

Neil Thomas Proto
University of Washington Law School
February 2009
(Accompanied by readings)

**The Idea of Progress and Global Warming:
General Motors, The Demise of Transit and the Duty of Government©**

Introduction

The central theme in the 1939 World's Fair was the idea of progress. Architecturally, the Fair was a radical departure from previous fairs. Each of the pavilions was designed in modern architecture. The Pavilion that attracted the most attention was General Motors.' Its exhibit was titled: "Futurama."

The General Motors promotional film for "Futurama" is on YOU TUBE. Here is the way the commentator begins:

"To help us get a glimpse into the future of this world of ours there has been created for the New York World's Fair a thought-provoking exhibit of the development ahead of us, the greater and better world of tomorrow that we are building today."

The commentator is projecting ahead to 1960.

The commentator goes on to say that this new world "is a vivid tribute to the American scheme of living." And it has "given birth to a new generation of men" that will produce and support "eternal things that are worthy of god that are lovely and unchanging..." The film scans over green fields and New England style villages – that are on a massive mock- up - and then comes to the highways that flow smoothly – "eliminating congestion" - across a contemporary style bridge and then into the city. You see an intersection of eight lanes with pedestrians on an elevated sidewalk so there can be "double the available width of traffic on the street." There are, of course, no street cars to be found.

In a few moments we will watch the documentary – "Taken for A Ride" – involving General Motors and the demise of transit systems throughout the United States that was well underway by the time of the 1939 World's Fair.

The story told in the documentary touches on the stuff of the law in the conventional sense that lawyers – and law students – understand: a court decision, *United States v. National City Lines*,



Futurama:Highways and High-risers



Dwight D. Eisenhower

where the government challenged the conduct of the nation's largest corporations; and the enactment of a law: The Federal Aid Highway Act of 1954 that, in its magnitude and geographic reach, radically altered America culturally. It was enacted – as you will see – at the insistence of the President Dwight D. Eisenhower in the name of national security.

I **Three Matters to Consider**

When you watch this documentary and think about the material I asked you to read I want you to focus on three matters that are subtly and implicitly expressed but critical to the story and how to think about the future:

First, The idea of Progress.

What is being done by General Motors is described as reasoned; forward looking, somehow essential not merely to our material well being but to something deeper; our sense of accomplishment, moving into a new era, a new century; something we are entitled to.



Adam Smith

Don't think of GM's position as a mere gimmick or slogan. It plays to something quite deep in the American psyche: that we are on the winning side of history. That science and technology and innovation are intended to ensure it.

Certainly over the past three decades – during your life time – being on the winning side of history was correlated not to moral or spiritual or social definition of progress but largely to a material one: the virtue of the market forces. The elevation of what Adam Smith called “desire” for the acquisition of things.

How did General Motors use the idea of progress?

Second, the structure of government.

This may seem elementary. There are three branches of government on the federal level, including executive branch regulatory agencies. Each agency has a different mandate or purpose under the law and a different culture. Then there is the notion of federalism; the federal- state relationship. State agencies also have different purposes and cultures. Although cities are the creation of states, they, too, are part of how we think about federalism.

I want you to focus especially on how the three branches and levels of govern interact in this documentary: What purpose they serve, who they are accountable to, and in what manner.

Third, who and what precisely are the corporations to whom we entrust the responsibility to serve a public purpose.

Here we are focused on the motor vehicle (General Motors; Mack Truck), oil (Standard Oil of California), and tire (Firestone Rubber) industry and transit companies, including various ones they created. At the time some of the transit companies were actually utility companies in the transit business. Where do these corporations get their authority? How do they make decisions? And, to whom are they accountable?

One last matter before we look at the documentary: The Seattle Transit System. Put General Motors aside for a moment.

The Seattle transit system began in 1889. It had multiple lines, each privately- owned. Ownership was consolidated in 1900 in a Boston-based Company – Stone and Webster – under the name Seattle Electric Company. In 1912 control of the line was transferred to the Puget Sound Traction, Light and Power Company (now called Puget Sound Electric).

In 1918 the entire system was purchased by the City of Seattle. The amount paid was, apparently, quite extraordinary. And difficult to finance. City officials looked to general revenues not to purchase cars and tracts but for operational expenses on a temporary basis. Here it encountered its first serious legal impediment to success. The Washington Supreme Court.



Seattle Transit System

I included the decision in *Asia v the City of Seattle*, 119 Wash. 674 (1922) in the readings. Focus on the dissent.

1. It suggests the court majority had a deep set of motives that may have yielded the decision; to me, anger or a sense of betrayal at what the city of Seattle did;
2. The dissent also tries to discern something quite cultural and social: who is dependent on the transit system for their livelihood and why that should matter.

The decision left the Seattle transit system vulnerable financially.

Nonetheless, at its height in the 1930's - after the decision in *Asia v. City of Seattle*, 119 Wash. 674(1922) - the Seattle transit system had 230 miles of tract.

There was another event of consequence. In 1932, the federal and state government constructed the George Washington Memorial bridge (the Aurora Bridge) without any streetcar tracks. It was a very practical, negative signal about the future of the streetcar versus the automobile.

Put General Motors back in:

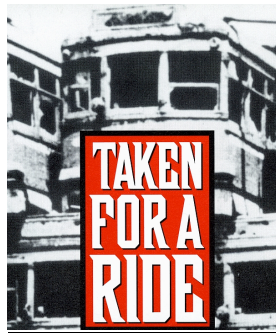
Bradford Snell – who you will meet shortly in the documentary – wrote this with respect to Seattle. There were, he wrote:

“myriad devices employed by General Motors since 1922 to eliminate the trolley. The railways of Boston, Detroit, San Francisco, [and] Seattle...were publicly operated and unavailable for purchase; but this did not preclude GM from using bribes and other inducements to persuade their officials to motorize.

Indeed, in San Francisco and Seattle, it arranged for one of its regional bus managers, the ex-president of its United Cities subsidiary, to become manager and transit car czar. [And]... it relied on banking connections to facilitate abandonment.” That is, the reading suggest, to pressure banks not to support Seattle’s efforts to refinance the debt from the purchase, operation and maintenance of the transit system.

The last street car in Seattle made its final run in 1941.

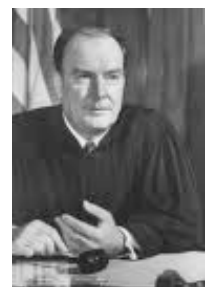
II The Documentary: “Taken for a Ride” *



III The Idea of Progress and the Structure of Government

I want to return to the idea of progress in a judicial context:

Judge J. Skelly Wright, in *Calvert Cliffs Coordinating Committee v Atomic Energy Commission* 449 F2d 1109(DC Cir. 1971), wrote about the future and the judicial role. This case was a challenge to the rules governing the construction of nuclear power plants after the enactment of the National Environmental Policy Act (NEPA). He wrote:



J. Skelly Wright,
Judge

* Among the additional readings is the author’s detailed history and analysis of the various civil and criminal cases, transfers and underlying politics (the Truman Administration prosecution and the Eisenhower Administration withdrawal), the related Supreme Court decision and the critique, somewhat misplaced and imprecise, of the documentary and Snell’s contribution.

“These cases are only the beginning of what promises to become a flood of new litigation – litigation seeking judicial assistance in protecting our natural environment. Several recently enacted statutes attest to the commitment of government to control, at long last, the destructive engine of material ‘progress.’”



Warren Burger,
Chief Justice

Less than a year later Chief Justice Warren Burger wrote this in denying, with reluctance, a motion for a stay of the injunction granted in *SCRAP v. United States of America*:

“Our society... and its governmental instrumentalities, having been less than alert to the needs of our environment for generations, have now taken protective

steps. These developments, however praiseworthy, should not lead courts to exercise equitable powers loosely or casually whenever a claim of ‘environmental damage’ is asserted. The world must go on and new environmental legislation must be carefully meshed with more traditional patterns of federal regulation.” *Aberdeen and Rockfish Railroad v. SCRAP* 409 U.S. 1207(1972), and



John Paul Stevens,
Justice

Now, Justice Steven’s decision in *Massachusetts v. EPA* (page 21 of the slip opinion) was similar to Judge Wright’s. Justice Stevens recognized the importance of global warming by accepting the conclusions reached by recognized experts and his own studied analysis. But he adds this – and, like Judge Wright, he is finding a judicial role in ensuring progress:

“But EPA overstates its case [that the increment caused by motor vehicle emissions is inconsequential]. Its argument rests on the erroneous assumption that a small incremental step, because it is incremental, can never be attacked in a federal judicial forum. Yet accepting that premise would doom most challenges to regulatory actions. Agencies, like legislatures, do not generally resolve massive problems in one regulatory swoop... They instead whittle away at them over time, refining their preferred approach as circumstances change and as they develop a more nuanced understanding of how best to proceed... That a first step might be tentative does not by itself support the notion that federal courts lack jurisdiction to determine whether that step conforms to law.”

And reducing automobile emissions is hardly a tentative step. Of course, EPA did not want to take any affirmative steps. What Justice Stevens is talking about is a judicial role in ensuring progress.

The structure of government.

The creation of the federal highway system included the establishment of a trust fund. Taxes from the sale of gasoline, oil products and tires were part of the fund. The FHWA was essentially an independent agency with its own distinct source of funding that far exceeded funding for any other mode of transportation.

In 1965, Congress created the Department of Housing and Urban Development. There was pervasive poverty in America's cities and the need for new housing and infrastructure (sewers, water systems). There also had been serious racial disorders, certainly in the south (Birmingham and Selma, Alabama and Savannah, Georgia) but, by the mid 1960s, the racial divide was now in the north including Seattle. Disorders occurred in Philadelphia, Cleveland, cities in New Jersey, and Chicago and then a riot in the Watts section of Los Angeles. People were moving to the suburbs although still working in the cities. Related to congress' attention on urban centers and the creation of HUD, Congress also focused on mass transit. It had given HUD that responsibility. Congress now revisited that choice in the context of thinking about the creation of a new agency: The Department of Transportation.

In 1966 a committee of congress wrote this:

“The 89th Congress [in 1965] has enacted important legislation enabling the Federal Government to help cities build mass transportation systems, and to investigate by research and demonstration the feasibility of high speed intercity transportation systems... The Congress by a recent enactment has assigned federal functions in this important area to the Department of Housing and Urban Development, which is itself a new Department. ...More experience is necessary to decide intelligently whether urban mass transportation, which is intimately bound up with other problems of community growth and development, more logically belongs in HUD or DOT.”

The famed documentary on the civil rights movement - “Eyes on the Prize” – includes one episode focused on the 1967 riot in Detroit. The episode opens with some Motown music; Martha and the Vandella's singing “Dancing in the Streets.” This was the voice over: “In 1967 Detroit was booming [the General Motors headquarters sign is visible]. Federally funded urban renewal brought highways and skyscrapers. The auto industry brought employment. But success looked different to Detroit's black community. Urban renewal brought expressways through black neighborhoods. It took jobs and resources to white suburbs. It left black residents behind.”



Detroit, 1967

And then the story shifts to a black women, Helen Kelly. This is what she said:

“The expressway divided the community. When you could walk across the street and talk to your neighbor, its no longer there, you got to cross the bridge and when you go across the bridge you ain't going to find anything because that space, the street is gone. All the houses in that neighborhood is gone.”

At almost the same time as the Detroit riot is occurring- and racial disturbances continue to occur, including in my own town, New Haven, Connecticut - Congress placed the Federal Highway Administration within the Department of Transportation. It also shifted the responsibility for mass transit from HUD to the Department of Transportation.

Highways and mass transit were placed in an agency culture devoted to the construction of highways and not the civility and culture of urban living or diminishing air pollution. Neither the civil disorders nor Helen Kelly's experience were enough to give Congress pause or rethink its (or General Motors') definition of progress.

Twenty-five years later - in 1991- there remained a struggle to get mass transit built. Congress amended the Clean Air Act and the Department of Transportation Act with the Intermodal Surface Transportation Act. It is among the readings. At the time there was considerable criticism that the federal government was not supporting mass transit and that the FHWA was not concerned about air pollution.

When you look at the statement of purpose, it not only lacks clarity with respect to the imperative to build mass transit but it elevated a new entity of government: the Metropolitan Planning Organization(MPO). In many regions of the country, the MPO diluted the role of cities or the value of urban living. Congress wanted to ensure the MPO retained a suburban mentality. And for all the value of regional planning, in 1991, for the most part, suburban mayors were still the product of an automobile era and sprawl.

When you think about solutions to global warming, which agencies and which level of government have or should have a duty?

IV

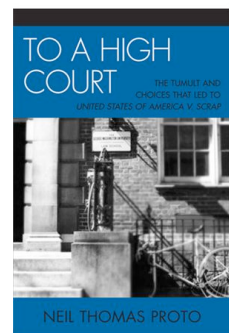
Who and what precisely are these corporations to whom we entrust such substantial public responsibility: What do you need to know?



Ralph Nader, 1970s

You can see, from the readings and 1969 photograph of Ralph Nader and the students and young lawyers with whom he worked, what they went through to understand and challenge General Motors. It was not sufficient to be right as a moral matter but to know this corporation's history and record and method of operating; to know its economics and finance and, most important, to know the law.

When we formed SCRAP we realized almost immediately that we needed to understand the history and culture of the railroad industry upon which the nation depended for the movement of recyclable materials and natural resources. We had to learn the economics and science of railroad freight rates, the deference the judiciary showed the railroads and the Interstate Commerce Commission, the special relationship between the railroad industry and the extraction of natural resources, and the corruption and malice that led to the formation and then the bankruptcy of the Penn Central Railroad. We needed, as well, to understand the culture of government: the influence of the railroad industry in the executive branch, the failure of government to meet its public duty.



For me, that learning also included a visit to Appalachia and the constant revisiting – which we all shared with each other – of what the railroads had done to harm people’s lives and the environment throughout the nation. With Louis Brandeis, as the book makes plain, to know that it was only with persistence and a knowledge of the law – the Interstate Commerce Act - and how to use it that it was possible to prevail. All of this, of course, as we also sought to master the statute and case law of the National Environmental Policy Act.

In *Ligget v. Lee* (1933), in a dissenting opinion, Associate Justice Louis Brandies reminded us – and it is worth repeating however elementary it may seem – that corporations get the privilege to operate from the state government:



Louis Brandeis,
Justice

“The prevalence of the corporation in America has led men of this generation to act, at times, as if the privilege of doing business in corporate form was inherent in the citizen; and has led them to accept the evils attendant upon the free and unrestrictive use of the corporate mechanism as if these evils were the inescapable price of civilized life, and hence to be borne with resignation.”

“Throughout the greater part of our history, a very different view prevailed. There was a sense of some insidious menace inherent in large aggregates of capital, particularly when held by corporations. So at first the corporate privilege was granted sparingly, and it was believed that under general laws embodying safeguards...the scandals and favoritism...could be avoided.”
The full court disagreed.

Now, all of this may give you pause about entrusting the automobile industry with the public responsibility to diminish global warming. Lately, however, especially at General Motors, we’ve seen what the absence of safeguards means for the pervasiveness of scandals and the meaning of favoritism.