

UNIVERSITÀ DEGLI STUDI DI SIENA



QUADERNI DEL DIPARTIMENTO  
DI ECONOMIA POLITICA E STATISTICA

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The influence of American economists on the Clayton  
and Federal Trade Commission Acts

n. 623 – Ottobre 2011



**Abstract** - The aim of this paper is to analyze American economists' influence in the passing of the Clayton and Federal Trade Commission Acts (1914). Specifically, it is argued and documented that American economists were important in this process in two ways. Many economists exercised an "indirect" influence by discussing in academic journals and books problems concerning trusts, combinations, and the necessary measures to preserve the working of competitive markets. At least as importantly, if not more so, some economists took an active role in the reform movement both contributing to draft proposals for the amendment of existing antitrust legislation and providing help and advice during the Congressional debates which led to the passing of the FTC and Clayton Acts. Among these, we will focus primarily, albeit not exclusively, on the contribution of John Bates Clark.

**Jel Classification:** B13; B14; B15; K21; L41; L42

This essay is dedicated to the Memory of Warren Samuels (1933---2011), who was of guidance and support to the writer and a continuous source of inspiration to the entire community of historians of economic thought.

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The influence of American economists on the Clayton and Federal Trade Commission Acts  
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In our warship of the survival of the fit under free natural selection we are sometimes in danger of forgetting that the conditions of the struggle fix the kind of fitness that shall come out of it; that survival in the prize ring means fitness for pugilism; not for bricklaying nor philanthropy; that survival in predatory competition is likely to mean something else than fitness for good and efficient production; and that only from a strife with the right kind of rules can the right kind of fitness emerge (Clark and Clark 1912, 200).

But we have got to face the proposition that competition, in the Ricardian sense, had ceased to be dominant (Gray 1911, 734).

## 1. Introduction

By 1890, American legislators were sufficiently concerned with the so-called “trust problem” to pass the Sherman Act, forbidding in Section 1 “[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations,” and making it illegal in Section 2 “to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations.”<sup>2</sup> Although the Sherman Act can be rightly considered as the father of competition policy in the United States, it was the Clayton act of 1914 that first explicitly specified those practices which are prohibited if their probable effect was to “substantially lessen competition or tend to create a monopoly.”<sup>3</sup> This phrase broadly qualified the Act’s prohibitions against unjustified price discriminations, tying contracts, exclusive dealing arrangements, corporate acquisitions, and interlocking directories among competing firms. The Federal Trade Commission (FTC) Act, passed simultaneously in 1914, created an administrative body to oversee the enforcement of antitrust legislation. Specifically the FTC was given the power to enforce the antitrust laws of the United States, as well as prohibits firms from engaging in anticompetitive practices.

Among the several factors which contributed to the passage of the 1914 antitrust legislation, the 1911 Court’s decisions in the Standard Oil and American Tobacco cases stand out for their relevance (Kolko 1967; Letwin 1965; Sklar 1988; Weinstein 1968).<sup>4</sup> As we will argue more in detail below, these decisions, firmly establishing that the Sherman act did not proscribe all restraints of trade, but only “unreasonable” ones, fueled much criticism on the actual efficacy and applicability of the existing antitrust legislation. Dissatisfaction with the Court’s rulings rapidly spilled over into the forthcoming presidential campaign. So pervasive was the public concern about the trust issue that in 1912 all the three major parties – Republican, Progressive, and Democratic – advocated legislation to strengthen the antitrust laws and to supplement the broad prohibitions of the Sherman Act. Not surprisingly, such a general preoccupation with the effectiveness of the Sherman Act gave new impetus to the academic debates on the role of giant

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<sup>2</sup> 15 U.S.C. §§ 1, 2.

<sup>3</sup> Clayton Act § 3, 15 U.S.C. § 18.

<sup>4</sup> As noted by Allyn Young as early as in 1915: “The recent additions to the federal legislation having to do with monopolies and trusts have followed upon three years of continuous and vigorous discussion. In part, very likely, this general revival of interest in the control of the trusts was bound up with the growth of a general radical movement in politics, and more especially with the demand for a generally increased measure of government control of industry. But there is more than mere coincidence in the fact that this period of active public discussion followed immediately upon the decisions of the Supreme Court in the Standard Oil and American Tobacco cases. Before these decisions the Sherman act was a weapon which had never been fairly tested with respect to its efficacy for the purpose for which it was forged. But with its strength and its limitations at least partly uncovered, it became a fair target for criticism” (Young 1915a, 201).

corporations and the regulation of their activities. These professional debates had a major impact on the framing of the 1914 antitrust legislation in a way that cannot be said of the Sherman Act of 1890 (Mayhew 1998; Henry and Fiorito 2008). In this connection, a contemporary observer such as Allyn Young, commenting shortly after the passage of the Clayton and FTC Acts, observed that “it is significant that in much of the more serious discussion, both the analysis of the problem and the proposals of the specific remedies involved the recognition of certain principles that for some years had been very generally accepted among economists.” In a following passage Young continued: “[s]pecific instances of the direct influence of economic writing and teaching have not been lacking, and it is fair to infer that through a process of gradual diffusion the indirect influence has been considerable” (Young 1915a, 204).

The aim of this paper is to assess and document the influence of American economists in laying down the groundwork for the Clayton and FTC Acts. It is our contention that contemporary American economists were important in this process in two ways. Many economists exercised an “indirect” influence by discussing in academic journals and books problems concerning trusts, combinations, and the necessary measures to preserve the working of (actually or potentially) competitive markets (Klebaner 1964). At least as importantly, if not more so, some economists took an active role in the reform movement both contributing to draft proposals for the amendment of existing antitrust legislation and providing help and advice during the Congressional debates which led to the passing of the FTC and Clayton Acts. Among these, we will focus primarily, albeit not exclusively, on the contribution of John Bates Clark.

The present paper develops these arguments as follows. The first section discusses the significance of the 1911 Court’s decisions in the Standard Oil and American Tobacco cases as well as their impact on the economic profession. The second section examines the economists’ discussions which followed the 1911 decisions, focusing both on the theoretical and policy aspects of the debates hosted in academic journals. The third section deals with Clark’s – and also some others of his colleagues’ – direct involvement in the antitrust reform movement. The fourth section succinctly analyses the passing of the FTC and Clayton acts. The fifth section scrutinizes the economists’ response to the passing of the 1914 antitrust legislation. The final section presents some conclusions.

## 2. American economists and the 1911 Court’s decisions

Major concern over monopolies and trusts was one of the distinguishing marks of the American Economic Association since its foundation and lasted well into the early 1900s (Coats 1960). The failed merger attempt of the Northern Securities Company and the subsequent panic of 1902–03, the 1907 financial crisis and its aftermath, as well as the ostensibly illegal financial practices of many conglomerates, all contributed to keep the trusts issue alive on academic circles. But it was only after the 1911 Court’s decision that the debate on the trust problem and the necessary measures to amend the existing antitrust legislation acquired new vigor and incisiveness.<sup>5</sup>

The 1911 oil and tobacco cases were the most important pre-1914 cases concerning the legality of combinations brought about by either stock or asset acquisition. The American Tobacco Company was primarily the result of a series of asset acquisitions, although it also involved the acquisition of competitors’ stock. The Standard Oil Company of New Jersey was primarily a combination brought about as a holding company by the acquisition of stock. The government won both cases, thus demonstrating that under the Sherman Act a combination of manufacturing concerns could be dissolved, whether organized under the corporate form of a holding company or as a single corporation. These high-profile decisions introduced the so called “rule of reason” principle as a new benchmark for antitrust action. This required a case-by-case approach where only combinations that “unduly restrained” trade would be deemed in violation of the

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<sup>5</sup> Before launching into the discussion a few terminological considerations are worth making. The term trust was used in the economic literature of the period to describe the closely-knit combination or organization, as opposed to cartels, pools, corners and other forms of looser agreements. The general term trust corresponded to three distinct legal models: 1) the stock-transfer trust; 2) the asset-transfer trust; 3) the holding company. See Ovenkamp (1991, 249-266) for a detailed discussion of the characteristic of each legal model. Economists also used – rather improperly – the term trust in the case of corporate mergers where “a single company acquires direct title to the property of the combining concerns” (Durand 1914b, 382).

Sherman Act. Any form of agreement for legitimate economic ends that only incidentally led to a restraint of trade could be considered “reasonable” and lawful. Both Standard Oil and American Tobacco were found, under the “rule of reason,” to have engaged in anticompetitive practices involving discriminatory pricing and marketing practices (see Sklar 1988, 146-54 for an elaboration of the “rule of reason” principle with regard to the above cases).

In addition, the 1911 Supreme Court ruling against the American Tobacco Company and the Standard Oil Company clarified state economic policy concerning actions of a holding company. Both trusts used the pyramided holding company to control several subsidiary corporations and gain market control. The court held that the pyramided structure of the American Tobacco constituted “unreasonable restraint of trade.” As noted by one interpreter (Prechel 2000, 64), these decisions showed that “the state was becoming more concerned about the use of the pyramided corporate structure to gain market control than about market control per se. It was the ability of corporations to control markets by controlling the assets of subsidiaries they did not fully own that the state managers found problematic.” Accordingly, as a consequence of the Court’s decision, the Standard Oil and American Tobacco companies were dissolved. In the case of the former, the method adopted was to distribute ratably to the original stockholders shares of the various companies held by the Standard Oil Company of New Jersey. In the case of the American Tobacco, the problem was somewhat more complex since the organization comprehended quite a variety of more or less related industries. An attempt was thus made to restore some degree of competition in these various branches by ordering the creation of a certain number of companies in each manufacturing line. In turn, these various companies issued their stock to the old American Tobacco Company in payment for the properties transferred to them, and this stock was then distributed pro rata among the shareholders of the original trust. As a result, the stockholders of this organization became the stockholders of the new companies in proportion to their quotas in the old.

Reactions to the Standard Oil and American Tobacco cases by the economic profession were immediate and widespread. In 1912 the *Journal of Political Economy* devoted two issues, 4 and 5, and much of number 6 to the trust problem. Still in 1912, the American Academy of Political and Social Science devoted its *Annal* to the topic of “Industrial Competition and Combination,” while the following year the American Economic Association organized a round table discussion on “Recent Trust Decisions and Business” which appeared in the 1914 supplement of the *American Economic Review*.<sup>6</sup> Such a revival of interest in the economic aspects of trusts and combinations was not confined to academic reviews. The years which followed the courts decisions witnessed also the almost coincident appearance of several treatises, written by professional economists, explicitly dedicated to the problem industrial concentrations (see, among the most significant, Stevens (ed.) 1913b; Dewing 1914; Honey 1914; Knauth 1914).<sup>7</sup>

Economists’ remarks on the Court’s decisions differed both in style and substance. Yet, the prevalent tone of the commentaries was quite critical. According to Henry Seager from Columbia University, the recent Court’s decision had left uncertain the legal significance of proving that a firm held a dominant position in the market. In other words, the enunciation of the “rule of reason” implied a new unpredictability as to which business practices were permissible and which not. As he put it in a polemical fashion:

To present the problem concretely: is the United States Steel Corporation a combination in restraint of trade in the statutory sense or not? I have read with care the reasons given in the decisions for condemning the Standard Oil Company and the American Tobacco Company, and I must confess my inability to give a confident answer to this question (Seager 1911, 611).

In a similar vein, Jeremiah Jenks — perhaps the most noted industrial organization economist of his day — looked upon the “rule of reason” as a vague concept and lamented the neglect of economic considerations by the Courts in shaping their decisions.<sup>8</sup> In a 1912 paper published on the *Journal of*

<sup>6</sup> Participants to the round table included E. Dana Durand, William A. Rawles, James E. Le Rossignol, George E. Putnam, Vanderveer Custis, John M. Clark, William W. Folwell, and Willard E. Hotchkiss.

<sup>7</sup> Honey’s volume was originally published in 1913. A new edition, revised and with new material, appeared the following year. Reference will be made here to the 1914 edition.

<sup>8</sup> On Jenks’ life and career see Brown (2004).

*Political Economy* he pointed out that the Supreme Court “has failed to take sufficiently into account the economic benefits that come from the saving of industrial energy and the promotion of industrial efficiency by industrial combination” (Jenks 1912, 357). Jenks was also highly skeptical about the efficacy of the remedies applied by the Court. In his opinion, the dissolution of the Standard Oil trust and the creation of several quasi-independent refining companies, was not just destructive of productive efficiency but also ineffective as an attempt to restore competition: “it will be a failure if the separate parts divide territory or make price agreements” (1912, 354). A similar objection was advanced by Edward Dana Durand. Durand – who was favorable in principle to the dissolution of the Standard Oil – criticized the actual implementation of the plan observing that, Immediately after the dissolution, there was little noticeable sign of competition among the former members of the trust: “[t]he method of dissolution – the equal distribution of the stocks of the constituent companies among the stockholders of the parent company – and the fact that the combination was of such long standing and that most of the more prominent men in the oil trust have never had any experience of competing with one another, may prevent the rise of competition” (Durand 1914a, 175; see also 1914b).<sup>9</sup>

Together with Durand, Northwestern University’s Willard E. Hotchkins was among the few who openly supported the Supreme Court’s decisions. Specifically, Hotchkins argued in the *American Economic Review* that the primacy achieved by large conglomerates such as the Standard Oil did not depend on the alleged superior efficiency due to economies of scale, but rather on various anticompetitive practices such as extracting secret rebates from railroads, selling below cost to destroy or intimidate local competitors, and evading state regulatory authority. Hotchkins (1914, 172) optimistically concluded that “[t]he carrying through of the Tobacco and Oil cases, whatever we may think of the ultimate disposition of these cases, has created a reasonable ground for assurance that the Government may proceed with any trust policy which is finally considered wise, without being embarrassed by a feeling of impotence.” John Maurice Clark, in the round table commenting upon Hotchkins’ paper, took a somewhat intermediate position. On the one hand, Clark denied that market dominance made abuses inevitable and warned about the outcome of “active competition,” which, in his own words, “tends to cutthroat wars and agreements.” Ultimately, he affirmed, the “poor phantom of potential competition” would function as a dependable safeguard. On the other hand, as to the Court decisions, he cautiously observed that “these semi-dissolutions, establishing as they do partial communities of stockholders’ interests, steel seem to be promising to produce a tolerable condition” (Clark 1914, 193).<sup>10</sup> Similarly to the majority of his colleagues, Clark concluded his contribution asking for more precise standards than the rule of reason the Court pronounced in the Standard Oil and American Tobacco cases.

Albeit too heterogeneous to define a univocal professional consensus, the economists’ reactions to the 1911 Courts’ decisions were nevertheless sufficiently cohesive to delineate a prevalent dissatisfaction with the dissolution of large conglomerates such as the Standard Oil and American Tobacco company, and a widespread support for some form of “reasonable” restraint of trade under a certain degree of governmental regulation. In essence, and this will be a central theme of this essay, professional economists understood that the new large-scale production organization of American capitalism called for a “trustified,” or “administered,” competitive market regime – as against the “old” competitive system – and for a corresponding adaptation of the law. As Vanderveer Custis from the University of Washington put it in his comment on the 1911 trust decisions: “[t]he problem is not so much the choice between the regulation of the trusts and the reestablishment of competition, as the choice between the regulation of the trusts and the development and regulation of new industrial conditions in which, of course, it is possible that more or less competition may prevail” (1914, 192).

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<sup>9</sup> In the case of the American Tobacco, however, Durand maintained that the dissolution was actually successful in reactivating actual competition in the tobacco industry. A similar opinion was expressed by Muhse (1913).

<sup>10</sup> The previous year, however, in a more critical vein Clark had written: “For decades we have been working to break up the so-called trusts and restore competition, but we seem to have accomplished little more than to reveal obstacles, obstacles that to many seem insuperable. Our dissolutions dissolve nothing: combinations are Protean, and we are baffled by shadowy communities of interest which seem to have no body we can grasp.” (Clark 1913, 114).

### 3. The debates

Apart from the specific comments on the dissolution of the Standard Oil and American Tobacco companies, the 1911 Courts decision had two relevant effects on the academic discussion of the trust problem. On the one hand, they breathed new life into the long lasting debate on the efficiency of trusts and combinations *versus* the wastes of “ruinous competition.” On the other hand, the 1911 court decisions had the consequence of narrowing the range of inappropriate behavior by trusts with which economists concerned themselves. As Anne Mayhew (1988, 192) pointed out, “[t]he focus was now largely on price and on the relationship among firms [while] concerns about political power had faded from the economic literature.” The emphasis in the economists’ contributions shifted from considerations relating to the mere size of trusts to their behavior and the form of their legal organization. The perceived failure of the 1911 dissolutions gave also new vigor to the discussions concerning the necessary policy measures to place under control these giant consolidations Each of these debates will be analyzed in some detail in the next two subsections.

#### 3.1. Economic efficiency and the wastes of competition

The academic discussions which followed the 1911 dissolutions of the Standard Oil and American Tobacco were varied and multifaceted, including and blending aspects of theoretical economics, industrial organization, and corporate finance. A basic issue framing the whole debate was still whether and to what extent large conglomerates were economically efficient. As William A. Rawles from Indiana University, commenting on the 1911 Court’s decisions, put it in the *American Economic Review*: “the hesitation in our policy of trust regulation is due in part to the difference of opinion among economists respecting the essential point in the controversy,—namely, the efficiency of combinations” (1914, 182).

Supporters of the trusts, or at least those economists who considered the corporate giants as the natural response to the new large-scale industrial conditions, were apt to stress their crucial role in preventing the deleterious effects of “ruinous competition.” Albeit present in the American economic literature at least from the 1890s, the theme of ruinous competition – as noted by Herbert Hovenkamp (1991, 316) – “had a brief revival after the rule of reason was developed in the 1911 Standard Oil and American Tobacco decisions.”<sup>11</sup> Several reiterations of the ruinous competition argument can be found in the post 1911 economic writings. John Bates and John Maurice Clark, in their 1912 *Control of trusts*, referred to both economies of scale and the presence of relatively high overhead costs as attributes leading to destructive competition. In those cases, following a decline in demand or excessive entry in the industry, the demand curve would shift below the declining curve of average costs. Although total costs are no longer covered, the individual firm may still face a market price exceeding average variable costs. It may then find an incentive in displacing competitors by increasing production and cutting the price. This, however, would trigger a reaction by competitors:

The other companies are in the same situation and have the same incentives, while they are spurred to aggressive action by seeing their established market taken from them by the belligerent tactics of their neighbor. So, first, there comes retaliation and reprisal until a form of guerrilla warfare takes the place of reasonable competition, and finally, the ruinously low prices spread over the whole market and profits are turned into losses everywhere (Clark and Clark 1912, 174).

In a quite similar fashion, Lewis H. Haney, writing in 1914, repeated that ruinous competition is likely to occur when the ratio of fixed to variable cost is high and identified, more explicitly than the Clarks, what we would now call “sunk costs” as playing an important role leading to monopoly outcomes.<sup>12</sup> Honey’s account deserves to be quoted in full length:

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<sup>11</sup> For an excellent and well documented reconstruction of the “ruinous competition” controversy see Hovenkamp (1991 Ch. 23).

<sup>12</sup> Lewis Henry Haney was born in Eureka, Illinois on 30 March 1882. He took his AB in economics at Dartmouth College in 1903 and his Ph.D. at the University of Wisconsin in 1906. He taught economics at the University of Iowa from 1906 to 1908, then was assistant professor at the University of Michigan from 1908 to 1910 and professor at the University of Texas from 1910 to 1916. He served as a member of the Economic Advisory Board of the Federal Trade Commission from 1916 to 1920. For a complete biography see Witzel (2005, 245-46).

Take any non-monopolistic business employing a large amount of fixed capital, which is the case wherever machinery plays an important part quantitatively, and a large part of the expenses is fixed. This means that if the output can be increased with the same investment in plant, the net returns per unit will increase: the business is one of “increasing returns” or “decreasing costs.” The moral would seem to be “increase your output.” But what happens when this natural impulse is obeyed by competing producers? First, prices sooner or later fall as a result of increased supply, and a time comes when they fall faster than expenses. Then comes overproduction, which means producing more than can be sold at prices which will cover costs. And finally, the producer realizes that he has on his hands a mass of capital which is so specialized that he cannot turn it into other industries and is so fixed that charges must accrue on it for a life period of considerable extent. He is without alternative and continues the struggle, selling for what he can get, until exhausted (Haney 1914, 135-36).

The main implication of the ruinous competition thesis was that many economists were led to affirm that the concept of “reasonable restraints of trade” should also include cartels, mergers and other forms of agreements efficiently designed to protect participants from the consequences of destructive competition. “The rise of trusts, pools, trade agreements” – wrote Irving Fisher – “is largely due to the necessity of protection from competition, precisely analogous to the protection given by patents and copyrights” (1912, 331). The Yale economist continued:

*The antitrust movement, in so far as it aims to compel competition, does not take these facts into account; nor does it understand the necessities which have led to monopoly. So considerable are the lines of business in which either there is a large sunk capital or a descending supply curve, that if we do not allow some form of trade agreements many kinds of trade are to-day impossible (1912, 332 quoted in Dilorenzo and High 1988, 427).*

The same argument was advanced by Oswald W. Knauth from Princeton University: “[t]he greater the fixed capital in the form of highly-specialized machinery, the more necessary is it to control the conditions of the industry” (1915, 587; 1916). Knauth – a former student of Mitchell at Columbia – developed this general contention in connection to the recent enforcements of the Sherman Act in the Standard Oil and American Tobacco cases. The recent policy of unqualified trust dissolution, he argued, is doomed to lead to destructive results – in terms of public welfare and economic efficiency – in those industries where competition not only may be ruinous, but also too vigorous in promoting technological advance with the consequent destruction of the capital embodied in the old discharged assets. “The greater the proportion of fixed capital,” – he maintained (1915, 580) – “the more destructive is a change.” According to Knauth the Courts had failed to recognize the different capital intensity of the industries where the Standard Oil and the American Tobacco operated. While “the relation of capital to annual added value in the oil business is as five to one;” in the tobacco business “they are about equal.” As a result, “[t]he destruction of capital through competition in the tobacco industry is negligible; in the oil business the risk is tremendous and must be insured against by means of higher prices, which the public must pay” (1914, 588).

Apart from the ruinous competition theme, other arguments animated the “trust-efficiency” debate. In general terms, field specialists more sympathetic with the trusts reiterated that the object of forming large conglomerates was to raise profits by rationalizing productive processes, closing inefficient plants, and achieving optimal capacity. More specifically, three different sources of economic efficiency were individuated. First, a trust would maximize its efficiency through the attainment of scale economies and economies of distribution; second, a trust would minimize organizational and transaction costs *à la* Coase by a process of vertical integration; third, a trust would increase its profitability by acquiring a dominant position in the market for its inputs and outputs. These three aspects were ambiguously blended in the several accounts of the superior efficiency of large conglomerates which are to be found in the literature of the period. Edward S. Meade, a corporate finance specialist from Pennsylvania University,



provides an excellent illustrative example of this attitude.<sup>13</sup> Meade – critically surveying the contemporary debate – found six types of advantages that could be achieved by uniting under a centralized control a large number of plants which had formerly been under separate managements: first, the centralization of administrative functions and the “dismissal of a large number of high-priced officials;” second, the saving in cross freights; third, broader and cheaper access to credit; fourth, lower price on material inputs “secured by ordering in larger quantities;” fifth, the advantages of large capital “in enlarging plants, in conducting expensive investigations with a view to reducing the cost of production, and in enlarging foreign trade;” and sixth, the elimination of “competitive advertising” (Meade 1912a).<sup>14</sup> To this main list, Meade added the following “minor” advantages such as:

the closer regulation of the middle-man, the reduction in the amount of bad debts, the closer restriction of contracts and credits, the improved position in dealing with rail-roads, the devoting of specialized plants to different products, the concentration of production at the best plants during periods of slack demand, the general distribution of the special knowledge and processes and patents of each plant, the improvement in the methods of accounting, the advantage of comparing the costs of one plant with those of others, and the perfection of factory organization in order to obtain the highest efficiency (Meade 1912a, 359).

Other contemporaries advanced similar lists with some additions or slight modifications in terms of style and emphasis (Honey 1914; Jenks 1912; 1914; Knauth 1912).<sup>15</sup> According to Jenks, for instance, the trusts could also claim with some justification to be providing good wages and secure employment for at least a portion of their employees. “[T]he point to emphasize [...]” – he wrote – “is that the savings of industrial energy, and of greater efficiency would permit the increase of wages without increasing prices” (Jenks 1912, 354).

Dissenting views, albeit less numerous, were not absent. Critics, it should be noted, did not deny that substantial advantages in terms of efficiency could be obtained through horizontal and vertical integration. They maintained, however, that the higher relative efficiency of large business units had been unduly exaggerated in comparison from the benefits accruing from their monopoly power and anticompetitive practices. As John H. Gray, professor of economics at the University of Minnesota, put it, “in the last ten years we have come to realize that these efficiencies of organization and operation, while they may exist, are of less significance than certain elements which heretofore have received an inadequate consideration. The monopolistic power of such organizations to control the market and secure higher than competitive prices, has been more important than the increased efficiency coming from combination” (1913, 135).

Several specific objections were raised to the superior efficiency of the trusts as economic entities. In large part the discussion did not contain any element of novelty and followed the lines already scrutinized by Charles Bullock in his 1901 critical survey of the trust literature (Bullock 1901). Hochkins (1914, 166), for instance, pointed out that vertical integration is not always beneficial. There will be a limit to it. The economies are eventually limited – and in fact diseconomies will arise – because of difficulties in managerial coordination and control as more and more stages are combined under a single management. Furthermore, Hochkins insisted (1914, 167), concentration and monopoly would work as a deterrent for individual inventive and technological progress.

Edward Dana Durand, fine statistician from the University of Minnesota and former director of the Census Bureau, was perhaps the most sharpest critic of the trusts.<sup>16</sup> In two influential essays appeared in

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<sup>13</sup> Meade had studied economics at Chicago under J. Laurence Laughlin, and was one of the founding faculty members of Harvard Business School. On Meade’s career and contribution to corporate finance see Witzel (2007).

<sup>14</sup> A precise definition of “competitive advertising” is provided by Jenks (1912, 350): “A monopoly may advertise extensively to extend its trade and to increase consumption of its goods. Competitive advertising often does not increase trade largely, but only determines from which dealer the consumer shall buy. The distinction between these two kinds of advertising should be carefully noted.”

<sup>15</sup> It should be noted that, compared to the analysis of Honey, Jenks and Knauth, Meade’s was phrased in more critical terms. See our discussion of Meade’s empirical test of the “economies of combination” below.

<sup>16</sup> Edward Dana Durand (1909-1913) attended Yankton College for one year before transferring to Oberlin College. He received a Ph.D. from Cornell University in 1896. After receiving his doctorate, Durand moved between several

the *Quarterly Journal of Economics* (1914b; 1914c), Durand advanced a series of counter-arguments to confute – or, in some cases, to circumstantiate – each of the several factors advanced by the apologists of the higher efficiency of the trusts.<sup>17</sup> Durand’s aim was to demonstrate that “many of the alleged advantages of trusts in efficiency could probably secure in almost if not quite as great measure through large individual plants and through smaller combinations not powerful enough to threaten monopoly” (1914c, 697). One of the most original aspects of Durand’s discussion was his direct attack to the contention that mergers and pooling should be considered as the only efficient response to the threat of destructive competition. According to Durand, the conditions leading to ruinous competition – high overhead and low variable costs – while present in specific businesses such as transportation and natural monopolies, are unlikely to be found in manufacturing industries. First, manufacturing firms shows a lower capital intensity than their railroad and public utilities counterparts. While the average investment-revenue ratio in the railroad, electric, and gas industries is between four and five, in manufacturing is close to unity. “Even in the steel industry,” Durand (1914b, 412) wrote, “which is one of the exceptionally large fixed capital, the reported value of capital only slightly exceeds the annual value of output.” Second, differently from transportation, manufacturing industries generally show a flat supply curve, at least for some significant intervals, so that a reduction of output in the wake of an unfavorable price reduction does not generally imply an increase in unit costs, including fixed charges. Even admitting a declining supply curve, Durand insisted, average costs are unlikely to fall through the entire range of production. At some point, it would become difficult to gain efficiencies by merely expanding. Finally, in manufacturing industries, each individual firm owns only a comparatively small portion of the total productive capacity. Under such conditions, no single firm can by price-cutting expect to increase its market share in any such proportion as in transportation industry. For these reasons, this was Durand’s main contention, the incentive to merge or collude in manufacturing industries is weaker than in special fields like railroad transportation: “there are many manufacturing industries today in which we find neither destructive competition nor combinations in restraint of trade” (1914b, 413).

A final mention should be made to Meade’s 1912 pioneering attempt to provide an empirical measure of the economic performance of trusts and combinations. Meade presented an index number of the prices of eighteen commodities produced by trusts and eighteen commodities produced under competitive conditions for the years 1897-1910. Meade’s data were obtained from the Bureau of Labor and his relative prices were computed on the basis of actual prices in January 1897. From his analysis Meade reached the following conclusions: 1) that in the years 1897-1900, while the trusts were in process of formation, the two series of relative prices ran nearly parallel; 2) that since 1900 the trust-made products had lower relative prices than those made under conditions of competition; 3) that the trust-made products were decidedly more stable in price than competitive ones, so far as large fluctuations are concerned. For this results, Meade (1912, 363) stated his verdict rather unequivocally: “[t]he advantage of the trust, on the points both of lower prices and of stable prices, is apparent and considerable.”

Less positive results, instead, were reached in connection to the superior efficiency of the trusts. Meade acknowledged the difficulties encountered in producing an index of technical efficiency. These were due mainly to the lack of uniformity in the accounting systems of the corporations under scrutiny which made any direct comparison meaningless. The solution adopted was quite straightforward, namely to adopt corporate profits as a proxy for economic efficiency. Basing his calculations on the net earnings of twenty-nine manufacturing holding companies, from 1902 to 1910, Meade presented an aggregate index number with the profits of 1902 as a basis. The index showed, for the nine years, an increase of about 37,7 per cent in the net earnings of the twenty-nine conglomerates under scrutiny. Meade judged this performance rather disappointing:

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government and academic positions until 1909, when he became deputy commissioner of corporations. Later that year, President Taft appointed him the new director of the census. After leaving the Census Bureau in 1913, Durand eventually took a place on the U.S. Tariff Commission, where he served from 1935 until his retirement in 1952. See Pribram (1860) for a full biographical account.

<sup>17</sup> The two essays drew upon a series of lectures delivered at Harvard University in April 1914.

An increase of 38 per cent in the net earnings of these companies in nine years, including a period of extraordinary expansion along every line, and considering also the fact that in many cases these combinations have enjoyed some monopoly advantage, *does not conclusively indicate that in the industrial trust an agency has been discovered which is destined to revolutionize our ideas of efficient business organization* (Meade 1912a, 365: emphasis added).

Similar conclusions were reached through the analysis of the amount of dividends paid on their common stock by a sample of fifty-five large conglomerates (Meade 1912a, 365-66; see also Meade 1912b).

### 3.2 Unfair competition

Within the general debate on the efficiency of trusts and the wastes of destructive competition other more contingent discussions took place in the years following the 1911 Court's decisions. As already remarked, these discussions centered on the contribution of certain practices and legal arrangements to the emergence of monopolistic positions. The practices under scrutiny included price discrimination and other non-price constraints such as exclusive dealing and tying contracts, and the establishing of horizontal restraints through the devices of the holding company and interlocking directorates. This is not surprising since both the explicit recognition of anticompetitive conduct and use of the holding company to acquire monopoly power had played a major role in shaping the Court's decision leading to the dissolutions of the Standard Oil and American Tobacco companies.<sup>18</sup>

In order to introduce the debate on unfair competition a brief assessment of the doctrine of "potential competition," as presented in the academic literature of the period, becomes necessary. John Bates Clark's contribution, in this connection, is particularly enlightening. Clark had developed the concept of potential competition as early as 1887 in his essay on "The limits of competition" where he presented it as a modification of a similar argument first enunciated in John Cairnes's *Some Leading Principles of Political Economy* of 1874 (Clark 1887, 48). Essentially, potential competition is that which would develop if monopolies actually used their economic power to raise prices much above the competitive level. Were this to happen, new competitors would appear to take advantage of the higher profits associated with monopoly pricing and this would force price down to the near-competitive level. In other words, if we do not observe entry into a particular industrial field, existing large corporations are not unduly exercising pricing power.<sup>19</sup> As Clark affirmed in his *Essentials*: "[s]ince the first trusts were formed the efficiency of potential competition has been so constantly displayed that there is no danger that this regulator of prices will ever be disregarded." (1907, 381).

In Clark's later contributions, however, the faith on the benefits of potential competition was phrased in much more cautious terms. Writing in 1912, shortly after the American and Tobacco cases, Clark expressed the fear that "bullying" tactics by dominant trusts could prevent the emergence of new competitors and therefore limit the check of potential competition on monopoly power: "[t]he limit on prices which merely potential competition now furnishes is not a close one, and the reason for this is the power of the great producer to 'slug' the small one when he actually appears in the field, by preferential

<sup>18</sup> Another somewhat parallel debate focused on the financial abuses perpetrated by the trusts, such as stock watering and overcapitalization. A full assessment of this debate, which had only a minor impact on 1914 the trust legislation, is well beyond the scope of this paper. See Mitchell (2008) for an historical reconstruction of the American economists' contribution to the various problems of trust finance during the first decades of the last century.

<sup>19</sup> Arthur Cecil Pigou advanced a sharp criticism of potential competition in his review of the first edition of John B. Clark's *The control of Trusts* (1901). The basic argument advanced by Pigou is that there are no reasons for the incumbent to reduce prices in advance of entry. When a potential competitor decides whether to enter or not, it will rationally look at the market conditions that may prevail after entry as a consequence of the incumbent's reaction, not at the price level before entry. As Pigou acutely noted: "It is not enough for a potential rival to be able to compete with the prices at which the trust at any time *chooses to sell*; he must be able to meet those at which, by abandoning all 'monopoly revenue' and contenting itself with 'normal profits' it *could* sell. Otherwise even though all 'illegitimate' competition were made impossible, the risks before independent producers would still be so great, that prices might be kept well above the point at which they could reap a profit, without ever inducing them to come into the field. The latent power of the Trust to fix a new price level, high enough to maintain itself, but low enough to ruin them, would frighten them away" (1902, 66: emphases in original).

rates of transportation, by local discrimination in the prices of goods, by the factors' agreement, and by other measures" (1912, 64). Other leading economists of the time expressed similar views (Hotchkins 1914; Sprague 1913; Stevens 1914a; Wright 1913).<sup>20</sup>

This growing skepticism towards the discipline of potential competition was reflected in the parallel increasing attention devoted to the anticompetitive behavior of the trusts. Disagreement among interpreters, however, emerged in connection both to the relative significance and definition of unfair competition. Opinions differed markedly, for instance, as to whether the prescription by law of unfair practices would be by itself a sufficient condition for the elimination of the monopolistic power of the trusts. Here we find rather divergent views. According to William S. Stevens from Columbia University, "if the Sherman Act can eliminate certain piratical and predatory methods of competition, a larger proportion of the 'natural' tendency toward combination would dissolve into the thin air" (1912b, 6). Likewise, Chester W. Wright – University of Chicago's economic historian and trust expert – affirmed that the prohibition of all unfair methods of competition would be, in the majority of the cases, "sufficient to curb all dangers of monopoly" (1912, 126).<sup>21</sup>

Contrary views – generally advanced by critics of the trusts – tended instead to minimize the relevance of unfair practices in the acquisition of monopolistic positions. "In the case of a good many trusts and pools we have reason to believe [...]" – wrote Durand (1914b, 389) – "that unfair competitive methods and special monopolistic features have not been important factors." Durand insisted on the necessity to distinguish between the "trust problem" properly understood, namely monopolistic power deriving from market dominance, and the "unfair competition problem," which should not be considered as the main source of monopoly. This led Durand to affirm: "[t]he restriction of unfair competitive methods and of special monopoly privileges would be a proper enough adjunct of the policy of prohibiting combinations, or of the policy of regulating their prices and profits. *But standing alone it is not a sufficient safeguard against monopoly*" (Durand 1914b, 401: emphasis added).

Other divergences emerged in connection to the very definition of unfair competition. For some economists, the scope of unfair methods of competition could be determined with reference to the potential results of the conduct in issue rather than by attempting to define the specific violations. According to Knauth, the most outspoken proponent of this point of view, unfair practices "consist not so much of certain acts," but rather "of an interpretation of acts in a given set of circumstances." Accordingly, unfairness would depend on industry-specific circumstances, which would change over time, and not on absolute and immutable standards. As Knauth explained:

Price-cutting, for instance, is "unfair" only when it is practiced by a powerful competitor with a view to ruining a financially weak, though perhaps efficient, competitor. Yet ordinarily price-cutting is the chief aim of the competitive system. Manipulation, exclusive sales, rebates, black-lists, bogus independent concerns, are all "unfair" only when they increase the chance of survival of the inefficient (Knauth 1916, 258).

The majority of the profession, however, insisted on the necessity to define in precise and unequivocal terms which practices should be explicitly considered as unfair. In this connection, the most noteworthy effort to sketch a comprehensive list of anticompetitive acts came from William H. Stevens,

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<sup>20</sup> Sprague offered an alternative explanation for the declining force of potential competition. In his view, this was mainly due to the changed industrial conditions which require, for an entrant wishing to serve the market, to invest in large amounts of plant and equipment of a highly specific character. In addition, Sprague observed, when the challenge to the incumbent is perceived to be particularly risky, the entrant would find serious difficulties in accessing external sources of financing for his enterprise. "The reputation of the investment banker" – he wrote – "rests largely upon the course of the securities he has already marketed. He can hardly be expected to foster new issues which are quite likely to prove of uncertain worth themselves and also weaken the standing of those which he has already placed among investors." (1913, 138).

<sup>21</sup> A somewhat unique position was held by Knauth. In his opinion, the banning of unfair practices would be necessary, not to restore competition, but rather to facilitate the natural emergence of monopoly based on superior technical and organizational efficiency. In his opinion, "the prevention of unfair competition is, at best, limited in scope to assuring the survival of the productively efficient, and [...] it does not alter or lessen the forces in capitalistic competition which are operating to bring about monopoly" (1916, 259).

one of the leading authorities in the field and later assistant chief economist of the Federal Trade Commission. In two oft-quoted articles published in the *Political Science Quarterly* (1914a; 1914b), as well in a parallel series of detailed case studies (1912a; 1912b; 1912c; 1913a), Stevens analyzed the actual implementation and the consequences on competitors of eleven species of unfair practices. These included local price cutting, bogus “independent” concerns, “fighting brands” (e.g., low-priced brands, secretly made by manufacturers of high-priced brands, brought into a market to repel new entry), and various kinds of tying arrangements.<sup>22</sup>

Stevens’ taxonomic approach, albeit influential, remained an isolated case. In general his contemporaries focused almost exclusively on vertical restraints such as exclusive dealing and tying arrangements, and on the practice of charging different prices for the same product with the intent of injuring a competitor. Evidence from the anticompetitive effects of exclusive dealings contracts came especially from the American Tobacco case, where it was shown that exclusive dealings in cigars and other tobacco products was driving out the independent dealers who carried a range of different products (Muhse 1913).

Price discrimination, in particular, was widely debated. In this connection, it is important to recall that price discrimination by unregulated monopolies played an important political role in stimulating the introduction of price regulation of “natural monopolies” in the United States. The creation of the Interstate Commerce Commission in 1887 to supervise rail freight rates was heavily influenced by the perceived inequalities of charging different consumers different prices for what appear to be the same service. Whatever the efficiency implications of price discrimination, it was argued, its prohibition would allow to protect local independent concerns against the discount pricing policies of their larger rivals. “Local price discrimination” – wrote Eliot Jones (1913, 133) – “has been a factor in the development of monopolies, and the possibility of such discrimination has tended to prevent potential competition from becoming effective competition.” The Clarks also pointed out that the banning of price discrimination would place an important check on the process leading to cut-throat competition. “[I]f any cut prices had to cover all customers or none at all” – they asked – “would not a manager think twice before offering his whole output below cost?” (Clark and Clark 1912, 175).

As a cautious defender of price discrimination, instead, Jenks offered a different perspective, affirming that “such discriminations at times may be beneficial to society.” Jenks agreed with Clark that in the case of natural monopolies, such as railroad transportation, price dissemination would generally be “unfair.” Railroad corporations, he admitted, are notorious in using their monopoly power to reward and punish firms through a pricing policy that features different prices to different firms for carrying the same tonnage over the same distance. Nonetheless, Jenks noticed, the majority of large conglomerates operate in competitive industries which, differently from railroads, do not imply any form of natural monopoly. In this case, price discrimination policy could significantly affect the scale on which new entry into the industry occurs, or even whether it happens at all. “If then,” Jenks concluded, “rivals in competitive trade against the great corporations get their start by special rates to individual customers and by making leaders of special articles—to compel them to sell to all customers at the same rate is against free competition, as the word is ordinarily used. Will the limitation of free action harm most the Trusts or its rival?” (Jenks 1914, 324-25).<sup>23</sup>

### 3.3 The corporation problem

Another important issue, often discussed in connection to the problem of unfair competition, was the so-called “corporation problem.” “In these days” – lamented Haney – “we hear too much of the ‘trust problem’ and too little of the *corporation problem*.” The former “is the problem of monopoly, and involves

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<sup>22</sup> Steven’s complete list comprehended: local price cutting, bogus independents, fighting ships and brands, tying contracts, exclusive dealings, rebates and preferential contracts, acquisitions of exclusive or dominant control of machinery or goods used in manufacturing, “manipulation,” boycotts, espionage, and coercive threats and intimidation.

<sup>23</sup> In addition, Jenks pointed out that “a law forbidding discriminations [...] can be easily evaded. It is impossible in many cases to get evidence” (Jenks 1914, 327).

broad questions of economic policy;” while the latter “concerns the form of business organization, and is largely concerned with legal institutions” (Haney 1913, 368: emphasis in original).<sup>24</sup> More precisely, by “corporation problem” it was commonly meant the “holding company problem.” It was in fact the holding company the target of much criticism by those economists who viewed it as a legal institution recently created with the exclusive aim of facilitating monopoly.<sup>25</sup> The holding company, it was argued, allows corporations to control assets that significantly exceed their capitalization through the creation of a series of intermediary companies within a pyramided structure. The “unfairness” of this legal arrangement was that it permitted the acquisition of monopolistic control at a reduced cost without having to bear the cost of full ownership integration. Further, the holding company permitted firms to expand across state lines without having to pay “foreign” corporation taxes, i.e., the corporate taxes of states other than those of the initial state of incorporation. The Clarks placed their critique in quite harsh terms:

There is one institution, a bad product of recent development, for which no good words should be said, and very few are said. It is the “holding company” so called, and is diabolically perfect as a means, first, of concentrating the control of many corporations in a single one and, secondly, of concentrating the control of that single company in a small minority of the real owners of the capital and the business over which they have sway. It sometimes puts property belonging to a vast number of owners at the disposal of a very insignificant minority and because of its bad perfection in creating monopolies, which injure consumers, and in building up little oligarchies within the monopolistic corporations, and so injuring honest capitalists, it finds few so mean as to do it with reverence (Clark and Clark 1912, 74).

The constitution of a holding company was also seen as the perfect complement of some financial manipulative devices such as the inflated appraisal of the constituent companies' properties leading to stock watering of assets:

Nothing is simpler than this means of uniting rival corporations under one control and the excluding the great body of owners from all power over them. First, inflate the capital of the original and constituent companies until the common stock is mostly water; then organize a new corporation to buy the majority of that water, and the thing is done (Clark and Clark 1912, 75-76).

Haney (1913, 14-15) shared the Clarks' point of view but presented it in a slightly different perspective. He agreed that large corporations had become undemocratic “oligarchies” with ownership “becoming more roundabout” and risk dissociated from “directive authority.” In a quite explicit Veblenian fashion, he stated that the emergence of the holding company has effected a deep “transformation” in the nature of property rights and was producing indirect, absentee ownership and “irresponsible direction and clash of interests” within the corporation.<sup>26</sup> Corporate “insiders” often owned few stocks, bore minimum risk, had great directive power but very indefinite responsibilities, and could run their corporations as “gambling houses” at the stockholders' expense. This led Haney to affirm:

From a public point of view is the great objection to holding-company organizations. In the first place, we have seen that the financial liability of the members of a holding company may be only a fraction of their financial power. In the second place, they are under no adequate responsibility for their economic and social power. To the extent that monopoly and restraint upon the freedom of trade are harmful, the holding company is a menace which, while it perhaps need not be destroyed, needs public supervision” (Haney 1913, 236-37).

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<sup>24</sup> Wright phrased the problem in slightly different terms: “The heart of the trust problem, as I view it, centers about the control of monopoly price; the corporation problem, on the other hand, is primarily concerned with maintaining proper relations and protecting the respective rights of the officers, creditors, and investors in such a form of corporate organization as shall prove suited to the real needs of modern industry” /Wright 1912, 582{.

<sup>25</sup> See Bonbright and Means (1932), Hovenkamp (1991) and Prechel (2000) for a detailed account of the legal origins of the holding company in the United States.

<sup>26</sup> Haney (1913, 5) referred to Veblen's *Theory of business enterprise* (1904).

Closely related to the holding company, was the problem of interlocking directorates. An interlocking directorship occurs whenever one person is a member or two or more boards, and the “interlocking directorate” is the whole web of corporate connections that is built up from these interlocking directorships. Interlocks tie enterprises together and thereby increase the overall level of concentration in the economy, and it was this concentrating effect of interlock which led critics to see them as being anti-competitive. The pervasive existence of interlocking directorates had been brought to the attention of economists – and public opinion – by the publication in 1913 of the Pujo Committee official investigation on the so called “Money Trust.” The Pujo Committee found, among other things, that the three largest New York banks – J. P. Morgan and Company, First National Bank, and National City Bank – were represented through 341 directorships on the boards of 112 corporations. One hundred eighty persons held 746 directorships in 134 corporations. The same 180 individuals held 385 directorships in 41 banks and trust companies. The Pujo Committee concluded that these financial institutions dominated corporate capital and credit in the United States, and that cooperation between interlocked firms was so consolidated that “virtually no competition existed among them” (Money Trust Investigation: Report 90, 55: reprinted in Faulkner and Flügel 1929, 597-700).

The results of the Pujo committee were referred by economists as evidence of the phenomenon of interlocking directorates. Durand, for instance, criticized the extent of overlapping corporate management among large business conglomerates including banks and insurance companies. He believed interlocking directorates were incompatible with healthy competition for credit, and undercut efficiency in the flow of capital to industry. “The investigations of the Pujo committee” – wrote Durand – “have made it clear that the flow of capital into industries is not altogether free from restraint. We may not credit fully the conclusions of that committee as to the power of the Money Trust. It is a fact, nevertheless, that a limited number of great financial interests, closely intertwined, and with a multitude of ramifications, have a considerable degree of control over credit throughout the country. A concern requiring large capital would find difficulty in placing securities or in borrowing money, if its purposes were inimical to combinations or corporations in which these great financial leaders were interested” (Durand 1914b, 397). Other leading figures of the time referred to the Pujo report and pointed out that interlocks had the effect of reducing competition among the leading commercial banks, concentrating control over credit in the hands of a few bankers, and eliminating opportunities for new board members with no conflict of interest (Kemmerer 1913; Laughlin 1914; Sprague 1914).

A contrary view was advanced by Frank Haigh Dixon, a railways expert from Dartmouth College, in the pages of the *Journal of Political Economy*. Dixon rejected the findings of the Pujo committee – which, in his words, “displayed at times a childish prejudice against Wall Street and all its works” (1914, 943) – and defended interlocking directorates on the ground that they make possible a degree of coordination and cohesion at the social level that individually owned firms could never achieve. Dixon argued that in the railway industry, his main field of inquiry, many directors were recruited from the outside to allow cooperation among key actors in the market and to monitor business conditions on behalf of the firm. “Such close co-operation” – he affirmed – “will work not to the restraining of trade unreasonably but rather to its liberation, for it will permit the execution of co-operative plans for relief in many situations that are now wastefully handled. It will permit the application the principles of scientific economic railway operation to the railway system as a whole” (1914, 954). For Dixon – and this was his central contention – the socialization of ownership created by inter-corporate stock ownership and common stock holders would operate in tandem with the socialization of authority forged by common shared directors, accommodating market relations to the new conditions of large scale corporate competition.

### 3.4 The policy debate

As mentioned at the outset, the debate which followed the 1911 Court’s decisions had also primary policy implications. In this regard, it is interesting to note that while the more “theoretical” discussion of the trust problem had clearly revealed various positions and nuances among the participants, the actual suggestions emerging from the policy debate showed a rather well defined consensus among professional economists. Such a common position centered around two explicit remedial prescriptions, namely, the precise prohibition by legal statutes of unfair practices, and the establishment of an administrative commission with regulatory and licensing powers which would also take over the mere information

gathering functions of the Bureau of Corporations, an entity that already existed in the department of Commerce.<sup>27</sup> Frank W. Taussig offers an enlightening statement which epitomizes the main lines of this general policy consensus. “Two things” – observed the Harvard economist in 1913 – “seem to me clear as regards the present state of the combination problem.” In the first place,

we are not certain how far combination conduces to effectiveness; hence not certain whether the drift toward it is inevitable. We shall get our best evidence on the subject if we succeed in putting an end to brow-beating and bullying. All the devices which a great concern can use for getting rid of a competitor, should be prohibited; such as intentional price cutting, bogus competitors, spying, and the various mean and underhanded doings uncovered by recent prosecutions. Let us hope that legislation can secure this much, and leave the field open for real competition. Then we may have some comparison between the industrial effectiveness of a huge concern and its smaller rival.

In the second place,

we need what I may call a “round-up.” We need a registration of all the large concerns, and more routine information about them than we have now. The powers of super-vision of the Bureau of Corporations should be enlarged. All “industrials” should make regular reports to it, perhaps similar to those which the railways make to the Interstate Commerce Commission; and the Bureau should have authority to check those reports, and to examine all books and records. The time may come when the Bureau should be given much greater powers. All agree that a task of price regulation would be in the highest degree difficult. Before we go so far as this, let us see what can be done toward making competition effective, and toward ascertaining how competition really works (Taussig 1913, 132-33).

Expressions of faith in the ability of an administrative commission to deal with antitrust problems surfaced throughout the academic debate (see in particular: Clark J. B. 1912; Clark J. M. 1913; Durand 1914b; 1914c; Haney 1914; Hotchkins 1914; Seager 1911; 1912; Willis 1912; Wright 1912). The potential procedural benefits of an administrative agency regulation – in contrast to judicial case-by-case resolutions of antitrust questions – was presented as an antidote to the uncertainty introduced by the 1911 Court’s introduction of the flexible “rule of reason.” Two principal procedural benefits were claimed by the advocates of a federal trade commission. First, attention was called to the ability of the administrative process to act promptly and, in so doing, to prevent the emergence of dominant market positions. As Durand (1914b, 410: emphasis added) put it: “[i]f a proper control over the organization of corporations and over their acquisition of property and securities were exercised by the states and by the Federal government, the attempt to organize new trusts could be nipped in the bud. *Herein lies one of the strongest arguments for the creation of a trade commission with power over corporations engaged in interstate commerce.*” Second, many economists insisted on the potential use of technical expertise in an administrative agency to resolve broad issues definitely. “In justice to the public and to wavering business” – in the words of George E. Putnam – “there is needed an intelligent guidance, such in fact, as can be secured only through the aid of a commission composed of experts in whom is vested the three-fold function of investigation, control, and cooperation with the Department of Justice” (Putnam 1914, 189). According to Haney, technical advice was mainly necessary in order to individuate those industrial fields in which “while monopoly is not clearly ‘natural,’ legitimate competition tends to become excessive or ‘cut-throat.’ In this connection, he affirmed, “the testimony of economic experts would be valuable” (Haney 1913, 406).

Apart from these general declarations of faith, it should be noted, very few economists did actually discuss in detail the substantial powers to be handed to the proposed trade commission. Moreover, when this happened, potentially quite different visions of a commission seem to emerge from their proposals.

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<sup>27</sup> The Bureau of Corporations in 1913 was created as an investigatory agency within the Department of Commerce and Labor, also created the same year. Over its twelve years of existence, the Bureau produced a series of reports. Its 1906 report on petroleum transportation made recommendations that became part of that year’s Hepburn Act. Its investigation and report on the petroleum industry facilitated the government’s prosecution of Standard Oil. The Bureau also conducted studies of other major industries, including tobacco, steel and lumber. On the history of the Bureau of Corporations see Johnson (1959) and Sklar (1988, 184-203).



Some, like Durand and Hotchkins, tended to emphasize the investigational role of the commission to aid courts in formulating dissolution decrees, supplemented by enforcement authority over specifically defined law violations, but made no mention of a federal license or incorporation law. Others, like John Bates Clark and his Columbia colleague Henry Seager seemed to prefer a commission with stringent licensing or chartering powers as an essential policy measure to curb monopoly power. Specifically, Clark and Seager envisioned a federal license or incorporation law under which no corporation could engage in interstate commerce without obtaining a license (or charter) from the proposed federal agency (Clark 1912a; Seager 1911; 1912). Accordingly, the agency would have the authority – subject to judicial review – to refuse or withdraw the license if the corporation in question violated the terms of the license or other federal laws. In addition, to attain and keep a license, a corporation would be required to publish properly audited reports of its assets, liabilities, profits, and losses. Clark was especially forceful in emphasizing the need of publicity. According to Clark, the proposed federal agency “will impose on every corporation a burden of proof; first, that it does not have the whole field; secondly, that rivals maintain themselves by their own excellence and are not tolerated as a blind for the public; thirdly, that there are enough of them to affect the standards of price in the whole industry; and fourthly, that the way is so open for the entrance of more that prices cannot become extortionate” (Clark 1912a, 65-66; see also Haney 1913, 409).

These differences notwithstanding, the majority of the participants to the debate rejected the idea of a federal commission with price-regulation powers, similar to the Interstate Commerce Commission jurisdiction over the railroads.<sup>28</sup> In this connection, it is interesting to note that economists starting from very different premises converged in their opposition to the establishment of a price-setting authority. For instance, John Maurice Clark, a detractor of the excesses of competition and a somewhat cautious endorser of the trusts, and Edwin Dana Durand, an open critic of combinations and enthusiastic supporter of the recent dissolutions, joined their voices in criticizing the possibility of price regulation as a policy to combat monopolistic abuses. Clark and Durand conceded that rate regulation of railroads and public utilities would have been justifiable since the government granted special privileges to virtually all such businesses, in the form of exclusive licenses, land grants, or easement over public property. What they opposed, was the idea of extending price regulation to every industrial field dominated by monopolistic conglomerates. In a 1913 paper published in the *American Economic Review*, Clark emphatically held:

that the fixing of levels of business prices and earnings is a subject about which this country does not yet know as much as many optimists suppose, that trust control by this method would rise new and serious difficulties of a kind not yet experienced, and that far from being the simplest way of handling trusts, this method, if carried out to the end, might unsettle our economic foundations in a way that would make our economic perplexities seem trivial by comparison” (Clark 1913, 115).

Among the several specific objections raised by Clark was that price regulation, automatically fixing the level of profits, would check entrepreneurial initiative and remove the firm’s incentive to become more efficient. Clark also pointed out the difficulties which would arise in setting individual prices in the case of “joint production” and in making sure that the adjustment of prices is based on cost benchmarks calculated under reasonably efficient management.<sup>29</sup> Finally, and more crucially, Clark argued that if price regulation should become general and cover all industrial fields, “the very standards that now guide regulators would be taken away, for our conceptions of ‘reasonable’ are drawn from parallel industries which remain competitive” (1913, 122).

Durand substantially reiterated Clark’s objections to price regulation but added a significant ideological twist. He took the position that governmental regulation of prices would represent a dangerous step toward “state socialism,” and that it would be out of question to contemplate the adoption of such a

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<sup>28</sup> On the history of the Interstate Commerce Commission and its regulatory powers see Alexis (1982) and Rothenberg (1994).

<sup>29</sup> Similar criticisms of price regulation surfaced throughout the American Economic Association round table on “the economics of governmental price regulation” which followed Clark’s paper. Participant to the round table included Frank W. Taussig, Eliot Jones, John H. Gray, Oliver M. W. Sprague, Thomas N. Carver, William Z. Ripley, and Francis E. Stanley. Wright (1913), in the same issue of the *American Economic Review*, expressed a different view, cautiously endorsing price regulation as the ultimate backstop against monopoly power.

plan in the United States, unless the whole nation were prepared to make a complete change in the basis of existing economic institutions. As Durand (1914c, 676) put it: “[t]he future is very likely to see either a regime of general competition – with, of course, some special exceptions – or a regime of universal communism. Clearly then we should be very sure of our ground before we take the first step towards possible communism.”

Policy discussions hosted in academic journals also dealt with what we have termed the “corporation problem,” i.e., the imposition of monopoly power through the holding company and the relate device of interlocking directorates. As to the “system of interlocking directorates,” Haney held that, given the technical difficulties involved in its complete prohibition, it should be at least exposed to the light public opinion, since “only with full publicity [...] can it be tolerated” (1913, 211-12). Haney’s plan regarding the neutralization of the holding company was to require all corporations and trusts “which own or control as much as one fourth of the shares of another corporation to purchase all the remaining shares within a reasonable time, or else to sell their present holdings.” The invoked administrative commission, he added, “might be called upon to appraise the value of the shares to be acquired, in case of difficulty” (1913, 399-401). The Clarks, instead, proposed the sterilization of voting control by the holding company over its subsidiaries. To reach this end, they suggested, it would be sufficient “if all the shares held by such a company were counted as a single share for voting purposes.” The adoption of such a policy measure, the Clarks continued, “could be insisted upon before either a federal charter or a federal license should be issued to a corporation doing an interstate business” (1912, 76-77).

As a final consideration, it is worth pointing out once again that it was the “unfairness” of the holding corporation as a device to acquire control at the expenses of the majority stockholders that had to be prohibited – not the direct acquisition of a competitor’s assets *per se*. In this connection, the Clarks explicitly specified that their plan to sterilize the voting power of holding corporations, “would not of itself prevent combination by the out-and-out method of buying out the property of rival plants or merging two corporations in a single one; but it would prevent combination from taking that other most subtle and pervasive form, in which those who have put in the majority of the capital are completely shut out from control” (1912, 151). Similarly, Haney observed that “in authorizing consolidations, the merger or amalgamation should be favored over the holding company.” For Haney the prospected federal commission “might be empowered to authorize consolidations *in industries liable to excessive competition* up to the point where no more say 60 per cent of the business would be embraced in any one business organization,” with the end in view of “allowing the undoubted economies of large-scale production” while, at the same time, “prohibiting monopoly and guarding against unwieldy and overgrown units” (1913, 409: emphasis in original).

#### 4. Direct influence: the case of John Bates Clark

The previous sections have shown how professional economists contributed to lay down the groundwork for the 1914 antitrust legislation by discussing the theoretical aspects of trusts and combinations and, as far policy prescriptions are concerned, openly condemning unfair practices and arguing for the formation of a federal commission. As mentioned in the introduction, however, some economists did not limit themselves to a pure theoretical contribution. A few of the leading figures of the profession, in fact, actively participated to the reform movement, directly advising Congressmen and Senators with the actual Congressional bill. Among these, John Bates Clark played a key role. John Bates Clark was arguably the most prominent U.S. economist by the turn of the twentieth century. Best known as a fine theoretician, he was also one of the more important authorities on issues associated with the trusts. As we have seen in our discussion above, Clark’s professional writings – in particular the second edition of his *Control of Trusts*, coauthored with his son John Maurice – influentially animated the discussion which preceded the passing of the 1914 antitrust legislation.<sup>30</sup> In addition Clark wrote regularly in some of the

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<sup>30</sup> In this connection, Joseph Dorfman argues that Clark’s second edition of his *Control of Trusts* “played a formative historical role in policy making, for it provided the most systematic exposition of the view on trusts, that was embodied in 1914, at President Woodrow Wilson’s urging, in the Clayton Act and the FTC Acts.” “From this

popular outlets of the day, including *The Independent*, a religious monthly associated with the Social Gospel movement (Henry 1995).

Given his professional visibility, Clark was increasingly sought out by official bodies for advice on the question of trusts and monopolies. As far as the main topic of this essay is concerned, Clark gave an important contribution in two distinct occasions – each of which will be dealt with in the following two subsections. First, in 1911 Clark was one of the three economists – the others being James Laurence Laughlin – included among the experts invited to present their views on the possible amendments to the Sherman Act before the Interstate Commerce Committee of the Senate. Clark’s testimony is significant because in that occasion he presented his policy views in a more systematic and “unfiltered” fashion than in his published contributions. Second, Clark was among the members of a special drafting committee established by the National Civic Federation (NCF) in 1911, that produced a draft revision of the Sherman Act (Kolko 1963, 258-59; Sklar 1988, 288-90; Weinstein 1968, 88). Although the National Civic Federation proposal was not the one eventually chosen, many of its key provisions were incorporated into the 1914 antitrust legislation.

#### 4.1 The 1911 testimonies

As documented in our discussion above, the Supreme Court’s 1911 rulings in the Standard Oil and American Tobacco cases intensified the academic debate about competition policy. The Court held that only “undue” restraints of trade are to be forbidden by the Sherman act and enunciated the so-called “rule of reason.” To many critics, we argued, these decisions increased the uncertainty concerning the legality of certain business practices, proved to be ineffective in dissolving large communities of interests and, more generally, undercut the Sherman’s Act utility as a tool to eradicate monopolies. Not surprisingly, reactions to the 1911 court decisions were not limited to the academic community. A growing apprehension had emerged in the political arena as well, as many opinion leaders began to fear large business conglomerates that had grown – and continued growing – despite the prohibition of the Sherman Act. These fears reached the steps of the United States Senate, and in 1911 the Senate begun an “inquiry into ‘what changes are necessary and desirable’ in the laws relating to the creation or control of corporations or to persons operating in interstate commerce” (Ward 1986, 4). Accordingly, the Interstate Commerce Committee of the Senate, of which Democrat Senator Albert Cummins was chairman, called for an inquiry into the whole of antitrust law – an inquiry whose hearings lasted from November of 1911 into the following spring. As we learn from William Letwin (1965, 267-68), lengthy testimony was taken from over one hundred experts in the field, including leading businessmen such as the steel tycoons Elbert H. Gary, Andrew Carnegie and James A. Farrell; lawyers who had been serving as consultants in previous antitrust cases such as Victor Morawets and Louis D. Brandeis; labor leaders and public affair specialists such as Samuel Gompers and Lyman Abbott; and eminent economists such as J. Lawrence Laughlin, John Bates Clark, and John H. Gray.

In his Senate testimony, Clark first openly introduced the contention, then developed in his subsequent writings, that in the current period the force of potential competition, as a check to monopolistic power, had lost much of its original vigor. In Clark’s own words:

During the more recent periods the public has had less confidence in the efficacy of potential competition; and while I would not for a moment give the opinion of other economists than myself, my judgment is that economists have somewhat less confidence in it. What it might do under a different set of conditions can certainly be created; but what it can do under existing conditions is less than it was at an earlier time. The fact is that this potentiality of competitors was neutralized by another potentiality, namely, the power of the great consolidation to drive the competitor out of the field by unfair means whenever he actually made his appearance. It was the swing of the club in the hands of the trust which terrorized the competitor and prevented his actual appearance. It was bullying on the threat of “slugging” which means attacking the competitor unfairly, and using weapons which the competitor does not possess (Clark 1911, 973).

What Clark now advocated was government promotion of “actual competition” – and not just *potential* competition – largely through dissolution of the “perilous” trusts (distinguished from those labeled “harmless”) and the banning of certain unfair practices. This claim was founded on the assumption

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standpoint,” continues Dorfman, “The Control of Trusts caught the dominant reform interest and in turn became a contributing force in shaping the trend of the socio-economic development of the nation” (1971, 17).

that only *actual* competition in a concentrated industry will create new capacity, exert downward pressure on prices, and make collusion more difficult by creating the conditions for an actual increase in the number of competitors. As Clark put it:

It is necessary to concede that without a fair amount of actual competition merely potential competition is not practically worth very much. There must be some actual competitors in the field. When prices are high many a man would like to enter the field, if he could safely do it. If then no one actually enters it, it is fair to infer that they are all under terrorism. The presence of actual competition on that ground alone is quite essential. But it is also essential that there should be some competition in order to produce a direct effect on prices, and in this connection small local producers perform a valuable function (Clark 1911, 974.75).

In his testimony, Clark also repeatedly invoked what he termed “tolerant competition.” By tolerant competition, Clark meant a live-and-let-live form of competition where big firms and small firms face the same pricing conditions and only efficiency determines the profit outcome. While the honest trust may well win this contest, such an outcome is not assured. Both large and small producer would face the same external constraints and both (or either) would succeed based upon their ability to advantage themselves through gains in efficiency (Henry and Fiorito 2007).

Clark’s conception of tolerant competition was reflected in his policy proposals. In this connection, the Columbia economist advanced four main points that will later appear in the 1912 edition of the *Control of Trusts*: 1) the necessity of supplementing the Sherman Act with more specific statutory prohibitions of certain unfair practices such as predatory price discrimination and the so-called factor’s agreement; 2) the need for a new and different regulatory commission with stringent licensing powers to “rescue” “actual competition” from the power of monopoly; 3) the total elimination of holding companies; and 4) the argument that the degree to which a firm is harmful is not its total capitalization, but the “fraction of the entire capital of an industry” which it holds. In this connection, it is significant to point out that Clark dealt with this fourth point – only briefly mentioned in the 1912 edition of the *Control of Trusts*<sup>31</sup> – with strong emphasis. Clark’s exchange with Senator Albert Cummins is particularly enlightening. Cummins – a leading progressive Republican from Iowa<sup>32</sup> – asked Clark whether, in his opinion, “a limitation, a fair and proper limitation, upon the amount of capital which any one corporation can employ would not be a stop toward the preservation and maintenance” of the “tolerant competition” of which he had spoken in his testimony. The subsequent exchange between Clark and Cummins is worth quoting in its full length:

PROFESSOR CLARK. I may say, sir, that this is one of the cases in which I have found myself demanding a thing on economic grounds and being opposed on legal grounds. I think it is desirable to treat the capital of one company, as compared with the total capital engaged in the industry, as an element in shaping a policy in dealing with it. On economic grounds no fixed amount of capital would apply to the wide range of different cases. Between a little yeast-cake monopoly which once existed and the Steel Trust there is such an enormous range of difference that what would be an excessive capital in one case would not make an impression at all on the necessary capital in the other case.

SENATOR CUMMINS. I do not mean a capital fixed by Congress, but a capital limited by the act of some governmental board which would survey the field and determine what amount of capital could be employed without unduly restraining trade.

PROFESSOR CLARK. I am perfectly free to say that that is what I do believe in. I should not appreciate the difficulty arising from the fact that the total capital in an industry is a changeful amount. Of course it is. It does not change so rapidly that, if a governmental bureau had a record of the real capital of each of the various corporations of which it takes cognizance in a certain year, this might not properly be made the basis of action for a short term of years following that date. In my view, the amount of capital which one

<sup>31</sup> The relevant passage contained in the 1912 Clarks’ monograph is the following: “The attempt to preserve active competition leads, then, to the need of setting some limit on the amount, or proportion, of capital that any one person or organized group of persons can control in any one business, by whatever method this control is exercised. It is to this policy that the enforcement of the Sherman Act is leading us” (Clark and Clark 1912, 47).

<sup>32</sup> Albert Cummins (1850-1926) became governor of Iowa in 1901, reached the Senate in 1908, and sought the Republican Presidential nomination (along with Roosevelt and Taft) in 1912. He remained a progressive through most of Wilson’s first term. On Cummins’ involvement in the 1914 antitrust legislation see Winerman (81-88).

corporation can have without danger to its rivals varies in different cases, but may always be defined as the fraction of the entire capital of an industry which experience shows that it may have without unduly restraining competition. It might be a large part of the whole, but it would become too large a part whenever we should discover that actual competitors were being unfairly crowded to the wall, so that potential competition could not do what we expect of it (Clark 1911, 977).

By 1911, thus, Clark came to see sheer size as a competitive problem. Still acknowledging the efficiencies of large-scale production, Clark now saw excessive concentration of capital in a specific industry as a threat to both actual and potential competition. In his view, the fixing of the proper limits of capital concentration according to each industry's characteristics should be among the tasks of a Federal Commission with powers – as he stated in his testimony – similar to those of the Interstate Commerce Commission (1911, 982; 984).<sup>33</sup>

Attention should be also devoted to Gray's and Laughlin's testimonies. Gray – an established public utilities authority and future president of the American Economic Association<sup>34</sup> – startled the committee with the statement that the power of interpreting the laws should be entrusted to an administrative body, while the Courts for all practical purposes should content themselves with the enforcement of law. Gray questioned the effectiveness of any anti-trust legislation as long as Courts exercise their present broad powers of interpretation: "The court is busy with other things, and the court has a training which is adverse to progressive legislation. The court represents the traditional; the court represents the sequence; it represents the ideas that have come down from simpler times" (Gray 1911, 747). Accordingly, he opposed the recent dissolution proceedings and the subsequent reorganization of the dissolved conglomerates. As far as the American Tobacco was concerned, Gray observed: "I want to submit to this committee that such a condition as has come about in the tobacco industry as a result of the court's decision is the most awkward, the most inefficient method of public management of business that the human mind could conceive" (1911, 742). In general terms, Gray favored consolidation in industry. Such a system saved waste and effected economies that inured to the advantage of the consumer and the investor. "Ours is the only country in the world," he said, "that has undertaken to prevent consolidation of industry. England has gone further in this direction than any of the continental countries of Europe. If the corporation is operated to the prejudice of the public interest. do not kill it: break it as you would do with a fractious horse, and then let it go on its way doing good under effective regulation" (1911, 736).

As an administrative commission advocate, Gray disclaimed an explicit intent to amend existing legislation and, in so doing, undermine Justice Department enforcement. He saw very little merit in the Sherman Act's approach of proscribing conduct in general terms and called for a new agency with stringent regulatory powers. For Gray, modern industry depended on efficiencies that rendered competition, at least in some markets, obsolete.<sup>35</sup> Differently from Clark, Gray did not see "any hope of getting back to effective competition" (1911, 738). "Regulation" – he argued – "is inconsistent with competition," and "combination

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<sup>33</sup> As we have seen above, however, Clark's proposed Commission, differently from the ICC, did not entail any price-fixing power.

<sup>34</sup> Gray began his academic career in 1887 as an instructor in political economy at Harvard – where he had graduated the same here. Two years later, like many other American scholars of his generation, he went to Germany to earn his Ph.D. at the University of Halle. In 1892 he returned to the United States and was appointed professor of political economy and social science at Northwestern University, where he stayed for fifteen years. In 1907 he moved to the University of Minnesota and remained there until 1920. In 1914 Gray served as president of the American Economic Association. After five years at Carleton College, and three years at the Interstate Commerce Commission, as chief analyst and examiner of the bureau of valuations, Gray was appointed head of the department of economics in the graduate school of American University where he stayed until 1932. See (Robinson 1946) for a full biographical account of Gray.

<sup>35</sup> "Competition has ceased to be a dominant element in our life, because as society progresses more and more of the capital in machinery and plant becomes fixed and cannot be withdrawn when it ceases to earn average profits, or even any profits at all. Because the industries that we are now constructing, not only the railroads but the great industrial trusts, are all subject to its increasing returns. By which I mean that the cost per unit of goods depends largely—not without some modification—but primarily upon the number of units you turn out of a given plant. That being the case, we have got to face the subject of monopoly. It is a new era we are in. the circumstances are different from those of a hundred years ago" (Gray 1911, 734).

or monopoly always result in practice from trying to compel competition” (1911, 743). In policy terms, the government should domesticate rather than limit size, and direct price regulation was the main tool for such domestication. Only price regulation, Gray argued (1911, 743-48), would provide consumer’s with essential services at “fair” prices; eliminate capital destruction arising from cutthroat competition; and prevent firms from earning monopoly profits. In order to impose effective regulation, the commission should set the prices “so as to discourage additional capital from coming in independently and permit the large corporation, while the condition lasted, to have somewhat larger profits than the less efficient from the uniform prices” (1911, 746). In addition to direct price regulation, Gray favored some form of inter-firm cooperation under the proposed administrative commission direction, including price-setting cartels as experienced in Germany, and the establishment of a voluntary federal license, or incorporation. In Gray’s prospected system, only those firms who opted for the federal license or charter, would be subject to the new governmental regulation of their pricing structures and trade agreements with other corporations, while the others would still be under the old Sherman act prescriptions (1911, 748-49).

Laughlin’s testimony mostly phrased in general abstract terms and contained little policy content.<sup>36</sup> Differently from Clark, the 1911 Court decisions do not seem to have left any mark on him, and his testimony largely reflects the position on trusts he had presented five years earlier in his *Industrial America* (Laughlin 1906). Laughlin started with a dogmatic defense of competition based on the idea that, under a purely competitive system, “the best man in industry or the best man in the labor field, on the basis of skill, is the person who would be supposed to survive, or, hindrance excepted, he would have the right to secure his survival” (Laughlin 1911, 995). In the main, he sentenced, growth of large conglomerates reflects superior efficiency – rather than misconduct – and “superiority of this kind necessarily brings monopoly” (1911, 995). In a quite uncritical fashion Laughlin reiterated the traditional pro-trusts rhetoric, insisting on the advantages of large-scale production, pointing out the wastes of competition, and harshly criticizing the recent trust dissolutions.

In some passages, the contrast with Clark is evident. For instance, whereas Clark had attacked the holding company as a device to reach monopoly, Laughlin insisted on the absolute irrelevance of the legal form of the trust, arguing that “it would not make any difference whether it [the trust] was in the form of a partnership or a corporation or what we call a combination of corporations” (1911, 1010). Likewise, whereas Clark had lost faith in the force of potential competition, Laughlin baldly held that “the officials of the United States Steel Corporation [...] know perfectly well that if they raised price it would only stimulate the production of many other competitors—the independents, and it is that outside competition that now really regulate prices” (1911, 1024). But Laughlin distanced himself also from Grey, when, similarly to Clark, he opposed both on theoretical and practical ground any attempt of price regulation by the government. “[T]he State” – he affirmed – “should not fix prices nor attempt to fix prices, not only because that has been wholly driven out of court in all past experience in economics, but directly because the State would find it impossible to establish any uniformity of cost of production” (1911, 997).

As to policy prescriptions, finally, Laughlin’ position was somewhat vague and stated in opaque terms. He called for the establishment of a commission, “very much like the English Board of Trade,” with powers to compel publicity, which he saw as an “absolute requisite,” because it allows us to know when and where monopoly is artificial or not and when and how to interfere” (1911, 997). No mention was made, however, of the actual powers and competences of such a commission, nor of the kind of publicity to be promoted. When asked by Senator Charles E. Townsend whether he had “specific recommendations to make as to amending the Sherman antitrust law,” Laughlin elusively replied: “I should not feel safe in making that detailed statement without the law before me and without more care than I could at this moment give it. For the sake of brevity I have confined myself to the principles involved and the general principle. The question of putting them into an amendment is a detail” (1911, 1017).

This was how three leading economists of the time – Clark, Gray and Laughlin – had presented their views in late 1911. More than a year later, on February 26 1913, the Senate Committee issued its final report which, both in its tone and content, largely reflected the views Clark had presented in his testimony and in his subsequent published writings. Accordingly, the Committee declared that “the progress of the world depends in large measure upon that fair, reasonable rivalry among men” and announced “that the

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<sup>36</sup> On Laughlin’s life and career see Nef (1967) and Mitchell (1941).

Sherman Act should stand as the ‘fundamental law’ on the issue of the nation’s competitive landscape.” At the same time it proposed, among other minor amendments, new legislation that would “specifically prescribe certain conditions upon which persons and corporations shall be permitted to engage in commerce.” The Committee also called for the Creation of a new commission to 1) administer and enforce the proposed laws; 2) serve as a reference for information about corporations’ management and practices, 3) handle issues that require “administrative promptness [...] rather than judicial deliberation,” and 4) supervise dissolutions ordered by the Courts.<sup>37</sup> No mention was made in the report of direct pricing regulation as a viable policy measure. As noted by one interpreter, the Committee’s final resolutions played decisive role in setting the stage for the new elected President Woodrow Wilson to urge the legislative package that evolved into the FTC and the Clayton Act (Ward 1986, 5).

#### 4.2 Clark, Wilson and the 1912 presidential campaign: a digression

In the meantime, public concern about monopolies was characterizing the 1912 presidential campaign and its preparation. The Sherman antitrust Act had become a crucial topic and had headlined the platforms of the three major candidates: William Howard Taft, a former judge, future Chief Justice, and the Republican incumbent; Theodor Roosevelt, the former Republican president now running as a Progressive; and Democrat Woodrow Wilson (Kovacic 1982; Winerman 2003). The Republican platform, after claiming credit for having “placed upon the statute book [...] the antitrust act of 1890,” proclaimed its support of “the enactment of legislation supplementary to the existing antitrust act which will define as criminal offenses those specific acts that uniformly mark attempts to restrain and to monopolize trade [...] The same certainty should be given to the Law prohibiting combinations and monopolies [...] in order that no part of the field of business opportunity may be restricted by monopoly or combination” (Porter and Johnson eds. 1965, 178) While President Taft did not appear to want to increase the certainty or severity of punishment under the law, he did wish to widen its coverage. The Progressive Party was more to the point, favoring “strengthening the Sherman Act” by prohibiting certain trade practices that were legal but “unfair.” Roosevelt specifically urged a commission with wide-ranging powers to regulate the issuance of securities, compel publicity of corporate accounts, investigate suspicious business behavior, and (in at least some cases) set maximum prices for goods produced by monopolies that had attained their position by superior efficiency (Kovacic 1982, 70; Winerman 2003, 16-20). The Democratic platform, branding private monopoly as “intolerable” and “indefensible,” backed vigorous enforcement and provided:

We favor the declaration by law of the conditions upon which corporations shall be permitted to engage in interstate trade, including, among others, the prevention of holding companies, of interlocking directors, of stock watering, of discrimination in price, and the control by any one corporation of so large a proportion of any industry as to make it a menace to competitive conditions [...]. We regret that the Sherman anti-trust law has received a judicial construction depriving it of much of its efficiency and we favor the enactment of legislation which will restore to the statute the strength of which it has been deprived by such interpretation (Porter and Johnson eds. 1965, 169).

Wilson was prepared to create some sort of trade commission, but he contemplated a far less powerful agency than did Roosevelt (Winerman 2003, 45-7).

Clark decided to comment publicly on the presidential candidates’ views on trusts in an article published on October 17th 1912 in *The Independent*. There, Clark – a self-professed Republican – expressed his skepticism towards Taft’s defense of the executive’s ability to use existing legislation aggressively to dissolve large conglomerates (as Taft himself had done) under a “rule of reason” construction of the Sherman Act. For the Columbia economist, the problem rested the post-dissolution reorganization of the dissolved trusts. Standard Oil and American Tobacco shareholders each received shares in the firms’ successors. Common ownership of the succeeding companies, Clark pointed out, had the consequence of delaying the emergence of effective competition: “if the units act in complete concert, if the prices of their products do not fall and their monopoly is as strong as ever, *a rule of reason calls for some addition to the*

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<sup>37</sup> Senate report no. 1326, Sixty-second congress, third session, February 26, 1913,. 13

*law*" (Clark 1912b, 891: emphasis added). Defending the *status quo*, as the Republicans were proposing, was no longer sufficient.

Clark appeared to be more benevolent, but still critical, towards the Progressive Platform. He agreed with Roosevelt's proposal of an administrative commission and applauded his commitment to make illegal by statute certain unfair practices.<sup>38</sup> Nonetheless, he lamented, "there is a popular impression that the Progressive party has another measure in view, as its main reliance, namely, the regulation of prices by a commission" (1912b, 893). Since his early writings on trusts, Clark had seen government price fixing as largely ineffectual, mainly because of bureaucratic problems, but also because it would be difficult, if not impossible, for officials to discover the true, competitive price based on costs of production that would be necessary to establish the "correct" price large firms should charge. Moreover, if government were to intervene in the pricing decision, this would no doubt stifle technological advance as it would interfere with firms' search for profit. After reiterating these objections, Clark asked his readers: "how then shall we judge the Progressive party if the test is its probable course in dealing with trusts?" Clark's answer clearly reveals his mixed feelings about the Roosevelt's policy on trusts: "Repressing predatory competition is thoroly admirable, but doing that and nothing more may amount to a surrender to monopoly. A proposal of price regulation implies some expectation of thus surrendering" (1912b, 893-94).

Finally, Clark turned to the Democratic platform. He began with an open approval of Wilson's call for laws on price discrimination, holding companies, and interlocking directorates but, curiously enough, no comment was made about Wilson's views of the proposed federal commission. The distinguishing mark of Wilson's antitrust efforts, however, was found in his commitment to introduce legislation to directly limit corporate size – a provision that Clark himself had vigorously sustained in his 1911 testimony:

This plan accords well with an intelligent policy in dealing with trusts, and the actual policy of the party is intelligent. It proposes to exclude from interstate trade companies having the clear characteristics of monopoly and recognizes as one of these traits, 'the control by any one corporation of so large a portion of an industry as to make it a menace to competitive conditions.' There are difficulties in the way of applying this test, but the worst that can be said about them is that it will take wisdom and earnest effort to overcome them (894).

Clark continued with an unequivocal endorsement of the Democrats' position on trusts:

A party which declares that it will not let a corporation become big enough to be a monopoly will certainly never admit, in advance of complete proof, that competition is dead. To admit this and act on the admission would be the most fatal error that the people could fall into. It would be like pronouncing life extinct in a man the moment he fell into the water. Competition is clearly existing under difficulties. In spots it looks moribund; but not even in transportation is it absolutely dead and elsewhere it has great remaining vitality (894).

Further evidence of Clark's support for Wilson is provided by an interesting letter that Benjamin M. Anderson Jr. – then an instructor of economics at Columbia – wrote to Wilson on behalf of Clark and himself.<sup>39</sup> Anderson had been alarmed by a report of Wilson's view on trusts published in the New York Times, which, as he put it in his letter to the future President, "quotes you as holding [...] that all need be done in connection with the problem of monopoly is to remove the special favors and unfair methods of competition which have built up the trusts; and then 'natural law' will take care of the situation: that there is no danger is size as such: that, if they can be made to fight fairly, you are willing for them to remain as big

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<sup>38</sup> "The platform of the National Progressive Party calls, in broad terms, for a general and effective control of trusts by an administrative commission, and the utterances of its candidate give reason for believing that, if elected, he would use his powerful influence in favor of reducing them to good behavior. Doubtless the party would take measures to stop the local cutting of prices for the sake of ruining independent producers, the 'factors' agreement,' which boycotts the customers of independents, the securing of special rates for transportation and kindred practices. It would make good rules of the ring and give rivals of the trusts a fairer chance to survive" (Clark 1912b, 892-93).

<sup>39</sup> On Anderson's contribution to economics see Dorfman (1948).



as they can.”<sup>40</sup> Anderson explained that Clark himself held a similar view in 1901, when the first edition of his *Control of Trusts* was published, but that since then he had changed opinion. The salient passages of Anderson’s letter to Wilson are reproduced below:

It is not enough, he [Clark] now maintains, so to regulate competition that “potential competition” may exist. There must be actual competition, on a considerable scale, and in all important markets. And size, as such, is often a tremendous factor in preventing this. [...] I may add that, while he waives the question of details, he is disposed to believe that a Federal Commission, issuing licenses to corporations doing interstate business, and having power to revoke them, will be an effective means of handling such parts of the problem as call for direct Federal action.

Anderson concluded referring to Wilson “the warmth of admiration which Professor Clark manifested toward you in the conversation, and of the high hopes and high confidence we have in your career as the next President of the United States.”<sup>41</sup> Both this letter and the commentary on the parties’ platforms show that Clark – albeit politically inclined toward the Republicans – had endorsed the Democratic candidate in the belief that Wilson would pursue effective antitrust remedies. Wilson’s policy proposals appeared to Clark as the only ones that could, at the same time, keep the trusts under governmental control and preserve the working of “actual competition” even in highly concentrated markets. As Clark put it in the final passage of his Independent piece: “[t]he present writer is a Republican, the descendant of Republicans, Whigs and Federalists. Tested by general views of the Federal constitutions, he thinks both his hereditary party and the new Progressive one have the advantage over their common rival. By the test of practical action in the most vital issue of the day he concedes that the Democrats win” (Clark 1912b, 894).

#### 4.3. The National Civic Federation proposal

The second act of John Bates Clark’s direct participation to the antitrust movement is tied to his involvement with the National Civic Federation. As a coalition of progressive businessmen and conservative labor leaders, the NCF had been in the forefront of progressive efforts to revise the antitrust laws since its establishment in 1900 (Cyphers 2002). In March 1908 a bill drafted by a committee of NCF representatives in consultation with Roosevelt’s Commissioner of Corporations was introduced in the House by William P. Hepburn and in the Senate by William Warner. The bill, known as the Hepburn bill, protected corporate expansion under extensive federal regulation, restored the Sherman Act’s common law interpretation to allow “reasonable” restraints of trade, instituted a federal registration of large corporations and unions, and expanded publicity to control corporate behavior. The Hepburn Bill aroused fierce opposition and, in spite of Roosevelt’s endorsement, was defeated in that session of Congress.<sup>42</sup> In June 1911 – on the heels of the Court’s decisions on the Standard Oil and American Tobacco cases – the NCF set up a new committee on the trust question that met for a year and which in turn appointed a drafting subcommittee consisting of Seth Low, the president of the NCF; Talcott Williams, an NCF leader and future director of Columbia University’s School of Journalism; Jeremiah W. Jenks, the industrial organization specialist from Cornell; and Clark. The result of the subcommittee’s efforts was a draft bill that obtained the Federation approval and

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<sup>40</sup> Anderson refers to the news report, with long quotations, of Wilson’s speeches in Cleveland, Canton, and Orrville, Ohio, in the *New York Times*, October 12, 1912.

<sup>41</sup> Benjamin M. Anderson Jr. to Woodrow Wilson, October 15, 1912 in Link (ed.) 1966-1994, 420-21. There is also evidence of a few direct epistolary exchanges between Clark and Wilson. In 1886 Wilson wrote the Columbia economist thanking him “for the profit and pleasure derived from the perusal of your [...] *Philosophy of Wealth*.” Wilson felt that Clark’s work had “fertilized his own thought “not only in the field of economics but also in the field of practical politics in which my special studies lie, and that, besides refreshing me with its original views and methods, it has cheered me not a little by its spirit, —its moderation and its Christianity.” Woodrow Wilson to John Bates Clark, August 26, 1887 in Link (ed.) 1966-1994, 564. Other correspondence between the two men, dated 1907 and relating to a Princeton University position on political economy, can be found in the Clark Papers at the Rare Book and Manuscript Library of Columbia University.

<sup>42</sup> Johnson (1961) and Sklar (1988, 203-85) provide the background on the Hepburn Bill.

was finally printed and marked “confidential” on December 16, 1913.<sup>43</sup> As we learn from James Weinstein (1968, 88) the bill was then sent to Senator Francis G. Newlands, to Representative Henry D. Clayton, to newly elected President Wilson’s commissioners of corporations, Joseph E. Davies, and the president himself.

The NCF bill proposed to separate the Bureau of Corporations from the Department of Commerce and Labor and transform it into a seven-member independent agency. Corporations, except common carriers, with gross annual revenue in excess of \$10 million would be required to register with the commission and provide full information, as the commission might prescribe.<sup>44</sup> The commission would grant publicity to the information so obtained, as well as to information discretionally collected in the course of its investigations, and it would make annual reports to Congress. Registered corporations would be required to submit to the commission for its approval any increase in capital stock, including increases “intended for the purpose of acquiring additional property.” Any such increase made without the required consent, “shall, in the discretion of the Commission, subject the corporation to a forfeiture of license.”<sup>45</sup> The commission would have the power, upon complaint or on its own initiative, to refuse or revoke license for noncompliance with registration prescriptions, and for violations of the Sherman Act. The bill also specified that the commission might refuse or revoke license whenever it finds that in the conduct of its business a corporation “makes or gives any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, or locality in any respect whatsoever; or subjects any particular person, company, firm, corporation, or locality to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.”<sup>46</sup> Upon revocation or cancellation of corporation’s registration, the commission could order the corporation to cease engaging in interstate or foreign commerce. All decisions of the commission would be final, except that a corporation might appeal in federal courts the commission’s order to cease from trade. Such suit in the District Court “shall proceed in all respects as other civil suits for damages, except that on the trial thereof the findings and order of the Commission shall be *prima facie* evidence of the facts therein stated and that the complainant shall not be liable for costs in the District court.”<sup>47</sup>

Clark, Jenks, Low and Williams set forth the inspiring principles of their proposal in a cover letter dated December 9, 1913, which accompanied the final version of the bill.<sup>48</sup> In its drafting of the bill, they stated, the committee has acted under the assumption “that the Sherman Anti-Trust Law, as interpreted by the Supreme Court of the United States, forbids restraints of trade, but not necessarily all restraints of competition. That is to say, the Sherman Anti-Trust Law is specifically aimed at all restraint of competition which is brought about either by monopolizing or by unfair practices; but the law does not assume that restraint of competition and restraint of trade are synonymous terms.” Accordingly, the major aim of the NCF bill was to infuse into existing antitrust legislation a higher degree of certainty by somewhat limiting the Court’s discretion in judging whether certain acts, because of their illegal intent or effect, constitute an unreasonable restraint of trade. The proposed interstate commission – as the committee’s members put it – “so far from being an agency for the arbitrary control of business, is to be an agency to help business men to determine whether what they are doing, or proposing to do, is probably lawful or unlawful.” The committee justified the placing of only those corporations with a gross annual revenue of \$10 million or more under the licensing authority of the commission on mere organizational grounds: “if such administrative regulation of commercial business is to be applied at the outset to all interstate business, [...] the mere volume of such business will make it difficult, if not impossible, for such a Commission to cope

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<sup>43</sup> Confidential, Proposal for a bill to create an Interstate Trade Commission, to define its powers and duties, to provide for the registration and license of persons, partnerships, corporations and joint-stock associations engaged in interstate commerce, and for other purposes; Dec 16, 1913. Seth Low, box 105, Rare Books and Manuscript Library, Rare Books and Manuscript Library, Columbia University.

<sup>44</sup> Registered corporations would be granted the right to use the title “United States registered.” Proposal for a bill to create an Interstate Trade Commission; Dec 16, 1913; Sec. 13.

<sup>45</sup> Proposal for a bill to create an Interstate Trade Commission; Dec 16, 1913; Sec. 15.

<sup>46</sup> Proposal for a bill to create an Interstate Trade Commission, Dec 16, 1913; Sec. 12.

<sup>47</sup> Proposal for a bill to create an Interstate Trade Commission, Dec 16, 1913; Sec. 23.

<sup>48</sup> Clark, Jenks, Low and Williams to “Dear Sirs.” Seth Low, box 105, Rare Books and Manuscript Library, Rare Books and Manuscript Library, Columbia University. The following quotations, otherwise indicated, refer to this letter.

with the undertaking in any helpful way.” Yet, in the following passage it was added that “the principal evils of which the public are conscious undoubtedly relate themselves to the largest corporations” – a sentence that evokes Clark’s emphasis on mere corporate size as a potential source of monopolistic power.

As to the federal licensing provision for the conduct of interstate business, the authors of the NCF bill explained that under the current legislation any single state of the nation “may create a corporation that does interstate business,” and “the State that creates the corporation is the only government in the world that can regulate the corporation as such.” On the other hand, the single states have no jurisdiction at all on the activities of the corporation. This implies that:

in the United States we have at present no government at all that regulates both the agent and the interstate business that the agent does. This is a condition of governmental feebleness, which has already resulted, and is likely to result again unless it be changed, in a situation that is little short of governmental chaos. It is certainly desirable, and in the opinion of many it is necessary that the same government which controls the business that is done should control the agent that does it, if interstate business in the United States is ever to be freed from uncertainty and conducted under the protection of uniform law. It is not often enough remembered that when the Federal Union was formed all of the States had the common law, so that interstate business was then free from conflicting legal requirements; but, with the development of statutory legislation, the States have long since ceased to have a common law. So long as the States were largely isolated, this was a matter of comparative unimportance; but now that the life of the people in all the States has been so far unified that the interstate business of every State is probably largely in excess of the intrastate business of that State, the subjecting of such business to the statutory variations of forty-eight different commonwealths becomes a matter of increasing embarrassment to the citizens not of one State here and there but of every State wherever it may be.

In this connection it is worth pointing out that the NCF committee had also considered the possibility of requiring all largest state corporations engaged in interstate business to reorganize themselves under a federal incorporation law. A federal law governing the financial and managerial responsibilities of these corporations would have been significantly more stringent than that of the single states, which, it was noted, “have competed with each other in the making of lax corporations laws.” Its efficacy notwithstanding, the committee discarded such measure because “the effort to define the essential elements of a good corporation law is a matter itself so difficult, and as to which there may be so many differences of opinion, that it has seemed best not to attempt to deal with that aspect of the subject in connection with this bill.”

By the end of 1913, thus, the NCF had presented a bill which, in its essence, provided for the federal registration of corporations, created an interstate trade commission, and introduced an elastic concept of unfairness borrowed verbatim from the Interstate Commerce Act of 1887. The NCF proposal was essentially Clarkian in its spirit. Clark’s view of a commission, as he had repeatedly affirmed in his Senate testimony, was “somewhat on the lines of the Interstate Commerce Commission,” especially in connection with the latter’s power to persecute unfair methods (Clark 1911). Similarly, the drafting committee defined the NCF bill as an “effort to apply to general commercial business the methods of regulation which have worked well as applied to the Interstate commerce commission.” Section 12 of the NCF bill, as its authors explained, applied to “the business affected by the bill the precise language of the Interstate commerce Law which has enabled the Interstate commerce commission to put an end to rebating and every other unfair practice in railroading which has been brought to its attention.”

It was the strict license-registration character of the bill, however, which revealed more clearly Clark’s decisive influence on the NCF proposal. Clark in fact had openly contemplated a commission with broad licensing authority both in his Senate testimony and his post 1911 contributions. Writing in on the need to restore actual competition, for instance, he had affirmed: “If we refuse federal charters or licenses to corporations which cannot show that active competition exists and that potential competition is free and effective, we accomplish the purpose in view, and it is then less important whether the field is in the possession of one colossal company and many smaller ones, or in that of one company which is very large and a number of others of moderate size” (Clark 1912a, 66). As noted by Sklar, any predisposition in the direction of a strong pro-license bill on the part of the other members of the subcommittee, especially Jenks and Williams, “may have well been reinforced by Clark” (Sklar 1988, 289). As to Jenks, the other

economist in the NCF committee, we could not find any explicit endorsement of a commission with licensing powers in his professional writings of the time, and even his condemnation of unfair competition, as we have seen in the previous sections, was phrased in somewhat cautious terms and always circumstantiated.

##### 5. The passing of the 1914 antitrust legislation

The timing of the NCF proposal, and this might not have been a sheer coincidence, corresponded almost exactly with actions of Newlands, Clayton, and the President with respect to legislation leading to the Federal Trade Commission Act (Weinstein 1968, 88). In January 20, 1914 – roughly one month after the NCF had circulated its draft bill – Wilson decided to illustrate his own antitrust agenda in a landmark address to Congress.<sup>49</sup> There, Wilson publicly proposed, among other things: legislation to provide “further and more explicit legislative definition of the policy and meaning of existing antitrust law,” and the creation of an “intestate trade commission,” which would provide guidance on the antitrust laws and help courts frame effective relief in cases involving antitrust violations (Winerman 203, 51-92).

It was against this background that the bills which eventually became the FTC and Clayton Acts were introduced in Congress. The legislative path of the 1914 antitrust legislation was a particularly tortuous one and needs only to be recapitulated here in its essential steps.<sup>50</sup> The House took up antitrust legislation first. Representative Henry Clayton prepared five tentative bills (the so-called five brothers), but his package was separated. When the actual bills were introduced into the House, the provisions that would in the end develop into the Clayton Act were incorporated into a single bill that was referred to Clayton’s judiciary committee, while the Commission bill was referred to the House Committee in Interstate and Foreign Commerce. A similar split occurred in the Senate, where Newlands had introduced a commission bill identical to Clayton’s. The Clayton-Newlands bills contained no reference to unfair practices. The new agency would receive annual reports from large corporations; would investigate Sherman Act cases on behalf of the justice Department; and would report to the President and Congress on the need for additional antitrust legislation. Thus, the new agency would have few substantive powers beyond those of publicity and persuasion. On June 5, 1914, the House passed its Commission bill (Winerman 2003, 59).

However, the core of the Wilson’s original program was the Clayton bill, which was facing political resistance in the House. As documented by Winerman (2003, 37-38), even before the House passed its versions of antitrust bills, Louis Brandeis and George Rublee – two influential Wilson’s advisers, both associated with the NCF – persuaded the President to support a stronger Commission bill in an effort to salvage an effective antitrust package. The proposed commission was still weaker than the one envisioned by Clark and NCF drafting committee, but the Senate did grant the Commission enforcement power by adding a provision (section 5) that gave it authority to prohibit unfair methods of competition. Dissenters raised their voices. Some opponents argued that this made the commission, which was also authorized to enforce the Clayton Act administratively, too strong. Others objected that the proposed commission would be too weak because contemplated no licensing power and no authority in the area of investment strategy (Winerman, 4; 62; 69-74). These oppositions notwithstanding, the FTC Act was passed by the Senate on September 8, 1914 and by the House on September 10, 1914, and it was finally signed into law by President Wilson on September 26, 1914. The Clayton anti-trust bill, now reduced in significance because of Wilson’s acceptance of a regulatory commission strategy, became law on October 15, 1914.

The FTC Act provided for a board of five members, no more than three of whom could come from the same political party. The core of the FTC’s authority rested in three fundamental provisions contained in Section 5, namely that “unfair methods of competition in commerce are hereby declared unlawful;” that the commission has the effective power to determine which methods are unfair; and that it can order

<sup>49</sup> Address on antitrust legislation to a joint session of Congress, January 20, 1914, in Link (1966-1994, XXIX: 153-58)

<sup>50</sup> Our historical reconstruction heavily draws upon Winerman (2003). For an exhaustive review of the legislative history of the 1914 antitrust legislation see Kintner (1978, 989-1023).

offenders to “cease and desist” from using such unfair methods.<sup>51</sup> In addition, the agency could require annual and special reporting by corporations engaged in interstate commerce, while providing the public with information the agency gathered in order to promote fair trade practices. The new agency could also assist the judiciary in formulating remedial orders to deter future antitrust violations. Although the final FTC Act envisioned a far more active and powerful agency than anything Wilson had advanced during his campaign, it lacked (at least) three key measures that represented the core of the Clark-NCF proposal, namely 1) registration of all large corporation with the commission; 2) commission’s control over capitalization and stock issue; 3) commission’s power to grant federal license (or incorporation) as a necessary conditions for corporations to engage in interstate commerce.

Compared to the FTC Act, the Clayton Act represented a different approach. In framing section 5 of the FTC Act, in fact, legislators recognized the difficulty of specifying all the anti-competitive practices that then existed and, accordingly, granted the new commission a fairly generous degree of discretion in defining and attacking such practices. The Clayton Act, instead, was intended to supplement the Sherman Act by addressing certain additional practices – specifically described – that could pass through what were perceived as “loopholes” in that statute. Its principal provisions were:

1) Price discriminations in connection with interstate commerce were declared to be unlawful, “where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly.” The Act allowed differences based on grade, quality, on the quantity sold, on the cost of selling and transportation, or when “made in good faith to meet competition.”<sup>52</sup>

2) Exclusive selling or leasing contracts, whether of patented or unpatented articles, whose effect may be to “substantially lessen competition or tend to create a monopoly” were also declared unlawful.<sup>53</sup>

3) The acquisition of stock in one corporation by another, or the combination of two or more corporations through stock-ownership, where the effect “may be substantially to lessen competition, [...] to restrain commerce [...], or tend to create a monopoly,” is prohibited. The act excluded existing corporate relations and made exemptions in the case of common careers developing branch lines, and of subsidiaries companies.<sup>54</sup>

4) Somewhat complicated limitations were imposed upon interlocking directorates. The provision relating to industrial combinations prohibited any person, after two years from the approval of the act, from being a director in two or more corporations, any one of which has a capital of a million dollars or more, provided that the business carried on by such corporations be of such a nature “that the elimination of competition by agreement between them would constitute a violation” of the antitrust laws.<sup>55</sup>

5) In addition to these prohibitions of monopolistic practices, the Clayton Act partially exempted labor unions and farm cooperatives from the domain of anti-trust legislation because of their non-profit status and their purpose of mutual benefit. The Act stated that: “[n]othing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purpose of mutual help, and not having capital stock or conducted for profit.” Such organizations are not to be construed to be illegal combinations or conspiracies under the antitrust laws,

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<sup>51</sup> In more precise procedural terms, the FTC act empowered the commission to issue orders restraining individuals, firms, and corporations (with the exception of banks and common careers) from using “unfair method of competition in commerce.” These orders could be issued only after hearings, and could be enforced only through decrees of circuit courts of appeal, and were subject to appeal in precisely the same manner as the orders issued under the various provisions of the Clayton act discussed below.

<sup>52</sup> (38 Stat., 780: Section 2).

<sup>53</sup> (38 Stat., 780: Section 3).

<sup>54</sup> (38 Stat., 780: Section 7).

<sup>55</sup> (38 Stat., 780: Section 8).

nor are the members of such organizations to be restrained from “carrying out the legitimate objects” of the organization.<sup>56</sup>

Made up as it is of material drawn from the four original Clayton bills that were at one time under consideration in different committees of Congress, the Clayton Act lacked the simplicity and unity of the FTC Act. Moreover, the specificity of its prohibitions was blurred by the necessity of showing that the behavior will probably “substantially lessen competition.” Not surprisingly, given its unsystematic character and ambiguous phrasing, the Clayton act attracted more critical responses from the economic profession than did the FTC act. The economists’ reaction to the 1914 legislative package will be analyzed in the next section.

## 6. The economists’ response

Whether and to what extent American economists were satisfied with the 1914 antitrust package can be assessed through a brief survey of their responses on academic journals and books. Many among those who animated the post 1911 debate on trusts did in fact publish specific commentaries on the FTC and Clayton Act. Durand, Seager and Stevens, for example, were among those who most openly reacted with favor to the new antitrust legislation. Interestingly enough, their appraisals of the FTC and Clayton acts, albeit substantially convergent, reveal their different theoretical and “ideological” premises. Durand, an advocate of trust dissolutions, observed that “if the destruction of trusts and the maintenance of competition be accepted as a proper policy, these acts must be approved for the most part as valuable aid in carrying out that policy” (Durand 1914, 73). Seager (1915, 448), whose positions can be assimilated to those of John Bates Clark, hailed the new acts as “as a legislative endorsement of the of the position already taken by the courts substituting the policy of ‘regulated competition’ for the policy of ‘enforced competition,’” while Stevens (1914c, 854), consistently with his own agenda, affirmed that “the power over unfair methods of competition which has been given to the Trade commission is an important step in the direction of eliminating those practices and therefore toward the ultimate solution of the trust problem.” Durand, Seager, and Steven’s approval was mostly directed toward the FTC act. According to Durand (1914, 90), for instance, “by all odds the most important feature of the new trust legislation is the creation of a federal trade commission,” while for Seager (1915, 461) “the very fact that we have in the Trade Commission a body competent to study these questions [unfair practices] and to advise congress with reference to them is the greatest merit of the new legislation.” In general terms, they pointed out that an administrative agency can avoid delay and legal technicalities and, more importantly, it would reflect decisions based upon economic – rather than legal – expertise.<sup>57</sup>

Jenks and Young, both from Cornell, stand out among those professional economists who publicly expressed their discontent with the new antitrust legislative package.<sup>58</sup> In the 1917 edition of his celebrated

<sup>56</sup> (38 Stat., 780: Section 6). Section 20 of the Clayton Act also prevented the judiciary from enjoining activities growing out of a “dispute concerning terms or conditions of employment” and declared that specified legitimate union activities in connection with a labor dispute are not to be considered violations of any law of the United States.

<sup>57</sup> As Stevens put it: “The new law provides a body of men with wide investigating powers, who are, implicitly at least, to devote considerable attention to the study of unfair methods of competition. These five men ought, therefore, to become specialists in this subject. If so, their orders will be based upon economic rather than legal grounds. They ought, in consequence, to be more sound, on the whole, than have been the decisions of the courts in the past relating to this matter or than would be those decisions if the prevention of unfair methods had been entrusted in the courts alone” (Stevens 1914c, 842-53).

<sup>58</sup> A third name should be added to those of Young and Jenks, namely Robert Liefmann, a German economist from the University of Freiburg who had been invited by the editor of the Quarterly Journal of Economics to contribute an essay on monopoly and competition theory. As an endorser of German cartels, Liefmann (1915, 325) attacked what he perceived to be the principle underling the FTC and Clayton acts, namely “the idea that competition is to be kept in effect under all circumstances,” as “not only theoretical unsound, but in practice impossible of execution.” In his opinion, “the federal trade commission is given a task which may rise to such dimensions that all cannot possibly be attended to.” Liefmann concluded confessing the impression that “these new enactments serve more to indicate the wish of the Administration to do something, than give promise of bringing into practical effect the principles on which they rest” (1915, 324-25).

the *Trust Problem*, Jenks and his coauthor, Walter E. Clark, held that “the serious error in the national legislation, to date, [...] is due to traditional blind fear of monopoly.”<sup>59</sup> In their opinion

“This persistent monopoly fear and attempt at monopoly prevention or destruction is the source of much of the difficulty in dealing with great industry. The normal development of much of manufacturing industry seems to be unmistakably in the direction of giant industry, if not of complete monopoly. To legislate in opposition to a normal tendency of industry is sure to make that legislation difficult, if not impossible, to enforce” (Clark and Jenks 1917, 278).

Jenks and Clark admitted that an administrative agency like the FTC would contribute to remove the uncertainty introduced by the rule of reason and to provide guidance to business. The problem, however, rested on the enforcement powers granted through section 5, which Jenks and Clark considered as a hindrance to the FTC investigatory and advisory activity: “If these were elided from the law, then lawmakers, courts, and administrative commissions at present engaged in the uninspiring and costly business to thwart or defeat great industrial growth would all be thereby set free to do the stimulating, progressive work of guiding and directing the nation’s great energies to their utmost achievements” (Clark and Jenks 1917, 278-79). Jenks’ dissatisfaction with the enforcing powers of the FTC is significant (or perplexing) since, as we have seen in the previous section, he was the among the authors of the NCF draft which contemplated a commission with stringent licensing powers and authority not only over unfair practices as in the case of the final version of the FTC, but also over increases in capital stock, including those involving mergers.<sup>60</sup>

With respect to Clark and James, Young was concerned less with the general principles inspiring the 1914 legislation and more with its economic and legal implications. In concluding his three-part article devoted to the “Sherman act and the new anti trust legislation” (1915a; 1915b; 1915c), Young conceded that the FTC act “introduces a method of dealing with the admitted evils of unfair competition modeled upon what has proved a successful method of dealing with railroad discriminations,” and praised, albeit with some reservations, the enforcement machinery introduced by section 5 of the FTC act. His appraisal of the Clayton act, instead, was much less generous. According to Young, the Clayton Act had failed in doing what could have been achieved through a federal incorporation law, namely, clear up some of the vagaries of the Sherman act and provide understandable guidelines of acceptable conduct. As he put it in one significant passage:

“The anti-trust sections of the Clayton act, in the opinion of the present writer, are bungling and generally futile. There is a chance that, at the worst, they may make enough trouble to delay the enactment of the badly needed federal statute dealing thoroughly and systematically with the promotion, organization, and management of corporations engaged in interstate commerce. At best, so far as I can see, they will be ineffective (Young 1915c, 435-36).<sup>61</sup>

In this connection, it should be emphasized that even among sympathetic commentators of the 1914 legislation, the reaction to the Clayton act was somewhat less positive than that reserved to the FTC

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<sup>59</sup> Although the new section on the Clayton and FTC acts could be attributed to Clark, Jenks – as the leading author of the volume – must have agreed on its tone and content.

<sup>60</sup> It is significant because tends to confirm the prevailing influence of John Bates Clark in drafting the NCF proposal.

<sup>61</sup> Interestingly, a similar plea for a federal incorporation law, using almost the same exact phrasing, is found in the 1917 edition of the *Outlines of economics*, one of the most popular textbooks of the period, coauthored by Young himself. There, the authors observed: “The unfortunate effects of the lack of uniform state requirements in such matters as purposes of incorporations, corporate powers, qualifications and responsibilities of promoters and directors, capitalization and the like could in large measure be remedied by federal action. The Clayton Act touches only incidentally upon this field. Its provisions relating to incorporate stockholdings and interlocking directorates were framed with reference merely to the problem of the persecution of competitive conditions. What is needed is a federal statute dealing thoroughly and systematically with the promotion, organization, and management of corporations engaged on interstate commerce” (Ely, Adams, Lorenz, and Young 1917, 245). On the legal advantages of federal incorporation see also the three-part article appeared in the *Michigan Law Review* and written by the University of Missouri’s economist Myron W. Watkins (1918a; 1918b; 1919).

act, and in some cases Durand, Seager, and Steven joined their voices with Young and other economists who pointed out some legal and economic weaknesses in the act's prohibitions. The main criticism advanced by Young was that, with the possible exception of including farm and labor exemptions, the Clayton Act did not alter the Sherman Act prohibitions, neither it expanded its ambit. For instance, commenting upon the prohibitions on price discrimination and exclusive dealing contracts, Young observed that "these sections prohibit nothing that is not already condemned by the Sherman act." He allowed that one of the most important finality of the new legislation was the general idea of halting problems in their incipiency. Thus, while the Sherman Act was directed at present evils, the Clayton Act was intended to address potential problems, whether or not they were currently illegal under the original antitrust statute. "Nevertheless," – he sentenced – "I do not believe the net effect will be notably different from what it would have been if the Sherman act had remained the only statute reaching these practices" (1915c, 428).<sup>62</sup> Young's opinion concerning the other prohibitions was by no means different. He dismissed the banning of inter-corporate stockholding and of interlocking directorates as "patchwork legislation," insisting that "the use of these and other devices for the purpose of monopolizing is already prohibited by the Sherman Act" (1915c, 426).

It was section 7 – the so-called "holding corporation section" (Martin 1959) – that attracted much criticism by Young and some of his colleagues. As we have seen, Section 7 prohibited the acquisition of the stock of one corporation by another where the effect is to substantially lessen competition between the acquired and the acquiring corporation or to restrain competition or to tend to create a monopoly. Sumner Slichter (1917, 765) pointed out that such a prohibition "can be evaded by the outright purchase of the corporation's property" – a possibility earlier contemplated by Clark and Honey as we have shown above in section 3.4. Clark and Jenks (1917, 274) instead lamented that it would apply indiscriminately to all stock acquisitions, whether by a holding company or operating company and regardless of the technical form of the merger, with the consequence that: "no horizontal combination, big or little, is possible under this act for it is inconceivable that one of two competitors should acquire the other's stock and yet not disturb the competition between them. Strict construction of this Section [...] would prevent any further corporate combinations in the United States."

Young – who argued that "this provision is useless, although in individual cases it may prove to be mischievous" (1915c, 422) – advanced two kind of criticisms. First, he complained about the complete neglect by the Clayton act of other unfair or predatory activities connected to intercorporate stockholding which do not necessarily result in the suppression of competition, such as "the unfair treatment of minority stockholders, the general confusion in the adjustment of stockholders' and bondholders' equities, the opportunities for various fraudulent practices, and the artificial concentration of financial power [...]" Only a federal incorporation law – he reiterated – could keep together into a single legislative chorus the issues of antitrust and regulation designed to curb financial speculation and stabilize the economy. Second, commenting into the specifics of the prohibition, Young (1915c, 422) emphasized that Section 7 set forth a test that is narrower than the general common law principle in regard to "reasonable restraints of trade." Independently from any impact upon third parties, he explained, if the merger substantially lessened competition between the merging corporations, it would imply a violation of Section 7. To put it differently, the prohibition failed to recognize that the combination of two small or weak competitors, by increasing their competitive power, may stimulate rather than impair competition in the field of business as a whole, and it is with the general competitive situation that the law should be concerned. Durand, albeit an ardent supporter of antitrust, made the same point quite strongly and in more explicit terms:

"This section seems to add nothing of real value to the Sherman act. Moreover, if strictly construed, it prohibits that which should not be prohibited. Under the Sherman law the courts have already held inter-corporate stockholding unlawful when they result in unreasonable restraint of trade or in a tendency toward monopoly. Several of the great trust cases decided by the Supreme Court have turned on this point – the Standard Oil case, the Tobacco case, the Northern Securities case, the Union Pacific case and others.

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<sup>62</sup> Stevens as well argued that the provisions of the Sherman act are sufficiently broad to include price discriminations and excusive and tying arrangements. "In view, however, of the importance of the elimination of methods of unfair competition," – he continued – "it seems highly probable that, if little has been gained by this duplication, at least no harm has been done" (Stevens 1915, 43-44).



The new law, however, prohibits the acquisition of stocks not merely where competition in *the* trade – that is in the business concerned as a whole – is restrained; but also where merely the competition between the particular corporations directly concerned is lessened. A lessening of the competition between two corporations may increase the competition in the branch of industry or commerce in which they are engaged. One corporation may control, say, one-tenth of a given branch and another corporation one-twentieth. The acquisition of stock in one by the other may completely destroy competition between them, but may thereby render them more efficient in competing with other concerns” (Durand 1914, 83).

Slichter, who shared the same view, went a step further and even cast doubts about the constitutionality of Section 7. There is a limit, he wrote, beyond which the prohibition of the acquisition of property ceases to be an appropriate means of preventing unreasonable restraints of trade. This limit would seem to be passed “by a prohibition against the acquisition of a controlling interest in any corporation which competed to a ‘substantial’ extent with the acquiring corporation or by a third company in several competitors, regardless of how insignificant was the proportion of the line of business controlled by the competitors” (Slichter 1917, 765-66). “The provision” – he added (1917, 766) – “is also open to the attack that it limits the freedom of contract, contrary to the Fifth Amendment,” on the same ground, “that the restriction on the freedom to acquire property is greater than is reasonably necessary to protect trade from undue restraints.”

Another target of specific criticism was Section 6, the one providing for labor exemption from antitrust laws. Young defined the statement that “the labor of a human being is not a commodity or article of commerce,” as “little more than an empty blague,” and in the same fashion dismissed the permission granted to individual members of labor organizations to “lawfully carryout the legitimate objects thereof” as “at once harmless and unavailing” (1914c, 418) Young’s views were further developed by Edwin Witte, the famous labor economist of the University of Wisconsin, who stands as the most prolific contributor on the subject (1914; 1916; 1917a; 1917b). In a contribution appeared on the *Harvard Law Review*, Witte affirmed that the labor exemption of the Clayton Act had to be judged in the context of the recent court decisions. Witte referred in particular to *Hitchman Coal and Coke Co. vs. Mitchell* (1917), which held that the United Mine Workers could be prosecuted as a conspiracy in restraint of trade under the Sherman Act on either of the following two grounds: “interference with the flow of labor from state to state, or interference with the flow of a manufactured product” (Witte 1917b, 634). In other words, the Sherman act had been brought to bear upon labor organization, not because unions were in themselves a form of monopoly, and as such are in “restraint of competition,” but merely because strikes and boycotts had the effect of interfering in some degree with the free flow of goods between different states. In this connection Witte, echoing Young, stated that the labor exemption contained in Section 6 “leaves the Sherman Act effective just where it was effective before.” Since the action of unions must usually interfere with interstate commerce in some commodity, the clause removing labor from the category of goods in interstate commerce, “is of no practical significance.” Witte conceded that Section 20 of the Clayton Act seemed to provide a more solid shield to union activities by tightening the rules for granting injunctions. This section specified that no federal court could issue an injunction in any case arising between an employer and an employee “unless necessary to prevent irreparable injury to property, or to a property right, for which injury there is no adequate remedy at law, and such property [...] must be described with particularity [...]”<sup>63</sup> Courts could not restrain employees who were peacefully engaged in meeting, picketing, striking, boycotting, or paying strike benefits. This provision notwithstanding, Witte believed that the Clayton Act added little substantive protection for union powers. The clause concerning “irreparable injury” and the ambiguity of the act language gave judges considerable discretion to interpret these terms and limit union action. Witte concluded that the bill would prevent the dissolution of unions, but was very skeptical about its effective power to exempt unions from prosecutions under the Sherman Act.

As a concluding remark, it should be mentioned that the passing of the 1914 antitrust legislation also triggered various parallel debates, among which the one on the legality of resale price maintenance under the new Clayton Act prohibitions was definitely the most important. Price maintenance takes place every time a manufacturer sets the price at which its distributors must sell its product to consumers. The

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<sup>63</sup> (38 Stat., 780: Section 20).

most frequent argument advanced about the anti-competitive character of retail price maintenance – an argument that persists today – was that it constitutes a practice that facilitates retailer and manufacturer collusion, by coordinating pricing and making monitoring easier (Slichter, Tosdal). In general, the Clayton Act was considered ineffective in this regard. Some economists, like Taussig (1916), held a different view and saw price maintenance compatible with competitive conditions (see also the round table on price maintenance published in the March 1916 issue of the *American Economic Review*.)

## 7. Final considerations

Writing in the opening article of the first issue of the *Journal of Political Economy*, James Laurence Laughlin, one of the protagonists of our story, observed:

Whatever the undoubted progress in the development of economic instruction in the United States which may have taken place in the last fifteen years, and whatever may be at present the inquiring and even eager interest shown in the subject by vast numbers of people, both within and without our school of learning, the fact must be frankly acknowledged that the influence of scientific economic thinking in the United States has little or no authority with the masses of the people (Laughlin 1892, 1).

The Chicago economist lamented that scientific economic thinking had not exercised any tangible impact on the lower as well as on the higher strata of American society, including opinion-makers and legislators, and sentenced that at present “national action is likely to be controlled, not by experts, but by politicians who use these subjects for their own purposes.” As a consequence of the “unskilled and untrained prejudices of people in large parts of the country” – Laughlin concluded – “our legislation since the civil war has had an unenviable quality” (Laughlin 1892, 18).

Roughly two decades after Laughlin’s remarks, the situation seems profoundly changed. This essay, in fact, has shown that while some individual figures, like Allyn Young or Jeremiah Jenks, found that their personal views were frustrated by the final versions of the FTC and Clayton acts, American economists in general were among the most influential promoters and supporters of the 1914 antitrust legislation. This is by no means to imply that economists themselves were the primary cause of the supplementing of the Sherman act and the establishment of an administrative commission. However, when the 1911 dissolutions turned public sentiment and political agendas in favor of such a legislative measures, their work, albeit in several cases divergent in the premises, presented a rather coherent idea of what kind of unfair activities had to be banned, what the new prospected Federal Trade Commission should do, and how it should be empowered to achieve those ends. The work of John Bates Clark was especially important in this regard. In 1912, together with his son, he published the second edition of his seminal *The Control of Trusts*, where, among other things, they advocated the expansion of the Sherman act perimeter, so to interdict exactly those activities and institutional restraint that will be prohibited by the final version of the Clayton act. In addition, Clark advised legislators directly, and, together with Jenks, helped write the NFC proposal to introduce an interstate trade commission as a more effective device for the enforcement of the Sherman act under a “rule of reason” construction. Although the NFC draft bill differed in many important respects from final FTC act, it still exercised considerable influence on the act’s evolution and its final form. As noted by one interpreter, “the ideas embodied in the Federal Trade Commission Act represented a triumph of the agitation and education done by the NFC over the previous seven years” (Weinstein 1968, 89).

Apart from the prominent role that economists played in this highly important change in antitrust legislation, our historical reconstruction has also provides further evidence concerning the role economics, as an increasingly professionalized and structured discipline, had played in affecting policy choices during the progressive era (Bernstein 2001). Extremely significant, in this connection, is the extent of the involvement of the profession in the debates that framed the blueprint for the 1914 legislation. Among the many who actively contributed to these debates we found established general theorists such as the Clarks, Laughlin, Seager, Taussig, and Young as well as an array of field specialists like Durand, Gray, Haney, Jenks, Knauth, Meade, Stevens and others – whose names are rarely mentioned even in the most encyclopedic

accounts of the economic thought of the period.<sup>64</sup> The importance of the work of these specialists is reflected in their detailed analysis of the actual behavior and organization of these large conglomerates, often presented as single case studies or meticulous comparative taxonomies, which allowed the whole community to intertwine their theoretical considerations on the trust issue with a broad analysis of the factual evidence of the problem.

Finally, this essay contributes to the understanding of the prevailing conception of competition among American economists during the early decades of the last century. For the majority of the economists of the period, increasing size and market power were an essential part of a new form of competition that had supplanted the old-style competition among small non-integrated firms. In an environment in constant change, competition was perceived as a process contemplating the coexistence of various market structures: monopolies, natural monopolies, oligopolies, perfect and imperfect competition.<sup>65</sup> Economists' analysis contemplated some embryonic use of neoclassical tools, as we have seen for instance in the use of marginal costs analysis in the "ruinous competition" debate. The whole approach, however, was by no means formalistic and there was no attempt to define competition according to a set of fixed abstract standards. More importantly, as our analysis suggests, the emphasis of the debates which followed the 1911 court's decision was not placed exclusively on the competitive structure of the market as defined by the mere size of the competitors and their actual or potential market power, but also – and in some case predominantly – on the actual behavior of large firms and its anticompetitive consequences. If not obstructed by unfair practices such as those that had led to dissolution of the Standard Oil and American Tobacco, it was held, the new competitive order would be driven by superior efficiency and would, at the same time guarantee less conflict and waste of resources in the market arena. It is not a case, therefore, that American economists, even the less sympathetic to the trusts, showed little or no nostalgia for the nineteenth century ideal of competition between smaller independent firms with little or no market power. The Clarks provide an excellent example of this attitude when, after having sketched their antitrust agenda, wrote: "We do not want competition to be as fierce as it has been in the past, for that kind never lasts long, and while it lasts it does more harm than good. The more moderate rivalry that would be set up in the way just proposed offers at least some probability of permanence, so that we should be likely to have more competition left after twenty years than after twenty years of the present attempts to preserve 'free' warfare" (Clark and Clark 1912, 114-15).

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<sup>64</sup> For instance, Brown (2004, 69) points out that Jenks is scarcely mentioned in the relevant volume of Joseph Dorfman's *The Economic Mind in American Civilization* (1948), despite his very substantial scholarly and public roles in the economics of the day. The names of Durand, Gray, Haney, Knauth, Meade, and Stevens do not appear at all.

<sup>65</sup> In this connection the first two decades of the last century appear as an extension of the nineteenth century. See the excellent discussion of the several meanings of the term competition among late nineteenth century American economists by Morgan (1993).

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