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Shattering Glass–Steagall

The power of financial industries to overcome restraints

Paul M. Hirsch, Jo-Ellen Pozner, and Mary Katherine Stimmler

In the aftermath of the mortgage lending debacle of 2007, which generated a recession for the US and world economies, former US Treasury Secretary Paul Volcker urged the restoration into banking regulations of the Glass–Steagall Act. This Act, initially passed in the aftermath of the Great Depression, prohibited the financial organizations in the US from engaging in both investment and commercial banking. Subsequent to its repeal in 1999, large mergers occurred and major banks in the US, such as J.P. Morgan Chase, and Bank of America (now including what had previously been Merrill Lynch), and Citibank expanded their business portfolios to encompass derivatives, commercial loans, and mortgage and consumer banking. The irony of these banks appearing to spend some of their government's "bailout" money for lobbying against the passage and enforcement of new banking regulations, occurring alongside Volcker's urging that the Glass–Steagall Act and its earlier restrictions on such expansions be reinstituted, has not gone unnoticed.

Our image of institutions, such as the Glass–Steagall Act, as powerful and legitimate fortresses impervious to change, is deceptive; such stability simply does not exist in the vast majority of institutional settings. Lawrence and Suddaby's (2006) challenge to the presumption of their permanence, calling for the examination of the process and dynamics of the creation, maintenance, and disruption of institutions refocused attention on actors' agency and intentionality with respect to institutional change. Instead of the myth of negotiated agreement, the perception that the settlement of earlier conflicts is permanent generally opens a window of opportunity for institutional entrepreneurs, whose primary motivation is to disrupt, often to their own advantage.

In this chapter, we present a case that demonstrates how a new legal and regulatory framework, passed with strong public support, may provide coercive and mimetic legitimacy and yet—despite apparently achieving "taken-for-granted" status—remain vulnerable to contestation, continued resistance, and eventual defeat. We find the settlement of a conflict in the public arena to be like a truce, rather than a permanent reframing that alters the cognitive mapping of those adversely affected by the outcome. That is, apparent settlement through regulation does not necessarily forestall the possibility that the parties that lost out in the conflict might mobilize their structural and symbolic resources to resist and reverse the new status quo. In so tracing the case of Glass–Steagall, we utilize Greenwood, Suddaby, and Hinings' (2002) *theorization framework* for mapping

an institutional change, and extend it to incorporate the simultaneous and subsequent efforts by resisters—at each stage from adoption to completion—to "retheorize" the change by developing narratives, discourse, and rhetoric to ultimately reimage and reverse it. In this chapter, we trace the rise and fall of Glass–Steagall, noting how, despite a 60-plus-year history, it was easily dismantled during the Clinton administration, and has little chance of being reinstituted.

The institutional change we trace, the Banking Act of 1933, commonly known as Glass–Steagall after its primary sponsors, mandated the division of commercial and investment banking in the United States after the Great Depression. This bundle of legislation was subject to contestation for over half a century before its de-institutionalization by the US Congress in 1999 through the passage of the Gramm–Leach–Bliley Act. Of particular interest is how, after 60 years of mandating that a "wall" separate securities writing, commercial banking, and insurance sales operations, the law was still subject to successful attack by the bankers that were constrained by its regulations. The repeal of this legal framework, which had appeared to strictly control the actions of bankers and to have attained a taken-for-granted legal standing, suggests that the agency of actors is highly resilient, while the institutions they target are more prone to change than previously considered (Funk and Hirschman, 2015).

The Glass–Steagall Act: Passage and de-institutionalization

The public image and legitimacy of bankers in the United States hit its all time low at the beginning of the Great Depression. "Near-hysterical public rage" was reported towards banks and bankers (Bentson, 1990), who, according to newly elected President Franklin Roosevelt (1933), stood deservedly "rejected by the hearts and minds of men" while "pleading tearfully for restored confidence." This bust had been preceded by the post-First World War "Jazz Age," an era marked by virtually unregulated markets in many domains. In the financial services industry, this period brought sustained economic growth, increasing banks' scope of operations, and leading them to create and market new types of securities. During the late 1920s, the number of banks engaged in underwriting equities and originating bonds doubled and tripled (respectively); between 1892 and 1931, the number of national banks with securities affiliates had risen from ten to 114 (Kroszner and Rajan 1994). This was the age of universal banking, whereby financial institutions could operate almost unfettered in any and all combinations of investment and deposit-taking activities.

After the stock market crash of 1929, the banks' particular combination of deposit-taking and underwriting businesses raised questions about potential conflicts of interest. Of major concern was the easy access commercial banks had to the uninsured savings of a large number of unsophisticated depositors, which raised a question of moral hazard: banks could play with their depositors money and enjoy the upside with minimal downside risk, all of which was borne by the unsuspecting depositor. Argued Senator Robert Bulkley in 1932:

> The banker ought to be regarded as the financial confidant and mentor of his depositors. Obviously, the banker who has nothing to sell his depositors is much better qualified to advise disinterestedly and to regard diligently the safety of depositors than the banker who uses the list of depositors in his savings department to distribute circulars concerning the advantages of this, that or the other investment.
>
> *(Congressional Record, May 10, 1931, p. 9912, cited in Kroszner and Rajan, 1994)*

To alleviate this potential conflict of interest, the US Congress passed the Glass–Steagall Act in 1933. This legislation bifurcated these two sides of banking, assigning the collection of

now federally insured deposits to commercial and thrift banks, while leaving to investment banks the more risky and uninsured businesses of underwriting and selling stocks and bonds. While the banking industry at the time did not have the political wherewithal to prevent the successful enactment of this high-profile legislation, it certainly did not support the Act or its intent. So began a 66-year long campaign to discredit and deinstitutionalize the restrictions imposed by Congress.

In analyzing the rhetoric of both supporters and critics of the Glass–Steagall Act and tracing how the balance of power shifted over time, we investigate the purposive actions of individuals and organizations aimed at retaining or altering support for continuation of this institutionalized regulatory framework. We examine the moves made as well as the ideologies, interests, and histories that agents drew upon to drive their aims forward. We focus on the institutional strategies followed by Glass–Steagall's resisters to dissociate it from its moral foundations (Lawrence and Suddaby, 2006), and otherwise delegitimate it through acts of manipulation, assault, and defiance (Oliver, 1992). In James Thompson's classic terms (1967, p. 24), we trace how the agents of opposition succeeded in converting the regulation from an unwelcome "constraint" to a more manageable "contingency," and finally to a manipulable "variable."

The theorization and retheorization of banking regulation

The separation of the banking industry that resulted from the Glass–Steagall Act evolved in a way that closely models the six stages of institutional change described in Greenwood, Suddaby, and Hinings' (2002) theorization model: *precipitating jolts; deinstitutionalization; preinstitutionalization; theorization; diffusion; and reinstitutionalization.* The jolt that shook up the longstanding institution of universal banking was the stock market collapse on October 24, 1929, a day on which at least 11 well-known bankers committed suicide. The crash triggered a four-year implosion of American financial markets, during which 40 percent of the nation's banks failed or were merged out of existence (Bentson, 1990), and the national unemployment rate hit 25 percent. These jolts shook the foundations of both the financial services industry and public perceptions of its trustworthiness, severely diminishing its social identity.

At the same time that the financial services field became so significantly delegitimated during the Great Depression, the seeds of a new kind of banking system were being planted. The pervasive image of bankers during this period was one of greed, imprudence, and the absence of self-control. President Hoover, who downplayed the consequences of the Great Depression that marked his single term in office, nevertheless saw the country's economic turmoil as the result of the darker aspects of human nature. "The economic system cannot survive unless there are real restraints upon manipulation, greed, and dishonesty," he wrote (Hoover, 1952, p. 24), reflecting a broadly accepted theorization of the roots of the crisis. Greed was to be blamed, and greed needed to be controlled. This change in public perception ultimately led to the *deinstitutionalization* of the institution of universal banking.

During the stages of *preinstitutionalization* and *theorization*, policymakers sought to understand the causes of the Great Depression, as well as potential solutions that might revitalize the American economy. During the hearings held by the Pecora Commission, a congressional inquiry into the causes of the great crash, fallen bankers (and not-quite-yet-fallen bankers) submitted to fierce questioning and constant media ridicule. Ferdinand Pecora worked closely with Senator Carter Glass to identify potential legislative reforms, recognizing a need to separate businesses that could steer the unwitting consumer's deposits into investment securities underwritten, promoted, and sold by the same bank. It was this process of theorization that eventually led to the drafting and passage of Glass–Steagall.

Justifications for Glass–Steagall were drawn from what legislators saw as a need to protect consumers from bankers and bankers from themselves. Neither bankers nor their customers were to be trusted to make responsible decisions, instead the state's role was to create a safe banking system, where neither banks nor their customers were in danger of taking on too much risk. It was this theorization of the causes of the Great Depression, which led Senator Glass, co-author of the Glass–Steagall Act, to state that "I think something should be done to deprive people of the privilege of mortgaging their homes and their futures to buy stocks on margin and to keep blowing up bubbles that are certain to break in their faces" (quoted in Ayres, 2014, p. 94). The goal of depriving individuals of their "privilege" of taking unsound risks, and of banks of profiting by encouraging such risk-taking, was at the heart of the Glass–Steagall Act.

This *theorization* of the causes of the Great Depression as described by Glass, Pecora, and others of like minds resulted in the *diffusion* of a new system of banking, one in which the activities of creating securities and managing loans and deposits were to be conducted in separate firms, thus mitigating the potential for serious conflicts of interest. The legislation brought the process of banking reform to the final step of Greenwood and colleagues' theorization model; the institutional change represented by the Glass–Steagall Act redefined the legitimate and legal framework of the financial services industry, *reinstitutionalizing* it in the form of two distinct organizational forms.

At the *reinstitutionalization* stage, the innovation or reform ought to become objectified by gaining cognitive legitimacy and social consensus around its pragmatic value (Suchman, 1995). Accordingly, the Glass–Steagall Act's legal framework was implemented and became reified through regulatory enforcement for the next half century. Consumers grew accustomed to what became a taken-for-granted system in which they got loans and saved money with one organizations, but bought stocks, bonds, and mutual funds from another.

Deinstitutionalizing Glass–Steagall

> In the financial world, the players think of their business as a never-ending game. Deals can always be renegotiated. They often work to change the circumstances to change the odds.
>
> *(Abolafia, 2010)*

If institutions are the result of compromises between actors with divergent interests, then coercive and normative legitimacy can be fleeting, and cognitive legitimacy can be a liability. Once a set of actors takes for granted an institution, there will likely be another set of actors waiting to pounce. Cognitive legitimacy creates vulnerability by reducing vigilance and maintenance by the actors whom an institution benefits; this opens an opportunity for opponents to challenge the institution and catch its defenders off guard. Greenwood *et al.* (2002) recognize this potential for institutional adversaries to create conflict, noting that the appearance of an institution's stability "is probably misleading." Lawrence and Suddaby's (2006) conceptualization of institutional work, with its focus on the agency of actors required to create and maintain institutions, similarly recognizes that such work can create conflict among parties with divergent interests who will "consequently work when possible to disrupt the extant set of institutions" (see also Bourdieu, 1993; Bourdieu and Wacquant, 1992; DiMaggio, 1988; Abbott, 1988).

Because examples of successful attempts at institutional disruption are rare, institutional work often appears straightforward and problematically unconstrained. A closer inspection of institutions, however, would reveal them to be the outcome of long series of compromises among willful, pro-active actors with divergent interests. The balance between the efforts of one set of institutional actors to create institutions on one side and the efforts by another set of actors to

disrupt them on the other results in a series of momentary truces or negotiated settlements. When investigating the creation, maintenance, or disruption of institutions, therefore, understanding the conflicts among institutional actors is essential to comprehending the results of their institutional work. While coercive and normative legitimacy may be found as a reinstitutionalized change comes close to becoming taken-for-granted, its cognitive acceptance as legitimate by all parties remains problematic. In the case of the Glass–Steagall Act, its deinstitutionalization was the result of what Lawrence and Suddaby aptly call continuous "backstage" negotiations. Their unfolding also involves parallels with and invite comparisons to the stages of theorization that the Act's passage followed.

The institutionalization and eventual deinstitutionalization of Glass–Steagall serve as a demonstration of the role of compromise in the creation of institutions and the liability of cognitive legitimacy. Commercial bankers, investment bankers, insurance companies, commercial bank customers, corporate investment banking clients, insurance policy holders, and policymakers were all vying to create a legal framework that best represented and promoted their interests above those of competing stakeholder groups. Despite its apparent cognitive legitimacy and taken-for-grantedness, even after a half-century of working under the restrictions of the Act, commercial bankers were still capable of resisting it and, eventually, disrupting it. Understanding why the legal framework remained intact as long as it did, and why it was finally discarded when it was, requires an analysis of both the structural balance of power among the various actors in the financial services field and the effectiveness of their strategies for gaining legitimacy.

Conflicting bankers' agendas delay unified push for repeal

The long life and seemingly abrupt end to the Glass–Steagall Act can be traced to the delicate balance of power among the trio of industries it regulated: investment banks, commercial banks, and insurance brokers. Although each of these industries sought to increase their power and reduce the limitations imposed on their businesses by the legislation, they were each extremely wary of any deregulation that would allow one of the other industries access to their closely guarded domain. A newsletter from the American Banking Association, a lobbyist group for commercial banks, described the struggle this way in 1997:

> For the last two decades, legislation to modernize the banking system has had a Perils-of-Pauline sort of story line, occasionally passing one chamber, only to fail in another, often because of the competing lobbying by the three powerful industries.
>
> *(McConnell, 1997)*

Investment banks feared that allowing commercial banks to sell securities would invite competition for the business of creating and selling securities, while commercial banks feared they could not compete if risk-seeking investment banks were allowed to line their coffers with retail customers' deposits. Consequently, each tried to work around a full repeal of Glass–Steagall, and instead sought one-way deregulation that would allow one side to take advantage of the other.

For example, investment banks often argued that allowing commercial banks the ability to underwrite securities would undermine the safety of the banking system. "The notion that bank securities caused the 1929 stock market crash ... is a myth propagated by the securities industry to assure Glass–Steagall a perpetual life," wrote legal historians (Isaac and Fein, 1988). The major lobbying organization for investment banks told the Federal Reserve Board in 1995 that "perilous underwriting operations and stock speculation" was the cause of the Depression and recommended that Glass–Steagall's ban on universal banking be upheld. Nevertheless, while investment

banks, including Merrill Lynch and First Boston, were making such claims to limit the activities of commercial banks, they were also making aggressive efforts to get into the business of commercial banking by acquiring "nonbanks" (an interesting nomenclature), organizations that were permitted to offer deposit-like cash management accounts. Investment banks were relying on Glass–Steagall to keep commercial banks away from their own business, while at the same time siphoning some business from commercial banks through the acquisition of "nonbanks."

The hastening of the proliferation of nonbanks was in part a function of the Federal Reserve's Open Market Committee's (FOMC) reaction to inflationary pressures in the 1970s, spurred by increasing government spending on social welfare programs and the Vietnam War. To manage inflation, the FOMC increased the discount rate to increase the cost of credit, which had the secondary effect of causing savers and investors to pull money out of savings deposits and to invest in federal and commercial bonds. Higher discount rates also encouraged banks to borrow dollars from abroad, which was enabled by the emergence of Eurodollar deposits, or dollar-denominated assets held in foreign countries. Consequently, the Federal Reserve allowed banks to begin borrowing from each other, creating the Federal Funds market by the late 1960s, and deregulated large and long-term CDs in 1974. These reforms in turn enabled practices such as commercial banks meeting funding requirements via brokerage houses, larger investors, and foreign subsidiaries, an unanticipated consequence; commercial banks therefore began to behave more like investment banks (Hammond and Knott, 1988).

In addition to the emergence of nonbanks and other practices, which blurred the long-upheld distinction among different types of financial institution, new technologies in both deposit taking and lending that appeared starting in the 1970s tipped the balance in the political arena from the traditional beneficiaries of geographical restrictions—small banks—towards more expansion-minded large banks. This swung power towards the large banks, which favored deregulation. Consequently, we see stronger efforts towards deregulation in states with fewer small banks, where small banks were financially weak, and with more small and bank-dependent firms (Strahan, 2003). Moreover, the presence of strong insurance lobbyists forestalled deregulation, particularly when it came to injunctions against banks could competing for the sale of insurance products. The relative strength of potential winners (large banks and small firms) and losers (small banks and the rival insurance firms) from deregulation can therefore explain the timing of reform.

Despite the efforts of investment banks to bolster support for Glass–Steagall, by the late 1990s, commercial banks had gained a powerful ally in the United States Office of the Comptroller, which began to allow commercial banks to reach beyond their charters and start offering securities. This prompted investment banking lobbyists to object that such actions were "a one-way street," arguing that the Comptroller's allowances would "allow banks to have a full range of securities activities' but would do "nothing for the securities firms that want to offer banking products" (quoted in Wayne, 1998). After both commercial and investment banks and their regulators had chipped away at Glass–Steagall independently of new legislation in the US Congress, a consensus developed which resulted in their successful joint effort to delegitimate the Glass–Steagall Act more fully. This was hastened when the merger of commercial bank Citicorp and insurance giant Travelers was announced, unchallenged by government regulators, notwithstanding its apparent violation of the Glass–Steagall Act's injunction against merging these particular business segments.

Retheorization: from safety to efficiency

Upon settlement of their internal differences, a new coalition of financial industry participants was formed, overcoming the differences of their ultimately contradictory earlier campaigns against one

another to topple the Glass–Steagall Act. Actually, they overturned only parts of the legislation, preserving those elements which best served their interests. Their purposive efforts to retheorize regulation and universal banking closely follow Lawrence and Suddaby's (2006) strategy for disruption by actively dissociating Glass–Steagall from its moral foundation through the suggestion that the issues it addressed were merely technocratic and no longer salient due to improved banking technology. In this way, they relied heavily on a teleological rhetorical strategy (Greenwood *et al.*, 2002) to valorize "modernization" (deregulation) and demonize the old-fashioned Glass–Steagall legal framework.

The rhetoric of surrounding Glass–Steagall shifted from a logic that emphasized protecting individuals from human greed and encouraged restraint to a logic that focused on efficiency, innovation, and flexibility. The mythologies adopted for and against Glass–Steagall were not based on diametrically opposite arguments, but rather on completely different sets of values. For instance, arguments in favor of Glass–Steagall emphasized the need for consumer safety, but arguments against Glass–Steagall rarely discussed safety at all. Instead, they emphasized the need for efficiency in the service of consumers. In this way, proponents of deregulation decoupled the meanings of Glass–Steagall and reattached new meanings through mythologizing, valorization, and demonization of a different set of values (see Table 19.1).

Prior to deregulation, the mythologized history of Glass–Steagall was that the Great Depression was caused by greed that caused bankers to sell consumers investment products that were not in their best interests, and that caused consumers to take on excessive risks. According to this mythology, the result was a superheated economy that spun out of control and eventually imploded. This theorization demonized bankers and portrayed consumers as helpless victims of their manipulation. Thus, the solution to the Great Depression was to put in place restraints that prevented bankers from capitalizing on their avarice. The political bases for altering financial markets were that bankers needed to be protected from their own bad judgments, and consumers were also in need of protection from their imprudent decisions, which Senator Glass articulated as "something should be done to deprive people of their privilege of mortgaging their homes and their futures to buy stocks on margin and to keep blowing up bubbles that are certain to break in their faces" (1927).

The arguments in favor of deregulation turned the argument for protection on its head. Its advocates balked at depriving people of their privilege to take whatever risks they wanted. Where Glass–Steagall promoters argued for restraint and protection, those in favor of deregulation argued instead for freedom and flexibility. The ban on universal banking was depicted as an unnecessary burden. The main argument was that technological advancements in the field of finance had innovative new ways of managing risk precluded any need to protect consumers or bankers.

Table 19.1 Rhetoric dissociating the Glass–Steagall Act from its moral foundations

	Regulation	*Modernization*
Moral argument	Safety	Freedom
Mythologized human nature	Greedy	Creative
Valorization	Protect	Enable
Demonization	Human morals, bankers	Restrictions
Theorization	Need to protect citizens and businesses from their own folly	Need to enable citizens and businesses to find the best solution

This undermining of beliefs and assumptions, noted by Lawrence and Suddaby (2006) as an effective strategy to destabilize an existing institution, was evident in the arguments of high executives in the US government. Commissioner of the Securities and Exchange Commission Evans (1982, p. 7) stated that "whatever the case may have been in 1933, today with modern technology there is no *natural* dividing line between investment and commercial banking," and that continuing to "force an arbitrary division would impose economic costs far in excess of any benefits." The "outdatedness" of the law was also underlined by Alan Greenspan, former Chairman of the Federal Reserve (1995):

> There is, I think, general agreement on the forces shaping our evolving financial system—forces that require that we modernize our statutory framework for financial institutions and markets. The most profound is, of course, technology: the rapid growth of computers and telecommunications. Their spread has lowered the cost and broadened the scope of financial services, making possible new product development that would have been inconceivable a short time ago, and, in the process, challenging the institutional and market boundaries that in an earlier day seemed so well defined.

The ability of both competition to limit avarice—consumers would surely find the least exploitative banks—and financial innovation to improve the quality and equity of financial services was valorized by financial services lobbyists. These voices touted product diversity, innovation, and efficiency, all derived from entrepreneurs' incentives to take on risk, and the ability of competition to ensure a form of self-regulation through restraint and cost-cutting. At the same time that they valorized freedom of choice and convenience for customers, deregulation supporters demonized strict government control as a burdensome nuisance. Bank lobbyists begged Congress to give them "regulatory relief," and regulators began to balk at the idea of enforcing restraint, despite the fact that their power derives from the ability to enact controls. On the one hand, SEC Chairman Arthur Levitt boasted to Congress that his agency had offered firms a "flexible, voluntary regulatory framework" (Levitt, 2000); on the other, an executive from JP Morgan explained that "regulatory diversity has served our industry well" (WayneNightly Business Report, 1998).

The crux of the deregulation argument was a teleological theorization in which, through experimental innovation, bankers would create newer and better financial products and services while removing barriers to competition would ensure that the cost for these improved services would remain as low as possible. Hence, much of the rhetoric surrounding deregulation adopted a strategic vocabulary that emphasized "modernization." The rhetoric around regulation switched from a moralistic stance founded on the need for "protection" to a technologically-driven euphoria for the potential for human invention to overcome moral shortcomings. This rhetoric, combined with the new alliance among financial services firms, worked by shifting the focus of attention from safety to convenience, from moral hazard to technological advancement, and from control to flexibility. It worked by allowing Congress "in the name of modernization to forget the lessons of the past, of safety and of soundness," as explained by Senator Bryon Dorgan, one of the eight who voted against the Financial Services Modernization Act (quoted in Labaton, 1999).

Of course, the teleological rhetoric, to some extent, did reflect real developments within the financial industry. New technologies, such as software that enabled the instantaneous pricing of complex securities, and financial innovations, such money market mutual funds, reshaped the technical environment in which banks operated. The argument that new technologies

diminished the need for financial regulation, however, was a rhetorical construction, rather than a foregone conclusion. Take, for example, Evans' (1982, p. 7) acknowledgement that:

> it has been suggested that the one way to deal with [new financial technologies] would be to clarify and strengthen the Glass–Steagall Act in order to establish a clear barrier between investment and commercial banking ... In my opinion, the proper approach is to remove the antiquated anti-competitive prohibitions.

Lobbyists arguing for removal of Glass–Steagall created a teleological argument that made their agenda not only the correct one, but an inevitable one.

The utilization of such teleological rhetoric emphasized how technological innovation served to undermine past assumptions, creating a need for change. It worked by allowing Congress "in the name of modernization to forget the lessons of the past," as explained by Senator Bryon Dorgan (quoted in Labaton, 1999), one of the eight who voted against the Financial Services Modernization Act, the carefully-named legislation which ultimately repealed Glass–Steagall. When the bill passed, Treasury Secretary Lawrence Summers said, "With this bill, the American financial system takes a major step forward toward the 21st Century—one that will benefit American consumers, business, and the national economy" (quoted in *New York Times*, November 13, 1999). The theorization of deregulation as "modern" was so thorough that the irony that this legislation actually brought the financial sector back to a time before the Depression was lost.

The greater convenience for consumers gained by loosening the boundaries separating commercial from investment banks was valorized by the advocates of "modernization," largely ignoring the "regulation" proponents' concern that eliminating these barriers removed the provisions intended to protect consumers. Their rhetoric reframed this moral argument by celebrating the capacity of financial "one-stop shopping" to provide "greater access to the broadest array of financial products" (a bank lobbyist quoted in Jonathan Glater, *Washington Post*, February 28, 1995). This argument was further echoed by policymakers, such as Treasury Secretary Robert Rubin, who said:

> As an individual depositor I don't think I'd react one way or the other [to deregulation]. You still have the federal guarantee. But if I were the bank or brokerage customer, I would be likely to get greater conveniences as a consequence of more competition and efficiency, and probably lower prices.
>
> *(Daniel Kadlec, February 28, 1995,* USA Today*)*

Employing a second type of institutional work, deregulation supporters dissociated the moral foundation position of the law's defenders (Lawrence and Suddaby, 2006) by both ignoring it and emphasizing the "convenience" of their alternative, demonizing strict government control as unnecessary and burdensome. Press headlines across the country cited the new freedom banks would enjoy when Glass–Steagall was finally repealed (e.g. "Law Frees Banks" [*Sun Sentinel*, November 13, 1999, p. A1]; "Unfettered Banking" [*Arizona Daily Star*, November 11, 1999, p. A1]; and "Walls Tumble Down" [*Akron Beacon Journal*, November 13, 1999, p. G1]). "We think banking organizations ought to have the choice of the most effective way to conduct their activities," said the Comptroller of the Currency in 1998 (Wayne, 1998). Similarly, the chairman of the SEC, Arthur Levitt, boasted to Congress that his agency had offered firms a "flexible, voluntary regulatory framework" (Levitt, 2000). As an executive from J.P. Morgan explained, referring to a

bank's ability to choose its regulator by rewriting its charter, "regulatory diversity has served our industry well" (Wayne, 1998) Thus, legislation that had been enacted as a means to restrain industries and protect consumers was undermined through rhetoric that moralized the liberties of companies to choose their own regulatory standards.

Disconnecting sanctions and rewards is the third mechanism identified by Lawrence and Suddaby (2006) contributing to the deinstitutionalization of an established and "taken for granted" rule. In the case of the Glass–Steagall Act, the most vivid example of this devolution was the merger of two giant firms, whose combination it barred. This merger, of Citibank with the Travellers Insurance Company in 1998, created the largest financial company in the world, and (once allowed) set off a wave of additional combinations which all crossed the dividing line drawn by the Glass–Steagall Act between commercial and investment banking. To reap the rewards and avoid sanctions specified by this law, the *New York Times* (April 8, 1998) reported "within 24 hours of the deal's announcement, lobbyists for insurers, banks, and Wall Street firms were huddling with Congressional banking committee staff members to fine tune a measure that would update the 1933 Glass–Steagall Act." Rather than moving to discipline the companies for violating rules, politicians acted to change the law to enable the merger. One insurance lobbyist noted that while this legitimated the merger after the fact, it would enable Congress to appear as leading the modernization of the industry, rather than the financial executives leading the charge against Glass–Steagall. The lack of law enforcement was evidence that actors within the industry had successfully disconnected the sanctions for bridging the Glass–Steagall divide. Within seven months, Congress officially repealed the Act.

Consensus and compromise in disruptive institutional work

The long life and eventual end to the Glass–Steagall Act can be traced to the delicate balance of power among the trio of industries it regulated—investment banks, commercial banks, and insurance brokers—and the three government powers that controlled them – Congress, courts, and regulators (especially the Federal Reserve and the Office of the Comptroller of the Currency (OCC)). Although each of the industries sought to increase their power and reduce the limitations on their businesses enforced by the Depression Era institution, they were all extremely wary of any deregulation that would allow one of the other industries onto their closely guarded turf. According to the *Washington Post*, "Lobbyists from the well-heeled banking, securities, and insurance industries have spent an untold number of hours and tens of millions of dollars pushing financial overhaul legislation, but until now were defeated by their own in-fighting, as each sought to enter the other's business while continuing to try to bar entry into their own.' Investment banks feared that allowing commercial banks to sell securities would invite competition for the business of creating and selling securities, while commercial banks feared they could not compete if risk-seeking investment banks were allowed to pad their coffers with retail customers' deposits. As a result, commercial and investment banks and insurance sellers and companies tried to work around a full repeal of Glass–Steagall and instead sought one-way deregulation that would allow their own sides to take advantage of the other.

In the decade prior the 1998 passage of the Financial Modernization Act, which officially repealed Glass–Steagall, there were significant but failed attempts by lobbyists and sympathetic members of Congress to make sweeping deregulatory changes. The first crack in Glass–Steagall appeared in 1988, when the first version of the Financial Modernization Act, which granted broader powers to commercial banks to issue securities, was passed in the Senate but failed in the House. "Something on the order of a quarter-million letters and post cards went to members of Congress from bank employees, officers, and directors," boasted the American Banker Association

(*ABA Journal*, November 1988). The bill's main proponent was Senator William Proxmire who argued that "Technology is rapidly revolutionizing the credit industry.... Instead of promoting safety, Glass–Steagall has promoted a monopoly environment" and noted that "greater competition is the benefit" of the repeal (*Herald Tribune*, February 14, 1988). Despite the rhetorical efforts to reframe the debate, the legislation got caught up in the House of Representatives, where lobbyists for community banks argued that the bill would concentrate power in the hands of a few large banks. Insurance lobbyists wavered; at first they opposed the bill because it enabled banks to sell insurance, but when this new power was restricted to only the home state of a bank holding company, they supported the legislation. Added to the arguments among the finance industry sectors were the bill power disputes between legislative committees (Hendrickson, 2001). In the end, a compromise could not be reached before Congress adjourned for the session.

A second failed attempt at deregulation occurred in 1991, during the fallout from the savings and loans crisis. Investment banks and insurance companies claimed that deregulation would bring greater solvency to the industry, but this argument was again lost to disputes among legislative committees. In particular the "jurisdictional rivalries" (Skidmore, December 23, 1991) between the House Energy and Commerce committee and the House Banking Committee, which had drafted different versions of the bill (Skidmore, December 23, 1991). Some pundits faulted the first Bush Administration's unwillingness to compromise with non-investment banking interests: "I don't know whether they could have done it, but I think they should have tried to cut a deal with some of the forces lined up against them," said William Seidman, former chairman of the FDIC (quoted in Skidmore, December 23, 1991). The Associated Press reported, "With no compromise in advance, each of the financial interests involved—small banks, large banks, securities firms and insurance companies—proved to have enough influence to block legislation they disliked, but not enough to pass what they advocated."

The third attempt at a full repeal happened in 1995 and, unlike the previous efforts, was undertaken by Congress in response to moves made by regulators. The Comptroller of the Currency, Eugene Ludwig, ruled that banks in small towns could offer insurance. Furthermore, the Federal Reserve Bank, under Alan Greenspan, signaled that it would increase the amount of bank holding company business that could be generated through securities affiliates. These moves by regulators demonstrated to Congress that reform needed to be addressed legislatively. Representative Jim Leach, a Republican from Iowa, championed legislation that would create financial services holding companies that would allow firms to control both securities and commercial banks and permit them to provide mutual funds, investment advice, and corporate underwriting, among other services. The bill was strongly supported by large commercial and investment banks, but failed due to resistance by the insurance industry, which feared banks would have an unfair advantage in cross selling insurance and traditional commercial banking products, and small bankers, who feared competing with banking Goliaths that could profit from securities and savings and loans activities. Although insurance agents did not provide the amount of campaign donations that banks provided, they had significant power and influence. As Representative Barney Frank explained:

> They can beat the banks and the securities firms and the insurance companies put together, because everybody has insurance agents in their district, and their corporate culture is, "Hi, how are ya? I'm your friend"—I mean, you know, they're door-to-door salespeople.
>
> *(quoted in the New York Times, May 5, 1995)*

In a compromise, the House added a barrier that prevented national banks from further entry into insurance sales, but in the end, both commercial banks and insurance brokers balked at the concessions and the attempt at repeal failed. "We need to see industry groups lined up in some

kind of accommodation before we can go anywhere," said Representative Bill McCullum. "If there is no agreement reached then, there may be no proposal or only parts" (Bradsher, 1995).

A fourth Congressional attempt to repeal Glass–Steagall happened the next year. The urgency of effort was somewhat lost, however, because of a pending Supreme Court decision on whether banks could sell insurance. Congress took a wait-and-see approach (Hendrickson, 2001) until the Court decided to allow banks' insurance sales in March, 1996. After the decision in the banks favor was announced, insurance agents and companies took a very stanch stance that they would not support any reform that didn't place stronger restrictions on banks' moves into insurance. Once these were added to the bills, the primary industry that had been calling for reform—commercial banks—refused to support them because they threatened to limit the insurance sales that had just been approved by the court. For members of Congress, this meant that a vote either way on the repeal would alienate important industries during an election year (Hendrickson, 2001). Over 75 amendments were proposed to the House bill before its sponsor decided the deadlock could not be broken.

As a result of the congressional stalemate, regulators, who were not responsible to all three industries and therefore could side with one or another, took it upon themselves to further address increased mixing between banks, securities firms, and insurance (Hendrickson, 2001). The Office of the Comptroller of the Currency (O.C.C.), which oversaw about one-third of the US banks, citing the deadlock in Congress (Hershey, 1996), issued a regulation enabling banks under the OCC's jurisdiction to expand into securities, insurance, and other non-banking businesses. The move was met with hostility by insurance and securities lobbyists. The American Council of Life Insurance stated: "At a time when all financial-service providers were ready to make peace, the O.C.C. has decided to renew the war, forcing people into old, entrenched positions" (*New York Times*, June 1996 "Glass–Steagall Over"). The securities industry was quick to point out that this piecemeal approach to deregulation resulted in banks gaining privileges that investment firms did not have.

In 1997 and 1998 Congress again made attempts to repeal Glass–Steagall with no success. Undeterred by previous failures, the Clinton Administration proposed that all sections of the financial industry be regulated by the same federal agency. This caused the commercial banks to balk because they had gotten around much of the Glass–Steagall obstacle with help from their regulator, the OCC. Without the support of the commercial banks, the repeal attempt went nowhere. The reform attempt was reenergized after the Citibank-Travellers merger, but again failed when Treasury Secretary Robert Rubin told President Clinton to veto the bill because it transferred his department's regulatory power over banking to the Federal Reserve.

Deinstitutionalization of the Glass–Steagall Act finally prevailed in 1999. In that year the *New York Times* reported that moves by insurance, commercial banks, and securities firms onto each others' turf had already blurred the line between to the industries to the point that "industries once at odds are now largely in accord on most of the central issues" (July 1, 1999). Similarly, a lobbyist for the American Insurance Association noted that the consensus had formed because "the market has advanced so that everyone has decided it's in their interests to have this bill" (quoted in the *New York Times*, July 1, 1999). "We have become each other," said Mark Brickell, a managing director at J.P. Morgan & Co. "There has been a convergence of our commercial activities and our political interests" (quoted in the *Washington Post*, 1999).

Conclusions

The story of the ups and downs of Glass–Steagall is of theoretical significance. By understanding the conflict that surrounded the institutionalized banking system, it becomes possible to understand

both why this system persisted as long as it did in its divided form and why it eventually changed to a universal banking system. Even institutions that have outlived their creators can be vulnerable to disruption, because institutions are always tentative arrangements among actors with divergent interests. This observation could apply to many institutional settings. "Winners" may come to rest on their laurels, while "losers" may benefit from upsetting institutional arrangements. In light of recent financial events, we see that the deregulation which was so highly sought after has lost its appeal when the institutional actors who sought it have again lost their legitimacy.

The void created by financial services' deregulation in the United States has been linked to significantly negative outcomes with far-reaching consequences. Regulations might have helped prevent recent scandals, including that of collusion among banks to systematically misstate their borrowing costs for the purposes of gaining more favorable trading terms in the Libor scandal of 2008, and the global financial crisis of 2008, which has been attributed to excessive risk taking, engagement with complex financial products. The failure to disclose conflicts of interest, and the failure of regulators, credit rating agencies, and the markets to rein in excesses have led to calls for greater supervision, along with continued strong lobbying efforts to prevent it from coming to pass. Even Alan Greenspan, who oversaw the dismantling of Glass–Steagall, noted the failure of this course of action, stating that "Those of us who have looked to the self-interest of lending institutions to protect shareholders' equity, myself included, are in a state of shocked disbelief," in front of the House Committee on Oversight and Government Reform (Andrews, 2008).

Yet, in 2014, the banking lobby succeeded in convincing Congress to weaken the substance of the very legislation designed to help prevent a repeat of the global financial crisis of 2008. Banks' success in this case is typical of the power this industry has to define the terms of its regulation and to have its members appointed to the very governmental positions that are supposed to monitor and rein in their excesses. There are few industries in which a revolving door between regulators and practitioners swings more widely or smoothly; between early 2009 and mid-2010, 148 former employees of financial regulatory agencies registered as lobbyists. Top positions at financial market regulators—and even within Congress—have increasingly become occupied by former big bank executives. As a result of this revolving door, regulators are seen to defer to bankers within their social and professional networks, and with and for whom they may want to work in the future.

Given the nature of the relationships among what are now universal banks and regulators, it is unclear from where the next stakeholders invested in deinstitutionalization and institutional work might emerge. The stakeholders most likely to be negatively impacted by the effects of deregulation and the new institutional order are individual investors and businesses, as well as small financial institutions. These are notoriously difficult groups to mobilize because of their relatively low status and power, the degree to which they are dispersed, and their essential conservatism. What will spur the next wave of institutional contestation in this domain? We can but hope that it is not another serious financial crisis.

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