Myths and Peculiarities: Comparing U.S. and German Capitalism

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Introduction

In recent debates about the nature and future of capitalism, the United States and Germany are typically understood to represent opposing models with deep historical roots.[1] In the realm of business culture *(Unternehmenskultur*) and industrial relations, American business epitomizes a market-based, "hire-and-fire" model of capitalism in which labor unions were never very powerful and have become virtually insignificant. German enterprises—despite significant challenges in recent years—are still marked by a socially based, corporatist culture ("Rhenish capitalism") founded on strong unions and labor participation in management (codetermination, or *Mitbestimmung*). Methods of finance and control provide a second point of contrast. Shareholdings in most large American corporations are publicly traded and widely dispersed, salaried managers seem all-powerful, and US companies resemble commodities, easily bought and sold. In Germany, a "relationship-based" system predominates, in which large shareholders are more common and more powerful, while companies enjoy close relationships with banks, creating significant barriers to takeovers by holding large stakes in each other. A third element concerns their respective strengths in manufacturing. American manufacturers still generally adhere to the style of mass production taken to its limits by Henry Ford, using specialized machines, narrowly defined skills, and closely supervised work processes. Their German counterparts excel, as they have historically, at more flexible forms of batch or customized production, relying on general-purpose machines and skilled workers.

But how far back do the historical roots of these contrasting styles of capitalism actually extend? Scholars tend to read them back into the late nineteenth century, yet knowledgeable observers at that time would surely have found them overdrawn and lacking in nuance, if not downright surprising. The paths that Americans and Germans forged to economic modernity—full of twists and turns, to be sure—require closer scrutiny and more systematic comparison than they have received. Our goal in this essay is to show how little we actually know about German and American capitalism at the turn of the twentieth century. Fundamental to this endeavor is the comparative method. As Carl Degler wrote two decades ago, in a call to American historians, "comparison will emphasize aspects of our past that may have gone unnoticed before, just as it will call for explanations where none was thought necessary before."[2] By unsettling the conventional understanding, we hope to stimulate the in-depth, empirical research that is needed if we are to reach a more nuanced understanding of the histories that have shaped the modern-day American and German political economies. Reassembling the pieces into a new, coherent narrative is a task far beyond the scope of this essay, but by exposing the shaky foundations of the conventional wisdom we hope at least to clear the ground for that important work.

Given space constraints as well as a dearth of comparative research on which we might draw, it is impossible, of course, to survey all dimensions of the history of capitalism in the two countries—from business history, the history of technology, and labor history to macroeconomic history and the history of public policy, not to mention aspects of social and cultural history—or to do so in any depth. Instead, the bulk of our essay examines the empirical foundations of what turn out to be little more than myths about differences in the American and German economies at the turn of the twentieth century. In the final section, we highlight very selectively what we regard as key differences—the peculiarities—that marked the American and German political economies at the turn of the century and that have persisted, despite the trials and tribulations of the twentieth century, to our own time. These concern the finer details of the two federal political structures, especially the division of labor between the federal and state/provincial governments in the making of economic policy. In the United States, we argue, the most important fact—increasingly an anachronism, yet so familiar that it has become virtually invisible—is that a broad swath, though not all, of economic policy remained (and remains) largely in the power of the state governments, even as firms became increasingly national and then international in their geographic reach. In the German Empire, economic policymaking across most policy domains was largely nationalized from the outset and remained so throughout the twentieth century. This critical difference set the American and German political economies along very different lines of development over the twentieth century.

Myths

Underlying the contrasting models of capitalism sketched out above are stylized storylines that run as follows: Germany was a relatively late industrializer, characterized by moderate "economic backwardness," in Alexander Gerschenkron's famous phrase. Its economy was boosted by protective tariffs and organized by national associations of producers, strong trade unions, and powerful universal banks. Because it lacked a large domestic market in the late nineteenth century, it became an export powerhouse. The United States, by contrast, is usually portrayed (at least implicitly and sometimes explicitly) as an early industrializer. A bastion of laissez-faire and individualism, it became an industrial power by mobilizing capital on Wall Street and by exploiting its massive domestic market.

Neither of these storylines is completely wrong, but neither are they completely right. When trends in the two countries are set side by side, as we show in this section, the differences that these stories imply between the American and German styles of capitalism at the turn of the century turn out to be much smaller than imagined, and in some instances are even turned on their heads.

First of all, the term late industrializer and all that it implies in German history—rapid growth, unprecedented demand for capital, speedy structural transformation—applies equally well to the United States. The US and Germany both faced intense international competition when they began to industrialize in the early to mid-nineteenth century, much more so than Britain and France had in the eighteenth and early nineteenth century. This was largely because the British and the French had already established themselves as formidable competitors by the mid-nineteenth century, when the United States and the German states began to industrialize. Capital- and labor-rich Britain was dominant in the two industries that had formed the core of its industrial revolution—iron and cotton textile manufacturing. In 1860, for example, Britain produced almost five times as much pig iron as the United States and more than seven times as much as the German states. British textile manufacturers consumed nearly half a million metric tons of raw cotton that year, while their American counterparts used well less than half as much and their German counterparts one-seventh.[3] France, meanwhile, covered the luxury or high-end market, especially in textiles. For the United States as well as Germany, the first round of industrial growth in the middle decades of the nineteenth century was, not surprisingly, centered elsewhere—in railroad construction (with a good deal of British iron), in the machine-tool industry (which produced the machines used in manufacturing), and in hard-coal mining (principally in Pennsylvania and the Ruhr region).

When the United States and Germany began to challenge British industrial power in the late nineteenth century, moreover, they both did so on the basis of the new, capital-intensive industries of the "second industrial revolution"—steel, electrical manufacturing, and chemicals (Germany) or oil (US).[4] In raw steel production, the United States surpassed Britain for the first time in 1886.[5] By 1894, the American industry was led by two dominant firms, Carnegie Steel and Illinois Steel, whose combined capacity equaled three-quarters of total American output.[6] In 1901, a broad swath of the steel industry was consolidated into a single giant firm, United States Steel, in a merger orchestrated by the private banking firm of J. P. Morgan. Meanwhile, the German steel industry, led by a larger number of smaller (though still very large) producers such as Krupp, Thyssen, and Phoenix, had overtaken Britain in output in 1893.[7] Facing (like their American counterparts) the "cutthroat" competition endemic to capital-intensive industries and amidst falling prices, German steel producers turned to cooperation, rather than American-style consolidation, forming a nationwide, multi-product cartel called the Steel Works Federation (*Stahlwerksverband*) in 1904. In electrical manufacturing, two top firms quickly became dominant in each country: Siemens and AEG (*Allgemeine Elektricitäts-Gesellschaft*) in Germany, and General Electric and Westinghouse in the United States. In chemicals, the United States had no real counterpart to Germany's pioneers such as BASF and Hoechst before the turn of the century, and certainly not after German producers, inspired by developments in the United States, formed two great *Interessengemeinschaften* (based on cartel contracts) in 1904–05. Nor did Germany—indeed, Europe as a whole—have any oil producers to rival John D. Rockefeller's Standard Oil, which dominated not only the American market but world export trade as well. Facing comparatively higher costs for fuel, raw materials, and transportation, American and German manufacturers in these and other industries made early and systematic use of new, capital-intensive methods of mass production that yielded economies of scale and scope as well as impressive productivity gains. Indeed, American and German firms were at the forefront of the movement toward managerial capitalism in the late nineteenth and early twentieth century.[8]

As befits relatively late industrializers, the American and German economies were both transformed rapidly between 1870 and 1913. Measured in terms of increase in real GDP per capita, the United States (116%) and Germany (100%) experienced faster growth in these years than France (74%) or Britain (54%), with the US modestly outpacing Germany.[9] By the end of the period, the structure of both economies had become recognizably industrial. By the early 1910s, industrial employment (Table 1) accounted for roughly one-third of all employment in the United States and Germany, and agriculture also continued to claim about one-third. Although not identical in the details, the structure of

TABLE 1. *Sectoral shares of employment, ca. 1910–1913*

	Agriculture	Industry	Services
UK (1911)	11.8	44.1	44.1
US (1910)	32.0	31.8	36.2
Germany (1913)	34.5	37.9	27.6

Source: Stephen Broadberry, "Human Capital and Productivity Performance: Britain, the United States and Germany, 1870–1990," in *The Economic Future in Historical Perspective*, ed. Paul A. David and Mark Thomas (Oxford 2003), 107.

employment was much closer in the United States and Germany than in the United Kingdom, where agriculture claimed little more than one-tenth of all employment, and industry nearly one-half. The words with which a German scholar characterized Germany on the eve of World War I could equally well have been said of the United States: It had been transformed "from an agrarian state with a strong industrial base to an industrial state with a strong agricultural base."[10]

Secondly, German producers were not alone in advocating and securing protective tariffs, despite the rhetoric of laissez-faire and individualism propounded by American businessmen in the late nineteenth century. US import duties had gone up rapidly during the American Civil War (1861–1865), partly to compensate domestic producers for very heavy internal taxes. The internal taxes were quickly removed when the war ended, and tariff levels initially declined slightly, but powerful, well-organized interests waged an intense lobbying campaign that kept them at wartime levels until high levels of protection came to seem natural —and then they were raised higher still. Woolen and cotton textiles as well as steel products were special objects of attention, but the mantle of protection, in the words of the US tariff's historian, was extended "to include almost every article, whatever its character, whose production in the country [was] possible."[11] Writing in 1886, English legal scholar Sir Henry Maine judged American tariffs to be "as oppressive as ever a nation has submitted to."[12] In the 1880s, the federal government annually collected import duties equal to about 30 percent of the value of all imported goods, or 42–48 percent of the value of dutiable imports. From 1890 through 1910, US revenue from duties fluctuated between 20 and 30 percent of the value of all imports and between 40 and 52 percent of the value of dutiable imports.[13]

German tariff levels, set by the *Zollverein*, a customs union founded in 1834 that included most of the German Empire after 1871, were relatively modest by comparison. Free-trade ideology dominated the *Zollverein* into the 1870s, but a combination of events—the Franco-Prussian War (1870–71), the economic crisis of 1873, the scheduled elimination of the last tariffs on iron in 1877, and rising protectionism on the Continent—led to growing agitation for protective tariffs in the German Empire. Pressure came especially from iron and textile manufacturing interests, who gained the support of agricultural interests when foreign grain began to make substantial inroads into European markets in the 1870s. Chancellor Otto von Bismarck threw his support behind the movement, both for party-political reasons and because it would mean enhanced revenues for the federal government, which could levy only indirect taxes and otherwise depended mainly on oft-contentious contributions (*Matrikularbeiträge*) from the member-states (*Länder*) of the empire.[14] The result was the tariff law of 1879. Although direct comparisons are difficult, it seems fairly clear that German tariffs, even after successive increases in 1885 and 1887, did not match the overall level of protection granted by American tariffs. Under the 1879 law, imports of raw materials into the *Zollverein* remained largely duty-free, while tariffs on industrial products ran around 10 to 15 percent of value. Duties on agricultural products were also relatively low, although tariffs on grain ran as high as 30 percent. The increases in 1885 and 1887 were mainly to tariffs on grain and livestock.[15] Then, while the McKinley tariff of 1890 raised American duties to new heights, the Caprivi tariff of 1891 ushered in a two-tiered system of rates in Germany that, overall, were "moderate" in the judgment of the British commercial attaché in Berlin in 1899. The Bülow tariff of 1902 raised rates on grain a bit further, and also established minimum rates for farm products that could not be negotiated downward. Industrial raw materials were generally not taxed, but the rates on finished manufactures were increased.[16] By then, American rates had been raised again in 1897 to new heights that prevailed until 1909.[17] In short, overall, tariff levels were, if anything, systematically higher in the United States than in Germany in the late nineteenth century.

National interest associations, thirdly, proliferated in Germany during these years, as is well known, but here, too, the parallels in the United States are unmistakable. As Alexis de Tocqueville observed in the 1830s, Americans (too) showed a special talent for forming voluntary organizations. When national-level policymaking gained strength in both countries—following the unification of Germany and the reunification of the United States in 1870 (when the last southern states returned to the Union)—organizing on a nationwide basis to defend economic interests became imperative in both countries, and national associations multiplied.[18]

The German Empire, a constitutional monarchy, was structured, like the United States, as a federal system (with twenty-five member states), but with a singularly important difference for the economic history of the two countries. Like the federal government in the United States, the Reich alone was responsible for national defense and foreign policy, but unlike its American counterpart, it also quickly became responsible for achieving and maintaining, in Hans-Peter Ullmann's words, the nation's legal and economic unity *(Rechts- und Wirtschaftseinheit)*.[19] Thus the Reich—often under the influence of its largest state, Prussia—very quickly assumed the predominant role in economic policymaking. And once policy was centralized, the incentives to form centralized associations were in place. Following quickly on the heels of the formation of the empire, the economic crisis of 1873 prompted the first national organization of German industrialists to form. This was the *Centralverband Deutscher Industrieller*, established in 1876 by regional and industry-specific associations to lobby for tariff protection. After protective tariffs were achieved in 1879, the association—in a dynamic typical of American associations as well—turned its attention to other matters of common interest to its members, while also expanding its membership (although it continued to be dominated by textile manufacturers and heavy industry). In 1895, a second national association, the *Bund der Industriellen*, formed, representing the interests of manufacturers of finished goods, who were more dependent on export markets and less enamored of protection than were the increasingly cartelized heavy industrialists.[20]

In the United States, power over economic policy shifted perceptibly from the states to the federal government during and after the Civil War, although not to the same degree as in unified Germany. Before the war, the opposition of slave interests had severely limited the federal government's powers in economic matters, even though the Constitution had reserved to it certain powers akin to those of the Reich—e.g., to regulate weights and measures, to issue patents, and to establish uniform bankruptcy laws. Popular sentiment, it should be noted, evidently favored a stronger federal role as well, for Congress repeatedly passed legislation that would have given the federal government a stronger role, for example, in railroad development and banking. But presidential vetoes repeatedly put an end to such initiatives, and Congress moved slowly even on less controversial issues such as regulating weights and measures or enacting uniform bankruptcy laws. This decades-long stalemate at the national level changed abruptly when the Civil War began and Southerners left Congress. Now Congress not only imposed an array of internal taxes and raised tariff levels, as noted above, but in short order chartered several transcontinental railroads, abolished slavery, and created a system of nationally chartered banks.[21]

It was the impending end to the war—and the concrete possibility that tariff levels would be lowered when internal taxes were repealed—

that prompted the first wave of national associations to form in the United States. Initially, they lobbied Congress on tariff or other issues and then, like the *Centralverband Deutscher Industrieller*, retooled to take up other matters of mutual interest. Among these Civil War-era associations were the United States Brewers Association, the New England Cotton Manufacturers' Association, the American Iron and Steel Association, and the National Association of Wool Manufacturers. A second wave emerged after the war. The National Association of Planters and Cotton Manufacturers formed in 1868, for example. In 1875, the American Bankers Association was created to serve as the unified voice of this diverse sector in lobbying Congress on currency and tax issues. The National Potters Association formed the same year. The American Paper Manufacturers' Association (later, American Paper and Pulp Association) formed in 1878. When Congress was poised to regulate interstate railroad rates, technology, and time in the 1880s, railroad men quickly took defensive action by forming the American Railway Association (1886). In the same year, the Stove Founders National Defense Association was founded. The National Association of Manufacturers was formed in 1895, initially to promote foreign trade and to lobby for protective tariffs; it then refocused its energies on combating unions.[22] What was happening in the economic sphere was part of a larger movement in the United States. As the British observer James Bryce remarked in the 1890s, "associations are created, extended, and worked in the United States more . . . effectively than in any other country."[23] The post-Civil War years were especially fertile: Of all the large civic associations formed in the US up to 1940, the majority sprang up in the decades between the Civil War and the end of the century.[24] By the turn of the century, an array of national interest associations riddled the political landscape of both countries. Germany was far from unique in this regard.

Nor were German workers, fourthly, more highly organized or even more politically oriented than American workers in the late nineteenth century. A comparison of the United States (1883) and Germany (1877/78) reveals that union membership in the US exceeded the German figures by a rate of five to one (with populations of roughly the same size). Iron and steelworkers, coal miners, and cigar makers made up the largest union contingents in the US, while no major industry had yet been organized in Germany. There, the cigar makers still accounted for the largest membership, and the printers claimed the highest percentage of organized workers (50 percent), with construction and metalworking slowly catching up. Yet only 1.5 percent of all artisanal and industrial workers belonged to a trade union in 1877.[25] Party hegemony, moreover, had led to a schism along ideological lines—there were Social Democratic "free" trade unions, liberal unions, and, later, Catholic unions *(Christliche Gewerkvereine*)—and this would become a long-lasting burden for the German trade union movement. Indeed, the union movement barely survived its close affiliation with Social Democracy, as both forms of organization were declared illegal and prosecuted alike under the Anti-Socialist Law *(Sozialistengesetz*), which remained in effect until 1890. Moreover, the welfare policies initiated by the German state (health insurance, 1883; accident insurance, 1884; old-age and disability pensions, 1889—largely financed by employers or employees) may have taken some wind out of the labor movement's sails, although the socialist vote nearly tripled between 1884 and 1890.[26]

In the United States, where neither the state nor the unions were as centralized, where unions did not align themselves so closely with political parties, and where they tended to divide along racial rather than religious lines, the trade unions nonetheless pursued an explicitly political agenda—with some success—through the 1880s. For all the energy that scholars have expended in trying to answer Werner Sombart's famous query, "Why is there no socialism in the United States?" it is worth emphasizing that there were only weak trade unions in Germany before 1890, as noted above, and that socialism was not entirely absent on American soil either. "The Noble and Holy Order of the Knights of Labor" (KOL) was a federation of local workers' associations, trade unions, and cultural organizations that had been founded as a secret society in 1869, and by 1883 it had flourished into a mass movement "whose membership is not known publicly," a US Senate committee reported, "but . . . runs into the hundreds of thousands."[27] At the height of its powers in 1886, the KOL claimed about a million supporters from the ranks mainly of white craftsmen and skilled industrial workers, but also of unskilled workers, African-Americans, and women. Except for this decidedly greater inclusiveness, the Knights became the labor organization in the United States that bore the closest resemblance to German Social Democracy. Like the Social Democrats, the KOL embraced an ideology of "associational socialism" that depicted "banks," "monopolies," "stockbrokers," and "corrupt politicians" as their main adversaries, and it supported efforts to organize production on a democratic-cooperative, instead of autocratic-corporate, basis. The Knights put forward a political vision, yet the revolution that they advocated was not the political revolution that the Social Democrats envisioned—how could it be when there was no strong central state to battle?—but a cultural revolution brought about by the self-education of the workers. Even the American Federation of Labor, renowned for its conservative, "bread-and-butter" strategy, initially won a string of victories in the state legislatures, only to see its successes gutted by American courts or the dynamics of competitive federalism.[28] By the turn of the century, unionization rates (excluding agricultural laborers) in the United States and Germany were virtually equal at about 5 percent.[29] This is not to say that the American and German labor movements were identical across the board at the turn of the century, but that the differences codified in opposing models of capitalism do not have as long a history as commonly supposed.

Also in need of reevaluation is the conventional emphasis on the pivotal role played by universal banks in German industrial history and on the mobilization of capital through stock markets in American industrial history. On the one side, the German "great banks" (*Großbanken*)—incorporated "universal" banks that offered a full range of commercial and investment services—appear to have been less deeply involved in industry than previously thought. Detailed data before 1900 are very scarce, but studies by economic historian Caroline Fohlin have done a great deal to call this bit of common wisdom into question. The records of two "great banks," the Disconto-Gesellschaft from 1856 to 1900 and the Darmstädter Bank (later, the Bank für Handel und Industrie), in scattered years from the early 1880s to 1908, suggest that their holdings of industrial securities were minimal. The Disconto-Gesellschaft had the bulk of its holdings in three mining companies, but they amounted to 3 percent or less of its assets in 1852–1865 (when detailed data are available) and it sold off its holdings when it was able to do so in the late 1860s and early 1870s. The Darmstädter Bank's holdings of industrial shares peaked at 1.3 percent of its assets in 1882, and they usually accounted for less than 1 percent in the 1880s and 1890s. It had "substantial holdings" in only twelve companies over the fifteen years from 1882 to 1897. This suggests, Fohlin concludes, "that the great banks invested a relatively small proportion of their portfolios in the equity of industrial firms."[30] Examining bank-firm relations from the opposite end in a random sample of 400 listed firms in 1905, she found that less than a quarter had an affiliation with "any joint-stock universal bank," and of those firms, less than half had a representative of one of the "great banks" on their board.[31] When banks did have close relationships with individual companies, moreover, it was usually because the banks were handling the companies' stock market listing and issuing their securities (German law required that investors be lined up to take all of a company's shares before it could take on its corporate powers), rather than monitoring or controlling the firms.[32] Although the evidence is sketchy, bank participation in German industry does not seem to have been widespread or even typical of German corporations.

On the other side, American bankers seem to have been more deeply involved in corporate finance than commonly thought. After the Civil

War and, even more so, after the panic of 1873, private bankers with international banking connections—best known was J. Pierpont Morgan—took a leading role in investment banking in New York, Boston, and Philadelphia, while incorporated banks, such as the First National Bank of Chicago, dominated the underwriting business in other regions. They increasingly took an active role in the corporations whose securities they floated, a practice begun with railroad investment in the 1840s and 1850s, formalized after the Civil War, and extended to the large industrial corporations that formed in the Great Merger Movement, a wave of incorporations and mergers that began in the mid-1890s.[33] Organized as partnerships, the private banking houses generally offered a full range of general and investment banking services by the turn of the century, although some specialized in one or a handful of specific services. Kidder, Peabody of Boston, for example, was well-known as a foreign banking house, supplying commercial and personal letters of credit, but it made most of its profits at the turn of the century from its securities business. Its partners, moreover, usually sat on the boards of the companies in which it had a stake.[34] By the early twentieth century, incorporated banks such as the Mellon National Bank of Pittsburgh were also offering the full range of investment services. National banks cut back their activities somewhat or spun them off as securities affiliates when the US Comptroller of the Currency tightened up restrictions on their investment activities in 1902, but state-chartered banks and even some national banks apparently continued to offer investment services.[35] Also growing rapidly in importance between 1890 and 1910 were state-incorporated trust companies, which operated nationwide and offered their clients an even broader range of services—not only general and investment but also legal services.[36] By 1912, representatives of the five American "great banks"—J. P. Morgan & Co., First National Bank, National City Bank, Guaranty Trust Company, and Bankers' Trust—sat on the boards of sixty-eight non-financial corporations. The combined assets of these "be-bankered" corporations, as future Supreme Court Justice Louis Brandeis dubbed them, equaled more than half of US GNP that year.[37]

In this light, it comes as no surprise that the Berlin stock exchange, by some measures, was as robust as the New York Stock Exchange (NYSE) at the turn of the twentieth century. Of course, neither the Berlin nor the New York exchange rivaled the London exchange in the value of the common stocks of domestic corporations (not to mention international companies) that they listed in 1900. And the value of domestic corporate equities listed on the New York Stock Exchange was more than twice that of similar stocks listed on the Berlin exchange. But by other measures, according to data put together by business historian Leslie Hannah, the Berlin stock exchange mobilized capital quite respectably at the turn of the century. It listed 719 domestic common stocks in 1900, almost as many as London's 783, but many more than the 123 listed on the NYSE. Moreover, they represented nearly equal proportions of GDP in the two countries—14 percent in Germany versus 15 percent in the United States. Nearly two-thirds of the NYSE-listed stocks were those of railroads, while this sector accounted for only 9 percent of Berlin-listed stock, since German railroads had been effectively nationalized by then. As might be expected, given that the *Großbanken* were incorporated and some of the most important American "great banks" were organized as partnerships, the finance sector had a much larger presence on the Berlin exchange (45 percent) than on the NYSE (7 percent). The remainder of the stock fell into a broad category of "other" sectors that included manufacturing and mining. These accounted for less than a third of the NYSE-listed stocks (30 percent) but nearly half of the stocks listed in Berlin (47 percent).[38] In other words, only about 37 "other" corporations were listed in New York, while nearly ten times as many (about 338) were listed in Berlin. Although direct comparisons are exceedingly difficult, the tendency to identify powerful universal banks with Germany and stock markets with the United States at the turn of the century clearly needs rethinking.

The emphasis usually placed on Germany's prowess in export markets and on the extraordinary size of the US domestic market also calls for greater nuance. To be sure, German firms (that is, those in the *Zollverein*, the only available source of German foreign trade statistics in this period) exported proportionally more goods than American firms did in the late nineteenth century.[39] *Zollverein* products equal to 14 percent of the German Empire's net national product (NNP) went to foreign markets in 1890, for example, while American exports represented less than 7 percent of US gross domestic product (GDP). In per capita terms, this amounted to about $16 for every German and about $14 for every American.[40] In shares of world manufacturing exports, moreover, Germany did better than the United States—17 percent vs. 12 percent in 1899, and 20 percent vs. 14 percent in 1913 (while the British share declined from 35 to 32 percent in these years).[41] But what is often overlooked is the other side of the balance sheet. Despite protective tariffs—or perhaps because of their relatively modest levels—Germany imported even more than it exported. In 1890, for example, *Zollverein* imports amounted to nearly 18 percent of German NNP, or $20 per person. And this was not unusual: The *Zollverein* ran a trade deficit consistently throughout the years from the 1880s through 1913.[42] In 1890, the United States, in contrast, imported merchandise equal to little more than 6 percent of GDP (or less than $13 per capita). This was entirely consistent with its overall pattern from 1876 through the turn of the century and beyond: merchandise trade surpluses.[43] Germans were more deeply engaged in the international economy, in other words, but Americans' more limited engagement was carried out on better terms.

The customary claim that the American domestic market was exceptionally large and the German market exceptionally small also warrants scrutiny. The size of a national market depended on a number of factors. Population, concentration in urban centers, and the average amount of money in the pockets of its inhabitants mattered a great deal, of course. But at least equally important was the degree to which the nuts-and-bolts matters that are so important in reducing the costs and risks of doing business nationwide—currency, weights and measures, transportation (and communication), and business law—were uniform throughout a "national" market. To count the population within a bounded geographic area and calculate urban concentrations and per capita wealth is not enough, in other words, to describe a "national market" as an entrepreneur would see it. A market only became "national" when the political steps had been taken to institute uniformity in the nuts-and-bolts sense across the entire geographic area that made up a nation. Geographic size was clearly in the United States' favor, but could also have worked against it. If the nuts-and-bolts aspects of business varied dramatically over its greater expanse, for practical purposes breaking it into a multiplicity of smaller units, what would otherwise appear to be a national market was anything but. In the last decades of the nineteenth century, both countries did what the European Union has been struggling to do for decades: They took many of the political steps necessary to create uniform national markets. But, because of differences in the federal structures of the two countries, the German Empire did more in this regard than the US.

Measured by population, urban concentrations, and wealth, the American market had indeed become more extensive than the German market by the turn of the century, although the contrast was less than striking when the era of the second industrial revolution opened. In 1871, the US and German populations were virtually identical at 41.0 million each. By 1890, however, the American population had grown by more than half (to 63.1 million), partly due to a large influx of immigrants, many from Germany; this was nearly double the British population at the time. By then, the German population, its growth slowed by a wave of emigration in the 1880s (principally to the US), had reached less than 50 million: There were now 28 percent more Americans than Germans. The divergence widened over the next two decades; by 1910, the US population (92.4 million) exceeded the German by 42 percent.[44] Americans also clustered in a larger number of larger urban areas than Germans did. Overall, the German population was more "urban" in 1871—36 percent of

Germans lived in communities of 2,000 or more, compared with only 26 percent of Americans (in communities of 2,500 or more in 1870); by 1910, the numbers were 60 and 46 percent, respectively, for Germany and the United States.[45] But, despite its lower rate of urbanization, the US in 1910 claimed about as many cities of 100,000 or more (50) as Germany did (48), and the three largest American cities had populations of 1,000,000 or more, while only one—Berlin—was as large in Germany (although Hamburg nearly qualified).[46] Finally, American pockets, on average, were deeper. In 1871, nominal GDP per capita in the United States was more than twice that in Germany ($183 vs. $83, or 121 percent higher in the US), and, since their economies were growing at roughly comparable rates in per-capita terms, the same was true in 1913 (now $407 vs. $186, or 118 percent higher in the U.S.).[47] In real terms (1985 dollars), the difference was less stark but still significant: According to Angus Maddison's estimates, American GDP per capita was 73 percent higher than the German in 1870, and 86 percent higher in 1913.[48] In terms of people, urban markets, and average dollars per pocket, then, the American market was indeed "bigger" than the German by the early twentieth century.

But was it as uniform in the nuts-and-bolts ways that made a market truly "national?" Here, the evidence suggests that German entrepreneurs had a more fully "national" market to exploit than their American counterparts did at the turn of the century, and well beyond. The political process of creating a German national market began in 1834 with the creation of the *Zollverein* and accelerated on the eve of the formation of the Empire. By 1871, more than 21,000 kilometers of railroad track linked together the German states inside and outside the *Zollverein*.[49] Although the members of the Empire would retain control of their own railroads, and federal ownership, despite Bismarck's best efforts, would not become a reality until 1919, the Association of German Railroad Administrations (*Verein deutscher Eisenbahnverwaltungen*), founded in 1846, had achieved virtual uniformity of technology and operating procedures (though not rates) across the German states by the 1860s.[50] With less transshipment and, therefore, lower costs, goods and people could travel nationwide—indeed, beyond the Empire—with relative ease. A degree of uniformity in business law had also been instituted from 1861, when the German Confederation enacted a general commercial law (the *Handelsgesetzbuch*, or HGB) that was quickly adopted by the major German states. The HGB initially left the question of how to create and regulate corporations and their securities—whether by special act (*Konzessionssystem*) or under general incorporation laws (*Normativsystem*)—to the member states, but in 1870, the North German Confederation amended the HGB to mandate general incorporation, partly in competition with and partly in emulation of Britain and France.[51] Although not without its deficiencies, the amended law created uniformity in the regulation of corporations and their securities across the Confederation. It, too, became the law of the German Empire.

Then, once the Empire was established in 1871, the remaining nuts-and-bolts elements of a national market quickly fell into place, for the imperial government, rather than its twenty-five member states, formulated broad areas of economic policy, from foreign and domestic trade, currency and coinage, and weights and measures to banking, insurance, incorporation, and the issuing of securities. In late 1871, the coinage of the twenty-five member states was standardized on the Mark. In 1875, the Prussian State Bank was transformed into the Reichsbank, a central, note-issuing bank with branches nationwide, effectively standardizing currency and creating a national money market.[52] Weights and measures were also unified in 1875, and in 1877, the founding of the *Physikalisch-Technische Reichsanstalt* put the German Empire on the forefront of international efforts to standardize scientific weights and measures. In 1883, the Reich pushed implementation further by setting up a multilevel system for monitoring weights and measures.[53] Meanwhile, creation of the *Reichspatentamt* in 1875 had instituted a national system of granting patents, abolishing the legal diversity that had prevailed in the North German Confederation and in the Empire until then. Finally, in 1884, a new general incorporation law was passed to address the deficiencies of the 1870 law. Although its requirements were stiff by American standards, its systematic and uniform rules governed the formation and operation of corporations nationwide. By 1890, the German railroad network had more than doubled to 43,000 km.[54] In short, the German Empire had put in place the technological and legal infrastructure that made its market "national."

On a quick reading of the US Constitution, one might think that many features of a national market existed in the United States from the outset. The Constitution prohibited the states from issuing their own currencies, and, as noted earlier, it lodged power over important aspects of business policy—foreign trade, patents, the post, interstate commerce, weights and measures, and bankruptcy law—securely in the hands of the federal government, thus dampening the tendency toward state-level Balkanization that had threatened to break apart the union under the Articles of Confederation.

But exercising even these relatively limited powers was a long and drawn-out affair, because the powers of the American federal government, as noted earlier, were more restrained, first, by the opposition of slave interests to an expansion of federal power, and then in the post-Civil War years by continuing conflict over the division of labor between the states and the federal government. Only in levying tariffs and in creating national patent and postal systems did Congress move swiftly. Regulation of interstate commerce proceeded more slowly. Before the Civil War, Congressional power to regulate under the commerce clause was "used with peculiar caution," in Lewis H. Haney's words, "because of the extreme sensitiveness of the states concerning their sovereignty."[55] It did not begin in earnest until passage of the Interstate Commerce Act (1886), regulating interstate railroad rates. The tasks of providing national standards for currency, weights and measures, and bankruptcy law also languished for decades. Despite the Constitutional prohibition on state-issued currency, the states chartered their own note-issuing banks with abandon. Twice, Congress created national banks (in 1791 and 1816) to help stabilize postwar federal finances, but they were the objects of great political conflict, and neither survived beyond the twenty-year life prescribed in its charter. Not until the Civil War, three-quarters of a century after adoption of the Constitution, did Congress create a system of nationally chartered, note-issuing banks and tax state currencies out of circulation.[56] For decades, moreover, Congress pursued standardization of weights and measures in piecemeal fashion. Not until 1901, when it established the National Bureau of Standards (now the National Institute of Standards and Technology), modeled on the *Physikalisch-Technische Reichsanstalt*, did the United States finally achieve nationwide standardization and break its dependence on Europe for technical standards.[57] Likewise, Congress passed—but then repealed—federal bankruptcy laws in 1800/1803, 1841/1843, and 1867/1878, before finally passing a law in 1898 that proved long lasting. Those laws pertained largely to individuals, however, and it was not until 1938 that Congress passed bankruptcy legislation aimed specifically at business entities.[58]

The Civil War and its aftermath, as noted earlier, prompted a visible expansion of federal power over the economy. Compared with German markets, however, American markets nonetheless remained fragmented for many decades, because the state governments remained more significant players in economic policymaking than their German counterparts. This aspect of the American political economy—the states' continuing importance after the Civil War—has largely escaped the notice of historians.[59] For economic history, this is an especially egregious error, for the division of labor spelled out in the American constitution, unlike in the German constitution of 1871, lodged extensive powers over economic policy in the hands of the state governments. In the words of legal historian Harry N. Scheiber, "property law, commercial law, corporation law, and many other aspects of law vital to the economy were left almost exclusively to the states" before the Civil War, and even after the postwar expansion of federal power, "the states were in large measure still setting their own agendas on industrial policy matters, despite centralizing tendencies in constitutional doctrine and in national policy." For the businessperson seeking a truly national market, the result, instead, was still "a multiplicity of legal environments."[60]

Evidence of the continuing fragmentation of economic policy and, therefore, of markets is abundant. Even as Congress began chartering and regulating national banks, the states continued to charter and regulate their own banks—and all other corporations—under rules that varied from state to state. Until the Federal Reserve was established in 1913, the United States lacked the equivalent of the Reichsbank (and relied on private banker J. P. Morgan to stabilize financial markets in the Panic of 1907). Although even in Germany, centralized regulation of banking was a product of the twentieth century, policymaking was much more fragmented in the United States, and remains so to this day.[61] Despite construction of the transcontinental railroads, a truly national system of railroads only began to take shape in the 1880s, when the threat of Congressional action on safety issues and standard time zones galvanized American railroads to form a national association, as noted earlier, and regulate such matters themselves. Only in the late 1880s were American railroad gauges finally standardized nationwide, for example, an indispensable step to building a truly national system that German railroads had taken a couple of decades earlier.[62] Meanwhile, the states continued to wield power over most other policy areas that defined markets. During the last decades of the nineteenth century, the federal courts, prodded by long-distance railroads and vertically integrated manufacturers whose activities increasingly crossed state lines, began to curb state regulation of interstate freight rates and inter-firm relations, as well as the "subtle forms of protection" that they had long practiced, e.g., via taxes, licensing fees, and inspections.[63] By the end of the century, federal court decisions, together with the Interstate Commerce Act (1886) and the Sherman Antitrust Act (1890), regulating the competitive behavior of firms engaged in interstate commerce, had shifted the balance of power over economic policy perceptibly further away from the states and toward the federal government.[64] But the overall effect, at least until the New Deal and probably until after World War II, was not to bring into being a uniform national market. The reconfigured division of labor between the state and federal governments in economic policy merely added another dimension of complexity to the "mosaic" of regulation that had characterized the United States since its founding.[65] A persistent, now two-dimensional mosaic of policymaking meant a persistent mosaic of markets.[66]

Overall, then, what remains of the stylized storylines that highlight differences between the United States and Germany at the turn of the century? Both countries qualified as relatively "late industrializers" as they rose to industrial power on the basis of the industries associated with the "second industrial revolution." Tariff levels, if anything, appear to have been higher in the US than in Germany. National associations of economic interests were a salient feature of the political landscape in both countries. Trade unions were not particularly strong in either country, though for differing reasons: Where the strength of German unions was undercut by political repression, the strength of American unions was undercut, in effect, by racism and the structure of the American polity. Universal banks were probably equally powerful in the two countries, except that they took the form principally of (unregulated) partnerships in the US. Export markets were evidently more important to German producers than to their American counterparts, although not strong enough to generate the trade surpluses that the US enjoyed. From the standpoint of the late-nineteenth-century entrepreneur, finally, the American domestic market probably did not appear as "national" as the German. If anything, the similarities between the two political economies at the turn of the century are more striking than the differences.

This is not to say, of course, that there were no differences of significance, but that the conventional understanding has overstated them, if not gotten them wrong altogether. Badly needed is more in-depth, fully comparative research of the potentially transformative kind for which Carl Degler called two decades ago. Only then will we be better positioned to understand the finer differences in the German and American political economies at the turn of the twentieth century and how they may have shaped development since then.

As this survey has repeatedly hinted, however, one particular difference will surely deserve close attention: the distinctive ways in which the labor of economic policymaking was divided between the state and federal governments in Germany and the United States. As the next section suggests, this fine-grained difference inflected economic policies at the turn of the century in ways that remain with us today.

Peculiarities

Omitted from the conventional storylines outlined at the beginning of the last section is a dimension of American and German capitalism that was palpably different at the turn of the century: the two countries' signature means of dealing with intensified competition. In the United States, the dominant business strategy to dampen increasing competition was to merge competing firms into single, giant corporations. In Germany, in contrast, the dominant strategy was cartelization—forming associations, based on contracts, among otherwise independent firms in order to dampen competition collectively by coordinating production and dividing up markets. Exploring the roots of this difference—if we dig deep enough—illuminates the critical importance of the distinctive ways in which the federal and state governments divided up economic policy-making in the United States and Germany.

The divergence in American and German business strategies set in toward the end of the first "Great Depression" (1873–1896), which was marked both by cutthroat competition, endemic to the new, capital-intensive industries of the era, and by falling prices. In Germany, some eight cartels had formed by 1875. By 1887, the number of German cartels was up to seventy.[67] Although the term "cartel" is seldom used in American history, the strategy was familiar in the United States as well in the 1870s. American manufacturers, too, as business historian Alfred Chandler notes, "set up nationwide trade associations to control price and production" across a broad range of industries. "By the 1880s," in his words, "these federations had become part of the normal way of doing business in most American industries."[68] In some instances—beginning with John D. Rockefeller's Standard Oil in 1882—inter-firm relations were more centralized in trusts and then in holding companies. But cartelization was a risky strategy under American common law, which did not prohibit combinations in restraint of trade but treated them as void and unenforceable. This meant that, unlike in Germany, the cartels' contractual agreements could not be enforced in court. Then, in 1890, the US Congress prohibited cartels nationwide (at least on paper) in the Sherman Antitrust Act. In 1888, meanwhile, the state of New Jersey had passed an incorporation law that made formal consolidation much easier by permitting its corporations to hold stock in other corporations. The combined effect of federal prohibition on cartels (in competition policy) and New Jersey's open door to holding companies (in incorporation policy) was to channel American business strategies toward outright merger and consolidation. [69]

At the turn of the century, a wave of organization building produced giant monopolies or monopolistic combinations in many sectors of the American and German economies virtually overnight. The Great Merger Movement in the US swallowed up more than 1,800 firms between 1895 and 1904, consolidating them into 157 firms that dominated their lines of business, mainly in manufacturing. Nearly 80 percent of consolidations with a capital of $1 million or more were incorporated in New Jersey. Of the ninety-three American consolidations whose market shares economic historian Naomi Lamoreaux was able to trace, more than three-quarters controlled at least 40 percent of their industry, and close to half controlled at least 70 percent.[70] Although mergers were carried out in Germany, too, particularly in the new electrical manufacturing industry, cartel formation continued to be the much more common strategy for dealing with competition in Germany. By 1895, 143 cartels were in existence; by 1900, the number had reached 300; and it doubled again to 673 by 1910.[71] The divergence hardened when the German courts affirmed the legality of cartel agreements (1897). On the eve of the Great War, the two economies had been so thoroughly transformed—each in its own way—that a German author wondered which was "the country of monopoly: America or Germany?"[72]

This much of the story is familiar: In their pursuit of cartelization, Americans were disabled by the law, while Germans were enabled. In Chandler's view, this difference in the legal standing of cartels in Germany and the United States expressed fundamental preferences that he sought to capture by characterizing the German style of managerial capitalism as "cooperative" and the American as "competitive." In his words, "[t]he basic difference between the two countries was . . . that industrial leaders in the United States continued to compete functionally and strategically for market share, while in Germany they often *preferred* to negotiate with one another to maintain market share at home and in some cases abroad."[73]

But is this all of the story? The evidence suggests that preferences were not so settled in either country. For more than a decade, after all, American business leaders had pursued cartelization with great energy, so it seems reasonable to think that many would have preferred a law overturning the common law and legalizing cartel agreements. But the Sherman Antitrust Act, though initially not actively enforced against businesses (it was used more against unions), did just the opposite. It introduced enough legal uncertainty to leave American producers with little choice in the matter, whatever their preferences. On Chandler's own evidence, moreover, at least some German business leaders would have preferred to consolidate rather than to cartelize their enterprises. After the 1901 economic downturn known simply as "The Crisis" in Germany, steel producers began negotiations for a collective solution to their competition problems. This led to formation of the *Stahlwerksverband* in 1904. But some steelmakers continued to advocate an American solution to their difficulties. August Thyssen, head of the largest firm among the founders of the *Stahlwerksverband*, for example, favored an outright merger of German steel firms on the model of United States Steel, formed in 1901 and the biggest of the giant firms to emerge from the Great Merger Movement. "Only through merger, Thyssen . . . argued, could the industry be rationalized in the American manner," Chandler notes. But Thyssen was unsuccessful.[74] In practice, it seems likely that industrialists' preferences frequently differed in both countries. Even among American businessmen, two broadly divergent viewpoints were on display when participants in the Chicago Conference on Trusts (1899) and in hearings before the US Industrial Commission on trusts and monopolies (1899–1900) sought to make sense of the rapid economic changes going on about them. On the one side were those—John D. Rockefeller among them—who regarded economic concentration as a natural and inevitable outgrowth of economic progress; on the other side were those (for example, independent oil men) who regarded the emergence of giant firms to be a direct and dangerous product of American industrial policy (in particular, the failure to eliminate railroad rate discrimination, lax regulation of corporations, or protective tariffs).[75]

If preferences in fact differed in both countries, or at least cannot be presumed to have leaned uniformly in one direction or the other, then how are we to understand the divergence in American and Germany strategies at the turn of the century? It seems clear that competition policy made cartelization difficult and mergers more attractive in the United States (although why American law took this stance is not so clear). But what made mergers more difficult to achieve in Germany? They were neither illegal nor unknown; the mergers in electrical manufacturing that produced the *Allgemeine Elektricitäts-Gesellschaft* and Siemens provide good examples. But they were far less common, even in industries such as steel, where at least some major players favored American-style mergers, and where universal banks could have been enlisted to help out with the process, as J. P. Morgan's banking house had in organizing US Steel. The critical issue, in other words, seems to be the ability to merge. What made it possible for so many firms to merge so easily in the United States but not in Germany? This question centers not on strategic choice as such, but on the power to choose: When industrialists disagreed among themselves, whose views prevailed?

Here is where differences not in competition policies but in incorporation policies at the turn of the century surely mattered, for forming a trust or carrying out a merger required incorporation of the constituent members in advance so that they would have shares to exchange.[76] The numbers suggest that this precondition of consolidation was far easier to meet in the United States than in Germany. The difference in the pace of incorporation in the two countries by the turn of the century was nothing short of astounding (and the American data, it should be stressed, are incomplete and therefore undercount American incorporations). In 1872, in the midst of the *Gründerjahre*, German incorporations reached a high point not exceeded again until 1920: 479 new corporations *(Aktiengesellschaften*) were created that year. In the United States, the seven states for which data are available (not including New York) chartered more than twice as many (924). The year 1883, another relative peak in Germany, produced 192 new corporations; in the US, for nine states (still not including New York), the number stood at 2,122.[77] As interstate competition in chartering heated up in the US and the Great Merger Movement got under way, the numbers diverged dramatically (despite the fact that the American data are still incomplete): in 1890, 236 new corporations in Germany and 3,774 in the US; in 1900, 261 in Germany and 8,727 in the US; and in 1910, 186 in Germany and 22,577 in the US.[78]

Given their comparable levels of industrial development and, hence, of underlying demand for incorporation, this tremendous difference in incorporation rates in the United States and Germany can only be understood by paying close attention to the way that policymaking powers were divided between the state and federal governments in the two countries and its effect on incorporation policies. (Given the tendency in the US today to regard corporations as purely the products of private initiative, it is perhaps worth emphasizing that they do not come into being—that is, have legal standing—in the absence of a sovereign act. As a New York Times writer quipped in 1923, "A legislative stork in the form of a law is responsible for every corporation."[79]) Although competition policy in the US, as noted earlier, was nationalized with the Sherman Antitrust Act of 1890, incorporation policy remained in the hands of the states. As interstate business grew in the late nineteenth century, the states engaged in a heated (and in some quarters, lamented) competition to attract corporations, both for the revenues that incorporation fees or taxes generated and for the indirect stimulus to economic growth. Known variously as a "race to the bottom" (in loosening state control over corporations) or a "race to the top" (in enhancing efficiency), the competition among states to craft attractive incorporation policies was initially won by New Jersey in the 1890s, only to be superseded by Delaware in the 1910s.[80] Corporations in the United States, as a result, could be created at will and virtually without strings attached by the turn of the century.

In the German Empire, by contrast, both competition and incorporation policy were national matters from the outset. This meant that no race, whether to the bottom or the top, could set in (except in response to international competitive pressures). Moreover, German incorporation laws generally set stringent conditions on incorporation, certainly compared with American practice in the late nineteenth century. Particularly onerous was a requirement in the 1870 Confederation law that all of the company's shares be placed with investors, and that 10 percent of the nominal value of the shares be paid in before the corporation could take on its legal powers.[81] This set a high barrier, and surely dampened the pace of incorporation before 1884. Then the 1884 imperial law raised the bar even higher, requiring not only that all shares be taken by investors, but also that 25 percent of the nominal value of each share be paid in before the company could take on its legal powers. This aspect of the 1884 law remained in place well into the twentieth century.[82]

In short, frenzied competition among the American states, absent in Germany, made it far easier to incorporate an American than a German enterprise at the turn of the century. Since incorporation was a precondition of merger, and there were so many American incorporations even before the Great Merger Movement, this no doubt facilitated mergers in the United States and hampered them in Germany.

In a second, more complex way, the competition among the American states in the arena of incorporation policy also appears to have lowered the barriers to mergers by hastening a shift in shareholder voting rights that made it easier to buy control of a corporation. Limitations on the voting power of large shareholders were common in both the United States and Germany through the 1840s. These were embodied in so-called prudent-mean voting rights that sought a balance between persons and property. For example, a shareholder's total votes might be capped at ten, or graduated scales might give proportionally fewer votes as shareholdings increased (e.g., one vote each for the first ten shares, then one vote for every ten shares up to one hundred, and one vote for every additional hundred shares). On the one hand, prudent-mean voting rights gave larger shareholders more voting power than did the American common law or the *Allgemeines Landrecht* in Germany, both of which granted only one vote per person in the absence of a charter provision to the contrary. But, on the other hand, they gave larger shareholders systematically less voting power than they enjoyed under the one share, one vote rules so well-known today. During the middle decades of the nineteenth century, however, as growing numbers of corporations competed to attract investment, more and more of the American states began to mandate one vote per share rules, or simply let companies decide for themselves what their voting rights should be. Scattered, firm-level evidence indicates that existing companies were also replacing prudent-mean scales with one share, one vote rules as a quid pro quo when they ran into financial trouble and needed to attract capital from large investors. By the 1880s, prudent-mean voting rights had virtually disappeared in the United States. As the author of a treatise on American corporate law noted in 1884, "by statute and bylaws, and by custom so general, as to amount to accepted law, a shareholder is entitled to as many votes as he holds shares." Growing competition among the states surely hastened this piecemeal transformation in the US. The competitive dynamic inherent in state-level policymaking, as noted earlier, encouraged an extraordinary proliferation of corporations, which meant that an extraordinary number of corporations were competing with one another to attract investors. At the same time, competition among the states no doubt encouraged legal changes so that shareholder voting rights would not put a state's corporations at a disadvantage in the intensifying, increasingly nationwide competition to attract capital. By the 1880s, one share, one vote rules had become the new American norm.[83]

In Germany, by contrast, no laws mandated one vote per share in the nineteenth (or the twentieth) century. The default in the *Allgemeines Landrecht* (§ 209), as noted above, was one vote per person, although it could be changed in the company's charter. In the absence of an explicit charter provision, the *Handelsgesetzbuch* (§ 224) did give shareholders one vote per share (*Jede Aktie gewährt eine Stimme*). [84] But prudent-mean scales were very widely used in individual charters granted through 1870.[85] This provision of the HGB was not changed by the Confederation's 1870 incorporation law,[86] but in the 1884 law (§§ 190, 221), its wording was altered in a way that suggests that one share, one vote rules were not the German norm, or at least not uniformly expected, as they were in the US. Now it read: "Every share grants the right to vote" (*Jede Aktie gewährt das Stimmrecht*). According to legal commentators, this change meant that companies could no longer set a minimum number of shares that a shareholder had to own in order to be qualified to vote (or set other restrictions on suffrage). Each and every share now gave its owner a legal and irrevocable right to vote. Voting rights were to be based on shares *(nach den Aktienbeträgen ausgeübt*), but that did not necessarily mean one vote per share, for the law gave companies the "freedom," as Viktor Ring put it in 1886, to place upper limits on voting power. This provision of the law explicitly permitted the options of setting a maximum number of votes that could be cast *(Höchstbetrag*) or adopting a graduated scale (*in Abstufungen*).[87] Although it was in the nature of joint-stock associations (unlike civil associations) that voting should be weighted according to shares, not persons, law professor Karl Lehmann explained in a 1904 comparative study, it was common to limit the power of large shareholders, "[s]ince a ruthless enforcement [*radikale Durchführung*] of this principle would give too much power to the largest shareholders."[88]

The wholesale movement to one share, one vote rules in the United States but not in Germany surely made it much easier to buy control of a corporation in the US than in Germany. And incorporating in the first place, as we have seen, was much easier in the US as well. Together, these differences—artifacts in both countries of the peculiar ways in which economic policymaking was divided between the federal and state governments—made it much easier to merge companies in the United States and much harder to do so in Germany. So the answer to the question of whose views prevailed when industrialists disagreed among themselves about appropriate strategy is different for the United States than for Germany at the turn of the century. In the US, it was generally straightforward by the turn of the century: the views of those prevailed who had the financial wherewithal to buy control of corporations, which were rapidly proliferating at the turn of the century. In Germany, shares did not necessarily translate into control in a straightforward way, and corporations were, in any case, far fewer in number and more difficult to create. While competition policy foreclosed the option of cartelization in the US, incorporation policy made mergers much more difficult to carry out in Germany. The two countries' signature means of dealing with competition at the turn of the century, in short, were more a product of the division of labor in economic policymaking than of business preferences.

The critical issue lay in the details of how power over economic policymaking was distributed between the states and the federal government. In the German Empire, economic policymaking was centralized in the hands of the federal government. Unlike in the United States, no race to the bottom (or top) ensued, and Germany did not depend solely on competition policy to regulate business; the federal government also controlled the conditions under which corporations were created and operated, and it exercised those powers. Economic policymaking in the United States, by contrast, was both decentralized among the states and divided between the federal and state governments. As a result, neither the states nor the federal government enjoyed the full panoply of powers at the disposal of the imperial government in Germany. On the one hand, the state governments were hamstrung by the exigencies of interstate competition and, after 1890, lost control over competition policy as well; on the other hand, the federal government, with growing powers over competition policy after 1890, was hamstrung by its lack of power over incorporation policy.

This vital difference in the structure of German and American policymaking persisted throughout the twentieth century and, it seems reasonable to think, profoundly affected the nature of the German and American economies. How many times was some version of this tale repeated? Until more comparative research is done, we will not know. But it seems likely that similar stories unfolded in other realms as well. An excellent example is social welfare and labor policies. Workplace policy was traditionally in the hands of the American state governments, and, like their European counterparts, they pursued a variety of social welfare and labor market initiatives in the late nineteenth and early twentieth centuries. But American-style competitive federalism, as David Brian Robertson argues, made it virtually impossible for the states to follow through. From the last half of the nineteenth century through the first third of the twentieth, he writes, "[c]omplaints about the effect of labor laws on state businesses helped to defeat or eviscerate factory laws, eight-hour laws, convict labor regulation, laws requiring one days' rest in seven, child labor laws, minimum wage laws, workers' compensation laws, and compulsory health insurance laws." Equally important, the American states operated in a constitutionally mandated "free-trade zone," but lacked control over tariff policy, which belonged to the federal government. As a result, unlike European governments, they had little room to bargain with employers. Controlling both tariff and labor policy, "European government officials," in Robertson's words, "could expand protections for workers and employers simultaneously with a tacit 'log-rolling' agreement, uniting employers and workers by giving advantages to both. But American states lacked similar powers, and were helpless to compensate employers when they extended worker protections."[89] As with business regulation, the tenor of American—and, one suspects, German—social welfare and labor policies reflected the peculiar structure of economic policymaking rather than settled national "preferences."

Many other aspects of German and American capitalism are ripe for comparative research as well. The same policymaking dynamics may explain, for example, the impressive enthusiasm for worker participation in management in both countries in the 1920s—and its ultimate failure in the United States. Anti-chain store legislation is another intriguing candidate for comparative exploration, for more than 800 bills were proposed in the American state legislatures between 1930 and 1935, yet Germany seems ultimately to have done more to protect small business.[90] Only when American and German experiences are set side by side and examined in detail will we arrive at the more nuanced understanding of American and German capitalism that we lack today.

Notes

[1] The classic post-World War II work is Andrew Shonfield, *Modern Capitalism: The Changing Balance of Public and Private Power* (London, 1969). More recent works include Alfred D. Chandler, Jr., *Scale and Scope: The Dynamics of Industrial Capitalism* (Cambridge, 1990); Thomas K. McCraw, ed., *Creating Modern Capitalism: How Entrepreneurs, Companies, and Countries Triumphed in Three Industrial Revolutions* (Cambridge, Mass., 1997); and Peter A. Hall and David Soskice, eds., *Varieties of Capitalism: The Institutional Foundations of Comparative Advantage* (Oxford, 2001). Richard Whitley, ed., *Competing Capitalisms: Institutions and Economies* (Cheltenham, UK, 2002) offers a very useful compilation of reprinted articles and book chapters.

[2] Carl N. Degler, "In Pursuit of an American History," *American Historical Review* 92 (February 1987): 7.

[3] B. R. Mitchell, *International Historical Statistics: The Americas, 1750–1988*, 5th ed. (New York, 2003), D8, D12; B. R. Mitchell, *International Historical Statistics: Europe, 1750–1988*, 5th ed. (New York, 2003), D8, D14.

[4] These developments may be traced in Chandler, *Scale and Scope*.

[5] Mitchell, *International Historical Statistics: The Americas*, D9; Mitchell, *International Historical Statistics: Europe*, D9.

[6] Chandler, *Scale and Scope*, 128–29; *Historical Statistics of the United States, Earliest Times to the Present: Millennial Edition*, ed. Susan B. Carter et al. (New York, 2006).

[7] Mitchell, *International Historical Statistics: Europe*, D9.

[8] For a detailed treatment of the United States, Germany, and Britain, see Chandler, *Scale and Scope*.

[9] Angus Maddison, *Dynamic Forces in Capitalist Development: A Long-Run Comparative View* (Oxford, 1991), 6–7 (in 1985 US dollars, adjusted for differences in the purchasing power of currencies).

[10] Quoted in Volker Berghahn, *Handbuch der deutschen Geschichte*, vol. 16, *Das Kaiserreich, 1871–1914* (Stuttgart, 2001), 42.

[11] On the years from 1865 to 1913, see F. W. Taussig, *The Tariff History of the United States*, 7th ed. (New York and London, 1923), 155–446; quotation from p. 236, referring to the first general, postwar revision of tariff levels in 1883.

[12] Quoted in Charles W. McCurdy, "American Law and the Marketing Structure of the Large Corporation, 1875–1890," *Journal of Economic History* 38, no. 3 (September 1978): 631.

[13] *Historical Statistics Online*, Ee429–30. See also Taussig, *Tariff History*, Appendix, Table 1. On the relationship between tariff-generated federal surpluses and the beginnings of the American welfare state in post-Civil War military pensions, see Theda Skocpol, *Protecting Soldiers and Mothers: The Political Origins of Social Policy in the United States* (Cambridge, Mass., 1992), esp. 109–115.

[14] W. O. Henderson, *The Rise of German Industrial Power, 1834–1914* (Berkeley, 1975), 218; Hans Jaeger, *Geschichte der Wirtschaftsordnung in Deutschland* (Frankfurt am Main, 1988), 100–101; Berghahn, *Das Kaiserreich, 1871–1914*, 300–304. The 1879 law capped federal revenue from customs at 130 million marks; any surplus was to be divided among the states according to their population. The Reich ran persistent deficits, however, and this restriction on federal revenue was eased in the first years of the twentieth century. On the long-term consequences of this fiscal division of labor, see Carsten Hefeker, "The Agony of Central Power: Fiscal Federalism in the German Reich," *European Review of Economic History* 5 (2001): 119–42.

[15] Henderson, *Rise of German Industrial Power*, 220–21.

[16] Henderson, *Rise of German Industrial Power*, 223.

[17] Taussig, *Tariff History*, 358, 361. As a percentage of the value of dutiable products, US duties rose from the low 40s in 1895–1897 to just under 50 percent in the first years of the new century. Taussig, *Tariff History*, 492, Table 1.

[18] On the interplay between state structures and the organization of interests in American and Prussian railroad development, see Colleen A. Dunlavy, *Politics and Industrialization: Early Railroads in the United States and Prussia* (Princeton, 1994), 145–201, 245–254.

[19] Hans-Peter Ullmann, *Interessenverbände in Deutschland* (Frankfurt Am Main, 1988), 68–69. See also Karl Heinrich Kaufhold, "Wirtschaftsverwaltung 1867–1914," in *Deutsche Verwaltungsgeschichte*, ed. Kurt G. A. Jeserich, Hans Pohl, and Georg-Christoph von Unruh, vol. 3, *Das Deutsche Reich bis zum Ende der Monarchie* (Stuttgart, 1984), 210; Jaeger, *Geschichte der Wirtschaftsordnung*, 97, 104–107.

[20] Ullmann, *Interessenverbände*, 77–80.

[21] See Richard Franklin Bensel, *Yankee Leviathan: The Origins of Central State Authority in America, 1859–1877* (New York, 1990); Heather Cox Richardson, *The Greatest Nation on Earth: Republican Economic Policies During the Civil War* (Cambridge, 1997). As historian James McPherson observed in a review of recent works that put slavery rather than states' rights at the heart of the Civil War, "During forty-nine of the seventy-two years from 1789 to 1861 the presidents of the United States were Southerners—all of them slaveholders. The only presidents to be re-elected were slaveholders. Two thirds of the speakers of the House, chairmen of the House Ways and Means Committee, and presidents pro tem of the Senate were Southerners. At all times before 1861 a majority of Supreme Court justices were

Southerners." James M. McPherson, "Southern Comfort," *New York Review of Books*, 12 April 2001, 31.

[22] Victor S. Clarke, *History of Manufactures in the United States* (1929; repr. ed., New York, 1949), II: 39, 102, 108, 491; James Willard Hurst, *Law and the Conditions of Freedom in the Nineteenth-Century United States* (Madison, 1956), 85; Dunlavy, *Politics and Industrialization*, 250–53; *The Oxford Companion to United States History*, ed. Paul Boyer (New York, 2001), 30, 534.

[23] Quoted in Theda Skocpol, Marshall Ganz, and Ziad Munson, "A Nation of Organizers: The Institutional Origins of Civic Voluntarism in the United States," *American Political Science Review* 94, no. 3 (September 2000): 527.

[24] Skocpol, Ganz, and Munson, "A Nation of Organizers," 531 (Table 2).

[25] Thomas Welskopp, *Das Banner der Brüderlickeit: Die deutsche Sozialdemokratie vom Vormärz bis zum Sozialistengesetz* (Bonn, 2000), 288f.

[26] Henderson, *Rise of German Industrial Power*, 231–33; Johannes Frerich and Martin Frey, *Handbuch der Geschichte der Sozialpolitik in Deutschland*, vol. 1, *Von der vorindustriellen Zeit bis zum Ende des Dritten Reiches*, 2d ed. (Munich, 1996), 95–101.

[27] US Senate, Committee on Education and Labor, *Report upon the Relations between Labor and Capital* (Washington, DC, 1885), vol. 1, 316.

[28] Victoria C. Hattam, *Labor Visions and State Power: The Origins of Business Unionism in the United States* (Princeton, 1992); David Brian Robertson, *Capital, Labor, and State: The Battle for American Labor Markets from the Civil War to the New Deal* (Lanham, Md., 2000).

[29] Gary Marks, "Variations in Union Political Activity in the United States, Britain, and Germany from the Nineteenth Century," *Comparative Politics* 22, no. 1 (October 1989): 87. See also Robertson, *Capital, Labor, and State*, 22–23.

[30] Caroline Fohlin, "Banking Systems and Economic Growth: Lessons from Britain and Germany in the Pre-World War I Era," *Federal Reserve Bank of St. Louis Review* 80, no. 3 (May/June 1998): 44.

[31] Caroline Fohlin, "Universal Banking Networks in Pre-War Germany: New Evidence from Company Financial Data," *Research in Economics* 51 (1997): 217.

[32] Fohlin, "Universal Banking Networks," 202, 223.

[33] Vincent P. Carosso, *Investment Banking in America: A History* (Cambridge, Mass., 1970), 25–50.

[34] Carosso, *Investment Banking*, 85–86, 88–90. For a recent reevaluation that situates Morgan's methods in a European context, see Leslie Hannah, "The Divorce of Ownership from Control from 1900: Re-Calibrating Imagined Global Historical Trends," Center for International Research on the Japanese Economy Discussion Paper Series CIRJE-F-460 (Tokyo, January 2007).

[35] Carosso, *Investment Banking*, 97–98.

[36] Carosso, *Investment Banking*, 98–100.

[37] Miguel Cantillo Simon, "The Rise and Fall of Bank Control in the United States: 1890–1939," *American Economic Review* 88, no. 5 (December 1998): 1081–82 (quotation, 1082).

[38] Hannah, "Divorce," 5.

[39] In 1899, the population of the *Zollverein* was only slightly higher (0.4 percent) than the Reich's. Walther G. Hoffmann, *Das Wachstum der deutschen Wirtschaft seit der Mitte des 19. Jahrhunderts* (Berlin, 1965), 518.

[40] Mitchell, *International Historical Statistics: The Americas*, E1, J1; Mitchell, *International Historical Statistics: Europe*, E1, J1. Despite the differing terminology, German NNP and US GDP appear to be comparable measures. We converted marks to dollars at an exchange rate of $0.2386 per Mark, based on Jürgen Schneider, Oscar Schwarzer, and Friedrich Zellfelder,

eds., *Währungen der Welt I: Europäische und nordamerikanische Devisenkurse 1777–1914* (1991), Teilband I, 367.

[41] Peter Botticelli, "British Capitalism and the Three Industrial Revolutions," in McCraw, ed., *Creating Modern Capitalism*, 72.

[42] Mitchell, *International Historical Statistics: Europe*, E1, J1. Trade surpluses did not materialize until after 1929. According to Walther G. Hoffmann, the actual value of exports to 1905 was probably about 4 percent lower than the official statistics indicated, while the value of imports may have been some 3 percent higher. See Hoffmann, *Das Wachstum der deutschen Wirtschaft*, 529.

[43] Mitchell, *International Historical Statistics: The Americas*, E1, J1.

[44] *HGIS Germany*, Institut für Europäische Geschichte Mainz, Institut für Raumbezogene Informations- und Messtechnik der Fachhochschule Mainz, and Deutsches Historisches Museum Berlin, http://www.hgis-germany.de, accessed 6 August 2007; *Historical Statistics Online*, Aa7; Mitchell, *International Historical Statistics: Europe*, A1. Of some 1.4 million emigrants from Germany in the 1880s, 92 percent went to the US. Hubert Kiesewetter, *Industrielle Revolution in Deutschland, 1815–1914* (Frankfurt am Main, 1989), 140.

[45] Hoffmann, *Das Wachstum der deutschen Wirtschaft*, 178; *Historical Statistics Online*, Aa31.

[46] *Historical Statistics Online*, Aa689; Wolfgang Köllmann, "Bevölkerungsgeschichte 1880–1970," in *Handbuch der deutschen Wirtschafts- und Sozialgeschichte*, ed. Wolfgang Zorn, vol. 2, *Das 19. und 20. Jahrhundert* (Stuttgart, 1976), 23.

[47] Mitchell, *International Historical Statistics: The Americas*, A1, J1; Mitchell, *International Historical Statistics: Europe*, A1, J1; *HGIS Germany*. We converted marks to dollars based on exchange rates given in Schneider, Schwarzer, and Zellfelder, *Währungen der Welt I*, Teilband I, 361, 367, 368, and in *Historical Statistics Online*, Ee626 (1913 only).

[48] Maddison, *Dynamic Forces*, 6–7.

[49] Mitchell, *International Historical Statistics: Europe*, F1.

[50] Dunlavy, *Politics and Industrialization*, 169–73.

[51] N. Reich, "Die Entwicklung des deutschen Aktienrechtes im neunzehnten Jahrhundert," *Jus Commune* 2 (1969): 258–68.

[52] Charles Kindleberger, *A Financial History of Western Europe*, 2d ed. (New York, 1993), 120–21; Richard Tilly, "Verkehrs- und Nachrichtenwesen, Handel, Geld-, Kredit- und Versicherungswesen 1850–1914," in *Handbuch der deutschen Wirtschafts- und Sozialgeschichte*, ed. Wolfgang Zorn, vol. 2, *Das 19. und 20. Jahrhundert* (Stuttgart, 1976), 594–95; Kiesewetter, *Industrielle Revolution*, 294.

[53] Berghahn, *Das Kaiserreich, 1871–1914*, 90; Kurt G. A. Jeserich, Hans Pohl, and Georg-Christoph von Unruh, eds., *Deutsche Verwaltungsgeschichte*, vol. 3, *Das Deutsche Reich bis zum Ende der Monarchie* (Stuttgart, 1984), 234; Kaufhold, "Wirtschaftsverwaltung 1867–1914," 249–50.

[54] Mitchell, *International Historical Statistics: Europe*, F1.

[55] Lewis H. Haney, *A Congressional History of Railways in the United States*, vol. 2, *1850 to 1877* (1910; New York, 1968), 221, paraphrasing Senator Charles Sumner. Until the expansion of railroads in the 1840s and 1850s, the most important interstate commerce was probably connected to the internal slave trade, which has been ignored by business historians. An important recent study is Walter Johnson, *Soul by Soul: Life Inside the Antebellum Slave Market* (Cambridge, Mass., 1999).

[56] On the impact of the Civil War on the American financial system, see Bensel, *Yankee Leviathan*, 238–365.

[57] Victor F. Lenzen, "The Contributions of Charles S. Pierce to Metrology," *Proceedings of the American Philosophical Society* 109, no. 1 (18 February 1965): 29–46.

[58] Richard B. Morris and Jeffrey B. Morris, eds., *Encyclopedia of American History*, 7th ed. (New York, 1996), 148, 206–07, 277, 298; Kermit L. Hall, William M. Wiecek, and Paul Finkelman, eds., *The Oxford Companion to American Law* (New York, 2002), 57.

[59] One exception is William R. Brock, *Investigation and Responsibility: Public Responsibility in the United States, 1865–1900* (Cambridge, 1984). British observer James Bryce's comment in the late nineteenth century still rings true more than a century later, and applies to historians of the US as well: "This [the government of the states] is the part of the American political system which has received least attention both from foreign and from native writers. Finding in the Federal president, cabinet, and Congress a government superficially resembling those of their own countries, and seeing the Federal authority alone active in international relations, Europeans have forgotten and practically ignored the State Governments." James Bryce, *The American Commonwealth*, 2d ed. (New York, 1891), 398. See also Harry N. Scheiber, "State Law and 'Industrial Policy' in American Development, 1790–1987," *California Law Review* 75 (1987): 415–17.

[60] Scheiber, "State Law," 419, 425, 426.

[61] Andreas Busch, "Staat und Globalisierung: Das Politikfeld Bankenregulierung im internationalen Vergleich," Habilitationsschrift, Fach Politikwissenschaft, Universität Heidelberg, Winter 2001/2002) usefully summarizes the history of banking and bank regulation in the US, Britain, Germany, and Switzerland, although his focus is on the post-1970s decades.

[62] Dunlavy, *Politics and Industrialization*, 199, 250–53; George Rogers Taylor and Irene D. Neu, *The American Railroad Network, 1861–1890* (Cambridge, Mass., 1956).

[63] McCurdy, "Marketing Structure," 632.

[64] Harry N. Scheiber, "Federalism and the American Economic Order, 1789–1910," *Law and Society Review* 10 (fall 1975): 57–118; Tony Allan Freyer, *Forums of Order: The Federal Courts and Business in American History* (Greenwich, Conn., 1979), xvii, 99–120.

[65] Scheiber, "Federalism," 97.

[66] For a revealing discussion of state policies hindering interstate trade in the 1930s, see Paul T. Truitt, "Interstate Trade Barriers in the United States," *Law and Contemporary Problems* 8, no. 2 (spring 1941): 209–22. One example he cited was the "striking" variation in truck regulation, which required transshipments at state boundaries and raised costs. Nationwide there were twenty-two different weight requirements at that time, he noted, and, although ten states had "a common standard, . . . no two are adjacent." Truitt, "Interstate Trade Barriers," 214.

[67] Berghahn, *Das Kaiserreich, 1871–1914*, 75–76.

[68] Alfred D. Chandler, Jr., *The Visible Hand: The Managerial Revolution in American Business* (Cambridge, Mass., 1977), 316. Although he mainly used the terms trade association or federation in *The Visible Hand*, he referred to them in passing as cartels (e.g., 315) and made clear in a later, comparative study that he regarded American trade associations in the 1870s to be cartels in the European sense. See Chandler, *Scale and Scope*, 71–72.

[69] Tony Freyer, *Regulating Big Business: Antitrust in Great Britain and America, 1880–1990* (Cambridge, 1992), 24–25.

[70] Naomi Lamoreaux, *The Great Merger Movement in American Business, 1895–1904* (Cambridge, 1985), 1–5; Christopher Grandy, "New Jersey Corporate Chartermongering, 1875–1929," *Journal of Economic History* 49, no. 3 (September 1989): 679.

[71] Berghahn, *Das Kaiserreich, 1871–1914*, 76. For a detailed treatment, see Ullmann, *Interessenverbände*.

[72] J. Singer, *Das Land der Monopole: Amerika oder Deutschland?* (Berlin, 1913).

[73] Chandler, *Scale and Scope*, 11–12 (emphasis added).

[74] Chandler, *Scale and Scope*, 493. Chandler's treatment of these developments is discussed in more detail in Colleen A. Dunlavy, "Corporate Democracy: Stockholder Voting Rights in

Nineteenth-Century American and Prussian Railroad Corporations," in *Institutions in the Transport and Communications Industries*, ed. Lena Andersson-Skog and Olle Krantz (Canton, Mass., 1999), 36–40.

[75] Colleen A. Dunlavy, "Why Did Some American Businesses Get So Big?" in *Major Problems in American Business History*, ed. Regina Lee Blaszczyk and Philip B. Scranton (Boston, 2006), 258–63.

[76] Chandler, *The Visible Hand*, 319.

[77] For Germany, Richard Passow, *Die Aktiengesellschaft: Eine wirtschaftswissenschaftliche Studie*, 2d enl. and rev. ed. (Jena, 1922), 18–19 (apparently complete data, 1871–1920); for the US, George Heberton Evans, Jr., *Business Incorporations in the United States, 1800–1943* (New York, 1948), 12, 99–100, 110–11, 113, 120, 126, 134, 139, 144; Graydon M. Meints, *Michigan Railroads and Railroad Companies* (East Lansing, 1992), 262.

[78] See the sources cited in note 77.

[79] Lindsay Russell, "Corporation Birth Control is Urged as Nation's Need," *New York Times*, 9 September 1923, XX5.

[80] Harold W. Stoke, "Economic Influences Upon the Corporation Laws of New Jersey," *Journal of Political Economy* 38, no. 5 (October 1930): 551–79; Grandy, "Corporate Chartermongering"; Mark J. Roe, "Delaware's Competition," *Harvard Law Review* 117, no. 2 (December 2003): 593, 609.

[81] Felix Litthauer, *Allgemeines Deutsches Handelsgesetzbuch: Nebst Einführung und Ergänzungs-Gesetzen unter Ausschluss des Seerechts*, Text-Ausgabe mit Anmerkungen und Sachregister (Berlin, 1871), 248, 84 (§ 209a), 86 (§ 210a); Reich, "Die Entwicklung des deutschen Aktienrechts," 267. For insurance companies, however, the minimum paid-in capital was twenty percent. In either case, the minimum had to be paid in on each share.

[82] "Gesetz, betreffend die Kommanditgesellschaften auf Aktien und die Aktiengesellschaften. Vom 18. Juli 1884," *Reichs-Gesetzblatt* no. 22, 31 July 1884, art. 209e, art. 210; Reich, "Die Entwicklung des deutschen Aktienrechts," 276. See also Werner Schubert and Peter Hommelhoff, *Hundert Jahre Modernes Aktienrecht: Eine Sammlung von Texten und Quellen zur Aktienrechtsreform 1884 mit Zwei Einführungen* (Berlin, 1985), which includes the 1870 and 1884 laws. The 1937 incorporation law (§ 28) retained this requirement; see Reinhard von Godin and Hans Wilhelmi, *Gesetz über Aktiengesellschaften und Kommanditgesellschaften auf Aktien (Aktiengesetz) vom 30. Januar 1937 (RGBl. I S. 107ff)* (Berlin, 1937), 79.

[83] Colleen A. Dunlavy, "From Citizens to Plutocrats: Nineteenth-Century Shareholder Voting Rights and Theories of the Corporation," in *Constructing Corporate America: History, Politics, Culture*, ed. Kenneth Lipartito and David B. Sicilia (Oxford, 2004), 72–84. On the *Allgemeines Landrecht*, see C. Hahn, *Die preußischen Gesetze und Verfügungen über offene Handels-Gesellschaften, Kommandit-Gesellschaften und Aktien-Gesellschaften* (Berlin, 1856), 11, 34.

[84] Litthauer, *Allgemeines Deutsches Handelsgesetzbuch*, 92. Provisions that were added or altered by the 1870 law were highlighted in this book in boldface and annotated; § 224 was not.

[85] Only 2 percent of a sample of 207 German corporations (out of a total of 638 known corporations) had one share, one vote rules; the rest limited voting power in a variety of ways. Dunlavy, "From Citizens to Plutocrats," 84.

[86] See note 84.

[87] Viktor Ring, *Das Reichsgesetz betreffend die Kommanditgesellschaften auf Aktien und die Aktiengesellschaften vom 18. Juli 1884* (Berlin, 1886), 292–93; Th. Hergenhahn, *Berufung und Thätigkeit der Generalversammlung der Aktiengesellschaften nach dem Reichsgesetz betreffend die Kommanditgesellschaften auf Aktien und die Aktiengesellschaften vom 18. Juli 1884* (Berlin, 1888), 118–20. Ring and Hergenhahn both maintained that the law permitted companies to give all shareholders one and only one vote. See also Viktor Ring, *Das Reichsgesetz betreffend die Kommanditgesellschaften auf Aktien und die Aktiengesellschaften. Vom 18. Juli 1884.*, 2d rev. ed.

(Berlin, 1893), 450–51. The phrasing in the 1884 law (§§ 190, 221) that permitted setting a maximum vote or using graduated scales was retained in the incorporation laws of 1897 (§252), 1937 (§ 114) and 1965 (§ 134).

[88] Karl Lehmann, *Das Recht der Aktiengesellschaften* (Berlin, 1904), 162–63. As examples of countries that capped the total number of votes, Lehmann named Belgium and the Netherlands; of those that specified graduated scales, Italy and England ("Normalstatut"); and of those that permitted one vote per person, Germany. On Germany, see also Colleen A. Dunlavy, "Corporate Governance in Late 19th-Century Europe and the US: The Case of Shareholder Voting Rights," in *Comparative Corporate Governance: The State of the Art and Emerging Research*, ed. Klaus J. Hopt et al. (Oxford, 1998), 32–33.

[89] Robertson, *Capital, Labor, and State*, 17–18, 31n36.

[90] Carl G. Ryant, "The South and the Movement Against Chain Stores," *Journal of Southern History* 39, no. 2 (May 1973): 212.