Chapter 1

Creative Syncretism

Industrialization imperiled democracy and markets in the United States because it concentrated power in large corporations. Looking back at the Progressive Era, scholars generally see two options: break up corporations or regulate them. There was a third way, which contemporaries called regulated competition. In this framework, the state checked the tendency to concentrated power in the first instance by steering competition from predation into improvements in products and production processes. Louis Brandeis conceptualized regulated competition and introduced it into public debate during the presidential election of 1912.

Political entrepreneurs in Congress enacted many of Brandeis's proposals into law. They licensed the Federal Trade Commission (FTC) to check predatory rivalry before it turned into unassailable power and to cultivate business capacities to improve the quality of competition. The FTC enlisted business and professional associations to make regulated competition workable through better cost accounting and trade practice conferences. Trade associations in specialty manufacturing took up the FTC's challenge, and reinvented themselves from competition-suppressing cartels into developmental associations devoted to enhancing products, services, and productivity. The commercial printing industry showed how developmental associations could succeed. And nearly a third of the manufacturing industries in the United States adopted the tools of regulated competition and developmental association to improve economic performance. By a number of measures, regulated competition better reconciled traditional American aspirations to egalitarian democracy with modern ambitions to economic prosperity than either free markets or regulated corporations.

To be sure, regulated competition did not become hegemonic. It shared institutional and cultural space with other organizational forms, ideologies, and policy perspectives. Sometimes its practitioners battled opponents in competing institutional locations who saw the world quite differently; at other times, they practiced their craft without notice. In any case, regulated competition survived and the institutions of state and economy in the twentieth century remained diverse, multivocal, and essentially contested.

Regulated competition has been invisible to students of state building and industrialization in the United States. In the mainstream narrative, industrialization was about the rise of the big corporation; the politics of antitrust in the Progressive Era was about adjustment to it; and the FTC and trade associations during the 1920s were largely failed experiments in bureaucratic autonomy and liberal corporatism.

This story misses regulated competition because it divides tradition and modernity too sharply and evaluates the intrusion of the former into the latter as dysfunctional. The nineteenth-century era of courts and parties and competitive capitalism was fundamentally different from the twentieth-century era of administrative government and corporate capitalism. Each period had its defining cultural dispositions, constitutional principles, and institutional forms. When the old order intruded on the new one, principles and practices came into conflict. The result was paralysis, confusion, and administrative impotence.

This book argues otherwise: those who built regulated competition were successful precisely because they reached across historical, institutional, and cultural boundaries to find resources, which they creatively recombined in experiments in business regulation, public administration, accounting, and trade associations.

Brandeis decomposed the republican antimonopolist ideology of the movements that came before him and recombined its parts with principles drawn from the progressive movement's devotion to applied science and public administration. The result was a syncretic ideology I call republican experimentalism. Likewise, he recomposed the populist proposal to enforce competition with the progressive proposal to regulate monopoly to conceptualize regulated competition. Creative politicians in Congress continued Brandeis's work by recombining progressive Republican and populist Democratic proposals for a federal trade commission and then forging a majority coalition by interpreting their work to their colleagues through multiple frames. At the FTC, creative commissioners recomposed resources from civil society to create a network of business and professional associations devoted to upgrading competition through deliberation and cost accounting. Prodded by the commission, reflexive associationalists in the commercial printing industry reconfigured their association from a competition-suppressing cartel into a developmental association, devoted to reconfiguring competitive customs through new forms of cost accounting. The U.S. Chamber of Commerce assembled cost accountants, government officials, and trade association executives in a series of deliberative forums, where they culled generalizations from their experiences to create a usable model of developmental association.

It is difficult to make sense of these people's work or the institutions they created with the standard institutionalist assumptions, which inform the received narrative. This book develops a different theory of institutions I call creative syncretism, which rests on two propositions. Institutions are composed of an indefinite number of parts, which can be decomposed and recombined in unpredictable ways. Action within institutions is always potentially creative. Creative syncretism will help us understand how the builders of regulated competition created an experimentalist state, which was devoted to cultivating capacities for economic improvement in U.S. industry.

This chapter explains why the institutionalist narrative misses regulated competition, presents the theory of creative syncretism, and then shows how it informs the story told in this book. The first section outlines institutionalist principles and shows how they have been applied to industrialization, Progressive Era antitrust reform, and associationalism in the 1920s. The second section raises empirical objections to the institutionalist narrative, which reveal systematic theoretical problems. The third section explains the theory of creative syncretism. Finally, the fourth section summarizes the narrative developed in this book.

INSTITUTIONALISM AND THE CONVENTIONAL STORY

Historical institutionalists from various fields have missed or misunderstood regulated competition.[1] Despite progress in understanding comparative industrialization and state building, they have made theoretical commitments, which restrict empirical research, and make it difficult to account for the innovations described in this book.

[1] By "historical institutionalists," I mean new business and organizational historians, new institutional and economic sociologists, and historical institutionalists in political science. See the notes 2 through 14 for representative examples.

Institutionalists present industrialization as the rise of mass production and state building as the emergence of bureaucratic autonomy. Although they acknowledge deviations from these forms, their story begins with a master narrative that makes unwarranted assumptions about technology, institutional constraints on agency, and historical sequencing. The result is not only to miss regulated competition, but also to narrow our appreciation of diversity within institutions, mistakenly conceptualize institutional change as episodic rather than normal, and overlook the everyday creativity of institutional actors.

This section outlines the main principles of institutionalist theory and shows how they inform the mainstream narrative.

Institutionalist Principles

Institutionalist accounts of industrialization and state building make five critical assumptions: technology determines economic problems, historical sequence determines institutional form, institutions constrain action, institutions are historically layered, and institutions are path dependent.

Technology Determines Economic Problems. In institutionalist theory, the revolution in technology determined the characteristic economic problems associated with industrialization. For example, modern steelmaking was fundamentally different from iron forging, railroads from canals, and cigarette from cigar manufacture. Despite their differences, these innovations raised similar economic dilemmas and management problems. This is not to say that institutionalists are technological determinists. They recognize there were many efficient ways to manage modern technologies and show how context, culture, and institutions determined diverse solutions with varying degrees of success. Nonetheless, technology is exogenous, defines the vector of problems to solve, and constrains the range of effective solutions.[2]

Historical Sequence Determines Institutional Form. In mainstream institutionalism, all societies have multiple institutions, which have independent

[2] The classic statement of this perspective on technology in the new business history is Alfred D. Chandler, Jr., *The Visible Hand* (Cambridge, MA: Harvard University Press, 1977); and Alfred D. Chandler, Jr., *Scale and Scope* (Cambridge, MA: Harvard University Press, 1990). See also Herman Daems, "The Rise of the Modern Industrial Enterprise: A New Perspective," in Alfred D. Chandler, Jr. and Herman Daems, eds., *Managerial Hierarchies* (Cambridge, MA: Harvard University Press, 1980). Among organizational

histories. Economic institutions develop differently from institutions in the state, politics, or the family. One can learn a great deal about national variations in political and economic development by paying attention to variations in the sequence of democratization, industrialization, and state building.[3] For example, in Europe, where state building occurred under monarchies prior to industrialization, industrializing elites learned to consult with bureaucrats. In the United States, where state building occurred after industrialization and democratization, corporate elites saw efforts to build state capacity as intrusions on their autonomy.[4] Institutional sequencing shapes how actors define their identities and interests and the possible courses of reform in modern government and industry.

Institutions Constrain Action. Institutions constrain economic and political action through a variety of mechanisms: rules, taken-for-granted

historians who make this assumption, see Thomas K. McCraw, "Rethinking the Trust Question," in Thomas K. McCraw, ed., *Regulation in Perspective* (Boston: Harvard Business School Press, 1981), 1–55; and Louis Galambos, "Technology, Political Economy and Professionalization: Central Themes of the Organizational Synthesis," *Business History Review* 57 (Winter 1983): 471–93. This assumption is also shared by leading economic sociologists. See Neil Fligstein, *The Transformation of Corporate Control* (Cambridge, MA: Harvard University Press, 1900), 33–74; and Frank Dobbin and Timothy J. Dowd, "The Market That Anti-Trust Built," *American Sociological Review* 65 (2000): 631–57. Historical institutionalists in political science, studying business regulation, also assume technology determined the characteristic economic problems of industrialization. See, for example, Stephen Skowronek, *Building a New American State: The Expansion of National Administrative Capacities, 1877–1920* (Cambridge: Cambridge University Press, 1982), 121–25.

3 Theda Skocpol, *Protecting Soldiers and Mothers: The Political Origins of Social Policy in the United States* (Cambridge, MA: Harvard University Press, 1992), 41–47; Edwin Amenta and Theda Skocpol, "Taking Exception: Explaining the Distinctiveness of American Public Policies in the Last Century," in Francis G. Castles, ed., *The Comparative History of Public Policy* (New York: Oxford University Press, 1989), 292–333; Skowronek, *Building a New American State;* Margaret Weir, Ann Shola Orloff, and Theda Skocpol, "Introduction: Understanding American Social Politics," in Margaret Weir, Ann Shola Orloff, and Theda Skocpol, eds., *The Politics of Social Policy in the United States* (Princeton, NJ: Princeton University Press, 1988), 3–36; Ira Katznelson, "Working-Class Formation: Constructing Cases and Comparisons," in I. Katznelson and A. Zolberg, eds., *Working Class Formation in Western Europe and the United States* (Princeton, NJ: Princeton University Press, 1986), 3–41; Martin Shefter, "Trade Unions and Political Machines: The Organization and Disorganization of the American Working Class in the Late Nineteenth Century," in Katznelson and Zolberg, eds., *Working Class Formation*, 197–275.

4 David Vogel, "Why Businessmen Mistrust Their State," *British Journal of Political Science* 8 (January 1978): 45–78.

schemas, coercion, mimesis, and incentives. In analyzing the economy and economic policy, institutionalists usually draw upon rational choice theory to make sense of institutional forms. They find that institutional control mechanisms are especially important for minimizing transaction costs, resolving collective action problems, and ensuring public goods necessary for growth (e.g., labor training). If one learns about the organization of institutional mechanisms of control, one can predict, with some probability of success, the interests, identities, ideas, cultural dispositions, and actions of its agents and how well they work in maintaining order.[5]

Institutions Are Historically Layered. New institutions do not displace old ones. Instead, they exist side by side in incongruous and conflictual relations. Political scientists Karen Orren and Stephen Skowronek call this "intercurrence." In the United States, the administrative state did not displace the nineteenth-century order of courts and parties. Instead, older institutions became twentieth-century competitors to administration in a disorder, where ongoing conflicts over authority defined modern politics. Individual political institutions, such as the U.S. presidency, exhibit a similar dynamic. As political scientist Jeffrey Tulis shows, twentieth-century principles and practices did not displace old rules and routines in the U.S. presidency; they joined them in complex and incongruous "layers."[6]

Institutions Are Path Dependent. Seemingly small choices made at one moment in history can be cumulative and narrow the range of possibilities

[5] Kathleen Thelen and Sven Steinmo, "Historical Institutionalism in Comparative Politics," in Sven Steinmo, Kathleen Thelen, and Frank Longstreth, *Structuring Politics: Historical Institutionalism in Comparative Analysis* (Cambridge: Cambridge University Press, 1992). On institutions as solutions to collective action problems, see Peter Hall and David Soskice, "Introduction to Varieties of Capitalism," in Peter Hall and David Soskice, *Varieties of Capitalism* (New York: Oxford University Press, 2001), 9–12; Douglas North, *Institutions, Institutional Change and Economic Growth* (Cambridge: Cambridge University Press, 1990); John R. Bowman, "The Politics of the Market: Economic Competition and the Organization of Capitalists," *Political Power and Social Theory* 5 (1985): 35–88; Pepper D. Culpepper, "Employers, Public Policy, and the Politics of Decentralized Cooperation in Germany and France," in Hall and Soskice, eds., *Varieties of Capitalism*, 275–307; and Pepper D. Culpepper, *Creating Cooperation: How States Develop Human Capital in Europe* (Ithaca, NY: Cornell University Press, 2003). On institutions as solutions to transaction cost problems, see Oliver Williamson, *The Economic Institutions of Capitalism: Firms, Markets, Relational Contracting* (New York: Free Press, 1985).

[6] Karen Orren and Stephen Skowronek, "Beyond the Iconography of Order," in Lawrence C. Dodd and Calvin Jillson, eds., *The Dynamics of American Politics: Approaches and Interpretations* (Boulder, CO: Westview, 1994); Karen Orren and Stephen Skowronek, *The Search for American Political Development* (Cambridge: Cambridge University

in the future. Commitments to institutional practices can involve high initial costs and reap increasing returns from repetition, learning, or amortization of sunk costs. But path dependencies are not merely the result of increasing returns. Institutionalists have uncovered a variety of cognitive, rational, and coercive mechanisms that ensure reproduction because actors find it more attractive to follow routines than consider alternatives.[7]

The Institutionalist Story

The institutionalist account of industrialization and state building from the Civil War to the Great Depression is about the rise of and adjustment to mass production. It is told in three periods. In the first period, technological innovations created crises of overcapacity, which business tried to solve through cartels. When antitrust blocked this solution, organizational entrepreneurs abandoned association for consolidation in the largest merger wave in U.S. history. This conjuncture shaped future possibilities. The second period is about the politics of adjustment to the managerial corporation. When progressive state builders attempted to create a federal commission to regulate the corporation, old-order institutions (courts and parties) hamstrung their efforts. The third period returned to the economic issue that dominated the formative era: overcapacity. Although the new bureaucratic state collaborated with trade associations to solve overcapacity problems in the 1920s, path dependencies and institutional layering

Press, 2004), 108–18; Kathleen Thelen, *How Institutions Evolve: The Political Economy of Skills in Germany, Britain, the United States and Japan* (Cambridge: Cambridge University Press, 2004), 31–37; Wolfgang Streeck and Kathleen Thelen, eds., *Beyond Continuity: Institutional Change in Advanced Political Economies* (Oxford: Oxford University Press, 2005). On layering in the U.S. presidency, see Jeffrey Tulis, *The Rhetorical Presidency* (Princeton, NJ: Princeton University Press, 1987).

7 Paul Pierson, *Politics in Time: History, Institutions, Social Analysis* (Princeton, NJ: Princeton University Press, 2004); Paul Pierson, "Increasing Returns, Path Dependence, and the Study of Politics," *American Political Science Review* 94, no. 2 (June 2000): 251–67; Douglass C. North, *Institutions, Institutional Change and Economic Performance* (Cambridge: Cambridge University Press, 1990); Brian Arthur, *Increasing Returns and Path Dependence in the Economy* (Ann Arbor: University of Michigan Press, 1994); Fligstein, *Transformation of Corporate Control,* 5–10; Paul J. DiMaggio and Walter W. Powell, "The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields," *American Sociological Review* 48 (1983), 147–60; Paul DiMaggio and Walter W. Powell, "Introduction," in Walter Powell and Paul DiMaggio, eds., *The New Institutionalism in Organizational Analysis* (Chicago: University of Chicago Press, 1991), 1–40.

impeded their efforts. Conflicts between the bureaucracy, parties, and the courts over competition policy left associations and government too weak to plan or discipline business. The result was a privately ordered economy, organized in markets and corporate hierarchies.

The nineteenth century witnessed a revolution in technology, which resulted in routine crises of overcapacity and cut-throat price competition. The steam engine, the open-hearth furnace in steel, and Bonsack rolling machine in tobacco greatly increased the speed of transportation and production. But these were expensive technologies that saddled firms with unprecedented debt. Where most costs had been "variable" in traditional industries (e.g., textiles, printing), most costs were "fixed" in modern industry (i.e., they did not vary with output). High fixed costs presented a novel economic problem: How could firms maintain production at a sufficiently high level to reap economies of scale, when their competitors, who had the same idea, were flooding the market with goods? This problem was compounded by depressions, which occurred every ten years between the 1870s and the second decade of the twentieth century. Business cut production traditionally in depressions. But modern manufacturers had the opposite incentive. In efforts to maintain scale economies, outcompete their rivals, and raise sufficient revenue to cover fixed costs and stave off bankruptcy, they maintained production levels and slashed prices. The result was cutthroat competition.[8]

The short-term solution to cutthroat competition was the creation of cartels, but it was notoriously unstable. In industry after industry, organizational entrepreneurs formed trade associations to manage overcapacity. However, as rational choice theorists predict and institutionalists argue, members had "high-powered incentives" to cheat on price and output agreements and profit at the expense of cooperators. As a result, cartels collapsed. To be sure, many cartels devised innovative methods to enforce agreements (the "trust certificate" is the most famous). However, by the 1880s they ran afoul of antitrust law. Unlike Germany or Japan,

[8] This paragraph and the following one are based on Chandler, *The Visible Hand;* Fligstein, *Transformation of Corporate Control*, 38–66; Dobbin and Dowd, "Market That Antitrust Built"; John R. Bowman, *Capitalist Collective Action: Competition, Cooperation and Conflict in the Coal Industry* (Cambridge: Cambridge University Press, 1989); Oliver E. Williamson, "The Modern Corporation: Origins, Evolution, Attributes," *Journal of Economic Literature* 19 (December 1981): 1537–68; J. Rogers Hollingsworth, "The Logic of Coordinating American Manufacturing Sectors," in John L. Campbell, J. Rogers Hollingsworth, and Leon L. Lindberg, eds., *Governance of the American Economy* (Cambridge: Cambridge University Press, 1991), 38–40.

where the state sanctioned and enforced cartels, U.S. courts refused to enforce trade agreements and state legislatures passed antitrust laws that empowered attorneys general to prosecute and dissolve them. Why?

Institutionalists explain the difference by historical sequencing. In the United States, nineteenth-century politics was organized around patronage parties and the judiciary. When the last vestiges of the property franchise ended in the 1830s, the first mass-based parties enlisted the petit bourgeoisie into politics. Without a central state bureaucracy that controlled policy and resources, patronage parties integrated the electorate through discrete benefits and appeal to the moral convictions of agrarian, small property, and artisanal norms. This class was overrepresented in legislatures.[9] Thus, when the "trusts" began to challenge traditional industry or set high prices for transportation and bulk commodities, the petit bourgeoisie registered its displeasure by instituting antitrust. In 1890, Congress passed the Sherman Antitrust Act, which outlawed all combinations in restraint of trade.

The absence of an autonomous bureaucracy in the United States also gave the judiciary far more influence and control over public policy than courts in Europe. Drawing on common-law precedents against restraints of trade before the advent of antitrust, the courts refused to enforce cartels. After antitrust, they read statutory law literally. For the first twenty years of Sherman Act jurisprudence, the courts declared all forms of business cartels illegal.[10]

Political institutions constrained and economic actors reacted. By the end of the 1890s, it was clear that association (or what business historians call "loose horizontal combination") was not an option. An alliance of industrialists, elite attorneys, and investment bankers seized the opportunity to solve the mounting crisis of overcapacity and cutthroat competition through mergers and acquisitions. They rearranged the principles of corporation law to facilitate consolidation. Between 1898 and 1904, the United States witnessed the largest merger wave in its history. Thousands

[9] Martin Shefter, "Party, Bureaucracy, and Political Change in the United States," *Sage Electoral Studies Yearbook* 4 (1978): 211–65; Skocpol, *Protecting Soldiers and Mothers*, 44–45; Amenta and Skocpol, "Taking Exception," 314–15; Skowronek, *Building a New American State*, 19–35; Weir, Orloff, and Skocpol, "Introduction," 18–22.

[10] Skowronek, *Building a New American State*, 19–35; Hans Thorelli, *The Federal Antitrust Policy* (Stockholm: Kungl, 1954), 155–60; McCraw, *Prophets of Regulation*, 65–68; Dobbin and Dowd, "The Market That Antitrust Built"; Hollingsworth, "The Logic of Coordinating American Manufacturing Sectors," 38–40.

of firms disappeared and some of the twentieth century's most prominent corporations – such as U.S. Steel and American Tobacco – were born.[11]

The great merger wave was a conjuncture, which created path dependencies. Capital-intensive industries continued to reap increasing returns from perfecting large-scale corporate hierarchies, whereas labor-intensive industries returned to open market competition. Trade associations became a lost alternative in the United States. Instead, antitrust created what students of "varieties of capitalism" call the archetype "liberal market economy." In contrast to Germany, where cartels were legal and most economic activity is "coordinated" by associations, the United States placed all economic activity in corporate hierarchies or open markets.[12]

The period following the great merger wave was marked by adjustment. In society, culture, and politics, Americans asked how they would adapt to the corporate reconstruction of U.S. capitalism. Some continued to resist, whereas others hoped to harness new forms to public ends. Nowhere was this struggle more evident than in the Progressive Era politics of antitrust, where old-order populists hoped to break up corporate monopolies and progressive state builders hoped to create an autonomous commission to regulate them. Although the progressives succeeded in 1914, institutional layering (or intercurrence) hampered the effectiveness of the FTC. Patronage parties refused to grant it sufficient authority or resources to exercise control. And the courts, jealous of competing authority, restricted the commission's powers. Thus, when the twin crises of overcapacity and redistribution reemerged in the 1920s and the Great Depression began, the bureaucracy was too weak to respond.[13]

[11] Hollingsworth, "The Logic of Coordinating American Manufacturing Sectors," 37–45; Naomi R. Lamoreaux, *The Great Merger Movement in American Business, 1895–1904* (Cambridge: Cambridge University Press, 1985); Dobbin and Dowd, "The Market That Antitrust Built"; McCraw, *Prophets of Regulation*, 68, 144–45; Jesse Markham, "Survey of the Evidence and Findings on Mergers," in *Business Concentration and Price Policy* (Princeton, NJ: Princeton University Press, 1955), 144; Ralph Nelson, *Merger Movements in American Industry, 1895–1956* (Princeton, NJ: Princeton University Press, 1959); William G. Roy, *Socializing Capital: The Rise of the Large Industrial Corporation* (Princeton, NJ: Princeton University Press, 1997).

[12] Hall and Soskice, "Introduction to Varieties of Capitalism," 27–33.

[13] On the weakness of the Federal Trade Commission, see Daniel P. Carpenter, *The Forging of Bureaucratic Autonomy* (Princeton, NJ: Princeton University Press, 2001), 7–11; Theodore Lowi, *End of Liberalism: The Second Republic of the United States* (New York: Norton, 1979), 97, 101, 111–12; Kenneth Finegold and Theda Skocpol, *State and Party in America's New Deal* (Madison: University of Wisconsin Press, 1995), 53–57; Thomas Lane Moore III, "The Establishment of a 'New Freedom' Policy: The Federal