Trust Company Failures and Institutional Change in New York, 1875–1925

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In the late nineteenth and early twentieth centuries, New York State trust companies were successful, grew quickly, and failed rarely. The few failures, however, played a leading role in shaping the rules that governed trust companies. Because trust company failures were consistently interpreted as isolated departures from the norm of conservative management, trust companies were able to continue to participate in the rule-making process. The institutions that evolved promoted financial stability by imposing the costs of failure on decision makers and discouraging risky behavior. These failures shed new light on the treatment of failure and the development of corporate governance and financial regulation in the United States

The State of New York created the first trust company in 1822, when it granted a corporate charter to the Farmers' Fire Insurance and Loan Company, later renamed Farmers' Loan and Trust Company, and authorized it to act as a trustee.[1] As the name suggests, Farmers and other early trust companies, like the New York Life Insurance and Trust Company and the Massachusetts Hospital Life Insurance Company, also sold insurance, and they provided trusts as an alternative to insurance.[2] Trust companies later used their trust powers

doi:10.1017/eso.2017.7

Published online August 7, 2017

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1. Hansen, *Institutions*, 13–16.
2. Murphy, *Investing in Life*, 141–142.

to facilitate the development of corporate finance by serving as registrars and transfer agents for corporate securities and as trustees for corporate mortgages.[3] Trust companies also accepted deposits; by the middle of the nineteenth century, some of these deposits could be withdrawn on demand including by check. Thus, by the late nineteenth century, trust companies in New York occupied a unique position in the financial system by combining functions associated with banks with functions associated with trustees.

Between 1875 and 1925, the number of trust companies in New York State increased from ten to 110, and the total resources of trust companies increased more rapidly than those of state banks or savings banks. Trust companies have been characterized as early examples of "shadow banks," operating outside the laws and regulations that applied to commercial banks.[4] However, as with other financial institutions, New York State trust companies rarely failed.[5] Between 1875 and 1925, the superintendent of banks only intervened eleven times to deal with troubled trust companies, and in several of these cases the trust company reopened. Despite this rarity, these failures provide a path to understanding the overall success of trust companies.[6] The path leads through institutions: failures played a leading role in shaping the institutions that governed trust companies. Consequently, failures shaped the expectations and actions of everyone involved with trust companies: depositors, shareholders, and executives.

There is considerable evidence that the institutions that govern financial corporations influence both growth and stability.[7] Some political economists have argued that fundamental forces, such as

3. On the early history of trust companies, see Haeger, *Investment Frontier*; Hansen, *Institutions*; Perine, *Trust Companies*; White, *Massachusetts Hospital Life Insurance Company*.

4. Frydman, Hilt, and Zhou, "Effects of Runs." White, "More Effective Supervision," 14, refers to New York trust companies as early shadow banks. Others have cited the lack of regulation as the cause of runs on trust companies during the panic of 1907. See Sprague, *History of Crises*; Bruner and Carr, *Panic of 1907;* Chernow, *House of Morgan,* Chapter 7*;* Markham, *Financial History,* 31–33; Moen and Tallman, "Bank Panic of 1907"; Moen and Tallman, "Clearinghouse Membership"; Strouse, *Morgan*.

5. George Barnett estimated that the average annual failure rate for state banks and national banks was about two-tenths of 1 percent between 1899 and 1909. Barnett, *State Banks*, 194–195.

6. Fridenson, "Business Failure," and Scranton and Fridenson, *Reimagining Business History,* argue for more attention to business failure. Examples of work on failure in business history include Balleisen, *Navigating Failure*; Hansen, "Commercial Associations" and "People's Welfare"; Hansen, "Sources of Credit"; Hansen and Hansen, "Religion"; Ollerenshaw, "Innovation"; O'Sullivan, "Fine Failure"; Sandage, *Born Losers*; Van Rooij, "Sisyphus in Business."

7. See, for example, King and Levine, "Finance and Growth"; Calomiris and Haber, *Fragile by Design*.

https://doi.org/10.1017/eso.2017.7 Published online by Cambridge University Press

geography or legal heritage, have driven the development of these institutions.[8] Many historians, however, have shown that specific historical narratives are often inconsistent with change driven by these fundamental forces.[9] Economic and business historians of the United States have noted that corporations and banks were largely governed by state law and that the evolution of these laws was often driven by events or forces that were specific to each state.[10] Among these forces, economic crises and failures have played prominent roles.[11] The failure of financial intermediaries can have significant negative spillover effects.[12] Thus, it is not surprising that the evolution of the laws and institutions that regulate financial intermediaries can be interpreted as "a process of innovation in response to crises."[13] This article shows that in the case of trust companies, regulatory innovation did not require a general crisis. Isolated failure, and even the threat of failure, was sufficient to prompt changes in legislation, legal decisions, and the practices of the superintendent of banks.

The influence of focusing events, such as financial crises or noteworthy business failures, on institutional change has received considerable attention.[14] Major crises can lead to changes in ideology, political alignment, or the balance of power among interest groups. More limited crises, for example, noteworthy business failures, can call attention to a potential threat or lead to changes in advocacy coalitions. Such events prompt learning: problems that were previously unperceived or underappreciated are brought to light. The nature of subsequent institutional change will depend on how the crisis is interpreted: What did people learn from the crisis? Did the crisis arise from a systemic problem, human error, or some exogenous shock?

Trust company failures prompted learning, but they did not lead to changes in ideology, political realignment, or even advocacy coalitions. There was no outside investigation of the trust companies, challenging central elements of the business, as there was with the Armstrong Investigation of the insurance industry in 1905 or the Pecora

8. See, for example, La Porta et al., "Law and Finance"; La Porta, Lopez-de-Silanes, and Shleifer, "Economic Consequences."

9. For a review of this literature, see Musachio and Turner, "Law and Finance Hypothesis."

10. Lamoreaux, "Revisiting American Exceptionalism"; Hilt, "Corporate Governance"; Lamoreux and Wallis, "States, Not Nation."

11. Hilt, "American Corporate Governance."

12. See Grossman, "Macroeconomic Consequences"; Kupiec and Ramirez, "Bank Failures"; Ramirez and Shively, "Effect of Bank Failures."

13. Hilt, "Corporate Governance," 30.

14. There is an extensive literature on the influence of crises on policy and institutions. See, for example, Birkland, "Focusing Events"; Higgs, *Crisis and Leviathan*; Temin, "Government Actions"; Weible, Sabatier, and McQueen, "Themes and Variations."

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Investigation of the financial industry during the 1930s. Instead, trust companies played a prominent role in the rule-making process. Trust companies continued to play a role because trust company failures were consistently attributed to human errors, actions by particular people that departed from the norm of good business. Failures were caused by officers who recklessly failed to diversify their company's investments; or they were caused by officers who fraudulently used trust company assets to further other business ventures; or they were caused by directors who negligently failed to monitor the company's officers. Failures brought to light specific weaknesses in laws and regulations that enabled these bad practices to occur. Consequently, trust company failures prompted specific institutional changes, intended to prevent, or at least discourage, these departures from the norm of careful and conservative management. The overriding goal was promoting financial stability while meeting ever-growing demands for financial intermediation. The general approach to achieving this goal was to discourage reckless or negligent management by imposing the costs of failure on officers, directors, and, if necessary, shareholders.

The Growth of Trust Companies

Trust companies grew rapidly in the last decades of the nineteenth century and the first decades of the twentieth century. Figure 1 shows the total resources of the primary financial intermediaries that were supervised by New York State's superintendent of banks: banks of deposit and discount, savings banks, and trust companies.[15] All three types of institutions experienced increases in resources, but trust companies and savings banks grew more rapidly than banks of discount and deposit.[16] Trust companies grew somewhat more rapidly than savings banks, but their growth was also more volatile. Unlike trust companies, the resources of savings banks were largely unaffected by business cycle movements. Trust companies also grew more rapidly than national banks.[17] Banks tended to attribute the rapid growth of trust companies to their payment of interest on deposits; trust companies tended to attribute their growth to their ability to provide a wide array of services to their depositors.[18] Although banks and trust companies sometimes had conflicts, the largest banks and trust

15. At various times, the superintendent also supervised safe deposit companies, private banks, savings and loans, and personal loan companies.

16. Other states also began to charter trust companies at a rapid pace in the early twentieth century. See Barnett, *State Banks*; Neal, "Trust Companies."

17. Neal, "Trust Companies," 43.

18. Herrick, *Trust Companies*, 31.

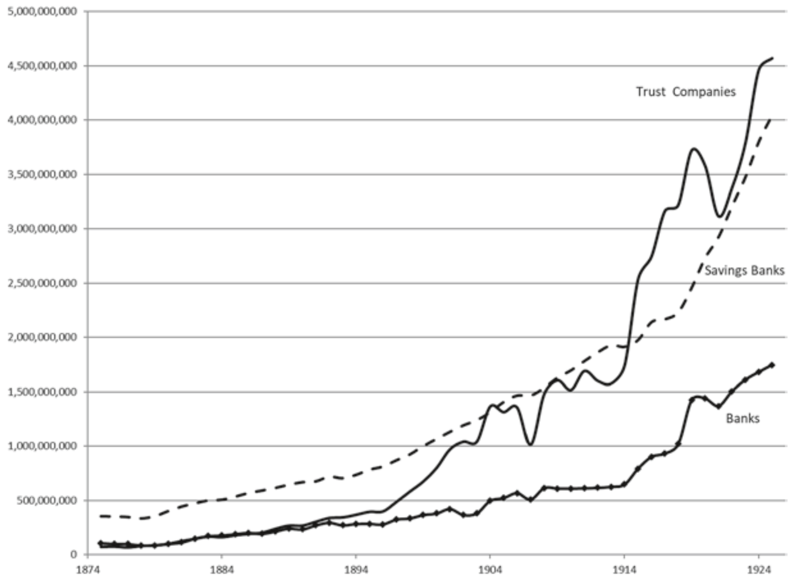

Figure 1 Resources of trust companies, state banks, and savings banks in New York, 1880–1925 (nominal dollars).

Source: New York State, *Superintendent of Banks Relative to Savings Banks*.

companies also had numerous business connections. In 1900, every trust company in New York City had interlocking directors with at least one national bank, and more than half had interlocking directors with at least six national banks.[19]

The growth in resources reflected both a greater number of trust companies and an increase in the size of trust companies. Figure 2 shows the number of trust companies that reported to the superintendent of banks at the end of each calendar year from 1875 to 1925. In 1880 only one trust company was located outside of Manhattan and Brooklyn: the Trust and Deposit Company of Onondaga, in Syracuse. By 1900 people had organized trust companies in New York cities, such as Binghamton and Albany, and by 1920 even smaller towns, like Johnson City, had trust companies. Despite the spread of trust companies throughout the state, New York City continued its dominance. In 1920, 82 percent of all resources in New York State trust companies were still held by companies located in New York City; the $904 million in resources of the largest New York City trust company, the Guaranty Trust Company, far exceeded the $648 million of all the trust companies located outside the city.[20]

19. Brewer, *Emergence*, 296–298.

20. New York State, *Superintendent of Banks Relative to Savings Banks*, 1920.

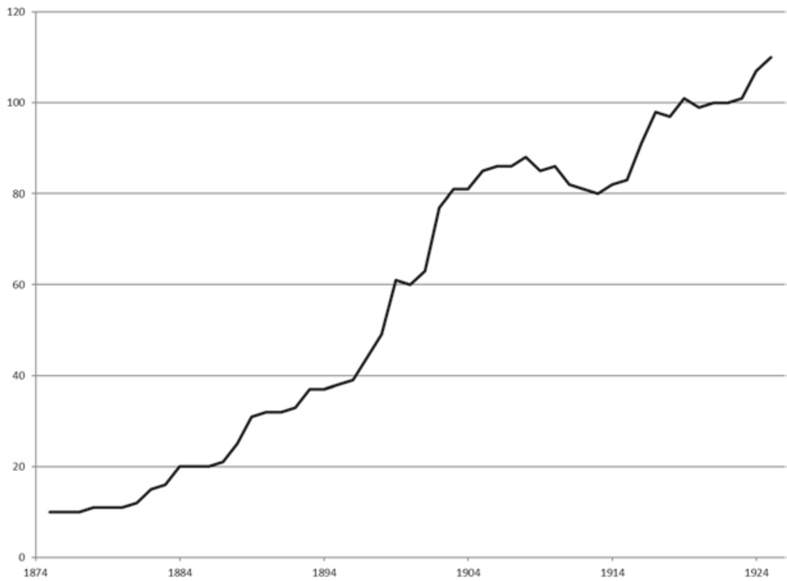

Figure 2 Number of trust companies in the State of New York, 1875–1925.
Source: New York State, *Superintendent of Banks Relative to Savings Banks*.

The number of trust companies at any time was the result of entry and exit. Figure 3 shows the number of entrants each year. Between 1875 and 1925, 168 new trust companies opened for business. Prior to 1887, trust companies in New York were created by special acts. In 1887, at the behest of Governor Hill, the State Assembly passed a general incorporation act to increase uniformity in the powers of trust companies and their regulation.[21] There were three ways for a trust company to exit the market: merger, voluntary liquidation, and forced liquidation. Figure 4 shows the number of firms that exited by each method from 1878, the year of the first exit, until 1925. Forty-nine trust companies left the superintendent's list of trust companies through mergers. The most intense periods of merger activity followed the panic of 1907 and the end of World War I. There were seventeen mergers from 1909 to 1915, and eighteen from 1919 to 1925. There is, however, a significant difference between the two periods. All of the mergers before 1918 were between trust companies; fourteen of the eighteen mergers after 1918 were between trust companies and banks. Twenty-one trust companies were liquidated between 1875 and 1925; twelve of these were voluntary liquidations, and these companies were small and disappeared quietly. Typically, the board of directors announced that they did not regard the rate of return

21. *The Sun* (New York), January 5, 1887, 1.

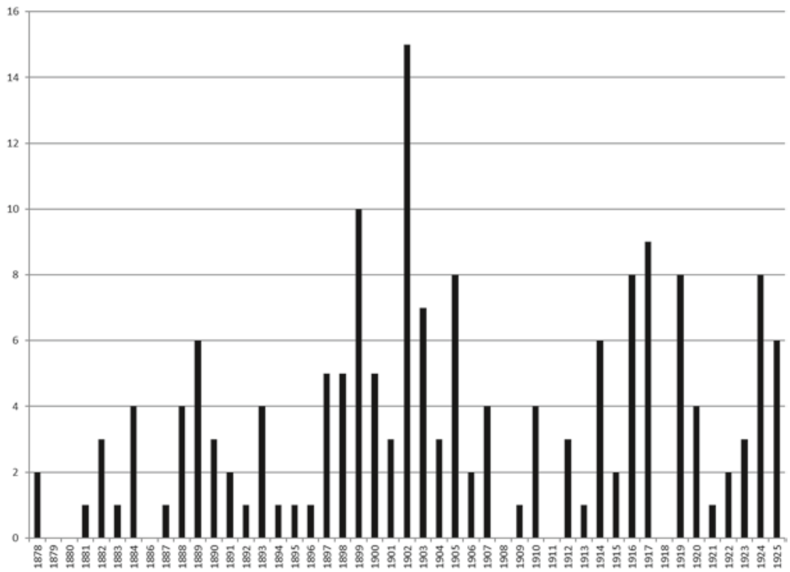

Figure 3 Trust company entry, 1878–1925.

Source: New York State, *Superintendent of Banks Relative to Savings Banks*.

as sufficient to warrant continued operation; they stopped accepting new business and paid off their depositors. The directors of the Eastern Trust Company, for instance, announced in 1904 that they would discontinue the business; they paid all of the depositors and then paid the shareholders 190 percent of the face value of their stock.[22]

The superintendent of banks only intervened eleven times with failing trust companies, and eight of these interventions resulted in the forced liquidation of the trust company.[23] Table 1 lists the cases that prompted intervention by the superintendent and provides a brief description of the major institutional changes that occurred because of them. These are the failures examined in this article. They raised questions about what had gone wrong; were heavily covered in the media; and prompted investigations, trials, and changes in the law. They influenced the evolution of institutions and shaped expectations. The next section examines each of these failures and their effects on the institutions governing trust companies.

22. *New York Times*, July 7, 1904, 12.

23. There was one atypical case, which was neither a voluntary liquidation nor a failure; the Transatlantic Trust Company was closed by the Custodian of Enemy Alien Property in 1919, after it was determined that the company had been established by an Austrian spy. *New York Times*, February 19, 1919, 5.

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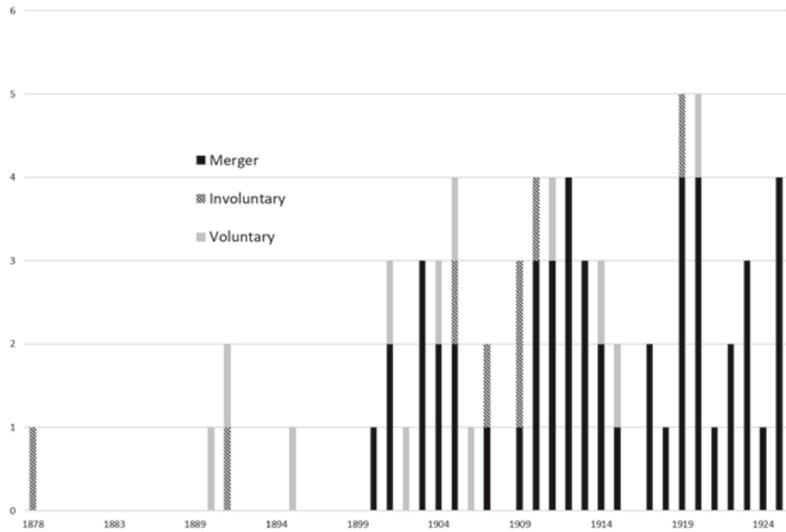

Figure 4 Trust company exits, 1900–1925.

Source: New York State, *Superintendent of Banks Relative to Savings Banks*.

The Failures

The National Trust Company

The National Trust Company, founded in 1867, and the Union Trust Company, founded in 1864, suspended payments during the panic of 1873.[24] Both companies soon resumed payments, but the suspensions prompted new regulations. In 1874 New York State enacted legislation that required all trust companies accepting deposits to place government bonds worth 10 percent of paid-in capital with the superintendent and prohibited trust companies from having either deposits or loans that totaled more than ten times paid-in capital and surplus. The same legislation required trust companies to "report to and be examined by the State Superintendent of Banking."[25]

24. *New York Times*, September 21, 1873, 1.

25. Brewer, *Emergence*, 10. Much of the information on trust companies in New York comes from these reports. It should, however, be noted that the superintendent submitted several different reports each year. One report covered all the state-chartered financial institutions; this report was the *Annual Report of the Superintendent of Banks*. Separate reports provided more detail on specific types of institutions. The name of the report examining trust companies evolved over time. Originally, it was titled *Annual Report of the Superintendent of the Banking Department Relative to Savings Banks and Trust Companies*. By 1900, it was the *Annual Report of the Superintendent of Banks Relative to Savings Banks, Trust Companies, Safe Deposit Companies and Miscellaneous Corporations*, and by 1920 it was the *Annual Report of the Superintendent of Banks Relative to Savings Banks, Trust Companies, Safe Deposit Companies, Personal Loan Companies and Personal*

https://doi.org/10.1017/eso.2017.7 Published online by Cambridge University Press

Table 1 Interventions by the superintendent of banks and institutional change

Year	Company	Action taken	Institutional changes
1877	National Trust Company	Receiver appointed (liquidated)	Capital requirement, annual reports, changes in receivership law.
1891	American Loan and Trust Company	Receiver appointed (liquidated)	Clarified the law regarding the rights of preferred creditors.
1903	Trust Company of the Republic	Superintendent intervention led to dissolution	Directors held liable for negligence.
1905	Merchants Trust Company	Receiver appointed (liquidated)	Introduction of reserve requirement; increase in reports and examinations.
1907	Knickerbocker Trust Company	Receiver appointed (reopened)	Increases in reserve requirements; restrictions on investments, responsibilities of directors, powers of the superintendent
	Williamsburgh Trust Company	Receiver appointed (reopened)	
	International Trust Company	Receiver appointed (liquidated)	
	Jenkins Trust company	Receiver appointed (reopened)	
1909	Binghamton Trust Company	Liquidated by superintendent	Enforcement of double liability for trust company shareholders and criminal prosecution of executives.
	Lafayette (Jenkins) Trust Company	Liquidated by superintendent.	
1911	Carnegie	Liquidated by superintendent.	Clearing House Association membership for trust companies.

Source: New York State, *Superintendent of Banks Relative to Savings Banks*.

Although the National Trust Company reopened shortly after its suspension, it never recovered. In 1878 an examination by the superintendent of banks, Henry Lamb, concluded that the firm's capital was impaired; it continued to list some loans as assets even though they had been in default since the panic of 1873.[26] Following state laws for dealing with insolvent financial corporations, Lamb referred the case to the attorney general, who then asked a court to appoint a receiver.

Loan Brokers. For simplicity, the report covering trust companies is referred to in the notes as the *Superintendent of Banks Relative to Savings Banks*. In 1930 the superintendent began to include trust companies in the *Superintendent of Banks for the Year …* rather than the *Superintendent of Banks Relative to Savings Banks*.

26. *New York Times*, January 3, 1878, 2.

The receiver paid all of the depositors in full, but there was little left over for shareholders.[27] In response to shareholder complaints about the conduct of the receivership, the New York State Senate held hearings to investigate the conduct of the National Trust Company receivership.[28] Along with similar complaints about receiverships of insurance companies, the investigation of the receivership of the National Trust Company prompted legislation intended to reduce the time and cost of receiverships. In addition to the change in receivership proceedings, the state increased the mandatory reports from trust companies from once to twice a year, beginning in 1882.[29]

American Loan and Trust Company

In February 1891 the new superintendent of banks, Charles M. Preston, concluded that the American Loan and Trust Company's capital was impaired, and he turned the case over to the attorney general.[30] Its failure was caused by large loans to the brokerage house of Grovesteen and Pell, which failed in 1887, and to the Decatur, Chesapeake, and New Orleans Railroad, which went into receivership in 1890. The American Loan and Trust Company was not a particularly important trust company, so its failure had no lasting consequences.

The Trust Company of the Republic

The Trust Company of the Republic was organized by prominent business people, including Perry Belmont, Stuyvesant Fish, George Gould, George Boldt, and Herbert Satterlee. The president of the company was Daniel Le Roy Dresser, president of the Merchants' Association of New York City and partner in Dresser and Co., silk merchants.[31] The company opened for business on March 31, 1902. In August 1902 shares were selling at more than triple the par value.[32] By summer 1903 share prices had fallen to less than half of par value; a $500,000 surplus was wiped out; and the capital was halved from $1 million to $500,000.[33] President Dresser resigned and fled to a sanitarium to recover from "Nervous Troubles."[34] The trust company changed its name to the Commonwealth Trust Company and ceased to take on new business. By 1905 most of its deposits had been closed.

27. New York (State), Senate Document No. 41, March 9, 1883, *Report of Sub-Committee Appointed to Investigate Receiverships*.

28. *New York Times*, March 20, 1883, 2.

29. New York State, *Superintendent of Banks for the Year 1883*, 14–15.

30. *New York Times*, February 20, 1891, 8.

31. *New York Times*, January 25, 1902, 12.

32. *New York Times*, August 21, 1902, 10.

33. *New York Times*, June 28, 1903, 12

34. *New York Times*, March 5, 1903, 3; March 8, 1903, 1; June 19, 1903, 16.

The company was not dissolved until 1914; the next year Dresser killed himself.

Dresser and Alexander Greig, the vice president of the Trust Company of the Republic, had previously organized the Security Warehousing Company, which was to establish warehouses, especially in the Cotton South. The Trust Company of the Republic was formed to allow farmers who obtained warehouse receipts from Security to borrow with the warehouse receipts as collateral. In May 1902, however, Dresser was drawn away from the company's original plan. John W. Young asked him to participate in the formation of a shipbuilding trust: the United States Shipbuilding Company.[35] Initially, Young suggested that the trust company act as the banker for the shipbuilding company, but he soon convinced Dresser to act as underwriter for part of a $9 million bond issue that was needed to finance the merger of the steel and shipbuilding companies that would form the United States Shipbuilding Company. Young proposed to split the offering evenly between New York, London, and Paris markets, and Dresser agreed to handle the New York portion. When, however, the London offering did not attract any interest, Young decided to offer $4.25 million in Paris and the remaining $4.75 million in New York.

The Paris offering, however, failed, and Young's options to purchase the various steel and shipbuilding companies were set to expire on August 11 and 12. Rather than let the merger fail, Dresser made large loans from the Trust Company of the Republic to himself and Louis Nixon, the president of the United States Shipbuilding Company. In addition, the trust company guaranteed loans to Dresser and Nixon from other institutions. The loans violated New York State law, which stated, "No loan exceeding in amount one-tenth of its capital stock shall be made by any such corporation, directly or indirectly, to any director or officer thereof and no loan to such director shall be made without the consent of a majority of directors."[36] They also violated the bylaws of the company that required loans be approved by the executive committee. On October 20, $4,285,665 of the company's $7,961,735 in assets was accounted for by loans associated with the Shipbuilding Trust.[37]

In October, two directors, Charles Wetmore and Herbert Satterlee, discovered Dresser's actions and began to investigate the trust

35. For a review of the trust company's involvement with the shipbuilding company, see Sammis, "Relation of Trust Companies." For Dresser's testimony on the trust company's involvement with the Shipbuilding Trust, see *New York Court of Appeals: Records and Briefs 223 NY 103 Kavanaugh v. Gould* (1915), Vol. 1, 457–472.

36. New York (State), *Banking Law*, Section 156.

37. New York (State), *Calhoun v. Commonwealth Trust Co.* Court of Appeals of the State of New York, Case on Appeal, (1913), Plaintiffs Exhibit 59, 374.

company's finances.[38] By December, the superintendent of banks, Frederick Kilburn, was aware of the situation. He threatened to go to the attorney general if there was not "some straightening up of the company's affairs."[39] The directors agreed to sell the bonds to a syndicate of investors. Kilburn explained that "this seemed a far better procedure than to refer the company to the Attorney General summarily, for it recovered nearly four million dollars that might have proved a loss."[40] No depositors lost any money, but the company's surplus was wiped out and its capital was reduced by half.

Dresser, the largest shareholder, was the biggest loser.[41] "When I went to Europe [in September]," he explained, "that stock was selling for $370 and when I came back [in November] I could not sell it for anything. I was out $570,000."[42] Dresser attributed his personal bankruptcy entirely to the problems with the trust company and the resultant loss of faith in his credit: "I could not sell my paper—I had a lot of maturing paper coming in at that time and I found the paper would not sell. I found there had been a very general feeling circulated I believe against my paper."[43]

One shareholder, Charles H. Kavanaugh, sought to hold the directors accountable for the loss in the value of the stock. Kavanaugh, whom the *New York Sun* described as "a wealthy knit goods manufacturer of Waterford," had purchased 100 shares of the trust company in April 1902.[44] He sued the company's directors on behalf of himself and other similarly situated shareholders. The right of shareholders to initiate such suits, called shareholder derivative suits, was first established in New York in the 1820s.[45] Kavanaugh claimed that the directors had been negligent, and that their negligence harmed the company and its owners. In deciding the case, Justice Van Kirk noted, "Whether or not a director has been negligent depends, under the facts in the case, upon whether or not he has performed his duty and has exercised the required degree of care in the performance of his duty."[46] Shareholders typically found

38. *New York Court of Appeals: Records and Briefs 223 NY 103 Kavanaugh v. Gould*, Vol. 1, (1915), 777.

39. New York State, *Superintendent of Banks for the Year 1903*, xii.

40. Ibid.

41. U.S. District Court of the State of New York, Bankruptcy Case Files–1898, Case No. 5728 Dresser & Co., Box 18, Hearing on Specifications, Vol. 1, January 6, 1904, 590, National Archives Kansas City.

42. Ibid., Box 20, File 6: General Meeting Vol. 1, 1903, beginning in July, 384.

43. Ibid., 378.

44. *New York Sun*, June 9, 1904, 3; *New York Court of Appeals: Records and Briefs 223 NY 103 Kavanaugh v. Gould,* Vol. 1, (1915), 944.

45. Hilt, "Corporate Governance"; Hilt, "American Corporate Governance."

46. *Kavanaugh v. Commonwealth Trust Company*, 118 N.Y.S. 758 (1906).

it difficult to prove that directors did not exercise the required degree of care.[47]

In the nineteenth century, many courts set a relatively low bar for the required degree of care. In one of the leading cases, *Spering's Appeal*, a Pennsylvania court held that directors were "merely gratuitous mandatories" who should only be responsible if their actions are consistent with "fraud or gross negligence amounting to fraud."[48] Many business people also viewed directors as no more than "gratuitous mandatories." Testifying before the Armstrong Investigation of the life insurance industry in 1905, Jacob Schiff, head of Kuhn Loeb and Company and previously a director of the Equitable Life Assurance Society, declared that a director "is considered in many instances, and I may say most instances, as a negligible quantity by the executive officers of the society."[49] Dresser expressed a similar view when he testified that he had asked Stuyvesant Fish and George Gould to be directors because of their connections and did not expect them to take an active part in directing the company.[50] Gould did not take an active part, even though he served on the board for seven months. He testified that he had played no role at all in management of the company: "I do not recollect that I ever attended a meeting of the directors. I do not think I ever did. I think I never made any inquiries as to the business of the Trust Company."[51]

Despite the statements by Schiff, Dresser, and Gould, courts in New York had held directors to a higher standard, especially when they were directors of a financial corporation. Quoting from *Hun v. Cary* (1880), Judge Van Kirk noted, "The directors must exercise ordinary care and prudence in the trusts committed to them, the same degree of care and prudence that men prompted by self-interest generally exercise in their own affairs."[52] He also noted that this standard of care was particularly clear in regard to financial corporations by quoting from *Hanna v. Lyon* (1904): "The law is settled in this state that directors of monetary corporations are held to the same degree of care that men of ordinary prudence exercise in regard to their own affairs."[53] Van Kirk concluded that the directors of the Trust Company of the Republic had not carried out their duties with the same degree of care that they would have exercised in their own affairs.

47. Lamoreaux, "Sylla or Charybdis," 20.

48. *Spering's Appeal* 71 Pa. 11 (1872). For a discussion of the case's significance, see Rhoads, "Personal Liability of Directors."

49. *New York Times*, September 30, 1905, 1.

50. *New York Court of Appeals: Records and Briefs 223 NY 103 Kavanaugh v. Gould,* Vol. 1, (1915), 550–551.

51. Ibid., 724.

52. Ibid., 303, 308.

53. Ibid., 303, 308.

https://doi.org/10.1017/eso.2017.7 Published online by Cambridge University Press

They were, therefore, found negligent and responsible for the losses due to the bad loans that the company had made. The exception was George Boldt, who had been caring for his dying wife. The court held that Boldt was not liable for any damages associated with meetings that he missed due to his wife's illness. All of the directors, except George Gould, settled with Kavanaugh. Gould continued to appeal the case until 1918, when he was ordered to pay $723,583.22 to Kavanaugh.[54]

The decision against the directors of the Trust Company of the Republic helped to clarify expectations about the degree of care required of directors. *Banker's Magazine*, for instance, explained that the decision "indicates along general lines at least, what may be expected if similar cases arise, and may well set the directors of our financial institutions to thinking of the very grave responsibilities which they have undertaken."[55] When the decision was upheld on appeal, *Bankers' Magazine* reprinted an editorial from the *New York World*, which asked, "If the directors are not presumed to know what the officers of the company are doing, who is to know? They are elected to do so, and if the law of New York views their duties as merely nominal, what check can stock-holders have on the safe conduct of the company's interest?"[56] C. Brewster Rhoads argued in a 1916 *University of Pennsylvania Law* review that the courts were generally moving to a higher standard in response to the needs of business:

> The trend of modern law, through the application of an extended conception of the trusteeship of directors, is complying with the demands of modern business by insisting on the exercise of reasonable care, skill and business judgment in the management of corporate enterprises and will no longer relieve directors who plead honesty but hopeless incapacity.[57]

Berle and Means used *Kavanaugh v. Gould* in their *Modern Corporation and Private Property* to illustrate the evolution of the law regarding the responsibilities of officers and directors of corporations in the twentieth century.[58]

Merchants' Trust Company

The Merchants' Trust Company commenced business in 1899. The name reflected its location in the warehouse district and its intention

54. *New York Times*, September 5, 1919, 26.
55. *Bankers' Magazine*, November 1909, 741.
56. Ibid., January 1912, 55.
57. Rhoads, "Personal Liability of Directors."
58. Berle and Means, *Modern Corporation*, 214.

https://doi.org/10.1017/eso.2017.7 Published online by Cambridge University Press

to specialize in mercantile finance.[59] In 1903 Superintendent Kilburn ascertained that the company had several large loans secured by unmarketable securities. In his *Annual Report for the Year 1905*, he explained that the situation left him with "only the alternative of reporting the company at once to the Attorney General for institution of proceedings in insolvency, or of trying to work out its difficulties."[60] He chose the latter course, arguing that immediately reporting the company to the attorney general "would surely impose a loss of at least half on the depositors." Consequently, he held off on seeking a receiver while the company worked to recover as much as it could from the loans it had made. On May 23, 1905, Kilburn recommended to the attorney general that the Merchants Trust Company be placed in receivership. In June 1905 it was dissolved, and by October depositors had been repaid, with about $150,000 to spare.[61]

Prior to his involvement with the Trust Company of the Republic and the Merchants Trust Company, Kilburn had suggested few regulatory changes related to trust companies. In 1901 the only recommendation that the he made regarding trust companies was for legislation clarifying his powers relative to foreign trust companies attempting to operate in the state.[62] He explicitly rejected a call for a reserve requirement for trust companies.[63] After these two failures, however, Kilburn made numerous recommendations for new legislation regarding trust companies. In his 1903 report, he attributed the failures of trust companies to poor business practices, suggesting that they "have arisen from too large transactions the safety of which depended wholly upon the success of one or two, or two or three, enterprises."[64] Consequently, he recommended that the legislature increase restrictions on the amount that a trust company could loan or invest in any single company. He also recommended increasing the frequency of reports to him, a prohibition on underwriting by trust companies, and a reserve requirement for trust companies.[65]

Many of the recommendations became law over the next few years. In 1905 an amendment to the Banking Act increased the number of reports for trust companies from two to four each year; increased the number of examinations from one to two; and the amount that a trust company could loan to any individual or firm was reduced from

59. *New York Times*, October 20, 1899, 11.
60. New York State, *Superintendent of Banks for the Year 1905*, xi.
61. *People v. Merchants' Trust Company*, 116 N.Y. App. Div. 41 (1906).
62. New York State, *Superintendent of Banks for the Year 1901*, xxx.
63. Ibid., xi.
64. Ibid., *1903,* xxxi.
65. Ibid., *1904,* xxiii–xxx.

50 percent of its capital to 40 percent, regardless of security. [66] A similar restriction on unsecured loans was reduced from 20 percent to 10 percent of capital.[67] In 1906 the Banking Law was further amended to require trust companies in New York City to keep reserves equal to 15 percent of deposits and other trust companies in the state to keep reserves equal to 10 percent of deposits.[68]

The Clearing House Association had raised the issue of trust company deposits in 1902. At that time, trust companies could not become members of the Clearing House, but they could clear through it by means of an affiliation with a member bank. In 1902 the Clearing House declared that nonmember banks and trust companies could only clear through a member bank if they kept a specified level of cash reserves (5 percent beginning on June 1, 1903, and rising to 10 percent on June 4, 1904), submitted weekly statements of their condition, and agreed to submit to the same examinations that were required of member banks.[69] The reason for the change was the belief "that in times of financial stringency the reserve required by statute of National and State banks would necessarily be called upon to withstand the drains upon not only the deposits with banks, but also upon the deposits of other financial institutions."[70] The essence of the argument was that financial stability depended not just on the reserves of each bank individually but also on whether the reserves of the system as a whole were sufficient to meet the needs of a financial crisis. Trust companies, however, argued that because their volume of clearings was so much less than banks that a 10 percent reserve requirement was not warranted.[71]

After the reserve requirement was imposed, all but three trust companies ceased clearing through the Clearing House. In response, the State Bankers Association began to support legislation that required trust companies to keep reserves. While the State Bankers Association supported a 15 percent reserve requirement (half in cash), the State Trust Company Association opposed it. Senator Stevens, the chairman of the State Senate's Banking Committee, met with representatives of both groups in an effort to resolve their differences. The senator offered a compromise of a 15 percent reserve requirement

66. Ibid., *1905,* xiv.
67. Ibid., xv.
68. Ibid., *1906*, xviii.
69. *New York Times*, February 5, 1903, 13.
70. *New York Times*, February 12, 1903, 5.
71. The total value of deposits and Clearing House banks and trust companies were roughly equal, but the value of clearings by trust companies were only about 7 percent as large as those of the banks. See *New York Daily Tribune*, March 18, 1906, 2.

with only 5 percent in cash. The representatives of the banks opposed the compromise, but the representatives of the trust companies supported it.[72] The compromise proposal supported by the trust companies was enacted that year.

The Panic of 1907

Four of the eleven occasions on which the superintendent intervened were associated with the panic of 1907. It was triggered by rumors that stock manipulators had used loans from financial institutions they controlled to fund their failed attempt to corner the market in United Copper, a copper mining company. On October 17, 1907, depositors ran on three banks associated with the speculators. The banks were members of the Clearing House, which came to their aid.[73] The next week, rumors spread that the president of the Knickerbocker Trust Company, Charles Barney, had been involved with the corner, and depositors ran on his trust company.

The Knickerbocker also turned to the Clearing House Association for assistance, even though it was not a full member of it. President Barney believed the association might help because the Knickerbocker was one of the three trust companies in New York City that had agreed to abide by Clearing House rules for reserves and reporting. The association, however, "decided that the advance of money for the protection of depositors is limited to its own members."[74] Barney also appealed to J. P. Morgan, who asked two of his associates to examine the Knickerbocker Trust Company's financial situation. They, however, were unable to complete their examination in time to head off the run that caused the trust company to close its doors.[75] A receiver was appointed on October 31, who found no signs of mismanagement at the Knickerbocker. It reopened on March 26, 1908, but it never regained its former status, and it merged with the Columbia Trust Company in 1912.[76] The rumors about Barney's involvement in the attempted corner turned out to be false; nevertheless, he died of a self-inflicted gunshot wound in November 1907.

The superintendent of banks, Clark Williams, closed three small trust companies during the panic of 1907: the International Trust Company, the Jenkins Trust Company, and the Williamsburgh Trust Company. The International, located in Manhattan, had been open less than a month and was quickly liquidated. The other two were

72. *New York Times*, February 18, 1906, 15.
73. Wicker, *Banking Panics*, 89.
74. Statement by the Clearing House, quoted in ibid., 91.
75. Hansen, "Failure of Regulation."
76. New York State, *Superintendent of Banks for the Year 1908*, vi.

located in Brooklyn. In August 1907, the combined checkable deposits of the Jenkins Trust Company and the Williamsburgh Trust Company totaled a little more than $11 million, less than one-fourth of those of the Knickerbocker Trust Company.[77] The Jenkins family controlled all three companies, and initially there were rumors of unethical and illegal behavior. John G. Jenkins Jr. was the first officer of a trust to be tried in criminal court. The charge was transferring funds from the Jenkins Trust Company to the brokerage house he and his brother owned. He was acquitted.[78]

Both the Jenkins Trust Company and the Williamsburgh Trust Company were placed under new management and reopened within the year, but neither remained open for long. The Jenkins Trust Company was renamed the Lafayette Trust Company, but could not attract the new capital it needed to remain in business. In December 1908 Superintendent Williams again took control and began the process of liquidation. In 1911 the Williamsburgh Trust Company borrowed from the Metropolitan Trust Company so it could pay off its depositors and then began a voluntary liquidation of its assets.[79] The closure of the Lafayette Trust Company was the first in which the state sought to enforce double liability on shareholders of trust companies. Some form of extended liability for shareholders in financial institutions was common in both the United States and the United Kingdom as a means of promoting financial stability.[80]

It should be noted that it is likely that there would have been more failures in the absence of private intervention. The Knickerbocker was one of a group of trust companies located uptown in the shopping and residential district, and depositors ran on other uptown trust companies and companies associated with anyone rumored to be connected to the United Copper corner.[81] The Trust Company of America and the Lincoln Trust Company were particularly hard hit. Unlike the Brooklyn trust companies, runs on the Manhattan trust companies threatened the entire financial system. In August 1907 only the Farmers' Loan and Trust Company had more resources ($90,352,376) than the Knickerbocker ($69,486,611) or the Trust Company of America

77. New York State, *Superintendent of Banks Relative to Savings Banks*, 1907, 670–673.

78. *New York Evening World*, November 23, 1908, 1; *Fort Covington Sun*, December 10, 1908, 1.

79. *Commercial and Financial Chronicle,* May 29, 1915, 1807.

80. See Grossman, "Fear and Greed"; White, "More Effective Supervision," 24–29; Bodenhorn, *Double Liability*; Hickson and Turner, "Shareholder Liability Regimes"; Hickson and Turner, "Unlimited Liability Bank Shares."

81. Hansen, "Failure of Regulation," emphasizes the impact on Manhattan trust companies, while Frydman, Hilt, and Zhou, "Effects of Runs," emphasize the role of connections with United Copper.

($77,003,464).[82] The resources of the Knickerbocker and the Trust Company of America accounted for more than 13 percent of trust company resources in the entire state. As the runs continued, other trust companies intervened to end the panic. At a famous meeting in J. P. Morgan's library on November 14, a syndicate was established to raise funds to deal with the continued runs on the Trust Company of America and the Lincoln Trust Company. Edward King, president of the Union Trust Company, was placed in charge of the bailout, trust companies agreed to provide $14 million, and Morgan agreed to arrange for himself and other bankers to provide an additional $6 million should the $14 million not be sufficient. Ultimately, King called for about half of the funds that Morgan and the banks had pledged, all of which was repaid by August 31, 1908.[83] Both the Trust Company of America and the Lincoln survived the panic.

Although the failures and near failures posed much more of a threat to the financial system than they had in the past, the role of trust companies in shaping policy increased during the panic. On October 24, at the height of the panic, Governor Charles Evans Hughes appointed Clark Williams, the vice president of the Columbia Trust Company and president of the National Organization of Trust Companies, as the new superintendent of banks.[84] On November 13, Hughes also established a committee to consider changes to laws and regulations for financial institutions in the state. Three of the committee's six members were trust company officers or directors. The committee presented its report to the governor on December 17, 1907.[85] It recommended that all banks and trust companies in New York City be required to hold reserves of 25 percent, comparable to national banks in the city, though the two trust company presidents dissented, arguing that 15 percent was sufficient for trust companies. The committee also recommended greater oversight by directors, requiring that all loans, discounts, and purchases of commercial paper be presented in writing at the board meeting following after they are made.

The committee recommended a substantial increase in the powers and the responsibilities of the superintendent. In the view of the commission, "under existing law he may criticize objectionable practices when they come to his attention and report continued delinquencies

82. New York State, *Superintendent of Banks Relative to Savings Banks*, 1907, 678–679.

83. J. P. Morgan and Co. Syndicate Books, 1895–1933, Funds for the Benefit of the Trust Company of America and the Lincoln Trust Company, Pierpont Morgan Library Archives.

84. *New York Times*, October 24, 1907, 4.

85. See New York (State), *Report of the Special Commission on Banks*; *New York Times*, December 18, 1907, 6.

to the Attorney-General. His criticism is hence in large measure academic and may be given scant attention by delinquents."[86] The report recommended that the superintendent should have veto power over the establishment of new branches and mergers, be granted the power to "direct the discontinuance of unsafe practices," and be made the receiver of insolvent firms under his supervision.[87] Despite previous attempts to improve receiverships of financial institutions, the commission noted that liquidation of state banks and trust companies remained more expensive than liquidation of national banks, which was under the supervision of the United States Comptroller of the Currency.[88]

Clark Williams echoed the recommendations of the committee in his report submitted in January 1908, and the legislature quickly enacted most of them. The state increased the reserve requirements for trust companies. The outcome was a compromise between the recommendation of the committee and the dissent of the trust company presidents. It retained the 15 percent reserve requirement enacted in 1906, but trust companies with headquarters or branches in Manhattan were now required to hold the entire 15 percent reserve in cash, and other trust companies in the Greater New York City area had to hold at least 10 percent in cash.[89] In addition, trust companies were prohibited from making any loan equal to more than 25 percent of the value of capital and surplus, and they were prohibited from owning more than 10 percent of the stock of any corporation.[90]

Legislation enacted in 1908 also increased the powers and responsibilities of the superintendent. Trust companies now had to obtain his approval to open a branch office,[91] and he was given authority to "direct the discontinuance of objectionable practices" at trust companies.[92] In addition:

> [He could] in the event of impairment of capital, of a suspension of payment of obligations, of violation of law, of unsoundness or unsafety of condition, or in certain other specifically defined cases take possession forthwith of the property and business of any

86. New York (State), *Report of the Special Commission on Banks*, 7.

87. Ibid. In 1902 the attorney general had determined that there was nothing in the law that prevented trust companies from establishing branches. *New York Times*, January 23, 1902, 13.

88. New York (State), *Report of the Special Commission on Banks,* 45.

89. New York State, *Superintendent of Banks Relative to Savings Banks*, 1908, 15.

90. New York State, *Superintendent of Banks for the Year 1908,* xxii.

91. Ibid., xxvi.

92. Ibid., xxviii.

https://doi.org/10.1017/eso.2017.7 Published online by Cambridge University Press

> corporation under his supervision, and retain such possession until the corporation shall resume business or its affairs be finally liquidated.[93]

Finally, responsibilities of officers and directors were more clearly defined. Directors had been required to own at least ten shares of the trust company; changes in the law made clear that any director who sold his shares had to resign. In addition, an officer of the trust company was required to present to the board of directors, or an executive committee of not less than five directors, a list of all sales and purchases of securities and all loans and discounts of more than $1,000 every month. The list was to include the names of all the individuals whose liability to the company had increased by more than $1,000 and a list of all the collateral held for outstanding loans. The list had to be "verified by the affidavit of the officer" and "filed with the records of the corporation within one day of such meeting."[94] Describing these changes, Williams practically echoed the decision of the court against the directors of the Trust Company of the Republic: "It is clearly the duty of the officers of every financial institution to adopt such means as are best calculated to keep its directors closely in touch with its affairs, not only by formal report, but by requiring personal familiarity with the condition of the institution."[95] The new legislation essentially aided the court in defining the responsibilities of directors of trust companies.

Binghamton Trust Company

The Binghamton Trust Company was the only trust company located outside of Manhattan or Brooklyn that failed between 1875 and 1925. Like the Trust Company of the Republic, the Binghamton Trust Company was brought down by its involvement with another business. The president of the Binghamton Trust Company, Charles J. Knapp, was also president of Outing Publishing Company. His nephew, Charles P. Knapp, was the president of Knapp Bros., a private banking firm.[96] The Knapps used trust company funds to prop up the other failing family businesses. On April 9, 1909, Williams took possession of the Binghamton Trust Company. Both of the Knapps were charged with violating banking laws, including accepting new deposits when they knew their firm was insolvent.[97] Charles P. Knapp was tried,

93. Ibid., xxix.
94. Ibid., xxvii.
95. Ibid.
96. *Gregory v. Binghamton Trust Co.* 154 N.Y.S. 376; *New York Times*, May 15, 1909, 1.
97. *New York Times*, October 3, 1909, 9.

convicted, and sentenced to two years in prison.[98] Charles J. Knapp was tried but acquitted.

The Carnegie Trust Company

The last trust company to fail between 1875 and 1925 was the Carnegie Trust Company. The firm was organized by Charles C. Dickinson, a lawyer and former bank examiner, and it was opened for business in January 1907. Despite the name, the firm had no connection to Andrew Carnegie, or any other Carnegie. Shaw resigned within a year to pursue political ambitions. Dickinson left the company in December 1909, after being seriously injured in a horse-riding accident; he relinquished the presidency to J. B. Reichmann and agreed to sell his shares in the company to a syndicate that included Reichmann and William J. "Big Bill" Cummins, an entrepreneur from Nashville, Tennessee.[99]

In the final months of 1910, depositors began closing their accounts at the Carnegie. The immediate cause of the run was the failure of Northern Bank, which was controlled by J. G. Robin, a former director of the Carnegie. On January 7, 1911, Superintendent of Banks Orion H. Cheney took control of the Carnegie Trust Company. His investigation and several court cases revealed relationships between Robin, Cummins, and Charles Hyde, the chamberlain of the City of New York. As chamberlain, Hyde determined where city funds were deposited. Robin and Cummins were able to persuade Hyde to deposit funds into particular banks and trust companies, including the Carnegie Trust Company; they then used the funds to finance other businesses ventures. Reichmann was sentenced to four months in prison for filing a false statement with the superintendent of banks.[100] Cummins was tried for grand larceny and sentenced to serve at least four years and eight months in prison.[101] Hyde was convicted of bribery, but the conviction was overturned at the appellate level.

The Carnegie failure was the final push needed to bring trust companies and the New York City Clearing House Association together.[102] The inability of trust companies to obtain aid from the Clearing House Association almost certainly contributed to the severity of the panic of 1907.[103] In May 1911, the Clearing House and a number of

98. Ibid., June 25, 1910, 5.

99. *Richards v. Schwab* 101 Misc. 128 (N.Y. Misc. 1917); *New York Times*, December 30, 1909, 2.

100. *The Independent*, July 6, 1911, 60.

101. Ibid., November 11, 1911, 3.

102. Mc Culley*, Banks and Politics*, 202–215.

103. Hansen, "Failure of Regulation"; Moen and Tallman, "Bank Panic of 1907"; Moen and Tallman, "Clearinghouse Membership."

trust companies came to an agreement on the terms for trust company membership, and twelve of the city's trust companies, including most of the largest firms, applied for membership.[104]

The failures of the Jenkins (Lafayette), Binghamton, and Carnegie trust companies shared some common features that distinguish them from previous failures. First, each case prompted criminal charges against officers of the company. Second, the superintendent of banks enforced the double liability rule against the shareholders. By 1920 the Liquidation Bureau of the Banking Department had paid dividends that summed to 85 percent for depositors in the Lafayette Trust Company, 73 percent for depositors in the Binghamton Trust Company, and 44 percent for depositors in the Carnegie Trust Company.[105] Most of these dividends came in the first couple of years after each company closed, but the bureau continued for the next decade to try to obtain as much value from assets as possible and to enforce the double liability of shareholders to make up the difference between assets and deposits. Depositors in the Lafayette and Binghamton trust companies each received small dividends as late as June 1920.

From 1912 to 1925, no trust company required the intervention of the superintendent of banks. On one hand, the lack of failures is quite remarkable. During those years, trust companies faced a financial crisis in 1914, World War I, a short but severe recession after the war, and more direct competition from national banks. On the other hand, the lack of failures should not be surprising given the rules and regulations that had evolved by 1912. Officers, directors, and owners of trust companies had repeatedly seen that they were the ones likely to bear most of the cost of failure. Officers had faced civil suits and criminal prosecution. Directors had been held liable for failure to carry out their duties with the same degree of care that they took in their own affairs. Owners had been pursued for double liability. Contrary to numerous descriptions of trust companies as unregulated or underregulated, the superintendents took an active and aggressive approach to protecting depositors. Superintendents responded to warning signs by conducting further examinations and by seeking to protect the value of a firm's assets in the interest of its depositors. The legislature had steadily increased restrictions intended to reduce risk: more reports to the superintendent, more stringent reserve requirements, and more requirements for diversification. Finally, in the event of financial crises, many of the trust companies had access to additional liquidity through membership in Clearing House Association or the Federal Reserve System. Indeed, research by Jacobson

104. *New York Times*, May 12, 1911, 13.
105. State of New York, *Superintendent of Banks for the Year 1920*, 35.

and Tallman shows that several trust companies took advantage of these new opportunities during the financial crisis in 1914.[106]

Trust companies began to lose their unique position in the financial system in 1913, when the Federal Reserve Act allowed the Federal Reserve to authorize member banks "when not in contravention of state or local law, the right to act as trustee, executor, administrator or registrar of stocks and bonds, under such rules and regulations as the said board may prescribe."[107] After several legal disputes about what it meant to contravene state or local law, Congress amended the act in 1918 to make it clear that national banks would also be allowed to carry out trust functions wherever state banks and trust companies could do so. Some national banks created trust departments. Others simply merged with existing trust companies. Mergers may also have been encouraged by Clayton Act prohibitions on interlocking directorates, which had broken down long-standing ties between banks and trust companies. The presidents of the Farmers' Loan and Trust Company and National City Bank, for example, had each served on the other company's board of directors for decades but resigned those positions because of the Clayton Act.[108] With interlocking directorates banned and national banks allowed to act as trustees, many banks and trust companies reestablished their old ties through mergers, as when Farmers' Loan and Trust and National City Bank merged to form City Bank Farmers' Trust Company in 1929.

By 1929 many companies had adopted names that incorporated the now-familiar phrase "bank and trust company." Beginning in 1930, the superintendent of banks no longer provided detailed reports on trust companies in the *Annual Report Relative to Savings Banks*. Instead, trust companies were included in the main report with state banks. By that time, trust companies were the most important financial intermediaries chartered by the State of New York; on December 31, 1931, while state banks had total resources of more than $853.5 million, trust companies had total resources of more than $10.5 billion.[109]

During the series of banking crises in the United States from 1929 to 1933, banks and trust companies in New York had among the lowest rates of bank failure in the country. While the average rate of failure was 6.6 percent, the rate in New York was less than 3 percent; moreover, the ratio of deposits in failures to all deposits was lower than the

106. Jacobson and Tallman, "Liquidity Provision."

107. Levitt, "Trust Powers," 839.

108. On the connections between banks and trust companies see Hansen, *Institutions,* 167–168; Hudson, "National City Bank"; *Commercial and Financial Chronicle*, October 21, 1916, 1479.

109. *Superintendent of Banks Relative to Savings Banks*, 1931, 5.

national average.[110] The worst year was 1931, when the Superintendent Joseph A. Broderick closed ten trust companies. The closed companies, however, accounted for only 0.82 percent of the total resources of trust companies in the state.[111] The Bankers Trust Company alone had resources ten times as large as all the failures combined. The failures posed nothing like the threat that runs on the Knickerbocker and the Trust Company of America had posed in 1907. Richardson and Van Horn have argued that the financial stability of New York during the Depression was a result of the system of regulations and supervision that existed then.[112] This article has shown that, to a great extent, this system evolved in response to earlier failures.

Conclusion

Most of the laws and regulations that governed trust companies in the early twentieth century can be traced directly to a failure, or near failure, of a trust company. The threat of failure during the panic of 1873 was sufficient to prompt the legislature to bring trust companies under the control of the superintendent of banks, require the publication of annual reports, and impose more uniform capital requirements. The actual failure of the National Trust Company brought changes to receivership of financial institutions and additional reporting requirements. The near failure of the Trust Company of the Republic led to clarification of the obligations of directors, and the failure of the Merchants' Trust Company was followed by increased reporting requirements and a reserve requirement. The failures and near failures during the panic of 1907 prompted numerous changes. The superintendent was given greater powers to force trust companies to discontinue unsafe practices and to oversee the liquidation of firms that did fail, reserve requirements were increased, the responsibility of directors to review loans was made explicit, and restrictions on loan size were increased. The failures between 1909 and 1912 made clear the willingness of the superintendent to enforce double liability on shareholders and the willingness of prosecutors to pursue criminal charges against executives. The failure of the Carnegie Trust Company prompted the leaders of banks and trust companies to establish conditions for trust company membership in the Clearing House Association.

Throughout the period, trust companies played a prominent role in the development of the laws and regulations that governed their

110. Wheelock, "Regulation," 29.
111. New York State, *Superintendent of Banks for the Year 1931*.
112. Richardson and Van Horn, "Intensified Regulatory Scrutiny," 462.

business. Even the panic of 1907 did not diminish the role of trust companies in the policy-making process. Trust companies continued to participate in this process because failures were consistently interpreted as isolated cases in which companies had departed from the norm of conservative practice. The laws and regulations that evolved in response to trust company failures were consistent with both rapid growth of trust companies and low rates of failure, even during the Great Depression.

To the extent that there was a fundamental force driving the evolution of the institutions governing the failure of trust companies, it appears to have been at odds with the fundamental force driving the evolution of institutions governing the failure of most businesses. One of the primary themes in the history of failure in the United States is the movement toward debtor-friendly laws. Early in the nineteenth century, states began to abolish debtor's prisons.[113] In the mid-nineteenth century, states passed homestead exemption laws.[114] In 1898 the United States passed bankruptcy legislation that enabled debtors to obtain a discharge, shifting the losses onto creditors.[115] In addition, federal courts developed procedures for corporate reorganization that often left officers in control and altered the obligations to creditors.[116] In contrast, the evolution of institutions governing trust company failure tended to place the repayment of creditors, that is, depositors, first and foremost. The overriding goal was financial stability. Officers and directors sometimes paid a high price for threatening this stability, as evidenced not just by financial costs but also by suicides and prison sentences.

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113. Coleman, *Debtors and Creditors*.
114. Goodman, "Emergence of Homestead Exemption."
115. Skeel, *Debt's Dominion*; Hansen and Hansen, "Role of Path Dependence."
116. Hansen, "People's Welfare"; Skeel, *Debt's Dominion*.

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