

INSTITUTIONS: A RESEARCH PROGRAM FOR LAW, MACROECONOMICS, AND HISTORY

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I

INTRODUCTION

It is a common scholarly lament that definitional imprecision leads to theoretical confusion. Such a lament seems well placed in institutional history, where two key terms—institutions and organizations—are used by many historians as essentially synonymous. Meanwhile, new institutional economists who delve deeply into economic history see the concepts as terms of art: institutions are the “rules of the game” or “equilibria” whereas organizations are agents that seek to optimize scarce resources and otherwise operate within the constraints created by these institutions.

In this Article, I argue that a new institutional synthesis in history, legal scholarship, and economics represents a challenge to both definitional approaches. It also represents an opportunity to define a new, intellectually energizing path ahead of legal scholarship on institutions. Without doing so explicitly, a new generation of legal scholars have profitably explored institutions as both organizations *and* rules, neither too closely wedded with a single organizational entity nor lost in the long and slow change of the rules over millennia. These scholars have begun to see how formal and informal rules that govern politics, society, and the economy change *through* organizations in both short bursts and over long horizons. The key insight is that the new institutional synthesis can build a theoretically robust methodology that is flexible enough to be deployed in a wide array of disciplines, including law, history, economics, sociology, and beyond.

In the 1970s and 1980s, law and economics shot up like a rocket as perhaps the most dominant intellectual movement in law. At the same time many law and economics scholars were intent on bringing the discipline of economics to the study of law:¹ ironically, economists were importing the discipline of law into the

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1. For one of the first near contemporaneous assessments of the law and economics movement, see generally Richard A. Posner, *The Law and Economics Movement*, 77 AM. ECON. REV. 1, 12 (1987) (“[W]hat may loosely be called the economic theory of law has a significant potential to alter received notions, generate testable hypotheses about a variety of important social phenomena, and in short enlarge our knowledge of the world.”). For a more recent historical assessment, see generally STEVEN

study of economics. In what came to be known variously by distinct, if overlapping, names like “new institutionalism,” “new institutional economics,” or less often “new institutional history,” economists and like-minded historians began to apply the methodologies of theoretical and empirical economics to historical questions. These historical applications helped economists and historians understand how institutions in society arose over time.²

Two additional disciplinary approaches to the study of institutions took place in the 1980s–2000s in history and sociology. These approaches only paid passing attention to new institutional economics and virtually did not engage with law and economics. First, the historian Louis Galambos, in three influential essays in the *Business History Review*, defined and redefined (and redefined) an organizational synthesis whereby political historians started to ask and answer harder questions about the development of the firm, the state, and its various constituent actors.³ Second, sociologists and organizational theorists developed an approach to historical institutionalism that provides a useful if incomplete jumping-off point for the study of institutional history.⁴

These four movements—legal academics’ law and economics, economists’ new institutional economics, historians’ organizational synthesis, and the sociologists’ historical institutionalism—arose together in time, but not together in space. The larger institutional economics revolution paid essentially no attention to the sociologists, the sociologists paid some bitter attention to the economists (for “discovering” what they had long been discussing), and most everyone ignored the historians, who in turn mostly spoke to each other. Law and

MICHAEL TELES, *THE RISE OF THE CONSERVATIVE LEGAL MOVEMENT: THE BATTLE FOR CONTROL OF THE LAW* 90–101 (2010) (describing founding law and economics leaders’ desire to prove “economic reasoning could apply to the entire legal system”).

2. For an overview of the depth and diversity of new institutional economics (NIE), see CLAUDE MENARD & MARY M. SHIRLEY, *HANDBOOK OF NEW INSTITUTIONAL ECONOMICS* 1–2 (2008) (“NIE focuses on how . . . institutions emerge, operate, and evolve, and how they shape the different arrangements that support production and exchange, as well as how these arrangements act in turn to change the rules of the game.”).

3. For an overview of Galambos’ ongoing definition of organizational synthesis, see Louis Galambos, *The Emerging Organizational Synthesis in Modern American History*, 44 *BUS. HIST. REV.* 279, 285 (1970) (“It seems likely that large-scale organizations have influenced all of these institutions, and could perhaps provide social history with a new type of centralizing theme.”) [hereinafter *Emerging Organizational Synthesis*]; Louis Galambos, *Technology, Political Economy, and Professionalization: Central Themes of the Organizational Synthesis*, 57 *BUS. HIST. REV.* 471, 491–92 (1983) (elaborating on “organizational synthesis” in response to more developed scholarship in the field); Louis Galambos, *Recasting the Organizational Synthesis: Structure and Process in the Twentieth and Twenty-First Centuries*, 79 *BUS. HIST. REV.* 1, 3 (2005) (“Globalization and the third industrial revolution. . . are changing the structure and processes of major U.S. institutions and are thus modifying our understanding both of the last century and of the recent past.”) [hereinafter *Recasting the Organizational Synthesis*].

4. See, e.g., Orfeo Fioretos, Tullia G. Falleti & Adam Sheingate, *Historical Institutionalism in Political Science*, in *THE OXFORD HANDBOOK OF HISTORICAL INSTITUTIONALISM* 1 (Orfeo Fioretos, Tullia G. Falleti, & Adam Sheingate eds., 2016) (“In comparative politics, historical institutionalism has been particularly influential and shapes research agendas in a widening array of substantive areas, from research on the modern state, capitalism, law, and economic development to the study of political regimes, political parties, organized societal actors, and public policy.”).

economics was also, with the important arguable exception of Ronald Coase, on its own trajectory.

The failure of engagement among these scholarly camps is largely epiphenomenal. These disciplines are separate because they are motivated by different kinds of questions, however close in intellectual proximity they may appear. New institutional economists were unapologetically interested in the full breadth of human history extending millennia to understand deep truths about economics. Theirs was an assault on the existing order in economics. Sociologists were interested in institutions as primarily social phenomena. Organizational historians, for their part, were originally just trying to reinterpret the Progressive Era in the United States.

In this Article, I chart the path of new institutional economics against two other trends in history and sociology to propose a new way to approach legal scholarship: new institutional synthesis. This approach allows scholars to take institutions seriously, use the comparative advantages of law as an academic discipline, and engage more completely with scholars in other fields who remain curious about law but without a path toward more effective engagement. I argue that a new institutional synthesis in history, legal scholarship, and economics represents a challenge to definitional approaches to institutions and organizations. New institutional synthesis also represents an opportunity to define a new, intellectually-energizing path for legal scholarship on institutions.

When we place the intellectual historical currents of legal scholarship, new institutional economics, history, and sociology in conversation with each other, we see something new. In Part II of this Article, I chart the three trends in the study of institutions—(A) new institutional economics, (B) the organizational synthesis in history, and (C) historical institutionalism in sociology—along with (D) law and economics, to argue that there is a possibility of bridging these gaps through a new institutional synthesis. I then show in Part III how a rising generation of legal scholars and historians have been part of a new institutional synthesis: they have profitably explored institutions as both organizations *and* rules, neither too closely wedded with a single organizational entity nor lost in the long and slow change of the rules over millennia. These scholars have begun to see how formal and informal rules that govern politics, society, and the economy change *through* organizations in both short bursts and over long horizons. This theoretically-robust methodology presents a fertile and active space for thinking about corporations, the financial system, and the economy.

II

ACADEMIC APPROACHES TO THE STUDY OF INSTITUTIONS

A. New Institutional Economics

1. Institutions in Economics, Old and New

“Institutions” in economic thought enjoy a storied history and were, arguably, there at the beginning. Adam Smith was, after all, consumed with thinking through the limitations to a mercantilist system, and had plenty to say about institutional features such as banks.⁵ But as the Ricardian revolution took hold, the effort was to reason deductively in search of universal truths about human behavior.⁶ Marshall and Mill sought to combine both approaches, making economic policy both deductive and sensitive to its historical and policy contexts.⁷ This was the initial fight: institutionalists, such as they were, wanted economics to be more than abstract formulations of profit maximization. To be an institutionalist meant to be mindful of history, context, and society.

Two schools of institutional thought arose in reaction to Ricardian economics (often called “classical economics”), one as a consequence of the other. The first school was the German historical school of economics. German historicism was active from the 1840s into the early twentieth century and was notable both for Max Weber, as its most famous proponent, and Gustav Schmoller, as its major founder.⁸ These scholars’ critiques focused less on the meaning of institutions and more on the idea that economics as an abstraction failed to accurately describe the way people made decisions.⁹ Institutions, in that broad sense, essentially meant historical context.

The second school was American institutional economics. As the school took root in the first half of the twentieth century, German historicism profoundly affected American institutional economics through its educational dominance—graduate training for academics was heavily oriented toward the German model and to German universities into the early twentieth century. The term “institutional economics” was first used by Walton Hamilton at a meeting of the

5. See 2 ADAM SMITH, *THE WEALTH OF NATIONS* 417–44 (1776) (discussing the shortcomings of the mercantilist system).

6. For a good recent overview of institutions in early economic thought, see generally BEÁTA FARKAS, *MODELS OF CAPITALISM IN THE EUROPEAN UNION: POST CRISIS PERSPECTIVES* 3–6 (2016) (providing a “brief historical overview” of institutions in mainstream economics).

7. See ALFRED MARSHALL, *PRINCIPLES OF ECONOMICS* xix–xx (1890) (casting doubt on the wisdom of a rational economic actor and arguing that economics must take into account “ethical forces” when studying behavior); JOHN STUART MILL, *PRINCIPLES OF POLITICAL ECONOMY* v (1848) (describing author’s intent to “exhibit the economical phenomena of society in the relation in which they stand to the best social of ideas of the present time”).

8. For an overview of the German historical school of economics, see generally Keith Tribe, *Historical Schools of Economics: German and English* 5–14 (Keele Econ. Research Papers, July 15, 2002) https://papers.ssrn.com/sol3/papers.cfm?abstract_id=316689 [<https://perma.cc/49W9-3NN8>].

9. *Id.*

newly-formed American Economic Association in 1918.¹⁰ Again, as with Marshall,¹¹ “institutions” meant only the broader historical context that served to reorient individual efforts to economize.¹² The early institutionalists did not engage very carefully in a definitional game. Weber was slightly more specific, thinking through the implications of “institutions” like bureaucracy and culture, but the term evaded easy definition.¹³

The wave of classical deductive abstractionism and historical contextualization continued through the late twentieth century until the new institutionalists sought to combine the approaches and, in the process, give the term more analytical content. “Institutions” for the new institutional economists—led by pioneers like Douglass North, Oliver Williamson, and later Avner Greif, among many others—meant something very specific. In North’s words, institutions were the “humanly devised constraints that structure political, economic and social interaction,” comprised of “both informal constraints (sanctions, taboos, customs, traditions, and codes of conduct), and formal rules (constitutions, laws, property rights).”¹⁴ Greif later pushed back against this conception, thinking of institutions instead as “equilibria,” more or less stable patterns of useful human behavior.¹⁵ But the idea is the same: institutions are the rules of the road, not the organizations that operate within those rules.

Given the success of institutional economics within mainstream economics—it is responsible for at least five Nobel Prizes, depending on how one is counting¹⁶—it is perhaps easy to forget how radical new institutional economics was at its inception in the 1970s. Institutions were controversial because these kinds of patterns of behavior were not supposed to matter in economic development. Markets carried their own logic, and agents should have found their best expression through these markets. According to classical economics, institutions (if they exist at all) were either implications of, or interferences with, market liberalism.

10. Malcom Rutherford, *Institutional Economics: Then and Now*, 15 J. ECON. PERSP., no. 3, Summer 2001, at 173, 178–79.

11. See generally MARSHALL, *supra* note 7.

12. See *id.* at 1789–82 (outlining the many topics taken on by new institutional economists relating institutions and policy to economic performance).

13. See MAX WEBER, *THE METHODOLOGY OF THE SOCIAL SCIENCES* 65 (1949) (“The indirect influence of social relations, institutions and groups governed by ‘material interests’ extends (often unconsciously) into all spheres of culture without exception, even into the finest nuances of aesthetic and religious feeling.”).

14. Douglass C. North, *Institutions*, 5 J. ECON. PERSP., no. 1, Winter 1991, at 97, 97.

15. AVNER GREIF, *INSTITUTIONS AND THE PATH TO THE MODERN ECONOMY: LESSONS FROM MEDIEVAL TRADE* 19–20 (2006).

16. They are: Coase (1991), Fogel (1993), North (1993), Ostrom (2009), and Williamson (2009). Despite their discussions of institutions, I’m not counting the 1974 prizes to Hayek and Myrdal. *All Prizes in Economic Sciences*, THE NOBEL PRIZE, <https://www.nobelprize.org/prizes/lists/all-prizes-in-economic-sciences/> [<https://perma.cc/P75Y-R38V>]. For more, see also AVNER OFFER & GABRIEL SODERBERG, *THE NOBEL FACTOR: THE PRIZE IN ECONOMICS, SOCIAL DEMOCRACY, AND THE MARKET TURN* 123 (2016) (discussing the “strong performances of institutional economists” for the Nobel Prize).

The institutionalists' idea, led by Douglass North, was that institutions were not simply the reflexive expression of, or interference with, market clearing. Rather, institutions showed why equilibria fail, why choices can be idiosyncratic, preferences unstable, maximization incomplete, and optimization sometimes complex.¹⁷ Institutions, in North's view, additionally were not merely theoretical propositions, but intimately connected with history.¹⁸ In one of his most important articles, for example, North (with Barry Weingast) confronted the puzzle of how Britain could transform from an unstable economy where investors could only participate in financing the sovereign through force to one of the most economically-developed models of the state in history.¹⁹ More specifically, they asked why investors came to trust British institutions—the rules of the game—when (1) the sovereign with a monopoly on violence was involved in the game and (2) the sovereign made up the rules himself.²⁰ In other words, how can the sovereign who seeks voluntary participation from others credibly commit to playing by the same rules as everyone else?²¹

North and Weingast argued that the structural changes wrought as part of the Glorious Revolution—in particular, the assignment of governmental powers to an independent judiciary, a sovereign Parliament that is separate from the sovereign King—were evidence of this kind of institutional change.²² For evidence of the value proposition for institutional change to assist with market functions, they also cited the dramatic success the Crown had in raising funds through the capital markets following the Glorious Revolution, an increase by an order of magnitude.²³

These changes are interesting for history, but also “provide[] an endogenous role for political institutions. Restrictions on the *ex post* behavior of the state improve the state's ability to maintain its part of bargains with constituents, for example, not to expropriate their wealth.”²⁴ The innovation of the Glorious Revolution was to use rules that would make this commitment credible. These new rules included parliamentary supremacy, especially in fiscal and financial matters, an independent judiciary, and the securing of political rights for citizens,

17. *Id.* at 20.

18. *See id.* at vii (“History matters. It matters not just because we can learn from the past, but because the present and the future are connected to the past by the continuity of a society's institutions.”).

19. *See* Douglass C. North & Barry R. Weingast, *Constitutions and Commitment: The Evolution of Institutions Governing Public Choice in Seventeenth-Century England*, 49 J. ECON. HIST. 803, 828 (1989) (describing “the successful evolution of institutional forms that permitted economic growth to take place in early modern England”).

20. *See id.* at 829–30 (describing the impact institutions had on British capital markets).

21. *See id.* at 806 (“Because the state has a comparative advantage in coercion, what prevents it from using violence to extract all the surplus?”).

22. *See id.* at 819 (“By limiting the ability of the government to renege on its agreements, the courts played a central role in assuring a commitment to secure rights.”).

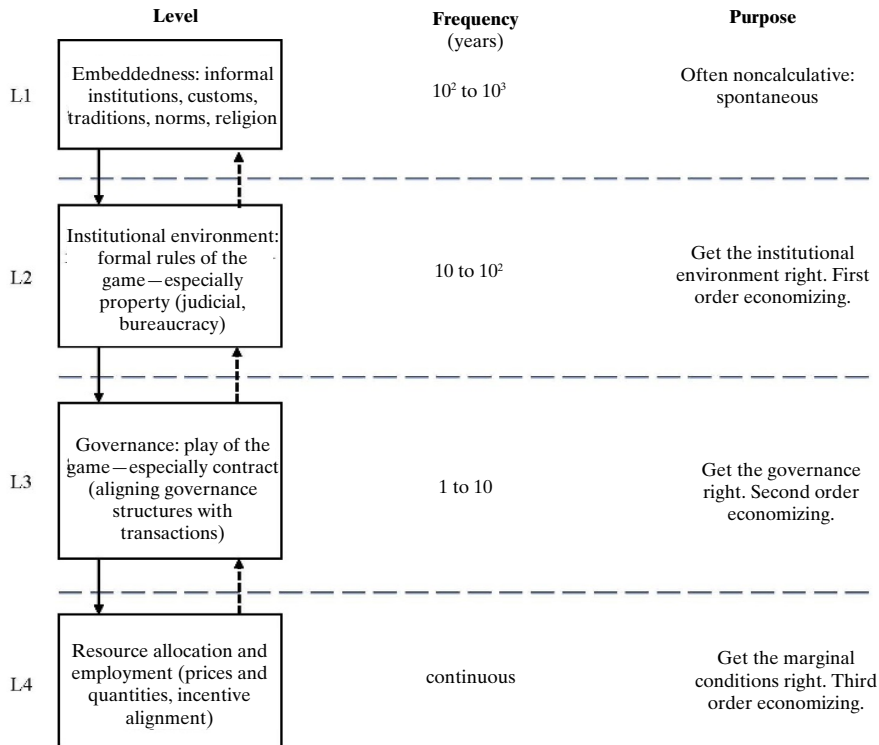
23. *See id.* at 824 (“Even though the later Stuarts were more financially successful than their predecessors, nothing that came before the Glorious Revolution suggests the dramatic change in capital markets that it unleashed.”).

24. *Id.* at 808 (emphasis added).

especially property holders. The Constitution is the thing: it places the authority to contract for obligations in one set of hands, but the authority to withdraw from them in another.

Northian definitional conceptions of institutions were not the only order of the day. Writing at the same time but focusing his definitional effort a little later, economist Oliver Williamson laid out the contribution more schematically. His famous view of institutionalism is reproduced in Figure 1.²⁵

Figure 1: Economics of Institutions



L1: social theory

L2: economics of property rights/positive political theory

L3: transaction cost economics

L4: neoclassical economics/agency theory

Under this schematic, changes like the Glorious Revolution were key events that could change all levels of institutional historical inquiry. But the purpose of institutional history for these economists was what Williamson calls here first, second, and third order economizing—that is, understanding how rules in long gestation and rare disruptive events change the rules that shape human behavior.²⁶

25. Oliver E. Williamson, *The New Institutional Economics: Taking Stock, Looking Ahead*, 38 J. ECON. LIT. 595, 597 (2000).

26. *Id.* at 597–98.

A generation later, new institutional economics was only gaining steam as a matter of economic theory and empiricism. The most important academic of the second generation of new institutional economics was, arguably, Avner Greif, especially his *Institutions and the Path to the Modern Economy: Lessons from the Medieval Trade*.²⁷ Greif viewed “institutions-as-rules” as “very useful in examining . . . the rules that politicians prefer and the contractual forms that minimize transaction costs.”²⁸ But he also saw in this view of institutions a key flaw: people do not always follow rules, and knowing on the basis of rules alone why some people follow and others ignore does not tell us much.²⁹ To overcome this flaw, Greif moved institutional economics past “rules of the game” and toward a theoretically-informed behaviorist approach that viewed institutions as game theoretic equilibria or, if not exactly equilibria, the “shared beliefs motivating equilibrium play.”³⁰ This move allowed Greif to bring the methods of game theory to the study of institutions, but also pointed toward the need to relax the focus on formality in these rules and look instead at patterns of behavior rather than rules per se.³¹ Constitutions might matter in some cases, but informal relationships among strangers can matter even more. Thus, Greif showed why informal institutions can function so effectively in ensuring compliance, even in the absence of state enforcement.

A final tradition in the new institutional economics has operationalized some of the movement’s insights to make powerful arguments about nation-states, political systems, causation, and more. The most important work in this tradition is Daron Acemoglu and James Robinson, building on work they had done with Simon Johnson.³² In that work, they seek to test the theories of new institutional

27. See generally GREIF, *supra* note 15. It is difficult, perhaps impossible, to adequately summarize this ambitious book. At the highest level, this book is probably the most methodologically ambitious work of institutional history on either side of the economics and history divide. In it, Greif outlines a theory of institutions and institutional change that draws on formal game theory to work through why strategic agents structure formal and informal trade relationships. But it is also a sophisticated piece of history based on the analysis of primary documents—essentially unheard of in institutional economics.

28. *Id.* at 8.

29. *Id.* at 8–9.

30. *Id.* at 10.

31. Although the debt goes unacknowledged, Greif owes something to Samuel Huntington’s idea of institutions as “stable, valued, recurring patterns of behavior.” SAMUEL P. HUNTINGTON, *POLITICAL ORDER IN CHANGING SOCIETIES* 12 (1968).

32. See, e.g., Daron Acemoglu, Simon Johnson & James A. Robinson, *The Rise of Europe: Atlantic Trade, Institutional Change, and Economic Growth*, 95 AM. ECON. REV. 546, 572 (2005) (“Our hypothesis is that Atlantic trade generated large profits for commercial interests in favor of institutional change in countries that met two crucial preconditions: easy access to the Atlantic and nonabsolutist initial institutions.”); Daron Acemoglu, Simon Johnson & James A. Robinson, *Reversal of Fortune: Geography and Institutions in the Making of the Modern World Income Distribution*, 117 Q.J. ECON. 1231, 1279 (2002) (“The age of industry . . . created a considerable advantage for societies with institutions of private property.”); Daron Acemoglu, Simon Johnson & James A. Robinson, *The Colonial Origins of Comparative Development: An Empirical Investigation*, 91 AM. ECON. REV. 1369, 1395 (2001) (considering “the impact of institutions on economic performance”). See also DARON ACEMOGLU & JAMES A. ROBINSON, *WHY NATIONS FAIL: THE ORIGINS OF POWER, PROSPERITY, AND POVERTY* 1 (2012) (discussing the “huge differences in incomes and standards of living that separate the rich countries of the world . . . from the poor”).

economics on institutions—meaning, in North’s famous term, those “humanly devised constraints”³³—that “influence the structure of economic incentives in society.”³⁴ The authors want to provide “comparative static results which will allow us to explain why equilibrium economic institutions differ.”³⁵ From that starting point, the authors and their successors can better understand which institutions are best suited for the viability of society, states, political systems, and more. Once again, though, they are squarely in the tradition of institutions in the Northian sense.

2. The Limits of New Institutional Economics in Institutional History

Greif and North show that new institutional economics is far from a homogenous field. And new institutional economists’ approach to institutional history is a valuable one that will likely long continue to yield important insights. But there are three ways that new institutional economics is an insufficient lens to help understand an institution like the U.S. Federal Reserve System. First, it is insufficient at the definitional level. The attempted clarity at differentiating organizations from institutions—and especially institutionalization of organizations as a historical process—in the new institutional economics literature takes for granted the very boundaries of organizations—what divides one organization from another. To take a question that will occupy some attention in the pages ahead: is the Federal Reserve public or private? Do its activities reflect an exercise of governmental power or market power? If that balance changes over time, has the institution changed? The point is, the Fed has had the same name for 100 years: the U.S. Federal Reserve System. Organizationally, there have been a few changes, including some that will I discuss. But institutionally—from the perspective of what, exactly, are the rules, norms, and social patterns of central banking—the Fed in 2020, or even 1950, bears little relationship to the institution legislatively-created in 1913.

Although scholars in the new institutional economic tradition are keenly attuned to questions of human behavior, humans in their model are agents who seek to magnify influence through organization and change institutions to maximize, or optimize, their various goals according to simple utility calculations. In this approach, organizations function within institutional frameworks, seeking to influence those frameworks but still subject to them all the same. The new institutional synthesis looks beyond this narrower field and wants to know not about the rules at the broadest level of society, politics, or economy, but the narrow rules that define those organizations themselves. Institutions are rules, organizations, and networks.

33. DOUGLASS C. NORTH, *INSTITUTIONS, INSTITUTIONAL CHANGE AND ECONOMIC PERFORMANCE* 19 (1991).

34. Daron Acemoglu, Simon Johnson & James A. Robinson, *Institutions as a Fundamental Cause of Long-Run Growth*, in 1 *A HANDBOOK OF ECONOMIC GROWTH* 386, 389 (Philippe Aghion & Steven N. Durlauf eds., 2005).

35. *Id.*

Second, the new institutional economics approach, as articulated by Williamson and endorsed by many others, is too certain of the time along which institutions are created and change than evidence can support. Consider again Williamson's schematic, from Figure 1. The new institutional synthetic approach to these same questions would not feel settled with the assumption that institutional change happens over a slow drip over the course of millennia. Instead, the historical question would be to drill deeply into these periods of acute change, recognizing that these periods of acute change can happen far more often than at the level of regime change. The Glorious Revolution surely matters, as North and Weingast note.³⁶ So too does the Federal Reserve Act of 1913. But so do scores of other changes that slowly, but acutely, influence the shape of the space within which individuals and organizations operate to accomplish their goals, from the Fed's legislative redesign in 1935,³⁷ to the informality of the Treasury-Fed dispute and the mythology that became the Fed-Treasury Accord.³⁸ Big Bang institutional changes matter, but so too do the smaller changes that can, sometimes only through historical revisionism, change institutional trajectories.

Finally, new institutional economics' conceptions of institutions rely too heavily on the idea that rules, relationships, and organizations are planned strategies, where agents seek to change the rules of play in order to accomplish some specific goals. Even if this is an accurate description in some cases, it is not always true. If institutions are "humanly devised constraints," as North argues, the importance of contingency in setting the organizational and institutional stage is lost in an apparatus too wedded to game theory and utility maximization.³⁹ In the pages ahead, we will see some exquisite planning by historical actors. We will also see in fuller display the whims of historical caprice. Had this Roosevelt Brain Truster not attended that banking convention, had this Secretary of the Treasury not had gout, and had that Fed Chairman not offended this member of Congress: well, then, the institutions of central banking in the twentieth-century United States would look very different. The idea that almost complete, "totalized contingency," as Christopher Tomlins has put it, is central to the historical process is not a new one.⁴⁰ But it is not a part of the new institutional economics, and the lack of attention to such randomness at the institutional level is a weakness. New institutional economics cannot, by itself, function as the

36. See North & Weingast, *supra* note 19, at 804 (discussing the "fundamental institutions of representative government emerging out of the Glorious Revolution").

37. See PETER CONTI-BROWN, *POWER AND INDEPENDENCE OF THE FEDERAL RESERVE* 28–32 (2016) (describing the restructuring of the Federal Reserve under The Banking Act of 1935).

38. *Id.*; see also JAMES MAHONEY & KATHLEEN THELEN, *EXPLAINING INSTITUTIONAL CHANGE: AMBIGUITY, AGENCY, AND POWER* 1 (2009) (observing that "institutions often change in subtle and gradual ways over time. Although less dramatic than abrupt and wholesale transformations, these slow and piecemeal changes can be equally consequential for patterning human behavior and for shaping substantive political outcomes").

39. NORTH, *supra* note 33.

40. Christopher Tomlins, *What is Left of the Law and Society Paradigm after Critique? Revisiting Gordon's "Critical Legal Histories"*, 37 L. & SOC. INQUIRY 155, 164 (2012).

theoretical backdrop for understanding institutional change at the Federal Reserve, nor can it adequately provide the theoretical bottom for institutional history as a subdiscipline.

B. Organizational Synthesis in History

1. Institutions in the Organizational Synthesis

If new institutional economics is not the theory for thinking through institutional change at the Fed, then perhaps the “organizational synthesis,” another primary institutional frame for thinking about institutions, is. In three essays spanned over thirty-five years, Galambos proposed the organizational synthesis as a lens that could account for the rise and development of the U.S. state across public, private, and nonprofit sectors.⁴¹ Galambos’ “institutional” view of history emphasized a certain kind of agnosticism: economic and political development did not march nobly and teleologically toward greater efficiency (contra to some of the new institutional economists), or equity (contra to some of the Progressive historians), nor even necessarily toward the stability or equilibria favored by later new institutional economics scholars. But neither did development degenerate into an exploitative and malevolent distribution of goods, governmental services, and political participation. Sometimes institutional change just *was*.

As Galambos described it in the first essay, institutional and organizational history “abandon[s] the heroes and villains of the progressive synthesis and the New Left” in favor of a dispassionate, almost clinical exploration of social, political, and economic structures.⁴² Indeed, under Galambos’s formulation, there would be no heroes or villains at all largely because there would be so few individuals: “Organizational history will . . . stress the role of environmental forces acting on the individual. Less emphasis will be placed on the individual’s efforts to shape his own historical context.”⁴³ Although Galambos referenced new institutional economics only in a passing footnote in his third essay, this individual-less conception of history’s march would be comfortable within that tradition.⁴⁴ Indeed, Galambos saw the organizational synthesis as sitting comfortably at the intersection of social science and history.⁴⁵

As with the new institutional economics, the organizational synthesis came at a disorienting time in U.S. historiography. The liberal presidential synthesis was

41. See sources cited *supra* note 3.

42. *Emerging Organizational Synthesis*, *supra* note 3, at 289.

43. *Id.* at 288.

44. *Recasting the Organizational Synthesis*, *supra* note 3, at 11 n.31.

45. See *Emerging Organizational Synthesis*, *supra* note 3, at 290 (“The chief strength of the organizational approach is a mode of analysis which blends the traditional tools of historical thought with ideas from the behavioral sciences.”). In important ways, Galambos was following Hofstadter’s lead from twenty years before. See RICHARD HOFSTADTER & C. DEWITT HARDY, *THE DEVELOPMENT AND SCOPE OF HIGHER EDUCATION IN THE UNITED STATES* 239 (1952) (“The university cannot create such a faculty any more than any other social institution. What it can do is provide the most favorable circumstances for such ability to achieve full stature and develop its full meaning.”).

collapsing as New Left historians found so much to despise in the presidential politics of Vietnam. The presidential synthesis had been an attractive lens for viewing U.S. history. Franklin Roosevelt—and, in a different way, his relative Theodore—had placed power and agenda-setting in the White House in a way that historians accepted, even celebrated. Some of these historians gave personal witness to the power of the Presidency: for example, Arthur Schlesinger, Jr. wrote to celebrate “The Age of Roosevelt” even as he advised the Kennedys.⁴⁶

The presidential synthesis failed for intellectual and methodological reasons. Intellectually, it was not defensible to periodize U.S. history in stubs of four- and eight-year administrations. No serious question in U.S. history starts and begins in perfect sync with the presidential electoral cycle. More importantly, presidents cannot set the agenda and drive history as well as many historians assumed they could. Indeed, Roosevelt may have been the exceptional president with social and political values to celebrate by academic historians.

Methodologically, the 1970s saw the trickles that would become a roaring stream in social and cultural history that continues to dominate the academic history today. Social and cultural historians of race, gender, sexuality, and even politics moved beyond the presidential focus by rejecting the notion that we can understand the past when limited to the doings and sayings of white elites.⁴⁷ This social and cultural revolution in history meant that a president-focused history had little-to-no place in the historiography of the age. The new approach was “fractured,” in Daniel Rodgers’s term.⁴⁸ The age of presidents was over.

The institutional and organizational histories surveyed, and anticipated, by Galambos came at the beginning of these junctures. His movement past heroes, villains, and even individuals, was an effort to take institutional history in the opposite direction of history’s mainstream. “The rendezvous of modern history,” he wrote, “still appears to be with bureaucracy in the private, public, and nonprofit sectors.”⁴⁹ Rather than embracing the move toward social and cultural history, Galambos and others were striving to understand the bigger picture of corporations, Congress, and bureaucracies: in their words, institutions and organizations.⁵⁰ This was the methodological and substantive approach Galambos and his successors sought to synthesize.

46. See generally 1 ARTHUR SCHLESINGER, JR., *THE CRISIS OF THE OLD ORDER: 1919–1933, THE AGE OF ROOSEVELT* (1957); 2 ARTHUR SCHLESINGER, JR., *THE COMING OF THE NEW DEAL: 1933–1935, THE AGE OF ROOSEVELT* (1958); 1 ARTHUR SCHLESINGER, JR., *THE POLITICS OF UPHEAVAL: 1935–1936, THE AGE OF ROOSEVELT* (1960).

47. For an overview of the social historical revolution, see Raphael Samuel, *What is Social History?*, *HISTORY TODAY* (Mar. 3, 1985) (“[Social History] prides itself on being concerned with “real life” rather than abstractions, with “ordinary” people rather than privileged elites, with everyday things rather than sensational events.”).

48. See Daniel Rodgers, *Age of Fracture*, 12 *HISTORICALLY SPEAKING* 12, 13 (2011) (“In all these ways and more, the realm of the social fractured. Mental images of society became more fragmented and gated, broke into individualized pieces, and lost dimensions of power.”).

49. *Recasting the Organizational Synthesis*, *supra* note 3, at 4.

50. *Id.* at 36 (“In American society today power continues to be wielded primarily by bureaucracies.”).

2. Alternatives to the Organizational Synthesis

There are two veins in history that arose as institutional and organizational alternatives to both top-down presidential and bottom-up social approaches to political and economic history. The veins rose in tandem but with no clear intellectual debt to Galambos. First came the revolution in business history instigated by Alfred Chandler, Jr. and his followers; historians who embodied the organizational synthesis better than any but with no obvious debt to the organizational reframing.⁵¹ Second, a group of historically-minded political scientists working under the banner of “American Political Development,” including Stephen Skowronek⁵² and, more recently, Daniel Carpenter.⁵³

Chandler advanced the thesis that the defining factor in twentieth century economics was the use of managerial and communications technology to consolidate, through economies of scale and scope, the management of the economy not in the state, but in the firm.⁵⁴ In this way, business history sat at the intersection of the history of technology and transaction-cost economics propounded by theorists like Ronald Coase and Oliver Williamson, which was distinct from but closely related to especially Williamson’s vision of institutions. Under Chandler’s retelling, the corporatist model of the New Deal and beyond was not the defining institutional innovation of the era: it was the managerial revolution that oversaw mass production, global conglomerates, and the coordination of these activities actively, through management, rather than passively, through markets.⁵⁵ The managerial revolution was squarely an organizational one.

The second vein was American Political Development. Here, the influence on political history from political science is more important than the influence on political science from history. The influence has been significant, and fits, too, within the institutional and organizational frame that Galambos described. Skowronek’s *Building the American State* is the most ambitious of these institutional histories, because it focuses so completely on the construction of a variety of institutions, from political parties, the civil service, the military, and

51. See ALFRED D. CHANDLER, JR., *THE VISIBLE HAND: THE MANAGERIAL REVOLUTION IN AMERICAN BUSINESS* 1–14 (1977) (providing a “history of a business institution,” and discussing how modern business institutions “took the place of market mechanisms”).

52. See STEPHEN SKOWRONEK, *BUILDING A NEW AMERICAN STATE: THE EXPANSION OF NATIONAL ADMINISTRATIVE CAPACITIES, 1877–1920*, at 3–18 (1982) (describing “the new state and American Political Development,” and the pervasiveness of institutional and organizational “coercive power” in American lives).

53. See DANIEL P. CARPENTER, *THE FORGING OF BUREAUCRATIC AUTONOMY: REPUTATIONS, NETWORKS, AND POLICY INNOVATION IN EXECUTIVE AGENCIES, 1862–1928*, at 1–13 (2001) (discussing the organizational transformation, and the “dynamics of bureaucratic autonomy in domestic policy arenas”).

54. See CHANDLER JR., *supra* note 51, at 1 (“[M]odern business enterprise took the place of market mechanisms in coordinating the activities of the economy and allocating its resources.”).

55. See *id.* at 484 (describing “the new economic function—that of administrative coordination and allocation—and the coming of a new subspecies of economic man—the salaried manager—to carry out this function”).

independent commissions.⁵⁶ The main macro-organizational point he made is that “states change (or fail to change) through political struggles rooted in and mediated by pre-established institutional arrangements.”⁵⁷ The meaning of institutions is largely unspecified, but roughly consistent with the organizational view offered by Galambos.

Carpenter, writing twenty and thirty years later, wrote more or less within the organizational synthesis (although he would reject that claim: his one invocation of the synthesis is to dismiss it as insufficiently theorized).⁵⁸ Carpenter wanted to describe not only the growth of organizations, but also the way that power within them is exercised.⁵⁹ For Carpenter, the focus was on bureaucratic autonomy, by which he meant the ability bureaucratic agencies have to “change the agendas and preferences of politicians and the organized public.”⁶⁰ This kind of autonomy is the outgrowth of reputation and credibility cultivated among communities of experts outside the political process. When that autonomy is cultivated, even those politicians with the legal authority to supervise that authority—presidents or members of Congress, for example—cannot do so. The autonomous bureaucracy is simply too strong. Accordingly, an institutional history under Carpenter’s vision fits within organizations—whether the U.S. Department of Agriculture, the postal system,⁶¹ or the Food and Drug Administration (FDA).⁶²

3. Weaknesses to the Organizational Synthesis

Galambos chose his label carefully: unlike new institutional economics, the organizational synthesis is not a carefully-organized school of thought but rather an external imposition of an explanation for the modern development of public and private life in twentieth-century United States. As such, the organizational synthesis has always been vulnerable to the critique that it is simultaneously both too broad and too narrow. By focusing on structures of society, and not on the people behind them, it excludes “vast segments of society to the periphery of historical analysis.”⁶³ Too much history is missed when the conception of the

56. See SKOWRONEK, *supra* note 52, at 15 (outlining the wide breadth of the book’s consideration, including “civil administration, army reorganization, and the establishment of national railroad regulation”).

57. *Id.* at ix.

58. See CARPENTER, *supra* note 53, at 373 (failing to integrate organizational synthesis into author’s larger argument).

59. See *id.* at 13 (suggesting the relative power and legitimacy of bureaucratic agencies accounts for their autonomy).

60. *Id.* at 15.

61. See *id.* at 3–13 (outlining the forthcoming discussion of the Post Office Department and the United States Department of Agriculture).

62. See *id.* at 366 (suggesting the Food and Drug Administration “accords more or less with the theory presented”).

63. Alan Brinkley, *Writing the History of Contemporary America: Dilemmas and Challenges*, 113 DAEDALUS 121, 134 (1984).

twentieth century includes only the faceless and massive organizations that arose during that century.⁶⁴

My critique of the organizational synthesis is related to those, but goes to a more definitional level and is similar to the problem with new institutional economics as the foundation of institutional history. Organizations, structures, bureaucracy, institutions—these terms become synonyms, leaving us with an account of history that only looks at marble buildings and the businessmen and politicians who built them. We gain something important from the organizational approach to institutional history—a biographical sense of the big founding moment and development of specific entities like the Federal Reserve, or General Motors, the FDA, a professional society, or a specific technology.

But the organizational approach does not tell us much about institutional change. Institutional history cannot be reduced to organizational biography. By focusing institutional history on these proper nouns, we can abuse historical narratives by placing organizations at the center of histories that are about so much more. The new institutional synthesis is richer and much more defensible when it focuses on the near constant pressure—external and internal—to change, disappear, reinvent, and progress that characterizes so much of institutional development the world over. Such pressures are never confined to a single organizational entity and are unlikely to be understood if historians require them to be.

Failing to understand these pressures more comprehensively is similar to the critique that the organizational synthesis fails to account for so much of society. For example, no serious scholar would presume to tell the history of the New Deal by focusing exclusively on the legislative process that created the slew of administrative agencies, as important as those agencies may be. Rather, we have to understand how people at the core and the periphery sought to influence these ideas and structures. These individuals and structures came to points of contention. Sometimes they created these changes, sometimes they reacted to them. Sometimes change occurred slowly, sometimes rapidly. And sometimes these changes were to create new organizations, sometimes new rules of the game, sometimes new relationships. And often these changes redefined the boundaries that separated one kind of organization from another.

This definitional departure matches colloquial usage. Think about both the institution of marriage and the Brookings Institution. Or that an individual person has reached such heights that she has become an institution, even as we each refer to our professional affiliations as institutions of higher education, by which we mean collections of buildings with proper names like Wharton or the University of Pennsylvania.

64. For other critiques of the organizational synthesis, see Brian Balogh, *Reorganizing the Organizational Synthesis: Federal-Professional Relations in Modern America*, 5 *STUD. AM. POL. DEV.* 119, 121–22 (1991).

C. Historical Institutionalism

1. The Promise and Challenge of Historical Institutionalism

The third and most promising vein for the historical understanding of institutions has been called “historical institutionalism.”⁶⁵ Suddaby, Foster, and Mills, leading theorists of historical institutionalism, argue for four propositions that should motivate the historical study of institutions.⁶⁶ First, the nature of the truth claims are “particularist and localized, rather than universal.”⁶⁷ Second, “historical studies of institutions focus on complex, rather than unitary causality.”⁶⁸ Third, the “motivations for historical studies of institutions tend to be driven by empirical phenomena or puzzles rather than gaps in theory.”⁶⁹ And finally, historical institutionalism is focused on “endogenous rather than exogenous explanations for institutions.”⁷⁰

This new and growing trend to think through organizational theory from the methodological perspective of history is an important departure point for the new institutional synthesis described in this Article. Certainly, the attention to complex causality—centrally related to the importance of contingency and historical “accidents” as drivers of historical change—is crucial to the study of institutional history. And thinking of “institutions” as a process whereby organizations develop some sort of social stickiness is important, too. It is the *process* of institutionalization—both in history and historicity—that should play a central role in the new institutional synthesis.

But there are important differences, not least in the idea that history can be abused into providing more of an explanation for the present than can be justified. In rising to the defense of history, some historical institutionalists commit the founders’ fallacy of privileging initial founding events over subsequent ones. For example, Khurana argues that an appreciation for history *is* an appreciation of founding moments: “[It] is essential to examine an institution’s birth—its emergence out of an interaction with the larger society and culture, the evolution of its internal dynamic and the interface between the two. . . . The key here is to show organizations responding to particular problems

65. See Roy Suddaby, William M. Foster & Albert J. Mills, *Historical Institutionalism*, in ORGANIZATIONS IN TIME 100, 111 (Marcelo Bucheli & Daniel Wadhvani eds., 2014). The authors offer the best articulation of historical institutionalism in the literature, and come closest to the new institutional synthesis I have in mind. For reasons discussed, however, there are still significant differences between their approach and mine. Historical institutionalism is also in many ways reactive to “new institutionalism” in organization theory and sociology. See, e.g., John W. Meyer & Brian Rowan, *The Structure of Educational Organizations*, in SCHOOLS AND SOCIETY: A SOCIOLOGICAL APPROACH TO EDUCATION 217, 219 (Jeanne H. Ballantine & Joan Z. Spade eds., 3d ed. 2008) (arguing institutions “are not necessarily rational in an economic sense, but are consistent with ‘rules, norms, and ideologies of the wider society’”).

66. See Suddaby, Foster & Mills, *supra* note 65, at 104–05 (outlining the four propositions that should motivate the study of institutions).

67. *Id.* at 104.

68. *Id.*

69. *Id.* at 105.

70. *Id.*

posed by history.”⁷¹ Scholars in the new institutional synthesis are as interested as historical institutionalists in the “evolution” of internal institutional dynamics as they interact with outside social and cultural pressures, but this articulation of history—in Khurana’s case, the history of the American business school as an institution—is question-begging. *Did* institutionalization occur at the founding moment? Did durability of specific institutional arrangements become institutional because of founders’ ambition for such? Or did the process of institutionalization come more gradually than that?

D. The Various Laws and Economics Movements

1. Law and Economics in Three Movements.

I pluralize, however awkwardly, the descriptor for the law and economics movement because we have, so far, seen various waves of the law and economics movement. I want to focus on three: the traditional law and economics movement that arose in the early 1970s and still continues today, the empirical turn in law and economics, and the focus on incentives in business law scholarship. These are under and overlapping. There are many other ways to do law and economics, including in behavioral and critical traditions, that are less relevant to this discussion.

The first law and economics movement, as discussed above, was a rifle shot throughout the legal academy and the bar, transforming field after field to the point where today’s discussions of, say, antitrust, corporate law, or bankruptcy, occur with barely a head nod to alternative methodologies and epistemologies.

Why did law and economics succeed so spectacularly? The intellectual contributions are an important factor. Law and economics provided an analytical framework that settled thorny problems of law’s limits and possibilities. It also presented a common language to engage with these questions, providing a semblance of rigor to the conversations. This matters for becoming a research program and an ideological movement alike.

Law and economics was, of course, both. As Yair Listokin argues in this volume, the law and economics movement’s interactions with a political platform gave it a kind of legendary status whereby conferences and sabbaticals were easily funded and cohorts could form.⁷² Even in well-endowed institutions like the University of Chicago, Yale, Harvard, and Stanford, where these early paths were forged, money goes a very long way toward hegemony.

Eventually, though, the legal academy wanted more, and some time in the early 2000s—as economics itself took an empirical turn—law and economics became much more focused on methods, and much less on informal theory. The

71. RAKESH KHURANA, *FROM HIGHER AIMS TO HIRED HANDS: THE SOCIAL TRANSFORMATION OF AMERICAN BUSINESS SCHOOLS AND THE UNFULFILLED PROMISE OF MANAGEMENT AS PROFESSION* 14–15 (2007).

72. See generally Yair Listokin, *Law and Macro: What Took So Long?*, 83 *LAW & CONTEMP. PROBS.*, no. 1, 2020, at 141.

empirical turn has had profound impacts on hiring selection and training incentives for rising stars in law and economics. Today, the law and economics movement is much more likely to include card-carrying members of the economics profession, hired by and housed in law schools, who use empirical methods developed in their cognate disciplines to inform debates about law and its consequences.

Finally, it is worth a brief discussion regarding the consuming obsessions of one significant branch of the law and economics movement: corporate governance and especially the study of Delaware corporate law. Perhaps no field of study has dominated law and economics more. To an outsider, “corporate law” means simply business law, the alternative to “public law” studied by scholars who focus on the Constitution, courts, and the administrative state. The rise and dominance of Delaware courts has been richly studied and needs no further elaboration here. But the second-order question—the rise and dominance of the *study* of corporate governance, Delaware, and related issues—does. The rise of the corporate form is certainly a historical and legal phenomenon of great worth for scholars to explore and understand. The existence of this movement needs no explanation. Its prominence, however, does.

2. The Limits of Laws and Economics

If institutions are the thesis—the affirmative starting point for analysis, according to this Article—then the first wave of law and economics is the antithesis. Law and economics prides itself on refracting away the complexities of institutions. Incentives matter, and rational actors’ responses to incentives—for good or ill—is the appropriate topic of conversation. So it is that we recast bankruptcy as the creditor’s bargain, antitrust as protection of consumer welfare, and corporate governance as the study of shareholders’ exercise of voting rights to enhance the value of their assets. Here, institutions, except in the narrowest sense—the rules that create the incentives—become largely an afterthought, if they show up at all.

The empirical turn in law and economics is more promising, because it seeks to exploit knowledge about institutions—organizations and rules—to test the hypotheses that economic theory generates. This kind of knowledge base is important and can correct instincts of economists who assume facts about the world that do not exist,⁷³ or lead them to err when they do undertake empirical analysis.⁷⁴ But there is a risk here, too. Hiring preferences for those with demonstrable technical skills risks privileging those technical skills at the

73. See Michael Klausner, *Fact and Fiction in Corporate Law and Governance*, 65 STAN. L. REV. 1325, 1325–31 (2013) (describing the legal structure of corporate governance and the ways that non-lawyers can misunderstand that structure).

74. One of the most prominent examples is Holger Spamann’s article, *The “Antidirector Rights Index” Revisited*, 23 REV. FIN. STUD. 467, 483 (2009), which upends the legal data that supported bold conclusions about shareholder protections in common law countries found in one of the most cited articles in economics, Rafael LaPorta, Florencio Lopez-de-Silanes, Andrei Shleifer & Robert W. Vishny, *Law and Finance*, 106 J. POL. ECON. 1113 (1998).

exclusion of the kinds of institutional knowledge that gives legal scholars their purported research advantage. At the same time, those Ph.D. candidates with the most innovative methodological skills will, because of the incentives of their training, gravitate more toward their own disciplines. The downside risk of the empirical turn in law and economics is that legal scholars are left with the worst of both worlds: methodologists who are far from the vanguard in developing their skills in ways that are valued by their home disciplines, and legal scholars with minimal training or knowledge of institutions that would allow them to make meaningful contributions in law.

The focus on Delaware and corporate governance presents a different kind of risk. That long dominance within business law makes it harder for legal scholars to see the world as it has evolved. The financial crisis of 2008, for example, found many corporate governance scholars grappling with the meaning of problems that have only passing relevance to corporate governance. The solution to this problem is a more ecumenical approach to defining the problems of business law, to erode the dominance of Delaware corporate governance as the main epistemology of our discipline. In that sense, we should want to see more study of the payment system, less of the poison pill; more study of central banks, less of corporate boards; more study of banking as a subset of administrative law, less of banking as a subset of corporate governance.

III

THE NEW INSTITUTIONAL SYNTHESIS, IN THEORY AND PRACTICE

The weaknesses identified above present some clear paths for improving the study of institutions. For a viable research program to take root, though, we need something more muscularly theoretical.

The new institutional synthesis can present that research program. By developing methods and substance to look at institutions as both rules and organizations—or, perhaps better, as rules shaped by organizations—the new institutional synthesis presents a path for understanding ideas that have been siloed by various scholars but should not have been. For example, administrative law scholars, corporate law scholars, and scholars of central banking have each made “independence” a hallmark for study. But why? To what ends? And what can we learn about the institutional framework that surrounds each enterprise to get at insights more deeply rooted in social, economic, political, and legal traditions than any one of these alone?⁷⁵

The spirit of the new institutional synthesis is ecumenicism, so I am reluctant to put these ideas forward as the sole or even dominant epistemology of institutions. But it is worth pausing on that idea: perhaps legal scholars, economists, and historians are all describing different parts of the elephant in the dark. Perhaps institutions are the elephant itself. And perhaps the new

75. I take up this question in Peter Conti-Brown, *Independence*, 44 J. CORP. L. (forthcoming 2020).

institutional synthesis, done with an eye toward both organizations and broader rules and social patterns, and the processes by which organizations become permanent, can bring together these disciplines that otherwise do not have much to say to each other.

If that idea is correct—that institutions are the full elephant—then we need to better understand what institutions are. And these leading definitions—institutions-as-rules, institutions-as-organizations, and institutions as the process by which organizations become permanent—are too narrow to capture the phenomenon of institutions, and especially institutional change, generally. If institutions are rules, organizations, and processes, we can use them to uncover the ways that social, cultural, economic, and political forces express themselves through organizational nubs with porous boundaries that are themselves defined by rules, formal and informal. “Institutions” are not simply broad themes like elections, governmental regimes, property rights, the enforceability of contract, or the independence of the judiciary, nor are they static organizations with proper names like the Federal Reserve or the Food and Drug Administration or General Motors. Instead, in the new institutional synthesis, institutions like the Federal Reserve are organizations whose boundaries are constantly changing through human effort and historical contingency, wrapped around specific but changing sets of problems.

To operationalize this argument, the new institutional synthesis proceeds on five bases. Given my own interests, I will discuss each step in the context of the institutional evolution of the U.S. Federal Reserve System.

First, *individuals matter*. People with specific policy aims are at the heart of institutional formation and institutional evolution, even and especially when these individuals’ policy aims conflict. So it was with Salmon Chase creating a national banking system to meet the demands of war finance,⁷⁶ Paul Warburg seeking to impose a more rational system on his adopted homeland,⁷⁷ Marriner Eccles refusing to serve in the Roosevelt Administration until he could rewrite the Federal Reserve Act.⁷⁸ People are everywhere in institutional history. This idea is in tension with both the organizational synthesis and new institutionalism that would focus on exogenous events, and with trends in social history that would deemphasize the role of policymakers in shaping the institutional context in which they operate.

Second, *people act through organizations*. These actors operate not in a vacuum, but through formal collaborations, and existing and new organizations. In each example above and in the many others that follow, individuals *organize*.

76. *Salmon Chase*, FED. RESERVE HISTORY, https://www.federalreservehistory.org/people/salmon_chase [https://perma.cc/U3S3-DS3W].

77. *Paul Warburg’s Crusade to Establish a Central Bank in the United States*, FED. RESERVE BANK OF MINNEAPOLIS, <https://www.minneapolisfed.org/publications/the-region/paul-warburgs-crusade-to-establish-a-central-bank-in-the-united-states> [https://perma.cc/45K3-P3U8].

78. MARRINER ECCLES, *BECKONING FRONTIERS* 165–67 (1951).

They name themselves, they band together with likeminded others, they try to create something not only as the ultimate goal, but as the intermediate one.

Third, *conflict defines institutionalization*. These organized efforts are not unopposed. Sometimes institutional moments can occur because of a subtle change that is adopted without much fanfare—rendering the Federal Reserve Bank of New York a permanent member of the Federal Open Market Committee in 1942 is a good example of this.⁷⁹ But much more often, there is opposition. This opposition comes to define institutional moments, because it is here that winners and losers declare victory and defeat new and old ways of doing things.

Fourth, *predicting founding moments is difficult*. Not all such collisions will be obvious for the broader process of institutionalization, which makes predicting the importance of specific moments hard to do beforehand. Sometimes this is easy to do—the Fed’s legislative founding in 1913 is plainly one such moment.⁸⁰ But Congress’s quiet retirement of the Fed’s reauthorization provision did not command near the same attention as the identical action in 1836, and even the legislative recreation in 1935 did not generate near the attention at the time.⁸¹

And finally, *institutionalization is both historical and historicized*. By historical, I mean that institutionalization takes place in history by the actors and organizations on the ground. By historicized, I mean that the power of institutionalization only comes later, sometimes by the same actors seeking to revise the historical record in a way that favors them, other times by subsequent actors who had nothing to do with the institutionalized moment.

The new institutional synthesis is guided by these principles. It varies from those adopted by the new institutional economists, organizational historians, and historical institutionalists because it recognizes that organizations both influence and are influenced by the rules that not only govern their conduct, but also give them organizational meaning. It is focused on exogenous and endogenous phenomena. It recognizes that the process of institutionalization of norms and organizations can move toward more and less institutional stickiness. And it recognizes that the norms and traditions of institutional moments continue to be written long after the events described.

To put it in terms of the Federal Reserve, compare the way that the three groups might study central banks. An institutional economist might look at “central bank independence” as an amorphous label that they have come to regard as the separation of monetary policy from electoral politics, arising in the

79. *100 Years of Service (1914–2014)*, FED. RESERVE BANK OF N.Y., <https://www.newyorkfed.org/aboutthefed/centennial-timeline#event/24> [<https://perma.cc/ZP99-NMEX>].

80. *Federal Reserve Act Signed by President Wilson*, FED. RESERVE HISTORY, https://www.federalreservehistory.org/people/salmon_chase [<https://perma.cc/8ESL-U8P8>].

81. See Peter Conti-Brown, *Central Banking and Institutional Change in the United States: Punctuated Equilibrium in the Development of Money, Finance, and Banking*, in RESEARCH HANDBOOK ON CENTRAL BANKING 18–19 (Peter Conti-Brown & Rosa M. Lastra eds., 2018) (discussing the legislative reconstruction of the Federal Reserve in 1935).

late seventeenth century and continuing to the present with a few twists and turns along the way.

An organizational historian would study the U.S. Federal Reserve System and seek to give the organization its biography. That historian would devote a lot of attention to the “founding” period, say, the Federal Reserve Act of 1913, as the apotheosis of institution building in the United States. This kind of organizational history focuses on that Big Bang and then sees what mysteries can be discovered as the institution finds its way. Indeed, to take the Fed as an example, most of the historical effort will be in recovering the intellectual basis for that Big Bang. And historical institutionalists would also be anchored to founding moments and the internal dynamics of the organization thereafter. The idea of *deinstitutionalization*—or the process whereby organizational ambitions to permanence, even if realized, do not succeed—is not part of that structure.

The new institutional synthesis adapts from all three approaches, as illustrated in Figure 2. To mix science metaphors, its focus is not on a Big Bang founding, but on a kind of punctuated equilibrium whereby institutional change—change as significant as the founding organizational moment—happens often but irregularly. The effort is to look at those bursts of institutional change without losing sight of either the rules of the road and broad patterns and equilibria, or of the ways that these individuals use organizational forms to accomplish these goals and change these rules.

Figure 2: Institutional Histories

	Definition of Institution	Subject	Sample Question	Methodology	Importance of Individuals	View of Human Agency	Temporal Focus
Institutional Economics	Rules of the game; equilibria or stable relationships	The economy	How do rules and relationships contribute to economic growth?	Game theory, econometrics; economic theory	None	Fundamental	Millennia
Organizational Synthesis	Organizations; largely undefined	Organizations	What is the history of X agency?	Social science theory, archival research	Top down, if at all	Fundamental	Decades
New Institutional Synthesis	Organizations and rules	Specific organizations; general functions	How and why did individuals organize to promote Y policies or goals?	Archival research	Fundamental at every level	Equal parts agency and contingency	Continuous

Some points worth emphasizing from this schematic. The new institutional synthesis is keyed toward the question of how the boundaries of organizations change over time. The theoretical commitments to this approach are three:

1. Rules and organizations are constantly changing.
2. Individuals—real people with stories, biographies, interests, failures, successes—matter enormously.
3. Contingency is everywhere.

A theory of institutional change that can predict the whole course of human history will not be found in the new institutional synthesis. A detailed, deep dive into specific changes in specific periods for specific organizations will.

IV

CONCLUSION

The Article has attempted to sketch how a new approach to the study of institutions differs from previous approaches in law, political science, sociology, and economics. In line with the best tradition of methodological essays, the aspiration for this Article is to spur discussion forward rather than defend too fiercely a movement already past. In that sense, the new institutional synthesis is not really a school of thought as much as an invitation to think about institutional history in a new way. Rather than focusing on institutions as organizations, this new institutional synthesis has shown how organizations change through the definition and redefinition of rules and norms: organizations *are* rules.

The new institutional synthesis is also unusually agnostic regarding the normative claims about various trends in the historiography of state development. A proponent of the institutional approach I describe need not have any particular opinion about, say, the rise of the state in the nineteenth century or the way the New Deal changed the structure of government or whether our appropriate focus is on powerful elites or marginalized populations. Instead, the new institutional synthesis points to the need to delve deeply into the ways that organizational boundaries shift over time. Uncovering those institutional historical narratives yields important insights relevant to these other debates, to be sure. But the new institutional synthesis carries a promise of methodological and ideological ecumenicism that other approaches do not offer. For that reason alone, perhaps, there is very good reason to look forward to the new institutional synthesis's continued and accelerated growth in the years ahead.