

## THE JITNEYS\*

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THE "jitney" episode of 1914-1915, wherein private automobiles were used as rivals to street railways, is typically treated in histories of American urban transportation either as an historical aberration, or at most, as an incident which inseeded the engineering design of early buses.<sup>1</sup> Rather, we shall attempt to demonstrate in this paper, the jitney episode was central to the history of urban transportation, and more specifically, that the policy of putting down the jitneys led directly to much of what is looked upon as most unsatisfactory in contemporary urban transport.

### THE STREET RAILWAYS IN 1914

American urban public transportation was provided almost exclusively by electric street railways in 1914. Although horsecar lines were built in New York and New Orleans as early as the 1830's, street railways as an industry had their inception in the late 1850's with the building of horsecar lines in Boston, Chicago, and most other major cities. Horsecar lines spread rapidly in response to increasing demand conditions as American urbanization progressed in the period from the end of the Civil War to the mid-1880's. The first large-scale mechanization of urban transport was cable traction, invented in San Francisco in the 1870's, but disseminated to other major cities between 1882 and 1893.<sup>2</sup> This form of transport was so capital-intensive that, apart from a small number of lines built to develop real estate projects on highlying or undulating land, only the most major radial routes from central business districts were economic for cable installations. Neither horsecar lines nor cable lines had any apparent economies of scale. A few cities, notably Providence and Grand Rapids, had unified street railways in the horse era owing to political success in securing franchise rights, but most street railways operated one or a small number of lines serving a limited area of a city.

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<sup>1</sup> For example, John Anderson Miller, *Fares, Please* 147-53 (1941).

<sup>2</sup> George W. Hilton, *The Cable Car in America* 29-48 (1971).

Until the introduction of the electric streetcar, there was no observed tendency toward concentration in the industry, but Frank J. Sprague's perfection of the electric streetcar in Richmond, Virginia, in 1888 brought to the industry as pervasive an economy of scale as is to be found in any economic activity. The ability to generate electric power in any section of a city, and to use it at central business districts, stadia, fairgrounds, or wherever it might be required, was an economy of scale so great that virtually all major cities experienced a rapid unification of their street railway systems in the late 1890's and the first decade of the century. The street railways had their monopoly positions protected by franchise rights, and by 1914 were typically subject to municipal and state regulatory bodies. Like regulated firms generally, street railways were entitled to "a fair return on a fair value of investment", as due process of law under *Smyth v. Ames*.<sup>3</sup> Their fare structures were the simplest of all regulated firms: in every major city except Cleveland, the street railway charged a flat 5 cent fare regardless of distance. Free transfers between lines provided city-wide service. The 5-cent fare entailed the usual cross-subsidization of pricing structures of regulated firms; the passengers who rode distances of under approximately two miles subsidized the longer distance passengers. Municipal governments typically felt they received a considerable benefit from this cross-subsidization, since the electric streetcar had increased the feasible home-to-work distance greatly, and thus made possible a broader and more deconcentrated urban area. The electric streetcar, which was providing some 90 per cent of urban trips by 1906, became the principal force in shaping American cities, creating a pattern of a central business district for central-office employment, shopping of the more specialized or more expensive sorts, and a restaurant-amusement complex, surrounded by a radial or grid pattern of strip shopping streets for the more ordinary classes of stores along the streetcar lines, and secondary business districts at the intersections of major lines.<sup>4</sup>

#### ENTRY OF THE JITNEYS

The jitney movement is customarily said to date from July 1, 1914, when L. P. Draper of Los Angeles picked up a passenger in his Ford Model T touring car, took him a short distance, and accepted a nickel fare as payment.<sup>5</sup> Draper had ascertained that this action was legal under the ordinances

<sup>3</sup> *Smyth v. Ames*, 169 U.S. 466 (1898).

<sup>4</sup> George M. Smerk, *The Streetcar: Shaper of American Cities*, 21 *Traffic Q.* 569 (1967).

<sup>5</sup> The origin of the term "jitney" is a matter for dispute. See the entry "jitney" in *A Dictionary of Americanisms* 908 (1966).

of Los Angeles, provided only that he held a chauffeur's license. Initially, only a small number of drivers emulated Draper, but the depression which followed the outbreak of World War I in the fall of 1914 generated a supply of unemployed men to whom jitney operation was an attractive outlet. The city's mild, dry climate and diffused pattern of employment had caused the population to turn to the automobile early; by 1914 a large supply of vehicles was available. The *Electric Railway Journal*, trade organ of the street railways, first took notice of the movement on November 28, 1914, when it reported, "an enormous increase in the number of privately-owned automobiles that solicit fares at 5-cents each on the streets of Los Angeles."<sup>6</sup> The movement was gaining momentum rapidly; on December 12 the *Journal* reported that the Los Angeles Police Department had issued only 1,520 chauffeur's licenses in 1914 through December 1, but 60 on December 2 alone. Los Angeles Railways was losing \$600 per day in revenue, had laid off 84 motormen and conductors and withdrawn 21 cars on six lines. The movement had spread to San Francisco; on December 1 six jitneys were in service from the Ferry Building out Market Street.<sup>7</sup> Early in 1915 the movement spread widely in the cities with mild climates in the west and southwest; Dallas had no jitneys at all on January 1, but 259 in operation on March 22.<sup>8</sup> Seattle had 518 jitneys carrying 49,000 passengers per day by early February 1915.<sup>9</sup> With the coming of milder weather, jitneys spread to cities with more severe climates, but their appearance in Portland, Maine, in March was interpreted as demonstrating that the movement had swept the nation.<sup>10</sup> The peak number of jitneys in the country was estimated at 62,000, probably about the second quarter of 1915.<sup>11</sup> A trade organ, *The Jitney Bus*, was founded in March, 1915.

#### CHARACTERISTICS OF JITNEY TRANSPORTATION

The jitneys corresponded to no single form of present-day transportation; rather, they provided a mixture of the services of buses, taxicabs, and delivery vehicles. The basic operation of the jitneys was as buses in or out of central

<sup>6</sup> *Traffic and Transportation*, 44 *Elec. Ry. J.* 1222 (1914) [*Traffic and Transportation* is a weekly news feature in the *Electric Railway Journal*. It is hereinafter cited *Traffic & Transp.* All other articles from this *Journal* are cited by author (if any) and title or headline.]

<sup>7</sup> *Traffic & Transp.*, 44 *Elec. Ry. J.* 1318 (1914).

<sup>8</sup> *Jitney Operation in Dallas, Tex.*, 45 *Elec. Ry. J.* 884 (1915).

<sup>9</sup> *Traffic & Transp.*, 45 *Elec. Ry. J.* 309 (1915).

<sup>10</sup> The "Jitney" Situation, 45 *Elec. Ry. J.* 494 (1915).

<sup>11</sup> *Retrospect and Forecast*, 1 *Motor Bus* 284 (Jan. 1916). The *Jitney Bus* changed its name to *Motor Bus* in September 1915. It retained the consecutive pagination begun in *The Jitney Bus*.

business districts. Typically, they picked up passengers at streetcar stops where, obviously, people demanding public transportation congregated, and carried them along the car lines. The jitneys' comparative advantage was for short trips, usually said to be of less than two-and-a-half miles in length. A jitney driver could carry four or five seated passengers plus standees on his running boards, as compared with a passenger load of about 50, handled by a crew of only two on a standard streetcar. The jitneys, however, provided the trip at overall speeds of about 15 miles per hour, 150 to 200 per cent of the speed of streetcars.<sup>12</sup> The higher quality of the service was able to attract many of the short-distance passengers from the streetcars, and the rapid turnover of passengers counteracted or neutralized the disadvantage the jitneys suffered in labor costs. Their patronage was broad, but heavily represented were the young, businessmen and others with a high valuation of time, and those who found prestige or novelty in automobile trips. In Los Angeles, people from the motion picture industry were the first large identifiable class of traffic, partly because the industry's diffused geographical pattern suited a highly flexible carrier. It was notable that the jitneys' gross revenue was uniformly in excess of the street railways' loss of revenue, indicating that many of the trips had previously been made by taxi or on foot.<sup>13</sup> The jitneys' absence of transfers further restricted them to short trips.

The jitneys' freedom from rails and also from franchise restrictions gave them greater flexibility in destinations than the street railways could possibly have offered. In San Antonio the operator did not customarily choose a destination until he picked up his first passenger. He would then post a destination consistent with that passenger's destination on his windshield and pick up additional passengers en route.<sup>14</sup> Drivers in San Francisco and elsewhere frequently organized trips in this fashion. Often jitney drivers would deviate from their usual routes to take passengers to their doors, usually at the rate of two passengers for a quarter. Some would deviate from established routes only in off-hours.<sup>15</sup> In St. Joseph, Missouri, a smaller city, delivery to the passenger's door was the normal case.<sup>16</sup> Drivers in New Orleans deviated from established routes without charge, but in the hope of tips at the same rate of two passengers for a quarter.<sup>17</sup> In Fort Worth, jitneys that adhered strictly to routes (before ordinances compelled it) had to give up this practice due

<sup>12</sup> L. R. Nash, *History and Economics of the Jitney*, 18 *Stone & Webster J.* 361, 365 (1916).

<sup>13</sup> J. C. Thirlwall, *The Jitney Problem*, 80 *Sci. Amer. Supp.* 143-44 (1915).

<sup>14</sup> *Jitneys at San Antonio*, 45 *Elec. Ry. J.* 1197 (1915).

<sup>15</sup> Murray Fahnestock, *Some Jitney Thoughts*, 1 *The Jitney Bus* 39 (May, 1915).

<sup>16</sup> *Jitneys in St. Joe*, 1 *The Jitney Bus* 43 (May, 1915).

<sup>17</sup> *The Jitney as a Gold Brick*, 45 *Elec. Ry. J.* 919 (1915).

to competition from "free lance" drivers who shunned all routes and schedules.<sup>18</sup> Some drivers operated in jitney service in rush hours and then as cut-rate taxicabs in off-hours.<sup>19</sup> Others delivered packages in off-hours.<sup>20</sup> Jitney service was so mobile geographically that once hostile regulations had been passed in one city the drivers could shift their operations to friendlier cities nearby.<sup>21</sup> Unlike streetcars, the breakdown of a single jitney did not blockade traffic or curtail service.<sup>22</sup>

There were no apparent economies of scale in jitney operation. In all cities the great majority of operators were individuals. There were jitney companies which operated fleets, and joint ventures of individual operators to run on specified routes with coordinated schedules. A firm called the Kansas City Jitney Transportation Company operated a fleet of 40 vehicles until its failure in July 1915, and an association of 13 individual operators ran a coordinated route in the same city under the name of the White Star Line.<sup>23</sup> In most cities the jitney operators had associations, the principal purpose of which was defense against hostile legislation, but some of these provided, or assisted members in providing, joint maintenance facilities. The association in Rochester, New York, operated a joint garage for maintenance and a towing vehicle for disabled cars.<sup>24</sup> As far as is known, these associations did not attempt price-fixing, which the ease of entry into the industry and the pervasive influence of the fare of the rival street railways made impractical.

Collusive organization of the industry was difficult in part because so many operators provided the service only in rush hours or on some other part-time basis. Some men simply posted their places of work as destinations upon leaving home and picked up anyone willing to pay for a ride along the way, thereby providing an almost infinite variety of routes such as no other form of public transportation could approximate. Some men drove as jitney operators for an hour or two before or after work, or both. In Houston on February 2, 1915, of the 714 active jitneys, 442 made only one or two round trips.<sup>25</sup>

<sup>18</sup> Jitney Statistics at Fort Worth, 46 Elec. Ry. J. 54 (1915).

<sup>19</sup> C. N. Black, Economics of the Jitney Problem from a Traction Company's Point of View, 46 Elec. Ry. J. 510, 511 (1915).

<sup>20</sup> Murray Fahnestock, *supra* note 15, at 40; The Package Jitney, 1 The Jitney Bus 104 (July, 1915).

<sup>21</sup> L. R. Nash, *supra* note 12, at 373; Regulation for the Jitney Bus, 45 Elec. Ry. J. 374, 377 (1915); Traffic & Transp., 56 Elec. Ry. J. 245 (1920); Clyde Lyndon King, The Jitney Bus, 12 Amer. City 481 (1915).

<sup>22</sup> Clyde Lyndon King, *supra* note 21.

<sup>23</sup> Traffic & Transp., 46 Elec. Ry. J. 167 (1915).

<sup>24</sup> Untitled Note, 1 Jitney Bus 78 (June, 1915).

<sup>25</sup> Jitney Figures from Two Southern Cities, 45 Elec. Ry. J. 1021 (1915); *cf.* L. R. Nash, *supra* note 12, at 363.

One physician kept an automobile to make night calls, but allowed his teen-aged son to operate it as a jitney in daytime hours.<sup>26</sup> In Memphis in June 1915, the average number of jitneys in operation for the full day was 90, but in the evening rush hour, 4:30 to 6:30 p.m., the average number was 142.<sup>27</sup>

As the foregoing indicates, the jitney was a form of transportation directly and immediately responsive to demand conditions. A further manifestation of this was the variation in supply of the service in response to weather conditions. Since the vehicles were mainly open cars, they were less satisfactory substitutes for streetcars in wet weather than dry. E. L. Lewis, Superintendent of the Los Angeles Railway, ordered his inspection staff to study the supply of jitneys in various weather conditions, and reported the following:

JITNEY TRIPS INTO DOWNTOWN LOS ANGELES<sup>28</sup>

Date	Weather	Round Trips
November 30, 1914	Clear	2657
December 3, 1914	Clear	3315
December 4, 1914	Rain	2994
December 10, 1914	Rain	2179
December 31, 1914	Clear	3200
January 4, 1915	Clear	2492
January 11, 1915	Clear	2987
January 28, 1915	Rain	1563
February 4, 1915	Clear	3482

In short periods, the variation in supply was even greater than the table indicates. A hard rain in the morning would depress the supply to 5 per cent of normal, but the usual supply would appear within an hour of the end of the rain.<sup>29</sup> In South Bend, Indiana, in July 1915, the city was typically served by about 30 jitneys on clear days, but only by about 20 in the rain. On Saturdays, the number rose to about 45, since the demand increased in connection with week-end shopping and the supply increased when much of the local industrial labor force had at least a half day of leisure.<sup>30</sup> In the

<sup>26</sup> Charles C. Lynde, Can I Make a Jitney Bus Pay?, 1 The Jitney Bus 7, 8 (April, 1915).

<sup>27</sup> Jitney Bus on the Wane . . . , 46 Elec. Ry. J. 395 (1915).

<sup>28</sup> Letter from E. L. Lewis, Sup't L.A. Ry. Co., to the Editor, April 8, 1915, in 45 Elec. Ry. J. 757 (1915).

<sup>29</sup> *Id.*

<sup>30</sup> South Bend Collects Jitney Data, 46 Elec. Ry. J. 399 (1915). Rural Indiana farmers also used their cars as jitneys on Saturdays when they came into town to shop.

South, cold weather ordinarily resulted in a diminution in supply of 50 per cent or more.<sup>31</sup>

Similarly, the price of the service manifested a responsiveness to demand and supply conditions which the regulated rates of street railways did not. In New Orleans, the price rose from 5 cents to 10 cents at midnight,<sup>32</sup> since the disutility to the driver operating the jitney in the wee hours was greater. In addition the infrequent owl cars of the street railway were less satisfactory substitutes for the jitneys than streetcars on ordinary daytime schedules. Storms, snows or strikes which prevented streetcar service entirely were reported to send jitney fares to the range of 75 cents to \$1.<sup>33</sup>

Jitney fares did not generally fall below 5 cents except for short periods. Competitive pressures in Atlantic City and occasionally elsewhere were reported to drive jitney rates down to 3 cents,<sup>34</sup> but in general jitney operators felt they could not compete with the street railways at fares below 5 cents. The jitneys' trade journal advised prospective entrants to the industry against attempting to operate in Cleveland, where the street railway was limited by local ordinance to a 3-cent fare.<sup>35</sup> The St. Louis Post Dispatch suggested that the street railways could easily wipe out the jitneys by moving to a 3-cent fare.<sup>36</sup> No street railway attempted this, verifying the presumption that price-cutting is not a plausible predatory device for eliminating a competitive rival.<sup>37</sup> Although some railways took to operating small fleets of jitneys themselves, these efforts usually were unprofitable.<sup>38</sup>

The costs and other supply conditions of the jitneys were studied carefully by the street railways, if only because the jitneys were a menace to their very existence. Their study was by no means unbiased—the Electric Railway Journal variously referred to the jitneys as “a menace,” “a malignant

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Traffic & Transp., 46 Elec. Ry. J. 422 (1915); Doings in Hoosierdom, 1 The Jitney Bus 144 (Aug., 1915). Regular jitney drivers in these towns favored license fees and other regulations designed to reduce the supply of these casual operators. Bus News From Everywhere, 2 Motor Bus 481, 482 (July, 1916). [Bus News From Everywhere is a news feature which appears irregularly in Motor Bus. It is hereinafter cited as Bus News.]

<sup>31</sup> L. R. Nash, *supra* note 12, at 363.

<sup>32</sup> The Jitney as a Gold Brick, 45 Elec. Ry. J. 919 (1915).

<sup>33</sup> L. R. Nash, *supra* note 12, at 364.

<sup>34</sup> Traffic & Transp., 45 Elec. Ry. J. 776 (1915).

<sup>35</sup> Charles C. Lynde, *supra* note 26, at 7.

<sup>36</sup> Here and There in Jitneydom, 1 Jitney Bus 42 (May, 1915).

<sup>37</sup> John S. McGee, Predatory Price Cutting: The Standard Oil (N.J.) Case, 1 J. Law & Econ. 137 (1958).

<sup>38</sup> L. R. Nash, *supra* note 12, at 372; Traffic & Transp., 45 Elec. Ry. J. 372 (1915); *id.*, 46 Elec. Ry. J. 207, 690 (1915); *id.*, 48 Elec. Ry. J. 39 (1916); 49 Elec. Ry. J. 270 (1917); Regulating the Jitney, 51 Literary Digest 3 (1915); J. C. Thirlwall, *supra* note 13.

growth," and "this Frankenstein of transportation"—but the jitneys' own journal also attempted cost studies biased, if at all, in the opposite direction. The street railways' initial reaction to the movement was incredulity, since the industry's leaders had previously been solidly of the opinion that rubber-tired transportation was unable to compete in costs with streetcar lines. There had been only one bus line in the country in continuous successful operation, the Fifth Avenue Coach Company, but this was considered a special case because New York prohibited streetcar tracks on Fifth Avenue. The company had operated a 10-cent fare with foreign buses since 1905 and estimated its average total cost of moving passengers at 9 cents.<sup>39</sup> Most other major cities had experienced efforts to operate similar bus lines, such as were already common in London and Paris, but all had failed without exception. The labor costs of the jitneys appeared so much more unfavorable than those of the failed bus lines that at the outset the situation seemed to the street railway industry superficially incomprehensible.

The American Electric Railway Association (the AERA) directed its Bureau of Fare Research to evaluate the costs of jitney service under the general categories of accounts of the street railways. F. W. Doolittle, Director of the Bureau, estimated out-of-pocket costs of jitney operators at 5.8 cents per mile, or \$5.80 for 20 round trips over a 2½ mile route. Such an operator could gross about \$8 per day, leaving him \$2.20 for fixed costs and his implicit wage. These additional costs Doolittle computed on an annual basis as follows: insurance, \$200; cleaning, inspection and housing of the vehicle, \$100; wage of driver, \$700; superintendence and management, \$195; interest and depreciation on vehicle, \$240; registration and license fees, \$5; a total of \$1,450 per year.<sup>40</sup>

Doolittle concluded from these data that the operation of the jitneys was uneconomic, that it was possible as a general phenomenon only because of neglect of depreciation, the implicit wage of the operator and other implicit costs, and thus that the jitneys could survive, if at all, only as a luxury service for short distances at fares of 10 cents or 15 cents.<sup>41</sup>

This opinion was the general feeling of major figures in the street railways in early 1915. Charles N. Black, Vice-President of the United Railroads of San Francisco, estimated that the 261 jitneys in operation in his city on January 26, 1915, operated for about 7 cents per mile, or 1¾ cents per seat mile, which was about 2½ times the cost per seat mile of his company's

<sup>39</sup> The Jitney-Bus Competition, 45 Elec. Ry. J. 324, 325 (1915).

<sup>40</sup> F. W. Doolittle, The Economics of Jitney Bus Operation, 23 J. Pol. Econ. 663, 674-75 (1915).

<sup>41</sup> *Id.* at 686-87.



streetcars.<sup>42</sup> Included in his calculations were depreciation of 1 cent per mile and an implicit wage of the driver of 3 cents per mile. The jitney as he viewed it, was competing partly through a higher speed, partly by neglect of the implicit costs, and partly through freedom from franchise obligations.

The jitneys' trade journal estimated operating costs in not markedly different fashion. Direct operating costs plus depreciation were estimated at 4 cents to 5 cents per mile. The implicit wage of the driver could be covered by averaging three passengers per two-mile trip.<sup>43</sup>

A St. Louis used car dealer who specialized in vehicles for jitney use told his prospective buyers to plan on costs of \$2 per day for each of four categories: tires; the driver's implicit wage; gasoline; and insurance-repairs-depreciation. The total of \$8 was under the \$10 which he told them they could expect in gross receipts from a full day's operations in St. Louis, but more than the \$7 reported for Kansas City or the \$6.25 for Peoria.<sup>44</sup>

Whether the jitneys were viable as rivals to the street railways was thought to depend on the level of implicit costs, of which, apart from the wage of the driver, depreciation of the vehicle was the most important. The exact magnitude of this cost was the source of considerable controversy. The typical jitney was a Ford Model T touring car with a year or more of use behind it. In Los Angeles, two-thirds of the jitneys were of this character, and the percentage was reportedly higher elsewhere.<sup>45</sup> Overlands were the second most popular brand of jitney, but larger cars were usually thought to be too expensive to operate, both in direct costs and in depreciation. A Ford suitable for jitney service was available in early 1915 for about \$240 to \$250 from a used car dealer.<sup>46</sup> Since the cars had not been designed for the purpose, jitney service was extremely hard on them. Ford touring cars were designed for long-distance driving at what were by the standards of the time prolonged high speeds, 20-25 miles per hour, with infrequent gear-shifting. A jitney, however, typically went from a stop to a speed of 25 miles per hour in a two-block distance and in a ten-hour day had to be shifted over 500 times.<sup>47</sup> Clutches deteriorated rapidly, and were the principal source of breakdowns, but the nature of the service accelerated wear on moving parts generally. As is well known, the Model T was designed with exceptionally large wheels for operation through muddy country roads impassable to earlier

<sup>42</sup> The Jitney-Bus Competition, 45 Elec. Ry. J. 324, 325-26 (1915).

<sup>43</sup> Murray Fahnestock, *supra* note 15, at 40.

<sup>44</sup> The Cost of Bus Operation, 45 Elec. Ry. J. 414, 417 (1915).

<sup>45</sup> L. R. Nash, *supra* note 12, at 365.

<sup>46</sup> *Id.*; Murray Fahnestock, *supra* note 15, at 39, 40.

<sup>47</sup> Turning the Touring Car Into a Jitney, 1 The Jitney Bus 5 (April, 1915).

automobiles. In jitney service the large diameter of the wheels put heavy leverage against the bearings when the right front wheel hit the curb in calling for a passenger. This readily knocked the wheels out of alignment, thereby increasing tire wear. About half of all jitneys were thought to operate with their wheels out of line.<sup>48</sup> Similarly, overloading accelerated deterioration of the body. The Ford touring car was intended for a driver and four passengers, but as between standees on running boards (which were not designed for heavy or prolonged weights) and overcrowding of the interiors, as many as 14 passengers were reported handled. The jitneys' own journal estimated that doubling the intended passenger load of a Ford resulted in deterioration of the body at four to six times the normal rate.<sup>49</sup> The journal in April 1915 advised its readers to allocate \$100 per year to depreciation, but by January 1916, suggested \$1 per day.<sup>50</sup> Other observers thought the service so destructive that they estimated depreciation rates of 50 per cent to 100 per cent per year.<sup>51</sup> On the other hand, one could rent a vehicle for the service for about \$15 per month, a figure which is consistent with a lower depreciation rate.<sup>52</sup>

The inappropriateness of the vehicles to the service was the one point on which all agreed—the jitneys' spokesmen, the street-railwaymen, the Ford Motor Company. As one would expect, certain garagemen specialized in modifying Fords with heavier clutches and reinforced bodywork, but the vehicle was basically so inappropriate that modification was at best a palliative. As one would also expect, by late 1915 specialized bodies designed for jitney service were being offered by coachmakers, ranging from all-weather wooden bodies for the Ford chassis, seating five to eight passengers, to single deck bus bodies for a truck chassis seating over 30. The jitneys' journal argued that even the simplest specialized vehicle expanded the range of jitney service beyond the two miles it considered economic without backhauls in an unmodified Ford.<sup>53</sup>

<sup>48</sup> Jitney Front Wheels Out of Line, 1 *The Jitney Bus* 25 (April, 1915).

<sup>49</sup> Overloading the Jitney, 1 *The Jitney Bus* 14 (April, 1915).

<sup>50</sup> Murray Fahnestock, *supra* note 15, at 40; Retrospect and Forecast, 1 *Motor Bus* 284 (Jan., 1916).

<sup>51</sup> The manager of the Kansas City Jitney Association estimated 50% per year, and the president of the street railway in Mobile, 100%. Letter from J. H. Wilson, Pres. Mobile Light & R.R. Co., to the Editor, Feb. 15, 1915, in 45 *Elec. Ry. J.* 421 (1915).

<sup>52</sup> Letter from Thomas R. Shepherd to the Editor, Jan. 19, 1915, in 100 *The Nation* 142 (1915).

<sup>53</sup> Murray Fahnestock, *supra* note 15, at 40. This journal published extensive speculations on the appropriate vehicle for the service. Charles E. Duryea, one of the inventors of the automobile, in a particularly perceptive analysis of the requirements of the service, recommended a rear-engined vehicle with an air-cooled engine of a small number of cylinders—a virtually exact description of the present Volkswagen Microbus. Had the jitneys been allowed to survive, they would probably operate with a variety of vehicles

The development of specialized vehicles promised to reduce one of the implicit costs—depreciation. Meanwhile the street railways were noting that their original logic concerning the other implicit cost—wages—was proving erroneous. It may have been true of any one jitney operator that he was understating his implicit wage, and also neglecting depreciation on his automobile, but it did not follow from this, as the street railways had hoped, that the movement would die shortly. It was typically observed that the number of jitneys in a city receded only modestly below the initial supply.<sup>54</sup> There proved to be a stream of men who would neglect the implicit costs for short periods; if they were unemployed and the alternative use of the vehicle was private, they were entirely rational to do so. As could have been predicted, the jitney industry was characterized by high rates of entry and exit. The industry's most able contemporary observer, L. R. Nash, reported that in a Southwestern city which he did not identify, 1308 jitneys had appeared on the streets in an 89-day period. Of these, 385 operated for one day only. None of the remaining 923 operated for the full 89 days; the longest period of operation was 82 days. Two operated for 81 days, seven for more than 75 days, 36 for more than 60 days, and about 400 for more than 15 days. Excluding the jitneys which operated for one day only, the average jitney operated for 19 days of the 89 studied.<sup>55</sup>

E. L. Lewis, Superintendent of the Los Angeles Railway, reported that 802 jitneys had operated in the city since January 1, 1915, of which 492 remained in service on March 18. The average driver operated for about 60 days.<sup>56</sup> Between March 1 and March 18, 72 cars entered the trade and 66 left; between March 18 and May 11, 137 entered and 139 exited.<sup>57</sup> Lewis believed that Los Angeles chronically had a larger floating work-seeking population than any other major city, from which an endless supply of jitney drivers could be drawn.

#### THE POLITICAL CONTROVERSY CONCERNING THE JITNEYS

The street railways by the spring of 1915 had, in general, recognized that the jitneys were not self-limiting, or a phenomenon which accurate evaluation

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ranging from taxicabs to full-sized buses, with vehicles such as Duryea recommended predominating. Charles E. Duryea, *Simplified Buses, 1 Motor Bus 163-65* (Sept., 1915). It is notable that the jitneys now in service in Atlantic City and San Francisco largely employ the Microbus and similar American-built vans. *San Francisco Chronicle*, July 5, 1971, at 4.

<sup>54</sup> J. C. Thirlwall, *supra* note 13.

<sup>55</sup> L. R. Nash, *supra* note 12, at 363.

<sup>56</sup> Letter from E. L. Lewis, *supra* note 28.

<sup>57</sup> E. L. Lewis, *The Rise and Decline of the Jitney in Its Birthplace*, 46 *Elec. Ry. J.* 500, 501 (1915).

of costs would end. The railways also realized that they could not bank on an economic expansion to lead people to shift out of jitney driving and into better jobs; while business conditions could improve, they could worsen as well and again expose the industry to new hordes of casual jitneys.<sup>58</sup> Accordingly, they sought protection from municipal governments, which for various reasons proved unanimously willing to provide it. First, as has been recognized in the literature hostile to public utility regulation, the logic of the regulatory framework implies protection of the regulated firm from forces leading to its decline.<sup>59</sup> *Smyth v. Ames* required that, as *quid pro quo* for undergoing regulation, the regulated firm be given a fair return on a fair value of investment. There is an implicit presumption in this doctrine that the monopoly characteristics of regulated firms are permanent; nothing in *Smyth v. Ames* directs a regulatory body in what to do when the regulated firm begins to decline. Apart from the general presumption that any industry will decline if given enough time, regulated firms are particularly likely to decline, since—as in the present instance—their discriminatory pricing structures give the economy an incentive to find alternatives for their services. If the commission's obligation is only to provide the regulated firm with a fair return on a fair value of investment, it is obligated to protect the firm against the innovation which is causing the firm to decline. The street railways, more unambiguously technological monopolies than almost any other firms, were subject to this body of law, and accordingly, were entitled to protection under its logic.

Most municipal governments apparently shared the street railways' own view that the public would be principally dependent on the streetcar indefinitely, and that partial conversion to rubber-tired transportation entailed highly undesirable transitional problems. In Oakland it was estimated that 13 jitneys were required to handle the average load of a streetcar.<sup>60</sup> Most street railways had franchise obligations to maintain pavement over their tracks and for specified distances on either side, or occasionally for the full width of the street. Some were obligated to provide free street lighting, and many railway franchises required tax payments to the municipality, usually at the rate of one or two per cent of gross receipts.<sup>61</sup> Municipal governments were typically reluctant to forego these advantages. It would have been far more costly to organize an industry of the character of the jitneys noncom-

<sup>58</sup> Traffic Problems Confront the Rose City, 52 Elec. Ry. J. 330 (1918).

<sup>59</sup> See Ed. Renshaw, Utility Regulation: A Re-Examination, 31 J. of Bus. 335 (1958) and the works cited therein.

<sup>60</sup> Traffic & Transp., 45 Elec. Ry. J. 910 (1915).

<sup>61</sup> See, for example, Traffic & Transp., 45 Elec. Ry. J. 649 (1915).

petitively so as to generate rents which the cities could confiscate to provide such benefits.

More important, as stated at the outset, municipal governments were convinced that they received a substantial benefit from the cross-subsidization of long-distance passengers by short-distance passengers inherent in the flat nickel fare. A second proposition accepted by all concerned was that, if the jitneys proved permanent, the street railways would convert from a nickel fare to a zone system in which fares were proportional to distance.<sup>62</sup> Municipal governments were essentially unanimous in their unwillingness to undergo this change, and thus to forego the force for diffusion inherent in the 5-cent fare.

The jitneymen were in a weak position politically and they recognized it.<sup>63</sup> The rapid entry and exit of operators made effective organization of the industry for political action extremely difficult. Associations of jitney operators had been founded in all major cities, and an International Jitney Association—a name reflecting the spread of the movement to Canada—was founded in Kansas City early in 1915. Only a minority of jitney operators typically belonged to such organizations; the Independent Jitney Association of Milwaukee had 53 members out of an estimated 150 operators active in the city.<sup>64</sup> The first purpose of the International Jitney Association, according to the declaration of principles which it adopted at its first and only annual meeting in Kansas City on May 4-6, 1915, was "protection against unlawful legislation."<sup>65</sup> Secondly, the jitney associations were devoted to lobbying for improvements in streets, mainly to endeavoring to secure hard surfaces where streets were still unimproved.

The third function of the jitney associations was unrelated to lobbying. The associations endeavored to arrange insurance appropriate to the service. Insurance companies were reluctant to insure the jitneys, since the operation had proved to have a high incidence of accidents, relative to pleasure driving. The large number of passengers boarding and alighting presented accident

<sup>62</sup> F. W. Doolittle, *supra* note 40, at 684-86; L. R. Nash, *supra* note 12, at 372-74; The Jitney-Bus Competition, 45 Elec. Ry. J. 324, 327; Am. Elec. Ry. Ass'n, Spec. Comm. on Operation of Motor Vehicles, Report on Motor Vehicles, 45 Elec. Ry. J. 619, 622 (1915); The Long Haul Problem, 1 Jitney Bus 125 (August, 1915). The last of these also recommended zone fares for the jitneys to expand their range.

<sup>63</sup> Emory Pickens, Bus Operations and Politics, 2 Motor Bus 399-400 (April, 1916); Fair Play for All, 2 Motor Bus 413-14 (May, 1916); Equitable Legislation, 2 Motor Bus 431-32 (May, 1916); Frenzied Legislation, 2 Motor Bus 498-99 (July, 1916).

<sup>64</sup> Untitled Note, 1 The Jitney Bus 18 (April, 1915); *cf.* Traffic & Transp., 45 Elec. Ry. J. 258, 650 (1915).

<sup>65</sup> Jitney Convention, 1 The Jitney Bus 65 (June, 1915).

hazards far beyond ordinary private operation of the vehicles. The International Jitney Association considered this function of the highest importance, since in the words of one of its officers, "Ruin for the industry would result from inability to meet obligations growing out of the hazards of the service."<sup>66</sup> The Association endeavored to establish a plan for specialized jitney insurance with the National Indemnity Exchange.

The jitneys had certain political support. The Hearst newspapers, the Kansas City Star and several other newspapers pursued pro-jitney editorial policies.<sup>67</sup> Some union locals, notably in the building trades, whose members occasionally drove jitneys, supported the movement, but organized labor more generally opposed the jitneys out of loyalty to the Amalgamated Association of Street Railway Employees. The local council of the American Federation of Labor in the Davenport-Rock Island-Moline area placed the jitneys on its "unfair" list in support of the Amalgamated, for example.<sup>68</sup> Urban merchants frequently wanted to preserve the shopping patterns the streetcars had created.

The jitneys' political support was much less important than that generated to preserve the street railways. It was not difficult for the street railways to demonstrate that the jitneys were threatening them with potential or immediate ruin. The Seattle Electric Company estimated it was losing \$2,450 per day in revenue to the jitneys, and the Puget Sound Traction Light & Power Company in the same city anticipated 20,736,000 fewer fares in 1915 than in 1914.<sup>69</sup> The Houston Post expected the Houston Electric Company to suffer a reduction in gross of \$250,000 in 1915.<sup>70</sup> California lines as a whole were losing revenue at the rate of \$2,500,000 per year, and companies in the Pacific Northwest cities at the rate of \$1,500,000.<sup>71</sup> Most street railways found that their loss in gross revenue was carried through to their net almost completely in the short run, since they were unable to reduce trips without increasing their inferiority to the jitneys in service.<sup>72</sup> Especially in Los Angeles, the street railways laid off some operating crews, but mainly

<sup>66</sup> Traffic & Transp., 45 Elec. Ry. J. 960 (1915).

<sup>67</sup> Periodicals divided on the jitney question. Sunset Magazine, a West Coast publication, was favorable toward the railways. Auto Snipers and Trolley Cars, 34 Sunset Magazine 47 (1915); Putting the Brakes on the Motor Bus, 34 Sunset Magazine 645 (1915). The Independent was pro-jitney. Getting Rid of the Rails, 82 The Independent 342 (1915); Isaac Don Levine, The Jitney, 82 The Independent 356 (1915).

<sup>68</sup> Traffic & Transp., 45 Elec. Ry. J. 603 (1915).

<sup>69</sup> Traffic & Transp., 45 Elec. Ry. J. 309, 486 (1915).

<sup>70</sup> Traffic & Transp., 45 Elec. Ry. J. 259 (1915).

<sup>71</sup> L. R. Nash, *supra* note 12, at 372; Buses Cripple California Railways, 2 Motor Bus 416 (May, 1916).

<sup>72</sup> L. R. Nash, *supra* note 12.

the street railways responded by cutting back their shop forces, curtailing car orders, cutting back maintenance of track and renewing pavement. In Memphis the street railway cut its shop force 30 per cent and cut salaries of remaining employees by 10 to 20 per cent.<sup>73</sup> Houston Electric anticipated it would have to forego double-tracking, paving and other capital expenditures amounting to \$750,000.<sup>74</sup> Municipal governments were typically very reluctant to see improvements in their streets of this character foregone.

Finally, the rise of the jitneys had produced an increase in accidents in virtually every city. By March 1915, accidents in Los Angeles had increased 22 per cent over the level before widespread jitney operation, and 26 per cent of the city's traffic accidents were involving jitneys.<sup>75</sup> Minor accidents involving jitneys competing for passengers at the curbs were particularly common. Fords had high centers of gravity, so that rolling over in collisions was frequent; passengers had essentially no protection from the vehicle in such accidents. Jitneys were occasionally used for abduction, robbery and rape by drivers, or by passengers who commandeered vehicles.<sup>76</sup> The ephemeral nature of jitney operation made these problems difficult to police, and inevitably gave the political opponents of the jitneys an argument to use for putting down the industry.

#### THE ANTI-JITNEY LEGISLATION

Although legislation to put down the jitneys was enacted at the state and local levels with variation from city to city, the effects were almost as if the policy had been federal, for it was absolutely ubiquitous. Jitneys were subjected to severe restrictions in every major city and even in towns where as few as half a dozen vehicles had appeared. The plain and avowed intent of these ordinances, as articulated by individual street railways and the AERA alike, was that the jitney should be made a common carrier: that it should be required to obtain licenses to use the public streets as a place of business, that its service should be constrained, and that it should assume most of the same burdens of service and taxation that were required of the railways themselves.<sup>77</sup> These regulations drastically changed the nature of

<sup>73</sup> William J. Locke, *The Jitney Bus and Its Future*, 4 Nat'l Municipal Rev. 604, 606 (1915).

<sup>74</sup> *Traffic & Transp.*, 45 Elec. Ry. J. 259 (1915).

<sup>75</sup> *Traffic & Transp.*, 45 Elec. Ry. J. 649 (1915).

<sup>76</sup> *Putting the Brakes on the Motor Bus*, 34 *Sunset Magazine* 645 (1915).

<sup>77</sup> Citations to this view are common. See generally Andrew Linn Bostwick, *Jitney Omnibus Legislation*, 38 *Municipal J.* 591-92 (1915); F. W. Doolittle, *supra* note 40, at 669-73, 680-83; L. R. Nash, *supra* note 12, at 369-71; *Auto Snipers and Trolley Cars*, 34 *Sunset Magazine* 47 (1915); *Traffic & Transp.*, 45 Elec. Ry. J. 485, 1182 (1915); *id.*,

the jitney owner's property rights—the costs he incurred and the rewards he reaped from using his resources in different ways. Each regulation imposed some special obligation on the jitney that was designed to negate one or more of the several aspects of its comparative advantage—that of a relatively speedy, convenient and specialized service—by so greatly raising the cost of operation that entry into the industry would cease and extant jitneys would be left with the choice of either unprofitable operation or withdrawal of their resources from the industry.<sup>78</sup> None of the regulations could have been secured or enforced at zero cost, however, and there were doubtless some jitneys that violated the laws and escaped punishment, but evidence presented later suggests that these statutes were enforceable at some acceptable cost, and, due largely to their pervasiveness, were essentially entirely effective.

1. *Franchises*. Requiring a franchise for jitney operations could only sharply reduce the rate of entry into the industry. Municipal procedures for obtaining and complying with franchises usually were more costly than obtaining ordinary vehicle licenses or permits. In some cities franchises had to be submitted to the ballot; franchise holders were then required to pay

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56 Elec. Ry. J. 150 (1920); The Jitney-Bus Competition, 45 Elec. Ry. J. 324 (1915); Regulation for the Jitney Bus, 45 Elec. Ry. J. 374, 377 (1915); Report on Motor Vehicles, 45 Elec. Ry. J. 619, 622 (1915); E. L. Lewis, *supra* note 57; W. E. Dunn, The Application of Established Legal Principles to the Jitney, 46 Elec. Ry. J. 503 (1915); C. N. Black, *supra* note 19; P.S.R.A. [Pa. St. Ry. Ass'n] Dismisses Railway Problems, 47 Elec. Ry. J. 904, 905 (1916); The Crux of the Jitney Question, 47 Elec. Ry. J. 983 (1916); Thomas Conway, Current Tendencies in the Railway Business, 48 Elec. Ry. J. 10-12 (1916); Railway Service Must Be Preserved, 50 Elec. Ry. J. 1159 (1917); Non-Essential Jitneys Must Go, 52 Elec. Ry. J. 745 (1918); Am. Elec. Ry. Ass'n, War Bd., 1st Ann. Report, 52 Elec. Ry. J. 785 (1918); E. M. Walker, Business Follows Service, 54 Elec. Ry. J. 660 (1919); H. C. Eddy, The Street Railway Outlook, 54 Elec. Ry. J. 691 (1919); How One Railway Eliminated Jitneys, 55 Elec. Ry. J. 230 (1920); Why Jitneys Aren't Driven Out, 55 Elec. Ry. J. 463 (1920); The Survival of the Fitter, 56 Elec. Ry. J. 412 (1920).

<sup>78</sup> General references to the type of regulation that the railways favored for the jitney and to their proposed "model" ordinances can be found in Andrew Linn Bostwick, *supra* note 77, at 591; F. W. Doolittle, *supra* note 40, at 669-73; L. R. Nash, *supra* note 12, at 369-71; Clyde Lyndon King, *supra* note 21, at 486-88; Traffic & Transp., 52 Elec. Ry. J. 526 (1918); The Jitney-Bus Competition, 45 Elec. Ry. J. 324, 328-29 (1915); Regulation for the Jitney Bus, 45 Elec. Ry. J. 374, 377 (1915); Clyde Lyndon King, Digest of Jitney Ordinances, 46 Elec. Ry. J. 314-17 (1915) [Reprint from The Utilities Magazine, July, 1915]; Abstract of David I. McCahill, Status of the Jitney, 48 Elec. Ry. J. 1248 (1916); A "Model" Ordinance, 1 The Jitney Bus 44 (May, 1915). Ordinances in Los Angeles, Salt Lake City, and Seattle contained virtually every form of restriction to be discussed *infra*. See, Traffic & Transp., 45 Elec. Ry. J. 257, 374, 530 (1915); *id.*, 46 Elec. Ry. J. 251, 377 (1915); *id.*, 48 Elec. Ry. J. 294, 377 (1916); Regulation for the Jitney Bus, *supra* note 21; Letter from E. L. Lewis, *supra* note 28; E. L. Lewis, *supra* note 57.



taxes as a percentage of gross receipts, or to provide special services, such as routes through low density areas.<sup>79</sup> Franchises usually connoted a measure of exclusivity, and frequently monopoly. While it might have been worth the costs for a fleet of jitneys under corporate ownership to obtain a franchise, this would have been far less rewarding for the operator of only one or two vehicles, and still less for the part-time jitneyman.<sup>80</sup> Franchises that had to be put to a popular vote would have been an almost prohibitive cost of entry; one can scarcely picture a municipality holding franchise elections for each operator, whether 50 or 500. This is confirmed by the experience in Denver, where, early on in the jitney movement, an ordinance was passed that required each separate bus to secure a franchise by vote of the people, with the result that jitney service there never developed.<sup>81</sup> The franchise requirement appears to have led to large operators exclusively in Long Beach, Memphis, and New York City.<sup>82</sup> This requirement was adopted as a means for eliminating existing jitney competition in Beaumont and Corpus Christi, Texas.<sup>83</sup>

2. *License fees and liability bonds.* It was customary for anti-jitney ordinances to impose a license tax intended to recoup for the municipality costs of wear and tear to the public streets that were due to the jitneys. By July 1915, seven cities had established annual license taxes of \$10 or less, eight had taxes of between \$25 and \$75, and 24 others had taxes based on seating capacity ranging from \$35 for a five-passenger vehicle to \$200 for cars carrying more than 16 people.<sup>84</sup> Austin required a \$10 license fee plus a tax of

<sup>79</sup> Such requirements were imposed in New York City. *Traffic & Transp.*, 45 *Elec. Ry. J.* 691 (1915).

<sup>80</sup> This behavior was observed over a 50-year period for taxicab regulation in Los Angeles. See Ross D. Eckert, *The Los Angeles Taxi Monopoly: An Economic Inquiry*, 43 *S. Cal. L. Rev.* 407 (1970).

<sup>81</sup> Report on Motor Vehicles, 45 *Elec. Ry. J.* 619, 620 (1915); *Traffic & Transp.*, 45 *Elec. Ry. J.* 648 (1915); Andrew Linn Bostwick, *supra* note 77, at 591; *Jitney Convention*, 1 *The Jitney Bus* 61 (June, 1915); *Jitney Ordinances*, 1 *The Jitney Bus* 100 (July, 1915); "Passing of the Jitney", 2 *Motor Bus* 455 (June, 1916).

<sup>82</sup> *Traffic & Transp.*, 45 *Elec. Ry. J.* 691 (1915); *id.*, 49 *Elec. Ry. J.* 366 (1917); *Legal Progress*, 2 *Motor Bus* 328 (Feb., 1916).

<sup>83</sup> *Traffic & Transp.*, 45 *Elec. Ry. J.* 354, 484 (1915).

<sup>84</sup> Clyde Lyndon King, *supra* note 78; *The Jitney in Texas*, 1 *The Jitney Bus* 18 (April, 1915); A "Model" Ordinance, 1 *The Jitney Bus* 44 (May, 1915); *Typical Jitney Ordinances*, 1 *The Jitney Bus* 81 (June, 1915); *Jitney Laws & Appeals From Austin to Zanesville*, 1 *The Jitney Bus* 133-36 (Aug., 1915); *Bus News*, 1 *Motor Bus* 201-04 (Oct., 1915); *id.*, 2 *Motor Bus* 449-50, 481-83 (1916); *Bus Movement Progress in 61 Cities*, 1 *Motor Bus* 168-71 (Sept., 1915); *Motor Bus Developments*, 1 *Motor Bus* 225-27 (Nov., 1915); *Progress of the Bus Movement*, 1 *Motor Bus* 259-62 (Dec., 1915); *Legal Progress*, 2 *Motor Bus* 327-29 (Feb., 1916).

one per cent of each jitney's gross receipts, while New Jersey required five per cent.<sup>85</sup>

Of far greater impact on the industry was the requirement that jitney owners obtain liability bonds. By July 1915, 27 cities had required bonds ranging from \$1,000 to \$11,000 per vehicle, sometimes varying with seating capacity, and usually providing a maximum of \$50,000 per fleet of jitneys; the requirement became more pervasive thereafter.<sup>86</sup> The AERA recommended bonds in the amount of \$10,000 per vehicle.<sup>87</sup> Owing to the jitneys' adverse accident experience, the bonds were expensive. Bonds of \$2,500 were reported to cost \$180 per year in Omaha, \$225 in Houston, and \$250 in Dallas and Seattle; a \$5,000 bond in New Jersey cost \$200; a \$10,000 bond in Oakland cost \$80 to \$100; and a bond for \$11,000 in Los Angeles cost about \$100.<sup>88</sup>

Given the supply conditions of the industry, an increment in costs of this magnitude was essentially enough to destroy it. The costs of the licensing and bonding requirements ranged from \$150 in the California cities to \$300 in Dallas, Houston, and Seattle. Accepting the common estimate of an implicit daily wage of the owner-driver of somewhat above \$2, these costs amounted to a tax on a full-time jitneyman of some 25 to 50 per cent of his annual earnings. Since the industry was competitive with negligible rents, and with a price determined by the regulated fares of the street railways, there was little prospect of significant backward or forward shifting of the tax. Thus, the tax could result only in a virtual annihilation of the industry.

In particular, the tax was certain to get rid of the casual or part-time operators, who, as stated earlier, amounted to the majority of all jitney-men. Since the tax, which was imposed on an annual basis, amounted to something

<sup>85</sup> Bus News, 1 Motor Bus 201 (Oct., 1915); *id.*, 2 Motor Bus 483 (July, 1916); Fair Play for All, 2 Motor Bus 412 (May, 1916). Since the jitneys lacked mileage meters or any form of cash register, the State of New Jersey experienced difficulty in estimating the tax due in collecting it.

<sup>86</sup> Traffic & Transp., 45 Elec. Ry. J. 1224-25 (1915); Clyde Lyndon King, *supra* note 78, at 314-15; The Jitney in Texas, 1 The Jitney Bus 18 (April, 1915); Jitney Jottings, 1 The Jitney Bus 53 (May, 1915); Typical Jitney Ordinances, 1 The Jitney Bus 81 (June, 1915); Jitney Ordinances, 1 The Jitney Bus 99 (July, 1915); Jitney Laws & Appeals from Austin to Zanesville, 1 The Jitney Bus 133-36 (Aug., 1915); Bus News, 1 Motor Bus 201-04 (Oct., 1915); *id.*, 2 Motor Bus 449-50, 481-83 (1916); Bus Movement Progress in 61 Cities, 1 Motor Bus 168-71 (Sept., 1915); Motor Bus Developments, 1 Motor Bus 225-27 (Nov., 1915); Progress of the Bus Movement, 1 Motor Bus 259-62 (Dec., 1915); Legal Progress, 1 Motor Bus 327-29 (Feb., 1916).

<sup>87</sup> Report on Motor Vehicles, 45 Elec. Ry. J. 619, 622 (1915).

<sup>88</sup> Traffic & Transp., 45 Elec. Ry. J. 1134 (1915); *id.*, 46 Elec. Ry. J. 82, 845, 929 (1915); *id.*, 48 Elec. Ry. J. 1223 (1916); *id.*, 49 Elec. Ry. J. 56, 270 (1917); Letter from E. L. Lewis, *supra* note 28; Jitney Ordinances, 1 The Jitney Bus 101 (July, 1915); Fair Play for All, 2 Motor Bus 413 (May, 1916).

between 70 and 135 days earnings, it effectively eliminated all jitneymen who operated for short periods between jobs. A casual operator could not buy a short-term bond. Similarly, an annual bond was high enough to get rid of drivers who carried passengers on the way to work, or made general jitney trips before and after work. The exclusion of such operators reduced the jitney's excellent adaptation to peak demands, and greatly reduced the possible variety of rush-hour routes.

Unsurprisingly, the jitneys' political spokesmen opposed the bonding requirements more vigorously than any other type of restriction, arguing that they should not be subjected to bonds in excess of those required of street-cars, adjusted downward in proportion to the jitneys' seating capacities.<sup>89</sup>

3. *Hours of operation.* A further means of eliminating casual or part-time operators was to require that all jitneys must offer their services for a minimum number of hours each day that was in excess of the hours that most part-time drivers preferred to work. If the minimum was set high enough, some drivers would have to increase their service during less profitable (off-peak) times of the day and to give up a portion of their time that was spent working at (or searching for) better jobs. The street railways for their part, claimed that transport suppliers should never be "irregular" in service to the public, and successfully lobbied for these ordinances, which jitneymen believed would force them "to keep going for hours of unprofitable time."<sup>90</sup> Among the cities that required at least six hours per day were Dallas, Grand Rapids, Spokane and Springfield, Massachusetts. Twelve hours were required in Atlanta, Austin, Fort Worth, Portland, Oregon and Topeka. Davenport, National City, California, Fresno, Ogden, Leavenworth, New York, San Diego, Salt Lake City, Sioux City, Schenectady, Seattle, Tampa and Tulsa each insisted on sixteen.<sup>91</sup>

4. *Routes and schedules.* Other regulations were aimed at the full-time jitney operator. The jitney's comparative advantage in providing a higher quality, flexible, specialized service was seriously reduced by ordinances that required vehicle owners to specify in their applications for licenses exact

<sup>89</sup> Stand Up For Your Rights, 1 The Jitney Bus 35 (May, 1915); To Bond or Not to Bond, 1 The Jitney Bus 143-44 (Aug., 1915); Bus News, 2 Motor Bus 450 (June, 1916).

<sup>90</sup> Jitney Ordinances, 1 The Jitney Bus 101 (July, 1915).

<sup>91</sup> See generally, Clyde Lyndon King, *supra* note 78, at 316; L. R. Nash, *supra* note 12, at 363-65, 371. For specific cities see Traffic & Transp., 45 Elec. Ry. J. 484, 531, 691, 909, 1092, 1133, 1182-83 (1915); *id.*, 46 Elec. Ry. J. 82, 251, 378, 467, 609 (1915); *id.*, 47 Elec. Ry. J. 1109 (1916); *id.*, 48 Elec. Ry. J. 294, 996 (1916); *id.*, 49 Elec. Ry. J. 1115 (1917); *id.*, 50 Elec. Ry. J. 1179 (1917); A "Model" Ordinance, 1 The Jitney Bus 44 (May, 1915); Jitney Ordinances, 1 The Jitney Bus 100 (July, 1915); Jitney Laws & Appeals from Austin to Zanesville, 1 The Jitney Bus 135 (Aug., 1915); Bus Movement Progress in 61 Cities, 1 Motor Bus 171 (Sept., 1915); Motor Bus Developments, 1 Motor Bus 227 (Nov., 1915); Bus News, 2 Motor Bus 450 (June, 1916).

routes, terminal points and time schedules. More than 50 cities passed ordinances of this kind.<sup>92</sup> In some cities, such as San Diego and Salt Lake City,<sup>93</sup> any deviations from the streets and routes specified were prohibited. Some allowed small deviations on certain streets provided that the vehicle returned to the route at the point of deviation and then proceeded in the direction that it had originally been headed; among these were Fresno, Galveston, Los Angeles, Oakland, Pasadena, Portland, Spokane, and Tulsa.<sup>94</sup> Los Angeles, for example, permitted a maximum deviation of three city blocks, with exemptions being made for trips to churches, public attractions, and baseball games.<sup>95</sup> In Oakland, however, limits were placed on even these exempted trips; jitneys with odd-numbered licenses could make trips to special events on alternate days, while vehicles with even-numbered licenses could make such trips only on the remaining days.<sup>96</sup> An obvious means for discouraging jitneys from departing from their routes was to require higher prices for these trips: jitneys in Hutchinson, Kansas were allowed to leave their routes only if passengers offered ten cents or more for the trip; in Austin the extra charge was five cents for each ten blocks or fraction thereof.<sup>97</sup>

5. *Long routes.* Since the jitney's comparative advantage was for relatively short trips, requiring that it adhere to long routes, or take the long hauls as well as the short, further raised its cost of operation and reduced

<sup>92</sup> See generally, Clyde Lyndon King, *supra* note 78, at 315-16. For the requirements of individual cities, see, Traffic & Transp., 45 Elec. Ry. J. 256-58, 353, 397, 484-85, 530-31, 648, 691, 733, 774-75, 817-18, 1092, 1135, 1182-83, 1226 (1915); *id.*, 46 Elec. Ry. J. 82, 207, 333-34, 378, 421, 467, 609, 888, 1012, 1098 (1915); *id.*, 47 Elec. Ry. J. 928 (1916); *id.*, 48 Elec. Ry. J. 163 (1916); *id.*, 50 Elec. Ry. J. 80, 1179 (1917); *id.*, 56 Elec. Ry. J. 989 (1920); The Jitney-Bus Competition, 45 Elec. Ry. J. 324, 328-29 (1915); Report on Motor Vehicles, 45 Elec. Ry. J. 619, 620 (1915); Jitney Statistics at Fort Worth, 46 Elec. Ry. J. 54 (1915); C. N. Black, *supra* note 19, at 511; The Jitney in Texas, 1 The Jitney Bus 18 (April, 1915); A "Model" Ordinance, 1 The Jitney Bus 44 (May, 1915); Typical Jitney Ordinances, 1 The Jitney Bus 81 (June, 1915); Jitney Laws & Appeals from Austin to Zanesville, 1 The Jitney Bus 133-36 (Aug., 1915); Bus News, 1 Motor Bus 201-04 (Oct., 1915); *id.*, 2 Motor Bus 449-50, 481-83 (1916); Bus Movement Progress in 61 Cities, 1 Motor Bus 168-71 (Sept., 1915); Motor Bus Developments, 1 Motor Bus 225-27 (Nov., 1915); Progress of the Bus Movement, 1 Motor Bus 259-62 (Dec., 1915); Bus Routes Should Be Flexible, 1 Motor Bus 271-72 (Dec., 1915); Legal Progress, 1 Motor Bus 327-29 (Feb., 1916); Bus Line Flexibility and Convenience, 2 Motor Bus 404 (April, 1916).

<sup>93</sup> Traffic & Transp., 45 Elec. Ry. J. 733 (1915); Typical Jitney Ordinances, 1 The Jitney Bus 81, 82 (June, 1915).

<sup>94</sup> Clyde Lyndon King, *supra* note 78, at 315.

<sup>95</sup> *Id.*; Traffic & Transp., 45 Elec. Ry. J. 530 (1915).

<sup>96</sup> The Jitney-Bus Competition, 45 Elec. Ry. J. 324, 329 (1915).

<sup>97</sup> Bus Movement in 61 Cities, 1 Motor Bus 169 (Sept., 1915); Bus News, 1 Motor Bus 201 (Oct., 1915). The rarity of such restrictions was probably due to the relatively high cost of enforcing them.

the rate of entry. The Electric Railway Journal noted with obvious satisfaction that "as one means of exterminating the jitney under the guise of regulating it, the routes required are sometimes so long as to be unprofitable."<sup>98</sup> Jitneys were required always to go to the end of their routes before reversing direction in Atlantic City, Austin, Dallas, Galveston, Los Angeles, Louisville, Philadelphia, Portland, San Francisco, and Tulsa.<sup>99</sup> In some places jitney routes had to be of a specified minimum length, such as 30 city blocks in Austin, three miles in Atlantic City and Schenectady, to the city limits in Battle Creek and Pontiac, or the length of competitive trolley lines in Davenport.<sup>100</sup> Licenses were revoked in Minneapolis when jitneys failed to operate over their entire routes.<sup>101</sup> As further evidence that compelling long routes would harm jitneys, the Puget Sound Traction Company, which began operating jitneys along with its trolleys in Seattle in June 1915, announced that it would take short hauls only and would avoid the "long haul traffic, which is unprofitable to the streetcars and to the jitneys."<sup>102</sup>

6. *Non-competitive routes.* Another widespread device for putting down the noncasual jitneys was to exclude them from the high-density downtown areas and from the routes served by the trolleys. Jitneys obtained much of their business by driving just ahead of streetcars and soliciting patrons who would otherwise have taken the trolley, and sometimes parked their cars tightly together against the curb so as to prevent ingress and egress from streetcars.<sup>103</sup> This was a particularly offensive form of competition that the railways were anxious to curtail, so that prohibitions against it were enacted in over a score of cities.<sup>104</sup> Quincy and Lawrence, Massachusetts, had abso-

<sup>98</sup> Clyde Lyndon King, *supra* note 78, at 316.

<sup>99</sup> Traffic & Transp., 45 Elec. Ry. J. 258, 485, 1133 (1915); *id.*, 46 Elec. Ry. J. 40, 315, 1012 (1915); *id.*, 48 Elec. Ry. J. 294, 336, 420 (1916); Clyde Lyndon King, *supra* note 78, at 315; E. L. Lewis, *supra* note 57, at 501; Jitney Ordinances, 1 The Jitney Bus 101 (July, 1915); Jitney Laws and Appeals from Austin to Zanesville, 1 The Jitney Bus 133 (Aug., 1915); Legal Progress, 1 Motor Bus 328 (Feb., 1916).

<sup>100</sup> Traffic & Transp., 45 Elec. Ry. J. 1133 (1915); *id.*, 48 Elec. Ry. J. 420 (1916); Clyde Lyndon King, *supra* note 78, at 315; Bus News, 1 Motor Bus 201 (Oct., 1915); *id.*, 1 Motor Bus 367 (March, 1916).

<sup>101</sup> Recent Decisions, 2 Motor Bus 457 (June, 1916).

<sup>102</sup> Traffic & Transp., 46 Elec. Ry. J. 41 (1915).

<sup>103</sup> For a description in which jitneys "stole" business from streetcars, see Sydney Strong, A Nickel a Ride—When the Jitney Comes to Town, 33 The Survey 647 (1915); Auto Snipers and Trolley Cars, 34 Sunset Magazine 47 (1915); Traffic & Transp., 46 Elec. Ry. J. 782 (1915).

<sup>104</sup> Traffic & Transp., 45 Elec. Ry. J. 204, 397, 484-85, 733, 775, 1005, 1093, 1133-34, 1182 (1915); *id.*, 46 Elec. Ry. J. 40, 125, 167, 207, 377-78, 422, 609-10, 650-51, 888, 929, 970 (1915); *id.*, 47 Elec. Ry. J. 105, 235, 671-72, 839, 1064, 1159, 1207 (1916); *id.*, 48 Elec. Ry. J. 163, 294, 514, 1320 (1916); *id.*, 49 Elec. Ry. J. 185, 892, 1115 (1917); *id.*, 51 Elec. Ry. J. 729 (1918); *id.*, 52 Elec. Ry. J. 526 (1918); *id.*, 56 Elec. Ry. J. 150 (1920);

lute proscriptions, forbidding jitneys from operating "over, along or across" any street railway line.<sup>105</sup> Jitney routes had to be at least one city block removed from parallel trolley lines in Bakersfield, New Rochelle and Tulsa.<sup>106</sup> Jitneys were excluded entirely from Market Street in San Francisco, Sheridan Road in Chicago, Broad Street in Philadelphia, and various streets in Lima, Ohio and Erie, Pennsylvania.<sup>107</sup> In Kansas City, a "jitney trail" was established around the downtown business district; during the hours of 6 a.m. to midnight jitneys were not permitted to enter the district and were forced to "hit the trail."<sup>108</sup> Philadelphia had a similar requirement, which was extremely unpopular with jitneymen.<sup>109</sup> Railway officials in some cities, notably Bakersfield and Rochester, approved of this type of limited use of jitney buses as part of an overall plan to have jitneys "feed" traffic to the railways through a system of transfers.<sup>110</sup> But the jitneys were not happy with this prospect. One observer of the industry in St. Louis doubted that the jitney could be made to pay on streets other than those on which the trolleys ran, since most of the passengers likely to take the jitney would be waiting for a streetcar and might not incur the costs of walking to another street.<sup>111</sup>

Some cities enacted ordinances that permitted competition between jitneys and trolleys but only at an increased cost. Oklahoma City permitted jitneys to follow trolley lines for a maximum of two city blocks.<sup>112</sup> In Witchia, jitneys paid a license fee of \$25 to \$50 (depending upon the size of the vehicle) to use streets other than those along which railways operated, but had to pay an additional \$300 to \$400 to drive along the trolley lines.<sup>113</sup> A similar

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The Jitney-Bus Competition, 45 Elec. Ry. J. 324, 329 (1915); Regulation for the Jitney Bus, 45 Elec. Ry. J. 374, 377 (1915); Clyde Lyndon King, *supra* note 78, at 316-17; How One Railway Eliminated Jitneys, 55 Elec. Ry. J. 230 (1920); Bridgeport Restricts Jitneys, 56 Elec. Ry. J. 137-38 (1920); Jitney Ordinances, 1 The Jitney Bus 99 (July, 1915).

<sup>105</sup> How One Railway Eliminated Jitneys, 55 Elec. Ry. J. 230, 231-32 (1920).

<sup>106</sup> Traffic & Transp., 45 Elec. Ry. J. 484 (1915); *id.*, 46 Elec. Ry. J. 929 (1915); *id.*, 47 Elec. Ry. J. 235-36 (1916); New Rochelle's Bus Line, 1 Motor Bus 349 (March, 1916); Bus News, 2 Motor Bus 450 (June, 1916).

<sup>107</sup> Traffic & Transp., 46 Elec. Ry. J. 377 (1915); *id.*, 48 Elec. Ry. J. 336 (1916); Bus News, 1 Motor Bus 201, 366 (1915-1916); Legal Progress, 2 Motor Bus 327 (Feb., 1916); Bus News, 2 Motor Bus 449 (June, 1916).

<sup>108</sup> Traffic & Transp., 56 Elec. Ry. J. 150 (1920).

<sup>109</sup> Traffic & Transp., 46 Elec. Ry. J. 40, 82 (1915).

<sup>110</sup> Traffic & Transp., 46 Elec. Ry. J. 125 (1915); *id.*, 48 Elec. Ry. J. 39 (1916); The Bus as a Street Car Feeder, 1 Motor Bus 300 (Jan., 1916).

<sup>111</sup> Regulation for the Jitney Bus, 45 Elec. Ry. J. 374, 375 (1915).

<sup>112</sup> Traffic & Transp., 45 Elec. Ry. J. 354 (1915); The Jitney-Bus Competition, 45 Elec. Ry. J. 324, 329 (1915); Clyde Lyndon King, *supra* note 78, at 317, esp. n.79.

<sup>113</sup> Traffic & Transp., 46 Elec. Ry. J. 207, 929 (1915); Bus Movement Progress in

situation existed in Topeka, where the higher taxes that jitneys had to pay for the use of railway streets were reported to be "practically prohibitive."<sup>114</sup>

Where jitneys were not prevented from driving along trolley lines different devices were employed to raise the cost of competition from them. One was to prohibit them from soliciting or receiving passengers at streetcar stands or at intersections. By 1916, nearly 20 cities required that jitneys pull up to the right-hand curb at distances of between 25 to 50 feet from the near curb of the intersecting street;<sup>115</sup> Los Angeles and Springfield, Illinois, required a distance of 75 feet,<sup>116</sup> while Toledo insisted on 100 feet, which brought about pleas from jitneymen to use regular streetcar stops.<sup>117</sup> Jitneys in Beaumont, Salt Lake City, San Francisco, Waukegan, and Tampa were prohibited from passing another bus or streetcar "for the purpose of reaching a prospective passenger first."<sup>118</sup> Another device was to place a limit on the time that jitneys could park and wait for passengers in high-demand locations; the more they had to cruise without passengers, the greater their operating costs. Limits of between two and five minutes were enacted in Daytona Beach, Fort Worth, Oklahoma City, Providence, and Tulsa.<sup>119</sup> Jitneys were prohibited from parking at all in the business district of Fresno, and were allowed to park only on certain corners of principal streets in Bristol, Tennessee.<sup>120</sup> Some cities, not satisfied with only one of the preceding restrictions, reinforced their ordinances with several of them. Fort Worth and Los Angeles seemingly left nothing to chance: not only were jitneys prohibited from important areas of the city, but they were also prevented from soliciting along

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61 Cities, 1 Motor Bus 167, 171 (Sept., 1915); Oppressive Legislation Being Eliminated, 1 Motor Bus 291 (Jan., 1916); Untitled Note, 2 Motor Bus 448 (June, 1916).

<sup>114</sup> Traffic & Transp., 48 Elec. Ry. J. 81 (1916).

<sup>115</sup> Traffic & Transp., 45 Elec. Ry. J. 908, 1135 (1915); *id.*, 48 Elec. Ry. J. 996 (1916); Clyde Lyndon King, *supra* note 78, at 316; Andrew Linn Bostwick, *supra* note 77; Growth of the "Jitney" Bus Business, 50 Literary Digest 434, 435 (1915); The Jitney in Texas, 1 The Jitney Bus 18 (April, 1915); A "Model" Ordinance, 1 The Jitney Bus 44 (May, 1915); Bus Movement in 61 Cities, 1 Motor Bus 170 (Sept., 1915).

<sup>116</sup> Letter from E. L. Lewis, *supra* note 28; Traffic & Transp., 46 Elec. Ry. J. 378 (1915).

<sup>117</sup> Traffic & Transp., 46 Elec. Ry. J. 167 (1915).

<sup>118</sup> Traffic & Transp., 45 Elec. Ry. J. 733 (1915); *id.*, 47 Elec. Ry. J. 671, 1109 (1916); The Jitney Bus in Texas, 1 The Jitney Bus 18 (April, 1915); A "Model" Ordinance, 1 The Jitney Bus 44 (May, 1915); Bus News, 2 Motor Bus 483 (July, 1916).

<sup>119</sup> Traffic & Transp., 45 Elec. Ry. J. 1006 (1915); *id.*, 48 Elec. Ry. J. 1320 (1916); The Jitney-Bus Competition, 45 Elec. Ry. J. 325, 328 (1915); Jitney Ordinances, 1 The Jitney Bus 100 (July, 1915); Bus News, 2 Motor Bus 450 (June, 1916).

<sup>120</sup> Oppressive Legislation Being Eliminated, 1 Motor Bus 289 (Jan., 1916); Bus News, 2 Motor Bus 481 (July, 1916).

those rail lines where some competition was allowed.<sup>121</sup> At one point, Motor Bus refused to publish the details of a Charlotte, North Carolina ordinance that it deemed to be "of ingenious cunning", out of fear that "other [city] councils will learn of it and incorporate it in their ordinances."<sup>122</sup>

7. *Safety regulations.* Ordinances were enacted in many cities to provide increased safety for passengers by eliminating certain undesirable features of jitney operation. That these regulations would simultaneously raise the cost of jitney services and reduce their supply was recognized and confidently predicted by the street railway people.<sup>123</sup> Speed limits on jitneys of under ten miles per hour, which were passed in several cities,<sup>124</sup> probably reduced accidents but they also reduced the jitney's comparative advantage in providing a faster service. Requiring that jitneys come to a full stop at all intersections also reduced their speed.<sup>125</sup> To reduce overcrowding, nearly 30 cities by July 1915, had limited seating capacity to no more than two persons in excess of the manufacturer's specifications.<sup>126</sup> Kenosha handled this problem with price: it simply prohibited the collection of fares from passengers who were standing.<sup>127</sup> Other regulations required brake inspections, non-skid tires, and inside lights for night driving.<sup>128</sup> Drivers' tests that verified the individual's physical health, moral character, and ability to drive and understand traffic laws doubtlessly protected some passengers,<sup>129</sup> but they also led to the withdrawal of some casual jitneymen, especially when residency

<sup>121</sup> Traffic & Transp., 45 Elec. Ry. J. 530 (1915); *id.*, 49 Elec. Ry. J. 1115 (1917); Letter from E. L. Lewis, *supra* note 28.

<sup>122</sup> Bus Movement Progress in 61 Cities, 1 Motor Bus 168 (Sept., 1915).

<sup>123</sup> See, for example, F. W. Doolittle, *supra* note 40, at 671; Traffic & Transp., 45 Elec. Ry. J. 1135 (1915); Report on Motor Vehicles, 45 Elec. Ry. J. 619, 622 (1915); W. E. Dunn, *supra* note 77, at 505.

<sup>124</sup> L. R. Nash, *supra* note 12, at 370; Andrew Linn Bostwick, *supra* note 77; Traffic & Transp., 45 Elec. Ry. J. 258, 329, 354, 1182 (1915); Clyde Lyndon King, *supra* note 78, at 316.

<sup>125</sup> Untitled Note, 1 Motor Bus 166 (Sept., 1915).

<sup>126</sup> L. R. Nash, *supra* note 12, at 370-71; Traffic & Transp., 45 Elec. Ry. J. 257, 774, 817, 909, 1135, 1182 (1915); *id.*, 46 Elec. Ry. J. 207, 251, 378, 467 (1915); News of Electric Railways, 45 Elec. Ry. J. 950 (1915); Clyde Lyndon King, *supra* note 78, at 316; Overloading the Jitney, 1 The Jitney Bus 13 (April, 1915); The Jitney in Texas, 1 The Jitney Bus 18 (April, 1915).

<sup>127</sup> Jitney Laws & Appeals from Austin to Zanesville, 1 The Jitney Bus 135 (Aug., 1915).

<sup>128</sup> Andrew Linn Bostwick, *supra* note 77; L. R. Nash, *supra* note 12, at 364-65, 370-71; F. W. Doolittle, *supra* note 40, at 670-72, 679-80; Traffic & Transp., 45 Elec. Ry. J. 257, 530, 733, 1133 (1915); *id.*, 46 Elec. Ry. J. 207, 251 (1915); The Jitney-Bus Competition, 45 Elec. Ry. J. 324, 328 (1915); Clyde Lyndon King, *supra* note 78, at 316; Report on Motor Vehicles, 45 Elec. Ry. J. 619, 622 (1915).

<sup>129</sup> Traffic & Transp., 45 Elec. Ry. J. 1092 (1915); Clyde Lyndon King, *supra* note 78, at 315.



and literacy requirements were imposed.<sup>130</sup> The jitney interests usually opposed these regulations on the ground that they should apply uniformly to jitneys and private automobiles.<sup>131</sup>

A final regulation that defies classification within the preceding framework, but nonetheless raised the cost of running jitneys, was the requirement that they transport firemen, policemen and other city employees free of charge, which was included in the ordinances of Austin, Fort Worth, Salt Lake City and Tampa.<sup>132</sup> A similar requirement had long been placed on the street railways, but the marginal cost of an additional one or two non-paying passengers was far less of a burden to a trolley carrying 30 or more people than to a jitney bus carrying fewer than ten passengers.

Virtually every facet of the campaign to regulate the jitney became controversial. Both railway and jitney interests pressed strenuously for public support,<sup>133</sup> resulting in a colorful series of hearings, petitions, litigation and injunctions in over forty cities.<sup>134</sup> This process is described by L. R. Nash:

<sup>130</sup> Traffic & Transp., 46 Elec. Ry. J. 206, 251 (1915).

<sup>131</sup> Examination of Drivers, 1 The Jitney Bus 110 (July, 1915).

<sup>132</sup> Traffic & Transp., 45 Elec. Ry. J. 258, 733 (1915); *id.*, 47 Elec. Ry. J. 1109 (1916); A "Model" Ordinance, 1 The Jitney Bus 44 (May, 1915); Bus News, 1 Motor Bus 201 (Oct., 1915).

<sup>133</sup> Traffic & Transp., 45 Elec. Ry. J. 485, 691-92, 1094 (1915); *id.*, 46 Elec. Ry. J. 609, 650, 845 (1915); *id.*, 51 Elec. Ry. J. 729 (1918); *id.*, 52 Elec. Ry. J. 526 (1918); *id.*, 56 Elec. Ry. J. 339 (1920); The Jitney-Bus Competition, 45 Elec. Ry. J. 324, 325 (1915); Ammunition in the "Jitney" War, 45 Elec. Ry. J. 634 (1915); F. W. Hild, Effect of Publicity on the Jitney Movement in Portland, 46 Elec. Ry. J. 560 (1915); Cartooning the Jitney, 50 Elec. Ry. J. 63 (1917); Jitneys Should Be Regulated, 50 Elec. Ry. J. 103 (1917); "Jim Jitney" Is Turned Down, 51 Elec. Ry. J. 325 (1918); Stand Up For Your Rights, 1 The Jitney Bus 35 (May, 1915); The Kansas City Jitney Convention, 1 The Jitney Bus 37 (May, 1915); Organization vs. Disintegration, 1 The Jitney Bus 59 (June, 1915); Jitney Convention, 1 The Jitney Bus 61 (June, 1915).

<sup>134</sup> Among these cities were Albany, Atlanta, Atlantic City, Austin, Baltimore, Boston, Bridgeport, Dallas, Des Moines, The District of Columbia, Flint, Fort Worth, Galveston, Houston, Kansas City, Kenosha, Knoxville, Little Rock, Los Angeles, Memphis, Nashville, Portland, Providence, Rochester, Sacramento, San Antonio, San Diego, San Francisco, Savannah, Seattle, Springfield, Ill., Spokane, St. Louis, Terre Haute and Wichita. For details see, Traffic & Transp., 45 Elec. Ry. J. 256-58, 484-85, 530-31, 650, 776, 910, 1048-49, 1092, 1134, 1225 (1915); *id.*, 46 Elec. Ry. J. 40, 82, 125, 166-67, 206-07, 333, 377-78, 421, 467, 610, 650, 690, 781, 848, 929, 1012, 1057 (1915); *id.*, 47 Elec. Ry. J. 147, 235, 714-15 (1916); *id.*, 48 Elec. Ry. J. 294, 419, 1081 (1916); *id.*, 49 Elec. Ry. J. 617, 892, 1070, 1115 (1917); *id.*, 50 Elec. Ry. J. 1179 (1917); *id.*, 51 Elec. Ry. J. 729 (1918); *id.*, 52 Elec. Ry. J. 526 (1918); *id.*, 56 Elec. Ry. J. 245, 519, 1174 (1920); The Jitney-Bus Competition, 45 Elec. Ry. J. 324, 325 (1915); Regulation for the Jitney Bus, 45 Elec. Ry. J. 374 (1915); Ammunition in the "Jitney" War, 45 Elec. Ry. J. 634 (1915); How One Railway Eliminated Jitneys, 55 Elec. Ry. J. 230-33 (1920); Bridgeport Restricts Jitneys, 56 Elec. Ry. J. 137-39 (1920); New England's First Jitney, 1 The Jitney Bus 45 (May, 1915); Typical Jitney Ordinances, 1 The Jitney Bus 81 (June, 1915); Jitney Laws & Appeals from Austin to Zanesville, 1 The Jitney Bus 133-36 (Aug., 1915); Bus News, 1 Motor Bus 201-04, 365-68 (1915-16); *id.*, 2 Motor Bus

Regulation has not been a simple matter. On the contrary, it has been accomplished only after pronounced opposition and litigation. A typical case may be described as follows: (1) the drafting of a regulatory ordinance which would amply protect the public and insure good and reliable jitney service; (2) loud protests from jitney drivers, their friends and patrons; (3) revision of the regulatory ordinance in which essential features were either eliminated or modified; (4) passage of this ordinance, still under jitney protest; (5) injunction by local court against enforcement; (6) hearing and dissolution of the injunction; (7) appeal to a higher court and suspension of the operation of the ordinance; (8) denial of the appeal, followed in a few cases by further appeal to higher or federal district courts. When legal measures were finally exhausted, political pressure was often brought to bear on city officials and some modifications made in the ordinances before they really became effective. This process usually consumed several months, during which the jitneys multiplied.<sup>135</sup>

In Portland, Oregon, jitneymen secured a series of injunctions that kept them on the streets for two years after the passage of an unfavorable ordinance.<sup>136</sup> In Fort Worth, they petitioned to recall a mayor and police commissioner who opposed their interests.<sup>137</sup>

The final tests of strength sometimes came on the ballot. Ordinances hostile to the jitneys were eventually settled by initiatives or referenda in over a dozen cities, with the jitneys usually meeting with defeat, even in Los Angeles, Portland, San Francisco and Seattle, where their operations had been relatively successful.<sup>138</sup> In Los Angeles, for example, when an anti-

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450-51, 481-83 (1916); Austin Ordinance Void, 1 Motor Bus 166-71 (Sept., 1915); Motor Bus Developments, 1 Motor Bus 225-27 (Nov., 1915); Progress of the Bus Movement, 1 Motor Bus 259-62 (Dec., 1915); Oppressive Legislation Being Eliminated, 1 Motor Bus 289-91 (Jan., 1916); Legal Progress, 1 Motor Bus 327-29 (Feb., 1916); Anti-Bus Lawmaking in New Jersey, 1 Motor Bus 335 (Feb., 1916); Fair Play for All, 2 Motor Bus 413-14 (May, 1916); Equitable Legislation, 2 Motor Bus 431-32 (May, 1916).

<sup>135</sup> L. R. Nash, *supra* note 12, at 370. See also, Bus Movement Progress in 61 Cities, 1 Motor Bus 167 (Sept., 1915).

<sup>136</sup> Traffic & Transp., 45 Elec. Ry. J. 910 (1915); *id.*, 46 Elec. Ry. J. 650 (1915).

<sup>137</sup> Traffic & Transp., 46 Elec. Ry. J. 166 (1915).

<sup>138</sup> Elections also took place or were contemplated in Atlantic City, Bakersfield, Charlestown, Dallas, Fort Worth, Grand Rapids, Houston, Kalamazoo, Salem, Mass., and Spokane. Traffic & Transp., 45 Elec. Ry. J. 484, 648, 691, 733, 1048, 1134, 1182 (1915); *id.*, 46 Elec. Ry. J. 206, 251, 333, 376, 609, 650, 845 (1915); *id.*, 47 Elec. Ry. J. 236 (1916); *id.*, 48 Elec. Ry. J. 1081, 1130, 1222 (1916); *id.*, 49 Elec. Ry. J. 892, 1070, 1115 (1917); *id.*, 50 Elec. Ry. J. 1179 (1917); *id.*, 51 Elec. Ry. J. 298, 1031, 1065 (1918); *id.*, 52 Elec. Ry. J. 330 (1918); *id.*, 56 Elec. Ry. J. 339, 989 (1920); News of the Electric Railway, 51 Elec. Ry. J. 1065 (1918); Traffic Problems Confront Rose City, 52 Elec. Ry. J. 330 (1918); How One Railway Eliminated Jitneys, 55 Elec. Ry. J. 230-33 (1920); Typical Jitney Ordinances, 1 The Jitney Bus 81 (June, 1915); Jitney Laws & Appeals from Austin to Zanesville, 1 The Jitney Bus 134 (Aug., 1915); Bus News, 1 Motor Bus 202, 365 (1915-16); Bus Movement Progress in 61 Cities, 1 Motor Bus 168

jitney ordinance was submitted to voters, the local railways declared a "general holiday" to enable 1400 of their employees to use 550 automobiles to transport voters to the polls; the measure carried with a majority of 9,981 out of 95,000 votes cast.<sup>139</sup> By the end of 1915, only 18 months after jitneys had first appeared in Los Angeles, regulatory ordinances that were favorable to the trolleys had been passed in 125 of the 175 cities that had experienced jitney competition,<sup>140</sup> and most major municipalities followed suit within another year. Additional harrassment for remaining jitneys came during World War I, when the railways argued that the War Industries Board should be "suppressing entirely all useless competition with existing electric railways." The AERA argued that steel, gasoline, and tires should be directed away from jitneys, and that "men engaged in nonessential automobile service of this nature should be forced to obtain some useful occupations or compelled to enter the service. . ." <sup>141</sup>

It was correctly anticipated by all parties that the effects of these ordinances would be harsh and swift.<sup>142</sup> Some jitneys switched over to taxicab service based on mileage rates,<sup>143</sup> but other means of circumventing the regulations usually led to arrest<sup>144</sup> or else new restrictions. Dallas jitneymen attempted to "rent" their cars instead of charging passengers according to the usual five-cent fare, but all operations ceased once the ordinance had been amended to include "evasive" operations.<sup>145</sup> Jitneys in Portland, Seattle, Utica, and several cities in Massachusetts offered "free" service to passen-

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(Sept., 1915); Oppressive Legislation Being Eliminated, 1 Motor Bus 289 (Jan., 1916); Legal Progress, 1 Motor Bus 328 (Feb., 1916).

<sup>139</sup> Traffic & Transp., 49 Elec. Ry. J. 1115 (1917).

<sup>140</sup> L. R. Nash, *supra* note 12, at 371.

<sup>141</sup> War Board Raises Jitney Question Again, 52 Elec. Ry. J. 620 (1918); Non-Essential Jitneys Must Go, 52 Elec. Ry. J. 745 (1918); Am. Elec. Ry. Ass'n, War Bd., *supra* note 77.

<sup>142</sup> For examples of such predictions see, Traffic & Transp., 45 Elec. Ry. J. 691 (1915); *id.*, 46 Elec. Ry. J. 166, 206, 1012 (1915); *id.*, 49 Elec. Ry. J. 56, 892 (1917); *id.*, 52 Elec. Ry. J. 526 (1918); *id.*, 55 Elec. Ry. J. 873 (1920); W. E. Dunn, *supra* note 77, at 505; Jitney Situation on the Pacific Coast, 47 Elec. Ry. J. 497-98 (1916); Status of the Jitney, 48 Elec. Ry. J. 1248 (1916); The Survival of the Fitter, 56 Elec. Ry. J. 412, 413 (1920); J. C. Thirlwall, *supra* note 13, at 143; Jitney Will Replace Trolley. . ., 1 The Jitney Bus 104 (July, 1915); Untitled Note, 1 The Jitney Bus 109 (July, 1915); Fair Play for All, 2 Motor Bus 412 (May, 1916); Bus News 2 Motor Bus 449 (June, 1916).

<sup>143</sup> Traffic & Transp., 48 Elec. Ry. J. 1222 (1916); C. N. Black, *supra* note 19; Jitney Situation on the Pacific Coast, 47 Elec. Ry. J. 497-98 (1916); Bus News, 2 Motor Bus 483 (July, 1916).

<sup>144</sup> See for example, Traffic & Transp., 45 Elec. Ry. J. 1134 (1915); *id.*, 46 Elec. Ry. J. 207, 333, 377, 782 (1915).

<sup>145</sup> Traffic & Transp., 46 Elec. Ry. J. 207 (1915).

gers who would "donate" a small amount, such as a nickel, to the jitneys' cause, but this was either held illegal or put down by subsequent regulations.<sup>146</sup> Car "clubs" sprang up in Oakland, Memphis, Minneapolis, New Orleans, Philadelphia and Rochester where a "member", after paying trivial "dues", was entitled to advance purchase of five-cent tickets or scrip that were good for trips on jitneys hired by the club. These actions were held to be evasions of ordinances requiring license fees and bonds, and led to arrests and a decline in operations.<sup>147</sup>

The most potent regulation for eliminating jitneys was the bond requirement. As noted earlier, the International Jitney Association correctly recognized that such requirements could be fatal, but it proved unable to cope with them. The National Indemnity Exchange had been organized to write insurance for the jitneys, but most ordinances required bonds that were so large that some jitneymen were unwilling to purchase bonds and insurance too.<sup>148</sup> Higher accident rates led to higher bond prices, and by 1917 insurance companies in California and Washington were unwilling to underwrite jitney liabilities unless the owners put up collateral.<sup>149</sup> This the operators were usually unable to do, and attempts at self-insurance by associations of operators in Newark and New Orleans failed in 1916.<sup>150</sup> Bonds ranging from \$2,500 to \$5,000 were the primary factor in the withdrawal of jitneys in Buffalo, Dallas, Houston, Los Angeles (where an \$11,000 bond was required), New Orleans, Newark, Philadelphia, Providence, Sacramento, Salt Lake City, and Seattle.<sup>151</sup> In New Orleans, 300 jitneys ceased operation

<sup>146</sup> Traffic & Transp., 49 Elec. Ry. J. 1069 (1917); *id.*, 50 Elec. Ry. J. 1140 (1917); How One Railway Eliminated Jitneys, 55 Elec. Ry. J. 230, 231 (1920); Getting Out from Under the Requirements of Prohibitive Laws, 1 Motor Bus 214 (Oct., 1915); Dodging the Law, 1 Motor Bus 246 (Nov., 1915).

<sup>147</sup> Traffic & Transp., 46 Elec. Ry. J. 690, 782, 970 (1915); *id.*, 47 Elec. Ry. J. 384, 424 (1916); Untitled Note, 1 The Jitney Bus 139 (Aug., 1915); Getting Out from Under. . ., 1 Motor Bus 214 (Oct., 1915); Jitney Club, 1 Motor Bus 240 (Nov., 1915); Club Cars in Minneapolis, 1 Motor Bus 264 (Dec., 1915); Bus News, 2 Motor Bus 367, 394 (1916); New Orleans Jitney Clubs, 2 Motor Bus 430 (May, 1916).

<sup>148</sup> Traffic & Transp., 46 Elec. Ry. J. 845 (1915).

<sup>149</sup> Traffic & Transp., 45 Elec. Ry. J. 908-09, 1005 (1915); *id.*, 47 Elec. Ry. J. 104, 1110 (1916); *id.*, 48 Elec. Ry. J. 158, 420, 1223 (1916); *id.*, 49 Elec. Ry. J. 270, 936, 1069, 1115 (1917); *id.*, 51 Elec. Ry. J. 62 (1918); News of Electric Railways, 48 Elec. Ry. J. 158 (1916).

<sup>150</sup> Traffic & Transp., 47 Elec. Ry. J. 1110 (1916); Fair Play for All, 2 Motor Bus 413 (May, 1916).

<sup>151</sup> Traffic & Transp., 45 Elec. Ry. J. 691, 733, 817, 908-11, 1005, 1135 (1915); *id.*, 46 Elec. Ry. J. 167, 207, 845, 929 (1915); *id.*, 47 Elec. Ry. J. 1111 (1916); *id.*, 48 Elec. Ry. J. 420 (1916); *id.*, 49 Elec. Ry. J. 56, 270 (1917); *id.*, 51 Elec. Ry. J. 638 (1918); Jitney Situation on the Pacific Coast, 47 Elec. Ry. J. 497-98 (1916); News of Electric Railways, 48 Elec. Ry. J. 154, 158 (1916); Untitled Note, 1 The Jitney Bus 109 (July, 1915); Bus News, 1 Motor Bus 202-03 (Oct., 1915); *id.*, 2 Motor Bus 449 (June, 1916); Motor Bus

within one day after an ordinance requiring a \$5,000 bond was upheld.<sup>152</sup> There was also a sharp drop in the number of vehicles on Memphis streets following the passage of a similar ordinance, and then a rise in operations after the ordinance had been declared unconstitutional,<sup>153</sup> indicating the sensitivity of the casual and marginal operators to changes in such major costs. A \$5,000 bond, along with New Jersey's five per cent gross receipts tax, quickly reduced the number of jitneys in Newark by two-thirds and cut those in Atlantic City by 90 per cent.<sup>154</sup> In Houston, a \$2,500 bond reduced operations from 800 to 300<sup>155</sup> and in Providence a license tax of \$5 per seat and a bond requirement of \$500 per seat received credit for cutting vehicles from 500 to 50.<sup>156</sup>

In contrast, Saginaw, Michigan, passed an ordinance embodying most of the anti-jitney regulations, including license fees and specification of routes, but omitting the surety bond. The consequence was the establishment of a local jitney industry which, though cartelized and restricted in entry, was able to survive and drive the street railway out of business by 1921.<sup>157</sup>

The passage of generally tough ordinances eliminated most jitneys within a matter of a few days in Ashtabula, Ohio, Oklahoma City, Sacramento and Tacoma.<sup>158</sup> Excluding jitneys from downtown areas or streetcar lines caused an exodus in Bakersfield and Fort Worth.<sup>159</sup> Requiring long routes and prohibiting jitneys from Broad Street in Philadelphia led to a drop from 1,200 to 8 overnight.<sup>160</sup> Whereas there were 1,000 jitneys in Los Angeles in 1916, only 32 were in operation in 1917, partly due to their being excluded from

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Developments, 1 Motor Bus 226 (Nov., 1915); Oppressive Legislation Being Eliminated, 1 Motor Bus 289 (Jan., 1916); Making it Pay in Providence, 1 Motor Bus 353 (March, 1916); Fair Play for All, 2 Motor Bus 412-14 (May, 1916); Effect of Laws in New Jersey, 2 Motor Bus 470 (June, 1916); A Raw Deal in Providence, 2 Motor Bus 495 (July, 1916).

<sup>152</sup> Traffic & Transp., 47 Elec. Ry. J. 1110 (1916).

<sup>153</sup> Jitney Bus on the Wane . . . , 46 Elec. Ry. J. 395 (1915).

<sup>154</sup> Fair Play for All, 2 Motor Bus 412-14 (May, 1916); Bus News, 2 Motor Bus 449 (June, 1916); Effect of Laws in New Jersey, 2 Motor Bus 470 (June, 1916).

<sup>155</sup> Bus News, 1 Motor Bus 202 (Oct., 1915).

<sup>156</sup> Bus News from Everywhere, 2 Motor Bus 450 (June, 1916); A Raw Deal in Providence, 2 Motor Bus 495 (July, 1916).

<sup>157</sup> Saginaw News Courier, April 13, 1921; *id.*, August 11, 1921.

<sup>158</sup> Traffic & Transp., 45 Elec. Ry. J. 484, 648, 691, 909, 1135 (1915); *id.*, 46 Elec. Ry. J. 167 (1915); *id.*, 48 Elec. Ry. J. 420 (1916); *id.*, 51 Elec. Ry. J. 638 (1918); The Jitney-Bus Competition, 45 Elec. Ry. J. 324, 327-28 (1915).

<sup>159</sup> Traffic & Transp., 46 Elec. Ry. J. 207 (1915); *id.*, 47 Elec. Ry. J. 291 (1916); *id.*, 48 Elec. Ry. J. 1222, 1320 (1917).

<sup>160</sup> Traffic & Transp., 46 Elec. Ry. J. 377, 1012 (1915).

the downtown area.<sup>161</sup> In Los Angeles an \$11,000 bond and a requirement that operators traverse the full length of routes reduced the supply of jitneys from 490 to 245 in a month.<sup>162</sup> Of the 125 cities referred to earlier as having passed anti-jitney ordinances by 1915, the number of vehicles subsequently declined in 62 of these, from 100 per cent in 22 cities to 15 per cent in one instance.<sup>163</sup> In spite of the fact that over 100 relatively strong ordinances were eventually repealed in favor of more moderate ones,<sup>164</sup> the regulations designed to throttle the jitney were entirely successful.

From the estimated peak of 62,000 in 1915, 39,000 were operating by January 1916, and only 5,879 jitneys were reported to remain in 153 cities by October 1918,<sup>165</sup> and even this number was to decline rapidly. By the early 1920's the jitneys were virtually gone. Spokesmen for the street railways, naturally, were pleased at the result. They had widely held simultaneously the irreconcilable positions that the jitneys were uneconomic, but could be put down only by regulation.<sup>166</sup> They readily adapted this logic to demonstrating that annihilation of the jitneys yielded a benefit to all parties. W. E. Dunn, Vice-President of the Los Angeles Railway, wrote:

There should be none to mourn this result. Even the would-be jitney operator is saved from a loss rather than deprived of a profit. And the community at large escapes the disaster which the jitney threatens by the reduction of street railway revenues to the point where adequate service to the public would be an impossibility and extension of lines would mean bankruptcy.<sup>167</sup>

As might easily have been predicted, such benefit as the street railways secured from their victory was short-lived.

#### CONSEQUENCES OF PUTTING DOWN THE JITNEYS

Viewed retrospectively, the entry of the jitneys was a typical example of the economy's bringing forth a competitive technology in response to the incentives presented to it by a monopoly situation. The jitneys were the analogue in urban passenger transportation of the trucks in intercity freight transportation. The discriminatory character of railroad tariffs gave the

<sup>161</sup> Los Angeles, Calif., Bd. of Pub. Util. & Transp., 6th Ann. Rep. 99-101 (1914-15); *id.*, 8th Ann. Rep. 166-69 (1916-17); *id.*, 9th Ann. Rep. 84 (1917-18).

<sup>162</sup> E. L. Lewis, *supra* note 57.

<sup>163</sup> L. R. Nash, *supra* note 12, at 371.

<sup>164</sup> Motor Bus Developments, 1 Motor Bus 225 (Nov., 1915).

<sup>165</sup> Non-Essential Jitneys Must Go, 52 Elec. Ry. J. 745 (1918); Am. Elec. Ry. Ass'n, War Bd., *supra* note 77; Retrospect and Forecast, 1 Motor Bus 284 (Jan., 1916).

<sup>166</sup> For example, L. R. Nash, *supra* note 12, at 371, 377.

<sup>167</sup> E. L. Lewis, *supra* note 57.

economy an incentive to develop a technology free of economies of scale, capable of providing a higher quality of service in speed and flexibility, which in the form of the truck quickly attracted most of the short-distance freight traffic and most other traffic which was high in value relative to weight, perishable, or breakable. The jitneys arose in response to the discrimination inherent in the flat nickel fare, attracting short-distance passenger traffic in the same fashion.

Public policy dealt with the two developments in dissimilar fashion, however. Federal and state policy dealt with the rise of the truck by putting motor carriers in an incomplete cartel which produced major resource misallocations and prevented both the railroads and trucks from realizing their comparative advantages perfectly, but local policy put down the jitneys completely. Such jitney lines as survived—King Drive in Chicago, Mission Street in San Francisco, and Pacific Avenue in Atlantic City—were linear systems like other transit lines, not possessed of the jitneys' inherent flexibility. The jitneys essentially provided a competitive market in urban transportation, with the characteristics of free entry and exit, and responsiveness to demand and supply conditions that a market of firms without economies of scale typically provides.

The policy of putting down the jitneys had several consequences, all of which are basic to what are looked upon as the major problems of current American urban transportation. First, the policy amounted to a decision to stick with linear systems for public transportation. This was initially an effort to preserve the streetcar, but it was unsuccessful. By 1918 the street railways had the characteristics of a declining industry in chronically depressed rates of return and decline in track mileage, even though absolute passenger counts did not begin to decline until 1924. The streetcar was replaced completely, except for special cases in a small number of cities, by the transit companies' converting to the bus, which was cheaper to operate, and more flexible in being able to avoid obstructions or to make modifications in the route. Equally important, since it had a short life expectancy and a common right-of-way with the automobile, the bus adapted itself well to declining demand conditions. This method of conversion left urban transit in the hands of monopolies, even though the technological base of the monopoly had disappeared with the streetcars. The buses ran on fixed routes with specified schedules, and with the same flat fare structures as the streetcars. The jitney men's old argument that restricting a bus to a fixed route and schedule deprives it of its inherent advantages was long forgotten. The linear bus systems, which retained all the inherent inflexibility of the streetcar lines, were so inferior to the automobile in speed and flexibility that they could only decline continually as the automobile slowly changed the urban

pattern from what the streetcar lines had created to a new pattern of greater diffusion. Such systems became steadily more uneconomic until by the 1950's most of them could no longer be operated by the private sector, and by the 1970's municipalities were driven to seeking federal aid to attempt to make them survive. Rarely has an industry failed a market test over such a long period, and rarely has the adverse performance been so little recognized as a market test, largely because the superior alternative organization of the industry has been so thoroughly forgotten.

Second, putting down the jitneys facilitated monopolization or cartelization of taxicabs, which made more expensive the one legal alternative to the private automobile which was capable of point-to-point service.<sup>168</sup> In addition, present policy causes the adaptation of taxicabs to peak-hour demand to be perverse. Cabs typically operate at a metered rate, with a high initial fare, corrected by a time calculation in the meter which cab drivers find inadequate to compensate them for lost time in rush-hour congestion. More important, taxi drivers are usually prohibited from picking up a second fare after loading the first one, or are allowed to engage in this practice only with the approval of the first fare. Drivers have an incentive to stop driving in rush hours to have meals or take leisure generally, and to resume driving afterward. The jitneys, being able to load passengers freely, had excellent adaptation to peak-hour demands.

Third, putting down the jitneys resulted not only in a pervasive incentive to use the private automobile, but in a low rate of utilization of automobiles. It is widely thought undesirable that the average automobile in rush-hour operations contains only 1.7 passengers. The reason for this is that under the legislation which put down the jitneys, it is illegal to fill up the remaining 3.3 seats at a price through the ordinary economic nexus of market transactions between strangers. As a consequence, both the investment in automobiles and the vehicle counts on roads in rush hours are greatly in excess of what they would be if the jitneys had not been prohibited. This is entirely analogous to the consequences of federal policy toward trucking, where ICC regulation produces a comprehensive incentive to private carriage with a low utilization of the trucks and an incidental cluttering of the roads with empty backhauls.

Appropriate public action toward the jitneys would have been providing the framework of policy within which the jitneys could operate as a competitive market for transportation. Most obviously, this entailed policing the jitneys so that they could not be used for abduction and subsequent crimes. Preferably this should have been done by a method other than advance

<sup>168</sup> Ross D. Eckert, *supra* note 80.



screening of entrants to the industry, since as Adam Smith observed, keeping a register of practitioners of a trade is a facilitation of collusion in it.<sup>169</sup> With free entry safeguarded, collusive pricing was almost impossible to implement in the industry.

Second, municipal governments should have assured that jitney operators and all other users of the streets were bearing the full cost of their operation. This implies a system of user charges which would reflect the social costs of movement at various times and places in the city, including a requirement for financial responsibility for all vehicles as distinct from a bond which was punitive against the jitneys.

Such policies would have given society the usual benefits of competition in urban transportation, and saved it several decades of unsatisfactory experience with noncompetitive alternatives.

<sup>169</sup> Adam Smith, *The Wealth of Nations* 128-29 (Modern Library ed., 1936).