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Taxing Conditions: The Fiscal interest of the State and the Rise of the Modern Corporation in America

Abstract

At the end of the nineteenth century, American corporate law changed into its modern, permissive form.

Emerging first in \NJ[,], the new laws allowed corporations to own each other, and using them capitalists solved their collective action problem of ruinous competition, reorganizing American industry in a great merger wave.

The most famous explanation for why the law changed, the efficiency argument, has been refuted by economic sociologists and political scientists who instead argue that the law changed because of the combination of powerful actors pursuing their interests and contingent conditions such as state fiscal crises. From this critical juncture, the law developed path-dependently.

But these conditions did not occur in \NJ[,], and the actual development of the law there, with several anti-incumbent changes in a relatively short period, do not fit with a path-dependent model.

Neither does the simultaneous adoption of both permissive corporate laws modeled on \NJ[']s, and their reaction, restrictive antitrust laws, across the United States.

To address these problems, this dissertation develops a theoretical framework in which institutional change is determined by how the institution serves the interests of incumbents in adjoining fields.

In its first part, this dissertation applies this framework to the development of corporate law in \NJ over time, comparing 28 failed and successful attempts to change the law, 1830-1913.

In its second part, it tests this framework on the adoption of

permissive and restrictive corporate laws across the United States, 1889-1915.

Using both qualitative and quantitative methods on new datasets of bills, votes, laws, politicians, corporations, and taxes, this dissertation finds that how existing law served political and economic incumbents' interests, by limiting competition and providing tax revenues, explain its change and persistence.

The power and interest relationships among classes are reflected back into the state through taxation, mediated by state capacity. Politicians sit like both spider and fly in a web of dependencies among actors and policies.

When the web is tight, institutions persist, when it loosens, change is possible.

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TAXING CONDITIONS: THE FISCAL INTEREST OF THE STATE AND THE RISE
OF THE MODERN CORPORATION IN AMERICA

Alexander Jerneck

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TAXING CONDITIONS: THE FISCAL INTEREST OF THE STATE AND THE RISE
OF THE MODERN CORPORATION IN AMERICA

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Alexander Jerneck

To Zenobia.

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ABSTRACT

TAXING CONDITIONS: THE FISCAL INTEREST OF THE STATE AND THE RISE OF THE MODERN CORPORATION IN AMERICA

Alexander Jerneck

Randall Collins

At the end of the nineteenth century, American corporate law changed into its modern, permissive form. Emerging first in New Jersey, the new laws allowed corporations to own each other, and using them capitalists solved their collective action problem of ruinous competition, reorganizing American industry in a great merger wave. The most famous explanation for why the law changed, the efficiency argument, has been refuted by economic sociologists and political scientists who instead argue that the law changed because of the combination of powerful actors pursuing their interests and contingent conditions such as state fiscal crises. From this critical juncture, the law developed path-dependently. But these conditions did not occur in New Jersey, and the actual development of the law there, with several anti-incumbent changes in a relatively short period, do not fit with a path-dependent model. Neither does the simultaneous adoption of both permissive corporate laws modeled on New Jersey's, and their reaction, restrictive antitrust laws, across the United States. To address these problems, this dissertation develops a theoretical framework in which institutional change is determined by how the institution serves the interests of incumbents in adjoining fields. In its first part, this dissertation applies this framework to the development of corporate law in New Jersey over time, comparing 28 failed and successful attempts to change the law, 1830-1913. In its second part, it tests this framework on the adoption of permissive and restrictive corporate laws across the United States, 1889-1915. Using both qualitative and quantitative methods on new datasets of bills, votes, laws, politicians, corporations, and taxes, this dissertation finds that how existing law served political and economic incumbents' interests, by limiting competition and providing tax revenues, ex-

plain its change and persistence. The power and interest relationships among classes are reflected back into the state through taxation, mediated by state capacity. Politicians sit like both spider and fly in a web of dependencies among actors and policies. When the web is tight, institutions persist, when it loosens, change is possible.

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Chapter 1

Introduction

Economic inequality in America is back to Gilded Age levels, and corporations lie at the heart of it. CEO compensation has grown to 500 times average production worker pay (Murphy and Zabojnik, 2004), driving much of the increase in top incomes (Keister, 2014; Piketty, 2014; Piketty and Saez, 2006). Prioritizing shareholder value has also motivated management to cut labor costs, decreasing workers' wages (Fligstein and Shin, 2007; Neckerman and Torche, 2007). Inequality started to increase in the 1970s after decades of declining (Piketty, 2014; Piketty and Saez, 2006), indicating that recent processes, such as managerial rent-seeking (Bebchuk and Grinstein, 2005), increased market demand for CEO talent (Gabaix and Landier, 2006), political changes in taxes and corporate structure (Bartels, 2009; Hacker and Pierson, 2011; Volscho and Kelly, 2012), and financialization (Lin and Tomaskovic-Devey, 2013) are its immediate causes. But these processes unfold in the institutional context of the modern corporation, itself the result of a historical process in which corporations, originally founded, and tightly controlled by state governments, became sovereign, private entities with powerful rights (Hovenkamp, 1991; Perrow, 2002; Roy, 1997). Understanding how the corporation transitioned from an extension of the state to an autonomous actor challenging it provides necessary context to these more recent developments.

This dissertation argues that the development of corporate law in America can be explained by politicians' interests in the taxes generated by corporate activity. Examining the development of corporate law over time and across the American states, it shows that politicians became dependent on corporate taxes, making them beholden to continued corporate activity and therefore more likely to pass laws favoring incumbent capitalists.

Today, the law allows corporations to exist forever, engage in any lawful business, own other corporations, and limit investors' risk through limited liability. Creating a corporation is as simple as filling out a form. But in the 19th century, state legislatures created corporations by passing individual laws for each corporation. Creating corporations by individual laws is called *special* incorporation, creating them by filing paperwork is called *general*

incorporation. Under special incorporation, the laws dictated what business each could engage in, how long it would exist, and reserving the right to change the terms at any time (Cadman, 1949; Seavoy, 1982). Corporations could in general not own other corporations. In 1896, New Jersey passed the first modern corporate law. It allowed general incorporation, and afforded corporations perpetual existence, the right to engage in any lawful business, to own the stock of other corporations, and to shield investors through limited liability (Chausovsky, 2007; Yablon, 2007). Several states soon adopted similar laws, and using them, especially the ability to own other corporations, capitalists consolidated American industries in a great wave of mergers at the turn of the century (Lamoreaux, 1988; Nelson, 1959). Consolidating competitors into large, profitable corporations solved capitalists' collective action problem with ruinous competition. Previous attempts using pools and cartels had failed because they were ruled illegal or unenforceable by the courts (Bowman, 1989; Freyer, 1992; Lamoreaux, 1988; Sklar, 1988). The transformation involved up to half of all manufacturing firms and ushered in a new way of organizing business in America (Bittlingmayer, 1985; Chandler, 1977; Fligstein, 1990; Piore and Sabel, 1984).

This dissertation explains this *emergence* of modern corporate laws in New Jersey and its subsequent *diffusion* across the American states. These were processes of *liberalization*, in which corporate law became more permissive with respect to what corporations could do. Corporations' quest for bigness and profitable levels of competition was controversial (Bensel, 2000; Hofstadter, 1965; Peritz, 1996; Thorelli, 1955). Trusts and monopolies were frequent fodder for muckraking journalists (e.g. Steffens, 1905a; Tarbell, 1904), and almost all parties criticized them in their party platforms (Porter and Johnson, 1956). The legislative answer was antitrust laws that defined and outlawed monopolies (United States Industrial Commission, 1900, 3), amounting to a *restriction* of corporate law. From 1889 to 1915, 22 states passed laws allowing corporations to own the stock of other corporations, and 24 states passed antitrust laws.

In the most famous treatment of the modern American corporation, Chandler argues that it emerged because it was more efficient (1990, 18). In this argument, the necessary legal changes are explained by their very necessity: “what was needed was a general incorporation law that permitted the formation of holding companies [...]. The New Jersey legislature quickly obliged.” (Chandler, 1977, 319). Economic sociologists instead argue that corporate law changed as a result of powerful actors pursuing their interests but also because of contingent events and conditions (Berk, 1994; Perrow, 2002; Roy, 1997). The critical juncture came when the 1837 and 1857 depressions, combined with states’ bad infrastructure investments and laissez-faire agitation, forced legislatures to shift from special to general incorporation. This privatized the corporation, which subsequently developed in a path-dependent way into its modern, permissive form (Roy, 1997). Studies of why the antitrust laws were passed focus almost exclusively on class interests. Farmers wanted restrictive laws protecting them against collusion among the buyers of their crops, the suppliers of their machinery and the railroads that transported their goods (e.g. Thorelli, 1955). Capitalists wanted permissive laws allowing them to limit ruinous competing through mergers (e.g. Lamoreaux, 1988), and small businessmen wanted restrictive laws protecting them against large competitors (e.g. Troesken, 2002).

Three flaws with these explanations motivate this dissertation: empirical inconsistencies, neglecting the role of the state, and limited consideration of the full variation in outcomes. Economic sociologists and others have refuted the functional logic of the efficiency explanation, showing that changes in corporate law were not unproblematic adaptations to changing technological and market conditions. But the conditions they cite did not occur in New Jersey, where the modern corporation first emerged in America. The state did not lose public money in failed infrastructure projects in mid-nineteenth century, and did not decisively shift to general incorporation until decades later, when it did so despite the resistance

of incumbent capitalists. Studies of antitrust policy seldom assess competing hypotheses simultaneously, which makes it hard to compare their relative merits.

Explanations of emergence and diffusion both neglect the role of the state. In the economic sociology explanation, the development of corporate law is the privatization of the corporation. This view accurately describes the increasing power of corporations to operate free from the constraints of the state. But, it diverts attention from that corporate law, specifically the ability of corporations to own each other, enabled capitalists to solve the collective action problem of competition, which they had failed to do on their own. While corporations gained freedom from the state, they also continued to rely on it. The class-based explanations of antitrust movement do not consider the role of the state, even though the interests and autonomous power of state actors are an important determinant of regulation (Amenta and Carruthers, 1988; Evans et al., 1985; Skocpol and Amenta, 1986).

Existing explanations do not consider the full variation of the outcome variable. Economic sociology explanations are built on the assumption of contingency and path dependency, in which the law most of the time develops along a fixed trajectory. Occasionally contingent combinations of conditions create critical junctures which upset the trajectory. This approach focuses on successful attempts to liberalize the law, at the expense of neglecting failed liberalizations and both failed and successful restrictions. Similarly, the antitrust studies focus exclusively on the restriction of corporate law, without considering that states were also liberalizing their laws. Without accounting for the full variation in the outcome, these explanations cannot explain why the law sometimes changed and sometimes did not, and why states sometimes liberalized and sometimes restricted their corporate laws.

To address the empirical inconsistencies, this dissertation builds an inductive explanation of the development of corporate law in New Jersey from 1830 to 1913. It then compares New Jersey to New York to understand why the first modern laws were not passed

there, despite it being the economic center. To ensure that the developed explanation is not due to chance or specific to New Jersey, this dissertation uses event history analysis. It tests the developed hypothesis, alongside ones derived from the existing literature, on the diffusion of both liberal and restrictive laws across 46 states from 1889 to 1915.

To address the lack of focus on the role of the state, it develops a theoretical framework that focuses on the interests of politicians as autonomous actors in the policy process. The state is important because it helped capitalists solve their collective action problem. Corporate law also solved problems for politicians. For example, in New York, special bank incorporation limited competition among banks and stabilized the money supply by allowing politicians to control the founding of new banks. The lucrative privilege to found new banks funded the patronage system which maintained party discipline and cohesion (Seavoy, 1982). Most importantly, corporate laws also provide revenue potential for states, who during this time were taking on a developmental role and increasing responsibility for infrastructure, education and public welfare (Higgins-Evenson, 2002). Just as fiscal crisis precipitates state breakdown (Goldstone, 1991), state-building increases the importance of taxation (Campbell, 1993). Law scholars have long argued that states made their corporate laws more permissive to attract incorporations which they could tax to bolster flagging revenues (Grandy, 1993; Stoke, 1930; Von Halle, 1900).

The ability of American states to tax corporations is a measure of their power over them, but also made states reliant on corporations for revenues. Politicians were unlikely to change a law generating tax revenues. When they did change the law, the more tax revenues corporations generated, the more likely they were to liberalize the law. This is not simply a deductive application of an ahistorical rational choice model, but grounded in politicians' subjective understanding of the connections between revenues and permissive corporate laws. In speeches to the legislature, New Jersey governors explicitly connected sound state finances to the revenues brought by incorporation activity under permissive laws. They cautioned against restricting permissive laws for fear of decreasing revenues,

and warned that other states competed for their corporate activity.

To address the limited variation in the outcome, this dissertation compares failed and successful attempts to restrict and liberalize the law in NJ, and successful attempts to liberalize and restrict across the United States. Comparing failed and successful attempts to change the law in New Jersey replaces the assumption that the law develops path-dependently with the actual conditions under which it changed and persisted. Testing the developed and existing hypotheses on states passing permissive as well as restrictive laws amounts to an additional test, increasing our belief in the argument.

This comparative approach involves applying several different methods to several different datasets, many of them new. In addition to typical secondary sources, published statistics, contemporaneous newspaper accounts and primary documents, this dissertation uses datasets created by parsing electronic copies of archival documents using custom software. These datasets include a new dataset of incorporation activity in New Jersey and the political makeup and activity of the New Jersey legislature, as well as a dataset of stock ownership and antitrust laws passed by 46 states between 1889 and 1915.

The datasets have two advantages. First, their longitudinal nature allows comparisons over time, essential to understanding the conditions under which institutions change and persist. Second, several datasets are much more comprehensive than existing sources, allowing for a more detailed empirical analysis. For example, datasets of the bills and votes in the New Jersey legislature uncover many failed challenges to the permissive corporate law from 1896 to 1913 which existing research has overlooked, thus underestimating conflict around corporate law. The dataset on politicians, which includes their education and profession, helps explain the seemingly contradictory voting pattern in 1888, where I show that politicians who were lawyers voted more consistently.

To develop the theoretical framework and understand the historical development of corporate law, this dissertation uses process-tracing, complemented by bivariate crosstab-

ulations and multivariate qualitative comparative analysis. This more inductive approach allows the formulation of an explanation grounded in the historical record, but suffers from two drawbacks. First, it is deterministic and does not account for the uncertainty in the data. Second, while it draws on many cases within New Jersey, and compares with New York, is based on a small, distinct geographical area of the United States. The quantitative analysis in the second part is designed to address both these shortcomings. It uses standard statistics to account for uncertainty and includes all but four states to account for potential geographic variation. It also has the added benefit of confirming the developed hypothesis on a dataset that was not used in its development.

The central finding of this dissertation is that tax revenues from corporations made politicians beholden to corporate activity, leading them to pass permissive, and resist restrictive, corporate laws. The development of corporate law in America was decisively shaped by the interests of politicians in maintaining or increasing state revenues. In New Jersey, permissive laws providing state revenues were not restricted, even when challenged by political reformers and competitors. New York did not enact modern laws before New Jersey because the corporations that contributed the most to party coffers were not the manufacturing firms interested in modern incorporation but transportation, communication, gas, electric, and insurance companies. Across the United states, the greater proportion of a state's revenues that came from corporate taxes, the more likely it was to liberalize, and the less likely it was to restrict its laws. Rather than the corporation becoming privatized, the state was continually involved in shaping corporate law during the entire period. Consequently, politicians were much more important than previously recognized. While the passage of antitrust laws has been understood as part of the class conflict between farmers, workers, and capitalists during the Progressive Era, politicians' interest in tax revenues was more important than these classes' direct interests. Politicians were semi-autonomous.

They were independent enough to protect controversial laws against challenges by farmers, political reformers, workers, and even challenger capitalists, when those laws serve their own interests of maintaining revenues. They were also independent enough to tax corporations against their will, but the resulting revenues made them invested in continued corporate activity under permissive laws.

By comparing across greater variation in the outcome variable, this dissertation pushes beyond the assumption that the law's development was path dependent occasionally punctuated by contingent events setting it on a new path. In so doing, it reclaims our ability to systematically explain the historical process instead of relying on contingency.

The idea that politicians are interested in maintaining tax revenues may strike contemporary readers, familiar with attempts to “starve the beast” – reducing government revenue to restrain government spending (Bartlett, 2007; Romer and Romer, 2007), as odd. Future research should examine how the result of this dissertation can be reconciled with this contemporary focus on reducing taxes. A potential explanation is that politicians' interests are just as important to policy outcomes, but that their interests have shifted from tax revenues to campaign contributions (e.g. Bartels, 2009; Gilens, 2012; Lessig, 2014; Page et al., 2013).

This dissertation is laid out in the following way. Chapter 2 lays out the theoretical framework in more detail. Chapter 3 compares 28 cases of failed and successful attempts to change corporate law in New Jersey, from 1846 to 1913. It establishes the conditions under which corporate law changed in New Jersey. Chapter 4 then presents the evidence from three case studies of the most important changes in New Jersey: the shift from special to general incorporation in 1873, the legalization of intercorporate stock ownership in 1888, and the restriction of the law in 1913. Chapter 5 compares New Jersey with New York, to understand why the modern laws did not emerge there first. Finally, chapter 6 tests the hypothesis that corporate taxes made states' corporate laws more permissive using event

history analyses of the passage of antitrust and laws allowing corporations to own stock in 46 American states 1889 to 1915. The conclusion summarizes the empirical story and theoretical contribution, and discusses some wider implications.

Chapter 2

Corporate Law, Competition and Taxation

2.1 Efficiency and Contingency

Chandler argues that the large modern American corporation emerged because it was more efficient (1990, 18), explaining the legal changes necessary for its emergence by their very necessity: "what was needed was a general incorporation law that permitted the formation of holding companies [...]. The New Jersey legislature quickly obliged." (1977, 319). Scholars have tested and refuted claims derived from this explanation, finding no difference in incorporations between industries with and without high capital intensity, high productivity, and rapid growth (Roy, 1997, 21-40), and that smaller railroads could be as efficient as large ones despite lacking economies of scale (Berk, 1994, 116-152). They also challenge its functional logic, arguing that corporate law developed through political processes shaped by powerful actors at critical junctures (Berk, 1994; Perrow, 2002; Roy, 1997). According to Roy (1997), states' bad infrastructure investments in combination with the 1837 and 1857 depressions, made states lose public money. Compounded with laissez-faire agitation, this forced states to scale back their involvement in the economy and abandon special, in favor of general, incorporation. The corporation became privatized, and the law subsequently developed path-dependently into its modern, permissive form (Roy, 1997, 42, 72-75). The lack of support for efficiency-derived hypotheses combined with empirical evidence of the political processes behind the change convincingly refutes the efficiency explanation.

But, the empirical conditions cited as the most important did not occur in New Jersey. The state did not invest public money in infrastructure projects, because main project was a railroad across the state and citizens from counties not on the route feared future tax hikes to pay for the debt. Instead, the state created a private corporation, the Camden and Amboy Railroad, to build and run the road. Special incorporation for railroads made it easy for the corporation and its political allies to maintain a monopoly on the route by preventing competitors from incorporating (Cadman, 1949; Lane, 1939; Reilly, 1952). The monopoly made the railroad lucrative, and taxes on its traffic helped the state maintain sound finances.

Because of how special incorporation served both political and economic interests it was not abandoned until the mid-1870s. Figure 2.1 shows the budget balance of New Jersey. Only three times did the state have a budget deficit. The largest deficit comes in 1866, and is likely due to costs incurred during the Civil War.

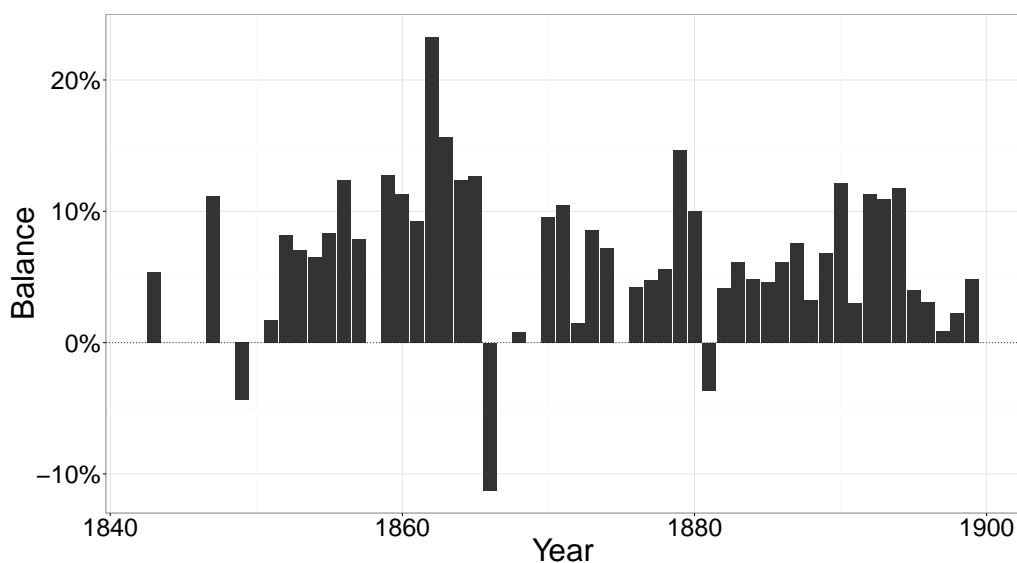


Figure 2.1: Budget Balance in New Jersey, 1840 - 1915. Balance is defined as revenues minus expenditures, divided by the sum of revenues and expenditures. Source: (Sylla et al., 1993).

The actual development of corporate law in New Jersey also fits badly with a path-dependent model of institutional change and persistence. When New Jersey shifted from special to general incorporation, it did so against the interests and resistance of incumbent capitalists, the Camden and Amboy Railroad. When it allowed corporations to own each other in 1888, it did so despite many politicians being opposed to allowing corporations to limit competition. Finally, in 1913 it restricted the permissive laws that had made it a center of incorporation in America. The simultaneous diffusion of permissive and restrictive corporate laws across the states also challenges the path-dependency model.

2.2 Path-dependency and Contingency

The argument that institutions of capitalism such as corporate law have developed path-dependently is attractive to economic sociologists and others studying the political foundations of the economy, because it so powerfully refutes the argument that they are efficient and functional adaptations. For path-dependent phenomena, small, even random initial differences can accumulate into large, sustained advantages for an institution, technology or actor, regardless of its efficiency (Arthur, 1988, 1989; David, 1985; Mahoney, 2000; Pierson, 2000). Precisely because of this, path-dependent models have become the most prominent alternative to functionalist and rational-choice explanations of institutions (Thelen, 2004, 25-28). They are also part of the larger movement to theorize time (Aminzade, 1992; Griffin, 1992, e.g.) and sequence (Abbott, 1995; Griffin, 1993).

Yet explanations that rely on contingency and path-dependency suffer from several theoretical problems. Many applications of path-dependency do not employ a sufficiently precise definition, instead only employing notions such as that history, or the past, matters (Mahoney, 2000, 507). In remedy Mahoney instead argues that only phenomena where “contingent events set into motion institutional patterns or event chains that have deterministic properties” should be studied using path-dependency and contingency (Mahoney, 2000, 507). Path-dependent institutional patterns are those in which increasing returns benefit existing institutions so that they become difficult to change or replace. Path-dependent event chains are processes with an “inherent sequentiality” and in which one event deterministically leads to the next Mahoney (2000, 509). At the same time as vague definitions of path-dependency are used too broadly, sociologists have focused too narrowly on mechanisms derived from utilitarian, or rational-choice theory, and not fully explored the potential for path-dependence and change caused by mechanisms drawn from other theoretical traditions, such as those emphasizing power, culture and cognition (Mahoney, 2000, 525).

A deeper problem with the contingency and path-dependency approach is its paradoxical reliance on both contingency and determinism. Contingency “refers to the inability of

theory to predict or explain, either deterministically or probabilistically, the occurrence of a specific outcome” (Mahoney, 2000, 513), whereas path-dependency implies determinism, that events unfold in a way that is perfectly predictable, in fact, that is in the only way possible. In any application of a contingency and path-dependency framework, then, the invocation of contingency contradicts the existing theory. But, the effect of contingency is then carried forward in time by processes explained by the existing theory. In Mahoney’s (2000) words, contingent and path-dependent “outcomes simultaneously 1) contradict the predictions of a theoretical framework employed by the investigator; and 2) are reproduced by the processes associated with the very theoretical framework they contradict.” (516). Collins (2007, 509) similarly argues that turning point arguments rest on the tacit assumptions that only some spheres of the social world, such as politics, have turning points, and that turning points in these determines what happens in other, such as economic, spheres. That interesting theories are those that contradict existing theories or expectations (Davis, 1971) is to be expected: theories are generated by a web of conflicts between opposing factions (Collins, 2009). But the alternating reliance on contingency and determinism, without a principled way of specifying the conditions for each, is still contradictory.

Collins (2007) argues that attributing causal effects to turning points is the result of too much focus on specific events at the expense of understanding broad, macro-historical processes. From the perspective of such broader process, the outcome of any one specific event is inconsequential compared to the inexorable march of history. In this sense, attributing causality to turning points is the result of focusing on a too short time period. Zooming out brings more of the timeline into view, highlighting that explanations based on contingent conditions confront countless counterfactuals. These potential, but not actualized turning points raise thorny questions. If major historical change can happen through contingent events, why is it not more common? And if turning points are so decisive, why are they at the same time so contingent? From the perspective of the stochastic causality of macro-historical processes, the outcomes of these counterfactuals are random, so trying to

explain them is meaningless, the equivalent of “chasing noise” in the language of statistical methods. Asking them nevertheless highlights the contradiction of mixing contingency and determinism. Laying out positive and negative cases along a timeline also highlights how the comparison of positive and negative outcomes quite naturally leads to the use of a “system of variable causes” outlined below. The existence of some stochastic, macro-historical causal process shaping corporate law gradually, for example making it more permissive, would mean that trying to explain these more rapid changes is a fool’s errand, the methodological equivalent of straining gnats and swallowing camels. In my view, this risk is lower than the risk inherent in relying on a broad, but faulty, explanation, especially since conceptualizations of those broader processes are often based on more specialized accounts of particular eras. For example, Arrighi’s (1994) broad treatment of capitalism relies heavily on Chandler (1977) for its characterization of the development of the American corporation (Arrighi, 1994, 239-245,292-293).

Even if the contingency and path-dependency approach could answer these questions, invoking contingency, precisely because it represents that which cannot be explained, is intellectually unsatisfying. Some sociologists may even reject the study of particular outcomes, or the use of contingent conditions as invalid explanatory factors (Mahoney, 2000, 509).

Explaining the development of modern corporate law in America as a contingent and path-dependent process is problematic because of its specific empirical problems in this case, and its more general theoretical problems. Instead, the theoretical framework used here draws on approaches that relax the assumption that change and persistence are caused by different kinds of mechanisms (Thelen, 2004, 30-31). In this view institutions can change because of several processes, including displacement, layering, conversion, drift, and exhaustion (Streeck and Thelen, 2005, 18-30,31)¹.

Institutional displacement occurs when one institution replaces another, as for exam-

¹Pierson (2004) identifies layering, conversion, and diffusion, which is similar to displacement.

ple in the different isomorphisms of the new institutionalism (DiMaggio and Powell, 1991; DiMaggio, 1982; Tolbert and Zucker, 1983). Key to the displacement mechanism is the existence of alternative institutions that can be activated or emphasized as conditions change. In the development of American corporate law, special incorporation was displaced by general incorporation, as detailed in Chapter 4. Layering occurs when subsequent additions to an existing institution gradually subvert the original. Examples include small amendments to public welfare programs that ended up privatizing them, like 401(k) and IRA retirement accounts (Hacker, 2005). In the development of American corporate law, the gradual introduction of more permissive clauses into general laws meant that the most modern law, enacted in 1896 (New Jersey Laws, 1896), was very permissive, despite the first general law, enacted in 1816 (New Jersey Laws, 1816), being quite restrictive (the most important aspects of corporate law are described in Chapter 3, and Table 5.1 shows an overview of their development). So even if both laws had similar structure, the content was completely replaced.

Institutional change through conversion entails repurposing an existing institution for new goals. Four conditions enable conversion. First, institutions have unintended consequences (Merton, 1936), in part because of the cognitive limits of the actors involved. Second, institutions are often the result of compromises, building in the potential for different uses. Third, strategic actors will try to bend institutions to serve their purposes. Fourth, institutions often outlive their founding conditions and coalitions. Roy (1997) argues that the corporation was originally created to provide public goods, and was repurposed for private enterprise. In my argument, the converse also occurred: different forms of corporate law were all enlisted in the same goal of providing state revenues. I discuss the role of limited knowledge in Chapter 6. In drift, it is not the institution, but the surrounding world that changes, so that the effect of the institution is transformed. Often, this involves deliberate neglect. A potential example from corporate law is the lack of enforcement of the federal antitrust law (Bittlingmayer, 1985; Posner, 1970; Sklar, 1988), examined in Chapter 10.

Exhaustion is the only of the five mechanisms that can lead to institutional breakdown rather than gradual change. It applies to institutions subject to depletion through decreasing returns, in which the more the institution is used, the weaker it becomes. One potential example from corporate law is the increased use of special incorporation, which, in some arguments, imposed such a heavy workload on legislatures that they shifted to general incorporation instead (Chausovsky, 2007, 42). This does not appear to have been the case in New Jersey, Figure 4.2 shows that special incorporation progressed at an approximately constant level until it was prohibited. These modes of change provide a wide range of subtle alternatives to the problematic contingency and path-dependency model. But they also have the character of abstract descriptions of empirical phenomena. What we need instead is a theory generating predictions of when institutions will change and persist.

This entails shifting from a “historicist” mode of causation, in which the effects of one cause are carried forward by another mechanism, to a “system of variable causes”, in which each outcome is explained by the contemporaneous values of the explanatory conditions. This terminology is taken from Stinchcombe (1968, 101-103), but with the substitution of variable for constant causes, because Stinchcombe is discussing explanations for persistence, while here we want to explain persistence and change. This system of variable causes starts with corporate law as an institution between state and market.

2.3 An Institution Between State and Market

Roy (1997, 71-77) argues that the corporation became privatized during the nineteenth century. This dissertation instead emphasizes that its development should be understood as continually shaped by private and public forces and interests. Corporate law always mixed public and private interests. Early New Jersey corporations were private, but regulated, and provided publicly useful turnpikes, canals, railroads, credit and currency. New Jersey canal and railroad corporations were profitable because the state guaranteed their monopoly

(Cadman, 1949; Lane, 1939). In New York, special bank incorporation limited competition, stabilized the money supply, and funded the patronage system, maintaining party cohesion (Seavoy, 1982).

Institutions like corporate law consequently lie between political and economic fields (DiMaggio and Powell, 1983; Fligstein, 2001; Fligstein and McAdam, 2012), activating the interests of actors in both. Following Thelen (2004, 32-33) I focus on these actors and their interests rather than power, because they are easier to observe. The key to understanding the development of American corporate law lies in the agreement rather than divergence of economic and political actors' interests: laws solving the problems of both persisted. Actors' interests vary by fields and positions: incumbents benefit more than challengers from existing institutions (Fligstein, 1996; Mahoney and Thelen, 2009), and try to protect them from attacking challengers. In the development of American corporate law, the most important economic actors are incumbent capitalists who want to limit competition to preserve profits (Schumpeter, 1934; Smith, 1776). Competition can be limited by differentiating products into niches (Carroll and Swaminathan, 2000; Harrison, 2002; White, 1981), running competitors out of business (Dobbin and Dowd, 2000; Fligstein, 1990), consolidating existing firms, limiting entry, agreeing to not compete, or by state regulation (Kolko, 1977; Swenson, 2002). Industries with high fixed costs, such as railroads or mass production, are especially vulnerable to ruinous competition (Dunlavy, 1994; Hovenkamp, 1991). In nineteenth century America, frequent demand shortfalls during recessions and depressions activated such competition (Lamoreaux, 1988), illustrating the collective action problem competition poses to capitalists: they would be better off collectively without competition but individual capitalists have an incentive to undersell (Bowman, 1989).

After trying cooperation in pools and cartels, which the courts ruled illegal or unenforceable (Fligstein, 1990; Freyer, 1992; Sklar, 1988), industrialists solved the ruinous competition problem by consolidating many smaller firms into larger corporations using modern corporate law in a wave of mergers at the turn of the century (Fligstein, 1990;

Lamoreaux, 1988; Nelson, 1959; Prechel, 2000; Stearns and Allan, 1996). Solving these collective action problems is an important way the state shapes markets. It also shows how important the continued involvement of the state was: corporations as a collection of private entities could not solve this problem on their own. Only when the law allowed corporations to own each other, replacing the voluntary ties of the market with the hierarchy of the firm (Williamson, 1981, 1979), could they solve this problem. That contemporary corporate law regulates relationships within (e.g. Alchian and Demsetz, 1972; Berle and Means, 1932; Fama, 1980; Jensen and Meckling, 1976), not between, firms is a result of its historical development. During the nineteenth century, corporate law often regulated relationships between corporations (Hovenkamp, 1991; Lamoreaux, 1988), for example, outlawing cooperating in trusts as a charter violation (Sklar, 1988, 99).

In the decentralized federalism of nineteenth-century America, the states were the locus of economic regulatory power (Scheiber, 1975). There is no federal corporate law during this time (Lamoreaux, 1988, 169-173), so the most important political actors are state politicians. Their most important interest in corporate law is its revenue potential. Both contemporaneous observers and later researchers have made the argument that states liberalized their corporate laws to attract corporations, which they could then tax to bolster tax revenues (Grandy, 1993; Stoke, 1930; Von Halle, 1900). Contemporaneous sources accuse politicians of corruption (e.g. Steffens, 1905a), but I focus on tax revenues, although they were often inseparable from party finances during this time (Yearley, 1970).

During the nineteenth century, state expenditures increased as states took on a developmental role, taking greater responsibility for infrastructure, education, and public welfare, leading states to adopt business methods and corporations to wield more influence over them (Higgins-Evenson, 2002). For example, state revenues were used to expand asylums (Sutton, 1991). Figure 2.2 shows per capita expenses and revenues across the states. The amounts are deflated using the price deflator from Sutch (2006), and the 1830 levels are set to 100 to aid interpretation. State budgets expanded more than 20 times over the study

period.

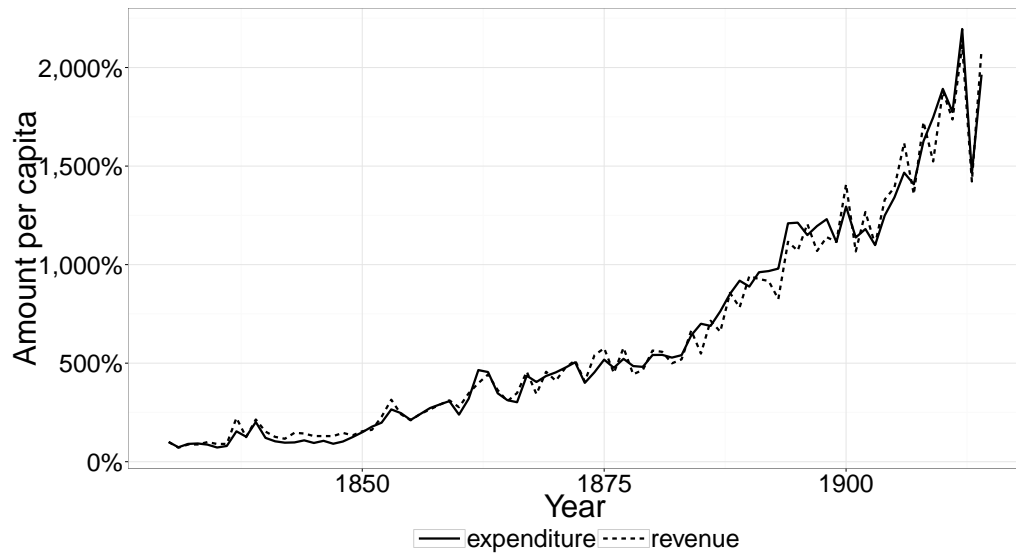


Figure 2.2: Expansion of state spending and taxation over time. Source: Inter University Consortium for Political and Social Research (2005); Sylla et al. (1993)

Marxists make the theoretical argument that state actors depend on a functioning capitalist economy (Block, 1987; Offe, 1984; Poulantzas, 2000), and therefore act in the interests of capitalists. But the argument that state politicians were interested in tax revenues from corporations is not just a theoretical deduction. Chapter 3 provides a detailed discussion of how politicians understood taxes on corporations. For politicians caught between rising expenditures and the declining efficacy and legitimacy of property taxes (Higgen-Everson, 2002; Mehrotra, 2008; Seligman, 1890), taxes on corporations provided an attractive solution.

Yet the fiscal argument has not been broadly applied or evaluated. Law scholars argue that specific changes in corporate law were undertaken to bolster flagging tax revenues (Grandy, 1989, 1993; Stoke, 1930), but have not expanded the argument to systematically explain both change and persistence in corporate law. For example, Stoke (1930) argues that declining tax revenues in the 1880s caused New Jersey to liberalize its corporate law, but does not acknowledge how decreased revenues from special incorporation in 1869 made

possible the passage of the first general law for railroads in 1873, which he instead sees as the historically specific result of particular legislative tactics. Similarly, Grandy (1993) agrees that failure to tax railroads in the 1880s made New Jersey liberalize its corporate laws, but does not acknowledge how reassessing the railroads in 1906/08 reduced the state's reliance on corporate taxes, enabling it to restrict its corporate laws in 1913. Neither has the argument been used to try to explain the adoption of permissive and restrictive laws across the states in the way that I do in Chapters 9 and 10. Parker (1993) is an exception, but, uses deficits instead of the share of revenues provided by corporate taxes. Because states could resort to the property tax, which was apportioned, so that the state decided how much it needed to raise, and then levied this on assessed property (Seligman, 1890, 25), states could, within the limits imposed by efficacy and legitimacy, make up shortfalls by apportioning the corresponding amount. But more importantly, deficits do not capture the effect of states that, like New Jersey, precisely because of their reliance on corporate taxes, had balanced or surplus budgets.

Understanding the development of modern corporate law in America requires explaining the great variation in outcomes, both the change and persistence over time in New Jersey as the modern law took form, and the differential diffusion of the modern laws, and their reaction in the form of antitrust laws, across the states. This variation is in itself a problem for explanations relying on path-dependence. In contrast, a system of variable causes, defined as changes in how the law served incumbent capitalists' and politicians' interests in limited competition and tax revenues, can explain these alternating phases of change and persistence. When politicians' and capitalists' interests aligned, corporate law persisted, when they did not, change was possible. Politicians' and capitalists' interests sometimes misaligned because corporate laws have no inherent tax revenue implications: they only provided tax revenues because of laws imposing taxes on the associated corporate activity. The revenue implications of corporate laws could, and did change, independently of how they solved incumbent capitalists' problems. This alignment and misalignment be-

tween political and economic incumbents' interests provides a systematic explanation of the development of the first modern corporate law in America. In this way, its development becomes a "sequence of problem-solving" (Haydu, 1998, 354), in which each form of corporate law and revenue extraction solved the recurring problems of competition and state financing in different ways.

2.4 The State and Institutional Change

The theoretical approach to the state used in this dissertation draws on, and contributes to, many of the perspectives that make up the voluminous literature on the nature of the state, power, and policy-making. The pluralist tradition (Dahl, 1961) is alive and well in the study of antitrust, with most existing explanations relying on the role of interest groups. Part II of this dissertation is dedicated to demonstrating how these explanations perform worse than one based on the fiscal interests of politicians. This highlights one of the most important drawbacks of the pluralist view: its omission of the interests of state actors themselves.

From the power-based view, it takes the general point that power is important, but also that counterfactual cases, in the form of proposed laws that do not pass, or even make it into the final policy arena, are important (Bachrach and Baratz, 1962). Chapters 3 and 6 uses this variation to show that corporate law was more contested than previously acknowledged, and to determine the general conditions under which the law will change and persist. But, rather than descend into the quagmire of determining the relationship between subjective and objective interests, like the three-dimensional view of power (Lukes, 2004) approach risks, it focuses on interests where observable objective and subjective conditions coincide: Chapter 3 discusses how the positive tax revenues, and politicians subjective understanding of them combined. Also, rather than focusing on power, which is difficult to define (Wrong, 1961), let alone observe, it follows more recent approaches that focus on more observable actors instead (Thelen, 2004).

Like the Marxist views of the state, this dissertation emphasizes that politicians depend on capitalists for state revenues (Block, 1987; Offe, 1984; Poulantzas, 2000). This study improves on this position in two ways. First, it grounds this deduction in an inductive study of how politicians understood tax revenues, showing that they saw the revenues as allowing them to provide services without taxing citizens directly. Second, by operationalizing the broad dependence on capitalism into the narrow dependence on tax revenues, it allows for more variation over time and across the states. Exploiting this variation shows that the interests of politicians and capitalists could diverge. When their interests diverged, politicians enacted laws that went against the interests of capitalists (Chapter 3). These decisions took many forms: the enactment of general incorporation in New Jersey in 1873 (Chapter 4), the restriction of the New Jersey law in 1913 (Chapter 7,), and the enactment of antitrust laws across the states (Chapter 10). Chapter 8 also argues that allegiances to different segments within the capitalist class also affected the shape of corporate law, and challengers within the capitalist class played an important role in the New Jersey shift from special to general incorporation. The divergence of interests within the political and economic elite highlights how this study improves on the power-elite model, in which the interests of political and economic elites align (Domhoff, 1990; Mills, 1959; Useem, 1984). Like with the Marxist approach, the operationalization of interest allows this study to use variation across the cases to have a more dynamic approach.

With the power-elite and policy network approach, it shares the point that state and civil society actors are tied together in networks (Knoke, 1996; Laumann and Knoke, 1987), but adds to this that policies as well as actors can be connected. It also shifts focus from the structure of the network to the content of the ties. In this view, the ties between politicians and capitalists, represent resource dependencies (Blau, 1986; Emerson, 1962; Pfeffer and Salancik, 1978): capitalists needed the tools to overcome their collective action problem of competition, which state politicians could provide, and capitalists had capital states could tax to pay for services and alleviate other taxes. The resulting ties are both directed and

valued, and their effect depends on both.

But, most of all, this is a state-centered (Evans et al., 1985; Skocpol and Amenta, 1986) approach². Goodwin (2003) usefully decomposes the state-centered approach into the political-opportunity, state-constructivist, state-autonomy, and state-capacity approaches. Following the resource-mobilization approach (McCarthy and Zald, 1977), the political-opportunity structure approach emphasizes how there must be a political opportunity for mobilized civil society groups to influence state policies. In Part II, I examine common operationalizations of the opportunity structure and social movements, in particular the Grange and farmers, finding little impact. In a broader sense, the revenues provided by a corporate law are an opportunity structure: the effect of challengers is channeled through the misalignment of incumbents' interests.

The state-constructionist perspective emphasizes how states shape civil society actors. This applies to the development of corporate law in several ways. More abstractly, corporate law is a constitutive institution in modern capitalism. Such institutions are often associated with a cultural-cognitive understanding of institutions (Scott, 2008, 51, 63-66), what is sometimes called the new institutionalism (DiMaggio and Powell, 1991)³, or sociological institutionalism in the broader institutional change literature (Clemens and Cook, 1999; Hall and Taylor, 1996). But the social construction of corporations is unusually concrete: the law brings them into being. Constitutive institutions are often contrasted with constraining institutions (Clemens and Cook, 1999, 444-445), which are more associated with a regulative Scott, 2008, 54, or coercive (DiMaggio and Powell, 1983), understanding of institutions. Corporate law is both constitutive and constraining: it brings corporations into being, constituting them, but also constrains them by affording them some, and denying them other, rights. The state-constructive approach applies in an even more concrete

²Because it examines variation within the United States, conditions like state structure (Dunlavy, 1994) and national ideologies (Dobbin, 1994) are more scope than explanatory conditions.

³The original argument emphasized the cognitive, normative, and coercive isomorphisms alike (DiMaggio and Powell, 1983), but the descendant literature, especially in North America, has emphasized the cognitive, at the expense of the coercive, elements (Mizruchi and Fein, 1999).

way: states created the first large corporations (Roy, 1997, 45-51). In the case of New Jersey, in 1830 the state created the Camden and Amboy Railroad Company, which then came to dominate the corporate law field in the state until the 1870s. The fundamental importance of the state in the construction of corporations is visible in that without specific provisions of corporate law corporations were unable to solve the collective action problem of competition among themselves. This was the case both for limiting entry among railroads, and, providing a means of merging among manufacturing firms.

The state-autonomy approach emphasizes the autonomy of state officials from classes and civil society. In this view, politicians develop their own identities, interests, and ideologies, that are separate from those of civil society groups. Most importantly, they act on these in ways that further their interests over, or, apart from the civil society. It most fundamentally comes from what Mann (1986) calls political power, derived from the general “usefulness of centralized, institutionalized, territorialized regulation of many aspects of social relations” Mann (1986, 26).

The state-capacity view emphasizes the state’s organizational and logistic capacity, or the state’s “infrastructural power”, which its ability to “penetrate and centrally coordinate the activities of civil society through its own infrastructure.” (Mann, 1988, 7). Infrastructural power determines states’ capacity, but is not a distinct source of power in itself, nor specific to the state. Bureaucratic organization lies at the heart of infrastructural power. This is easiest to see in that many of the important pre-conditions of the state’s infrastructural power, such as official coinage, weights, and measures; literacy and the ability to store laws and knowledge; and rapid communications (Mann, 1988, 6,9), correspond to key attributes of bureaucracy (e.g. Weber, 1978, pp 956). Weber (1978, 223) states the connection more directly, arguing that bureaucracy is the most efficient and powerful means of organizing, and lies at the heart of the modern state.

Bureaucracy is not unique to the state, the capitalist enterprise is also a bureaucracy, so that capitalist entrepreneurs alone have the means and knowledge to escape complete bu-

reaucratic control (Weber, 1978, 223-225). Similarly, the rationalization of the state, which increased its infrastructural power, also made possible capitalism by making economic life calculable, one of the necessary conditions for profit-making (Weber, 1978, 90-93, Weber, 1999, 109-119, Collins, 1980). The rise of the modern state and capitalism are inextricably intertwined.

State capacity and state autonomy are sometimes collapsed into state strength (Barkey and Parikh, 1991), but are analytically separate dimensions (Mann, 1988). Their relationship is easiest understood in terms of distributive and collective power (Mann, 1986, 6): distributive power refers to a zero-sum relationship where one actor has power over the other, whereas collective power refers to the power of two actors over third parties or nature. In this sense, state-autonomy is about the distributive power of the state over societal actors – what Mann (1988, 5-7) refers to as “despotic power” and vice versa. Increased state capacity or infrastructural power can increase state autonomy, but, infrastructural power also increases the capacity, or collective power, of the citizens: standard measurements and property rights facilitate trade, and calculable law enables capitalism.

The highly complex, almost paradoxical interactions between state-autonomy and state-capacity found in this study illustrate the need to treat them as distinct mechanisms. In essence, the state capacity to tax corporations led to decreased state autonomy because the states became dependent on those revenues. In exchange theory terms, capitalists had a resource, tax revenues, that politicians needed but lacked, leading to a resource dependency relationship (Blau, 1986; Emerson, 1962; Pfeffer and Salancik, 1978). In turn, the reliance on corporate taxes was motivated by increased state capacity in the form of a budding welfare state of schools and asylums, and, a lack of state capacity in extracting a legitimate and effective tax on citizens. In New Jersey, the increased state capacity to tax railroads starting in 1906 led to increased state autonomy versus corporations, enabling the state to restrict its corporate laws in 1913.

State-autonomy versus capitalists is also shaped by the scale of the political and eco-

conomic systems they are embedded in. Just like the state's position in a geopolitical system of states affects its autonomy (Goodwin, 2003, Collins, 1986, 161-166), the existence of an economic system larger than itself increases the autonomy of capitalists, because they can move capital to the most favorable regime (Arrighi, 1994; Weber, 1978). In Mann's (1986) words, capitalists can outflank states nested in a larger economic system. The differential diffusion of permissive and restrictive corporate laws across the American states highlights this mechanism: state antitrust laws, including the restriction in New Jersey in 1913 ended up having little effect on the overall trajectory of American corporate law, because corporations could incorporate in the most favorable states, those that had adopted the permissive laws.

To explain the development of corporate law in America, this study uses a theoretical model that has the following specific parts. Corporate law is an institution between state and market, activating the interests of incumbents and challengers in both. Incumbents will depend the institution, making it persist, to the extent it solves their problems. Capitalists' problem is ruinous competition, tax revenues is politicians'. Corporate laws that limited competition and provided tax revenues will persist. In addition, the more politicians rely on tax revenues from corporations, the more permissive the corporate law they enact will be.

The general version of this theoretical model is one in which institutional change and persistence is shaped by how the institution fits into the alignment and misalignment of capitalists' and politicians' interests. Institutions that align their interests persist, misalignment enables change. In this, politicians, caught in a web of interests and dependencies between themselves and capitalists, and between different policies of the state, are key.

Part I

Emergence

Chapter 3

Successful and Failed Attempts to Change the Law

3.1 Four Phases of Corporate Law

	Time	Corporate Law	Competition limits	Revenue sources
1	1830/32 – 1869/73	Special Incorporation	Limiting entry by preventing incorporation	Railroad taxes
2	1869/73 – 1883/88	General Incorporation	Pools and cartels	Property, railroad, and corporate taxes
3	1883/88 – 1906/13	Modern Incorporation	Mergers using holding companies	Railroad, corporate taxes
4	1908/13 –	Restriction	Mobile capital: move to more favorable regime	Railroad taxes

Table 3.1: Four Phases of Corporate Law and Revenue Sources, 1830-1915. When multiple years mark the end or beginning of a phase, the first year marks a shift in political investment, the second a shift in corporate law, except for 1830/32, where the incumbent railroad was created in 1830 and the state started receiving revenues from it in 1832. The law reassessing railroads passed in 1906 but had its largest revenue effects in 1908.

New Jersey corporate law developed in four phases, shown in Table 3.1. Each phase is characterized by a particular combination of corporate law, means of limiting competition, and tax revenues. In the first and third phases incumbents' interests align, creating stability, in the second and fourth they misalign, enabling change. In the first phase, politicians and the incumbent railroad corporation used special incorporation to limit competition by denying competitors corporate charters. In return, the state received large revenues from taxes on railroad traffic. When these taxes expired, incumbent politicians became disinvested in special incorporation, allowing a combination of political and economic challengers to enact general incorporation. During phase two, politicians tried replacing railroad traffic taxes with property, railroad property, and corporate (incorporation and capital) taxes, while gradually liberalizing corporate law. In 1888 New Jersey allowed corporations to own each others' stock, ushering in phase three. This change occurred in part because

politicians who were against permissive corporate laws did not realize it could be used to limit competition: they were focused on cartels and not the emerging holding company. Increased incorporation in New Jersey increased tax revenues, making politicians invested in the new, permissive law. This protected the new law against political reformers until 1906/08, the start of phase four, when New Jersey raised railroad property taxes, again disinvesting politicians from corporate law as a revenue source and allowing its restriction in 1913. This restriction did not affect the development of American corporate law because by that time capitalists had moved to more favorable regimes in states that adopted similar laws, most notably Delaware. In the next two sections I show how the revenue sources and politicians understanding of them varied over time.

3.2 Tax Revenues from Corporate Laws

Figure 3.1 shows the development of the largest revenue sources in the New Jersey state budget (smaller sources are not shown to simplify the plot). The dotted line represents tax revenues from railroads. In phase one, they are taxes on railroad traffic, in later phases they are taxes on railroad property. The dashed line represents the "state tax", a property tax authorized when needed to cover budget shortfalls. The solid line represents tax revenues from corporations, consisting of a tax on new incorporations and a tax on corporate capital.

The different phases of corporate law are clearly visible. First, until 1869, phase one, when the railroad traffic revenues associated with special incorporation, made up the largest revenue source. Then follows phase two, when several revenue sources succeed each other as the largest, with none dominating until 1884, when railroad property taxes increase. Phase three lasts until 1906. During it, railroad traffic revenues start out as the largest and the corporate taxes associated with modern, permissive corporate law as the smallest, and they gradually switch positions. In phase four, the period after 1906 railroads once again is the largest single revenue source (but with a smaller share than previously). The state

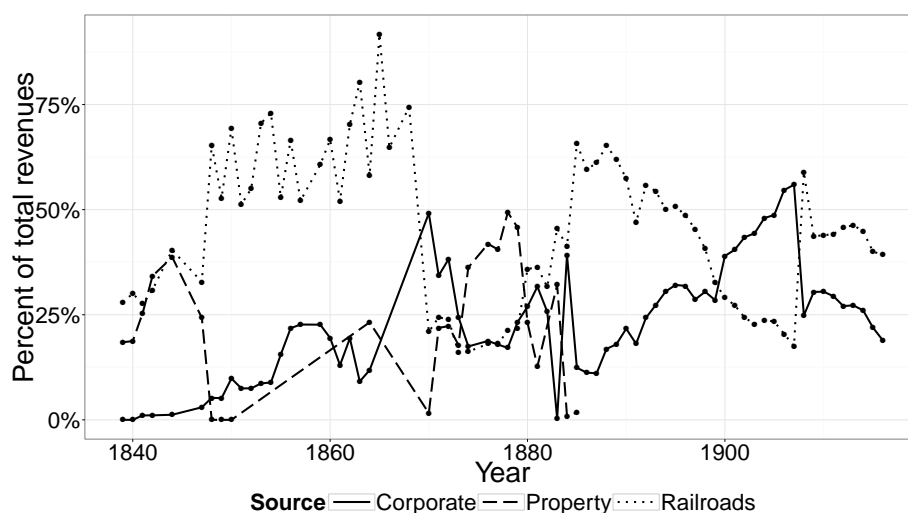


Figure 3.1: Largest New Jersey Revenue Sources' Share of Total Revenues 1840 - 1915. Source: (Sylla et al., 1993).

tax on property never became an alternative to corporate or railroad taxes because it was levied directly on citizens. Politicians considered it onerous: in 1837 Governor Dickerson lamented that "it will be necessary again to resort to a state tax" (Assembly, 1837, 13), and in 1845 Governor Haines hoped that next year, "the citizens of the state will be relieved from the burden of a direct tax" (Senate, 1845, 14). Governors made similar statements in 1840, 1841, 1843, 1850, and 1872. The shifts in revenue proportions correspond to the expiration of railroad traffic taxes in 1869, the enactment of a corporate tax in 1883, a railroad property tax in 1884, and the reassessment of railroad property in 1906. The only successful attempts to change corporate law against the interests of incumbent capitalists occurred in 1873 and 1913, once the associated revenues are less important. Corporate laws that generated large state revenues persisted.

3.3 Politicians' Subjective Understanding of Tax Revenues

Actors' subjective views of positive conditions are important for understanding historical processes (Haydu, 1998, 355). The governor's annual message to the Legislature show

how politicians spoke of corporate law's fiscal consequences. In these messages, required by law and accompanied by bureaucratic reports, the governor reports on state finances and major projects for the preceding year, and advocates his policy positions for the current year. Delivered over the entire study period in a similar format, they are a moving window on contemporaneous legislative thought.

Year	Party	Understanding
1833	Whig	"[W]e may safely calculate, that in a few years our treasury will be greatly augmented from these companies; and we many with confidence look forward to no very distant period, when the revenue arising from the several great works of internal improvement, [...] will be amply sufficient to defray all the expense of government." (Council, 1833, 8-9).
1845	Whig	"[T]he citizens of the state will be relieved from the burden of a direct tax [...] This happy result must follow, unless there should be a great decrease of business on the public works[.]" (Senate, 1845, 14-15)
1855	Dem.	"Our revenue is derived almost entirely from our public works, and has been ample to meet all the expenses of the State, without any tax upon the people, which is a subject of just appreciation and pride. (House, 1855, 6)
1866	Rep.	"Instead of burthening [sic] herself with debt to construct lines of public travel, she granted liberal charters to develop private enterprise. The result is, that every section of the State is now traversed by railroads, from which a large public revenue is derived." (Legislature, 1866, 20)
1875	Dem.	"The revenue from corporations exceeds the ordinary expenses of the government, and [...] no tax would be necessary [...] if appropriations for erecting public buildings had not been made." (Senate, 1875, 19)
1885	Dem.	"[I]f these laws [taxing railroad property and corporations] are acquiesced in there will be sufficient money obtained thereunder to defray all the legitimate expenses of the State without imposing any direct State Tax." (Senate, 1885, 24)
1893	Dem.	"The liberal policy of the State toward miscellaneous corporations has largely increased its revenue from this source. This policy has induced numerous corporations to organize under our laws, and large amounts of foreign capital has thus been brought under our tax laws. (Senate, 1893, 363)
1904	Rep.	"Enough new companies were incorporated to add this large sum to our permanent income, and this of course is the important item. The incorporation fee is paid but once. The yearly tax remains. Not all the companies succeed [...] but the strong and healthy survive and become a source of permanent income to the state." (Legislature, 1904, 478)

Table 3.2: Politicians' understanding of corporate revenues, as expressed in Governors' messages, 1830-1913. Source: Messages dataset (see Table A.1).

Table 3.2 lists quotes, chosen at approximately 10 year intervals, showing how, over the study period, politicians understood the connection between corporate revenues, state finances, and taxation. Similar understandings also appear in 1831, 1834, 1860, 1886, 1892,

1894, 1903, 1908, and 1909. They show that politicians understood the revenues derived from favored corporate activity, first the railroad across the state, later national companies incorporating in New Jersey, as important contributions to state coffers that allowed them to lower citizens' tax burden. The Party column shows that politicians of different parties shared this view. Politicians' projections were not always correct: as the 1875 quote shows, state expenditures sometimes grew so that a direct tax on citizens' property was necessary.

3.4 Failed and Successful Attempts to Change the Law

How did the way corporate laws limited competition and provided revenues create stability and change in the law over time? To answer this question I compare 28 cases of failed and successful attempts to change corporate law in and against the interests of incumbent capitalists (shown in Table 3.3). In phase one, the cases are bills and laws about general and special incorporation for railroads, and changes to general manufacturing laws which become the template for the modern law. In the first phase, I identify cases from several detailed secondary sources (especially Cadman, 1949; Lane, 1939; Reilly, 1952; Sackett, 1895) and verify them in the New Jersey Journal and Minutes of the Legislature and New Jersey Session Laws. In later phases the cases are bills and laws that liberalize or restrict important aspects of general incorporation. The most important aspects are those found in the 1896 general incorporation law, considered the first modern American corporate law, because it for the first time assembled all these aspects into one general law (Chausovsky, 2007; Yablon, 2007).

Phase	Year	Law change	Bills	Passed (%)
1	1846	Ability to operate in any industry	1	100
1	1851	General railroad law	1	0
1	1852	General railroad law	1	0
1	1854	Camden & Amboy charter extension	1	100
1	1865	Allowing out of state operation	1	100
1	1873	General railroad law	1	100
2	1875	General corporate law	1	100
2	1875	Prohibiting special incorporation	1	100
2	1888	Allowing intercorporate stock ownership	3	100
2	1888	Prohibiting cartels	2	0
3	1896	General corporate law	1	100
3	1897	Restricting 1896 law	2	0
3	1898	Restricting 1896 law	1	0
3	1906	Restricting 1896 law	3	0
3	1910	Restricting 1896 law	1	0
4	1913	Restricting 1896 law	7	86

Table 3.3: Failed and successful attempts to change corporate law in New Jersey, 1846-1893. $N = 28$. Source: see text.

It allowed incorporation "for any lawful business", except insurance, banking, and railroads, although railroad companies operating "wholly in other states" were allowed (New Jersey Laws, 1896, ch. 185, p. 277, §6). It also allowed corporations to own the stock of, and merge with, other corporations (§51, §104); to operate in other states (§7) and to exist forever (§1); and limited liability for stockholders (§21). Perpetual existence allows firms to exist independently of the comings and goings of individual owners, workers and managers. The ability to own the stock of other corporations allows capitalists to limit competition. The ability to engage in any lawful business allows corporations the to enter new and exit old industries. Limited liability shifts the risk of ownership away from stockholders. In phases two, three and four I use all bills concerning these aspects of corporate law found in the Bills dataset (see Table A.1). Much of the existing literature relies on newspaper accounts, but this dataset is more exhaustive, including counterfactual cases of failed bills. Only the Senate is covered, but it includes bills passed by the Assembly, which the Senate also voted on. The several attempts at restriction in 1888 and from 1897

to 1910 shows that only focusing on successful changes underestimates the conflict around corporate law.

In the tables below, I dichotomize incumbent politicians' investment in the existing law, by setting it to "Yes" if the associated revenue source is the largest source of revenues⁴. During the first phase I code economic incumbents' investment using secondary sources, setting it to "Yes" from 1836 because in that year the Camden and Amboy committed to preserving their monopoly by political means (Cadman, 1949, 59), and until 1874, the year after New Jersey allowed general incorporation for railroads and corporate law no longer limited railroad competition (see next section). For the later phases I operationalize economic incumbents' investment in the current corporate law as the share of the nationally incorporated capital incorporated in New Jersey, setting it to "Yes" if New Jersey's share exceeds 60%. For the period 1888-1904, the data is from the Trusts dataset (see Table A.1), for the period 1905-1913 the data is coded from Nelson (1959, 67).

Because economic incumbents' actions towards bills will vary with whether those bills challenge or support their interests, I code whether each bill went against their interests or not. Before 1873, the anti-incumbent bills are those introducing general incorporation for railroads. These bills made corporate law more permissive, because they made it easier to incorporate a railroad company. But in subsequent years, anti-incumbent bills restrict what corporations can do (typically restrictions on owning stock or using mergers to limit competition), coded from the secondary literature, the Bills, and the Session Laws datasets. Identifying anti-incumbent laws, which are directed at an existing interest, is easier than determining whether a law change is positive or neutral with respect to incumbents' interests. An incumbent-neutral change may later become pro-incumbent, like the 1865 out-of-state provision, which when passed was probably neutral with respect to the Camden and Amboy Railroad, but later became important to interstate holding companies. For this reason

⁴Using the yearly change in the smoothed share of total revenues yields substantively the same results. I smooth the raw values using local regression to remove yearly fluctuations and identify the trend. These analyses are available upon request.

the analysis in this section uses the awkward, but accurate, categories anti-incumbent and not anti-incumbent bills.

	No change in existing law	Change in existing law
Not anti-incumbent	0 (0)	100% (8)
Anti-incumbent	60% (12)	40% (8)

Table 3.4: Success and failure of attempts to change existing law. Row percentages, number of attempts in parentheses. N=28.

Table 3.4 shows the success and failure rates of anti-incumbent and not anti-incumbent attempts to change existing law. All the not anti-incumbent attempts succeeded, validating the view that legislatures in general favored business during this period (Fligstein, 1990). But focusing on changes that were not against the interests of incumbent capitalists (not anti-incumbent) obscures that some anti-incumbent changes also succeeded.

	No change in existing law	Change in existing law
Existing law did not provide revenues	47% (7)	53% (8)
Existing law provided revenues	100% (5)	0% (0)

Table 3.5: Success and failure of anti-incumbent attempts to change the law, by whether existing law provided tax revenues or not. Row percentages, number of attempts in parentheses. N=20.

Table 3.5 shows that anti-incumbent attempts to change the law never succeeded when the existing law provided large tax revenues. Table 3.6 shows that only one anti-incumbent attempt succeeded when existing law limited competition.

	No change in existing law	Change in existing law
Existing law did not limit competition	53% (8)	47% (7)
Existing law limited competition	80% (4)	20% (1)

Table 3.6: Success and failure of anti-incumbent attempts to change the law, by whether existing law limited competition or not. Row percentages, number of attempts in parentheses. N=20.

	No change in existing law	Change in existing law
Not anti-incumbent		
No Democratic majority	0% (0)	50% (4)
Democratic majority	0% (0)	50% (4)
Anti-incumbent		
No Democratic majority	58% (7)	25% (2)
Democratic majority	42% (5)	75% (6)

Table 3.7: Success and failure of attempts to change the law, by whether Democrats were in majority or not. Column percentages, number of attempts in parentheses. 8 not anti-incumbent bills and 20 anti-incumbent bills.

These tables show that anti-incumbent attempts to change existing law were less likely to succeed when political or economic incumbents were invested in those laws, exactly as the theoretical framework predicts. Table 3.7 shows that there is no comparable pattern for the most plausible confounding variable, partisan majority.

Rather than develop path-dependently, New Jersey corporate law changed many times, corresponding to alignment and misalignment of incumbent politicians' and capitalists' interests. This variation provides the conditions for persistence and change in the law, but does not explain the exact nature of the key changes that made New Jersey into the birthplace of modern corporate law in America.

3.5 Close and Loose Coupling of Incumbent Interests

The preceding analysis shows how the tight coupling of politicians' interests to a specific form of corporate law created the conditions for path-dependency, so that the law did not change when politicians were heavily invested in it. But that the revenues a corporate law generates is not intrinsically tied to how it affects competition allows incumbent politicians' and capitalists' interests to shift out of alignment, opening the possibility of change.

I examine this misalignment by comparing voting on three pairs of bills, where the first changes how corporate law provides revenues, the second how it affects competition.

The pairs are: the 1854 decision letting the railroad transit duties expire, and the 1873 general railroad incorporation law; the 1883 and 1884 incorporation tax bills, and the 1888 bills allowing intercorporate stock ownership and prohibiting cartels; and the 1906 railroad taxation law, and the 1913 bills restricting corporate law.

Consistent voting patterns within each pair indicates tight coupling of the law's revenue and competition implications. Politicians voting for permissive corporate laws should also vote to increase tax revenues from corporate laws, because those revenues made all politicians invested in permissive corporate laws. This stance may seem paradoxical: politicians could also vote either for lower taxes and more permissive laws, or higher taxes and more restrictive laws. But both Republicans and Democrats connected permissive corporate laws to sound state finances. For example (see also the quote from Governor Murphy above), Democratic Governor Leon Abbett tied permissive laws to healthy state finances, arguing that "under the liberal laws of the State many new corporations have been created, largely increasing the receipts from fees for filing certificates," (New Jersey Legislature, 1892), but also took credit for many labor-friendly laws, including occupational safety laws; regulating prison labor; the right of workers to organize into unions and cooperatives; wage liens; the right to be paid in cash (not scrip); prohibiting the employment of non-resident peace officers; and instituting a State bureau of labor dispute arbitration (New Jersey Legislature, 1893).

Because of turnover, few politicians voted on both bills of any pair, so I compare party level votes. If politicians voted consistently, Democrats who voted more restrictively in 1888 and 1913 should vote against the 1883 and 1884 corporate tax bills and for the 1906 railroad tax bill, and Republicans, who voted more permissively, should vote in the opposite way. Table 3.8 shows the voting patterns on the three bill pairs. Both the 1883 and 1906 bills passed unanimously (and the 1906 bill was introduced by a Republican), so there is no evidence that New Jersey politicians voted on revenue laws in accordance with their preferences on corporate laws (New Jersey Legislature, 1883, 1884; New Jersey Senate,

	Rep.	Dem.
1854 – 1873		
Decreasing revenue share		+
Anti-incumbent corporate law		+
1883/84 – 1888		
Increasing revenue share	+	+
Pro-incumbent corporate law	+	-/+
1906 – 1913		
Decreasing revenue share	+	+
Anti-incumbent corporate law	-	+

Table 3.8: Partisan voting pattern on pairs of bills changing corporate law’s revenue and competition implications. ‘+’ indicates that the party supported the bill, - that the party voted against it. The -/+ indicates that Democrats voted inconsistently, this issue is explored in Chapter 6.

1906). Democrats supported setting the railroad tax duties to expire in 1869 as part of the effort to extend the Camden and Amboy Railroad Corporation’s charter (Lane, 1939, 358-360), but 1873 general incorporation for railroads bill was also introduced and championed by a Democrat (Times, 1873-02-25,-), again indicating decoupling.⁵

Laws that provided large tax revenues persisted despite challenges, but there is no intrinsic link between how it provided revenues and limited competition, so sometimes the two became decoupled: the constant conflict between challengers and incumbents worked in the resulting gaps to change the law. In the following chapters I examine in detail how this conflict shaped three key changes, adding the historical detail the above comparisons necessarily abstract from. The changes are the shift from special to general incorporation in 1873, enabling the first general corporate law which became the template for the 1896 law; the 1888 legalization of intercorporate stock ownership which made national capitalists start using New Jersey corporate law to solve ruinous competition; and the 1913 restriction of corporate law in New Jersey.

⁵I rely on secondary sources and newspaper accounts for these votes because voting on the charter extension was highly involved.

Chapter 4

From Special to General Laws

4.1 Rise and Fall of the Monopoly

According to Roy (1997), the 1837 and 1857 depressions combined with states' bad infrastructure investments and laissez-faire agitation forced legislatures to prohibit special incorporation and only allow general incorporation. This privatized the corporation by decreasing legislatures' power and control over it.

But while New Jersey promoted infrastructure projects like many other states, it did not invest public money because the main project was a railroad across the state and citizens from counties not on the route feared future tax hikes to pay for the debt⁶. Instead, in 1830 it created a corporation, the Camden and Amboy Railroad, to build and run a railroad connecting Camden, across the Delaware river from Philadelphia, and Perth Amboy, across the bay from New York City. The railroad thus connected the two major economic centers of the country. The Camden and Amboy changed name and structure several times, first merging with the canal company into the Joint Companies, then into the United Companies, then leasing all its property to the Pennsylvania Railroad in 1871. For ease of presentation, I refer throughout to the company as the Camden and Amboy Railroad. In 1832 the state granted the company a monopoly on the route, in exchange for some stock and transit duties on through traffic. Following a failed attempt to sell to the state in 1836, the company tried to control the legislature more directly (Lane, 1939, 332), supporting the Democrats and occasionally the Whigs (Lane, 1939, 334 - 336).

The monopoly was contested by promoters of laissez-faire, but also by those critical of corporate power, like political economist Henry Carey, who accused the company of simultaneously overcharging customers and underpaying the state, resulting in several legislative commissions and investigations (Lane, 1939, 343-344). It was also attacked by its customers. In 1848 Philadelphia and New York merchants petitioned the federal government to open a post road across New Jersey to break the monopoly, but involving the federal government only rallied support for the Joint Companies in New Jersey (Lane, 1939, 341-

⁶This section draws on Cadman (1949); Lane (1939); Reilly (1952).

342). Lastly, potential competitors attacked the monopoly, trying to incorporate from 1833 to 1836, in 1853, and 1854 but were all defeated, so that all railroads chartered during this time were either subsidiaries to or not competitors of the monopoly (Cadman, 1949; Lane, 1939). Bills to enact a general incorporation law for railroads (see Table 3.3), which would have opened the field to competitors, were also defeated (Cadman, 1949).

In these struggles, the incumbent Camden and Amboy and its challengers used a wide range of tactics. Such tactics included newspaper articles and editorials, mass meetings, petitions, citizen delegations to the Legislature, procedural tactics by loyal members in the Legislature, lawsuits, and finally, stock purchases when the Camden and Amboy bought a controlling interest in the challenger the Philadelphia and Trenton Railroad (Reilly, 1952, 56-75), (Lane, 1939, 328-329). The Camden and Amboy had an advantage in that the tax revenues from its traffic made up 50-90% of all tax revenues (see Figure 3.1), making state politicians invested in the existing regime. Not all politicians were sympathetic to the Camden and Amboy, but opposition within the Democratic Party was never strong enough to resist the influence, partly because of the party's electoral success under the regime (Reilly, 1952, 147). Support for special incorporation did not fall along, but cut across, party lines. In 1853, some Democrats wanted to start a new party (including some Whigs), but were discouraged by the Whigs who thought it would weaken their own party even more. (Lane, 1939, 353), (Reilly, 1952, 147).

In 1854, the legislature started debating taking over the Camden and Amboy when its charter was set to expire (either in 1864 or 1869, depending on how the charter was interpreted). The legislature ultimately extended the charter, but set the monopoly clause and the transit tax to expire in 1869 (Lane, 1939, 356 - 359, Dunlavy, 1994, 81). I code this case as not anti-incumbent, because the corporation's charter (which allows it to exist) was extended. That it would expire later could be seen as anti-incumbent, but, a more conservative approach is to only code it with respect to its contemporaneous outcome, which was to allow the company to continue to exist as a private corporation.

The decline in state revenues in 1869 created the conditions for the shift from special to general incorporation, but by itself does not explain it because a general incorporation law for railroads did not pass until 1873. Politicians were no longer invested in the special law regime since it ceased to provide revenues, but it still limited competition for the Camden and Amboy so why it changed despite solving incumbent capitalists' problem needs explaining. Several observers attribute the Legislature passing the law despite the resistance of the Camden and Amboy to contingencies due to legislative tactics (e.g. Steffens 1905a, 654 and Sackett 1895, 62, Stoke 1930, 551). This argument starts with the National Railroad's challenge to the monopoly in the form of a bid to incorporate in New Jersey to build a rival railroad. The Camden and Amboy defeated the National Railroad's special incorporation bill by advocating a general railroad incorporation bill introduced the same year instead. Stoke (1930, 566) describes this tactic as "too subtle": once defeated, the National instead threw its support behind the general bill, and the Camden and Amboy was forced to "either continue to support the bill or admit it had tricked the New Jersey legislature" (Stoke, 1930, 566).

Attributing the outcome to the legislative tactics of the parties involved offers an attractive contingent turning point explanation. But a focus on tactics is too narrow⁷. Similar tactics were commonplace. Sackett (1895, 89-90) describes the following tactics used to defeat attempts to dismantle unelected city commissions. A bill to make the commissions elective was introduced, and none of the Republicans dared to openly oppose it. Instead, "they resorted to the old expedient of meeting every movement for a change by proposing something more liberal, which they, of course, had no idea of enacting." They could then vote against the first bill claiming they preferred the more liberal bill they had themselves

⁷There is also some evidence that the National was more powerful than previous challengers. For example, the Camden and Amboy Railroad ultimately neutralized the 1833-1836 Trenton and Philadelphia Railroad challenge by buying a controlling interest in their stock (Reilly, 1952, 56-75 and Lane, 1939, 328-329). The National Railroad defended against this tactic using an early form of takeover defense (e.g. Davis, 1991), transferring a controlling interest of its stock to "The American Trust Company of New Jersey", and stipulating that "no part of the said stock shall ever be voted [...] so as to give any [company or corporation], which may own, control or operate the existing lines of railroad between Philadelphia and New York, any power or control over the management of the affairs of the National Company" (Hamilton, 1873, 85).

proposed. They then debated the more liberal bill until the session ended without voting on it.

The contingency argument cannot explain why such tactics did not lead to a change in the law in the previous challenges. In contrast, the timing of the change fits with the incumbent investment model: the 1869 expiration of transit taxes makes the incumbent political actors disinvested in special incorporation, making them less likely to defend it. But it is not until there is a combination of political and economic challengers occurring at the same time that change happens. The National Railroad’s push for a special law charter was deflected into support for the general law, and it invested in it immediately, incorporating “forty minutes” after it had been signed by the Governor (Sackett, 1895, 63). The appearance of an economic challenger is not a contingency but a regular feature of fields, and such challengers also appear from 1833 to 1836, and in 1853 and 1854. But change only happens once the broader conditions of incumbent investment were favorable.

4.2 Consequences of the Prohibition

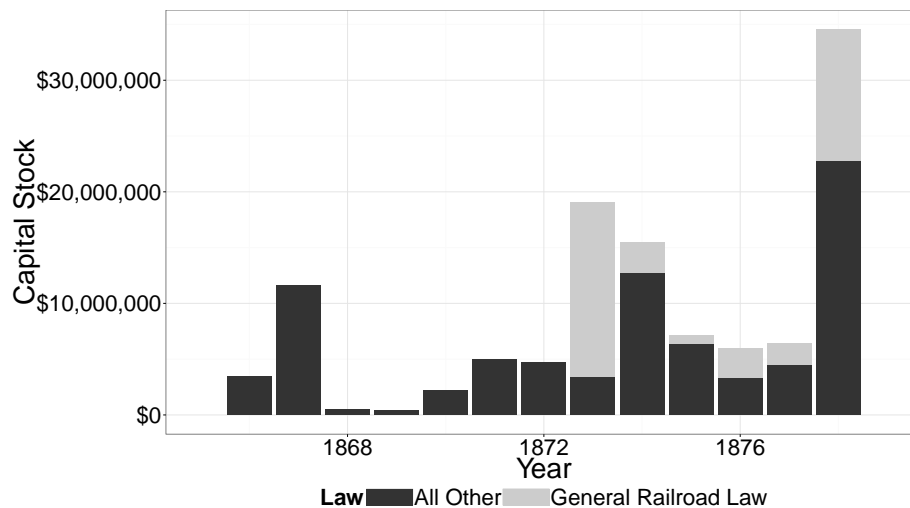


Figure 4.1: Capital Incorporated in New Jersey, by Law. Data: NJ-Incorporations (Table A.1)

Once general incorporation for railroads passed, the conditions for completely prohibiting special incorporation in 1875 were in place. The prohibition was accompanied by the passage of a new, general and comprehensive corporate law. Figure 4.1 shows how railroad incorporations under general laws increase in 1873. In combination with Figure 3.1 it shows how by 1875 both incumbent political and economic actors were no longer invested in special incorporation: politicians because it no longer gave the state money, and capitalists because they could no longer use it to control competition among railroads.

Figure 4.2 shows the number of special and general incorporations in all industries in New Jersey from 1840 to 1885. It shows that while general incorporations (solid line) was gradually increasing, special incorporations (dotted line) were still dominating. The decline in 1874 is likely due to the onset of the recession, and the decline in 1875 is likely due to both the recession and the prohibition of special incorporation. There is no definite evidence that general incorporation would have come to dominate had special incorporation not been prohibited.

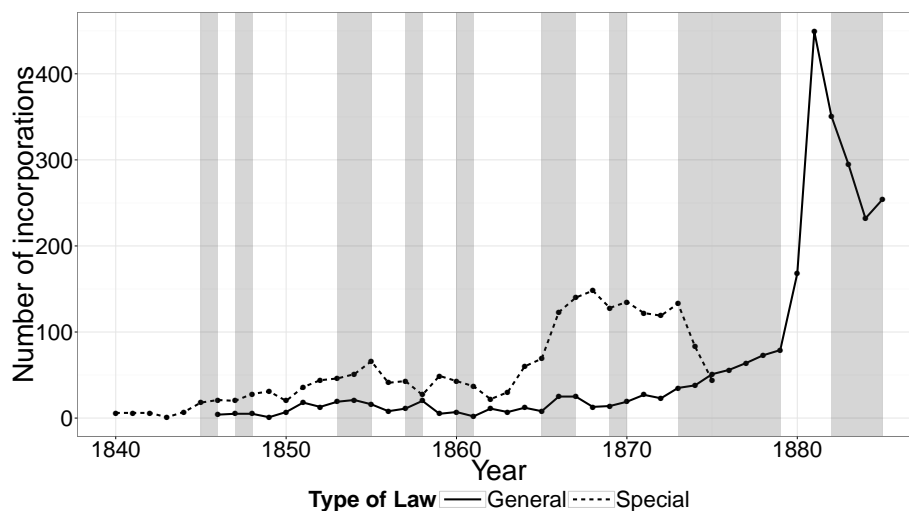


Figure 4.2: Number of Companies Incorporated in New Jersey, by Type of Law. Data: US-Incorporations (Table A.1). Recession data from National Bureau of Economic Research (2012).

The railroad field in New Jersey was from its inception stabilized by a special law

regime that created an incumbent in a monopoly position, the Camden and Amboy, limited entry from challengers by requiring all railroads to seek a special charter of incorporation from the legislature, and therefore prevented ruinous competition in a field with high fixed costs (e.g. Dunlavy, 1994; Hovenkamp, 1991; Lamoreaux, 1988). Observers such as Steffens (1905a) and Lockard (1964) draw a direct connection between the dominance of the railroad monopoly and the later modern incorporation. But at the time, the 1873 general railroad incorporation law was not seen as business-friendly, as evidenced by this description of the law in a *New York Times* editorial:

”An apparent honest attempt to release the commonwealth from that thralldom to a corporation which gave it the ignominious name of the State of Camden and Amboy. That a general railroad act has been passed in New Jersey not only shows that the people are ready for constitutional changes in consonance with the spirit of the age, but is of general importance as indicating that the opposition to corporations has become aggressive.” (New York Times, 1873)

The special law regime solved the same problem in railroads that modern incorporation would later solve for manufacturing, but in different way, by allowing large firms in fields already populated with many firms to merge to lower competition. How could an institution, modern incorporation, that emerged despite the resistance of market incumbents, come to serve the very interests⁸ of those incumbents? The key to understanding this paradox is that both served business incumbents, but in fields with different structures. In special law fields, incumbents wanted to limit entry; in manufacturing, they wanted to consolidate an already existing, too large, population of firms. Which kinds of corporate laws will be preferable to incumbents depends on the overall field structure. Economic interests are consequently neither singular, uniform, nor necessarily opposed to political interests.

⁸It is because of this ambiguity with respect to the interests of incumbents, and because this analysis shows that the 1873 law was more important, that I do not include the 1875 special incorporation prohibition as a QCA case.

That the empirical conditions cited in the path-dependency and contingency model did not occur in New Jersey reduces our faith in it. At the same time, the conditions that did occur conform to the incumbent investment model, thereby increasing our belief in it. That the shift from special to general incorporation ran counter to incumbent capitalists' interest at the time is further evidence against existing path-dependent explanations. The general laws started out being anti-incumbent, and only later, under different industrial conditions, became useful to different incumbent capitalists. If the most powerful actors of the time had been able to shape events, special incorporation would have persisted.

Chapter 5

Liberalizing the New Laws

Given that the shift from special to general incorporation was anti-incumbent, why did New Jersey become the preferred state for incorporation during the turn of the century merger wave?

Year	Liability	Existence	Lawful business	Own stock	Out of state
1846	full or limited		any lawful mfg.		
1865			any lawful		yes
1875	limited	50 or unlimited	any lawful		
1888				yes	
1896	limited	unlimited	any lawful	yes	

Table 5.1: Most Important Changes to New Jersey Corporate Law, 1846-1896. Data: (New Jersey Laws, 1846, 1865a,b, 1888, 1896)

Table 5.1 shows when and how the key elements (described in Chapter 3) of modern incorporation appear in New Jersey laws (for an exhaustive treatment of New Jersey corporate law changes, see Cadman 1949). Extant research agrees that the 1896 law assembled existing elements (Chausovsky, 2007; Yablon, 2007), or codified existing practices (Roy, 1997), but does not determine which changes made national capitalists incorporate in New Jersey. Comparing capitalists' use of different laws helps to determine which changed their behavior. Capitalist use of New Jersey laws would increase incorporation activity after the passage of the 1865, 1875, and 1888 laws. Figure 5.1 shows the number of companies and amount of capital incorporated in New Jersey during this period. Shaded regions indicate recessions (National Bureau of Economic Research, 2012). Incorporation activity increases after the 1865 and 1888 laws, but business cycles likely explain much of this variation.

But the most important potential effect of the 1888 law is not only increasing incorporation activity, but using holding companies (that own the stock of other corporations) to limit competition⁹. In the late nineteenth century, high fixed-costs coupled with overproduction and periodic demand shortfalls caused ruinous competition among railroads (and later manufacturing firms), prompting attempts to limit competition using pools, cartels,

⁹For example, the "Copper Trust" was incorporated in New Jersey as the "Amalgamated Copper Company", whose sole asset was the stock of other corporations (Moody, 1904, 4).

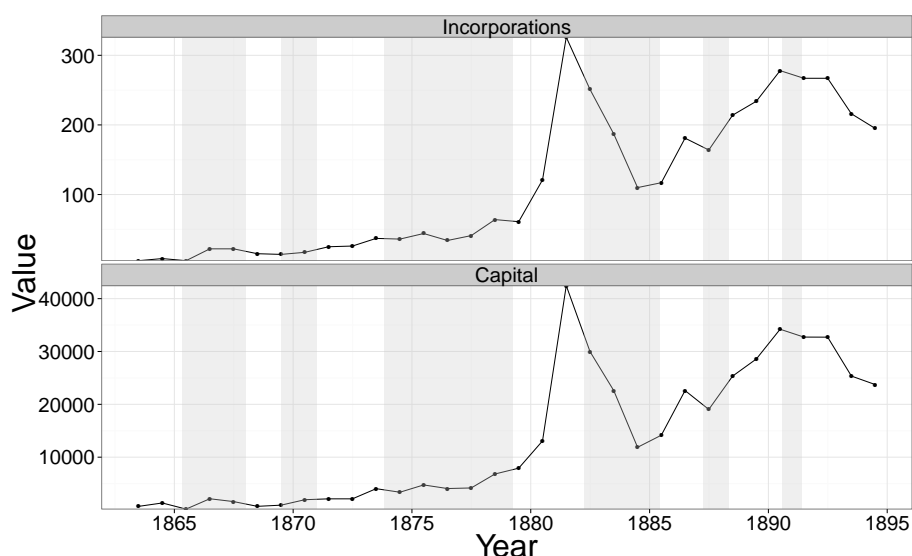


Figure 5.1: Number of Companies and Amount of Capital Incorporated in New Jersey, 1863-1895. Data: NJ-Incorporations (Table A.1)

and then mergers (Dunlavy, 1994; Fligstein, 1990; Hovenkamp, 1991; Lamoreaux, 1988). Because mergers were legal for railroads in 1873 but in 1888 for other industries, comparing their merger pattern shows the effect of the 1888 law. Figure 5.2 shows New Jersey railroad incorporations and mergers. Mergers peak shortly after new incorporations, close to, or during recessions, i.e., during periods of increased competition and decreased demand, indicating that railroads merged to limit competition throughout the period.

Figure 5.3 shows the amount of capital, and number of companies, organized under new incorporations and as holding companies (Moody, 1904).¹⁰ The lack of mergers in the 1883-1885 recession, compared to the railroad mergers, and to the 1889 and 1891-1893 non-railroad mergers, corresponds to the lack of legal means of merging. Conversely, the post-1888 non-railroad mergers correspond to the first times the conditions for mergers coincided with the legal means to do so, indicating that the 1888 law caused capitalists

¹⁰Most mergers in the New Jersey incorporations dataset (NJ-Incorporations, see Table A.1) are between railroads or franchise corporations such as water companies, so I use data collected by Moody (1904) to examine the pattern of non-railroad mergers. The plot only show activity until 1896, because later activity dwarfs the earlier activity.

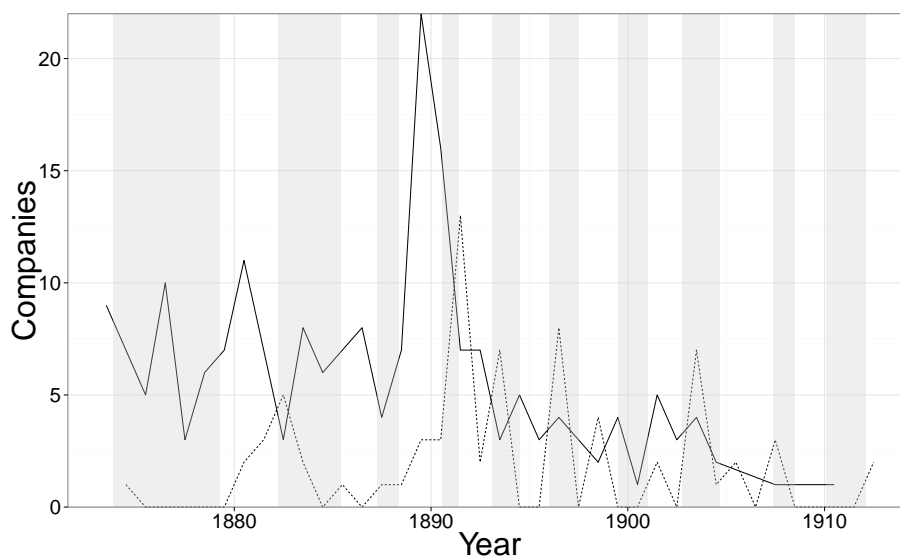


Figure 5.2: Number of Railroad Corporations Incorporated (Solid Line) and Merged (Dotted Line). Data: NJ-Incorporations (Table A.1)

to incorporate under New Jersey laws to limit competition, thus increasing incorporation taxes' share of state revenues (see Figure 3.1). In the next chapter I outlined how New Jersey legalized intercorporate stock ownership in the 1888 law, despite resistance from many politicians to allowing corporations to limit competition.

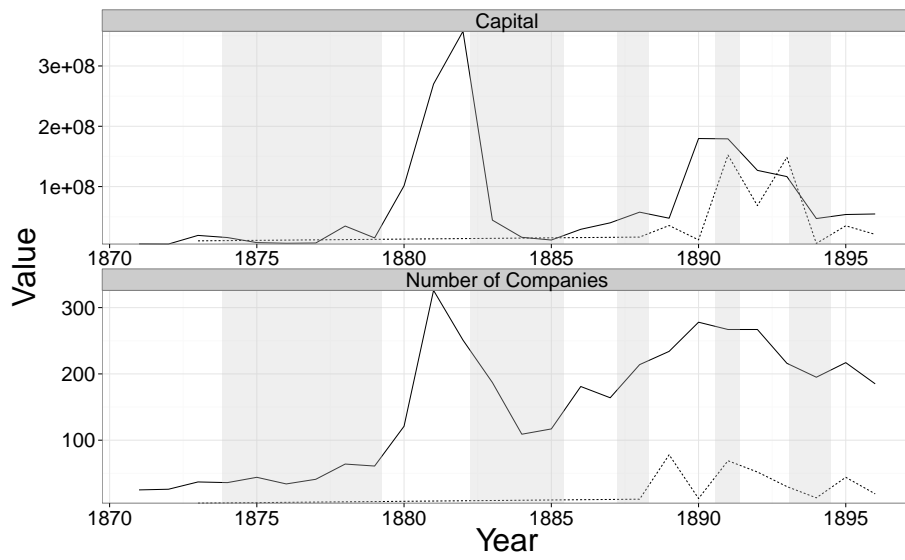


Figure 5.3: Incorporation (Solid Line) and Merger (Dotted Line) Activity in New Jersey, by Capital and Number of Companies. Data: (Moody, 1904) and NJ-Incorporations (Table A.1).

Chapter 6

Reforming Dominant but Dying Institutions

6.1 Contradictory Voting

According to Roy (1997), corporate law in New Jersey was "much less politicized there than in other states" (165, see also Parker 1993). But New Jersey legalized intercorporate stock ownership in 1888 law despite political opposition to allowing corporations to limit competition. Democratic Governor Robert Green argued that allowing combinations (cartels)

is against public policy which in the interest of the public demands that competition shall not be restricted. The almost general formation of these combinations at the present day should receive the attention of the Legislature and be regulated within proper and harmless bounds or prevented altogether (New Jersey Legislature, 1888, 65).

Democratic Assemblymen introduced two bills prohibiting cartels. But the Assembly also passed three bills legalizing intercorporate stock ownership, one of which became the 1888 law.¹¹ Tables 6.1a and 6.1b show that most politicians voted for the permissive, pro-incumbent bills, even though many had also voted for the restrictive, anti-incumbent bills. Changes in tax revenues and the alignment of politicians' and capitalists' interests cannot explain why both restrictive and permissive votes occurred in the same year. Why did the Assembly allow corporations to own each other, despite the clear resistance to allowing corporations to limit competition?

6.2 The Role of Legal Knowledge

I argue that New Jersey legalized intercorporate stock ownership because restrictive politicians focused on existing ways of limiting competition, such as cartels, not realizing stock

¹¹The permissive bills originated in the Senate, but the Assembly also voted on them. The two other bills legalized intercorporate stock ownership in specific industries. Both restrictive bills passed but failed in the Senate, dying in the Committee on Corporations (made up of two Republicans and one Democrat). There is no record of the Committee activity that could explain why.

blyman, and the outcome variable is his consistency. If the argument that politicians voted inconsistently because of lack of knowledge about the permissive bills' consequences is correct, politicians with more legal knowledge should be more consistent. The legal knowledge and reasoning of individual Assemblymen is difficult to measure from the historical record, but, their education and profession, as reported in their personal biographies in the Legislative Manual (Legislature, 1888), can serve as a proxy. Therefore, I expect that politicians who reported working as a lawyer or taking the bar exam to vote more consistently. To control for partisan differences, I use a dummy variable for whether a politician was Republican or not. I control for legislative experience and seniority using tenure (the number of years each politician had been an Assemblyman), all from the Politicians dataset (see Table A.1), well as the population of the district they represented, coded from the Census (Inter University Consortium for Political and Social Research, 2005). Descriptive statistics and correlations are in Appendix C.

Table 6.2 shows the results. Model 1 shows the control variables. In general, Republicans voted more consistently. Model 2 tests the hypothesis that politicians that were lawyers voted more consistently. The coefficient for being a lawyer is statistically significant and in the hypothesized direction, thus supporting this hypothesis. This is also the best-fitting model. For comparison, Model 3 shows that there is no comparable association for Assemblymen who were businessmen. New Jersey liberalized its corporate law in 1888 despite resistance from reformers to allowing corporations to limit competition, in part because those reformers were focused on the dominant cartels, not the emerging holding companies.

<i>Dependent variable:</i>			
Consistency			
	(1)	(2)	(3)
Republican	1.112*** (0.305)	1.012** (0.294)	1.112*** (0.308)
Population	-0.428 (0.298)	-0.508 (0.286)	-0.428 (0.301)
Tenure	-0.169 (0.107)	-0.174 (0.102)	-0.169 (0.108)
Lawyer		0.848* (0.329)	
Businessman			0.009 (0.320)
Constant	0.880** (0.259)	0.734** (0.254)	0.877** (0.280)
Observations	60	60	60
R ²	0.246	0.327	0.246
Adjusted R ²	0.206	0.278	0.191
<i>Note:</i>	*p<0.05; **p<0.01; ***p<0.001		

Table 6.2: Determinants of Voting Consistency: Results from Linear Regression Models.

Chapter 7

Restricting the New Laws

Starting in 1888 corporate tax revenues' share of the budget increased (see Figure 3.1), making politicians invested in the new, permissive laws and aligning their interests with capitalists who used the law to limit competition. The 1896 law is widely considered the first modern corporate law in America, but by then national capitalists had already started limiting competition using New Jersey's 1888 stock ownership law. The 1896 law was challenged by political reformers, but protected by the revenues it provided, and New Jersey did not restrict its laws until after railroad property taxes became the largest revenue source, in 1913.

Governor Woodrow Wilson proposed several bills to restrict the law. Democrats voted consistently for all the bills, while Republicans opposed three of the seven bills, including one defining and outlawing trusts, and one repealing §47 of the 1896 law which allowed corporations to buy property by issuing stock. That opposition was strongest to these provisions is evidence that the 1896 law was used to limit competition. This reversal is a challenge for all explanations of the emergence of modern American corporate law.

Keller (1981, p. 69) sees the restriction as an example of the "antimonopoly, small-is-good tradition of the Democratic Party". Several pieces of evidence contradict the claim that a consistent Democratic ideology caused the restriction. First, the Democratic party was for most of special law period closely associated with the Camden and Amboy Railroad monopoly (see Chapter 4). Second, whatever the Democratic ideology was in 1888, it did not translate into a consistent voting pattern on capitalists' ability to limit competition (see Chapter 6). Third, no Democratic Senators voted against the 1896 corporate law (the only voting Democrat voted for). Fourth, while Democrats introduced many bills restricting corporate laws from 1888 to 1913, none were introduced while in the majority in 1889 and from 1891 to 1893 (see Chapter 3).

Comparing the 1883 to 1913 Governors' messages shows how politicians' understanding of the connection between corporate law and state revenues developed rather than remained static as part of a Democratic ideology. In 1883 Governor George Ludlow (Demo-

crat) motivated the original introduction of incorporation fees by the privileges enjoyed by New Jersey corporations:

We have a large number of corporations formed under our laws; receiving from them privileges and immunities peculiar to themselves; claiming and receiving peculiar protection from our courts, and which, under our present system of assessing and collecting, escapes much of the local taxation. A law which should provide for a small State tax on the capital invested in them, levied either upon the capital itself or the product thereof, would produce a large amount in the aggregate, without making the burden of any one large, or being unfair to the corporations themselves. (Legislature, 1883, p. 37)

The incorporation fees that tied incorporation activity to state finances were initially motivated by the special privileges corporations enjoyed (in 1883 just the ability to operate as a corporation was seen as a privilege). But, by 1913, Governor Woodrow Wilson (Democrat), in his message to the Legislature, described corporations in a completely negative way, but also without mentioning state finances. Focusing especially on corporations' right to own stock, Wilson argued that New Jersey's corporate laws were at odds with federal policy and encouraged monopolies by

explicitly permit[ting] every corporation formed in New Jersey, for example, to purchase, hold, assign, and dispose of as it pleases the securities of any and all other corporations of this or any other State and to exercise at pleasure the full rights of ownership in them, including the right to vote as stockholders. This is nothing less than an explicit license of holding companies. This is the very method of forming vast combinations and creating monopoly, against which the whole country has set its face[.] (Legislature, 1913, p.)

Thus, in 1913 Democrats recognized the role of intercorporate stock ownership in creating monopolies through holding companies, something at least Democratic legislators did

not in 1888, when many of them voted inconsistently. They also considered some corporate rights intrinsically illegitimate instead of a legitimate reason for the state to tax them.

Year	Rep. Plat.	Dem. Plat.	Gov. Msg. (Party)	Revenues (%)	Δ Revenues
1887		Taxation		11	0.0
1888		Taxation	Trusts (Dem.)	17	5.8
1889				18	1.1
1890	Trusts	Trusts		22	3.7
1891	Trusts	Trusts		18	-3.6
1892	Trusts	Trusts	Revenues (Dem.)	24	6.2
1893	Trusts	Trusts	Revenues (Dem.)	27	3.1
1894			Revenues (Dem.)	31	3.2
1895				32	1.6
1896				32	-0.2
1897				29	-3.2
1898				30	1.8
1899		Trusts		28	-2.0
1900		Trusts		39	10.5
1901	Revenues	Trusts		40	1.5
1902		Trusts		43	3.0
1903		Trusts	Revenues (Rep.)	44	0.9
1904		Trusts	Revenues (Rep.)	48	3.7
1905		Trusts		49	0.7
1906		Trusts		55	5.9
1907		Trusts		56	1.3
1908			Revenues (Rep.)	25	-31.1
1909			Revenues (Rep.)	30	5.6
1910				30	0.1
1911		Trusts		29	-1.1
1912				27	-2.4
1913			Trusts (Dem.)	27	0.2

Table 7.1: Politicians' attitudes towards corporations, as expressed in party platforms and Governor's messages, 1887-1913.

A systematic comparison of politicians' views of corporations across time, party, and branch of government helps understand how they evolved and interacted with revenues. I code politicians' views of corporations in party platforms and Governors' annual messages to the Legislature by examining each mention of corporations they contain. Many of these mentions concern the regulation of specific types of corporations such as insurance and

municipal utility corporations. I focus on mentions of corporations that view them either as sources of revenues for the state, or, as trusts or illegitimate restrictions of competition. Each party or message can contain each of these views of corporations, but in the sample examined they do not co-occur. The quotes from the 1893 and 1913 Governor's messages are typical of each view of corporations.

Table 7.1 shows how Republicans and Democrats viewed corporations in party platforms and in Governors' annual messages to the Legislature Comparing Democratic (Dem. Plat.) and Republican party platforms (Rep. Plat.) explains Keller's view that Democrats saw corporations as trusts unfairly limiting competition. But the Governors' messages (Gov. Msg.) shows how this party ideology rarely translated into the executive: Governors, even Democrats, were much more likely to view corporations as sources of revenues.

The passage in 1913 of anti-incumbent bills is accompanied by a change in ideology in the executive branch of the Democrats, from viewing them as sources of revenues in the early 1890s to illegitimate trusts in 1913. But this change in ideology cannot be explained by the level of revenues generated by corporate laws. In fact, the levels generated by corporate laws in 1893 were almost the same as in 1913. This poses a problem for the incumbent investment model: why was the same level of revenues generated in 1893 high enough to make politicians' invested, as manifest by the Governor's messages, but in 1913 be low enough for politicians to not be invested? A possible answer lies in the rate of change of those revenues. The last column, change in revenues, shows the change in percentage points in the share of revenues generated by corporate law from year to year. In 1893 the percentage of the state budget made up of revenues from corporations had been almost exclusively rising for several years, while in 1913 it had been almost exclusively declining for several years.

Figure 3.1 shows how this shift is due to a rapid increase in railroad revenues in 1908, following the enactment of several railroad tax laws (Sackett, 1895, p. 204 - 216). The renewed focus on taxing railroads made the revenues from corporations less salient and

freed the Democrats to carry through their party platform ideology into actual reform. So, the fiscal context likely matters for politician's subjective understanding of the absolute share of total revenues.

The crosstabulations and qualitative comparative analysis are based on the percentage of state revenues generated by the current corporate law regime, rather than the yearly change in that share. The problem identified here, the different interpretations of the same share of revenues in 1893 and 1913, does not show up in the summary comparisons because no corporate law bills were introduced in 1893. To ensure that the claim about changes in, rather than the share of, revenues generated by the current corporate laws is not an ad-hoc explanation for the difference between 1893 and 1913, I also tested the crosstabulations and fuzzy-set qualitative comparative analysis using the yearly rate of change in the share of revenues. The results using the rate of change are very close to the results using just the share of revenues. They are presented in the Appendix D.

Ideology worked within fiscal constraints. Governor Abbett (who defended liberal corporate laws by the revenues they brought) was not exclusively business-friendly: in 1893 he lists many labor-friendly policies Democrats had enacted, including various occupational safety laws; regulating prison labor; the right of workers to organize into unions and cooperatives; wage liens; the right to be paid in cash (not scrip); prohibiting the employment of non-resident peace officers; and instituting a State bureau of labor dispute arbitration (New Jersey Legislature, 1893) ¹⁴. Both Abbett and Wilson are reformers but for Abbett, liberal corporate law means increased state revenues that can be used for the common good, while for Wilson, there is no more fiscal connection.

The fiscal model does not draw its own conclusions by explaining the restriction in terms of direct shifts in state revenue sources. Grandy (1989) argues that by this time the native economic activity of New Jersey increased making the revenues from incorporation

¹⁴I do not make any claims on the actual efficacy or enforcement of these laws, this list is only meant as an indication of the ideology of these politicians, to show that allowing liberal incorporation laws to raise revenues was ideologically compatible with a pro-worker position.

less relevant. But the simpler explanation that increases in state revenues from railroad taxes decoupled corporate law from fiscal policy is preferable. That New Jersey would restrict its laws in 1913 contradicts the path-dependent model of corporate law, but is commensurate with the incumbent investment model.

Viewed this way, New Jersey’s reliance on liberal corporate laws for revenue purposes becomes a parenthesis in the state’s history, sandwiched between periods of reliance on railroad revenues. Similarly, New Jersey’s restriction ended up not affecting the continued development of corporate law in the United States because by the time it restricted its laws, they had already spread to other states. The same ”mobile capital” logic (Arrighi, 1994; Weber, 1978) that had initially attracted incorporation to New Jersey now led to other states capturing the lion’s share of incorporation activity. While New Jersey started out as a leader, it was later supplanted by first New York and then Delaware.

Period	New Jersey	New York	Delaware
1895-1904	79.1	3.7	2.6
1905-1914	20.5	16.3	8.3
1915-1920	0.0	37.1	38.2

Table 7.2: Percent of consolidation activity measured by capitalization for the three leading states. Horizontal sums do not add up to 100% because other states account for some activity. Source: adapted from Nelson (1959, table 37, p. 67)

It is also possible that the mobile capital logic is at least partially responsible for New Jersey’s restriction. Just as the enactment of general incorporation for railroads in 1873 led to railroad companies being formed under general instead of special laws, making the 1875 prohibition of special incorporation possible, the possibility of incorporating in other states than New Jersey could lead to some incorporating activity going there instead, thus leading to disinvestment in New Jersey laws by capitalists. Answering this question requires comparing the amount of capital incorporated in several states after the great merger wave. Existing data, shown in Table 7.2, shows that the switch happens, but is not fine-grained enough to establish the whether the restriction caused the decline or vice versa.

Chapter 8

Why not New York?

One problem with the argument that New Jersey enacted modern legislation to bolster flagging revenues (Grandy, 1993; Stoke, 1930) is that New York, in contrast to New Jersey, had large deficits during this time. Figure 8.1 shows the budget balances (revenues minus expenditures, divided by the sum of revenues and expenditures) in Delaware, New Jersey, New York, Ohio, and Pennsylvania. It shows how, judging by budget deficits alone, New York would be a more likely candidate for liberalizing its incorporation laws¹⁵. That New York and not New Jersey ran deficits is especially problematic for this strong version of the fiscal explanation, given that according to Stoke (1930), one of the architects of the fiscal strategy, corporate lawyer James Dill, first tried to convince the New York legislature.

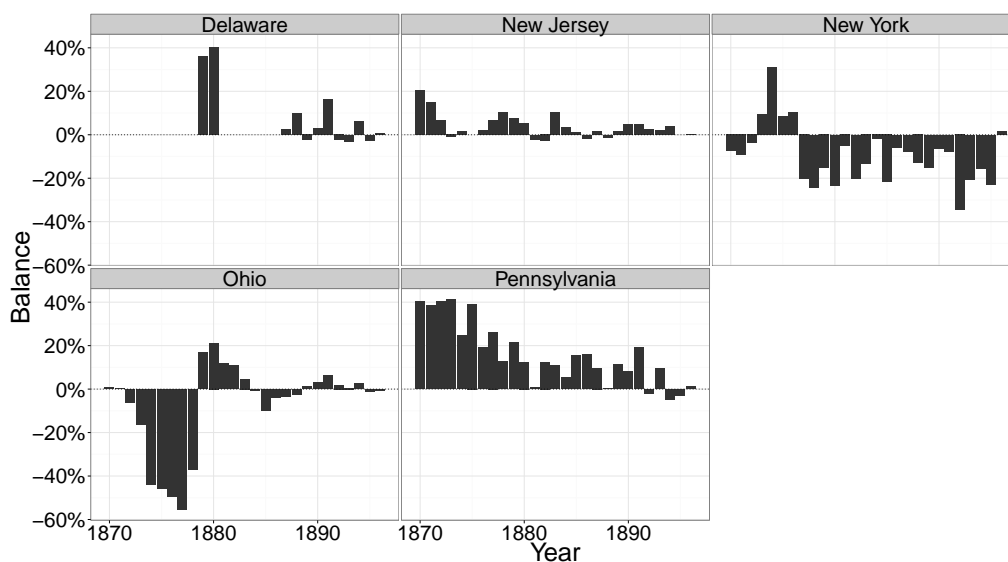


Figure 8.1: Budget balances for five states 1870 - 1896. Data: (Holt, 1977).

New Jersey and New York also passed similar laws to generate revenues from corporations, both through taxes and fees. In 1883 New Jersey enacted a tax on new incorporations, amounting to \$25 for corporations with a capital stock smaller than \$100,000, and to 1/5 dollar per 1000 dollars capital stock for those with larger capital stocks (New Jersey Laws, 1883, p. 62 §1). New York enacted a similar law, exacting a 0.125% tax on the authorized

¹⁵While this plot relies on data from (Holt, 1977), I replicate this result using data from (Sylla et al., 1993)

capital stock, in 1886 (New York Laws, 1886, ch. 143), three years after New Jersey, but still a decade before the 1896 modern incorporation law. New York even started taxing corporations on an annual basis before New Jersey did, enacting an annual tax on the capital stock of corporations in 1880 (New York Laws, 1880, ch. 542). So New Jersey and New York had similar ways of extracting revenues from corporations leading up to the passage of modern incorporation.

I argue that the reason modern incorporation did not emerge in New York despite greater fiscal incentive and similar laws for raising revenues was the special relationship between some large corporations and leading politicians in New York during the 1890s. The relationship between incumbent corporations and politicians is an important part of the incumbent-investment model of institutional change. In the 1890s, civil service reform forced the New York Republicans “to find fresh sources for the election funds that political appointees had once provided, party leaders increasingly tapped corporate wealth” (McCormick, 1981, p. 141). They put in place a “centralized system of collecting campaign funds from big companies and afterward protecting their interests through government” (McCormick, 1981, p. 141). These relations “gave certain classes of large corporations, alone among the state’s economic groups, regular access to political representation” (McCormick, 1981, p. 141). Crucially, these classes of corporations were not the manufacturing firms interested in modern incorporation, but rather transportation, communication, gas and electric power, and insurance companies. (McCormick, 1981, p. 144). Muckraker Steffens (1905b, p. 255 - 256) put it more bluntly, arguing that New York party bosses rejected the Dill plan because it would deprive them of “all this good old graft.” Grandy also argues that New York politicians “found expressions of strong antitrust and pro-labor positions politically necessary” (Grandy, 1993, p. 76). But according to McCormick (1981, p. 157) the Republicans’ response to public agitation against trusts was not “very much more than a symbolic one”, with almost no actual effect for policy.

This relationship could be the result of the underlying industry structure, maybe for

some reason, the New York economy was dominated by these kinds of corporations (called franchise corporations below). To test this hypothesis, I compare the industry structure of New Jersey and New York . For New York, I manually coded data from the annual report of the state treasurer, published in the New York statutes from 1875 to 1892. These reports lists the name, industry, incorporation date and starting capital of each corporation chartered during the year. Unfortunately, this data does not cover the entire 1890s, the most crucial period. However, this is the only dataset on New York incorporations for this period I am aware of. Also, given that these data reflect the creation of new corporations that then presumably continue to exist for some time, in this sense the industry structure during the 1890s will reflect the pattern of incorporations at this time. For New Jersey, I use the dataset on incorporations described in Appendix A, coding industry based on information contained in the company name.¹⁶ The New York law only applies to “any lawful business except banking, insurance, the construction and operation of railroads or aiding in the construction thereof, and the business of savings banks, trust companies, or corporations intended to derive profit from the loan or use of money, or safe deposit companies, including the renting of safes in burglar and fire-proof vaults” (New York Laws, 1875, p. 755, ch. 611, §1). Only two insurance companies appear in the New Jersey dataset, and none of these during the comparison period. I code railroads as a separate category in New Jersey. The New York data records the starting capital of each corporation, while the New Jersey data records both the total capital stock authorized, and the amount each corporation started business with. To make the New Jersey and New York numbers more comparable, I use the amount corporations started with for New Jersey. For this reason, the amounts (and the industries, because not all New Jersey records contain data on the amount started with) do not correspond to the ones in other figures. This is also a conservative measure of the amount of capital incorporated in New Jersey.

Figure 8.2 shows the amount of capital organized in franchise and other industries dur-

¹⁶For example, 'Manufacturing' in the company name indicates manufacturing. Some company names do not contain any industry information, they are marked as NA in the figure.

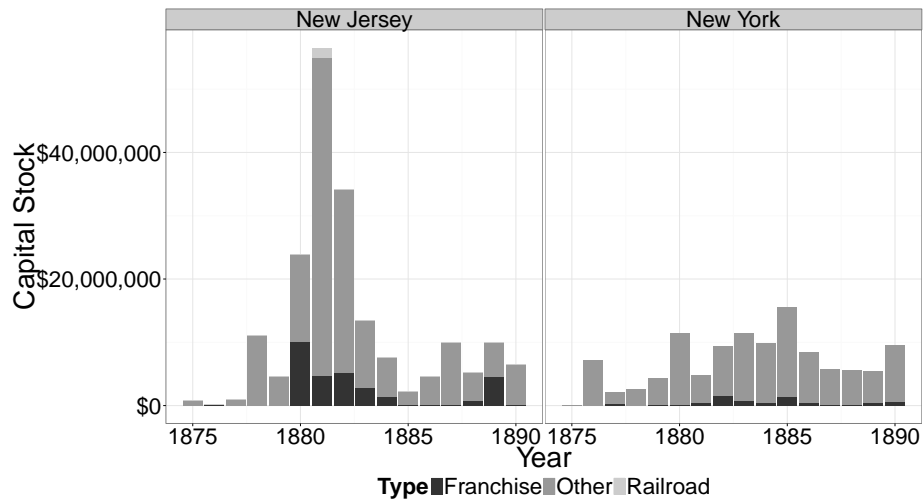


Figure 8.2: Amount of capital organized by franchise and other corporations in New Jersey and New York. Data: see text.

ing the period. Judging by the amount of capital incorporated, New York was not more dominated by franchise corporations than than New Jersey. To test this hypothesis more formally, I compare the average ratio of capital incorporated in franchise corporations to other corporations in New Jersey and New York during the period. The ratio is larger in New Jersey, which is the opposite of what we would expect if the non-emergence in New York was caused by an underlying larger concentration of capital in franchise corporations (New Jersey: 0.19, New York: 0.06, $p = 0.07$, Welch Two-Sample t-test, two-sided). This comparison does not prove that the special relationship between some types of corporations and politicians in New York was not simply the result of the underlying dominance of those types of industries, but all the evidence presented points in the opposite direction: that New Jersey, not New York, had a greater share of these kinds of incorporations. It does however raise the issue of whether we can assume that all politicians share an interest in raising revenues from the state. The incumbent investment model tells us that we can't: the interests of an actor depends on their position in the field: incumbents are likely to have different interests from challengers, and politicians can have multiple interests.

Part II

Diffusion

Chapter 9

Class and Fiscal Interests in Corporate Law

The new corporate laws, pioneered by New Jersey in 1888 but soon adopted by other states, enabled the merger wave at the turn of the century by permitting corporations to own each others' stock (Chandler, 1977; Hovenkamp, 1991). These laws attracted little attention when passed (Roy, 1997), but the corporate quest for bigness and profitable levels of competition was controversial (Bensel, 2000; Hofstadter, 1965; Peritz, 1996; Thorelli, 1955), with trusts and monopolies being frequent fodder for muckrackers (e.g. Steffens, 1905a; Tarbell, 1904). The trust issue was salient enough that all but one national party (the anti-immigration American Party) criticized them in their 1888 party platforms and all national parties criticized them in 1896 (Porter and Johnson, 1956). The legislative answer was antitrust laws that defined and outlawed activities that limited competition. The federal government passed the Sherman act in 1890, and the Clayton act in 1914, but states passed antitrust laws throughout the period. I discuss the interactions between federal and state antitrust in the next chapter below.

Students of antitrust disagree on whether the laws increased or decreased market concentration. Some argue that capitalists understood the problems with looser combinations and turned to mergers before antitrust laws were enacted and enforced (e.g. Chandler, 1965). Others, including both sociologists (Dobbin and Dowd, 2000; Fligstein, 1990) and economists (Bittlingmayer, 1985), argue that antitrust policy created the impetus for mergers. In the 1970s and 1980s, the Chicago school of neoclassical economics gained influence over antitrust policy and theory (Hovenkamp, 1985), issuing several explanations and reinterpretations of the passage and enforcement of the Sherman and Clayton Acts (Bork, 1966; Posner, 1970; Stigler, 1985). The causes of antitrust law became a battering ram in the larger debate about the role of government and markets (Hovenkamp, 1985; Sullivan, 1991), and much of this literature deals with whether the original antitrust laws increased allocative efficiency (e.g. Bork, 1966; DiLorenzo, 1985; Lande, 1982).

Antitrust and corporations' ability to own each other is such a salient theoretical issue because the very idea that government regulation of the market was necessary strikes at the

heart of the neoclassical economics project, most clearly articulated in the Chicago School, in which “natural economic reality *is* the world of perfect competition.” (Fourcade, 2009, 96, emphasis in original). Substantively, antitrust and intercorporate stock ownership lie at the center of the transformation of America into both an industrial power and a society in which industry is powerful.

In this chapter I derive hypotheses for why states would pass antitrust and stock ownership laws, drawing on existing explanations. These all focus on the role of the interest groups farmers, capitalists, and small businessmen. I then formalize the main conclusion from Part I, that politicians in states that derived large revenues from corporate taxes enacted legislation more favorable to capitalists. I call such favorable laws *permissive*, because they allowed capitalists to limit competition, and antitrust laws *restrictive*, because they curtailed what capitalists could do to limit competition. In the next chapter I test these hypotheses on a new dataset of the adoption of stock ownership and antitrust laws across the states.

9.1 How States Make Policy

The policy outcome literatures offer increasingly complex explanations for why states adopt specific policies, from class or group interests, via mobilization, institutional configuration and temporal process, diffusion of policies across states, to interactions between these mechanisms. In contrast, existing antitrust explanations all see the laws as an expression of the class interests of farmers, small businesses, or a combination of the two, who lobbied to protect their interests against capitalists in the form of large corporations (Troesken, 2002). The main¹⁷ explanation for the merger wave is that it occurred to limit ruinous competition (Lamoreaux, 1988), which was destroying profits and firms.

¹⁷Even Chandler (1977, 315-320), who is otherwise considered the efficiency hypothesis champion argued that the horizontal combinations of the merger wave were undertaken to limit competition, and according to Prasad (2013, 37), in more recent work, “no analyst seriously argues that [antitrust law] was an attempt to increase efficiency”.

In addition to class interests, the literature on the causes of economic regulation (see Schneiberg and Bartley 2008 for a review) emphasizes institutional mechanisms like the influence of ideas (e.g. Dobbin, 1994), and how institutions can shape interests (e.g. Berk, 1994). A related literature emphasizes timing (Pearson, 2014; Pierson, 2004) and sometimes contingency (Baumgartner and Jones, 1993; Roy, 1997). The broader literature on policy outcomes also emphasizes public opinion (Burstein, 1998; Soule and Olzak, 2004), and how interests and social movement mobilization are mediated through political institutions (Amenta et al., 1992; Jenkins et al., 2006; Leicht and Jenkins, 1998; McCammon et al., 2001), by policy crafting (Martin, 2010), or the cultural environment (McCammon et al., 2007). Researchers have also studied policy adoption as a process instead of a dichotomy, examining the effect of social movements at each stage (Soule and King, 2006). Policy can also diffuse across polities: scholars have identified the importance of knowledge and ideas, coercion, competition, and learning in global diffusion (Dobbin et al., 2007), and imitation, emulation, and competition among American states (Karch, 2007). In some approaches intra- and interstate mechanisms interact to cause adoption (Soule and Zylan, 1997).

These insights have two consequences for this study. First, more complex mechanisms than those covered in the substantive literature, focused on class interests, may affect corporate law. Second, some of these complexities, especially mobilization, are only observed for farmers but not small businessmen or capitalists. I address the first issue by complementing the hypotheses derived here with supplemental analyses examining more complex mechanisms (discussed in the next chapter). An exception is the argument that antitrust was shaped by an American political ideology that includes the Republican, Jeffersonian ideal of small farmers and a distrust of concentration of power be it political or economic (Hofstadter, 1965; Letwin, 1981; McChesney and Shughart, 1995; Millon, 1987; Peritz, 1991), which I don't examine here because it is best studied in comparison with other countries (e.g. Freyer, 1992), although the within-country variation studied here does challenge the

view that antitrust was a result of a shared ideology.

Conceptual and methodological problems makes it more difficult to address the second problem. The effect of farmer mobilization as a social movement is hypothesized, operationalized, and tested, but any potential effect of small business and capitalist mobilization is harder to measure. The farmers' social movement fits the theoretical understanding of a social movement as a movement seeking to address power differentials (Amenta et al., 2010), and it has been treated as such in the literature (Sanders, 1999). There is a readily available, and previously used measure of its mobilization (Schneiberg et al., 2008; Tontz, 1964). There are two common ways of operationalizing and studying capitalists' and small businessmen's mobilization: organization into employers' associations (Berk and Schneiberg, 2005; Bonnett, 1922; Granovetter, 1995; Spillman, 2012) and the structure of the network of interlocking directorates (Allen, 1974; Bunting and Barbour, 1971; Mariolis, 1975; Mintz and Schwartz, 1981; Mizruchi, 1992; Mizruchi and Stearns, 1988; Mizruchi et al., 2006; Palmer et al., 1986; Pettigrew, 1992, for a review see Mizruchi 1992). Both emerged during the study period: the National Association of Manufacturers formed in 1895 (Steigerwalt, 1964), and already Brandeis (1914, 51) decried interlocking directorates as "the root of many evils." But both are difficult to operationalize and measure at the state level. Small businessmen and capitalists organized by industry (Bonnett, 1922), or in national peak organizations like the NAM (Steigerwalt, 1964), transcending geography and class. Similarly, interlocking directorates formed within and across industries, with railroads and telegraphs, themselves geographically transcendent, at the core (Roy, 1983). Not until 1964 do regional cliques in the interlock network emerge (Mizruchi, 1982, 152-153). The obstacles to gathering contemporaneous state-level trade association or interlock data are prohibitive: one of the few studies of spatial patterns in interlocks is limited to one year (1965) because of data availability (Kono et al., 1998). Studies of interlocks or trade associations from this period focus on the largest corporations (Bunting and Barbour, 1971; Mizruchi, 1982; Roy, 1983) or most prominent associations (Bonnett, 1922).

Workers also have a potential interest in corporate law, because of, for example, how it allows capitalists to organize capital (Offe and Wiesenthal, 1980). But workers' interests at the state level could either lie in promoting domestic industry and jobs, or limiting what corporate law allowed capitalists to do as part of a broader class struggle. The large labor unions did not favor antitrust laws, because they preferred dealing with large corporations, the laws were used against labor unions (Johnson, 1961, 423), and labor leaders thought limiting ruinous competition would be in workers' interests (Sanders, 1999, 274). Socialist parties sometimes welcomed trusts as a sign of the coming demise of capitalism (Bensel, 2000, 123), although some contemporary observers argue workers had not formed an opinion on trusts (Von Halle, 1900, 133). More generally, working class interests play complex roles in shaping economic regulation, as research on welfare state development shows (e.g. Baldwin, 1990; Prasad, 2013). Because of this ambiguity I do not formulate a hypothesis about workers interests¹⁸.

9.1.1 Farmers' Interests

Farmers have played an important role in shaping many facets of the American economy and state regulation of it (Lipset, 1971; Prasad, 2013; Sanders, 1999). One of the most common explanations for the passage of antitrust laws is also the influence of farmers (DiLorenzo, 1985; Letwin, 1981; Libecap, 1992; Thorelli, 1955). Corporate concentration and attending lack of competition threatened farmers in three ways: lack of competition among railroads increased transport rates, lack of competition among buyers reduced prices for their goods, and lack of competition among producers of farm machinery increased prices for their machines (Thorelli, 1955, see also Carney, 2009). Because American farm-

¹⁸Supplemental analyses show that there are no significant effects of the number of strikes, or the number of establishments at which strikes occurred (both normalized by the number of manufacturing establishments), or, of the share of strikes that succeeded on either outcome. Data on strikes was coded from the Bureau of Labor (1901) and the Bureau of Labor (1907). No comprehensive data exists for the period 1906-1913, and the 1914 data is incomplete (Edwards, 1981) and strike activity could probably not be accurately interpolated, so these models were fit on data for 1889 to 1905.

ers were exporters, they could not be appeased with protectionism like in Europe (Prasad, 2013, 71, 76). Farmers had already won important legal victories against railroads in the form of the Granger Laws, which subjected railroads to rate controls and regulatory commissions (Schneiberg et al., 2008). If state corporate law reflected farmers' concern with corporate concentration, we would expect states with more farmers to have more restrictive laws.

Hypothesis 1: The more farmers, the lesser the permissiveness of the law.

Late nineteenth-century American farmers organized into several social movements such as the Grange and the Farmers' Alliance (Buck, 1913; Nordin, 1974), which promoted both economic self-organization in the form of cooperatives, and economic regulation in the form of antitrust laws (Schneiberg et al., 2008). According to Sanders (1999) this agrarian movement was the most important force shaping state regulation of the American economy. Following the resource-mobilization view of social movements (McCarthy and Zald, 1977), we would expect states with more organized farmers to have more restrictive laws.

Hypothesis 1a: The more farmers and the more organized they are, the lesser the permissiveness of the law.

9.1.2 Capitalists' Interests

The view that state regulation of the economy during the Progressive era benefited capitalists (Kolko, 1977) is the dominant view of this period (Sanders, 1999). One of the most important interests of capitalists of the time was limiting competition. This position is shared by researchers across the theoretical-ideological spectrum, from the Chicago school view of regulatory capture (Stigler, 1971), to the Marxist, such as Bowman (1989), on how competition is a collective action problem for capitalists.

Economists have long recognized that limiting competition to preserve profits is an important interest to capitalists (Schumpeter, 1934; Smith, 1776). Ruthless competition that

destroyed profits and businesses was an especially pressing concern for American capitalists at the end of the nineteenth century. Industries with high fixed costs, such as railroads or mass production, are especially vulnerable to ruinous competition (Dunlavy, 1994; Hovenkamp, 1991), and in nineteenth century America frequent recessions with attending demand shortfalls exacerbated it (Lamoreaux, 1988). After trying cooperation in pools and cartels, which the courts ruled illegal or unenforceable (Fligstein, 1990; Freyer, 1992; Sklar, 1988), industrialists solved the ruinous competition problem by consolidating many smaller firms into larger corporations using modern corporate laws in a wave of mergers at the turn of the century (Fligstein, 1990; Lamoreaux, 1988; Nelson, 1959; Prechel, 2000; Stearns and Allan, 1996). If state corporate law reflected capitalists' concerns with ruinous competition, we would expect states with more competition to have corporate laws allowing capitalists more leeway in how to address that competition, specifically, we would expect those states to not have antitrust laws but to have laws permitting corporations to own each other.

Hypothesis 2: The greater the competition, the greater the permissiveness of the law.

9.1.3 Small Business Interests

The argument that small businessmen were behind the enactment of antitrust laws in the United States is based both upon theoretical deductions using rational-actor assumptions but also examinations of the archival record. Arguing that based on self-interest, small business but not farmers stood the most to lose from industry concentration, and that therefore small business rather than farmers should have supported antitrust laws, Stigler (1985) finds that states with more potential monopolist businesses were less likely to enact antitrust laws. Examining Senator Sherman's letters, Troesken (2002) finds that the architect of the federal antitrust law did not receive any letters from farmers, but did receive many from small businesses. Similarly, Sklar (1988) understands the drafting of the Sherman act as a conflict between advocates of large and small producers (Sklar, 1988, 89-90), and Libecap

(1992) argues that antitrust laws were a way for smaller producers to defend against larger producers. DiLorenzo (1985) also argues that small business was part of the coalition for antitrust laws. If state corporate law reflected small businesses' concern with competition from trusts, we would expect states with smaller firms to have more restrictive laws.

Hypothesis 3: The smaller the average firm, the lesser the permissiveness of the law.

9.1.4 Politicians' Interests

Existing explanations do not consider the role of state actors, even though the state and its constituent actors' ability to operate autonomously from the surrounding social context is an important determinant of regulation (Amenta and Carruthers, 1988; Evans et al., 1985; Skocpol and Amenta, 1986).

Part I of this dissertation explains changes in corporate law over time in New Jersey, and here I review the main parts of this argument. While the modern American state is suffused with bureaucratic policy-making autonomy (Carpenter, 2001), at this time the American state was a state of "courts and parties" (Skowronek, 1982), in which public finances were inseparable from party finances (Yearley, 1970). Engels called the American state the best example of an autonomous state, controlled by "two great gangs of political speculators, who alternately take possession of the state power and exploit it by the most corrupt means and for the most corrupt ends" (Marx and Engels, 2001). This does not mean that American states were predatory states (Evans, 1989). In fact, state expenditures increased as states took on a developmental role, taking greater responsibility for infrastructure, education, and public welfare, but also leading states to adopt business methods and corporations to wield more influence over them (Higgins-Evenson, 2002). Just as fiscal crisis precipitates state breakdown (Goldstone, 1991), state-building increases the importance of taxation (Campbell, 1993).

Law scholars have long argued that states made their corporate laws more permissive to attract incorporations which they could tax to bolster flagging revenues (Grandy, 1993;

Stoke, 1930; Von Halle, 1900). Marxists make the general argument that state actors are autonomous but depend on a functioning capitalist economy (Block, 1987; Offe, 1984; Poulantzas, 2000), and therefore act in the interests of capitalists. This view is consistent with the general resource dependency theory (Blau, 1986; Emerson, 1962; Pfeffer and Salancik, 1978) and mirrors the broader view of taxation as shaping not only the taxed society but the taxing state (Campbell, 1993; Tilly, 1990).

Parker (1993) tests this hypothesis by examining the effects of state deficits on adoption of several aspects of corporate law, but finds no conclusive effect on the legalization of intercorporate stock ownership. But using deficits excludes states that had sound finances, perhaps because of their very reliance on corporate taxes. New Jersey politicians, for example, directly attributed their state's favorable fiscal situation (NJ generally had a budget surplus) to taxes on corporations:

Under the liberal laws of the State many new corporations have been created, largely increasing the receipts from fees for filing certificates, and the amount of tax payable by miscellaneous corporations. [...] The promise made by the Executive in 1884, that no direct State tax should be imposed upon the people has been faithfully kept. (Democratic Governor Leon Abbett, Message to the Legislature, New Jersey Legislature, 1892)

Instead of deficits, I use share of total revenues that comes from taxes on corporations to better measure states' reliance on corporate activity (Jenkins et al., 2006). The ability of American states to tax corporations is a measure of their power over them, but also made states reliant on corporations and therefore more likely to have corporate laws in their interests. Therefore, we expect states with larger shares of their revenues coming from taxes on corporations to have more permissive laws.

Hypothesis 4: The greater the share of tax revenues business taxes generate, the greater the permissiveness of the law.

In the next chapter I test these four hypotheses on a new dataset of laws and political and economic conditions in the American states.

Chapter 10

Adoption of Restrictive and Permissive

Laws across the States

Figure 10.1 and 10.2 show the adoption of antitrust and stock ownership laws over time and space. Antitrust laws were more common, and somewhat concentrated in the Midwest, although many states in the South and the East adopted antitrust laws as well. Much fewer states adopted stock ownership laws, but through the mobile capital logic these states came to have outsize influence, reflected in the concentration of merger activity in just a few states (mostly New Jersey, New York, and Delaware, see Table 7.2 in Chapter 7). While stock ownership laws seem to be concentrated in the East and the West, not all states within those regions legalized stock ownership. The lack of clear geographical patterns in part motivate the multivariate approach taken here. To better understand the conditions that led states to adopt these laws, I use event-history analysis (Allison, 1982), which is especially suited to analyzing the probability that some unit will experience an event, when some units may never experience the events. In this case, some states never adopted antitrust laws, some states never adopted stock ownership laws, and some states never adopted either law. Table 10.1 shows this adoption pattern.

10.1 Data and Methods

The unit of observation is the state. The dataset has data on 46 American states¹⁹ from 1889 to 1915. Some states (WA, SD, MT, ND, ID, WY, UT, NM and AZ) achieved statehood during the study period, but I include them because there is data for them and to maximize sample size. Including state entry year, or limiting the sample to only states that achieved statehood before the study period, or limiting the sample to observations after statehood, do not change the results. The starting year was chosen as the first year immediately after New Jersey first allowed corporations to own each other in 1888 (Hovenkamp, 1991; Lamoreaux, 1988; New Jersey Laws, 1888), and the ending year was chosen so that the study period covers the restriction of corporate law in New Jersey in 1913 (New Jersey Laws, 1913;

¹⁹Alaska, Hawaii, North Dakota and Oklahoma are excluded because of missing data.

Sackett, 1914), as well as the passage of the Clayton Act in 1914. While some states legalized intercorporate stock ownership in one fashion or other before 1888, New Jersey's law was the broadest yet (Chausovsky, 2007) and sharply increased incorporation activity: by 1891 more than twice as much capital had been incorporated New Jersey trusts since the law's passage than had been previously incorporated in all states together (Moody, 1904). Chapter 5 analyzes this process in more detail.

10.1.1 Dependent Variables

This study examines two dependent variables, the passage of a corporate law allowing holding companies (by allowing one corporation to own the stock of another), and antitrust laws prohibiting combinations, mergers, and other actions taken to limit competition among corporations. Enacting a holding company law makes the corporate law more permissive, and enacting an antitrust law makes the law more restrictive. Yet, the pattern of adoption of these two laws across the states, shown in Table 10.1, shows that they are not mutually exclusive: some states adopted neither and some states adopted both. Contemporary observers saw the enactment of both kinds of laws as incoherent, and caused by on the one hand politicians' desire to attract capital to their state, and on the other their attempts to appease popular opinion against large corporations (Von Halle, 1900). More recent treatments instead suggest that states tried to encourage efficient, but discourage anticompetitive mergers (Hovenkamp, 1991, 266). Regardless, because they are not mutually exclusive they must be studied as separate outcomes.

	No Stockownership	Stockownership
No Antitrust	AZ, CO, GA, IA, IL, KY, MO, NH, OH, RI, TN	CT, DE, MD, MN, NC, NV, OR, PA, WA, WV, WY
Antitrust	AR, CA, FL, ID, KS, MA, MI, MS, NE, NM, SD, UT, VT	AL, IN, LA, ME, MT, NJ, NY, SC, TX, VA, WI

Table 10.1: Consistency of states' position on both stock ownership and antitrust laws

The first outcome is the adoption of an antitrust law, which is a law designed to define, and prohibit monopolies (United States Industrial Commission, 1900, 3). The details of these laws differ in many respects, for example whether they required corporations to submit affidavits attesting to not breaking the law, whether they include damages and even forfeiture of the corporate charter, whether they exempted labor unions and farmers, and by the severity of the prison terms, if any, they imposed on directors and officers. But this variation within laws is small, (Forrest, 1896) especially compared to not passing an antitrust law at all, so I code the outcome dichotomously, as passing an antitrust law. Some of this variation is theoretically interesting, especially the exemptions, which directly indicate that the law was tailored to further specific interests²⁰, but characterizing them as different kinds of events with competing risks would decrease the number of events available to estimate each set of parameters, decreasing the statistical power.

The second outcome is a law legalizing inter-corporate stock ownership. Without such a law, corporations could not own the stock of other corporations (United States Department of Commerce, Bureau of Corporations, 1916, 2067). Intercorporate stock ownership was crucial to the two ways corporations tried to limit competition after their first method, the stock-transfer trust was deemed illegal in the Standard Oil and Sugar decisions (Supreme Court, 1895, 1911): the asset-transfer combination and the holding company. A holding company, a corporation that controls other corporations by owning their stock, directly depends on the legality of intercorporate stock ownership. The asset-transfer combinations were mostly effected by the buying corporation paying for the assets with its own stock, something that could only be accomplished if the selling corporation could legally own other corporations' stock (Hovenkamp, 1991, 249-258). While the judicial interpretation of these laws, especially antitrust, was highly variable and fraught, the existence of antitrust and stock ownership laws on the books of the states is a relatively easily empirically verifiable fact. Both outcomes are coded from contemporaneous manuals of corporate law

²⁰Several laws had exceptions for farmers cooperatives, and sometimes labor unions.

(Borgmeyer, 1893; Conyngton, 1905; Frost, 1913; Keasbey and Honeyman, 1903; Overland, 1908), government reports (United States Department of Commerce, Bureau of Corporations, 1916; United States Industrial Commission, 1900), and state session laws.

10.1.2 Independent Variables

To test the ruinous competition hypothesis, I adopt the operationalizations made by Lamoreaux (1988), but calculated at the state instead of industry level. These are the ratio between capital and output, the growth in capital invested, fixed costs, margin, and profits. They are all based on Lamoreaux's operationalization of her argument that "[m]anufacturers formed consolidations to escape the severe price competition that developed during the depression of the nineties in certain types of industries: capital-intensive, mass-production industries in which firms were closely matched and in which expansion had been rapid." These variables are calculated from data on the manufacturing industry reported in the decadal censuses 1870-1920 (Inter University Consortium for Political and Social Research, 2005). Following Lawrence et al. (2009); Schneiberg and Bartley (2001) I use the number of farms per capita, also calculated from Inter University Consortium for Political and Social Research (2005), to measure the importance of farmers. A more straightforward measure would be the percentage of all families that live on farms, but that data is only available for some census years (the correlation between farms per capita and the percentage of all families that live on farms is 0.98 for the overlapping years). James (1999) uses the dollar value of all farm output in a state, but that risks capturing the population size, as well as farmer wealth (the correlation between the total value of all farm output and population size is 0.82, while the correlation between percentage of all families that live on farms and population size is -0.14). Following Smith and Fridkin (2008), I use the per-capita membership (number of families divided by total population) in the Grange, to measure the social movement organization of farmers, coded from (Tontz, 1964). Using the number of Grange members per state, or the number of Grange members per state in

peak years, like Schneiberg et al. (2008), yields substantively similar results (no significant effects for either outcome). To measure the prominence of small businessmen I use firm size, measured as the average amount of capital invested per manufacturing establishment. To measure a state's reliance on revenues from incorporation activity, I use the share of total revenues that come from taxes on corporations, calculated from data in Sylla et al. (1993) and complemented with data from (Holt, 1977). Corporate taxes include corporate income taxes, but exclude specific taxes levied on railroads or insurance companies, because taxes on railroads served as alternatives to taxes on corporations in for example New Jersey.

I also examine additional variables and models to control for effects of the political, federal, economic and regional context. Following the argument that democratic politics affect distributional outcomes (Skocpol and Amenta, 1986), I control for party politics and democratic structures. To examine the effects of the main parties I include a count of the number of chambers of the legislature and governorship under the control of the Republican Party (Martin, 2010). For the stock ownership outcome, models including this variable do not fit better²¹. Models with alternative operationalizations (share of the vote in the latest gubernatorial election cast for the Republican candidate, and average Republican vote cast in the last presidential, congressional) do not fit better. In many elections during the study period, the main parties split, especially over issues like free coinage, into Gold and Silver factions (e.g. Porter and Johnson, 1956, 97,112), and to account for this I calculate all operationalizations of main party effect using only Republicans as well as all joint Republican tickets. These models do not fit better. Similarly to Amenta and Poulsen (1996) and Martin (2010), I control for the degree of democracy in a state, using the share of the population that voted in the previous gubernatorial election, calculated from Inter University Consortium for Political and Social Research (1995). No models including either this or alternative measures (share of adult white males that voted in last gubernatorial

²¹Better fit is measured as lower QIC (Pan, 2001), which is necessary because the models are fit using generalized estimation equations. Comparisons are limited to the models testing all hypotheses simultaneously (models 8 and 9). Only variables whose inclusion makes these models fit better are included in the results shown below.

election, average share of the population and average share of white males that voted in the most recent previous presidential, gubernatorial, and congressional elections) fit better. Political scientists have long debated whether American parties changed in the 1896 election, with some arguing that it was a critical turning point (Brady, 1991; Burnham, 1967, 1981; Price, 1975; Schattschneider, 1988), and others claiming it was not (Bartels, 1998; Mayhew, 2002; McCormick, 1988). To include the possibility that parties did, I included a dummy variable for the period post-1896, and interact it with the variable measuring Republican control. These models do not fit better.

Federal executive and judicial antitrust policy varied over time (Posner, 1970; Sklar, 1988), and I control for executive policy by including the number of antitrust cases prosecuted each year, coded from Posner (1970). In addition to the federal government's zeal in prosecuting cases, I also take into account the Supreme Court's varying interpretations of the Sherman act during this time. Different scholars have periodized the Supreme Court's interpretation differently, and I examine periods used by Bittlingmayer (1985); Dobbin and Dowd (2000); Sklar (1988). Generally, these authors specify a time of liberal and a time of restrictive antitrust interpretation by the Supreme Court. The antitrust models using dummy variables for the periods coded from Sklar and Dobbin and Dowd do not fit better, and while some stock ownership models do, the only significant period coefficient is the one for the pre-Sherman act period. So, there are no consistently significant effects of shifts in the federal enforcement or interpretation of antitrust law.

Following Soule and Olzak (2004) I control for the total population of the state (logged to reduce skew). For antitrust, models including this variable fit better, but not for stock ownership. Antitrust models that instead control only for the size of the economy, operationalized as the total value added in manufacturing (logged and non-logged), the sum of manufacturing and farming output (logged and non-logged), or the total amount of capital invested in manufacturing (logged and non-logged) fit worse. Bensel (2000) and Sanders (1999) divide the United States of this time into core, diverse, and peripheral regions based

on industrialization, primarily measured as value added in manufacturing per capita. I examine this regional variation by fitting one set of models including regional dummy variables (because only a few states fall into the diverse group I code them as in the periphery) and one set with value added per capita. These models do not fit better.

The business cycle fluctuated, and I use a dummy variable for whether the national economy was in a recession in the previous year, coded from National Bureau of Economic Research (2012). Antitrust, but not stock ownership, models with this variable fit better. There are no significant interactions between the variables operationalizing the hypotheses and recessions, so there is no support for the contingency or timing argument that these mechanisms interacted with legitimacy crises (e.g. Roy, 1997). The share of neighboring states that adopted an antitrust or stock ownership law in the two previous years controls for the most immediate regional context (Balla, 2001; Martin, 2010; Smith and Fridkin, 2008). Antitrust, but not stock ownership, models including this variable fit better.

10.1.3 Modeling Approach

The dataset is an unbalanced panel with states as units, and state-years as observations. There is right-censoring, because some states did not experience either event, but it is non-informative because the end year is the same for all states. The starting year is chosen to minimize left-censoring by starting the study period right after New Jersey passed the stock ownership law that was the first to be used to limit competition. Because state population is only available once every decade, following Lott (1999); Smith and Fridkin (2008), I expand it to the year level using use linear interpolation, a reasonable approximation because it grew continuously. For the economic measures that could be affected by the outcome, I use the more conservative last observation carried forward instead of linear interpolation. All dollar amounts are adjusted for inflation using the price deflator from Sutch (2006). I use event history analysis (Allison, 1982), the most common approach to modeling policy adoption among American states (e.g. Baybeck et al., 2011; Miller, 2004). Event history

analysis has been used to study the adoption many controversial policies including regulation of abortion (Medoff, 2012; Mooney and Lee, 1995), stem cell research (Levine et al., 2013), the death penalty (Mooney and Lee, 2000), and same-sex marriage (Hume, 2011), as well as economic policies such as anti-tax evasion laws (Hageman and Robb, 2011), public venture programs (Leicht and Jenkins, 1998), fire insurance regulation (Schneiberg and Bartley, 2001), minimum wages (Hoekstra, 2009), state enterprise zones (Turner and Cassell, 2007) and environmental regulations (Stoutenborough and Beverlin, 2008). For a review see Karch (2007)). I use discrete-time rather than continuous-time event history models, because the timing of the events are only measurable at the year level (each law comes into effect on a particular day, but is passed over a period of weeks or months as it makes its way through the legislative process). I estimate these models via logistic regression of state-years, with a linear and quadratic term for time (Allison, 1982; Box-Steffensmeier and Jones, 1997)²². I fit separate models for each outcome rather than treating them as different kinds of events with competing risks, because as Table 10.1 shows, there were states adopting neither, either or both outcomes. Some states passed multiple laws, so I fit the models using generalized estimation equations to take into account the correlation between these repeated measurements (Liang and Zeger, 1986). States are removed from the dataset after their last observed outcome. Because many of the operationalizations of competition are highly correlated I fit a separate model with each one, then select the best-fitting one²³. There are 55 antitrust events and 31 stock ownership events. The models are fit using the `gee` (Carey et al., 2012) and `geepack` (Halekoh et al., 2006) packages in R, version 3.1.0 (2014-04-10).²⁴ All data and code are available from the author upon request.

²²In the antitrust models the quadratic term is not significant, so it is dropped.

²³The best-fitting models are selected using the lowest quasi-likelihood information criterion (QIC, (Pan, 2001).

²⁴Data and model handling was greatly facilitated by the `plyr` package (Wickham, 2011). All plots made using the `ggplot2` package (Wickham, 2009), and all model tables using the `stargazer` (Hlavac, 2013).

10.2 Results

10.2.1 Antitrust

Table 10.2 shows models predicting the adoption of antitrust bills. Model 1 shows the control variables Republican control and population size. States with more Republican control were less likely to enact antitrust laws, although this coefficient is not statistically significant across all models. Nevertheless, this result is consistent with the view of Republicans as more business-friendly. States with larger populations were more likely to enact antitrust laws, and this coefficient is statistically significant across all models. A potential explanation is that larger states have more domestic economic activity and are less dependent on other states. Models 2, 3, and 4 test the class interest hypotheses. Model 2 shows support for Hypothesis 1, that the more farmers there are in a state, the more restrictive its corporate law will be. But, there is no support for Hypothesis 1a, that the mobilization of farmers into a social movement would make states more restrictive. I discuss this lack of support below in more detail.

Model 3 tests the hypothesis that capitalists' interest in the form of ruinous competition shaped corporate law. The coefficient is not in the direction hypothesized, and not statistically significant. Model 4 tests the hypothesis that small businessmen made corporate law more restrictive in terms of what corporations could do to limit competition. The coefficient is statistically significant and is in the hypothesized direction: the larger the average company in a state is, the less likely that state was to enact an antitrust law. Model 5 tests the hypothesis that politicians became dependent on corporate taxes and therefore enacted permissive laws. The coefficient for share of state revenues that comes from corporate taxes is in the hypothesized direction and statistically significant. The greater reliance on corporate taxes, the less likely a state is to pass an antitrust law. These models test each hypotheses individually, and the fact that both the farmers and small businessmen hypoth-

Table 10.2: The Passage of Antitrust Laws: Results from Discrete Time Logistic Event History Models

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
l.year	0.046** (0.017)	0.056* (0.023)	0.059** (0.019)	0.080*** (0.024)	0.067*** (0.020)	0.093*** (0.026)	0.080*** (0.022)	0.095*** (0.026)	0.089*** (0.023)
rep.control	-0.341*** (0.112)	-0.123 (0.114)	-0.338** (0.113)	-0.297* (0.116)	-0.277*** (0.101)	-0.274* (0.107)	-0.145 (0.121)	-0.220* (0.107)	-0.151 (0.119)
tot.pop.li.log	0.689*** (0.196)	0.863*** (0.211)	0.678*** (0.182)	0.773*** (0.174)	1.084*** (0.194)	1.098*** (0.199)	1.080*** (0.203)	0.943*** (0.216)	0.954*** (0.227)
farms.per.pop.li		0.215*** (0.059)					0.163** (0.056)		0.095 (0.073)
grange.fam.pop.li		0.005 (0.013)							
profit2			4.510* (2.220)			1.623 (2.975)	3.174 (2.623)	1.547 (2.479)	2.268 (2.362)
firm.size.cap.log				-0.652* (0.263)		-0.385 (0.306)		-0.105 (0.301)	
share.business.nalocf					-0.043*** (0.012)	-0.040** (0.012)	-0.028* (0.013)	-0.036*** (0.011)	-0.031* (0.012)
neighbor.adopted								1.990** (0.608)	1.563 (0.845)
recession								-0.504* (0.234)	-0.502* (0.224)
Constant	-2.627*** (0.254)	-4.947*** (0.767)	-4.127*** (0.780)	4.973 (2.994)	-2.590*** (0.277)	1.341 (4.026)	-5.429*** (0.911)	-3.027 (3.936)	-5.195*** (1.043)
Observations	822	822	822	822	822	822	822	822	822

Note: * p<0.05; ** p<0.01; *** p<0.001
55 events.

esis is supported is consistent with the unresolved nature of the debate over the causes of antitrust: taken separately, there is evidence for both. Models 6 and 7 test all hypotheses simultaneously in order to adjudicate between them. Because the number of farms per capita and firm size are highly correlated (as measured by the variance inflation factor), there is one model with each variable. These models find support for hypothesis 1 and 4, that states with more farmers enacted more restrictive laws, and that states that relied more on corporate taxes were more permissive. Models 8 and 9 include the share of neighboring states passing an antitrust law in the two previous years, which controls for the regional context. The coefficient for the number of farms per capita is no longer statistically significant in this model: once we control for the regional context, there is no support for the hypothesis that farmers pushed states to have more restrictive corporate laws. Substantively, this could be due to that many of the most agrarian states, which often adopted antitrust laws, border each other (the lack of effect is probably not due to collinearity: the variance inflation factors for number of farms per capita and the regional control are 2.35 and 1.63, respectively). Thus, the only hypothesis that is consistently supported is Hypothesis 4, that reliance on corporate taxes made states' corporate laws more permissive. In models 8 and 9, the coefficients -0.036 and -0.031 for corporate taxes means that a one unit increase would lead to a 4% and 3% decrease in the odds of adopting an antitrust law (50% and 44% for a one standard deviation increase). Corporate tax reliance is measured in percent, so, for every percentage point that a state increases its reliance on corporate taxes, it becomes 3% less likely to enact an antitrust law.

10.2.2 Stock Ownership

Table 10.3 shows models predicting the legalization of intercorporate stock ownership. The model specifications and layout are identical to those for antitrust, with the following exceptions. The outcome is adopting a stock ownership law instead of adopting an antitrust law. The variable operationalizing capitalists' interest in the form of ruinous competition

is capital output instead of capital growth (of the operationalizations used by (Lamoreaux, 1988), I select the best-fitting one as measured by the QIC of bivariate models including each). None of the control variables included in the antitrust models have statistically significant coefficients in the stock ownership models, and including them does not improve model fit so they are excluded from these models.

Models 2, 3, and 4 test the class interest hypotheses. There is no support for Hypothesis 1, although the coefficient is in the hypothesized direction. As for antitrust, there is no support for Hypothesis 1a. Model 3 supports Hypothesis 2, that capitalists' interest in the form of ruinous competition shaped corporate law. Model 4 tests the hypothesis that small businessmen made corporate law more restrictive in terms of what corporations could do to limit competition. The coefficient is statistically significant and is in the hypothesized direction: the larger the average company in a state is, the less likely that state was to enact an antitrust law. That only capitalists' interest show an effect could be explained by that stock ownership was a much less salient issue than antitrust, and that capitalists with their greater knowledge of the law could influence this measure. Chapter 6 shows how the first stock ownership law passed in New Jersey in 1888 because political reformers, who had voted for antitrust-like bills (which did not pass), also voted for bills legalizing stock ownership, indicating that at least some politicians did not understand the ramifications of intercorporate stock ownership.

Model 5 supports hypothesis 4, that the greater a state's reliance on corporate taxes, the more likely it is to allow corporations to own each others stock. Models 6 and 7 test all hypotheses simultaneously in order to adjudicate between the hypotheses. Because the number of farms per capita and firm size are highly correlated (as measured by the variance inflation factor), there is one model with each variable. The effect of competition disappears in these combined models. Models 8 and 9 include the share of neighboring states passing a stock ownership law in the two previous years, which controls for the regional context. The lack of statistical significance for the regional context variable could be due to that

stock ownership laws were passed in a much more geographically dispersed pattern. Like for antitrust, the only hypothesis that is consistently supported is Hypothesis 4, that reliance on corporate taxes made states' corporate laws more permissive. In models 8 and 9, the coefficient 0.028 for corporate taxes means that a one unit increase would lead to a 3% increase in the odds of adopting a stock ownership law (53% for a one standard deviation increase). Corporate tax reliance is measured in percent, so, for every percentage point that a state increases its reliance on corporate taxes, it becomes 3% more likely to allow corporations to own each others stock.

The analysis undertaken in this chapter does two things. First, it provides support for the hypothesis developed in the analysis of New Jersey, that corporate tax revenues made politicians more favorable towards corporations, using a different method, dataset, and sample. This provides evidence that the conclusion drawn in Part I is not an artifact of the cases or time period studied. It also provides a probabilistic complement to the more deterministic approaches used there. Second, it shows that this explanation is better than existing ones for the adoption of antitrust and stock ownership laws.

Table 10.3: The Legalization of Stock Ownership Laws: Results from Discrete Time Logistic Event History Models

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
I.year	0.595*** (0.179)	0.605*** (0.178)	0.649** (0.210)	0.668*** (0.188)	0.601** (0.188)	0.635** (0.199)	0.637** (0.209)	0.635** (0.199)	0.637** (0.209)
I(1.year ²)	-0.019*** (0.006)	-0.019*** (0.006)	-0.022** (0.007)	-0.022*** (0.006)	-0.019** (0.006)	-0.021** (0.007)	-0.021** (0.007)	-0.021** (0.007)	-0.021** (0.007)
farms.per.pop.li		-0.088 (0.074)					0.002 (0.077)		0.002 (0.077)
grange.fam.pop.li		0.007 (0.036)							
fixed2			39.800* (18.500)			31.700 (24.200)	31.400 (21.600)	31.700 (24.200)	31.400 (21.600)
firm.size.cap.log				0.559 (0.354)		-0.015 (0.400)		-0.015 (0.400)	
share.business.nalocf					0.031*** (0.006)	0.028*** (0.006)	0.028*** (0.008)	0.028*** (0.006)	0.028*** (0.008)
Constant	-7.140*** (1.380)	-6.560*** (1.660)	-9.200*** (1.960)	-14.400*** (4.330)	-7.670*** (1.370)	-9.050* (4.530)	-9.240*** (2.380)	-9.050* (4.530)	-9.240*** (2.380)
Observations	933	933	933	933	933	933	933	933	933

Note: *p<0.05; **p<0.01; ***p<0.001
28 events.

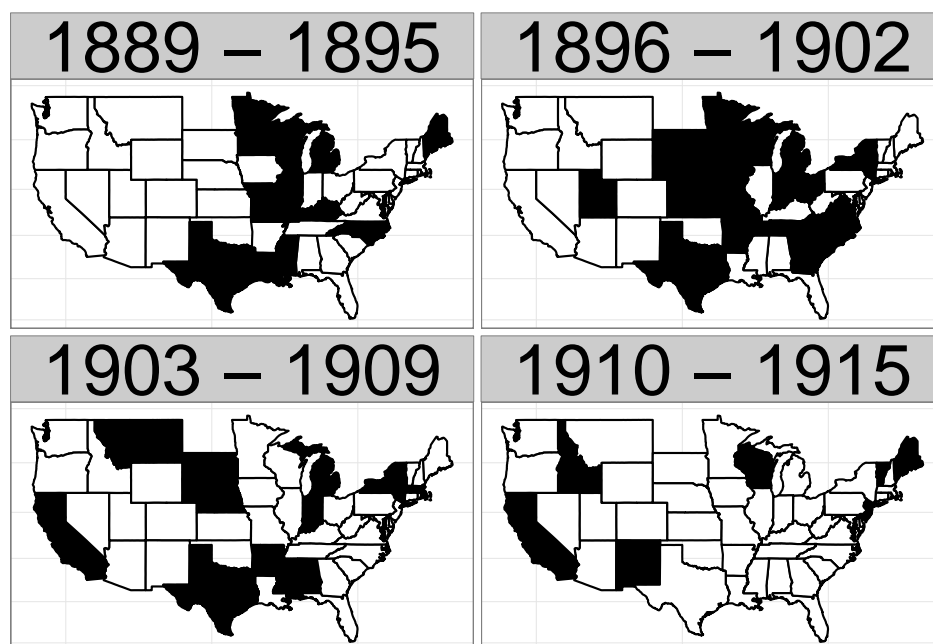


Figure 10.1: Adoption of Antitrust laws across the states. Source: See text.

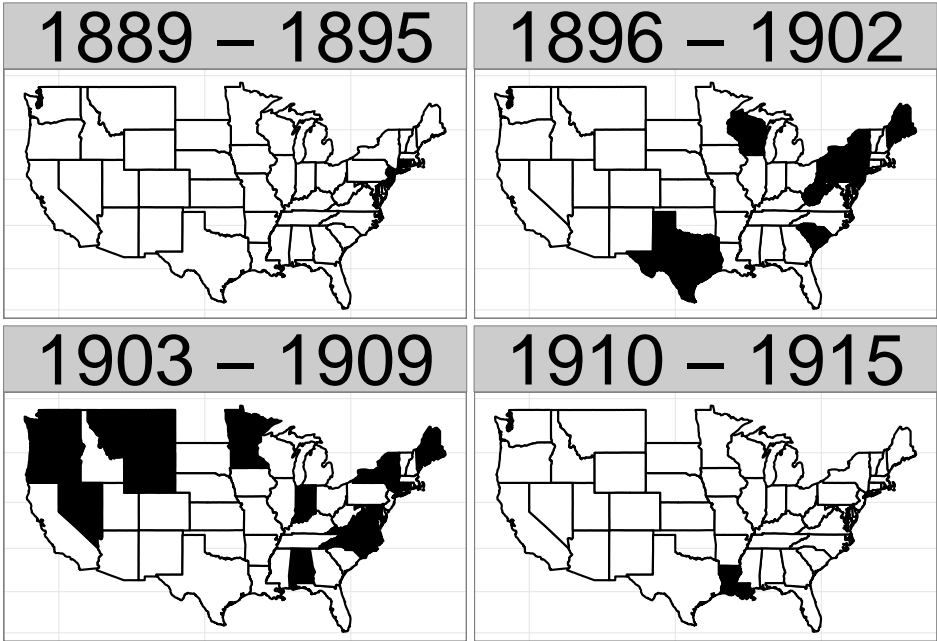


Figure 10.2: Adoption of stock ownership laws across the states. Source: See text.

Chapter 11

Conclusion

Existing explanations for the emergence of modern incorporation in America focus on efficiency or power and path-dependency. The latter successfully refutes the former, but New Jersey, which passed the first modern law, lacked the empirical conditions it cites. The conditions that did obtain in New Jersey, with several anti-incumbent law changes in a short time period, fit path-dependency poorly. Instead, Part I shows, the alignment and misalignment of politicians' and capitalists interests explain change and persistence in the law. Laws solving politicians' and capitalists' problems by limiting competition and providing tax revenues persisted, and laws that stopped providing large revenues became vulnerable to change.

Mid-century depressions did not force New Jersey to shift from special to general incorporation because the former served political and economic incumbents' interests. Special incorporation limited competition by preventing competitors from incorporating, keeping the dominant cross-state railroad lucrative for owners and politicians, and aligning their interests. Once the railroad stopped providing large tax revenues, politicians lacked reason to protect it, their interests diverged from capitalists', and general incorporation for railroads passed as soon as a political and economic challenge occurred in the same year. Once railroad corporations switched to general incorporation, the state prohibited special incorporation completely. In 1888 New Jersey allowed corporations to own each others' stock despite political resistance to permitting corporations to limit competition, in part because opponents did not understand the new law's implications. The revenues brought by increasing incorporation activity under the new laws aligned incumbents' interests again, so that politicians protected the laws against a series of challenges by political reformers. The permissive laws were only restricted in 1913, once raising railroad taxes in 1906/08 provided an alternative revenue source, again misaligning incumbents' interests by making politicians less invested in permissive laws. Before being restricted, New Jersey's laws had decisive effects because other states, notably Delaware, adopted similar laws.

Part II takes up this adoption of modern, permissive laws, and its reaction in the form of

antitrust laws, across the American states. It tests the hypothesis developed in Part I, that the more politicians depended on state revenues from corporations, the more likely they were to enact laws that favored corporations, on both the adoption of permissive and restrictive laws. Existing explanations of why American states passed corporate laws that either allowed or prohibited capitalists' attempts to limit competition have focused on the class interests of capitalists, farmers and small businessmen. Part II instead shows that while there is some support for the effect of farmers, the only consistently supported hypothesis is that state politicians became dependent on tax revenues from corporations, so that the greater the share of state revenues that came from corporations, the more lenient the state corporate law. Given common perceptions of the Progressive Era as one in which farmers mobilized into social movements, the lack of effect for farmers' mobilization is somewhat surprising. While this lack of effect does not mean that the mobilization of farmers was not important in some unmeasured way, this lack of effect could also be due to the timing of the movement and the enactment of antitrust laws. Most antitrust laws were passed at the end of the 1890s, while the Grange movement experienced its largest memberships relative to the overall population at the beginning and end of the study period, in the late 1880s and late 1910s.

In summary, this dissertation has shown, using both qualitative and quantitative methods and data, across time and space, that the revenues from corporate taxes help explain change and persistence in corporate law. In theoretical terms, institutional change and persistence is determined by how the institution serves the interests of incumbent actors in the fields adjoining the institution. Alignment between incumbent interests promotes institutional persistence, misalignment provides the possibility of change. Below I discuss several implications and associated research programs that flow from this conclusion.

11.0.3 State Autonomy and Capacity

Scholars have long debated how societal groups and the state shape policy outcomes. Pluralists argue that policy is the result of relatively equally matched societal groups (Dahl, 1961), while the state-centered view emphasizes the role of autonomous state actors (Evans et al., 1985; Skocpol and Amenta, 1986). The marxist view also emphasizes the role of state actors, but, adds that since they are dependent on continued economic activity under capitalism, they act in the interests of capitalists (Block, 1987; Offe, 1984; Poulantzas, 2000). Power-elite theorists focus on how relationships between state actors and capitalists shapes policy (Domhoff, 2002; Mills, 1959). The results of this study support the state-centered view, that state actors crucially shape policy outcomes, and that state actors are relatively autonomous from societal groups, but also raises several complex, almost paradoxical effects of, and interactions between, state autonomy and state capacity to tax.

First, politicians' autonomy to tax corporations against their will had the paradoxical effect of making them more dependent on, thus less autonomous from, corporations. States often imposed corporate taxes on corporations against capitalists' will. For example, the Colorado Governor convened an emergency session of the state legislature to amend its new tax law after it was struck down following a lawsuit by corporations (House of Representatives, 1902, 15-23). Politicians also expressly used corporate taxes to control and make corporations more transparent (Mehrotra, 2010). But politicians became dependent on the resources extracted through those taxes, making them enact laws that were more favorable to corporations. In exchange theory terms, capitalists had a resource, tax revenues, that politicians needed but lacked, so that corporate taxation led to a resource dependency relationship (Blau, 1986; Emerson, 1962; Pfeffer and Salancik, 1978). That capitalists resisted efforts to tax them, even though those taxes would later work in their favor highlights how the cognitive limits on rational choice can affect institutional development (e.g. Streeck and Thelen, 2005). It is also similar to the conclusion drawn by Prasad (2013), that American progressive taxation as a means of reducing inequality backfired by depriving the welfare

state of financing. It also exemplifies the broader point made by Krippner (2011), that reforms intended to alleviate the crises facing the state led, inadvertently, to financialization.

The state's ability to tax corporations also relies on its capacity, the infrastructural power to identify (assess) and extract (tax) resources from societal actors. The reliance on corporate taxes was motivated by increased spending caused by increased state capacity in the form of a budding welfare state of schools and asylums, combined with a lack of state capacity in extracting legitimate and effective property or income tax from citizens. Lastly, New Jersey's increased capacity to tax railroad property in 1906/08, freed it from its dependence on corporate taxes, so that it could restrict corporate law in 1913.

In this view of corporate law and political economy more broadly, state and economic actors are tied together by resource dependencies, and different policies are tied together, all through taxation. This view is similar to the broadly institutional view of capitalism, in which there are interactions and complementarities between different facets of the economic system (Biggart and Guillén, 1999; Guillén, 2001; Hall and Soskice, 2001; Hamilton and Biggart, 1988). This study adds to this view the argument that the state is the central locus of these dependencies. The complex balances of interest and power among economic groups are reflected into the state through taxation, and moderated by state capacity. Politicians sit like both spider and fly in this web of dependencies.

11.0.4 Taxation as Hidden Driver

The changes in how the law solved incumbents' interests, especially in how it provided revenues, are in turn shaped by other processes, such as the conflict between the state and corporations over tax payments. The changing sources of revenue for New Jersey can be understood as 80 years of struggle between the state and its railroad corporations over taxation. In this light, the state's fiscal reliance on incorporation activity was a parenthesis, sandwiched between periods of reliance on railroad taxes. In the broader national context, the adoption of permissive corporate laws, came just as the states, led by Wisconsin, started

to replace property taxes with income taxes (Mehrotra, 2008). Thus, it is possible that the deeper causes of the development of the corporate law lie in the states' struggle to tax both immobile forms of corporate capital (railroads have to operate in particular physical spaces and so cannot escape the state's power that ultimately derives from its central control of territory (Mann, 1988)) and their citizens' income.

As in all historical research, the question of how far back and how deep to trace causal processes arises. Prasad (2013, 250-251) provides one answer, arguing that causal sequences should begin at the moments when historical phenomena are no longer reducible to the events that brought them into being. This dissertation thus leaves these deeper determinants of the changes in how corporate law provided revenues for future research. The goal here is to show, relative to existing explanations that emphasize path-dependency, how these fiscal changes, regardless of their causes, can explain the development of corporate law. Nevertheless, an important future direction for research is understanding the connection between states' developing ability to tax and corporate law. Likewise, Section 3.5 shows that there is no relationship between politicians' preferences on corporate laws and voting on laws changing tax rates. For example, Democrats, who were more restrictive towards corporations, did not vote against laws increasing New Jersey's reliance on corporate taxes. This decoupling of tax and corporate law decisions provides an important source of change and should be analyzed across the states, especially focusing on the states that adopted both antitrust and stock ownership laws.

11.0.5 Contemporary Consequences

A major theme of this dissertation is that politicians become dependent on those they tax. This has an important consequence for the study of welfare states. Progressive taxation can undermine welfare states by spawning more political protest through their increased visibility, by decreasing economic growth, and by promoting the development of private welfare alternatives. (Prasad, 2013, 170). This study suggest yet another mechanism:

politicians become dependent on the classes they tax: progressive taxation thus makes politicians dependent on the rich, regressive taxation makes them more dependent on the poor. The seemingly paradoxical fact that the United States has a relatively progressive tax system, whereas Sweden has a relatively regressive system (Steinmo, 1993), is compatible with this argument. It is also compatible with the general argument made by Wright (1997, 9), that capitalists will oppose policies that improve the material conditions of workers, such as universal basic income, even if those policies are wholly paid for by wages, because it decreases their ability to exploit them. The link between progressive taxation and weak welfare states is then not that progressive taxation did not succeed, but that it was too successful.

The taxation and dependency argument has been developed in a context in which state budgets were expanding, and politicians were interested in maintaining revenues for the provision of services, even if those services were rudimentary compared to modern welfare states. More recent attempts to “starve the beast” – reducing government revenue to restrain government spending (Bartlett, 2007; Romer and Romer, 2007), as well as the politics of austerity and welfare state retrenchment cast doubt on whether politicians still operate according to this maxim. Future research should examine the development of politicians’ fiscal interests and attitudes, for example if politicians’ fiscal interest has shifted more directly to campaign contributions (e.g. Bartels, 2009; Gilens, 2012; Lessig, 2014; McCaffery and Cohen, 2004; Page et al., 2013).

Part III

Appendices

Appendix A

Methods

Existing accounts explain law changes using historically specific conditions without applying those conditions to counterfactual cases of when the law did not change. Focusing on successful changes underestimates conflict. Part I improves on these explanations by considering a longitudinal sample of failed and successful attempts to change the law. New Jersey is the focus because that is where modern corporate law first emerged, despite it lacking the conditions cited in the best existing explanation. Comparing instances of change and persistence within the same state also helps isolate the conditions for change, at the expense of omitting potentially important differences between states. Those differences are instead taken up in Part II. Comparing these cases shows that whether incumbent politicians' and capitalists' interests are served by the laws determine whether those laws will change.

Lack of incumbents' investment in the law is a necessary condition for change, but the precise nature of the outcome is determined by the conflicts between incumbents and challengers. For example, New Jersey did not pass a general incorporation law for railroads in 1869, when the special law regime stopped providing revenues, but in 1873, when the special law regime was attacked by both economic challengers and political reformers. This is not a contingent outcome because the appearance of challengers is a regular feature of the model. The goal is not to replace contingency with determinism, but to peel back contingency by first specifying necessary conditions for change and then explaining the precise nature of change in a theoretically-grounded way.

The analytic strategy proceeds accordingly. Bivariate comparisons of 28 attempts to change the law show that changes in incumbent politicians' and capitalists' investment explain whether the law changed or persisted. Prior research and the theory indicate that these outcomes are caused by interactions among multiple causal conditions, and that different such combinations can lead to the same outcome. I examine this potential conjunctural causation using qualitative comparative analysis (Ragin, 2000, 1989). This analysis is described in Appendix B.

Despite advantages in examining conjunctural causation, qualitative comparative analysis (QCA) has two main drawbacks. First, the number of possible combinations increases exponentially with the number of conditions, quickly surpassing the number of available cases, so only a limited number of conditions can be examined. The incumbent investment model clearly specifies a limited number of conditions, and the cases are all instances of institutional change within the same state, so time-invariant attributes of New Jersey are constant, reducing the number of conditions necessary to include. Second, QCA is deterministic, increasing the risk of drawing spurious conclusions. Roscigno and Hodson (2004), argue that contradictory configurations, which consist of cases with the same causal conditions but different outcomes, if acknowledged can be used to relax this assumption. The goal of the QCA is to validate the model by showing that conditions derived from it can explain important changes to New Jersey' corporate law. The existence of contradictory configurations would be evidence that these changes were due to contingencies and thus not explainable with a small set of theoretically derived conditions. Out of 16 empirically observed configurations, one is contradictory with one contradictory case, and the conclusions drawn from the QCA are consistent with the theoretical predictions, indicating that the changes were less contingent than explainable by changes in actor investment. The low number of contradictory cases means that the conclusions from the QCA pass a veristic, or absolute standard. QCA can also be applied probabilistically, but the number of important law changes is too low for their application (Ragin, 2000, p. 116).

Process-tracing of key changes then provides additional evidence of how incumbents' investment worked, and how change occurred once the conditions were in place. Process-tracing identifies the intervening causal process between independent and dependent variables, in an effort to move beyond covariation alone as a source of causal inference (George and Bennet, 2005, 224) and thus complements the crosstabulations and QCA. It is also especially well suited for the analysis of path-dependency and contingency (Bennett and Elman, 2006). Concretely, it means 1) building a continuous and theoretically coherent

account between substantively motivated starting and ending points, and 2) explicitly accounting for the evidence that should be present if the theorized explanation is true and the evidence that is inconsistent with alternative explanations (Bennet and Elman, 2006, 460).

The process-tracing also guards against spuriousness by introducing additional data against which the competing explanations can be evaluated. Such evaluation is easy when one theory fits the data better than another. But a contingency-based explanation can by definition fit any data. A Bayesian approach provides a principled way of comparing models that both fit the data (Western, 2001). Bayesian reasoning shows that when two models explain the data equally well, we can prefer the simpler model because it has higher posterior probability (2001, 366). More complex models explain a greater range of outcomes, but at the cost of spreading out their probability (2001, 367). A simpler model concentrates its probability, so that when it is correct it is so with a higher probability. When contingency implies unpredictability and not just conditionality, theories based on it become "the extreme case of [...] explanatory complexity" (2001, 369). Roy (1997, 280) uses contingency in a conditional sense, but even such a model quickly becomes complex. To see why, consider its mode of explanation: each change is explained by a condition specific to that change, so that the number of conditions in the model grows with the number of cases explained. Therefore, I treat the incumbency-investment model as the simpler of the two, and take any failure of it as evidence for contingency, but any success of it as evidence against contingency.

Both process-tracing and QCA serve well to inductively develop explanations, but they are vulnerable to criticisms, including that they are deterministic (as opposed to probabilistic), that they may rely inordinately on a few observations, and, that they are difficult to generalize (e.g. King et al., 1994). To guard against these criticisms, I also employ standard regression techniques. Part II tests the central hypotheses developed in the qualitative Part I, that tax revenues made politicians invested in corporate laws that allowed incumbent capitalists to limit competition. I test this hypothesis, alongside ones derived from the

existing literature, on all the states (except those lacking data), 1889 – 1915. Apart from using quantitative methods that may counter some deficiencies of the qualitative methods, these tests also allow the incorporation of additional data not used in developing the hypotheses. The details of these methods, which are more closely bound up with alternative operationalizations, are presented in Chapter 10.

A.1 Data

The data consist of secondary sources, published statistics, contemporaneous newspaper accounts, and primary documents such as laws. Using software to extract data from published sources, I also construct several new datasets of incorporation activity in New Jersey and the political makeup and activity of the New Jersey legislature. These datasets are summarized in Table A.1. They have two advantages. First, their longitudinal nature allows comparisons over time, essential to understanding the conditions under which institutions change and persist. Second, the Session Laws, NJ-Incorporations, Bills, and Votes datasets are much more comprehensive than existing sources, allowing for a more detailed empirical analysis. For example, the Bills and Votes datasets uncover many failed challenges to the permissive corporate law from 1896 to 1913 which existing research has overlooked, thus underestimating conflict around corporate law. Again, because the data used in Part II is more closely bound up with operationalizations of the theories tested, it is presented in Chapter 10.

Several sources and approaches were used to build these datasets. For the Session Laws, Politicians, Bills, Votes, and Messages dataset, digitized originals of the New Jersey Session Laws, Legislative Manuals, and Senate Journals were downloaded from the New Jersey State Library²⁵, Google Books²⁶ and Hathi Trust²⁷. Sources in PDF format were

²⁵http://law.njstatelib.org/slic_home/law_library/historical_laws

²⁶<http://books.google.com/books>

²⁷<http://www.hathitrust.org/>

Period	Name	Variables	Source	Method
1865 - 1914	Session Laws	Name, date, text	NJ Session Laws	OCR, text parsing
1860 - 1911	NJ-Incorporations	Name, date, location, agent, capital	New Jersey State Library (2011)	HTML parsing
1875 - 1913	Bills	Name, date, number, introducer	NJ Senate Journals	OCR, text parsing
1875 - 1913	Votes	Bill, politician, vote	NJ Senate Journals	OCR, text parsing
1875 - 1913	Messages	Governor, year, text	NJ Senate Journals	OCR
1875 - 1913	Platforms	Party, year, text	NJ Legislative Manuals	OCR
1888 - 1903	Trusts	Name, date, state, plants, capitalization,	Moody (1904)	hand-coded
1834 - 1920	Revenues	Year, state, category, amount	Sylla et al. (1993)	N/A
1800 - 1907	US-Incorporations	Year, state, number	Lamoreaux (2006), Evans (1948)	N/A

Table A.1: Scope, Sources, and Methods for Main Datasets Used. The starting year for NJ-Incorporations is approximate. Datasets marked OCR, text parsing were created by converting digitized copies of the source texts to machine-readable text, which was then parsed by custom software (available upon request). The NJ-Incorporations dataset was created by parsing HTML tables made available by the New Jersey State Library. The Revenues and US-Incorporations datasets are published datasets for which no data-gathering method was necessary.

converted to plain text using tesseract²⁸. Sources in EPUB format were converted to plain text using the Python²⁹ EPUB module³⁰. The plain text files were parsed using software written in Haskell³¹ to build datasets. The NJ-Incorporations dataset was built from tables of incorporations made available by the New Jersey State Library³². All figures, most tables, and all statistical analyses were done using R³³. All data, programs, and analyses are available upon request.

²⁸<http://code.google.com/p/tesseract-ocr/>

²⁹<http://www.python.org/>

³⁰<https://pypi.python.org/pypi/epub>

³¹<http://www.haskell.org>

³²http://slic.njstatelib.org/slic_files/searchable_publications/corp/NJCORPIntro.html

³³<http://www.r-project.org/>

Appendix B

Qualitative Comparative Analysis of New Jersey Laws

Prior research and the theory indicate that these outcomes are caused by interactions among multiple causal conditions, and that different such combinations can lead to the same outcome. I examine this potential conjunctural causation using qualitative comparative analysis (Ragin, 2000, 1989). QCA has recently been used to study a variety of phenomena with complex causality, such as the causes of worker resistance (Roscigno and Hodson, 2004), how gene-environment interactions affect adolescent educational continuation (Shanahan et al., 2008), how structure and culture produce community (Vaisey, 2007), how chemical plant and community conditions combine to cause pollution (Grant et al., 2010), why some social movements are extensively covered in the media (Amenta et al., 2009), and the determinants of social movement outcomes (Amenta et al., 1992; Cress and Snow, 2000).

B.1 Results

QCA uses Boolean algebra to identify possibly multiple and conjunctural causes of an outcome. I use fuzzy-set QCA (fsQCA) because it allows partial set memberships, thus both capturing set memberships but also degree of membership (Ragin, 2000). This mode of QCA proceeds by assigning each case membership in sets determined by the presence or absence of each causal condition. Set memberships can be "fully in" or "fully out", but also degrees between, such as "more in than out." It then groups cases sharing similar set memberships and outcome into configurations, and reduces these configurations by eliminating redundant conditions into a parsimonious list of combinations that cause the outcome or its absence.

The first step in fuzzy-set QCA is assigning set memberships to each case. For political incumbents' investment (referred to as PAI below), I assign cases with more than 50% of state revenues coming from the existing corporate law as fully in, 16% or less as fully out, and 30 as the crossover point. For economic incumbents' investment (EAI), I assign

cases with more than 75% of national incorporation activity taking place in New Jersey as fully in, 20% as fully out, and 35% as crossover. These cutoffs are chosen to separate empirically occurring groups of cases. I assign all the cases until 1874 as fully in on the economic incumbents' investment, following the secondary literature's description of this period. I assign Democratic majority (DM) as fully in if both chambers of the legislature have Democratic majorities, fully out if none do, and one Democratic majority chamber as the crossover point. I also examine the challenger-incumbent field dynamic using the condition EC, which is fully in if an economic challenger appeared in the same year, and fully out if there were no economic challengers that year (coded from the secondary literature). I calibrate the fuzzy-set scores using the direct method of calibration (Ragin, 2008), then create a truth table following the procedure developed by Rihoux and Ragin (2009, ch. 5). The truth table is shown in Appendix . Grouping the bills with common set memberships results in 16 configurations, 1 out of which is contradictory: only six out of the seven 1913 bills restricting New Jersey's corporate law passed. Because observers such as Sackett (1914) consider the overall reform passed and following (Amenta et al., 1992, p. 330) I recode it as passing to follow the main tendency in the configuration.

Outcome	Configurations	Common
Anti-incumbent	ec * pai * DM * eai EC * pai * dm * EAI	pai
Incumbent-neutral	ec * pai * dm * eai ec * PAI * dm * EAI ec * pai * DM * EAI EC * PAI * DM * EAI	

Table B.1: Conditions Leading to Institutional Change, New Jersey Corporate Law 1846-1913. (*) indicates Boolean AND, (+) Boolean OR. Lowercase indicates absence of condition. $N = 20$ for anti-incumbent outcome, $N = 8$ for incumbent-neutral outcome.

Table B.1 shows the conditions under which attempts to change New Jersey's corporate law succeeded. The notation follows QCA conventions. The presence of a condition is indicated by uppercase letters, the absence by lowercase letters. A plus (+) means "or" and

an asterisk (*) means "and." For example, the formula $\text{pai} * \text{DM} * \text{eai}$ reads an absence of political incumbent investment, a presence of Democratic majority, and an absence of economic incumbent investment.

The first two rows are the paths to change that runs counter to the interests of the economic incumbent. Such change happens either when there is no economic challenger, political and economic incumbents are not invested, and there is a Democratic majority, or when there is an economic challenger, no political incumbent investment and Democratic majority, but economic incumbents are invested. The absence of political incumbent investment is the common causal condition.

The remaining rows show the four paths to change that is either positive or neutral with respect to economic incumbent actors. Such change happens when there is no economic challenger, no political incumbent investment, no Democratic majority and no economic incumbent investment; when there is no economic challenger, no democratic majority and political and economic incumbents are invested; when there is no economic challenger, no political incumbent investment, but Democratic majority and economic incumbent investment; or when there is an economic challenger, political and economic incumbents are invested, and there is a Democratic majority. There is no common path to pro- or incumbent neutral law changes. The many causal paths to incumbent-neutral or positive change is implied in the fact that no such bills failed, and is commensurate with the view in existing literature that state Legislatures gave corporations what they wanted (Fligstein, 1990). It is also to be expected given that the interests surrounding incumbent-neutral or positive law changes were less well-formed. The conclusion is thus that anti-incumbent institutional change can happen when political actors are not invested in the institution. This analysis both confirms and refines the incumbent investment model. It shows that once an institution is established with benefiting incumbents, it will only change once the political actors are no longer invested in it. Here the differences among political parties matters less than the common interests of incumbent politicians to maintain revenues and the political

advantages they confer.

B.1.1 Truth Table for Qualitative Comparative Analysis

Explanatory Measures					Outcome			
AI	EC	PAI	DM	EAI	Bills (N)	Passed	Failed	Consistency
0	1	1	1	1	1	1	0	1.00
1	0	1	1	1	2	0	2	0.15
1	0	0	1	1	2	0	2	0.16
0	0	0	1	1	3	3	0	1.00
1	0	1	0	1	1	0	1	0.21
0	0	1	0	1	3	3	0	1.00
1	1	0	0	1	1	1	0	1.00
1	0	0	1	0	7	7	0	0.85
1	0	1	0	0	4	0	4	0.11
1	0	0	0	0	3	1	2	0.38
0	0	0	0	0	1	1	0	1.00

Table B.2: Truth Table for Configurations. AI=Anti-incumbent, EC=Economic challenger, PAI=Political incumbent investment, DM=Democratic majority, EAI=Economic incumbent investment. $N = 28$.

Appendix C

Descriptive Statistics and Correlations for 1888 Votes

	Minimum	Maximum	Median	Mean	Standard Deviation
Consistency	0.00	5.00	1.00	1.43	1.28
Republican	0.00	1.00	1.00	0.62	0.49
Population	-0.62	0.70	-0.27	-0.00	0.50
Tenure	0.00	5.00	0.00	0.78	1.39
Lawyer	0.00	1.00	0.00	0.25	0.44
Businessman	0.00	1.00	0.00	0.32	0.47

Table C.1: Determinants of Voting Consistency: Descriptive Statistics.

	1	2	3	4	5	6
1: Consistency						
2: Republican	0.43					
3: Population	-0.13	0.08				
4: Tenure	-0.22	-0.10	-0.02			
5: Lawyer	0.32	0.14	0.12	0.01		
6: Businessman	0.02	0.02	-0.03	-0.02	-0.39	

Table C.2: Determinants of Voting Consistency: Correlations.

Appendix D

Alternative Operationalization of New Jersey Revenues

Figure D.1 shows both the longer trends and short-term fluctuations in the share of total revenues provided by the current corporate law. The cases of institutional change are far enough apart in time that revenue share differences are not due to these short-term fluctuations. To measure political incumbents' investment in the current law using the yearly change in revenue share, I smooth the revenue data using a local regression to remove these short-term fluctuations that would otherwise bias the yearly changes. To ensure that the results do not depend on how much the raw data are smoothed, I use regressions with several specifications. These are shown overlaid the raw data in Figure D.1.

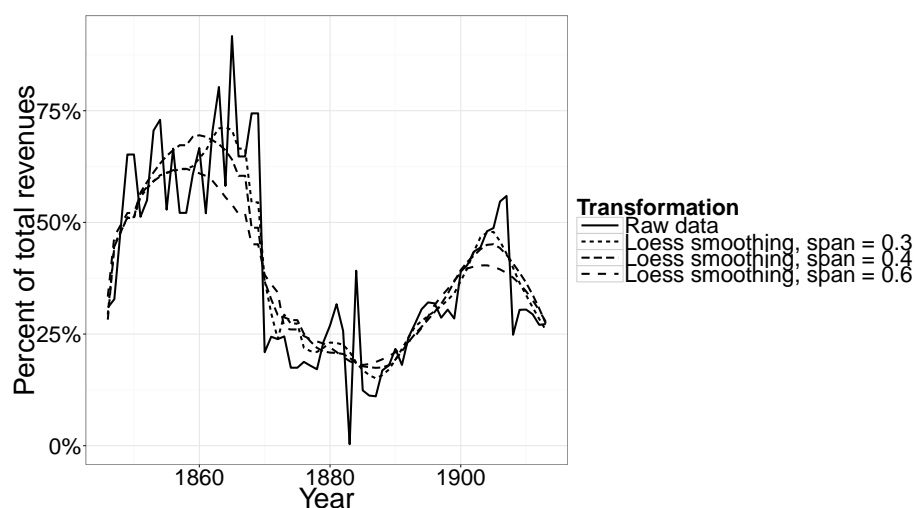


Figure D.1: Percent of total revenues provided by current corporate law, raw data and loess smoothing.)

Crosstabulating the passage of bills with whether revenues from the current corporate law were increasing or not gives very similar results as when crosstabulating with whether the revenues from the current corporate law were high or not. Anti-incumbent bills did not pass when revenues from the existing corporate law were increasing. The only exception is the 1873 general railroad law, which, when using a smoothing span of 0.3 passes despite the revenue from the associated corporate law increasing. Figure D.1 shows that this increase is likely an artifact, compared to the longer-term decline. The results for the incumbent-positive or neutral bills are the same for changes in revenues as the level of revenues.

The qualitative comparative analysis of the anti-incumbent bills using the rate of change in revenues provided by the current corporate law are the same as those using the share of revenues. To capture empirically occurring clusterings, I assign cases with more than 1.5 percentage point increase as fully in, more than a 1.9 percentage point decrease as fully out, and zero change as the crossover point. The analysis using both the level of and yearly change in revenues provided by the current law, finds that the common pathway to anti-incumbent change is low and decreasing revenues.

Table D.1 shows the results of the qualitative comparative analysis of anti-incumbent and incumbent-neutral change, using only the revenue share (PAI), the yearly change in revenue share (PAI.DIFF), and both the revenue share and the change in revenue share (PAI, PAI.DIFF) to operationalize the investment of political actors. The other conditions are the same as those used in the other qualitative comparative analysis (presence of economic challenger, EC; economic actors' investment, EAI; and size of Democratic majority, DM). The results for anti-incumbent change are the same across operationalizations of political incumbent investment: lack of political incumbent investment is the common condition uniting the paths to anti-incumbent change. There is no common configuration of conditions that leads to incumbent-neutral change in any of the operationalizations of political incumbent investment.

Outcome	Condition	Configurations	Common
Anti-incumbent	PAI	ec * DM * eai * pai EC * dm * EAI * pai	pai EC * dm * EAI * pai.diff
Anti-incumbent	PAI.DIFF	EC * dm * EAI * pai.diff	
Anti-incumbent	PAI, PAI.DIFF	ec * DM * eai * pai * pai.diff EC * dm * EAI * pai * pai.diff	pai * pai.diff
Incumbent-neutral	PAI	ec * dm * eai * pai ec * DM * EAI * pai ec * dm * EAI * PAI	
Incumbent-neutral	PAI.DIFF	EC * DM * EAI * PAI ec * dm * EAI	
Incumbent-neutral	PAI, PAI.DIFF	ec * dm * pai.diff DM * EAI * PAI.DIFF	
Incumbent-neutral	PAI, PAI.DIFF	ec * dm * EAI * PAI ec * dm * eai * pai * pai.diff ec * DM * EAI * pai * PAI.DIFF EC * DM * EAI * PAI * PAI.DIFF	

Table D.1: Conditions Leading to Institutional Change, New Jersey Corporate Law 1846-1913. (*) indicates Boolean AND, (+) Boolean OR. Lowercase indicates absence of condition. $N = 20$ for anti-incumbent outcome, $N = 8$ for incumbent-neutral outcome.

Appendix E

Descriptive Statistics for Diffusion

Regressions

E.1 Antitrust

	N	Mean	SD	Min	Max
Antitrust law	822.00	0.07	0.25	0.00	1.00
Republican control	822.00	1.74	1.32	0.00	3.00
Population (logged)	822.00	-0.14	1.12	-3.16	2.17
Farms per 100 capita	822.00	7.09	3.38	0.85	15.25
Grange families per 1000 capita	822.00	3.20	7.89	0.00	58.67
Profit	822.00	0.29	0.07	0.16	0.73
Firm size (logged capital)	822.00	12.47	0.71	10.48	14.57
Corporate tax share (%)	822.00	14.31	19.25	0.00	79.90
Neighbors adopting outcome	822.00	0.48	0.27	0.00	1.33
Recession	822.00	0.73	0.44	0.00	1.00

Table E.1: Descriptive Statistics for Antitrust Analyses

	1	2	3	4	5	6	7	8	9	10
1: Antitrust law		-0.09	0.14	0.16	-0.03	0.07	-0.06	-0.06	0.18	-0.06
2: Republican control			-0.02	-0.30	0.26	-0.11	0.24	0.15	-0.19	-0.01
3: Population (logged)				0.02	-0.10	0.12	0.09	0.32	0.24	-0.01
4: Farms per 100 capita					-0.03	0.21	-0.64	-0.47	0.49	-0.01
5: Grange families per 1000 capita						-0.31	0.23	-0.03	-0.13	-0.01
6: Profit							-0.56	-0.26	0.13	-0.12
7: Firm size (logged capital)								0.43	-0.30	0.15
8: Corporate tax share (%)									-0.10	-0.01
9: Neighbors adopting outcome										0.00
10: Recession										

Table E.2: Correlations for Antitrust Analyses

E.2 Stock Ownership

	N	Mean	SD	Min	Max
Stock ownership law	933.00	0.03	0.17	0.00	1.00
Farms per 100 capita	933.00	7.90	3.34	0.85	15.27
Grange families per 1000 capita	933.00	2.35	6.13	0.00	43.57
Fixed costs	933.00	0.04	0.01	0.02	0.10
Firm size (logged capital)	933.00	12.43	0.67	10.48	14.57
Corporate tax share (%)	933.00	9.73	15.19	0.00	79.90

Table E.3: Descriptive Statistics for Stock Ownership Analyses

	1	2	3	4	5	6
1: Stock ownership law		-0.05	0.02	0.06	0.04	0.13
2: Farms per 100 capita			-0.10	-0.11	-0.54	-0.42
3: Grange families per 1000 capita				0.18	0.23	0.05
4: Fixed costs					0.50	0.17
5: Firm size (logged capital)						0.27
6: Corporate tax share (%)						

Table E.4: Correlations for Stock Ownership Analyses

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