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# When Economics Faces the Economy: John Bates Clark and the 1914 Antitrust Legislation

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## Abstract

The aim of this paper is to analyze John Bates Clark's influence in the passing of the Clayton and Federal Trade Commission Acts of 1914. It is argued that Clark was important to the passage of these acts in two ways. First, he exercised an indirect influence by discussing in academic journals and books problems concerning trusts, combinations, and the measures necessary to preserve the working of competitive markets. At least as importantly, Clark took an active role in the reform movement, both contributing to draft proposals for the amendment of existing antitrust legislation and providing help and advice during the Congressional debates that led to the passage of the FTC and Clayton Acts.

## Acknowledgment

This essay is dedicated to the memory of Warren Samuels (1933–2011), who gave guidance and encouragement to the writer, and was a continuous source of inspiration to the entire community of historians of economic thought.

## Notes

[1]From 1898 to 1902 at least 303 firms disappeared annually through mergers; 1208 disappeared in 1899 (Nelson, 1959, p. 37). According to Lamoreaux (1985, pp. 1–2), in those same years at least 72 consolidations led to the formation of entities that controlled over 40% of an industry, and 42 to entities that controlled over 70%.

[2]Clark's idea of potential competition, although profoundly influential among American economists at the turn of the last century, was not immune from criticism. Arthur Cecil Pigou, reviewing The Control of Trusts for the Economic Journal, objected that there are no reasons for the monopolist to reduce prices in advance of entry. When a potential competitor is deciding whether to enter, it will rationally look at the market conditions that may prevail after entry as a consequence of the incumbent's reaction, not at the price level before entry. As Pigou (1902, p. 66) noted: ‘It is not enough for a potential rival to be able to compete with the prices at which the trust at any time chooses to sell; he must be able to meet those at which, by abandoning all “monopoly revenue” and contenting itself with “normal profits” it could sell.’ Otherwise, Pigou continued, ‘even though all “illegitimate” competition were made impossible, the risks before independent producers would still be so great, that prices might be kept well above the point at which they could reap a profit, without ever inducing them to come into the field. The latent power of the Trust to fix a new price level, high enough to maintain itself, but low enough to ruin them, would frighten them away.’

[3]This section draws on Fiorito & Henry (2007).

[4]On the role of the 1912 presidential campaign in the formation of antitrust policy in the US, see Kovacic (1982) and Winerman (2003).

[5]Clark is referring here to Charles Van Hise, who was president of the University of Wisconsin and a close advisor to Theodore Roosevelt. In his influential Concentration and Control, Van Hise (1912) argued strongly for a powerful administrative commission

with far-reaching authority to regulate prices. The quoted letter from Clark, dated September 20, 1912, is preserved in the John Bates Clark Papers, Rare Books and Manuscript Library, Columbia University.

[6]In the closing passage of his Independent piece, Clark (1912b, p. 894) wrote: ‘The present writer is a Republican, the descendant of Republicans, Whigs and Federalists. Tested by general views of the Federal constitutions, he thinks both his hereditary party and the new Progressive one have the advantage over their common rival. By the test of practical action in the most vital issue of the day he concedes that the Democrats win.’

[7]The document, marked ‘Confidential’, was entitled ‘Proposal for a bill to create an Interstate Trade Commission, to define its powers and duties, to provide for the registration and license of persons, partnerships, corporations and joint-stock associations engaged in intestate commerce, and for other purposes; Dec 16, 1913.’ A copy is preserved in the Seth Low Papers (Box 105) at the Rare Books and Manuscript Library, Columbia University.

[8]Proposal for a bill to create an Interstate Trade Commission; Dec 16, 1913; Sec. 15.

[9]Proposal for a bill to create an Interstate Trade Commission, Dec 16, 1913; Sec. 12.

[10]Proposal for a bill to create an Interstate Trade Commission, Dec 16, 1913; Sec. 23.

[11]The letter is preserved in the Seth Low Papers (Box 105) in the Rare Books and Manuscript Library, Columbia University. Unless otherwise indicated, the quotations which follow in this section refer to this letter.

[12]As to Jenks, the other economist in the NCF committee, I was unable to find any explicit endorsement of a commission with licensing powers in his professional writings of the time, and even his condemnation of unfair competition was cautiously phrased and always conditional on circumstances (Fiorito, 2011).

[13]Wilson's speech on antitrust legislation was delivered to a joint session of Congress on January 20, 1914; the text of the speech can be found in Link (1966–94, Vol. 29, pp. 153–158).

[14]In testimony given before the Judiciary Committee in February 1914, Clark (1914, p. 328) affirmed that the measures proposed by Clayton were ‘in absolute harmony with the requirements of economics, with present conditions and economic tendencies ….’

[15]These ‘cease and desist’ orders could be issued only after hearings, could be enforced only through decrees of circuit courts of appeal, and were subject to appeal.

[16]The text of the Clayton Act can be found online at: http://www.justice.gov/atr/public/divisionmanual/chapter2.pdf. The passages quoted below are cited by the relevant section number of the Act.