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RESEARCH ARTICLE

Theory in closer contact with industrial life: American institutional economists on competition theory and policy

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Abstract

This paper investigates the views on competition theory and policy of the American institutional economists during the first half of the 20th century. These perspectives contrasted with those of contemporary neoclassical and later mainstream economic approaches. We identify three distinct dimensions to an institutionalist perspective on competition. First, institutionalist approaches focused on describing industry details, so as to bring theory into closer contact with reality. Second, institutionalists emphasized that while competition was sometimes beneficial, it could also be disruptive. Third, institutionalists had a broad view of the objectives of competition policy that extended beyond effects on consumer welfare. Consequently, institutionalists advocated for a wide range of policies to enhance competition, including industrial self-regulation, broad stakeholder representation within corporations, and direct governmental regulations. Their experimental attitude implied that policy would always be evolving, and antitrust enforcement might be only one stage in the development toward a regime of industrial regulation.

Key words: Competition; economic thought; industrial organization; institutional economics; institutionalism; public policy

JEL codes: B15; B25; L40

1. Introduction

During the early 20th century when federal antitrust law was enacted and developed in the United States, the field of economics was broad and diverse in terms of methods of inquiry and ideological underpinnings. The standardization of theoretical framing and econometric methods across economics departments in the United States found today did not yet exist, and indeed a graduate student in economics could have a very different training depending on the department or even advisor that they ended up working with. One set of economists in this earlier period was the American institutionalists. An eclectic group that is difficult to characterize, self-identified institutionalists tended to focus on the role of institutions in shaping incentives and behavior, while also drawing on social psychology to characterize human behavior and pragmatist philosophy to describe their approach to defining problems and methods of investigation.

Importantly, the American institutionalists were not a marginal group. They were influential and well-connected within the economics profession, which was pluralistic at the time. Rutherford (2011: 7) describes that institutionalists during the interwar years 'published regularly in the leading journals of economics, held positions in major research universities (dominating the faculty at two of the top four PhD-granting universities in the country), were highly active in the creation of institutions for research and education in the social sciences, had excellent links to funding agencies, were deeply involved in economic policy making, and became presidents of the American Economic Association and American Statistical Association'. They also had a significant influence on the field of law and economics (Hovenkamp, 1990). Contrary to many conventional accounts of the history of American economics, the institutionalist movement was more than simply a dissent of the mainstream.[1]

As such, the institutionalist perspective was prevalent during a time period crucial to the development of antitrust law in the United States. Moreover, institutional economists worked in antitrust enforcement and contributed to the pressing antitrust debates of the day. Their writings had many similarities to those of the lawyer and Associate Justice of the Supreme Court Louis Brandeis, and several institutional economists worked at the Antitrust Division of the Department of Justice with Thurman Arnold. Given the recent interest in the legal thinking of figures such as Brandeis and Arnold (e.g. Sallet 2018; Waller 2004), it is worthwhile to also consider their contemporaries in economics who shared perspectives, influences, and policy recommendations. Excellent studies of the interwar institutionalist movement by Yonay (1998) and Rutherford (2011) have corrected the conventional histories that gloss over the institutionalist influence in American economics. But they devote little attention to institutionalist writings and activities on competition policy.

We aim to fill that gap by investigating the views on monopoly, competition, and antitrust of the American institutionalists. In doing so, we explore an alternative perspective on antitrust to what would become the mainstream economic approach to antitrust analysis.[2] We characterize distinct elements of the institutionalist approach towards these topics, while also highlighting the range of thinking among members of the institutionalist movement. To this end, we have identified eleven institutionalists with significant and relevant scholarship: Arthur R. Burns, John M. Clark, Corwin D. Edwards, Charles Gulick, Walton Hamilton, Dexter Keezer, Stacy May, Henry Rogers Seager, George W. Stocking, Irene Till, and Myron W. Watkins.[3]

We identify three distinct dimensions to an institutionalist perspective on competition policy. First, the institutionalist approach focused on describing industry details, so as to bring theory into 'closer contact with life and reality' (Morse, 1958: vi). Rather than start with general theoretical models, and try to fit industries into those frameworks, institutionalists valued understanding historical industrial development. Recognizing that capitalism had evolved towards large businesses, they rejected as obsolete the model of perfect competition with an indefinite number of small buyers and sellers. Rather, a modern economic system needed a more complex approach that acknowledged the variety of different industries. Second, institutionalists emphasized that while competition was sometimes beneficial, it could also be disruptive. Their case studies demonstrated that in some industries, excessive competition jeopardized societal stability. Consequently, they proposed a more nuanced approach towards competition than their peers. Third, institutionalists had a broad view of the objectives and purposes of competition policy that extended beyond maximizing consumer welfare and included economic stability, fair distribution to factors of production, diffusion of the gains of progress, and preservation of the competitive process. As a corollary of these three points, institutionalists saw existing antitrust legislation as insufficient.

Having identified this shared basis of institutionalist thinking, we then discuss competition policies advocated by institutionalists. Institutionalists saw themselves as practicing a scientific endeavor, and one aspect of that was using experimentation to see what policies worked best. Consequently, many institutionalists were open-minded about which policies would best achieve given policy objectives. They advocated for reforms to antitrust enforcement and uses of other policies to enhance competition, including helping industries self-regulate, granting representation to all stakeholders within corporations, and direct regulations by the government. Their experimental attitude also meant that

[1]Hovenkamp (1990: 1021) suggests that institutionalists not only had a bearing on law and economics, but also on law: 'The influence of institutionalism on American law, principally from 1930 to 1970, remains unexplored, but circumstantial evidence indicates that it was substantial'.

[2]See Van Horn (2011) for a discussion of the postwar Chicago School's shifting perspective on business concentration.

[3]In his comprehensive study of the institutionalist movement, Rutherford (2011) identifies 1918–1947 as the pinnacle years of the institutionalist movement. We survey institutional economists active during the period 1918–1947, but we include all their relevant work even if published outside those years.

policy would always be evolving, and antitrust enforcement might only be one stage in the development toward a regime of industrial regulation.

2. Progressive era roots

The influence of the progressive era is critical to understanding institutional economics. From the earlier generation of progressive economists, Richard T. Ely, Henry Carter Adams, and Charles H. Cooley stand out as having a particularly significant influence. As described by Rutherford (2011: 39), the influence of those progressive economists played an important role in moderating institutional economics away from Thorstein Veblen's radicalism towards a more pragmatic and progressive reform program. However, as Rutherford also argued, 'institutionalists saw themselves not merely as continuing that tradition, but as significantly updating, modernizing, and revitalizing it in a number of ways' (2011: 40). Institutionalists aimed to provide a stronger theoretical foundation to institutions than the more descriptive work of the progressive economists, and their economics was thoroughly secular, rather than built on a foundation of Christian morality (Bateman, 1998). Instead of religion, institutionalists drew on current scientific knowledge from other fields, empiricism, and pragmatist philosophy. And progressive economists including Ely and John Bates Clark accommodated marginalism into their economics, a move largely rejected by institutionalists. Moreover, the institutionalists had to operationalize their economics for use in government, and uphold their methodologies against those of neoclassical contemporaries.

The main thread of continuity from progressive to institutional economics is that both groups considered themselves opponents of laissez-faire. The institutional economists shared with progressives the goal to dismantle the idea of free markets that self-regulate, and replace free markets with the 'visible hand of a powerful administrative state, guided by expert social scientists' (Leonard, 2017: x).

A key theme of the institutionalist argument against laissez-faire is that business is affected with the public interest, and thus subject to intervention and control. This control could be used to guide industry to create an economic life for a society that is stable, equitable, makes efficient use of productive capabilities, provides for an adequate standard of living, and ultimately progressively raises the standard of living. Like progressive reformers, institutional economists found the institutions and economic arrangements they studied in dire need of reform. And the path to reform was regulation and the administrative state, and replacing individual liberty with the common good. There was a loud echo of progressive reformers in the institutionalist mantra of 'social control', by which they meant 'government intervention and regulation designed to guide the economy in socially desirable directions' (Rutherford, 2011: 9). Social control for an institutionalist could include everything from social norms in business communities to court decisions and legislation, such as minimum wage laws, public health measures, control of the business cycle, and systems of social insurance. This idea was built on progressive ideas such as those from Ely, who viewed competition in society as constrained by ever-evolving customs, institutions, and laws (Morgan, 1993: 584).

The four-way presidential campaign of 1912 illustrates the range of antitrust policy views that emerged during the progressive era (Crane, 2015). Only two of the candidates in the race advocated for the regime of antitrust law: the conservative Republican William Taft and the progressive Democrat Woodrow Wilson. Socialist Party candidate Eugene Debs viewed consolidation of industry as beneficial to facilitating the nationalization of industries, and Theodore Roosevelt argued for the inevitably of large businesses, but to subject them to pervasive regulation and supervision. According to Daniel Crane, although Theodore Roosevelt is often remember as a strong proponent of trustbusting, his view shifted over the decade leading up to the 1912 campaign, to a conclusion that modern business would be inevitably large, and the solution was regulation and control. In the campaign, it was Taft who was the 'defender of an individualistic, competitive economy bolstered by aggressive, executive antitrust enforcement' (Crane, 2015: 2030). Brandeis had the ear of Wilson, who made the argument for 'regulated competition' (Berk, 2009).

Institutional economics entered its heyday by the end of this decade, and the debates from the 1912 campaign remained current. As will be shown, institutional economists continued several different strands of policy thinking that emerged during this campaign. Like Roosevelt, some institutional economists concluded that modern industry would inevitably and permanently be organized into large corporations. Efforts to preserve an atomistic economy would be futile, and institutionalists saw promise in a large administrative state guided by experts. But at the same time, the institutionalists echo Brandeis in seeking a third way between socialism and laissez-faire, and between competition and monopoly. Like institutional economists, Brandeis thought the 'bright lines between competition and monopoly or public and private proved chimerical' (Berk, 2009: 65). As we shall see, proposals Brandeis advocated for as regulated competition were also championed by institutional economists, such as trade practice conferences.

3. An institutionalist view on competition

Institutionalists were critical of how existing economic theories treated competition. Yet their project was a positive one, seeking to blend theory and empirics, and to bring economic theory more in line with economic reality. The institutionalist project also sought to broaden the scope of economics along two dimensions: by bringing economics into a deeper conversation with other social sciences, and for economics to confront historical development. Unlike natural sciences, economics as a social science cannot completely escape historical processes, and economic science needed to be consistent with other fields, especially psychology, sociology, and law.

3.1 Perfect competition as an antiquated view

The progressive economists found theories of perfect competition inadequate to explain the revolutionary changes they saw in the modern economy, and this perspective endured and was even amplified in institutional economics.[4] Institutionalists' historical studies of economic development highlighted the significance of newly emergent large business units, which also entailed a decrease in competition in many sectors. Arthur R. Burns,[5] for example, titled his 1936 book, *The Decline of Competition: A Study of the Evolution of American Industry*. His primary argument was that monopolistic elements had become organic parts of industry, such that the ideal of perfect competition was unattainable: 'Elements of monopoly have always been interwoven with competition but the monopoly elements have increased in importance. They can no longer be regarded as occasional and relatively unimportant aberrations from competition' (Burns, 1936: 3). For Burns, as for other institutionalists, many factors led to the decline of competition. The decline in the number of sellers was partly due to economies of scale, but Burns also argued that the shift away from competition was reinforced by social policy, corporate law, and patent law.[6]

A noteworthy aspect of the institutionalist approach was an engagement with the history and philosophy of science, an interest that economists would later lose (Backhouse and Forder, 2020). Institutionalists held that science is produced in historically contingent contexts, thus the importance of understanding the trajectories of economic methodologies, including their own. Only then can an economist make knowledgeable decisions about what questions to ask, and how to answer them. In his Presidential Address to the American Economic Association (AEA) titled 'Institutional Factors in Economics Thinking', Stocking (1959) portrayed how institutionalists understood the nature of

[4]For a discussion of competing notions of competition during 1885–1905, see Morgan (1993). Her account describes the views of economists, such as Veblen, Ely, and J.B. Clark, who greatly influenced the generation of economists described in the present paper. Hovenkamp (1990) discusses views of Veblen, Ely, and John R. Commons and their influence on the field of law and economics. Dennis (1975) traces the development of the term 'competition' in the history of economic thought.

[5]Arthur R. Burns was at Columbia University. He should not be confused with Arthur F. Burns, who was also an institutionalist at Columbia University and served as Chairman of the Federal Reserve in the 1970s.

[6]Edward Chamberlain's 1933 *Theory of Monopolistic Competition* had a bearing on institutional economists. Morris Copeland and John M. Clark in particular placed great value on the work, but also lamented that it largely rested on neoclassical assumptions that the institutionalists rejected (Copeland 1934: 250; Copeland 1940). See Fiorito (2010) on the mixed reactions of the institutionalists to Chamberlain's *Theory of Monopolistic Competition*.

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scientific knowledge.[7] Stocking outlined the intellectual development of economics to show that no society is static and that economic theories reflect the societal milieu of the time.

Similarly, Walton Hamilton, one of the most prominent advocates of the institutionalist movement,[8] offered a historical and philosophical explanation for how economic theory had gone astray at the beginning of his 1940 book *The Pattern of Competition*. He argued that economists sought to build an abstract framework to understand competition, and thus introduced the concept of perfect competition in an uncritical emulation of mechanistic scientific theory. Hamilton argued that this concept reflected the *Zeitgeist* of its developers:

> The economists – at least those who breathed the climate of their century – wished well by competition, and set about creating a likeness which did it proud. In this endeavor they made use of the best ideological stuff at hand. The academic atmosphere was saturated with mechanistic notions, and they were captivated by the beauty and precision of the Newtonian theory which, for the moment at least, had brought law, order, and economy into the world of nature. Accordingly, with little thought of deliberate borrowing, they set about creating a mechanics of competitive business. To this end they employed a bit of observation, a goodly amount of abstraction, and a bountiful measure of the most rigorous logic of the day. (Hamilton, 1940: 8)

The application of natural science methods to social science problems and especially the emulation of Newtonian physics led academic economics to develop theory in isolation of authority and human culture. Consequently, the market was characterized by actors with insatiable wants impelled by utilities and disutilities, and competition allowed for prices to yield neat adjustments of supply and demand. The competitive system then assured order and justice in industry. The economy of this abstract world was efficient and orderly. Self-interest kept everything going, and there was no antithesis between competition and cooperation (Hamilton, 1940: 11).

In this vein, institutionalists saw the concept of perfect competition as a product of a certain time, one with an economy comprised of many small producers. But subsequent changes to the economy had not been reflected by economics. Hamilton, therefore, noted that 'In the Library of Congress, you will find more than 200 books, each of which will explain how competition is supposed to work. Yet you will find on its shelves less than a dozen studies of how competition actually works in different industries. Pure competition works only in books' (Hamilton, 1932c: 20). According to Stocking, economists including Edward Chamberlain, J. M. Clark, John Kenneth Galbraith, and Joseph A. Schumpeter made contributions to understanding this 'organizational revolution', but the discipline was still a long way from understanding these societal changes. Stocking argued that 'theorists concerned with industrial structure have a greater obligation to society than to discover that its economy works well' (Stocking, 1959: 16). In Hamilton and Irene Till's[9] view, the abstract nature of neoclassical economics could yield misleading conclusions: 'Almost everywhere the free and open market has lost its primitive simplicity; nowhere does it operate in the complete and automatic way once glibly assumed' (Hamilton and Till, 1940: 116).

Thus, institutionalists viewed perfect competition as a puzzling starting point for modern economic modeling. By historicizing this concept, they demonstrated its limitations to understanding modern economic systems. They rejected the use of perfect competition as the conceptual benchmark since

[7]George W. Stocking received his Ph.D. from Columbia University in 1925. He was then affiliated with the University of Texas at Austin from 1925 to 1947, taking leaves of absence over that time period to serve in various government positions, including in the early 1940s as an economic advisor to Thurmond Arnold, head of the Antitrust Division of the Department of Justice (In Memoriam: George W. Stocking, 1976). He was at Vanderbilt University from 1947 to 1963. Stocking was president of the Southern Economic Association in 1952, and of the American Economic Association in 1958.

[8]Hamilton received a PhD in economics from the University of Michigan in 1913. He moved to Yale Law School in 1928 and would teach there until 1948.

[9]Irene Till received her PhD in 1937 from Columbia University with a thesis on the milk industry (Rutherford 2011: 81n–82n). She was Hamilton's second wife, and he her second husband.

it led to misleading conclusions. Markets did not function uniformly, and thus the institutional details of each particular market were paramount to understanding how competitive forces would operate. Industries were characterized by many flavors of competition.

3.2 Conceptualizing competition

If the concept of perfect competition was deficient, how did the institutional economists propose to understand market competition? Economic theory, in their view, should capture the complexities of the modern economy. Hamilton and Till argue in their book *Antitrust in Action* that markets are often located between the poles of competitive and uncompetitive industries, 'along the fringe, weaving in and out, are an assortment of industries, in which elements of restraint and competition have been colorfully woven into the same pattern' (Hamilton and Till, 1940: 116). This weaving together of restraint and competition in the market means economic analysis must take into account the particular features of each industry: 'The task… should be to capture a picture, in clean-cut perspective and comprehensive detail, of the industry in operation… Little by little, the topography of the national economy will emerge' (Hamilton and Till, 1940: 112).

Hamilton elaborated on how to build a picture of the economy in a series of lectures at Columbia University in 1940, published as *The Pattern of Competition*. He explained that an analysis of industry patterns involves looking at the particular arrangements, norms, power structures, and business patterns of each particular industry. Hamilton engaged this project by describing in detail the arrangements and business patterns of many industries: women's dresses, kerosene, cottonseed, tobacco, and coal. He described how the assembly line and routinization of auto manufacturing led to a loss of bargaining power for labor, and a concentration of auto manufacturing led to a power imbalance with auto dealers. He detailed the oil industry, how it is structured through the segments of extraction, refining, transport, and marketing; and then described that the motion picture industry exhibits a similar 'trunk-line design – but after its own kind' (Hamilton, 1940: 38). For Hamilton, economics must recognize that supply and demand operate within a network of institutions.

Historical development of the economy was also key to understanding the current and future trajectories of industry for institutionalists. George Stocking and Myron Watkins,[10] in a trilogy on cartels, began with an in-depth analysis of the historical development of the cartel movement. John M. Clark[11] began his investigation of trusts with a detailed discussion of the evolution of business combinations, from cartels to trusts, and then to holding companies finally giving way to consolidation outright through merger or acquisition (Clark, 1939: 380).

A noteworthy attempt to establish a new theoretical approach to competition was Clark's concept of *workable competition*, first proposed in 1940 and subsequently refined (Clark, 1940, 1955, 1961). Clark's aim was to capture both the varieties of competition existent in a modern economy and their dynamics, since he saw competition not as static but as a dynamic process. Clark listed 10 conditioning factors that can be used to characterize competition: the degree of standardization in the product, the number and size-distribution of producers, the methods of price-setting, the method of selling, the nature of market information, the role of geography, variability in output, the variation of costs with varying production size, the variation of cost with short-run fluctuations of output, and the flexibility of productive capacity. Rather than a one-dimensional spectrum ranging from pure competition to monopoly, Clark's conception of competition involves several dimensions across which the nature of competition can change. But Clark cautions that 'Even this affords an unduly simplified picture, and the whole functional relationship is probably so complex as to defy mathematical plotting' (1940: 248).[12]

[10]Watkins earned his doctorate in economics from Cornell University in 1917, spent much of his career at New York University, and had a stint at Department of Justice's Antitrust Division.

[11]Clark was affiliated with Columbia University, and was among the first individuals to describe institutional economics as a distinct approach to economic analysis.

[12]Clark's concept of workable competition was not endorsed by all institutionalists. Indeed, many did not refer to it at all, while Stocking criticized its potential application in antitrust, fearing that the vagueness of the concept would allow too lenient enforcement (Stocking 1955, 1961).

Another innovative theory was Corwin D. Edwards's[13] concept of 'business power', which expanded on the conventional concept of market power based on monopoly and oligopoly theory. This came out of his work in the 1950s theorizing about the proposition that the form of a firm was a strategic variable of the firm (Edwards, 1955; Smith, 1979: 281). Firms could use size and diversification to obtain power over rivals and buyers, leading Edwards to introduce the concept of conglomerate business: 'the term conglomerate becomes a device for examining problems of size and power apart from the traditional focus upon monopoly and efficiency' (Edwards, 1955: 332). The uses of power took many forms, including market contracts of various sorts that impeded competition, but also advantages outside of production and sale: litigation, politics, public relations, and finance. Edwards' concern was that if conglomerates became a widespread trend, industry could end up with 'an authoritarian system of business, within which the significant checks and balances would be, not those of the market, but whatever safeguards might be built into the structure of the corporation or into the relations between the corporation and the state' (Edwards, 1955: 351). And innovation was at risk as well: 'Entrepreneurship becomes scarce, and much of what was once entrepreneurship is converted into bureaucracy' (Edwards, 1955: 351).

Writing later in his career, Edwards characterized the concept of business power succinctly:

> [T]he concept of monopoly is inadequate to cover the phenomena of business power, and the concept of oligopoly is inadequate to replace it. Different kinds of power can be derived from (a) control of a preponderant share of a single segregable market; (b) position as one of a few competing firms; (c) possession of a large aggregate of resources in comparison with one's competitors; and (d) diversity of activities across many fields of operation… Business power structures today contain blends of all of these, and hence are hard to describe, analyze, or appraise on the basis of a single one of these concepts… Yet these are the forms in which business power is growing most rapidly, is subject to least legal curb, and is hardest to appraise as to the elements of good and bad. (Edwards, 1970: 438)

3.3 When is competition beneficial?

Though institutionalists saw many virtues in market competition, they also questioned the widespread assumptions about the benefits of competition *per se*. They recognized that modern corporations realized unprecedented efficiencies of scale. Although many economists argued that more competition is always preferable,[14] institutionalists rejected the assumption that unregulated competition leads to economic harmony and stability. For institutionalists, this view rested on unsound theoretical assumptions. In the theory of perfect competition, supply and demand cause prices to rise and fall and arrange industrial matters efficiently. However, 'As a theory it is a little too beautiful; it looks too much like the textbooks and too little like things in the real world' (Hamilton, 1932c: 7). In reality, Hamilton and other institutionalists argued, demand is fickle and fluctuating, production takes a long time and requires planning under great uncertainty, and overhead has become a dominant expense.

[13]Corwin D. Edwards co-authored the 1931 principles textbook *Economic Behavior*, which sought to 'work out an institutional approach to the study of economics' (Atkins et al. 1931: iii). He graduated from the University of Missouri and earned his doctorate in 1928 for Cornell University. His career included teaching at NYU, two decades in government including time at the FTC and the Antitrust Division under Thurman Arnold, and then later academic appointments at the University of Chicago and University of Oregon.

[14]For example, see the exchange between Hamilton and former AEA President Frank A. Fetter, in which Fetter argues that Hamilton goes too far in this 'reforming zeal' for antitrust policy, and also maintains that the competitive benchmark is the right one, that competitive principles apply to modern industry just as much as they did to petty trade, that disruption in industries is a result of the under-enforcement of antitrust, and that the current depression was primarily the results of merger waves and under-enforcement of antitrust (Hamilton 1932c). See McCaffrey (2018) for more on Fetter's views on antitrust and monopoly.

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Institutionalists argued, often based on case studies, that competition could have harmful effects. Hamilton, for example described that 'in its actual operation there can be too much, as well as too little, of so good a thing' (1932a: 177). Here Hamilton was drawing on progressive economists, who used terms such as 'cutthroat' and 'ruinous' competition to describe cases 'where competition pushed prices too low to recover fixed costs, crushing wages and profits alike' (Leonard, 2017: 57). Hamilton argued that each industry had its own circumstances, such that competition provided different degrees of success in different industries. Based on his studies of American industries, especially bituminous coal, Hamilton saw instances where competition could be a disruptive force. For example, 'A capacity which cries to be used and overhead costs which click on with the clock lead as often as not to an overdone competition which drives prices relentlessly down. In its wake comes a plague of bankruptcies, irregular employment, and wages too low to support a decent standard of life' (1932b: 593). And at the same time, the institutionalists caution that even a 'threefold classification of the competitive, the undercompetitive, and the overcompetitive confuses analysis by parading simplicity' (Hamilton and Till, 1940: 117).

John M. Clark similarly described varieties of competition that could have harmful consequences in his book *The Social Control of Business*: cutthroat competition, characterized by an excess of producing capacity; predatory competition, where the objective is not present earnings but driving out of competitors; localized or discriminatory competition; unfair competition of various sorts; and partial or imperfect competition based on agreements or understandings among competitors. He argued that 'Evidently the public cannot afford to rest on a simple belief that all competition is good. The situation requires careful differentiation between different types of competition, coupled with wise restraints temperately exercised' (Clark, 1939: 131). To be able to identify the effects of competition, case studies of the industry in question would be necessary, since the effects of competition depend on the structure of each industry. The view that perfect competition is a kind of natural state of affairs and has to be emulated was rejected. Rather, to ensure that competition leads to desired and beneficial results, it should be tightly regulated and sometimes restricted. Because of these various forms of competition, any attempt at control must take careful consideration of the economic context.

Institutionalists also saw scope for cooperation in the economy, and even that some industries might be better organized in cartel-like or monopolized forms. As Henry Rogers Seager[15] put it in an early statement of the advantages of business cooperation: 'But let us not make a fetish of competition! It also has its bad as well as its good side. While recognizing its value and making strenuous efforts to insure it a fair field for its operation, let us not ignore the fact that cooperation also has its legitimate place. On a higher moral plane than competition, its extension… must prove advantageous not only to business men but to the whole community' (Seager, 1914: 71). However, institutionalists were also certainly no apologists for monopolized forms, especially if left in the hands of profit-seeking entrepreneurs without public oversight. And they shared the fear of the progressive reformers that large trusts could corrupt politics.

3.4 Beyond consumer welfare: the goals of competition policy

What did institutional economists want competition to do for society? Like progressive economists from earlier decades and prominent progressive figures such as Brandeis, institutionalists appealed to a wide range of virtues to justify the importance of effective and vigorous competition policies. And institutionalists championed broader goals for competition than what would later be adopted in the consumer welfare standard in antitrust, which focuses on prices and output (Glick, 2018). For example, excessive competition could lead to low prices, but would not be desirable if at the

[15]Seager's intellectual development was influenced by the German historical school and the Austrian school, and specifically his interactions with both Richard Ely and Simon Patten shaped his perspectives on economic inquiry. He received a PhD from the University of Pennsylvania in 1894, and joined the Department of Economics at Columbia University in 1902 as an adjunct professor. He was promoted to full professor of political economy in 1905, and remained at Columbia until his death in 1930 (Henry Rogers Seager, 1930). Seager was elected president of the American Economic Association in 1922.

expense of industrial stability or when it depressed wages. Institutionalists regarded consumer welfare as important; but they also proposed a much broader and more complex way to measure the consequences of competition, because the public interest is affected by businesses in many ways. Seager, in his collaboration with Charles Gulick,[16] wrote that in the bituminous coal industry, the goal for competition policy was a stabilization of the industry to the benefit of operators, consumers, and miners: 'Regularization of the coal industry would benefit operators and consumers, but most of all the coal-miners, who have suffered more than any other group of American wage-earners from persistent irregularity of employment' (Seager and Gulick, 1929: 668). In other writings, Seager challenged the view that antitrust enforcement should be focused solely on consumer prices; instead, Seager argued for weighing the benefits to consumers and producers with a broader concern for 'the whole community' (1914: 71).

John M. Clark also advocated broad economic goals for competition. Clark argued that competition in price should encourage efficiency of production, but that 'it should also distribute the results equitably and not allow the profit taker to absorb an arbitrary or extortionate amount as his share' (Clark, 1939: 139). Otherwise, the lowering of prices is pointless. Clark's concern is that competition can lead to a lowering of prices not by increases in efficiency, but by producers merely squeezing down wages: 'competition in reducing prices needs to be balanced by an equally active and vigorous competition in bidding up the rewards of the factors of production, or else it may produce positively harmful results' (Clark, 1939: 139). In his *Competition as a Dynamic Process,* he devoted an entire chapter to the question 'What do we want competition to do for us?' (Clark, 1961: ch. 4). He discussed a broad set of societal goals toward which competition can contribute: that competition could help promote productive efficiency, product variety, the diffusion of the gains of progress, the elimination of inefficiencies, the facilitation of high and stable employment, and business freedom desired for its own sake.

In another article on competition, Clark elaborated on a group of objectives 'concerned, not with products and prices, but with the conditions of competitive rivalry in itself. It regards freedom and opportunity as ends in themselves' (Clark, 1955: 455–456). As indicated by Clark's assertion, institutionalists often highlighted the political and moral importance of competition. In his presidential address to the Southern Economic Association titled 'Saving Free Enterprise from Its Friends', Stocking emphasized these objectives when writing that 'the essence of free enterprise is decentralized decision-making, or stated negatively, the lack of concentration of power' (1953: 431). He saw that free enterprise in the United States was endangered: 'We have built power blocs into our economic structure with a political cement that is difficult to loosen' (Stocking, 1953: 443). The path to preserving free enterprise required society to 'create an environment more conducive to decentralization of economic power' (Stocking, 1953: 443).

This aspiration for broad goals of competition policy stemmed from the institutionalist belief that economic science itself had to consider all realms of human life, not only prices (Yonay, 1998: 154). This belief followed from institutionalist convictions that it was impossible to separate economics from ethical norms; in the words of J. M. Clark, efficiency could only be measured against some societal goals, which 'are supposed to have something ethical about them' (Clark, 1924, quoted in Yonay, 1998: 153). But this inseparability did not worry institutionalists, because values and welfare could be studied scientifically by drawing on state-of-the-art psychology and philosophy.

4. Institutionalist policies towards the control of competition and monopoly

While acknowledging that large businesses are in some industries the most efficient form of production, institutionalists also warned that these oligopolistic and monopolistic tendencies had potentially harmful effects on the consumers, workers, and society as a whole. Because corporate activity had economic and social consequences beyond the private gains or losses of the owners, they stressed that industry was affected by the public interest. Therefore, institutionalists saw a far-reaching regulatory

[16]Gulick graduated from Columbia University in 1924 with an institutionalist persuasion (Rutherford 2011: 226).

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framework as justified within the program of social control (Rutherford, 2015). Expansive regulation and the coordination they hoped it would achieve were not a substitute for markets, but rather mechanisms to improve market functioning for society's benefit. In this section, we review how institutionalists, who worked on issues related to antitrust, competition, and monopoly, proposed to achieve the benefits of competitive forces.

The institutionalists took an experimental approach to finding policy that would best achieve the goals they set out to achieve. Like scientific experimentation, policies had to be trialed and improved over time. Competition policies therefore too would evolve over time, and it remained to be seen whether antitrust enforcement might only be a stage in the development of a more robust regime of industrial regulation. Unsurprisingly, given their experimental approach, institutionalists proposed quite diverse measures.

The diverse policy proposals discussed in this section can be broadly categorized into (i) self-control by competing corporations, (ii) control by the various stakeholders, and (iii) direct control by the state. Self-control could be achieved by facilitating the self-regulation of industries, where competitors could agree on industry-wide trade practices and standards. Control could also be exercised by all stakeholders, where it would be important that workers and consumers be involved in the management of a corporation or somehow given a say. Finally, direct control exercised by the state included direct regulations, regulatory agencies, reforming the antitrust system, and other state actions. Institutionalists did not want an overreaching government or a system of central planning. Rather, the main aim of social control by the state was to ensure fair competition where possible and, where not, to avoid the abuse of monopoly powers.

4.1 Walton Hamilton and Irene Till: self-regulation, litigation, and an administrative base

Walton Hamilton was initially rather critical of the antitrust laws. After Hamilton joined the Antitrust Division at the Department of Justice in 1938 under Thurman Arnold – Hamilton served as Special Assistant to the Attorney General until 1945[17] –, he became somewhat more amenable to enforcement through antitrust law. Regarding policy, Hamilton aimed to understand how to achieve stability and for industry to serve the public interest. Some degree of coordination would be necessary to achieve this goal: 'If industries are to become orderly, if the office of bankruptcy is to be limited to an elimination of the unfit, if laborers are to enjoy steady employment and living wages, there must be a measure of central direction' (Hamilton, 1932a: 177). Hamilton was amenable to different forms that this central direction might take. It may include formal control of capacity, output, and possibly price. But it also required putting a check on the profit-making incentive, which Hamilton argued could either come through giving consumers a stake in firm management or by setting up a regulatory commission.

In his early writings, Hamilton suggested three ways to advance competition policy. First, control the disruptive effects of competition through regulation: 'Devices must be invented to take up the shock of competition' (Hamilton, 1932c: 11). Examples included regulated work hours, work accident indemnity, regulated labor conditions, and minimum wage laws. Second, industries that are monopolistic can be regulated by commissions to protect consumers from exorbitant prices. Finally, Hamilton suggested that some industries can be made self-regulatory, by creating the structure for control to come from within the industry and serve the desired goals. He saw trade associations and chambers of commerce as examples: 'it is essential that the membership of the controlling body be not limited to persons who make profits out of the business. Laborers and consumers,

[17]Hamilton and Arnold were longtime Yale Law School colleagues. Franklin Roosevelt's nomination of Arnold to head the Antitrust Division was controversial and somewhat unexpected, in part because of Arnold's harsh criticism of antitrust enforcement in his bestseller *The Folklore of Capitalism* (Waller 2004). But Arnold took his role seriously and invigorated antitrust enforcement. For an excellent discussion of Arnold's perspectives on economics and their intersection with law, see Goodwin (2019).

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likewise, must be given a voice in control and an instrument for the effective expression of their interests must be found' (Hamilton, 1932c: 12).

To illustrate self-regulation, Hamilton proposed that the bituminous coal industry might be regulated by the creation of a single United States Bituminous Coal Corporation, controlled by a board of 15 individuals, five from each group of consumers, laborers, and technicians. Capital would be represented by bonds paying a fixed rate of return but would have no control. This is just one example, and the suitable method of control would look different depending on each industry structure: 'The dominant idea is to keep the pecuniary motive, to contrive a system of checks and balances which operate within the industry rather than from without, and to construct a scheme of arrangements whereby the interests of the parties are made to promote the ends the industry should serve' (Hamilton, 1932c: 13).

Hamilton's time working with the Antitrust Division informed *Antitrust in Action*, a 120-page monograph written with Irene Till. The authors point out many difficulties of enforcing antitrust through litigation. First, by focusing on specific cases of wrongdoing, enforcement missed the industry-wide 'rounded picture'. Secondly, cases typically originate through complaints filed by market participants, but this is a 'rickety foundation' which 'makes enforcement sporadic and haphazard' (Hamilton and Till, 1940: 39). Moreover, there are many difficulties in building a case: companies have tactics to avoid submitting requested documents; witnesses can turn hostile because they will keep their business relationships past the duration of the case; and the alternative tool, the grand jury, is a 'blunt device'. On top of all of this, it is hard for generalist judges to make antitrust decisions because of their lack of expertise and the rarity of such cases (Hamilton and Till, 1940: 72).[18] For these reasons, the authors recommended giving the Antitrust Division subpoena powers, shifting from criminal prosecutions to civil sanctions, and the courts presuming that company directors authorize restraint of trade when it happens, so as to do away with trying to prove intent. In addition, they recommended a specialist court for antitrust cases (Hamilton and Till, 1940: 114). Their hope was that, if litigation must continue to serve as the tool to regulate industry, at least it should be quicker and more efficient.

At the same time, however, Hamilton and Till did not envision the antitrust laws to be the only tool to regulate industry, rather only the first step toward industrial control. Hamilton was well aware of the risk that regulatory bodies may be captured by the special interests they were supposed to be regulating, including the real risks for capture at antitrust enforcement agencies (Newman, 2019; Rutherford, 2011: 91). Still, Hamilton and Till envisioned an evolution for regulation, writing 'It is even possible that antitrust will give way to some more up-and-coming mode of regulation' (1940: 4). The loftier recommendation in *Antitrust in Action* is a move away from litigation toward an 'administrative base', to provide a more nimble tool of industrial control. This would involve using administrative ruling to give industry guidance and clearance of practices before the fact. The hope is that this would even invite business to engage with the antitrust agency, as they would seek clarity, and a constant engagement would allow rules to be flexible to amendment as industries changed: 'The task is to explore the line where public interest and private advantage clash and to resolve the conflict' (Hamilton and Till, 1940: 109).

4.2 George W. Stocking and Myron W. Watkins: monopoly and freedom

In 1944, George W. Stocking began a collaboration through the 20th Century Fund with Myron W. Watkins. This collaboration between Stocking and Watkins resulted in an influential trilogy on cartels and competition: *Cartels in Action* (1946), *Cartels or Competition* (1948), and *Monopoly and Free Enterprise* (1951). In an institutionalist fashion, the first two publications on cartels dive deep into the historical development of the cartel movement and provide detailed case studies including both qualitative and quantitative evidence. And in accord with another institutionalist theme, the authors viewed cartels as having differing merits, depending on the particular industry circumstances. Stocking and Watkins distinguished between defensive and aggressive cartels. They provided the sugar

[18] See Giocoli (2020) for a discussion of the role of economists as expert witnesses in antitrust litigations.

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industry as an example of a defensive cartel, which is characterized as forming in an attempt to stabilize an endangered industry. An aggressive cartel is one that forms only to protect the industry from competitive forces without any rationale of economic distress, and they labeled the aluminum industry as such a cartel (Stocking and Watkins, 1948: 7).

In *Monopoly and Free Enterprise*, Stocking and Watkins set out to show how society can foster enterprise and freedom of choice without sacrificing efficiency or tolerating inequity. Specifically, they showed the ways in which society can prevent the further concentration of economic power and foster effective competition. Their proposals included more consistent and vigorous enforcement of antitrust law, especially to prevent mergers of competitors, commodity standardization, required labeling or grading to help consumers make informed choices and 'curb fictitious differentiation' (1951: 508), making capital more mobile across industries to promote effective competition in the economy, and more broadly to aim policy at preventing private economic power from becoming concentrated in the hands of a few individuals or groups.

They viewed it as a difficult problem because some restrictions must be put on business privileges and practices, and the question is where to draw the line. But it is critically important, not only because of the traditional theory that monopoly restricts output, but also because monopoly leads to an inequitable distribution of income, harms innovation, and puts freedom at risk: 'Whenever private economic power becomes so concentrated that the decisions of a few individuals or groups can substantially determine investment, employment, output, and price policies in whole branches of industry, then and there business enterprise ceases to be really free and it may even cease to be truly enterprising' (Stocking and Watkins, 1951: 13). They criticized the Supreme Court's varying attitude over time regarding antitrust case law and conclude with a plea for more consistent antitrust enforcement and a recognition that a company need not have a complete monopoly to have power to control prices.

4.3 Henry Rogers Seager and Charles Gulick: ensuring regulation and self-regulation

Henry Rogers Seager and Charles Gulick discussed corporation issues in the United States and around the world in their 1929 book *Trusts and Corporation Problems*. The problem they faced was that large combinations and trusts had many strong economic justifications, but also posed dangers to society, and the authors discussed how to navigate that tradeoff. They saw unregulated competition as generating many wastes and inefficiencies and viewed the combination movement as a way for business people to avoid those wastes: 'The combination movement is thus a natural and indeed inevitable business development, which is not in and of itself opposed to the public interest' (Seager and Gulick, 1929: ix). But though monopolistic businesses had economic justifications, they needed control and regulation to 'prevent industrial combinations from oppressing independent producers and exploiting consumers' (Seager and Gulick, 1929: x).

If the United States could not prevent the oppression and exploitation of large trusts, then strong antitrust enforcement was the best solution. However, the authors held out hope that an alternative policy could be achieved. Rather than suppressing trusts, an alternative policy would entail the 'development of an adequate and efficient administrative machinery for control and regulation' (Seager and Gulick, 1929: x). There were two key ingredients to the successful operation of such machinery: publicity regarding all agreements and operations of a corporation, and prevention of all unfair and oppressive policies toward competitors. Seager and Gulick viewed the Federal Trade Commission (FTC), established in 1914, as an agency that might be given additional powers and developed to achieve this policy goal.

Seager and Gulick also suggested other improvements to the competition policy. They discuss the use of trade practice conferences, which were used by the FTC beginning in 1919 to help industrialists form their own standards. Initiated by industry representatives or by invitation of the FTC, representatives would discuss industry practices, and then hold a vote for their judgment as to the fairness or unfairness, usefulness or harmfulness. The authors viewed these conferences as a much more effective tool for confronting dubious practices than issuing numerous complaints against individual organizations. And they argue that this method has reduced the combative, resentful attitude of business people towards the FTC, in the long run securing better results: 'The trade practice conference has done more in aiding the business community to work out its problems than perhaps any other single activity of the Commission, it is one of the most useful devices which the Commission could have hit upon, and it should continue to be used extensively' (Seager and Gulick, 1929: 530).

Another fundamental problem the authors saw was that individual U.S. states have an incentive to liberalize incorporation laws to gain revenue, thereby initiating a race to the bottom. Since U.S. states compete to attract companies, they might outdo each other in lax competition laws (Seager and Gulick, 1929: 37). To deal with these 'charter-peddling states', the authors saw the need for federal control of large-scale corporations (Seager and Gulick, 1929: 635) and they suggest federal incorporation as a mechanism.

Since Seager and Gulick believed that unregulated competition could be socially wasteful, they saw advantages to trusts, including steady prices and output, and the avoidance of wasteful advertising (Seager and Gulick, 1929: 84): 'We are persuaded by our study of the combination movement at home and abroad that it is essentially a movement making for economy, efficiency, and better relations in business' (Seager and Gulick, 1929: 665). Therefore, they believed Congress had done well to exempt railroads, export associations, and cooperative farmers' organizations from antitrust enforcement. Seager and Gulick moreover thought that similar antitrust exemptions with regulation could be good for petroleum, forestry, and coal industries to provide for conservation of scarce natural resources and efficient management. If successful, they thought antitrust exemptions should be cautiously extended to other industries as well.

One advancement of the FTC Act was the enhanced preservation of the competitive process itself: 'The business men and corporations who have suffered most from unfair methods employed by their competitors in the past have been just those who were financially least able to fight such competitors in the courts' (Seager and Gulick, 1929: 649). And echoing Hamilton and other institutionalists, Seager and Gulick are optimistic that competition policy in the United States might be able to go beyond antitrust law, and that the FTC would develop into an agency to ensure an economy in which large corporations under regulation serve the public interest: 'The principles upon which [the FTC] rests are sound and in time we are confident that it will demonstrate itself to be an indispensable part of the machinery for the 'social control of business' (Seager and Gulick, 1929: 653).

4.4 Arthur R. Burns: administrative bodies and taxing large firms

Arthur R. Burns' major contribution regarding competition policy was his 1936 book, *The Decline of Competition: A Study of the Evolution of American Industry*. Burns saw a wide gulf between the abstract theory of monopolistic competition and economic reality and sought to bridge that gap.

Burns was critical not only of existing antitrust legislation and enforcement, but he also doubted that antitrust policies alone had the ability to face the challenges of big business. Rather, he believed policy needs to go beyond enforcement through law. He saw a role for taxes, such as a tax on large firms, which would sacrifice some economies of scale but would re-orient innovation from greater economies of scale to productive efficiencies for small business units. Ultimately, he thought that firm size cannot be strictly limited, and most conduct cannot be outlawed.

Instead, Burns argued that there needs to be an increased role for the state: 'State participation in the administration of economic resources is urged as a means of securing greater efficiency than the partially competitive and partially monopolistic system of the past has been able to offer' (Burns, 1936: 565). Thus, competition policy must consider which pressures society is willing to put towards efficiency, and consider what is an equitable incidence of benefits and burdens of economic change. Legislatures have too wide a variety of activities to get into details, and the judiciary is not equipped to regulate industry; thus, Burns (1936: 589) gives the same suggestion as several institutionalists: 'administrative bodies able to devote their full time to the making policy in the control of industry

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appear to be the best instrument of social control'. These administrative bodies should make positive policy and be responsible for it, and make that process as transparent as possible would provide for the most effective means to achieve industrial control.

4.5 Dexter Keezer and Stacy May: the government as a competitor

Dexter Keezer and Stacy May's *The Public Control of Business* (1930) was another institutionalist publication critical of existing methods of control including the antitrust laws.[19] On the belief that government supervision of business would become a pivotal issue, Keezer and May set out to investigate three methods of industrial control: antitrust law, commission regulation of firms affected with the public interest, and state participation in business.

The primary way to revitalize antitrust, according to the authors, is to abandon the courts' interpretation that mere size is not a violation of antitrust law (Keezer and May, 1930: 233). They argued that this interpretation is problematic because there can be no effective competition with a dominant firm in an industry. Making an analogy to sports: 'It would be quite as logical to expect to have a football game when there was one player on one side against eleven and eight substitutes on the other, as to expect competition to operate, let alone flourish, in an industry where one corporation controls nineteen times the output of all its competitors' (Keezer and May, 1930: 233).

Because of judicial limitations on antitrust law enforcement and public interest laws, Keezer and May advocated that government should participate directly in business: 'the government may enter into direct participation in business, not upon a monopoly basis, but in direct competition with privately owned and operated enterprises'. They argued that this would create great possibilities for exerting control over prices and services, 'for the private enterprise may be forced to meet the competition of the public enterprise' (Keezer and May, 1930: 238). Ultimately, they viewed the three programs of control – antitrust law, regulatory commissions, and government participation – as a flexible suite of tools that can be experimented with to find the most effective strategy. Thus, antitrust laws should be complemented by other methods of control to promote competition: 'A strong case can be made for the regular use of public interest regulation and public participation in business as forms of control to supplement antitrust action' (Keezer and May, 1930: 250).

5. An alternative economic perspective on competition

The economics profession certainly had diverse and evolving views on competition policy during the early 20th century (Mayhew, 1998; Van Horn, 2011). The institutionalists waned in policy relevance over the course 20th century, and whatever one might think about the merits of their arguments, they undoubtedly contributed to a significant episode in American economics, finding influence and receptive audiences in both policy and academic spheres. Their practices included insightful aspects that could inform current and future approaches to the economic analysis of competition.[20] For example, how would one scientifically evaluate the benefits of competition other than by looking at prices? What would it look like if, rather than fit empirical evidence into abstract models, one started from the empirical patterns of industry and developed theory from there?

The institutional economics perspective on competition stands in contrast with views of their contemporaries, such as Princeton's Frank Fetter, Chicago's Henry Simons and Frank Knight, and Harvard's Edward S. Mason, as well as later neoclassical and Chicago school views on competition

[19]Keezer and May were both students of Walton Hamilton at Amherst College and followed Hamilton to the Robert Brookings Graduate School (Rutherford 2011: 155–160, 178). Keezer served in the New Deal administration as an Executive Director of the Consumers' Advisory Board, and then went to serve as President of Reed College in 1934 (Rutherford 2011, 79 n. 23). May's post-Brookings career included teaching stints at Dartmouth College and Cornell, work at the Rockefeller Foundation, and Director of the Planning and Statistics Division of the War Productions Board during World War II.

[20]A discussion on the future of institutional economics can be found in Hodgson (2014).

and law and economics.[21] It is important to note, as Yonay's (1998) superb study describes, that the interwar struggle over the character of American economics was not an intellectual battle between two clearly defined camps; rather, most economists located themselves along with various points of a spectrum between the institutional and neoclassical poles. And the camps were not rigid; for example, the neoclassical Frank Taussig was interested in how psychology could inform market behavior when prices were falling. But that being said, the struggle between the two camps was real. Robbins wrote in 1932 that investigations under the banner of 'Institutionalism… have been doomed to futility from the outset and might just as well never have been undertaken' (1932: 102). Harvard was the interwar stronghold of neoclassical economics, home to figures such as Frank Taussig and Thomas Carver. In 1932 Schumpeter joined Harvard, a 'bitter enemy of institutionalism' (Yonay, 1998: 57). According to Camic (1992: 434–435), what unified Harvard economists during the 1930s was hostility to institutionalism.[22]

Chicago in the 1930s was not yet a stronghold of neoclassical economics. But leading figures did make impassioned pleas for competition. Henry Simons wrote in 1934 that 'the great enemy of democracy is monopoly, in all its forms' (1934, 4). One of the few responsibilities of the state was to preserve competitive conditions, and thus he called for 'outright dismantling of… gigantic corporations', and that 'restraint of trade must be treated as a major crime, and prosecuted unremittingly…' (19). Although the praise of highly competitive markets retained credence in Chicago, what changed by the 1950s was the views on the role of the state in preserving competition (van Horn, 2011). While Simons viewed preserving competitive conditions as the perhaps single most important role for the state, by the 1950s the common belief among Chicago economists was that monopolies tended to disappear because competitive forces permeated markets. In a historical assessment of the concept of perfection competition, George Stigler wrote that 'the concept of perfect competition has defeated its newer rivals in the decisive area: the day-to-day work of the economic theorist. Since the 1930's, when the rival doctrines of imperfect and monopolistic competition were in their heyday, economists have increasingly reverted to the use of the concept of perfect competition as their standard model for analysis. Today the concept of perfect competition is being used more widely by the profession in its theoretical work than at any time in the past. The vitality of the concept is strongly spoken for by this triumph' (Stigler, 1957: 17). Unlike institutional economics, these other intellectual movements found competition beneficial and an appropriate conceptual benchmark, they praised the logical rigor of highly abstract mathematical models even at the expense of institutional details, and to varying extents, they viewed economics as a warning against intervention rather than a call to action.

Institutionalists, for their part, made intellectual alliances with leading legal minds on competition, such as Louis Brandeis and Thurman Arnold. Brandeis and the institutional economists made many overlapping arguments regarding competition. Berk (2009) shows that Brandeis championed regulated competition as the third way between breaking up corporations and regulating them. A key component of this program for Brandeis was the trade practices conference program conducted by the FTC from 1919 to 1925, a program also praised by institutional economists Seager and Gulick as a way for the government to facilitate industrial self-regulation. Brandeis and the institutional economists shared a methodological commitment to analyzing the economy with a historical and institutional grounding.[23] Consequently, they also shared criticism of the widespread approach in economics to

[21]See in particular Henry Simon's 1934 *A Positive Program for Laissez Faire* and Edward Mason's 1939 article 'Price and Production Policies of Large-Scale Enterprise.' For histories of Chicago law and economics, see Medema (2011), van Horn (2011), van Horn (2018), and Hovenkamp and Scott Morton (2020). For more on how institutionalists different with Frank Knight, see Almeida and Cavalieri (2020). Edward Mason and Joe Bain, a student of Schumpeter's and Mason's at Harvard, undertook studies in the 1940s that would form the basis of the structure-conduct-performance (SCP) approach, which served the basis of modern industrial organization and the economic analysis of antitrust for decades.

[22]This included prominent neoclassical economists such as Allyn Young, Edward Mason, Taussig, Carver, and Schumpeter who were united in an opposition to institutionalism.

[23]'From Brandeis perspective, the progressive economists were mistaken in their search for foundational laws… their categories of perfect competition and natural monopoly were hopelessly abstract and reified standards' (Berk 2009: 51).

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categorizing market structures: 'In antitrust, [Brandeis] thought the economist's formal categories – perfect competition and natural monopoly – underestimated the diversity of economic arrangements and their consequences' (Berk, 2009: 88). This methodology brought both Brandeis and institutionalists to the same concern that competition could be beneficial and destructive, predatory or productive. And institutionalists shared in Brandeis' connection of economic with political and moral questions. Brandeis worried about the effect of economic power on democracy, and hoped antitrust could address broad economic and social concerns (Berk, 2009: 43; Sallet, 2018). Brandeis found economic and political questions inseparable: 'Did economic arrangements develop independent citizens capable of participating in a vigorous democracy? Or did they lock in power, aggrandize the rich, and dispirit the poor?' (Berk, 2009: 42).

The shared interest in fostering regulated competition led the institutionalists to make many similar policy recommendations to those made by Brandeis. In addition to the FTC trade practices conferences, Brandeis thought trade associations could manage competition, through standard setting, price regulation, information pooling, and education (Berk, 2009: 60). Brandeis also 'took a keen interest in worker, retail, and agricultural cooperatives' (Berk, 2009: 60). These are all interests advocated for by American institutionalists as well, because of their interest in using the state to help industry self-regulate. This connects with the foremost goal for Brandeis that the FTC foster business practices that made prosecution and coercion unnecessary (see Berk 2009: ch. 4). And optimism for scientific methods led Brandeis to advocate that antitrust and sectoral regulation should be informed by a spirit of experimentation (Sallet, 2018).

To be sure, the institutionalists were not in complete harmony with Brandeis. Brandeis doubted that large scale led to much efficiency, and argued that most often big business got big through illegitimate means (Leonard, 2017: 60). Here, Brandeis's views diverged with both progressive reformers and most institutionalists. But in Berk's recounting, economists are the antagonists of regulated competition because of their obsession with highly abstract models, whereas the institutional economists offer an example of an economic analysis more aligned with those concerns. Institutionalists are a set of contemporaries who shared Brandeis's skepticism for abstraction, valued detailed industry studies, and thought economic action was foremost a social affair based on habits and customs. When 'customs became destructive and economic agents needed outside intervention to perturb habits and unearth alternatives', there was a role for intervention (Berk, 2009: 135). On this key point, institutional economic analysis and Brandeis aligned.

The institutional economists are also noteworthy given their contributions to the work of the Antitrust Division under the leadership of Thurman Arnold, who was advised by institutional economists including Hamilton, Stocking, and Edwards. Arnold was not hostile toward big business, only the abuse of power, a view that accorded with many institutionalists who recognized the importance of efficiencies of scale. And Arnold advocated that the Antitrust Division should be 'operated as an expert body largely independent of politics' (Waller, 2004: 580), which fit with institutionalist views of the role of expertise in guiding administration of regulation. And like the institutionalists, Arnold justified the importance of antitrust by appealing to values beyond allocative efficiency and pure economic reasoning, including concern about the destruction of local business and draining away of local capital.

There were certainly points of difference between Arnold and the institutionalists as well. Institutionalists were sometimes skeptical of the efficacy of the courts in enforcing competition, while Arnold praised the case-by-case method of litigation through courts. And for Arnold, 'avoiding ruinous competition or competitive evils was not a defense' for anticompetitive conduct (Waller, 2004: 596), while the institutionalists were indeed concerned about the ills brought on by too much competition. Nonetheless, institutionalists had enough in common with Arnold such that their collaboration was mutually advantageous in advancing common interests. 'For Arnold, most economists and the law and economics movement of his day were the priests of the old order, preaching that the government was powerless to take action to solve the ills of the day, lest it contravene the natural laws of markets. To him, the newer economics of his day were a source of action, not inaction' (Waller, 2004: 610). What the institutionalists may have most critically offered to Arnold was the conviction that economic analysis brought a call to action, a justification for interventions that could improve industry and society.

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