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Institutional and Political Sources of Legislative Change: Explaining How Private Organizations Influence the Form and Content of Consumer Protection Legislation

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This article explores how private organizations influence the content and meaning of consumer protection legislation. I examine why California forced consumers to use a private dispute resolution system that affords consumers fewer rights, while Vermont adopted a state-run disputing structure that affords consumers greater rights. Drawing from historical and new institutional theories, I analyze twenty-five years of legislative history, as well as interviews with drafters of the California and Vermont laws, to show how automobile manufacturers weakened the impact of a powerful California consumer warranty law by creating dispute resolution venues. As these structures became institutionalized in the lemon law field, manufacturers reshaped the meaning of legislation. Unlike California, the political alliances in Vermont and a different developmental path led to a state-run dispute resolution structure. I conclude that how social reform laws are designed and how businesses influence social reform legislation can increase or decrease the achievement of a statute's social reform goals.

INTRODUCTION

With varying degrees of success, social reform advocates in the United States use the legislative process to address broad social problems such as race, gender, and economic inequality. Law and society scholars, in turn, often conduct empirical research that explores law's capacity to produce social change (Rosenberg 1991; Williams 1991; McCann 1994; Engel and Munger 1996; Albiston 1999). Too often, however, empirical studies in this vein evaluate whether legislation works and leads to social reform without looking at variation. This is partly because empirical studies on social reform laws typically evaluate one federal law, for example, Title VII, the Americans with Disabilities Act, or the Family Medical Leave Act, as opposed to studying the variation in state laws. Scholars rarely treat states as "laboratories of democracy" and

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compare how legislation is drafted and enacted impacts whether social reform laws are more likely to achieve reform. This article does not focus on the success or failure of social reform legislation, but on under what conditions social reform legislation is more likely to facilitate or inhibit consumer inequality in society. My study suggests that the process through which social reform laws are enacted, and how organizations influence the content and meaning of legislation, impacts the likelihood that the desired social reform goals are achieved.

State consumer warranty laws provide an ideal setting to address this question because consumer rights have been, through legislative codification, routed into several different dispute resolution systems operating outside the court system. In the 1970s and 1980s, states across the United States adopted consumer warranty laws for buyers of automobiles. These consumer protection laws responded to widespread problems of manufacturers failing to make safe automobiles and, more precisely, failing to make repairs under their warranties. Attempting to put manufacturers and consumers on a more even playing field, these laws afforded consumers the ability to go to court and seek replacement or repurchase of their vehicle, attorney fees, and sometimes a civil penalty if manufacturers failed to comply with their warranties. Although today consumers in most states can still take their claims under these laws to court, they seldom do. Instead, consumer rights are now largely contingent on first using alternative dispute resolution structures, some created and operated by private organizations and others run by states. In particular, all fifty states allow consumers the option of having their automobile lemon law disputes resolved in dispute resolution forums funded by automobile manufacturers but operated by external third-party organizations. In addition to allowing consumers to use the private dispute resolution forum, thirteen states also allow consumers the choice of using a state-run dispute resolution forum instead. California was the first state to enact a consumer warranty law and the second state to amend its law to make public legal rights contingent on using private dispute resolution forums.[1] Vermont was the first state to codify a state-run dispute resolution system into law.

Moreover, there is at least some evidence that the content and meaning of these social reform laws and, in particular, the institutional design of these dispute resolution forums consumers are asked to use, matter with respect to how likely consumers are to achieve the relief they seek. My prior study of consumer lemon law arbitration awards revealed that outcome data on who wins between consumers and manufacturers in these private and state-run disputing forums in California and Vermont significantly diverge (Talesh 2012). Specifically, from 1996–2007, consumers obtained a full refund or replacement vehicle almost twice as often in Vermont's public dispute resolution system (59 percent) as in California's private system (30 percent) (Talesh 2012).[2] Thus, whether consumers achieve relief under these two social reform laws appears at least partially contingent on whether they seek relief in private or state-run dispute resolution structures. In fact, data on how consumers fare in private dispute resolution

1. In fact, California was the first state to attempt to create a lemon law. However, while California struggled to pass its lemon law, Connecticut borrowed California's proposed bill and passed a specific law protecting automobile owners. The passage of Connecticut's lemon law in 1982 was largely modeled after California's failed bills in 1980 and 1981.

2. Moreover, Vermont consumers overwhelmingly elect to go through the state-run dispute resolution system rather than the private process.

structures across all fifty states mirror the consumers' win rate in California, while consumers fare better in the thirteen states that have state-run dispute resolution structures.

Evaluating the conditions that social reform legislation is more likely to neutralize the imbalance of power between consumers and manufacturers led me to an interesting set of research subquestions that focus on the organizations and actors participating in the legislative process: (1) Why did California codify a private dispute resolution system into law while Vermont ultimately adopted both private and state-run dispute resolution systems into law? and (2) Under what conditions do private organizations influence the content and meaning of social reform legislation?

To answer these questions, I draw on and link two literatures concerning the role that organizations play in shaping and changing legal institutions: political science historical institutional studies of how institutions stay stable and at times change amid various levels of business influence and new institutional organizational sociology studies of how organizations shape law within their organizational field. Historical institutionalists explain institutional development, stability, and change by examining when events occur and specifically explore how questions of timing and path dependency impact politics and public policy (Pierson 2004). Focusing less on politics and timing, new institutionalists argue that as organizational norms and values diffuse among organizations, they eventually become institutionalized within a community or field of similar organizations (Meyer and Rowan 1977; DiMaggio and Powell 1983; Scott 1992). More recently, scholars have been exploring how institutionalized norms among organizations eventually influence the content and meaning of law among public legal institutions (Edelman, Uggen, and Erlanger 1999; Talesh 2009, 2013; Edelman et al. 2011). Neither theory alone explains why California made powerful consumer rights contingent on using private dispute resolution structures while Vermont provided consumers with the option of using a state-run dispute resolution process. In this instance, new institutional theory and historical theories of institutional change, stability, and political action work together to explain the configuration of the lemon law field. New institutional approaches explain why private dispute resolution structures diffused across both states (and in fact all fifty states), while politics and path dependency explain why the *form* and *control* of each structure was different in California and Vermont.

Through a quantitative coding and qualitative content analysis of twenty-five years of legislative history, as well as interviews with legislative analysts involved in crafting laws in both California and Vermont, this article shows how automobile manufacturers, who were initially subject to a powerful consumer warranty law in California in 1971, transformed and ultimately weakened the impact of this law by creating their own dispute resolution venues. As these legalized structures became institutionalized among the organizational field and eventually run by third-party organizational surrogates, manufacturers infused business values into California legislation in varying degrees and reshaped the meaning of law and compliance among not just organizations, but also in the legislature. As a result of such legislation, consumer rights and remedies became largely contingent on first using third-party dispute resolution structures funded by manufacturers where rights and remedies equivalent to those available in court do not exist.

As was the case in California, the Vermont legislature in 1984 reached consensus that alternative dispute resolution (ADR) forums as opposed to courts were the proper place to resolve legal disputes. However, the contested and varying political alliances in Vermont, as well as a different developmental path (cf. Pierson 2004), led to a different dispute resolution structure being codified into law. Unlike California, Vermont did not create a court-based option for consumers in the 1970s. Thus, when Vermont created a lemon law in the 1980s, Vermont considered both court and ADR options. In particular, different interest groups, namely, consumer advocates and automotive dealers, dominated the Vermont legislative process. A political tradeoff ensued among key stakeholders, such as automotive dealers, manufacturers, consumer advocates, and the state attorney general, whereby a court option was eliminated from consideration in return for permitting the State of Vermont to administer a dispute resolution structure in addition to allowing the private dispute resolution process to operate. Thus, by comparing two states that developed two different institutional processes with varying degrees of business control and participation in the dispute resolution structures, I show under what conditions business and managerial conceptions of law reshape the meaning of public legal rights and the conditions under which they do not.

UNDERSTANDING INSTITUTIONAL STABILITY AND CHANGE THROUGH HISTORICAL AND NEW INSTITUTIONAL THEORIES

New institutional organizational sociologists and political science historical institutionalists emphasize different mechanisms for explaining how institutions, legal or otherwise, change or remain the same amid varying influence by organizations.[3] After reviewing historical and new institutional approaches, this section concludes by proposing an institutional-political framework that integrates both scholarly approaches and offers broader explanatory power for explaining the puzzle of institutional change and stability.

Historical institutionalists attempt to elucidate the role that institutions play in the determination of the social and political world in which we live, that is, "formal or informal procedures, routines, norms and conventions embedded in the organizational structure of the polity or political economy" (Hall and Taylor 1996, 938). Instead of focusing on equilibria, historical institutionalists take a dynamic approach to history and bring questions of timing and temporality into politics and, in particular, to the center of the analysis of how institutions matter. They explain institutional development and stability by examining when events occur (Pierson 2000a, 2000b, 2004). Historical institutionalists often highlight the importance of path dependencies, that is, earlier decisions in time that often change the parameters and the decision making at later points in time and make a particular course of action difficult to reverse (Pierson

3. Although empirical scholars increasingly focus on mechanism-centered causal explanations, the term "mechanism" is somewhat ambiguous and contested (Gerring 2010). Gerring's study "Causal Mechanisms: Yes, But . . ." highlights the wide-ranging definitions of the term "mechanism" and how the term is often deployed by social science researchers without taking the time to define the term at all. When I use the term mechanism in this article, I am referring to the pathways, processes, or micro-level explanations by which an effect is produced.

2000a, 2000b, 2004). Path dependency does not mean that institutions, government or otherwise, cannot reverse their path, but that it is less likely to occur.

More recently, political scientists and some political sociologists are focusing on how institutions change gradually over time and, in particular, the ways in which the contradictory forces of institutional stability and change coexist (Weir 1992; Hall and Taylor 1996; Clemens and Cook 1999; Thelen 1999, 2004; Schickler 2001; Hacker 2002, 2004, 2006; Streeck and Thelen 2004; Barnes 2007, 2008). Focusing on US legislative and social policy, historical institutionalists identify three key modes of institutional change. Instead of attacking legislation directly and seeking formal revision through explicit changes to laws, businesses and political elites adapt existing institutions and policies to new ends (conversion), create new institutions or policies without eliminating existing ones (layering), and change the operation or effect of policies without significant changes in those policies' structure (drift) (Schickler 2001; Hacker 2004; Streeck and Thelen 2004; Thelen 2004; Hacker and Pierson 2010). Thus, by examining processes unfolding over time and in relation to each other, historical institutionalists highlight how business influence occurs within existing policy bounds, through large-scale legislative reform, and through feedback loops between the litigation and legislative process in which elites participate (Hacker 2004; Barnes 2007, 2008, 2011).

These approaches toward history have strong explanatory power, especially with respect to how businesses and policy elites influence legislative processes and public policies; however, they are less specific about the processes and mechanisms through which path dependency, conversion, or layering occurs (cf. Silverstein 2009). In other words, historical institutionalists direct little attention toward the way that norms and cultural practices that are developed and institutionalized by organizations affect which institutions become path dependent and for what organizations choose to lobby. Moreover, they have not focused on how *internal* organizational processes, policies, and structures (e.g., internal dispute resolution structures) eventually act as a form of political power that leads to institutional change at the legislative level. Subterranean forms of institutional change that surface via drift, conversion, and layering often emerge from structures embedded within organizations.

On the other hand, new institutionalists focus less on timing and when events occur to explain institutional change and stability. Instead, they focus on how widely accepted norms, values, and patterns of behavior become taken for granted and institutionalized within organizational fields (Meyer and Rowan 1977; DiMaggio and Powell 1983; Scott 1992, 2002). An organizational field is the subset of the environment that is most closely relevant to a given organization, including suppliers, customers, and competitors, as well as flows of influence, communication, and innovation (DiMaggio and Powell 1983). New institutionalists focus on cultural or cognitive constructs that engender and result in the proliferation of isomorphic or homogenous organizational structures and forms, irrespective of those forms' utility or appropriateness for a particular situation (Meyer and Rowan 1977; DiMaggio and Powell 1983; Scott 1992, 2002). Although early accounts of organizational fields emphasize the uniformity, taken for grantedness, and institutional isomorphism that results in a dominant or settled logic within a field (Tolbert and Zucker 1983), more recently scholars are emphasizing that fields often include multiple and contradictory logics (Friedland and Alford 1991;

Stryker 1994, 2000, 2002; Heimer 1999; Schneiberg 2002; Scott 2002; Lounsbury, Ventresca, and Hirsch 2003; Schneiberg and Soule 2004; Edelman 2007, Talesh 2012, 2013).

Edelman and Stryker (2005) note that the concept of a legal field as a unit of analysis is similar to the concept of an organizational field developed by new institutionalists in the 1970s. However, the key distinction is that each field anchors itself around different core logics. The central logics of organizational fields in the United States since the twentieth century are rationality and efficiency (Chandler 1962, 1977; Scott and Davis 2007). Corporate governing models emphasizing formalization, rationalization, productivity, profit, managerial discretion, and survival permeate throughout the United States in the form of administrative hierarchies within organizations (Selznick 1969; Orloff and Skocpol 1984; Jacoby 1985; Baron, Dobbin, and Jennings 1986).

Conversely, the core logic of the legal field is anchored around rules and rights. In particular, the "liberal legal model" holds that law is developed through adherence to rational principles that produce a set of rulings that are impartial and free from political, religious, and substantive influence. Thus, due process values and formal rules of evidence recognized by the US legal system develop around the idea of impartiality. The formal universality of rights in liberal legal ideology permits individuals to cement their claims in those rights that can be recognized (if necessary using the court system) and in the principles of social justice that underlie them.

Over the past forty years, a secondary and competing logic arose in the legal field centered around ADR. Claims of "a litigation explosion" (Burger 1982, 275), "too much law" (Galanter 2002, 296), and excessive use of adjudication to solve all problems reached their height in the 1970s and 1980s and prompted a series of experiments in alternative forums to resolve legal disputes (Lieberman 1983). As ADR rose in the last three decades, organizations embraced these forums for inter- and intraorganizational disputes (Westin and Feliu 1988). The rise of the ADR logic in the legal field is anchored in the idea that by moving further away from formal procedural rules and the constraints of precedent, informal and alternate forums provide greater access and a disputing process that is faster, less expensive, less adversarial, more empowering, more informal, private, and capable of producing flexible, creative solutions (Fisher and Ury 1981; Menkel-Meadow 1984; Westin and Feliu 1988; Bush 1989; Rosenberg 1991; Bush and Folger 1994; Lande 1998). Private organizations, which also value efficiency and discretion, have come to embrace ADR as a primary mode for resolving a variety of inter- and intraorganizational disputes (Talesh 2013). Thus, legal practitioners, regulators, judges, legislators, organizations, and individuals interact in a legal field with two distinct liberal legal and ADR logics regarding the purpose of law and the use of legal processes. The overlap in both actors and institutions between organizational and legal fields provides an arena in which the ideas that become institutionalized in organizational fields eventually seep into legal fields such as courts (Edelman, Uggen, and Erlanger 1999; Edelman et al. 2011) and legislatures (Talesh 2009).

Unlike historical institutionalists, new institutionalists studying the relationship between organizations and law focus less on (1) the role of politics and power, (2) timing and temporality, and (3) how path-dependent events can trigger feedback

mechanisms that reinforce the recurrence of a particular pattern in the future.[4] Moreover, to date, new institutionalists have not engaged in a fine-grained analysis of precisely how competing organizational and legal (liberal legal and ADR) field logics influence the meaning of legislation. Although some political scientists and sociology scholars have begun to tease out the relationship between institutionalized norms and cognitive scripts (new institutionalist's influence) and timing, political power, and conflict (historical institutionalist's emphasis) (Fligstein 1990; DiMaggio and Powell 1991; Stryker 1994, 2000, 2002; Katzenstein 1996; Stinchcombe 1997; Talesh 2009), there has been little effort to bridge these two scholarly communities when studying organizational influence over law (cf. Barnes and Burke 2006, 2012; Epp 2009; Talesh 2009). As Kathleen Thelen notes, "much work remains to be done to sort out the relationship between the political (decision/power) and the cognitive (script) aspects of institutional stability and change" (Thelen 1999, 387).

Rather than privileging social conditions over politics when studying institutional change or examining institutional change solely within the boundaries of politics and not social conditions, I explore how institutional and political mechanisms play a role in shaping the meaning of consumer rights in California and Vermont. In doing so, I develop an institutional-political framework that explains how California and Vermont ended up with different institutional arrangements.

In this instance, organizations' capacity to shape the content and meaning of law in the legislative context results both when organizations create and institutionalize dispute resolution venues within their organizational field *and* when organizations directly engage in political mobilization and lobbying. By coding the legislative history for liberal legal, ADR, and business logics, I show how the meaning of consumer rights are shaped and transformed as liberal legal, ADR, and business logics are mobilized by various interest groups and advocacy coalitions during the legislative process. As businesses legalize their environments by creating and institutionalizing dispute resolution structures in their organizational field, business logics anchored in efficiency, discretion, problem solving, and informality flow back into legislation by advocacy coalitions who reframe the meaning of consumer protection for legislators. These logics diffused across the country, as all fifty states adopted private dispute resolution structures into law. However, while the entire country went down the path of layering these structures into existing consumer lemon laws, local state politics explains why the form and control of each structure was different in California and Vermont and, in particular, why Vermont also adopted a state-run dispute resolution structure into law. Thus, my approach enhances both historical and new institutional literatures. Diffusion and isomorphism explain how path-dependent processes take shape. However, organizational conceptions of law, in particular, overlapping legal and organizational field logics, shape the meaning of legislation in varying degrees due to path dependency and politics.

4. There are a few empirical studies suggesting politics matter when trying to understand organizational influence over law in other contexts such as securities regulation (Krawiec 2003, 2005; O'Brien 2007), insurance regulation (Schneiberg 1999, 2005; Schneiberg and Bartley 2001), and consumer protection (Talesh 2009). However, more work is needed by scholars interested in the relationship of business and legal regulation.

METHODOLOGY: ARCHIVAL ANALYSIS OF LEGISLATIVE RECORDS AND INTERVIEWS

To examine under what conditions organizations can influence the content and meaning of social reform legislation, I obtained and analyzed approximately twenty-five years of legislative history pertaining to California and Vermont's consumer warranty protection laws. I also conducted interviews with legislative analysts who drafted the California and Vermont lemon laws. Interviewing the authors of various pieces of legislation and tracing the legislative histories over time provided me the most direct access to viable information that could reveal how California and Vermont's lemon laws were both similar yet different.

I chose these two states because they were each among the first states to enact lemon laws using different models (California allowing private dispute resolution structures; Vermont using private and state-run dispute resolution structures).[5] Because the California legislature did not keep transcripts of oral testimony at legislative hearings during the time period I reviewed, my inquiry consisted of written records. In Vermont, I was able to acquire written records as well as cassette tapes of public hearings held during legislative debate concerning the creation of its lemon law. These tapes were subsequently transcribed and analyzed.

Once I collected my data, I combined two approaches sometimes used in studies examining institutional change over time: process tracing (PT) and comparative analysis. My goal was to trace the sequence of events that caused California's legislature to codify manufacturers' dispute resolution structures into its lemon law while Vermont's legislature codified both private and state-run disputing structures into law. Because I was analyzing two states, my PT analysis was necessarily comparative and forced me to identify factors that distinguish the differential outcomes. Drawing from prior historical and new institutional work, my focus was on revealing the pathways, processes, or micro-level explanations by which an effect is produced.

Legislative Documents

I located and obtained the entire universe of legislative documents available in California and Vermont concerning (1) the initial creation of the California Song-Beverly Act in 1971, the law that established warranty protection for consumers; (2) the enactment of the California Lemon Law in 1982 and subsequent amendments thereafter until 2006; and (3) the enactment of the Vermont Lemon Law in 1984 and subsequent amendments thereafter until 2006. This inquiry produced approximately 1,900 pages of legislative history.

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5. Obviously, California and Vermont are different in terms of size and ethnoracial composition. Moreover, despite being generally considered liberal states, there certainly could be local or cultural differences between California and Vermont. Evaluating possible qualitative differences among two states is always an issue in comparative studies and exceedingly difficult to control for as a practical matter. Despite these limitations, choosing two "first-mover" states, that is, California was the first to create a consumer warranty law and the second to adopt private dispute resolution structures into law while Vermont was the first state to also create a state-run dispute resolution structure, allowed me to maximize my opportunity to collect the information as opposed to selecting states that ultimately followed national trends.

The legislative history contained a variety of documents that I content coded and categorized into three areas: letters, legislative documents, and miscellaneous. There were a variety of letters in the legislative history from many different groups, including, but not limited to, manufacturers, legislators, governors, plaintiffs and defense lawyers, consumers, consumer advocacy groups, manufacturer associations, and manufacturer advocacy groups. These detailed letters provided a timeline and tremendous insight into what each person's or group's position was concerning the relevant bill or proposal before the legislature.[6] The legislative documents included committee reports, amendments, voting records for some bills, legislative analyst reports from state senators and staff, bill summaries, proposals, drafts of alternative bills and red-line revisions of statutes, handwritten notes of legislators, and judicial, senate, and legislative committee analysis. The miscellaneous documents consisted of press releases, newspaper articles, interviews with legislators, reports from the federal government, and other documents related to consumer warranty protection.

After my initial collection of all documents, I screened the documents to determine whether they were relevant to my study. Any documents pertaining to the following four categories were considered relevant documents and therefore included in my study: (1) lemon law field actors' involvement in the creation of the Song-Beverly Act; (2) the creation of the California Lemon Law in 1982; (3) the creation of the Vermont Lemon Law in 1984; and (4) documents relating to either the establishment of a legal presumption or the creation of dispute resolution procedures. The lemon laws enacted in the 1980s by California and Vermont were specifically enacted to deal with warranty issues for new motor vehicles. My purpose was to identify and closely examine the complete history of the creation and codification of private and state-run dispute resolution procedures into lemon laws.[7] I identified 538 pages of relevant documents.

Once my initial screening of documents was complete, my coding scheme sought to examine political and institutional logics that were dominating the legislative process in both states. I coded my documents across a series of variables: (1) date,

6. Numerous manufacturers also provided their own reports concerning their private dispute resolution forums to assist the legislature. The legislative history included General Motors' position statements, California Manufacturers' issue statement, report, and editorial, California Automobile Dealers Association letters, New Motor Vehicle Board letters, Motor Vehicle Manufacturers Association analysis, Ford Motor Company's release statement in opposition to the lemon law, problem papers, appeals board brochures, charts, and proposed amendments.

7. The analysis in the following sections is derived from my review of the legislative history for the following statutes and amending bills: Cal. Stat. 1970, ch. 1333, SB 272; Stat. 1971, ch. 1523, SB 742; Stat. 1972, ch. 1293, SB 685; Stat. 1976, ch. 416, SB 568; Stat. 1978, ch. 991, AB 3374; Stat. 1980, ch. 394, AB 2263; Stat. 1981, ch. 150, SB 282; Stat. 1982, ch. 381, AB 3561; Stat. 1982, ch. 388, AB 1787; Stat. 1986, ch. 547, AB 3835; Stat. 1986, ch. 547, AB 3835; Stat. 1987, ch. 1280, AB 2057; Stat. 1988, ch. 697, AB 4513; Stat. 1989, ch. 193, AB 1104; Stat. 1991, ch. 689, AB 211; Stat. 1992, ch. 1232, SB 1762; Stat. 2002, ch. 306, SB 1765; VT legislative bills H.0039, H.0537, S.0105, Bill File Copy 1983–84 (H.48). I also reviewed and transcribed the following public hearing testimony provided to me by the Vermont legislative archives: Senate Judiciary April 16, 1999, April 20, 1999, and April 21, 1999, Senate Highways & Traffic Committee transcripts, April 6, 1984, April 9, 1984, April 14, 1984, and April 17, 1984; House Commerce Committee transcripts January 8, 1988, January 28, 1988, February 9, 1988, and February 16, 1988.

(2) state, (3) author, (4) document type, (5) bill number, and (6) summary of content. I also coded documents to determine the absence or presence of business,[8] ADR,[9] and liberal legal[10] logics in the legislative discourse. The term "logic" refers to the way organizations and individuals organize their thoughts and assumptions about meaning, values, schemas, and culture (Friedland and Alford 1991). As previously discussed, what constitutes a liberal legal, ADR, or business logic was derived from long-standing literatures examining ADR (Moore 1986; Fisher and Ury 1981; Menkel-Meadow 1984; Galanter and Lande 1992), liberal legal logic (Kennedy 1980; Tushnet 1984; Bumiller 1987; Minow 1987; Freeman 1990; Schultz 1990; Williams 1991; Edelman 1992), and business logic (Selznick 1969; Orloff and Skocpol 1984; Jacoby 1985; Baron, Dobbin, and Jennings 1986; Edelman 2007) as well as previous empirical studies in which lemon law field actors were interviewed and asked to identify the purposes and goals of dispute resolution and lemon laws (Talesh 2012). While the majority of specific business values I used were derived from prior literature, I added customer satisfaction into the coding scheme after preliminary coding revealed that customer satisfaction was a frame being offered by private actors in a large number of documents. Thus, customer satisfaction was added into the coding scheme and coded for throughout all documents in the dataset.

First, I determined whether each document explicitly discussed or mentioned liberal legal, ADR, or business logics (0 = No, 1 = Yes). These categories were not mutually exclusive. A document could, for example, reflect both ADR and business logics. To the extent that a document reflected a presence of a liberal legal, ADR, or business logic, I then coded for the absence or presence of subsets within each liberal legal, ADR, or business logic category. Table 1 summarizes the logics that I coded for in the legislative discourse

These specific subcategories for business, ADR, and liberal legal logics were also not mutually exclusive. A document could, for example, reflect both ADR and business logics. A document could also reflect multiple ADR, business, or liberal legal logics in the same document (e.g., productivity, efficiency, informality, and quickness). The presence of a particular logic in a document, however, was coded only once. For example, a document having multiple or repeated statements reflecting or indicating the presence of the ADR value "informality" was coded for the presence of informality one time for that document. Examples of language from the legislative history that was coded as reflecting a specific liberal legal, ADR, or business logic can be found in

8. A business logic was defined in my codebook as "a statement that reflects core business values and orientations, including profit, efficiency, productivity, customer satisfaction, and managerial discretion."

9. An ADR logic was defined in my codebook as "a statement that reflects an affirmation and affinity for resolving disputes outside of courts, or reflects a belief in resolving conflicts quickly, informally, privately, saving costs, and often with a flexible, problem-solving orientation that focuses on interests, needs, and problems as opposed to formal legal rights."

10. A liberal legal logic was defined in my codebook as "a statement reflecting an affirmation and/or affinity for protecting formal legal rights of individuals, equality, justice, and formal rules of evidence and procedure. It also reflects a general belief that using the court (or publicly transparent) system is the most appropriate domain to achieve liberal legal values."

TABLE 1.
Logics Coded for in Legislative Discourse of California and Vermont[a]

Liberal Legal Logic	ADR Logic	Business Logic
Protecting formal rights of individual	Quickness (resolve disputes quickly)	Profit (organization's desire to increase revenue)
Formal rules of evidence	Informality (resolve disputes informally)	Efficiency/efficient management (keep costs down)
Due process (notice, right to counsel, opportunity to be heard, neutral decision maker)	Privacy (case resolved outside courts)	Productivity (solve problems, task oriented)
Court system (as preferred venue to protect rights)	Saving costs	Managerial discretion and control (over organizational decisions)
Other	Flexibility (extralegal remedies, flexible solutions)	Customer satisfaction (desire to keep customers happy)

[a] As I mentioned earlier, I was forced to adjust my coding scheme in Vermont slightly because significant portions of the Vermont legislative record contained transcripts of oral testimony at public hearings before the legislature. In Vermont, I treated each speaker as a "document" for purposes of coding and coded each speaker's testimony for all the variables in my coding scheme.

Note: Table 1 highlights the various logics that were coded for in the legislative records of California and Vermont. These categories are not mutually exclusive. A document could, for example, reflect both ADR and business logics.

Appendices 1, 2, and 3. Subsequent reliability checks of the coding showed no systematic discrepancy and reliability was above the acceptable standard.[11]

Once coding was complete, I evaluated the raw number, percentage, and proportion of representation of values annually and aggregately over the twenty-five-year time period. The absence and presence of various liberal legal, ADR, and business logics were evaluated over time by author, document type, bill number, state, relevance, and specific logics invoked. My quantitative coding allowed me to evaluate the change in the legislative discourse over time, the prevalence of logics in the legislative discourse, and the variation in which interest groups were mobilizing various logics in California and Vermont. In addition to quantitative coding, each document was coded for

11. Although content-based coding categories tend to be more interpretive and require considerable judgment to apply (Krippendorff 1980, 62–63), reliability was assessed by recoding by two research assistants of a subsample of the documents and evaluated using Cohen's kappa. The kappa statistic is generally considered one of the best measures of agreement available because, unlike other measures, it explicitly takes into account the level of agreement between raters that may be expected simply by chance. Kappa has a value of 0 when the level of agreement is what would be expected by chance and 1 when there is perfect agreement. Usually, the value of kappa falls somewhere in between. After completing training, the research assistants practiced coding documents that had already been coded by the principal investigator. The research assistants did not begin actual coding until they could accurately and consistently reproduce the coding of previously coded documents. Kappa scores reflecting level of agreement among coders of the presence of liberal legal, ADR, and business logics as well as the specific subcategories among each respective logic exceed .90 for sixteen of the twenty-three indicators and exceed .80 for seven of the twenty-three indicators. These indicators suggest reliability in the coding well above required levels (Clayman et al. 2007).

substantive content and analyzed using PT methods (George and Bennett 2005; Bennett and Elman 2006).

In sum, my comparative PT approach explored whether and how politics and institutional logics influenced the legislative process in both states. This research approach, however, suffers from a long-standing limitation to archival research: it is always possible that the legislative archives do not contain all the actual documents pertaining to the creation and development of these lemon laws. While it is always possible my dataset is missing documents or that other relevant documents exist, I obtained and evaluated every written and audio file made available by California and Vermont's legislative archives from the time period of my study.

Interviews

The quantitative coding and qualitative content analyses were supplemented with in-depth interviews with legislative analysts who were involved in drafting the California and Vermont lemon laws. I identified which individuals to interview by making a list of the legislative analysts who appeared in the legislative record as drafters of various bills. Based on the legislative records in both states, there were seven primary drafters of the Song-Beverly Act and California and Vermont lemon laws. I invited these individuals to be interview subjects in my study. Four individuals agreed to conduct in-depth interviews. I interviewed one of the authors of the Song-Beverly Act, two individuals involved with drafting the California Lemon Law, and the legislative analyst who drafted the Vermont Lemon Law. In-depth interviews with the actual drafters of these lemon laws provided another opportunity to understand the processes through which these laws were created and altered over time. Although retrospective interview data about events that took place twenty-five to thirty-five years ago may not be reliable, these laws were clearly salient to lawmakers, who reported that this legislation was among the most meaningful and important work they did. In addition, interview data from both California and Vermont largely corroborate my documentary data.

AN INSTITUTIONAL-POLITICAL EXPLANATION OF PRIVATE ORGANIZATIONS' INFLUENCE OVER THE MEANING OF SOCIAL REFORM LEGISLATION

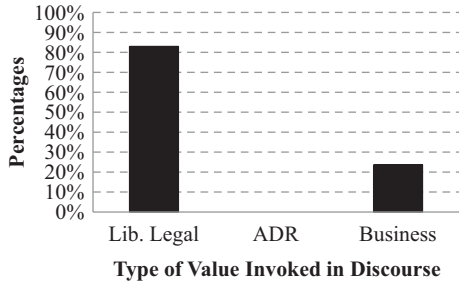
This section discusses the institutional and political mechanisms through which automobile manufacturers shaped the content and meaning of California and Vermont consumer protection laws. The diffusion or spreading of organizationally created dispute resolution structures as lemon law field actors interact explains why California and Vermont codified private dispute resolution structures into law. However, path dependency and politics explain why Vermont also adopted a state-run dispute resolution process into law. My comparative analysis of California's and Vermont's legislative history highlights how legislative advocates relied on liberal legal, ADR, and business logics in various ways.

The Song-Beverly Consumer Warranty Act—Establishing Powerful Rights for Consumers

California's Song-Beverly Consumer Warranty Act (Civil Code §§ 1790 et seq.) (Song-Beverly Act or Act) was the first federal or state consumer warranty protection statute passed in the United States. Enacted in 1971, the Act grew out of California state investigations and public hearings in the late 1960s, which revealed that manufacturers and retailers rarely accepted responsibility for making repairs under their warranties (Legislative Analyst, SR 3020, lines 81–122). The largest number of warranty complaints concerned automobile dealers and manufacturers.

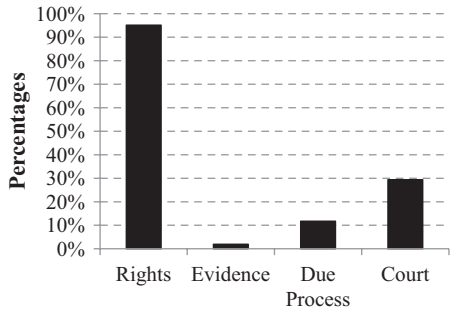
California State Assembly Senator Alfred Song specifically indicated that the purpose of creating a consumer warranty protection law was to eliminate delays and a lack of accountability by manufacturers who issue warranties for their products and provide consumers a pathway for seeking relief: "There is no effective remedy aside from the courts. Certain private and government agencies collect complaints of shady business dealings, but they will not act to reimburse the customer. . . . Filing suit in court is the best alternative for the consumer" (Song press release November 1969). My coding of the legislative record confirms that liberal legal values and, in particular, a rights-based rhetoric dominated the discourse at the legislative level during the creation of California's Song-Beverly Act. Figure 1 demonstrates that of the documents coded as relevant during the creation of the Song-Beverly Act, 83 percent had the presence of a liberal legal value.

Of note, there was no presence of any discourse concerning ADR in the legislative record from 1969 to 1971. The legislative record also revealed an overwhelming focus on rights-based rhetoric. Song repeatedly indicated that when defects emerged under warranty, consumers should have "the legal right to have it repaired or replaced." Figure 2 reveals that of the liberal legal values present in the legislative discourse, rights frames were prevalent 95 percent of the time.



N = 123	102	0	29

FIGURE 1.
Presence of values in legislative record during creation of Song-Beverly Act (1969–1971).
***Note*: Figure 1 highlights, by percentage of documents in the legislative record, the presence of liberal legal, ADR, and business values during the creation of the Song-Beverly Act.**



N = 102	97	2	12	30

FIGURE 2.
Specific liberal legal values invoked in the legislative discourse (1969–1971).
***Note*: Figure 2 highlights, by percentage of documents in the legislative record, the presence of specific liberal legal values during the creation of the Song-Beverly Act.**

The Act set forth rights, responsibilities, and the legal relationship of buyers and sellers of consumer goods in California. If manufacturers issuing express warranties for consumer goods sold in California were unable to service or repair consumer goods to conform to the applicable express warranties after being given a "reasonable number of attempts" to fix the problem, consumers could go to court and seek full reimbursement (refund) or a replacement vehicle. In addition, consumers could seek a civil penalty up to two times the actual damages plus attorney fees.

Not surprisingly, consumers strongly supported the bill while manufacturers argued that the law was ambiguous, poorly drafted, and would lead to increased litigation. Automotive dealers also were allies of the proposed law since they were not going to be held liable:

> We found a common interest here because the retailers were annoyed by the manufacturers' policy on warranties, too, because their customers would purchase products that proved to be defective and take them back to the retailer, saying this was covered by warranty, but the manufacturers weren't reimbursing the retailers. (Legislative Analyst, SR 2030, lines 125–38)

The Song-Beverly Act was a significant victory for consumers.[12] Rights-based rhetoric dominated the legislative discourse as consumer organizations pressed for strong social reform legislation forcing manufacturers to enforce warranties issued. However, all

12. The federal government soon followed California's lead as the problem regarding warranties was not limited to California. The federal government's office for consumer affairs noted that it was receiving more than 4,000 letters a month from consumers across the country in the late 1960s and early 1970s concerning manufacturers' failure to uphold their warranties. The 1975 Federal Magnuson-Moss Warranty Act (Magnuson-Moss Act) passed, setting forth minimum requirements for those who chose to issue full warranties.

involved realized ambiguities in the law could create unforeseenchallenges. In particular, the Act did not define what constitutes a reasonable number of attempts or a civil penalty.

Manufacturers' Transformation of California Consumer Rights Through the Creation of Private Dispute Resolution Processes

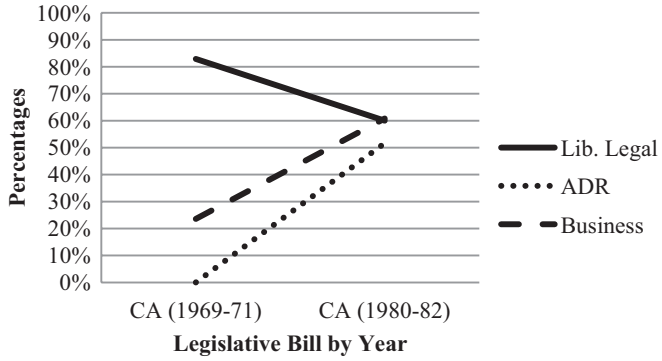
California State Assembly Committee hearings in the late 1970s revealed that consumers remained frustrated with manufacturers. As a result, full restitution or replacement of new automobiles rarely occurred because manufacturers rarely acknowledged that they were given a reasonable number of attempts to fix a defect under warranty (Assem. Com. Report 1980, 1981).

In 1980, California Assemblywoman Sally Tanner decided to clarify and expand the Song-Beverly Act by proposing a specific law, referred to as the California "Lemon Law," which defined what constitutes a "reasonable number of attempts" for new motor vehicles. Because automobiles were the primary source of complaints from consumers, Tanner felt that it was necessary to strengthen the protection afforded consumers. The bill proposed that a consumer could invoke a "legal presumption" that the automobile manufacturer had been legally given a reasonable number of attempts to repair a nonconformity if (1) the same nonconformity had been subject to repairs by the manufacturer or its agents four or more times or (2) the new motor vehicle had been out of service by reason of repair for a cumulative total of twenty days or more.

Domestic and foreign automobile manufacturers strongly objected to the lemon law and lobbied against the proposal. They alerted Tanner and the rest of the legislature through letters and detailed memoranda that, in response to the Song-Beverly Act's passage in 1971, automobile manufacturers had created internal dispute resolution processes to resolve consumer disputes. Consistent with the predictions of new institutional studies (DiMaggio and Powell 1983; Edelman 1990, 1992; Dobbin and Sutton 1998), diffusion of dispute resolution structures among manufacturers and dealers occurred in the 1970s and 1980s. In addition to foreign and US automobile manufacturers, over 2,000 automotive dealers across the United States jointly funded and controlled a third-party dispute resolution process to resolve warranty complaints. With some variation, these dispute resolution processes consisted of panels of three to five persons, often including manufacturer and dealer representatives, a mechanic, and a consumer advocate. Eventually, manufacturers contracted with third-party dispute resolution organizations to administer these programs.

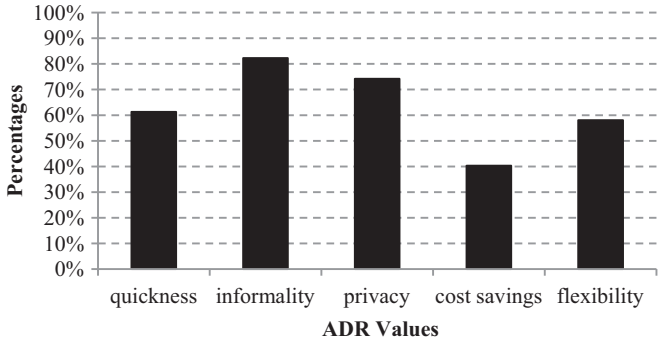
Whereas rights-based claims dominated the discourse during the Song-Beverly Act's creation, Figure 3 shows a convergence in the presence of liberal legal, ADR, and business values in the legislative discourse in the early 1980s.

In particular, manufacturer advocacy to the California legislature was uniform. Led by Ford, General Motors, and Chrysler, manufacturers without exception framed the purpose and benefits of their dispute resolution processes in terms of legitimacy, efficiency, cost savings, discretion, informality, and customer satisfaction as opposed to consumer protection. Unlike the predominantly rights-based rhetoric present in the legislative record in 1971, Figures 4 and 5 reveal a broad cross-section of multiple ADR and business values present in the legislative discourse between 1980 and 1982.



CA 1969-71	N = 123	LLV = 102	ADR = 0	BV = 29
CA 1980-82	N = 120	LLV = 72	ADR = 62	BV = 73

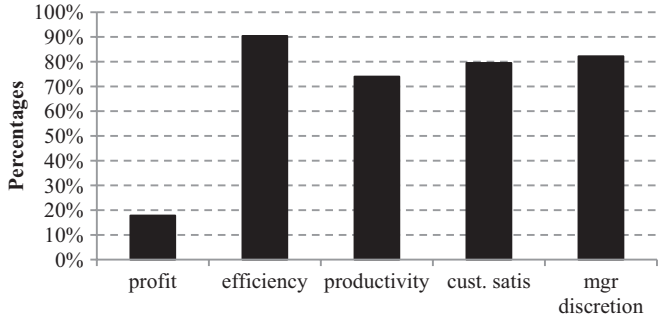
FIGURE 3.
Convergence in values in Californian legislative discourse (1969–1982).
***Note*: Figure 3 highlights, by percentage of documents in the legislative record, the change in the legislative discourse from 1969 to 1982.**



N = 62	38	51	46	25	36

FIGURE 4.
Specific ADR values invoked in Californian legislative discourse (1980–1982).
***Note*: Figure 4 highlights, by percentage of documents in the legislative record, the presence of specific ADR values invoked during legislative discourse concerning the California Lemon Law.**

Manufacturers simultaneously mobilized ADR and business values while lobbying the legislature. For example, Ford emphasized that it had "taken great strides in establishing a speedy, inexpensive, and fair system to resolve product disputes as an effective alternative to lengthy and costly dependence on the courts" (Ford Release). Chrysler indicated that it had created and funded a third-party dispute resolution forum because it "can't afford any dissatisfied purchasers" and because it was "a far better way, and certainly less costly in time and money to the car owner, to get a satisfactory resolution to the problem of the so-called 'Lemon' car than the long-drawn out method embodied



N = 73	13	66	54	58	60

FIGURE 5.
Specific business values invoked in the Californian legislative discourse (1980–1982).
***Note*: Figure 5 highlights, by percentage of documents in the legislative record, the presence of specific business values invoked during legislative discourse concerning the California Lemon Law.**

in AB 1787 [Lemon Law]" (A.E.D letter, Aug. 7, 1981; see Appendices 2 and 3). Full restitution in these processes, however, remained rare.

Consistent with prior new institutional studies (Edelman, Erlanger, and Lande 1993), internal dispute resolution processes provided a means through which manufacturers' values and norms influenced the structure and content of the lemon law field far more than did consumers' interests. Moreover, manufacturers formed advocacy coalitions with other interested stakeholders such as third-party dispute resolution administrators that influenced public policy. By linking their private dispute resolution structures to other socially recognized values such as informality and efficiency, manufacturers redefined consumer rights.[13] This resulted in a shift in the discourse about the Song-Beverly Act that reflected the advocacy efforts of business.

The Legislature Layers Manufacturer Dispute Resolution Processes into the California Lemon Law

After the California Lemon Law was narrowly defeated in 1980 and 1981, the Lemon Law, Civil Code § 1793.22, was enacted in 1982, but with major changes from

13. In this instance, a pure rational choice account of manufacturers' response is unlikely to explain manufacturers' actions fully. It is important to note that the field of manufacturers and dealers developed private dispute resolution structures in the 1970s even though manufacturers were not excessively at risk of repurchasing cars. Between 1970 and 1980, the legislative history indicates that manufacturers rarely repurchased consumers' automobiles because they claimed they had not been given a reasonable number of attempts to repair them and that this provision was not defined in the Song-Beverly Act. However, manufacturers created these structures anyway because they were concerned about other business values such as exuding legitimacy, being responsive to consumers, and creating informal forums to resolve problems (cf. Edelman, Abraham, and Erlanger 1992). Interviews with manufacturers and other stakeholders involved in creating and administering these dispute resolution programs confirm that they were primarily concerned with creating an informal, flexible, relatively quick process that could solve the consumer's problem (Talesh 2012).

the original proposal. Under the Lemon Law, a consumer was entitled to a "legal presumption" that the manufacturer received a "reasonable number of attempts" if the manufacturer had been given four or more chances to fix the defect *within the first* 12,000 miles or twelve months from purchase or the automobile had been out of service by reason of repair for a cumulative total of more than thirty (not twenty) calendar days within the first 12,000 miles or twelve months from purchase. A manufacturer was permitted to rebut the presumption at trial by showing that its actions in a particular case were reasonable.

The most important changes, however, concerned the California legislature's layering of manufacturers' dispute resolution processes into the Lemon Law. Specifically, the legal presumption as to what constitutes a "reasonable number of attempts"—the main purpose of the Lemon Law—could not be asserted in court unless the consumer first resorted to the existing "qualified third-party dispute resolution process" to the extent a manufacturer maintained one (Civil Code § 1793.22(c)). Thus, legal protections afforded under the Lemon Law were *contingent* upon using manufacturers' third-party dispute resolution processes if they existed. Dispute resolution processes "qualified" if they met the minimum requirements set forth in the federal warranty law, the Magnuson-Moss Warranty Act and, in particular, Federal Trade Commission Rule 703, for dispute resolution proceedings.[14] Decisions under dispute resolution processes were binding on manufacturers but not consumers. In a display of deference to manufacturer-sponsored venues, the Lemon Law indicates that if the consumer chose to reject the arbitrator's ruling and sue, the arbitrator's findings could be admitted at trial without any need for evidentiary foundation. Unlike remedies available in court, the Lemon Law also provided that no civil penalties or attorney fees could be recovered in dispute resolution processes unless the manufacturer-run program permits such recovery. Further, unlike the all (restitution, replacement) or nothing (no award) remedies available in court, arbitrators are permitted to award consumers the opportunity to allow manufacturers another repair attempt.

In sum, institutional *and* political theories explain how strong public legal rights were channeled into alternative forums. Consistent with historical institutional theories of path dependency (Pierson 2000a, 2000b, 2004), California established in 1971 a litigation path for resolving consumer disputes by creating a private right of action attainable in court. Manufacturers responded both to environmental demands (changes in public attitudes and awareness, the law, legal mandates) and to managerial interests (desire for fewer lawsuits, greater efficiency, informality, quick resolution, and no civil penalties or attorney fees) by developing private dispute resolution venues to satisfy legitimacy and efficiency concerns. One by one, manufacturers and dealers created various dispute resolution structures until this approach became the institutionalized norm in the lemon law field. Manufacturers eventually contracted with external

14. The federal Magnuson-Moss Act set forth minimum requirements for manufacturers that chose to issue full warranties. Specifically, the FTC regulation Rule 703 required manufacturers (1) to notify the buyer about the existence, location, and method for using the dispute resolution program; (2) to fund the program; (3) to insulate the program from manufacturer influence; (4) to make the program free to the consumer; and (5) to require the program reach a decision within forty days. The Magnuson-Moss Act did not establish a means of ensuring that these programs operated fairly and impartially. It also did not provide for civil penalties.

third-party organizations to administer lemon law programs and train individual arbitrators. When the legislature proposed creating a specific lemon law for automobile warranties in the 1980s, business, ADR, and liberal legal frames simultaneously permeated the legislative discourse. Because California already had a litigation path in place for consumers seeking relief, manufacturers instead used their creation of dispute resolution venues to redefine and convert (cf. Hacker 2002, 2004; Barnes 2007, 2008) public rights attainable in court into private rights to dispute resolution where fewer rights and remedies are available for consumers. The legislature, without ever formally and critically analyzing whether manufacturer institutional venues were procedurally and substantively fair to consumers, layered manufacturer venues into the Lemon Law (Streeck and Thelen 2004; Barnes 2007, 2008). Thus, the norms regarding compliance that evolved within the organizational field during the 1970s shaped manufacturers' conceptions of law in their lobbying behavior in the 1980s in the legal field (i.e., legislature).

Vermont Develops First State-Run Lemon Law Dispute Resolution Structure

California was the first state to create a warranty law and the second state to create a law specifically protecting consumers who receive automobile warranties. California, however, was not unique. Amid the rise of ADR structures beginning in the 1970s (Galanter 2002), all fifty states began copying one another and developed lemon laws in the early 1980s that permit third-party dispute resolution organizations to administer lemon law cases on behalf of automobile manufacturers.[15] However, Vermont was the first of thirteen states also to create a state-run dispute resolution structure, albeit with varying degrees of state and private involvement.[16] While new institutional understandings of diffusion, institutional isomorphism, and organizational influence of law explain why manufacturers uniformly developed these dispute resolution structures and why states ultimately adopted them into law, these theories, in this instance, do not explain the variation in the *type* of dispute resolution structure adopted by states.

Although all states deferred to ADR venues, political opportunity and path dependency shaped the manner and type of dispute resolution structure adopted into law by Vermont. By the time California developed a specific lemon law dealing with automobile warranties in 1982, California already had a litigation option in place for consumers through the creation of the Song-Beverly Act in 1970. Thus, the legislative debate over California's Lemon Law in the early 1980s focused not on eliminating the litigation option, but on layering manufacturers' processes into law and making consumer rights contingent on using such structures (cf. Schickler 2001). Moreover, because automotive dealers were not liable under the Song-Beverly Act, they played little role in the creation of the California Lemon Law in 1982.

Unlike California, Vermont did not have a litigation option in place when it decided to create a lemon law in the early 1980s. Vermont's legislature originally

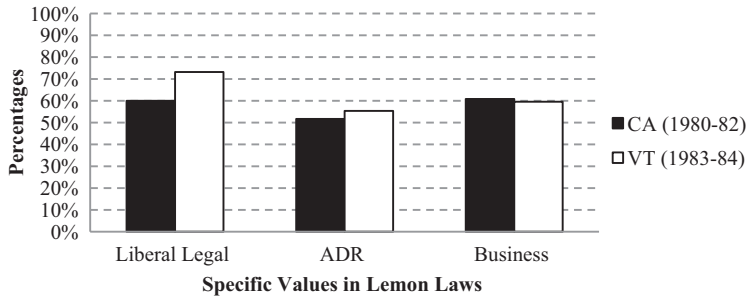
15. Thirty-three states make invoking the legal presumption in court contingent on first using the manufacturer-sponsored dispute resolution structure if one exists.

16. Seven states use a three- to five-person arbitrator panel consisting of various interested representatives from the lemon law field. Four states directly hire and oversee a private organization that administers lemon law disputes and two states use administrative law judges.

proposed a bill similar to the Song-Beverly Act and the original California Lemon Law. Following other states' lead, Vermont's bill initially proposed creating a consumer cause of action in court when warranties were breached. The bill also included the potential for civil penalties and attorney fees. However, unlike California, Vermont's original bill proposed that automotive dealers also be made potentially liable. Because automotive dealers faced potential liability under the proposed Vermont Lemon Law, they had different incentives to participate in the legislative process and, consequently, were very active in lobbying the Vermont legislature.

In this instance, institutional and political mechanisms work together to explain how Vermont ended up with an ADR system that was administered by the state while California ended up with a private dispute resolution process. Figure 6 demonstrates that, consistent with new institutional studies of diffusion (spreading of organizational forms and structures), Vermont experienced a similar presence of liberal legal, ADR, and business values in the legislative discourse to what California experienced in the early 1980s.

The logics present in the legislative discourse were largely similar in both states; however, the actors mobilizing these frames and the political tradeoffs available for interest groups were different. Unlike in California, automotive dealers played a formidable role in shaping the legislative process in Vermont. Automotive dealers' aggressive lobbying centered around two issues. First, dealers argued they should not be held liable since they were not the party who issues the warranty to the consumer. Second, in accordance with the proliferation of dispute resolution structures in the automotive industry taking place in the 1970s, dealers suggested expanding their dispute resolution system (called Auto-Cap) to include warranty disputes instead of having these cases



CA N = 120	72	62	73
VT N = 56	41	31	38

FIGURE 6.
California and Vermont lemon laws—similar presence of values in legislative record (1980–1984).
***Note*: Figure 6 shows, by percentage of documents and oral testimony in the legislative record, that the presence of business and ADR values was nearly equal during the creation of California and Vermont lemon laws. This is consistent with new institutional understandings of diffusion of institutionalized logics in an organizational field.**

sent to court: "We ought to take the auto bill of rights and our Auto-Cap program and expand on that to cover the lemons and it won't cost the taxpayers anything" (Auto. Dealer Testimony, 1144). The Auto-Cap dispute resolution panel consisted of a board of multiple industry representatives, a technical expert, and a consumer advocate. Interviews with legislative analysts involved in the law-making process at the time confirm that automotive dealers, in addition to consumers and consumer advocates, aggressively lobbied the Vermont legislature.

My analysis of the legislative history confirms that automotive dealers, consumers, and consumer advocates had a greater presence in the legislative discourse in Vermont than California. Whereas automotive dealers had zero presence in the legislative record concerning California's Lemon Law, Figure 7 and Table 2 reveal that automobile

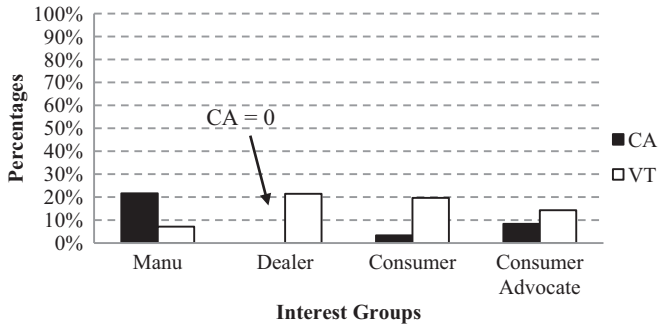


FIGURE 7.
Difference in presence of interest groups in California and Vermont.
***Note*: Figure 7 highlights, by percentage of documents and/or oral testimony in the legislative record, the difference in actors involved in the legislative discourse in California and Vermont during the creation of their lemon laws.**

TABLE 2.
Interest Group Presence in Legislative Discourse Over California and Vermont Lemon Laws

	CA (# of Docs. Authored) N = 120	CA (%)	VT (# of People Testifying in Public Hearings) N = 56	VT (%)
Manufacturer	26	**22**	4	**7**
Dealer	0	**0**	12	**21**
Private industry advocate	17	14	4	7
Consumer	4	**3**	11	**20**
Consumer advocate	10	**8**	8	**14**
Journalist[a]	30	25	0	0
Legislator	33	27	17	30

[a] Unlike California, Vermont's legislative history did not include any newspaper or media articles. Therefore, there are no journalistic accounts in the legislative record concerning the Vermont Lemon Law.

Note: Bold means included in Figure 7.

dealers accounted for one-fifth of the lobbying done at the Vermont legislature during public hearings. The presence of consumer advocates and consumer voice in the legislative debate is collectively three times higher in Vermont than California. Conversely, manufacturer presence in the legislative record is approximately three times less in Vermont than in California.

Legislative hearing testimony concerning the Vermont Lemon Law revealed broad consensus among automotive dealers, manufacturers, consumer advocates, and the state attorney general's office for an ADR structure. They collectively argued that the cost, delay, and expense of the civil litigation system was problematic for consumers and that a court option was not necessary. However, while sympathetic to the problems of the court system, consumer advocates, the state attorney general, and many legislators remained skeptical about allowing private dispute resolution systems complete control over adjudicating public legal rights. The different voices in the legislative debate ultimately led to a different political compromise in Vermont, one that allowed dealer and consumer interests to align around eliminating a court option but using a state-run dispute resolution structure. Legislative representative John Zampieri highlights the political compromise that took place in Vermont:

> We had 44 people or thereabouts testify, both manufacturers, dealers, and consumers. After the hearing we decided that the bill that was presented to us had to be rewritten if we were going to do anything on the subject. So, we went to work and what we believe you've got is a pro-dealer, pro-consumer bill and probably somewhat anti-manufacturer in that we believe that this gives the dealer more of a handle in dealing with the manufacturers in the event that they have an automobile that is technically not working very well and they're having problems getting service out of the manufacturer or its designees.
>
> Because what we have done in this bill is that we have taken the Auto-Cap program which is volunteer, we put it into statute form, we created a Vermont motor vehicle arbitration board. . . .
>
> If you go to that board and the decision that's made by that board is on your side, the manufacturer has got to live with it. Or, if the decision comes down against you, you have to live with it. There is no appeal to the superior court unless you can prove that there's been collusion or hanky panky on that board or if the board itself has violated some of the rules that it's supposed to operate under. This will preclude people from getting involved in a lengthy court fight and that decisions will be done immediately after the case is heard before the board. . . . It's a quasi-judicial board. (Hearing Testimony, State Rep. John Zampieri Testimony, March 29 1984)

It appears manufacturers were initially prepared to fight for favorable legislation in Vermont, as they were in California. Manufacturers argued that their dispute resolution systems sufficiently addressed consumer grievances. However, once the Vermont legislature proposed to keep these disputes outside courts and in a state-run dispute resolution structure that does not offer consumers the ability to recover attorney fees and civil penalties, manufacturers opposed the bill less aggressively:

> This is one final decision. [Manufacturers] like this part. Because once the decision is made, they can't be brought into court and have a court case go indefinitely. The decision is quick and final. (Hearing Testimony, State Rep. John Zampieri, March 29, 1984)

> [Manufacturers] went berserk on the initial draft. They were ready to load bombs in their planes and fly up here. The manufacturers know about this bill the way it is written [now] and they're not here. We've sent copies to them. . . . Apparently they're not upset about it the way that it's set up. (Hearing Testimony, Tom Heilman, Vermont Automotive Trade Association, April 4, 1984)

Amid the political tradeoffs between legislators, manufacturers, automotive dealers, consumers, consumer advocates, and the state attorney general, Vermont in 1984 enacted a lemon law that grafted automotive dealers' Auto-Cap dispute resolution program into law but made changes to the board composition and who administers the program. Instead of ceding the adjudicatory structure to private organizations, consumers making lemon law claims are allowed to choose between using the dispute resolution structures manufacturers fund or the Motor Vehicle Arbitration Board (Lemon Law Board) designed, funded, and run by the state government. Unlike the single-arbitrator system in California, the Lemon Law Board consists of a five-person panel of arbitrators appointed by the governor that hears lemon law cases twice a month in a government building. Unlike Auto-Cap, the Lemon Law Board consists of three citizens, an automotive dealer representative, and a technical expert. The Lemon Law Board hears and decides cases and the court administrator writes the legal decision. Other than appealing for abuse of discretion, there is no right to sue in court. The only remedies the Lemon Law Board may award are restitution, replacement, or denial, that is, no additional remedies such as repair or reimbursement for expenses. There are also no attorney fees or civil penalties in this forum. Thus, the creation of the Vermont Lemon Law Board centered around a collective institutionalized belief that ADR forums are the appropriate forum for these consumer disputes but that the dispute resolution structure should be held in a public forum.

Table 3 highlights the major differences between California and Vermont's dispute resolution models.

In the lemon law context, new institutional studies and theories of political action together explain how private organizations shaped the meaning of public legal rights in different ways. Consistent with the predictions of new institutional studies, organizational structures that diffused among manufacturers and automotive dealers in the lemon law field were adopted into law in California and Vermont, one run by private organizations and the other run by the state. However, political science theories on path dependency and interest group politics explain why the form of the dispute resolution structure varied. Because California already had established a litigation path in the 1970s, it simply layered an additional structure into law in the 1980s (Pierson 2004).

However, Vermont had not already established a litigation path for lemon law disputes. Thus, unlike California, Vermont considered all dispute resolution options, including courts, when establishing its lemon law in 1984. In addition, the legislative record confirms different voices permeated the legislative debate in Vermont and led to different political tradeoffs: automotive dealers yielded on demanding that their dispute

TABLE 3.
Lemon Law Dispute Resolution Structures

	Private	State-Run
	Dispute Resolution Funded by Auto Manufacturers	Dispute Resolution Arbitration Board
Location	California	Vermont
Program administrator	Private third-party administrators contract with manufacturers	State administrator
Adjudicatory structure	1 arbitrator (lawyer or nonlawyer)	5-person panel of arbitrators (3 citizens, 1 technical expert, and 1 auto dealer)[a]
Remedies available	Full refund Replacement car Extralegal awards (repair, reimbursement for expense)	Full refund Replacement car
Adjudicatory authority	Binding if consumer accepts decision; otherwise can sue in court	Binding on both parties (no right to sue in court)

[a]Some states have three-person as opposed to five-person panels.

resolution process be used provided they were not going to be held liable under the new law; the state attorney general, consumer advocates, and consumers withdrew support for a court option in return for grafting automotive dealer's private Auto-Cap dispute resolution program into a public forum run and administered by the state; and manufacturers withdrew opposition to a dispute resolution forum other than their own in exchange for removing a court option for consumers. Thus, institutional and political mechanisms together explain how and under what conditions private organizations are able to shape the content and meaning of public legal rights.

Other than strengthening administrative rules and procedures and altering the eligibility, definitions, and statute of limitations, the Vermont legislature has made few changes to the Vermont Lemon Law since its creation. The Vermont legislature is largely content allowing a state-run disputing structure to adjudicate consumer lemon law grievances. Legislative amendments to the California Lemon Law primarily focused on ways of establishing soft state certification and approval of the third-party dispute resolution processes. Despite these efforts, as I mentioned earlier, prior studies show consumers won refunds or replacements far less in California than in Vermont from 1996–2007 (Talesh 2012). Thus, while this study does not attempt to make causal claims, the legislative process and, in particular, the institutional design of these processes, may matter in terms of who wins in these forums.

THEORY, METHODOLOGICAL, AND POLICY IMPLICATIONS

This article makes several theoretical, methodological, and policy contributions to the study of organizations and law. By integrating historical and new institutional

approaches, my "institutional-political" theoretical framework brings together two scholarly communities that explore the puzzle of institutional change and stability but rarely speak directly to one another when examining organizational influence over law. On the one hand, consistent with new institutional studies of diffusion of institutionalized structures within organizational fields, virtually all automotive manufacturers and dealers created dispute resolution systems in response to social and legal pressures. As these dispute resolution structures became institutionalized, California and Vermont eventually adopted these structures into their lemon laws. Though beyond the empirical scope of this article, it is important to note that the rest of the states immediately followed California and other early-mover states in the mid-1980s and made consumer rights in their lemon laws contingent on using private dispute resolution structures. Thus, in the lemon law context, we see diffusion of private dispute resolution structures among automotive manufacturers and dealers and also diffusion of the form in state lemon laws' incorporation of these private structures into their lemon laws. The legislative process became an important domain for importing ideas from the organizational field into the legal field. The legislature's perceptions of manufacturer dispute resolution structures as efficient and the proper forum for these conflicts was culturally conditioned around manufacturers' norms and beliefs that private dispute resolution was the appropriate mechanism for conflict resolution. Thus, organizational influence over the meaning of social reform legislation results from institutional legal meaning making in the organizational field, namely, diffusion, isomorphism, and overlapping organizational and legal field logics.

On the other hand, politics and path dependency also impact the legislative process. Although institutionalized logics concerning the value of alternative disputing forums shaped what advocacy coalitions chose to lobby for and ultimately diffused into Vermont law as well, the different political alliances in Vermont, and the fact that Vermont had not already established a litigation option for consumers, led to a state-run dispute resolution structure also being codified into law. While prior work on path dependency reveals how businesses and policy elites influence legislative processes and public policies, my study shows how *internal* organizational processes, policies, and structures (e.g., private dispute resolution structures) can eventually act as a form of political power that leads to institutional change at the legislative level. Whereas prior work places less emphasis on the processes through which subterranean forms of institutional change such as path dependency, conversion, or layering occurs (cf. Silverstein 2009), I reveal how norms and cultural practices that are developed and institutionalized by organizations can affect which institutions become path dependent and for what organizations choose to lobby. In this instance, the alteration of these lemon laws emerged from structures embedded within organizations.

My methodological approach also enhances existing approaches concerning studying law and organizations. Comparing cases using PT analysis reveals the political and institutional mechanisms driving legislative stability and change across states. Simultaneous qualitative content and quantitative coding analysis of the legislative history across a series of business, ADR, and liberal legal values provides a novel way for studying how overlapping organizational and legal field logics can bring about institutional change that accounts for norms, values, and cognitive scripts as well as the power of politics and political action. My study, therefore, responds to the growing call by

institutionalists across disciplines for "greater interchange among [institutional theories]" (Hall and Taylor 1996, 955) and "specifying more precisely the reproduction and feedback mechanisms on which particular institutions rest" (Thelen 1999, 400). At a minimum, my comparative PT analysis hopefully provides some evidence that, at least for those interested in studying the relationship between organizations and law, we can enhance our understanding by blending historical and institutional schools of thought.

From a policy standpoint, these data raise important questions concerning the conditions under which social reform legislation is likely to facilitate or inhibit consumer inequality in society. Whereas prior sociolegal empirical research primarily focuses on the perceived success or failure of social reform legislation, my analysis demonstrates *how* organizational influence over the content and meaning of legislation and, more precisely, the institutional design of social reform laws, impacts whether legislation is likely to reduce the imbalance of power between consumers and manufacturers.

California's consumer protection laws enacted in the 1970s and 1980s intended to limit manufacturers' ability to perpetuate social and economic advantage through the manufacturer-consumer relationship. Although the Song-Beverly Act and the Lemon Law altered the legal environment by changing public perceptions and attitudes about consumer entitlement and rights, the ambiguity of these laws gave manufacturers wide latitude to construct their legal environment. Thus, the evolution of California's consumer warranty laws reveals that even in situations where one would most expect law to protect the one-shot player, that is, cases arising under a remedial statute granting individual rights, there are subtle ways by which statutes can be weakened (cf. Albiston 1999). In this instance, organizational advocacy and involvement in social reform legislation in California was not balanced with competing voices and values and, consequently, increased manufacturers' ability to co-opt legislation. The legislative history of Vermont's Lemon Law highlights the circumstances under which businesses are less successful in shaping the meaning of law among core public legal institutions and, in particular, how politics and varying political alliances matter. Scholars interested in continuing to examine the vitality of social reform legislation would be well served not just to study federal laws, but also to compare the variation in state social reform laws (cf. Burke and Barnes 2009).

My comparative approach also complements critical legal studies scholars' work on how law can be an instrument of power to increase racial, gender, and class inequality by showing under what conditions legislative deference to organizational structures leads to legal inequality. To the extent consumer protection laws are undermined by business norms in various private disputing forums deferred to by public legal institutions, policies may be ineffective, especially in ameliorating social and economic disadvantages for consumers. How social reform laws are designed can increase or decrease the likelihood of achieving a statute's desired goals. Given that consumer and civil rights claims are increasingly being directed into organizational forums with legislative and judicial deference, future studies should focus not just on whether consumers prevail in these adjudicatory settings, but also how these institutional forms are developed and designed. Understanding the conditions under which businesses are able to influence the content of legislation will allow more sophisticated policy design and more informed legislative and judicial decisions.

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APPENDICES

The following three appendices highlight some examples of language from the legislative history that was coded as reflecting a specific liberal legal, ADR, or business logic. A single document could reflect multiple ADR, business, or liberal legal logics. I provide examples from a variety of documents analyzed as part of a legislative record. However, a few of the examples provided below demonstrate how a single document in the legislative record could be coded for more than one logic.

Appendix 1

Liberal Legal Logic	Example
Protecting formal rights of individual	1. "The law in this field, however, is not clear, and the litigant must take his chances. The rights and responsibilities of the manufacturer, the retailer and the consumer should be well-defined and known to all parties. I plan to introduce legislation on this subject next year." [Legislative Press Release quoting Song] 2. "Last year I was able to enact the SB Consumer Warranty Act which does give consumers legal weapons to enforce the provisions of warranties on products purchased after March 1, 1971." [Letter, Alfred Song, 1971] 3. "We, the elected representatives, are vested with the responsibility of protecting the public's interest. . . . There are no laws in California specifically designed to protect the consumer. This bill is a step in the right direction." [Quotes from Alfred Song in Senate Press Release] 4. "My bills say that when you buy an appliance, an automobile, or other product that is defective and is covered by a warranty, you have the legal right to have it repaired or replaced if you return it to the retail seller." [Letter, Alfred Song]
Court system (as preferred venue to protect rights)	1. "There is no effective remedy aside from the courts. Certain private and government agencies collect complaints of shady business dealings, but they will not act to reimburse the customer. Filing suit in court is the best alternative for the consumer." [Alfred Song Press Release]
Formal rules of evidence	1. "Arbitration programs often do not use the rules and criteria set forth in the Lemon Law as a basis for awarding a refund or replacement. Some do not even train their arbitrators to use or understand the Lemon Law. Many consumers have received decisions calling for further inspections, diagnosis, repairs, extended warranties, or simply nothing at all—despite the fact that they had already had their car repaired numerous times." [CalPirg Letter]
Due process (notice, right to counsel, opportunity to be heard, neutral decision maker)	1. "An informal dispute settlement mechanism incorporated into the terms of a written warranty shall be funded and competently staffed at a level sufficient to ensure fair and expeditious resolution of all disputes, and shall not charge consumers any fee for the use of the mechanism. The mechanism must be sufficiently insulated from the warrantor so that the decision of the members and the performance of the staff are not influenced by either the warrantor or the sponsor. This includes, at a minimum, committing funds in advance, basing personnel decisions solely on merit, and not assigning conflicting warrantor or sponsor duties to mechanism staff persons. Minimal operational requirements for such matters as staffing, investigative procedures, time limits, recordkeeping, audits, and confidentiality are established." [US Law Week summary of FTC guidelines for warranty structures.] 2. "The arbitration programs, either operated or sponsored by manufacturers, are not providing a fair and impartial process for consumers seeking relief from defective new cars. These programs do not comply with FTC minimum guidelines for third party dispute resolution processes nor do they abide by the provisions of the California lemon law." [Letter from CalPirg, 1970]

Appendix 2

ADR Logic	Example
Quickness (resolve disputes quickly)	1. "Chrysler can't afford any dissatisfied purchasers, so it has established a procedure of using third parties to resolve, in a matter of weeks instead of years, disputes between the purchaser and the dealer over an unrepaired component of the vehicle during the warranty period. This is accomplished through Customer Satisfaction Arbitration Boards (CSAB)." [Letter from A. E. Davis, A. E. Davis & Co., to Members of Senate Judiciary Committee, CA legislature (Aug. 7, 1981)]
Informality (resolve disputes informally)	1. "The idea of General Motors' arbitration program, which is voluntary and predates the [sic] California's lemon law . . . is that it be informal and non-legal, that the process be easily understood by the consumer, and that a lengthy court setting be avoided." [GM letter to CA legislature]
Saving costs	1. "In summary, we believe this Chrysler CSAB program is a far better way, and certainly less costly in time and money to the car owner, to get a satisfactory resolution to the problem of the so-called 'Lemon' car than the long, drawn out method embodied in AB 1787." [Letter from A. E. Davis, A. E. Davis & Co., to Members of Senate Judiciary Committee, CA legislature (Aug. 7, 1981)]
Flexibility (extralegal remedies, flexible solutions)	1. "The decisions, so far, have ranged all the way from denying that the purchaser had a valid case to ordering the dealer and Chrysler to replace the vehicle with a new one. Replacement has taken place in four instances . . . so this system works and in a matter of weeks, not years as would be the case under AB 1787. The final decision is binding on Chrysler and the dealer, but not on the customer who still has the option of going to court."
Privacy (case resolved outside courts)	1. "This bill will place an undue burden of time and expense on the aggrieved purchaser by forcing him or her to go to court to prove that the vehicle's nonconformity fits the language of the amendment. Chrysler has a better idea that doesn't cost the purchaser a cent, not even a postage stamp. Chrysler has established 54 CSAB covering all 50 states. . . . In summary, Mrs. Tanner, we believe this CSAB program is a far better, and certainly less costly, way to get a properly running vehicle back in the hands of its owner than by the procedures facing him in your bill." [Letter, A. E. Davis & Co.] 2. "On the other hand, we hate terribly to be an over-legislated industry where before any decision or any judgment is made that you need a battery of lawyers to decide what is to be done relative to the best interest of both the consumer and the industry itself. We would like very much to have a system, perhaps, that would be very simple, one that doesn't take time because most of these owners that have complaints, I'm sure they don't want to get involved in litigation, get involved in debates. They don't want to hear the preamble or the Gettysburg Address. They want quick and easy decisions to resolve their problems." [Testimony in Vermont, Larry Handy, President VT Auto Dealers Association, 1984]

Appendix 3

Business Logic	Example
Productivity (solve problems, task oriented)	1. "I think it's fair to ask when one considers this legislation whether the intent is to solve the problem or the intent is to encourage litigation. We feel that the intent should be to solve the problem and we think the arbitration system is perhaps one of the best ways to accomplish that." [Testimony in Vermont, Gene Wagner, MV Manu. Association]
Efficiency/efficient management (keep costs down)	1. "We believe this proposed legislation will greatly increase the number of frivolous and unmeritorious lawsuits filed against motor vehicle manufacturers. Inevitably, an increased dependence upon the over-burdened court system will lead to increased costs for Ford, and, subsequently its customers. Ford and its dealers have taken great strides in establishing a speedy, inexpensive, and fair system to resolve product disputes as an effective alternative to lengthy and costly dependence on the courts." [Ford Press Release]
Managerial discretion and control (over organizational decisions)	1. "The California Manufacturers Association says that these bills are unnecessary restrictions on big business." [Press Release, CA State Capitol, 1970]
Customer satisfaction (desire to keep customers happy)	1. "As self-regulating mechanisms . . . their very existence means that our dealers and our own personnel are perceived as taking the extra steps required to resolve issues to the satisfaction of customers." [Ford Consumer Appeals Board, 1980s] 2. "American Honda feels that the current laws adequately protect the consumer, while maintaining a fair balance with both the dealer and manufacturer. We realized many years ago that it is in our own best interest to assure customer satisfaction with our products and this philosophy has paid dividends in repeat sales. We pledge to continue this corporate position well into the future." [Letter from Honda to CA legislature, 1981] 3. "Chrysler can't afford any dissatisfied purchasers, so it has established a procedure of using third parties to resolve, in a matter of weeks instead of years, disputes between the purchaser and the dealer over an unrepaired component of the vehicle during the warranty period. This is accomplished through Customer Satisfaction Arbitration Boards (CSAB)." [Letter from A. E. Davis, A. E. Davis & Co., to Members of Senate Judiciary Committee, CA legislature (Aug. 7, 1981)]
Profit (organization's desire to increase revenue)	1. "We believe this proposed legislation will greatly increase the number of frivolous and unmeritorious lawsuits filed against motor vehicle manufacturers. Inevitably, an increased dependence upon the over-burdened court system will lead to increased costs for Ford, and, subsequently its customers. Ford and its dealers have taken great strides in establishing a speedy, inexpensive, and fair system to resolve product disputes as an effective alternative to lengthy and costly dependence on the courts." [Ford Press Release] 2. "The present SB Act and volunteer manufacturer and dealer warranties already provide mechanisms for resolving customer complaints and their flexibility allows for mediation or binding arbitration, mandating a dealer to repurchase an automobile after four attempts to correct a possibly minor problem will surely increase the likelihood of costly and time-consuming litigation, these costs would ultimately have to be recouped by increased automobile prices. The consumer is presently very well protected by present law and voluntary warranty provisions, AB 1787 raises the real possibility of undermining this protection by setting the stage for protracted lawsuits. Instead, AB 1787 is not in the best interests of the consumer, please vote against it." [Telegram Letter, Kaiser Aluminum & Chemical Corp., 1981]