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Giocoli, Nicola

University of Pisa, Department of Economics

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Nicola Giocoli[*]

Department of Economics, University of Pisa

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Introduction

It is rather well known that most late 19th-century US economists gave a rather cool welcome to the Sherman Act (1890) and, though less harshly, to the Clayton and FTC Acts (1914).[1] A large literature has identified several explanations for this surprising attitude, calling into play the relation between big business and competition, a non-neoclassical notion of competition and a weak understanding of anti-competitive practices. Much less investigated is the reaction of *British* economists to the passing of antitrust statutes in the US. What we know is simply that none of them (including the top dog, Alfred Marshall) championed the adoption of a law-based competition policy during the three decades (1890-1920) of most intense antitrust debates in the US. The earliest competition law in the UK will only came in 1948, following WWII. The historiographical question then arises whether the British economists' reaction to the Sherman, Clayton and FTC Acts may account for this delay. Alternatively, we may ask whether the British economists' failure to push for a UK version of the Sherman act was due to their understanding that the structural differences between British and American economy made antitrust law less urgent on this side of the Atlantic.

The position of three prominent British economists will be examined in this paper: H.S. Foxwell, D.H. MacGregor, and, of course, Alfred Marshall – the latter in two moments at the extremes of

[*] E-mail: giocoli@mail.jus.unipi.it The financial contribution of the MIUR – PRIN "Contracts, Markets and Competition in English Economists from Marshall and Edgeworth to Coase. At the Origins of the Economic Analysis of Law" is gratefully acknowledged.

[1] See Stigler 1982.

our period, 1890 and 1919. It will turn out that they all shared with their American colleagues a theoretical and operational scepticism about the government and judiciary interference with the free working of markets. They also believed that British industrial structure and business habits were so different from those in the US that the urge of interfering with markets in order to preserve competition was much weaker.

Economists on both sides of the Atlantic had much in common in their reflections about competition policy. First of all, they all endorsed a dynamic, process-based view of competition. Like the Classics before them, these economists still conceived of competition as a specific pattern of behaviour – a business activity, not a static market condition. None of them considered the trust-and-cartel problem as a matter of freedom from excessive market power. The expression "free market" still meant to them – again, like to the Classics – a market free from State interference, not a market where no firm had the power to set the price. Moreover, they all considered the vertical dimension of competition – namely, the competition between the seller and the buyer – to be at least as important as the horizontal dimension – namely, the competition between a firm and its rivals. "To compete" still meant to them, first and foremost, "to sell high and buy cheap".

The rapid pace of industrial change in Britain and the US caused a departure from Classical ideas. The emergence of large scale business, with enormous investments in fixed capital, put at centre stage an issue that did not feature in Classical accounts, the relation between business size and competition. Size meant scale economies and increasing returns (IRS), which in turn led either to monopolization or to so brutal a competitive process that combination in its various forms (trusts, cartels, mergers, etc.) seemed the only available self-defence for businesses. Late 19th-century economists had therefore to reconcile their Classical notion of competition with the powerful tendency to concentration in the real economy.

Finally, these economists shared in various degrees (sometimes only as a romantic regret for an idealized past) the notion of a "right to fair profit". For both ethical and economic reasons, they believed that a businessman who behaved honestly and who spent the due amount of effort in his activity was entitled to earn a normal return on his investment. The ethical reasons came from the old Millian mantra that custom was as important as competition for the setting of prices, as well as from the moral refusal of cut-throat competition against your peers. In the US the refusal was epitomized by the Jeffersonian ideal of an economy made of "small dealers and worthy men"; in Britain it was embodied by "the gentleman's way" of doing business. The economic reasons were more mundane. Competition need be restrained as a means to protect the profitability of the huge fixed investments characterizing modern industry. Absent adequate returns, there would be no incentive to perform the investments in the first place. The economic side of the "right of fair profit" featured prominently in the Common Law on both sides of the Atlantic. The principle long established by courts was that, within a liberal system of generalized freedom to contract, a businessman had the right to obtain a return for any activity (say, a contract in restraint of trade) which did not cause offense to the law nor violated anyone else's rights – that is, regardless of what the activity's eventual consequences might be on the working of the market.

In sum, at the turn of the 20th century American and British economists struggled to reconcile a dynamic view of competition and a Classical suspicion towards government interference with free markets with a changing industrial structure, the spread of large business and the "right to fair profit". How this reconciliation was achieved by three major British economists, and the impact it had on their views about the pros and cons of US antitrust statutes, is the subject of the following pages. Yet, before examining their endeavour, we need to outline the corresponding positions of their American colleagues.

§1. US economists and the Sherman Act[2]

At the turn of the 20th century US economists found themselves in a new era. Externally, they were facing the rapid growth and transformation of industrial forces. A world where big business had an ever increasing role, with its enormous investments in fixed capital, large scale industrial processes and powerful increasing returns. Internally, they were caught in a period of theoretical transition between the Classical approach and the rising Marginalist school. Coping with both novelties forced them to undertake a difficult redefinition of the meaning of competition. As remarked by Mary Morgan, the difficulty of this task may explain the multi-faceted, sometimes even contradictory, characterizations of the notion of competition US economists offered in a relatively short time span, from the mid-1880s to the outbreak of WWI (Morgan 1993). A few common traits may nonetheless be singled out.

First, they all started from a Classical notion of competition. In Classical economics competition meant market behaviour, i.e., the actions and reactions of sellers and buyers in the marketplace.[3]

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[2] This section draws on a vast literature. See, among many others, Peterson 1957; McNulty 1967, 1968; Stigler 1982; DiLorenzo & High 1988; Williams 1990; Backhouse 1991; Morgan 1993; Machovec 1995.

The analytical function of competition within the Classical "model" was to bring market price to its normal level, eliminating both excess profits and unsatisfied wants. For Smith and the other Classics, competition was a process leading to certain predicted results – a price-determining force which operated within the market, but did not coincide with it. Competition was clearly not conceived of as a market situation or state, like in the post-1930s neoclassical approach.

The solution of the basic allocation problem was independent in Classical economics of the market type and thus of specific structural assumptions about competition. In the modern sense of the term, it would perhaps be better to say that the Classics did not deal with "competition", but just with the price mechanism (see Peterson 1957). In order for this mechanism to work, the only requirement was a sufficient degree of competition between buyers and sellers, i.e., of their freedom to act and react. As remarked by Paul McNulty, the concept of competition entered economics as a behaviour consisting of a series of actions, like undercutting or bidding up prices, entering a market, etc., that later neoclassical economists would consider "monopolistic". The essence of classical competition was to undersell your rival; the power to set and cut prices was the main competitive weapon (McNulty 1968; also see Di Lorenzo & High 1988; Salvadori & Signorino 2011).

The process view of competition met troubles when applied to an economy like the US in the last two decades of the 19th century. Centred as it was on the exchange behaviour of buyers and sellers, the notion could not account for the internal processes within a firm, i.e., for all those activities aimed at finding the cheapest way to produce or the most efficient way to manage a business. The "internal" side of competition, which the Classical characterization somehow downplayed,[4] was crucial in the new industrial world. Alfred Chandler's path-breaking works on the history of US business have demonstrated that the search for cost-reducing methods within the firm was the main force behind the re-organization of US industry at the end of the 19th century (see e.g. Chandler 1977).

US economists struggled to fill the gap. Drawing upon the turbulent experience of US railroad industry, Arthur T. Hadley was among the first – and surely the most lucid – to argue that the existence of large sunk costs made conventional economics irrelevant to understanding the working of a given industry. He argued that, contrary to what Classical economists believed, the

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[3] To this "vertical" aspect of competition we may add the set of activity by which firms learned what and how to produce (see e.g. Machovec 1995, Ch.2), though it is far from obvious that this "internal" side of competitive behavior was as important for the Classics as the "vertical", exchange-based side. More on this below.

[4] See McNulty 1968. For a contrary view see Machovec 1995, Ch.4. The point is not of course whether Classical economists dealt with entrepreneurial behaviour – they obviously did. The real issue is whether they viewed such within-the-firm behaviour as an external competitive weapon.

mechanism of entry and exit in such industries could stabilize neither the market price, nor the return on investment around their normal level. Due to the enormous sunk costs, "the rate at which it pays [for capital] to come in is much higher than the rate at which it pays to go out." (Hadley 1886, 223). As a consequence, there was no normal limit to the "new" competition in the presence of large sunk costs. So huge was the loss suffered from stopping production and exiting the market production that firms preferred to fight until the end and could be even ready to sell below average variable cost (Hadley 1896).

The only possible outcomes for these industries were either that competition led to monopoly, and thus to the end of competition itself, or that firms would find an artificial, rather than natural, limit to competition by forming a combination or a cartel. Richard T. Ely famously remarked that competition in the presence of large fixed costs was self-destructing and *inevitably* led to monopoly (Ely 1888). The so-called "inevitability thesis" became a mantra for end-of-19th-century US economists. Among its main implications, the demise of a crucial corollary of the Classical view, namely, the notion that State interferences with the free working of the market – via franchises, tariffs, regulations, etc. – was the only possible source of monopoly power.

Yet, the inevitability thesis did not necessarily entail State intervention for preserving competition. Given decreasing costs and IRS, the higher market concentration, the better productive efficiency. Only big firms could achieve the required size to enjoy scale economies or invest into cost-saving production techniques. Moreover, monopolies, cartels and combinations were, at least in theory, always subject to the threat of potential competition. The notion that potential competition might constitute an effective check on monopoly power was among the major contributions by the best economist of the era, John Bates Clark.[5] Accordingly, most trusts were not real monopolies but, at best, only partial ones (quasi-monopolies), because they still had "[to] fear rivals, actual or potential". Taking into account that bigness fostered the adoption of more efficient, socially beneficial productive technologies, it was therefore inevitable to conclude that "[c]onsolidation without monopoly is favorable to progress" (Clark 1907, 534). The result held only if the trust did not block potential competition by using abnormal or unfair methods, like

[5] Clark 1901; 1904. The notion was forerun by George Gunton who argued that: "If the gates for the admission of new competitive capital are always open, the economic effect is substantially the same as if the new competitor were already there; the fact that he *may come* any day has essentially the same effect as if he *had* come, because to *keep him out* requires the same kind of influence that would be necessary to *drive him out*" (Gunton 1888, 403, original emphasis).

predatory pricing or boycotts. But apart from those cases, there was no need, in Clark's, as well as in most US economists', view, for a specific antitrust law.[6]

The "new" competition brought forward by the presence of huge sunk costs had another dire consequence, unaccounted for in the Classical view of competition. According to Clark (1886), competition in its old meaning was a "rivalry in service", i.e., a race to gain the customers' favor. Hence, it was never intended as an unbridled struggle and was always restrained by custom: as the *Palgrave*'s entry put it, "custom was the only hindrance to perfect competition". Custom meant, among other things, fair trading – and not just in a moral sense. In a market with several firms and free entry, competition was an impersonal activity, where each firm's lone concern was its relation to customers. Fairness and adherence to custom meant a "right to profit", i.e., a businessman's entitlement to a normal return on one's own capital, provided of course he behaved correctly in the marketplace. The possibility itself of misbehaving was indeed limited by the (usually small) firm's inability to exercise any form of market coercion upon its customers or rivals. In the US, the notions of fair trading and the "right to profit" were strictly related to the Jeffersonian ideal of an economy populated of small businessmen, none of whom capable of exercising a significant market power (see Peritz 1996, Ch.1).

This old world was being cancelled by the "new" competitive order. As Clark, Hadley, Ely and others recognized, the necessity to either protect or remunerate the huge investments in fixed capital had transformed impersonal competition into personal attack, the rivalry in service to customers into the deliberate effort to destroy a rival, custom-regulated competition into "cut-throat competition", another popular catch-word of late 19th-century debates. Cut-throat competition (also called "ruinous" or "excessive" competition) was negative for both the firms and the consumers. The former risked losing their investments, or at least having their profit margins, necessary to service their large fixed costs, severely squeezed. The latter risked forfeiting the benefits of technical progress in case the firms, for fear of the consequences of a price war, abstained from investing in the first place (see Fisher 1912, 331).

Destructive competition of this kind was the more intense, and costly, the bigger the stakes – and the stakes were always huge in the new, heavily capitalized industries.[7] Hence, the seemingly paradoxical conclusion that "the smaller the number of competitors, the more intense is

[6] The long-debated supposed change in Clark's opinion with respect to antitrust law may thus be easily explained as his evolution from the idea that these "abnormal and unfair" methods were quite rare to the awareness that they were so frequent that they required explicit statutory and judicial condemnation.

[7] The idea that the larger the share of fixed over variable capital, the riskier a business with respect to "sudden fluctuations in trade" was already in Ricardo, *Principles*, Ch.XIX.

competition" (Hadley 1896, 117). Yet the paradox was only apparent, given that the vertical notion of competition between buyers and sellers had been replaced by a horizontal – and often personal – struggle between rival firms. In the new order "to compete" meant, much more than before, to perform a series of specific business actions addressed at defeating one's own rivals. As we know, the latter behaviour could still be encompassed within the Classical notion of competition. Despite the deep transformation in the industrial structure, US economists could therefore remain faithful to their old idea of competition as a behavioural process.

Unfortunately, cut-throat competition was not the only option in a market with only a handful of firms. Combination offered an alternative devoid of its most ruinous consequences. The term covered a range of solutions, from contracts in restraint of trade to cartel-like collusion to mergers-to-monopoly. Cut-throat competition could thus lead to monopoly not only when only one firm survived a competitive war, but also as the outcome of any of the different forms a combination could take. As Clark put it, "Easy and tolerant competition is the antithesis of monopoly; the cut-throat process is the father of it." (Clark 1886, 120). Far from just being the product of government interference in the marketplace, as the Classics believed, monopoly seemed pretty ubiquitous in the new industrial era. It could emerge as the natural outcome in an industry characterized by enormous fixed costs, or as the end result of a costly competitive struggle, or as the smooth escape from competition itself, in the form of a trust, a cartel or a merger. Given the huge losses caused by ruinous competition in a context of heavily-capitalized businesses, US economists were not hostile, generally speaking, to the latter solution. Irving Fisher argued that combination was a legitimate form of self-defence for a firm's investment: "The rise of trusts, pools, and rate agreements is largely due to the necessity of protection from competition, precisely analogous to the protection given by patents and copyrights." (Fisher 1912, 331).

It should not come as a surprise that the Sherman Act, which somehow compelled firms to compete, could not be welcomed by most US economists. They did not see the rise of monopoly as a real threat to the functioning of the market: provided potential competition could work its magic, monopoly could even turn out beneficial on productive efficiency grounds.[8] For some of them – whom we may call the "corporatist economists" as in Perelman (2006, Ch.3) – the latter gains were so relevant that they greeted the monopolization process as a natural, inevitable and, above all, beneficial process. Others stuck to the Classical vision of market freedom as absence of restraints and State interferences and as complete liberty to contract – let's call them the

[8] This not only on account of larger scale economies, but also because big firms could enjoy the IRS generated by costly R&D activities or by the adoption of advanced managerial techniques.

"conventional economists". They accepted whatever outcome the spontaneous play of competitive forces might generate. Common Law should intervene only when a monopolist restrained someone else's freedom to contract, but apart from these cases no grounds existed for new antitrust statutes. In concrete, this meant that a contract in restraint of trade which had been freely entered by independent businesses should always be considered legal, regardless of a firm's size or power.

Most US economists supported just one kind of legislation, namely, that compelling the widest publicity of the monopolists' financial and accounting data, be they trusts, cartels or other combinations. Publicity could spread information about the profitability of a business to customers, rivals and the general public. This could help the rational calculation by potential entrants, thus fostering the working of potential competition, and could trigger the public opinion's contempt against a monopolist's misbehaviour.[9] Behind the proposal for a mild form of regulation, mainly publicity, a curious alliance was formed between corporatist and conventional economists: both groups rejected the prohibitions of the Sherman Act and thought that it was business power, not business size, which should raise concern. But power required at most *regulation*, not prohibition.[10]

The right to profit of "small dealers and honest men" was a crucial theme during the Congressional debates on the Sherman Act (see Peritz 1996, Ch.1). It became the catchword for a third policy view, that we may call the "populist" one. The populists often coincided with those "experts" (often non academics, like journalists, politicians, etc.: see Perelman 2006, Ch.3) who, like conventional economists, praised market forces for their desirable outcomes, but who, unlike the other groups, ascribed all marketplace evils to the abandonment of old style, "fair" competition. But if the markets' natural harmony had been disrupted by the rise of monopoly power, it was up to the State to restore it by contrasting such a rise. Hence, the populists were the only group which openly favoured the Sherman Act.

Apart from populist voices, the only major economist in favor of a tighter competition law was John Bates Clark who, in his early 20th-century works, supported the approval of a new antitrust statute. The statute should explicitly target those business practices which a typical monopolist or combination could undertake in order to hinder or neutralize potential competition. Clark's "new"

[9] That lack of information might constitute a source of monopoly power, and that publicity might make for it, was acknowledged in the 1902 *Report on Trusts and Combinations of US Industrial Commission*, authored by US economist Jeremiah Jenks.

[10] See e.g. Seligman 1909, 349. An interesting issue which cannot be touched here is whether US economists' preference for regulation over prohibition was, among other things, also a consequence of their newly acquired literacy in marginalist techniques and thus of their higher confidence in the possibility for the policy-maker to master, via the power of mathematics, the working of market forces.

view was founded upon a distinction between good and bad monopolies, the latter being those achieved or defended through unfair practices. He thought that the leading principle for antitrust law should be "keep the field open for competitors" (Clark 1907, 383) and that such a principle could be made effective only by prohibiting unfair and predatory business practices. Hence, as early as 1899, Clark listed the practices which law should expressly forbid. The list was to be eventually endorsed by US Congress in the 1914 Clayton and FTC Acts.

Notwithstanding its modernity,[11] even Clark's approach to antitrust reform retained the traditional notion of competition as a behaviour, not a state. Antitrust law was required precisely because a monopolist or a cartel might undertake some competitive actions which obstructed the possibility for other firms to undertake their own ones. In short, Clark was still within the boundaries of the Classical process view of competition. We may therefore conclude that none of the turn-of-the-century US economists conceived of competition as a 20th-century neoclassical economist would do, i.e., as a specific market structure whose welfare-maximizing outcomes antitrust law should be designed to protect.

§2. Competition in the British economy before 1920

A British quip at the turn of the 20th century claimed that Germany was the land of cartels, America the land of trusts and Britain the land of "gentlemen's agreements".[12] The joke captured the spread in British industry of loose vertical and horizontal agreements, aimed at regulating competition among rival firms. Due to those loose agreements, traditional family businesses and independent entrepreneurs could survive in the marketplace without having to surrender to either the excesses of US-style cut-throat competition or the tight guidelines of German-style cartels. The general attitude in British business was "live and let live" – an attitude which might even lead to the pensioning off at the other firms' expense of less efficient entrepreneurs! The agreements

[11] Both the idea of equating monopoly power with restrictions to entry (already in the early 19th-century British economist Samuel Bailey: see Backhouse 1991, 60-1) and that of focusing on business conducts, rather than static market structures, as the real sources of monopoly power were prescient of modern developments in competition economics. The latter idea (conduct as the source of monopoly) will be openly criticized by MacGregor 1906: see below. In 1912 Clark will argue in favour of a general prohibition of monopolizing practices, against his own previous view that the list of proscribed practices should be a close one.

[12] See Mercer 1995, Ch.2.

were usually managed by a secretary chosen by the participants and charged with the task of keeping the records and accounts.[13]

The British economists' views about competition law cannot be understood without taking into account the British business's habit to self-regulation. As I said in §1, support in the US for antitrust law descended from a blending of economic and moral arguments, such as the protection of republican values threatened by the economic disruption brought by cut-throat competition and the rise of powerful businesses. The mixture of ethics and economics was explicitly reject in Britain, where the values and ethos of the business class suffices to warrant self-restraint and where the adoption of free trade policies guaranteed that external competition would always dilute internal market power.

Even British courts were, to say the least, neutral to the fore-mentioned loose agreements. Despite the Common Law's generally negative attitude towards restrictive practices in business, the actual implementation of legal rules by late 19th-century courts amounted to a sort of benign neglect. The underlying doctrine was that contracts in restraint of trade (CROTs henceforth) were not unlawful but, at most, just *non-enforceable* between the parties, meaning that a party could not require that a CROT be enforced by a court whenever a dispute arose. Clearly, the doctrine was ineffective every time no such dispute occurred or whenever, as it was actually customary, the dispute was settled by arbitration. Moreover, following a sort of "rule of reason" they developed during the 1890s, courts stated that CROTs might even be legally enforceable when they were declared "reasonable both between the parties and in relation to the public interest".

The spread of vertical and horizontal agreements preserved the British economy from a US-style wave of mergers and consolidations. US federal courts interpreted the Sherman Act first and foremost as an anti-cartel, rather than anti-trust, statute and declared cartels and other kinds of restrictive agreements illegal. As a reaction, American firms replaced simple agreements with tighter forms of consolidation, including fully-fledged mergers. Thus, the earliest effect of the Sherman Act on the American economy was a faster growth of business giants and a higher concentration of monopoly power. British commentators – be they professional economists or specialized journalists – criticized such a paradoxical outcome. As a consequence, they refused any explicit legislation, while praising the local pattern of self-regulation and upper-class "fair play".

The joint action of openness to free trade (protective tariffs were historically nil, or almost nil), business self-regulation, favorable judicial interpretations and faith in the power of competition

[13] That is, with typical accountancy tasks. US-style combinations were on the contrary handled by lawyers and often ended in legal controversies. See Freyer 1992, Ch.1.

contributed to the general consensus, shared by scholars, businessmen, policy-makers and the public opinion, that neither the government's nor the courts' intervention were required to bolster competition and fight market power. Apart from those special industries which, as already noted by J.S. Mill,[14] were unsuited for competition and had therefore to be regulated (i.e., natural monopolies), free trade and "fair play" competition were deemed effective levelers of economic power.

The picture of a highly competitive economy is confirmed by historians of British business. Crafts (2011) remarks that at the beginning of the 20th century the share of the largest 100 British firms in manufacturing was only 15% of output, profit rates were less than 9%, price-cost margins were low and no restrictions hindered the international mobility of capital and goods. The overall performance of the British economy was quite good. Far from being a failure, as past economic historians had it, late Victorian economy thrived so much that by 1911 Britain was still ahead of its rivals in terms of total factor productivity. Competition law would hardly be felt as an urgent need.

Business historians have identified three phases in the British public opinion about the trust and combination problem at the turn of the 20th century.[15] The first period, from the late 1880s to the first merger wave in early 20th century, was characterized by the above-mentioned faith in free trade and the power of competition. Laissez-faire policies, rather than State intervention, were the proper remedy against business concentration. The report of the 1886 Royal Commission on the Depression of Trade and Industry emphasized that small firms led by innovative entrepreneurs were still essential to British economic prosperity. These firms' independence was best warranted by their belonging to loose business agreements.

The second period, from the early 20th century to WWI, witnessed an increasing favor for, and spread of, those loose agreements. They represented a reaction against the first merger wave at the turn of the century and, above all, against the failed "invasion" of the British economy by US industrial giants in the crucial shipping and tobacco industries. In 1909 a Royal Commission on Shipping Rings was formed to investigate the consequences of the system of "rings" or "conferences" (that is, cartels) in the shipping industry. The Commission was the first opportunity of an exhaustive inquiry into a potentially competitive industry.[16] The issue then arose of where to draw the line between the inevitable weakening of competitive forces caused by business agreements and the benefits of higher stability and the avoidance of cut-throat competition.

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[14] See Medema 2011, Ch.2

[15] See Freyer 1992, Chs. 2-3.

[16] Previous similar inquiries had only been concerned with natural monopolies, such as the railways or the street lights. On British shipping rings see Scott Morton 1997.

The Commission produced two reports.[17] Both concurred that the remedy against potential abuses of the conference system was full publicity of the agreements, to be achieved through their official registration with the Board of Trade. The majority explicitly rejected the proposal of a regulatory body like the one already existing for the railway industry. The minority partly dissented and emphasized that the conferences' real goal was the exclusion of competitors and preservation of high rates, rather than market stabilization. However, not even the minority report required more government intervention; on the contrary, by making direct reference to the poor record of US antitrust law, it expressed doubts as to whether a legislation against the conference system would be worth the cost of inevitable litigations and of the government's, and the court's, interference with such a complex industry.

A lone voice in the Commission spoke in favor of a US-style antitrust law. Economist David Barbour, noting the inconsistency between the minority's diagnosis and remedy, claimed that explicit government intervention was required. He thus suggested that "a more drastic, and probably more effective and simpler, remedy would be legislation on the lines of the Sherman Act". However, Barbour erred in a crucial passage of his analysis. He argued that uneven market power precluded the establishment of mutually advantageous agreements for all firms, big and small. The shipping rings' experience proved exactly the opposite, namely, that achieving a balance of interests through the negotiation of mutually beneficial anti-competitive agreements was not at all impossible– and the real reason behind British businesses' rejection of more invasive government policies.

Finally, in the post-WWI period a rationalization rhetoric emerged, calling for a re-organization of British industry to be achieved via consolidation, agreements, trade associations and, above all, a reduction of "wasteful" competition. The same collectivism and regimentation which had allegedly benefited both the German and the American wartime efforts had been advocated for the British economy in lieu of its traditional, family-based capitalism. Big business had been the main sponsor of the new system during the war. Accordingly, at the end of the war over 500 local or national trade or industry associations, exercising control over output and/or prices, were active throughout the British economy. Ever more frequently, one or two large firms enjoyed a near monopoly within a market, while smaller businesses could get along only through the establishment of horizontal and vertical price agreements.

[17] See Freyer 1992, Ch.3, for more details.

The rationalization rhetoric led to the appointment in 1918 of the Committee on Trusts, whose 1919 Report explicitly stated that combinations held "great possibilities of economical and efficient production and of improved distribution at lower cost". The Report,[18] including its most "scientific" part (authored by economist John Hilton), was clearly unconcerned about the rapid spread of associations and combines in the economy. It bluntly declared that the age of classical competition was over and claimed that combination was inevitable, so much so that the choice facing Britain was not anymore between free and restrained competition, but between loose associations and tighter consolidations.

The Committee did not neglect the potential abuses of private market power. Hilton openly dismissed the classical argument that "certain natural safeguards" (like potential competition) could effectively protect consumers from the exaction of extremely high prices. However, the "light of publicity" was once again considered "the sovereign antiseptic and the best of all policemen". American antitrust law was on the contrary ridiculed, especially in view of its paradoxical impact on the survival of small businesses. Beyond publicity, the main policy recommendation endorsed by the Committee's Conclusions was the creation of a trust and combination Department within the Board of Trade – a sort of administrative tribunal (*not*, note well, a regular court) with the power of investigating and vetting agreements.[19] The suggestion was somehow endorsed by the British government with the institution of the Standing Committee on Trusts, a watered down and short-lived (it ended in 1921) version of the permanent tribunal suggested by the Report.

This sketchy sequence of facts brings us back to the historiographical issue raised in the Introduction. What was the British professional economists' attitude with respect to antitrust? Were they themselves critical of the Sherman Act or did they support it? What was their opinion about the peculiar kind of consolidation in the British economy, i.e., the loose combinations among independent businessmen? What about the post-war rationalization rhetoric? It is to these questions that we now turn.

[18] Jones 1919 summarizes the Report. Also see Mercer 1995, Ch.3.

[19] In an Addendum to the Report, the Fabian members of the Committee (including S. Webb and J. Hobson), though basically agreeing with the Report's conclusions, advocated further government action. As a means to protect the community from the evils of private monopoly and, at the same time, grant workers and consumers a share of the benefits of improved industrial organization, they suggested socialization, i.e., that the monopolized services be performed either by cooperative societies or directly by public authorities.

§3. An early foray into competition issues: Foxwell at the British Association

We begin our mini-survey with a 1888 paper by Herbert S. Foxwell. There are two reasons for selecting it. First, because Foxwell, a prominent member of the English Historical School, can be taken to represent the School's position on the monopoly problem.[20] Second, that paper, read at the British Association, is one of the earliest forays into the issue by a British professional economist. Foxwell himself, returning to comment on the topic in 1917, will proudly claim: "I was perhaps the first English-speaking economist to put in a word in defence of business combinations" (Foxwell 1917, 325).

Foxwell's initial statement in 1888 was premised upon the Classical view of competition, but led him to a non-Classical conclusion: "It is in fact a mistake to suppose that a state of competition can be a final permanent state of stable equilibrium. […] The main function of competition is that of selection. It is an industrial war, more or less honourably carried on, leading to the more or less disguised supremacy, the commercial monopoly, of the victorious firm… […] From this point of view it is competition which is transitional; and monopoly presents itself, not as something accidental […] but as something more permanent, more fundamental, than competition itself." (Foxwell 1919 [1888], 264). Competition is a process, as the Classics said, but a process often leading to monopoly. Indeed, "…the more perfect the competition, the more certain and strong is the resulting monopoly." (ibid.).

Among the different kinds of monopoly listed by Foxwell, two are relevant here. He called them monopolies by efficiency and monopolies by combination (ibid., 267). The latter received little credit in the paper because he thought that inter-firm agreements were very difficult to establish and maintain. Hence, "…combination, as distinguished from amalgamation of interests [viz., fully fledged merger], is not a fruitful source of enduring monopolies." (ibid.). The case of *monopoly by efficiency* is much more relevant. Scale economies, the division of labour and the progress in transports and communications generate this kind of monopoly. We now know that Foxwell was wrong, given the later diffusion of loose combinations in the British economy, but at the time he delivered the paper the inevitable process of monopolization might still take one path or the other, i.e., either towards cartels and other agreements or towards mergers and large scale aggregations.[21]

[20] On Foxwell and the English historical school see Koot 1977.
[21] In 1917 Foxwell will credit his 1888 paper as being the first "defence of business combinations" among British economists. The claim is false, but understandable in view of the wider role played by combinations in 1910s economy.

What should the State do against such an inevitable process? Foxwell's policy advice stemmed once again from a Classical premise and a non-Classical conclusion: "It is very commonly assumed that competition exists wherever the State does not interfere. This is a very loose and misleading abuse of words. The mere absence of State interference has never given us competition in any real sense of the word. On the contrary, nothing has been more favourable to the growth of practical monopolies than the regime of laissez faire." (ibid., 269). A major revision was called forth at all levels, theoretical, legislative and political, because monopoly "seems to be nearly as significant a feature of our time as competition was at the time of Adam Smith". As a consequence, "the political economy and industrial legislation which suited the earlier period may require some adjustment or development in view of the new force." (ibid.). That the cradle of modern monopolies is competition itself rather than State privilege could not leave British public opinion unaffected: "…the temper of the public towards monopoly is sensibly changing. […] competition […] now comes in for popular odium; even monopoly, with its order and permanence, seems a welcome relief from the iron rule and terrible uncertainties of so-called free competition." (ibid., 270).[22] Laissez-faire represented no more a viable policy option: theoretically, it was false that laissez-faire warranted the absence of monopoly; politically, the public opinion's support for unrestrained competition had vanished.

Monopoly also brought considerable advantages "which suffice to explain its success, and to induce us to view that success with a certain degree of sympathy" (ibid.). Among the advantages feature the usual suspects plus some new entry: from scale-induced cost reductions to increased business stability, from the avoidance of wasteful competition to the most efficient use of business knowledge and skills, from the saving of useless advertisement expenditures to the higher quality guaranteed by product standardization and the higher respect for employees' rights warranted by the public visibility of big businesses (ibid., 270-1). Foxwell even claimed that, thanks to IRS, monopoly might lead to *lower* consumer prices, an argument which will also feature a couple of years later in Bk.V, Ch.xiv, §5 of Alfred Marshall's *Principles*.

Foxwell did not deny the monopolies' "powers of mischief", in terms of high prices, excessive political influence and endemic corruption. To avoid these dangers – which he thought might lead to the spread of anti-capitalistic views in the public opinion – traditional regulatory practices were the most advisable policy. Regulating the new "monopolies by efficiency" rested on two pillars:

[22] Again in 1917: "…it is beyond doubt that unregulated competition has destroyed more honest trade than all the combinations in the worlds. Even in England, legislation has been more occupied in restraining competition than monopoly. The social history of the nineteenth century has been one long protest, one great legislative reaction, against the mischiefs of unregulated competition." (Foxwell 1917, 325).

publicity and industry-specific control. First, "there should be every possible form of publicity in regard to all transactions affecting public interest… […] With due publicity, self-help would be far easier, and public opinion would come in to aid the right, and would largely dispense with the necessity for direct legal control" (ibid., 274-5). Second, "where control is found to be called for, it should be as far as possible delegated to local or trade bodies familiar with the practical details of the case, and subject only to a mild revision form the central authority" (ibid., 275). The latter, corporative pillar made any legislative intervention redundant, if not counterproductive: "Precise and rigid legislation should be avoided as far as possible. Most practical questions are questions of degree. These cannot well be dealt with by law. They are best refereed to commissions or other bodies with a large lay element, and partaking of the character of a jury" (ibid.). But it was the former pillar, publicity, that should carry most of the burden. Foxwell joined the list of British commentators who thought that the spread of information about monopoly practices would reduce the necessity of actual interventions: "… if [this tendency to monopoly] renders control more necessary, it also renders it more easy; and it is possible that such control as is required may be very largely secured by the simple expedient of publicity." (ibid., 276).

Four propositions summarize Foxwell's 1888 views which, as we said, we may take as representative of the whole English Historical School. First, monopoly is the inevitable outcome of competition in every industry where a large capital is required; second, monopoly is beneficial under several respects, including the elimination of that wasteful competition which public opinion so much despises; third, monopoly cannot self-regulate, lest its negative side prevails; fourth, regulation must be done administratively, i.e., away from courts, and at a local or industry-specific level, but first and foremost must be based on the widest publicity of monopolistic practices so that the public opinion may effectively curb possible abuses.

§4. In defence of British entrepreneurial spirit: Marshall's 1890 address

Our second specimen is Alfred Marshall's 1890 address to the Section F of the British Association, "Some aspects of competition". The selection is obvious, if only because the paper contains a very early reference to the newly approved Sherman Act.

Marshall aimed at explaining the change in post-1840s economists' "mental attitudes" with respect to competition. The change reflected the "conditions of time and place different from those in which" their previous "narrow and inelastic" doctrines were developed (Marshall 1890, 614). To highlight the new views about competition, Marshall chose the controversy between protectionism and free trade and the analysis of trusts and combinations, both presented in terms of the different policies followed in Britain and the US. The law of increasing returns connected the two themes on account of its different impact in the two economies. The pursuit of IRS justified American protectionism, but also led to concerns about excessive business concentration. Free trade reduced the exploitation of scale economies in Britain, but also made concentration a lesser issue (ibid., 621). Yet, the attitude towards free trade might only go so far in explaining the two countries' different concentration patterns and concerns about it. Marshall was aware that the main reason for these differences had be found elsewhere.

First came the diversity in "national character and [objective] conditions". The former affected the role of the individual in the economy: "the individual counts for much more in American than in English economic movements. […] In England, therefore, the dominant force is that of the average opinion of the business men, and the dominant form of association is that of the joint-stock company. But in America the dominant force is the restless energy and the versatile enterprise of a comparatively few very rich and able men who rejoice in that power of doing great things by great means that their wealth gives them,…" (ibid., 621-2). These "rich and able" American businessmen disliked the methods of a joint-stock company and prefer the "more mobile, more elastic, more adventurous, and often more aggressive" methods of combination, or *trust*. As to the objective conditions, Marshall remarked how monopolization was favoured in the US by the enormous distances, which made it possible the development of local monopolies, and by the power of railways (again because of sheer geography) over local industries (ibid., 622).

Like Foxwell 1888, also Marshall 1890 contains a version of the ruinous-competition-leads-to-monopoly story. Especially in the US, it was customary to remark that "in manufactures free competition favours the growth of large firms with large capitals and expensive plants" and that "when there is not enough work for all, these manufacturers will turn their bidding recklessly against one another, and will lower prices so far that the weaker of them will be killed out…" (ibid., 623). Bursts of cut-throat competition inevitably led the few surviving firms to be "irresistibly drawn to some of those many kind of combinations". As even the American Congress had recognized, "combination grows out of, and is the natural development of, competition", a competition that "burns so furiously as to smother itself in its own smoke" (ibid.).

Marshall did not subscribe entirely to this argument ("America's cry", as he called it). First of all, he thought that popular fears against monopoly had been exaggerated (ibid., 624). In some of the most conspicuous examples of nefarious business concentration – such as the oft-quoted case of Rockfeller's Standard Oil – a crucial role had been played by objectively monopolistic features (say, ownership of oil fields) and by the control of essential facilities (say, railways and pipelines). Moreover, he noted how trusts often broke down, following a suicidal tendency to set so high prices that it became profitable for their members to deviate from the agreement as well as for outside businesses to enter the market, not to mention the inevitable public opinion outrage which might even lead to new antitrust legislation (ibid.).

In the opening Chapter of the *Principles*, Marshall wrote that deliberate calculation by entrepreneurs – the fundamental character of modern economic life – might bring to either competition or combination, whatever happened to be more convenient (*Principles*, Bk.I, Ch.1, §4). The same point he made in the 1890 address: both competition and combination stemmed from rational calculation, not, as other economists claimed, from country-specific psychological attitudes (like, say, the German "spirit"). Economic rationality explained both the rise and the demise of combinations, but also accounted for their pursuing "moderation" as far as prices and other manifestations of business power were concerned. Many commentators recognized that "moderate" combinations are those which managed to survive and thrive, eventually shaping the structure of their own industries (Marshall 1890, 624-5).

A gulf still separated his analysis of "moderate" combinations from the claims in favour of "bold schemes for industrial reorganizations" by those whom Marshall called the "eulogists of Trusts". He was sceptical of the possibility that trusts might retain both "that individual vigour, elasticity, and originating force" typical of the separate firms and "that strength and economy which belong to a unified and centralised administration" (ibid., 625). Modern trusts, with their required pooling of revenues, aimed at eliminating most of the weaknesses undermining older, and simpler, forms of combinations – first of all, the incentive to deviate. However, by destroying the individual firm's incentive to pursue efficiency and good management, trusts led to severe inefficiencies which might even soak up the benefits of large scale production (ibid., 626). The long run tendency pointed therefore towards fully-fledged mergers, where individual firms would lose their identity and become branches of the big conglomerate.

Such a long run drift towards complete consolidation was also favoured by the law and the courts. The latter in particular seemed to adhere to an old, and mistaken, view of competition, namely, the idea of the antithetical nature of competition and combination. Marshall noted that in the Common Law "a use of the rights of property which would be 'combination in restraint of competition' if the ownership of the property were in many hands, is only a free use of the forms of competition when the property is all in a single hand" (ibid., 627). This groundless "restraint of competition" doctrine led to the prohibition of pooling and other looser aggregations, while it sanctioned complete consolidation obtained via mergers and acquisitions.

Marshall's argument may be summarized as follows. A tendency existed in the economy towards concentration due to scale economies and the likes, but this tendency would at worse lead to loose forms of combinations, pursuing "moderate" pricing behaviour, were it not for two forces pushing towards complete consolidation. These were, first, the anti-efficiency incentives originating from the pooling of revenues, and, second, the flawed Common Law doctrine of restraints of trade. As a consequence of the joint action of the two forces, the tendency towards largely innocuous combinations had turned into a drift towards dangerous industrial giants.

Armed with that argument, Marshall could tackle two core issues. First, the question of either prohibiting or allowing a business practice depending on whether it had been undertaken by a combination or by a single, possibly powerful, firm. What made the issue particular urgent was the novelty of the US Sherman Act, whose §2 (against monopolizing practices) extended to individual behaviour a prohibition which Common Law had until then applied only against combinations (ibid., 628). Marshall did not believe the Sherman Act would suffice to stop the trend of turning combinations into conglomerates; he thought the Act was, under this respect, just a display of legislative populism, with little effect on business behaviour (ibid.). His real concern was that the Act, much like the Common Law's traditional doctrine on combinations, lacked rigorous economic foundations.

This concern explains why he dedicated a whole section of his 1890 address to discuss the literature about the positive and negative effects of combinations. The "trust eulogists" claimed for instance that large combinations reduced socially wasteful marketing expenses and stabilized output and prices.[23] Marshall contested both points: on the one side, to gain and preserve its monopoly position the combination had to spend in wasteful bargaining activities an amount of resources comparable to competitive firms' marketing expensive; on the other, the record showed that the allegedly higher stability of monopolized industries had been paid in terms of more instability in other, related sectors (ibid., 632). Marshall also downplayed the most typical pro-

[23] Cf. Foxwell's 1888 list of "gains from monopoly" in the previous §.

trust argument, namely, the efficiency gains achieved via the full exploitation of scale economies. Field experience of productive processes enabled him to argue that: "a comparatively small capital will command all the economies that can be gained by production on a large scale; and it seems probable that in many industries […] a similar position of maximum economy will shortly be attained without any much further increase in size." (ibid.). Neither gigantic size nor combination were necessary conditions for achieving significant "reductions in the expenses of production".[24] On the contrary, large businesses and combinations seemed to incur into what he called "the main reason for regarding with some uneasiness any tendency there may be towards such consolidations of business" (ibid., 633).

He claimed that the oft-mentioned superior power of big business to perform expensive R&D "count for little in the long run in comparison with the superior inventive force of a multitude of small undertakers" (ibid.). The passage reveals the true reason behind Marshall's preference for a system of independent and competitive firms, namely, his belief that the latter could be more effective than the former in producing new knowledge. While giant firms and combinations usually exploited existing knowledge, small autonomous businessmen had the highest incentives to exert their utmost efforts to innovate: "large private firms [are] inferior to private businesses of a moderate size in that energy and resource, that restlessness and inventive power, which lead to the striking out of new paths." (ibid.). Competition, much better than combination, could enhance "the constant experiment by the ablest men for their several tasks, each trying to discover a new way in which to attain some important end" (ibid., 636). In modern jargon, they are called dynamic efficiency gains – to be distinguished from mere, size-related scale economies. According to Marshall, these were the gains that competition policy should defend and promote by limiting the power of trusts. Unfortunately, "the benefits which the world reaps from this originality are apt to be underrated", if only because "older economists, though fully conscious of them," had failed to underline their being among the most precious outcomes of a competitive economy (ibid., 633). The Classical process view of competition had become, in Marshall's hands, an instrument for the generation of dynamic efficiency gains – a "discovery view" of competition, so to speak.

The "discovery view" found its main implications in policy terms. Those economists "in whom the Anglo Saxon spirit is stronger"[25] would not fail to "exert themselves to the utmost to keep Government management within narrow limits", in order to preserve "the vital service which free competition renders to progress", that is, the individual freedom of discovery (ibid., 642). More

[24] Almost the same words will feature thirty years later in *Industry and Trade*: see below, §8.
[25] Marshall's polemic target were the Germany-influenced members of the Historical School and, probably, also the Socialists.

specifically, at issue were the limits of State interference with a firm's property rights (ibid., 629). Of the two alternatives on the table, State ownership/management and private ownership/management subject to State control, Marshall's preference was clearly for the latter for the simple reason that only private ownership could warrant the proper incentives to innovate. State control was however technically hard to implement: "more forethought and hard work are needed to arrange an effective public control over an undertaking than to put it boldly into the hands of a public department" (ibid., 630). Not surprisingly, he thought that the most important kind of control was exercised by neither the government nor the law. It was public opinion, if properly educated to the economic way of reasoning, which could exercise the greatest and quickest pressure against the abuses of monopolists (ibid., 638 and 642). Such an authoritative endorsement of "the new force of public opinion" would provide the rationale for the publicity mantra of so many antitrust proposals by turn-of-the-century British economists.

§5. Combination as a business method: MacGregor's very Marshallian analysis

Foxwell's and Marshall's addresses pre-dated the first merger wave in the British economy. Marshall's disciple, David H. MacGregor, published his Fellowship thesis for Trinity College, titled *Industrial Combination*, in 1906, when the merger mania reached climax.[26] The work aimed at exploiting the Marshallian definition of competition to demonstrate, first, that combinations should be considered a natural outcome of market forces, and, second, that their rise would not affect the general welfare, provided these same market forces were allowed to work freely.

As we read in the Introduction to the 1938 reprint, the book originated from Marshall's lectures about the relation between competition and monopoly – in particular from the idea that "normal competition was not perfect competition; that in all competition there was an element of monopoly" (MacGregor 1938 [1906], Introduction).[27] The monopolistic element of business behaviour consisted in the practices of contracting and bargaining. It followed that "[c]ompetition is the more perfect the less it has recourse to these [trade] practices". In normal – to be distinguished from perfect – competition firms make ample recourse to them. MacGregor also remarked that the "more modern [i.e., 1938] definition of perfect competition has an entirely

[26] On MacGregor see Lee 2008, who underlines the long-lasting success of the 1906 book.
[27] In the original Preface MacGregor also recognized his theoretical debt to American economists J.B. Clark and J. Jenks and to German antitrust scholar R. Liefmann.

different basis; it means that no single producer can affect the price, and this implies atomization of the supply" (ibid.). The difference between the new, neoclassical definition of perfect competition and the Marshallian, Classics-inspired definition was adamant to MacGregor, who harshly criticised the new approach for being "retrograde", "superseded" and capable of "obscuring" the relevant patterns of real world competition.

MacGregor began the book with a definition of industrial combination as "a method of economic organization by which a common control, of greater or less completeness, is exercised over a number of firms which either have operated hitherto, or could operate, independently." (ibid., 1). Characterizing combination as a result, rather than as a process, allowed him to encompass the whole range of monopolistic phenomena, like mergers, trusts, cartels or other looser agreements. It also brought the issue back within the boundaries of pure economic analysis, away from metaphysical accounts about national temperaments or American individualism.[28] Finally, if combination was just a new industrial method, a presumption existed that its general welfare effects – at least as far as productive efficiency was concerned – were similar to those of any other business innovation, that is, surely *positive* (ibid., 193).

The unit of industrial combination was identified in the Marshallian representative firm, i.e., "the self-contained establishment which alone, under modern conditions, has economic efficiency for the supply of goods […] the structure which is typical of that period of economic development, which has access to all of the normal economies of that period, and is of the size which is suited to their most efficient use" (ibid., 3). The definition was again crucial because it allowed MacGregor to dispose of the commonest explanation for the rise of combinations. Given that, by definition, the representative firm already produces at the maximum efficiency level, the driver of combinations could *not* be production on a larger scale: "All arguments for combination which depend only on an increase of the scale of production are irrelevant." (ibid, 4). The true economic rationale for combinations should therefore reside in business organization – more precisely, in the possibility of achieving further economies, different from purely dimensional ones, via the "adjustment of the relations" between already output-efficient firms. Examples were the gains from establishing a common control or from redirecting reciprocal transactions towards a

[28] See MacGregor's critique of British historicist Ashley: ibid., 139-140. It is difficult to disagree with MacGregor's remark that, were individualism the true cause of American trustification, how could we explain that trust actually suppressed the member firm's independency while cartels, which flourished in allegedly less individualistic Germany, effectively preserved it?

common interest.[29] The most important question to be asked thus became "whether combination may not be the 'representative method' of organization in the twentieth century" (ibid.).

Building on Marshallian premises, MacGregor could also get rid of another popular explanation, namely, the idea that combinations be the "industrial medicine, to heal the fever of the independent system" and avoid the turmoil of "*excessive* competition" (ibid., p.38, original emphasis). He thought the thesis was a *non sequitur* because its supporters never demonstrated the higher efficiency of combinations in an environment which *presupposed* the existence of either too much capital invested or too small a market. It might as well be possible that, under negative market conditions, Marshallian firms "prefer to combine rather than fight a long and losing battle for supremacy" (ibid., 39). But this solution made the problem of excess capital tougher, because the combination had now to compensate the members whose plants were required, for the sake of the common profitability, to reduce or shut down operation (ibid., 40).[30]

MacGregor denied that combination and competition were really opposed. His mantra that "[c]ombination is not monopoly" (ibid., 5) was used to stress that, while monopoly was a limiting case with no room left for competitive methods, a combination *had to* use competitive methods to exist and succeed: "No one who is acquainted with the policy of the Standard Oil Trust or the Westphalia Coal Cartel would be tempted to regard combination as the foe of competitive methods" (ibid., 6). Even when a combination reached a monopolistic situation, it still had to employ aggressive competitive methods in order to keep off potential competition: "the absence of competitors is the best proof of the force of competition" (ibid.). The biggest mistake was thus to believe that the "special methods" used by combinations were the negation of competition. Restating the Classical view of competition, he argued that: "A monopoly cannot rest on anything, but competing power, since *competition is not one of many economic forces, but a name for economic force*" (ibid., 6; emphasis added).

From here it was just a small step for MacGregor to defend combination as a natural phenomenon, much like competition. If Adam Smith's natural state of laissez faire amounted to the triumph of individual freedom, then the freedom to join a combination renouncing one's own business individuality should also be counted (ibid., 9). Contrary to what many believed,

[29] Later in the book MacGregor explained that, having by assumption already exhausted its internal economies, a representative firm could grow further only via external economies. Achieving the latter while preserving a firm's independence required an implicit or informal cooperation with other firms in some aspects of the business (like, say, general and trade-specific services or collective supplies). Combinations were simply a way to make explicit and more organized these, often pre-existing, independent methods of gaining external economies (ibid., 20). As he put it, "neither private interest nor Natural Selection will realize these economies so readily or effectively as combination." (ibid., 28).

[30] MacGregor mentioned here the British habit of "bribing" members of combinations out of their business: see above, §2.

competition did *not* coincide with independence: competitive methods belonged to every economic system and every kind of business organization. What the modern trend towards combination showed was just the intensification of the competitive struggle (ibid., 12). Accordingly, the combination method could survive only if it proved to be the fittest method, though the standard of fit was not, as J.B. Clark had claimed, that of efficiency alone, but rather the more comprehensive one of competitive strength (ibid., 13).

The competitive strength of a business, whatever its form or organization, depended on four general factors. The first was obviously its productive efficiency, but the other three were equally important: a business's bargaining strength in vertical relations,[31] its ability to avoid or mitigate trade risks and its use of "resources". By the latter term MacGregor meant "those forms of industrial strategy and tactics which a firm employs solely by its own exertions, and not through bargain" (ibid., 13-15).

MacGregor dedicated the rest of his book to show how combination methods might affect the four factors of competitive strength. Two features in his analysis deserve mention here. First, the ambiguous welfare effects of three of the four factors (productive efficiency being the only surely positive one[32]) and the fact that combination methods could affect them all raised doubts about the overall outcome of combinations. Their general welfare effect was therefore always uncertain, especially if their other alleged benefit, market stability, was also discounted because of its adverse impact on prices (ibid., 204).

The Appendix on fair price is also noteworthy. There MacGregor discussed the popular argument that combination could help avoid the direst consequences of excessive competition: economic chaos on the one side and a strain to market morality, by depriving the entrepreneur of his "right to profit", on the other (ibid., 108-112). He noted that, by refusing to condemn practices usually deemed "unfair" (such as exclusive dealing), English courts had sanctioned the right to use all lawful means to push one's own trade. Yet welfare effects, static and dynamic, rather than morality, were the proper yardstick for judging the fairness of a business practice. Thus, labelling as "unfair" output restriction agreements (which diminished static welfare) or the concerted protection of over-investment (which diverted resources from their most efficient uses) could obey that yardstick. Fair trade was, to MacGregor, whenever competition served the consumer. Any means used by a firm or combination to prevent rivals from accessing consumers should be

[31] MacGregor remarked that a business's horizontal bargaining strength with direct competitors depended on its vertical bargaining power with customers and suppliers (ibid., 14).

[32] And MacGregor knew that "combination is not as a rule primarily due to productive efficiency, but rather to reasons of defence or aggression" (ibid, 194).

condemned as unfair. English courts had therefore been mistaken in their "right to profit" doctrine. In modern jargon, they had considered trade as a zero-sum game, where each trader has the "right" to strive for the largest share of the given surplus, rather than as a positive-sum game, where competition increases total surplus.

MacGregor's book was not just about general principles. He dedicated Part II to explaining the specific causes and actual functioning of trusts and cartels in Britain, Germany and the US. In particular, by mixing legal, political and economic arguments, he offered a convincing explanation of why cartels had been more successful in Germany than in Britain and the US. However, it is Part III, dedicated to a comprehensive evaluation of the welfare effects of combination and to the discussion of policy proposals, which deserves our attention.

What role for the State with respect to combinations? MacGregor claimed that a preliminary issue should tackled, namely, whether monopolies and combinations really were the normal and inevitable outcome of modern business. If the answer was positive, if an inevitable tendency towards concentration did exist, then "the State places itself in an altogether untenable position by the enactment of laws against combination as such – laws, for instance, so general in their terms as the Sherman Act" (ibid., 231-2). It was not up to public authorities to prejudge the purely theoretical issue of the desirability and/or inevitability of one form or another of business organization. As MacGregor noted, whenever the State tries "to set up a standard of economic orthodoxy", disaster is looming. "[T]he utter failure of American laws to stop the development" of combinations corroborated this point. Here MacGregor quoted the "epitaph of such unsystematic procedure", written by the 1902 American Industrial Commission. Reflecting on the implicit incentive to tighter forms of concentration provided by the Sherman Act, the Commission declared that "the strongest forms of combination appear to have been fostered by laws intended to prevent them" (ibid., 232).

The record of US antitrust law had been miserable: "To attach a stigma to what may be a normal evolute is to render the worst service to industry; to attach it to the outcome of artificial conditions is less logical than to operate on these conditions" (ibid., 233). MacGregor's anathema also included proposed legislation directed at attacking specific business practices. The evolution of business methods was simply too fast for law and courts to keep pace. Practices such as price discrimination and exclusive dealing, which authors like J.B. Clark considered "unfair" (i.e., against economic efficiency), should more properly be taken as symptoms, rather than source, of monopoly power. The right policy was to address the source (by, say, reducing or eliminating trade tariffs), not the symptoms.[33]

The State's duty should therefore be just to ensure "that the [combination] movement will owe its success or failure to the action of the openest competition with other methods" (ibid., 235). If trust and cartels eventually succeeded in such an open contest, that would "not mean that the era of competition is over; but rather that a new form of organization has greater competitive power than an old one" (ibid.). This conclusion extended, in a very Marshallian way, the notion of competitive tools from the usual "price-and-capacity" pair to entire methods of business organization. The State should only care that competition between alternative methods took place in a level playing field. More concretely, the policy-maker should intervene on those sources of monopolistic powers under its direct control, first and foremost trade tariffs.

MacGregor's approach of viewing combination as a market phenomenon was reiterated in the book's conclusion: "The combinations will stay according as they can compete, as the general sense of the community approves their methods of competition, and foresees in the future no power upon prices that is mainly resourceful and strategic." (ibid, 240). Thus, the best policy advice was "… to avoid passion, and prejudgment, and the terrorism of mere size; to perceive that the extortion of a few strong producers can be remedied otherwise than by drastic interference with economic tendencies." (ibid., 241).

The question arises whether such a conclusion characterizes MacGregor as a mere speaker on behalf of his mentor Marshall or as an autonomous thinker. The gist of MacGregor's argument – that combinations were just a peculiar method of organizing business in a changing industrial world and that their success or failure depended on market forces, with no need of government or, worse, judicial intervention – might as well feature in Marshall's 1890 address. Yet, as I show in the next §, it would fit only partially within Marshall's *Industry and Trade*, a book which reflected another decade of deep transformations for the British economy.

[33] Clark's position was partly different in that, though he agreed that it was hard for courts to assess these and similar business practices, he believed the latter were the means through which monopoly power was becoming ubiquitous in the economy. As a consequence the law had to leave their assessment and control to special commissions formed by business experts (like the future Federal Trade Commission, established with the 1914 Clayton Act and inspired by Clark himself). On the differences between Clark and MacGregor on this point, see Williams 1990.

§6. Time for experts: Marshall's recipe for a new industrial era

Marshall returned to the combination problem in the second volume of his *Industry and Trade* (Marshall 1919). As we know from §2, in the three decades since his 1890 address the British economy had undergone a major transformation, including a merger wave at the turn of the century followed by a new attitude towards combinations during the war years. It is therefore hardly surprising that Marshall's views on the topic may have also changed, though the main innovation in his thought was triggered by an external event, the 1914 approval of the US Clayton and FTC Acts. However, in purely theoretical terms, the two Marshalls exhibit a strong continuity – even more so if we include MacGregor 1906 as a reliable account of his teacher's beliefs.

The analytical underpinnings of Marshall's discourse on trusts, cartels, associations and other forms of combination in volume II of *Industry and Trade* can be found in a crucial passage in the first volume, where he denied the existence of any sharp distinction between competition and monopoly, because "they shade into one another by imperceptible degrees" (Marshall 1919, Vol.I, 123). No necessary connection exists between economic freedom, a more or less intense competition and the spread of monopolies. Indeed, "the most malignant features of unscrupulous competition […] have been seen in the pursuit and maintenance of monopolistic control in industries which might retain an open market", for the obvious reason that monopolists stand to gain the most from the aggression, and eventual elimination, of a competitor, while truly competitive markets offer meagre prizes for winners (ibid., 124).

The monopolistic element in the economy is at the same time ubiquitous and partial, or temporary: "[e]very manufacturer, or other business man, has a plant, an organization, and a business connection, which put him in a position of advantage for his special work. He has no sort of permanent monopoly, because others can easily equip themselves in like manner. But for the time being he and other owners of factories of his class are in possession of a partial monopoly" (ibid., 135). Those combinations which occupy a large portion of Volume II are just one of the several possible methods by which businessmen may consolidate their partial monopoly.

Consider the opening sentences of the second volume: "The fiercest and cruelest forms of competition are found in markets which are no longer quite free, but have been already brought in some measure under monopolistic control. […] …though monopoly and free competition are ideally wide apart, yet in practice they shade into one another by imperceptible degrees […] …there is an element of monopoly in nearly all competitive business, […] …nearly all the monopolies, that are of any practical importance in the present age, hold much of their power by an uncertain tenure, so that they would lose it ere long, if they ignored the possibilities of competition, direct and indirect." (ibid., Vol.II, 1-2). Marshall's long list of case studies, drawn from British, German and US industries, rests on these premises. Three principles summarize them: *i*) competitive and monopolistic elements coexist in every business and every market; *ii*) the most intense competition takes place for achieving and extending monopolistic power; *iii*) any monopoly is intrinsically partial and temporary, being subject to potential competition.

From the latter point stems Marshall's first evaluation of the combination movement. The strength of monopolies could well become "a national danger" (ibid., 10), but the ever-increasing threat of potential competition and the habit of far-sighted businessmen to privilege the long over the short run significantly reduced the danger that monopolies could abuse their power and set very high prices (ibid., 3). Consistently with his own 1890 address, as well as with MacGregor's 1906 conclusions, he did not view the situation in the British economy as particularly worrying. His examples are illuminating: a combination could well be established to protect its members' right to a "fair profit" against the intrusion of competitors charging "unfairly low prices"; a monopolist could rationally charge a low, not short-run profit-maximizing price in order to launch a new product, increase sales and exploit scale economies (ibid., 8); two partial monopolists, situated at different stages of the production process, could merge in order to internalize the benefits of any efficiency improvement, to the eventual benefit of the general public (ibid., 18).[34]

Remarkably, Marshall dealt with the traditional arguments about combinations only after those caveats against a simplistic and overtly negative attitude.[35]. The two customary critiques were the alleged incompatibility of scale economies and competition and the different varieties of combination prevailing in US, Germany or Britain. As to the first, he downplayed the role of production economies in the current industrial phase, the main driver towards combination having become the economies in marketing: "The influence of technical economies on the expansion of the business unit tends to weaken after a certain size has been reached. […] In the present age the tasks of marketing offer ever increasing scope for vast aggregations of capital. These tasks will be found to give the keynote to the present phase of the development of trusts, and of cartels."

[34] This is a version of what is today known as the double marginalization argument for vertical integration by either merger or contract.

[35] As to the alleged increased stability of output and prices warranted by trusts, Marshall acknowledged that trusts could well "make for increased stability in the conditions of trade and industry", and that they could reduce "the wastes of competition and the strain of anxiety lest some unexpected move should largely falsify business expectations". However, he noted that this stability, at least in the US, had been "purchased at a heavy price", especially after that free capital whose abundance had always protected the general welfare much more effectively than sophisticated regulation had fallen under the control of financial conglomerates representing the very same interests of industrial trusts (ibid., 97-8).

(ibid., 76). He reiterated the point that he maximum of production economies could well be attained by firms of moderate size: “a capital very much less than that required to dominate the market will suffice to obtain every important advantage that belongs to production on a large scale. “ (ibid., 80).[36] Achieving the maximum efficiency in marketing tasks on the contrary required an “almost unlimited capital”. This circumstance pushed firms towards an “association with others engaged in the same industry” (ibid., 77).

That British public opinion had a more relaxed attitude towards combinations than the American one could be easily explained by the lesser recourse of British firms to aggressive competitive practices and by the green light given by Common Law courts to several kinds of restraints of trade which had been severely condemned in the US. Marshall made it clear that the first feature was specific of the British economy, on account of its peculiar mix of “gentlemen’s” business habits and extreme openness to foreign trade. A weaker trend towards trustification, as well as the spread of looser forms of associations (much looser than, say, German quasi-military cartels) had emerged: “…many industries […] are mainly controlled in Britain by firms, whose traditions go back for several generations, and which are therefore disinclined to sudden changes, and violent courses of strategy; while attempts to make an antisocial use of monopolistic strength in manufacture would generally be frustrated by the arrival of competitive foreign goods in British ports.” (ibid., 77). Differently from US and Germany, associations of producers depended in Britain on the participation of “worthy firms, that reckon costs of production on the basis of good solid work or well-tried methods and with well-tried plants.” Rather than pressing hard for the elimination of lagging firms, British associations took the weaker members’ costs as normal. The most efficient members could then earn hefty profits upon their lower costs while the association could boast that it was reasonably pricing at the level of normal costs (ibid., 149).[37]

The second argument – about the heterogeneity of combinations in the different countries – called into question what Marshall dubbed the paradox of antitrust law. In the US both the Common Law and, later, the Sherman Act had condemned business associations, but had left almost unaffected other aggregations of capital. While repressing temporary combinations in restraint of trade, the law had paid “little attention […] to the threatening power of permanent growth and fusions of great businesses” (ibid., 78). In Britain the courts’ attitude towards combinations had been even more lenient. Contracts in restraint of trade had never been

[36] Recall the similar argument in Marshall 1890 and MacGregor 1906.

[37] That prices be set by the association with an eye at the worst possible cost conditions was among the reasons why many British industries lagged behind their foreign rivals.

condemned as unlawful in general, but only as unfair in specific circumstances, for example when used by a powerful business to destroy its weaker rivals (ibid., 95). British courts had thus sanctioned even openly anti-competitive practices, such as contracts for exclusive dealing with deferred rebates, which had on the contrary been drastically repressed in the US (ibid., 151).

Marshall's analysis so far was very much in line with his 1890 address – or, if anything, with MacGregor 1906. Yet, in 1919, new times had come for the British economy. Traditional arguments about combinations now held less sway than before. Free trade was not anymore an undisputed dogma. The enhanced dependence on foreign supplies during the war and the augmented revenue need of the government pushed towards the imposition of import tariffs. Proposals had emerged that combinations for the regulation of prices should be officially sanctioned, and even encouraged, by the State (ibid., 82-3). Worse than that, the new mantra in British public opinion was that small businesses were out of place in the postwar era (ibid., 123).

Against these dangerous ideas Marshall raised his authoritative voice in the most original part of *Industry and Trade*. He ridiculed as a "parrot-wise" repetition – "all the more mischievous, because there is much important truth at the back of it." (ibid.) – the slogan that the modern industrial age belonged to large businesses. The combination movement had clearly favoured countries like Germany, whose industries had been organized on a semi-military basis. In the case of Britain similar gains would be achieved only "at the expense of the diminution of the spirit of free enterprise" (ibid.), "a priceless national asset" which had been the main driver behind British success (ibid. 124).

Marshall's defence of the entrepreneurial spirit of individual businessmen – by itself hardly a novelty in his thought – did not go unqualified. He acknowledged that individualism could lead to the neglect of opportunities of cooperation. The modern economy increasingly required "efforts in tasks that are needed for the proper development of industry, but are too large for a single business" (ibid.). His overall balance of the pros and cons of the combination movement centred on such a, typically British, mixing of individualism and cooperation. For example, "constructive cooperation" among independent business allowed the achievement of a standardization of production without requiring that all productive activities be placed under a common direction (ibid., 129). Hence, even small firms could specialize in the standardized production of specific components: "Standardization, specialization and thorough organization may enable a multitude of businesses of moderate size to attain every important efficiency and economy that at first sight appear to belong only to giant business." (ibid., 130). Against the claim that size was crucial for research and development activities because of their huge cost and of the impossibility to arrange them cooperatively (ibid.), Marshall countered that the claim only applied to specific industries, like steel and chemicals. Generally speaking, it remained true, in 1919 as in 1890, that "thought, initiative and knowledge are the most powerful implements of production" (ibid.) and that "the vaster a business, the greater is the danger that it will be dominated by routine" (ibid., 96). It seemed thus "probable that the total constructive activities of the nation will be neither as vigorous nor as freely exercised, as they would have been if nearly every establishment, large enough to avail itself of the full economies of massive production, had been under independent control" (ibid.).

Yet, the "new ideas" and material conditions of post-war industry did require something more concrete than an appeal to augment traditional British individualism with a cooperative spirit. Here, in the field of specific policy proposals, Marshall drew an important lesson from US antitrust experience – and the main difference between his 1890 address and *Industry and Trade*. Precisely because of the new business environment and of the new challenges raised by modern technology, any policy statement concerning the combination movement had to be based on a proper amount of information. Britain had therefore to imitate the US and establish the proper institutional settings for the collection and analysis of information about trusts, cartels and other forms of combination. America's aggressive antitrust action against several kinds of anticompetitive business practices rested on a massive amount of data and research. Despite each country's economic peculiarities, the American method "seem[ed] to offer guidance of high value to Britain", because of the "unrivalled thoroughness" of its studies on the combination problems (ibid., 121).[38]

What was then the gist of the "American method", which Marshall so much admired in the second decade of the 20th century? It rested on two pillars. On the one side, the attack against "unfair" methods of competition, that is, methods which narrowed the basis of competition itself. On the other, given the vagueness of the term "unfair", the organization of "systematic studies" on that issue, conducted by "permanent and authoritative Commissions", which could help courts in handling concrete cases (ibid., 79). Marshall endorsed both elements.

First, his general view of the goal of antitrust was, in 1919, more clear-cut than three decades earlier. He explicitly acknowledged that the goal should be *defending the competitors' right to compete*: "The law against malicious boycotting is akin to an anti-trust law: each aims at

[38] And because of the shared Common Law principles (ibid., 122).

preserving the right of well-behaved persons to make free use of the common highways of business" (ibid., 84). The law and the State should never hinder "the action of the great forces of economic evolution, even when they involve the destruction of old businesses.". They law should never be invoked to protect "incompetent competitors". What they should do was to intervene whenever "the trust sets itself to destroy a rival who is prepared to sell things of good quality at lower prices than the trust is charging for them elsewhere." (ibid., 85). This because "[t]he interest of the public requires that the rival should have a fair chance of developing his business."(ibid.) – in modern jargon, because it is the possibility of competition, carried on by efficient firms, which must be protected on account of its overall beneficial effects.

As to the second pillar of the "American method", Marshall claimed that: "The first place among unfair methods of competition denounced by antitrust laws is held by price discrimination, especially local price-cutting." (ibid., 84), that is, by what is today called predatory pricing.[39] He remarked that this kind of monopolistic strategy is "so definite that it can hardly evade the pursuit of *painstaking capable investigation* well supported by authority" (ibid., emphasis added). With the benefit of hindsight, we can smile at his optimism about an antitrust violation which has caused several headaches to 20th-century lawyers, scholars and law enforcers. Yet, what really matters is the implication Marshall drew from his remark, namely, that business practises like predatory pricing had "relatively little to fear from those milder and less penetrating forms of bureaucratic control which have hitherto sufficed for most of Britain needs." (ibid.). The ability to conduct *painstaking capable investigations* was required in Britain too. Hence, his call, reiterated in several places of *Industry and Trade* (see e.g. ibid., 155), for the intensification of research about combinations and for the establishment of a British version of the American FTC in the form of permanent inquiry commission on monopolistic practices.

To sum up, Marshall's 1919 plea for a substantial revision of British antitrust policy was based on both the *theoretical* notion that there did exist several business practices which were clearly anti-competitive and the *practical* advice that, in order to concretely identify these practices, antitrust law or government orders did not suffice. Absent an adequate level of information on which to base any intervention, neither a law nor even an autocratic power of the kind experienced by Germany could effectively curb the potential evils of powerful monopolies without risking the dissipation of their potential benefits. Before anything else, the British economy thus required a series of "organized, long continued authoritative studies", like the ones performed in

[39] Still today a predatory pricing violation may fall either under §2 of the Sherman Act (prohibiting monopolization) or under the general prohibition of price discrimination.

the US by the FTC and its predecessor, the American Bureau of Corporations (ibid., 118). These studies had to be conducted by "expert teams", where economists and business experts should feature prominently. Indeed, "the central fact" emerging from American experience was that "investigations in regard to the antisocial policies of trusts and cartels can be efficiently made only by a strong staff of men who give their whole time to the work." (ibid., 98).[40]

Conclusion

No general conclusion may be drawn from the small sample of works examined in the paper. The British economists' attitude towards the turn-of-20th-century combination movement, and specifically towards the possibility of extending to Britain an antitrust legislation akin to the American one, is a theme which deserves a more exhaustive analysis. Yet a few points may be underlined even at this preliminary stage.

First of all, from a purely history of thought viewpoint, all the economists considered here shared a classical view of competition as a dynamic process consisting of a series of business actions and reactions. None of them got even close to embrace a structural notion of monopoly and perfect competition like the one popularized by post-1930s neoclassical authors. Ironically, their main theoretical troubles arose precisely because, under modern industrial conditions, those business practices were generating an outcome – generalized monopoly power – faraway from that envisaged by classical economists.

Second, with the only exception of Royal Commission member David Barbour, no British economist declared himself explicitly in favour of a Brit-version of the Sherman Act. Surely none of the members of the Historical School who, like Foxwell, approved the spread of the combination movement which they saw as the inevitable outcome of the technological transformations in industrial processes. And surely none of the more conventional, laissez-faire economists, who, like Marshall and MacGregor, considered combinations as far from inevitable, being just another business method which, like all others, should be left free to stand or fall according to its own intrinsic efficiency and ability to withstand the test of the free market. In terms of the classification suggested in §1 between corporatist and pro-laissez faire US economists, it may be argued that

[40] He added that "In such work there is but little use for the special faculties of the lawyer" (ibid.). Under this respect, there was no real change in Marshall's thought, given that his 1890 scepticism about the Sherman Act was based on a distrust of the judiciary's ability to deal with difficult antitrust issues, while his 1919 praise of the Clayton and FTC Acts was founded on his faith in the "expert teams" called to investigate into the evolution of combinations and their business practices.

Foxwell belonged to the first group and Marshall and MacGregor to the second one. What matters most, no professional economist – in Britain as much as in the US – belonged to the third group, that of the populist supporters of an explicit antitrust legislation.

My third, and final, point qualifies the second one, at least as far as the top dog among the above-mentioned economists is concerned. While it may be true that the explicit laissez-faire position of his disciple MacGregor was in strong continuity with his 1890 address, and while even large parts of his own *Industry and Trade* did not go beyond the repetition of the same happy-go-lucky attitude towards trusts and cartels, it cannot be denied that in the 1919 book Alfred Marshall made a decisive step towards a more "modern" notion of competition policy. Drawing from the US experience the idea that several business practices existed which required explicit prohibition on account of their significant anti-competitive effects, he ended up endorsing a policy view akin to that embodied in the (J.B. Clark-inspired) Clayton and FTC Acts.

In principle, Marshall's key concept of "defending a competitor's right to compete" lent itself to two different interpretations: that of protecting *any* competitor, including inefficient ones, or that of protecting *only* those competitors whose existence in the marketplace could effectively be beneficial for social welfare. By eventually choosing the latter interpretation – which, as modern industrial economics has shown, amounts to identifying the goal of competition policy in the protection of the competitive process itself – Marshall concluded a path which had originated in his 1890 address and which had significantly progressed thanks to MacGregor's 1906 book (where several hints at this new policy notion might indeed be found). That he did so without making recourse to the post-1930s neoclassical notion of competition as a static market structure which lies at the foundation of most contemporary antitrust policy should be something to ponder for those industrial economists who claim that the classical dynamic view of competition is unsuited as a foundation for an effective competition policy.

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