2007: 158).

Because of this radical reconstitution of the roles and responsibilities of the corporation, the state, and the market, corporate crime was marginalized, decriminalized, and largely ignored

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34 Foucault (2008) argues that a group of liberal economists (Bohm, Eucken, Ropke, etc.) started to reconceptualize the role of the state in order to delegitimize the Nazis Regime and legitimize the liberal-capitalist system that was emerging in Germany. This group of scholars formed the conceptual basis for what Foucault calls "state phobia" and wrote about their new ideas in the economic journal Ordo (and that's why he calls them ordoliberals). In essence, for Foucault, this “state phobia” is a key pillar of neoliberalism, and thus, the origins of this new liberal governmentality did not simply emerge with Milton Friedman.
from the 1980s on.\textsuperscript{35} While corporate malfeasance is much more costly in dollars and lives lost than street crime, the crusade against crime has seldom passed beyond the elegant doors of the business elite, and their harmful actions have been explained as unavoidable outcomes of the organizational complexity of large corporations, as a simple communication breakdown, or as an understandable reaction to market forces (Snider 2008: 265).\textsuperscript{36}

From this perspective, then, it is not only acceptable, but laudable for corporate executives to give themselves millions of dollars in salaries and stock options while, at the same time, decreasing aggregate wages for workers through wage freezes, or simply by taking away their jobs through downsizing and offshoring (Snider 2008: 265).\textsuperscript{37} It is simply good business practice for Exxon Mobil to destroy 1,300 acres of New Jersey wetlands and negotiate a settlement with the pro-business New Jersey government for $225 million, when the costs to repair the wetlands and compensate those affected was estimated at $9 billion (Rose 2015). It is also acceptable for General Motors to pit engineering groups against one another, and force teams to absorb the costs of part changes for other vehicles if they make design alterations, or decrease the number of engineers per team to spur intra-firm competition. In fact, management

\textsuperscript{35} While there has been a general trend towards deregulation since the 1980s, deregulation has not been a constant and uniform policy, and with different crises of capital (Savings and Loans, Westray, Enron, 2008 meltdown) the state has responded with new, neoliberal, forms of regulation (Snider 2011, Soederberg 2008). And all the while, welfare mothers, recreational drug users, and young racial minorities, under the guise of zero tolerance rhetoric, faced increasing punitiveness in the form of mandatory minimum sentences and “three strikes” legislation (Snider 2008).

\textsuperscript{36} If a street criminal attempts to use these same excuses to explain away their miscreant behaviour, they are seen by criminologists as using “techniques of neutralization,” but when corporations use these same techniques they are accepted, reinforced and reproduced by mainstream academics (Snider 2008: 265).

\textsuperscript{37} Crown Holdings, a corporation that produces among other things the beer cans for all major Canadian beer companies and many craft brewers, has only been too eager to impose a level of austerity on its workers they could not have expected, considering that the workers at its Toronto plant helped to double the profits of the corporation the year before negotiations (Warren 2015). Despite having a highly productive workforce and posting immense profits, Crown Holdings presented a take-it-or-leave-it contract to the union representing its employees demanding a 42 percent cut in wages for new employees – effectively creating a two tiered union guaranteed to cause tension and resentment between co-workers in the union.
practices such as these are more likely to be celebrated since they increase the efficiency (that is, profitability) of the corporation (Snider 2008: 265).

Conspicuously absent from these mainstream discussions of corporate behaviour is any reference to the immense harm these policies, implemented with direct reference to neoliberal dogma, cause to people, their families, and their broader communities. Underpaying an employee and forcing him or her to work extended hours prevents people from fulfilling their obligations as a parent, spouse, volunteer, or citizen, and destroys family life, community integration, and civil society in the process (Snider 2008: 267). Ultimately, through neoliberal policies, the surplus value created by labour has increased, and corporate elites have translated this into increased political and economic clout – benefiting the richest five percent of the population to the detriment of the rest (Snider 2015; Wolff 2010).

In the United States, since 1980, the poor have grown poorer, the middle income groups have, at best, remained stable, while the richest 5% has greatly increased its overall wealth (Snider 2015: 21). In fact, the distribution of wealth in the U.S. has returned to 19th century levels, with the richest ten percent owning more than 70 percent of the wealth produced (Saez and Picketty 2014: 839).38 This shift in wealth has been aided by changes in the U.S. taxation system. Taxation has been shifting from a progressive system to a regressive system, where the poor pay more in taxes than they receive in government services and transfer payments (Braithwaite 2005: 20). In stark contrast, corporations and the investor class have seen massive reductions in tax rates and increases in government subsidization (Snider 2008). In 2012, despite making a profit of $1.1 billion (U.S. dollars), Facebook paid no taxes at the state or federal level,

38 From 1870-1910 the top income decile in the U.S. held 70-80 percent of national wealth, this number dropped to 60-70 percent from 1950-1970, but has, since 1980, regained its 19th century class relations and income distribution (Saez and Picketty 2014: 839).
and even received a $429 million tax rebate (Kavoussi 2013). Not to be out subsidized, Wal-Mart, and the Walton family who collectively own over 50 percent of the company’s stocks, received $7.8 billion dollars (again U.S. dollars) from U.S. taxpayers, most of which was given to Wal-Mart’s employees who are not paid a high enough wage by the company to sustain themselves, and must be provided with food stamps or other health subsidies in order to survive (Americans for Tax Fairness 2014: 3). Simply put, the U.S. government subsidized Walmart’s inhumane wages in 2013, which allowed the corporation, rather than the employees, to reap immense profits.

The story is not much different in Canada. Since the ratification of NAFTA (the North American Free Trade Agreement) Canada has lost much of its sovereignty (Snider 2008: 266). Multi-national corporate elites set agendas for federal and provincial governments, and as a result, the neoliberal restructuring and growing gap between rich and poor that has come to define the U.S., has made its way into Canada (Snider 2008: 265). In the year 2000 one of every six Canadians earned less than $10 an hour, and the last 15 years have seen declines in federal transfer payments, employment insurance and other federal and provincial programmes (Snider 2008: 265). At the upper end of the bell curve, adjusted for inflation, the richest one percent now rakes in $180,000 more than they did in 1982, while the bottom 90 percent have only gained $1,700 (Snider 2015: 21). Furthermore, the average annual salary for CEOs continues to increase – the average wage of the CEO of one of Canada’s largest companies increased 25 percent between 2008 and 2013 from $7.35 million to $9.21 million (Mackenzie 2015: 6). In 1998 the average CEO made 105 times the average Canadian’s income, in 2013 that number had jumped

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39 At the time of writing, Brad Wall, Premiere of resource rich Saskatchewan, is lobbying for Provincial equalization payments (payments that transfer money from rich provinces to poorer provinces) to be cut or drastically changed (Lambert 2015).
to 195 times the average (Mackenzie 2015: 6-8). While there are regional disparities in this growth of inequality (Prince Edward Island, for example, had the least growth in inequality and Alberta the largest) (Snider 2015: 22), it is clear that inequality is trending upwards throughout Canada.

This creation of immense inequality, and the harms that accompany it, form one of the key criticisms of neoliberalism. Neoliberal proponents completely ignore the fact that capitalist markets, especially those constructed on laissez-faire ideology, fail to protect the majority of citizens because they promote the concentration of power and information into a small class of elites (Tombs and Whyte 2007: 159). Moreover, neoliberal advocates fail to recognize that people rarely choose their conditions of life: they can be forced, out of necessity, to work in an asbestos mine, cotton field, or other dangerous industry, because of a need to earn money and a lack of employment opportunities created by a highly concentrated and competitive labour market (Tombs and Whyte 2007: 159).

Another important problem underlying neoliberalism is the assumption that markets are, or ever have been, free. In the wake of the 2008 financial collapse, many nation-states had to intervene to save private banks from collapsing as a result of untamed market forces (Tombs and Whyte 2015: 17). Shortly after this event, in 2009 when GM was facing bankruptcy, the United States and Canadian governments intervened to save it from going bankrupt and leaving thousands of workers without jobs (Milke 2013). In both of these cases the state was far from a peripheral night watchmen maintaining a steady and predictable currency, but instead was an active intervener, a guarantor of the political and material conditions necessary to make capitalism function (Tombs and Whyte 2015: 17). In essence, the free market that the advocates of neoliberalism desire is nothing more than wishful thinking – even 19th century laissez-faire
economic principles were supported and enabled by state action (Tombs and Whyte 2015; Tombs and Whyte 2007).

Building from the illusion of market freedom, many now argue that the neoliberal conception of state regulation – that it inherently retards market efficiency – is incorrect, as regulation actually helps capital in the long run (Tombs and Whyte 2007: 159). For example, the regulation of work conditions in 19th century factories, while at odds with the interests of individual factory owners at that time, helped to appease the mass of disgruntled workers, ensuring the widespread adoption of industrialized production, and thus facilitated the future success of capitalism (Pearce and Tombs 1998:42). Corporations, it seems, have been constituted, both legally and politically, through state action, and in this sense, corporate activity is always regulated by states in some capacity (Tombs and Whyte 2015: 25-26).

Consensual/Pluralist Regulation

While neoliberalism has established itself as the dominant perspective for understanding political and economic problems, and in doing so has decriminalized many crimes of the powerful, it is not the dominant approach to regulating corporate crime. Within the existing literature on corporate regulation, one particular way of understanding regulation dominates: the compliance approach (Tombs and Whyte 2007: 152). The compliance approach is one of a number of schools that can be grouped under the general banner of consensual theories (Tombs and Whyte 2007: 152). While there are differences between the various perspectives that constitute this group, they are grouped together because they share a set of fundamental pluralist assumptions: namely, that power is dispersed in modern societies and that popular interests can be mobilized to bring about political and social change (Tombs and Whyte 2007: 153). Thus,
consensual theories of regulation can also be seen as liberal-pluralist strategies of enforcement (Tombs and Whyte 2007).

However, while consensual/pluralist based approaches to corporate regulation may not be steeped in neoliberal rhetoric, they do, nonetheless, decriminalize and differentiate corporate crime from traditional street crime. As I discussed in the first chapter, compliance scholars like Sally Simpson (2002) argue that regulation is most successful when regulators use bargaining, persuasion, and compromise to achieve their goals, rather than strict adherence to the law and the use of strong penalties. Corporations do not respond well to criminalization and can become alienated by criminal law (street criminals, it must be assumed, are not alienated by the criminal justice system) (Simpson 2002). Bargaining and persuasion, on the other hand, can create tight cooperative relationships between regulators and corporations, and this relationship will allow regulators to influence corporations to behave responsibly (Tombs and Whyte 2007; Simpson 2002). In essence, for compliance scholars, the crux of regulation is securing the cooperation of corporations (those whose behaviour they are supposed to govern), and the best way to secure this is through counsel and education, not adversarial punishment. Viewed this way, strict adherence to the law is inappropriate, and at worst criminogenic, and thus, compliance scholars reproduce the decriminalization of corporate crime.

Compliance scholars, to support their decriminalization of corporate crime, point out that in gathering enough evidence to warrant a criminal charge, regulators allow harm to continue to be imposed on people, markets, and the environment simply to punish the corporation (Snider 1993: 134). Moreover, even if the state is able to gather evidence in a harm-minimizing way, the disproportionate amount of corporate crime would quickly inflate criminal justice budgets to the point of fiscal impossibility (Snider 2015: 101). Because of this, compliance scholars argue that
regulators should act as consultants, rather than police officers, to prevent harm at its earliest stages (Tombs and Whyte 2007; Pearce and Tombs 1990).

Underlying this approach to regulatory enforcement is the assumption that corporate criminals are fundamentally different from street criminals. This decriminalization of corporate harm and wrongdoing was a major theme of the corporate counterrevolution that characterized Anglo-western democracies in the 1980s and 1990s, and the use of compliance-oriented strategies to regulate corporate crime has only tilted regulation further in favour of corporations. Using the criticisms of criminalization advanced by consensual regulatory scholars (that corporations are deserving of leniency), neoliberal advocates can paint corporations as the scapegoats of over-regulation, and call for deregulation broadly or of a specific industry (Snider 1993: 141).

**Compliance contra Punishment**

The compliance school’s description of how regulation is exercised is, in the main, accurate. However, compliance scholars push this description of what is to advocate what ought to be (Tombs and Whyte 2007: 154). They argue that the dominance of cooperation in the regulatory field is not only inevitable, but that this system of under and non-enforcement is necessary and good (Tombs and Whyte 2007: 154). It is this conflation of “what is” with “what ought to be” that makes compliance theories of regulation difficult to criticize (these scholars can always claim they are simply describing reality, instead of prescribing a Truth) (Tombs and Whyte 2007: 156). Despite this circular defense, several important criticisms have been levied against the compliance school and consensual theories of regulation.

First, some argue that the evidence supporting cooperation and self-regulation is simply not convincing (Tombs and White 2007). In particular, the arguments made by compliance
scholars against punitiveness are hypothetical since punitiveness has rarely, if ever, been achieved in corporate regulation (Tombs and Whyte 2007: 156). Critical scholars like Bittle and Snider 2011, Soederberg 2008, and Snider 2008, demonstrate that the strict enforcement compliance scholars argue against does not actually exist, since the creation and enforcement of strict laws is only ever a temporary aspect of the regulatory cycle. In other words, the punishment of corporations has never truly been implemented and sustained, and instead non-enforcement prevails (Snider 2008; Tombs and Whyte 2007). Further undermining these arguments made by compliance scholars is the growing number of corporate crime case studies (which this research is a part of) that highlight the failures of compliance-oriented regulation (Snider 2015; Tombs and Whyte 2007).

Another important criticism of consensual theories is that they fail to understand the effects of class-based power (Snider 1993: 140). As noted above, the immense financial and political power that corporations have obtained over the last thirty or forty years has allowed them to tilt political and economic policy in their favour, often to the detriment of the rest of society (see Americans for Tax Fairness 2014), and this is no different when corporate malfeasance is at issue. ⁴⁰ Wal-Mart, Royal Dutch Shell, Exxon Mobil, Sinopec-China Petro, and British Petroleum all fell in the top forty global economies in 2014 (this includes GDps of nations and annual revenues by corporations), controlling more wealth than nations such as

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⁴⁰ In 1994, Bill Clinton, facing a declining home real estate market with the pool of qualified borrowers quickly drying up, introduced the National Homeownership Strategy: Partners in the American Dream to allow previously disqualified borrowers (the poor and marginalized) to be able to obtain debt and enter the homeownership market (Will 2013: 53). However, rather than provide subsidies directly to prospective homebuyers, the Clinton administration loosened the regulations for financiers so that they could invent creative financial mechanisms (adjustable mortgage rates, subprime mortgages, and zero down loans) to make lending to these poorer individuals profitable (Will 2013: 53). Homeownership increased incredibly from 64% of Americans in 1995 to 70% in 2007, and the financial sector reaped huge revenues from the profits, dividends and bonuses that came with this rise in lending. However, in 2007, when the housing bubble created by this policy burst, the banks that securitized and sold these risky loans and sold them to other investors, becoming insolvent as a result, were bailed out, while the poor and marginalized homeowners were left homeless (Will 2013).
Finland, Chile and Hong Kong (Snider 2015: 19). The concentration of this immense wealth into the hands of a tiny minority (the board of directors and the corporate managers they hire to maximize shareholder value) allows corporations to establish oligopolies and monopolies (this is especially clear in the automotive industry), manipulate markets, and otherwise rig the economic game in their favour (Snider 1993). Because this understanding of class-based power is completely ignored by consensual theorists, who believe power is dispersed and social change can be achieved by obtaining a democratic consensus, their understanding of the regulatory process is limited.

Third, because consensus theorists ignore the class-based power that helps structure regulation, they often ignore the class conflict and struggle that has led to the implementation of regulation in the first place (Tombs and Whyte 2007). As noted in chapter 2, the long history of automobile regulation is fraught with examples of conflict between the immediate interests of capital and those disparate groups who are harmed by their actions. General Motors was particularly outspoken against government regulation in the automobile industry, and it wasn’t until Ralph Nader’s exposé of the designed in dangers of automobiles, and GM’s subsequent spying scandal, that meaningful federal regulation of the automobile industry was achieved (Eastman 1984). GM and the automobile industry are not an aberration. The hostility of capitalist elites towards any and all state regulation is illustrated by events such as Bhopal, the Herald of Free Enterprise, Lac Megantic, and the Westray mine collapse, which illustrate the importance

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41 Simon (2006: 104-105) notes that the automobile industry has become highly concentrated, and rather competing with one another over price and quality, automobile companies compete over image and brand through advertisements, the costs of which are passed on to consumers. In fact, the annual model change (a key pillar of automobile industry dogma) works to protect the automobile cartel from competition by driving up the price of entry to the market (Simon 2006: 105). Perhaps the most glaring piece of evidence demonstrating the auto industry’s oligopolization is its immunity to recession; that is, in the face of an overall decline in incomes (and thus less available money to purchase vehicles) automobile prices continually increase.
of dissident voices in the struggle against corporate power (Snider 2015: 2-5; Tombs and Whyte 2007: 14-18).

Fourth, and building off the last point, because consensus-based theorists largely ignore the class-conflict and struggle inherent to regulation, the consensus these scholars speak of is highly selective (Tombs and Whyte 2007: 157). The criminal law has failed to reflect the growing support within society for greater punitiveness and criminalization of corporate malfeasance (Tombs and Whyte 2007: 157). Despite the existence of corporate criminality laws in many areas (for Canada see Bittle 2012) and an unsuccessful attempt at charging the Ford Motor Company with three counts of reckless homicide in 1978 for knowingly producing a vehicle that did not meet NHTSA rear-collision standards (see Cullen, Maakestad and Cavender 1987), most of the harms caused by corporations and their actors continue to be dealt with in civil or administrative courts (Snider 2008; Tombs and Whyte 2007; Snider 1993).

Last, the assumption that corporations are, for the most part responsible and moral actors, does not recognize the widespread and routine nature of corporate offending (Tombs and Whyte 2007: 157). Viewing the problem of corporate crime as a problem of “a few bad apples” ignores

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42 In 1984 Union Carbide’s Chemical plant in Bhopal, India released forty tons of chemicals into the air killing 3,329 and injuring thousands more (Tombs and Whyte 2007: 14). When the leak occurred, the vent gas scrubber was turned off, the flare tower was not in operation, water hoses that could have been used to douse the gas did not have enough pressure to reach the stack where gas was escaping, and the refrigerator unit intended to cool the storage tanks had been turned off to save $50 a week. The Herald of Free Enterprise was a roll-on, roll-off style ferry that operated in the English Channel. After Thatcher opened-up the ferry transportation market in 1984, private companies like the Herald’s Sealink UK Ltd. began undercutting the public ferries Tombs and Whyte 2007: 17). In order to cut costs and maintain profits Sealink reduced the number of workers and turnaround time for the ferries. On March 6, 1987 the Herald was pulling away from Zeebrugge port with its bow doors open – this was a common procedure to decrease loading time – but this time water began to pour in the bow doors capsizing the vessel in 90 seconds, killing 193 passengers (Tombs and Whyte 2007: 17). In the Westray mine collapse, managers at the mine were pressured by the corporation to incapacitate the murphy switches (a switch that turns off machines when methane levels are too high) to increase productivity (Bittle 2012). As a result of this decision, methane gas was able to build up in the mine, ending with an explosion that killed 23 miners (Bittle 2013). On July 6, 2013 a train carrying 72 tankers of crude oil from the North Dakota oil fields derailed and exploded killing 47 people in the town of Lac Megantic, Quebec (Snider 2015: 2). The Railway Association of Canada in the years leading up to this event had lobbied Transport Canada to allow trains to be staffed by one person (reducing their overall wage costs), and the Corporation, Montreal Main Atlantic Railway loaded the flammable oil in unsafe cars (again reducing their costs). These four examples clearly show that when increased profitability is at issue, safety takes a back seat.
the fact that most regulation occurs only after corporations have acted irresponsibly and recklessly (Tombs and Whyte 2007: 157). Furthermore, this “bad apples” understanding overlooks the techniques corporations use to hide their law-breaking. Gray (2006) notes how factories, with the help of workers, routinely construct “Potemkin villages” before an inspection, only to tear them down after the inspection, returning the workplace to its hazardous, pre-inspection state. For critical scholars, the assumption that corporations are responsible actors ignores the fact that the key function of the corporation is to create and maximize profits, and when profitability stands in contradiction with the safety and health of consumers, workers, or the environment, it is likely that the pressure of profitability will outweigh any calls for social responsibility.

Such criticisms of consensual theories of regulation are rooted in the critical-Marxist tradition of legal studies. In the Marxist tradition, the law has typically been conceptualized in one of two ways: on the one hand, as a repressive force that can ensure the success of the capitalist system through coercion and violence (Snider 1987: 37); or, on the other hand, as a force of ideological and political domination that unites dominant classes and facilitates the disorganization, and thus pacification, of subordinate classes (although these are not necessary mutually exclusive, and many argue that the law reproduces capitalism by using both of these techniques) (Snider 1987: 37-38).

This division within Marxist understandings of law takes its own shape in discussions of corporate regulation. The instrumentalist school, which typically sees the law as repressive, assumes that the state exists to reinforce and reproduce the interests of the ruling class, and sees legal regulation as a tool (or instrument) to accomplish this underlying goal (Snider 1987: 39). From this perspective, laws that benefit the lower classes at the detriment of elites (most, if not
all laws regarding corporate crime) will be constructed so that they satisfy the disruptive voices from below, while impacting the interests of the ruling classes the least (Snider 1987: 39). Structuralists, by contrast, argue that the law is determined by the needs of capital accumulation and the capitalist system, and cannot be traced back to the state or any other group of individuals (Snider 1987: 39). These structuralist Marxists do, however, agree with instrumentalists that the laws created to govern corporations and other elites will be weak, and ultimately work to further the interests of the ruling classes (Snider 1987: 39).

However, absent from structuralist and instrumentalist conceptualizations of corporate regulation is any acknowledgement of the role of social movements in ensuring stronger legislation, and safer workplaces and products (Snider 1987). As Snider (1987: 57) notes, decades long struggles undertaken by unions, consumer groups, public interest legal lobbies, and environmental groups (just to name a few), has, through the publicity they generated, produced a gradual redefinition of corporate behaviour. In effect, these struggles between social groups and social elites have increased the price of legitimacy for corporations, and forced the business community to provide better working conditions, safer products, and cease some polluting practices (Snider 1987: 57). What Snider advances is a neo-Marxist understanding of regulation; one that recognizes and attempts to make sense of the contradictory relationships of corporate regulation.

One of the key criticisms launched at instrumentalist and structuralist understandings of regulation, and the relationship between the state and capitalism more broadly, is that they are overly deterministic (Snider 1987: 45), because the state does not simply reflect and promote the objectives of corporations and capitalism (Bittle 2012: 55). Neo-Marxist scholars remind us that, while the state and capital both play an important role in regulating corporate activity, they do
not solely determine the nature and scope of regulation. In my earlier discussion of the struggle for regulation in the auto industry (Chapter 2), the scientific knowledge claims of scientists researching automobile accidents, and the work of public interests groups (particularly Ralph Nader) undermined the strategies of corporations seeking to prevent regulation, and helped to get automobile safety laws passed. While the state played a legitimating role, enacting legislation and holding hearings, the thrust ultimately came from activist groups resisting the power of automakers and pointing out the immense harm their vehicle designs were causing.

Another key aspect of neo-Marxist research into corporate crime is the importance of not individualizing corporate crime (Bittle 2012: 54). It’s not that individuals do not matter – certainly in the context of the GM ignition switch recall Ray DiGiorgio’s attempts to conceal his approval of a substandard part, which derailed investigators, was an important aspect of the case – but that their actions must be situated within the broader organizational and structural context in which they occurred (Bittle 2012: 54). The contested nature of the law is an important aspect of this context, and must also factor into our understandings of corporate criminality and offending. While political-economic power relations are important, they are not wholly deterministic – for example, in the Walkerton, Ontario case, scientific and legal knowledge/power were able to come together and resist neoliberal deregulation, and instead helped implement a period of reregulation and agency re-strengthening (Snider 2004).

Ultimately, corporate crime and its regulation is a process of constant struggle, and there is no guarantee that the state will carry out the interests of capital or will respond using a “public interest test” (Tombs and Whyte 2007: 153).

Critical corporate crime scholars today present a more nuanced understanding of the coproduction of corporate crime through interactions between the state, corporations, and the
market (see Tombs and Whyte 2015; Bittle 2012 and Glasbeek 2002), a view that distinguishes itself from deterministic Marxism or liberal legal perspectives that see the law as embodying consensus (Bittle 2012). From this perspective, these scholars call for the strict enforcement of criminal sanctions, as well as regulatory strategies that introduce formal sanctions to deviant corporations at earlier stages of offending (Bittle 2012: 52). Punishment is seen as a promising response to corporate offending for several reasons: first, corporate crimes are not one-off acts, and are therefore fairly easy to detect (Bittle 2012: 52); second, since some corporate crimes are easily detected (particularly workplace crimes where the harm involves loss of life or limb), increases in regulatory resources would positively correlate with an increase in detection (Bittle 2012: 52); third, since corporate crimes contain an element of rational choice (e.g. the cost-benefit analysis that took place in the Ford Pinto and to a lesser degree in the GM ignition switch case), it is likely that the symbolic message of punishment would be internalized, and deterrence might be achieved (Tombs and Whyte: 170); fourth, criminal punishment can incapacitate corporate offenders, thereby preventing them from causing more harm to society (Tombs and Whyte 2007: 172); and lastly, punishments wrought against powerful corporations, unlike those against street crime, are not likely to increase social inequality (Bittle 2012: 52).

**What about Transformative Justice?**

But what specifically do these scholars propose? Not all corporate crimes cause the same amount of harm, and because of this fact, punishment scholars, and some compliance scholars (namely Braithwaite 1982) have called for punishments ranging from fines to the “corporate death penalty” (see Tombs and Whyte 2007: 180-189). However, these strategies are contained within historically dominant notions of punishment as justice, and fail to truly transform the criminogenic qualities of the corporation, the market, and capitalism. In the following section I
will demonstrate the pitfalls of a range of enforcement strategies based on their goals to deter, incapacitate, rehabilitate or provide restitution for corporate crime. Following this, I will outline the key theoretical aspects of transformative justice, and demonstrate how these principles can be helpful in thinking about corporate crime and its responses. Following that, I will examine the transformative potential of worker self-directed enterprises broadly, drawing links to the GM ignition switch recall along the way. Ultimately, I hope to demonstrate that Ruth Morris’s (2000) concept of transformative justice can deepen contemporary responses to corporate crime that see a means to justice (punishment) as the end goal.

Morris used the concept of transformative justice to criticize the traditional incarceration-as-justice model, and can be categorized broadly within penal abolitionist research, which seeks to abolish prisons. However, to discard its applicability to corporate crime simply because it was originally applied to street crime only furthers the street crime/suite crime dichotomy that corporate crime scholars ardently oppose. The use of penal abolitionist ideas to structure and deepen our conceptions of corporate crime is, however, not unprecedented. For example, Steve Tombs and David Whyte (2015), in following Thomas Mathiesen’s (2006) *Prison on Trial*, demonstrate that the corporation as an institution fails to withstand critical scrutiny, and therefore, we should move to abolish the corporation as a legal and social institution. It is from the backdrop of the corporate abolitionist perspective that I will attempt to advance the notion of transformative justice in relation to corporate crime.

But what is transformative justice? In the simplest terms, transformative justice attempts to fundamentally alter the organizational and structural conditions that allowed for the crime to be committed in the first place (Morris 2000). Morris (2000) demonstrates that traditional punishment (that is, incarceration) is counterproductive because it produces more harm than
good, and other non-punitive responses, such as restorative justice, are misguided because they attempt to return the victim and offender to states that were conducive to the offending and subsequent harm in the first place. In this sense, then, responses to crime should attempt to transform the social conditions that allowed for the offence to occur, rather than return the individual to a place conducive to offending.

With respect to corporate crime, limitations to a company’s charter, disqualifications of senior managers from holding high positions in corporations, or incarceration, all fail to address the structural imperative of the corporation to produce profits. Furthermore, if we are to accept Pearce and Tombs’ (1998) contention that corporate crime is not only structurally produced, but also organizationally produced, what stops a new CEO or other senior officer, trained and socialized within the same system, from carrying out the same harmful actions in the pursuit of increased quarterly profits? The answer is quite simple: nothing. The corporation, even if its charter is altered, some former employees or major stockholders barred from participating in daily operations, or its wholesome image diminished, still functions to produce profits, and organizational attitudes, such as the GM nod, may remain despite high level firings or public shaming. What is needed, then, is a response that fundamentally changes the *modus operandi* of the corporation and the power dynamics that allow the concentration of power and exploitation of workers.

What would such a response look like? One promising alternative to the capitalist corporation has been the movement for worker self-directed enterprises (WSDEs). Rather than focus on the macroeconomic problems like taxation and state intervention, Richard Wolff (2010) asks labour and the left to envisage change at the micro level, to question the top down structure of corporations that concentrates power into the hands of a small number of major stockholders.
and the boards of directors they elect. By contrast, WSDEs are worker-owned businesses where all workers collectively produce the product or service for sale, and, in a democratic way (one worker one vote) elect a board of directors to manage day-to-day operations (Snider 2015: 115). Because the workers own the enterprise, they are expected to participate in the organization of the business, giving them more control over their working conditions and the distribution of surplus value. While many critics disregard WSDEs as nothing more than a socialist pipe dream, hundreds of successful WSDEs are listed on Wolff’s Democracy at Work website (democracyatwork.info), and help demonstrate that collective ownership is a legitimate way to organize businesses (Snider 2015: 112).

The oldest and most successful WSDE is, perhaps, the Mondragon Co-operative Corporation (MCC) (Snider 2015: 112). From its beginnings as a small polytechnical school, MCC has grown into one of the largest companies in Spain, with more than 250 smaller companies falling within the MCC umbrella, ranging from supermarket chains to appliance manufacturing, and even financial services (Snider 2015: 112). However, while MCC provides a great example of how non-capitalistic organizations can succeed in the contemporary global economy, there is evidence that the workers at Mondragon face similar rates of alienation and disillusionment as workers in traditional capitalist enterprises.

Specifically, Sharryn Kasmir (1999) argues that the MCC can only be seen as a capitalist alternative if the workers’ experiences are ignored, politics are marginalized, and the co-op is separated from its global context. Furthermore, at the local level, while Mondragon workers have broader rights to participate and influence their daily working conditions and future directions of their enterprise, the workers do not have the knowledge and resources to capitalize on this increased power (Kasmir 1999: 383). One reason for this could be the fact that
Mondragon prohibits unionization, a policy that masks the class-conflict inherent in capitalist production, and forces individual employees to rely only on their own resources to negotiate their working conditions. Unionization within Mondragon would allow workers to pool assets and hire lawyers, economists, and engineers to evaluate proposals and protect their interests (Kasmir 1999: 387).

Furthermore, as Kasmir (1999) demonstrates, the workers’ status as owners actually works as a new way to discipline workers and increase their exploitation. Managers at Mondragon use the worker’s direct stake in the company’s success to pressure them to accept policies that increase productivity and exploitation, like time-motion studies, by stressing to the employee-owners that “it’s your firm,” and therefore workers should favour any and all policies that increase profits (Kasmir 1999). Ultimately, Kasmir (1999) argues that Mondragon reproduces post-Fordist capitalist relations, rather than eliminates class distinctions or worker exploitation.

There is an important aspect to this reproduction of post-Fordist capitalism other than the masking of class-conflict. As discussed earlier, Snider (1993: 121-122) notes that regulators often take a “softer” approach to regulating corporate crime because these regulators are socialized in the same ideological system as managers and CEOs, an ideology that reaffirms the primacy of capitalism and the corporation. It is unlikely that the Mondragon workers were socialized in a school system that attempted to create democratic, rather than disciplined workers – people who would feel comfortable challenging the dominant, hierarchical, structure of the workplace. In this way, and to borrow a concept from Resnick and Wolff (1987), the social conditions of the workplace, and the concomitant relations of power, are overdetermined by a

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43 Resnick and Wolff (1987: 253) argue that “the state does not merely derive from and reflect some subset of its constituent processes. Rather the diverse social processes comprising the state overdetermine one another, they
range of political, cultural, natural and economic processes. Because of this, the exploitation within a workplace is not solely dependent on the structure of organization, but as Kasmir (1999) demonstrates, can be influenced by localized cultural histories. Thus, a transformation towards co-operative ownership should not be seen as a panacea for corporate crime or the ills of capitalism.

The problems that underlie Mondragon are not simply limited to the overdetermined nature of collective ownership. Mondragon, like other capitalist corporations, is structured to create surplus value (Glasbeek 2002; Shamir 1999). Therefore, profitability, whether for a tiny minority or a collection of workers, can create a situation where the safety of workers comes in conflict with the profits of the organization. For example, Gary Gray’s (2006) ethnography of an assembly line factory in Ontario illustrates how managers can use the notion of collective need to put workers at risk. In particular, Gray (2006: 881) shows how he and other workers were asked to violate safety standards and put their health in jeopardy so that an unsafe production line could continue to operate, and high levels of productivity could be maintained. With this in mind, it is likely that if workers stood to profit even more from productivity, they might put their own safety at risk to achieve higher profits or avoid decreases in productivity.

This would certainly apply to the case of the GM ignition switch. The recall of vehicles can impact profits, and workers, just like shareholders, might be willing to risk safety to increase or maintain profits. Moreover, the intra-firm competition that GM touted as increasing productivity might also be adopted democratically by workers who would benefit more from the increases in profitability created by increases in productivity. Of course, this is not guaranteed—

combine together to produce something different from each and all of them.” Moreover, Bittle (2015: 123) argues that this overdetermination of the state also applies to the corporation. What I am suggesting here, is that it is possible that the workplace, whether democratic or hierarchical, in the same way as the state but occurring on a more localized level, is overdetermined by a range of factors.
workers could choose to act responsibly and recall a vehicle, absorbing the costs of the recall, in order to avoid bad publicity and a poor market reaction, but such decisions are still rooted in market logics.

I do not wish to dismiss the transformative potential of WSDEs altogether. As Bittle (2015: 146) notes “changing the way in which surplus values are produced, appropriated and distributed has the potential to alter the very system that has generated so much harm and devastation.” Or to synthesize this into the transformative language of Morris, non-capitalist organizations like WSDEs have the potential to transform some of the criminogenic aspects of the contemporary capitalist corporation. However, transformative justice is not simply about transformation, it also attempts to provide restitution to the victims of crime, and in this way, there remains a role for state enforcement.

For Morris (2000), a crucial pillar of transformative justice is a redefinition of restitution. For Morris (2000:12), restitution is more than a simple one-to-one relationship of “you stole $20.62 from me, so you will pay back $20.62.” Instead, restitution is about returning back to the victim the intangible elements lost in the victimization: restoring the victim’s sense of security and inclusion into the community that victimization removed. But state regulation of enterprises, must transform in order to do this; that is, rather than reproducing the primacy of corporate capitalism, regulation must attempt to empower workers and the community to realize the benefits of non-capitalist spaces, and foster a more equitable and inclusive social condition than is currently offered by corporate capitalism (Bittle 2015: 146).

While I do not have any how-to guide to solve the contradictions of capitalist production and the state regulatory system, in the preceding paragraphs I have attempted to push traditional responses to corporate crime passed a conceptualization of justice as punishment, to one of
justice as transformation. Snider (1987: 57) stresses that changes in the social conditions of the masses have been brought about, not through state action, but through the struggles of individuals at the local level. It is from this point, that I draw my optimism for the potential of WSDEs to transform the criminogenic qualities of the corporation. Democratic ownership provides a greater voice to workers to change their social conditions, and the conditions of production within society.

Conclusion

In this chapter I outlined general characterizations of the enforcement process, demonstrated the historical importance of the corporate counterrevolution and its impact on liberal-pluralist regulation, critically examined the key claims and assumptions advanced by punishment scholars, and argued for a reorientation of corporate criminal responses, one that relied on transformative justice rather than punishment. While this thesis provides no roadmap for social transformation, the ideas expressed in this chapter provide alternatives to the capitalist status quo. However, while I have offered a way of moving forward that does not rely on punishment, it is important that the harms caused by General Motors and other corporations are not forgotten or de-emphasized, as their actions have caused immense harm throughout society.
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