

From Antimonopoly to Antitrust

Richard White

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As he died to make men holy
Let us die to make things cheap
Leonard Cohen, “Steer Your Way”

Monopoly and antimonopoly tracked each other across the nineteenth-century United States, but their trajectory was not simple nor the meanings reducible to current understandings of the terms. Antimonopoly appeared to be the antithesis chasing down monopoly, but it was really the thesis—the ideal and the norm. It reflected ideas held since the early republic, which had only grown in strength during the Jacksonian era.¹ Monopoly threatened all antimonopolists held dear: democracy, the equality of white men, free and fair competition, and the “competency” they believed should be achieved by anyone who worked in the republic.

Americans used the term monopoly during the late nineteenth and early twentieth century so promiscuously that they sometimes nearly stripped it of meaning, but Gilded Age antimonopolists focused on a particular kind of monopoly. They made the individual the core unit of analysis. In the early republic, Americans had worried about commercial monopolies and their impact on the nation as a whole.² The core idea of Gilded Age antimonopoly remained fairly constant: a monopoly did harm by depriving others of opportunity. Any person or group that had the ability to deny others reasonable access to something which was necessary for their life or enterprise qualified as a monopolist.³ Monopolies discriminated; they chose winners and

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losers; they determined economic, social, and political outcomes. In doing so they threatened the American republic and its values of equality and democracy.

By the end of the nineteenth century, antimonopolists had divided. Some continued to seek to break-up monopolies through the courts, state and federal laws, and regulatory commissions. Other antimonopolists accepted the inevitability of monopoly, while claiming that the old values of antimonopoly could paradoxically be grafted upon them if they came under public control.

The split among antimonopolists opened the way for a third group, which embraced antitrust. Where antimonopolists regarded all privately held monopolies as dangerous—and advocated state control of those that could not be prevented -- many advocates of antitrust marked off some “trusts” as inevitable, even necessary and benign. They focused far more on the economic dangers of monopoly than on political, social, and moral dangers.⁴

The differences between antimonopolists and antitrust intellectuals can seem more differences of degree than kind. Like early antimonopolists, antitrust intellectuals and reformers initially idealized small producers. John Bates Clark, the period’s leading economist, and the author of *The Control of Trusts (1901)* wrote in the book’s first edition that “With a fair field and no favor the independent producer is the protector of the public and of the wage-earner; but with an unfair field and much favor he is the first and most unfortunate victim. Save him, and you save the great interests of the public.”⁵

Clark continued to make independent producers the great concern and bastion of antitrust, but by the second edition of his book in 1912, who counted as an independent producer

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was not so clear. Clark abandoned any hope of restoring small scale production. The old world of shops was gone, not to return.⁶ The economy had become, in part, a world of trusts; the question was what to do about them.

“Trust” had become a term of convenience, serving both as a metaphor for monopoly and as a synonym for centralized big business, but it also had a literal meaning. At the end of the nineteenth-century, Standard Oil was a trust. The oil company chartered separate corporations in multiple states and then the stockholders of each put their stock in trust, receiving trust certificates in return. The constituent corporations remained legally separate but control was centralized in the trustees.⁷ Trusts had a history that it will be necessary to double back to, but for the moment it is enough to know that by 1899 holding companies and corporations chartered under the generous laws of New Jersey –the “traitor state” – had rendered trusts largely obsolete.

Like the antimonopolists, John Bates Clark regarded private monopolies as intolerable, but he initially thought them difficult to establish and maintain. Trusts and large corporations could be tolerated as long as there was room for potential competitors to appear. The elimination of the *possibility* of competition was for Clark the sole criterion of monopoly. “Can the rival safely appear or can he not? is the test question...” Clark thought measures meant to control monopolies were as dangerous as monopolies themselves. He seemed willing to see trust’s crush competitors as long as they did it “fairly” through “natural” competition and left open the prospect of new rivals emerging.⁸

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Distinguishing the different strains of antimonopoly and then differentiating antimonopoly from antitrust is the first step in understanding the change in antimonopoly politics and its relationship to democratic governance as the United States moved from the Gilded Age into the Progressive Era. A convenient time and place to do so is Chicago in 1899. *Fin de siècle* America had just emerged from what Americans called—with characteristic Gilded Age grandiosity -- the Great Depression and were in the midst of what Naomi Lamoreaux has labeled the great merger movement. When in 1899 the first Chicago Conference on Trusts, hosted by the Civic Federation of Chicago, convened, the emergence of “trusts” and the expansion of monopoly had become matters of great public and political concern. A wave of mergers was quickly extending centralization beyond the railroads and a few industries such as oil to newer manufacturing industries. Floundering in the face of the depression of the 1890s, these manufacturers had consolidated from necessity. The conference, and those that followed, were multiday affairs designed as an impartial examination of trusts “embracing every shade of opinion.”⁹

The 1899 conference was ecumenical. William Jennings Bryan was there. Corporate lawyers were there, and so was the country’s leading socialist intellectual, Laurence Gronlund. Samuel Gompers attended as did other union leaders as well as advocates of trusts. Businessmen of all stripes spoke. But the key attendees in regard to articulating antimonopoly and antitrust and the differences between them belonged to two distinct groups. The first were antimonopolists, who had dominated the mass politics of the Gilded Age. Academic economists, some of whom held positions in the new government agencies or private and professional

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organization that arose from the nineteenth-century contest over monopoly, composed the second group. Henry C. Adams of the Interstate Commerce Commission, Edward Bemis of the Bureau of Economic Research, J.W. Jenks of the United States Industrial Commission, and John Bates Clark of Columbia University were men of reputation, but they did not command popular followings.

The conference exposed the degree to which antimonopolists and the antitrust academics disagreed over what counted as monopoly. For antimonopolists judgments about monopolies did not turn on whether prices of the commodity or service they produced rose or fell. It was their effect on society as a whole that mattered. Antimonopolists deployed a familiar rhetoric of democracy and equality –at least for white people -- that reached back beyond the Jacksonian era and the battle against the Bank of the United States. The representative of antitrust spoke the emerging empirical language of the academy, the professions, and the bureaucracy. They were intent on measuring market share, the movement of prices, changes in wages, in short on establishing the economic effects of monopolies. The consequences of monopoly went beyond the economy, but this was not their main concern. They differentiated among trusts, judging them by their effects.¹⁰

Dudley G. Wooten, a member of the Texas legislature who gave a stemwinding speech at the opening of the Chicago Conference, and William Jennings Bryan, whose talk was a centerpiece of the meeting, typified the Gilded Age antimonopolists. Wooten –a Catholic, educated at Princeton and later a law school professor -- and Bryan, an evangelical and nominee of both the Democrats and Populists for president in 1896-- were quite different men, but they

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deployed common rhetoric and appealed to a long history. The galleries erupted in repeated and rapturous cheers for both.

Wooten went straight to the political and moral core of antimonopoly, dismissing the potential economic utility of monopolies.

We believe that there are some things more valuable, more to be desired and more worthy to be contended for by a free people than mere industrial activity, commercial progress or the accumulation of worldly wealth. We do not believe in that school of political philosophy that . . . at the behest of modern monopoly . . . salves the wounds of freedom with the oil of avarice, and condones a constitutional crime with the argument of pelf and greed.

At stake in the struggle to contain monopolies, Wooten insisted, were “higher values” of equality, freedom, and democratic government.¹¹

The language of antimonopoly Wooten used was a particular strain of a reaction to the centralization of economic and political power taking place across the Western world; the responses differed according to political culture, which varied considerably between industrializing nations. In the United States, as in Great Britain, political ideology and institutions “reinforced political and individual sovereignty” and feared the concentration of both political power and economic power.¹²

This dual fear of political and economic centralization remained, but the fear of economic centralization had dwarfed its twin. Antimonopoly had once been an expression of strict constitutionalism and small government, but men like Wooten had become convinced that federal power would have to be enhanced to contain the monopolies it had helped to create. He was willing to change the Constitution to do so.¹³

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The role of government in the creation and prevention of monopoly formed the refrain of William Jennings Bryan. Bryan could hold an audience even while reading a banker's letter or summarizing a Delaware incorporation law; at Chicago he did both. He rooted his ideas on government regulation in a Protestant sense of original sin and American agrarianism. His solutions relied on democratic governance.¹⁴

Bryan did not waste time on fine distinctions. He defined a trust as synonymous with a monopoly, and he dismissed any distinction between good and bad monopolies. They were all bad. They arose from a confusion of the relationship between men and money. "Man is a creature of God and money is the creature of man." Money, he said, was the root of all evil including the evil of monopoly. God had made men selfish. "We are all hoggish." And just as hogs had to have rings put in their nose to stop them from rooting up crops, so men "in their sober moments" recognized that they had to "put rings in their own noses to protect others from themselves and themselves from others in their hours of temptation."¹⁵

Bryan walked his audience through the supposed causes of monopoly. The tariff contributed and so did railroad discrimination which favored some customers over others. Stock watering allowed corporations to reap dividends on imaginary capital. These helped monopoly, but tariff reform, financial regulation, and railroad regulation were insufficient for restraining it since its core was the inordinate love of money and the desire for great wealth.¹⁶

Antimonopolists believed that in a democracy the purpose of an economy was not to insure maximum national wealth but rather to provide citizens with what they called a competency—an amount sufficient to support a family, a home, give children a start in the

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world, and provide for old age –and thus the independence the republic demanded of its citizens. Bryan wanted “to see every person secure for himself a competency,” but he did not want them in their attempt achieve it strive for monopoly that denied others opportunity.¹⁷

Bryan proposed legislative and constitutional solutions. He would not allow any corporation chartered in one state to operate in another state without that state’s permission. In addition, Congress could place “restrictions and limitations even to the point of prohibition” on corporations and their actions. He defended the constitutionality of this by referencing his distinction between corporate and human personhood and arguing the constitution protected only human persons. If the courts ruled such measures unconstitutional, then the states should amend the constitution giving the federal government the power “to destroy every trust in the country.”¹⁸

Bryan’s “concurrent” solutions were rooted in a distinction between human personhood and corporate personhood. God created man as the epitome of his creation, but all men were roughly equal, and all were fated to die. The corporate person was different, “a creature of law . . . a man-made man,” more powerful than a million men and potentially possessed of “perpetual life.” The government created corporations and gave them artificial privileges for a public good, and they should exist only as long as they served that good. When a corporation harmed the public, the government should withdraw its privileges. Monopoly threatened “government of the people, by the people and for the people” because when a few men controlled the sources of production and doled out the daily bread to all, the republic would become a government “of the syndicates, by the syndicates and for the syndicates.”¹⁹

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What was at stake was the republic itself.

In between Bryan’s rhetoric and his legislative remedies lay treacherous political ground. Laws had to translate into governance, and experience had taught antimonopolists to distrust government commissions, which could be corrupted and captured, and the courts, which had repeatedly disappointed them. Bryan did not say if there would be new bureaucracies to implement new federal powers let alone what they would look like, but without enforcement, Bryan’s laws would be meaningless.

The insistence that broad social, political, and moral goals of antimonopoly should supersede narrow economic benefits became a general refrain of antimonopolists at the conference. J.G. Schonfarber of the Executive Committee of the Knights of Labor emphasized that the Knights’ goals were “moral as well as economic, fostering independence, pride of character, dignity and manhood . . .”²⁰ John W. Hayes the General Secretary and Treasurer of the Knights stressed that the issue of monopoly and trusts “involves more than the trivial matter of production and prices. It . . . involves the question of human rights, of individual liberty, of the status of the citizen, of the dignity of citizenship, the right of defense, a limit to the power of wealth, a point at which the encroachment of mercenary greed must stop, and a barrier created that will enable us to defend our liberties, our manhood, and our independence.”²¹

The Republican Party, too, had its antimonopolist wing. Hazen Pingree, the Republican governor of Michigan, who had wait several minutes for the applause to subside before he could speak, pointed out that the questions sent out by the Civic Federation had steered the conference away from the social questions central to antimonopoly. There had been “no indication that any

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thought whatever has been given to their effect upon our national life, upon our citizenship, and upon the lives and characters of the men and women who are the real strength of our republic.” He complained that the only idea nowadays seems to be to find out how business or commerce will be affected by trusts. The “’Almighty Dollar’ is the sole consideration.”²²

When Edward Bemis praised Professor Jenks’ definition of a monopoly as a corporation that “so controls the business, whatever it may be, as practically to regulate competition and to fix the price of its products on the whole with little reference to competitors, or to the cost of production, but mainly with reference to securing the greatest net results,” he emphasized the purely economic definition of antitrust to which Pingree objected.²³ No rapturous applause greeted Bemis and the academic economists, but in a real sense the future was theirs.

The economists considered themselves empiricists, but it was a qualified and ideological empiricism. They wanted, in Henry C. Adams words, to assess if “the combinations commonly called trusts” were “advantageous or disadvantageous.” They were willing to entertain the possibility that concentration and centralization of business and industry were not only inevitable-- the product of “industrial evolution--” but also potentially beneficial. Bemis approvingly quoted the muckraker Henry D Lloyd that “monopoly is business at the end of its journey.”²⁴

Adams advanced three criteria for evaluating the utility of trusts. The first two relied on purely economic data. He wanted to know, first, if trusts lowered costs to consumers and, second, did they protect against panics and depressions. When antitrust academics determined whether a corporation was a monopoly by assessing the relation of the price of its products to the

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cost of their production and determining whether a trust could impose prices without worrying about competition, they tried to make the question empirical and technical. The focus on price as the measure of monopoly skipped backward past nineteenth-century antimonopoly to Adam Smith, whose concern with monopoly revolved around a “necessary, ornament, or conveniency of life” and the lessening of its price as the ultimate measure of social good.²⁵

When John Bates Clark distinguished between centralization and monopoly, he revealed the criteria were also ideological. Monopoly was “evil” because it distorted the allocation of resources and the public needed protection from its “extortions,” but centralization was “natural.”²⁶ Natural was one of John Bates Clark’s favorite words; when applied to society, it was perhaps the most ideologically loaded word in the language. Clark appealed to higher laws as readily as Wooten or Bryan, but his laws were economic and chief among them was the necessity of competition.²⁷

The antimonopolist accusation that toleration of trusts sprang from crass materialism and worship of the almighty dollar stung. Clark and other academic economists insisted that they, too, looked to a public interest that was more than crude abundance, and included “contentment, harmony, and even fraternity.”²⁸

Henry C. Adams last criterion for evaluating trusts was social and political: “is this new organization of industry in harmony with a democratic organization of society?” Adams was not ready to claim “that the trust organization of society destroys reasonable equality, closes the door of industrial opportunity, or tends to disarrange that fine balance essential to the successful

workings of an automatic society.” He did think the issues were worthy of debate “and that the “burden of proof lies with the advocates of this new form of business organization.”²⁹

When John Bates Clark said the key to curtailing the trusts—the bad kind -- was preventing discrimination, he acknowledged the moral imperatives of the antimonopoly tradition. Guarantee all customers of a trust equal treatment without discrimination: equal rates, equal prices, no rebates –and prices and wages would go to their “natural levels.” Eliminate discrimination “and you will secure for our country a happy union of productive power, that will give us the command of the markets of the world, and justice, that will develop the manhood and insure the contentment of our citizens.”³⁰

The condemnation of discrimination, the demand for equal treatment, the focus on independent producers and the “interests of the public,” all of this indicated that antitrust was scaling the same ladder as antimonopoly, but justice, manhood, and contentment stopped at a lower rung than antimonopoly’s demands for democracy, equality, and independence. Antimonopoly had grown radical, while Clark’s goal—“a happy union of productive power” – was fundamentally conservative. As he phrased it a little later, it embraced “freedom of individual action . . .the right of contract –in short, . . .the things that have made our civilization what it is.” He asserted a harmony of labor and capital rather than an inevitable conflict between producers and non-producers that became a hallmark of antimonopoly. In 1899 he was not ready to abandon laissez-faire completely.³¹

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Antimonopoly's early focus on discrimination, and its resort to the common law and market competition as a remedy for monopoly prefigured much of Clark's antitrust agenda. The problem was that when Clark published *The Control of Trusts* in 1901 several decades had passed and antimonopolism had evolved. Understanding how Clark and other antitrust intellectuals could simultaneously echo antimonopolism and differentiate themselves from antimonopolists involves a brief history of antimonopolism and the attack on discrimination.

Attacks on discrimination had entered American political discourse in the late nineteenth-century not in regard to race or gender, but rather in regard to the prices railroads charged their customers. Antimonopolists focused on the railroads because railroads depended on state and federal aid, because as common carriers railroads had an obligation to offer equal access to all, and because virtually all enterprises depended on railroads. That railroads offered clear benefits and that overall railroad rates were falling was not the issue. The Senate Select Committee on Interstate Commerce concluded in 1886 that the "essence of the complaints" against railroads was "the practice of discrimination in one form or another." Nineteenth-century antimonopolists paired discrimination with equality. The "great desideratum is to secure equality."³²

These advocates of equality were not radicals. They believed in private ownership and the primacy of the market, but they thought that monopoly in the name of the first had subverted the second. There were by the 1870s two major schools of antimonopolists. The first represented a coalition of merchants and farmers. George Miller and Lee Benson long ago traced the origins of antimonopoly attacks on the railroads to merchants in New York and the Midwest who found themselves at the mercy of these new corporations. Because railroad corporations

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possessed both state charters and special privileges, they fit into older ideas of monopolies as unnatural creatures of state privilege.³³

Merchants and farmers, particularly those who organized in the Grange following the Civil War, believed that the natural tendency of markets was to promote competition, but when monopolists perverted markets they had to be restored by state regulation. The Grange supported laws that created state railroad commissions which barred free passes, made discriminatory rates a matter of criminal extortion, and gave states the power to set rates.³⁴ The wedding of free markets and state regulation made antimonopoly seem paradoxical and confusing. Early antimonopolists were not yet ready to allow that all markets were always and everywhere socially constructed and none were “natural.”

The second strain of antimonopolism centered on Henry George, the most prominent antimonopolist of the period. Henry George brought antimonopolism into the industrial era by using land as a bridge between Jacksonian antimonopoly and Gilded Age antimonopoly. His first book -- *Our Land and Land Policy* --resurrected and modernized an old liberal hostility to a landed aristocracy. He expanded the definition of land in a way well-suited to industrialism. Land included “all natural opportunities or forces,” including coal, minerals, petroleum, and any other natural resources existing separate from human labor. Land was “the source of all wealth and . . . the field of all labor.”³⁵

George did not oppose capitalism; his single tax did not touch capital –as George defined it. Instead he taxed land, by which he meant all “natural opportunities and forces” such as coal, minerals, oil, or any other natural resource that existed independent of human labor. His tax was

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unusual, but its goal was conventional: fair competition between individual producers. He did not divide the world between labor and capital, but instead between land and labor. Labor included “all human exertion.” Capital was but the preserved manifestations of labor, and capital and labor were but “different forms of the same thing—human exertion.” Both were social, flowing from relations of exchange and consumption.³⁶

George thought that large conglomerations of capital presented dangers, which he framed in moral terms. Capital in large masses was “frequently wielded to corrupt, to rob, and to destroy.” But “land” was his primary target. Unlike capital, “land” was not a product of human labor, and it did not depreciate or lose its utility. Increases in population made it rise in value without any labor invested by its owners. Such gains amounted to unearned rents derived from the labor of others. George’s single tax aimed to remove the tax on labor and the working capital needed for enterprise—houses and factories, domestic livestock, machinery—while heavily taxing land to prevent monopoly control. His aim was to break up the monopolization of resources that punished “nominally free laborers . . . forced by their competition with each other to pay as rent all their earning above a bare living, or to sell their labor for wages which give them a bare living.”³⁷

George won over Terence Powderly, the leader of the Knights of Labor in the 1880s, who agreed with George that the land question was “the one great question of the hour.”³⁸ Powderly argued that since the government had enriched railroads in the name of the public good, it should now act on behalf of the working poor, providing them not only with land they could claim under the Homestead Act but with the means to set up farms. The government should also limit the

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size of farms to only what an owner could cultivate with his and his family's labor.³⁹ George became the nominee of the United Labor Party in the 1886 New York mayoral election with the support of the Knights in an election that focused on inequality and high rents in New York City. He proposed his single tax as a means to break up the city's speculative landholdings and expand housing.

George intellectually dominated antimonopoly with his attack on inequality, but the merchants and farmers remained the prime movers in terms of legislation. Their attacks were two pronged. They demanded regulation of the railroads, and they wanted tariff reform.

Creating railroad commissions proved far easier than making them effective. When the Supreme Court upheld state railroad commissions in the so-called Granger cases in 1877, it marked the railroads as the leading example of a specific class of property "clothed with a public interest" and holding monopoly power, in the sense that the public had no choice but to make use of their services. The court echoed reformers in justifying railroad commissions as legitimate tools for restraining the anti-competitive practices of railroads, which were "a restraint on individual freedom."⁴⁰

Railroads found various ways –including corruption –to subvert these commissions, but the state commissions failed largely because scale mattered. Large railroad corporations dwarfed many states in size and resources and extended well beyond their borders. It was hard to regulate corporations that crossed multiple state borders when the state lacked jurisdiction beyond its own boundaries.⁴¹

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The failure to achieve effective reform only added fuel to antimonopoly's fire, but in the 1870s and early 1880s the heated rhetoric still paired with relatively modest remedies. When the antimonopolist journalist Charles Hudson enumerated the consequences of discrimination by the railroads, he saw the fate of the republic at stake. "When railroads charged more to some shippers than to others and more per mile from one place to another," then, as Hudson argued, "the equality of all persons is denied by the discriminations of the corporations which the government has created." Wealth was "not distributed among all classes, according to their industry or prudence, but is concentrated among those who enjoy the favor of the railway power; and general independence and self-respect are made impossible." When such influences undercut "the establishment of a nation, of intelligent, self-respecting and self-governing freemen" the result was "little better than national suicide."⁴² Hudson denounced discrimination among things as "prescriptive and unreasonable," discrimination among places as "burdensome and dangerous," and discrimination among persons as "corrupt and criminal."⁴³

Yet antimonopolists like Hudson did not so much offer new remedies as increase their scale. Hudson continued to believe that commissions could outlaw discrimination, insure market competition, and destroy monopoly by forbidding the railroads from colluding to fix prices through rebates and pooling -- a practice that became identified with precursors of the trusts.⁴⁴ But the reach of the railroads across state lines and the failure of state railroad commissions had already led to demands for federal measures. In 1878 Congressman John H. Reagan of Texas, who had worked to attract railroads to his district in the early 1870s, introduced a bill in the House of Representatives "to regulate interstate commerce." Reagan, the ex-Postmaster General

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of the Confederacy, was as thorough-going a racist as other white men of his time and place. He was, however, an eloquent antimonopolist whose bills were aimed at “the unjust discriminations of common carriers,” although he consistently defended the presumably just right of these common carriers to discriminate on the basis of race.⁴⁵

Reagan became a driving force behind the eventual creation of the Interstate Commerce Commission. He denounced the railroads and those protecting them for seeking to reduce the people “to serfdom, poverty and vassalage.” The rise of an “aristocracy of wealth with monopolies and perpetuities which are forbidden and denounced by all our constitutions” endangered the republic, “breaking down . . . all the bulwarks of civil liberty.” Monopoly would destroy American manhood itself and with it “that personal freedom and independence which is the pride of every American citizen.” Americans would cease to be citizens and become subjects.⁴⁶

The differences between Reagan and his most formidable congressional opponents had by 1886 boiled down to how precisely the prohibitions against collusion and anti-competitive measures in the bill were to be worded, and how they would be enforced. The rival Cullom bill contained the commission that Reagan so distrusted because he was convinced from past experience in the states that the railroads could quickly and easily control the commissioners. When in October of 1886 the Supreme Court in *Wabash, St. Louis & Pacific Ry. Co. v. Illinois* ruled that the states could not regulate interstate commerce, it created a vacuum that Congress filled with the Interstate Commerce Act.⁴⁷

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The Interstate Commerce Act of 1887 was as much a product of the conference committee put together by the Democratic leadership as its ostensible parents: Reagan and Senator Shelby Cullom of Illinois. Much of what Reagan advocated –the public posting of tariffs, outlawing of pools, and fines against guilty railroad officials – would eventually end up in the conference version, but the act took Reagan’s specific prohibitions of rebates and short haul/long haul distinctions and either attached conditions or made the requirements vague. They must be “reasonable” and not “undue or unreasonable.” Prohibitions that antimonopolists wanted etched in stone and enforced by the courts, the law made a matter of the commission’s and courts’ discretion.⁴⁸

The ICC represented a compromise between classic antimonopoly and what some railroad leaders and economists had come to call natural monopolies. Charles Francis Adams, the patrician railroad reformer who became president of the Union Pacific, thought antimonopolists like James Hudson had conflated the moral meaning of competition as a sign of liberty and antidote for discrimination with a newer sense of competition as simply a technical factor that helped establish “a relationship between prices and costs.”⁴⁹ Everything Charles Francis Adams had learned about railroads in his years as a reformer and executive could be encapsulated in the idea that “[c]ompetition and the cheapest possible transportation are wholly incompatible.”⁵⁰

Adams admitted that the defense of monopoly was counterintuitive. Most Americans regarded competition as “a nostrum at once universal and infallible.” Competition, however, helped neither railroads nor their customers.⁵¹ By 1885 Adams was promoting a book by Arthur

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Hadley, then a young professor at Yale. Hadley's *Railroad Transportation* was not particularly original, but it was wonderfully clear and succinct. Adams believed even congressmen could understand it, and he liked to send them copies. "All our education and habit of mind," Hadley wrote, "make us believe in competition." Competition in a free market theoretically made the price of goods "proportional to their cost of production." When the price fell below the cost of production, producers would cease to produce and prices would rise to a point that stimulated renewed production. When any endeavor proved profitable, new producers would arise and the competition among them would lower or stabilize prices. But, Hadley argued, competition among railroads did not work this way. A railroad was a natural monopoly because competition made it less rather than more efficient. When prices fell, railroads continued to solicit traffic, even when they had to carry it at a loss, because their high fixed costs meant they lost even more if their equipment lay idle. "Business at any price rather than no business at all," was their motto.⁵² Eventually, of course, some would fail. Followed to its logical conclusion, competition would leave only one road standing, thus creating the monopoly it was supposed to prevent.⁵³ Cheap, efficient and fair transportation would come from "directing the largest possible volume of movement through the fewest possible channels" and not from encouraging the duplication that created competition.⁵⁴

Although historians sometime conflate telegraph monopoly with railroad monopoly, the consolidation of monopoly power in Western Union resulted from "a deliberate, creative act, forged through years of aggressive maneuvering and maintained against fierce opposition,"⁵⁵ Western Union later embraced the ICC, seeking to use it to deflect the quite real threat of the

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creation of a national postal telegraph. This was not just a measure advocated by antimonopolists. The National Board of Trade and Transportation, which included the New York Chamber of Commerce, also endorsed it.⁵⁶

The compromise between antimonopolists and advocates of natural monopoly eliminated what each regarded as the essential element for successful regulation. The law's embrace of a commission gutted Reagan's conviction that state courts and local institutions were the best remedy for railroad abuses.⁵⁷ But Reagan succeeded in inserting language specifically banning railroad pools, and government enforced pools were the key prescription of railroad intellectuals for curing excessive competition.⁵⁸

It was never entirely clear whether the Interstate Commerce Act was an antimonopoly measure or a way to weaken the thrust of antimonopoly. In the phrase "under substantially similar circumstances and conditions," a cynical Adams thought, "there is much labor cut out for the commission, and they are big with litigation for the courts and fees for the lawyers."⁵⁹ Until the courts made the law's meaning clear, "every company must construe it for itself." Collis P. Huntington of the Southern Pacific conceded that pools could no longer be called pools "but there is, I suppose, a way of dividing up the traffic that is just as good as a pool."⁶⁰

For a time, Adams placed considerable hope in the ICC for restraining competition.⁶¹ The railroads formed the Interstate-Commerce Railway Association to exploit, with the ICC's approval, loopholes in the act. In banning pools the act prohibited the payment of money by one railroad to another to maintain prices, but the Association contended it did not ban the fixing of prices per se. The Association would set standard rates and divide up traffic and would inform

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the ICC of violations which also violated the Interstate Commerce Act. The ICC would act as the Association's enforcement arm. But the railroads were no more able to arbitrate and regulate themselves through the Interstate-Commerce Railway Association than they had through pools, and the Association collapsed.⁶²

The compromises necessary to produce the ICC produced a weak commission, and the vagueness of the legislative language put it at the mercy of the courts. During the 1890s courts refused to accept its rulings on rates cases as binding, denying it enforcement powers. As Morton Keller noted, the courts had by the turn of the century reversed more than half of the ICC decisions brought to them for review.⁶³

The ICC targeted railroads, the poster child of monopoly, but tariff reform represented a broader attack on what Democrats in particular regarded as a root cause of the distorted markets and government favoritism that bred monopolies. The tariff, which penalized consumers of manufactured products by curtailing foreign competition, became the nation's leading political issue between 1888 and 1892. Reform Democrats dressed tariff reduction in the clothes of antimonopoly, economic equality, workers' rights, and the dangers of economic concentration. Saul Lanham of Texas proclaimed that "no man or set of men has the right in this country to be legislated into wealth." The tariff was the "mother of trusts," a triumph of avarice over liberty; it concentrated wealth while the people were "sinking lower and lower in want, wretchedness, degradation and squalor." It created conditions where "the millions own nothing and the few own millions."⁶⁴ Even John Bates Clark, who opposed free trade and wholesale tariff reform, admitted that tariffs amounted to a state subsidy on exports for manufacturers.⁶⁵

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There is no understanding the second major antimonopoly measure of the period—the Sherman Antitrust Act (1890)—without reference to the tariff. The Sherman Antitrust Act makes sense largely as a Republican antidote to Democratic demands for tariff reform. The act may have been a “revolutionary” attack on price fixing, but a sign of the feebleness of the revolution was the lack of any opposition to the uprising.⁶⁶ Tallying the House and Senate votes together, there was only a single vote against it. Senator James Z. George, Democrat from Mississippi, who both denounced the act and voted for it, indicated why.

I have shown that this bill is utterly unconstitutional, and, even if constitutional, utterly worthless. If we pass it we do not only a vain and useless thing; we do a wicked thing. We give to a suffering people, as a remedy for a great wrong, that which will prove utterly inefficient, but will prove an aggravation of the evils. There is, however, a power we can exercise: the power to reduce or abolish duties on the foreign competing articles.⁶⁷

Men like Senator George voted for it because they were vulnerable to accusations that if they reduced the tariff without legislating against American monopolists they were not only refusing to act against the most egregious domestic monopolies, they were giving European monopolists access to American markets. Tariff reformers argued that giving foreign producers access would increase competition and lower prices, but this would not be true in those industries most liable to monopoly such as the railroads and telegraph. The Sherman Act placed tariff reformers between a rock and a hard place. They might think it toothless and a diversion, but they had to protect themselves from accusations of being soft on monopoly. They had no choice but to act against monopolists in general and vote for the Sherman Act.

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As its critics predicted, the Sherman Act’s vague and ambiguous language left its meaning, like the ICC’s, putty in the hands of the courts. Worse, the courts turned it against antimonopolists themselves. In 1893 during the Pullman Strike the government deployed both it and the Interstate Commerce Act against the American Railway Union and not against railroad monopolies.⁶⁸

Taken together the ICC and the Sherman Antitrust Act created near incoherence in regard to the railroads. When Benjamin Harrison’s administration used the Sherman Antitrust Act against the Trans-Missouri Freight Association for fixing prices, the lower courts ruled against the government, agreeing that the ICC had exclusive jurisdiction. In 1897 the Supreme Court overturned the lower courts and said the railroads were subject to the Sherman Antitrust Act.⁶⁹

John Bates Clark and the antitrust intellectuals of the turn of the century were the heirs to this tangled history of antimonopoly. Initially, they disavowed much of their inheritance. Many of the cures antimonopolists advocated—legal restraints on corporate activities, elimination of the tariff, attacks on the size of corporations and other trusts, tax policies, and regulation of prices—were Clark thought worse than the disease. Clark spoke for “a body of conservative and intelligent citizens” and distanced himself from antimonopolists who desired “laws that cannot be enforced and . . . would do harm if they were enforced.”⁷⁰

Clark also made what on the surface seems a startling claim. He said only two small groups favored trusts. Neither group included organized capital. Socialists, communists, and other members of the “revolutionary class” comprised the first group. Highly organized workers

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who would ally with the trusts “against the public” to raise prices and wages made up the second.⁷¹

Clark’s claims, as simplistic and unnuanced as they were, did possess a semblance of truth. He referenced a vanguard antimonopolism which, as he did, regarded centralization as inevitable, but which sought quite different ways to adapt to it.⁷²

The Knights of Labor along with the Farmer’s Alliance, and the Bellamyites became the vanguard of antimonopoly in the 1880s and 1890s. They broke from the older emphasis on competition as the antidote for monopoly and advocated cooperation. This paradoxically brought them closer to their enemies: the monopolists.

Cooperation was a favorite word of both Charles Francis Adams and of John D. Rockefeller. Rockefeller went much further than Adams and other advocates of natural monopoly; he attacked competition itself. Rockefeller and Standard Oil preached cooperation. His cooperation did not include labor and was hardly democratic, but Rockefeller had no patience with the liberal pieties of free markets. He saw the problem of the age as excessive competition. The economy needed order: pools to regulate production and prices and consolidation to yield larger and more efficient companies. He defined cooperation in the oil industry as joining Standard Oil, which he founded in 1870. Standard Oil had a knack for absorbing the most able of its rivals; the corporation was ruthless, efficient, and only as scrupulous as it needed to be.⁷³

Vanguard antimonopolist advocated a different strain of cooperation. They believed that cooperation, if democratically controlled, could rather than producing oligarchies create a more

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equal and prosperous society. The Farmers' Alliance and Knights of Labor argued that cooperative endeavors by independent producers and workers that restricted rather than enhanced competition could make monopoly a tool of those it threatened. Both attempted to put cooperation into practice. Powderly's collaboration with Henry George was of the moment; a world of independent producers was not his ultimate goal.⁷⁴ The Knights dreamed of moving beyond wage labor, and beyond competition, to a cooperative society. They were willing to act in restraint of trade if necessary.

The Knights started cooperative enterprises but less noticed is their participation in cooperative agreements with business that tried to use the power of labor to mitigate the intense competition that drove business toward consolidation and monopoly. The abundance of coal made coal mining one of the most competitive industries in the United States, and the mines of the Midwest were the most competitive of all. The so-called Central Competitive Field was a creation of the railway network that knit the cities, bituminous coal mines, and industries of the Midwest into a shared market for coal. The Joint Convention sought to govern that market.

Branden Adams has examined the tenuous -- and briefly and precariously successful -- Joint Convention and shown what democratic governance of industry might look like. Coal miners and mine owners negotiated agreements that sustained independent mines, maintained wages, and limited competition and strikes. Ownership remained dispersed and labor had an equal voice with management. It was the kind of cooperation between labor and capital that Clark denounced.⁷⁵

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The Joint Convention which first met in 1886 relied on the power of labor to enforce agreements that clearly acted in restraint of trade. The participants –both mine owners and miners – came from the mines on the rail lines centered on Chicago that served the major coal markets from western Pennsylvania to Minneapolis. Miners and mine owners had an equal number of votes. Although miner and owners were grouped by states, the convention set wages and working conditions by sixteen separate districts, each with its own peculiar conditions of production. Each district had to consent to the rules governing it. Disputes were to be settled by boards of conciliation, but the ultimate club was the threat of labor stoppages if the terms of the agreements were violated.⁷⁶

The Convention worked, but it also proved vulnerable to the railroads, which could manipulate the price of coal by changing freight rates and thus destroy the convention’s carefully crafted agreements. The railroads, which also owned mines, both gave a price advantage to outside coal –West Virginia – and used reduced rates, as they did in southern Illinois, to entice coal owners to abandon the Convention. The railroads pressure was exacerbated by new fuels -- oil and natural gas –that competed with some mine owners in their local markets.

The Joint Convention increased prices for consumers, but it also fulfilled the antimonopolists’ demand that workers and other producers have control over their labor and secure just returns on it. It looked toward an alternate arrangement of industry even as it demonstrated the difficulty of securing such control within a single industry since no industry in the late nineteenth and early twentieth centuries existed apart from the railroads. As common carriers, the railroads were legally obligated to provide fair and neutral rates. When they did not,

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the doom of the Joint Convention became a matter of time. It weathered a bitter strike in the northern Illinois fields in 1888 and the defection of mines in southern Illinois and Indiana. It survived until the beginning of the Great Depression in 1893 when the collapse of coal markets and declining wages triggered a general strike in the region's coal mines. The strike, and the convention, failed.⁷⁷

The Joint Convention with its emphasis on cooperation and its willingness to act in restraint of trade became a flip side to antimonopoly's older reliance on competition as the antidote to monopoly. It was part of a much broader movement inclined to see monopoly not as a problem but as an ultimate solution.

The Farmers' Alliance, which organized farmers from 'the business standpoint,' embraced a similar perspective. Charles Macune, the leading figure in the Texas Farmers' Alliance, argued that farmers organized "for the same reason that our enemies do: for 'individual benefits through combined effort.'" Once organized, farmers would act pragmatically, opposing some corporations and allying with others.⁷⁸ In California citrus growers embraced the Southern Pacific Railroad when it encouraged their cooperatives.⁷⁹ Similarly, the Farmers' Alliance and the National Cordage Company would in the 1890s form the ill-fated National Union Company to monopolize the jute bagging industry and secure guaranteed low prices to Alliance members.⁸⁰

The Farmers' Alliance, recognizing the capacity of railroads to subvert attempts at cooperative endeavors between producers, pushed for government ownership of the railroads and telegraph. They used the Post Office –and this may be impossible for modern Americans to

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imagine—as their model of efficiency, expertise, and dependable service.⁸¹ The St. Louis Convention of the Populists, which grew out of the Farmers Alliance, endorsed nationalization in 1891, and with Marion Todd’s *Railways of Europe and America*, the Populists added their own analysis to a large library on what was wrong with the railroads and how to fix them. According to Todd, the question had become “Whether the Railways shall own the people or the people own the Railways.”⁸²

The popular expression of cooperation as the solution to monopoly and inequality was *Looking Backward*, a novel by Edward Bellamy. With its wooden dialogue and didactic plot, it is easy to dismiss *Looking Backward* (1888) as merely an execrably bad book, but it was an important cultural phenomenon that created Bellamy clubs and attracted reformers. Bellamy blended the monopolist and antimonopolist versions of cooperation into a future utopia, where society had become a single monopoly. Dr. Leete, speaking at the dawn of the twenty-first century, explained that the misery of the late nineteenth century arose from “that incapacity for cooperation which followed from the individualism on which your social system was founded.” Bellamy adopted the Knights of Labor’s insistence on the abolition of wage labor and their conviction that the rights of American citizens extended to the workplace. He echoed both vanguard antimonopolists and industrialists such as John D. Rockefeller and Charles Francis Adams in claiming that large-scale organizations were more efficient and more productive and that cooperation would inevitably triumph over competition. The result was a society that had finally completed the American Revolution by democratizing and socializing industry. The trusts

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had been consolidated in one “Great Trust” controlled by the people. No revolutionary violence had been necessary. Every person had a competency; no one was rich.⁸³

These were the developments Clark denounced. He would have heard expressions of them at the Chicago meeting in 1899. Laurence Gronlund split with antimonopolists who still embraced competition. William Jennings Bryan had argued that trusts were the creation of laws and government; they were neither natural nor inevitable, but Gronlund argued the opposite. The issue was not preventing them but controlling them. Like Bellamy, he thought that they would inevitably come under government ownership and be democratically controlled.⁸⁴

Between 1900 and 1914, which saw the passage of the Clayton Act and the creation of the Federal Trade Commission, antitrust intellectuals such as John Bates Clark and Louis Brandeis replaced antimonopolists in shaping national debates and national legislation. The evolution of antitrust—which can only be crudely sketched here—seemed a case of ontogeny recapitulating phylogeny. Antitrust replicated the development of antimonopoly, focusing on similar issues but in a narrowed frame as it shed the wider social and political concerns of antimonopoly and its vision of a democratic economy.

Louis Brandeis’s critics have dismissed him as nostalgic and too devoted to tradition, but Gerald Berk has sought to redeem him as modern and scientific.⁸⁵ Both Brandeis and Clark were modernists, but Berk differentiates between them because unlike Clark and his allies, Brandeis recognized that “the antitrust impasse was not a technical problem with moral implications. It was a moral and political problem for which reformers ought to imagine technical

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possibilities.”⁸⁶ In Berk’s formulation Brandeis sought to retain “republican ends (equality, citizenship, and democracy) . . . through scientific means (experimentation, measurement).”⁸⁷

Brandeis certainly deployed the moral language of antimonopoly. The “money trust” he opposed produced “the suppression of industrial liberty, of manhood itself.” But, contrary to assertions by current hipster antitrusters, Brandeis’s moral concerns only superficially resembled those of the antimonopolists. He did not so much disavow the individual’s pursuit of wealth as the point of the economy as distinguish between the right way and wrong way of pursuing it.⁸⁸

Brandeis and Clark remained closer to each other than either was to the antimonopolists. They grappled with problems familiar to antimonopolists: the size and reach of new corporations, the threat to independent producers, the role of railroads and natural monopolies, and the tariff as a seedbed of monopoly. But they also came to grips with new problems such as the financialization of the new trusts and their novel forms of organization following the great merger movement.⁸⁹

Trusts consolidated existing factories and networks to control production and prices, but the main product of the consolidation was less industrial efficiency than financial excess. Louis Brandeis regarded a small set of New York bankers, particularly J.P. Morgan, as a Money Trust whose activities threatened the entire economy. These bankers merged companies in order to issue stock in the new company whose high valuations enriched both the bankers and the owners of the companies being acquired. All involved benefited from pushing a company’s capitalization as high as possible.⁹⁰

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In the early twentieth century, Clark regarded trusts as the central problem in the economy, but he did not consider their size as the real issue. He believed their increased scale did create new efficiencies, and he was initially sanguine about the ability of competition to control the new trusts. He became far more critical of the holding companies organized under New Jersey's and Delaware's laws. They produced only evil consequences and needed to be stripped of their weapons and power.⁹¹

The activities of the bankers were real and important, but they were also easy to oversimplify and overstate. Morgan and the New York bankers did assemble old companies into new industrial corporations, but these bankers were neither as influential nor ubiquitous as they seemed. A much wider cast of players strolled the new stage. Watered stock and the profits of organizers grabbed headlines, but the headlines exaggerated the extent of change in the stock market. Until the end of World War I, railroads, not the new industrial corporations, still dominated activity on Wall Street. The key players in the day to day workings of the stock market remained brokers trading on the call market with loans from commercial banks. Trust companies --not trusts in the old antimonopoly sense— enlarged their role in stock market. They were fiduciary agents that managed assets entrusted to them, and they rather than small investors provided the bulk of the funds flowing into the market.⁹²

The evolution of Brandeis, and more particularly Clark, between 1900 and 1914 illustrate the emergence of a mature antitrust movement that adjusted to new conditions. Both men moved away from a celebration of independent producers and a belief that guaranteeing “fair” competition within the market and enforcing the common law's prohibition of monopoly would

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be sufficient to prevent abuses by the trusts. They still appealed to the precedents set by the two major, if badly flawed, antimonopolist measures-- the Interstate Commerce Commission and the Sherman Antitrust Act --but neither thought them sufficient. By 1914 they both supported the Wilson administration's program of regulated competition through the creation of the Federal Trade Commission and the passage of the Clayton Act.⁹³

The differences in the two editions of John Bates Clark's *Control of Trusts* can illustrate these changes in antitrust politics. The first edition came out in 1901 in the wake of the Chicago Conference. The second, co-authored with his son, appeared in 1912.

The 1901 edition of *Control of Trusts* resembled the antimonopolism of the 1870s in its reliance on competition and its faith in natural laws; it also paralleled the thinking of Charles Francis Adams in his days on the Massachusetts Railroad Commission in believing that publicity and transparency, a reliance on the courts and common law, and the mere plausible threat of competition were enough to prevent monopoly's abuses. Clark embraced a largely free market stance, making an exception only in regard to the railroads, where, now following Charles Francis Adams of the 1880s, he advocated in allowing the railroads to create pools under government supervision.⁹⁴

The second edition was a different book. The little more than a decade between the two editions had not proven kind to Clark's belief in markets, common law, and competition. The 1912 edition came out in the wake of the Supreme Court's decisions in the Standard Oil and American Tobacco cases. The court overthrew the Harlan construction that had vitiated the Sherman Antitrust Act by confining it to cartels and rendering it largely useless against corporate

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consolidation. The court now interpreted the Sherman Antitrust Act according to a “rule of reason” that focused on consequences. It prohibited unfair business practices whose intent was to exclude others from a trade or industry, but did not equate mere restriction of competition with restraint of trade. Restraint of trade demanded a violation of the public interest. It was a no harm, no foul, rule.⁹⁵

Clark and economists close to him responded warily. They, too, thought restriction of competition did not constitute restraint of trade, but they believed that by leaving so much discretion to judges, the decisions increased the uncertainty over what practices were permissible and which were not. The court’s remedies could potentially hurt efficiency without restoring competition. He thought the common law and a liberated Sherman Antitrust Act alone were insufficient for the control of monopoly. The protections amounted to too little, too late.⁹⁶ Striking down monopolies after they had done their destructive work was inadequate. Antitrust laws had to be proactive, eliminating unfair competition as soon as it appeared. Law had to “disarm the trusts.”⁹⁷

Disarming the trust meant regulated competition. By 1912 Clark admitted that a trust’s *willingness* to use unfair means of competition was often enough to scare off potential competitors.⁹⁸ He admitted, too, that his conviction in the first edition that no forcible dissolution of trusts would be necessary had been too sanguine.⁹⁹ He repudiated from *laissez-faire*. To advocate it was “to convict oneself of being a hopeless lunatic or a reactionary.” Clark retained his faith in natural law and in the “natural” forces guiding the economy, but he also admitted that competition was “social. It is a game played under rules fixed by the state”¹⁰⁰ Competition

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as it currently existed eliminated the fit rather than the unfit. He wanted robust measures not to kill all new consolidations but to make them “tolerable.”¹⁰¹

Clark’s new antitrust of “constructive competition” hearkened back to the antimonopoly debates of the 1880s in the sense that it relied on the expert commissions, regulated common carriers, and supervised market mechanisms advocated in that era. He wanted specific practices banned; he admitted that in the modern industrial economy competition had to be regulated to be effective.¹⁰² Clark also endorsed a federal incorporation bill similar to what Bryan had advocated in Chicago in 1899.¹⁰³ The bill failed, but Clark insisted that Delaware’s and New Jersey’s state incorporation laws amounted to a “letter of marque” allowing holding companies to prey on other states. The Senate Committee on Interstate Commerce in 1913 reflected Clark’s testimony in holding that the federal government should not just set the rules of competition but should “prescribe the conditions upon which persons and corporations shall be permitted to engage in commerce.”¹⁰⁴ Clark had earlier been willing to allow restraints on competition in regard to the railroads as long as they did not amount to a restraint on trade; by 1912 he broadened this willingness to other industries.¹⁰⁵

These reforms went much farther than Clark had been willing to go in 1901, but he did not approach vanguard antimonopolism. He continued to oppose government regulation of prices and wages and government ownership of natural monopolies. His goal of regulating competition to prevent monopolies was Wilsonian rather than Theodore Roosevelt’s attempt in the Hepburn Act to accept and regulate monopolies.¹⁰⁶

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Clark-- like Brandeis --tried to refine technical definitions to identify when size indicated that businesses had become monopolies, but he did not share Brandeis's identification of monopoly with bigness. Although he wanted to track the percentage of capital that any one firm invested in an industry, Clark stressed there could be no fixed rule. An expert commission modeled on the ICC would decide when the percentage became dangerous.¹⁰⁷

Determining capital investment given the combination of inept and creative bookkeeping employed by corporations and stock watering, which Clark now took seriously, involved him in contradictions. He paradoxically wanted a strict accounting of the capital invested in corporations even as he argued the inability to do so made price regulation impossible.¹⁰⁸

Determining capital investment became a kind of holy grail of antitrust. The National Archives still contains one of the ICC's more quixotic enterprises during this period: a mile by mile examination of railroad infrastructure. The ICC inventoried track, roadbed, building, bridges, wells and more for every American railroad in the early twentieth century to provide a reference point for rates of return on capital and thus permissible rates for railroads. It yielded only stunningly detailed maps and reams of paper.¹⁰⁹

As antitrust evolved into expert regulation of the economy to preserve competition, vanguard antimonopolism largely disappeared from national politics and retreated to the local and state levels. Municipal ownership of utilities and transportation networks --"natural monopolies" -- were vestiges of grander antimonopolist plans for nationalizing railroad and telegraph corporations. State public utility commissions descended from more ambitious antimonopolist plans for regulation of monopolies.¹¹⁰

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The old antimonopolist coalition had fractured. In the early twentieth century organized labor, once in the vanguard of antimonopoly, largely withdrew. The courts' interpretation of the Sherman Antitrust Act had badly hurt unions, and Samuel Gompers immediate goal was to lift the burden of antitrust from labor. He embraced a Bellamyite future, but it was a distant future. In the present he was willing to exchange labor's demand for control over production for a living wage-- sufficient remuneration to allow high levels of consumption.¹¹¹

Clark did support the Clayton Act, which nominally relieved labor of the burden of the Sherman Act, but the courts vitiated the measure by reverting back to common law rationales for regarding unions as acting in restraint of trade. It remained hard to imagine a coalition that included both Clark and union labor.¹¹² Clark championed non-union workers as victims of monopoly, and he continued to regard union labor as allies of the trusts against the public.¹¹³ Clark intended his reforms to benefit farmers, consumers, stockholders, and non-union wageworkers. He imagined a world of wage workers who became capitalists not by starting their own shops but by investing their wages in stocks and bonds. This, in unexplained ways, would achieve "a steady upward trend of the level of political life." Clark's vision was a far cry from the world antimonopolists imagined where everyone enjoyed a competency and producers controlled the conditions of their labor.¹¹⁴

As the old antimonopolists had feared, antitrust narrowed the dangers of monopoly to its threat to an efficient economy. Antitrust reformers still used rhetorical appeals to politics, society, and morality, but the same words now had different referents. At the turn of the century Clark had condemned monopoly as contrary to the public interest, which he defined as

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abundance and “an equity of distribution.”¹¹⁵ Clark’s public interest now largely reduced to efficiency and, although the term is anachronistic, a high GNP: “a fruitful industry yielding a large general income.” The antimonopolist goal of equality changed to distributing the national income “according to an honest principle.”¹¹⁶ Clark made a general abundance and “economic leadership” in a competition for world markets the goal of reform.¹¹⁷

Louis Brandeis sounded more like an antimonopolist in connecting “industrial liberty” with “political liberty,” but the connection remained vague.¹¹⁸ Brandeis’s focus remained on “the Almighty dollar.” He regarded the damage monopoly did as primarily economic: suppression of competition, excessive profits, retarded innovation, and reduced efficiency. Monopoly victimized consumers, shareholders, and independent producers who bore the burden of heavy charges on the cost of capital, which in turn produced the suppression of competition that allowed monopolies to extort excessive profits.¹¹⁹

As Berk summarized his position, “Brandeis asked judges, politicians, and economists to consider the facts in antitrust cases according to three criteria: the process of business development in the industry in question, the distribution of economic power in the industry, and the effects of business arrangements on economic performance.”¹²⁰ His solutions – “cultivational regulation” --aimed at regulatory and accounting reforms to bring pricing and profit into balance.¹²¹ Brandeis did promise that his technical solutions –sliding scale rate making and performance benchmarking would nurture civic development as well as economic growth and scientific learning, but it was unclear how civic development would be a result.¹²²

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When Brandeis stressed cooperation, what he meant was much closer to the natural monopoly and business cooperation threads of the Gilded Age than to the cooperative ideals of the Alliance and Knights.¹²³ Cooperation began to look like a modern corporation, and shareholders took an increasingly prominent place among the beneficiaries of antitrust. When Louis Brandeis attacked the “money trust,” the victims he sought to rescue were small investors, who, compared to their numbers, assumed an outsized role as keys to the well-being of the republic. This stress on shareholders brought Brandeis closer to Clark than to the antimonopolists. When Clark complained of the current situation of “minorities controlling majorities to an appalling extent,” he meant minority shareholders controlling corporations. His proposed changes “would be one step in advance toward a more democratic condition.”¹²⁴ This was not the democratic control of society and politics the antimonopolists had in mind.

And yet, for all their differences, there is no imagining antitrust without antimonopoly. Antitrust built on the cracked legislative foundations –the Sherman Antitrust Act and the ICC-- that antimonopoly bequeathed it and created something stronger, more effective, and far more constrained. The larger social, political, and moral goals of antimonopoly faded at the national level, surviving in cities, and to a lesser extent, in states. Antitrust embraced democracy but only to the extent that its bureaucratic authority derived from democratic governance.

The conclusion is not that antitrust sold out antimonopoly. There is no imagining figures like Clark and Brandeis – as well as Roosevelt and Wilson -- without antimonopoly. Both antitrust and antimonopoly sought a fairer, more efficient, and more competitive economy, and antitrust built on the cracked legislative foundations –the Sherman Antitrust Act and the ICC--

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that antimonopoly bequeathed them. In terms of regulation antitrust created something stronger and more effective than what had come before.

But the effectiveness of antitrust involved a narrowing of its focus. The threat of monopoly became economic. Antimonopolists certainly had economic concerns, but it was never their main focus. Monopolies threatened more than the economy: it targeted American society, American democracy, and American values. Monopolies threatened Americans as citizens and producers and not just as consumers and shareholders.

Antimonopoly had spanned all levels of governance, but antitrust proved most consequential and influential on the national level. And on the national stage, antitrust inevitably became a creature of experts and bureaucracy. It embraced democracy largely to the extent that its bureaucratic authority derived from democratic governance. The larger social, political, and moral goals of antimonopoly –and the reliance on an engaged citizenry -- retreated into the cities and to a lesser extent, in states. Tom Johnson’s Cleveland, Hazen Pinigree’s Detroit and Michigan, the Nonpartisan League in North Dakota, even some of Hiram Johnson’s California kept portions of antimonopoly alive

The focus of antitrust on the “Almighty dollar” and Americans as consumers betrayed them, as the antimonopolists predicted it would. Once a conservative judiciary succeeded in making efficiency the criteria of economic worth and lower prices the chief measure of the common good, then monopoly had entered its promised land. This was a perversion of antitrust, but the advocates of antitrust had enabled it. Despite their roots in antimonopoly, they bet that

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Americans would settle for prosperity, relatively full employment, and a piece of the pie. The antimonopolists had desired more.

That bet is once again on the table.

¹ Thank you to Richard John for pointing this out. See his essay in this volume: “Rethinking the Antimonopoly Question: Commerce, Land, Industry,” in *Antimonopoly and American Democracy*, ed. Daniel A. Crane and William J. Novak.

² Ibid.

³ This is close Charles Postel’s argument in *Equality: An American Dilemma, 1866-1896* (New York: Farrar Straus and Giroux, 2019), 50.

⁴ The best synopsis of this view is John Bates Clark, *The Control of Trusts; An Argument in Favor of Curbing the Power of Monopoly by a Natural Method* (New York, The Macmillan Company 1901).

⁵ Clark, *Control of Trusts*, 58. Quote, John Bates Clark, in Civic Federation of Chicago, *Chicago Conference on Trusts. Speeches, Debates, Resolutions, Lists of the Delegates, Committees, Etc., Held September 13th, 14th, 15th, 16th, 1899.* (Chicago, Civic Federation, 1900), 409 <https://hdl.handle.net/2027/uiuo.ark:/13960/t10p1090c>; John Bates Clark and John Maurice Clark. *The Control of Trusts* (New York : Macmillan, 1912), 22-23.

⁶ Clark and Clark, *Control of Trusts* (1912), 23-24, 82.

⁷ Lawrence E. Mitchell, *The Speculation Economy: How Finance Triumphed Over Industry* (San Francisco: Berrett-Koehler Publishers, 2007), 28-29

⁸ Clark, *Control of Trusts*, 22-28, 31, 51-55, 72-73.

⁹ Mitchell, *The Speculation Economy*, 117-19. Mary A. O’Sullivan, *Dividends of Development : Securities Markets in the History of US Capitalism, 1866-1922* (New York, Oxford University Press: 2016), 36, 43, 50-51, 53, emphasizes how important the railroads remained. Naomi Lamoreaux, *The Great Merger Movement in American Business, 1895-1904* (New York: Cambridge University Press, 1985).

¹⁰ Clark, *Control of Trusts*, 3, 8.

¹¹ Dudley G. Wooten, *Proceedings of Chicago Conference on Trusts*, 1899, 42-53.

¹² Frank Dobbin, *Forging Industrial Policy: The United States, Britain, and France in the Railway Age* (Cambridge University Press, 1994), 20.

¹³ Dudley G. Wooten, *Proceedings of Chicago Conference on Trusts*, 1899, 42-53.

¹⁴ William Jennings Bryan, *Proceedings of Chicago Conference on Trusts*, 1899, 496-514

¹⁵ Bryan, *Proceedings of Chicago Conference*, 1899, 497, 498, 500-01.

¹⁶ Bryan, *Proceedings of Chicago Conference*, 1899, 501-02, 507-08.

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- ¹⁷ Richard White, *The Republic For Which It Stands: The United States During Reconstruction and the Gilded Age, 1865-96* (New York: Oxford University Press: 2017), 137-138. Bryan, *Proceedings of Chicago Conference, 1899*, 501.
- ¹⁸ Bryan, *Proceedings of Chicago Conference, 1899*, 503, 506.
- ¹⁹ Bryan, *Proceedings of Chicago Conference, 1899*, 508, 510-11, 512.
- ²⁰ J.G. Schonfarber, *Proceedings of Chicago Conference, 1899*, 343-49.
- ²¹ John W. Hayes, *Proceedings of Chicago Conference, 1899*, 331-340.
- ²² Hazen Pingree, *Proceedings of Chicago Conference, 1899*, 263-64.
- ²³ Edward Bemis, *Proceedings of Chicago Conference, 1899*, 394-95.
- ²⁴ Bemis, *Proceedings of Chicago Conference, 1899*, 400; Henry C. Adams, *Proceedings of Chicago Conference, 1899*, 35-42.
- ²⁵ Neri Salvadori, Rodolfo Signorino, “Adam Smith on Monopoly Theory. Making good a lacuna,” *Scottish Journal of Political Economy* (May 2014) Volume 61, Issue 2, 178-195, quote on 191. <https://doi-org.stanford.idm.oclc.org/10.1111/sjpe.12040> ; Henry C. Adams, *Proceedings of Chicago Conference, 1899*, 35-42; Gerald Berk, *Louis D. Brandeis and the Making of Regulated Competition, 1900–1932* (New York: Cambridge University Press, 2009), 38-39.
- ²⁶ Clark developed these ideas more fully in John C. Clark, *Control of Trusts*, 1-16.
- ²⁷ For Wooten, *Proceedings of Chicago Conference, 1899*, 44, 48; Clark, *Proceedings of Chicago Conference, 1899*, 405. Clark, *Control of Trusts*, 12.
- ²⁸ Clark, *Control of Trusts*, 82.
- ²⁹ Henry C. Adams, *Proceedings of Chicago Conference on Trusts, 1899*, 35-42.
- ³⁰ Clark, *Proceedings of Chicago Conference, 1899*, 409.
- ³¹ Clark, *Proceedings of Chicago Conference, 1899*, 409; Clark, *Control of Trusts*, 10, 56, 84, 86.
- ³² *Report of the Senate Select Committee on Interstate Commerce . . . Forty-Ninth Congress, First Session, Submitted to the Senate, Jan. 18, 1886* (Washington: GPO, 1886), 182, 215-16. See also, John Lauritz Larson, *Bonds of Enterprise: John Murray Forbes and Western Development in America’s Railway Age*, expanded edition (Iowa City: University of Iowa Press, 2001), 135-43.
- ³³ George H. Miller, *Railroads and the Granger Laws* (Madison: University of Wisconsin Press, 1971), and Lee Benson, *Merchants, Farmers, and Railroads: Railroad Regulation and New York Politics, 1850-1887* (Cambridge: Harvard University Press, 1955). Postel, *Equality*, 24, 48-55.
- ³⁴ Postel, *Equality*, 65-69.
- ³⁵ Christopher William England, “Land and Liberty: Henry George, the Single Tax Movement, and the Origins of 20th Century Liberalism” (Ph.D. diss., Georgetown University, 2015), 3-4 , Edward J. Rose, *Henry George* (New York: Twayne, 1968), 75, Henry George, *Progress and Poverty* (New York: Robert Schalkenbach Foundation, 1942, orig. ed. *This work will appear in: Antimonopoly and American Democracy, edited by Daniel A. Crane and William J. Novak, forthcoming from Oxford University Press.*
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1879), 188-189; Tamara Venit Shelton, *A Squatter's Republic: Land and the Politics of Monopoly in California and the Nation, 1850–1900* (Berkeley: University of California Press, 2013), 75–76, 88–96; for the most recent account of George, see Edward T. O'Donnell, *Henry George and the Crisis of Inequality: Progress and Poverty in the Gilded Age* (New York: Columbia University Press, 2015), particularly 42–63.

³⁶ George, *Progress and Poverty*, 162, 198.

³⁷ Jeffrey P. Sklansky, *The Soul's Economy: Market Society and Selfhood in American Thought, 1820–1920* (Chapel Hill: University of North Carolina Press, 2002), 115–16; George, *Progress and Poverty*, 190, 328–29, 347, 405–6, 413–14, 425, 438–40. Clark denied that the unearned increment on land posed a problem, believing it widely distributed. Clark and Clark, *Control of Trusts* (1912), 7-8

³⁸ Terence Vincent Powderly, *Thirty Years of Labor, 1859–1889* (New York: A. M. Kelley, 1967), 173-186.

³⁹ Powderly, *Thirty Years of Labor*, 174-186.

⁴⁰ George H. Miller, *Railroads and the Granger Laws*, (Madison: University of Wisconsin Press, 1971), 172-193, particularly 188-189. Herbert Hovenkamp, *Enterprise and American Law, 1836–1937* (Cambridge, MA: Harvard University Press, 1991), 274.

⁴¹ William R. Childs, *The Texas Railroad Commission: Understanding Regulation in America to the Mid-Twentieth Century* (College Station: Texas A&M University Press, 2005), 33-34. *Wabash, St. Louis, and Pacific Railroad Company v. Illinois*, 118 U. S. 557 (1886), 563–577.

⁴² Hudson, *The Railways and the Republic* (New York: Harper & Brothers, 1886), 9.

⁴³ Hudson, *The Railways and the Republic*, 55. William W. Sharkey, *The Theory of Natural Monopoly* (New York: Cambridge University Press, 1982), 14, 26. Richard A. Posner, “Natural Monopoly and Its Regulation,” *Stanford Law Review* 21, no. 3 (Feb., 1969), 570.

⁴⁴ Richard White, *Railroaded: The Transcontinentals and the Making of Modern America* (New York: Norton, 2011), 327-29.

⁴⁵ Ben H. Proctor, *Not Without Honor: The Life of John Reagan* (Austin, University of Texas Press, 1962), 196-198, 218, 255.

⁴⁶ Richard White, *Railroaded*, 357.

⁴⁷ Childs, *Texas Railroad Commission*, 33-34.

⁴⁸ M. Elizabeth Sanders, *Roots of Reform: Farmers, Workers, and the American State, 1877–1917* (Chicago: University of Chicago Press, 1999), 187-94.

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⁵⁶ Wolff, *Western Union*, 279-81. Richard R. John, *Spreading the News: the American Postal System from Franklin to Morse* (Cambridge: Harvard University Press, 1995), 175.

⁵⁷ James, *Presidents, Parties and the State*, 103.

⁵⁸ James, *Presidents, Parties and the State*, 115-117; Sanders, *Roots of Reform*, 194; Childs, *Texas Railroad Commission*, 36-40.

⁵⁹ *Travelers Official Railway Guide for the United States and Canada*, 19th Year, no. XI (April 1887), 1 ½. Gerald G. Eggert, *Richard Olney: Evolution of a Statesman* (University Park: The Pennsylvania State University Press, 1974), 26.

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⁶² White, *Railroaded* 362-65, 393. White, *Republic For Which It Stands*, 585.

⁶³ White, *Railroaded*, 362-65, 393. White, *Republic For Which It Stands*, 585, use notes. Morton Keller, *Regulating a New Economy: Public Policy and Economic Change in America, 1900-1933* (Cambridge: Harvard University Press, 1990), 45.

⁶⁴ Joanne R. Reitano, *The Tariff Question in the Gilded Age: The Great Debate of 1888* (University Park: Pennsylvania State University Press, 1994), 69-76.

⁶⁵ Clark and Clark, *Control of Trusts* (1912), 60-61, 66-67.

⁶⁶ Hovenkamp, *Enterprise and American Law*, 283, 286-91. White, *Railroaded*, 384-85.

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- ⁶⁸ White, *Railroaded*, 436, 441; Keller, *Regulating a New Economy*, 30.
- ⁶⁹ White, *Railroaded*, 385.
- ⁷⁰ Clark, *Control of Trusts*, v-vi, 3.
- ⁷¹ Clark, *Control of Trusts*, 4-5, 7.
- ⁷² Clark, *Control of Trusts*, 4-5, 7.
- ⁷³ Ron Chernow, *Titan: The Life of John D. Rockefeller, Sr.* (New York: Random House, 1998), 78–80, 109–17, 131, 223–24.
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- ⁸⁴ Gronlund *Proceedings of Chicago Conference on Trusts*, 1899, 569-74.
- ⁸⁵ Berk, *Brandeis*, 45-47, 252.
- ⁸⁶ Berk, *Brandeis*, quote, 44, 38-39, 46-47.
- ⁸⁷ Berk, *Brandeis*, 37-43.
- ⁸⁸ Louis D. Brandeis, *Other People’s Money: And How the Bankers Use It* (New York : F.A. Stokes, c1914), 46-50, 63, 94.
- ⁸⁹ Mitchell, *The Speculation Economy*, 56. Brandeis, *Other People’s Money*, 51-68, 128

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⁹⁰ Mitchell, *The Speculation Economy*, 45-48. For failed attempts by the courts to limit and mitigate this law see 48-54. Berk, *Brandeis*, 66.

⁹¹ Luca Fiorito, “When Economics Faces the Economy: John Bates Clark and the 1914 Antitrust Legislation,” Working Paper No: 2012-01, Month February, University of Utah, Department of Economics Working Paper Series, <http://www.econ.utah.edu> 18-19. Clark and Clark, *Control of Trusts* (1912), 74-77, letters of marque, 75. Joseph Dorfman, *The Economic Mind in American Civilization*, Vol. 3, 203-204.

⁹² Mary O’Sullivan, *Dividends of Development: Securities Markets in the History of U.S. Capitalism, 1866-1922* (New York: Oxford University Press, 2016), railroads and industrials, 6, 36-41, 63-68, bankers (41-43), institutional investors, banks, call market, 51-53.

⁹³ Berk, *Brandeis*, 20, 67, 92, 101, 103.

⁹⁴ Clark, *Control of Trusts*, 60-63; Fiorito, “When Economics Faces the Economy,” 8. Clark retained his belief in publicity, 21.

⁹⁵ Martin Sklar, *The Corporate Reconstruction of American Capitalism* (New York: Cambridge University Press, 1988) 147, 146-154, 381-82. *American Tobacco Co v. United States*, 221 U.S.; *Standard Oil v. United States*, 221 U.S. For antitrust law during the Progressive Era, see Daniel A. Crane, “The Dissociation of Incorporation and Regulation in the Progressive Era and New Deal,” in *Corporations and American Democracy*, ed. Naomi Lamoreaux and William J. Novak (Cambridge: Harvard University Press, 2017), 109-124.

⁹⁶ Clark and Clark, *Control of Trusts*, 29-30, 83-84, 99-100.

⁹⁷ Fiorito, “When Economics Faces the Economy,” 11. Clark and Clark, *Control of Trusts*, 96-127, especially 110, 123, 125.

⁹⁸ See, Luca Fiorito, “When Economics Faces the Economy: John Bates Clark and the 1914 Antitrust Legislation,” Working Paper No: 2012-01, Month February University of Utah, Department of Economics Working Paper Series, <http://www.econ.utah.edu> , p. 12-13, 21-23, 31-35. Clark and Clark, *Control of Trusts*, 26-29, 123. For evaluation of who got what, Gerald Berk, Louis D. Brandeis and the Making of Regulated Competition, 1900–1932 (2009), 107.

⁹⁹ Clark and Clark, *Control of Trusts*, 1912, 128.

¹⁰⁰ Clark and Clark, *Control of Trusts*, 24-25, 70, 201. For faith in Natural Law see Joseph Dorfman, *The Economic Mind in American Civilization*, Vol. 3, 203-04.

¹⁰¹ Clark and Clark, *Control of Trusts*, 104

¹⁰² Fiorito, “When Economics Faces the Economy,” 12-14.

¹⁰³ Fiorito, “When Economics Faces the Economy,” 20-21. Crane, “Dissociation,” 119-123.

¹⁰⁴ Fiorito, “When Economics Faces the Economy,” 16

¹⁰⁵ Fiorito, “When Economics Faces the Economy,” 28; Clark and Clark, *Control of Trusts*, 140, 168-69, 190.

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¹⁰⁶ Crane, “Dissociation,” 12-22.

¹⁰⁷ Fiorito, “When Economics Faces the Economy,” 14-15, 24-26. Clark and Clark, *Control of Trusts*, 194-195.

¹⁰⁸ Fiorito, “When Economics Faces the Economy,” 6. Clark and Clark, *Control of Trusts*, 79-80, 132, 135, 160, 167.

¹⁰⁹ These records are in National Archives, Part IIIB III.48 - III.89 Record Group 134 Records of the Interstate Commerce Commission. For a guide to railroad records in the National Archives, Records Relating to North American Railroads, Compiled by David Pfeiffer, Reference Information Paper 91, National Archives and Records Administration, Washington, DC, 2001. Dorfman, *The Economic Mind in American Civilization*, Vol. 3, 203.

¹¹⁰ Clark recognized this trend as the triumph of natural monopolies rather than vanguard antimonopolies. Clark and Clark, *Control of Trusts*, 141-43.

¹¹¹ Lawrence Glickman, *A Living Wage: American Workers and the Making of Consumer Society* (Ithaca: Cornell University Press, 1997); *Buying Power: A History of Consumer Activism in America* (Chicago: University of Chicago Press, 2009); Roseanne Currarino: *The Labor Question in America: Economic Democracy in the Gilded Age* (Urbana: University of Illinois Press, 2010); Dana Frank, *Purchasing Power: Consumer Organizing, Gender, and the Seattle Labor Movement, 1919-1929* (New York: Cambridge University Press, 1994).

¹¹² Samuel Gompers, “The Progress and Reaction in the Age of Reform, 1909-13,” in Samuel Gompers, *The Samuel Gompers Papers*, ed. Peter J. Albert, Stuart Bruce, and Grace Palladino (Urbana: University of Illinois Press, 2000) Vol. 12, 479-481; Robert K. Murray, “Public Opinion, Labor, and The Clayton Act,” *The Historian* 21, no. 3 (1959): 255-270.

¹¹³ Clark and Clark, *Control of Trusts*, 19, 44.

¹¹⁴ Clark and Clark, *Control of Trusts*, 23-24, 82 137-38.

¹¹⁵ Clark *Control of Trusts*, 82.

¹¹⁶ Clark and Clark, *Control of Trusts*, 134.

¹¹⁷ Clark, *Control of Trusts*, 82.

¹¹⁸ Brandeis, *Other People’s Money*, 62

¹¹⁹ Brandeis, *Other People’s Money*, 46-50, 63, 94, 150-52, 201-223.

¹²⁰ Berk, *Brandeis*, 66.

¹²¹ Berk, *Brandeis*, 69.

¹²² Berk, *Brandeis*, 69.

¹²³ Berk, *Brandeis*, 253-56.

¹²⁴ Clark and Clark, *Control of Trusts*, 153.

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