

Chapter Seven

The End of the Progressive Corporation

“America is a business country.”

Woodrow Wilson, on Lincoln’s Birthday, February 12, 1912

“Government cannot take its hand off of business.”

Woodrow Wilson, before The Economic Club of New York, May 23, 1912.

This is the story of the pivotal year 1914, the year that began the end of the Progressive Era in business and prepared the way for the third stage of growth of the modern stock market. It also shows how the seven years bridging the Panic of 1907 and the First World War mark the second phase of the development of the American stock market with dramatic increases in the number of small investors and the pronounced beginnings of a shift from bonds to stock. The first phase of development saw the giant combinations creating the modern stock market, and securities regulation as very much a part of the antitrust movement. This second stage separated antitrust concerns from the stock market and worried about the way that market could, and did, destabilize the overall well-being of the American economy.

The year of war marked the apex of the second phase of securities regulation, with the Owen stock exchange regulation bill as the first and last significant federal effort to regulate securities speculation for the sake of economic stability, even as it contained the beginnings of the investor protection regulation that characterized the third and final stage. The stock market became the subject of regulatory focus in its own right, if not quite yet for the interest of investors.¹

The Modern Market

As we have seen, stock ownership among ordinary investors had been increasing over the previous decade, and with increasing speed. While the years from the turn of the century to the Panic of 1907 marked one stage of growth, driven by the masses of new securities created by the merger wave and its aftermath and taken up by Americans experiencing a new prosperity, the period from the panic to the War was a second stage. The financial press and retail brokerages were proliferating, industrial stocks became normalized as investment vehicles and began to overtake the railroads, and preferred and even common stock no longer frightened the “average” investor. In fact some reports characterized the market following the panic as middle class bargain hunting for stocks. Speculation was no longer an evil word; advisors and policymakers only cautioned the public to speculate intelligently rather than gamble. For a still small but growing class of Americans, the stock market had become part of the ordinary course of American life.

Numbers from the period are not entirely reliable, but the trends are unmistakable. One 1914 report noted that the number of stockholders had increased between six and seven times over the preceding ten years. That number had doubled from 1901 to 1906, again from 1906 to 1911, and again from 1911 to 1913, despite the fact that the last period showed a particularly disappointing stock market performance. The facts that many of these stockholders owned only one or two shares, and that the number of odd-lot buyers substantially increased, were clear indications that small investors were beginning to shift significantly to stock as investment vehicles. One of the most rigorous studies of the period concluded that the value of new securities issued per year was almost \$2 billion for the six years between 1907 and 1912,

swelling the market. While it remains likely that the absolute number of new stockholders remained relatively small, the speed with which their participation in the market was increasing signals the growing centrality of the stock market to American business, culture, and individual wealth.²

Additional evidence supports this conclusion in somewhat finer detail. The National Civic Federation's Distribution of Ownership in Investments Subcommittee, chaired by economist E.R.A. Seligman, began a study in 1914 to figure out how widely spread capital ownership had become. The NCF was simultaneously studying the division of American wealth between labor and capital and the degree to which socialism had spread in the United States, and its stock study was prompted by its pronounced fear of creeping socialism. Widespread capital ownership would be some evidence that the socialist threat was weak.³

The NCF study used several different databases. In February 1914, *The Wall Street Journal* had published articles detailing the distribution of stock ownership in a number of railroads and industrial corporations. In contrast to the NCF's concern with socialism, the *Journal's* purpose in publishing the articles was to show the federal government, during a period of intense legislative activity, that regulation would hurt not the plutocrats but Americans of modest means. The *Journal* found that seventy-two railroads had 461,445 shareholders. From June 1912 to June 1913, the number had increased by 11% even as capitalization had increased only 2%. Average shares per holder decreased from 141 to 133. The *Journal* sampled a few corporations for which December 1913 data were available and found the trend continuing. The clear conclusion was that the number of shareholders, and especially the number of small shareholders, was increasing even in a bad market environment. Importantly, too, the average par

value of these individual holdings was approximately \$14,000 in 1912 and \$13,320 in 1913. While this last number is \$273,800.59 in 2006 dollars, these average holdings hardly represent the kind of plutocratic ownership suggested by the popular press. Regrettably, I was unable to find a way to determine the standard deviation from the mean figures **[Emily –check]**, but it does seem indisputable that at least the middle class investor was a dramatically increasing presence in the market, a conclusion borne out by the NCF data. As the *Journal* put it, the odd-lot investor was the “backbone of the investing world.”⁴

The evidence presented by industrial corporations was even more striking. Three hundred twenty-seven companies had 790,023 shareholders, with average holdings of 85 shares at an average par value of \$8,500 (\$174,722.60 in 2006). Of course, as the *Journal* noted, there was duplication of investors in industrials and in industrials and railroads, but its conclusions (and mine) are “not materially affected.” Corporate capital ownership was clearly becoming more widespread.⁵

The Comptroller of the Currency also kept data on stock ownership in national banks. **[get this]** The Committee relied upon all this material as its starting point. In addition, the NCF wrote to at least **[one hundred]** corporations requesting information.

The records of the study in the NCF archives suggest that it was never completed, nor were the results published in the organization’s periodical, *The National Civic Federation Review*. But the available data is highly suggestive. Many corporations responded in more or less detail, which makes it difficult to classify the information, but one can identify three broad categories. Some companies provided very specific information, for varying years, on the distribution of shares (one to five shares, six to ten, etc.), sometimes by type (common and

preferred), and sometimes in the aggregate. A larger number simply provided the average number of shares owned by each shareholder. A significant number of companies also provided information on the extent of their shares owned by women and foreigners. There is a compilation in the NCF files of 75 of the responding corporations' average holdings in 1901, 1906, and 1913. Presumably those included were the only corporations in the survey that had remained in continual existence during that period.

Taken together, the information in the NCF archives allows me to make modest claims about the distribution of shareholdings in terms of the size of blocks owned, the growth of small investors, and the increasing trend toward speculation. Several respondents themselves expressly noted increases in small shareholdings, greater distribution of their shares, the extent of duplication (which provides evidence that diversification was a common investment practice), and the extent of institutional ownership.

The data show a significant spread in share ownership across the population from the turn of the century on, both directly in the form of small shareholdings of less than 100 shares, and indirectly in the form of increased stock ownership by insurance companies and savings banks. The compiled data of 75 corporations shows an increase in the number of shareholders from 140,072 in 1901, to 197,264 in 1906, to 414,945 in 1913. Large holdings (holdings over 1,000 shares) were very small proportions of almost every company's stockholdings. Average shareholdings were consistently low, and the number of small holdings had increased dramatically over time. Some of the more pronounced leaps included U.S. Steel, whose shareholders increased from 32,000 to 125,000 over this period, General Electric, from 2,900 to 10,450, and American Telephone & Telegraph, which grew from 8,143 to 53,737. The number

of shareholders in these companies increased by 41% between 1901 and 1906, and 110% between 1906 and 1913. It is particularly striking to see the extent of growth from 1906 on, both because it encompasses the highly disruptive Panic of 1907 and its aftermath and because most of the period from 1910 to 1914 was one long flat market characterized by broad economic stagnation.

The data demonstrate the increased popularity of common stock as an investment vehicle, with significant amounts of small blockholdings (under 100 shares and under 500 shares) in a number of corporations. They show increased amounts of outstanding stock for almost every corporation. They also show the very strong presence of women investors, both in common stocks of speculative companies and as investors more generally. Women's ownership ranged from 25% to over 40% in virtually every company reporting such statistics, including General Motors, B.F. Goodrich, Borden's Condensed Milk Co., and National Carbon Company, except in cases like American Locomotive Company, where they owned a majority of the preferred stock, and American Express Company and the Delaware, Lackawana & Western Coal Co., where they owned an outright majority of all of the stock. The *Wall Street Journal* articles both remark upon the extent of women's ownership of corporate America. **[Emily – can we find enough to support contemporary claims that women liked to speculate?]** All of this information, although limited, demonstrates strong trends to broader distribution of stock over the population and increased numbers of small shareholders.⁶

As I noted, indirect ownership had increased as well. Three and a half million life insurance policies were in force in 1913 issued by companies investing in railroad stocks. The fourteen companies identified in the NCF archives together owned 20 million shares of railroad

stocks at a time when the number of railroad shares outstanding was [] and the number of shares of stock outstanding was []. **[Emily –can we find any data correlating insurance ownership with stock ownership? Any more info on ins. cos. and savings banks?]**

Despite largely adverse economic conditions, buying stock, which had been pretty universally looked upon only a few years earlier as intrinsically speculative, became an increasingly popular activity. The language of Wall Street had even developed to include a phrase that marked the transition of a stock from speculative to investment quality; the stock was “put on an investment basis.” **[Emily – when first used?]**

Attitudes toward speculation had changed. The dramatic increase in small holdings of common stock reflects this, as does financial discussion in general. More specifically, almost all of the companies providing detailed information on their capitalizations show that outstanding common stock exceeded outstanding preferred stock and, while the sample is small, the fact is significant. Little had changed to increase the amount of information available to shareholders, and a flat market and poor economy is hardly like the bubble environment of the merger wave or the period leading up to 1907 in which speculation increased at least in part as a function of the frenzied environment.

One can tentatively conclude that speculation had begun to become a significant part of the culture of small investors. For example, Consolidated Gas of Baltimore went from 6.3 million shares of preferred in 1906 to 4.1 million in 1914, a period during which its common shares went from 6.3 million up to 11.4 million, with only a relatively modest increase in par value. (The company didn't provide a breakdown in capitalization between the common and preferred.) Holding capitalization almost constant, the Chicago & Alton Railroad Co. saw the

number of its preferred shareholders rise from 314 in 1906 to 408 in 1914, while the number of common shareholders went from 219 to 671. Companies like Borden's Condensed Milk, Eastman Kodak, Federal Light & Traction, General Motors, Proctor & Gamble, Seaboard Air Line Railway, and Southern California Edison, all had more common than preferred shares and, typically, shareholders. Some companies, like The Texas Company (Texaco) and The Silversmiths Company, only had common stock outstanding. Many of these companies were, or, as in the case of Seaboard Air Line Railway, sounded like they were, in relatively new technologies or newly developing industries. Even in the flat years of 1910 to 1914, speculation was becoming the game.

Speculation had come to be seen, even by reformers, as something other than pure gambling. The Pujo Report, picking up on a distinction made by its predecessor investigatory committees, itself distinguished between "wholesome speculation," which even its reformist counsel Untermeyer admitted was vital to the economy, and "unwholesome speculation." While noting that speculation was best left to the man who had the appropriate amount of time to spend on it, one popular financial writer opined that speculators did more for society than investors, because they were the people who provided entrepreneurial capital. He recognized "that the moral standards of the average speculator before the latter half of the nineteenth century . . . were below par." At one point "the Hebrews, the leaders of the world's business, practically monopolized speculation. . . ." But, fortunately for finance and economic development, "with the changing times, speculation has been placed upon a higher moral level than formerly." Now speculators could be described as "gentlemen." The market had proven itself to be important, and all but the most radical politicians were concerned that it not be destroyed. Evidence of the effect

of anti-speculation laws, most prominently that of Germany, cautioned against heavy-handed regulation.⁷

The market was becoming an important repository of wealth and a significant institution in American life, but this was not the time for radical reform. The year and a half leading up to the European war was a time of industrial depression and a flat stock market. The largest bankruptcy at that point in U.S. history, the collapse of the famous Claflin dry goods empire in June 1914, produced panic in a White House that had come to power on a platform of conservative progressive business reform, but that had never known economic good times and was beginning to fear the consequences. That would change with a remarkable and, perhaps improbable, reversal of fortune as war broke out in Europe. Our own entry into the war would provide economic rejuvenation and the training ground for massive new numbers of stockholders. And when securities regulation finally came into its own, it would be responsive to the new reality. But until then, the shadow of the merger wave continued to loom over legislative efforts.

Regulating Business the Wilson Way

The beginning of the end for the Progressive Era in business began on June 25, 1914. That was the day the Claflin dry goods empire declared the largest bankruptcy in American history, and the day that the President chose to declare himself unambiguously for business. The fifteen months before that day were among the most active business and financial reform periods in American history. By the end of his first year in office, Wilson had played a major role in pushing through Congress two controversial bills, a major tariff revision and the Federal Reserve Act, which he signed into law on December 23, 1913. Wilson also worked hard for the 1914

passage of the Clayton Antitrust Act and the Federal Trade Commission Act, which ended 25 years of political agitation for antitrust reform. The FTC Act, reflecting Wilson's reform blend of progressivism and conservatism, represented a compromise between executive, judicial, and market control of the antitrust issue. It lodged regulatory supervision in an independent federal agency, giving the new FTC the authority to provide advance guidance to corporations as to the legality of their behavior. But it left the courts, following the 1911 Supreme Court embrace of the rule of reason, as the dominant enforcement arena.

When Wilson left progressivism for business, and ultimately for war, he left two pieces of legislation on the cutting room floor of the Congress he had thus far led so effectively. The Rayburn bill, a version of which would ultimately pass in 1920, was a railroad regulation bill that was a direct descendant of S.232 and the corporate finance measures cut out of the Mann-Elkins Act. Cast in terms of securities regulation, it was an antitrust measure that, following the dominant pattern of antitrust thinking, addressed overcapitalization as the principal problem. Its method was to give the ICC power to determine whether or not individual railroads could issue new securities. True to its heritage, shareholder protection was no part of its concern.

The far more modest, and far more controversial, Owen bill, was the first true securities regulation measure. But it wasn't yet modern securities regulation. It grew out of the same concerns as the investigations of the Hughes Committee and Hadley Commission, the effect of securities speculation on economic stability. At the same time, picking up on strands in the earlier investigative and legislative efforts, it demonstrated an interest in protecting stockholders too. The Owen bill would never pass. But it was a great leap forward. Securities regulation was now federal business.

Woodrow Wilson made almost no direct contribution to securities regulation. But his indirect contribution to the philosophy of regulation had a powerful influence on the legislation that finally emerged under his Assistant Secretary of the Navy, Franklin Roosevelt. Neither a radical progressive, a Jeffersonian conservative, nor a classic Southern Democrat, Wilson was far more economically and business savvy than most historians acknowledge. His peculiar blend of ideas included progressive collectivism forged by his teachers at Johns Hopkins and refined by his observations of the world around him, southern conservatism that included at least an intellectual appreciation of, and sometimes political commitment to, states' rights, a belief in a strong and active presidency, and an understanding that big business had become the centerpiece of American life and politics. Together this created a style of regulation that drew from, even as it moderated, Teddy Roosevelt's, and that helped to transform political ideas about business regulation. As I will show in the next chapter, by the time Wilson was engaged in his futile battle for Versailles and the League of Nations, the modern stock market had emerged, and modern regulatory ideas with it.⁸

The Democrats Return

The 1912 election provided a Democratic sweep of the elected branches of the federal government. The party had been out of power since 1895, and that meant that inexperienced leaders were confronting the job of establishing and managing a ruling party. It also meant that a significant number of important congressional and executive positions were filled by Southerners, including all of the relevant committee chairmanships. **[check]** Historians dispute the extent to which Southern Democrats shared a consistent, common ideology, but while it seems clear that there were significant progressive and even radical voices from the South, those

voices were a counterpoint to a fundamentally conservative chorus. Southern conservatism, unlike the business conservatism of Republican leaders like Allison, Platt, Aldrich, Spooner, and Hanna, unlike the conservatism of Taft, was an older sort of American conservatism, a conservatism of liberty and states' rights and limited federal power. Thus it is all the more striking that almost all of the leaders of the Wilson reforms that established the federal government's dominance in business and financial regulation were southern born. The President, his treasury secretary William Gibbs McAdoo, advisors Samuel Untermyer and Louis Brandeis, and congressmen Carter Glass, Robert Owen, Robert Henry, Henry Clayton, and Aresnio Pujio, among others, all were raised, or at least born, in the South. While their views were hardly monolithic, they came together to create the modern financial regulatory state.

The Republican Party had effectively protected business from meaningful regulation for twenty-five years, even as it preached progressive regulation from the bully pulpit. Progressive and conservative at the same time, it failed to achieve the regulatory reforms that would have maintained that protection at the same time responding to the almost universal demand for some federal control. To be fair, it was the Republicans who were in charge during the most rapid, and thus difficult to evaluate, period of American economic transition. Nevertheless, the natives of Jeffersonian soil, the anti-corporate heirs to Jackson, the states' rights Democrats, achieved exactly the kind of balanced regulation the progressive Republicans had sought. It was this group of southern Democrats that made America safe for business.⁹

Wilson's Philosophical Development

Wilson, the minister's son, grew up in comfortable middle class circumstances. As he grew, he moved with his family continually southward, both before and, for a time, after his

college years at Princeton, studying first at Davidson and later at Virginia where he received a law degree. The conservatism that characterized the instruction at these institutions was exploded at Hopkins, where Wilson earned his Ph.D. under some of the most innovative economic and political thinkers of the day. As a son of the south, his birthright was both Democrat and conservative. It was a birthright he used well in delivering the Democratic Party from the radical ineffectuality of William Jennings Bryan. Yet this conservative Southern Democrat, who spent his formative years in a south dominated by the Civil War and Reconstruction, was no real conservative. Wilson' presidency defined the Progressive Era. It also ended it.

He was hardly the type of president that newspaperman William Allen White, a staunch Republican, expected to find himself hailing as the great hope for American progressivism. But as reform governor of New Jersey he fought the party regulars to win battles ranging from civil service reform to remaking that state's infamous corporation law into one of the strictest in the country. He campaigned for president first and foremost on a platform of completing the antitrust reform that had been almost twenty years in the making. But he was also the president who insisted upon segregating the United States Civil Service. A southern gentleman with that character's chivalry towards women, he opposed woman's suffrage until the war forced him to it, asserting states' rights grounds even as he promised suffragettes his support in 1918.* He politically opposed a variety of progressive social reforms he had specifically advocated in his early writings, including child labor laws, minimum wage laws, and federal aid to health care and education, in part on the same states' rights grounds. Wilson's neo- Jeffersonian New Freedom, according to the intellectual spirit of the progressive movement, Herbert Croly, was in

direct opposition to the collective, communitarian, and regulatory aims of progressivism.¹⁰

Croly was right. Wilson talked far more of the importance of the individual than the orthodoxy of left progressivism allowed. But Croly was also wrong. The New Freedom was a political campaign, not a complete social vision. And the man who was the candidate was still Tommy Wilson, the young new professor who was a founding member of the iconoclastic American Economic Association. Wilson's graduate education at Johns Hopkins, where Herbert Baxter Adams and Richard Ely preached the inevitability of combination and bigness, and Wilson's own intellectual development, accomplished in part through his observation of the world around him, wove together a philosophy that attempted to articulate a Jeffersonian vision of individual responsibility with acceptance of the evolutionary and, consequently natural, collective reality of modern life. The New Freedom, properly understood, was the translation into presidential politics of the young century's attempt to find the place of the individual in collective urban society.¹¹

The Centrality of Business Regulation

As early as 1889 in his book, *The State*, Wilson had attempted to navigate between the goals of socialism, which he described as having "the right end in view" even if its methods were "mistaken enough to provoke the laughter of children," and *laissez-faire* competition, which was harsh and destructive. His conclusion at that time, a conclusion which he maintained throughout his economic legislative program, was that competition was desirable, but it was only just when it occurred between equals. Under modern circumstances, that equality of competition could only be achieved through regulation. Socialist regulation was extreme. "The regulation I

* To be fair, when the suffragette movement came to a vote in New Jersey during his presidency,

mean is not interference: it is the equalization of conditions so far as possible, in all its branches of endeavor; and the equalization of conditions is the very opposite of interference.” That regulation, equalizing information, access, and power, is the type of regulation embodied in the FTC Act. Even more, it is the very essence of the New Deal securities acts.¹²

Business regulation was in the very nature of the state, as Wilson saw it, and as his views evolved, he came to understand it as central to the state’s function. Business and the state were deeply tied together. The state must not only regulate but also learn from business. In his famous 1887 article, *The Study of Administration*, Wilson wrote that administration of the government itself was but a branch of business. But while the state was to regulate, it was to do so with a light hand. As he noted in 1912, “You cannot establish competition by law, but you can take away the obstacles by law that stand in the way of competition.” At that time this of course meant eliminating the ability of monopolies to block access to capital and opportunities for individual entrepreneurs and smaller businesses. But even the regulation that would accomplish this should be carefully tailored so that business would not become “partners or creatures of the government itself.”

Roosevelt’s approach was far too interventionist. “Recent proposals of regulation have looked too much like a wholesale invasion by government itself of the field of business management.” It would be characteristic of the Wilson style of regulation, embodied in the New Deal securities acts themselves, that they left business largely to business. And indeed candidate Wilson, accepting the 1912 presidential nomination of the Democratic Party, proclaimed “I am not one of those who think that competition can be established by law against the drift of world-

Wilson cast his vote in favor of the measure.

wide economic tendency.” The very trend toward cooperation he and his teachers observed in the 1880s had become reality. But there was no mistaking Wilson’s demand for regulation. Although, as Martin Sklar points out, Wilson scholars have attempted to classify his thought into periods moving from various types of conservatism to “militant progressivism,” Wilson’s progressivism was a leitmotif of his writings and speeches throughout his life, even when superimposed upon a southern conservative base. The early influences of Ely and Hopkins, and the American Economic Association, never really left him.¹³

Jeffersonian Business

To the extent Wilson can properly be classified as conservative, his conservatism was a function of the manner in which he believed that progressive change should take place rather than the question of whether change should take place at all. As such, his conservatism was pragmatic, not principled. Indeed he understood that modern circumstances left the state and society no choice but to change. The world had become what it was, and it was for the state to adapt rather than to combat. As he noted in his first Inaugural Address, in words consistent with those he had been speaking for twenty-five years, “we shall deal with our economic system as it is and as it may be modified, not as it might be if we had a clean sheet of paper to write upon.” Practical wisdom,” not the “long process of historical experience,” was what allowed states to change their practices with changing circumstances. Theories followed experience, not the other way around. But the historicist views of his German-trained teachers were also important components of his thinking. This very pragmatism was consistent with “the rule of historical continuity,” rejecting clean breaks with the past and instead adopting past ideas to new circumstances.¹⁴

Nowhere was this evolutionary and historicist approach more evident than in his rhetorical attempts, as a politician, to connect Jeffersonian thought to the new world of big business. Wilson was clearly not a Jeffersonian. As early as the late 1880s, Wilson favored cooperation over the real world state of individual competition, as long as it didn't lead to monopoly. And very much like progressives of both parties, he was untroubled by big business, a position he continued to articulate with increasing frequency as he came closer to assuming progressive leadership. "I regard the corporation as indispensable to modern business enterprise," he told the American Bar Association. "I am not jealous of its size or might." In fact, "modern business is no doubt best conducted upon a great scale." The problem wasn't the existence of huge combinations but monopolies that deprived others of business opportunities. And as he moved increasingly toward the presidency, Wilson argued that it was combinations of combinations, including the Money Trust, which posed the threat to individual initiative, not the great combinations taken individually. Indeed in the winter of 1912, he rearticulated the evolutionary understanding he had developed at Hopkins, telling the General Assembly of Virginia that "I am not here to enter an indictment against business. No man indicts natural history."¹⁵

He drew on Jeffersonian metaphors even as he rejected Jeffersonian thinking. Federal regulation was not inconsistent with Jeffersonian ideals. Wilson transformed the Jeffersonian maxim that "that government is the best that governs least" into an understanding that the best government regulated as far as it had to in order to eliminate arbitrary interference with individuals and to eliminate "undesirable transactions." He might depart from Jefferson on the need for federal regulation, on the one hand, but find common ground in the fact that it was for

the sake of the individual that regulation was to be had.¹⁶

More significant for my purposes, Wilson transformed the corporation into a Jeffersonian form of property, much in the same way that I earlier showed that the American middle class was discovering stock as a substitute for the land. “The corporation . . . is an arrangement by which hundreds of thousands of men who would in days gone by have set up in business for themselves put their money into a single huge accumulation and place the entire direction of its employment in the hands of men they have never seen, with whom they never confer.” The yeoman farmer had become the yeoman stockholder, but the separation of ownership from control limited the manner in which the individual could assert his individual autonomy through his ownership of property. Jeffersonian terms, no matter how evocative of American tradition, were insufficient for modern conditions. “We have changed our economic conditions from top to bottom, and with our economic conditions has changed also the organization of life. The old party formulas do not fit the present problems.” This required changes in the laws, which were still based upon the idea of business done by individuals. They needed to be adapted for business done by giant corporations in order to liberate the individual within the organization.¹⁷

Sklar describes a fairly sharp break between Wilson and Jeffersonian thought. But there was some continuity that is consistent enough with Wilson’s writings that Wilson’s talk of Jefferson seems to have transcended mere political opportunism. In his address at the 1912 New York Jefferson Day banquet, in a remarkable speech entitled *What Jefferson Would Do*, Wilson not only built on the Jeffersonian theme of individual opportunity but transformed the Jeffersonian ideal of competition among individuals to competition among corporations. Completely dismissive of Jeffersonian fears of bigness, he said: “in the general field of business

[Jefferson's thought] would . . . see that, whether big or little, business was not dominated by anything but the law itself, and that that law was made in the interest of plain, unprivileged men everywhere." Squared with Wilson's acceptance of the reality of the giant modern corporation, he seems to have meant that the individual would be free to enjoy the Jeffersonian ideal as long as economic opportunity, in its new form, was not denied him.¹⁸

Wilson tried his best to maintain a healthy respect for states' rights, but ultimately his view of the presidency overcame his native instincts. In *The State*, as well as in later work, he argued that most business regulation should be left to the states and, indeed, if the variety and inconsistency of state regulations were causing business problems, it was up to the states to get together and correct them. At the same time, he described commercial regulation, which was necessary to ensure the survival of the states, as "the chief object of the Union."

Gradually the states more or less disappeared from his business legislative program. This was an inevitable result as Wilson refined and to a degree achieved the imperial presidency developed by Roosevelt. As early as 1897, he lamented the fact that the presidency had faded into irrelevancy. The contrast between the strong leadership of the nation's first three decades with the pallid presidential leadership (excepting Lincoln) that followed, had given rise to scattered congressional government. He acknowledged that Congress was rightly jealous of its legislative prerogatives. But as president he didn't hesitate to wade into the legislative chamber whenever he chose, participating actively and consistently in the legislative process, trumping even Roosevelt's heavy involvement. It was Wilson who, as the new President, broke the century long tradition that barred the President physically from the Capitol, as he began the practice of addressing Congress in person.¹⁹

One final place where the kind of classic American individualistic thought commonly associated with Jefferson appears consistently in Wilson's thinking is his demand for individual accountability, even in the context of the corporate form of business. Corporations themselves were unpunishable. "Corporate responsibility lacks vitality, corrects nobody." The individual was the actor, whether within a corporation or otherwise, and only the individual could be punished and corrected, just as the individual was the only bearer of natural rights, the only appropriate political actor. Collective responsibility simply wouldn't do.²⁰

Woodrow Wilson, son of the south but grafted onto the north, adapted traditional notions of individualism to the permanence of the new collective society that he fully accepted, from the collectivity of life in cities, in tenement houses and apartment buildings, to the collectivity that was the corporation. He knew that this collective society could not flourish under the minimalist state that preceded the transformative presidency of Roosevelt, no matter how ideally attractive. Organizational life demanded a government that did more than simply prevent harm. It required a government that regulated organizations. And the approach he developed to regulating organizations was to protect increasingly interdependent people from one another from within the collective institutions that began to dominate American society.

The Collective Society

The society of private individuals conducting their lives through private ordering had been transmogrified in large part into a society where safety in housing and employment, for example, could no longer be left to private arrangements but had become matters of public concern. The society of individuals had become a society of groups with the consequence that the concerns of individuals had become the concerns of groups, including the giant corporations,

and only the federal government was in a position to lay down the rules for group behavior in American life.

Wilson's regulatory approach therefore centered upon the ideas of publicity necessary to ensure competition among equals, whether those equals were individuals or corporations, by ensuring access to capital, information, and opportunity for those with ideas and initiative. The idea of the regulated free market was Wilson's attempt to square classical American philosophical liberalism with the economic reality of the new collectivism. The regulated free market was Wilson's lasting legacy to American economic life.

As part of this vision of a regulated free market Wilson was interested in securities regulation as a means of providing opportunity. "When you offer the securities of a great corporation to anybody who wishes to purchase them, you must open that corporation to the inspection of everybody who wants to purchase." Disclosure permitted the individual to make free economic choices. But by the time disclosure was on the legislative table, and as the midterm elections of 1914 approached, matters had changed. An industrial depression had lasted for almost two years, along with a flat and lifeless stock market. Even new demands that would bolster American industry, created by the war in Europe, took time to show. Meanwhile Wilson, facing midterm elections, had grown increasingly impatient with economic stagnation and was under significant political pressure from Wall Street to slow the pace of reform. As a result, he shifted rather quickly from his philosophy of conservative progressivism to firm support for big business. Business had been regulated enough, and he withdrew his support for securities regulation and, indeed, any other economic reform. Another 20 years would pass before securities regulation was provided by the federal government. When that regulation came, its

protection would embrace the regulated free market conservatism of the Wilson philosophy.²¹

The Money Trust Committees

When Wilson took office, the House Banking and Currency Committee was hard at work. In delayed response to the flaws in the American monetary system revealed by the Panic of 1907, as well as continuing populist agitation over the perceived concentration of the American economy on Wall Street, the House Banking and Currency Committee created two subcommittees. One, chaired by Virginia Representative Carter Glass, had been directed to draft remedial banking legislation that would make the necessary currency reforms. The other, chaired by Louisiana Congressman Arsenio Pujoe, was charged with investigating Wall Street's control over American finance.

The Federal Reserve

The work of the Glass committee would culminate in 1913 with passage of the Federal Reserve Act, creating the central banking system of the United States. Controversial currency legislation already was in place. Nelson Aldrich had introduced an emergency measure after the Panic of 1907, which took form as the Aldrich-Vreeland Act of 1908. That act lay completely dormant until its one moment of glory, when it served to stabilize the American economy following the collapse of the European currency markets at the start of World War I.

Almost everybody agreed that some form of currency reform was needed. But, as we have already seen, a long-running political dispute centered on the twin questions of the appropriate powers of the federal government and the desirability of centralizing power in Washington. Even more frightening to some than centralizing power in Washington was centralizing power on Wall Street. The very real possibility of the latter was reflected in the

predominant reform proposal, the Aldrich plan, developed by Aldrich as head of the Monetary Commission appointed in the wake of the Panic of 1907, together with banker Paul Warburg of Kuhn, Loeb. Aldrich wanted a central bank controlled by the bankers. This deeply worried progressives of both parties who were concerned with Wall Street's already concentrated financial power.

The legislation that emerged, with its balance of centralization and decentralization, government and business control, was very much in the Wilsonian style of regulation I've described. The Bryanite wing of the Democratic Party favored complete federal control of the money supply. This troubled those who disliked too much government power and naturally bothered the bankers themselves. When the Southerner Glass became chair of the subcommittee in 1912, he was opposed to a central bank at all. But, working with his friend Warburg, he developed a more decentralized version of the Aldrich plan. The progressives opposed this, as did McAdoo who, with the support of Undermyer and Owen, wanted to establish the central bank within the Treasury Department. Wilson, on the advice of Brandeis, backed the plan for government control. Enormous controversy raged from all sides, as Wilson, McAdoo, and Glass carefully fought one battle after another until the Federal Reserve Act, linking the federal government with the existing private banking system, became law on December 23, 1913. The fast moving legislation and its enormous impact on the banking and currency system held much of the country's attention as the Pujo Committee was preparing its report.

The Pujo Committee had been appointed by the House after years of clamoring for an investigation of the financiers of Wall Street, dubbed the "Money Trust" by Representative Charles Lindbergh in **[get date and confirm]**. To some, the Money Trust, of which J.P Morgan

reputedly was the head, was just like any other trust, a conspiracy in restraint of trade. In this vision, the trust that resulted was a loosely bound, small group of banks and investment banks that controlled the money system and the New York Stock Exchange. As a result, it controlled the ordinary person's access to credit and to fair terms on the stock market itself. Others, including Pujo Committee counsel Samuel Untermyer, saw the Money Trust simply as an excessive concentration of financial power in several New York (and some Boston) banks and investment houses. Whatever the Money Trust was or might have been, populist agitation demanded an investigation. The House had little choice but to authorize it.

Looking backwards from the prosperity of 1926 on the economic history of these early Wilson days, Alexander Noyes gave credit only to the work of the Glass Committee. The Pujo Committee, the subcommittee focused on the Money Trust and the stock market, was "long forgotten." Long forgotten it may have been in the sunny days of 1926. But not in 1933, when Untermyer was one of the first experts to be asked by his old colleague from the Wilson administration, Franklin Roosevelt, to draft a securities bill. More, the Pujo Committee's hearings and recommendations produced the Owen bill of 1914, and thus put securities regulation squarely on the federal map.²²

The Owen bill failed for a lot of reasons, including the President's political needs, Wall Street opposition, widespread fear of centralized government power and, perhaps, some congressional exhaustion after frustrating decades of debating economic regulation. Also among the reasons it failed was, I suspect, a widespread dislike of the bill's principal proponent, Samuel Untermyer.

The Crusader

*“[T]he [Pujo] subcommittee might more properly bear the counsel’s name than the name of its chairman.”*²³

There is no doubt that the Pujo Committee was Undermyer’s committee. One of the most colorful members of the Wilson circle, Samuel Undermyer was born in 1858 in Lynchburg, Virginia, two years after Wilson and only sixty miles across the Shenandoah Mountains as the crow flies. The two men were dramatically different in background, style, and upbringing. But they shared both idealism and ideals, and it was their mutual idealism that led each to their own separate downfalls, Undermyer in the Pujo-Owen fight, and Wilson in the settlement of the war and the creation of the League of Nations.²⁴

Undermyer was an early Wilson supporter and a major, if largely unofficial, influence on Wilson’s economic policies. Despite an early hint of personal distaste for Undermyer that crops up periodically if subtly in Wilson’s papers, Republican Simeon Fess could say of him, if somewhat hyperbolically, that his “utterances are the final word for this administration.” And indeed, as time wore on, Wilson appears to have developed a real fondness for Undermyer, as well as deep respect.²⁵

Undermyer began life as a southerner, but his was not a southern life. The garrulous and passionate Undermyer recalled, as one of his first childhood memories, running out of his home in Lynchburg and crying “Hurrah for Jeff Davis” as Union troops marched through the city’s streets. But it wasn’t the South *per se* that captivated Undermyer. He always championed the underdog.

Isadore Undermyer, a Jewish Confederate lieutenant who lost a fortune in Confederate bonds, died shortly after Appomattox. Undermyer’s mother moved the family to New York

where she opened a boarding house. While Wilson was formed by Princeton, Virginia, and Hopkins, Untermyer's work as an office boy in a New York law firm served as his undergraduate education. He began work at 15 and, after a few years, enrolled in Columbia Law School, from which he graduated in 1878. With his half brother, Randolph Guggenheimer, he formed the firm of Guggenheimer & Untermyer. The firm remained a prominent institution in New York business law until its dissolution in 1986.

Untermyer was smart and ambitious. By the age of 25 he was earning \$50,000 annually and was a millionaire by 30. Untermyer earned much of his money as a corporate promoter. According to his obituary, which rated a page one placement in *The New York Times*, "he was one of the first lawyers to see the advantage of combination of capital in great industrial enterprises. . . ." And, employing the ethics of the era, he sometimes got into trouble, as we saw in the *American Smelting* and *Columbia Strawpaper* cases.²⁶

Untermyer was a success. He bought and developed Greystone, Samuel Tilden's estate in Yonkers, New York, to serve as his country escape from his Fifth Avenue apartment. There he hosted as his guests friends like William Jennings Bryan, senators, congressmen, administration officials and foreign dignitaries. He traveled and worked from Europe to Palm Beach to Palm Springs, where he died at his home, The Willows, a substantial Spanish colonial structure sitting at the base of a mountain. He was the intimate of presidents from Roosevelt [check] to Roosevelt and a close advisor to many members of Congress. But he was more.

Untermyer was an idealist. The kind of passion that led to the young Untermyer's protest against Union occupation led him to turn, like his older contemporary Brandeis, from trust promotion to economic reform. He cut his reformist teeth working with Charles Evans Hughes

on the insurance industry investigation of 1906, he challenged controlling shareholders of giant corporations who were trampling on the rights of minority shareholders, and he fought his most famous battle against the irresponsibilities of the New York Stock Exchange. His life was a life of causes, undertaken typically without pay. He was involved in drafting the Federal Trade Commission Act, the Clayton Act, the Federal Reserve Act, and numerous other measures.

No battle was too small for him, no cause too trivial, when it came to the rights of ordinary, vulnerable people. He fought for the rights of straphangers in New York, ensuring the continuance of the “five cent fare” in the face of determined attempts by transit owners to increase their rates. And, as one of the earliest public opponents of Hitler, he was active in a variety of anti-Nazi groups and elected president of the World Non-Sectarian Anti-Nazi Council in 1934.

On board an ocean liner from New York to Bermuda in the mid-1930s, “he . . . carried out a one- man demonstration” when he learned that the captain’s table was set with German products, and successfully prevented the use of German steel in the construction of New York’s Triboro bridge. Like Brandeis, Untermyer turned a successful business law career into a career as a lawyer for the people.²⁷

Untermyer was an early supporter of Wilson’s presidential candidacy, as well as a member of the Tammany-controlled New York delegation to the 1912 Democratic National Convention in Baltimore which he left before the final balloting for his annual trip to Baden-Baden. He wrote to candidate Wilson from the R.M.S. Caronia and from the spa in order to fill him in on the Pujo Committee’s preliminary findings and to offer him whatever help he might need.²⁸

As influential as he became, Untermeyer was frustrated in his attempt to obtain an official appointment in the Wilson administration. (He finally served under McAdoo [and then Glass] as [] in the Treasury Department from 19 [] to 19 [].) He wanted the ambassadorship to Germany and, failing that, France. But Wilson was conflicted in his early feelings about Untermeyer. When Colonel House reported in April 1913 that he had received word that “Samuel Untermeyer would like to become Ambassador to Germany . . .the President smiled and said it was interesting and he was glad to know that Mr. Untermeyer would be pleased if he should be sent.” House further reports in his diary a conversation with the President on November 29, 1913, concerning Untermeyer’s possible appointment to the French mission. Wilson noted that McCombs had suggested Untermeyer and House pressed the case, but Wilson was “quite emphatic in his decision not to appoint him. . . . I related a discussion I had heard concerning Untermeyer, one man taking the stand that his success had a bad influence upon the youth of the country, the other contended that his failure to obtain public recognition was in itself a good lesson to the youth of the country. The President thought both gentlemen were correct.”²⁹

Untermeyer was both charming and abrasive. He was arrogant, controlling, and sometimes unpleasantly aggressive in the pursuit of what he perceived as justice. His partner in reform and Lynchburg neighbor, Carter Glass, despised him, characterizing him most kindly as “that shy and painfully reserved gentleman, Mr. Samuel Untermeyer, of New York City, well known and greatly admired for his fine aversion to notoriety of every description.” While Glass had a personal ax to grind, it is true that Untermeyer had no trouble grabbing the spotlight when he wanted it, and had a healthy, and somewhat justified, sense of self-worth.³⁰

The Pujo Committee’s creation, no less than its ultimate success, appeared to depend

upon Untermeyer's participation. In January 1912, while resolutions forming the Committee were being drafted and debated, Robert Henry, Chair of the powerful House Rules Committee, penned the following "p.s." to a letter pleading for Untermeyer's help. "You must not fail me – Action will soon be taken – delay and postponement are dangerous – So to carry forward plans you must obey the request and summons – Henry."³¹

The Committee

House Resolution 405 authorized the creation of a special committee to investigate whether a money trust really existed on Wall Street and the extent of its power over American business and banking. As part of that inquiry, the committee would have been charged with discovering the relationship between the bankers and the New York Stock Exchange. Additional committee power would have been to investigate the methods by which interstate corporations were financed and how they marketed their securities. But House Resolution 405 failed. **[why?]**

A second, significantly diluted, resolution did pass, and simply empowered the committee "to obtain full and complete information of the banking and currency conditions of the United States for the purpose of determining what legislation is needed." In the end and, as we shall see, at Untermeyer's insistence, Arsenio Pujo of Louisiana successfully introduced an amending resolution on April 22 which largely reinstated the failed H. Res. 405. That final resolution gave very broad investigative powers to the committee for the purpose of gathering information and suggesting "remedial and other legislative purposes."³² **[Find political history – why didn't first pass and second did?]**

House Resolution 405 followed directly from the legislative activity we've seen developing in previous chapters. The opening clauses refer to bills "pending or under

consideration to regulate industrial corporations engaged in interstate commerce through Federal incorporation, supervision, and otherwise,” and legislation “believed to be necessary to further control the incorporation, management, and financial operations of railroad corporations.” **[fix this as articulated in 504]** Moreover, the committee was empowered “to investigate the methods of financing the cash requirements of interstate corporations and of marketing their securities” Securities regulation of industrial corporations was finally going to receive thorough congressional investigation.³³

The Counsel

Untermeyer’s application for the job of counsel to the Pujo Committee was characteristically unsubtle. In late 1911, when agitation for the investigation was growing after Charles Lindbergh’s initial introduction of a resolution to authorize the investigation of the Money Trust, **[check]** he gave what *The New York Times* characterized as an “unusual address” before The New York County Lawyer’s Association, calling for substantial corporate reform, mostly in state law. And in December 191**[1]**, he made a widely reported speech before the Finance Forum of New York City in which he argued that a Money Trust did indeed exist in the concentration of finance on Wall Street.³⁴

There was never any question that Untermeyer would be retained as counsel. The infamous stock speculator turned muckraker, Thomas Lawson, described him as having “either prosecuted, defended, or had an inquisitorial finger in every sword-swallowing, dissolving-view, frenzied finance game that has been born or naturalized in Wall Street within the decade.” It was Untermeyer who, at Henry’s request, drafted the original H.R. 405. After its defeat and the passage of the watered-down substitute resolution, he claimed to have lost interest in the

investigation because of the Committee's limited power. Writing to Henry in April 1912, he complained of the "very narrow scope of the Investigation" and concluded that "[u]nder the present restricted form of Resolution the Inquiry is bound to prove worse than fruitless." Henry invited him to draft a new resolution, incorporating the powers that originally had been included in the defeated H.R. 405. Meanwhile, Pujo invited Untermeyer to become counsel to the Committee. Untermeyer declined. But he artfully described in his response the powers the Committee would need to be granted in order for him to change his mind. These were, naturally, the broad investigatory powers that had been contained in the failed H.R.405. The next day, after some back and forth, he conditionally accepted the position. On April 25, 1912, House Resolution 429, introduced by Pujo in the form demanded by Untermeyer, passed by a vote of 237 to 15.³⁵

Pujo appointed James Farrar of New Orleans to serve as co-counsel to the Committee. But there could be no doubt as to who was in charge. Writing, at first somewhat diffidently, to Henry on April 15, 1912, Untermeyer noted the honor it would be to serve with Farrar as associate counsel. "At the same time I am unwilling to make the sacrifices that would be involved in my undertaking this work unless I am to direct – with the aid of the Committee – the lines of policy on which it is to be conducted and am to have the leading part in its conduct." He was more even more direct with Pujo. He would not represent the committee unless "I will have charge of the preparation and presentation of the evidence and the examination of witnesses incident thereto."

Untermeyer was not entirely comfortable with his imperious demands. He lied about drafting the initial resolution that created the Committee, even to Pujo himself. Later, while

presenting the Owen bill to the committee in January 1914, he denied that he was the sole draftsmanship of the resolution and even more strenuously denied that he had demanded or been given the exclusive power of questioning witnesses.³⁶

Yet on May 6, Undermyer asserted his authority to the Pujo Committee in a letter, cosigned by Farrar, so breathtakingly demanding that it amounted to a bloodless coup. Undermyer laid out exactly how and when things would be done and concluded: “We cannot undertake any such task unless it is clearly understood that we are to have the widest possible latitude and authority from the Committee as to the scope of the Inquiry and the witnesses who are to be examined.” Not only did Undermyer effectively usurp the Committee’s power, he did so while holding it hostage: “We desire also at this time to expressly, and separately as to each of us, reserve the right to resign our employment and to publicly state the reasons for so doing if an irreconcilable difference should hereafter arise between the Committee and Counsel as to the scope or manner of conducting the Investigation.” The investigation was very public. The Committee members would have faced political disaster if Undermyer had resigned.

These hearings would be Undermyer’s hearings, and both the investigation and the bill that came out of it bore the stamp of his personality and his ideology. He was rightly warned by Alfred O. Crozier [**who?**], that if the Democratic Party failed to pursue the financial reform plank in their platform and the investigation failed to produce concrete results, Undermyer would be blamed: “But you have long been known as a great corporation lawyer with offices on Wall Street. When the people find, if they do, that they have been tricked and betrayed . . . and that the barn door was deliberately left open by the Committee until the horse was stolen, you will be made the one ‘scapegoat’ of the whole proceeding and the country will believe that you were put

in charge by Wall Street ‘interests’ for the express purpose of accomplishing that very result.” Untermyer’s reputation as crusader was at stake.³⁷

Almost immediately after his appointment, Untermyer raised another problem, one that ultimately would cripple the investigation. On April 30, he wrote to Henry noting that the National Banking Act contained a provision that would have prohibited the Committee and its staff from investigating the records – particularly the client records – of the banks that would be the subject of investigation. A judicial order or an amendment to the Banking Act was needed, or Untermyer and the Committee would be unable to follow the money. On May 18, the House unanimously passed an amendment to the Banking Act giving the Committee the powers it needed. It would never find its way out of the Senate.³⁸

With no progress on the Senate side, Untermyer turned in the fall to the administration for help. Untermyer couldn’t demand the banks’ records, but the Comptroller of the Currency had at least some of the information the Committee wanted. Taft had never been in favor of the investigation, but on September 24 Untermyer wrote to him to ask that he release that information. Taft turned the matter over to his Attorney General, George Wickersham, and Untermyer started to push harder. He got nowhere until, late in December, Taft instructed the Comptroller to release information. It was, wrote Untermyer, only “the least important of this data.” As a result, Untermyer felt that the Committee never had properly completed its investigation. In January 1912, Arsenio Pujo retired from Congress after an unsuccessful campaign for the Senate, leaving Glass in charge of the Committee. It was left to the unelected Untermyer to wrap up the work.³⁹

As aggressive as Untermyer was, he was also sensitive, and took criticism personally.

Before the Pujo Committee had even been created, he was complaining to Henry about his treatment in the press. His complaints would continue throughout the process in letters to friends like Henry and Bryan, associates like Pujo, and the press itself ranging from field reporters and Washington correspondents to William Randolph Hearst. He became particularly angry when his character was challenged, as it was at times because of his aggressive questioning, at times because of his race. One event, in particular, was a tremendous source of personal agitation; his insistence on obtaining the testimony of the allegedly dying William Rockefeller. Although he traveled to the latter's home on Jekyll Island and worked with Rockefeller's doctors to obtain that testimony as painlessly as possible, allowed Rockefeller's own lawyers to put the questions to him, and waited until doctors were willing to let Rockefeller speak, he was roundly lambasted for his inhumanity. (The fact that Rockefeller was healthy enough to return to New York shortly after the hearings ended and lived until 1922 went more or less unremarked upon.)⁴⁰

From the beginning, Untermeyer professed his customary confidence in the ultimate results of the investigation. His later statements that he had begun without bias simply aren't credible, especially in light of his early speeches and letters. A week before his first appearance before Congress and well before passage of the authorizing resolution, he wrote to Henry on January 16, 1912: "Further reflection confirms me in the opinion that a thorough, painstaking, well-directed investigation will uncover a vicious financial system which must be corrected by remedial legislation before we can hope for any fundamental relief in the existing Trust and Monetary conditions." By June 12, when the investigation had barely begun, he was writing Henry that "[w]e have already shown more than enough basis for remedial legislation affecting Clearing House and Stock Exchange to justify Investigation." On June 28: "We have however

already proved enough to satisfy reasoning men of the despotism of the financial concentration of money in New York.” And, as I noted earlier, he wrote to candidate Wilson from Baden-Baden, laying out the “facts” – a full indictment of Wall Street -- as the Committee had already found them.

Despite his predetermined conclusion and aggressive questioning of witnesses, Untermeyer did try to be fair during the hearings. His correspondence shows him reaching out to his former friends on Wall Street. Among other conciliatory gestures, he arranged a conference at the Lotos Club in October 1912 to discuss possible legislative solutions with some of the leading villains of the Money Trust, Alfred Wiggin of Chase National Bank, Frank Vanderlip of National City Bank, A. Barton Hepburn of Chase National Bank, Walter Frew of the Corn Exchange Bank, and Morgan partner William H. Porter, among others. He was so conciliatory as to negotiate appearances with witnesses, perhaps most elaborately with Francis Lynde Stetson, counsel to the House of Morgan. He may well have believed that he was being fair. On the first day of hearings on the Owen bill on February 4, 1914, he said: “I resent the suggestion that there was anything unfair or partisan about the conduct of that investigation.” Unfair? Probably not. Partisan? Without question.⁴¹

The Report

Pujo submitted the Committee’s interim report to the House on February 28, 1913. In the event, it was the only report the Committee ever delivered. The report itself reveals why the Committee never finished its work. As I noted earlier, it had suspended its hearings in the early summer of 1912. Part of the reason was to give the Senate time to pass the necessary Banking Act amendment. Perhaps equally important was the Committee’s expressed concern that the

hearings not appear to be partisan and influence the upcoming presidential election. (I suspect that the Democratic House was far more concerned with the possibility that widespread Republican opposition to the hearings might energize Taft's campaign than that more populist and progressive approval of the investigation would help Wilson.)

The Committee felt the pressure to deliver something to show its progress. Time was short, with a new Congress to take office in 1913 and, with it, no assurance that the investigation would continue. Important witnesses would be left unexamined. The Senate's failure to amend the banking bill and the Comptroller's refusal to disclose information to the Committee "seriously embarrassed your committee" in its efforts to explore the ties between banking houses. Thus the Committee presented its report as interim and suggested that its work be continued in the new Congress. It never was.⁴²

Interim or not, it was hardly a surprise that the Report concluded that American finance and industry were controlled by a small group of men, principally associated with Morgan, the First National Bank, National City Bank, Lee, Higginson, and Kidder, Peabody. In order to break up this concentrated control and restore stability and opportunity to the financial system, the Committee made a number of recommendations, including a draft of the bill that would be introduced as the Owen bill. Central to the Report, the bill, and indeed the whole debate, was the proposed requirement that the NYSE and other exchanges, traditionally organized as unincorporated associations, should be required to incorporate under the laws of the states in which they operated.

Incorporating the Exchange – The Path to Enforcement

As a general matter, the issue of exchange incorporation had a fairly developed recent

history. In England a committee of Parliament had examined the question in 1875 and concluded that it would be unwise to force the incorporation of the London Stock Exchange. A German committee also recommended against incorporation for the Berlin Boerse in 1892. The idea seems to have made its first public appearance in the United States with the Report of the Hughes Committee, which also rejected it. Governor Sulzer (who, as a congressman, had battled the Littlefield bill), proposed it to the New York legislature in 1912, with Untermeyer making his pitch before the measure was overwhelmingly defeated. The principal opposition in each case stemmed from beliefs that exchange self-regulation would produce better broker conduct than would law.⁴³

Incorporating the exchanges might seem like a curious thing to fight about. Yet Exchange officials fought this proposal more fiercely than any other. Untermeyer continued to push it as central to the entire regulatory program, and indeed continued fighting long after the Owen bill had been consigned to history. Combined with the bill's requirement that the exchanges adopt regulations against speculation, it became the whole ball game. Nobody during the course of the debate admitted its true significance to federal regulation.

On the face of it, neither side's reaction makes any sense. New York didn't have a particularly stringent general incorporation law. By the time of the Report, the state had passed rules against stock manipulation. **[check]** It also had enacted the country's first statute permitting no-par stock which either made overcapitalization undetectable or impossible, depending upon one's point of view. There was no reason to believe that the state would make its corporations law tighter. The Committee and the exchange officials knew this, as they also knew that New York had already rejected exchange incorporation. With lax corporation laws that by this time

resembled New Jersey's [**confirm**], what did the Exchange have to fear from the New York legislature? ⁴⁴

One reason for the Committee's approach might be found in Wilsonian progressive thought and political realities. The Federal Reserve Act, the FTC Act, and the Owen bill, all avoided centralized federal regulation as much as possible in a manner consistent with giving the legislative and executive branches an opportunity to provide needed controls. Regulation should, as much as possible, remain with the states and private entities like corporations under broad federal guidance. Incorporation was perhaps the surest way to achieve this kind of regulation through state and federal charter requirements built into the corporation's behavior, allowing the corporation then to act in the market. As the Report stated: "Whilst, of course, [the exchanges] can not now do anything contrary to law, nevertheless the State can not exercise in their case that comprehensive control and close and summary supervision which it may exact of corporate bodies as a condition of permitting them to exist at all. If such exchanges were required to incorporate, the State could write into and enforce in their charters provisions calculated to restrict them to legitimate purposes and suppress the abuses described."⁴⁵

To Wall Street, the Owen bill appeared to centralize in the federal government the power to interfere with the operations of what had become the very symbol of American capitalism. Undermyer must have realized that too much centralized power in the federal government, especially in the executive branch, would surely have killed any chance that the bill had for passage. As it was, the bill's opponents suggested that it lodged in the Postmaster General, who was given supervision over the act, inquisitorial, arbitrary, and dictatorial powers. Decentralization and self-regulation were essential if the bill was to pass.

These arguments seem sensible enough. They fit the market-oriented progressive ideology of the President and the central concerns of his party. But they hardly seem to cast stock exchange incorporation in a light that fits the Committee's attitude and its ultimate agenda. For a page earlier, the Report noted the Committee's desire to correct the inconsistency and laxity of state law by using the exchange to create uniform and responsible regulation. It certainly seems odd that legislation designed to fix irresponsible state law would rely upon incorporating the exchanges under those very lax state laws which were supposed to ensure that the exchanges imposed meaningful corporate regulation! Finally, no Wilsonian progressive, no matter how committed to localism, could possibly have wanted to embrace the State of New York as a laboratory for regulatory experimentation through incorporation of the NYSE. That state traditionally had been reluctant to regulate the Exchange, and the lobbying pressures the Exchange would have brought to bear on the legislature would most likely have been irresistible. It was easy enough for the state legislature to prohibit outright fraud, especially since the NYSE had recently adopted some of the recommendations of the Hughes Committee. It seems highly unlikely that the Committee assumed that New York law would adequately have regulated the Exchange.⁴⁶

Even if these arguments support the Committee's proposal, they don't suggest any good reason for strong Exchange opposition. It's not enough to think that the members of the exchange simply reactively objected to any regulation. Indeed one of the Exchange's persistent objections to the duties that Washington sought to impose on it was that securities regulation was a federal responsibility, not an Exchange responsibility. And this wasn't just talk. The Exchange was, for example, very much in favor of the Rayburn bill precisely because it placed

regulatory responsibility on the federal government and not on the Exchange.

But the Exchange's formal response, summarized in a brief submitted to the committee by its counsel, John Milburn, argued that incorporation would interfere with the Exchange's ability to discipline its members by involving the courts, that legislation would result in "constant appeals to the legislature" for modifications and amendments, and that incorporation was unnecessary in order for Congress to impose regulation. These were the arguments the Exchange had used to defeat incorporation legislation in New York, and they were just as specious as Untermeyer's.

The biggest problem the Exchange had with judicial intervention was the difference that would be created by disciplinary decisions made "from a strictly legal point of view and with the legal habit of mind," and those made by the Exchange's Governors, "looking at it from the point of view of practical men of great experience in the actual transactions of the exchange." No doubt the Exchange believed it was a better regulator, but Milburn gave neither evidence nor a principled defense of this position.⁴⁷

The idea that lobbying would create uncertainty and weaken the power of the Exchange is, at once, overstated and beside the point. Lobbying occurs with respect to all legislation, and there is no reason to have expected the State of New York, which had already shown deference to the Exchange, to become more aggressive. Since the purpose of the bill was to weaken the power of the Exchange, to state this argument is simply to oppose regulation simpliciter. Finally, the Exchange was right – incorporation was not necessary to regulation.

As it was presented by the parties, the incorporation debate doesn't seem to make a lot of sense. Handing over the job of regulating to New York wasn't likely to tighten the rules by

which the Exchange operated or ensure their enforcement. There was no likely public benefit and no serious potential for harm to the Exchange. The answer has to be more complex. My best guess is that, while incorporation was not necessary for regulation, incorporating the exchange was critical to effective enforcement of the regulations, and everybody knew it. This is especially true of the provisions in the bill requiring the exchanges to adopt rules limiting speculation and demanding corporate disclosure. The interstate commerce clause allows Congress to exercise jurisdiction of “any person” engaged in interstate commerce. But an unincorporated association, like the New York Stock Exchange, isn’t a person. For the federal government to enforce its laws against an unincorporated exchange, it would have to prosecute each member, meet the standard for federal jurisdiction with respect to the activities of each member, and collect damages from each member. Incorporation would have allowed the federal government to prosecute and collect from only the exchange itself, whose activities in interstate commerce were beyond dispute.

Incorporation was necessary too in order to ensure that the exchanges would apply the regulations to their members. Otherwise, the law could only compel each of the individual members to do what might be in their power to enforce the rules of the body, or to punish them if they failed to do so. Since no one individual would have had anything like the power necessary to enforce the rules, there would have been no way to demonstrate that any one individual was responsible for enforcement failures. Thus again it seems likely that the importance of incorporation was to facilitate federal enforcement of its rules rather than to ensure state control over the stock exchanges.

The ongoing debate over the incorporation of labor unions supports this conclusion. As

one illustration, in December 1902 a debate of sorts took place between Louis Brandeis and Samuel Gompers over the incorporation of labor unions. In the recent background was a British decision holding an unincorporated union liable in damages for the actions of its members during a strike. Brandeis nonetheless supported incorporation, arguing that it would enhance the responsibility of union leaders and members and make the unions more acceptable to the public. Broadly stating the laws applicable to unions, he made a comment which could not have been especially persuasive to union members and makes precisely the point I believe underlay the battle over exchange incorporation. “[W]hile the rules of legal liability apply fully to the unions, though unincorporated, it is, as a practical matter, more difficult for the plaintiff to conduct the litigation, and it is particularly difficult to reach the funds of the union with which to satisfy any judgment that may be recovered.” It should be obvious that Gompers opposed the measure. Every participant in the stock exchange debate had to have been aware of this issue. That nobody mentioned it is most likely a function of the delicacy of class respect between the Committee members and Wall Street bankers. Speaking of damages and liability might have seemed crude. Of course that’s just a guess, but it is striking that the issue never explicitly came up.⁴⁸

Incorporation was also a way for the federal government to use the exchanges to rectify the failings of state corporate law in a way that wouldn’t implicate the commerce clause concerns that impeded federal incorporation. “Great and much needed reforms in the organization and methods of our great corporations may be legitimately worked out through the power wielded by the stock exchange over the listing of securities. . . .In short, its opportunities as an agency of corporate reform are almost endless, provided its own practices can be reformed

so as to entitle it to exercise these broad powers.” In order for the federal government to regulate through the exchanges, they had to be incorporated.⁴⁹

Once the initial matters of the form of control were resolved, the Report turned to the work of regulating securities. There were two principal aspects to regulation. One, growing out of the traditional demand for securities regulation, focused on controlling speculation. The other was disclosure for the protection of investors.

The Owen Bill

The ground had been laid for the Owen bill during the first two stages of stock market growth. The Hughes Committee, the Hadley Commission, and a spate of bills in Congress reflected growing concern with the stock market as a matter of national financial stability. They sought to curb speculation, especially futures trading, margin buying, short selling, and wash sales that by general consensus had turned the nation’s securities markets into gambling dens. Recall that this concern grew from the Panic of 1907 that was caused largely by the banks’ irresponsibility in financing the securities industry and in securing their own collateral.

An earlier aim of securities measures was, as we have seen, controlling the trusts for the protection of consumers. Overcapitalized corporations threatened to destroy the American consumer for the sake of promoters and stockholders. Investors in this era were a secondary concern. A common tool that runs throughout these bills is disclosure but the goal of disclosure was to provide otherwise unavailable information necessary to permit the executive branch to enforce the law.⁵⁰

The Owen bill was very much in this tradition, but it was also something completely different. It was a bill aimed both at economic stability and at the safety of investors. As such, it

tried to correct for some of the evils in corporate governance and finance permitted by state law.

The incorporation requirement was the basis for allowing the government to insist upon effective exchange self-regulation to ensure investor protection and economic stability. The structure of self-regulation, supervised by the federal government, was very much in keeping with the Wilsonian progressive approach to federal regulation. Essentially no exchange could engage in the interstate sale of securities unless it was incorporated and adopted regulations approved by the Postmaster General prohibiting wash sales and matched orders and “all other dealings or transactions that are intended or the effect of which is to deceive or mislead the public.” The exchange rules also had to forbid exchange members from using their customers’ securities as collateral for their own loans and from lending securities left by customers with them as collateral and to keep full and complete records of all transactions, open for inspection by the Postmaster General. Along these same lines, the bill prohibited margin sales at less than 20%. All of these provisions were intended to prevent excessive speculation encouraged by brokers, both for the safety of the economy and for the protection of investors.⁵¹

Other provisions of the bill aimed directly at investor protection. The rules of all exchanges engaged in interstate commerce had to require listed corporations to provide financial information, approved by resolution of the corporation’s board and “verified by oath of an officer thereof,” including balance sheets describing “the nature, amount, and value of the tangible and other property, assets, and effects of the corporation” along with contingent liabilities, an income statement covering the preceding three years, and similar statements as to corporate subsidiaries. The corporation’s filing package also had to include every contract, written or not, relating to the corporation’s sale of its securities.

Other provisions for investor protection focused on managements' treatment of investors. Listed corporations were required at least annually to file with the Postmaster General "for public inspection and use, updated profit and loss statements, agreements with officers and directors or entities with which they were affiliated, and of the "profits, emoluments, salaries, commissions, or other compensation or benefits " received by the officers and directors. And charters of all listed companies had to have provisions preventing officers and directors from engaging in short selling unless reported to the corporation's board of directors and entered into its minutes.

A gaping hole is left in my analysis of the Owen bill that makes it difficult to say more, and that is the absence of a committee report. A report was prepared by the Committee and submitted to the Senate on the day of the Claflin bankruptcy, June 25, 1914. Owen himself had just sailed for Europe, but Gilbert Hitchcock of Nebraska rose almost immediately to challenge it on the ground that it had never been approved by a quorum of the Senate Banking and Currency Committee. A lengthy parliamentary debate took place the next day, and Hitchcock's motion to recommit the bill was approved. Hitchcock then requested that the report be "withdrawn from the files." I have been unable to locate a copy of this report and thus can only piece together the Committee's understanding of the bill from the Pujo hearings and Committee report, the hearings on the bill, and its text.⁵²

Unlike previous proposals, the Owen bill was directed at least in part at investor protection, although the bill primarily was, like its predecessors, aimed at ensuring the integrity of the market for the sake of the health of the economy and the banking system. This conclusion is reinforced by a jurisdictional fight between the Banking Committee and the Post Office

Committee following reintroduction of the bill in 1915. Owen argued that his committee had jurisdiction over the measure precisely because it was designed to protect the banking and currency systems. Securities were used as collateral for bank loans, so “the stability of the banking system of the United States is vitally concerned in the proper conduct of the stock exchanges.” Although the Owen bill retained the traditional concern with macro-economic factors that had been the focus of the Pujo hearings, it did, for the first time, bring investor protection center stage. And it did so, in a particularly Wilsonian way, by leveling the playing field for all investors. When the President finally came out in support of securities regulation in 1919, it was for a bill that marked the third stage of securities development, a bill that was almost entirely a disclosure measure for the benefit of investors.⁵³

The Owen bill and the FTC bill were two logical outgrowths of the federal incorporation debate. In its disclosure provisions aimed at responsible corporate governance and finance, the Owen bill bridged the gap between federal incorporation and economic stabilization through securities regulation. The FTC Act took up the dimension of federal incorporation proposals that demanded meaningful federal antitrust legislation. Both the Owen bill and the FTC Act completed the separation of the two major problems that had confounded the federal incorporation movement. The Rayburn bill, aimed at railroad antitrust through the elimination of overcapitalization by securities regulation, continued to muddle the issues. It also would have regulated railroad finance and management. But the Owen bill and the FTC Act, like most of the federal incorporation proposals that preceded them, relied upon disclosure and relatively light federal control to encourage, if not enforce, the self-regulation of business. Both provided remedies when self-regulation failed.

The New Deal securities acts imposed a slightly heavier federal hand but still maintained the spirit of the Owen bill and the Wilsonian approach to regulation in general. They had important similarities, particularly in the areas of corporate disclosure and the regulation of brokers and dealers. Like the later acts, Owen relied largely on the exchanges themselves for detailed self-regulation rather than detailed federal control, dealing directly only against those practices – manipulation, short selling, and margin trading – that the NYSE had shown itself unwilling to correct for itself. Finally, like the FTC and Federal Reserve Acts, it relied more heavily on voluntary, cooperative conduct with the private sector than it did on heavy-handed federal regulation.

The End of Business Progressivism

The economic context in which the Pujo hearings concluded, the Owen bill was debated, and business progressivism ended was complex. Nineteen thirteen, the year of Wilson's inauguration, was a depression year, which was really a continuation of the lackluster economy that had prevailed since the panic. Alexander Noyes describes it as an odd time, with indications of potentially improving trade due to expected bumper crops, an influx of gold, and some industries, like iron, working almost at full capacity. But there was no recovery, any more than there would be in the optimistic atmosphere of early 1913. Some blamed the tariff reduction bill, others the ICC's failure to raise railroad freight rates. Noyes, looking back, attributed it to a reaction to the economic uncertainty in European markets caused by that continent's increasing expectation of war, even as American markets failed to accept, or discount, that probability.⁵⁴

In any event, despite occasional bursts of activity during the period from 1911 to August 1914, the depression continued, and it ultimately affected Wilson's taste for business regulation.

It was an odd depression, because while industry and railroads did poorly, finance and banking performed reasonably well, despite the flat stock market. But hope dawned with 1914. Surveys of businessmen as well as the general economic environment showed a fresh breath of great optimism. The Federal Reserve Act had been passed and the tariff revised downward, and Wilson expressed the hopes of many that, as this legislation took effect, the economy would improve even as he signaled that it was time for the government to leave business alone. The settlement of the government's antitrust suit against the New York, New Haven & Hartford also signaled the possibility of better government-business relations. Railroad executives in Chicago were looking forward to passage of the pending Rayburn bill, which would provide uniformity in an area complicated by divergent state regulations.

But hope wasn't uniform across the nation. Boston had been particularly bowed by the depression, and the collapse of the New Haven, precipitated by that city's own Louis Brandeis, had hit New England investors especially hard. Businessmen in Boston remained gloomy. The *Wall Street Journal* reported with less optimism than others, too, focusing on the tightness of the money supply and the undeniable problems in the railroad industry caused by low freight rates, problems which dragged related industries like steel down with it. Finally, despite his reassurances to business, Wilson clearly intended to push his trust legislation, and its ultimate form was uncertain. The fate of the Owen bill was still unclear. While many businessmen expected the trust legislation to be rather mild, the uncertainty produced anxiety.⁵⁵

The year also began with another hopeful sign. After two years of badgering by the Pujo Committee, five major Morgan partners announced their resignations from a total of thirty directorships on January 2. Tommy Lamont, speaking for the firm, noted that these resignations

had been long-planned because the directorships simply were too time consuming for the firm, and that it had only been the partners' senses of obligation toward their clients that had kept them on. The move met with broad approval. Untermeyer, characteristically, complained that the resignations didn't go far enough. Indeed they were relatively insignificant because, busy or not, the Morgan partners remained on the boards of most banks and financial companies and of their most important industrial companies as well.⁵⁶

Interest rates dropped throughout the month and the stock market began to rally. Wilson gave a real boost to the market in his address to a joint session of Congress on January 20. His remarks were particularly powerful because he appeared before the legislators in person, having revived a tradition that had been abandoned over a hundred years earlier as inappropriately imperial. Most striking in this speech was his announced conciliation with business. Calling his business legislative agenda, and its approaching end, a "constitution of peace" with business, he declared that "the antagonism between business and government is over." He acknowledged the damage that continued legislative uncertainty caused business, and pledged to complete his program quickly. The market rallied, but it was a rally that would barely survive the month. The President may have declared a truce, but business was far from certain.⁵⁷

Wilson was clear about what he would and would not support. His basic guideline was the Democratic platform of 1912. This meant that he would push trust legislation and also support the Rayburn bill. He would not, however, support federal incorporation, which no longer was part of that platform, nor would he support the Owen bill on which hearings were to begin in February. Securities regulation was not part of the platform.

The strength of Wilson's opposition to Owen is unclear. *The New York Times* described

him as clearly opposing the Owen bill, but the *Wisconsin State Journal* more specifically described him as not opposing but not supporting the bill either. It appears that Wilson was of a mind to do the minimum amount of business regulation that he had promised and no more. As he would make clear by June, he was ready to let business be business.⁵⁸

The hopeful air of January rapidly faded. Congress got to work on the legislative program, which the administration began to push hard to complete despite some recalcitrance in Congress. The beginning of February found the capital markets – stocks, bonds, and money – substantially improved. The President was given credit for boosting investor confidence, and for distancing himself from the Owen bill, which one comment called “the most advanced proposal toward the Federal espionage over and regulation of private affairs and personal ethics that the radical tendencies of the age have yet evolved.” Strong European buying also helped. The Owen hearings began on February 2, with a disengaged president and predictions of defeat. But the first week of February was to prove the financial high point of the year.⁵⁹

Legislation that had begun in an atmosphere of optimism had hit major snags by March. The Investment Bankers’ Association opposed even the relatively mild trust legislation that would become the FTC and Clayton Acts, as did former President Taft. Securities markets had started to flatten, and trade had slowed considerably. The odd thing about this situation, and puzzled almost everyone including Wilson, was that the money supply was easing and business inventories were low, both of which ought to have produced a boost in commercial activity. But no such boost was coming. Legislative uncertainty continued to be identified as a cause of the malaise, as did a lack of confidence created by a number of fraud-induced railroad failures.⁶⁰

Mid-April saw a significant price break on the stock market. The downward trend this

started was to continue until the New York Stock Exchange and, with it, all other American stock exchanges, closed for war on July 31. Wilson's increasing insistence on passing trust legislation before Congress adjourned gave business some reason to be afraid that perhaps the resulting statute would not be quite as benign as had been hoped. The proposed anti-stock-watering provisions, which would have given the federal government supervisory powers over all corporate securities issues and prohibited corporations with watered stock from engaging in interstate trade, became a major sticking point in the trust bill. The Rayburn bill had been on track, but railroad presidents were now trying to derail it, pushing for federal incorporation instead as a measure that would provide much greater efficiency. Opposition to the program was beginning to infest the President's own party. The market broke again, and the new possibility of war with Mexico didn't help.⁶¹

Not all was lost. The Rayburn bill was reported to the House in May with the approval of the New York Stock Exchange. This bill provided the kind of federal regulation, instead of exchange regulation, that the NYSE had called for in the Owen hearings. The measure was designed, as I have noted, to prevent common carriers from issuing watered stock, and as such it was very much of an antitrust measure. Indeed all of the antitrust reasons that had made stock watering a major public issue for decades formed the rationale underlying the bill. While Rayburn himself, during debate on the bill, made it clear that its goal was not to protect investors, Chairman Adamson of the Interstate Commerce Committee [**check**] proclaimed that, in addition to its anti-trust effect, it also targeted people who were "buncoing innocent investors out of hundreds of millions of dollars and embarrassing other innocent investors by unloading on them worthless stocks and bonds."

At the same time, and despite the torpid market, small investors were still active. In May, the *Chicago Tribune* began a [weekly] column giving investment advice on specific securities in answer to specific questions from readers. As the *Tribune* reported, demand for such a column was very high, with a “flood of inquiries” from “financial houses welcoming an investigation of their securities,” securities promoters, brokerages recommending stock they had for sale, and, most of all, “from persons who have been solicited to make investments and are seeking disinterested advice.” Similar columns began to appear in other newspapers and magazines that circulated among the middle class.⁶²

Nonetheless, it had been an intense winter and spring, mid-term elections were approaching, trust legislation was stalling, the economy wasn’t moving, and the market was declining. It was in this atmosphere that the President lost his cool, and it was in this atmosphere that he completed his transformation from business progressive to business defender. It was in this atmosphere that he called an end to the Progressive Era.

Just Believe

The end began on June 1, when Wilson gave a widely reported speech in which he declared that the business depression wasn’t widespread, that other countries were in much worse shape, and that the only real depression was in railroads and steel. It was then that he delivered the phrase that was to haunt him. The depression was “psychological.” Like the recently created Peter Pan, the President insisted that prosperity would return if businessmen would only believe. “While admitting that he had no particular facts on which to base his assertion,” he declared that the economy was sound. The outpouring of public ridicule built slowly throughout the month, tempered by the House passing the FTC and the Rayburn bills in early June.

The *Wall Street Journal* and the *Los Angeles Times* were especially hard on the President. The *Journal* described him as “unlearned in economics, or in business practice,” and the *LA Times* suggested that “If President Wilson would only consent to psychologize into his swollen cabeza the idea that businessmen understand” the conditions for business success far better “than he ever did or ever can or ever will” there would be economic hope, concluding, “Oh, how the man in the White House needs a mind cure!”⁶³

Criticism continued during the month. In mid-June, taking a page from Roosevelt’s book, Wilson publicly revealed that a letter had been sent by W.P. Ahnfelt, president of the Pictorial Review Company of New York, to an undisclosed number of businesses, along with a form letter to be addressed to congressmen and administration officials. Ahnfelt asked that all who agreed that Wilson’s trust program should be stopped, that railroad freight rates should be increased, and that, in general, business should be given a rest by the administration, should send letters and telegrams along the lines of the form letter to their representatives and other officials. Wilson trotted this out as evidence of a campaign by business interests to stop trust reform, suggesting that the wealthy and powerful were opposing the people. He continued his retaliation by publicizing supporting letters from businessmen who had written to him, meeting at the White House in July with the wildly successful Henry Ford who declared that prosperity was returning, and meeting with the Democratic leadership to build support for pushing through the trust legislation.⁶⁴

The President’s satisfaction was short-lived. On June 25, H.B. Clafin Co., a respected dry goods wholesaler that had been in business since 1843, declared bankruptcy after surviving the Civil War, the Panics of 1873, 1893, and 1907, and several depressions. Over \$30 million in

notes remained unpaid, making it the largest bankruptcy in the Nation's history. While its effect on the stock market was minimal, its broader, dare I say psychological, impact, was far more significant. On that same day, Wilson gave a short speech in the White House to the Virginia Editorial Association. While the group was small, the newspapers were unanimous that the speech was intended to be one of the President's most important.⁶⁵

Reading the accounts of the speech make it easy to guess at the President's emotions. He was variously (and often) described as "defiant," with snapping jaws and flashing eyes. Virtually every report commented on his "clenched fists." Perhaps the most obvious emotion that comes to mind is frustration, frustration that business failed to understand his desire to help, frustration with the pace of trust legislation, frustration with opposition members of his own party, frustration at the mockery to which he had been subjected for his psychoanalysis of the economy, and frustration especially that the return to prosperity that he had predicted in January had fallen flat on its face. And that frustration seems to have been coupled with Wilson's characteristic self-righteous anger, on display whenever his will appeared to be thwarted, the same anger that led him to lose the graduate school battle at Princeton which led to his resignation and the same anger that would help to doom the League of Nations.

Whatever his emotions, Wilson was ready indubitably to declare for business, and almost to will a return to prosperity. "There is nothing more fatal to business than to be kept guessing from month to month and from year to year whether something serious is going to happen to it or not and what in particular is going to happen to it if anything does. . . The guessing went on, the air was full of interrogation points, for ten years or more, then came an administration which for the first time had a definite programme of constructive correction." Everything he said resounded

with his effort to blame the depression on Roosevelt. He stated that the antitrust legislation would serve as a “new constitution of freedom” for business. “It will not be postponed, and it will not be postponed because we are the friends of business. . . . Because when the programme is finished, it is finished; the interrogation points are rubbed off the slate; business is given its constitution of freedom and is bidden go forward under that constitution. And just so soon as it gets that leave and freedom there will be a boom of business in this country such as we have never witnessed in the United States.”⁶⁶

Perhaps Wilson’s most astonishing statement came near the beginning of the speech. “We are in the presence of a business situation which is variously interpreted. Here in Washington . . . we are perhaps in a position to judge of the actual conditions of business better than those can judge who are at any other single point in the country,” and, in his judgment, a business revival was around the corner. After describing his legislative program to date as well as the pending trust legislation, he proclaimed: “We know what we are doing; we purpose to do it under the advice, for we have been fortunate enough to obtain the advice of men who understand the business of the country; and we know that the effect is going to be exactly what the effect of the currency reform was, a sense of relief and security.” Few presidents have ever displayed such arrogance. Few have been so fortunate as to face an impending war.⁶⁷

Nobody was terribly impressed. Even the friendly *Times* suggested that perhaps the president had overstated the extent to which recovery was imminent. The *Los Angeles Times* headlined that *Wilson Rages Impotently*, particularly pained by the criticism he received for his psychological diagnosis of the depression. The *New York Press* asked: “Could the United States government send to the fallen house [of Claflin] 30 or 40 millions of relief in a psychological

form, instead of hard cash, and lift it from its ruins? President Wilson must stop talking – and acting, too – what to ordinary business intelligence is almost criminal nonsense, or this whole country, big as it is and strong as it is, will be threatened with a Claflin collapse.” B.C. Forbes, writing in the *New York American*, blamed the Claflin failure partly on the President’s “perpetual attack on business,” and complained that his repeated description of the depression as psychological “is worse than puerile – it is becoming exasperating to the many thousands of business men who are wrestling with heartbreaking problems to keep things going as well as to workers who have either been thrown idle or put on starvation hours.” The *Wall Street Journal* also gave no ground. Wilson’s optimism was, it noted, “apparently based on a plentiful absence of the right kind of information,” noting that “In Wall Street there is no such self-deception. Its aggregate information exceeds that of all the country put together, and is brought down to date.” Finally, “official opinion is not only valueless but misleading. It sees what it wishes to see, when the wish is so evidently father to the thought.” Wilson had irretrievably called an end to economic progressivism. But the business community to whom he opened his soul responded with contempt.⁶⁸

Business didn’t improve. The President’s supporter, The *New York Times*, put a happy headline on a national survey of businessmen in July, but the content of their comments was no more optimistic than it had been all year. Southern and western bankers were concerned as well, and their worry deepened as the summer progressed. Crops were predicted to be bumper, the automobile industry produced one of the economic bright spots, and the trust bill was nearing passage. None of these had any discernible effect.⁶⁹

And then the war in Europe began. The New York Stock Exchange, followed by all other

American stock exchanges, shut down on July 31. The European sell-off of securities, many of which had been bought that spring, had dramatically dropped stock prices over the preceding week and threatened to drain the Nation's gold supply. The closing was supported throughout the country. As the *Atlanta Constitution* put it, "the New York stock exchange would have been called upon to bear the weight of the world's financial burdens" had it not closed for business. And, for the first time in two years, it really did appear as if prosperity was around the corner. With the NYSE closed until December and only the pending Clayton Act to finish, the administration had completed its economic reforms. A friend of business it was, and business would soon reap the benefits of the President's diplomacy. The Progressive Era in business had come to an end.⁷⁰

Prophet of Prosperity

Wilson's June performance as economic prophet had been ridiculed, and rightly so. But in the event it was Wilson, and not the critics, who proved correct, although not for the reasons Wilson gave. The economy had indeed been suffering. Railroads in the east and related industries like steel were in genuine pain because the ICC held rates to levels insufficient to permit maintenance and expansion and still allow dividends. Railroads were in such bad shape that a group of prominent railroad presidents met with Wilson on September 9 to ask for various forms of relief, including postponement of the Rayburn bill. But the war gave the roads what they needed. Not only was the Rayburn bill postponed for almost six years but, on December 18, the ICC finally gave the railroads the rate relief they had been seeking, allowing an increase of 5% in freight rates. Railroad and steel stocks reacted shortly thereafter as headlines announced that the increase would mean a "big revenue jump" of at least thirty million dollars. By December 9,

McAdoo confidently stated that prosperity already had begun to return. The absence of panic during the lengthy depression was, he said, “phenomenal,” and the railroad rate increase and the easing of money that came with the operation of the new Federal Reserve banks were having good effects. Americans had started saving, and had money to invest in domestic industrial expansion. “Any war is injurious to the world, yet we have reached the point where the present war is in some ways an actual benefit.”⁷¹

The benefits weren't immediate. The first order of business that faced McAdoo and the bankers immediately following the declaration of war was to stave off a potential currency crisis. Gold reserves dropped by almost \$160 million on a base of \$1.1 billion as European creditors couldn't collect gold from their own debtors to pay off U.S. debt and as they dumped their American securities prior to the exchange closings. This brought McAdoo to New York immediately after July 31 to negotiate the issuance of clearing house certificates and increase available currency by \$500 million under the Aldrich-Vreeland law.⁷²

Emergency revenue measures also placed a short-term burden on increased commerce. House Democrats backed the President's proposal for war taxes on items like beer, wine, tobacco licenses, gasoline, bankers and brokers and a stamp tax on bonds, stock, and other financial instruments which alone was estimated to raise thirty-five million dollars. Despite significant Republican opposition, the measure was supported by the NYSE as a patriotic measure and was backed in force by Democrats, passing on October 22 as the Federal Emergency Revenue Act.⁷³

Even before there was any discernable improvement in economic fundamentals, American investors reflected their new optimism. Despite the market closures, or perhaps because of them, there was significant pent up investment demand. Bond trading reopened on the NYSE on

September 20, with limited restrictions, and on the 21st a New York City bond issue oversold within twenty-four hours. Trading in unlisted stocks resumed on September 25 subject, like bonds, to price review by a stock exchange committee, and bond trading volume had increased significantly by the end of September. Investor confidence continued, despite dividend cuts or suspensions by railroads and industrials preparing for war finance. Plummeting foreign exchange rates, bumper wheat crops, and a balance of trade increasingly in favor of the United States helped to keep confidence high. Only the South continued to suffer, as the interruption in the cotton trade, especially with England, made the crop virtually illiquid and led to bailout plans by banks and the federal government.⁷⁴

Signs were sufficiently good that Wilson, perhaps demonstrating that his judgment hadn't improved much since June but bolstered by improving balance of trade figures, proclaimed on October 12 that business conditions were "improving rapidly," noting that "he had not made any systematic canvas, but that from reports received from here and there he is of the opinion that business is rapidly assuming normal conditions." Luckily for the President, this time he was right. The next day, the New York Stock Exchange announced that it would allow restricted stock dealings to resume between members. On the 15th, Wilson signed the Clayton Act, and economic progressivism was over.⁷⁵

The Federal Reserve System opened for business in the middle of November, releasing \$400 million into the economy. Britain took American cotton off its contraband list even as the plan to bail out cotton growers was about to be put into effect. The bond market had normalized, and indeed demand for bonds was substantial and steel was beginning to pick up. The stock market was still sticky, but this was attributed to the fact that prices were being held where they

were when the Exchange closed. In fact European investors had returned to American securities as well, rather than dumping them on the market as Wall Street initially feared. Savings banks returned to the bond market in significant numbers by early November, and as the month progressed investors' demand for stock exceeded the supply. On November thirty, the NYSE reopened for bond trading, and stock trading resumed on December 12, with prices rising by month's end.⁷⁶

After over three years in the doldrums, the American economy was poised to take off. But not just yet. Nineteen fifteen dawned with bank clearings down, business failures up, and a continued "unsatisfactory state of industry and trade." No wonder Wilson had panicked in June. As one commentator noted in April 1915, "everyone seems agreed on the fact that the Wilson administration, in its first two years, has so identified itself with financial and industrial legislation that the conditions of business will have a determining effect upon the results of the next presidential campaign, unless, indeed, our foreign relations grow so acute as to sweep out of sight all the issues raised in the last ten years of agitation." Fortunately for the President, that would be precisely the case. And, as a result, the United States would engage in its first serious public war financing since the Civil War, using the same techniques that Jay Cooke had then used. The difference was that this time the securities markets had reached the threshold of their modern form and were ready for their complete integration into American culture that would take place during the 1920s.⁷⁷

1. Sklar, Kolko, Noyes, [check Weinstein and Wiebe] For an excellent account of the roots of federal securities regulation from the Panic of 1907 on, see Steve Thel, *The Original Conception of Section 10 (b) of the Securities Exchange Act*, Stanford L. Rev., Vol. 42, No. 2 (Jan., 1990), 385-464.

2. *The Army of Small Investors*, The Los Angeles Times, April 12, 1914, p. v.18; *Public Buying*, The Boston Daily Globe, Feb. 8, 1914, p. 54; John L. Snider, *Security issues in the United States, 1909 – 20*, Rev. of Econ. Stat., Vol. 3, No. 5 (May 1921), pp. 98-102

³ Seligman was also the editor who accepted Wilson's famous article on administration, over Wilson's modest objections of inadequacy, for the Political Science Quarterly.

Except where otherwise indicated, all of the information contained in the following discussion can be found in the archives of The National Civic Federation, Reel 179, located at the main branch of The New York Public Library.

⁴ *Seventy-Two Roads Owned by 461,445 Shareholders*, Wall Street Journal, Feb. 28, 1913, p. 1.

⁵ *Million and a Quarter Owners in 327 Companies*, Wall Street Journal, Apr. 4, 1913, p. 1.

⁶ *Investment*, The Street, Sept. 3, 1919, p. 22.

35 Robert L. Smitely, *The Economics of Speculation*, The Street, August 13, 1919, pp. 6, 7.

⁸ Perhaps the most subtle explanation of Wilson's political and business thought is Sklar's.

SKLAR, OP. CIT. While I depart from Sklar's view around the edges, I more or less agree with his

analysis.

9. Richard M. Abrams, *Woodrow Wilson and the Southern Congressmen, 1913-1916*, *The Journal of Southern History*, Vol. 22, No. 4 (Nov. 1956), pp. 417-437; Dewey W. Grantham, Jr., *Southern Congressional Leaders and the New Freedom, 1913-1917*, *The Journal of Southern History*, Vol. 13, No. 4 (Nov. 1947), pp. 439-459; Anne Firor Scott, *A Progressive Wind from the South, 1906-1913*, *The Journal of Southern History*, Vol. 29, no. 1 (Feb. 1963), pp. 53-70. **[more]**

¹⁰ WILLIAM ALLEN WHITE, *THE AUTOBIOGRAPHY OF WILLIAM ALLEN WHITE* (NEW YORK; MACMILLAN; 1946); Kendrick A. Clements, *The Papers of Woodrow Wilson and the Interpretation of the Wilson Era*, *The History Teacher*, Vol. 27, No. 4 (Aug., 1994), pp. 475-489, 482; *On Women Suffrage*, Address to the ladies representing woman suffrage at the White House, Oct. 3, 1918, in *THE PUBLIC PAPERS OF WOODROW WILSON, I WOODROW WILSON, WAR AND PEACE, PRESIDENTIAL MESSAGES, ADDRESSES, AND PUBLIC PAPERS (1917-1924)* (Ray Stannard Baker and William E. Dodd, eds.)(New York; HARPER & BROS.; 1927)(hereinafter, "PPWW"), p. 272; *WOODROW WILSON, THE STATE: ELEMENTS OF HISTORICAL AND PRACTICAL POLITICS* (BOSTON; D.C. HEATH & CO.; 1889), p. 663; Woodrow Wilson, *The New Meaning of Government*, *Public Admin. Rev.* Vol. 44, no. 3 (May-June 1984), pp. 193-195, originally published 1912.

11. *See generally* ARTHUR S. LINK, *WILSON: THE NEW FREEDOM* (PRINCETON; PRINCETON UNIVERSITY PRESS; 1956).

¹² WILSON, *THE STATE*, OP. CIT. , pp. 659, 661.

¹³ WILSON, THE STATE, OP. CIT., pp. 650 -653; Woodrow Wilson, *The Study of Administration*, Pol. Sci. Q., Vol. 2, No. 2 (Jun. 1887), pp. 197-222, 209; Woodrow Wilson, *Jackson Day Dinner Address*, Jan. 8, 1912, in , II WOODROW WILSON, COLLEGE AND STATE, PPWW, p. 344, 348; Woodrow Wilson, *Living Principles of Democracy*, *id.*, pp. 196, 197-98; Woodrow Wilson, *Speech of Acceptance*, August 7, 1912, in II WILSON, COLLEGE AND STATE, PPWW, OP. CIT., pp. 452, 464; SKLAR, OP. CIT., pp. 383-430, 402. In general, I agree with Sklar's analysis of Wilson's thought.

¹⁴ WILSON, THE STATE, OP. CIT. pp. 655, 667; Woodrow Wilson, *First Inaugural Address as President of the United States*, March 4, 1913, in I WOODROW WILSON, THE NEW DEMOCRACY, PPWW, pp. 1, 5.

¹⁵ Woodrow Wilson, *The Lawyer and the Community*, AUG. 31, 1910, IN II WOODROW WILSON, COLLEGE AND STATE, PPWW, p. 245, 258; Woodrow Wilson, *Jackson Day Dinner Address*, Jan. 1, 1912, *id.* , pp. 344, 347; Woodrow Wilson, *Richmond Address*, Feb. 1, 1912, *id.*, pp. 367, 376; Woodrow Wilson, *The Tariff and the Trusts*, Feb. 24, 1912, *id.*, pp. 405, 411.

¹⁶ Woodrow Wilson, *Law and Personal Power*, April 13, 1908, in II WILSON, COLLEGE AND STATE, PPWW, pp. 24, 30.

¹⁷ Woodrow Wilson, *The Lawyer and the Community*, op. cit., pp.255, 256; Woodrow Wilson, *Issues of Freedom*, May 5, 1911, in II WILSON, COLLEGE AND STATE, PPWW, pp. 283, 285; Wilson, *Richmond Address*, op. cit., p. 34; Wilson, *The Tariff and the Trusts*, op. cit., p. 410.

¹⁸ Woodrow Wilson, *What Jefferson Would Do*, April 13, 1912, in II WOODROW WILSON, COLLEGE AND STATE, PPWW, pp. 424, 428.

¹⁹ WILSON, THE STATE, OP. CIT.; Woodrow Wilson, *The States and the Federal Government*, in II WOODROW WILSON, COLLEGE AND STATE, PPWW, pp. 32-53; Woodrow Wilson, *Leaderless Government*, The Virginia Law Register, Vol. 3, no. 5 (Sept. 1897), pp. 337-354.

²⁰ Wilson, *Law and Personal Power*, op. cit., p 29; Woodrow Wilson, *The Ministry and the Individual*, Nov. 11, 1909, in II WOODROW WILSON, COLLEGE AND STATE, PPWW, pp. 178, 181; Wilson, *Living Principles of Democracy*, op. cit., p. 196; Wilson, *The Lawyer and the Community*, op. cit., p. 24; Wilson, *The Tariff and the Trusts*, op. cit., p. 413.

21. WOODROW WILSON, THE NEW FREEDOM: A CALL FOR THE EMANCIPATION OF THE GENEROUS ENERGIES OF A PEOPLE (NEW YORK AND GARDEN CITY, DOUBLEDAY, PAGE & COMPANY, 1913),

22.

22. Arthur S. Link, *Woodrow Wilson and the Progressive Era, 1910-1917* (New York; Harper & Brothers; 1954), pp. 44-53; Sklar; Noyes.

As I've noted earlier, there had been a number of securities bills introduced in Congress. But the Owen bill was the first to benefit from serious hearings and public attention.

23. CAROSSO, *op. cit.* at 137.

²⁴ The parallel isn't perfect. Wilson retired and died after his defeat; Undermyer went on to fight

many another battle.

25. Remarks of Simeon Fess, THE CONGRESSIONAL RECORD, June 2, 1914, p. 9701; WW to SU, 10/5/13; WW to SU, 1/27/14; WW to SU, 2/4/14; WW to SU, 8/15/14; WW to SU, 10/10/16; SU to WW, 10/14/16, all in Wilson Papers.

26. Untermeyer Dead in His 82d Year; Long Had Been Ill, The New York Times, March 17, 1940, 1.

27. *Id.* ; Editorial, *Samuel Untermeyer*, The New York Times, March 18, 1940, p. 16; *Governor Attends Untermeyer Rites*, The New York Times, March 23, 1940, p. 13; Coleman T. Mobley, *Firm Archives Reveal Rich History*, Legal Times, May 26, 1986, p. 26; Shannon Star, *Couple Learn History as They Rescue Home*, The (Riverside, California) Press Enterprise, May 11, 2002, p. B.3.; WILLIAM G. MCADOO, *CROWDED YEARS* (KENNIKAT PRESS, PORT WASHINGTON, N.Y., AND LONDON, 1971) 117-8, 157, 345-6; JOHN J. BROESAMLE, *WILLIAM GIBBS MCADOO: A PASSION FOR CHANGE, 1863-1917* (NATIONAL UNIVERSITY PUBLICATIONS, KENNIKAT PRESS, PORT WASHINGTON, NEW YORK , AND LONDON, 1973), 104-06.

²⁸ Samuel Untermeyer to Woodrow Wilson, 7/3/12, Wilson Papers, The Library of Congress, Manuscript Division (“Wilson Papers”); SU to WW, 7/31/12, Wilson Papers; SU to WW, 10/3/13, Wilson Papers,.

²⁹ *From the Diary of Colonel House*, April 18, 1913, in 27 THE PAPERS OF WOODROW WILSON (PRINCETON; PRINCETON UNIV. PRESS; 1978(ARTHUR S. LINK, ED.), 334; *From the Diary of Colonel House*, May 19, 1913, in 27 THE PAPERS OF WOODROW WILSON, 457; *From the Diary of*

Colonel House, November 29, 2913, in 28 THE PAPERS OF WOODROW WILSON, 597; Samuel Untermyer to William Gibbs McAdoo, December 18, 1913, McAdoo Papers, The Library of Congress, Manuscript Division, Washington, D.C.; Telegram from Untermyer to McAdoo, Jan. 14, 1914, McAdoo Papers.

³⁰ See Glass's remarkable and rather vicious 1913 memo responding to Untermyer's "review" review of Glass's book, found in Wilson Papers, Series 2.

31. **[more]**; Robert L. Henry (RLH) to Samuel Untermyer (SU), 1/23/12. Unless otherwise noted, all references to Untermyer's correspondence can be found at the Jacob Marcus Center of the American Jewish Archives, Cincinnati Campus, Hebrew Union College, Jewish Institute of Religion, hereafter, "AJA".

32. H. Res. 405, 62d Congress, 2d Session, February 3, 1912; H.Res. 429, 62d Congress, 2d Session, February 24, 1912; H. Res. 504, 62d Congress, 2d Session, April 22, 1912.

33. H. Res. 405

34. **[support]**; *Wilson Is Neutral On Exchange Bills*, The New York Times, Jan. 24, 1914, p. 11.

35. Lawson is quoted in III CONGRESS INVESTIGATES: A DOCUMENTED HISTORY, 1792-1974 (NEW YORK; CHELSEA HOUSE; 1975)(Arthur M. Schlesinger, Jr. and Roger Bruns, eds.), p. 2253. RLH to SU, 4/9/12; SU to RLH, 4/10/12; SU to RLH, 3/15/12; SU to James F. Byrnes, 4/17/12; SU to A.P. Pujo, 4/19/12; SU to APP 4/20/12; RLH to SU, 4/25/12.

36. RLH to SU, Dec. 23, 1911; SU to RLH, 12/26/11; Subpoena of SU to appear before House

Rules Committee from RLH, 1/20/12; RLH to SU, 1/26/12; SU to RLH, 1/27/12; RLH to SU, 1/30/12; Telegram, RLH to SU, 2/3/12; SU to RHL, 4/20/12.

37. SU to RLH, 4/15/12; SU to A.J. Pujó, 4/20/12; HEARINGS BEFORE THE COMMITTEE ON BANKING AND CURRENCY, UNITED STATES SENATE ON S. 3895, 62rd Congress, 2nd Session, (Washington; Government Printing Office; 1914)(hereafter “Owens Hearings”), pp. 10-12.; Alfred Owen Crozier to SU, 6/10/12; SU to AOC, 10/1/12; AOC to SU, 10/16/12; SU to AOC, 10/18/12.

38. SU to RLH, 4/30/12; RLH to SU, 5/18/12; SU to RLH, 5/28/12; SU to APP, 5/30/12; RLH to SU, 6/1/12; SU to RLH, 6/3/12; A.J. Pujó to SU, 8/29/12; SU to RLH, 11/12/12; RLH to SU, 12/3/12; SU to William Jennings Bryan, 7/18/12; SU to WJB, 12/3/12; 11/21/12; WJB to SU, 11/illegible/12; **[more]**

39. SU to APP, 10/11/12; SU to APP, 12/4/12; SU to George Wickersham, 12/16/12; SU to APP, 12/24/12.

40. SU to RLH, 1/23/12; **[there are interim letters – find them]**; SU to William G. Brown, 10/4/12; SU to The Editor of the New York Sun, 11/10/12; SU to WJB, 11/21/12; SU to APP, 11/18/12; SU to Andrew Freedman, 11/26/12; SU to William Randolph Hearst, 12/1/12; SU to Rollo Ogden, 12/17/12; SU to New York Tribune, 2/11/13; SU to William Garver, 2/15/13; SU to APP, 2/17/13; SU to C.W. Van Ham, 5/17/12; SU to CWV, 6/3/12; SU to C.W. Thompson, 5/31/12; CWT to SU, 6/1/12; SU to CWT, 6/3/12.

41. SU to Herman Siecklin, 6/3/12; U to A.H. Wiggin, 10/28/12; U to Francis Lynde Stetson,

10/28/12, 10/29/12; FLS to U, 11/2/12; U to FLS, 11/2/12; FSL to U, 11/4/12; U to FLS, 11/4/12; SU to FLS, 11/16/12; U to FLS, 11/19/12; U to Bernard Baruch, 10/28/12; Owens Hearings, p. 7.

42. Report of the Committee Appointed Pursuant to House Resolutions 429 and 504 to Investigate the Concentration of Control of Money and Credit (Washington, Government Printing Office, February 28, 1913), pp. 15-17. (hereafter “Pujo Report”)

⁴³ Albert W. Atwood, *et. seq.*, *Speculation on the Exchanges – Discussion*, American Econ. Rev., Vol. 5, No. 1 (Mar., 1915), 86-111, remarks of William C. Van Antwerp. The discussion was held following Untermeyer’s delivery of a lengthy address on the subject. Samuel Untermeyer, *Speculation on the Stock Exchanges and Public Regulation of the Exchanges*, American Econ. Rev., Vol. 5, No. 1 (Mar., 1915), 24-68. The somewhat sordid history of the New York Stock Exchange Bill is told in STATE OF NEW YORK, PROCEEDINGS OF THE JUDICIARY COMMITTEE OF THE SENATE IN THE MATTER OF THE INVESTIGATION DEMANDED BY SENATOR STEPHEN J. STILWELL (ALBANY; J. B. LYON COMPANY; 1913). The Massachusetts legislature also considered and defeated a bill to require exchanges within that state to incorporate by special incorporation. THE COMMONWEALTH OF MASSACHUSETTS, AN ACT TO REQUIRE THE INCORPORATION OF STOCK EXCHANGES, House No. 71, 1/1/13. **[fix cite]**

⁴⁴ In 1913 New York passed laws prohibiting wash sales, false statements in connection with the sale of securities, quotations of fictitious transactions discrimination against non-exchange members, hypothecating customers’ securities, and brokers’ trading against their customers. LAWS OF NEW YORK, 1913, CHAPS. 253 (4/10/13), 254 (4/10/13), 475 (5/9/13), 477 (5/9/13), 500 (5/14/13),

592 (5/17/13), AND 593 (5/17/13).

45. Pujo Report at 116.

46. Pujo Report at 115; CONSTITUTION OF THE NEW YORK STOCK EXCHANGE AND RESOLUTIONS ADOPTED BY THE GOVERNING COMMITTEE WITH AMENDMENTS TO JANUARY NINETEEN EIGHTEEN (NEW YORK; SEARING & MOORE; 1918), pp 99-100.

⁴⁷ BRIEF AND REPLY BRIEF SUBMITTED ON BEHALF OF THE NEW YORK STOCK EXCHANGE TO THE SENATE COMMITTEE ON BANKING AND CURRENCY, MARCH 5, 1914 AND MARCH 30, 1914, RESPECTIVELY, p.55

⁴⁸ Louis D. Brandeis and Samuel Gompers, *The Incorporation of Trade Unions: "No, Thank You!"* Says Gompers, Green Bag 2d, Vol. 1 (Spring 1998), pp. 306-315, 308.

49. Pujo Report at 114-15.

50. It's actually worth noting that futures contracts and speculative activity as gambling had been a serious concern in the United States from at least the end of the 18th century, and persisted as a concern particularly with respect to agricultural commodities throughout the Progressive era.

STUART BANNER, *ANGLO-AMERICAN SECURITIES REGULATION: CULTURAL AND POLITICAL ROOTS, 1690-1860* (CAMBRIDGE; CAMBRIDGE UNIVERSITY PRESS; 1998), CH. 5; CEDRIC B. COWING, *POPULISTS, PLUNGERS, AND PROGRESSIVES: A SOCIAL HISTORY OF STOCK AND COMMODITIES SPECULATION, 1890-1936* (PRINCETON; PRINCETON UNIVERSITY PRESS; 1965).

51. Responsible brokers, associated with the Association of Partners of Brokerage Firms, and others, were increasingly concerned that public distrust of them was growing. Part of this they attributed to public agitation stirred up by the Pujo hearings, but for part of this they accepted responsibility themselves. *The Brokers' Aim*, The New York Times, Jan. 11, 1914, p. XX7. The vesting of jurisdiction in the Postmaster General was done to avoid questions over the federal government's authority to regulate the exchanges under the interstate commerce clause.

31. CONGRESSIONAL RECORD, 67TH CONGRESS, 2D SESSION, pp. 11075, 11116-11172, June 25, 26, 1914.

53. 61 Cong. Rec. 229 (12/13/15)

54. Alexander D. Noyes, *The War Period of American Finance, 1908-1925* (New York and London; Putnam's Sons; 1926), pp. 15-20.

55. *May Modify Legislation*, The New York Times, Jan.3, 1914, p. 2; *Split New Haven Without a Suit*, Jan. 11, 1914, p. 1; *Exchange Men See Flaws in Owen Bill*, The New York Times, Jan. 30, 1914, p. 14; *Looking Into the Future*, The Boston Daily Globe, Jan. 1, 1914, p. 8; *What the Brokers Think About the Stock Market*, The Boston Daily Globe, Jan. 4, 1914, p. 38; *Better Times*, The Boston Daily Globe, Feb. 1, 1914, p. 54; *Regulation of the Carriers*, The Chicago Daily Tribune, Jan. 4, 1914.

56. *Financial Markets*, The New York Times, Jan. 3, 1914, p. 14; *May Modify Legislation*, *op. cit.*;

Morgan Firm Out of Thirty Boards, The New York Times, Jan. 3, 1914, p. 1; **[more on Morgan resignations]**

57. *Friendliness the Keynote*, Los Angeles Times, Jan. 21, 1914, p. 13; *Sweetens the Pill*, Los Angeles Times, Jan. 21, 1914, p. 11; *Financial Markets*, The New York Times, Jan. 22, 1914, p. 14.

58. *Blocks Legislation on Stock Exchanges*, The New York Times, Jan. 23, 1914, p. 3; *Wilson's Bills Made Public*, Los Angeles Times, Jan. 23, 1914, p. 13; *Wilson Will Aid Legislation on Stock Exchanges*, Wisconsin State Journal, January [], 1914, p. [].

59. *Democrats in Panic Speed Legislation*, Los Angeles Times, Feb. 16, 1914, p. 11; *The Financial Situation in America and Europe*, Feb. 2, 1914, p. 10.

60. *Bond Firms Object to State Control*, The New York Times, Mar. 17, 1914, p. 14; *Taft Opposes Trust Law*, the New York Times, Mar. 21, 1914, p. 3; *"Big Business Waiting"*, The New York Times, Mar. 24, 1914, p. 8; *Stock Market*, The Boston Daily Globe, Mar. 16, 1914, p. 11.

61. *The General Trend of Trade*, The New York Times, April 19, 1914, p. XX12; *Delay Opposed by Wilson*, Chicago Daily Tribune, April 14, 1914, p. 7; *Must Hurry Up "Trust" Laws*, Los Angeles Times, April 14, 1914, p. 13; *What the Brokers Think About the Stock Market*, Boston Daily Globe, April 19, 1914, p. 46; *Market Oversold*, Boston Daily Globe, April 19, 1914, p. 46; *Watered Stock is Proscribed*, Los Angeles Times, April 18, 1914, p. 13; *Oppose Securities Bill*,

Boston Daily Globe, June 4, 1914, p. 15; *Senate Trust Bill Soon*, The New York Times, April 30, 1914, p. 14; *Drastic Regulation for Corporations*, The Atlanta Constitution, April 30, 1914, p. 16; *Wield Club Over Trusts*, Los Angeles Times, April 30, 1914, p. 15.

62. *Favors Jail Clause in Railroad Bill*, The New York Times, May 17, 1914, p. 10; *‘Change Men Favor the Rayburn Bill*, The New York Times, May 17, 1914, p. XX11; *For Federal Control of Railroad Bond Issues*, The Atlanta Constitution, May 17, 1914, p. 11; *The Investor’s Guide*, Chicago Daily Tribune, May 31, 1914, p. A5; *Remarks of Representatives McKenzie and Rayburn*, CONG. REC. 6/2/1914, p. 9687; *Need Shown For Advice on Stocks*, Chicago Daily Tribune, May 31, 1914, p. A5. **[add magazines – other papers]**

⁶³ *Some Pyschological Inexactitudes*, The Wall Street Journal, Jun 3, 1914, p. 1; *Wilson’s Psychology*, Los Angeles Times, Jun 13, 1914, p. II4.

⁶⁴ *President Insists on Trust Program*, Boston Daily Globe, Jun 16, 1914, p. 1; *Wilson In Council Pushes Trust Plan*, New York Times, Jun 16, 1914, p. 1; *Wilson Explains Motive*, New York Times, Jun 19, 1914, p. 2; *Letters to Wilson Call Business Good*, New York Times, Jun 21, 1914, p. 1; *Vanderlip Urges Congress to Wait*, New York Times, Jun 23, 1914, p. 7; *Ford Tells Wilson Boom Is On The Way*, New York Times, Jul 10, 1914, p. 2

⁶⁵ Woodrow Wilson, *The Uneasiness in Business*, June 25, 1914, in II WILSON, THE NEW DEMOCRACY, PPWW, OP. CIT., p. 135.

⁶⁶ *Ibid.* at 136, 137.

67. *Ibid.*, pp. 135, 137; *Receivers Take H.B. Claflin Co.; Allies Sound*, The New York Times, Jun. 26, 1914, p. 1; *Claflin Firm Fails for \$35,000,000*, The Atlanta Constitution, Jun 26, 1914, p. 3; *Stock Market*, Boston Daily Globe, Jun 26, 1914, p. 14; *Big Business Boom For United States Pledged by Wilson*, The Atlanta Constitution, Jun 26, 1914, p. 1; *Wilson Says Boom Is Near For Business*, Chicago Daily Tribune, Jun 26, 1914, p. 1; *Wilson Predicts a Gigantic Boom*, The New York Times, Jun 26, 1914, p. 1; *The Financial Situation in America and Europe*, The New York Times, Jun 29, 1914, p. 12.

68. *Wilson Rages Impotently*, Los Angeles Times, Jun 26, 1914, p. 13; *New York Editors Want To Know If Crash Is Conspiracy or Psychology*, The Washington Post, Jun 26, 1914, p. 3; *Developments of the Week*, Wall Street Journal, Jun 29, 1914, p. 1; B.C. Forbes, *Big Failure Shows the Reality of Trade Slump That Could Have Been Avoided*, The Washington Post, Jun 27, 1914, p. 10.

69. *Business Men See Good Times Ahead*, The New York Times, Jul. 13, 1914, p. 1; *Views of Bankers In South and West*, The New York Times, Jul 13, 1914, p. 7.

70. *Governors Close Stock Exchange*, The New York Times, Aug. 1, 1914, p. 1; *Financial Markets*, the New York Times, Aug. 1, 1914, p. 12; *Stock Market*, Boston Daily Globe, Aug. 1, 1914, p. 7; *Gotham Closes Stock Exchange*, Los Angeles Times, Aug. 1, 1914, p. 18; *Many Millions Lost*, The Washington Post, Aug. 1, 1914, p.three ; *Merchant's Point of View*, The New York Times, Aug. 30, 1914, p. X12; *Security Markets of World Closed To Stop Unloading*, Aug. 1, 1914, p. 1; *War Crisis Shuts New York Stock Exchange*, Boston Daily Globe, Aug. 1, 1914, p. 1;

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71. *Financial Markets*, New York Times, Feb. 12, 1915, p. 14; [**Emily – what about 12/14 ICC action?**] *Railways Lay Needs Before President*, The New York Times, Sept. 10, 1914, p. 18; *President Asked to Aid Railroads*, The Atlanta Constitution, Sept. 10, 1914, p. 4; *Lines Win Fight for Higher Rates*, The Washington Post, Dec. 19, 1914, p. 1; *Sees a Big Trade Boom*, The Washington Post, Dec. 0, 1914, p. 9.

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