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Democracy and Productivity: The Glass-Steagall Act and the Shifting Discourse of Financial Regulation

In the fall of 2008, the United States experienced a sudden financial crisis that plunged the financial sector into disarray, provoked the worst economic downturn since the Great Depression, and gave rise to an ongoing series of highly contentious debates over economic regulation. Two years later, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act, one of the largest overhauls of financial regulation in history. Throughout this debate, much of the discourse of financial reform revolved around concepts such as consumer protection, the problem of the “systemic risk” posed by the failure of financial institutions that could have vast negative spillover effects, and the clash between proponents and critics of expanded federal regulatory oversight.¹ But despite deep-seated public anger against financial firms and accusations of abusive practices of securitization and subprime mortgage lending, the public discourse of reform politics exhibited little evidence of more aggressive arguments against the concentrated economic and political

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power of big finance—arguments that had historically animated antitrust and financial reformers during the late nineteenth and early twentieth centuries.² This current era of ongoing debate over the role of the state in regulating the financial sector suggests an opportune moment to reexamine the language and arguments of an earlier era of financial regulatory reform: the debate around the Glass-Steagall Act of 1933.

Passed as part of the Banking Act of 1933,³ during the fabled Hundred Days session of Congress under Franklin Roosevelt, the Glass-Steagall Act consisted of several provisions that taken together mandated the separation of commercial and investment banking.⁴ The Banking Act also expanded permission for national banks to engage in “branch banking” by opening subsidiary branches in different localities—a practice that had long been restricted out of concern for unfavorable competitive pressures on local banks—and expanded the regulatory powers of the Federal Reserve. These three initiatives were colloquially known at the time as the “Glass bill,” named for its chief architect and proponent, Senator Carter Glass. By spring 1933, the Glass bill merged with legislation pushed by Henry Steagall in the House to create a deposit insurance system by establishing what is now the FDIC. With the added deposit insurance provisions, the combined Banking Act passed Congress easily in June 1933, signed into law by Franklin Roosevelt shortly thereafter.

As a substantive policy, the Glass-Steagall Act’s separation of commercial and investment banking was seen as crucial to preventing abuse by financial firms in selling securities—and its repeal in 1999 arguably contributed to the rise of complex derivatives and mortgage-backed securities that helped create the 2008 financial crisis. But the purpose of this article is not to evaluate the empirical evidence for or against Glass-Steagall as a policy choice; rather, it is to examine the nature of the debate around Glass-Steagall itself. What kinds of arguments were mobilized in favor and against the reform? What arguments carried the most political force at the time? And what can this story tell us about the current political debate we face today?

While most studies of the Glass-Steagall Act have focused primarily on the empirical case for and impact of the separation of commercial and investment banking,⁵ there are no studies focusing on the politics and discourse of the reform itself. Aside from a few focused histories of the Glass-Steagall Act,⁶ the Act is usually treated in passing in larger studies of financial reform or New Deal histories. Indeed, the Glass-Steagall Act itself was folded into and quickly supplanted by larger policy debates over initiatives such as deposit insurance, the creation of the Securities and Exchange Commission,

and more pitched political battles over economic planning and recovery in 1933–34.

The reform discourse in Congress surrounding Glass-Steagall parallels many of the debates in our current historical moment. Then, as now, policymakers struggled to conceptualize the precise nature of the economic challenge and how reforms ought to respond. Then, as now, the dominant narrative was primarily one where reforms were targeted toward promoting economic productivity and stability. Yet at the same time, there was a strong undercurrent of a more aggressive and moralized critique of financial greed and excessive power. This historical debate around Glass-Steagall from 1931 to 1933 is especially interesting because it captures an important shift in discourses of reform, from earlier Progressive Era reform discourses to the kinds of language that would mark the New Deal and postwar eras—a shift that would ultimately have profound consequences for more recent debates on financial regulation.

Where earlier Progressive Era reformers exhibited a deep-seated distrust of financial giants, whose concentrated economic and political power was seen as a threat to liberty and democracy, Glass-Steagall supporters made a conscious effort to avoid this moralized, democratic argument. Instead, the arguments for Glass-Steagall were couched in terms of promoting productive economic activity, specifically by curbing banker conflicts of interest, and excess unproductive speculation in risky assets. While some of these New Deal reformers shared with earlier generations of financial reformers a distrust of financial elites, they nevertheless sought to ground reform efforts in terms of maximizing economic productivity, rather than explicitly trying to curtail the power of financial sector giants. Further, this shift in conceptual approach was partly shaped by the New Dealers' commitment to building a national banking system and expanding federal regulatory power—commitments which themselves ran afoul of the concentration-of-power arguments marshaled by earlier generations of reformers.

The debate over Glass-Steagall thus pitched two competing reform narratives against one another. On the one hand, veterans of the Progressive and Populist movements appealed to earlier understandings of financial reform as being primarily a problem of *economic power* and *democratic accountability*: the task, for these reformers, was to curb the concentrated power of financial firms whose economic might and political influence posed a threat to the very ideals of liberty and democracy. Against this “democratic” argument for reform, policymakers like Glass and his supporters advanced a very different reform narrative, focusing not on the problem of financial firm power and the anxiety of democratic accountability, but rather on the goal of

economic productivity. This “technocratic” argument saw the task of reform as one of macroeconomic management, whose success could be seen primarily through its impact on economic growth and stability. In this technocratic approach, concerns of power, liberty, and democratic accountability took a back seat.

This clash between the democratic and technocratic discourses of reform built on a long-standing tension in Progressive Era discourse. But the Glass-Steagall episode represents a historical moment in which the technocratic understanding of the modern economy and the goals of policy were beginning to supplant the democratic framework of more radical reformers. The Glass-Steagall debate thus captures and exemplifies this broader shift in the New Deal era away from more robust discourses of progressive and democratic reform toward a discourse primarily concerned with economic growth, consumer welfare, and technocratic management.⁷

As will be argued below, this shift in financial reform discourse has had lasting repercussions. By shifting the motivation for financial regulation from one of power and accountability to one of economic productivity, the New Deal consolidated a conceptual framework that was ultimately more permissive of deregulatory arguments that arose in the 1980s and 1990s; so long as deregulation could be shown to be productivity-enhancing, there remained little justification for continued regulation. Indeed, this is exactly the argument advanced by a range of scholars and policymakers who sought to undo New Deal-era financial regulations on the grounds that deregulation would promote economic productivity, culminating in the repeal of the Glass-Steagall provision itself in the Financial Services Modernization Act in 1999. For example, many influential studies in the 1990s argued that the separation of commercial and investment banking had in fact become a barrier to economic productivity, and that combined banking functions would safely promote greater development and stability.⁸ At the same time, this discourse of productivity shaped efforts to revive financial regulations in 2009–10 following the recent financial crisis: it is notable that Barack Obama’s own argument for financial reform focused primarily on concerns of economic stability and productivity; gone was the moralized democratic language of more radical Progressive reformers.⁹ Arguably, this narrower conceptual approach to financial reform undercut several of the more aggressive reform proposals that were advanced, such as breaking up megabanks, instituting a stronger form of the ban on proprietary trading, or stronger leverage caps.¹⁰ One repercussion of the turn to a language of productivity during the Glass-Steagall debate was to erode inherited discourses of democratic accountability, to the detriment of future efforts at financial reform.

The rest of this article will proceed as follows. Part I offers an overview of the Glass-Steagall Act and the historical context of its passage. Part II then establishes the key break that proponents of Glass-Steagall made from inherited discourses of financial reform popularized by thinkers like Louis Brandeis, who emphasized regulation as a democratic check on concentrations of economic power. Part III describes in depth the clash between democratic and technocratic narratives of financial reform in the congressional debate around the Glass-Steagall Act from 1931 to its passage in 1933. Part IV then suggests that despite the shift in rhetoric by reformers to favor the language of economic productivity, these reformers relied in crucial ways on the background norms of democracy cultivated by earlier generations of Progressive reformers to generate support for the reforms themselves. This suggests that for all its apparent modernity, this newer discourse of economic productivity could not by itself offer a durable conceptual and discursive foundation for financial regulation. This lack of durability of the productivity argument became especially clear in the acceleration of deregulatory efforts in the late twentieth century. Finally, Part V concludes by examining in more detail the repercussions of this shift in discourse for more modern debates over financial regulation, including the deregulatory push in the 1980s and 1990s, and the more recent efforts at financial reform in 2009–10.

I. THE POLITICS OF GLASS-STEAGALL: A BRIEF HISTORY

The merging of commercial and investment banking undone by the Glass-Steagall Act was itself a relatively recent phenomenon. Traditionally, commercial and investment banking had been seen as incompatible businesses.¹¹ But the expansion of trust companies in the late nineteenth century into various financial services placed state and national banks under severe competitive pressure. State banks sought more permissive state charters to engage in investment banking. National banks remained prohibited from following suit, but instead developed the “affiliate system”—a process of setting up independent but fully owned affiliates under state charters for the purpose of engaging in investment banking. Although the practice was criticized by the Comptroller of the Currency in 1913, no action was taken, and by 1914 there was no longer any effective barrier between these two types of banking. Further, World War I helped more banks develop their securities businesses, as both banks and the public became accustomed to dealing in war bonds. These trends finally culminated in the 1927 McFadden Act, which formally recognized and thus supported the expansion of commercial banks

into investment banking. While Glass himself argued against the Act strongly, successful lobbying efforts by the American Bankers' Association (ABA) and the Investment Bankers' Association of America (IBAA) prevailed. Deregulation and rising stock prices from 1927–29 led to a boom of investment banking by commercial banks, until by the time of the stock market crash they had become the dominant force in investment banking.

In the immediate aftermath of the crash, Herbert Hoover instructed Congress to investigate the prospect of separating commercial and investment banking.¹² Glass spearheaded the effort in the Senate to devise new regulations, introducing early draft legislation in 1930, and holding hearings under the auspices of the Senate Banking and Currency Committee in early 1931.¹³ In January 1932, Glass introduced a revised bill that for the first time was specifically designed to separate securities affiliates from commercial banks. The financial sector, predictably, was strongly opposed to the legislation, as individual banks along with the ABA and the IBAA both decried the pending legislation as unfairly restrictive of banking practices, and a threat to the prospects for economic recovery. After further hearings and revisions, Glass introduced the final version of his bill on April 19, 1932. This bill focused on securities affiliates as the key catalyst for the collapse of the financial sector, proposing the outright separation of commercial from investment banking. But Hoover and much of Congress remained opposed to major financial regulatory reform, delaying further action on Glass's bill.

As events wore on in 1932, prospects for Glass's bill seemed to improve. The Pecora investigation into stock exchange practices revealed in public hearings the excesses of Wall Street bonuses, income tax evasion, and highly profitable but misrepresented securities sales and other problematic business practices. In the meantime, Glass helped draft the Democratic Party platform in 1932, inserting a provision calling for the regulation and separation of commercial and investment banking.¹⁴ FDR himself campaigned in part on a platform stressing the need for greater financial regulation, as he sought to build a coalition between progressives favorable to government regulation and rural populists traditionally fearful of Wall Street's economic and political dominance.¹⁵ Throughout the spring and summer of 1932, banks and influential business groups such as the New York Chamber of Commerce consistently mobilized to oppose the bill, meeting with members of Congress and writing telegrams from around the country castigating the bill as harmful to credit, recovery, and growth, and generally ill-advised in the midst of the recession. But the bill won support from the Federal Reserve, and from independent bankers who saw the separation of commercial and investment

banking as key to protecting the livelihood of the small local bank against the spread and growing dominance of large financial firms.¹⁶

In the interim between FDR's electoral victory and his inauguration, there was renewed movement behind the Glass bill. Hoover came around to supporting a version of the bill, especially after FDR's electoral victory convinced him that financial regulation of some kind was now inevitable. With Hoover's support, the Republican Senate resumed consideration of Glass's bill in a lame-duck session of Congress in January 1933. Hoover hoped to obtain passage of a more watered down bill before FDR and the newly elected Congress—with heavy Democratic majorities—could be sworn in.¹⁷ After a filibuster by Huey Long over the branch banking provisions, the Republican Senate passed S. 4412 on January 25, 1933. However, the bill did not achieve passage in the Democratic House, where debate was already beginning on prospects for deposit insurance.

With the arrival of a new Congress and a new administration in March 1933, the Glass bill moved very quickly toward passage. Much of the Hundred Days session of Congress centered around a mad dash to bolster the economy and stave off further financial collapse. Within a week of taking office, FDR pushed through the Emergency Banking Act, on March 9, 1933, extending the Reconstruction Finance Corporation started by Herbert Hoover in 1932 to provide loans to troubled banks, keeping them afloat. This initial emergency measure was then followed by more systemic regulatory reforms: the Truth in Securities Act (passed May 27), mandating new standards of publicity and transparency in securities disclosures, and the Banking Act itself on June 16.

The increasingly favorable climate for Glass-Steagall originated from a number of different sources. First, the escalation of bank failures up to 1933 created an increasing atmosphere of crisis and widespread grassroots pressure for aggressive action. Thousands of small rural banks had already failed even prior to 1929, but annual bank failures continued to rise, headlined by the collapse of the Bank of the United States, which constituted at the time the largest bank failure in history.¹⁸ By the spring of 1933, whole states were without functioning banking systems, and state governments took to declaring bank holidays to prevent further collapses, culminating in FDR's national bank holiday in March 1933. Meanwhile, the sensationalist revelations arising from the Pecora hearings further stoked public outrage. Third, the success of the bill was helped by the decision of Chase National Bank to voluntarily separate its investment affiliate from its commercial bank in early 1933. The final marriage of the Glass bill with Steagall's deposit insurance bill also helped secure bipartisan support for passage in the House.¹⁹ These factors—continuing

bank failures, revelations in the Pecora hearings, the impact of Chase's endorsement, and the combination with Steagall's deposit insurance plan in the larger bill—seem to have broken the financial sector's effective opposition to reform.²⁰

But what were the key arguments advanced by the supporters of the Glass bill to justify the separation of commercial and investment banking? While these various developments helped create an opening for reform, they could not by themselves determine the form that the pro-reform discourse itself would take. Nor was the fate of Glass-Steagall assured by FDR's election, for though Roosevelt would later proclaim the bill as the “best banking bill since the Federal Reserve System was created,” he himself remained lukewarm about the bill during its drafting,²¹ withholding official backing of the draft legislation until May 1933.²² Indeed, the support for Glass-Steagall did not track party lines. For example, Democrats controlled the House after 1930 but did not act on the Glass Bill; Hoover came around to support the bill after November 1932; FDR's own support was initially lukewarm.²³ Rather, the debate grouped those arguing for a more modern approach, casting reform in terms of promoting economic productivity, against traditionalists uneasy with according more power to big banks. These positions transected party lines, since many Progressive and Populist movement veterans critical of Glass-Steagall could be found among both Republicans and Democrats. Indeed, the next section will argue, traditional reform discourses that viewed financial regulation as a democratic imperative to hold the power of big banks accountable were being gradually supplanted by these discourses emphasizing regulation as a route to economic productivity.

II. CONCENTRATED POWER, DEMOCRATIC ACCOUNTABILITY, AND THE BREAK FROM BRANDEIS

Historically, there has been a powerful thread in American political thought that exhibits a deep distrust of concentrations of economic, and particularly financial, power, helping justify generations of reform movements targeting financial sector elites. For example, as Bray Hammond outlines in his study of banks and American politics, the early debate over the first proposed Bank of the United States pitted Jeffersonian agrarian democrats against the Hamiltonian aristocratic commercial elite. This mistrust of commercial and financial elites transmuted by the Jacksonian era into a more urban and commercial movement that nevertheless retained its deep distrust of concentrated economic power and its commitment to popular democratic sovereignty. It was this

democratic populism of the self-made entrepreneur that animated Jackson's assault on the second Bank of the United States.²⁴

By the turn of the twentieth century, this mistrust of concentrated financial power became most commonly associated with the thought and writings of Louis Brandeis, an eminent Boston lawyer and eventual Supreme Court Justice. His influential book of collected essays, *Other People's Money and How the Bankers Use It*, became a touchstone for antitrust reformers from its first publication in 1914, and was reissued by Brandeis himself in 1933 to take advantage of the contemporaneous debate over financial regulatory reform. Investment bankers like J. P. Morgan were the particular villains of Brandeis's book, for they controlled not only their own vast wealth but also the wealth of everyone else.²⁵ This "money trust" of "banker-barons" created evils for society such as higher tolls and prices for services, weakening of competition and innovation, and the "suppression of industrial liberty."²⁶ The concentrated economic power of these financial interests meant that they could affect anyone dependent on them for credit or for sustaining a market for the self-produced goods of farmers and entrepreneurs. All of modern society thus lay under the domination and arbitrary will of financial giants. This "curse of bigness," as Brandeis famously termed it, could only be righted by various regulations aimed at curbing bankers' excesses and rendering them accountable to Congress and to the democratic public. Thus Brandeis proposed the prohibition of interlocking directorates, arguing that bankers must only serve one master rather than running multiple businesses.²⁷ He also emphasized the role of publicity in making bankers transparent, empowering investors to punish bad banks and make informed decisions of their own.²⁸ While the Progressive movement represented by Brandeis included a wide range of at times contradictory arguments and positions, this Brandeisian defense of a democratic citizenry holding concentrations of economic and political power accountable constituted a major strand of antitrust and reformist sentiment.²⁹

A number of New Deal histories presume that these same arguments about the importance of holding concentrated economic power accountable to a democratic public were the driving conceptual force behind the Glass-Steagall Act. In Arthur Schlesinger's account, the regulatory efforts of 1933 viewed business "not as a power to be propitiated or, at the very least, as a partner to be cajoled, but as an erratic and irresponsible force requiring strict social discipline."³⁰ Unlike other more powerful New Dealers who believed in the power of big institutions in business and in government to generate social welfare and who sought to set up a national economic planning apparatus,

those who were behind financial reform lacked such “faith . . . in the virtues of bigness and of industrial self-government, and propos[ed] instead to use the federal power to revitalize and police the competitive economy.” Similarly, Ellis Hawley argues that financial reform is the one area where New Dealers hearkened back to more traditional arguments of the sort associated with Louis Brandeis that regulation was needed to constrain the concentration of power in the financial sector.³¹ Victor Carosso suggests that it was this anti-elite populism that drove financial reform, as FDR and congressional Democrats obliged public opinion.³²

But such populist arguments asserting democratic accountability against concentrations of economic power were not in fact the major explicit arguments deployed by proponents of Glass-Steagall.³³ Instead, Glass-Steagall proponents grounded their argument not in an attack on concentrated economic power, but rather in an effort to promote a more productive market economy by curbing speculation and conflicts of interest.³⁴ This argument began to challenge prior discourses of democratic accountability, shifting the grounds of reform language from one of democracy against private power, to one of economic productivity and technocratic macroeconomic management. These rival discourses had coexisted for much of the Progressive and early New Deal eras, but it was during this period in the 1930s debates when the latter began to gradually supplant the former. While the Securities Act had a clear Brandeisian pedigree—the concept of publicity as key to reigning in shady securities dealings was a central theme in Brandeis’s book, and the legislation itself was drafted and spearheaded in Congress by Brandeis’s protégé, Felix Frankfurter—the same did not hold for Glass-Steagall. The policy itself of separating investment and commercial banking of course had implications for constraining concentrations of economic power, and like many New Deal policies drew on existing proposals that were initially articulated and developed during the Progressive Era.³⁵ But the older generation of Progressives in Congress often found themselves in considerable tension with Roosevelt and the New Deal approach—a clash apparent in the Glass-Steagall debate.³⁶

Indeed, while Roosevelt himself might have had an interest in some of Brandeis’s work—he would often cite Brandeis’s *Other People’s Money* and was particularly taken with arguments emphasizing publicity as a key to securities regulation in 1933 and 1934³⁷—the New Deal brain trust as a whole was largely dismissive of democratic accountability arguments. For example, Raymond Moley, one of FDR’s main advisers on antitrust and financial regulation policy, saw big business as a key to promoting productivity, growth, and higher standards of living, seeking to turn away “from the nostalgic

philosophy of the trust busters.”³⁸ Thus, even those policymakers who were tasked with administering the central achievement of the older Progressive reformers were themselves reconceiving the task of antitrust and financial regulation more broadly as being more about economic productivity than democratic accountability.

Similarly, Glass and his adviser H. Parker Willis both seemed to move away from Brandeisian arguments, focusing instead on the need to promote economic productivity through regulatory reform. One of the original framers of the Federal Reserve Act, Glass sought to build a national banking system as a solution to the problem of financial crisis. “He was remarkably free from any anti-business bias and throughout the controversy over his bill maintained his close relationships with many respected Wall Street figures,” writes Perkins. “Ninety per cent of all bankers, he often said, behaved in a sound manner; but because of lax laws, the other ten per cent were prone to submit to their baser tendencies and, as a consequence, gave everyone a bad name.”³⁹ For both Glass and Willis, the challenge for the modern economy was not so much one of concentrated economic power, but rather one of excessive speculation and unproductive economic activity.

Indeed, the argument motivating reform as presented in Congress focused on exactly this effort to promote economic productivity by reigning in unhealthy speculation through the development of a national banking system and federal regulation. Glass and his supporters saw this approach as the best way to curb the excesses of the financial sector while ensuring that such reforms would not constrain economic growth. Similarly, while for traditional Progressive Era reformers conflicts of interest arose primarily out of the interlocking directorates shared by multiple financial firms giving rise to potential abuses of power, for Glass and his supporters the problem was not one of unaccountable corporate power but rather one of potential wastage of productive capital arising from distorted financial incentives.

The Glass-Steagall Act therefore became an emblematic battleground capturing the steady pivot away from an earlier generation of reformers critical of concentrations of economic power, to a new discourse focused on optimizing a productive economy through selective state regulation. In this new discourse, the value of regulation turned purely on its economic effects, rather than on its implications for constraining financial-sector power or increasing financial-sector accountability to a democratic public. This shift from such a “democratic” discourse of financial reform to a “technocratic” one emphasizing productivity instead of accountability of corporate power is apparent in the congressional debate over Glass-Steagall.

III. PRODUCTIVITY AND REGULATION: THE CONGRESSIONAL DEBATE OVER GLASS-STEAGALL

Glass and the Technocratic Argument in the Senate

During the early hearings in front of Glass's subcommittee in 1931, Glass developed his initial argument in favor of the separation of commercial and investment banking. Glass came to see the key cause of the 1929 financial collapse to be excessive speculation in the stock market, which in his view was largely driven by "artificial" stimulation of stock prices by speculators. Chief among these villains for Glass were the securities affiliates of national commercial banks. Over the course of the hearings, some witnesses expressed support for the proposed separation, while others emphasized that any such reform would lead to deflation and undermine the economy.

But what is most striking about Glass's arguments during the hearings is not his support for the separation of commercial and investment banking, but rather his focus on achieving a better financial system through centralized federal regulation and the development of a national banking system. As the hearings went on, Glass came to believe that the kind of decentralized local banking system implied by Brandeisian and antitrust reformers was simply incapable of meeting the needs of the modern American economy.⁴⁰ Early in the hearings, J. W. Pole, the Comptroller of the Currency, testified that the bulk of bank failures both before and after the 1929 crash were small rural banks. "I see no future for this type of banking as a system of banking," Pole told the subcommittee, "and in my opinion, it is unjust to the rural communities to subject them to the hazards of a banking policy which permits them to exist."⁴¹ Glass himself came to see the continuing depression as an opportunity to overcome "this insuperable difficulty" in the American banking system, by building a system comprised of national rather than state and local banks, which would be more stable and effective in the long term.⁴²

These arguments culminated in a major speech given by Glass on May 9, 1932, on the Senate floor to defend his proposed legislation. After first emphasizing the need to prevent Federal Reserve Banks themselves from using their reserve funds for speculative purposes, Glass took aim at the activities of the security affiliates. These affiliates constituted "one of the greatest contributions to the unprecedented disaster which has caused this almost incurable depression," argued Glass.⁴³ "Organized to evade the law," these affiliates "sent out their high-pressure salesmen and literally filled the bank portfolios of this country with these investment securities." Yet Glass also rejected the notion that the country could return to some earlier system premised on small local

banks, which Glass noted accounted for the vast majority of bank failures in the country. “The appeal of the little bank,” proclaimed Glass, “so called against the ‘monopolistic’ tendencies of branch banking, is misleading when we come to reason about it.”⁴⁴ If securities affiliates had to be stopped, and if returning to a system of small local banks was not feasible, then the answer in Glass’s view had to come from a reformed and regulated national banking system—specifically one that prohibited the merging of investment and commercial banking but enabled national banks to open more branches in more localities. This is exactly what Glass proposed in his legislation.

The argument for the separation of investment banking itself was premised on the need to prevent conflicts of interest that might undermine the ability of national banks to promote economic productivity. As Senator Robert Bulkley, a Democrat from Ohio, elaborated following Glass’s speech, the conflicting interests between bankers as protectors of their clients’ deposits and bankers as peddlers of securities necessitated a regulatory intervention:

Can any banker, imbued with the consciousness that his bond-sales department is, because of lack of securities for sale, losing money and at the same time losing its morale, be a fair and impartial judge as to the necessity and soundness for a new security issue which he knows he can readily distribute through channels which have been expensive to develop but which presently stand ready to absorb the proposed security issue and yield a handsome profit on the transaction? It is easy to see why the security business was overdeveloped and why the bankers’ clients and country bank correspondents were overloaded with a mass of investments many of which have proved most unfortunate.⁴⁵

Commercial bankers, according to Bulkley, became involved in investment banking and securities affiliates because “professional pride became diverted from the pride of safe and honest banking service to that of profits, greed, expansion, power, and domination.”⁴⁶ Once a separation between investment and commercial banking was mandated, Bulkley argued that bankers would once again be better able to advise their clients and facilitate productive economic activity. Such regulation was needed not because bankers were inherently destructive forces, but because human nature compelled the search for profit, and without the separation of commercial and investment banking that search would induce some bankers to engage in problematic speculation peddling securities. As Bulkley continued: “If it is to have the advice of its banker untainted . . . if we are to relieve the banker of the temptation to put pressure upon his commercial borrower to put out a security

issue . . . if the public is to be protected against the possibility of bad bank loans . . . we must keep banks out of the investment security business.”⁴⁷

Rival Discourses of Democratic Accountability in the Senate

In contrast to this technocratic argument justifying the Glass bill on economic productivity grounds, the traditional Progressive Era discourses of financial reform as seeking democratic accountability were harnessed most commonly by critics of the Glass bill. It was opponents of this “absolutely invincible thesis”⁴⁸ that commercial and investment banking ought to be separated who explicitly marshaled Brandeisian and antitrust arguments against concentrations of economic and political power. For these critics, the Glass bill was a “banker’s bill,” representing a dangerous centralization of control over the economy in the hands of the Federal Reserve and the bankers who constituted its governing bodies. Many of these critics were drawn from both Democratic and Republican Party ranks, veterans of older waves of Progressive and Populist reform movements, habitually hostile to the power of big banks. Some of the opposition came from outright opponents of economic regulation who sought to defend the relatively free reign of banks and businesses. But opposition rhetoric also came from the old guard of Progressive Era reformers in Congress. Senator Peter Norbeck, a Republican from South Dakota, for example, criticized the reforms as compounding the problem of concentrated economic and political power. As Norbeck argued, Glass’s proposal would “centralize control of everything, especially of credit, . . . [and] put us at the mercy of the financial centers.”⁴⁹ “Our country,” Norbeck continued, “is too large, too widely diversified, to expect one banking system to be so versatile as to deal with so complex a situation efficiently. The American people are individualistic and so should be our banking structure.”⁵⁰ Norbeck thus argued for a return to a decentralized system of state and local banking, recalling earlier debates from the Jacksonian era:

It is in the interest of the United States that a banking monopoly should not be created. . . . We only have to look back to the history of the endeavor to renew the charter of the Bank of the United States, with its branches in the then leading cities, during the Presidency of Andrew Jackson, to prove now, as then, that a banking monopoly headed in at Washington is not for the best interests of the citizens of the United States. The placing of more power in the national-banking system is dangerous.⁵¹

Following this initial debate over the Glass bill, Hoover and Senate Republicans tabled further consideration until a lame-duck session in January 1933. But even then these same criticisms continued to comprise the bulk of the antireform position. While some critics came to express support for the separation of commercial and investment banking, they all opposed the Glass bill because of its branch-banking provisions and its expansion of Federal Reserve regulatory authority. Senator Gerald Nye (R-N.D.), warned against regulations that would seem to serve the interests of banking groups too closely.⁵² Similarly, Senator Burton Wheeler (D-Mont.), argued that restrictions should be placed on the banking industry not only as a check against unproductive speculation, but rather as a key guarantee of political and economic liberty against concentrated economic power:

I realize there are good features in the Glass bill. Those provisions largely to restrict banks to a banking business and take them out of the field of security salesmanship through affiliates meet with my hearty approval. . . . But a further centralization of financial control in a few large cities and a few large financial institutions is too great a price to pay for the very desirable restrictions proposed in this measure. We should have restrictions as a right. We should not have to trade off our birthright for them. I want to say frankly that, in my mind, the centralization of wealth and financial control in a few hands in New York is much more dangerous to the future welfare, I might say to the continued existence, of this Nation than even the centralization of governmental functions in Washington. And I have no intention of minimizing that danger either.⁵³

Clash of Discourses in the House

By the time the final version of the Glass-Steagall Act took form in the House, in May 1933, the discourse around the bill exhibited these same dynamics. Proponents of the bill emphasized the need to promote economic productivity by curbing bankers' conflicts of interest through regulation, while opponents warned against fueling further concentration of economic power. Self-proclaimed "Jeffersonian Democrats" voiced opposition to the bill as a violation of the party's commitment to antitrust measures that attacked concentrations of economic power in defense of "the struggling business men

of the land.”⁵⁴ Other opponents in the House warned that bankers already “exercised their control over the country” through their ownership of media and economic organizations, and their bankrolling of politicians’ electoral campaigns.⁵⁵ In such a climate, the proposed Glass bill seemed to critics to be a misguided delegation of even more power to bankers:

[Bankers] have perhaps contributed nothing to the future welfare of man, who have lived their big-business lives isolated from millions of their fellow Americans, and who have been paid these enormous salaries by reason of a trust combination made possible under judicial decisions. It is the very size of these institutions that is the real evil. Therefore, the law that created them has a right to put them out of business, if need be, to insure a more equitable distribution of the wealth of our great country and to preserve common happiness to mankind.⁵⁶

These critics in the House attacked in particular the expansion of Federal Reserve authority, warning that the Fed would act to promote the interests of bankers, rather than the interests of the country as a whole. By “strengthening the stranglehold of the Federal Reserve system upon the public,” the Glass-Steagall bill represented a “surrender to Wall Street,” and had “for its purpose the adding of tentacles to the Federal Reserve System—the visible hand of the invisible empire—that has choked and throttled the prosperity of the people of this Nation.”⁵⁷ The Federal Reserve was seen as “a banker’s banking system,” privately owned by elite bankers, and thus likely to disregard the public interest.⁵⁸ These critics believed, not entirely incorrectly, that the branch banking and Federal Reserve provisions in the Glass-Steagall bill as written would help strengthen both the Federal Reserve and national banks. It was this specter of a national banking system that provoked the critics to reassert the language of decentralization as the guarantor of economic liberty. As Congressman Weidman declared: “The people of the United States are lining up against the creatures of privilege. The people of the United States are demanding a return to the Constitution and a return to democratic self-government. The party of Jefferson will stand with them. . . . The Constitution is a charter of human freedom. The Federal Reserve Act is a charter of monopoly granted to a special class in direct defiance of the Constitution.”⁵⁹

Rather than addressing head-on critics’ concerns about concentrating economic power in the Federal Reserve, proponents of the bill continued to emphasize its potential effects on boosting economic productivity. Henry

Steagall, Glass's counterpart in the House, introduced the final version of the bill as an effort to restore sound banking principles:

Our great banking system was diverted from its original purposes into investment activities, and its services devoted to speculation and international high finance. Our financial leaders went on a spree. . . . Agriculture, commerce, and industry were forgotten. Bank deposits and credit resources were funneled into the speculative centers of the country for investment in stocks operation and in market speculation . . . the purpose of the regulatory provisions of this bill is to call back to the service of agriculture and commerce and industry the bank credit and the bank service designed by the framers of the Federal Reserve Act.⁶⁰

Supporters thus attempted to refocus the attention and ire of Congress onto the core issue of investment and commercial banking and the speculative activities of securities affiliates. As Congressman Koppelman proclaimed to supportive applause,

the unholy alliance between the brokerage office and the bank must be broken. . . . In banking as elsewhere, no man can serve two masters. . . . Instead of keeping the money for the use of the legitimate needs of commerce and agriculture, money has been lent to the gamblers to use in buying stocks on margin. This bill prevents this evil from again occurring. Let us once and for all drive the money changers out of the directors' rooms of our American banks. Only in this way will banking become an honored profession; only in this way will bankers become public servants charged with a sacred responsibility to administer the funds intrusted [*sic*] to them for the benefit of their depositors and not for the gain of themselves.⁶¹

Indeed, this argument proved to be the common ground for much of the Congress. As far as the speculative securities affiliates were concerned, separating them from their parent commercial banks was a proposal that both critics and supporters of a national banking system could endorse. As Congressman Luce noted, this "prime purpose" of the bill would be achieved through a range of provisions and "nobody questions the desirability of accomplishing their object."⁶² Even some opponents in the Senate agreed with the need to separate investment and commercial banking, even if they sought to do so without concentrating further power in the Federal Reserve.⁶³

Consolidating the Discourse of Productivity

Thus the primary arguments in favor of Glass-Steagall revolved around the need to curb conflicts of interest, unproductive speculation through regulatory reform. The goal for these reformers was to boost economic productivity. Opponents of the bill seized upon its branch banking and regulatory provisions as dangerous contributions to the further concentration of economic power in the hands of the Federal Reserve and Wall Street. It was these opponents who harnessed more traditional reform discourses that emphasized the need to restore democratic accountability against the power of financial firms.

But the proponents of Glass-Steagall were not furthering the interests of national bankers the way their critics held. In fact, Glass and his supporters fought a bitter struggle to overcome the banking industry's arguments that self-regulation and minor transparency would be sufficient to overcome the kinds of speculative activities that fueled the stock boom and collapse in 1929. Indeed, the banking industry attempted to block the passage of the Glass bill by asserting the economic productivity generated by combining commercial and investment banking. "Department store" banking, where customers could find all forms of financial services under one roof would improve consumer welfare and economic growth, they maintained. Regulation would result in deflation and a reduction in credit essential to firms responding to the economic downturn.⁶⁴ Further, while it was conceded that some securities affiliates had gone too far, the solution for bankers lay in greater transparency and a return to "sound banking principles" rather than egregious government regulation that would eliminate the economic benefits of combined banking practices—despite the fact that banks themselves stood to benefit enormously from the deposit insurance program that was emerging in parallel to the Glass bill.⁶⁵

That the banking industry shaped its counteroffensive along such productivity arguments rather than defending their "economic bigness" underlines the degree to which the debate around Glass-Steagall was one about economic productivity and conflicts of interest—and not about concentrations about economic power. Of course, the banking industry lost the debate in 1933, but their focus on productivity arguments was significant in two respects. First, it helped consolidate a shift in financial reform language from the older discourses of democratic accountability against the power of financial firms to a focus on optimizing economic productivity through regulation. Second, these arguments that regulation would actually be productivity-reducing foreshadowed exactly the arguments that the industry

and favorable policymakers would rearticulate in the late twentieth century to successfully advocate the undoing of Glass-Steagall and many other New Deal-era regulations.⁶⁶

The political success of Glass and his argument thus represented a telling shift away from a generation where antitrust arguments asserting democratic accountability over concentrations of economic and political power gave way to an era where such interventions were now justified as reforms needed to promote economic productivity and curb potential conflicts of interest. The democratic accountability arguments Brandeis and other antitrusters were seemingly relegated to the vocal but ultimately powerless congressional opposition. But these older discourses of reform were not wholly absent; indeed, they operated in the background, providing a much-needed reservoir of political will and moral critique that reformers like Glass depended upon to sustain the reform argument.

IV. DEMOCRATIC DISCOURSE AS AN UNDERLYING ARGUMENT FOR REFORM

While the New Dealers did not openly embrace the Brandeisian argument for financial regulation, a close reading of the pro-reform discourse suggests that these ideas were not entirely abandoned. Instead, they operated in the background, contributing significant moral and political force to the pro-reform argument. Throughout the debate over the Glass-Steagall Act, supporters of the reform implicitly drew on the moral force of traditional discourses of democratic accountability against the concentrated power of financial firms. Thus, while the surface-level rhetoric of Glass and his supporters reflected a shift toward a language of economic productivity, in many ways the force and persuasiveness of this new language depended crucially on the *prior persuasive effects* of the older discourses of democratic accountability. This subtle relationship between the democratic and technocratic discourses suggests that the language of productivity was not by itself sufficiently persuasive or compelling. This dynamic, where the success of the productivity argument depended in part on an appeal to prior understandings of the democratic accountability argument for financial regulation, manifested in the language used by key players in the Glass-Steagall debate: supporters of the bill, the public debate in the press, FDR, Glass, and his adviser H. Parker Willis.

First, proponents of the Glass-Steagall Act emphasized the need for regulation to prevent conflicts of interest that could lead to unproductive and risky speculation with deposits. This argument was bolstered by the empirical

findings of the Glass Subcommittee, which held that the securities affiliates themselves were more likely to borrow funds, speculate with deposits, engage in unproductive investments, and thereby create greater risk of bank collapse.⁶⁷ But these arguments by themselves did not decisively compel the need for greater regulation of the sort that ultimately passed. Prior efforts at *deregulation*, such as the 1927 McFadden Act, had been justified on similar terms as productivity-enhancing.⁶⁸ Instead, what formed the increasingly implicit and understated core of the pro-reform argument was a coupling of this commitment to economic productivity with a distrust of powerful economic actors—a distrust absorbed from the Brandeisian tradition.

Second, in the broader public debate over Glass-Steagall, Brandeis's arguments against concentrations of economic power remained live. Prominent antitrusters expressed their support for the separation of commercial and investment banking in the press coverage of the Glass bill in April 1932.⁶⁹ Over the course of that spring and summer, the increasing coverage of the Pecora hearings fueled further criticism of elite economic interests. As Ferdinand Pecora later recounted, the revelations of dishonest securities transactions, tax evasions, and other profit-generating schemes generated public outrage against the types of powerful financial institutions most capable of engaging in such practices.⁷⁰ Such anger was directed as much against the practices as they were against the “great banks” themselves.⁷¹ The final Stock Exchange Practices report singled out securities affiliates as “a prolific source of evil,” which allowed commercial banks to “violate their fiduciary duty to depositors seeking disinterested investment counsel by referring such inquiries to their affiliates.”⁷² The anger displayed in the final report was not simply directed against the fact of conflicting interests inhibiting economic performance; it was directed against a deeply moral wrong, as “personages upon whom the public relied for the guardianship of funds did not regard their position as impregnated with trust, but rather as a means for personal gain.”⁷³

Third, Roosevelt similarly toggled back and forth between appeals to traditional discourses of democratic accountability against corporate power and the newer discourse of economic productivity. Even as the Glass bill was tabled in the Senate, Roosevelt's campaign gave voice to powerful traditions asserting democratic liberty against the machinations of elite economic interests. In his famous Columbus, Ohio, speech on the depression and government response, Roosevelt attacked the Hoover administration for being enthralled to the business elite. Like Hoover, FDR proclaimed his support for American individualism, but he argued that Hoover's deeds contributed to the demise of such individualism by encouraging the concentration of economic power

in a few elite institutions. “I believe that the individual should have full liberty of action to make the most of himself,” Roosevelt declared. “But I do not believe that in the name of that sacred word a few powerful interests should be permitted to make industrial cannon fodder of the lives of half the population of the United States.”⁷⁴ Roosevelt blamed “the ruthless manipulation of professional gamblers” for the stock market crash.⁷⁵ In opposition to these elite interests, Roosevelt argued for the expansion of government authority as a crucial check acting on behalf of a democratic public: “I believe that the Government, without becoming a prying bureaucracy, can act as a check or counterbalance to this oligarchy so as to secure the chance to work and the safety of savings to men and women, rather than safety of exploitation to the exploiter, safety of manipulation to the financial manipulators, safety of unlicensed power to those who would speculate to the bitter end with the welfare and property of other people.”⁷⁶ A return to the high-growth years of the 1920s was not enough; what was needed was a renewed attempt to empower a democratic public to check the interests of elites through the deployment of an activist regulatory state. These arguments—and FDR’s victory in the election—helped push the Glass bill forward.⁷⁷

Fourth, Glass’s own key adviser, H. Parker Willis, exhibited in his own writings a commitment to something more than just economic productivity. His proposals for banking reform stemmed from a conviction that banking was “a kind of activity in which the community is profoundly interested; and in whose proper management the state, representing the people, is deeply concerned.”⁷⁸ Ensuring that banks served the common good required aggressive regulation, for “in too many cases in the past, experience has shown that bank examiners have been prevented by political influence from taking steps necessary to prevent unsound banking.”⁷⁹

Finally, Glass himself seemed to respond most passionately to antitrust-type arguments during the initial hearings in 1931. While many of the witnesses agreed that increases in transparency of bank practices would be sufficient to prevent harmful speculation, Glass remained relatively unconvinced, until his engagement with W. Z. Ripley, a Harvard University professor who provided familiar antitrust arguments in favor of the outright separation of commercial and investment banking. The author of the antitrust book *Main Street and Wall Street*, Ripley argued that in every industry there would always be a group of companies and individuals that would operate for private gain at the expense of the public. Securities affiliates represented one such way in which bankers would be tempted often to the detriment of their clients. While Ripley endorsed the separation of commercial and investment banking, he

did so as part of a broader, antitrust agenda calling for checks on trusts and other big firms. Glass and Willis did not go so far, but they nevertheless responded highly favorably to Ripley.⁸⁰

Democratic accountability arguments were thus in the air, yet, as argued above, they did not appear in the explicit defenses made by proponents of Glass-Steagall. This juxtaposition suggests that, as with the Securities Act, this notion of democratic accountability against financial interests helped animate the argument for Glass-Steagall, but the intellectual debt was never openly acknowledged, nor was it conceptually developed. Glass most likely avoided making an explicit Brandeisian argument due to his distrust of small banks and his commitment to big regulatory institutions like the Federal Reserve. But he tellingly saw such big government regulation not as the rejection of Brandeisian concerns with concentrations of economic power, but as a critical component in asserting individual liberty against such power.

Thus, Glass defended the Federal Reserve and his subsequent proposals for reform in precisely this vein:

We regarded it [the Federal Reserve Act] as a banking declaration of independence. We undertook to rescue the country bank from involuntary servitude to the great banks in the money centers. But we failed to do that; they are still in involuntary servitude, and right now, as I am receiving telegrams of protest form the money centers against the proposition to have branch banking in the national system, the very bankers who are sending the telegrams know perfectly well that some large banks have as many as 4,000 correspondent banks throughout this country which are in involuntary servitude to them.⁸¹

It was precisely those money centers that Ripley, Brandeis, and other antitrusters feared that Glass saw as the key villains, for they “choked the portfolios of their correspondent banks from Maine to California with utterly worthless investment securities.”⁸²

But for Glass, the solution was not to reject the notion of finance and banking altogether, nor was it to return to an idyllic vision of a decentralized economy and polity. Neither approach could realistically sustain a modern American economy or provide for social welfare. Thus, on some level, the challenge of elite economic interests remained for Glass as it did for Brandeis, but Glass pursued a response through the creation of a national banking system backed by federal regulation and under the guidance of a technocratic, expert-driven Federal Reserve system. These national entities acted on

behalf of the democratic public—but were ultimately independent from the kind of local democratic politics that Brandeis and other antitrusters celebrated as a response to elite domination. For Glass, without reforms to separate investment and commercial banking and to expand national branch banking along the lines proposed by Glass, the country would merely continue “in involuntary servitude to the great banks in the money centers.”⁸³ Without federal regulation to magnify and realize the public interest against these powerful economic elite, the country would remain in thrall to an already-existing “vicious species of nationwide branch banking without the responsibility that properly attaches to a sound [federally regulated] branch banking system.”⁸⁴ In fact, Glass saw his bill as a truer, more responsible populism than that deployed by opponents of his measure. In his attack on Huey Long’s filibuster of his bill in January 1933, Glass derisively mocked Long’s defense of “the people’s interest” against Glass’s bill: “Oh ‘the pee-pul’! Who are ‘the pee-pul’? The people are those who do business with banks, or, if not directly with banks, the people are those who are employed and who do business with those who do business with banks. They are ‘the pee-pul.’ And yet we have all this talk about the ‘cold and shivering and starving’ by Senators who have not lifted a finger to clothe a soul or to feed a hungry mouth!”⁸⁵

For reformers like Glass, these reforms were thus a *maturation* rather than rejection of populist and progressive arguments against corporate power advanced by earlier reformers, to better accord with the realities of modern capitalism. But while this approach may have succeeded in generating the policy changes that Glass sought, it contributed to the decline of the older tradition of more explicit and robust reformist discourse. It is telling that while small and independent banks continued to express a distrust of the concentrated economic power of large financial firms, the bundling of the separation of investment and commercial banking, which would undermine the power of big finance, with national branch banking, which would increase it, made it difficult for the constituency of small banks to articulate a clear argument and to fully support Glass’s vision of a more “mature” and “modern” populism.⁸⁶

V. CONCENTRATED POWER, PRODUCTIVITY, AND THE VIABILITY OF REGULATORY REFORM

The discourse of regulatory reform around Glass-Steagall thus provides a concrete example of the broader shift during the New Deal away from older discourses of democratic checks on concentrated economic power to a

framework more focused on economic growth, consumer welfare, and technocratic management.⁸⁷ Populist and antitrust arguments emphasizing the need to hold economic elites accountable through democratic action and regulation gave way to a pro-reform argument emphasizing the need to promote more productive banking practices through regulation and technocratic oversight. But while the explicit argument in favor of Glass-Steagall emphasized the need for regulation to promote economic productivity and to prevent financial conflicts of interest, these arguments drew crucial moral and political force from inherited and prevailing notions of democratic accountability against elite economic interests. Glass and his allies did not openly appeal to the Brandeisian antitrust argument, perhaps in part because of their unease with the antitrust celebration of localism and decentralization. But they harnessed and converted this hostility to concentrated elite economic interests into a more universal—and more vague—argument about the public economic good.

The New Dealers supporting Glass-Steagall therefore depended on the political and moral force of earlier reformist discourse. By tapping, but not openly articulating, discourses of democratic accountability against concentrated economic power and elite economic interests, proponents of the Glass bill could have it both ways: they could mobilize support for reform without necessarily provoking too strong a backlash from vested interests. This may indeed have been a political necessity, a pragmatic maneuver to pass landmark legislation. But as suggested by other critics of New Deal discourse, these shifts likely had repercussions for future trends in American politics. In a sense, the New Dealers spent down the political and conceptual “capital” that had accrued during the Progressive Era, tapping into the broader currents of unease with unaccountable large financial firms—an unease fostered by decades of Progressive Era mobilization and argumentation. But the New Dealers did not replenish these reserves of moral and political force with an equally compelling effort at mobilization and political argument.

The discursive legacy of this strategy survived to shape future debates on financial regulatory reform in two crucial respects: first, opponents of financial regulation have been able to reverse the conflict of interest and productivity arguments to suggest that deregulation would better promote these economic goals; and second, proponents of financial regulation have lacked a historically central argument that justifies greater regulation *independent* of its effects on the economy itself.

Indeed, both repercussions have served to cripple the contemporary debate on financial regulation. First, a host of empirical studies in the 1980s and 1990s sought to argue that banks with securities affiliates in the 1920s

were not in fact selling risky assets, and were less likely to fail.⁸⁸ Meanwhile, market pressures, it was argued, forced banks to self-regulate by offering higher-quality securities, rather than engaging in risky speculations punished by consumers.⁸⁹ Regulation thus became a constraint rather than an enabler of economic productivity. These arguments were seen as definitive repudiations of the official justifications for Glass-Steagall as an act against conflicts of interest and in favor of economic productivity, helping fuel the repeal of Glass-Steagall in 1999.⁹⁰ By seizing on the explicit economic arguments advanced for Glass-Steagall and asserting their invalidation, supporters of deregulation were thus able to gain an upper hand.

Similarly, without recourse to a reconstructed democratic accountability argument, progressives today are left without a rejoinder, unable to mobilize a compelling argument for financial regulation reform. The Obama administration's early regulatory reform proposals were relatively limited in scope, with the exception of the push for the Consumer Financial Protection Bureau. While a range of economists and commentators have suggested that the large financial institutions—which are even larger and more concentrated after the bank failures and bailouts of the last year—must be broken up into smaller institutions to reign in systemic risk and prevent future meltdowns, such tougher reform measures were not pursued.⁹¹

The anemic state of financial regulatory reform has much to do with the inability of reformists to reconstruct the kind of compelling democratic accountability narrative that animated Brandeis, the antitrusters, and even helped drive in the background the success of Glass-Steagall. In place of the New Dealers' distrust of elite financial interests, we now have a political terrain that seems thoroughly in thrall to the ideology of high finance. As former IMF chief economist Simon Johnson notes, the very banking institutions that were at the heart of the meltdown have thus far managed to avoid tougher regulation because those in government seem unwilling to push for stricter regulations. "The banking-and-securities industry has become one of the top contributors to political campaigns, but at the peak of its influence, it did not have to buy favors the way, for example, the tobacco companies or military contractors might have to," argues Johnson.⁹² "Instead, it benefited from the fact that Washington insiders already believed that large financial institutions and free-flowing capital markets were crucial to America's position in the world." This ideological capture of Washington by Wall Street effectively "gives the financial sector a veto over public policy, even as that sector loses popular support." Meanwhile, the banking sector as a whole has displayed surprising unity in opposing reform;⁹³ by contrast, in the 1930s many small

and local banks registered their open or tacit support for Glass-Steagall as a check on the large financial institutions, while investment banks supported the reform as a check on possible competition.⁹⁴

Rhetoric and narrative matter greatly in politics. They provide a language to articulate challenges and solutions, giving shape to the very nature of the social challenges themselves. The fact of banking practices or any other potential social ill by itself does not generate reform; these facts must be articulated as a general problem to gain political salience.⁹⁵ At the same time, these narratives also help construct solutions to these challenges, giving more defined form to otherwise vague and partially formed moral and political visions or intuitions. On both counts—the defining of problems and the concurrent proposal of solutions—reform discourses are heavily influenced by prior experience. Indeed, the persuasiveness of reform proposals depend crucially not only on the innate content of the proposals themselves but also on how they define the nature of the problem at hand, and how their solutions relate to historically received narratives.⁹⁶ Discursive shifts such as those charted in this article thus have repercussions for future political discourse, by establishing a new way of defining and responding to a social challenge—and obscuring another.

Decades after the debates of 1933, the Glass-Steagall Act resurfaced in political debate, first during its repeal in 1999, and then again in the broader debate over financial regulation in 2009. While the dynamics of these more recent debates are different from those in 1933, it is possible that the supplanting of an explicit discourse of democratic accountability for a discourse premised on economic productivity and conflicts of interest may have played a role in the inability to resist deregulation in 1999, and the relative difficulty of pushing new regulation in 2009.⁹⁷ Indeed, if as this article suggests, New Deal reformers relied in part on the moral and rhetorical force of a present but unarticulated democratic accountability argument against concentrated economic power, then the lack of such a discourse could deprive current and future efforts at financial regulatory reform of a historically powerful argument defending regulation on democratic grounds—and independent of any claims about economic effects. As central as the New Deal is to contemporary progressive politics, it may be time to look past the New Deal and draw inspiration from an earlier discourse of democratic accountability.

If financial regulatory reform is to succeed—and endure—it is vital that this belief in the unerring and vital successes of high finance be checked by a revived concern with such concentrations of economic and political power. Economically, these financial centers pose a major systemic risk to the

national financial system. Politically, their clout in Washington is increasingly difficult to overcome. We find ourselves in a situation where such banks are at once “too big to fail” and “too big to regulate.” The New Dealers rejected Brandeisian language as antiquated, but they nevertheless relied on the emotive and political force generated by a critique of concentrated power. Today’s reformers need to develop their own equivalent, a reconstruction of the democratic accountability argument to help animate efforts to reign in concentrated economic and political power through mechanisms of democratic accountability. As Ferdinand Pecora himself warned in retrospect, without such democratic vigilance, regulatory successes will remain short-lived: “It is certainly well that Wall Street now professes repentance. But it would be most unwise, nevertheless, to underestimate the strength of hostile elements. . . . These laws are no panacea; nor are they self-executing. More than ever, we must maintain our vigilance. If we do not, Wall Street may yet prove to be not unlike that land, of which it has been said that no country is easier to overrun, or harder to subdue.”⁹⁸

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NOTES

1. See, e.g., Barack Obama, speech on financial regulation, Cooper Union, New York, 22 April 2010. Transcript available at http://www.huffingtonpost.com/2010/04/22/obamas-wall-street-speech_n_547880.html (accessed April 2011).

2. See, e.g., Simon Johnson and James Kwak, *13 Bankers: The Wall Street Takeover and the Next Financial Meltdown* (New York, 2011).

3. Public Law 73-66, 48 Stat. 162, enacted 16 June 1933. The Glass-Steagall Act, which effectuated the separation of commercial and investment banking, was codified in §§16, 20, 21, and 32 of this statute.

4. Specifically, Section 16 of the bill restricts the securities activities of national banks, especially by prohibiting them from underwriting corporate securities. Section 20 prohibits member banks of the Federal Reserve system from being affiliated with any entity involved in the sale or transactions of securities. Section 32 prohibits any officer, director, or employee links between member banks and other individuals engaged in securities firms. Section 21 outlaws any person engaged in securities activities to also engage at the same time in deposit banking to any extent. The Banking Act also strengthened the regulatory powers of the Federal Reserve Bank.

5. See, e.g., George Benston, *The Separation of Commercial and Investment Banking: The Glass-Steagall Act Revisited and Reconsidered* (New York, 1990).

6. Edward Kelly, “Legislative History of the Glass-Steagall Act,” in *Derugulating Wall Street*, ed. Ingo Walter (New York, 1985), 41–66; Edwin Perkins, “The Divorce of

Commercial and Investment Banking: A History,” *Banking Law Journal* 88, no. 6 (June 1971): 483–528.

7. See, e.g., Michael Sandel, *Democracy’s Discontent: America in Search of a Public Philosophy* (Cambridge, Mass., 1998); Alan Brinkley, *The End of Reform: New Deal Liberalism in Recession and War* (New York, 1996); Kathleen Donohue, *Freedom from Want: American Liberalism and the Idea of the Consumer* (Baltimore, 2005).

8. See, e.g., Benston, *The Separation of Commercial and Investment Banking*; Randall S. Kroszner and Raghuram G. Rajan, “Organization Structure and Credibility: Evidence from Commercial Bank Securities Activities Before the Glass-Steagall Act,” *Journal of Monetary Economics* 39 (1997): 475–516; and Kroszner and Rajan, “Is the Glass-Steagall Act Justified? A Study of the U.S. Experience with Universal Banking Before 1933,” *American Economic Review* 84, no. 4 (September 1994): 810–32; James Barth, R. Dan Brumbaugh Jr., and James Wilcox, “Policy Watch: The Repeal of Glass-Steagall and the Advent of Broad Banking,” *Journal of Economic Perspectives* 14, no. 2 (Spring 2000): 191–204.

9. See Obama, speech on financial regulation.

10. See, e.g., Johnson and Kwak, *13 Bankers*.

11. Kelly, “Legislative History of the Glass-Steagall Act”; Perkins, “The Divorce of Commercial and Investment Banking.”

12. Kelly, “Legislative History of the Glass-Steagall Act,” 43.

13. Much of the following legislative history is recounted in more detail in *ibid.*; and Perkins, “The Divorce of Commercial and Investment Banking.”

14. Perkins, “The Divorce of Commercial and Investment Banking,” 518.

15. On FDR’s electoral campaign and strategy, see Arthur Schlesinger, *The Crisis of the Old Order, 1919–1933* (Boston, 1957).

16. See National Archives, Washington, D.C. Documents pertaining to Glass-Steagall Act, bill numbers S. 3215, S. 4115, S. 4412 (72nd Congress, 1932–33); S. 245, S. 1631 (73rd Congress, 1933).

17. Perkins, “The Divorce of Commercial and Investment Banking,” 520–21.

18. It was noted at the time that the president of the New York bank, Bernard Marcus, had appropriated huge sums of bank funds for his own speculative ventures, which largely failed. The result was a huge wave of public attention and criticism, generating a new distrust of affiliates. See *ibid.*, 497.

19. I am grateful to an anonymous reviewer for pointing this out.

20. Kelly, “Legislative History of the Glass-Steagall Act,” 53.

21. “Bank Bill Held Up for Woodin Views,” *New York Times*, 19 April 1933; “Bank Bill Taken Up with President,” *New York Times*, 5 May 1933.

22. “Roosevelt Favors Pushing Bank Bill,” *New York Times*, 6 May 1933; “Bank Reform Bill Swiftly Approved,” *New York Times*, 14 June 1933.

23. I am grateful to an anonymous reviewer for pointing this out.

24. See Brey Hammond, *Banks and Politics in America: From the Revolution to the Civil War* (Princeton, 1957). As Hammond writes, “Taking advantage of the traditional agrarian aversion to banks and of President Jackson’s particularly, the entrepreneurial rebels attacked what they called the monopoly and the tyranny of the federal Bank, ended its existence, neutralized the federal government’s constitutional responsibility for the currency, made banking a business free to all, and thereby insured to enterprise an abundance of bank and credit” (740–41).

25. Louis Brandeis, *Other People's Money and How the Bankers Use It* (New York, 1967), 12–13.

26. *Ibid.*, 34.

27. *Ibid.*, 46–48.

28. *Ibid.*, 69.

29. For the cross-currents of Progressive thought more generally, and the tensions between these democratic antitrusters and more technocratic reformers, see Richard Hofstadter, *The Age of Reform* (New York, 1974); and Daniel Rodgers, “In Search of Progressivism,” *Reviews in American History* 10, no. 4 (1982).

30. Arthur Schlesinger, *The Coming of the New Deal* (Boston, 1959), 444.

31. Ellis Hawley, *The New Deal and the Problem of Monopoly: A Study in Economic Ambivalence* (Princeton, 1966), 306.

32. Vincent Carosso, *Investment Banking in America* (Cambridge, Mass., 1970), 353.

33. As I will argue in Part IV, these Progressive narratives nevertheless played a vital background role in mobilizing support for the New Deal reforms.

34. Benston, *The Separation of Commercial and Investment Banking*, 173–78. It is worth noting that Benston is in general critical of Glass-Steagall as being based on a faulty empirical understanding by the New Dealers themselves as to the nature of the 1929–33 banking crisis. Benston himself is part of the wave of studies attempting to delegitimize Glass-Steagall as a valid policy reform, arguing instead for its repeal in the 1980s and 1990s. I will address this push by Benston and others in Part V.

35. Rodgers, “In Search of Progressivism,” 413–15.

36. See, e.g., Otis Graham, *An Encore for Reform: The Old Progressives and the New Deal* (New York, 1967).

37. See Joel Seligman, *The Transformation of Wall Street* (New York, 2003), 41–51.

38. Moley in *ibid.*, 40.

39. Perkins, “The Divorce of Commercial and Investment Banking,” 500. Perkins bases his characterization of Glass on Glass’s own writings in letters and his statements in the *Congressional Record*. See 500–502 and notes 40–42.

40. It is worth noting, however, that this view mischaracterizes Brandeis’s own argument. Brandeis’s attack on bigness did not necessarily mean a celebration of localism. As Philippa Strum argues, Brandeis instead called for firms and organizations that were large enough to ensure efficiency but small enough to be controlled by a democratic public. See Strum, *Brandeis: Beyond Progressivism* (Lawrence, Kans., 1995). See also Brandeis’s written dissents in *New State Ice Company v. Liebman* (1931) and *Liggett v. Lee* (1933), in Strum, ed., *Brandeis on Democracy* (Lawrence, Kans., 1995), 138–53.

41. Hearings, Subcommittee of the Committee on Banking and Currency, “Operation of National and Federal Reserve Banking Systems. U.S. Senate, 71st Cong., 1st sess., 19 January 1931, 3.

42. Glass, Hearings, 4 February 1931, 365. It is worth noting that Glass took the opportunity in the hearings to castigate some witnesses who years earlier had opposed the Federal Reserve Act as a threat to individualism and commerce, but who now appeared before the subcommittee accepting of the Federal Reserve as a vital component of the national financial system. See Hearings, 17 February 1931, 417–18.

43. Glass, 9 May 1932, 75 *Congressional Record*, 9887.

44. *Ibid.*, 9892.

45. Buckley, 9 May 1932, 75 *Congressional Record*, 9911.
46. *Ibid.*
47. *Ibid.*, 9912.
48. Vandenberg, 9 May 1932, 75 *Congressional Record*, 9913.
49. Norbeck, 30 April 1932, 75 *Congressional Record*, 9300.
50. *Ibid.*
51. *Ibid.*, 9301.
52. Nye, 20 January 1933, 76 *Congressional Record*, 2153–54.
53. Wheeler, 20 January 1933, 76 *Congressional Record*, 2146.
54. Shannon, 19 May 1933, 77 *Congressional Record*, 3751. Congressman Shannon was a Democrat of Missouri.
55. Weideman, 19 May 1933, 77 *Congressional Record*, 3751. Congressman Weideman was a Democrat of Michigan.
56. Shannon, 19 May 1933, 77 *Congressional Record*, 3760.
57. Lemke, 22 May 1933, 77 *Congressional Record*, 3907. Congressman Lemke was a populist Republican of North Dakota.
58. Keller, 22 May 1933, 77 *Congressional Record*, 3913. Congressman Keller was a Democrat of Illinois. It is interesting to note that these opponents were also challenging the notion of central bank independence, concerned that the removal of the Treasury Secretary from Federal Reserve Board membership and the provisions enabling the Fed to retain any profits from its own reserves rather than funneling them to the Treasury would create an institution dangerously free to pursue the private, rather than public, interest. As Keller continued: “It [the Federal Reserve Bank] is entirely privately owned. It does not belong to the people of the United States or to the United States Government—not one dollar of it.”
59. Weideman, 22 May 1933, 77 *Congressional Record*, 3922–23.
60. Steagall, 20 May 1933, 77 *Congressional Record*, 3835.
61. Koppelman, 22 May 1933, 77 *Congressional Record*, 3907.
62. Luce, 22 May 1933, 77 *Congressional Record*, 3914.
63. Wheeler, 20 January 1933, 76 *Congressional Record*, 2146.
64. “Held Deflation Measure,” *New York Times*, 19 March 1932; “Bankers Denounce Glass Bill’s Terms,” *New York Times*, 24 March 1932; “Glass Bill Called Bar to Recovery,” *New York Times*, 29 March 1932; “The ABA and the Glass Bill,” *Bankers’ Magazine* 124, no. 4 (April 1932): 409; “Assert Recovery Waits on Congress,” *New York Times*, 2 May 1932; “ABA Objections to Glass Bill,” *Wall Street Journal*, 2 May 1932.
65. “Prospective Banking Legislation,” *Bankers’ Magazine* 125, no. 4 (October 1932): 311; J. J. Haas, President of the American Bankers Association, “Reply to the Critics of Banking,” *Bankers’ Magazine* 125, no. 5 (November 1932); “A Proposal for Real Banking Reform,” *Bankers’ Magazine* 127, no. 5 (November 1933): 490.
66. See Section V.
67. Hearings, Subcommittee of the Committee on Banking and Currency, “Operation of National and Federal Reserve Banking Systems. U.S. Senate, 71st Cong., 1st sess., Appendix, 999–1058. It should be noted that actually small banks failed more and the key issue for bank stability as a policy matter was in fact the establishment of deposit insurance. But Glass used these findings to push his vision of bigger national-scale banks that were stripped of their securities affiliates—thus avoiding the conflicts of interest that arose

from affiliate activities, but retaining the financial and economic benefits of larger, more centralized banks.

68. Wide Effect Seen in New Bank Law,” *New York Times*, 27 February 1927; “National Bank Expansion,” *Wall Street Journal*, 20 June 1927; “Bank Stocks Reach New Record Highs,” *New York Times*, 18 May 1927. National Bank Expansion,” *Wall Street Journal*, 20 June 1927.

69. “Untermeyer Praises Aims of Glass Bill” *New York Times*, 25 April 1932.

70. See Ferdinand Pecora, *Wall Street Under Oath: The Story of Our Modern Money Changers* (New York, 1968).

71. *Ibid.*, 283.

72. “Stock Exchange Practices,” Report of the Committee on Banking and Currency, June 1934, 73rd Cong., 2nd sess., Report No. 1455, 113.

73. *Ibid.*, 186.

74. Franklin Delano Roosevelt, Campaign Address at Columbus, Ohio, 20 August 1932. Available online at <http://newdeal.feri.org/speeches/1932e.htm>.

75. *Ibid.*

76. *Ibid.*

77. “Says Roosevelt Is for Bank Bill,” *Wall Street Journal*, 10 January 1933.

78. H. Parker Willis, John Chapman, and Ralph West Robey, *Contemporary Banking* (New York, 1933); see also H. Parker Willis, “The Banks and You,” *Modern Problem Series* no. 17 (Columbus, Ohio, 1933).

79. Willis, Chapman, and Robey, *Contemporary Banking*, 12.

80. See Hearings, Subcommittee of the Committee on Banking and Currency, “Operation of National and Federal Reserve Banking Systems. U.S. Senate, 71st Cong., 1st sess., 23 February 1931, 479–96.

81. Glass, 9 May 1932, 75 *Congressional Record*, 9883. Simon Johnson, “Why Don’t the Community Banks Get It?” Baseline Scenario, 3 August 2009, <http://baselinescenario.com/2009/08/03/why-dont-the-community-banks-get-it/>.

82. *Ibid.*

83. *Ibid.*, 9891.

84. *Ibid.*

85. Glass, 17 January 1933, 76 *Congressional Record*, 1937.

86. See, e.g., National Archives, Washington, D.C. Documents pertaining to Glass-Steagall Act, bill numbers S. 3215, S. 4115, S. 4412 (72nd Congress, 1932–33); S. 245, S. 1631 (73rd Congress, 1933).

87. See, for example, Sandel, *Democracy’s Discontent*; Brinkley, *The End of Reform*; Donohue, *Freedom from Want*, 2005.

88. Benston, *The Separation of Commercial and Investment Banking*.

89. Kroszner and Rajan, “Organization Structure and Credibility,” and “Is the Glass-Steagall Act Justified?”

90. See Barth et al., “Policy Watch,” 2000. It is remarkable how the arguments for the repeal of Glass-Steagall echoed those offered by the banking sector in 1932–33: it was argued that combining commercial and investment banking was safe, would provide greater consumer choice and options, while further regulation would simply constrain the ability of banks to help finance productive economic development.

91. See, e.g., Labaton, “Antitrust Chief Hits Resistance in Crackdown,” *New York Times*, 25 July 2009.

92. Simon Johnson, "Why Don't the Community Banks Get It?"

93. "ABA Testifies on Proposal to Create a Consumer Financial Protection Agency," News Release, 24 June 2009, <http://www.aba.com/Press+Room/062409ABATestifiesCFPA.htm>. 2009; Johnson, "Why Don't the Community Banks Get It?"

94. See Carlos D. Ramirez and J. Bradford De Long, "Understanding America's Hesitant Steps Toward Financial Capitalism: Politics, the Depression, and the Separation of Commercial and Investment Banking," *Public Choice* 106 (2001): 93–116; Perkins, "The Divorce of Commercial and Investment Banking," 516; "Roosevelt Seeks Law to Regulate Securities," *New York Times*, 17 March 1933.

95. Mika Lavaque-Manty, *Arguments with Fists: Political Agency and Justification in Liberal Theory* (New York, 2002), Daniel Carpenter and Gisela Sin, "Policy Tragedy and the Emergence of Regulation: The Food, Drug, and Cosmetic Act of 1938," *Studies in American Political Development* 21 (Fall 2007): 149–80; Deborah Stone, "Causal Stories and the Formation of Policy Agendas," *Political Science Quarterly* 104, no. 2 (Summer 1989): 281–300.

96. See Peter Hall, "Conclusion: The Politics of Keynesian Ideas," in *The Political Power of Economic Ideas: Keynesianism Across Nations*, ed. Hall (Princeton, 1989).

97. Indeed, a cursory look at some of the empirical literature building up to the repeal of Glass-Steagall in 1999 exhibits a preoccupation with the explicit economic arguments offered by Glass-Steagall proponents in 1933, rather than the underlying democratic accountability arguments offered by Brandeis and others. The arguments for the repeal of Glass-Steagall seem to echo those offered by the banking sector in 1932–33: it was argued that combining commercial and investment banking was safe, would provide greater consumer choice and options, while further regulation would simply constrain the ability of banks to help finance productive economic development. Some studies in the 1990s suggested that securities affiliates were not in fact selling risky assets, and were less likely to fail. Market pressures, it was argued, forced banks to self-regulate by offering higher-quality securities, rather than engaging in risky speculation. If Glass-Steagall is premised on the need to prevent such speculation and bank failure through regulation, then it would seem that on economic grounds, regulation had become a constraint rather than enabler of productivity. See Benston, *The Separation of Commercial and Investment Banking*; Kroszner and Rajan, "Organization Structure and Credibility," and "Is the Glass-Steagall Act Justified?"; and Barth et al., "Policy Watch."

98. Pecora, *Wall Street Under Oath*, 303.