68. Joe Soss, "Welfare Application Encounters: Subordination, Satisfaction, and the Puzzle of Client Evaluations," *Administration & Society*, forthcoming (1999).

69. *The 1996 Green Book.*

70. The state breakdowns in this section are from American Public Welfare Association (APWA), *State-by-State Welfare Reform Policy Decisions* (Washington, DC: APWA, 1997), 22-24.

71. As cognitive theories of decision making suggest, the value of what one already possesses is likely to outweigh the value of what one might (or might not) be able to obtain under changed circumstances—especially if changing those circumstances entails the potential for substantial losses. See Deborah Stone, *Policy Paradox: The Art of Political Decision-Making* (New York: Norton, 1997).

72. Frances Fox Piven suggested James Scott's argument that the economically marginal will choose "security over advantage." See James C. Scott, *The Moral Economy of the Peasant: Subsistence and Rebellion in Southeast Asia* (New Haven, CT: Yale University Press, 1976).

73. Edin and Lein, *Making Ends Meet*, 20-45.

74. Rebecca M. Blank, *It Takes a Nation: A New Agenda for Fighting Poverty* (New York: Russell Sage, 1997), 163.

75. Voss, Corbett, and Randell, "Interstate Migration and Public Welfare," 129.

76. See Barbara Sard, Ed Lazare, Robert Greenstein, and Jennifer Daskal, *Housing Bills Could Weaken Welfare Reform and Create Problems for the Working Poor* (Washington, DC: Center on Budget and Policy Priorities, 1997); Tracy L. Kaufman, *Out of Reach: Rental Housing at What Cost?* (Washington, DC: National Low Income Housing Coalition, 1997).

77. Approximately 70 percent of the welfare population does not receive rent subsidies. See *The 1996 Green Book* and Kaufman, *Out of Reach.*

78. Edin and Lein, *Making Ends Meet*, 40.

79. Sard et al., *Housing Bills Could Weaken Welfare Reform.*

80. Ibid.

81. See 57 *Federal Register* 45468 (1 October 1992) and 61 *Federal Register* 6690 (21 February 1997). The U.S. Department of Housing and Urban Development (HUD) uses the fortieth percentile rent for the 1996 Fair Market Rent and so do we.

82. Peterson and Rom, *Welfare Magnets*, 12-13.

83. APWA, *State-by-State Welfare Reform Policy Decisions*, 22-24.

84. See Edin and Lein, *Making Ends Meet.*

85. Mark Alan Hughes, "The Welfare Dustbowl," *The Honolulu Advertiser*, 20 October 1996, B1.

86. The concern that reform may push recipients from one state to another has already intensified in adjacent states where people are cut from the rolls. See Stacy Milbouer, "Mass. Welfare Deadline Causes Concern: Some Could Seek Benefits in N.H.," *Boston Globe*, 22 November 1998, p. 8. In its *Amicus Curiae* brief submitted to the Supreme Court in *Anderson v. Roe* (98-97), the U.S. Government argues that Congress anticipated how the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 could well induce migration. Unfortunately, the Solicitor General went on to write that this justified allowing states to establish two-tier benefit schedules to discourage migration. Whether the Court agrees and upholds this option at the expense of the right to travel is yet to be determined. A better argument would be to agree that welfare reform may well cut people off from services and induce migration, but that is exactly why states should not be able to create barriers and deny access to such needed services.

Political and Institutional Conditions for Governance by Association: Private Order and Price Controls in American Fire Insurance

MARC SCHNEIBERG

Under what conditions can firms institute associations to control competition, solve market failures, or promote dynamic efficiency? Ever since Mancur Olson's classic statement of the problem of collective action, research on economic organization has come to view free riding, defection, and prisoner's dilemmas as the central obstacles to coordinating markets through associations.[1] The rub: Firms, industries, and even economies would be better off if firms joined together, agreed to cooperate, and assumed the costs of maintaining prices or producing collective goods. However, firms will find it individually more profitable to cheat on agreements, free ride on others' contributions, and "sucker" their peers. Hence, absent special conditions, associations, cooperatives, or other such bases of private order will prove too costly to organize and will be unenforceable and unstable. For some scholars, these problems are serious enough to dismiss governance by association as generally nonviable.[2] And while cases of successful self-regulation have tempered this pessimism, researchers continue to view Olson's collective action problem as the central barrier to cooperation and pose the resolution of that problem as the critical condition for private association.

I thank Lis Clemens, Woody Powell, Michael Hechter, Gerry Berk, Chick Perrow, Sun-Ki Chai, members of the University of Arizona Social Organization Seminar, and the Editorial Board of *Politics & Society* for thoughtful comments on earlier drafts of this paper. The research presented here was supported in part by a grant from the Social and Behavioral Science Research Institute at the University of Arizona. The usual caveats apply.

POLITICS & SOCIETY, Vol. 27 No. 1, March 1999 67-103

Analyzing self-regulation in American fire insurance, I argue that problems of predation and institutional authorization are as vital for association as problems of enforcement. Managing bad faith is essential for cooperative responses to market pressures. Yet associations must also be endorsed or at least tolerated as rational or fair by state officials, experts, consumers, and other actors in the institutional environment. Authorization matters because firms sometimes need state support to solve enforcement problems. More important, associations foster externalities, monopolistic predation, and other forms of collective opportunism. At a minimum, predation will dissipate potential performance gains from association and decrease outsiders' willingness to delegate public authority to sector organizations. Predation can even evoke counterorganization, crises of legitimacy, and political opposition in the broader surround. These external dynamics not only intensify firms' internal collective action problems but can also culminate in statist or antitrust policies that suppress association. In this article, I (1) document the two faces of self-regulation and (2) identify conditions under which consumers, state officials, and other outsiders will endorse association as an alternative to states, markets, or corporate hierarchies.

My analysis exploits two insights often set aside by research on associations. First, as emphasized by the new organizational institutionalism, economic governance is always embedded in broader institutional settings or fields. Constituted in large part by already organized actors, established structures of interaction and power, and taken-for-granted models of order, these fields subject rational-adaptive behavior to their own dynamics, evaluative criteria, and demands, and constrain or enable market organization.[3] Second, associations are corruptible systems of rule that concentrate power and take prices out of the market. They can promote rent seeking, expose consumers to arbitrary appropriation, and create political problems of justification or value. Paraphrasing Grannovetter, cooperation and trust may be vital for managing market failures and achieving high-performance production. But trust and solved prisoner's dilemmas are also bases for honor among thieves and can induce theft and predation among otherwise honorable actors.[4]

I begin by conceptualizing association as a nested project that must solve two sets of dynamically linked problems—problems of enforcement and problems of predation and institutional authorization. I then turn to fire insurance and show how solving collective action problems was necessary, but not sufficient, for association. As insurers overcame enforcement problems, they evoked hostility, statist threats, and trust-busting politics in the broader surround, reactions that increased the cost of cooperation for insurers within the industry. In Section 3, I document the structural changes, cultural work, and political settlements that altered participants' interests, deflected insurers away from purely redistributive acts, and rendered self-regulation acceptable to outsiders. Using these findings, I discuss when and how firms can institute associations as an alternative to other forms of economic order.

1. ASSOCIATION AS A NESTED SET OF PROBLEMS

The literature on association is replete with claims that prisoner's dilemmas and problems of internal control are the pivotal issues in building associational order. In economics, this view has dominated and produced a small industry of research on the enforcement practices and stability of cartels.[5] Prisoner's dilemmas and enforcement also figure centrally in capture theories of regulation, neo-corporatist accounts of private government, analyses of common-pool resource governance, and historical studies of association.[6] In all these accounts, crafting associations depends on (1) whether firms can manage enforcement problems and costs within their domain and (2) the factors that affect those costs.[7]

Researchers recognize that associations have effects and determinants beyond their confines. First, economists have long condemned associations as rent-seeking devices that impose externalities on consumers, usually by raising prices. As such, associations can generate hostility among outsiders and lead entrepreneurial politicians to attack the industry.[8] Scholars even suggest that associations lack their own normative bases or legitimating principles and must internalize externalities via encompassing schemes and other means that ensure public-regarding behavior.[9] Second, researchers argue that firms may not be able to solve enforcement problems unless the state makes compacts legally binding.[10] These problems may lead firms to seek state power, although scholars disagree on the facilitating conditions. Where economists argue that "politics" deter firms from capturing the state for fear that outsiders will use regulation against them, political scientists argue that association requires autonomous states to counterbalance private power, contain factionalism, and direct firms toward public ends.[11]

Unfortunately, researchers have yet to develop these insights into a treatment of rent seeking and the institutional dynamics of associations that stands on par with the internalist view. Instead, they invoke politics and the state as exogenous factors or bracket externalities, either as a strategy to isolate internal dynamics or by stressing consumers' collective action problems.[12] In fact, scholars often assert that externalities yield little opposition because consumers have small stakes in any one industry; are numerous, diverse, and dispersed; and face intractable organizing problems. As a result, there are few sustained studies of the contextual dynamics of association or of the conditions under which autonomous states or hostile publics might endorse or enforce collective self-regulation.

To address these dynamics more systematically, I view association as broadly akin to a nested or two-level game in which firms must simultaneously manage logics of membership and logics of influence.[13] Three features of this nesting are important. First, association takes place in two arenas, each with its own problems and dynamics. Within a sector, firms try to organize cooperation among industry members and face the dilemmas and enforcement problems described by existing research. However, this internal game is embedded within a broader political-institutional field. In that arena, the key players are the industry's consumers, expert communities, regulatory agencies, incumbent and would-be legislators, and public opinion organizations like daily newspapers. Here, the critical issues involve predation and monopoly power, the legitimacy of firms' organizational choices, and the ways that industry outsiders evaluate and counterorganize in response to firms' associational efforts. Generally speaking, industry outsiders initially face two sets of strategy choices. They must decide whether or not to counterorganize and engage in public debate. And should they opt to organize, outsiders can either side with the industry or oppose firms' associational efforts through antitrust laws, direct state control, or their own productive enterprises. To be sure, outsiders' choices depend on the organizational capacities of consumers, state actors, and expert groups and on institutional factors like state structure and prevailing models of order. Yet players at this level can subject firms to criticism, statist intervention, and trust-busting policies that are as problematic for association as problems of internal control.

Second, the two problems and arenas are dynamically linked. Efforts and outcomes in one arena or game will create problems, alter payoffs, and activate or subvert discourse, coalitions, and organizing efforts in the other. And as neoinstitutionalists have emphasized, the connections between actors and their contexts are both material and symbolic. Thus, as firms solve enforcement problems, they create opportunities and incentives for predation and collective opportunism. They subject consumers to high prices, confront state actors with competing systems of power, and increase the payoffs to counterorganization for consumers and other outsiders. Furthermore, by subverting impersonal market forces, associations raise questions about what constitutes fair value or a reasonable price and can evoke crises of sociopolitical legitimacy.[14] Depending on the circumstances, association can prompt other centers of power to withdraw their support from the industry and reduce outsiders' willingness to delegate public authority to sector organizations. It can also foster hostile public opinion and supply entrepreneurial politicians and others with evidence and rhetorical resources for criticizing the industry, reframing public debates, and mobilizing anti-industry coalitions.[15] Conversely, politics and public criticism can supply firms with rationales and political cover for defection and factionalism and raise the costs of interfirm cooperation. Anticompany politics can even prompt firms that feel mistreated by associations to exploit anti-industry sentiments and turn to outsiders for help, thereby further fueling the cycle.[16]

Finally, politics and the links between arenas make solving enforcement problems necessary but not sufficient for associational order. In fact, solving problems of predation and meeting the conditions for authorization may be essential both for mitigating anticompany politics and for containing free riding within the industry. As I document below, market failures may leave consumers and others receptive to arguments for association. Yet the likelihood that outsiders will endorse associations also depends on the development of a compelling theory of value and pricing practices that express prevailing views of rationality and justice. Authorization is also more likely when associations incorporate trading partners into the system via collective bargaining or other gain-sharing devices; when consumers or states are sufficiently organized to deflect associations toward improvement, positive-sum games, or the production of public goods; and when credible regulatory safeguards exist. Without these conditions, associations will be vulnerable to criticism, politics, and feedback loops between external pressure and internal instability and will rapidly give way to other forms of market control.

The following pages document these dynamics and explore the conditions for association via a historical analysis of American fire insurance. This industry is ideally suited for this task. First, as was common in the nineteenth century, fire insurers turned to associations to control price competition, stabilize markets, and standardize products or processes. Yet, unlike most other American industries, fire insurers consolidated rather than abandoned associations and price controls at the century's end. They rejected vertical integration and the giant corporate hierarchy for a more decentralized and cooperatively organized mixture of national firms, regional insurers, state companies, and independent local distributors.

Moreover, insurance associations evoked two powerful—and diametrically opposed—responses from outsiders. From the 1880s until the early 1900s, associations sparked a nationwide political struggle over the "insurance trust," anti-compact bans in over half the states, and statist rate making. But during the 1900s and 1910s, legislators, regulators, and consumers began to endorse fire insurance associations. By 1920, more than twenty states had sanctioned association; by 1950, this stance was nearly universal. This shift provides unique opportunities for identifying when and why consumers, regulators, and other institutional actors will endorse association as an alternative to states, markets, and corporate hierarchies.

2. PROBLEMS OF ASSOCIATION IN FIRE INSURANCE

From 1865 through the early 1900s, fire insurers labored to construct a multi-level system of associations and organized more than one thousand combinations, data pools, and price-fixing schemes.[17] In part, this outpouring reflected the insurance market failures produced by unbridled competition and the need for cooperation. Insurers depended on collective inputs like pooled loss experience and had to enact coordinated rate advances in order to absorb shock losses from conflagrations.[18] However, the staggering number of associations also reflected the persistent obstacles insurers faced in instituting cooperative systems.

Enforcement problems. As existing research would expect, insurance associations faced an almost intractable problem of "bad faith."[19] Insurers appreciated that they would be better off if they standardized risk classifications and combined loss data. They also appreciated the gains they could realize if they fixed prices collectively and cooperated in rate advances. Moreover, insurers organized compacts to these ends. However, compact members found it more profitable to cheat on their agreements. They withheld loss data for private use, cut rates and offered rebates to get business, and "embarrassed" rivals who advanced rates. Furthermore, nonmembers and new entrants free rode on data pools and price-fixing schemes by copying rate schedules and by charging rates just below those fixed by associations. Taking business from loyalists, these efforts fueled further defections and often snowballed into factionalism and organizational collapse. Growing numbers and increasing diversity in the industry regarding costs and competitive strategy only amplified the enforcement problem.

Undeterred, insurers enhanced their enforcement powers through internal and external means.[20] Between 1880 and 1900, insurers decentralized governance via a multilevel strategy of local, state, and regional association; created independent rate-making bureaus; and employed precommitment compacts that only obliged firms if 85 or 90 percent of their peers signed on. Through these schemes, insurers decomposed organizing into more manageable tasks, reduced the probability of being suckered, and insulated rate making from factional interests and local breakdowns. At the same time, associations built monitoring and sanctioning capabilities through "stamping offices" that audited agents' daily reports and, through fines, deposit schemes and organized price wars against free riders. Furthermore, company associations instituted mutual boycotting schemes that brought agents, brokers, and their associations into the enforcement process. These schemes forced agents and brokers to boycott companies that cheated or remained outside an accord. As such, they denied compact violators access to reinsurance and distribution networks and granted associations "powers, which, if they are to be exercised at all, should belong to the State."[21]

As a group, these innovations helped insurers consolidate a regionally differentiated system of associations and price controls during the 1880s and 1890s. While imperfect, this system helped insurers advance rates and withstand conflagrations without massive bankruptcies and provided companies with sufficient control over markets that they rejected state regulation. Yet solving enforcement problems was not sufficient for association. As insurers made progress against their own collective action problems, they raised the specter of appropriation and predation and evoked higher level games that put their project in peril.

Rent seeking I: Hostile public sentiment. The reactions of Missouri property owners to the "Fetter Bureau" in the early 1890s were typical.[22] Organized by a broker to inspect risks and fix prices in Kansas City and the rest of Missouri outside St. Louis, the bureau quickly moved to raise rates and eliminate rebates. Responses were unequivocal. According to the *Jefferson City Tribune*, the bureau was

> as iniquitous and unlawful a combine as was ever formed to rob the people. That the people have been systematically plundered through this insurance combine there is no doubt, and it is time that something was done to check the evil.

Other papers agreed, as did merchants such as one hard-pressed druggist: "That bastard Fetter is ruining me! I have to have fire insurance. . . . How can I pay this kind of rates when nobody has money?" Similarly, rate hikes in Ohio sparked protests as prices had already "left a bitter brown taste in the mouths of the public."[23] From the 1870s through 1900, insurance association evoked criticism and hostile sentiments.

Costs were partly responsible for this acrimony. Fire insurance was necessary for credit and thus an essential purchase for homeowners, farmers, and businessmen. In addition, bureaus like Fetter's routinely sought to raise rates via "flat advances" of 10 to 25 percent. But policyholders knew that insurance meant sharing burdens and would accept their share if rates could be justified. And that was the problem: By concentrating economic power and superseding the "natural play" of impersonal market forces, associations not only increased insureds' costs and exposed insureds to the risk of appropriation, but they also raised questions about the fairness of prices and created a problem of sociopolitical legitimacy.

Insurers presented insurance a necessary "tariff" upon the community to cover fire losses.[24] Furthermore, companies tried to justify rates in the late nineteenth century in terms of the need to collect tariffs sufficient to "repair the fire waste" and cover extra-hazardous conditions like negligence or the use of kerosene. Firms also invoked the data, that is, their "loss experience," poor "aggregate results," or high "loss ratios." In effect, insurers sought to articulate rate norms and present rating bureaus in ways that resonated with prevailing principles of rationality, science, and merit.

Nevertheless, insurance associations typically proceeded in an ad hoc manner and took from the public whatever, wherever, and whenever they could. Companies were driven by their own pressures, like conflagrations, shifting competitive conditions, and rate wars in far-off places. And with market control came incentives and opportunities for rent seeking. Thus, insurers consistently violated their own principles, providing policyholders, politicians, and the press with events and rhetorical weapons for reframing associations and attacking the combine.[25]

Criticism in the late nineteenth and early twentieth centuries expressed three concerns: rates were "extortionate," rates were "unfairly discriminating," and rate-making bodies acted capriciously, without reference to experience or reason.[26] The discrimination charge elaborated claims of extortion and concerns with equality and merit. Large commercial risks paid much lower rates than "preferred risks" like dwellings, schoolhouses, and detached stores. Preferred risks burned less often than factories or warehouses and cost less to service but lacked market power. In addition, disparities in rates across locations fed fears that prudent country folk were being forced to bear the costs of the profligate ways of big city life and that Eastern interests sought to extract wealth from the West and South. These fears stemmed from regional rate differences and growing competition between combine insurers and "home companies" based outside the Northeastern metropoles.[27]

Yet what proved most galling was the fact that companies and their agents could neither explain nor justify their rates when policyholders and public officials complained. "[I]s there not something fundamentally wrong," asked the Beardstown, Illinois City Council in 1901,

> in a rating system that allows a low rate when a town has no protection and then insists on high rates after a fire department is established? Can it be explained to a fair minded public?[28]

In cases like these, or when insurers imposed flat advances, agents "have no reasonable excuse."

> It is palpably without reason. . . . The lot of the local agent in dealing with the assured when rates are being raised, lines canceled, improvements being demanded, etc., is not an enviable one. [It is] a most embarrassing proceeding to approach friends with a canceled policy or to get a rate that is sharply advanced. . . . The vacillating policy of some companies, the rate fluctuations without apparent reason . . . cannot reasonably be explained.[29]

Even "Czar Fetter" was forced to concede that the emperor had no clothes.

> I had no figures or experiences from any of the companies showing their losses or profits on the various classifications. . . . [Rates] were what I considered fair, but might be termed guesses.[30]

In short, association produced a problem of justification and a crisis of sociopolitical legitimacy. "[I]f the companies," wrote an analyst of conditions in the 1890s,

> had possessed any standard by which fire hazards could have been measured, or any sufficient data through which such standards might have been constructed [or] had they known approximately the costs of carrying the various classes of risk which they were called upon to insure, they might have completely forestalled all the hostile legislation that was to follow [and] the public would have rested content.[31]

According to a turn-of-the-century Ohio Agency Association president, every citizen "is willing to pay his fair share of the [insurance] tax, when the government is fairly and economically administered."[32] Yet, as industry experts conceded, rates "have no statistical basis [or] scientific foundation, [so insurers] cannot prove their rates are just."[33] And since firms could not justify prices, consumers, politicians, and the press could frame rates as "robbery" and "unfair discrimination" and cast rate-making bureaus as being "as iniquitous and unlawful a combine as was ever formed." Indeed, insurers' inability to "prove their rates" meant public criticism and considerable frictions whenever new rates were issued.

Rent seeking II: Counterorganization and politics. By themselves, hostile sentiments were not an intractable problem. But they left the combine vulnerable to trust-busting and statist politics, especially after 1880, as it used stamping offices and other enforcement schemes to consolidate control. Two mechanisms focused scattered frictions into political attacks: consumer counterorganization and entrepreneurial politics. These processes were sometimes fueled by insurers or agents who felt mistreated by the combine and wished to use public sentiment against their rivals.

Consumer counterorganization was quite common and took three forms: (1) organizing a mutual, Lloyd's, or home company to insure risks in an area or sector; (2) forming policyholder unions to fund legal efforts, promote mutuals, and "meddle" in insurance matters; and (3) mobilizing a local commercial club, businessmen's association, or board of trade to confront a local rating authority or promote legislation. At the same time, there emerged a cadre of populist, consumer-sensitive crusaders who sought to redress wrongs—and promote their careers—by prosecuting insurers in the courts and introducing anticompany laws.[34] The generally moderate *Western Underwriter* "explains,"

> In former times, companies were willing to disgorge from their exchequers to a certain extent to kill hostile legislation. [But] companies were being "held up" for such amounts, and with increasing persistence until they called a halt. . . . Then began a systematic hammering by legislators, solely for revenge, while they played to the gallery in an ostensible crusade against "combines" and "robbers."[35]

The paper reacted similarly to Kansas Commissioner Webb McNall and his late 1890s attack on the Clarkson Bureau:

> [H]e goes off half-cocked. No one questions his sincerity or honesty. Evidently he thinks he is doing the public a great service, even if he has gubernatorial aspirations and wants to get prominently before the public.[36]

To make matters worse, insurers' legitimacy problems developed within an institutional context that focused and amplified diffuse sentiments. First, the decentralization of the U.S. polity, the delegation of insurance regulation to the states, and the local nature of rate making meant that consumers did not have to solve national collective action problems. Instead, they could counterorganize and lobby locally. Second, consumers were already organized in the nineteenth century:

> [P]ractically every city [and town] has its trade organization, a chamber of commerce, or a board of trade, composed of the leading business men of the city. . . . An increase in rates on

risks owned by these men means opposition—and opposition which counts, for the organization already exists by which it can be concentrated.[37]

Third, the states contained many points of entry. Groups closed out of a key assembly committee could often find support in the state attorney general's office, on a city council, or even in county court. Fourth, electoral politics, the openness of the American polity, and the presence of an independent local press aided organization and fostered effective attacks even in the absence of well-organized consumer groups. Exposés on rate hikes and local political heroes' fights against the combine sold copy, publicized entrepreneurship, and played a major role in stirring up hostile public sentiment.

Last, but not least, were the models, rhetorics, and general suspicion of trusts and combines that emerged from similar struggles against Standard Oil in Ohio, the schoolbook trust in Missouri, and more.[38] Like the emerging norms for rate making, these sentiments and frames represented resources for mobilization against the insurance trust, both for organized interests and for politicians claiming to champion a public interest.

Thus, efforts by insurers to raise rates or implement new enforcement schemes rapidly escalated into public debates, the mobilization of a commercial club, or an anticompact proposal. In fact, as Figures 1 and 2 show, these forces were sufficiently strong that from 1885 to 1910, twenty-three states instituted anticompact measures that specifically banned insurance combinations and/or permanently enjoined companies from cooperative rate making.[39]

Anticompact laws resulted from a broad movement in which property owners, large and small businesses, and groups like the Grand Rapids furniture makers, the Kansas Farmers Alliance, and policyholders of Palestine, Texas, organized mass meetings and successfully mobilized the state against the industry.[40] In addition, anticompact measures had a regional character that reflected the three axes of unfair discrimination discussed above: large versus small risks, cities versus towns, and East versus West.[41] Anticompact laws were concentrated in the rural and agrarian Midwest and South. In contrast, national and regional associations were dominated by Northeastern and foreign firms.[42] Furthermore, anticompact states with exemptions for limited cooperation were geographically or economically closer to the Northeastern industrial core than states without exemptions.

But perhaps most important of all, anticompact laws reactivated associations' internal collective action problems and undermined their control over markets.

External politics subverted internal solutions. While associations tried to evade bans on cooperation,[43] anticompact measures forced insurers to devote resources to lobbying, publicity, and court battles. Moreover, anticompact measures significantly raised the costs of association. They altered the payoffs to cooperation and provided actors with support and rationales for defection. And they

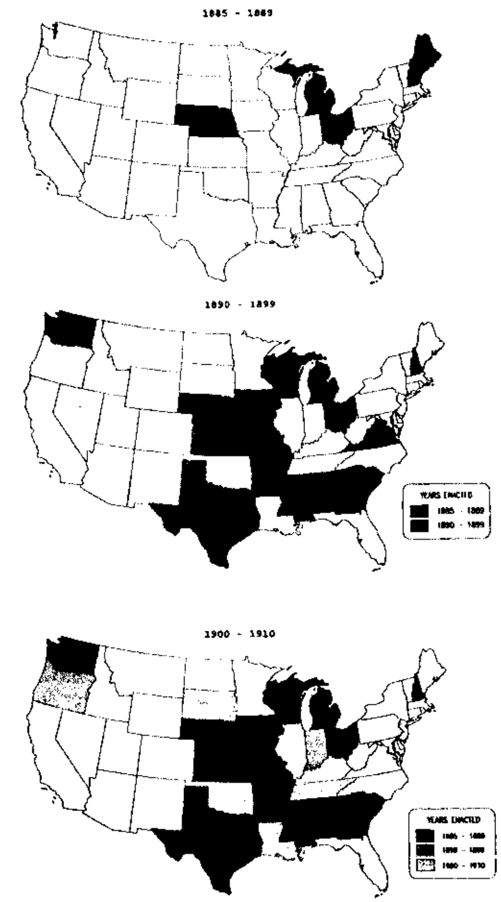

Figure 1. Development of anticompact measures, 1885-1910.

prompted associations to delay or eschew rate hikes, punitive measures, and the implementation of sanctioning devices. Ohio Attorney General Monnett's "spirited attack" on the insurance trust in the late 1890s exemplifies this process.

Few sectors of the state are free from the contagion of rate cutting. [Monnett] had the effect of frightening the companies [and brought] about the present results. The session of the legislature coming on just as it did heightened the scare, and the threats of . . . legislation either served as an excuse for violating rules or really inspired a fear of the consequences. [C]ompanies cannot be depended on for the remedy . . . as it gives the attorney general another excuse to start in on another crusade.[44]

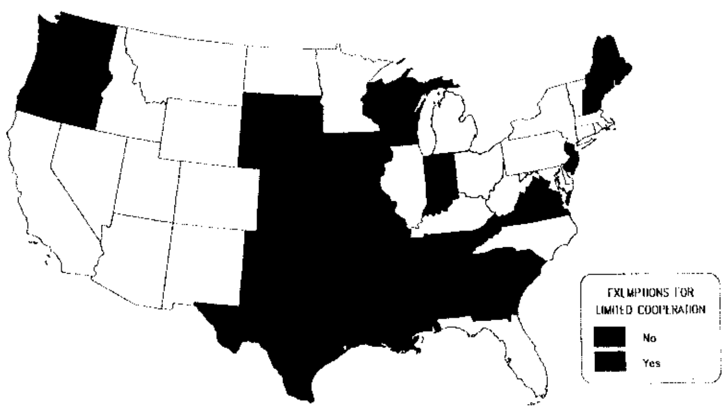

Figure 2. Types of anticompact measures.

In Cleveland, for example, the local board could not fine agents "on account of the anti-trust law" and was forced to abandon separation, its most potent enforcement device.[45]

These dynamics were not confined to Ohio. In Kansas, after McNall broke the Clarkson Bureau, "cooperation as to rates is hard to get [as] companies are always finding a pretext to cut a rate." In Missouri, antitrust cases "caused the companies to desire to free themselves from future entanglements." In Michigan, rates were not issued, "it being thought best not to do so till the danger of hostile legislation was over." And throughout the Midwest, anticompact agitation "engenders bad faith, which is sure to cause trouble."[46]

Politics and its effects altered firms' priorities in ways not anticipated by theories of association. "The main problem confronting fire insurance," announced a leading trade journal, is

> that of public hostility and unjust laws. . . . The high expense of conducting the business, the whaleback railroad method of rate shifting, arbitrary actions . . . the maintenance of high rates on preferred risks to pay for too low rates elsewhere—all this has been the salient force engendering public opposition. Until . . . organizations follow the business methods that will gain the respect and confidence of the public, no lessening of hostility may be expected. [And] unless some plan is devised to make rates on scientific principles . . . the State will force the companies to do so. [It] will frame classifications and have the statistical machinery.[47]

This observation was prescient. In 1909, over company objections, Kansas populists passed the first rating law. This law gave the insurance department

power to order changes in rates and was used by the superintendent to order 12 to 17 percent statewide rate reductions. In 1910, Texas and Louisiana took rate making out of the companies' hands entirely and assigned that task to state insurance boards. In 1912, Kentucky also chose a statist path.[48] Lacking a compelling solution to the problems of predation and hostile public sentiment, associations were politically impossible, and the only options insurers faced were either publicly enforced markets or direct statist control.

3. STEPS TOWARD INSTITUTIONAL AUTHORIZATION

These options shifted, however, as debates and political struggles yielded new analyses, structural reforms, and pacts. In some cases, insurers promoted reform. In others, rationalization and reform were forced on insurers over their objections. Yet in the late 1890s, reforms began to prompt outsiders to cooperate with rate-making bureaus. By the late 1900s, consumers, legislators, and regulators in some states were convinced that enforced markets and statism served neither the industry nor its customers; they qualified and then abandoned such measures and started to pass "rate regulation" laws that authorized associations and rate compacts in fire insurance (see Table 1). Legal endorsement began in 1911 in New York but was soon embraced even by ardent anticompact states. By 1920, twenty-four states had endorsed fire insurance associations; by 1937, thirty-one states had joined the movement; and by 1950, this stance was nearly universal.[49]

This turnabout rested on a variety of factors and innovations that emerged from the struggles over combination from the 1890s through the early 1910s.[50]

Market failures. Rate wars, conflagrations, and political conflicts generated severe shortages and waves of bankruptcies.[51] Since insurance was needed for credit, these market failures not only exposed policyholders to loss, but they also disrupted finance and trade and heightened consumer interests in steady insurance supplies. Furthermore, market failures served as object lessons or events that increased buyers' receptivity to arguments for association and enhanced the credibility of insurers' efforts to reframe price fixing as economically rational.

For example, the 1898 New York rate war drove rates so low that insurers cut back on underwriting en masse and produced a nationwide insurance shortage. The shortage left "tough risks" in Chicago without protection and prevented Eastern merchants from exploiting changes in customs rules.[52] Commercial insureds took this lesson to heart. "Whilst we are interested in a low scale of premium charges," wrote one such group,

> unbridled competition in fire insurance rates is not in the best interests of the public, because it leads to the depletion of reserves held for contingencies, the gradual elimination of the smaller companies, reduction in the quantity and quality of the insurance obtainable, and [an] increase in rates—especially where the amount of insurance needed is large.[53]

Table 1
States That Authorized Rating Compacts in Fire Insurance

New York	1911	
Arkansas	1913	
New Jersey	1913	
North Carolina	1913	
West Virginia	1913	
Iowa	1915	(repealed 1917, reinstated 1947)
Michigan	1915	
Minnesota	1915	
Missouri	1915	(first rate control law passed 1911)
Pennsylvania	1915	
Kentucky	1916	(after state made rates from 1912-1915)
Hawaii	1917	
Kansas	1917	(tacit recognition, first rate control law passed 1909)
Ohio	1917	
Oregon	1917	
South Carolina	1917	
Washington	1917	
Wisconsin	1917	
Colorado	1919	
Indiana	1919	
Nevada	1919	(companies must "file or cause to be filed" rates)
South Dakota	1919	
Vermont	1919	
Virginia	1920	
Wyoming	1921	
Idaho	1923	
Mississippi	1924	
Louisiana	1926	(perhaps as early as 1910)
North Dakota	1929	(first rate control law in 1919)
New Hampshire	1931	(de facto recognition of state rate-making board)
Illinois	1937	

States that authorized rating associations in 1944 and 1945

Alabama	Tennessee	District of Columbia
Connecticut	Maryland	

States that authorized rating associations for the first time between 1947 and 1950

Alaska	Delaware	Maine	Nebraska	Rhode Island
Arizona	Florida	Massachusetts	New Mexico	Utah
California	Georgia	Montana	Oklahoma	

Shortages and insurance strikes surrounding fights over statist and antitrust laws in Kentucky and Arkansas likewise educated buyers and led businessmen to repeal the statutes.[54] Lenders were also impressed. Like insureds, lenders had interests in steady insurance supplies. Yet they did not purchase the insurance needed for credit and did not bear the price of stability. Thus, bankers, creditmen, and credit-based trades had strong incentives to join insurers in their search for order.

Scientific rates and a model of rational order. Market failures did not themselves yield a cooperative solution. On the contrary, solving market failures via association presupposed compelling theoretical and normative rationales for cooperation and market control, including coherent principles for fixing prices and allocating loss costs. Such rationales were essential given the problems of predation and justification posed by private association.

The requisite principles emerged piecemeal from debates over rates during the 1880s and 1890s. They were systematized in the 1890s by a group of reformers and actuaries that included A. F. Dean, the industry's leading rationalizing agent, and were rapidly disseminated in the 1890s and early 1900s through various means. These included books like Dean's *The Rationale of Fire Rates*, newspaper articles, a lecture series at Yale, and public hearings held during the era of legislative investigations. Between 1909 and 1913, New York's influential Merritt Investigating Committee amplified these principles in its report, as did other state investigations and the National Convention of Insurance Commissioners.

In this view, insurance was a "tax" that pools community resources and covers the losses of the few via small tariffs on the many.[55] According to this code, "there must be sufficient funds" to cover losses and "provide a surplus." Furthermore, "the rate of fire tax assessment must be equitably made" so that no individual or group is "assessed at a greater rate than its just proportion" or bears more than its fair share of the tax burden.[56]

Three principles for apportioning the tax were critical. First, an individual, group, or locality should be assessed "upon its own merits" and charged "rates based on the amount of hazard" it posed.[57] Insureds should carry their own weight and be taxed in proportion to the loss costs they impose on the community. They should receive low rates for meritorious behavior like reducing hazards through prevention and suffer rate penalties for being careless with combustibles or other morally hazardous behaviors.

Second, while insureds vary and should be taxed different rates, rating authorities must subject all risks to equal or "identical rating treatment" and assign "like rates to like hazards" without partiality or unfair discrimination.[58] Third, rates must be based on impartial, scientific analyses of the hazards, statistical data, and the loss costs or loss ratios for each risk or risk class.[59] Rate making should be performed by statistical experts and engineers who were insulated from politics and the pressures of "business getting" and could set rates in accordance with actuarial science. Moreover, rate makers should base rates on the inspection of risks, on detailed knowledge of the causes of fires, and on bodies of loss data extensive enough to exploit the "laws of the large numbers."

As a group, these principles projected a vision of insurance as a scientifically administered, quasi-public market. Embodying "modernist" commitments to rationality, merit, and the rule of law, they provided participants with a compelling guide for fixing rates and avoiding predation. In addition, these principles enabled reformers, insurance experts, and regulators to recast unchecked competition as irrational and association as the industry's salvation.[60] Cooperation among insurers was needed, advocates argued, to standardize risk classifications and generate sufficient loss data to use laws of averages. Cooperation was also needed, advocates continued, because competition decoupled rates from hazards and fostered moral hazard, discrimination, and insolvencies. Price warfare kept insurers from levying rate penalties on hazardous properties and increased burning rates. Furthermore, commercial insureds used market power to get rates and rebates that were not available to others. Further still, price wars drove rates below loss costs so that companies could not accumulate adequate reserves or withstand conflagrations. Hence, cooperation was vital not just to make scientific rates but also to enforce proportionate relations between rates and hazards, protect consumers from company failures, and preserve incentives for eliminating hazards. In fact, by using associations to link rates to hazards, reformers hoped to safeguard the insurance system from price warfare while channeling interfirm rivalry into cooperation and competition over prevention and loss cost reduction.

Thus, by 1900 or so, participants had begun to converge on an economic rationale for association and norms for fixing reasonable rates. First articulated by companies to defend rates in the 1880s, these principles were subsequently used by politicians, insureds, and the press to attack the combine. But in the late 1890s, these norms came to serve as a framework or common language within which insurers and their opponents could talk to each other, come to terms, and craft three structural reforms—schedule rating, fire prevention, and collective bargaining.

Schedule rating. Developed in the 1890s, schedule rating was a rate-making method for pricing commercial risks.[61] This method defined a standard building and a basis rate that reflected the qualities of the structure, its location, and the area's firefighting facilities. It also defined (1) credits for good construction, firefighting appliances, and the owner's prevention efforts and (2) charges for substandard construction, exposure, occupancy, and hazards on the premises. To price a risk, an inspection bureau surveyed the premises, determined the basis rate, and adjusted the rate using the credits and charges noted by the survey. Owners wishing to reduce rates could eliminate deficiencies and apply for a rerating.

Schedule rating was a symbolic and material boon to insurers. First, it generated rates that demonstrably reflected the hazards a property and its owner posed for the community. It thus brought rates in line with rate norms and enabled insurers to explain their rates. In fact, by tying rates to the documented features of a risk, schedules let insurers reframe public discourse about high rates in terms of the individual property owner and his (de)merits. Second, schedule rating extended a quid pro quo that promised insureds lower rates in exchange for their taking steps to reduce hazards. It let commercial insureds pursue lower costs

individually, within the system, and offered politically powerful consumers alternatives to anticompany politics.

Driven partly by moral hazard problems, schedule rating and scientific methods were also political responses to public opinion and "the necessity for meeting in some intelligent manner the anti-insurance sentiment in State legislatures."[62] As one firm put it, "a first class schedule is the business rejoinder to the anti-compact law."[63] In this rejoinder, insurers used schedule rating to recast high prices and deflect attention from associations to policyholders.

> Since it lists the various defects of each risk and the charges made for the same, property owners [will] realize that they are not suffering from the effects of arbitrary discrimination or of personal judgment of the rater, since it is evident that the rate on their own property is governed entirely by its own faults or merits.[64]

The discursive gains from schedule rating were crucial. Agents now have a

> means of explaining rates [and] can now show the insured that his rates are of his own making. The inspection bureaus have all the information necessary. . . . It now remains with the insured to pay high or low rates as he sees fit.[65]

Agents endorsed schedule rating,[66] as did state officials. "It makes for fairness and equity," noted Wisconsin's insurance commissioner, and will solve "the perplexing problems of rates and discrimination that . . . stalk in company office and legislative hall."[67] New York's Investigating Committee agreed.

> [W]hen the insured sees just how, by making certain changes in his building, he can obtain a more favorable rate, there is a direct appeal to his pocket, which is at once taken advantage of. . . . [T]he rate for a given risk, when a schedule is established, is perfectly definite. It is that fact that gives schedules one of its chief virtues, the fact that it eliminated discrimination . . . on the basis of "influence."[68]

More important, consumers were persuaded and responded to insurers' call. We "placed a premium on carelessness," wrote the chief of the Ohio Inspection Bureau of schedule rating in Columbus, and "all the property owners got busy and the fire losses were reduced." Chicago theater owners likewise "got busy" with reconstruction, even though rating those death traps under schedule "advanced rates considerably," because rates "can be successfully and intelligently explained to the public."[69]

Prevention and collective bargaining. Before 1890, fire insurers took risks as they came. Yet in the 1890s, insurers made prevention a priority and laid an institutional foundation for a nationwide campaign against "fire waste."[70] As a part of this effort, insurers formed networks of inspection bureaus, the Underwriters Laboratories, and prevention associations. Insurers used this array to learn about the causes of fires, to craft prevention protocols and model building codes, and to forge ties with engineering societies and building trades. Insurers also used this array to inspect every U.S. city and hundreds of small towns. And in this process, insurers began to bargain collectively with civic groups, local officials, and trade boards, offering lowered rates for specific improvements like passing building codes or razing hazardous stretches of buildings.

The logic of prevention and collective bargaining paralleled that of schedule rating, right down to merit principles, the deflection of blame for high rates, and ways for consumers to pursue their interests within the system. As a manager of the Indianapolis Fire Inspection Bureau told the city's Commerce Club, rates are insureds' responsibility.

> It is up to you gentlemen, to enact ordinances and laws compelling good construction, safe installation of electric wires, or steam pipes, of proper storage of gasoline.... It is up to you to see that... the fire department keep pace with the growth of the city and that politics, the bane of all such organizations, be kept out of the department.[71]

Others joined insurers to amplify this call. "You are barking up the wrong tree," a creditmen association pamphlet advised, by complaining about high rates

> without giving heed to that which inevitably makes them so.... *Instead of railing at the insurance companies, might it not be more sensible to see what we can do to cut down the losses?*... The insurance companies have... suggested methods [so] losses can be cut down, and rates correspondingly reduced.... [G]et in touch with the nearest rating bureau and ascertain what can be done about your rate. If you can do this in association with a group of business neighbors, so much the better, because your interests are bound up with theirs in the matter.[72]

And in growing numbers, consumers responded, especially when facing "pink slip" advances. In Philadelphia, for example, trade groups turned from protesting rate advances to

> hearty cooperation with the underwriters, and to... legislation that led to the best building laws... the installation of over seven miles of high pressure water pipes, with independent pumping stations [and a 20 percent reduction in rates].[73]

Businessmen across the country played along, from those in Knoxville, who organized a Fire Insurance League to have their pink slip removed, to those in Des Moines and Duluth, who were aided by policyholder unions that had found a profitable niche in prevention and consumer advocacy. This quid pro quo even transformed the competitive game for firms and agents.

> The public is being educated to the fact that the rate is determined by the hazard, and not by the insurance "trust." [P]roperty owners are making a study of fire protection and the agent stands to him as an expert adviser.... Heretofore, the "personal equation" has been a large factor in soliciting.... [Now] the agent who can show the assured how to get a lower rate by making improvements will be the man who will get the business.[74]

Like schedule rating, prevention and collective bargaining helped insurers make rates in a defensible manner and increased outsiders' willingness to accept associations. Evidence of burst water mains or failure to respond to alarms effectively refuted charges of extortion. In addition, bargaining and prevention made rates local affairs and enabled politicians to deliver lower rates to their constituencies by working with insurance bureaus. They thus altered the opportunities politicians faced and deflected activism over rates from anticompany politics into municipal reform and public works. Furthermore, schedule rating, fire prevention, and bargaining effectively used price controls to channel competition and cooperation within the industry into learning, improvement, and loss cost reduction.

However, these reforms served large or organized consumers and did relatively little for disorganized interests and small customers. And while schedules and bargaining enhanced the rationality of rate making, they did not provide insurers with objective standards for fixing basis rates, surcharges, or credits or for setting class rates that applied en masse to small risks like family dwellings. Lacking standards, rating bureaus remained vulnerable to criticism.[75]

Classified experience. Aware of this problem, reformers pushed for a change that directly implemented the new theory of rates: Create a uniform plan for classifying risks, have firms supply an actuarial board with loss data for each risk class, and use that data to make or adjust rates in accordance with actuarial science. Reformers used life insurance as a model and sought to build a mortality table for fire losses.[76] Such tables, advocates explained, "would command the respect of the public [and] restore harmony between the public and the companies."[77]

The push for combined classification and actuarial bureaus began in earnest during the 1890s in the politically torn Midwest and was promoted by Dean and his colleagues through the 1900s.[78] This effort received enthusiastic support from analysts, trade journals, and the public. But companies withheld their loss data on the grounds that they were trade secrets and delayed this program for decades.[79]

These delays evoked demands from regulators and consumers for classified data and talk about using the state to compel cooperation.[80] Classified data even became a key issue in the legislative investigations of the 1910s. "[Y]ou should have a classification to base your estimate on," a former commissioner told the New York Investigating Committee,

> and then, if a citizen comes to the authorities and said, "My rate is too high," the judge would have something to base an opinion on.... [O]therwise it would be a matter of guesswork.[81]

The committee agreed. "It is perfectly certain," it wrote after grilling industry officials about their failure to deliver,

> that the public has a right to demand and is going to demand that in return for the right to combine the companies shall furnish equitable rates and not only that but that they shall put themselves into the position to *demonstrate* [through combined loss experience] that they are furnishing equitable rates.[82]

Yet it was not until 1915 that the National Board created the Actuarial Bureau and began to collect and tabulate classified experience from its members.

Politically, this reform was too little, too late. Delays in implementation deeply frustrated consumer groups, regulators, and lawmakers. Furthermore, insurance bureaus backslided on earlier reforms, sometimes failing to deliver on their bargains with local governments and consumer groups. They put off reinspections, occasionally raised rates after a town put time and money into improvements, and appropriated policyholders' investments in prevention.

Rate regulation. By 1910, it was clear that consumers and public officials would not accept association without public safeguards against appropriation and high rates. Insurers fought regulation, fearing that it would expose rates to politics and let populists legislate rate cuts. However, in state after state—and as a condition for avoiding antitrust laws and statism—coalitions of consumer groups, agents, commissioners, and reformers subjected fire insurers to rate regulation.[83]

Rate regulation was a political settlement or quid pro quo between insurers, consumers, and the state.[84] Texas excepted, the states authorized insurers to form associations and fix prices. However, as a condition for authorization, states also subjected rates and associations to public control. First, rating laws endorsed schedule rating and forbade unfair discrimination in rates. Some states went further to ban rates that were "excessive," "unreasonable," or that yielded underwriting profits above 5 percent. Second, rating laws provided regulators and consumers with administrative machinery for ordering changes in rates that exceeded profit limits, discriminated unfairly, and/or were substantially disproportionate to hazards. Third, rating laws empowered commissioners to examine associations and officers and required companies to file rates, organizational data, and/or classified loss experience with the state. Finally, some laws supplemented administrative safeguards by promoting mutual insurers, which subjected bureaus and their members to market competition based on prevention and risk reduction.[85]

Rate regulation was decisive for resolving insurers' institutional difficulties. It consolidated and extended earlier reforms. Furthermore, it instituted third-party mediation and provided consumers with ways to appeal rates and hold insurers to their bargains. In effect, rate regulation granted outsiders state power to enforce fairness principles, ensure parity between rates and loss costs, and force bureaus to share the gains from prevention. And to make public safeguards effective, regulation substantially expanded the states' administrative capacities. Indeed, filings, classified data, and examination powers provided consumers and state officials with an independent database. They enhanced outsiders' abilities to monitor the industry and enabled public officials to adjudicate rate disputes authoritatively.

Taken together, rate regulation, schedule rating, and the rest settled the problems of rent seeking and authorization. While granting insurers public powers, regulation and reforms turned associations away from redistributive predation into improvement and the production of public goods. This reformed associational system not only promoted learning about loss costs, hazards, and the causes of fires, but it also tied prices to costs, channeled cooperation and competition into prevention and cost reduction, and harnessed the sector to the task of rebuilding America's cities, towns, and factories. Through these means, the system decreased the occurrence and severity of conflagrations and reduced loss costs—and rates—by almost 50 percent from 1910 to 1940.[86]

Regulation and reform hardly ended complaints about rates. Rather, they fragmented and depoliticized opposition by channeling complaints into individualized administrative negotiations over particulars.[87] Furthermore, reforms lifted external constraints on enforcement and directly enhanced insurers' cooperative capacities. Improved data on losses reduced the chances that firms would underbid their costs or start price wars out of ignorance. Cost data served as a "stop rate" and could have a "steadying effect upon rates" as they gave firms "something tangible to hold onto and furnish a bound below which self-interests would not allow the companies to go."[88] Reforms also induced firms to compete by helping insureds reduce hazards and loss costs. They made individual firms' competitive success dependent on collectively produced items like rate schedules and inspection services, increasing insurers' interests in cooperation. Finally, regulation made rate norms and compacts more or less legally binding in a number of states.[89]

4. DISCUSSION AND CONCLUSION: SOME CONDITIONS FOR ASSOCIATION

Increasingly, scholars have moved beyond markets and hierarchies to study associations and other economic forms. Researchers have found that associations and price controls represent alternatives to states, markets, and vertically integrated firms and can promote innovative and dynamically efficient production.[90] Researchers have also found that the rise of the corporation in the American economy was partly a response to the problems firms faced in controlling competition via associations, pools, and other cooperative schemes.[91] Determining the conditions for association should thus shed light on both the evolution of the U.S. economy and the possibilities for high-performance alternatives to mass production, corporate hierarchy, and economic centralization.

My findings extend existing analyses of these conditions. First, I show that association is a multilevel project in which problems of predation and institutional authorization are as important as internal problems of enforcement. Second, I identify solutions to the predation problem and some conditions under which industry outsiders will endorse association as an alternative to statism, markets, and corporate hierarchies.

Nested games and predation. The difficulties insurers faced with defection and free riding partly confirm existing research. Prisoner's dilemmas and enforcement problems shape the prospects for association, as do the number of firms, interfirm heterogeneity, and other industry conditions that directly affect the cost of organizing compacts. Yet the game of organizing cooperation within an industry is embedded or nested within a broader political-institutional arena, one where state actors, consumers, experts, and other outsiders organize to evaluate, support, or oppose firms' associative projects. Firms seeking to associate must therefore secure the endorsement or forbearance of actors and agencies in the broader surround. And since legal enforcement can overcome organizing problems that firms cannot solve privately, authorization and its conditions may prove as, if not more, decisive for association than industry factors and enforcement costs.

Embeddedness creates underappreciated dilemmas for associations and raises issues of institutional design that go beyond internal control.[92] As firms solve enforcement problems, they create opportunities and incentives for monopoly predation: firms can raise prices above costs and profit at consumers' expense. At a minimum, this use of association can diminish competitive pressures for improvement, dissipate positive-sum gains, and alienate key players, particularly when elites are committed to the politics of productivity or growth. In effect, associations pose a principal-agent problem for outsiders. Cooperation and price controls can yield dynamic efficiencies and benefit consumers, workers, states, and other sectors. Yet by tolerating or delegating authority to associations, states and other outsiders enable firms to act in collectively opportunistic ways and expose themselves and their constituencies to risks of arbitrary appropriation.

Solving enforcement problems can also spark fatally hostile responses in the broader setting. By subjecting consumers to externalities and threatening state sovereignty, associations increase the payoffs to counterorganization. Furthermore, associations are systems of rule that suppress price setting by impersonal and presumably impartial market forces. As such, associations raise issues of fair price, create legitimacy crises, and can provide industry outsiders with grounds for criticizing the industry and mobilizing anticompany coalitions. Thus, organization within an industry can induce external games where statism or antitrust politics emerge as the dominant strategy.

Different games will emerge in different settings. One possibility—evidenced by fire insurance and the nineteenth-century American economy more generally—is populist protest, antitrust politics, and market-enforcing policies.[93] Such responses are most likely in open and decentralized polities, when a free press and electoral politics prevail, when regional economic conflict is intense, or when consumers are small in number, homogeneous, or already organized. Market-enforcing responses are also fueled by certain economic ideas.[94] The prevalence of neoclassical economics within academic and policy circles can even promote antitrust action by state agencies in the absence of populist mass mobilization.

In contrast, populist trust-busting has not characterized European or Japanese economic systems.[95] Given centralized polities, powerful economic ministries, the influence of labor, and the international position of these economies, we would expect statist intervention rather than trust-busting. We might also expect responses to association that are more preoccupied with export competitiveness, state prerogatives, and issues of public order than regional discrimination or consumer welfare. But in either case, intra-industry organizing is dynamically linked to the broader surround and can activate external organizing and fatal political opposition.[96] And as insurers' experiences suggest, external games and even the threat of hostile institutional responses can transform payoffs within associations, rendering solved or partially solved control problems intractable.

Hence, solving the Olsonian problem of collective action is necessary but not sufficient for collective self-regulation. Instead, firms seeking to govern through associations must simultaneously solve both internal problems of bad faith and external problems of predation, legitimation, and institutional authorization.

Hypotheses regarding authorization. Under what conditions, then, will autonomous states, mobilized consumer groups, and other industry outsiders endorse or at least accept associations and private price controls? My analysis suggests first that authorization hinges partly on industry conditions, including a sector's vulnerability to market failures and the centrality of its products. Market failures provide outsiders who depend on steady and high-quality supplies of the industry's output with a material interest in regulation and market stabilization. Market failures also increase the credibility of arguments for association and can provide advocates with leverage to discredit opponents and reframe public debates to their advantage.[97] Moreover, consumers and business groups will be most interested in stabilizing markets when the product is indispensable—that is, required for other transactions or mandated by law—and when few or no substitutes exist.

However, market failure is not sufficient for authorization. Cooperative solutions must be fought for, justified, and linked with outsiders' concerns. This is especially true given the questions associations raise about fair price and their potential for degenerating into predatory practices that leave outsiders worse off than before. Accordingly, I suggest that authorization also depends on conceptions of control or theories of pricing and markets that express prevailing principles of rationality, efficiency, and justice and supply participants with compelling economic rationales for cooperation and price control.[98]

Overall, outsiders are more likely to accept association once reformers or experts craft a theory of markets that casts unchecked competition as inefficient and highlights the payoffs of price control for politicians, consumer groups, and their constituencies. Such a theory is a potent mobilizing or legitimating resource as it can help advocates reframe problems and alter others' perceptions of the costs of alternatives. Equally important is whether participants converge on norms or theories of pricing that operationalize generally held visions of rationality and fairness and define defensible metrics for sharing costs among trading partners.

As answers to questions about fair value, these norms supply firms with standards for tempering predation and for reframing or justifying associations, prices, and their distributional effects. They are also intellectual resources for developing structural reforms. These norms or theories of price can even serve as a common language or framework within which firms and their adversaries can talk to each other, reach agreements, and forge reform coalitions.

Neoinstitutionalists have begun to show how theories of markets and prices can help actors mobilize support, influence policy makers, and (de)legitimate governance. Models of markets and market failure were instrumental in the rise of the corporation, the rise and fall of regulation, and the demise of the conglomerate.[99] Moreover, the American railroads' failure to obtain state sanction for pools in the nineteenth century apparently derived, in part, from a failure to converge on norms of fair price: Many shippers and officials felt that rates should be proportional to the distance traveled and sought rate parity. But railroads and Eastern merchants stressed fixed burdens and scale economies, arguing that long-haul rates should be lower than rates for short-haul traffic.[100] Associations also faced insurmountable theoretical obstacles in the 1920s, as regulators, judges, and government economists steeped in neoclassical economics refused to countenance open price schemes.[101] Used strategically, models like agency theory and theories of perfect competition can be potent material forces.

In fire insurance, the theoretical and normative conditions for association were met by scientific rate making and a model of insurance as a rationally administered, quasi-public market. Systematized by reformers and actuarial experts, these theories cast insurance as a system of taxation. They allocated the rate burden in proportion to the hazard or costs an individual or group imposed on the community and described rate making as a scientific operation based on statistical laws and the impartial analysis of hazards by experts and engineers. These theories also presented an analysis of market failure or ruinous competition, one that demonstrated how cooperation and price controls were needed to implement actuarial science and safeguard consumers from discrimination and company insolvency. In short, these theories mobilized commitments to rationality, merit, science, and the rule of law to make compelling economic arguments for cooperation and to provide associations with guidelines for making rates that outsiders would accept as reasonable and fair. Furthermore, these rate-making principles facilitated structural reforms that helped bring regulators and consumer groups into the associational coalition.

The importance of structural reforms for building coalitions between insurers and outsiders suggests that authorization also depends on a third condition: the institution of pricing practices and bargaining schemes that link prices to costs, incorporate trading partners into the regime, and generate incentives and opportunities for improvement and cost reduction. Associations foster opposition largely because they let firms arbitrarily raise rates above costs and extract resources from consumers. And as insurers quickly discovered, failure to reform pricing practices once rate norms emerge will magnify rather than mitigate public criticism. However, associations can alleviate opposition through reforms that tie prices to costs and that induce firms to invest rents into cost reduction, improvement, or the production of public goods. Associations can further alleviate opposition by providing trading partners and their representatives with ways to participate in these processes and gains, that is, by incorporating consumers and other organized interests into the regime.

The specific form these devices must take is an open question. What is important are mechanisms that channel associations from redistributive zero-sum efforts into positive-sum games that harness cooperation and price control to cost reduction or the creation of new benefits. In insurance, participants realized these ends through schedules, collective bargaining, and fire prevention, although efforts by associations in printing and hardware suggest that other devices can achieve these results.[102] Likewise important are structural linkages that supply trading partners with ways to realize gains, bargain over outcomes, and pursue their interests in economy or fairness within the associational system. Associations must provide outsiders with reliable alternatives to politics and disorganize the opposition. Indeed, as research on labor relations also has found, participation and gain-sharing schemes such as collective bargaining can induce actors to accept short-term sacrifices and the existing structure of control and can shift participants from anticompany politics and stalemates to games of consent based on depoliticized, local, or individual struggles over particulars.[103]

Finally, authorization may ultimately depend on state or effective third-party systems of monitoring, mediation, and enforcement. The evidence from insurance is clear. Consumers and institutional actors are not likely to endorse cooperation and private controls unless they can mobilize state power to appeal company decisions, hold firms to their bargains, and keep the system aligned with rate norms or efficiency principles. In general, consumers, public officials, and other outsiders have significant stakes in credible safeguards against predation and in mechanisms that enforce the rules of new positive-sum games. Not surprisingly, state or private third-party oversight often characterizes successful and politically acceptable associational systems, ranging from self-regulation in the securities industry to mesocorporatist schemes, export associations, and rationalization cartels.[104]

The evidence is also clear that credible public safeguards presuppose the existence or creation of administrative capacities.[105] As insureds and regulators realized, these capacities hinged not only on budgets and staff but also on the creation of expertise, independent data, and a competitive fringe within the regulated industry. Expertise and data like classified experience are vital for monitoring compliance and for regulators' ability to evaluate and authoritatively adjudicate competing rate claims. Without good data, participants can neither prove prices are reasonable nor reliably enforce rate norms. Authorization will fall prey to consumer distrust and regulators' fears of becoming embroiled in intractable disputes. Furthermore, promoting a competitive fringe can amplify regulators' capacities to temper collective predation by providing state agencies and consumers with economic alternatives and potential political allies.

In sum, the foregoing analysis suggests that states, consumers, and other outsiders will authorize or accept associational governance under four conditions. These conditions are (1) market failure; (2) compelling theoretical rationales for cooperation, including rate norms or distributional principles for equitably allocating costs among trading partners; (3) pricing and bargaining schemes that promote positive-sum games and gain sharing; and (4) credible regulatory safeguards. Unfortunately, a case study cannot determine if all four conditions are necessary for authorization. Nevertheless, it is safe to conclude that each of these conditions increases the likelihood that industry outsiders will endorse association as an alternative to direct state control, publicly enforced markets, and autonomous corporate hierarchies.

The foregoing analysis also has several implications for existing research. First, my findings confirm Elinor Ostroms's claim that actors can solve otherwise intractable problems of cooperation incrementally by using less costly partial solutions to organize further and address larger issues.[106] Arguably, solving problems of predation and instituting the reforms needed for authorization are as subject to second- or third-order collective action problems as solving internal control dilemmas and instituting enforcement devices. However, the conditions for authorization in fire insurance were neither developed all at once nor imposed from above. Instead, authorization emerged piecemeal, from the bottom up, via the accretion of partial solutions generated by debates and political struggles over rates. The process began with the articulation of rate norms by insurers and critics, an outcome that required low levels of organization. Once in place, rate norms facilitated the organization of industry reformers around new partial solutions—structural reforms like schedule rating and fire prevention—that altered outsiders' material interests and helped bring business interests, regulators, and local government officials into a supporting coalition. This growing coalition, in turn, enabled lawmakers to conduct public investigations that let reformers disseminate regulatory standards and theories of market failure and so on. Indeed, legislative endorsement and the rate regulatory coalition might not have been possible without this cumulation of partial solutions to the predation problem.

Admittedly, my emphasis on cultural and normative elements departs from previous work in this area. I do not wish to suggest that culture trumps politics or material interest or to engage in often fruitless debates that pit culture against efficiency, politics, or power. My point is simply that actors can secure the external conditions for association incrementally and that rate norms or models, like structural changes, can reduce organizing costs and create possibilities for broader solutions to the dilemmas of cooperation.

My findings also provide new insights into regulation and the American state. First, they call into question claims by Stigler and others that anticompany politics reduce the prospects for viable association.[107] For Stigler, politics deters firms that cannot control competition privately from seeking state-enforced cartels. Fearful that hostile outsiders would use regulation to reduce prices, firms will resist intervention, leaving the industry and its associations to limp along without effective enforcement powers.[108] The insurance case suggests a contrary view: Organized consumers or autonomous states are necessary to counter private power and deflect sectors away from predatory market control strategies. Industries cannot be relied on to make this transition on their own. Instead, firms and associations may need hostile publics, organized consumers, and autonomous states to force them into positive-sum—and politically acceptable—equilibria. Moreover, firms and associations may also need mobilized consumer groups and strong states to realize specific conditions for authorization like collective bargaining. To be sure, authorized self-regulation is not likely when consumer groups are hopelessly fragmented and building administrative capacities is politically impossible.

Second, my findings challenge conventional wisdom regarding federalism and the weakness of the American state relative to the power of business.[109] Companies did use insurance strikes to pit states against one another and subvert regulation. Nevertheless, the system displayed surprising possibilities, dynamics, and strengths. Through cooperative action and the support of the Supreme Court, states and insurance regulators did manage to build the administrative capacities needed for public oversight and even subjected insurers to a credible threat of statist control. Moreover, decentralized public authority and the openness of the states to local anticompany pressures reduced organizing costs for consumer groups and other outsiders, effectively facilitating the political opposition and collective bargaining needed to reach a new equilibrium. Perhaps most important, federalism and decentralization meant that participants did not have to develop a single comprehensive national solution to the problems of the insurance trust. Instead, states like Georgia and Nebraska could pursue antitrust politics through the 1940s without preventing states like New York from implementing and testing rate regulatory alternatives. In effect, the federalism permitted diversity, regional adaptation, and dissent. It absorbed extremism and created political space for experimentation and compromise solutions, which could then diffuse to the rest of the system. Had participants been forced to find a single, federal-level solution to the insurance trust problem, agrarian forces in Congress or judicial proclivities might have vetoed these efforts from the outset.

Finally, my analysis of association bears on the growing reassessment of conventional efficiency theories of the modern firm. Sociologists and others have asserted with increasing force that the rise of the corporation in the United States resulted from political and cultural factors, rather than economizing or efficiency pressures.[110] But with a few exceptions, advocates have not strengthened that argument by documenting the existence of efficient, economically viable alternatives to vertical integration and the corporate hierarchy in the late nineteenth-century American economy.[111] Fire insurance is such a case. As an industry that instituted a regionally decentralized and dynamically efficient system of association and price controls, fire insurance provides additional evidence that the corporation is not the only high-performance solution to market forces and that efficiency pressures did not uniquely determine the choice of corporate form. From the standpoint of economic constraints, other high-performance alternatives were, in fact, available to American business.

NOTES

1. Mancur Olson, *The Logic of Collective Action* (Cambridge, MA: Harvard University Press, 1971).

2. Gabriel Kolko, *The Triumph of Conservatism* (New York: Free Press, 1963), 26-56; Oliver Williamson, *The Economic Institutions of Capitalism* (New York: Free Press, 1985), 159-60, 277-79; Martin Sklar, *The Corporate Reconstruction of American Capitalism, 1890-1916: The Market, the Law, and Politics* (Cambridge: Cambridge University Press, 1988), 154-66.

3. Important statements about institutional fields and how they shape firms and economic governance include Paul DiMaggio and Walter W. Powell, "The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields," *American Sociological Review* 48 (1983): 147-60; Neil Fligstein, *Transformation of Corporate Control* (Cambridge, MA: Harvard University Press, 1990); Frank Dobbin, *Forging Industrial Policy* (Cambridge: Cambridge University Press, 1994); and the essays in W. Richard Scott, John Meyer, and Associates, eds., *Institutional Environments and Organizations* (Thousand Oaks, CA: Sage, 1994).

4. Mark Grannovetter, "Economic Action and Social Structure: A Theory of Embeddedness," *American Journal of Sociology* 91 (1985): 481-510.

5. For a review, see Alexis Jacquemin and Margaret Slade, "Cartels, Collusion, and Horizontal Merger," in R. Schalmanesee and R. D. Willig, eds., *Handbook of Industrial Organization*, vol. 1 (Amsterdam: Elsevier, 1989).

6. For capture theorists who view enforcement problems as central forces affecting market organization, see George Stigler, "The Theory of Economic Regulation," *Bell Journal of Economics and Management Science* 2 (1971): 3-21; George Stigler, "Free Riders and Collective Action: An Appendix to Theories of Economic Regulation," *Bell Journal of Economic and Management Science* 5 (1974): 359-65; Richard Posner, "Theories of Economic Regulation," *Bell Journal of Economic and Management Science* 5 (1974): 335-58; Roger Noll, "The Political Foundations of Regulatory Policy," *Journal of Institutional and Theoretical Economics* 139 (1983): 377-404. For neocorporatist accounts, see Phillippe Schmitter, "Interest Intermediation and Regime Governability in Contemporary Western Europe and North America," in S. Berger, ed., *Organizing Interests in Western Europe* (Cambridge: Cambridge University, 1981); Phillippe Schmitter, "Corporatism Is Dead! Long Live Corporatism!" *Government and Opposition* 24, no. 1 (1989): 54-73; Henry Jacek, "Business Interest Associations as Private Interest Governments," in Wyn Grant, ed., *Business Interests, Organizational Development and Private Interest Government* (Berlin: Walter de Gruyter, 1987); William Coleman, *Business and Politics: A Study of Collective Action* (Montreal: McGill-Queen's University Press, 1988). On common-pool

governance, see Elinor Ostrom, *Governing the Commons* (Cambridge: Cambridge University Press, 1990). For historical analyses, see Marc Schneiberg and J. Rogers Hollingworth, "Can Transaction Cost Economics Explain Trade Associations?" in M. Aoki, B. Gustafsson, and O. Williamson, eds., *The Firm as a Nexus of Treaties* (London: Sage, 1990); Louis Galambos, *Competition and Cooperation* (Baltimore, MD: Johns Hopkins University Press, 1965); John R. Bowman, *Capitalist Collective Action: Competition, Cooperation, and Conflict in the Coal Industry* (Cambridge: Cambridge University Press, 1989); Debora Spar, *The Cooperative Edge* (Ithaca, NY: Cornell University Press, 1994).

7. Researchers usually invoke industry characteristics to explain the costs and prospects of associations, although Spar stresses actor characteristics like their ability to punish defectors and abide by compacts. The industry conditions commonly invoked are large numbers, spatial dispersion, and heterogeneity in an industry that make organizing interfirm compacts costly; high fixed costs that create pressures for "running full" and price cutting; ease of entry; and substitutability. See Spar, *The Cooperative Edge*; Posner, "Theories of Economic Regulation"; Noll, "The Political Foundations of Regulatory Policy"; Naiomi Lamoreaux, *The Great Merger Movement in American Business, 1895-1900* (Cambridge, UK: Cambridge University Press, 1985); Alfred Chandler, *The Visible Hand* (Cambridge, MA: Harvard University Press, 1977); Franck and Bunel, "Contestability, Competition and Regulation." Research on the effects or economic benefits of associations likewise analyzes them in terms of their capacity to solve prisoner's dilemmas and enforce cooperation. See Colin Crouch, "Conditions for Trade Union Wage Restraint," in L. Lindberg and C. Maier, eds., *The Politics of Inflation and Economic Stagnation* (Washington, DC: Brookings Institution, 1985); Wolfgang Streeck, "Skills and the Limits of Neo-Liberalism: The Enterprise of the Future as a Place of Learning," *Work, Employment and Society* 3, no. 1 (1989): 89-104; Lane Kenworthy, *In Search of National Economic Success: Balancing Competition and Cooperation* (London: Sage, 1995).

8. On the nature and efficacy of entrepreneurial politics, see James Q. Wilson, "The Politics of Regulation," in J. Q. Wilson, ed., *The Politics of Regulation* (New York: Basic Books, 1980); Noll, "The Political Foundations of Regulatory Policy"; Roger Noll, "Economic Perspectives on the Politics of Regulation," in R. Schmalensee and R. Willig, eds., *Handbook of Industrial Organization*, vol. 2 (Amsterdam: Elsevier, 1989).

9. Wolfgang Streeck and Philippe Schmitter, "Community, Market, State and Associations? The Prospective Contribution of Interest Governance to Social Order," in W. Streeck and P. Schmitter, eds., *Private Interest Government* (Beverly Hills, CA: Sage, 1985); Phillippe Schmitter, "Neo-Corporatism and the State," in Wyn Grant, ed., *The Political Economy of Corporatism* (London: Macmillan, 1986).

10. Chandler, *Visible Hand*; Schmitter, "Interest Intermediation and Regime Governability"; Udo Staber and Howard Aldrich, "Trade Association Stability and Public Policy," in R. Hall and R. Quinn, eds., *Organizational Theory and Public Policy* (London: Sage, 1983).

11. For the former position, see Stigler, "The Theory of Economic Regulation," and Bowman, *Capitalist Collective Action*. On the latter, see Theda Skocpol and Kenneth Finegold, "State Capacity and Economic Intervention in the Early New Deal," *Political Science Quarterly* 92 (1982): 255-78; Stephen Skrowronek, *Building a New American State* (Cambridge, UK: Cambridge University Press, 1982); Michael Atkinson and William D. Coleman, "Corporatism and Industrial Policy," in Alan Cawson, ed., *Organized Interests and the State* (London: Sage, 1985).

12. For work that invokes the state as an exogenous factor, see Fligstein, *Transformation of Corporate Control*, and Bowman, *Capitalist Collective Action*; for bracketing externalities to isolate internal dynamics, see Ostrom, *Governing the Commons*.

13. My analysis of nesting draws mainly on George Tsbelis, *Nested Games* (Berkeley: University of California Press, 1990). See also Robert Putnam, "Diplomacy and Domestic Politics: The Logic of Two-Level Games," *International Organization* 42 (1988): 427-60; Peter Evans, "Building an Integrative Approach to International and Domestic Politics: Reflections and Projections," in P. Evans, H. Jacobsen, and R. Putnam, eds., *Double-Edged Diplomacy* (Berkeley: University of California Press, 1993). The terms *logic of membership* and *influence* come from Phillipe Schmitter and Wolfgang Streeck, "The Organization of Business Interests: A Research Design to Study the Associative Action of Business in the Advanced Industrial Societies of Western Europe," discussion paper IIM/LMP 81-83: Wissenschaftszentrum Berlin, 1981.

14. On the nature and dimensions of legitimacy, see Arthur Stinchcombe, *Constructing Social Theories* (Chicago: University of Chicago Press, 1968), 157-63; Howard Aldrich and C. Marlene Fiol, "Fools Rush In? The Institutional Context of Industry Creation," *Academy of Management Review* 4 (1994): 645-70; Joel Baum and Walter Powell, "Cultivating an Institutional Ecology of Organizations: Comment," *American Sociological Review* 60 (1995): 529-38.

15. Entrepreneurial politics and framing are two mechanisms by which actors dramatize offenses and translate diffuse hostility into organization and focused political attacks. See Wilson, "Politics of Regulation"; David Snow and Robert Benford, "Ideology, Frame Resonance and Participant Mobilization," *International Social Movement Research* 1 (1988): 197-217; Sidney Tarrow, *Power in Movement* (Cambridge: Cambridge University Press, 1994); Stephen Ellingson, "The Dialectic of Discourse and Collective Action," *American Journal of Sociology* 1 (1995): 100-44.

16. Internal organizing is not always the starting point in the interaction. For example, legitimacy problems and threats of state intervention may prompt self-regulation and intra-industry organization in the first place. See Wyn Grant and William Coleman, "Conclusions," in Grant, ed., *Business Interests, Organizational Development and Private Interest Government.*

17. For good overviews of associations in fire insurance, see Robert Riegel, *Fire Underwriters Associations in the United States* (New York: Chronicle Co., 1916); Kent Parker, "Ratemaking in Fire Insurance," in J. Long and D. Gregg, eds., *Property and Liability Insurance Handbook* (Homewood, IL: Richard Irwin, 1965).

18. Marc Schneiberg, "Beyond Markets, Hierarchies and Networks: Competition and Inter-Firm Association in the American Fire Insurance Industry" (unpublished manuscript, University of Arizona, 1998).

19. F. C. Oviatt, "History of Fire Insurance in the United States," in L. Zartman, *Yale Readings in Insurance* (New Haven, CT: Yale University Press, [1905] 1921), 88-93; Harry Brearley, *The History of the National Board of Fire Underwriters* (New York: Frederick Stokes, 1916), 24-35, 49-72; William Wandel, *The Control of Competition in Fire Insurance* (Lancaster, PA: Art Printing Company, 1935), 89-125.

20. See Bowman, *Capitalist Collective Action*, 45-69, for a discussion of enforcement devices.

21. New York State, *Report of the Joint Committee of the Senate and Assembly of the State of New York Appointed to Investigate the Corrupt Practices in Connection with Legislation, and the Affairs of Insurance Companies Other Than Those Doing Life Insurance Business*, New York Assembly Documents No. 30 (Albany, NY: J. B. Lyon, 1911), 102. Hereafter referred to as the *Merritt Report.*

22. The following discussion and quotes draw on H. Grant, *Insurance Reform: Consumer Action in the Progressive Era* (Aimes: University of Iowa Press, 1979), 76-81.

23. *Western Underwriter*, 28 November 1901, 7; Grant, *Insurance Reform*, 81.

24. See, for example, Miles Dawson, "Scientific Fire Rating," in Zartman, ed., *Yale Readings in Insurance*; A. F. Dean, *The Rationale of Fire Rates* (Chicago: J. M. Murphy, 1901).

25. On the mobilizing potential of events and rhetorical resources, see Ellingson, "Dialectic of Discourse and Collective Action," and Dobbin, *Forging Industrial Policy*, 220-22.

26. For statements and commentary about these complaints, see New York, *Merritt Report*, 63-73; Riegel, *Fire Underwriters Associations in the United States*, 37-46; National Convention of Insurance Commissioners, *Proceedings of the Forty-Sixth Session of the National Convention of Insurance Commissioners*, Del Monte, CA, September 1915 (Columbia: R. L. Bryan Company, 1915), appendix, September 1915 meetings, 131-141 (hereafter referred to as the NCIC, Proceedings, September 1915); Arthur Williams, *Price Discrimination in Property and Liability Insurance* (Minneapolis: University of Minnesota Press, 1959), 7-14.

27. Reactions to a turn-of-the-century rate advance illustrate these three axes of complaint about unfair discrimination. In Indianapolis,

> [T]here is quite a hostile feeling . . . and the coming legislature will likely take a whirl at the compass. . . . There is little if any justice in a flat advance. Some risks are sufficient as they are, and the other are below the margin. Thus, the good risks are paying for the bad.

In Michigan, "the papers state that the small towns are being made to pay to the excessive losses and expenses of the big cities." And throughout the region, property owners protested that "only the west is being visited with this charge, while the east seems immune, even though the largest conflagrations have occurred there" (*Western Underwriter*, 23 August 1900, 9; 12 February 1903, 12; 12 October 1904, 9).

28. *Western Underwriter*, 12 December 1901, 5.

29. *Western Underwriter*, 23 August 1900, 9; 26 September 1901, 7.

30. Testimony cited in Riegel, *Fire Underwriters Associations in the United States*, 38.

31. Daniel Handy, "Anti-Compact Laws," in Harry Brearley, ed., *The History of the National Board of Fire Underwriters* (New York: Frederick Stokes, 1916), 287-88.

32. *Western Underwriter*, 29 August 1901, 1.

33. Lester Zartman, "Discrimination and Cooperation in Fire Insurance Rating," in Zartman, ed., *Yale Readings in Insurance*, 232.

34. See Grant, *Insurance Reform*, 134-36, for a discussion of this "new breed" of insurance commissioners.

35. *Western Underwriter*, 12 July 1899, 5.

36. *Ohio Underwriter*, 13 May 1897, 4.

37. Zartman, "Discrimination and Cooperation in Fire Insurance Rating," 234.

38. *Ohio Underwriter*, 1 April 1897, 4-5; Spencer Kimball, *Insurance and Public Policy* (Madison: University of Wisconsin–Madison Press, 1960), 100; Grant, *Insurance Reform*, 81.

39. The data are from Spectator Company, *Fire Insurance: Laws, Taxes, Fees* (Philadelphia: Spectator, 1901-1915); Handy, "Anti-Compact Laws"; Clarence Hobbs, "State Regulation of Insurance Rates," *Proceedings of the Casualty Actuarial Society* 27 (1941): 37-57. With few exceptions, insurance is regulated by the states, not the federal government. This jurisdictional settlement rested largely on an 1869 ruling in *Paul v. Virginia*, in which the Supreme Court held that insurance was not "interstate commerce" and upheld states' rights to regulate the industry. This settlement insulated the insurance business from the Sherman Act and other federal antitrust laws during the period under consideration and ensured that the political struggle over the insurance trust would unfold at the state level.

See Simon Whitney "Insurance," in S. Whitney, ed., *Antitrust Policies*, vol. 2 (New York: Twentieth Century Fund, 1958); Claude Lilly, "A History of Insurance Regulation in the United States," *Chartered Property and Casualty Underwriters Annals* 29 (1976): 99-115; Kenneth Meier, *The Political Economy of Regulation: The Case of Insurance* (Albany: SUNY Press, 1988), 52-76.

40. Handy, "Anti-Compact Laws"; Spencer Kimball and Ronald Boyce, "The Adequacy of State Rate Regulation: The McCarran-Ferguson Act in Historical Perspective," *Michigan Law Review* 56 (1958): 545-78; Grant, *Insurance Reform*, 71-135; Meier, *Political Economy of Regulation*, 50-77.

41. For parallel findings at the federal level, see Elizabeth Sanders, "Industrial Concentration, Sectional Competition and Anti-Trust Politics in America, 1880-1980," *Studies in American Political Development* 1 (1986): 142-214.

42. Marc Schneiberg, "Private Order and Inter-Firm Governance in the American Fire Insurance Industry, 1820-1950" (Ph.D. dissertation, University of Wisconsin, 1994), 343-44; Brearley, *The History of the National Board of Fire Underwriters*, 302-7.

43. Wandel, *The Control of Competition in Fire Insurance*, 127-33.

44. *Ohio Underwriter*, 18 August 1898, 5.

45. *Ohio Underwriter*, 23 June 1898, 8; *Western Underwriter*, 21 December 1899, 9-10.

46. *Ohio Underwriter*, 23 June 1898, 7; *Western Underwriter*, 7 September 1899, 6; 4 June 1903, 12.

47. *Western Underwriter*, 5 September 1901, 7.

48. For legislative and regulatory actions in Kansas, Kentucky, Texas, and Louisiana, see Kentucky, *Annual Report of the Insurance Commissioner of the State of Kentucky for the Year Ending December 31, 1913* (Frankfort, KT: George Fetter, 1913), xi-xii; Kentucky, *Annual Report of the Insurance Commissioner of the State of Kentucky for the Year Ending December 31, 1914* (Frankfort, KT: George Fetter, 1914), xi-xii; Louisville Board of Trade, *Report of the Special Fire Insurance Committee of the Louisville Board of Trade* (Louisville, KT: Louisville Board of Trade, 1912), 21; Riegel, *Fire Underwriters Associations in the United States*, 63-65; Grant, *Insurance Reform*, 101-11.

49. Spectator Company, *Fire Insurance: Laws, Taxes, Fees*; New York, *Merritt Report*; Robert Reigel, "Rate-Making Organizations in Fire Insurance," *Annals of the American Academy of Political and Social Science* 70, no. 159 (1917): 172-79; Wandel, *Control of Competition in Fire Insurance*.

50. Reforms emerged in a piecemeal fashion that precludes easy periodization. For some places and groups, reforms emerged and induced some kinds of cooperation in the late 1890s. For others, hostility toward bureaus persisted into the early 1910s, and some groups shifted between tolerance and hostility as reforms appeared, disappeared, and reappeared. The early 1900s in particular were a time of flux, transition, and mixed responses.

51. New York, *Merritt Report*; Handy, "Anti-Compact Laws"; Parker, "Ratemaking in Fire Insurance," 171; Kimball and Boyce, "The Adequacy of State Rate Regulation."

52. *The New York Times*, 21 May 1898, 7; *Western Underwriter*, 15 November 1900, 9; New York State, *Hearings before the Joint Committee of the Senate and Assembly, 1909-1911*, New York Assembly Documents No. 30 (Albany, NY: J. B. Lyon. 1909-1911), 2986. Hereafter referred to as New York, *Merritt Hearings*.

53. New York, *Merritt Hearings*, Exhibit W-2, 4291.

54. *Western Underwriter*, 19 April 1906; Kentucky, *Annual Report of the Insurance Commissioner of the State of Kentucky for the Year Ending December 31, 1913*, xi-xii; Kentucky, *Annual Report of the Insurance Commissioner of the State of Kentucky for the Year Ending December 31, 1914*, xi-xii; Riegel, *Fire Insurance Underwriters Associations in the United States*, 63-64.

55. Dean, *Rationale of Fire Rates*; Dawson, "Scientific Fire Rating," 181; Richard Bissell, "Rates and Hazards," in Zartman, ed., *Yale Readings in Insurance*, 157; Minnesota, *Thirty-Ninth Annual Report of the Commissioner of Insurance* (Minneapolis: Syndicate Printing, 1910), 4-5; New York, *Merritt Report*, 38; NCIC, Proceedings, September 1915, 122-23.

56. *Western Underwriter*, 24 October 1901, 8; 4 October 1906, 16.

57. *Western Underwriter*, 7 August 1902, 10; Riegel, "Rate Making Organizations in Fire Insurance," 185; see also NCIC, Proceedings, 1912, 165; NCIC, Proceedings, 1915, appendix, 141; December 1914, 17-18.

58. Hobbs, "State Regulation of Insurance Rates," 40; Dean, *Rationale of Fire Rates*, 6-7; W. N. Johnson, "A Few Salient Facts in Connection with Fire Insurance" (an address before the Fire Insurance Club of Chicago, Tuesday, 25 May 1909), 8.

59. *Western Underwriter*, 4 October 1900, 8; 26 September 1901, 8-9; 29 January 1903, 7; Oviatt, "History of Fire Insurance in the United States," 77; Bissell, "Rates and Hazards," 157-59; Zartman, "Discrimination and Cooperation in Fire Insurance Rating," 231-45; New York State Insurance Department, *Annual Report, 1914*, New York Senate Documents (Albany, NY: J. B. Lyon, 1915), 23-25.

60. A. F. Dean, "Scientific Fire Rating," in Zartman, ed., *Yale Readings in Insurance*, 200-7; Dawson, "Scientific Fire Rating," 181-93; Zartman, "Discrimination and Cooperation in Fire Insurance Rating," 228-43; New York, *Merritt Report*, 41-50, 63-79, 124-26; Wisconsin, *Report of the Wisconsin Legislative Fire Insurance Investigating Committee* (Madison, WI: Democrat Printing, 1913), 45-49; NCIC, Proceedings, September 1915, appendix, 119-40; Riegel, "Rate-Making Organizations in Fire Insurance," 183-87.

61. Bissell, "Rates and Hazards," 161-80; *Best's Fire and Casualty News*, March 1940, 15-18; Parker, "Ratemaking in Fire Insurance"; Heimer, *Reactive Risk and Rational Action*, 54-57.

62. *Western Underwriter*, 27 December 1900, 133. On schedule rating and moral hazards, see Heimer, *Reactive Risk and Rational Action*.

63. Cited in Wandel, *Control of Competition in Fire Insurance*, 133.

64. Bissell, "Rates and Hazards," 167.

65. *Western Underwriter*, 23 July 1903, 7.

66. *Western Underwriter*, 21 March 1907, 7.

67. NCIC, Proceedings, September 1915.

68. New York, *Merritt Report*, 44, 48.

69. *Western Underwriter*, 26 February 1907, 5; *Western Underwriter*, 18 January 1900, 8. For an overall assessment of how consumers viewed schedule rating, see New York, *Merritt Report*, 54-55.

70. Brearley, *History of the National Board of Fire Underwriters*, 78-114; Riegel, *Fire Underwriters Associations in the United States*, 19-24; Gerald Maatman, "Loss Prevention in Fire Insurance," in Long and Gregg, eds., *Property and Liability Insurance Handbook*; Heimer, *Reactive Risk and Rational Action*, 59-76.

71. Cited in *Western Underwriter*, 28 April 1904, 12.

72. National Association of Credit Men, *Burning Subject for Business Men* (Louisville, KY: National Association of Credit Men, 1909), 13.

73. *Western Underwriter*, 19 November 1903, 11; 7 May 1903, 8.

74. *Western Underwriter*, 15 October 1903, 7.

75. For examples of this critique, see Louisville Board of Trade, *Report of the Special Fire Insurance Committee*, 20-21; George Holt, *State Fire Insurance Board* (Chicago:

Policyholders Union, 1912), 24-27; New York State Insurance Department, *Fifty Third Annual Report of the Superintendent of Insurance*, New York Assembly Document (Albany, NY: J. B. Lyon, 1913), 40-41; New York State Insurance Department, *Fifty Fifth Annual Report of the Superintendent of Insurance* New York Senate Documents (Albany, NY: J. B. Lyon, 1915); NCIC, Proceedings, 1915, appendix, 119-39.

76. Dawson, "Scientific Fire Rating," 184-87; Bissell, "Rates and Hazards," 158; New York, *Merritt Hearings*, 3130-38, 3159-68; New York, *Merritt Report*, 68-73.

77. Dean, *Rationale of Fire Rates*, 65, 178.

78. *Ohio Underwriter*, 4 August 1898, 4; *Western Underwriter*, 18 June 1903, 7; 19 July 1903, 3.

79. On the problems of firms' withholding loss data, see New York, *Merrit Report*, 68-73; Wandel, *Control of Competition in Fire Insurance*, 59-64.

80. *Western Underwriter*, 5 April 1900, 7; 27 February 1902, 7; 24 January 1907, 12; 14 March 1907, 16.

81. New York, *Merrit Hearings*, 2421-22.

82. New York, *Merritt Report*, 72.

83. On the nature and politics of rate regulation, see Spectator Company, *Fire Insurance: Laws, Taxes, Fees*; Riegel, *Fire Underwriters Associations in the United States*, 59-69; Robert Riegel, "The Regulation of Fire Rates," *Annals of the American Academy of Political and Social Science* 219 (1917): 114-20; Clarence Hobbs, "State Regulation of Insurance Rates," *Proceedings of the Casualty Actuarial Society* 11 (1925): 218-75; Clarence Hobbs, "State Regulation of Insurance Rates, Part II: Regulation of Rates and Rating Organizations," *Proceedings of the Casualty Actuarial Society* 28 (1942): 344-460; Grant, *Insurance Reform*, 100-33.

84. New York, *Merritt Report*; Michael Rose, "State Regulation of Property and Casualty Insurance Rates," *Ohio State Law Journal* 28 (1967): 669-733; Meier, *Political Economy of Regulation*, 69; NCIC, Proceedings, 1915, appendix, 119-44.

85. In 1912, the Supreme Court declared the industry to be affected with a "public interest"—thus ratifying a quasi-public vision of insurance markets—and upheld the states' rights to regulate rates. In 1914, the NCIC joined the regulatory coalition with its model rating law, and in 1915, the NCIC and the National Board of Fire Underwriters reached a compromise on uniform classification. By 1940, thirty-five states had rating laws. In 1944, the entire system of regulated association was challenged by the Supreme Court but was quickly saved and universalized by the McCarran-Ferguson Act and the enactment of rating laws in every state. For an excellent overview, see Meier, *Political Economy of Regulation: The Case of Insurance*, 59-76.

86. *Best's Fire and Casualty News*, August 1942, 27.

87. See, for example, New York State Insurance Department, "Reports on Official Examinations," in *Annual Reports of the Superintendent of Insurance of the State of New York*, New York Legislative Documents (Albany, NY: J. B. Lyon, 1911-1932).

88. Dawson, "Scientific Fire Rating," 193; Zartman, "Discrimination and Cooperation in Fire Insurance Rating," 229; *Western Underwriter*, 1 October 1903, 13; New York, *Merritt Hearings*, 1696.

89. U.S. Senate, *The Insurance Industry Rates, Rating Organizations and State Rate Regulation*, Congressional Report 831 (Washington, DC: Government Printing Office, 1961), 4-9, 67-80; Jon Hanson, Robert Dineen, and Michael Johnson, *Monitoring Competition: A Means of Regulating the Property and Liability Insurance Business* (Milwaukee, WI: NAIC, 1974), 16-46.

90. Charles Sabel and Jonathon Zeitlin, "Historical Alternatives to Mass Production: Politics, Markets and Technology in Nineteenth Century Industrialization," *Past and Present* 108 (1985): 133-76; Charles Sabel and Jonathan Zeitlin, "Stories, Strategies, Structures: Rethinking Historical Alternatives to Mass Production," in C. Sabel and J. Zeitlin, eds., *Worlds of Possibility* (Cambridge, UK: Cambridge University Press, 1997); Streeck and Schmitter, "Community, Market, State, and Associations?"; Michael Best, *The New Competition* (Cambridge, MA: Harvard University, 1990); Lane Kenworthy, *In Search of National Economic Success*; John Campbell, J. Rogers Hollingsworth, and Leon L. Lindberg, eds., *Governance of the American Economy* (Cambridge, UK: Cambridge University Press, 1991); Wolfgang Streeck, "On the Institutional Conditions of Diversified Quality Production," in E. Matzner and W. Streeck, eds., *Beyond Keynesianism* (London: Elgar, 1991).

91. Chandler, *Visible Hand*, 315-39; Lamoreaux, *The Great Merger Wave*, 62-117; Fligstein, *Transformation of Corporate Control*, 32-74, 317-21; Schneiberg and Hollingsworth, "Can Transaction Cost Economics Explain Trade Associations?"; William Roy, *Socializing Capital: The Rise of the Large Industrial Corporation in America* (Princeton, NJ: Princeton University Press, 1996), 176-223.

92. Streeck and Schmitter, "Community, Market, State and Associations?"; Coleman, *Business and Politics*, 47-77; Streeck, "On the Institutional Conditions of Diversified Quality Production."

93. Sanders, "Industrial Concentration, Sectional Competition and Anti-Trust Politics in America"; Fligstein, *Transformation of Corporate Control*; Dobbin, *Forging Industrial Policy*, 28-94.

94. See, for example, Martha Derthick and Paul Quirk, *The Politics of Deregulation* (Washington, DC: Brookings Institution, 1985); Gerald Berk, "Communities of Competitors: Open Price Association and the American State, 1911-1929," *Social Science History* 3 (1996): 375-400.

95. Magaziner and Hout, *Japanese Industrial Policy* (Berkeley, CA: Institute of International Studies, University of California, 1980); Jurgen Kocha, "The Rise of the Modern Industrial Enterprise in Germany," in A. Chandler and H. Daems, eds., *Managerial Hierarchies* (Cambridge, MA: Harvard University Press, 1980); Morton Keller, "The Pluralist State: American Economic Regulation in Comparative Perspective, 1900-1930," in T. McCraw, ed., *Regulation in Perspective* (Cambridge, MA: Harvard Business School Press, 1981).

96. While associations could evoke little or no external opposition, losses from rent seeking create incentives for challengers to organize, and absorbing outsiders into regulatory coalitions can dissipate rents. The absence of any effective opposition may hinge on circumstances beyond consumers' oft-cited organizing difficulties—institutional conditions that suppress electoral politics, political entrepreneurship, and public debate; economies that are completely closed; and state actors and expert communities that lack the capacities to resist or are unabashedly committed to predation. On expanding the regulatory coalition, see Sam Peltzman, "Toward a More General Theory of Regulation," *Journal of Law and Economics* 19, no. 2 (1976): 211-14; Noll, "Political Foundations of Regulatory Policy."

97. For a discussion of how actors use events to transform public debate and mobilize support, see Ellingson, "Dialectic of Discourse and Collective Action."

98. Fligstein, *Transformation of Corporate Control*, 2-5, 9-16; Neil Fligstein, "A Political-Cultural Approach to Market Institutions," *American Sociological Review* 4 (1996): 657-60.

99. On the role of theories of economic order in the rise of the corporation, see Sklar, *Corporate Reconstruction*, 53-78; Fligstein, *Transformation of Corporate Control*, 1-32, 295-314; Berk, *Alternative Tracks*, 48-60, 75-80, 100-12. On economic theory and

regulation, see Thomas McCraw, *Prophets of Regulation* (Cambridge: Belknap, 1984); Derthick and Quirk, *The Politics of Deregulation*. On the conglomerate, see Gerald Davis, Kristina Diekmann, and Catherine Tinsley, "The Deinstitutionalization of Conglomerate Firms in the 1980s," *American Sociological Review* 59 (1994): 547-70.

100. Chandler, *Visible Hand*; Skowronek, *Building a New American State*, 142-60, 248-55; McCraw, *Prophets of Regulation*, 31-36; Colleen Dunlavy, "Political Structure, State Policy and Industrial Change: Early Railroad Policy in the United States and Prussia," in S. Steinmo, K. Thelen, and F. Longstreth, eds., *Structuring Politics* (Cambridge, UK: Cambridge University Press, 1992), 133-36; Berk, *Alternative Tracks*, 77-100; Dobbin, *Forging Industrial Policy*, 70-75.

101. Berk, "Communities of Competitors." See also Best, *The New Competition*, 21-23.

102. Berk, "Communities of Competitors"; Gerald Berk, "Discursive Cartels: Uniform Cost Accounting among American Manufacturers before the New Deal," *Business and Economic History* 1 (1997): 229-51.

103. Adam Przeworksi, "The Material Bases of Consent: Economics and Politics in a Hegemonic System," in M. Zeitlin, ed., *Political Power and Social Theory* (Greenwich, CT: JAI, 1979); Colin Crouch, "Conditions for Trade Union Wage Restraint," in L. Lindberg and C. Maier, eds., *The Politics of Inflation and Economic Stagnation* (Washington, DC: Brookings Institution, 1985).

104. William Coleman, "Keeping the Shotgun behind the Door: Governing the Securities Industry," in J. R. Hollingsworth, P. Schmitter, and W. Streeck, eds., *Governing Capitalist Economies* (New York: Oxford University Press, 1994); Magaziner and Hout, *Japanese Industrial Policy*; Josef Esser, Wolfgang Fach, and Kenneth Dyson, " 'Social Market' and Modernization Policy: West Germany," in K. Dyson and S. Wilks, eds., *Industrial Crises* (New York: St. Martin's, 1983); Atkinson and Coleman, "Corporatism and Industrial Policy"; Alan Cawson, "Varieties of Corporatism: The Importance of the Meso-Level of Interest Intermediation," in Cawson, ed., *Organized Interest and the State*; Patricia O'Brien, "Governance Systems in Steel: The American and Japanese Experience," in Hollingsworth, Schmitter, and Streeck, eds., *Governing Capitalist Economies*.

105. For important analyses of the effect of administrative capacities, see Skowronek, *Building and New American State*; Skocpol and Finegold, "State Capacity and Economic Intervention in the Early New Deal."

106. Ostrom, *Governing the Commons*, 58, 189.

107. Stigler, "The Economic Theory of Regulation"; Bowman, *Capitalist Collective Action*, 133-47.

108. Strictly speaking, Stigler's argument is that politics is more about firms' preferences in state-enforced cartels than organizational outcomes. And consistent with that argument, fire insurers resisted rate regulation. Nevertheless, Stigler also contends that industry members are the highest bidders in the market for regulation, suggesting at a minimum that firms are uniquely qualified to veto undesirable state interventions. Moreover, Stigler does not claim that regulation can be imposed on firms against their will. To understand that kind of result, we must move beyond the capture theory framework in directions suggested by this article.

109. Kolko, *The Triumph of Conservatism*; David Vogel, "Why Businessmen Distrust Their State: The Political Consciousness of American Corporate Executives," *British Journal of Political Science* 8 (1978): 45-78; Dunlavy, "Political Structure, State Policy and Industrial Change."

110. Fligstein, *Transformation of Corporate Control*; Dobbin, *Forging Industrial Policy*; Roy, *Socializing Capital*.

111. Prominent exceptions are Philip Scranton, "Milling About: Family Firms and Urban Manufacturing in Textile Philadelphia, 1849-1865," *Journal of Urban History* 3 (1984): 259-94; Brigitte Young, "The Dairy Industry: From Yeomanry to the Institutionalization of Multilateral Governance," in Campbell, Hollingsworth, and Lindberg, eds., *Governance of the American Economy*; Berk, *Alternative Tracks*.