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Is America driven by profit?: a sociological study of private versus public interests in American society

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Senior Thesis

Is America driven by profit?
A sociological study of private versus public interests in American society

by

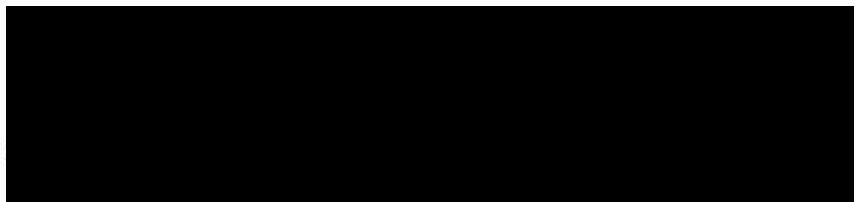
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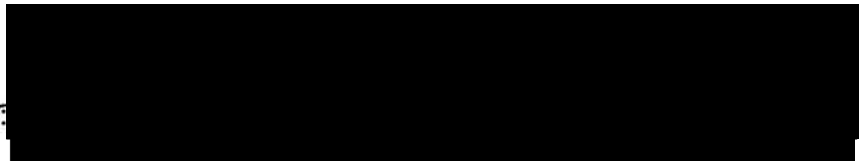
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THE MODERN ECONOMY IN AMERICA

In the modern era the economy has become a central facet of social reality, but it is neither the constitutive element of modernity, nor the driving force of history. The emergence of the modern economy was not the founding event of modernity, as is often assumed. It is not a necessary element of modern society or the constructive force of the modern consciousness. Rather, nationalism is the constitutive element of modernity, the emergence of nationalism and the construction of the nation is what allowed us to develop the modern consciousness. The modern economy did not have to be what it is today. It just happened to turn out that way.

The reality is that the American nation-- a community of sovereign equals that adheres to the basic principles of equality and liberty¹--complements and promotes a capitalist economic system, where the social mobility that is possible within the democratic framework is able to occur. This is a new occurrence in the history of human society.

The propensity to pursue profit for profit's sake—the characteristic propensity of capitalism--may have existed throughout human history, but it is irrational outside of the modern framework. The pursuit of profit only became a rational activity once the modern consciousness had taken hold. This rationalization (of the irrational) made capitalism into a Weberian iron cage²; capitalism became reified as a social institution.

¹ This definition is taken from the scholarship of Liah Greenfeld. See *Nationalism: five roads to modernity*.

² In *The Protestant Ethic and the Spirit of Capitalism*, Max Weber discusses the emergence of the iron cage as the last step in the development of modern society. The system of society has already been created and individuals are born into it and assume their roles as social actors until the next great revolution in human society. Each individual no longer makes the decision to be oriented towards profit; each one must be in such a society or he/she exists along the periphery. As Weber states, "The Puritan wanted to work in a

The United States has the unique distinction among societies of being founded on the principles of nationalism. It was modern--and a nation³--from the moment the Constitution was signed. It always valued social mobility and popular sovereignty⁴. The modern consciousness did not have to struggle against the remnants of feudalism in America. The infiltration of modern values was more complete, and thus the economy itself was more prominent. So what we have in the American society, is the pursuit of individual happiness (an individualistic interpretation of nationalism) being equated with the pursuit of profit. To be successful in America is to have wealth.

And yet, the central value of the society is for the success of the entire nation. Exceptional individual success is coveted for one's self, but it is seen as perverse and unfair when it is enjoyed by others. This collectivist interpretation of nationalism has led to awkward government policy that works against the individuals who make up the American nation.

Why does public ire turn against the self-interested individuals the nation so values? This phenomenon occurs when there is a disparity between what one believes everyone in America can achieve and what one is actually able to achieve. This disparity becomes intolerable when one citizen is able to achieve so much, i.e. Bill Gates or John D. Rockefeller. Those who do not succeed (or who do not succeed to the same degree) feel this as an inconsistency in a society that proclaims that each citizen has the same

calling; we are forced to do so.” This has made us “specialists without spirit, sensualists without heart.” (181, 182)

³ See *Nationalism: five roads to modernity*, by Liah Greenfeld. I make this distinction because few sociologists, even those who write profusely on the subject, have defined the term in a useful, objective, rigorous way.

⁴ I am speaking here of the tenets of the society, not necessarily the reality. Nonetheless, America did

right to success. Those who are unsuccessful feel that they are equally endowed, and, thus, their inferior position must be the result of external factors. In other words, their image of society as full of opportunity for success does not match their own experience, thus they contend the other's success is somehow unfair or un-American.⁵ This is the petri dish for public policy measures that act to create an apparent equality of ends, and this is what explains the nature of the relationship between business and government in America.

The American society is not driven by the ideal of the individual pursuit of wealth, even though its individual members are. Instead, consistently and periodically, the American government has enacted policy that acts to hold back individuals (corporations), so that the appearance of equality of ability can be maintained. One can very clearly see this in American antitrust laws that forbid monopoly conduct (measured by performance?) and use market share as a barometer of an industry's *inefficient* structure.⁶ American society values the image that everyone can achieve at the same level. Thus, in America there is this phenomenon that all invidious distinctions are artificially removed by public policy when they become too much to bear on the public psyche.

possess greater freedom and sovereignty than any other society.

⁵ I am not engaging in metaphysics here, but I will present my research on this matter in subsequent chapters.

⁶ The only inefficiency here may very well be that the current structure does not please certain individuals whose self-interest would be met if public policy was enacted to change it. These individuals would rather see 10 firms in an industry than 2, *even if* two firms could offer the goods at a lower cost.

THE AMERICAN NATIONALITY

For, I say, the true nationality of the States, the genuine union, when we come to a mortal crisis, is, and is to be, after all, neither the written law, nor, (as is generally supposed) either self-interest, or common pecuniary or material objects—but the fervid and tremendous IDEA, melting everything else with resistless heat, and solving all lesser and definitive distinctions in vast, indefinite, spiritual, emotional power.

—Walt Whitman, *Democratic Vistas*

What constitutes the American identity? Is it, as Whitman proposes, a “tremendous IDEA” of the American nation? Or is it simply a rational self-interest, an orientation towards ever increasing material prosperity? What is of greater importance: the ideals of equality and liberty or material wealth and prosperity? It is certain that economic interests are often represented in the words of our leaders. Clinton’s 1992 presidential campaign theme was “It’s the economy, stupid!” and Reagan’s economic policy became known as Reaganomics. Perhaps even more indicative of closeness of the economic sphere to politics in the United States was Calvin Coolidge’s statement that “the business of America is business,” a sentiment that has long been shared by many Americans. This idea fits firmly within the framework of my theory. Yes the *business* America is business, but America itself is not a *business*, it is not constantly orientated towards profit. Every decision made by the populace is not based on economic gains. Just as a merchant’s business life is just one piece of his/her total existence, business is just one aspect of the life of the American nation.

Even so, it cannot be disputed that economic interests are central to life in America. As discussed earlier, the fact that American society takes the form of the modern nation does not necessitate that this be so. To understand American society one must study the unique relationship between its polity and its economy. It is precisely

because America possesses a national identity and a democratic government that business interests have assumed such a dominant role. On the national level, the economy has become a symbol of prestige. But on the individual level, the connection is much simpler. In this modern nation, where the ideal of equality is worshipped fervently, individuals look for some way to distinguish themselves from the masses. As Tocqueville remarked over 150 years ago, “birth, condition, and professions no longer distinguish men, or scarcely distinguish them; hardly anything but money remains to create strongly marked differences between them and to raise some of them above the common level.”⁷ And this distinction is attainable. At least at the theoretical level, every member of American society may obtain wealth, or lose it as well. This knowledge that social mobility is indeed possible fuels the desires and aspirations of the wealthy as well as the poor. Indeed, Tocqueville remarked, “I never met in America with any citizen so poor as not to cast a glance of hope and envy on the enjoyments of the rich, or whose imagination did not possess itself by anticipation of those good things which fate still obstinately withheld from him.”⁸

So there are two main reasons for the centrality of business interests in the lives of Americans: 1) for individual distinction, because the possibility for mobility exists, and 2) for prestige of the nation. And yet, material prosperity is not all that propels Americans. If it were all, in these times of tremendous economic expansion, with the so-called “misery index”—the unemployment rate plus the inflation rate—at one of its lowest rates ever, Americans could have no need to be ashamed of their nation. But

⁷ Alexis De Tocqueville, *Democracy in America*, ed. Richard D. Heffner (New York: Penguin

Americans are currently not very proud of their nation, in spite of its amazing material success.

While business interests and American nationalism do complement each other, there are some inherent contradictions in the relationship. For example, the pursuit of profits may trample on others' rights or make it impossible for equality even to be considered an ideal, as it is continuously disregarded. The only way of resolving these issues is to allow one of the concepts to take precedence over the other. In the history of America, the values of the nation have continued to override business interests, which explains why we often act in opposition to evident demands of economic rationality.

Business interests are continually placed in the framework of what is best for the nation. Self-interested wealth is not tolerated or welcomed. Monopolies that hold the American public hostage are divested by the government. The government (where the power of the nation resides) holds the economic interests of corporations in-check and responsive to the values of the nation.

Even one of the greatest "Captains of Industry" of all time, Andrew Carnegie, held more nationalist than capitalist views of wealth. Or at least he understood that he must defend great wealth in the framework of the ideals of the nation. It was necessary that his argument appeal to the idea that those of great individual wealth can pursue the interests of greater society. Carnegie, of course, did not feel that wealth was inherently bad, or even that great disparities between rich and poor should be eliminated. Carnegie wrote that "it is well, nay, essential for the progress of the race, that the houses of some

Group, 1956), 254.

should be homes for all that is highest and best in literature and the arts, and for all the refinements of civilization, rather than none should be so, much better this great irregularity than universal squalor.”⁹

Not only is great wealth preferable to “universal squalor,” but great wealth plays an important role in the American society. Carnegie eloquently argues in an essay entitled “Wealth,” that wealthy individuals had a duty to give back to society during their lifetime, that they are entrusted by the community to distribute the wealth in such a way that is in the best interests of all. If wealthy individuals did not give while they were alive, estate taxes at death were the next best alternative. As Carnegie states:

The growing disposition to tax more and more heavily large estates left at death is a cheering indication of the growth of a salutary change in public opinion. . . Of all forms of taxation, this seems the wisest. Men who continue hoarding great sums all their lives, the proper use of which for public ends would work to the community, should be made to feel that the community, in the form of the state, cannot thus be deprived of its proper share. By taxing estates heavily at death the state marks its condemnation of the selfish millionaire’s unworthy life.¹⁰

Andrew Carnegie believed it best that a wealthy individual pursue his philanthropic interests during his lifetime, and not wait until his death to distribute the wealth. He acted according to these arguments and his philanthropic pursuits, for instance, Carnegie Hall, were great. He was a nationalist capitalist at heart.

Just as Carnegie invoked the ideals of the nation to justify personal wealth, Presidents have often expressed the values of the nation in important speeches,

⁸ Ibid., 210.

⁹ Andrew Carnegie, “Wealth” in *Democracy and the Gospel of Wealth*, ed. Gail Kennedy (Boston: D.C. Heath and Company, 1949), 1.

¹⁰ Ibid., 5.

reaffirming the primacy of the nation above the dollar. Historical speeches, such as the inaugural addresses often contain references to the prosperity of the nation. And what is important to note is that the prosperity of the nation is not always framed in economic terms. In 1876, Rutherford B. Hayes stated in his inaugural address that “at the basis of all prosperity . . . lies the improvement of the intellectual and moral condition of the people.”¹¹ And he was not alone in holding this idea of what it meant to be a prosperous nation.

Presidents often place other values and concerns above economic prosperity. American values such as freedom, opportunity for advancement, and above all, equality stand before profits. Garfield spoke against slavery when he stated that “there can be no permanent disenfranchised peasantry in the United States. Freedom can never yield its fullness of blessings so long as the law or its administration places the smallest obstacle in the pathway of any virtuous citizen.”¹² And Cleveland reified the idea that the nation is the people and the people are the nation when he proclaimed that “the entire scheme of our civil rule, from the town meeting to the State capitals and the national capital, is yours”¹³ in his inaugural address to the citizens. It is not the economy that makes us a nation, but the equality of the people. Harrison best put the economic interests of the United States in perspective when he explained what made a great state:

Each State will bring its generous contribution to the great aggregate of the nation’s increase. And when the harvests from the fields, the cattle from the hills, and the ones of the earth shall have been weighed, counted, and valued, we will turn from them to crown with the highest honor the

¹¹ President Hayes, *Inaugural Addresses*, 132.

¹² President Garfield, *Inaugural Addresses*, 143.

¹³ President Cleveland, *Inaugural Addresses*, 151.

State that has most promoted education, virtue, justice, and patriotism among its people.¹⁴

If the words of the presidents themselves do not convince one that the values of the nation are supreme, one can look at the laws of the nation that act as a rein on profit-seekers who infringe on national values. Perhaps the most notable of these laws is the Sherman Antitrust Act. In the body of this paper we will look at specific examples of these actions, but now it is enough to point out that the law acts as a constraint on corporations or individuals who do not present themselves as benefiting the collective good.

While some corporations and individuals, such as Standard Oil, AT&T and, more recently, Microsoft, have attempted to fight the constraints, the government has been strong in its resolve. Business and government continue to fight this battle which is really about the interpretation of the nation's ideals, and whose is more accurate—society's or the capitalist's.¹⁵ Laws and court battles have been an effort to make a clear ruling, but the relationship between business and government—or the private and the public sectors--is stormy and it is not likely to turn calm anytime soon. In today's economy, some industries are necessarily comprised of large corporations. The larger the corporation, the more market share and greater market power it possesses. As a corporation wields more power, it often appears to erode the equality ideal and other basic national values. The simple solution might be to disallow firms that wield a certain

¹⁴ President Harrison, *Inaugural Addresses*, 162.

¹⁵ This, in itself, is an oversimplification. Of course, capitalists are a very important group of society, and often public and private interests are exactly the same thing. What I am speaking of here, are those times when there is an argument over which value is more important: equality of opportunity or equality of ends.

percentage of market share. However, all large firms are not bad for the nation or the economy. Also, sometimes a firm must be significantly large to carry out a large project that benefits the whole society, such as the construction of the railroads.

Delegating these tasks to the government is not an option in this individualistic-civic nation. Ownership of businesses by the government has always been mistrusted and considered un-American. The business of America is business, but the government should not be running a business. It is a slight distinction that proves the supremacy of the values of the nation. This is related to power, as well as to legitimacy. The government already has too much power to be directly controlling the economic life of its citizens, and since the government makes the laws that govern commerce it would be illegitimate for government to engage in commerce. Since America is a legalistic society that considers legitimacy to be important, government ownership of large industries is avoided. It is noteworthy that:

Only a small number of American railroads were initially operated by the state, and by 1850 with very few exceptions these had been turned over to private business enterprises. These same merchants and shippers who distrusted government ownership were also fearful of private monopoly. Therefore, the charters of the early roads generally provided for close legislative oversight of these new transportation enterprises.¹⁶

Today the compromises and tepid relationship between business and government continues. For the remainder of this paper, I will focus on the very nature of this relationship in the cases of the finance industry, the petroleum industry, and the telecommunications industry.

¹⁶ Alfred D. Chandler, Jr., *The Visible Hand: The managerial revolution in American business* (Cambridge, MA: The Belknap Press of Harvard University Press, 1997), 82.

FINANCING THE CITY ON THE HILL

The anxiety that surrounds the mixing of business (the private sector) and government (the public sector) illuminates the paradoxes inherent in the American culture. It is an issue of interests; it is making the choice between individual liberty and general equality. Politics in America has always been a tension over these two ideals. The force of the pervading culture, nationalism in its uniquely American flavor (individualistic and egalitarian), forces this duality of interests.

What is most intriguing is that the espoused principles upon which the United States is built, and which are found in written form in the Constitution, are often times paradoxical. For example, most every American would agree that equality is important, and yet at the same time, these same Americans would argue that each person should have the liberty to make the most out of his/her own unique gifts. Logically, these two principles cannot exist in unison, yet they function to hold the society together. This is possible because society and individuals are not always logical; in fact, they are often times irrational and nonsensical. These two diametrically opposed principles exist together to form the American culture.

While most Americans will accept the co-existence of opposing principles from a distance, never really contemplating what it means to espouse both at the same time, historically arguments have occurred over the definition and application of the principles themselves. This argument has continued from the very first administration, when there was a great debate about how the federal government should be involved in the

development and security of the private sector of the economy. This same debate continues today, acted out by the two main political parties: Democrats and Republicans.

In the late 18th century the debate centered around the establishment of a national bank as a means of paying off Revolutionary War debts and to create a stable financial base for business and economic growth. Two central figures in Washington's administration argued over the constitutionality and necessity of such an enterprise. Alexander Hamilton, the Secretary of the Treasury at the time, argued persuasively for the establishment of a national bank, while Thomas Jefferson, the Secretary of the State, argued that such an entity was unconstitutional.

What is most intriguing about the debate is that both Hamilton and Jefferson were essentially arguing for the same thing--what best served their own self-interest. Hamilton's valued a strong national government and felt that a national bank could only enhance the nation's power and prestige. Jefferson, on the other hand, was not anxious to create a strong, central government. He wanted as little government intervention in the lives of citizens as possible. Jefferson was not eager to add size and power to the national government, yet history teaches us that a strong, central financial system actually benefits the individuals that Jefferson claimed to represent. (It is noteworthy that such an institution did not last in America until the establishment of the Federal Reserve Bank in 1913.)

Alexander Hamilton first made the proposal for the establishment of a national bank in a report presented to Congress on December 14, 1790. In the report he outlined the benefits of such an institution:

the augmentation of the active or productive capital of a country . . . And thus, by contributing to enlarge the mass of industrious and commercial enterprise, banks become nurseries of national wealth—a consequence as satisfactorily verified by experience, as it is clearly deducible in theory . . . Secondly.--Greater facility as to the government in obtaining pecuniary aids, especially in sudden emergencies . . . Thirdly.—The facilitating of the payment of taxes . . .¹⁷

Hamilton's arguments are complex and encompassing. His central argument is that a national bank would establish a secure national financial system and could be the means of paying back Revolutionary War debt. In support of his argument, Hamilton pointed to the success of the Bank of North America when it was first used as a Bank of the Continental Congress and lamented that it had become the bank of one state. Hamilton's main argument centered around his belief that a strong financial system was good for the nation as well as for national prestige. The constitutionality of such an institution was never questioned by Hamilton.

Hamilton understood the necessity of building a strong financial infrastructure to control the ebb and flow of the markets. He pointed to the lack of currency in circulation after the Revolution and felt that a national bank issuing paper currency could greatly benefit the development of the nation. He saw little risk in adding money to the circulation. Hamilton insisted that with the establishment of the national bank, "if more [paper currency] should be issued then is necessary, it will return upon the bank."¹⁸ A national bank could act as a restraint on the market, helping to prevent great panics, and this added security would benefit the interests of those engaged in the business sector.

¹⁷ Alexander Hamilton, "Report on a National Bank," In *Papers on public credit, commerce and finance*. ed. Samuel McKee, Jr. with a foreword by Elihu Root (New York: Columbia University Press, 1934), 54-58.

And the national bank, as far as it led to greater economic development would lead to greater national prosperity and national prestige.

Hamilton's case for a national bank was convincing. Congress passed his proposed plan for national bank in early 1791 and sent it to President George Washington for approval. Washington consulted the opinions of two of his advisors, Attorney General Edmund Randolph and Secretary of State Thomas Jefferson. Both Randolph and Jefferson reacted negatively to Hamilton's proposal, contending that the establishment of a national bank was unconstitutional, but it is Jefferson who presented a complete argument that diametrically opposed Hamilton's logic. Unlike Hamilton, Thomas Jefferson, author of the Declaration of Independence, was an individualist who placed civil liberties above national prestige. Jefferson's argument forced Hamilton to further defend his proposal to Washington.

Jefferson's chief concern with Hamilton's plan for the Congress to establish a National Bank was the amount of power that it would give to the federal government. As Jefferson wrote in his formal "Opinion" presented to George Washington, the power to establish a national bank is not one of the explicit powers given to Congress. And Hamilton himself did not argue this point. It became a question of interpretation of the Constitution. Hamilton argued for a broad interpretation—finding implied powers in the often vague text. Jefferson, however, felt that the Constitution should be interpreted

¹⁸ Ibid., 72-73.

strictly and literally. Only explicit powers should be granted according to Jefferson's argument.¹⁹

For both Jefferson and Hamilton, the argument over the establishment of a national bank, and a national banking system, centered around whether or not the federal government had the power to establish *corporations of any sort*, and a bank was considered one such corporation. At the end of the eighteenth century, there was a great concern over giving too much power to a central government because it was felt that this meant less power for the people. Even into the beginning of the 19th century, corporations, or any entity that appeared to be in a position of power (such as government), were distrusted. Citizens were careful not to yield too much power to business or government. As Lawrence Friedman notes:

Partly because of the historic meaning and role of corporations, people in 1800 identified corporations with franchised monopolies. Corporations were creatures of the state endowed with breath for the sole purpose of holding franchise or privilege, that is, some power or right that no one else could lay claim to. Most corporations were transportation, monopolies, banks, insurance companies—aggregations of 'capital' representing the 'few' against the 'many.'²⁰

It was not until 1837 that the first free banking law was passed in Michigan, providing a statutory formula for establishing a bank and eliminating the special privilege attached to obtaining a bank charter.²¹

Government was often seen as being entangled with business, as it often was, and was considered just as dangerous. Only certain groups were granted charters by

¹⁹ It is interesting to note that Jefferson later found in the Constitution the power for the President to purchase foreign territory in the form of the Louisiana Purchase.

²⁰ Lawrence Meir Friedman, *A History of American Law*, 2nd ed. (New York : Simon & Schuster, 1985), 194.

government to set up corporations, which were essentially monopolies. Money and power often played an important role in this process. As the process for incorporating became simpler, charters of incorporation were more accessible, and some of the general distrust towards government began to fade. Today, at the end of 20th century, there is a general sense that the government protects the people from effects of big business, that the government represents the peoples' interests. This new sentiment appears to have arisen towards the end of the 19th century when the strong, conspicuous alliance of business and government started to dissolve, and the people looked to powerful government to protect them from the increasingly powerful big business sector.

In those times of general distrust towards any entity that threatened to overpower individual liberty, Jefferson argued that since a National Bank was not necessary in order for Congress to carry out its delegated powers then a National Bank would be unconstitutional because “the powers assumed by this bill, have not . . . been delegated to the United States, by the Constitution. . . I. They are not among the powers specially enumerated: for these are: 1st. A power to lay taxes for the purpose of paying the debts of the United States; . . . 2d. ‘To borrow money.’ . . 3. To ‘regulate commerce with foreign nations, and among the States, and with Indian tribes.’”²²

²¹ Ibid., 180.

²² Thomas Jefferson, “Opinion against the constitutionality of a National Bank,” in *The Writings of Thomas Jefferson: being his autobiography, correspondence, reports, messages, addresses, and other writings, official and private*, ed. H. A. Washington. Published by the order of the Joint Committee of Congress on the Library, from the original manuscripts, deposited in the Department of State (Philadelphia: J. B. Lippincott & Co., 1869-1871), p. 556-7.

Jefferson recognizes two additional assignments delegated to Congress, but he does not find the power to establish a national bank in these mandates either. According to Jefferson, it is not Congress' duty to do whatever for the general welfare but only

1. To lay taxes to provide for the general welfare of the United States, that is to say, 'to lay taxes for *the purpose* of providing for the general welfare.' . . . To consider the latter phrase, not as describing the purpose of the first, but as giving a distinct and independent power to do any act they please, which might be for the good of the Union, would render all the preceding and subsequent enumerations of power completely useless. . . It would reduce the whole instrument to a single phrase, that of instituting a Congress with power to do whatever would be for the good of the United States; and, as they would be for the sole judges of good or evil, it would be also a power to do whatever evil they please.²³ [emphasis in original]

Jefferson argues that Congress' ability to make additional laws does not grant it the ability to set up a national bank, since a national bank is not necessary for carrying out the powers directly given to Congress. Jefferson states, "2. The second general phrase is, 'to make all laws *necessary* and proper for carrying into execution the enumerated powers.' But they can all be carried into execution without a bank. A bank therefore is not *necessary*, and consequently not authorized by this phrase."²⁴ Jefferson's distrust of government is seen here is his sense that Congress would do but evil if left to its own devices. He believed in the individual's ability to do for him/herself. Government should not interfere in the lives of its citizens. Only government institutions necessary to carry out the limited functions assigned to the federal government should be enacted.

Jefferson also argues that a law establishing a national bank is unconstitutional for the very reason that it changes a state law. To this line of reasoning, Hamilton replies

²³ Ibid., 557.

that every new law is a change, and so “it can therefore never be good reasoning to say this or that act is unconstitutional, because it alters this or that law of a State. It must be shown that the act which makes the alteration is unconstitutional on other accounts; not *because* it makes the alteration.”²⁵

To answer the question of constitutionality, Hamilton looked to the Constitution to find the words that gave credence to his argument. Hamilton argues that “it is the manifest design and scope of the Constitution to vest in Congress all the powers requisite to the effectual administration of the finances of the United States.”²⁶ By interpreting this idea from the Constitution to mean that Congress has the power to establish a national bank, Hamilton makes the case for the broad interpretation of the Constitution and the idea of implied powers, which was later expanded by Chief Justice John Marshall. Hamilton dismisses Jefferson’s main argument with hardly a paragraph.²⁷ In a letter to George Washington, Hamilton argues, “Most of the arguments of the Secretary of State . . . are of a nature rather to apply to the expediency than to the constitutionality of the bill.”²⁸ And, therefore, should not be considered.

However, Hamilton did take the time to consider and debunk two of Jefferson’s politically charged arguments. Hamilton states:

There are two points in the suggestions of the Secretary of State, which have been noted, that are peculiarly incorrect. One is, that the proposed incorporation is against the laws of monopoly, because it stipulates an exclusive right of banking under the national authority; the other, that it

²⁴ Ibid., 558.

²⁵ Hamilton, “Letter to George Washington,” 112.

²⁶ Ibid., 134.

²⁷ Jefferson’s main contention, as I will discuss below, is that since the establishment of a national bank is not a necessity for the survival of the nation, it is also not constitutional.

²⁸ Hamilton, “Letter to George Washington,” 114.

gives power to the institution to make laws paramount to those of the States . . . The bill neither prohibits any State from erecting as many banks as they please, nor any number of individuals from associating to carry on the business, and consequently is free from the charge of establishing a monopoly; for monopoly implies a *legal impediment* to the carrying on of the trade by others than those to whom it is granted.²⁹ [emphasis in original]

In regard to the supremacy of the state's laws to those of the corporation, Hamilton replies that a "law of a corporation, if contrary to a law of a State, must be overruled as void, unless the law of the State is contrary to that of the United States, and then the question will not be between the law of the State and that of the corporation, but between the law of the State and that of the United States."³⁰ And, according to Hamilton, the federal law is the law of the nation.

Hamilton's main case was that a national bank would lead to stable financial markets, an easier way for the government to collect taxes and access large sums of money, and generally to the greater prosperity of the nation. Hamilton was a nationalist, pragmatist in a nation that still intended to realize its ideals.

Hamilton pointed to the Bank of North America, first established by the Continental Congress in May 1781, as an example of how the Bank of the United States could be used to benefit the entire nation—to pay down debts, firm-up the financial markets, and contribute to national prestige. Since the expiration of its original charter, the Bank of North America had received a state charter in Pennsylvania and lost its former luster in Hamilton's eyes. He no longer felt that it was sufficient for the entire

²⁹ Ibid., 112-3.

³⁰ Ibid., 113.

nation. As Hamilton states, “in the general opinions of the citizens of the United States, the Bank of North America has taken the station of a bank of Pennsylvania only. This is a strong argument for a new institution, or for a renovation of the old, to restore it to the situation in which it originally stood in the view of the United States.”³¹

Although Washington signed Hamilton’s proposal into law on February 25, 1791, when the first charter of the Bank of the United States expired under President Jefferson’s watch in 1811, it was not renewed. The debate was not over. A Second Bank of the United States was eventually established in 1816 and drew more criticism from Jefferson. In 1817, Jefferson argued against the Second Bank of the United States because he was concerned that a National bank would change the character of the American society from that of an egalitarian democracy to that of a plutocratic aristocracy. Jefferson could not see that the character of the United States is a distinct worldview that can not be changed quickly. He warned, “The bank mania is one of the most threatening of these imitations. It is raising up a monied aristocracy in our country which has already set the government at defiance, and although forced at length to yield a little on this first essay of their strength, their principles are unyielded and unyielding.”³²

Again in 1819, during a short recession, Jefferson blamed the banks for the economic woes of the nation. He saw the monetary constraint of the banks as handcuffs on individual rights. In a letter to John Adams he states, “The paper bubble is then burst . . . We were laboring under a dropsical fulness [*sic*] of circulating medium. Nearly all of it is now called in by the banks, who have the regulation of the safety-valves of our

³¹ Hamilton, “Report on a National Bank,” 75.

fortunes, and who condense and explode them at their will . . .”³³ Jefferson did not believe that a strong financial center and financial stability were worth the price of giving away such individual choices as to the type of currency produced, etc.

The argument did not end with the establishment of the Second Bank of the United States. In 1836, it too lost its charter as a direct result of what has come to be known as the “bank war” and as an indirect result of the criticism of Jefferson and his political descendants, known as Jeffersonian Democrats.

³² Jefferson, 64-65.

³³ Ibid., 147-148.

The Bank War

Andrew Jackson, a descendent of the Jeffersonian Democrats, distrusted the national bank, which was seen as an entanglement of the public with the private sector, group interest with self-interest. Since the central bank had often helped to constrain the market, helping to avoid the great highs and lows of unstable financial systems, it was considered harmful to the state banks that it often ended up constraining.³⁴ Jackson saw the national bank as an intermingling of business and government (and an intermingling of money and politics), and he felt this too powerful of an alliance over the interests of the people. (Strangely enough, the individuals who were involved in business—which has always been a significant percentage of the U.S. population—were not considered a piece of this public that must be protected.) There was a general distrust of power in any form (especially if it came in the form of money) impeding on self-interest. “Self-interest” was the interest of those moving upwards in society, not those who possessed wealth or power. For Jackson (and Jefferson), those whose interests were backed by money did not possess self-interest, but moneyed-interest (which was a very different thing).

During his first term in office, Jackson made his dislike of the national bank known, and prompted its then president, Nicholas Biddle, to apply for a new charter in 1830, six years ahead of the set expiration of the first charter. The charter easily passed through Congress but was vetoed by Jackson, as was expected, and the issue of the

³⁴ An interesting note here – the states were considered representative of the people, while now the central government seems to fit that role as well, with state and local government seen as hands of the central entity, not distinct organisms.

existence of a national bank dominated the 1832 election. Henry Clay ran in support of the institution, but when Jackson firmly won the race he concluded that he also won the debate. “Jackson concluded from his victory in that election that he had a mandate not only to refuse the bank a new charter but to destroy as soon as possible what he called a ‘hydra of corruption.’”³⁵

And so he set out to complete his mission four years prior to the actual expiration of the charter governing the bank. Jackson ordered the end of U.S. government deposits to the national bank. Instead, the payments were diverted to state banks.³⁶ Although for a few years after its charter had expired the bank kept operating under a state charter, it eventually went out of business in 1841.

Jackson’s victory lasted for many years, until in fact the Civil War necessitated a national banking system that would allow for greater government access to funds, central fiscal control, and a better way to control the flow of currency throughout the nation. In 1863, Congress formally created a national banking system.³⁷ However, this structure was not very strong, and it was not until 1913 with the creation of the Federal Reserve Board, that true financial stability returned to the nation.

The Federal Reserve Act “aimed to cure the three glaring flaws which experience had revealed: (1) lack of co-operation among banks during crises; (2) inelasticity of the money supply; and (3) concentration of control in a few financial magnates.”³⁸ The

³⁵ “Bank War,” *Britannica Online*. <<http://www.eb.com:180/cgi-bin/g?DocF=micro/50/45.html>> [Accessed 24 January 1999].

³⁶ In 1834, Henry Clay pushed through the Senate a measure censuring Jackson for this action, but the censure was expunged from his record in 1837.

³⁷ Friedman, 442.

³⁸ Arthur Meier Schlesinger, *The Rise of Modern America: 1865-1951* (New York: The Macmillan

tremendous influence that the Federal Reserve System is due to its very mandate or *raison d'être*: to bring stability to the nation's financial system. The theoretically autonomous structure of the institution also adds to its degree of influence. It controls without direct supervision of the public or elected officials, thus controlling the nation's money supply without the direct influence of the citizens, i.e. the nation itself.

The Federal Reserve System consists of a Board of Governors of the Federal Reserve System, 12 Federal Reserve banks, the Federal Reserve Open Market Committee, the Federal Advisory Council, the Consumer Advocacy Council, (since 1976) the Consumer Advisory Council, and several thousand member banks. The Fed (as it is commonly known) holds a special place in the American economic system. It is located somewhere between the public and private sector. The official definition is that a Federal Reserve Bank is a "privately owned corporation established pursuant to the Federal Reserve Act to serve the public interest."³⁹ It is supposed to be a neutral entity, but of course it is influenced, to some degree, by both sectors. Perhaps most importantly, the Fed has tremendous influence over the economic health of the country, and especially the financial markets.

The Federal Reserve System is structured in a way to enforce control over the nation's money supply and to make adjustments when necessary in order to maintain the nation's financial health. It is able to keep the economy in check because of its unique position—just out of reach of the common citizens desire for more and more capital and the common politician's desire to do whatever necessary to be re-elected. The Federal

Company, 1951), 223.

Reserve's constraint has helped the nation to grow fiscally strong because it does not answer to the whims of the masses.

Ironically, the existence and recent success of the Federal Reserve may be an important reason why other nations seek to become democratic. Other nations attribute the economic success of the United States solely to its democratic structure, while the economic stability of the United States is largely due to this very undemocratic (yet national) entity, which places national interests (of equal opportunity and general welfare) above those of individual "capitalists."

This is not to say that the existence of the Fed is the sole reason for the economic success of the United States. (The dawn of big business itself occurred about 50 years prior to the establishment of the Fed.) The unique combination of democracy and capitalism along with the strong economic nationalism that exists in the United States has caused the rapid economic development that one finds in the United States. The existence of the Fed merely has made the path to economic development look easier. It has done a good job of smoothing out the business cycle. Prior to the establishment of the Fed, the U.S. economy experienced great boom and bust periods—with bank panics and stock crashes every few years. Aside from the Great Depression 60 years ago, the business cycle in the U.S. has mellowed considerably under the direction of the Fed. There are still expansion and contractions, but they are much weaker pulls in either direction.

³⁹ "Federal Reserve System" *Britannica Online*. <<http://www.eb.com:180/cgi-bin/g?DocF=micro/205/27.html>> [Accessed 24 January 1999]

The very function of the Fed at first appears to consider capitalist interest above the values of the nation, but a closer analysis reveals that this is not the case. A stable financial environment leads to greater equality of opportunity and social mobility, which support the general interests of the nation.

The Federal Reserve System exerts control through the use of the Open Market Committee, which meets often and makes any financial adjustments (such as lowering the interest rate charged on money lent to member banks or purchasing or selling additional securities to change the amount of currency in circulation) necessary. The Federal Reserve Chairman also reports to congress on the economic health of the nation and urges or discourages specific federal policies.

Since positive economic results are often dependent on some coordination in policy between the elected branches of government and the Fed, when the chairman of the Fed speaks investors listen for clues as to whether or not he will support the current fiscal policy set by the elected officials. That is why each side is always urging the other to go along with such-and-such policy. In 1985, then-Federal Reserve Chairman, Paul A. Volcker urged the United States Senate to support his proposed monetary policy. Volcker said, “We either have to increase our saving or reduce the deficit. . . We can’t increase saving, so we have to reduce the deficit . . . That clearly is within your power.”⁴⁰

⁴⁰ John M. Berry, “Fed Chairman romances the markets,” *The Washington Post*, 21 July 1985.

The autonomy of the Federal Reserve and its great influence on the business community and general financial health of the nation has sometimes led to animosity between the elected branches of the federal government and the Federal Reserve Board.

Policies favored by politicians often clash with those favored by the financial gurus who need not worry about re-election and who head the Fed's board. This is especially true during economic downturns. For example, the President may be in favor of increasing the money supply by lowering interest rates thus making capital more available to the nation. The Fed may argue that such a policy will lead to over-stimulation of the economy and high inflation. Generally the Fed is in favor of slower economic growth and a stable economy over high economic growth and instability.⁴¹

Several contentious battles have plagued recent history. The Carter and Reagan administrations are two times when the disagreements between the Fed and the administration were made public. This had negative effects on the business community because it threatened the stability of the financial market.

In the late 1970s, there was high unemployment and high inflation in the American economy. In 1977, the Carter administration was in favor of increasing the money supply in order to aid economic recovery, but it could not do much without the assistance of the Federal Reserve. However, the Federal Reserve chairman, Arthur F. Burns, was in support of a tight monetary policy in order to bring down inflation. The dispute escalated and became public knowledge through the press. In fact, when Burns' term as chairman expired in January, Carter did not re-appoint him, even though just a

⁴¹ Recent years have shown that strong economic growth and stability can be maintained simultaneously.

few months earlier Burns' reappointment had been a sure thing. Again during the Reagan administration, there was a conflict between the goals of the Fed and the Administration. The elected officials rang up huge budget deficits that the then-chairman of the Fed, Paul A. Volcker, publicly denounced. Possibly as a result of both of these clashes, both the '70s and the 80's ended in economic recessions.

As the Carter and Reagan Administrations' very public disputes with the Federal Reserve Board have shown, when the Administration and the Fed do not agree on policy the economy suffers. At the time, the *Washington Post* reported the public airing of the Carter's administration disagreement with the Fed as "virtually unprecedented."⁴² But it would happen again during the Reagan years and is likely to happen in the future. The two institutions set out to attain the goals of economic nationalism in two different ways—one by satisfying to the self-interests of all Americans (the private interests) and one by satisfying the interests of the entire community (the public interests).⁴³ Of course, each citizen is a member of both "interest groups." In fact these interests may very well be the same thing (and often are), i.e. high levels of employment and low inflation. It is when the two interests come into conflict, as they did during the Carter and Reagan administrations, that the country once again finds itself in the midst of the debate between Hamilton and Jefferson.

This development challenges many basic assumptions, but this debate is not relevant to the current discussion.

⁴² Art Pine, "White House Warns Fed on Interest Rise," *The Washington Post*, 21 October 1977, A1.

⁴³ The Federal Reserve Bank actually projects an image of protecting the public's interest as well. One of its main goals is to ensure that the economy stays on a healthy track, for the good of all. Of course, it is obvious, that the Fed's actions do aid self-interest individuals by providing a stable financial base. The Fed mitigates the two interpretations of American nationalism—individualistic and collectivist—by projecting an image of acting for the collective, while at the same time taking actions that benefit individuals.

Historically the Fed has sought to influence all policy decisions that affect the strength of the U.S. economy. That is why Volcker argued against protectionist trade policies in 1985 and why Alan Greenspan (the current Fed Chairman) reacted so forcefully to President Clinton's recent proposal to invest funds earmarked for Social Security in the volatile stock market.

In the current complex economy of the United States, the Fed's role has gained prominence since it is one indicator of how the economy is doing, as well as a type of insurance against panic. Wall Street players are on alert whenever the chairman of the Federal Reserve Board speaks in public or testifies to Congress (which he does every quarter). At times, the stock market has reacted violently to the chairman's words—rising rapidly or plummeting dramatically. The movements are reactions to any hints the chairman may have made about whether the Fed will be contracting or expanding the money supply in the near future. Investors closely monitor interest rates since they directly affect bond rates as well as the general availability of capital.

In fact, today's Fed has taken that role even further—offering to maintain the financial stability of the world. As reported in the *Los Angeles Times*, "The chairman of the Federal Reserve explained to the House Ways and Means committee that last fall, because of fears in world financial markets over Russia, Brazil and Asia, the Fed had acted to expand the supply of money circulating in the U.S. and *world economies*."⁴⁴
[emphasis added]

⁴⁴ John Flanigan, "Saved by Greenspan's Exuberant Money Policy," *Los Angeles Times*, 24 January 1999, 1 C.

The success of Greenspan's move was far from inevitable (which is why it was not made publicly known until three months after the fact, in January 1999). The world does not operate in the same economic-political sphere as the United States. The solutions that work here will not necessarily work elsewhere—and in fact, may do more harm than good. Economics is tied closely with feelings of nationalism (naturally since it is a conspicuous indicator of a nation's prestige) and providing an "a-national" solution is not likely to be a long-term fix. Yet, the tactic seems to be working. As the *LA Times* reports, "world financial systems have not seized up, credit has flowed, stock markets have functioned."⁴⁵ For now, at least, the United States' Federal Reserve is holding up the world's financial market.

It is likely that the United States will not be able to sustain the world's financial market for any length of time.⁴⁶ The mere fact that the Fed alone is able to exert so much influence over the world's affairs is indicative of its increasingly powerful position. As it has become an institution, it has become less dependent on the other branches of government for at least tacit agreement. It has gained confidence in its position, and therefore makes more independent decisions. Since the 1970s, the Fed chairman has felt empowered enough to criticize the actions of the President, which was not something done openly before that time.

This prominence and independence of the Fed is important because the Federal Reserve System represents a compromise between our nation's ideals. This leads to two possible consequences: A swift shift in the role and influence of the Fed is likely to cause

⁴⁵ Ibid.

public criticism, while a gradual shift may have a more significant effect on the nature of our society. It may alter the priority given to public or private interests since it does not directly represent either, but instead it represents them both at the same time—constraining the money supply but also creating a stable environment for individual financial gains.

Yet, it is unlikely that the equilibrium of American society will shift anytime soon. Revolutions in thinking have not affected it thus far. For example, consider the case of what has been called the Second Industrial Revolution.

⁴⁶ If it is able to, we (as sociologists) will need to rethink our understanding of the nature of our contemporary society.

THE SLICK ROAD TO ECONOMIC NATIONALISM

Many economists consider the period just after the Civil War (from about 1870-1920) America's Second Industrial Revolution. This is a misnomer. The period of time usually considered the First Industrial Revolution (approximately 1840-1860) did not include very much industrialization. Yes, there were some factories built, i.e. Lowell, MA, but most work was still performed by hand and small firms dominated the economy. So, if any name at all, one should give the period of 1870-1920 the title of "First Industrial Revolution." And yet, that is also misleading. Business in America had changed drastically during this time with an increased emphasis on efficiency and productivity, but it was not a revolution of industry. It was a revolution in the thinking about the business and the size of the market. It was the development of economic nationalism as a common mindset throughout America.

The United States had always been a nation. What developed during the period of time that some economists refer to as the Second Industrial Revolution was the national economic space. The centrality of the economy in the definition of American society was not always the case. Business interests were always important, but the economic interests did not define what it was to be an American, as they often seem to today. Nationalism developed prior to economic nationalism, which is the point many scholars miss when they insist that all human society is primarily an economic entity and that the only movement in history is of an economic flavor.

Big business developed from the imagination of men such as John D. Rockefeller and Andrew Carnegie. They consolidated many small firms to form large, bureaucratic

enterprises primarily concerned with efficiency and profits. This transformation in the American marketplace was not inevitable or part of some great movement of history; it simply happened by chance and the work of visionaries. One should not overstate the effects of the Civil War on the emergence of economic nationalism. Standard Oil was not incorporated until 1870, five years after the war ended. Big business was just beginning to emerge during the war years, and business primarily became nationalized as a result of new ideas, not economic conditions. Rockefeller's vision should not be underestimated. Standard Oil was something brand new. It challenged the legal structure of the time. It was not inevitable that the Civil War and even industrialization would lead to the emergence of big business.

Standard changed the way that America does business, and it also helped to define the relationship between business and government in the age of economic nationalism. The emergence of big business in America brought a dramatic change to this dynamic.⁴⁷ The market grew from local to national. Business became a rational pursuit, and businessmen⁴⁸ began to keep an accurate account of their losses and gains, in order to better calculate their profits. It was a whole new age of enterprise.

The definition of the market changed dramatically—from the local to the nation and, eventually, to the world. New natural resources, such as petroleum and large supplies of coal, were discovered. These elements required processing before they could be sold to consumers. A large amount of capital was required in order to start a business

⁴⁷ This is not a qualitative change in American society. It is a change in the economic sector, but it is a change that was derived from the modern framework. It is the emergence of a national economy. Which, after all, one should expect to emerge in a nation.

⁴⁸ And it was *businessmen*. Of course, the women were relegated to the home.

in these new industries. And the only way to ensure profitability was to be able to serve an increasingly large market. Due to economies of scale, such products could only be processed efficiently in relatively large quantities. The local market demand was insufficient, and the new industries sought a brand new market, the national one. And so the nation became a market. It was the birth of the concept of the “American economy.” Before this time, no such entity existed. Yes, there were fiscal policies of the national government, but all markets were local and so what happened in one city or state did not really effect very much what happened in another locality.

Most of the populace lived on the eastern side of the country and settlers were just beginning to fulfill their “manifest destiny” to move westward. Most of the country was agrarian, and American farmers sought more and more arable land. As settlers moved farther and farther west, they needed a transportation system not only to bring them and their supplies to the new territory, but also to send goods and produce back east to the urban market centers. A national railroad system was developed (with much assistance from the national government) in order to facilitate development. Cities too began to develop at a rapid rate. And with them, national companies emerged.

At first businesses had to do some tricky organization in order to serve a national market, and it was only later after the national market was a reality, that corporation law began to change to reflect it. The Standard Oil Company is an interesting illustration of this transformation, because not only was it one of the first to build itself up, but it was the first significant consolidation to be broken up by the Sherman Antitrust legislation. The decision of Chief Justice White, in May 1911, reaffirmed the primary importance of

national interests even in the midst of a revolution in economic thinking. The market had changed but the values of the nation had not, and so a private enterprise (such as Standard Oil) that disregarded the notion of a level playing field and instead trampled on the principle of equality, would not be tolerated. In the United States, it has always been the case that economic interests must be portrayed as being for the good of the nation—the people--or they are not accepted.⁴⁹ The Standard Oil Company did not adhere to this basic tenet and was divested by the federal government by force. Years later, AT&T understood this notion better and agreed to a consent decree that, while splitting the company in two, allowed the it to emerge from divestiture and remain a very powerful force in the industry.⁵⁰ As the relationship between business and government has changed over the years, its underlying character has remained the same—it is a careful compromise between private and public interests. Through the history of the nation, primary importance has been towards policies that best serve the public good

That is not to say that the relationship has not been altered by the changing world. In order to understand how drastically things changed, it is helpful to understand how they were before. America was an agrarian-based economy with small family farms. Although the farmers were always oriented towards profit, they valued the individual and so felt no pressing need to consolidate and move towards greater and greater efficiency with increased technology. Size and power were to be feared. These farmers valued their

⁴⁹ Here the perception is more important than the reality. As long as a company appears to be working in the best interest of the nation, it is unlikely to come under duress from antitrust regulators.

⁵⁰ Fifteen years since the divestiture, AT&T still commands about 50% of the market share in long-distance.

independence and did not want to work for the state or anybody else, but were content to work their farm, save and invest their profits, and carry on a rural existence.

Government was mostly local. The early Americans distrusted a strong central government and so most laws and regulations were enforced on the local or state level. The United States was a small but growing nation. Business was very much alive. Private property rights and sufficient contract law allowed for this to be true. However, the business community was made up of local merchants with small shops found in each town. The main business of America was the family farm, which was very much a business (unlike in other countries). The family farm provided more than a subsistence output and American farmers had an ulterior motive: profit.

Bank credit was available, even without the existence of a central banking system. (The Civil War, as we have seen, necessitated a national banking system, which may have been another factor making it easier for big business to develop after the war and not in the midst of the so-called First Industrial Revolution.)

Rockefeller's Standard Oil could not have developed a hundred years earlier. The foundation did not yet exist—in terms of adequate corporation law and availability of financial instruments. But such an enterprise could have developed during the industrial revolution. As John T. Flynn relates in *God's Gold*, by

1840 there was present, even in that scarcely launched small factory age, almost all of the devices which Rockefeller and his contemporaries would use to build the era of mass production . . . Not only was the corporation being developed, but the widespread sale of stock to provide the funds, while at the same time a few gentlemen at the center usurped the control, was already understood by a few.⁵¹

⁵¹ John T. Flynn, *God's Gold: The story of Rockefeller and his times* (New York: Harcourt Brace and

Yet the emergence did not happen then. What was missing was the idea.

Suddenly, after the Civil War, the age of big business emerged. Standard was not the only trust that developed during this time period. Pools, rings, and various combination agreements sprang up in many industries. Western Union bought up all of the telegraph lines, New York Central Railroad was formed by a consolidation, and other “combinations” (a common euphemism for trust used in this period) developed in such goods as salt, rope, and whiskey. “Between 1898 and 1902, 198 trusts or giant new corporations were created in coal, sugar, and other industries . . . ”⁵²

But Standard was the most conspicuous, most lambasted trust to exist. Its size and power were unlike any trust that had ever been before, and its business practices were revolutionary.⁵³ It changed everything about business in America. And it was amazingly successful, making Rockefeller the richest man in the world and capturing 90% of the market share of refined petroleum products at its peak.

What is most astonishing is that Rockefeller was able to accomplish all of this in the volatile, infant oil industry. Rockefeller first entered the industry only three years after Drake first discovered a method of acquiring large amounts of the substance from the earth. It was a wild time for the industry. No one knew if, when, or where the

Company, 1932), 22.

⁵² Ron Chernow, *Titan: The life of John D. Rockefeller, Sr.* (New York: Random House, 1998), 389.

⁵³ It has been noted that those who wrote antitrust legislation simply read the history of the Standard’s practices and outlawed them. This may be an exaggeration, but it is uncanny how much of what Standard did to get ahead was made illegal in later years.

substance would be found next and if the current wells would be able to meet the future demand.⁵⁴

The oil was found on top of rivers in the Oil Regions, and salt diggers would also find it when digging for salt. They did not know its value and often cursed it. In fact, historians disagree who was the first person to discover that petroleum could be used as an effective illuminant. It is well established that it was first used as a cure-all medicine by Native Americans, and that Samuel Kier was the first to see a monetary value in oil: bottling and selling it as early as 1850 as Kier's Oil. He sold it nationally in 8 ounce bottles, and marketed it for its curative properties.⁵⁵

On more speculation than knowledge of what would come of his venture, George Bissell formed the Pennsylvania Rock Oil Company, with his partner Jonathan G. Eveleth, and leased some land along Oil Creek. The new company sent a sample of the petroleum to a Yale professor for analysis. Professor Silliman sent back a very favorable report in 1855. With this knowledge, the Pennsylvania Rock Oil Company renamed itself Seneca Oil Company and contracted with E.E. Bowditch and E.L. Drake to dig for oil. Drake finally struck oil in August 1859, and with that the oil craze began.

But the man whose name was destined to become most closely associated with oil did not succumb to the excitement.

⁵⁴ Other industries, such as automobiles and steel, also started out as competitive and then became more centralized. (In fact, economic theories have developed to explain this phenomenon. Ironically, the Chicago school—that is the Rockefeller-endowed University of Chicago—theory explains that only a certain amount of firms in a given industry is the efficient structure and artificially adding more firms brings down productivity.) However, when Standard Oil was created and Rockefeller began buying up the competition and eliminating waste, there was no theory to explain his actions. It had never been done before and it changed the dynamic between business and government forever.

⁵⁵ Ida Tarbell, *The History of the Standard Oil Company* (New York: The Macmillan Company, 1925)

John D. Rockefeller

John D. Rockefeller may have been the greatest capitalist in America's history. And he was also the most hated, and later revered, figure to emerge from the Big Business era. Rockefeller's life story has already received the attention of much scholarship, and thus, I will not go into detail here. I will simply sketch the important details from his youth that help in understanding his decisions and drive that compelled him to amass his great fortune—those decisions relevant to the emergence of big business in America in the 1880s and the nature of the relationship between business and government.

Rockefeller was born on July 8, 1839 into an “middle-class” household. His parents, Eliza and William, led a strange, and estranged, existence. His father, later known as “Devil Bill,” was never home for long, leaving the family for months at a time. He supported his family by peddling “cure-alls” in the days before modern medicine.⁵⁶ At times he passed himself off as an eye and ear specialist; other times he doled out doses of a supposed “cancer cure.”⁵⁷ While William was gone, Eliza was left to care for the children. She was strict and fervently religious. Running a good Baptist household she did not allow alcohol, cards, or dancing. Since Eliza never knew how long it would be before her husband's next arrival, she was frugal with money, admonishing the children always to save. When William returned from his trips, he would bring presents and wads

⁵⁶ This is particularly ironic given that John D. Rockefeller later gave millions to the development of modern medicine.

⁵⁷ Years later, after John D. had made millions, it was exposed that “Devil Bill” was a bigamist who had led two separate lives—one as William Rockefeller and the other as William Livingston. (See *Titan* by Ron Chernow.)

of cash (which he kept rolled up in a sock drawer according to one Rockefeller biographer). It is no wonder that John D. cultivated a fervent relationship with money.

Rockefeller never went to college; instead, he took a three-month business class at E.G. Folsom's Commercial College and then found a job.⁵⁸ Rockefeller spent his early career in the produce business. First as a clerk at a produce merchant and as a partner in Clark & Rockefeller, a wholesale merchant firm. Rockefeller and his partner, Clark, began their company with \$4,000 capital (which was a sufficient amount at that time). Clark was older than Rockefeller, but Rockefeller had saved almost half of his investment (equivalent to a year's salary) in only three years of work. Rockefeller acquired the other \$1000 from a loan from his father.⁵⁹ The wholesale produce business that Clark and Rockefeller were in was capital-intensive, requiring much more capital than their initial investment. Rockefeller was known for his ability to acquire loans for the business. He built up a very strong credit for the young firm because he valued his access to capital, and always paid his notes on time. By the time he was 20 years old, Rockefeller was already a successful businessman.

John D. Rockefeller developed a rather unique, religious relationship with money which has been the subject of much analysis. All of Rockefeller's numerous biographers from Ida Tarbell to Allan Nevins, and John T. Flynn emphasize Rockefeller's religiosity, but all had difficulty reconciling it with Rockefeller's business drives. It was an issue that they had trouble explaining. Actually the connection is quite clear if one couches one's thoughts about Rockefeller in terms of the drive of the individual, the social

⁵⁸ See *Titan* by Ron Chernow.

mobility of the open stratification system of the United States, and the cool rational emphasis of the Baptist denomination of which Rockefeller was a part. His life makes perfect sense, in all of its uniqueness. Ron Chernow, Rockefeller's most recent biographer does a better job at understanding these two seemingly contradictory forces in Rockefeller's life: the love of money and the love of God. Yet even Chernow mocks Rockefeller's ability to "rationalize" his business ethics.

The fact is that Rockefeller did not see or *feel* a contradiction. He meant it when he remarked, "God gave me my money." The two forces that drove Rockefeller's life are reconcilable.

Max Weber provides a thorough discussion of the affinity of certain denominations of Protestantism with the pursuit of profit in his book, *The Spirit of Capitalism and The Protestant Ethic*. Weber's main theory in this book was that certain denominations of Protestantism found in America, such as Calvinism and others that subscribed to the theory of predestination, acted as the "spirit of capitalism," providing a rational framework for the continuous striving for profit.

Although many scholars have shown Weber to be factually wrong in his overarching theory, religion does have an ability to rationalize many things for certain people. We can not ever really know what Rockefeller felt, but we can examine his life. He did not have a nervous breakdown. He was not tormented. He lived to be 98 years old and he was striving for 100. And we know that Rockefeller's religiosity played a major role in his life as a businessman. "Rockefeller was convinced that he had a God-

⁵⁹ It was to be a gift on Rockefeller's 21st birthday, but since John D. was only 20 his father charged him

given talent for making money, was obligated to develop it, and was liberally rewarded by God. . .”⁶⁰

Rockefeller’s life parallels Weber’s argument to some degree, and, in a way, it proves that Weber made a mistake. Rockefeller was the exception. Most people could not so easily square religion and capitalism, at least not with the excessive practice of capitalism which they saw practiced by such men as Carnegie and Rockefeller. They chose not to connect their pursuit of profit with their religious beliefs,⁶¹ but with something higher, their very identity. (In fact, Rockefeller made this identification easier as he aided the development of economic nationalism.)

Rockefeller saw the nation as one economic space and he was one of the first to make this concept palpable by using one central office (infamously known as 26 Broadway) to control an enterprise large enough to serve the nation in its entirety. This represented a drastic change in thinking from the past, when a merchant served his own territory or served another market through the means of a third party which he did not control. Rockefeller, being the good Baptist, sought control and efficiency, and made these ideas two of the central pillars of modern business.

As Flynn and other biographers emphasize, Rockefeller was a planner. He thought through every decision completely and then acted with the utmost confidence and assurance of success. It is hard to tell if it was his thorough planning or complete

10% interest until his birthday.

⁶⁰ Chernow, 56.

⁶¹ In fact, most of Rockefeller’s fiercest critics lambasted Rockefeller’s claim that his wealth was somehow God-given.

confidence that was his true trump card. Whichever, his success is one of historic proportions.

Rockefeller always knew where he stood on the ladder of success. He was almost obsessed with accounting. As a young clerk, Rockefeller maintained an accounting of each of his expenditures in a book known simply as "Ledger A." Rockefeller always stressed the importance of knowing your own worth, where you stand, and he was severely critical of his competitors' lack of attention to finances. (In his memoir he probably exaggerates the problem when he states that his competitors did not even know if they were making or losing money.) Today's business practice requires a strict attention to finances, but this was not the norm when Rockefeller started his business career. Rockefeller's accounting acumen was the exception that has become the norm, like many of his business methods.

In Business

Overproduction plagued the petroleum industry from its inception. Boom towns, such as Pithole, PA, burst in less than a decade as the oil was discovered and exploited until it lost its worth. It is notable that Rockefeller did not enter the business right away, but stayed away watching. In 1862, Rockefeller was finally convinced of the possibilities in oil. “With his partner, M.A. Clark, he invested several thousand dollars in a new firm which was called Clark and Andrews. His own name was kept out of it. But John D. Rockefeller was now in oil.”⁶² In 1865, Rockefeller turned his attention wholly to oil. He bought out his partner, Clark, and began Rockefeller and Andrews.⁶³ Why now? It was the end of Civil War. Oil was continually being discovered, and, for the first time, there was some assurance of a steady supply.

In 1862, the same year that Rockefeller first entered the oil business, crude oil producers met to discuss some way to save their business. They knew that some form of consolidation or cooperation was necessary to stop the downward spiral of price. “The flood of oil threatened to destroy them. . . Let us combine, they said, to hold the price of oil up to two dollars a barrel.”⁶⁴ And yet they could not stick to the mutually agreed to constraints. The voluntary method of management could not work in a society of self-interested individuals. It is easy to understand why they later resented Rockefeller and his ability to bring rationality and control to the industry. Rockefeller faced this state of the industry and changed it, and with it changed the structure of business.

⁶² Flynn, 107.

⁶³ Rockefeller’s original oil partner, Andrews, left the business in 1880 for \$1 million.

⁶⁴ Flynn, 107.

In June 1870, Rockefeller's refining business underwent the first, of what would become many, structural transformations in order to better serve the new market. All of Rockefeller's interests were combined to become the Standard Oil Company. As Tarbell reports, "The capital of the new concern was \$1,000,000. The parties interested in it were John D. Rockefeller, Henry M. Flagler, Samuel Andrews, Stephen V. Harkness, and William Rockefeller."⁶⁵

From this point on, Rockefeller acted rather quickly to amass a degree of control over the industry. One of the most infamous anecdotes about this period is that of the South Improvement Company. Every biographer/historian tells a slightly different version of the story of the South Improvement Company. For the purpose of my theory, the specific details are not very important. The basic story is the following: The South Improvement Company was formally organized on January 2, 1872. It was an agreement between selected refiners and the railroads. The SIC had obtained written contracts with the railroads dividing freight proportionally among the railroads and giving SIC members discounted rates which would be half of the newly doubled open rate. One peculiar feature of this agreement was the idea of the "drawback." The South Improvement Company was to receive its rebate even on freight that the railroads carried for non-SIC refineries. In addition, all of the way bills of the railroads (listing each refinery which used the railroads as well as how much oil was sent and to where) were to be sent to the South Improvement Company.

⁶⁵ Tarbell, 44.

Most agree that it was not Rockefeller's idea and that it never actually did any business. The one fact that should be noted, and a fact that all scholars tend to agree on is that Rockefeller used the signed contract between the members of the SIC and the railroads to convince the other refiners in the Cleveland area to "join" Standard, in exchange for cash or Standard stock.⁶⁶ According to Flynn, within three months 20 of Cleveland's 25 refineries had sold out to Rockefeller.

It may be that the other refiners did not even need this much convincing. The oil business was new and unstable, and no one (except for Rockefeller) was sure that it would be around tomorrow. And so what if he did tell them about this new deal that they could only be a part of if they joined Standard Oil. Wal-Mart is able to sell products very cheaply because it receives a quantity discount on its merchandise. This is expected and allowed today, but competing to eliminate your competition was something new in Rockefeller's day. History shows that many of the competing refiners took that cash and quickly got out of the unstable oil business. Others refused to sell and remained independent, but most of the Cleveland refineries sold out to Rockefeller and very quickly Standard Oil commanded a monopoly in the Cleveland area.

The plan worked out as follows: Rockefeller in Cleveland, Logan and Frew in Philadelphia, Lockhart, Waring, and Warden in Pittsburgh, and Jabez A. Bostwick in New York agreed to organize a central corporation or association which would comprise the most powerful refiners in the business. Each one in his respective territory was to buy up, with the aid of the pressure the central organization would supply, their competitors in

⁶⁶ Rockefeller glosses over these transactions in his autobiography. As he tells the anecdote, "Late in 1871, we began the purchase of some of the more important of the refinery interests of Cleveland. The conditions were so chaotic and uncertain that most of the refiners were very desirous to get out of the business. We invariably offered those who wanted to sell the option of taking cash or stock in the company." From *Random Reminiscences*, 95.

their own district. They would demand from the railroads a contract which would give them a large rebate on their own shipments and an equally large drawback on other people's.⁶⁷

When the new "double" rates were mistakenly published prior to the public announcement of the South Improvement Company, there was a public outcry. Congress was urged to investigate.

From March to April 1872, a Congressional Investigating Committee investigated SIC. As a direct result of these hearings, the South Improvement Company's charter was repealed. But Rockefeller had already created a monopoly in Cleveland.

The South Improvement Company was very short-lived and it never actually did any business. Rather it was a plan--an early attempt to organize the railroads, control production, and lower transportation costs by deals of rebates and drawbacks.

This early plan was foiled, but Rockefeller was determined. The Standard Oil Company would eventually practice variations on its Cleveland coup in other markets.

By August 1872, Rockefeller had set up a National Refiners Association with himself as President and J.J. Vandergift (from Oil Region) as VP. It too had a short life, disbanding in June 1873. In May 1873, Rockefeller went back to the Oil Regions to offer a new "open plan" (the Pittsburgh Plan) that would allow entry to all. The producers were not interested, and Rockefeller quickly saw the limitations of voluntary associations in the business realm. It was too difficult to convince producers to place the interest of

⁶⁷ Flynn, 153.

the good of all above personal self-interest, thus limiting excess capacity so that all may benefit in the future instead of producing a relatively large amount at today's low price.

Rockefeller and his associates continued to expand Standard Oil, usually by the process of acquiring its competition. Rockefeller often paid high prices for refineries that were high cost producers. He did so because he wanted to retain the interests of the owners. Practically, he did not want to buy them out and have them use their new wealth to build a new refinery to compete with him. Secondly, he understood the importance of loyalty, and of the need for the once-owners to maintain their status and identity (and not to mention their expertise). As Ron Chernow puts it, "The creation of Standard Oil was often less a matter of stamping out competitors than of seducing them into cooperation. . . This policy, which kept colleagues from defecting and forming competing companies, was one of many expensive extravagances that accompanied the creation of the monopoly."⁶⁸

Sometimes the seduction was not so sweet. Rockefeller often made secret deals with other people in business for their mutual benefit. Today this is normal business practice. Yet at the time, this in itself was quite unusual. Flynn relates that Rockefeller owned a plant at Hunter's Point, LI to barrel Standard's refined oil once it arrived by tank car from Cleveland on the New York Central. Since railroads were privately owned at the time and the industry was fairly new, there existed parallel train tracks so one could choose from multiple railroads to transport oil from any of the major refining centers to New York or any other significant urban area. This is what gave Rockefeller his

⁶⁸ Chernow, 162.

bargaining power. If the railroads had consolidated earlier, as Rockefeller did with the Cleveland refineries, they would have been able to set the rates. As it was, each was competing for Standard's cargo. Ironically, it was the competition that Rockefeller lambasted that allowed his monopoly to grow.

In this case, the Erie Railroad owned a barreling plant in Weehawken, NJ and was interested in obtaining some of the Standard's freight. Rockefeller saw the possibility of pitting the two railroads against each other to obtain the best rate for Standard, so Rockefeller made a deal. Rockefeller agreed that he would use the Erie to transport some of his refined oil (diverting it from the New York Central) if Standard could operate the barreling plant in Weehawken owned by the Erie. Of course, the Erie agreed because that phantom evil "competition" forced it too. Of this move by Rockefeller, Flynn remarks, "Now see the profound shrewdness of this move. Every barrel of oil shipped east by his rivals passed into his hands at Weehawken. Thus he came into possession of full information about the volume, character, and destination of their sales."⁶⁹

Rockefeller was constantly looking for ways to lower his costs of production so he could effectively eliminate the competition by selling at a lower price, yet still make a profit. Rockefeller understood that by vertically integrating he could greatly decrease the average cost of production. By 1869, one year prior to the establishment of Standard Oil, Rockefeller's company was already fairly vertically integrated. According to Flynn,

He had his own warehouses in New York. By this time the wooden tank car had arrived and he owned his own tank cars. . . The firm loaded and unloaded its own tank cars and employed several chemical and mechanical

⁶⁹ Flynn, 185.

experts to improve its processes of manufacture and make a greater use of the crude by-products.⁷⁰

The traditional containers used to transport oil were barrels, but they were expensive containers, often costing more to manufacture than the price of their contents. Tank cars, which could transport oil at a lower cost, had been developed but the railroads did not want to invest in them. “In 1874, Standard Oil—with that kindly solicitude for the railroads’ welfare that artfully tied them up with myriad strings—began to raise tens of thousands of dollars to build oil-tank cars, which they would then lease to the roads for a special mileage allowance.”⁷¹ The tank cars gave Rockefeller a further advantage with the railroads. Through further negotiation, the natural transportation advantage afforded the refineries that were located in the Oil Regions was removed. Rockefeller no longer had to pay for crude oil to be transported from the Oil Regions to Cleveland and the rates to New York were the same for everyone.

The infamous railroad rebates and drawbacks that have tarnished Standard’s legacy have held up as the epitome of evil. Rockefeller explains them easily. He states, “The reason for rebates was that such was the railroads’ method of business. A public rate was made and collected by the railroad companies, but, so far as my knowledge extends, was seldom retained in full; a portion of it was repaid to shippers as a rebate.”⁷² History seems to forget that rebates were not illegal for many years, and actually were, in a sense, fair. Rockefeller was able to guarantee shipment of a set capacity of oil that others could not promise. Why shouldn’t he receive a better rate? The drawbacks, the

⁷⁰ Ibid., 136.

⁷¹ Chernow, 170.

most maligned practice of all, were nothing more than an agreement between the railroads and Standard—a contract that the railroads *agreed* to, and yet Standard suffered the public criticism for the practice. And, as Ron Chernow notes, Standard Oil was not the only company to use drawbacks. In 1875, John W. Garrett, the president of the Baltimore & Ohio Railroad offered Camden Consolidated Oil Company “a ten-cent-a-barrel drawback on *all* refined oil sent via the B&O [emphasis in original].”⁷³ (That Camden Consolidated was actually owned by Standard Oil is not relevant because Mr. Garrett thought he was dealing with an independent refiner.)

The railroad rebates were significant for decreasing the average cost of refining crude oil, and they continued with the first pipelines—before Standard primarily used its own lines. “In the spring of 1868, Jay Gould hatched a secret deal with Rockefeller and Flagler that gave them shares in a subsidiary company called the Allegheny Transportation Company, which was the first major pipeline network serving Oil Creek. Through this deal, the Cleveland refiners received a staggering 75 percent rebate on oil shipped through the Erie system.”⁷⁴

Standard’s practices were often called “unfair” and “anti-competitive.” The controversy over railroad rebates and drawbacks was related to the designation of private railroads as “common carriers.” Railroads were developed with a significant amount of public wealth, in the form of the land grants given to railroad companies, and yet they were owned and operated by private investors. In this role, many felt that they should be

⁷² John D. Rockefeller, *Random Reminiscences of Men and Events* (New York: Doubleday, Doran & Company, 1933), 107-8.

⁷³ Chernow, 167.

⁷⁴ *Ibid.*, 113.

forced to provide equal treatment to all shippers. The debate is really not so clear when one considers that the railroads were trying to make a profit, running a railroad involved high costs, and there was intense competition. Standard could guarantee significant daily shipments that greatly decreased operating expenses. With government as the owner of the railroads this profit motive does not exist and it's easier to argue for equal rates for all. Often historians apply their own, contemporary ethics that exist within today's moral and legal framework to the past that they study. This is not fair to those who have gone before and it does little for our understanding of human society.

Many of Standard's more innovative policies have become common modern business practices. By the 1880s, the Standard was not dependent on bankers, but had built up its own cash reserves and was extremely liquid. In being so, "Standard Oil anticipated a major feature of the twentieth-century economy: the tendency of sophisticated, cash-rich corporations to outgrow their traditional bankers and become financial-service giants in their own rights."⁷⁵

The Standard did not suffer during depressions because Rockefeller was fiscally conservative and was sure that the company maintained a large cash reserve. Because of these past actions, during the depression that ensued after the stock market crash of 1893, Standard was able to buy Crescent Pipe Line Company and other oil properties from the Mellon family in 1895. Standard's conservative fiscal practices gave it an advantage, which, of course, detractors immediately labeled unfair when all that Standard was doing was profiting from its own frugality.

⁷⁵ Ibid., 336.

Even Rockefeller's critics cannot fault his fiscal conservatism: he always paid his debts and Standard Oil always had a solid financial base—which is much more than could be said for many of the companies of the time. As Tarbell states, “In 1872 the Standard Oil Company paid a dividend of thirty-seven per cent, but in 1873 they cut it to fifteen per cent. The profits were going almost solidly into the extension and solidification of the business.”⁷⁶

Rockefeller used the cash to “vertically integrate.” Of course at the time, there was no term for what he was doing, besides “cutting costs.” Instead of buying barrels to hold his oil from a retailer, Rockefeller decided to manufacture his own barrels. Instead of paying railroads to haul his oil, Rockefeller eventually laid his own pipelines. And this is one of the ways that Rockefeller increased efficiency. He also cut down on general waste, and his frugality is legendary. If 45 drops of solder were used to seal a barrel, he would suggest attempting to use 43 instead. Rockefeller understood that operating on a large scale multiplies one's savings, no matter how small a difference it is per item. “Regarding each plant as infinitely perfectible, he created an atmosphere of ceaseless improvement. Paradoxically, the mammoth scale of operations encouraged close attention to minute detail, for a penny saved in one place might then be multiplied a thousandfold throughout the empire.”⁷⁷

Rockefeller so admired intelligence that he often turned some of his most bitter enemies into Standard associates. Standard's infamous attorney Samuel C.T. Dodd and even Rockefeller's eventual successor, John Archbold, were at one times fierce critics of

⁷⁶ Tarbell, 127.

Standard policies. Perhaps they were converted to Rockefeller's vision. Or maybe they lived by the maxim, "if you can't beat him, join him."

Rockefeller used the "brain trust" that he acquired to build up a powerful system of delegated functions. He chose smart people for his organization and he allowed them wide discretion. Only important matters were brought to the Board of Directors who met daily. From about 1876 onward, the members of the Board made it a habit to lunch together daily, which made them all aware of the general policies of other branches of the corporation and helped them to keep the big picture in perspective.

The Standard operated according to a committee system. Specialized committees oversaw the various functions that made up the Standard empire: transportation, marketing, manufacturing, purchasing, etc. Only large expenditures or major problems made it to the executive committee for discussion.

By December 1877, the Standard Oil Company had reached its peak, controlling roughly 90 percent of all domestic refined oil. "Perhaps a hundred tiny refineries still eked out a meager living in the interslices of the industry, but they were mostly tolerated as minor nuisances and scarcely threatened Standard Oil."⁷⁸ As oil continued to be discovered in new areas, such as California and Texas, Standard appeared with its pipeline at every new well. Overproduction kept crude oil very cheap and Standard was there to gather it and store it for later use. And the Standard also found a way to make this excess capacity profitable, by exporting.

⁷⁷ Chernow, 180.

⁷⁸ Ibid., 205.

By the end of the 19th century oil had been discovered in a number of other countries, but the production in the United States and Russia continued to dominate for some time. Not surprisingly, Europe was heavily dependent on foreign oil during this time and the European market offered a solution to the glut of overproduction. In 1867, Rockefeller's brother William joined him in the oil business. "He formed a separate firm called William Rockefeller and Company and sent William to New York, where he opened an office at 181 Pearl St. . . . Thus in 1867, Rockefeller had already split his business into two firms—one a refining firm in Cleveland, the other a selling firm in New York."⁷⁹ Rockefeller saw inadequacies in the European oil distribution system so Standard began to build its own in the late 1870s.⁸⁰ Standard began merchandising and marketing its product overseas, and

In 1885 the company ran its first oil tank steamer carrying a million gallons of oil . . . In about ten years the company had 70 large importing stations abroad, 4,000 interior stations, 16 manufacturing plants, 2,000 tank cars, 4,000 tank wagons, 150 coating vessels, and barges. It had more wagons retailing in Europe than it had in the United States.⁸¹

By the mid-1880s about 70% of America's oil went abroad.⁸² The Standard's first foreign subsidiary was the Anglo-American Oil Company established in England in 1888. It very quickly monopolized England's market for refined petroleum. In 1883, Russian oil first became a real competitive threat to Standard's hold on the European market. A railroad finally connected the Russian refineries to the European marketplace. Russian oil could be produced and delivered at a lower price than Standard

⁷⁹ Flynn, 126-7.

⁸⁰ Ibid., 246.

⁸¹ Ibid., 247.

oil. In 1898 that Russia's production of crude oil first exceeded America's, but America's dependency on foreign oil did not become a reality until much later.

There were other obstacles to overcome. There was tremendous animosity towards Standard, especially as size and power grew. Independent refiners at times tried to fight the Standard and numerous stories are told about such and such uprising or rate war, but the Standard was far too powerful to be driven out easily. When the Producer's Association attempted to use the trust formation against Standard Oil, it too was ineffective against Rockefeller's structure, which always reflected the vision of the entity, rather than simply representing its legal organization. The American Petroleum Company issued 200,000 shares in 1878, placing half of the capital "in-trust." They did this in an attempt to pool the crude oil and keep the price high. The trust did not last because the organization found it difficult to control who drilled for oil and to prevent "cheaters" from drilling more than their allotted amount.

Standard Oil was able to succeed mainly because it was constantly improving itself, with investments in research and development and a constant emphasis on eliminating waste, and finding ways to consume the competition.⁸³ In order to conduct its business in this way, a great deal of secrecy was necessary. Because the law governing corporations had not changed quick enough to keep up with the new shapes that big business took on, Standard was forced to disguise its true nature. Due to this, the public *and the press*, were often unsure about what was Standard and what was not. The speculation could be seen in the newspaper articles of the time:

⁸² See *Titan* by Ron Chernow.

The refiners and transporters, though separate parties, have been accused of being practically one. The United Line, with its pipes and tanks for storing, touches every point in the producing field . . . The Standard Oil Company, the great monopoly of oildom, is represented in the Board of Directors of the United Lines by the President and Secretary, although neither has ever attended any of the meetings.⁸⁴

News stories such as this one only increased the animosity towards Standard, and competitors continued to challenge Standard's supremacy.

The Standard's toughest battles sometimes became its greatest achievements. After a war with the Empire Transportation Company (a pipeline), a subsidiary of the Pennsylvania Railroad, in which rate cuts had dramatic effects for the pipeline and the railroad, the Standard won a tremendous bounty with a purchase price of \$3,400,000. "The final agreement was reached in October and on the seventeenth of that month the entire business . . . —refineries, pipe lines, tanks, wharves, shops, everything—were [*sic*] handed over to Mr. John D. Rockefeller."⁸⁵ A new pooling arrangement with the Pennsylvania Railroad was another positive outcome from this battle. The Standard agreed to ship a minimum of two million barrels per year via the Pennsylvania Railroads in exchange for "a 10 percent commission (read: rebate) on its shipments over the road . . . [and] Standard was designated as the evener . . . of a new plan brokered by the railroads whereby the railroad would receive 47 percent of all oil traffic; the Erie and New York

⁸³ It should be noted that Standard Oil was not always a first-mover. Standard did not move into the pipeline business until forced to by the Empire Transportation Company. See the following account.

⁸⁴ *The New York Times*, "Fortunes in Petroleum: Great interests centring in the oil-fields," 31 January 1880, 1.

⁸⁵ Flynn, 197.

Central 21 percent a piece; and the B&O 11 percent.”⁸⁶ In 1878, the “commission” was increased to at least 20 cents per barrel.

Another battle caused Standard to enter the pipeline business. The Tidewater Pipe Line was the first pipeline to the sea, and it was built by Rockefeller’s enemies as an attempt to bypass Standard-controlled United Pipe Line and the rebate-plagued railroads. Standard built its own railroad to the sea, and attempted to cut off Tidewater’s supply of refined oil but was unsuccessful. But then the creator of the Tidewater, Byron Benson, decided that he would rather work *with* Rockefeller. “Thus, within a year of completion, the pipeline that was supposed to emancipate independents from Standard Oil bondage was drawn into a railroad pool supervised by John D. Rockefeller.”⁸⁷ An agreement was reached in 1883 giving Standard 88.5% of the pipeline trade in Pennsylvania and leaving 11.5% for Tidewater.

Most every author bemoans Standard’s “unfair methods of competition.”⁸⁸ Yes, the Standard’s practices were sometimes unethical, but the worst offenses were generally not unique to Standard. Railroad rebates and bribery of public officials were common practices to the large business trying to cope with outdated laws and a whole new economic space. That everyone did these things does not mean that they were the way it should have been done, but that is precisely the point. No one knew how it should have been done. *It was all new*. It is more interesting to ask why was it done this way than to attack the actions of the visionaries.

⁸⁶ Chernow, 203.

⁸⁷ *Ibid.*, 215.

⁸⁸ Schlesinger, 89.

Through the years Standard Oil always won its battles because Rockefeller had equipped it well with large cash reserves and talented people. It was a new type of corporation that relied on capturing the economies of scale, of being able to serve a national (and later an international) market. This necessitated a smart and creative executive team. The directors of Standard had to come up with new methods for doing business since they were doing a whole new type of business. “To accomplish all these tasks of enlarging the market and improving the methods of manufacture in a large way was beyond the power or ability of any concern as then constituted. It could only be done, we reasoned, by increasing our capital and availing ourselves of the best talent and experience.”⁸⁹

What was so revolutionary about Rockefeller’s business plan was that it had no foundation in the past. No one had ever developed a national corporation, and, in fact, the legal structure was not set up for it. Many of Rockefeller’s legal problems came as a direct result of the lack of any legal way of conducting business the way that the Standard did business! Legally, one could not set up a company with subsidiaries nationwide with policies dictated from one central office. Each state had its own corporation law and usually jealously held on to its corporations by not allowing them to own stock in out-of-state companies. There was no federal corporation law to remedy this problem. As Rockefeller complained, “Our Federal form of government making every corporation created by a state foreign to every other state, renders it necessary for persons doing

⁸⁹ Rockefeller, 82.

business through corporate agency to organize corporation in some of the many of the different states in which there business is located.”⁹⁰

For years, Standard’s lawyers looked for legal ways to organize the company so that it could function according to Rockefeller’s vision. In 1879, the first Standard Oil Trust agreement was signed. The way it worked is rather simple. The Standard Oil Company of Ohio could not own companies outside of the state, according the corporation law of Ohio. Instead, the company assigned three mid-level employees to act as trustees: Myron R. Keith, George F. Chester, and George H. Vilas. These three individuals held stock in the subsidiaries of Standard. When they received dividends, they distributed them to the 37 investors of Standard of Ohio as individuals, in proportion to their stake in Standard (as a whole).

On January 2, 1882 a new agreement drafted by Samuel C.T. Dodd, Standard’s attorney, went into effect. New Standard Oils were set up in each state where the company held a majority of interests. To get around limitations in the corporation laws, so that one central office could control the operations of subsidiaries in other states, some tricky organization was necessary. Through the trust agreement of 1882, Standard Oil confronted this problem by placing all the stock from all of the companies under its leadership (about 40 at its peak) in the control of nine trustees. These trustees then issued trust certificates to the other stockholders.

This change in trust formation brought about the forerunner of stock options. Rockefeller encouraged his employees to purchase Standard stock, and even provided

⁹⁰ Ibid., 67.

them with loans in order to do so. “As such shareholding became widespread, it welded the organization more tightly together, creating an esprit de corps that helped in streamrolling over competitors and government investigators alike.”⁹¹

It was a business organization that could not last; it was built on a great amount of trust (what would happen if one of the nine did not turn over the dividends to the trust certificate holders?). Since the “trust” itself existed somewhere outside of the law—later being ruled illegal by the courts, there was no real recourse. And the trust also had a limit of mortality: what if someone died? So it did not last and it was not meant to last. It was at best a temporary solution before there could be a change in sentiment towards business, and before a national business economy would be welcome by government and the public alike.

Finally in the early 1890’s, a new law in New Jersey allowed its corporations to own stocks in other corporation, and so the Standard Oil Company changed its legal structure once again. On March 21, 1892, in response to an unfavorable court ruling, the Standard Oil Trust was dissolved and replaced by the Standard Company (New Jersey). The Standard Oil of New Jersey became Standard Oil (New Jersey), was re-capitalized, and it bought out the original Standard interests, transferring ownership from the defunct trust to the new holding company. Standard Trust certificate holders exchanged their certificates for shares in 20 companies. All of the original stocks were held by the new corporation and everything functioned the same way that it had done before. The only

⁹¹ Chernow, 222.

place where the corporation looked any different was on paper. Orders still originated from 26 Broadway, Standard Oil's New York headquarters.

In June 1899 the legal form of the corporation changed slightly again from a corporation which both conducted business and held stock in other corporations to simply a holding company. "Standard Oil became a full-fledged holding company under New Jersey law with the legal parent, Standard Oil of New Jersey, controlling stock in nineteen large and twenty-two small companies. . ."⁹² Again the way that the company functioned did not change at all.

This structure, with a strong central office and delegation of details, allowed the company to capture a degree of control and efficiency unknown previously to American business. The company "had obtained a complete mastery over the oil industry, controlling 90 per cent of the business of producing, shipping, refining and selling petroleum and its products, and thus was able to fix the price of crude and refined petroleum and to restrain and monopolize all interstate commerce in those products."⁹³

The Standard paved the way for a legal business structure that could serve the emerging national market. The only significant domestic competitor to challenge Standard's monopoly was the Pure Oil Company, which developed in 1895 as the result of a consolidation of thirty refiners. Only a consolidated company could capture the same kind of economies of scale that Standard enjoyed in order to pose a significant threat. It is significant that today, 90 years since the antitrust legislation, the oil industry

⁹² Ibid., 430.

⁹³ Opinion by: [*30] [**504] MR. CHIEF JUSTICE WHITE. *THE STANDARD OIL COMPANY OF NEW JERSEY ET AL. v. THE UNITED STATES*. 221 U.S. 1; 31 S. Ct. 502; 1911 U.S. LEXIS 1725; 55 L. Ed. 619 May 15, 1911, Decided

remains a worldwide oligopoly. As Rockefeller understood, the petroleum industry is one that is most efficient when it can produce at a large capacity, in order to meet its economies of scale.

The modern business emphasis on efficiency and organization towards profit is largely a construct of Rockefeller and his contemporaries, but that is not to say that Rockefeller was not challenged by the legal system as he built up his empire.

Investigations and court cases were brought against the Standard from the time that it first gained any real power until its dissolution. Most of the early rulings were favorable to the Standard. However, there were many of them and they quickly became a nuisance.⁹⁴ In October 1878, the Pennsylvania's Commissioner of Internal Affairs, J. William McCandless found a complaint filed by the Producers Protective Union unsubstantiated. On April 29, 1879, a Grand Jury of Clarion County indicted John D. Rockefeller and other Standard and United Pipe Line associates for criminal conspiracy to secure a monopoly of the oil industry.⁹⁵ Rockefeller and most of the others evaded arrest, but four who were in Pennsylvania were arrested and made bail. But as with most of the other cases against Standard in the early years, not much came of it.

Also, in 1879, the New York Legislature set up the Hepburn Committee (headed by Alonzo Barton Hepburn who would one day become a Trustee of the Rockefeller Foundation) to investigate the ties and secret dealings between the railroads and the oil industry. "For the first time the name of John D. Rockefeller came to have a national

⁹⁴ It is important to note that many of these cases were driven by those very people whom Rockefeller had attempted to buy out in the beginning. They did not come close to reaching to his level of success and they were angry.

⁹⁵ (This was not a civil complaint but a criminal one!)

currency as the symbol of the new order and its evils.”⁹⁶ As a direct result of the hearings conducted by the Hepburn Committee (where the Standard officials avoided answering the questions—a tactic often used in future court dealings), Hepburn “recommended to the legislature a group of acts creating a railroad commission, regulation of railway rates and accounts, all of which ultimately became law.”⁹⁷

The Standard Oil name became tarnished through all of these court proceedings, and, in at least one instance, Standard was falsely blamed. Three Standard officials were indicted in July 1886 in connection with the alleged conspiracy to blow up the Buffalo Lubricating Company. The judge quashed the indictment seeing no connection between Standard and the attempt made on the lubricating company.

By the late 1880s, the antitrust sentiment was building. In 1888, the New York State Senate began an inquiry of trusts and the House of Representatives in the U.S. Congress’ Committee on Manufacturers began to investigate trusts that same year. On July 2, 1890, the Sherman Antitrust Act was signed into law by President Harrison. The law was applied in the proceedings that had been instituted in the Supreme Court of Ohio against the Standard Oil Company of Ohio that same year. The charge was that Standard Oil Company of Ohio had allowed another organization (the Standard Oil Trust) to assume its privileges granted by charter. In 1892, the court ruled against Standard and it was forced to reorganize in order to comply with the ruling. But the hated practices continued and in November 1906 the federal government filed an antitrust suit against Standard Oil in Missouri. Between 1906 and 1907, numerous cases sprang up against

⁹⁶ Flynn, 218.

Standard throughout the country. One such case that proved to be a bitter defeat for Standard was initiated in Illinois. Standard was charged with continuing to take illegal railroad rebates. On August 13, 1907, Judge Kenesaw Mountain Landis of Chicago handed down a decision fining the Standard \$29,000,000. This was the largest judgement ever ordered against a U.S. corporation up to that point. The case was immediately appealed to the U.S. Circuit Court of Appeals, and in August 1908 the appellate court revoked the fine and ordered a retrial. On November 20, 1909 the Standard Oil Company of New Jersey was ordered dissolved as a holding company. On March 9, 1910, the attorneys for Standard Oil filed briefs in the Supreme Court challenging the November 1909 decision. The decision that came down in May 1911 was disastrous for Standard. Chief Justice Edward White's opinion upheld the decision of the lower court and ordered the Standard Oil of New Jersey dissolved.

And yet the verdict in this case was not the death knell for big business in America. Not only did the directors of the newly "independent," formerly-Standard companies still meet often at 26 Broadway to discuss policy issues and management (being careful not to take notes), but Chief Justice White's opinion contained within it a loophole of sorts.⁹⁸ He changed the Sherman Antitrust Act from being against all forms of monopoly to outlawing just those companies whose conduct could be proven to be lead to "undue restraint of trade." That is, monopoly conduct, not structure, was ruled illegal. White effectively gave big business a legal way to flourish in America, as long as

⁹⁷ Flynn, 220.

⁹⁸ Ironically, the dissolution of Standard Oil actually increased the wealth of John D. Rockefeller. The market capitalization of the Standard Oil holding company had always been kept artificially low in accordance with Mr. Rockefeller's conservative fiscal policy. After the dissolution, speculation in the

it acted like an equal member of society. If it achieved exceptional success, it would be suspected of engaging in unfair tactics. That is, unless it was one of the few businesses deemed to be “natural” or “public” monopolies, working for the collective good. In that case, its success was equated with the success of the nation.

stock of those companies that once belonged to Standard forced the price of the stocks higher and higher.

Regulation of Business

Business in America has always been regulated, although originally most regulation occurred on the state or local level. Primarily, this was because only state and local business existed. It was only with the dawning of economic nationalism and big business that federal regulation became necessary.

As this change was occurring, somewhat of a regulatory vacuum existed: the state and local laws had been ruled inadequate by the courts, but no new federal regulation had been developed to take its place. It was a period that could not, and did not, last, but it offered tremendous opportunities for political corruption in attempts to further delay new regulation.

To be a politician became a position of power, of status. But the government was relatively weak and political cache was not enough to quench the ego of most politicians. The answer was to turn to graft. Many politicians were “bought and sold” during the heyday of political corruption. The Gilded Age was known for its corrupt politicians and great excess. (Many observers would note that contemporary America is really not much different.)

Critics of Standard Oil point to the fact that John Archbold, Standard’s vice-president and Rockefeller’s successor, was publicly exposed bribing public officials during the 1908 New York Governor’s race. One should keep in mind that Standard was not the only business to buy influence at the time. And while there has been some change in (or at least outward expression of) the way that business and government officials behave towards each other, money and politics are still very much entwined. Special

interest groups and lobbyists donate bundles of money to re-election campaigns each year and offer special perks to Congressman and high-ranking officials. (In fact, it can be argued that today's Washington lobbyists and politicians engage in nothing more than well-organized, legally-sanctioned bribery.)

As it became clear that business enterprises were becoming more powerful than the government, threatening individual liberty with their omnipotent power, federal government sought a way to regulate the private sector. The principle of equality, the idea of the nation, was not to be overrun by private interests. The first industries to be regulated were those made up of large and powerful enterprises that threatened the ability of new entrants to be successful. As Lawrence Friedman states, "It was the most vital—and the most threatening—sectors of the economy that first came to be regulated: transport and money, railroads, banks, insurance companies."⁹⁹ These industries were not vital to the lives of the citizens, as compared to food production, textiles, or medicine, but they were essential to the strength and prestige of the American economy. The government sought to regulate them so as to avoid having to destroy them. The regulations were a way to ease the tension between the private interests of the capitalists and the public interest of equality of opportunity.

Eventually the national government took on its role of protector and agent for the people, but this change was gradual and just beginning in the late 19th century. In the late 1880s, the federal laws began to change to deal with the new business forms taking shape, mostly as a response to public criticism of the business practices of the trusts and

⁹⁹ Friedman, 447.

combinations. In 1884, the Anti-monopoly Party appeared, and in 1887, the Interstate Commerce Commission was born. There were two acts passed against railroad rebates. In 1887, the Interstate Commerce Act made rebates on railroads illegal and punishable offenses. In 1903, the Elkins Act again made rebates illegal. And the Hepburn Act in 1906 once again outlawed them. According to a report by the Interstate Commerce Commission in 1907 railroad rebates were still being used. It is difficult to pinpoint when the practice actually ended because businesses became more adept at hiding their tracks. It is likely that the practice did not end altogether until the government seized control of the rails.

On July 2, 1890, President Harrison signed the Sherman Antitrust Act. For years nothing significant came out of the new legislation. Only 18 suits were instigated during the first decade of the legislation's existence, and, more importantly, none of them were effective in hurting big business. Standard Oil was so unaffected by the new legislation that "Rockefeller supported the reelection of Senator Sherman in 1891."¹⁰⁰

By 1892, Standard had again changed its structure, evolving from a trust to a holding company, and most other large businesses followed Standard's model in deference to the Sherman Act. This did nothing to change the nature of big business. In fact, as Chapman states, "Between 1893 and 1904 the number of giant combinations increased from 12 to 318 with an increase in aggregate capital from less than \$1 billion to

¹⁰⁰ Chernow, 298.

almost \$7 billion . . . These 318 companies controlled about two fifths of the capital invested in manufacturing.”¹⁰¹

The downfall of the trusts really came with the assassination of McKinley in 1901. McKinley had been on the side of big business, but his Vice-President, Theodore Roosevelt, made it his mission to free the nation of “bad trusts.” During McKinley’s administration, six antitrust suits had been initiated. In Roosevelt’s first term in office, just five suits were launched, but in Roosevelt’s second term he began 39 such prosecutions.

And yet Chief Justice White’s decision in 1911 meant that big business would be allowed, the national market would be embraced, and only those companies that acted unfairly would be prosecuted. The public began to see the value of a strong national economy--it gave the United States status on the world stage. Economic nationalism increased, and large companies that helped to increase national prestige were openly encouraged by the federal government. During the era of Standard Oil, the United States imposed high protective tariffs against foreign oil imports, and the ordered dissolution of Standard Oil did not force Standard Oil subsidiaries to divest their overseas operations. In fact, quite conveniently, a government report disclosing Standard’s anti-competitive practices overseas that had been completed during the Roosevelt years was not released until after the 1911 Supreme Court decision.¹⁰² This is an example of the emerging economic nationalism. The American economy became a measure of the prestige of the nation.

¹⁰¹ Cashman, 85.

And so, the devastating court order did little to harm the fortunes of the creators of Standard Oil. The competition that emerged prior to the divestiture probably hurt the company more. As oil was discovered in more and more countries, it became impossible for Standard to maintain control. Others ate into its market share, and its monopoly power was fading even prior to the government taking any action. However, its influence on the American business community has yet to fade.

¹⁰² The report I refer to here is Part III of the “Report of the Commissioner of Corporations of the Petroleum Industry.” U.S. Department of Commerce and Labor. Introduction by Paul A. Weinstein.

Rockefeller's Business Legacy

What was Rockefeller's real evil? He only wanted to play the game when he could make the rules, which he did. John T. Flynn, one of Rockefeller's biographers related that as a child Rockefeller would not play a game unless the other children agreed to play the game he chose. Nothing had changed when he became an adult. He did not enter the oil business as soon as oil was discovered, but took time to plan how, when, and if he would act. Nor was he satisfied to be one of many refineries competing to fulfill the demand, charging low prices by the necessity of competition instead of efficiency. For Rockefeller, competition is the antithesis of efficiency. It leads to a duplication of resources. "The man who puts up a second factory when the factory in existence will supply the public demand adequately and cheaply is wasting the national wealth and destroying the national prosperity, taking the bread from the labourer and unnecessarily introducing heartache and misery into the world."¹⁰³ Rockefeller uses appeals to nationalism and rationality to argue against competition.

One of the criticisms that most incensed Rockefeller was that of Standard's practice of under-capitalizing its firm. "We have been criticized for paying large dividends on a capitalization which represents but a small part of the actual property owned by the company. If we had increased the capitalization to bring it up to the real value, and listed the shares on the Exchange, we might have been criticized then for promoting a project to induce the public to invest."¹⁰⁴

¹⁰³ Rockefeller, 144.

¹⁰⁴ Ibid., 92-93.

It is important to note what Rockefeller saw as the dangers of combination because much of what Rockefeller labels as “dangers” were very much common practice at the time and have since been outlawed. For him the real evil was water stock—capitalization that overvalued the true worth of a firm. Rockefeller saw the harm of the proliferation of “water stock” in the Gilded Age. He defended Standard by stating, “Another thing to be remembered about this so-called ‘octopus’ is that there has been no ‘water’ introduced into its capital (perhaps we felt that oil and water would not have mixed); . . .”¹⁰⁵ Since, according to Rockefeller, this was the only evil that could be committed by corporations, Standard Oil had not committed any wrongdoing.

It is noteworthy that big business with its emphasis on efficiency—which Rockefeller promoted—has lasted into the present day as a legitimate enterprise. The “watered stock” corporations that Rockefeller detested have been outlawed and fervently prosecuted by regulators. Rockefeller’s viewpoint was the modern view of business.

By the turn of the century the new way of doing business was firmly entrenched in the American way of life. Roosevelt himself, who would become known as a “trust-buster” was not anti-consolidation and saw nothing wrong with combinations that did not act unethically. Of course, it is very difficult to know the private practices of a large corporation. Those that were singled out were often the most successful at the practice, garnering near 90% of the market in Standard’s case as opposed to the 50% market share held by U.S. Steel, which escaped Roosevelt’s wrath.

¹⁰⁵ Ibid., 67.

Economic nationalism has become a part of the national consciousness, and yet the public interest interpretation of the nation's ideals continues to override the private interest one. Even though private interests often lead to national prestige in the economic sector, public interests (i.e. the ideal of equality) are the ones protected when the two interpretations are pitted against each other. Rockefeller was a nationalist before he was a capitalist and it should be noted that he subscribed to Andrew Carnegie's "Gospel of Wealth"—giving vast amount of his wealth away through philanthropy. He helped to build up his nation by giving money to its educational and medical institutions, among a myriad of other causes.

DIGNITY, PRESTIGE AND THE FCC

Unlike Standard Oil, Western Union's monopoly of the telegraph industry was not divested by government, and, in fact, its successor-technology, the telephone, was also allowed to acquire and maintain a monopoly structure for most of its existence as well.

The primary reason for the difference in the government's stance towards oil and communications is likely related to the nature of the two industries. While petroleum played a large role in the emergence of big business in America and first provided light to American homes in the form of kerosene, it has never been considered a public service company. The telecommunications industry was granted this role and title by the government, specifically the Federal Communication Commission (FCC). "That philosophy, first stated by the organizational patriarch of the Bell System, Theodore Vail, is that the major task of management is to conform the business to the desires of the public."¹⁰⁶ And while the public policy that guides the industry has changed, this fundamental principle has remained the same.

One needs to understand the nature of the industry and the relationship between its unique technology and modern society in order to understand why it has always been monitored and regulated by government. Telecommunications is connected to two of the main elements of modernity: national prestige and human dignity. Communication has always been considered an important weapon, and an efficient national communications system furthers national prestige. Also, a communications system that is available

¹⁰⁶ Charles L. Brown, "A Personal Introduction," in *Disconnecting Bell: The impact of the AT&T Divestiture*. Ed. Harry M. Shooshan (New York: Pergamon Press, 1984), 1.

universally to the public of a nation is desirable because it exemplifies the principle of equality. Coupled with national prestige is a phenomenon that occurs when certain technologies enter the lives of the people who then wonder what they would have ever done without them; they become necessities of a sort. The telephone is one such technology, and thus it has come to be something that the community feels should be accessible to all. It has become a symbol of being alive in the 20th century, and it has become an expression of human dignity. That is the reason that its accessibility and price has been so tied up with politics.

While most of the other nations decided to make telecommunications a governmental project, in the United States it has been allowed to develop in the private, albeit heavily-regulated, sphere. The capitalist ideals that are central to the American society have succeeded in keeping the industry in private hands, but the anti-capitalist interests, and also the national value of equality, have tied some strings to those very hands.

Since the technology for the telegraph first developed, public policymakers have been balancing measures that stifle the industry with those that allow it to flourish. Since telecommunications has long been considered a “public service industry,” this balancing act is especially precarious because of the value invested in the industry by the society. In the past, the government's used regulation and antitrust litigation to ensure the technology's universal accessibility. In recent years the trend has been a greater reliance on the “invisible hand” of the market in order to produce the same results formerly pursued by vigilant regulation and litigation.

In the telecommunications industry, the ultimate goal of the public policy undertaken has remained the same throughout the years: providing efficient, universal telephone service at the lowest possible cost. The methods employed to attain this goal have changed dramatically over the past century. With the changes in law, the industry structure has gone through many transformations and remains in a flux to this day. I intend to show that the goals of the governmental policy have not changed, and, in fact, in a nation they could not change.

AT&T was the first company in the United States to provide long distance telephone service. Established in 1885 as the long-distance subsidiary of Alexander Graham Bell's American Bell Telephone Company, the American Telephone and Telegraph Company (known today simply as AT&T) assumed the American Bell Company and became the parent of the Bell system in December, 1899. By the early 1920s, "AT&T became the manager of a nationwide network consisting of its own subsidiaries and independent telephone companies."¹⁰⁷ AT&T's market was practically 100%. "AT&T had dominated every major part of the telephone business—local transmission, long distance, and the manufacture of customer premises equipment (CPE) and switching and transmission equipment."¹⁰⁸ The market structure was sanctioned, and to some degree preferred, by the policymakers. In most every other nation in the world, the telecommunications industry was owned and operated by the government. However

¹⁰⁷ Alan Stone, *Wrong Number: The Breakup of AT&T* (New York: Basic Books, 1989), 14.

¹⁰⁸ *Ibid.*, 3.

in the capitalist American society, a federally regulated monopoly appeared to be a better option, and so “the FCC followed a concept known as ‘continuing surveillance.’”¹⁰⁹

Eventually, as the technology of the industry changed, policymakers began to think that the public interest might best be served by a different market structure. In the late 1970s, competitors were allowed to enter the long-distance market. “MCI made an important move in the regulatory arena when, in late 1974, it quietly filed the EXECUNET tariff for a service that would compete directly with AT&T’s long-distance service.”¹¹⁰ MCI soon learned that the industry was stacked too much in AT&T’s favor and filed an anti-trust suit in 1974.¹¹¹ Noticing the high entry barriers to the long-distance market, the Justice Department filed its own anti-trust suit versus AT&T on November 20, 1974. On January 1, 1984, AT&T and the Justice Department signed a consent decree ending the litigation. The settlement forced AT&T to “divest itself of more than three-quarters of its assets and the source of almost half of its annual revenues.”¹¹² After the divestiture AT&T’s competitors began to steal significant market share. This change dramatically affected AT&T’s market power and its bottom line. Effectively, the forced divestiture of AT&T, which took effect in 1984, separated the local from long-distance service and allowed the local service providers (the so-called Baby Bells) to continue to operate regulated local monopolies, while AT&T was relegated to the long-distance

¹⁰⁹ Richard E. Wiley, “The End of Monopoly,” in *Disconnecting Bell: The impact of the AT&T Divestiture*. Ed. Harry M. Shooshan (New York: Pergamon Press, 1984), 24.

¹¹⁰ Stone, 23.

¹¹¹ This case was settled in 1985 in an anti-climactic fashion. By that time, AT&T had been divested and both companies were anxious to be out of the courtroom. MCI received less than \$200 million for its efforts and the case was considered a victory for AT&T.

¹¹² George H. Bolling, *AT&T Aftermath of Antitrust: Preserving positive command and control* (Fort Lesley J. McNair, Washington, D.C.: National Defense University, 1983.), 45.

realm. "What AT&T had to do is roughly comparable to what the Army would have to do if ordered to make each of its divisions capable of wholly independent operations in both peace and war."¹¹³

This change in the industry dramatically effected telephone service in America. Telephone access was no longer guaranteed to all Americans, as it had been when the industry was forced to adhere to strict government regulations. Prices were free to rise, and service was suspended in some unprofitable areas. The public was mainly confused by the whole event. Consumers had enjoyed access to local and long-distance service at affordable rates under the AT&T monopoly and were not fully aware of the technological changes occurring in the telecommunications industry that could make service even less expensive. As the *Washington Post* reported on January 1, 1984, "The breakup of the Bell System today is an even that seems to many people to fly in the face of common sense. Simple wisdom says, 'If it ain't broke, don't fix it.' So why 'fix' the Bell System? Why change something that was so reliable—and such a relative bargain?"¹¹⁴

In walking the tightrope between public and private interests—getting the interpretation of the nation's values "right"—the government had decided the public good would be best served by allowing more private interests to vie for the opportunity to serve the telecommunications market. Although many Americans were perplexed by the antitrust case, many in the industry welcomed the new changes. In fact, even AT&T was set to gain from the breakup since it would face less regulation.

¹¹³ Bolling, 67.

¹¹⁴ Behr, Peter, "Blame AT&T's Breakup on Hitler; Splitting Ma Bell May Defy Common Sense, But Change is Inevitable," *The Washington Post*. 1 January 1984, H2.

The consent decree of 1984 marked the government's first commitment to the introduction of competition into the telecommunications industry. At first, entry was generally relegated to the long-distance market. However, even as early as the 1980s "competitive access providers," or CAPS, were allowed to offer "a way for telephone users to reach . . . [long distance] carriers without using the facilities of the established . . . local telephone companies."¹¹⁵ At first CAPs mainly offered services to business customers, and the public-at-large did not have an opportunity to choose their local carrier. However, in the 1990s, "some CAPs and other companies, including affiliates of cable television companies (e.g. Hyperion Telecommunications, Time Warner Communications) and local service divisions of long distance companies (e.g., MCImetro), began to offer local telephone calling services to a broader range of telephone users The newer competitors are [*sic*] often called "competitive local exchange carriers" or CLECs, although the terms CAPs and CLECs are often used interchangeably."¹¹⁶ The number of competitive local exchange carriers, or CLECs, increased from just 20 in 1993 to 109 in 1996, an annual growth rate of 76.0%.¹¹⁷ And according to FCC Chairman William Kennard, "there are more than 100 CLECs in the U.S., with a market value of \$14 billion."¹¹⁸ So far, public policy has been in favor of this trend. In 1996, Congress passed the Telecommunications Act, which opened the local market to the possibility of direct competition.¹¹⁹

¹¹⁵ U.S. Government, FCC.

¹¹⁶ Ibid.

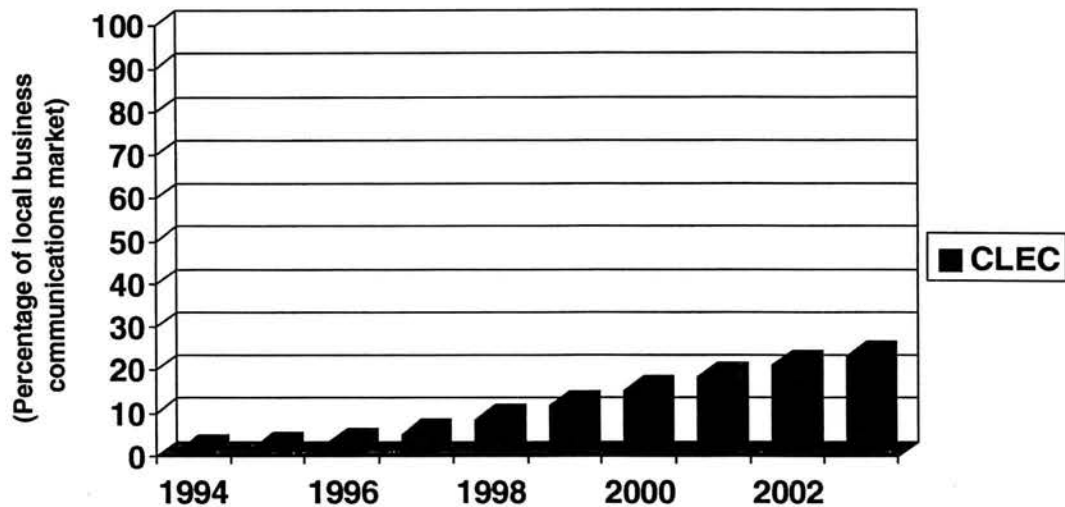
¹¹⁷ U.S. Government, FCC.

¹¹⁸ Eric Krapf, "Is Competition On Your Horizon?" *Business Communications Review*, September 1998, 44.

¹¹⁹ There exists the possibility that AT&T may be able to once again offer local telephone services.

Figure 1

CLEC Market Share, 1994-2003
estimated



Source: As predicted by The Strategis Group, Inc., reported in "Merger Activity Promotes Competition," PR Newswire, August 20, 1998.

Even after the passage of the 1996 Act, entry into the local market remains heavily regulated. Perhaps it is due to the fact that local telephone service is seen as an even more basic human right than long distance service. Whatever the reason, the Telecommunications Act of 1996 has not had a significant effect on the face of the local market. Most Americans still receive their local telephone service from a so-called Baby Bell (one of the companies that made up the local half of the AT&T enterprise prior to the divestiture). Although the 1996 Act allows the Baby Bells to enter the long-distance market, entry can only occur once basic conditions have been met. Once the Baby Bell receives approval to offer long-distance, then long-distance carriers are finally able to

enter the market in that locality. State-level litigation and the slowness of the Baby Bells to meet the conditions for entering the long-distance market has retarded the development of competition in the local market.

With recent developments in the industry, the level of competition in the local market is poised to increase dramatically. AT&T's recent purchase of TCI (which is awaiting formal approval by the FCC) would give AT&T a back door into the local market, through TCI's cable wire.

As AT&T looks for ways to once again serve the local market, it has faced increased competition in the long-distance sector. "In 1984, AT&T's toll revenues of \$35 billion accounted for 90% of the revenues received by all long-distance carriers. By 1997, with its revenues having increased by 12%, its share of total revenues had fallen to about 45%."¹²⁰ This trend is likely to continue. Today, technologies such as wireless communications, the Internet, and the cable modem have blended the lines between local and long-distance. The market is growing horizontally and AT&T (and other large telecommunications firms) is seeking to consolidate enough services so that it can offer its customers "bundled services" providing for all of their communications needs. Demand for increased broadband capacity and access to new technology offerings is challenging today's incumbents to meet the new demand or lose market share to new entrants. This is the reason that MCI Communications Corp merged with WorldCom, Inc and AT&T has announced plans to merge with TCI and TCG. MCI/WorldCom's combined assets include nearly 100 local Synchronous Optical Network (SONET)

¹²⁰ U.S. Government, FCC.

rings.¹²¹ By merging with cable giant Tele-Communications, Inc. (TCI) and acquiring competitive local exchange carrier Teleport Communications Group (TCG), AT&T is creating a comprehensive services package in an effort to reach its goal of being “back on top, delivering local and long distance voice, data, Internet and video services.”¹²²

The divestiture has not only led to increase service offerings, but it has changed the entire structure of the long-distance market. It has been transformed from a traditional public service company to a regulated monopoly to a fairly tight oligopoly. (In 1997, 72.1% of all toll service revenues were made by the top four firms.) However, although it looks like an oligopoly, it does not act as one might expect an oligopoly to act. The leading firm—AT&T—is not able to exploit its market power because of the fear of public policy and public perception.

There was a day when AT&T could charge virtually whatever price it wanted for long-distance service. The only barrier to price was AT&T’s ability to legitimize it to the FCC. In fact, practically with the blessing of regulators, “AT&T used to charge way above cost for long-distance, using the proceeds to subsidize rates for local phone service.”¹²³ This practice artificially kept the price of long-distance high, but as Stone argues in *Wrong Number*, “it [AT&T] did so not to extract monopoly profits but as a consequence of its service obligations, many of which had been imposed by legislators and regulators.”¹²⁴

¹²¹ David Rohde, “AT&T Under Armstrong: New CEO must build new business and take care of the old,” *Network World*, 20 April 1998, 74.

¹²² Kate Gerwig, “In The Telecom World, The More Shake-Ups, The Merrier,” *InternetWeek*, 6 July 1998, 26.

¹²³ Andrew Kupfer, “The Next Big War In Telecom,” *Fortune*, 23 Nov 23 1998, 260.

¹²⁴ Stone, 3.

Increased competition in the long-distance market and AT&T's declining market share has driven down the price for long distance calls from nearly 50 cents per minute to somewhere between five and 15 cents per minute. In addition, AT&T has been forced, by market pressure, to switch from charging for long-distance calls according to distance to charging by the minute. Flat rate plans are now available for traditional long-distance services as well as the emerging wireless segment.

For most of AT&T's history, its monopoly in the local market was protected by government regulations. Simply, AT&T was the only telephone company in town, and in the next town over, and so on. In the past, it often used litigation as a means of limiting entry into its competitive businesses. However, since the divestiture AT&T has concentrated its efforts on becoming a more efficient organization, streamlining its businesses (as evidenced by its divestiture in 1995) and entering new markets as they arise. Recently, AT&T has acquired and/or merged with other companies, such as cable giant TCI and competitive local exchange carrier TGI, in order to gain entrance into new businesses and/or markets.

The telecommunications industry is no longer a monopoly, at least not in the long-distance realm, but it is not exactly a competitive industry either. Currently the four firm concentration ratio in the industry is about 80%, with AT&T as the presubscribed carrier for approximately 62.2% of all households, MCI WorldCom for 12.3%, and Sprint at 5.1%.¹²⁵ The Herfindahl-Hirschman Index (HHI) may be more telling. In 1997, the estimated HHI for the long distance industry was 2,048, down from 4,734 in 1984.

AT&T's significant market share has not translated into tremendous market power. Perhaps the company has not been as aggressive because it is mindful of attracting the attention of antitrust regulators. Whatever the reason, the company has not made oligopoly profits in recent years, even though it is the top firm in the industry and it enjoys about 50 percent market share.¹²⁵ In addition, the firms in the industry act as true competitors and neither of them seem to be content enough with their current share of the market to collude on price and output. So even though the market structure suggests that the firms in the industry, or at least the top firm, would act like an oligopoly, that does not seem to be what is happening. The question becomes why doesn't the industry act the way that the structure seems to dictate? Past government actions and on-going government surveillance, coupled with emerging new technologies, and uncertainties about what will be allowed in the future, have created a competitive industry, that is providing abundant services at a low price.

The fierceness of the competition led to another transformation of AT&T. On September 20, 1995, AT&T shocked the business community by announcing that it would split into three separate, publicly held companies: NCR, Lucent Technologies, and AT&T.¹²⁷ NCR would focus on computer systems, Lucent Technologies (formerly Bell Laboratories) would concentrate on networking systems, consumer products, and

¹²⁵ "A Record 26 Million Consumers Change Their Long-Distance Phone Company Reports The Yankee Group; Significant Changes in Consumer Market Share Also Seen." *PR Newswire*, 13 October 1998.

¹²⁶ This is true when other methods of calculating market share are taken into consideration. Please see the discussion of structure for further explanation.

¹²⁷ At least one of these companies appears to be on a growth trajectory. Lucent Technologies', one of AT&T's spin-offs, "revenue grew 19.4 percent [in the first 9 months of 1998], while revenue for the whole communications market grew 14 percent," from "AT&T Spin-off Grows Up," Kimberly Caisse, *Computer Reseller News*, October 12, 1998, page 84.

business communications systems, and the “new” AT&T would focus on consumer, business, wireless, online, and international services. The trivestiture was formally completed by 1997.

The trivestiture in 1995 was initiated to create a more efficient, stronger AT&T, but while AT&T focused on splitting into three separate companies other companies were moving into the emerging wireless and online markets. AT&T is still trying to catch up in the Internet segment. In 1997, “the engine of the company, consumer long-distance, was slowing down as competitors plucked away the most profitable customers. AT&T had developed no credible Internet strategy, despite ample evidence that the future of communications lay there. And the company was overly wedded to its circuit-switch technology, even as businesses and consumers began to demand higher-capacity networks that could handle multimedia traffic and truckloads of data.”¹²⁸ Michael Armstrong took over as CEO in November 1997. Included in his arsenal to make AT&T competitive and strong has been to “cut costs, improve the product line, then pitch it to upscale customers.”¹²⁹

The trivestiture of 1995 did not accomplish what AT&T needs to do to compete in today’s “new” telecommunications industry: to be able to provide comprehensive telecommunications services. AT&T needs to enter the local market in order to effectively compete with emerging competitors who are able to offer a greater range of services and to remain profitable. “AT&T needs to get into the local market for many reasons, particularly the coming invasion of the regional Bells into long-distance. AT&T

¹²⁸ Jeff May, “AT&T Tries to Keep Up During CEO's First Year,” *The Star-Ledger*, 1 November 1998.

is already losing market share in long distance to newer companies such as Qwest and Level 3 and to cheap dial-around services.”¹³⁰ But it has not been easy for AT&T to gain access to the local market. For one, it was prevented from merging with a Baby Bell before the deal was even formally announced. AT&T’s announcement this past summer that it will merge with cable giant Tele-Communications, Inc. (TCI) testifies to its commitment to entering the local market. “The proposed merger with cable giant TCI gives AT&T the fat wires it needs to offer voice, video and high-speed Internet access to as many as third of the nation’s homes.”¹³¹ Reportedly the deal will cost AT&T \$48 billion plus an additional \$15 billion more to build the necessary two-way digital capabilities.¹³² Of course, federal regulators must approve the deal first.

Besides making the structure of the industry almost unrecognizable, government policies have affected the performance of the industry, and more specifically the leading firm. AT&T’s profits have been somewhat volatile in recent years. Increased competition has put downward pressure on prices, which has lowered marginal revenue. “From 1984 to 1994, AT&T’s average revenue per minute declined from 32 cents per minute to 18 cents per minute—a drop of 40%.”¹³³ Restructuring costs have also hit AT&T’s bottom line. While in 1994 “revenues grew at the best rate since we became the new AT&T, to a record \$75.1 billion,”¹³⁴ 1995 was a dismal year for performance. Over

¹²⁹ Ibid.

¹³⁰ Ibid.

¹³¹ Ibid.

¹³² Gerwig, 26.

¹³³ U.S. Government, FCC.

¹³⁴ Company Annual Report, 1994.

the past five years (1993-1997), profits have averaged about 9-11 percent in good years, but have also tumbled to negative and below normal levels.

AT&T's financial performance may have been hindered somewhat by government regulation, but innovation has not harmed. Prior to the divestiture of 1984, AT&T's Bell Labs were known for their technical innovations. In fact, in wartime the government used technology that came out of the labs. Up until they were spun off as Lucent Technologies in 1995, the Bell Labs continued to be a source of innovation for the AT&T enterprise. Today, there seems to be a renewed emphasis on research and development at the company. This has been propelled, at least in part, by the need to keep up with the new technologies being developed by competitors.

Today the telecommunications industry offers users many more choices than ever before, and at a much lower cost for most consumers.¹³⁵ Now users can choose between various pricing plans, as well as options such as voice mail, paging service, cellular/digital phone service, and Internet access. Much of these innovations are due to the increased level of competition in the industry.

Over the years, AT&T has remained a viable force because it is not able to reinvent itself to keep up with the changing industry. It understands that it provides a public service and is willing to undergo massive transformations in order to remain the industry leader. In 1984, it agreed to let go of 2/3 of its assets, and as recently as 1995, it spun off two of its three main businesses. Although, AT&T has experienced unprofitable years (i.e. 1993), in the long run it has remained strong. Examples of its economic health

¹³⁵ Due to various billing formations, not all users have benefited by the new pricing structures.

include the fact that AT&T's sales have grown 4%¹³⁶ from 1993-1997 and its stock has continued to perform well. "AT&T was the top performing stock in the Dow Jones Industrial Average (DJIA) for the six months ending December 31, 1997, and had the seventh-highest appreciation among the Dow stocks for the full year . . . [The] stock generated a total return, including dividends, of over 53% in 1997."¹³⁷ The stock price for year-end 1997 was \$61.31, and is currently trading in the \$80s.

Traditionally, AT&T's services, both local and long-distance, were as universally accessible as possible due to federal mandates. For many years since the divestiture, AT&T has held onto unprofitable customers in the long-distance market. "AT&T consumer markets spokesman Mark Siegel said the company has 15 million to 20 million customers it classifies as light users, who make as little as \$3 worth of monthly long-distance calls."¹³⁸ Recently, AT&T has made a strategic management decision to focus its marketing on attaining more profitable customers and not to be as concerned about losing low-revenue producing ones. Market share may be lost but management expects that this strategic shift will increase average revenue per user (ARPU) over time.¹³⁹ Although AT&T does not plan to strategically deny service to low revenue producing consumers, this marketing shift could (as AT&T's management is hoping that it will) make AT&T effectively less accessible to some consumers. In practice, this conduct is likely to lower consumer efficiency because there are more consumers who are willing to

¹³⁶ Compact Disclosure, AT&T Complete Company Record

¹³⁷ "Management's Discussion and Analysis" January 1, 1997, taken from an EDGAR filing, found in Compact Disclosure, v4.5, Digital Library Systems, Inc, Copyright 1985-96

¹³⁸ "AT&T's Long-Distance Share Dips Below 51 Percent in Late 1997," *Communications Today*, 16 April 1998.

¹³⁹ "Management's Discussion and Analysis"

use AT&T's long-distance than are given the option (in terms of a sales pitch) to do so. This may also mean that these consumers who are not marketed to will pay more per minute of long-distance than those who are informed about the discounted price plans which are available.

This practice may have important implications for the nature of the telephone industry and may cause the government to once again rethink its policy towards the entire industry. The government has used public policy to promote innovation and competition in the industry in an attempt to reach the goal of having an efficient, affordable, national telecommunications system. Over the years, public policy has greatly affected the structure of the telecommunications industry at every step of its development. Through the use of regulation and/or litigation, the government created the AT&T holding company, later dissolved the monopoly, and then allowed for the emergence of competition in the local market. The public policy initiatives have produced different industry structures, but the goal of the policy measures has always been the same: to have a national telecommunications system that provides service that is universally accessible. It is only the methods of reaching this goal that have changed.

Since the 1970s, the trend in public policy towards the telecommunications industry has been to allow more competition into the industry. The passage of the Telecommunications Act in 1996 was another initiative in this general direction. However, as discussed in the introduction, public policymakers do not always get it right; they do not know exactly what will come of their action. The Act of 1996 has created a merger frenzy (i.e. MCI/WorldCom and AT&T/TCI) as firms try to consolidate their

services to prepare to compete in all communications market. There are some important risks involved in allowing the telecommunications industry to be dominated by a few firms. These firms will have no incentive to provide universal service, and, therefore, only the most profitable consumers will be served. Since all of the technology will be controlled by just a few firms, they will soon realize that they are better off colluding than competing. Of course, this is just a conjecture of what if, but so is the government's policy, and that is the danger that exists when the government tries to impose its values on specific industries within the economy. Yet, in a nation that is constantly trying to balance the values of capitalism with the principle of equality, the government really can't help itself. It will continue to have a hand in the development of the communications industry, simply because of what the telephone has come to represent.

CONCLUSION

What is the nature of the relationship between business and government—private and public interest—in America? Does it favor private interests over public ones in order to promote national prestige? The answer is no. The fact that corporations and individuals may increase the status of the United States on the world stage does not exempt them from acting in the best interest of the public.

Since the economic sphere is central to the American society, I have dealt with the tension between private and public through the relationship between business and government. The three case studies presented make it clear that a collectivist interpretation of nationalism can be found in the United States, and, in fact, it characterizes the nature of the relationship between business and government.

Public policy dictates whose interests matter when a choice must be made between the two, such as if a large company was able to sell its products at a very low cost and make windfall profits if it used a cheap manufacturing process that emitted ozone into the atmosphere. The public interest of a clean environment would take precedence over the material wealth that could be made by the individual company.

In the case of the debates over the establishment of the national bank, the argument was over which mechanism best served the public good (the collective good)—the free market or an artificial public mechanism to exact some control over the market. Hamilton felt that some intervention was necessary, and that a national bank would best serve the nation by stabilizing the national financial market and providing equal opportunity for all Americans. Jefferson felt that individuals best determined their

own destiny and that a national bank threatened the liberty of individuals by giving too much power to the government over the people (i.e. the ability to control the money supply).¹⁴⁰ The Federal Reserve System now in place is an attempt to best serve the public interest of maintaining equality of opportunity by helping to stabilize the financial markets and controlling the money supply. Of course, at the same time the Fed also serves private interests by ensuring that individuals have access to capital and that inflation is kept in check. The Fed is accepted partly because it exists, at least theoretically, outside the realm of interests (it wields tremendous power, but since it does not conspicuously represent any one interest, it is not greatly challenged) but mostly because it presents itself as providing for the collective interest—equality of ends. Thus, the Fed is a very effective implementation of public policy towards business—it is a mirage of sorts, allowing private interests to be successful while presenting itself as an institution for the public good.

The petroleum industry case represents the new challenges that the government faced in the Age of Big Business. The economy was becoming national, big business was increasingly powerful, and the economy was emerging as a measure of national prestige. Business practices were changing rapidly with an eye towards every-increasing efficiency and productivity. In the case of Standard Oil this meant purchasing small competitors and/or selling at below cost to force competitors out of business. Commanding at one point approximately 90% market share, Standard Oil controlled the petroleum industry, and with it the lives of many Americans. The federal government

¹⁴⁰ It is rather ironic that history has shown that the market-controlled money supply wreaked havoc on the

decided to take action, and effectively divested the company in 1911. The act served the self-interests of those people who felt that Standard Oil's control on the market was impenetrable. They argued that an entity like Standard should not be allowed, when, in actuality, they sought to mimic its success. They were seeking equality of ends.

What is interesting to note is that the legal divestiture of Standard Oil did little to change the operations of the company--it simply provided the appearance of competition. It is this image that removed the irritant. There was no longer some large entity that others in the oil business could blame for their own lack of success.

In the case of AT&T, the federal government was forced to make a decision—which industry structure best served the public good? (It was never a question of which industry best served the interests of individuals.) For years, AT&T was allowed to operate as a monopoly because federal policy makers felt that it best served the public interest in such a structure. Since telecommunications was tied up with both human dignity issues and national prestige, policymakers opted for creating a heavily-regulated monopoly instead of a state-run structure or a competitive industry. The antitrust litigation versus AT&T represents nothing more than a change in thinking. The technology had changed and it no longer appeared advantageous to limit the number of firms providing telecommunications services. AT&T had been the only company in the business for many years, so when policymakers wanted to change the structure of the industry, they needed to dismantle AT&T.

interests of individuals.

The nature relationship between business and government in America cannot be defined by conventional wisdom. Although economic nationalism, with its focus on a prominent and strong economic sector as the carrier and barometer of national prestige, seems to favor support of the private interests above the public, in America, public policy has consistently chosen to support equality of ends over equality of opportunity. Over and over again in America's history, the government has sought to hold down or destroy individual interests that illuminate natural distinctions in ability that Americans would rather forget.

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