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The Progressive Move from Ideology to Functional Administration

This chapter continues to explore how the concerns of expertly trained bureaucrats came to dominate debates over ethical issues that the corporation seemed once to have raised so enduringly. After administrative interests were given pride of place, discussions of general corporate function yielded to a focus on specific problems like the effect of corporate size, social costs, and control,[1] and new rules emerged to regulate the multistate corporation with the help of ample databases and advanced scientific techniques.[2]

This evolution from a moral to a scientific discourse occurred for the precise reasons that Seymour outlined in his 1903 article. That is, a moral consensus on political norms (ends) was lacking, and adminstrative rules (means) depended on scientific methods that facilitated discourse among groups with opposing—but not irreconcilable—interests.[3]

To illustrate the problem and the solution, we turn to the presidential election of 1912. Unrivaled as a three-party contest, this election featured Republican incumbent William Taft against not only the Democratic contender, Woodrow Wilson, but also the Republican breakaway candidate, Teddy Roosevelt. Roosevelt ran on the Progressive Party line, and both challengers ran as "progressive" candidates. The differences in their programs, especially with respect to the large firm, highlight just how broad the meaning of progessive had become. They also demonstrate how founding-father clashes between the Jeffersonians and the Hamiltonians had persisted and developed over the nation's first 150 years. Consider, then, two of the most articulate and influential proponents of turn-

of-the-century progressivism, Herbert Croly (who supported Teddy Roosevelt) for the instrumentalists and Louis Brandeis (who supported Woodrow Wilson) for the developmentalists.

CROLY, BRANDEIS, AND THE ENDS OF PROGRESSIVISM

Herbert Croly emphasized individual liberty and utility as the principal ends of social reform, arguing that these twin aims could best be realized by giving leaders the freedom to distinguish themselves and to rule broadly over matters with which ordinary individuals were ill prepared to deal. Criticizing reforms that he believed had been turning America into a democracy of conformists, he insisted that modern democracy could succeed only with the leadership of "selected individuals who are obliged constantly to justify their selection."[4] That leadership would free ordinary Americans to contribute to society at their own pace and through their "own special work with ability, energy, disinterestedness, and excellence."[5]

On a more concrete and economic level, Croly called for an increased nationalization of laws that would break down state barriers to commerce and facilitate the ongoing and inevitable nationalization of the economy. Acknowledging some doubts about industrial concentration, he insisted that national control of commerce supplant state regulation, especially for large corporations that were national in scope. Praising the Interstate Commerce Commission, he also advocated more industry-specific forms of public supervision to check potential abuses. But at the same time, Croly sought repeal of federal antitrust laws, which he claimed generally favored smaller over larger firms; their repeal would enable more efficient firms to continue growing. While conceding the benefits of a graduated inheritance tax and laws for collective bargaining to create a more level playing field for enterprises and workers, Croly trumpeted market efficiency as the surest means to increase wealth and expand the opportunities of all U.S. citizens. This sustained voluntarism made him an instrumentalist heir to the Hamiltonians.

Croly labeled as "Jeffersonian" the more egalitarian and decentralized progressives like Louis Brandeis. Although Croly emphasized the "peculiar advantage" afforded by fifty years of industrial reorganization, Brandeis focused on the deterioration of industrial democracy that had accompanied individual liberty under a laissez-faire regime. As relatively independent producers became relatively dependent employees, any salutary effect of consolidation on productivity was being undercut by the apathy and powerlessness of investors who had surrendered their control over corporate property to

its managers. Brandeis doubted the ability of ordinary voters to form opinions about candidates' political views or personal competence that were sufficiently accurate to elect or depose them intelligently. The more centralized the power was, the more distant the voter would be; distance, in turn, bred ignorance and apathy.

"Can any man be really free," asked Brandeis, "who is constantly in danger of becoming dependent upon somebody and something else than his own exertion and conduct?"[6] This dependency had adverse consequences for the polity as well as the individual. "While there are many contributing causes of unrest," Brandeis testified before Congress, "there is one cause which is fundamental. That is . . . the contrast between our political liberty and our industrial absolutism."[7]

In economics as in politics, Brandeis departed from Croly. Brandeis favored antitrust laws as a means to ensure competition; he also favored decentralized forms of regulation whenever possible. In the democratic sovereignty of the various states, he saw useful laboratories for legal- and public-policy experimentation. Pluralism could be a competitive process that engaged not only private sovereigns and their followers but a range of public authorities as well.

Brandeis also advocated a comprehensive social insurance system in order to make individuals less dependent on employers and to care for them during periods of sickness, unemployment, and retirement. Acknowledging that corporate consolidations under particular circumstances enhanced industrial efficiency, Brandeis also argued that corporate directors and managers were motivated by more than competition and efficiency: They also sought prestige and market and political power, enriching themselves at the expense of other corporate constituents. The ills of general industrial despotism called for strong medicine, requiring serious alteration of the corporation's internal governance. Labor could not regain its preindustrial independence until it participated in management. Unions had done good work, but mostly as adversaries. Industrial democracy would require sharing both profits and responsibilities in a more cooperative relationship between management and labor.[8]

Despite their differences, both Croly and Brandeis were "progressives." Each decried the selfishness he found in individuals; each also had faith that a democracy supported by market forces could channel individual self-interest to socially useful endeavors. Their differences were largely over the degree to which they believed political democracy could renew itself without industrial reforms that went beyond wealth-maximizing concerns.

Croly was Roosevelt's adviser; Brandeis was Wilson's. And it was Wilson who won the election. During his first administration, Con-

gress responded to competitive business pressures by establishing the Federal Reserve System to stabilize banking; it also passed the Federal Trade Commission (FTC) and Clayton acts, which strengthened the antitrust laws for regulating business and limited their application to labor unions. Later, when the United States joined World War I, the federal government even took over operation of the national railroad system, so that by the end of the war, corporate regulation had moved even more firmly into the federal arena.[9] Both federal fiscal powers and the court system expanded when the Sixteenth Amendment was ratified in 1913 and litigants were invited to develop the rules of corporate practice and governance under a "federal common law."[10]

National powers under the Constitution therefore seemed adequate to control the large corporation. But the constitutional grounds for accommodating the modern corporation remained vague. Progressive reform still failed to provide any moral consensus to guide regulatory policy, and the Supreme Court's construct, the "natural entity," remained formalistic, strained, and ultimately unconvincing.

REALISM DISPLACES IDEALISM IN REGULATORY POLICY

Intellectual historians have characterized the 1920s and 1930s as an era of ideological crises and mounting "realism," in both law and social theory. Success in World War I provided a moment of optimism, but the world's leaders soon squandered their opportunity for lasting peace, and in the following years normative discussions about the ends of public policy became more polarized and less amenable to theoretical resolution.

Lawyers and policymakers faced two major problems in constitutional thought. The first involved synthesizing geographic federalism and group pluralism; the second, translating the realities of group process and functional relationships into meaningful individual rights. Without social agreement on democracy's precise ethical ends, lawyers and administrators began paying more careful attention to the underlying "social facts" on which public policies rested; they also relied on social scientific analyses to mitigate institutional conflicts. This turn to policy and administrative science won even more adherents after 1912, when the election indicated that the ideological differences that separated progressive reformers were more powerful than the similarities that united them. Furthermore, social scientists increasingly found analytic overlaps and interdependencies in what had traditionally been labeled the public and the

private spheres. They responded by addressing all policy problems as part of the same fabric.[11]

The new consciousness exhibited a flexible attitude toward groups and optimism about multiple, competing sovereignties. Conservatives began to experiment politically, buoyed by the belief that courts would defend business interests against state sovereignty. At the same time, progressives hoped that the growth of national controls would lead to a predictable system of economic regulation. Although fears of class polarization persisted, the discussions gradually took into account the diverse kind of pluralism that had been transforming the nation's political and economic landscape. Constitutional practices would reshape themselves now around groups, be they corporations, political parties, trade associations, labor unions, universities, or churches. Attention therefore focused anew on the functional character of different organizations. Functionalism, in turn, served to limit, or "particularize," proposals for public intervention into private life and thus began eroding the older generation's adherence to rugged individualism, laissez-faire, and other precepts of a Darwinistic social norm.

Mary Parker Follett's *The New State,* published in 1918, provided both a cogent criticism of individualism and a coherent new constitutional ideology based on pluralism.[12] Drawing on William James's view that an individual person developed psychologically by drawing on a "pluralistic universe,"[13] Follett found group identity to be the proper grounding for both individual fulfillment and "true democracy."[14] She also distinguished the territorial associations characteristic of federalism (the "neighborhood groups") from other kinds of interest groupings that her contemporaries labeled pluralism (the "occupational groups"). Each in its own way contributed to the dynamics of the "unifying state."[15]

Follett's concept of fluid groupings, which led to a sort of blending, had inherently more optimistic political implications than did one-to-one group identification, which led to a state so compelled to "balance interests" that it would eventually breed irreconcilable antagonisms and the sort of ultimate domination by factions that James Madison had feared.[16] Blanket identification of businessmen with capitalistic enterprises and workers with socialistic endeavors denied or ignored the lessons of this new psychology and its pluralistic individualism, and the static conception of the state as a "machine" or a "collection of units" made citizenship appear passive in the extreme. Although Follett's support for legal rules that would nurture the group process and develop the individual person's role was certainly sympathetic to Brandeis's prescriptions for decentralized egalitarian democracy, it also lent itself to Croly's centralized

utilitarian kind of nationalism through unifying functional inquiries into the group process.

Frank Kent followed Follett with *The Great Game of Politics* (1923), which provided a popular account of how the synthesis between group and government developed as a collective bargaining game. In a language anticipating the New Deal, he explained that the rules of the game mattered and that the state functioned as an impartial umpire who made occasional adjustments to keep the game fair.[17]

Between the world wars, Follett's global, unifying idealism disappeared in the main, and only recently have historians begun to mourn its loss. In the early 1920s, academic legal writing clearly reflected a convergence of social science, pragmatic jurisprudence, and group (as opposed to class) analysis. Although schools of realist or pragmatic legal thought continued to fragment in the law, academicians did not revert to the earlier formalism. The new focus on rules for "interest balancing" was evident in scholarly work both conventional and radical in nature.

The new realism's reach was extensive. Studies ranged from comparative assessments to empirical inquiries, supporting broad-based reform, especially in federal administration.[18] Proposals continued to reflect the earlier range of progressive values, from centralized and integrated forms of power to decentralized, parallel or competing forms of power.[19] But appealing to the facts of governmental processes helped move public policy from reflection to action.

John R. Commons and Karl N. Llewellyn were among the leading reform writers of the period. Commons's *The Legal Foundations of Capitalism* began with a polemic against the Supreme Court's rampant formalism as an uninformed economic interpretation of constitutional history. Having correctly anticipated economic regulation along the lines of market adjustment rather than redistribution, Commons carefully distinguished the two premises in constitutional doctrine. He also emphasized economic interdependencies. Because, for example, the legal institutions that governed transactions might themselves present significant market risks, actors might react by substituting cooperative group processes for the arm's-length bargaining and competition characteristic of the market. Unfortunately, Commons's writing was so elusive that many of his valid observations about the "going-concern" and corporate regulation generally went unheeded for over a generation.[20]

Around the same time, Karl Llewellyn was also taking an interest in the intersections of law and economics.[21] Although the "working rules" that grew out of market transactions were not laws in the formal sense, he observed that to the degree that they were limited and licensed by the state, they certainly had the same effect. Moreover,

they were often of the "very [technical] type . . . which the official legal institutions [were] unable to construct."[22] By and large, the law could condone the working rules of "a lesser group, of more or less voluntary constitution" and so, too, arrangements of two or more such groups for particular ends.[23] Nevertheless, as they became the basis of social policy, these rules also created some problems for modern pluralist society, the most notable being disparities in bargaining power. Ongoing but specialized public-sector interventions were an appropriate counterforce. Unfortunately, these were the very sorts of actions that judges and legislatures were inadequately prepared to undertake, although "administrative law [had] in part stopped the gap."[24] Llewellyn accordingly recommended both designing administrative agencies with the requisite expertise to reform existing working rules and limiting the role of courts and legislatures to one of oversight and guidance. In many ways recalling Follett's "unifying state," his proposals prized the diversity of continually changing working rules, and they also leveled the older conceptual divisions between private and public law.

Gradually Llewellyn's concepts entered public-policy considerations. During the 1920s, federal regulators still relied on private actors to initiate working rules for administrators to reshape, but with the Great Depression and the first New Deal, Congress became more actively involved. In passing the National Industrial Recovery Act (NIRA), Congress empowered the National Recovery Administration (NRA) to persuade interest groups to work out rules of conduct in a wide range of industrial and commercial markets. When the Supreme Court later ruled the NIRA to be unconstitutional, Congress both decentralized and strengthened the authority of the public administrators in a series of laws that constituted the "Second New Deal."

REALISM, THE CORPORATION, AND PUBLIC POLICY

Actual public policy regarding large corporations evolved in a fashion somewhat parallel to the theoretical policy discussions. Realists critiqued existing rules empirically from a social science perspective, but explorations in the different areas of corporate regulation, such as antitrust and firm size, social cost, and contract diverged.

Antitrust and Firm Size

Following the enactment of the Clayton and Federal Trade Commission (FTC) acts in 1914, federal antitrust enforcement aimed in the

main to restrict the growth of individual firms, their collaboration, and any unfair methods of competition.[25] At the turn of the century, economists as divergent politically as Thorstein Veblen and John Bates Clark had come to agree that firm size could give rise to economies of scale, not just market power. They continued to disagree, however, on the relative weights of the factors, with Clark on the whole being more sanguine about the market's ability to discipline prices.

Such discussions persisted throughout the decade, with the Supreme Court as well trying to balance considerations that minimized production costs with those that maximized competition. In the 1911 suit against the Standard Oil Trust, Chief Justice Edward D. White found the company to be in violation of the Sherman Act and ascribed a "rule of reason" to the act's prohibitions against monopolization and agreements in restraint of trade. For its part, Congress passed both the Clayton Act, whose Section 7 prohibited mergers that tended "to substantially lessen competition," and the FTC Act, whose Section 5 prohibited "unfair methods of competition."[26] Neither act specified standards for determining when businesses had illicitly enfeebled competition, by either undesirable levels of market concentration or particular market practices. Legal commentators continued therefore to speculate on which trusts were "good" and which trusts were "bad."[27]

The realist critique of judicial policy developed shortly after the *U.S. Steel* case of 1920, in which the Supreme Court upheld the legality of the steel trust, pursuant to the "rule of reason." In his 1922 article, "The Change in Trust Policy," Myron Watkins argued that the Supreme Court's establishment of a "rule of reason" under federal antitrust law was wholly without legal foundation.[28] Nevertheless, "[i]f there is an economic basis for the changed attitude toward business enterprise, we may very well overlook the lack of legal precedent and find satisfaction in the ease with which our legislative wants are recognized and filled by the courts."[29] To determine whether or not the courts' policy was "industrially sound," Watkins drew on then current economic literature and made a thorough analysis of the economic performance of several of the challenged trusts.[30] He concluded with alarm that the public had much more to lose than to gain from this kind of "reason."

Along with a Brandeisian preference for decentralized competition, Watkins's analysis led to the gradual weakening of antitrust "rule of reason" exceptions. Even so, larger monopolies, such as the Aluminum Company of America, persisted well into the 1930s, as did industrial consolidations of all but the very largest firms. Judges even invited market leaders to testify on the reasonableness of consolidation in their industries. In effect, the courts allowed merging

firms to overcome the presumption that the consolidations were designed merely to restrain competition.

Increasingly sophisticated economic literature on industrial organization provided more support for business. These economic tools were honed throughout the 1920s and 1930s as the theory advanced. First Frank Knight described the large firm's structure and operation in economic terms. Then John Maurice Clark developed an analytic framework for how firms responded to different forms of regulation. Edward Chamberlin related market structures to firm strategies, and Edward Mason and Nicholas Kaldor developed the economics of industrial organization.[31]

During the same era, public regulation of utilities or natural monopolies generally moved from the federal to the state and local levels. Early in the century, progressive reformers had still been calling for the municipal ownership of utilities in order to ensure fair rates. But by the 1920s, "local socialism" had run its course, displaced by state public service commissions engaging in rate regulation. Like antitrust policy, rate regulation suffered from the Supreme Court's ambiguous reading of the legal requirement that commissions price corporate capital inputs "fairly" in setting rates.[32]

For two decades, commentators resorted to legal precedents and logic to ascertain the Court's meaning and apply it to particular cases. Beginning with Gerard Henderson's 1920 article on railway valuation and culminating in Donald Richberg's more generally applicable insights in 1922, they moved from ambiguous prescriptions to realistic economic appraisal.[33] Scattering references to economists throughout his article, Richberg exhorted lawyers and policymakers to "forget [the "fair value" doctrine] and its horrible brood of supporting opinions" and instead "put rate making on a reasonably scientific basis and stabilize public utility securities, all of which will benefit both the consumers and the investors."[34] In time, the economic literature provided analyses to secure cost-based rate ceilings, and by the end of the decade even skeptical economists like Richard Ely had grown confident that rate regulation would prove more effective than alternative means of control.[35] Federal regulators followed much the same pattern for national and interstate industries. They both relaxed control over consolidations and relied on cost-based rate regulation rather than more direct control mechanisms.[36]

Social Costs

Corporate operations increasingly affected people not involved in governing the firm. These groups included workers, customers, suppliers, and even the community at large. Just what should the corporation's responsibility to these affected parties be? State legislatures

responded by exercising their "police powers," which the courts had reined in fairly tightly. By and large, the legislatures could draw on industrial labor rules, including compensation procedures, hours-of-work rules, injury compensation, and other norms reflected in collective-bargaining arrangements.[37] The courts tended to scrutinize legislation through a prescriptive constitutional lens. Thus, certain kinds of working rules took on a "public" character—insofar as they touched on norms of public health, welfare, or morals—and so warranted legislative concerns. Others were more private, concerning only the judgments of the independent individuals directly involved.

Social-cost regulation developed on two levels. First, it tried to establish an "industrial policy" of enhanced participation in company policymaking and better working conditions in general, at the same time mitigating such specific problems as unemployment, periodic layoffs, unsecured pensions and life insurance for the workers' survivors, health benefits, and workers' compensation. Publicity increasingly helped pressure and reward businesses, inform unions, and convince legislators. Especially notable in these efforts were John Commons and his associates at the University of Wisconsin on the academic level,[38] and "muckrakers" like Ida Tarbell on the popular front.[39]

Second, lawyers confronted judges with a more realistic understanding of what was at stake when working rules were elevated to the status of law. Supreme Court Justices Oliver Wendell Holmes and Louis Brandeis, in particular, responded by moving the Court's style of review from substantive to procedural judgments, eventually including assessments of the quality of the challengers' political and legal access.[40] Brandeis, for example, emphasized not just the facts underlying particular kinds of legislation but also those of the legal system itself, drawing attention to how the technical rules of governmental organization could help counter group and state fragmentation, thereby reducing administrative costs.[41] He played also an extremely important role in beginning to analyze legal institutions from the viewpoint of scarcity. One should not just reckon the value but also the cost of legal/judicial decisions; no free lunch existed in either the law or the marketplace. Llewellyn seconded this observation of limits. The problem of "how to apportion the available energy," he noted, was one of "ethics," a realm in which courts were hard pressed to demonstrate any superiority of judgment.[42]

Corporate Control

The third set of policy concerns centered on corporate control groups. The scale of modern technology, impersonal markets, and

antitrust traditions helped create the corporate system and made the alternative of cartel arrangements inherently unworkable. Market size and impersonality inhibited cooperation among cartel participants: Each firm wanted to sell more, not less, despite the higher price the cartel made possible, and cartel enforcement was difficult when antitrust laws prevented formal arrangements to discipline cartel members. The families that had amassed huge fortunes sought mergers and incorporation as ways to sustain their wealth; the advantages of permanent organizations with limited liability outweighed in most cases the loss of direct control.[43] Now wealth worked through passive financial instruments that were easily traded in America's burgeoning financial markets. As ownership dispersed, public policy enshrined shareholders as the ultimate control group, even as they might practically be losing the power to influence corporate decisions; the rhetoric of private property and active citizenship seemed worth preserving. Was it not essential to democratic rule?

For the same reason, policymakers fretted over the two other control groups, the bankers and the managers. The former were particularly disturbing, as the great merger movement of the late nineteenth century had transformed the nation's economy into a modern industrial system with their considerable assistance. To protect the interests of their creditors, investment bankers joined client boards, creating an interlocking network that seemed to give them effective control.

Instead of a decentralized economy populated by family-controlled firms, America now appeared as a financially dominated industrial complex in which a few banking houses emerged as a ruling plutocracy. National debate over the transformation had begun in 1912 when a special House committee chaired by Arsene Pujo explored the accusations that money trusts controlled industry both directly and indirectly.[44] Although no formal legislation emerged from these investigations, many of the proposals put forth by the Pujo committee became law during the New Deal, and the concerns that motivated the hearings lasted well after the World War II era.

Even before the hearings got under way, however, industrial organization itself had weakened the bankers' ability to scrutinize and effectively impose their will on these giant firms. As managers used investor funds to build empires, their expertise and superior access to pertinent information substantially reduced the bankers' ability to act as an effective voice in corporate decision-making. Shareholder control seemed diminished as well. Here, the relative bargaining power of management improved not just because firms became too complicated for a hands-on approach from equity owners but also because legal reforms further increased their independence.

Investor dependency could be hazardous to more than the people directly involved. As we noted earlier, progressive reformers like Brandeis had already argued that public oversight or the restructuring of corporate governance was necessary to prevent socially irresponsible conduct and redistributions. While acknowledging that professional managers could run giant bureaucracies efficiently, he feared that "the permanent separation of ownership from control must prove fatal to the public interest. The responsibility of ownership is lacking."[45] Policy debates continued to evolve during the first three decades of the century. Insisting on the "private" nature of the corporation, promoters and insiders pressured state legislatures to loosen restrictions under general incorporation statutes so that operations could respond more ably to changing financial market conditions. At the same time, critics suggested that these "insiders" were simply relying on the states' jurisdictional vulnerabilities to manipulate and exploit an ever growing and relatively uninformed investing public, not to mention dependent workers and consumers.

It was in the context of this debate that John Dewey cut through the formal legal conceptions of corporate personality with unrestrained realism.[46] Concluding that the lawyers' resort to conceptualism allowed them to support just about any conclusion they desired, Dewey insisted that the time had come to engage in more straightforward practical debates, to "eliminat[e] the *idea* of personality until the concrete facts and relations involved have been faced and stated on their own account."[47]

Among the contemporaries who took into account "concrete facts and relations" were two Harvard Business School professors, Nathan Isaacs and Adolf A. Berle. In contrast with those whom Dewey scorned—writers like Edward H. Warren, who still felt compelled to draw on sixteenth-century legal precedents to justify twentieth-century corporate rules[48]—Isaacs and Berle focused entirely on modern practice, and they did so in ways still tied to both formal logic and the 1920s culture of relatively minimal public interventions.[49]

Isaacs tended to concentrate on "private working rules" that required legislative attention. In his view, lawyers and judges paid too little attention to accountants and engineers; this neglect was damaging not only in matters of corporate investment[50] but also in those of corporate promotion.[51] In the latter case, for example, judges had been establishing rights and obligations based on whether promoters were legally related to the corporation as contractors or officers. But since their work was usually accomplished before the corporation even came into legal existence, judges resorting to the logic of the law had trouble discovering any relationship at all.[52] Applying com-

mon sense and experience instead, Isaacs examined the actual practices of promoters to discover working rules that could then be used as the basis for more useful legislation.[53] He also found in the "trust" concept a useful supplement to the corporate form, especially when freed from the encrustations of judicial formalism.[54] Trust, Isaacs decided, had a role "[n]ext to contract, the universal tool, and incorporation, the standard instrument of organization . . . wherever the relations to be established are too delicate or too novel for these coarser devices."[55]

Berle took the concept of trust a step further: He wanted directors and "control" groups to be held accountable, as trustees or "fiduciaries," for a wide range of innovative financial practices. For example, when Berle studied the matter of nonvoting stock issued to investors so that bankers could continue to control corporate boards even as they held a diminishing fraction of the outstanding equity, he concluded that "[s]eparation of management from actual ownership is complete and permanent; the management shareholders appear bound to consider no interests but their own."[56] For recourse against mismanagement, the ordinary shareholder had no avenue but in equity, and this course was circuitous at best.[57]

Applying an empirical eye to decisions in courts of equity, Berle began to discover a pattern: Board policies were set aside when "a group in control was acting unconscionably towards persons who had no effective voice in, and had not assented to, the corporate result."[58] "Bankers' control" appeared to be a general problem for corporate action, and corporate law allowed minority control groups to breach their fiduciary duties in many different ways.[59]

As in the case of social-cost regulation, the policies governing corporate control remained decentralized, developed largely in private arrangements or by limited intervention on the part of state legislatures and courts. Throughout the 1920s, for example, the public stock exchanges elaborated working rules based on day-to-day technical experience. State legislatures modified their separate business and public securities ("blue sky") laws in line with corporate lawyers' designs and perhaps their more realistic perspective.[60]

By the end of the decade, however, the concept of managerial trusteeship had taken broad hold. As trustees of the corporation's assets, managers were now expected to be held liable to shareholders. When concerns about the large firm's economic performance became urgent with the onset of the Depression, trusteeship became the focus of attention, inextricably bound to broad deliberations about social policy.