

## American Fair Trade

Rather than viewing the history of American capitalism as the unassailable ascent of large-scale corporations and free competition, *American Fair Trade* argues that trade associations of independent proprietors lobbied and litigated to reshape competition policy to their benefit. At the turn of the twentieth century, this widespread fair trade movement borrowed from progressive law and economics, demonstrating a persistent concern with market fairness – not only fair prices for consumers but also fair competition among businesses. Proponents of fair trade collaborated with regulators to create codes of fair competition and influenced the administrative state’s public-private approach to market regulation. New Deal partnerships in planning borrowed from those efforts to manage competitive markets, yet ultimately discredited the fair trade model by mandating economy-wide trade rules that sharply reduced competition. Laura Phillips Sawyer analyzes how these efforts to reconcile the American tradition of a well-regulated society with the legacy of Gilded Age of laissez-faire capitalism produced the modern American regulatory state.

LAURA PHILLIPS SAWYER is an assistant professor at Harvard Business School, where she teaches in the Business, Government, and International Economy Unit. Her work has appeared in the *Business History Review*, *Journal of the Gilded Age and Progressive Era*, *The Legitimacy of Power*, and *Capital Gains*. She received the 2016 Sonnedecker Prize for Best Article by the American Institute for the History of Pharmacy. Her work has been supported by numerous grants and fellowships.

# American Fair Trade

*Proprietary Capitalism, Corporatism, and the  
“New Competition,” 1890–1940*

LAURA PHILLIPS SAWYER

*Harvard Business School*



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*For my partner,  
Logan*

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## Preface

*American Fair Trade* argues that trade associations of independent proprietors acted as regulatory intermediaries between individual firms and government agencies in the fifty years before World War II. In doing so they facilitated the growth of the administrative state and altered the legal meaning of “fair competition.” These rule-making partnerships between private business associations and the Department of Commerce and the Federal Trade Commission circumvented the U.S. Supreme Court’s early antitrust jurisprudence, expanded the rule of reason, and informed New Deal partnerships in planning. The conventional history of American capitalism has dismissed associative management of competitive practices as impracticable due to the Court’s stringent antitrust law and the coordination challenges of collective action. Yet, trade association organization, litigation, and lobbying played an influential role in modern American state-building. *American Fair Trade* argues that the businessmen and -women who led association efforts to craft, monitor, and enforce voluntary codes fair competition through the 1920s made important and lasting contributions to modern American political economy by institutionalizing partnerships with federal regulators. Those partnerships conferred legitimacy to the trade association movement to manage competitive markets and contributed to nascent administrative agencies’ early efforts at macroeconomic management. This approach to regulation relied upon popular rhetoricians and reformers, such as Louis Brandeis, who capitalized on antimonopoly sentiment and argued that economic decentralization best protected the American liberal-democratic tradition. It also appealed to reformers, such as Herbert Hoover, who reconfigured Brandeis’s regulated competition to prioritize economic rationalization

and standardization. Thus, the American experiment with codes of fair competition resulted from regulatory initiatives on the left and the right, rather than solely business self-interest or rent-seeking. Over the course of the early twentieth century, the advocates for the “new competition” provided a timely critique of free market competition and helped shape the foundations of the modern administrative state. By 1940, although New Deal experiments in a coordinated market economy had largely ended, the modern American administrative state had achieved a level of autonomy that subsumed issues of managing competitive markets into various administrative processes of rule-making, adjudication, and enforcement, largely away from public scrutiny.

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Over the course of this multiyear project I have incurred many debts. While a mere “thank you” seems woefully inadequate to express my gratitude, it is with immense joy that I write these acknowledgments. I owe a great deal to my many teachers, mentors, friends, and colleagues who have engaged with the ideas put forth in this book. I have also benefited from multiple academic institutions – the University of Virginia, Brown University, and Harvard Business School. This book project has been strengthened by those relationships and institutions, though any errors or oversights remain my own.

I am grateful to the mentors and teachers who helped direct this project in distinct ways. My first debt is to Brian Balogh, my dissertation advisor at the University of Virginia, who shepherded me through the process of identifying, developing, and revising a thesis topic. He then continued to guide me through the process of turning the dissertation into a book manuscript. His perspicacious insights into American political development and his unrivaled dedication to both his scholarship and his students have served as an inspiration not only to me but to all his students. He is a practitioner and a teacher of good citizenship, something I will strive to pay forward. He also has made the Miller Center of Public Affairs an exciting and intellectually rigorous academic environment for scholars of American politics. I am incredibly thankful for his consistent support and friendship over the years. Gerald Berk joined my dissertation committee as an outside reader and thankfully, stayed on as I revised the book manuscript. His scholarly work on Louis Brandeis and regulated competition helped to guide my research interests as a graduate student, and his

work continues to generate new insights. He generously gave his time and energy to help develop this project, for which I am very appreciative.

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As I finished my graduate work and began to engage more deeply with the business and legal history community outside of the University of Virginia – first as a postdoc and then as a junior faculty member – I was lucky to find enthusiastic and engaged interlocutors at both Brown University and Harvard Business School. I am grateful to John Tomasi, who runs the Political Theory Project (PTP) at Brown, for welcoming a historian to a roster of outstanding political theorists and philosophers. John's dedication to intellectual curiosity and open debate made PTP an exciting place to work. I also gained insights into theory and philosophy from my PTP colleagues – Alex Gourevitch, Javier Hidalgo, Jessica Flannigan, Jeppe von Platz, and Kevin Vallier – and I continue to treasure those friendships. The history department at Brown proved both welcoming and engaging, especially Seth Rockman and Michael Vorenburg. As the Harvard-Newcomen Fellow in business history, Geoff Jones and Walter Friedman were always willing to provide critical engagement and constructive feedback that helped bring this project to completion. Walter and Geoff both read chapter drafts and articles, lending me one of their most precious commodities: time. They have been invaluable colleagues at HBS.

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Yet even with all of these opportunities for personal academic enrichment, one cannot forget that our duty is to educate and engage our students. I am indebted to my students at Virginia, Brown, and HBS. They have taught me as much as anyone about how to ask probing questions and communicate overarching principles. They have also endured my dry humor along the way, perhaps even enjoying it from time to time. Teaching at HBS has been particularly rewarding, especially with my sections in the winter term of 2016.

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Company. Jennifer Johns, the curator at the Ruthmere Museum in Elkhart, Indiana, deserves special thanks for guiding me through the Dr. Miles Medical Company archives. It was wonderfully enriching to read the company ledgers, tour the Beardsley home, and discover the handwritten letters that plotted business strategy through the early twentieth century. Thank you for preserving these historical documents!

As all business historians know, the Hagley Museum and Library not only has vast holdings of business records and personal papers, but it is a truly lovely place to work. I would like to thank Roger Horowitz, Carol Lockman, and Terri Snyder for granting me the pleasure of an extended stay with the Henry Belin du Pont Dissertation Fellowship. I would especially like to thank Majorie McNinch at the archive for all her help navigating the U.S. Chamber of Commerce documents and the Seagram's collections. I have enjoyed each of my visits to Hagley, and I look forward to future trips.

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