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## 1AC – NDT

### 1AC – Economy

#### Contention one: Economy

**The three largest asset management companies are the lead investor in 90% of firms in the stock market. Common ownership by institutional investors stifles incentives for firms in the same sector to compete.**

Torshizi ’21 [Mohammad; Assistant Professor in Faculty of Agricultural, Life and Environmental Science @ University of Alberta, PhD in Agricultural Economics @ University of Saskatchewan; and Jennifer Clapp;Professor and Canada Research Chair in Global Food Security and Sustainability @ University of Waterloo; “Price Effects of Common Ownership in the Seed Sector,” *The Antitrust Bulletin*, 66(1), p. 39-67; AS]

Common Ownership

The rise in common ownership of large corporations within the same sector is in large part a consequence of an enormous increase in institutional investment in equity shares in publicly traded firms. Much of this increased institutional investment is associated with the rise of equity-based index funds—both mutual funds and exchange traded funds—that are dominated by large asset management companies, such as BlackRock, Vanguard, State Street, Capital Group, and Fidelity.13 These firms have grown to be truly giant in size in recent years due to the high demand for the index fund investment products that they have on offer to investors, including both institutional and retail investors. Common ownership patterns intensified after the 2008 financial crisis when institutional investors started to diversify their investments after mortgage-backed securities lost their attractiveness.14 The amount of capital invested in index funds rose from US$2 trillion in 200815 to US$8.3 trillion by the end of 2015, which represented approximately one third of the US$24.6 trillion managed by asset management firms at that time.16 By late 2019, the amount invested in index funds climbed further to reach US$11.4 trillion.17

Index funds typically offer returns based on an index of a range of firms within a sector—often holding shares in all of the major firms in that market segment, including those that are normally competitors with one another. Retail and other institutional investors that own shares in these index funds do not own shares in the firms that comprise the index. Rather, the asset management companies that offer index fund products to other investors are the holders of the shares in those firms. As index investing ballooned over the past decade, large asset management firms have come to hold significant shares in most companies listed in the Standard and Poor’s 500 (S&P 500) stock market index. According to Fichtner et al.,18 the big three combined—BlackRock, Vanguard, and State Street—are the largest shareholder in 438 of the 500 most important companies in the United States. Together, these three large asset management companies can hold anywhere from 10% to 35% of the largest firms on the stock market. According to the Organization for Economic Cooperation and Development (OECD), by 2015 “the mean ownership of 1,662 listed U.S. corporations by the Big Three [BlackRock, Vanguard and State Street] was over 17.6 percent.”19

Although the institutional owners, even collectively, typically do not hold a majority share in the firms in which they invest, there is growing concern in the literature regarding the broader impact of these new patterns of common ownership. Some scholars have stressed the potential for common ownership to result in anticompetitive behavior on the part of the firms in which institutional investors collectively own significant shares.20 In particular, firms with common shareholders have an incentive to maximize not their own firms’ profits but instead to maximize the portfolio value of their largest shareholders, which includes firms that are normally their competitors. In other words, there is little incentive for managers of commonly held firms to compete with their rivals.21 As Schmalz22 provocatively asks: “ ... if firms have no incentives to compete, why would they?”

The prospect of weak incentives for competition among firms within sectors characterized by common ownership has led to questions about the potential impact of common ownership within the economy. In the broader economic literature, a lack of competition can result in effects such as higher prices, collusion among firms (to fix prices or to erect barriers to entry), weakened incentives for investment, and a tendency toward greater market concentration through mergers and acquisitions (M&As).23 Each of these concerns has also been raised with respect to the rise of common ownership.24 Further, some scholars have pointed to broader macroeconomic trends that might arise from anticompetitive practices among firms, such as growing inequality.25 Azar et al. and Ant´on et al.26 warn that common ownership patterns can encourage these types of outcomes, even if firms are not explicitly colluding with one another and even if they are not explicitly pushed to do so by their largest shareholders. In other words, these outcomes may result simply from the fact that firm managers are acting in the interests of their largest shareholders under their own direction. Additionally, Azar et al. and Ant´on et al.27 claim that the so-called passive mutual funds or “lazy investors” could create a suboptimal equilibrium outcome by doing nothing (i.e., not pushing the firm managers to follow competitive strategies).

Empirical studies investigating whether such outcomes are occurring in practice are still in their early days and have sparked much debate among scholars studying common ownership impacts. One of the first studies to examine this relationship focused on the airline industry in the United States.28 This work found an increase in effective levels of market concentration as a result of common ownership, resulting in airline prices that were 3%–7% higher than would have been the case in the absence of common ownership. In a study focused on common ownership in the banking sector,29 researchers also found elevated effective levels of market concentration that resulted in higher banking fees, signaling a weakening of incentives to compete.

More recent studies include an investigation of the impact of common ownership on barriers to entry in the pharmaceutical sector.30 This work found that a one standard deviation (SD) increase in common ownership resulted in decreased probability of entry into the market by generic drug firms by 9%–13%. Another study found that firms commonly owned by large institutional investors were more likely to experience a merger or acquisition event.31 And in yet another study, researchers found that voluntary disclosure among firms is greater when there are higher levels of common ownership, suggesting weakened competition, which lowers the cost of disclosure and improves coordination among firms.32 Further, Guit´errez and Philippon33 found that commonly owned and concentrated industries invest less, which could weaken innovation.

#### The mere existence of common ownership elevates corporate profit margins at the expense of output and growth. An antitrust remedy is critical.

Azar ’18 [José et al; School of Economics and Business @ University of Navarra; Martin Schmalz; Professor of Finance @ Oxford; and Isabel Tecu; PhD in Economics @ Brown University; “Anticompetitive Effects of Common Ownership,” *The Journal of Finance*, 73(4), p. 1513-1565; AS]

To see why doing nothing is sufficient for common ownership to lead to higher prices, assume that increasing market share requires managerial effort, which is privately costly. For instance, entering new markets and attracting new customers may require successful R&D, extensive market research, unpleasant price wars with incumbents, and effort at a personal cost. If “lazy investors” do not insist on the implementation of expansion strategies, managers can enjoy the “quiet life” that comes with choosing suboptimal quantities (Hicks (1935)).17 If a match between lazy principals and lazy agents becomes pervasive in an industry, then in a Cournot model context, industry output declines and margins increase (see Ant´on, Ederer, Gin´e, and Schmalz (2017)). Diversified shareholders have little incentive to intervene and change such an equilibrium. One should therefore not expect large diversified mutual fund families to actively push for more aggressive product market behavior between portfolio firms, given that doing so would not only be costly, but also go against incentives to maximize the value of the family’s total portfolio. Also, we are not aware of any evidence to that effect.

By contrast, it is well documented that campaigns by activist investors, which typically concentrate their capital in one target firm per industry, lead to increases in target market share at the expense of its rivals (e.g., Aslan and Kumar (2016)). When industry competitors are owned by concentrated activists that push their targets to compete aggressively, a more competitive outcome obtains.

The past three decades have witnessed a shift from the low-common-ownership equilibrium to the high-common-ownership equilibrium, with diversified institutions increasingly crowding out concentrated owners as firms’ most powerful shareholders. One should thus expect a decrease in the extent of competition, even when diversified owners do nothing to actively reduce the competitiveness of their portfolio firms’ product markets. This may be one reason why antitrust law explicitly recognizes that a “passive” change of incentives is sufficient to implement anticompetitive outcomes (Elhauge (2015)).

In sum, large diversified mutual fund families doing nothing, that is, not pushing portfolio firms to compete aggressively against each other, can implement the outcomes we document. Active engagement in corporate governance on behalf of common owners merely exacerbates the problem.

#### Horizontal shareholding drives the investment-profit gap. Cross-industry empirical studies price in alt causes and confirm it’s the primary factor.

**Elhauge ’20** [Einer; Professor of Law @ Harvard; “How Horizontal Shareholding Harms Our Economy - And Why Antitrust Law Can Fix It,” *Harvard Business Law Review*, 10(2), p. 207-286; AS]

C. New Empirical Evidence on the Investment-Profit Gap

New empirical studies also indicate that horizontal shareholding can help explain the rapid increases over recent decades both in the gap between corporate profits and investment and in economic inequality. This new literature shows that we had a sharp rise in horizontal shareholding from 1999 to 2014, with the probability of two competing firms in the S&P 1500 having a large horizontal shareholder increasing from 16% to 90% over that period.35 This sharp rise in horizontal shareholding coincides with the fact that the recent large divergence between corporate profits and investment began in 2000.36 It also coincides with the period during which we have had the highest growth in corporate profits and greatest decline in labor's share of national income since World War II.11

Standing alone, such parallel timing could be a coincidence and reflect economic factors other than horizontal shareholding that changed during the same time period. However, a new cross-industry empirical study has directly found that the gap between corporate investment and profitability is mainly driven by the level of horizontal shareholder ownership in concentrated markets.38 Further, the new study found that, within any industry, the investment-profit gap is mainly driven by those firms with high horizontal shareholding levels.39 While parts of the study used MHHI measures of horizontal shareholding, others avoided any concerns that MHHI might reflect endogenous effects on market share by instead using the firm's level of quasi-indexer ownership as a proxy for horizontal shareholding levels. 40 This new empirical evidence now affirmatively establishes a link between anticompetitive horizontal shareholding and the economy-wide lack of corporate investment that has contributed to low economic growth in recent decades.

This new empirical evidence also indicates that the main cause of the investment-profit gap cannot be general macroeconomic, technological, or policy trends, such as recessions, increased automation, decreased productivity, a slowdown in technological innovation, or changes in government spending, taxes, or labor law. If such general trends were the main cause, they should result in a similar profit-investment gap across the economy, rather than a gap that is mainly driven by concentrated markets with high horizontal shareholdings. Even less can such general trends explain why, within any industry, the investment-profit gap is mainly driven by firms with high horizontal shareholding levels. If automation, technological factors, or government policies were the main driver of low investment, that should apply equally to all firms in an industry, not mainly to those firms with high levels of horizontal shareholding.

Although this new cross-industry study does not directly examine economic inequality, a connection to economic inequality is logically suggested by its proof of an empirical connection between horizontal shareholding in concentrated markets and a gap between high corporate profits and low corporate investment. The reason is that those high corporate profits go to shareholders who are disproportionately wealthy and reflect high prices that are disproportionately borne by the non-wealthy, and the lack of corporate investment depresses employment and wages in a way that further disproportionately harms the non-wealthy. 4

#### Common ownership undermines welfare gains by incentivizing buybacks at the expense of investment.

Gutierrez ’18 [German; PhD Candidate Finance @ NYU Stern School of Business; and Thomas Philippon; Max L. Heine Professor of Finance @ Stern School of Business NYU; “Ownership, Concentration, and Investment” AEA Papers and Proceedings 2018, 108: 432–437 p. 432-436]

We argue that changes in firm governance have contributed to the weakness of corporate investment in recent years. Our initial motivation comes from four trends affecting the US corporate sector during the 2000s:

(i) Concentration and profits have increased in most industries (Furman 2015; Grullon, Larkin, and Michaely 2016; Barkai 2017).

(ii) Business investment has been weak relative to profitability, funding costs, and market values (Gutiérrez and Philippon 2017b).

(iii) Payout rates of US-incorporated public firms, including buybacks, have increased markedly, as shown in Figure 1, panel A.

(iv) The fraction of the equity market owned by institutional investors, quasi-indexers in particular, has increased, as shown in Figure 1, panel B.1

Two main explanations have been proposed for the joint evolution of concentration and invest- ment: intangible capital (Alexander and Eberly 2016; Crouzet and Eberly 2018) and increased market power (Gutiérrez and Philippon 2017a). These two explanations do not account for the entire investment gap, and we study the role of corporate governance.

Firms must continuously choose what fraction of earnings to retain, invest, and pay out. Shareholders and managers often disagree about these choices. A large literature in corporate finance argues that managers have a tendency to prefer larger firms. One can also argue that equity markets put excessive emphasis on quarterly earnings. Almeida, Fos, and Kronlund (2016) show that the probability of share repurchases is sharply higher for firms that would have just missed the earnings per share forecast in the absence of a repurchase. Terry (2017) shows that firms just meeting Wall Street forecasts have lower research and development growth. Managers can also be shortsighted, however, and Kaplan (2017) argues against the idea that markets have a short-term bias. The nature of the potential bias, if any, is therefore an empirical question.

The joint evolution of investment, payouts, and market value can help us understand these governance issues. Suppose that managers’ incentives become more aligned with shareholders’ preferences. Market values unambiguously increase. Payouts to shareholders increase at some horizon. And, if managers prefer larger firms, and if the change in governance is correctly identified, investment decreases. A shift in governance can therefore account for the gap between Tobin’s Q and investment documented in Gutiérrez and Philippon (2017b). Consistent with this idea, Figure 2 shows that buybacks increased faster for firms with high quasi-indexer ownership.2 In the remainder of the paper we test more formally this hypothesis.

I. Ownership and Investment

We first want to test whether high institutional ownership, particularly quasi-indexer owner- ship, leads to higher payouts and lower investment. The assumption is that quasi-indexers affect governance and therefore investment. The literature has argued that quasi-indexers affect governance through voice (Appel, Gormley, and Keim 2016a), cooperation with activists (Appel, Gormley, and Keim 2016b) and, to a lesser extent, rebalancing (Wurgler 2011). The identification issue is that ownership, payouts, and investment are jointly endogenous.

One possible identification strategy relies on the recomposition of Russell indices. These indices are re-constituted annually and result in differential weights for firms around the 1,000/2,000 cutoff. In 2005, for example, the ten smallest firms in the Russell 1,000 had a combined index weight of 0.004 percent, and the next ten largest firms were in the Russell 2,000 with a combined index weight of 2.3 percent (Crane, Michenaud, and Weston 2016). The differential weights lead to sharp exogenous variation in institutional ownership. Crane, Michenaud, and Weston (2016) use a regression discontinuity (RD) design to show that an increase in institutional ownership causes an increase in payouts.3 They find that the elasticity of log-payouts to percentage point changes in ownership is 4.57 (Crane, Michenaud, and Weston 2016, Table 3). When we run a simple OLS regression of log-payouts on lagged ownership we obtain a coefficient of 3.05. We are thus confident that we are not over estimating the impact of owner- ship. More importantly, we find that investment decreases with rising payouts.

The index-recomposition identification is appealing but too local given our goal to explain broad trends in payouts and investment. To be able to consider a large panel of firms, we use pre-2000 quasi-indexer ownership as an instrument for post-2000 buybacks and investment, controlling for initial firm characteristics. This approach is supported by two facts. Firstly, firm ownership is highly persistent within quasi-indexer institu- tions: a regression of ownership at t on ownership five years prior yields a coefficient above 0.8, even after controlling for firm characteristics such as market capitalization. Secondly, activism—one oftheprimarymechanismsthroughwhichqua- si-indexer ownership affects buybacks—increases only after 2004. For this governance impact, pre- 2000 ownership is therefore a valid instrument in the sense of Bartik (1991).

Columns 1 and 2 of Table 1 present our base results. We include industry and year fixed effects and a wide range of pre-2000 firm-level controls (e.g., size, market capitalization, etc.). We instrument buybacks with pre-2000 quasi-indexer ownership, and then use the portion of buybacks that is explained by ownership to predict investment. We also instrument firm Q with its industry average to mitigate measurement error (unreported). We find that higher pre-2000 quasi-indexer owner- ship appears to cause higher buybacks and lower investment.4 In unreported tests, we interact pre- 2000 quasi-indexer ownership with the aggregate buyback-to-assets ratio and include firm as well as year fixed effects. We find that firms with higher quasi-indexer ownership are more sensi- tive to aggregate buyback trends.

II. Interaction between Competition and Ownership

The welfare consequences of stronger governance depend crucially on the degree of competition in the goods market. In noncompetitive industries, an increase in firm value can come from an increase in markups, and shareholders are likely to favor inefficiently low levels of investment. Under perfect competition, by contrast, shareholder value and social welfare are more likely to be aligned. Moreover, an important paper by Giroud and Mueller (2011) shows that governance is primarily an issue for firms in noncompetitive industries. Managers of firms in highly competitive industries are under constant pressure to innovate. We therefore focus on the interaction between governance, concentration, and investment. We measure concentration in the product market and in the asset management industry. We define the modified Herfindahl as MHHI = HHI+CO, where HHI denotes the import-adjusted Herfindahl constructed in Gutiérrez and Philippon (2017a) and CO accounts for anti-competitive effects of common ownership following Schmalz (2018).5

#### Margins have no relationship to corporate investment – buybacks are a drain on corporate treasuries.

Schwarz ’22 [Jon, citing Economists; 2/9/22; Senior Writer @ The Intercept; ““A PURE SIDESHOW”: NOW MORE THAN EVER, THE STOCK MARKET DOESN’T MATTER”; https://theintercept.com/2022/02/09/stock-market-doesnt-matter/; AS]

THERE’S A MORE complicated aspect of the stock market, one understood by almost no one in the U.S.

For a society to thrive and improve, businesses need to continually spend money on investments: new factories, new equipment, research and development, etc.

Most Americans have an inchoate, general sense that higher stock prices make companies more willing and able to make such investments. But in fact, stock prices have little or no relationship to corporate investments, either in theory or reality.

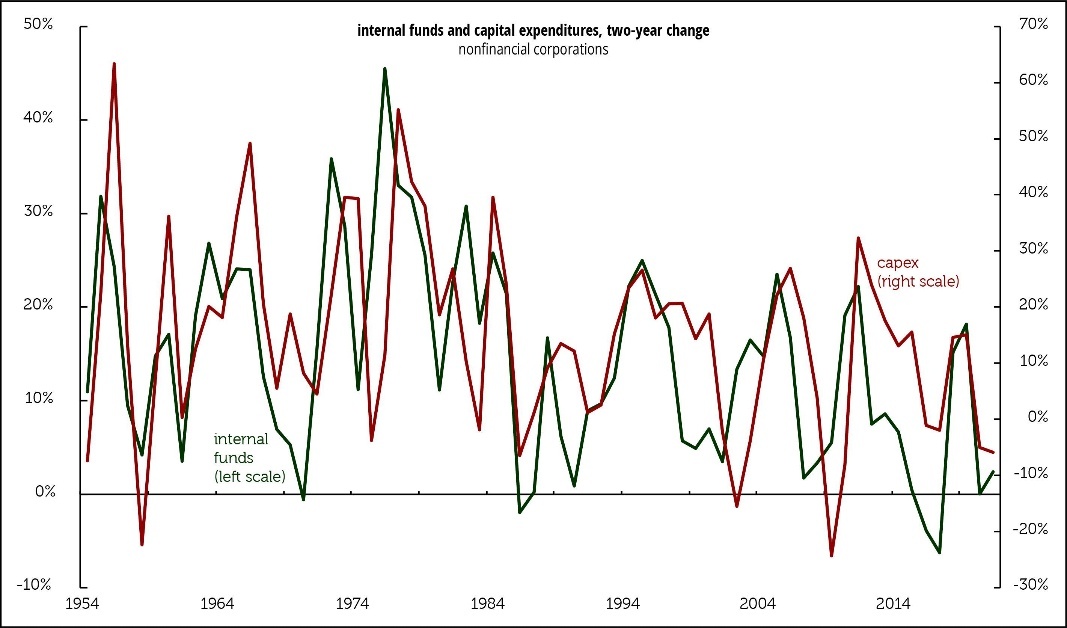
The key fact here is that corporations don’t own their stock; hence an increase in their stock price doesn’t make the company itself richer, just its stockholders. Corporations can raise money to get going via an initial public offering, and that has been important for some technology companies. But that’s generally it.

You might imagine that companies raise money from time to time by issuing new stock. The truth, however, is exactly the opposite. According to the Federal Reserve, corporations have bought and retired an incredible $6.8 trillion more of their stock over the past 25 years than they have issued new stock. The companies generally do this to please their stockholders (including their own executives), since it raises the price of the remaining stock. But it means the stock market has been a gigantic drain on corporate treasuries, rather than filling them.

Where, then, do companies get the cash for investments? The answer’s simple: from the money they make selling their products (with a bit added from borrowing).

The empirical reality of this can be seen in two graphs created by Doug Henwood, the host of KPFA’s “Behind the News” and author of “Wall Street: How It Works and for Whom.”

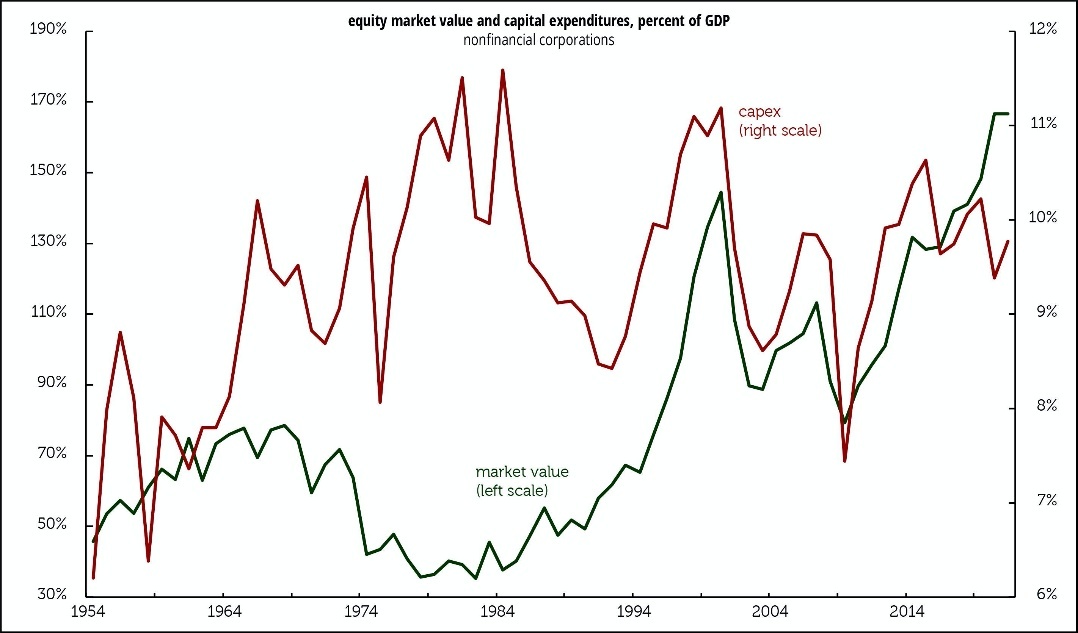
First, we can see how closely increases in internal corporate funds mirror corporate capital expenditures. When companies have more money, they spend more on investments to increase productivity.



Corporate internal funds vs. their capital expenditures. Source: Federal Reserve.

Chart: Doug Henwood

Next there’s the change in the value of the stock market versus the level of corporate investment. As Henwood puts it, “When the great bull market began in 1982, which we could call the onset of the neoliberal era, the market value of the stock of nonfinancial corporations was 35 percent of GDP and their capital expenditures (capex) were 10 percent of GDP. Almost 40 years later, in 2021, the market value of stock was 167 percent of GDP and capex, 10 percent.” Notably, corporate investments were highest as a share of the economy in the late 1970s and early ’80s, when the stock market’s value was far, far lower as a percentage of the overall economy.



The value of the stock market vs. corporate capital expenditures. Source: Federal Reserve.

When you add it all up, the vast difference between the stock market’s significance for Americans, and our cultural obsession with it, is bizarre. It’s as though the only weather reports we ever got were about the temperature and precipitation in Greenwich, Connecticut. We need to stop worrying about those people — and start paying attention to the weather where we live.

#### The stock market is an irrelevant economic metric. Margins reflect the gains of the richest, not macroeconomic welfare.

Schwarz ’22 [Jon, citing Economists; 2/9/22; Senior Writer @ The Intercept; ““A PURE SIDESHOW”: NOW MORE THAN EVER, THE STOCK MARKET DOESN’T MATTER”; https://theintercept.com/2022/02/09/stock-market-doesnt-matter/; AS]

THE STOCK PRICE of Meta (i.e., Facebook) plunged 27 percent in one day last week! The S&P 500 is veering into correction territory! The ballyhooed ARK Innovation ETF, made up of dozens of tech stocks, has plummeted 50 percent in the last year!

You’re supposed to feel anxious about this, even if you don’t know what those words mean. The U.S. media constantly screeches at us about the stock market: It’s up, it’s down, it’s sideways, it’s sprouted bright rainbow-colored plumage. Whatever happened in the stock market on any given day often leads the evening news. There’s a stock ticker running constantly at the bottom of the screen on many cable news shows. Times Square has a ticker that movies use for New York City establishing shots almost as often as the Statue of Liberty or the Empire State Building. And obviously the stock market going up is portrayed as an unmitigated good, while declines are disastrous.

This means there are probably more ominous headlines coming, because even after its recent fall, the stock market remains significantly overvalued.

THE MOST COMMON way to measure whether stocks are undervalued or overvalued is their price-to-earnings, or P/E, ratio. Price is the dollar cost per share, and earnings are the company’s net proceeds per share.

There are slightly different ways of figuring P/E, and many different stock indices. But one widely used P/E ratio calculation for the S&P 500 shows it’s currently about 25. This means that for every $100 in price for the stocks on the index, the companies are accruing $4 in earnings. But the median historical P/E ratio for the S&P is far lower, about 15. In other words, if earnings levels stay the same, the S&P would have to fall 40 percent from where it is now to be priced normally.

The cost of famous individual stocks appears even more out of whack. As of today, Microsoft’s P/E ratio is about 32. Amazon’s is 49. Tesla’s is an eye-bulging 186.

After the stock market bubble of the late 1990s or the housing bubble of the 2000s — or for that matter, the Dutch tulip bubble of the 1600s — you’d think we’d have learned our lesson about financial bubbles. They feel great on the way up, and with stock market bubbles in particular, people have some vague sense that this means good things about the overall economy in the future. But bubbles do not represent real wealth, and the high never lasts.

In theory, stock prices represent the future value of after-tax corporate profit. That’s all. And the higher corporate profits move, the less money there is to pay wages. So higher stock prices can represent a greater level of corporate power and less for workers trying to exact better pay from their employers. Likewise, as Dean Baker, senior economist at the Center for Economics and Policy Research, points out, “If we cut corporate taxes, and offset the cut with an increase in taxes on ordinary workers, that should make the stock market go up, but there is no reason to think this move would lead to more rapid economic growth.” (I briefly worked for Baker long ago.)

In other words, profits and hence stock prices are, as much as anything else, a measure of the balance of power in society. The famed 18th-century economist Adam Smith — so popular on the right that White House staffers in the Reagan administration wore ties with pictures of him — explicitly explained this in his book “The Wealth of Nations”: “The rate of profit does not, like rent and wages, rise with the prosperity, and fall with the declension of society. On the contrary, it is naturally low in rich, and high in poor countries, and it is always highest in the countries which are going fastest to ruin.”

So unless you’re C-suite executive with tons of stock (or are nearing retirement age and have made extremely risky decisions with your savings), a stock market plunge generally won’t be bad for you. And it also probably wouldn’t be good for you. “If you don’t have much wealth,” says Josh Bivens, director of research at the liberal Economic Policy Institute, the stock market is “a pure sideshow for your own economic circumstance.”

According to the Federal Reserve’s most recent survey, Americans in the bottom 90 percent of net worth own just 16 percent of stocks overall. Strikingly, the bottom 50 percent own just 1 percent.

Meanwhile, the top 10 percent have 84 percent of all stocks. The top 1 percent of households alone have 38 percent of stocks.

Given these numbers, stock ownership by race is about what you’d expect. African Americans make up 14 percent of households but have just 3 percent of stock wealth.

Some older members of the upper-middle class are often upset by anyone saying the stock market doesn’t matter, because they’re counting on selling their own stock holdings to finance their retirement. But this is exactly why all financial advisers recommend that everyone but the ultra-rich gradually reduce any stock holdings as they age, replacing the stocks with bonds that may have lower returns but won’t lose value in a stock crash. The long run-up in stock prices over the past several decades has made many people believe they can get the higher possible returns in the stock market without real downside risk. But they can’t.

While few people care about it, there’s also the moral quandary of retiring by selling stocks when they’re overpriced. Perhaps you can successfully offload such stocks to younger people before prices fall. But this would essentially entail scamming all your buyers.

But what about younger members of the upper-middle class, who probably are heavily invested in the stock market? A stock plunge would make them feel poorer for a while, but in the long run they’d be better off with a cheaper market. Regular contributions they’re making into a 401(k) plan, for instance, will buy more stock for the same amount of money. This is exactly analogous to home prices. Overpriced homes are good for older people who already own a house, as long as they can sell before prices fall — but terrible for young people who don’t own a home and would benefit from lower prices.

#### Competition spurs productivity growth – combatting market power accesses trillions of dollars of gains.

Philippon ’21 [Thomas; Stern School of Business @ New York University; “The Case for Free Markets,” *Oxford Review of Economic Policy*, 37(4), p. 707–719; AS]

(i) Concentration and entrenchment

Trends in industry concentration are by far the most discussed in mainstream media, so I will be brief. Many studies have shown that concentration has increased in more than three-quarters of US industries since the 1990s (Grullon et al., 2019; Autor et al., 2020). Concentration is a useful but imperfect indicator because it is the outcome of a dynamic process. As a result, concentration can be benign or harmful depending on the underlying driving force. Concentration is beneficial when it is driven by lower trade costs, e.g. lower shipping costs or lower search costs. When these costs are low the best producers expand at the expense of inefficient ones, which improves consumers’ welfare and increases concentration simultaneously. This reallocation can happen within a country (geographical expansion, Rossi-Hansberg et al. (2018)) or across countries (international trade, Covarrubias et al. (2019)). An important point is that this type of concentration is beneficial precisely because new competitors enter into existing markets. Some industries—in manufacturing, in retail and wholesale trade—fit this pattern, but many—in telecom, air transportation, or healthcare—do not.

Instead of looking at the concentration of market shares at fproa point in time, Figure 1 considers the reshuffling of markets shares. In competitive industries entrants should challenge dominant firms and thus we would expect market shares to change over time. To test this idea, we rank all large firms—by market value or by revenue—in a particular year, and we rank them again 5 years later. The change in rankings over a 5-year window is a measure of reshuffling. Figure 1 shows that reshuffling has decreased over the past 20 years.1 Hamel and Zanini (2021) make a similar point by looking at top 100 (or 500) companies. In 2000 only 45 of the largest 100 American companies had been in the top 100 every year between 1991 and 2000. In 2019 that figure was 71 out of 100.

I find this statistic useful because it provides a dynamic view of the economy. It suggests that dominant firms have become more entrenched over the past 20 years.

(ii) Profits and pay-outs

Figure 2 shows the evolution of after-tax non-financial corporate profits in the US since 1946. After-tax profits used to fluctuate around 6 percent of GDP for most of the post-war period. After 2000, however, they increased substantially to around 9 per cent of GDP. Several factors could explain this evolution. Technological change, for instance, could have increased the role of capital in production. This explanation would imply a boom in investment, however, and Gutiérrez and Philippon (2017) show that investment—both tangible and intangible—has been lower than expected over the past 20 years.

High corporate profits did not, in fact, lead to high investment but, as Figure 3 shows, to high pay-outs to shareholders. Figure 3 also shows that the increase in pay-outs is entirely explained by the increase in share buybacks. Dividends have been roughly constant as a share of assets.

(iii) Specific studies

In addition to the broad trends discussed above, there are several detailed studies of specific industries. For instance, Gaynor and Town (2012) study hospital consolidation and show that it generally results in higher prices, and Gaynor (2021) provides a recent review of competition in the US healthcare system. Micro studies make it possible to carefully study prices, how they relate to costs, and how they vary across locations (Cooper et al., 2019, 2021).

Faccio and Zingales (2017) estimate that US consumers would gain $65 billion a year if US mobile service prices were in line with German ones, and Philippon (2021) shows that American consumers pay more for broadband and wireless services than consumers in other industrialized nations.

Several studies point out that the weakening of antitrust enforcement is at least partly responsible for the decline in competition (Kwoka, 2015). Ashenfelter et al. (2014) survey 49 studies that estimate the price effects of consummated horizontal mergers in 21 industries over 30 years. Of the 49 studies surveyed, 36 find evidence of mergerinduced price increases.

(iv) Explanations

There are, of course, several plausible explanations for the increase in concentration, profits, and pay-outs. We need to consider other indicators to tell them apart. In Philippon (2019) I consider various explanations and I argue that declining competition in many US industries over the past 20 years is a major contributor to the rise in profits. Let me discuss some alternatives and explain where I think that they fall short. For instance, one could hypothesize that technology has changed in such a way as to increase the role of capital in production. Formally, we would write y = kα­1−α and hypothesize an increase in α. This would provide a competitive explanation for an increase in the capital share of income. It would, however, also predict a counterfactual boom in investment. Gutiérrez and Philippon (2017) show that investment—both tangible and intangible—has been lower than expected over the past 20 years.

Alternatively, one could hypothesize that the selection effect has increased as in Autor et al. (2020). The selection effect refers to the exit of weak firms from the market. The strength of the selection effect depends on the degree of competition in the market. When competition is intense ex post, only the best firms can survive. Holding constant the entry cost, a lower survival probability must lead to higher ex post profits for those firms that actually survive. The key equation here is the entry condition (1 − p) E [V] ≤ κ where p is the exit rate, κ the entry cost, and E [V] the discounted value of profits conditional on survival. Holding κ constant, an increase in p must be compensated by an increase in E [V]. This explanation, however, relies on an increase in the exit rate, while empirically the exit rate has declined. Another issue is that the selection effect increases aggregate productivity. This class of explanations must therefore also posit another, independent mechanism to explain the productivity slowdown.

It is quite important, however, to understand that these various explanations are not mutually exclusive. For instance, the main result in Autor et al. (2020) is that the change in the labour share is driven by reallocation towards firms with low labour shares, especially in manufacturing and especially during the 1990s. There is no disagreement about the statistical decomposition. There is also no disagreement about the dynamics within manufacturing, where globalization plays a major role. Covarrubias et al. (2019) show that trade-adjusted concentration has not increased in manufacturing. Similarly, the evolution of the retail industry since the 1990s supports the relevance of ‘star’ firms (Hortacsu and Syverson, 2015). The entry condition (1 − p) E [V] ≤ κ is also common to virtually all models, and the main point of Philippon (2019) is that the dynamics of many industries only make sense if we posit an increase in κ, i.e. if we posit that incumbents are protected by higher barriers today than 20 years ago. This argument does not preclude other changes, in α, p, or a variety of other factors.

Monopsony versus labour power

Industry consolidation can affect workers as well as consumers. Dominant employers can mark down wages and have weak incentives to improve working conditions. They can also impose non-compete agreements on their employees. Azar et al. (2017) show that employers in many local labour markets enjoy monopsony power. The academic discussion centres on the size of the effect. Schubert et al. (2021) argue that the aggregate impact is relatively small since most US workers are not in highly concentrated labour markets, but they find that a subset of workers experience meaningful negative wage effects from employer monopsony power. Stansbury and Summers (2020), on the other hand, emphasize the decline in unionization and argue that a decrease in labour power (the opposite of monopsony) can account for recent trends in the US economy.

Monopoly and monopsony power have broadly similar implications for the distribution of national income. Monopsony power, however, is also likely to increase inequality among workers. As far as investment is concerned, a rise in monopoly power predicts a decline, while the implications from monopsony or labour power depend on the elasticity of substitution between capital and labour and on the nature of bargaining. For instance, with efficient firm-level bargaining, investment, output, and prices do not depend directly on labour power. All these models, however, predict an increase in investment in response to the increase in expected profits unless barriers to entry also increase. Once again, then, the main point in Philippon (2019) is that we must posit an increase in κ to get a full account of the trends.

Inflation

At first glance, a rise in monopoly power might seem difficult to reconcile with low inflation since monopoly power allows firms to raise prices (Stansbury and Summers, 2020). This argument, however, only holds in partial equilibrium. Jones et al. (2020) show in a dynamic equilibrium model that an increase in entry costs has a negligible impact on inflation because the negative effect of lower investment and labour demand cancels the positive effect of mark-ups.

Intangibles

An important trend of the past 40 years is the rise of intangible assets. A key point of intangible assets is that they are both factors of production (that need to be compensated) and potential barriers to entry (notably in industries with network or scale effects). Crouzet and Eberly (2019) find that intangibles contribute significantly to the gap between valuations (Tobin’s Q) and investment, particularly in fast-growing sectors. To the extent that intangible assets allow dominant firms to prosper, they can blur the line between efficient concentration and barriers to entry. Intangible expenses explain a large part of the rise in mark-ups documented by De Loecker et al. (2020).

(v) Consequences for consumers and workers

The economic consequences of monopoly power are complex and sometimes difficult to analyse, so I find it useful to decompose them into redistribution effects (inequality and transfers of wealth) and production effects (investment, productivity growth).

Let us start with the redistribution effects. Combining data on prices, wages, concentration, and investment, Philippon (2019) concludes that prices in the US are somewhere between 7 and 8 percent too high. Let us translate this estimate into concrete numbers. The typical household spends about $4,400 each month.2 Increased monopoly rents over the past 20 years thus represent an additional cash outlay of about $310 each month for the median household, or about $3,700 per year. This is a significant expense. According to the 2019 ‘Report on the Economic Well-being of US Households’ from the Federal Reserve, ‘relatively small, unexpected expenses, such as a car repair or a modest medical bill, can be a hardship for many families’. In their survey, only about 60 percent of adults report that they would be able to cover a hypothetical expense of $400 with cash (or its equivalent).

If we aggregate these extra payments across all households and over 12 months, we find that American families pay around $600 billion each year in excessive monopoly rents. These transfers of wealth increase inequality because capital income is more highly concentrated than labour income. The median household does not earn much capital income compared to households in the top deciles or percentiles of the income distribution.

Let us now turn to production effects. The estimates we have just discussed reflect direct wealth transfers from households to corporations, and from workers to shareholders, but they do not take into account changes in quantities of goods and services produced. An increase in market power not only redistributes income, but it also affects GDP. To understand the full consequences of monopoly power we must therefore take into account its impact on investment, employment, and production. I use a simple model to perform the following thought experiment: suppose we could roll back the barriers to entry, undo the bad mergers, and somehow return to the level of competition we had in the late 1990s. How much better off would we be?

A model is a set of equations that represent the decisions of economic agents and the clearing of all markets.3

The virtue of a model is that we can compute the evolution of the economy when all agents adjust their behaviour. We start from an economy where GDP is 100 units and labour earns 65 of these units, so the labour share is exactly 65 per cent. Firms include a 5 per cent mark-up in their (gross) output prices and their net profits exactly cover their fixed costs. We then engineer an increase in gross mark-ups from 5 to 10 per cent.4 The demand for capital, labour, and intermediate inputs decreases. In this economy with lower competition, GDP drops to 95 units and labour income drops to 58 units. The new labour share is therefore 58/95 ≈ 0.61, which is in line with the decline observed in the US. The stock of productive private capital decreases by 10 per cent, consistent with Gutiérrez and Philippon (2017).

Let us put these numbers into perspective. US GDP is about $20 trillion. If we could make the economy as competitive as it was 20 years ago, this would increase by 5 percent to $21 trillion. The compensation of employees is about $11 trillion. In a competitive economy it would be 65/58\*11 ≈ $12.3 trillion. These calculations suggest that the lack of competition has deprived American workers of about $1.3 trillion of labour income, which is somewhat more than the entire cumulative growth of real compensation between 2012 and 2018.

#### Slow growth causes extinction.

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Four structural forces will shape the future of International Relations: globalization (but without liberal rules, institutions, and leadership)1; multipolarity (the end of American hegemony and wider distribution of power among states and non-states2); the strengthening of distinctive, national and subnational identities, as persistent cultural differences are accentuated by the disruptive effects of Western style globalization (what Samuel Huntington called the “non-westernization of IR”3); and secular economic stagnation, a product of longer term global decline in birth rates combined with aging populations.4 These structural forces do not determine everything. Environmental events, global health challenges, internal political developments, policy mistakes, technology breakthroughs or failures, will intersect with structure to define our future. But these four structural forces will impact the way states behave, in the capacity of great powers to manage their differences, and to act collectively to settle, rather than exploit, the inevitable shocks of the next decade.

Some of these structural forces could be managed to promote prosperity and avoid war. Multipolarity (inherently more prone to conflict than other configurations of power, given coordination problems)5 plus globalization can work in a world of prosperity, convergent values, and effective conflict management. The Congress of Vienna system achieved relative peace in Europe over a hundred-year period through informal cooperation among multiple states sharing a fear of populist revolution. It ended decisively in 1914. Contemporary neoliberal institutionalists, such as John Ikenberry, accept multipolarity as our likely future, but are confident that globalization with liberal characteristics can be sustained without American hegemony, arguing that liberal values and practices have been fully accepted by states, global institutions, and private actors as imperative for growth and political legitimacy.6 Divergent values plus multipolarity can work, though at significantly lower levels of economic growth-in an autarchic world of isolated units, a world envisioned by the advocates of decoupling, including the current American president.7 Divergent values plus globalization can be managed by hegemonic power, exemplified by the decade of the 1990s, when the Washington Consensus, imposed by American leverage exerted through the IMF and other U.S. dominated institutions, overrode national differences, but with real costs to those states undergoing “structural adjustment programs,”8 and ultimately at the cost of global growth, as states—especially in Asia—increased their savings to self insure against future financial crises.9

But all four forces operating simultaneously will produce a future of increasing internal polarization and cross border conflict, diminished economic growth and poverty alleviation, weakened global institutions and norms of behavior, and reduced collective capacity to confront emerging challenges of global warming, accelerating technology change, nuclear weapons innovation and proliferation. As in any effective scenario, this future is clearly visible to any keen observer. We have only to abolish wishful thinking and believe our own eyes.10

Secular Stagnation

This unbrave new world has been emerging for some time, as US power has declined relative to other states, especially China, global liberalism has failed to deliver on its promises, and totalitarian capitalism has proven effective in leveraging globalization for economic growth and political legitimacy while exploiting technology and the state’s coercive powers to maintain internal political control. But this new era was jumpstarted by the world financial crisis of 2007, which revealed the bankruptcy of unregulated market capitalism, weakened faith in US leadership, exacerbated economic deprivation and inequality around the world, ignited growing populism, and undermined international liberal institutions. The skewed distribution of wealth experienced in most developed countries, politically tolerated in periods of growth, became intolerable as growth rates declined. A combination of aging populations, accelerating technology, and global populism/nationalism promises to make this growth decline very difficult to reverse. What Larry Summers and other international political economists have come to call “secular stagnation” increases the likelihood that illiberal globalization, multipolarity, and rising nationalism will define our future. Summers11 has argued that the world is entering a long period of diminishing economic growth. He suggests that secular stagnation “may be the defining macroeconomic challenge of our times.” Julius Probst, in his recent assessment of Summers’ ideas, explains:

…rich countries are ageing as birth rates decline and people live longer. This has pushed down real interest rates because investors think these trends will mean they will make lower returns from investing in future, making them more willing to accept a lower return on government debt as a result.

Other factors that make investors similarly pessimistic include rising global inequality and the slowdown in productivity growth…

This decline in real interest rates matters because economists believe that to overcome an economic downturn, a central bank must drive down the real interest rate to a certain level to encourage more spending and investment… Because real interest rates are so low, Summers and his supporters believe that the rate required to reach full employment is so far into negative territory that it is effectively impossible.

…in the long run, more immigration might be a vital part of curing secular stagnation. Summers also heavily prescribes increased government spending, arguing that it might actually be more prudent than cutting back – especially if the money is spent on infrastructure, education and research and development.

Of course, governments in Europe and the US are instead trying to shut their doors to migrants. And austerity policies have taken their toll on infrastructure and public research. This looks set to ensure that the next recession will be particularly nasty when it comes… Unless governments change course radically, we could be in for a sobering period ahead.12

The rise of nationalism/populism is both cause and effect of this economic outlook. Lower growth will make every aspect of the liberal order more difficult to resuscitate post-Trump. Domestic politics will become more polarized and dysfunctional, as competition for diminishing resources intensifies. International collaboration, ad hoc or through institutions, will become politically toxic. Protectionism, in its multiple forms, will make economic recovery from “secular stagnation” a heavy lift, and the liberal hegemonic leadership and strong institutions that limited the damage of previous downturns, will be unavailable. A clear demonstration of this negative feedback loop is the economic damage being inflicted on the world by Trump’s trade war with China, which— despite the so-called phase one agreement—has predictably escalated from negotiating tactic to imbedded reality, with no end in sight. In a world already suffering from inadequate investment, the uncertainties generated by this confrontation will further curb the investments essential for future growth. Another demonstration of the intersection of structural forces is how populist-motivated controls on immigration (always a weakness in the hyper-globalization narrative) deprives developed countries of Summers’ recommended policy response to secular stagnation, which in a more open world would be a win-win for rich and poor countries alike, increasing wage rates and remittance revenues for the developing countries, replenishing the labor supply for rich countries experiencing low birth rates.

Illiberal Globalization

Economic weakness and rising nationalism (along with multipolarity) will not end globalization, but will profoundly alter its character and greatly reduce its economic and political benefits. Liberal global institutions, under American hegemony, have served multiple purposes, enabling states to improve the quality of international relations and more fully satisfy the needs of their citizens, and provide companies with the legal and institutional stability necessary to manage the inherent risks of global investment. But under present and future conditions these institutions will become the battlegrounds—and the victims—of geopolitical competition. The Trump Administration’s frontal attack on multilateralism is but the final nail in the coffin of the Bretton Woods system in trade and finance, which has been in slow but accelerating decline since the end of the Cold War. Future American leadership may embrace renewed collaboration in global trade and finance, macroeconomic management, environmental sustainability and the like, but repairing the damage requires the heroic assumption that America’s own identity has not been fundamentally altered by the Trump era (four years or eight matters here), and by the internal and global forces that enabled his rise. The fact will remain that a sizeable portion of the American electorate, and a monolithically proTrump Republican Party, is committed to an illiberal future. And even if the effects are transitory, the causes of weakening global collaboration are structural, not subject to the efforts of some hypothetical future US liberal leadership. It is clear that the US has lost respect among its rivals, and trust among its allies. While its economic and military capacity is still greatly superior to all others, its political dysfunction has diminished its ability to convert this wealth into effective power.13 It will furthermore operate in a future system of diffusing material power, diverging economic and political governance approaches, and rising nationalism. Trump has promoted these forces, but did not invent them, and future US Administrations will struggle to cope with them.

What will illiberal globalization look like? Consider recent events. The instruments of globalization have been weaponized by strong states in pursuit of their geopolitical objectives. This has turned the liberal argument on behalf of globalization on its head. Instead of interdependence as an unstoppable force pushing states toward collaboration and convergence around market-friendly domestic policies, states are exploiting interdependence to inflict harm on their adversaries, and even on their allies. The increasing interaction across national boundaries that globalization entails, now produces not harmonization and cooperation, but friction and escalating trade and investment disputes.14 The Trump Administration is in the lead here, but it is not alone. Trade and investment friction with China is the most obvious and damaging example, precipitated by China’s long failure to conform to the World Trade Organization (WTO) principles, now escalated by President Trump into a trade and currency war disturbingly reminiscent of the 1930s that Bretton Woods was designed to prevent. Financial sanctions against Iran, in violation of US obligations in the Joint Comprehensive Plan Of Action (JCPOA), is another example of the rule of law succumbing to geopolitical competition. Though more mercantilist in intent than geopolitical, US tariffs on steel and aluminum, and their threatened use in automotives, aimed at the EU, Canada, and Japan,15 are equally destructive of the liberal system and of future economic growth, imposed as they are by the author of that system, and will spread to others. And indeed, Japan has used export controls in its escalating conflict with South Korea16 (as did China in imposing controls on rare earth,17 and as the US has done as part of its trade war with China). Inward foreign direct investment restrictions are spreading. The vitality of the WTO is being sapped by its inability to complete the Doha Round, by the proliferation of bilateral and regional agreements, and now by the Trump Administration’s hold on appointments to WTO judicial panels. It should not surprise anyone if, during a second term, Trump formally withdrew the US from the WTO. At a minimum it will become a “dead letter regime.”18

As such measures gain traction, it will become clear to states—and to companies—that a global trading system more responsive to raw power than to law entails escalating risk and diminishing benefits. This will be the end of economic globalization, and its many benefits, as we know it. It represents nothing less than the subordination of economic globalization, a system which many thought obeyed its own logic, to an international politics of zero-sum power competition among multiple actors with divergent interests and values. The costs will be significant: Bloomberg Economics estimates that the cost in lost US GDP in 2019- dollar terms from the trade war with China has reached $134 billion to date and will rise to a total of $316 billion by the end of 2020.19

Economically, the just-in-time, maximally efficient world of global supply chains, driving down costs, incentivizing innovation, spreading investment, integrating new countries and populations into the global system, is being Balkanized. Bilateral and regional deals are proliferating, while global, nondiscriminatory trade agreements are at an end. Economies of scale will shrink, incentivizing less investment, increasing costs and prices, compromising growth, marginalizing countries whose growth and poverty reduction depended on participation in global supply chains. A world already suffering from excess savings (in the corporate sector, among mostly Asian countries) will respond to heightened risk and uncertainty with further retrenchment. The problem is perfectly captured by Tim Boyle, CEO of Columbia Sportswear, whose supply chain runs through China, reacting to yet another ratcheting up of US tariffs on Chinese imports, most recently on consumer goods:

We move stuff around to take advantage of inexpensive labor. That’s why we’re in Bangladesh. That’s why we’re looking at Africa. We’re putting investment capital to work, to get a return for our shareholders. So, when we make a wager on investment, this is not Vegas. We have to have a reasonable expectation we can get a return. That’s predicated on the rule of law: where can we expect the laws to be enforced, and for the foreseeable future, the rules will be in place? That’s what America used to be.20

The international political effects will be equally damaging. The four structural forces act on each other to produce the more dangerous, less prosperous world projected here. Illiberal globalization represents geopolitical conflict by (at first) physically non-kinetic means. It arises from intensifying competition among powerful states with divergent interests and identities, but in its effects drives down growth and fuels increased nationalism/populism, which further contributes to conflict. Twenty-first-century protectionism represents bottom-up forces arising from economic disruption. But it is also a top-down phenomenon, representing a strategic effort by political leadership to reduce the constraints of interdependence on freedom of geopolitical action, in effect a precursor and enabler of war. This is the disturbing hypothesis of Daniel Drezner, argued in an important May 2019 piece in Reason, titled “Will Today’s Global Trade Wars Lead to World War Three,”21 which examines the preWorld War I period of heightened trade conflict, its contribution to the disaster that followed, and its parallels to the present:

Before the First World War started, powers great and small took a variety of steps to thwart the globalization of the 19th century. Each of these steps made it easier for the key combatants to conceive of a general war.

We are beginning to see a similar approach to the globalization of the 21st century. One by one, the economic constraints on military aggression are eroding. And too many have forgotten—or never knew—how this played out a century ago.

…In many ways, 19th century globalization was a victim of its own success. Reduced tariffs and transport costs flooded Europe with inexpensive grains from Russia and the United States. The incomes of landowners in these countries suffered a serious hit, and the Long Depression that ran from 1873 until 1896 generated pressure on European governments to protect against cheap imports.

…The primary lesson to draw from the years before 1914 is not that economic interdependence was a weak constraint on military conflict. It is that, even in a globalized economy, governments can take protectionist actions to reduce their interdependence in anticipation of future wars.

In retrospect, the 30 years of tariff hikes, trade wars, and currency conflicts that preceded 1914 were harbingers of the devastation to come. European governments did not necessarily want to ignite a war among the great powers. By reducing their interdependence, however, they made that option conceivable.

…the backlash to globalization that preceded the Great War seems to be reprised in the current moment. Indeed, there are ways in which the current moment is scarier than the pre-1914 era. Back then, the world’s hegemon, the United Kingdom, acted as a brake on economic closure. In 2019, the United States is the protectionist with its foot on the accelerator. The constraints of Sino-American interdependence—what economist Larry Summers once called “the financial balance of terror”—no longer look so binding. And there are far too many hot spots—the Korean peninsula, the South China Sea, Taiwan—where the kindling seems awfully dry.

Multipolarity

We can define multipolarity as a wide distribution of power among multiple independent states. Exact equivalence of material power is not implied. What is required is the possession by several states of the capacity to coerce others to act in ways they would otherwise not, through kinetic or other means (economic sanctions, political manipulation, denial of access to essential resources, etc.). Such a distribution of power presents inherently graver challenges to peace and stability than do unipolar or bipolar power configurations,22 though of course none are safe or permanent. In brief, the greater the number of consequential actors, the greater the challenge of coordinating actions to avoid, manage, or de-escalate conflicts. Multipolarity also entails a greater potential for sudden changes in the balance of power, as one state may defect to another coalition or opt out, and as a result, the greater the degree of uncertainty experienced by all states, and the greater the plausibility of downside assumptions about the intentions and capabilities of one’s adversaries. This psychology, always present in international politics but particularly powerful in multipolarity, heightens the potential for escalation of minor conflicts, and of states launching preventive or preemptive wars. In multipolarity, states are always on edge, entertaining worst-case scenarios about actual and potential enemies, and acting on these fears—expanding their armies, introducing new weapon systems, altering doctrine to relax constraints on the use of force—in ways that reinforce the worst fears of others.

The risks inherent in multipolarity are heightened by the attendant weakening of global institutions. Even in a state-centric system, such institutions can facilitate communication and transparency, helping states to manage conflicts by reducing the potential for misperception and escalation toward war. But, as Waheguru Pal Singh Sidhu argues in his chapter on the United Nations, the influence of multilateral institutions as agent and actor is clearly in decline, a result of bottom-up populist/nationalist pressures experienced in many countries, as well as the coordination problems that increase in a system of multiple great powers. As conflict resolution institutions atrophy, great powers will find themselves in “security dilemmas”23 in which verification of a rival’s intentions is unavailable, and worst-case assumptions fill the gap created by uncertainty. And the supply of conflicts will expand as a result of growing nationalism and populism, which are premised on hostility, paranoia, and isolation, with governments seeking political legitimacy through external conflict, producing a siege mentality that deliberately cuts off communication with other states.

Finally, the transition from unipolarity (roughly 1989–2007) to multipolarity is unregulated and hazardous, as the existing superpower fears and resists challenges to its primacy from a rising power or powers, while the rising power entertains new ambitions as entitlements now within its reach. Such a “power transition” and its dangers were identified by Thucydides in explaining the Peloponnesian Wars,24 by Organski (the “rear-end collision”)25 during the Cold War, and recently repopularized and brought up to date by Graham Allison in predicting conflict between the US and China.26

A useful, and consequential illustration of the inherent challenge of conflict management during a power transition toward multipolarity, is the weakening of the arms control regime negotiated by the US and the Soviet Union during the Cold War. Despite the existential, global conflict between two nuclear armed superpowers embracing diametrically opposed world views and operating in economic isolation from each other, the two managed to avoid worst-case outcomes. They accomplished this in part by institutionalizing verifiable limits on testing and deployment of both strategic and intermediate-range nuclear missiles. Yet as diplomatically and technically challenging as these achievements were, the introduction of a third great power, China, into this twocountry calculus has proven to be a deal breaker. Unconstrained by these bilateral agreements, China has been free to build up its capability, and has taken full advantage in ramping up production and deployment of intermediate-range ground-launched cruise missiles, thus challenging the US ability to credibly guarantee the security of its allies in Asia, and greatly increasing the costs of maintaining its Asian regional hegemony. As a result, the Intermediate Nuclear Force treaty is effectively dead, and the New Start Treaty, covering strategic missiles, is due to expire next year, with no indication of any US–Russian consensus to extend it. The US has with logic indicated its interest in making these agreements trilateral; but China, with its growing power and ambition, has also logically rejected these overtures. Thus, all three great powers are entering a period of nuclear weapons competition unconstrained by the major Cold War arms control regimes. In a period of rapid advances in technology and worsening great power relations, the nuclear competition will be a defining characteristic of the next decade and beyond. This dynamic will also complicate nuclear nonproliferation efforts, as both the demand for nuclear weapons (a consequence of rising regional and global insecurity), and supply of nuclear materials and technology (a result of the weakening of the nonproliferation regime and deteriorating great power relations) will increase.

Will deterrence prevent war in a world of several nuclear weapons states, (the current nuclear powers plus South Korea, Iran, Saudi Arabia, Japan, Turkey), as it helped to do during the bipolar Cold War? Some neorealist observers view nuclear weapons proliferation as stabilizing, extending the balance of terror, and the imperative of restraint, to new nuclear weapons states with much to fight over (Saudi Arabia and Iran, for example).27 Others,28 examining issues of command and control of nuclear weapons deployment and use by newly acquiring states, asymmetries in doctrines, force structures, and capabilities between rivals, the perils of variable rates in transition to weapons deployment, problems of communication between states with deep mutual grievances, the heightened risk of transfer of such weapons to non-state actors, have grave doubts about the safety of a multipolar, nuclear-armed world.29 We can at least conclude that prudence dictates heightened efforts to slow the pace of proliferation, while realism requires that we face a proliferated future with eyes wide open.

The current distribution of power is not perfectly multipolar. The US still commands the world’s largest economy, and its military power is unrivaled by any state or combination of states. Its population is still growing, despite a recent decline in birth rates. It enjoys extraordinary geographic advantages over its rivals, who are distant and live in far worse neighborhoods. Its economy is less dependent on foreign markets or resources. Its political system has proven—up to now—to be resilient and adaptable. Its global alliance system greatly extends its capacity to defend itself and shape the world to its liking and is still intact, despite growing doubts about America’s reliability as a security guarantor. Based on these mostly material and historical criteria, continued American primacy would seem to be a good bet, if it chooses to use its power in this way.30

So why multipolarity? The clearest and most frequently cited evidence for a widening distribution of global power away from American unipolarity is the narrowing gap in GDP between the US and China. The IMF’s World Economic Outlook forecasts a $0.9 trillion increase in US GDP for 2019–2020, and a $1.3 trillion increase for China in the same period.31 Many who support the American primacy case argue that GDP is an imperfect measure of power, that Chinese GDP data is inflated, that its growth rates are in decline while Chinese debt is rapidly increasing, and that China does poorly on other factors that contribute to power—its low per capita GDP, its political succession challenges, its environmental crisis, its absence of any external alliance system. Yet GDP is a good place to start, as the single most useful measure and long-term predictor of power. It is from the overall economy that states extract and apply material power to leverage desired behavior from other states. It is true that robust future Chinese growth is not guaranteed, nor is its capacity to convert its wealth to power, which is a function of how well its political system works over time. But this is equally the case for the US, and considering recent political developments is not a given for either country.

As an alternative to measuring inputs—economic size, political legitimacy, technological innovation, population growth—in assessing relative power and the nature of global power distribution, we should consider outputs: what are states doing with their power? The input measures are useful, possibly predictive, but are usually deployed in the course of making a foreign policy argument, sometimes on behalf of a reassertion of American primacy, sometimes on behalf of retrenchment. As such, their objectivity (despite their generous deployment of “data”) is open to question. What is undeniable, to any clear-eyed observer, is a real decline in American influence in the world, and a rise in the influence of other powers, which predates the Trump administration but has accelerated into America’s free fall over the last four years. This has produced a de facto multipolarity, whether explainable in the various measures of power—actual and latent—or not. This decline results in part from policy mistakes: a reckless squandering of material power and legitimacy in Iraq, an overabundance of caution in Syria, and now pure impulsivity. But more fundamentally, it is a product of relative decline in American capacity—political and economic—to which American leadership is adjusting haphazardly, but in the direction of retrenchment/restraint. It is highly revealing that the last two American presidents, polar opposites in intellect, temperament and values, agreed on one fundamental point: the US is overextended, and needs to retrench. The fact that neither Obama nor Trump (up to this point in his presidency) believed they had the power at their disposal to do anything else, tells us far more about the future of American power and policy—and about the emerging shape of international relations—than the power measures and comparisons made by foreign policy advocates.

Observation of recent trends in US versus Russian relative influence prompts another question: do we understand the emerging characteristics of power? Rigorously measuring and comparing the wrong parameters will get us nowhere at best and mislead us into misguided policies at worst. How often have we heard, with puzzlement, that Putin punches far above his weight? Could it be that we misunderstand what constitutes “weight” in the contemporary and emerging world? Putin may be on a high wire, and bound to come crashing down; but the fact is that Russian influence, leveraging sophisticated communications/social media/influence operations, a strong military, an agile (Putin-dominated) decision process, and taking advantage of the egregious mistakes by the West, has been advancing for over a decade, shows no sign of slowing down, and has created additional opportunities for itself in the Middle East, Europe, Asia, Latin America, the Arctic. It has done this with an economy roughly the size of Italy’s. There are few signs of a domestic political challenge to Putin. His external opponents are in disarray, and Russia’s main adversary is politically disabled from confronting the problem. He has established Russia as the Middle East power broker. He has reached into the internal politics of his Western adversaries and influenced their leadership choices. He has invaded and absorbed the territory of neighboring states. His actions have produced deep divisions within NATO. Again, simple observation suggests multipolarity in fact, and a full explanation for this power shift awaiting future historians able to look with more objectivity at twenty-first-century elements of power.

When that history is written, surely it will emphasize the extraordinary polarization in American politics. Was multipolarity a case of others finding leverage in new sources of power, or the US underutilizing its own? The material measures suggest sufficient capacity for sustained American primacy, but with this latent capacity unavailable (as perceived, I believe correctly, by political leadership) by virtue of weakening institutions: two major parties in separate universes; a winnertake-all political mentality; deep polarization between the parties’ popular bases of support; divided government, with the Presidency and the Congress often in separate and antagonistic hands; diminishing trust in the permanent government, and in the knowledge it brings to important decisions, and deepening distrust between the intelligence community and policymakers; and, in Trump’s case, a chaotic policy process that lacks any strategic reference points, mis-communicates the Administration’s intentions, and has proven incapable of sustained, coherent diplomacy on behalf of any explicit and consistent set of policy goals.

Rising Nationalism/Populism/Authoritarianism

The evidence for these trends is clear. Freedom House, the go-to authority on the state of global democracy, just published its annual assessment for 2020, and recorded the fourteenth consecutive year of global democratic decline and advancing authoritarianism. This dramatic deterioration includes both a weakening in democratic practice within states still deemed on balance democratic, and a shift from weak democracies to authoritarianism in others. Commitment to democratic norms and practices—freedom of speech and of the press, independent judiciaries, protection of minority rights—is in decline. The decline is evident across the global system and encompasses all major powers, from India and China, to Europe, to the US. Right-wing populist parties have assumed power, or constitute a politically significant minority, in a lengthening list of democratic states, including both new (Hungary, Poland) and established (India, the US, the UK) democracies. Nationalism, frequently dismissed by liberal globalization advocates as a weak force when confronted by market democracies’ presumed inherent superiority, has experienced a resurgence in Russia, China, the Middle East, and at home. Given the breadth and depth of right-wing populism, the raw power that promotes it—mainly Russian and American—and the disarray of its liberal opponents, this factor will weigh heavily on the future.

The major factors contributing to right-wing populism and its global spread is the subject of much discussion.32 The most straightforward explanation is rising inequality and diminished intergenerational mobility, particularly in developed countries whose labor-intensive manufacturing has been hit hardest by the globalization of capital combined with the immobility of labor. Jobs, wages, economic security, a reasonable hope that one’s offspring has a shot at a better life than one’s own, the erosion of social capital within economically marginalized communities, government failure to provide a decent safety net and job retraining for those battered by globalization: all have contributed to a sense of desperation and raw anger in the hollowed-out communities of formerly prosperous industrial areas. The declining life expectancy numbers33 tell a story of immiseration: drug addition, suicide, poor health care, and gun violence. The political expression of such conditions of life should not be surprising. Simple, extremist “solutions” become irresistible. Sectarian, racial, regional divides are strengthened, and exclusive identities are sharpened. Political entrepreneurs offering to blow up the system blamed for such conditions become credible. Those who are perceived as having benefited from the corrupt system—long-standing institutions of government, foreign countries and populations, immigrants, minorities getting a “free ride,” elites—become targets of recrimination and violence. The simple solutions of course, don’t work, deepening the underlying crisis, but in the process politics is poisoned. If this sounds like the US, it should, but it also describes major European countries (the UK, France, Italy, Germany, Poland, Hungary, the Czech Republic), and could be an indication of things to come for non-Western democracies like India.

We have emphasized throughout this chapter the interaction of four structural forces in shaping the future, and this interaction is evident here as well. Is it merely coincidence that the period of democratic decline documented by Freedom House, coincides precisely with the global financial and economic crisis? Lower growth, increasing joblessness, wage stagnation, superimposed on longer-term widening of inequality and declining mobility, constitute a forbidding stress test for democratic systems, and many continue to fail. And if we are correct about secular stagnation, the stress will continue, and authoritarianism’s fourteen-year run will not be over for some time. The antidemocratic trend will gain additional impetus from the illiberal direction of globalization, with its growth suppressing protectionism, weaponization of global economic exchange, and weakening global economic institutions. Multipolarity also contributes, in several ways. The former hegemon and author of globalization’s liberal structure has lost its appetite, and arguably its capacity, for leadership, and indeed has become part of the problem, succumbing to and promoting the global right-wing populist surge. It is suffering an unprecedented decline in life expectancy, and recently a decline in the birth rate, signaling a degree of rot commonly associated with a collapsing Soviet Union. While American politics may once again cohere around its liberal values and interests, the time when American leadership had the self-confidence to shape the global system in its liberal image is gone. It may build coalitions of the like-minded to launch liberal projects, but there will be too much power outside these coalitions to permit liberal globalization of the sort imagined at the end of the Cold War. In multipolarity, the values around which global politics revolve will reflect the diversity of major powers, their interests, and the norms they embrace. Convergence of norms, practices, policies is out of the question. Global collective action, even in the face of global crises, will be a long shot. To expect anything else is fantasy

Unbrave New World and Future Challenges

At the outset of this chapter we described these structural forces as interacting to produce more conflict and diminished prosperity. We also predicted a world with shrinking collective capacity to address new challenges as they arise. What specifically will such a world look like? We address below three principal challenges to global problem solving over the next decade.

Interstate Conflict

In the world experienced by most readers of this volume, conflict is observed within weak states, sometimes promoted by regional competitors, by terrorist groups, or by great powers, acting through surrogates or by indirect means. Sometimes, as in Syria, this conflict spills over to contiguous states and contributes to regional instability, and challenges other regions to respond effectively, a challenge that Europe has not met. Much of this will continue, but the global significance of such local conflicts will be greatly magnified by increasing great power conflict, which will feed—rather than manage or resolve—local instabilities and will in turn be exacerbated by them. Great powers will jockey for advantage, support their local partners, escalate preemptively. Conflicts initially confined to failing states or unstable regions will be redefined by great powers as global in scope and significance.

This tendency of states to view local conflicts in the context of a zero-sum, global struggle for power is familiar to students of the Cold War, but now with the additional challenges to collective action, expanded uncertainty and worst-case thinking associated with the power transition to multipolarity. We can easily observe increased conflict in US–China relations, as we will in US–Russia relations as future US administrations try to make up for ground lost during the Trump presidency, especially in the Middle East. We can observe it among powerful states with mutual historical grievances, now with a weakening presence of the hegemonic security guarantor and having to consider the renationalization of their defense: Japan-South Korea, Germany-France. We can observe it among historical rivals operating in rapidly changing security landscapes: India-China. We can observe it within the Middle East, as internal rivalries are appropriated by regional powers in a contest for regional dominance. We can observe it clearly in Syria, where the regime’s violent suppression of Arab Spring resistance led to all-out civil war, attracted outside support to proxy forces by aspiring regional hegemons Saudi Arabia and Iran, enabled the rise of ISIS, and eventually to great power intervention, principally by Russia. In a world of effective great power collaboration or American primacy, the Syrian civil war might have been settled through power sharing or partition, or if not, contained within Syria. The collapse of Yugoslavia, occurring during a period of US “unipolarity” and managed effectively, demonstrates the possibilities. Instead, with the US retrenching, Middle East rivals unconstrained by great powers, and great power competition rising, the Syria civil war was fed by outside powers, then metastasized into the region, and—in the form of refugee flows—into Europe, fundamentally altering European politics. Libya may be at the early stages of this scenario.

This is not the end of the Syria story. Russia has established itself as a major player in Syria and the Middle East’s power broker, the indispensable country with leverage throughout the region. China is poised to reap the financial and power benefits of Syrian reconstruction. The US has just demonstrated, in its act of war against the Iranian regime, its willingness, without consultation, to put its allies’ security in further jeopardy, accentuating the risks of security ties with Washington and generating added opportunities for Russia and China. The purpose here is not to critique US policy, but to point out the dramatically shifting power balance in a critical region, toward multipolarity. The dangers of such a shift will become apparent as some future US president attempts to reassert US influence in the region and finds a crowded playing field.

Can a multipolar distribution of power among several states whose interests, values, and political practices are divergent, all experiencing bottom-up nationalist pressures, all seeking advantages in the oversupply of regional instability, be made to work? I think not. Will this more dangerous world descend into direct military confrontation between great powers, and could such confrontation lead to use of nuclear weapons? Here the question becomes, what will this more dangerous world actually look like; what instruments of coercion will be available to states as technology change accelerates; how will states employ these instruments; how will deterrence work (if at all) among several states with large but unequal levels of destructive capacity, weak command, and control, disparate— or opaque—strategies and simmering rivalries; can conflict management work in a world of weak institutions? The collapse of the Cold War era nuclear arms control regime, the threat to the Non-Proliferation Treaty represented by the demise of the JCPOA, and multiple indications of an accelerating nuclear arms race among the three principle powers, augurs badly. Given the structural forces at play, and without predicting the worst, we are indeed entering perilous times.

Global Poverty and Inequality

Despite the challenges of volatility and disruptive change inherent in globalization, the world under American liberal leadership has managed a dramatic reduction of extreme poverty. According to World Bank estimates, in 2015, 10 percent of the world’s population lived on less than $1.90 a day, down from nearly 36 percent in 1990.34 In fact, as of September 2018, half the world is now middle class or wealthier.35 The uneven success of the UN Millennium Development Goals (MDGs) exemplifies this achievement, and demonstrates what is possible when open markets are managed through strong global institutions, effective leadership and interstate collaboration. What this liberal hegemonic system did not achieve, however, was a fair distribution of the gains from globalization within states, and among those states that for various reasons were not full participants in this system.

This record of partial achievement leaves us with a full agenda for the next fifteen years, but without the hegemonic leadership, strong institutions, ascendant liberalism or robust global growth that enabled previous gains. There are powerful reasons to question the sustainability of these poverty reduction gains, leading to doubts about the realization of the Sustainable Development Goals, which have replaced the MDGs as global development targets.36 (See Jens Rudbeck’s chapter and Sidhu’s UN chapter for SDGs). Skeptics have pointed to slowing global growth, specifically in China, whose demand for imported commodities was a major factor in developing country growth and job creation; growing protectionism in developed country markets, fueled by bottom-up forces of nationalism, and from top-down by a weakened global trading regime and increased geopolitical rivalry; the effects of accelerating climate change on agriculture, migration and communal conflict in poor countries; and the growth burst among poor countries from the rapid transition to more efficient use of resources, a transition that is now slowing down.37

Perhaps the greatest concern in this scenario is a general deterioration in the developing country foreign investment climate. Foreign direct investment (FDI) has been a major contributor to growth, job creation, and poverty alleviation among poor countries. It has incentivized growthfriendly policies, reduced corruption, introduced technology and effective management practices, and linked poor countries to foreign markets through global supply chains.38 It has stimulated growth of indigenous manufacturing and service companies to supply new foreign investments.

It has been the major cause of economic convergence between rich and poor countries. From 2000 to 2009, developing economies’ growth rates were more than four percentage points higher than those of rich countries, pushing their share of global output from just over a third to nearly half.39 However, FDI flows into poor countries are imperiled by the structural forces discussed here. Political instability arising from slower growth and environmental stress will increase investors’ perception of higher risk, reinforcing their developed country bias. Protectionism among developed countries will threaten the global market access upon which manufacturing investment in developing countries is premised, causing firms to pare back their global supply chains. As companies retrench from direct investment in poor countries, the appeal to those countries of Chinese debt financed infrastructure projects, under the Belt-Road Initiative with little or no conditionality, but at the risk of “debt traps,” will increase.

Global Warming

The question posed at the beginning of this section is whether the international system, evolving toward multipolarity and rising nationalism, will find the collective political capital to confront challenges as they arise. Global warming is the mother of all challenges, and the weakness in the system’s capacity to respond is clear. With the two major political/economic powers and greenhouse gas emitters locked in deepening geopolitical conflict (and with one of them locked in climate change denial, possibly through 2024), the chances of significantly slowing global warming or even ameliorating its effects are very slim. We are reduced to the default option, nation-specific adaptation to climate change, which will impose rising human, political and economic costs on all, and will widen the gap between rich countries with adaptive capacity (of varying degrees), and the poor, who will suffer deteriorating economic, political, and social conditions. (For a contrary, optimistic view see Michael Shank’s chapter, which credits new actors—like cities—as playing a more constructive role in climate mitigation.) This would bring to a close liberal globalization’s greatest achievement; the raising of 1.1 billion people out of extreme poverty since 1990,40 with all its associated gains in quality of life (in the WHO Africa region, for example, life expectancy rose by 10.3 years between 2000 and 2016, driven mainly by improvements in child survival and expanded access to antiretrovirals for treatment of HIV).41

Several forces are at work here. The problem itself is graver—in magnitude and in rate of worsening—than predicted by climate scientists. The UN Intergovernmental Panel on Climate Change (IPCC), the major source of information on global warming, has consistently underpredicted the rate of climate deterioration. This holds true even for its “worst-case scenarios,” meaning that what was meant as a wake-up call has in fact reinforced complacency.42 (see Michael Shank’s chapter for further discussion of climate change). The IPCC, in its 2019 report, has tried to undo the damage by emphasizing the acceleration in the rate of warming and its effects, the only partially understood dynamic of climate change, and—given wide uncertainty—the possibility of unpleasant surprises yet to come. This strengthens the scientific case for urgency—to both severely limit greenhouse gas emissions, and to increase investment in ameliorating the effects.

Unfortunately, the crisis comes at a moment when the climate for collective action is ice cold. Geopolitical competition incentivizes states to out produce each other, regardless of the environmental effects. Multipolarity complicates collective action. Economic stagnation mandates job creation, making regulation politically toxic. Bottom-up nationalism/populism causes states to pursue “relative gains,” meaning that if the nation is seen as gaining in a no-holds-barred economic competition with others, the negative environmental effects can be tolerated. A post-Trump presidency would help, with the US rejoining the Paris Agreement, and lending its weight to tighter regulation, increased R and D, and stronger economic incentives to reduce carbon emissions. Keep in mind, however, that President Obama was fully behind such efforts, but in a deeply polarized America was unable to implement measures needed to fulfill the Paris obligations through legislation, and his executive orders to do this were swiftly overturned by Trump.

Conclusion

It may be tempting to hope that post-Trump, the US can regain its global leadership and exert its considerable power in a liberal direction, but with enough self-awareness of its relative decline to share responsibility with others. This was, I believe, the broad direction of the Obama strategy, evidenced by the JCPOA and the Trans-Pacific Partnership: liberal, collective solutions to global problems, as US dominance receded.

This would constitute an optimistic scenario, and it confronts two major problems: can US internal politics support it (can, for example, the country legislate controls on carbon, essential for the global credibility and durability of such commitments); and is the world ready to reengage with American leadership, given the damage to its reputation and the structural forces discussed in this chapter?

My educated guess is no, on both counts. The rot within is extensive, the concrete evidence clear in the economic inequality/immobility numbers, the life expectancy numbers, the deep political polarization, between the two major parties, between regions, between cities and rural areas. We are in fact a long way from fitness for global leadership, and the recognition of this by others will accelerate the decline of American influence. The rest of the world is well on its way toward adjusting to post-American hegemony, some by renationalizing their defense, or by cutting deals with adversaries, by building new alliances or by seizing new opportunities for influence in the vacuum left by American retrenchment. The evidence for this will accumulate. Observe the current and emerging Middle East, where all these post-hegemonic strategies are visible.

#### FTC rulemaking provides predictable enforcement that reins in institutional investors.

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No institutional investor or individual holding shares of more than a single effective firm in an oligopoly may ultimately own more than 1% of the market share unless the entity holding shares is a free-standing index fund that commits to being purely passive.

We now define the terms above.

\* An institutional investor is said to hold or be invested in the set of firms representing the aggregate holdings of the entire investment company reporting to or under the corporate control of the same firm. Different "institutions" run by the same management company are treated as part of the same set of holdings and whenever we refer to an "institution," a "fund," or an "institutional investor," we mean the broad fund holding company (e.g., Vanguard, BlackRock, Fidelity, etc.), not the specific fund offered by these companies (e.g., Vanguard S&P 500 Admiral Shares).

\* An institutional investor is invested in more than a single effective firm if it is invested in more than one firm, and the total market share of all firms it holds any stake in is greater than HHI10,000 in the oligopoly. The effective firm definition allows an institutional investor to hold multiple competing sufficiently small fringe firms instead of a large firm.

\* Prior to the start of each calendar year, the DOJ and FTC would make a list of industries constituting oligopolies and company market shares based on the standards discussed in Part J.C above. There would be some mechanism to solicit comments from any interested parties. The DOJ and FTC would then finalize the list with at least a month before the beginning of the new year to allow the institutional investors time to rearrange their holdings to comply with the policy.

\* The market share ultimately owned by an institution or individual i is the sum over all firms j of the product of the share that institution has in that firm /3, and the market share of firm sj: pysj.

\* An index fund that is purely passive commits to engage in no communication with top managers or directors, 98 to vote its shares in proportion to existing votes so that it has no influence in any corporate governance decision, and to own and trade stocks only in accordance with clear and non-discretionary public rules, such as matching an index as closely as possible.

While we have generally assumed that our policy should take the form of an enforcement policy issued by the DOJ and the FTC analogous to the Guidelines, there are other possible approaches. It is possible that the FTC could issue formal rules under Section 5 of the FTC Act. 99 In addition, the policy could be enacted as legislation. There are different advantages to each of the approaches. The DOJ and FTC could adopt an enforcement guideline at their discretion, while a regulation would require notice-and-comment rulemaking and be subject to judicial review under the Administrative Procedure Act, and legislation would require an act of Congress. Thus, it would be easiest to put in place an enforcement guideline, relatively difficult to issue a regulation, and (we suspect) nearly impossible to enact legislation, at least in the near term. However, the major disadvantage of an enforcement guideline is that it might not block the complex and uncertain private litigation that we are concerned about. That outcome would depend on the courts, which might-or might not-interpret the statute considering the enforcement guidelines.100 If varied court rulings caused difficulty for the business operations of institutional investors, they might prefer a formal rule to this policy. A regulation would result in greater judicial deference, and legislation the greatest.

Should the enforcement policy be absolute or create a rebuttable presumption? Lawyers are more comfortable with the latter approach. As we acknowledge, our policy might create some false positives; it may well be appropriate to give defendants an opportunity to rebut. Suppose, for example, a defendant can show that it is highly decentralized, with independent boards of directors and firewalls making any amount of coordination within the firm highly implausible. It may therefore be better conceptualized as many small independent funds that fall below the 1 percent threshold than as a single huge fund. The "no talking rule," discussed below, illustrates another possible defense.

### 1AC – Plan

#### The United States federal government should not permit investors holding shares of more than a single effective firm in an oligopoly to own more than a small market share where the shareholding entity does not commit to being purely passive.

### 1AC – Agriculture

#### Contention two: Agriculture

**Seed sector consolidation has skyrocketed – common ownership hampers competition in the industry**

Torshizi ’21 [Mohammad; Assistant Professor in Faculty of Agricultural, Life and Environmental Science @ University of Alberta, PhD in Agricultural Economics @ University of Saskatchewan; and Jennifer Clapp;Professor and Canada Research Chair in Global Food Security and Sustainability @ University of Waterloo; “Price Effects of Common Ownership in the Seed Sector,” *The Antitrust Bulletin*, 66(1), p. 39-67; AS]

The seed sector today is highly concentrated, dominated by just a handful of very large firms that account for the vast majority of agricultural seed sales globally. The concentrated nature of the seed industry today reflects key developments that have occurred over the last century, which have resulted in several waves of consolidation in the sector. Growing concentration in the sector has been accompanied by rising levels of common ownership of the top seed companies, especially since the early 2000s.

Over the course of the past century, the seed industry in North America has evolved considerably and since the 1970s has undergone successive episodes of consolidation. The development of hybrid seeds in the mid-1920s led to growing private sector interest in the sector because hybrids created demand for purchased seeds.46,47 Hundreds of small independent seed companies emerged in the following decades, as the use of hybrid and other modern seed varieties expanded. But by the 1970s, the sector began to consolidate, encouraged by a strengthening of intellectual property protection over seed varieties in the United States as well as internationally, which created more opportunity for profits.48 This wave of consolidation in the sector saw larger firms purchase many smaller, independent seed companies. In this period, a number of large chemical firms, such as Ciba Geigy, Sandoz, and Royal Dutch/Shell, also bought up seed companies as part of a diversification strategy to shore up sagging profits in the chemical industry.49 By the 1980s, the newly combined seed and chemical companies began to invest heavily in agricultural biotechnology following the extension of patent rights to genetically engineered (GE) microorganisms, as well as to seeds and plants derived from biotechnology.50

A second wave of M&As took place in the sector throughout the 1990s and early 2000s, capitalizingon the growing interest in the potential for agricultural biotechnology to develop new seed varieties that could work in concert with specific agricultural chemicals.51 This period saw further linking up of seed and chemical firms. In 1999, Pioneer Hi-Bred, the largest seed company at the time, was purchased by DuPont, a major chemical firm. AstraZeneca and Novartis, two large firms that specialized in pharmaceuticals and chemicals, merged and spun off their own agricultural input firm which came to be known as Syngenta.52 Monsanto, also originally a chemical firm, acquired a range of seed and biotech companies throughout the 1990s and subsequently merged with Pharmacia & Upjohn in 2000. The resulting firm spun off a new agricultural input business under the Monsanto name in 2002.53 In the mid-1990s, Mycogen, a seed and biotech firm, was acquired by Dow Chemical, which subsequently acquired yet more seed and biotech firms to form Dow AgroSciences in 2000. Bayer, a major chemical and pharmaceutical firm, purchased Aventis Cropscience in 2001, which enabled Bayer to secure a positon in the seed industry.54

Following this second wave of mergers, just six firms, collectively known as the “Big 6” dominated the agricultural input sector, controlling the majority of seed and chemical sales by 2009. These firms were as follows: Monsanto, Bayer, Syngenta, Dow, DuPont, and BASF. In the period from 1994 to 2013, the global market share of the four largest seed firms nearly tripled, from 21% to 58%.55 By 2013, the global seed industry was worth around US$39 billion, of which the Big 6 held a 62% share.56 In 2016, five of the Big 6 agricultural input firms held significant market shares in corn, soy, and cotton seed markets, as shown in Table 1. Monsanto, for example, held around one third of the market for each of these crop seeds in the United States. Other major firms in the sector held significant shares in one or two of these crops, with DuPont holding similar market share to Monsanto in corn and soy seeds, while Bayer held a quarter of the cotton seed market. Collectively, in 2016, these five firms held 77% of the corn seed market, 75.1% of the soy seed market, and 70.5% of the cotton seed market in the United States.

The 2015–2017 period saw a third major wave of mergers in the global seed sector, which reduced the number of firms dominating in the sector to just four.58 In 2015, Dow and DuPont announced that they would merge into a new company known as DowDupont, bringing together the seed expertise of DuPont with the major chemical firm Dow. The new firm split into three separate businesses, one of which, Corteva Agriscience, focuses exclusively on agricultural seeds and chemicals.59 In 2016, ChemChina, a major Chinese chemical firm, announced its plans to purchase Syngenta, which focuses on GE seeds and chemicals.60 And in May 2016, Bayer announced its intention to acquire Monsanto, the world’s leading producer of GE seeds and associated agrochemicals. Until August 2018, BASF, also one of the Big Six, was largely focused on agrochemicals and was not a major player in the seed sector.61

Because it is still early to obtain full data on the extent to which the newly merged companies are commonly owned, we have focused our analysis on five of the Big 6 firms with significant interests in the seed sector (Syngenta, DuPont, Dow, Monsanto, and Bayer), just prior to their recent consolidation. Over the study period, institutional ownership of these firms increased markedly, as shown in Figure 1. And as shown in Figure 2, as of December 31, 2016, the five largest asset management companies—BlackRock, Capital Group, Fidelity, Vanguard, and State Street—collectively held anywhere from 12.4% to 32.7% of the shares in these firms, indicating a high degree of common ownership and a significant increase in each of the five largest asset management companies’ shares of the five largest seed companies in 2000.

The high degree of common ownership in the U.S. seed industry raises concerns regarding competition effects. This is because, as illustrated in Figure 3, the network of common owners and the strong linkages that they create among the seed producers may suggest that market concentration levels are higher than what can be observed at firm (seed producer) level. While previous studies in the seed industry focus on the effect of market concentration at firm level on seed prices, this study explores the hypothesis that the strong linkages among the seed producers through the network of their common owners may have a similar impact.

**Common ownership uniquely raises seed prices and undermines agricultural innovation.**

Torshizi ’21 [Mohammad; Assistant Professor in Faculty of Agricultural, Life and Environmental Science @ University of Alberta, PhD in Agricultural Economics @ University of Saskatchewan; and Jennifer Clapp;Professor and Canada Research Chair in Global Food Security and Sustainability @ University of Waterloo; “Price Effects of Common Ownership in the Seed Sector,” *The Antitrust Bulletin*, 66(1), p. 39-67; AS]

Conclusion

There is a growing concern in the literature regarding the anticompetitive impacts of common ownership. The network of common owners and the strong linkages that they create among rival firms may suggest that market concentration levels are higher than what can be observed at firm level. This study contributes to the wider debates over the competition effects of common ownership by examining the seed industry and employing methods that enable us to establish more clearly the relationship between common ownership concentration and prices. It also contributes to the literature on seed pricing by exploring the hypothesis that the strong linkages among the seed producers through the network of their common owners may also reduce incentives for competition and result in higher seed prices, an aspect of the seed pricing structure that has not yet been explored in the literature. Using a simple theoretical model, our article illustrates how common ownership essentially changes the nature of competition among firms and results in a suboptimal market outcome, represented in a lower equilibrium quantity and a higher equilibrium price. In particular, we outline some of the strategic interdependencies of institutional owners and their portfolio firms that are key to understanding the common ownership problem. We illustrate why common ownership may result in tacit anticompetitive behavior without the common owners actively pursuing anticompetitive behavior in their portfolio firms.

Several statistical tests are employed to minimize the likelihood of a type I error. Our empirical analysis shows that, even when taking measures to separate the effects of market concentration and common ownership on seed prices, on average 14.6% of soy, corn, and cotton seed prices over the past twenty years can be attributed to common ownership. Robustness tests show that, if seed prices are indeed path dependent, this impact may be smaller (6.2%), although still strongly significant. Numerous sets of robustness tests, including IV regressions and the test of a sharp increase in common ownership concentration in the seed industry after the financial crisis, support the main findings. In addition, we find that larger institutional shareholders have a greater impact on the firms’ anticompetitive behavior.

These findings are important because they contribute to the current theoretical and empirical literatures regarding the effects of common ownership and confirm the kinds of price impacts identified in other sectors such as banking and airlines.103 Our results isolate the effects of common ownership to show that it independently contributes to higher seed prices. Moreover, we cannot rule out that common ownership intensifies concentration levels, rather than the other way around, in which case the trends in common ownership could have a larger impact on seed prices than our findings suggest.

While common ownership is only one of several determinants of seed prices examined in our study, the fact that it does contribute to higher prices raises some important considerations. To begin, other contributors to higher seed prices that we measured, such as IPRs and innovation, often reflect technological improvements to seeds that result in higher yields, which can be welfare-enhancing for both seed companies and for farmers. But price increases that result from common ownership and market concentration, the largest contributors to seed prices that we examined, raise concern because they reflect the market power of the firms selling the seeds as well as the concentration and power of their owners: the asset management companies.104 Seed price increases that result from such market power are not welfare-enhancing for society at large and contribute to a concentration of wealth and power of a few large companies and their financial owners. Such outcomes contribute to economic inefficiencies, or deadweight losses, that can harm farmers and society at large and can potentially act as an overall drag on innovation in the sector in the long run.105 Our finding regarding the significance of both common ownership and market concentration as key components of seed price increases reinforces broader concerns in the literature over the potential inequality effects of common ownership.106

These latter concerns in particular are important for policymakers to consider, especially as there is growing public concern over growing levels of both corporate concentration and common ownership in the wider economy, as we reviewed in this article. In this regard, the potential for common ownership levels to influence prices is important information that could inform policy decisions such as those associated with merger control reviews as well as regulations that govern index funds and share ownership more broadly. Such concerns have been recognized by U.S. regulatory bodies including the U.S. Federal Trade Commission and the Department of Justice, as well as by the European Commission and the OECD.107 The asset management industry has been concerned about these developments.108 As Barbara Novick, vice-chair and head of investment at Blackrock recently noted, “We don’t need these remedies, because there isn’t a problem.”109 Our findings are important in the context of this policy debate for two reasons. First, they add a new empirical case study regarding the effects of common ownership on prices, showing that even utilizing methods that result in a conservative estimate of the price effects of common ownership, there is a relationship between high levels of common ownership and higher seed prices. Second, they demonstrate that pursuing questions such as whether or not institutional owners actively pursue anticompetitive behavior in their portfolio firms may be misleading. To better understand problems that are created by common ownership, one must delve deeper into the strategic interdependencies and economic incentives that are at play.

**Studies confirm reverse causality – common ownership threatens the agri-food supply chain.**

Torshizi ’21 [Mohammad; Assistant Professor in Faculty of Agricultural, Life and Environmental Science @ University of Alberta, PhD in Agricultural Economics @ University of Saskatchewan; and Jennifer Clapp;Professor and Canada Research Chair in Global Food Security and Sustainability @ University of Waterloo; “Price Effects of Common Ownership in the Seed Sector,” *The Antitrust Bulletin*, 66(1), p. 39-67; AS]

This article seeks to contribute to this debate by showing how the rise of common ownership in the seed sector affects firms’ incentives to compete, which we illustrate with an evaluation of its impact on seed prices. This article analyzes empirical data from the U.S. seed industry over the 1997–2017 period to determine whether seed prices have increased as a result of the rise in common ownership of the major companies that dominate that sector. The analysis utilizes methods that aim to correct for the critiques that have been made about the methods used in studies in other sectors. We use a variation of the modified Herfindahl Hirschman Index (MHHI) of common ownership concentration to avoid the problem of conflating the effects of market concentration and common ownership concentration on prices.

There are several reasons why the seed industry is an especially important sector for an analysis of the effects of common ownership. First and foremost, control of the seed industry may result in control of the entire agrifood supply chain9 or what has been described as “food power.”10 The price effects of common ownership on seeds, therefore, have great significance for broader policy debates regarding food security. Second, institutional investors hold significant shares of firms in the seed industry, which have increased dramatically over the last two decades.11 In 2016, the top five asset management companies owned 10%–30% of the shares of the top seed companies (see Figures 1 and 2). As such, common ownership is prevalent and has increased markedly, making the sector an excellent one for an investigation into its effects on competition and pricing. Third, the seed industry is highly consolidated, which has allowed for other types of strategic behavior such as cross-licensing and joint ventures.12 The seed sector is an important arena to test for other types of strategic behaviors, including potential anticompetitive effects. Finally, the particularities of the seed industry, in which the price of seed for each cropping season is determined and listed in the previous year, naturally alleviates some of the concerns expressed in the literature about the potential for reverse causality. Our theoretical model shows how common ownership results in a suboptimal market outcome by creating an environment that weakens competition. The empirical analysis shows that approximately 6.2%–14.6% of maize, soybean, and cotton seed price increases over the 1997–2017 period are attributable to common ownership, after controlling for other important supply and demand side factors such as market concentration, intellectual property rights (IPRs) protection against farmsaved seed, innovation, and path dependency in seed prices. These results suggest that corporate incentives to compete are influenced by patterns of common ownership. Our findings are important because they confirm the findings of earlier studies in other sectors, specifically the airline and banking industries, even when taking a more conservative approach and correcting for what some critics argue to be potential methodological problems. The findings thus add evidence from an unrelated sector— seeds—to the broader literature on the effects of common ownership on pricing and competition and as such have significance for broader policy debates

#### Policing common ownership incentivizes agricultural breakthroughs and controls food prices.

Clapp ’19 [Jennifer; Professor and Canada Research Chair in Global Food Security and Sustainability @ University of Waterloo; “The Rise of Financial Investment and Common Ownership in Global Agrifood Firms,” *Review of International Political Economy*, 26(4), p. 604-629; AS]

Potential implications of new investment patterns in the agrifood sector

In what ways is the agrifood sector likely to be affected by the recent increase in mutual funds and ETFs with investments in the sector and the new patterns of common ownership that accompany those new investments? The literature on common ownership outlined above suggests that anti-competitive behaviors, as well as broader societal effects, may arise when large firms in the same sector share the same owners. Corporate concentration, which itself is associated with some anti-competitive tendencies, has already been well documented across the entire agrifood sector – from inputs to agricultural commodity trading, to food processing, to food retail – and the firms that dominate at each point are able to exercise extraordinary power (Howard, 2016; IPES Food, 2017). When common ownership of these firms is added to the existing analysis of corporate power and concentration, a number of important questions and areas for further inquiry emerge. In particular, there is a real possibility that the levels of corporate power and influence in the sector are much higher than previously understood as a result of rising levels of common ownership among agrifood firms. Below, I offer a preliminary analysis of how the firm-level and broader societal dynamics associated with common ownership more generally have the potential to play out in the agricultural inputs sector and point to areas where further research is required to test the extent to which common ownership in fact plays a role in shaping outcomes in the broader food system.

First, it is important to outline the extent to which the global market for agricultural inputs is already highly concentrated (e.g. Fuglie et al., 2011; Howard, 2016; Mooney, 2018). In 2013, prior to a series of recent mergers in the sector (outlined below), the global pesticide market was worth approximately US$54 billion, of which the six largest firms (collectively referred to as ‘the Big Six’ – Monsanto, Bayer, Dow, DuPont, Syngenta, and BASF) controlled a 75% share, with the top three (Syngenta, Bayer, and BASF) alone accounting for a full 51% of the market. In the global seed industry, worth US$39 billion, the same six firms held a combined 62% share of the market in 2013, with the top three (Monsanto, DuPont, and Syngenta) controlling a full 55% share (ETC Group, 2015, p. 5; see Figure 3). As outlined in the previous section, common ownership by the five largest asset management companies in 2016 was significant across each of the Big Six agricultural input firms, especially in the cases of Bayer, Monsanto, Dow, and DuPont (see Figure 1 above).

As noted in the wider literature, the ability of firms to raise prices without associated increases in quality or service is potentially much higher in markets that are already concentrated (OECD, 2017, p. 20; Diez et al., 2018, p. 13), and given the high degree of concentration in the agricultural input sector, it is likely that common ownership has contributed to price increases for both seeds and chemicals. With respect to seed prices, for example, data from the USDA shows that from 1997 to 2017, the inflation adjusted per acre price of corn, soy, and cotton seed (three key crop seeds for which the Big Six agricultural input firms dominate) more than doubled, while the inflation adjusted per acre price of wheat seed (for which research and development largely takes place in the public realm rather than by the Big Six input firms) remained flat over that same period (see Figure 4). There are many factors that affect changing farm input prices (Fuglie, Heisey, King, & Schimmelpfennig, 2012), and it is difficult to isolate their relative effects without a detailed statistical analysis. However, one recent study finds that common ownership is responsible for approximately 15% of price increases for corn, cotton and soy seed over the 1997–2017 period, while corporate concentration more generally is responsible for approximately another 14% (Torshizi & Clapp, 2018).

Since 2016, the agricultural input sector has been dramatically reconfigured by a series of mergers and acquisitions that have seen some of the biggest players combined into giant firms that command significant market shares. While there are a number of potential explanations for these mergers, such as a drive for efficiencies and a desire to develop product complementarities (OECD, 2018), there is some logic to the idea that common ownership could also have played a role. Indeed, the financial investment context appears to be highly relevant to the timing of the mergers. Low commodity prices over the 2013–2016 period depressed demand for the products sold by international seed and chemical companies and led to weaker returns for those firms. Shareholders, including the large asset management companies, could plausibly have encouraged those firms to pursue mergers in order to expand their market share as a means to boost share values (Clapp, 2018). The extent to which the asset management companies played a role in these mergers is a question that merits further empirical research. Regardless of the main drivers of the mergers, the result is a much more concentrated sector following consolidation. As of 2018, the top three seed firms (Bayer-Monsanto, Corteva Agriscience (DowDupont), and ChemChina-Syngenta) controlled 62% of the market (up from a 55% share for the top three firms in 2013), and the top three agro-chemical firms (Bayer-Monsanto, ChemChina-Syngenta, and BASF) controlled 59% of the market (up from a 51% share for the top three firms in 2013; ETC Group, 2015; Mooney, 2018).

The fact that the largest firms that currently dominate the agricultural input sector are now larger and command even more market share creates a context in which it is difficult for new firms to enter the market. Over the past 20 years, the dominant firms have developed seed and chemical technologies that were protected by patents that have functioned as powerful barriers to entry (Fuglie et al., 2012). These types of technologies require enormous capital outlays, which is difficult for new entrants to match. Further, the largest firms in the sector are increasingly working together in ways that lock in their dominance as a concentrated group, effectively shutting out new entrants into the market. As Howard (2015) notes, the firms that dominate in the sector are collaborating with one another on their seed and chemical research activities through a series of cross-licencing and collaboration agreements that further entrench their collective commitment to this model of agriculture, and make it difficult for new players to break into the market.

The increased market power associated with rising common ownership, as described above, has the potential to result in broader societal outcomes. To gain greater insight into this potential, it is helpful to look to work that examines the implications of corporate concentration in the food system (IPES Food, 2017). To begin, more market power on the part of agrifood firms could result in greater inequality within the food system. As critics have noted in the face of the mergers transforming the agricultural input sector, if firms are able to increase prices based simply on their enhanced market power rather than on the basis of improved product quality or choice, those higher prices are likely to translate into lower incomes for farmers, or higher food prices for consumers, or some combination of both (American Antitrust Institute, Food & Water Watch, & National Farmers Union, 2016; Friends of the Earth, 2017). Inequality can also arise as a result of workers being made redundant, especially in instances where merging firms reduce their combined workforce in order to achieve cost savings in the newly merged firm. Both Dow-DuPont and Bayer-Monsanto, for example, presented justification for their respective mergers on the grounds that they could achieve cost ‘synergies’ through such a strategy (e.g. Bayer, 2016; Dow & Dupont, 2016). In early 2019, Bayer announced plans to eliminate 12,000 jobs – 10% of its workforce – in a costcutting move following its acquisition of Monsanto (Buck 2019).

Levels of investment and innovation in the sector could also be weakened and/ or narrowed by growing market power that can arise as a result of high levels of common ownership. Common ownership, for example, may discourage firms from innovating in ways that are either costly for the individual firm or that might harm the profitability of other firms in the sector, or both. When evaluating the effects of the Dow-DuPont merger in 2017, for example, the European Commission concluded that incentives to engage in R&D were likely to be dampened by high levels of common ownership. It noted in its decision:

… the decision taken by one firm, today, to increase innovation competition has a downward impact on its current profits and is also likely to have a downward impact on the (expected future) profits of its competitors. This, in turn, will negatively affect the value of the portfolio of shareholders who hold positions in this firm and in its competitors. Therefore, as for current price competition, the presence of significant common shareholding is likely to negatively affect the benefits of innovation competition for firms subject to this common shareholding. (European Commission, 2017, p. 383).

Investment and innovation in the sector can also be weakened when common ownership contributes to more consolidation among firms in the sector and/or creates higher barriers to entry. In the 1980s to 1990s, the merger of smaller firms in the sector to form larger ones did result in larger R&D budgets for the merged firms, which enabled companies to develop new seed traits and varieties. Fuglie shows that by the late 2000s, however, increased concentration in the sector slowed the intensity of private research on biotech corn, cotton, and soy relative to what would have been the case without that level of concentration (Fuglie et al., 2012). Indeed, as noted above, in the case of the recent Dow-DuPont and Bayer-Monsanto mergers, the firms indicated that they would be introducing some cuts to their R&D budgets once the firms merged, in order to reduce duplication and save costs. Dow and DuPont referred to this as ‘global optimization of R&D’ in its agriculture division (e.g. Dow & Dupont, 2016, p. 22). One analyst noted that of the thousands of R&D job losses at Dow and DuPont associated with the merger: ‘it’s almost the death of innovation’ (quoted in Parrish, 2016). The result of this weakening of R&D spending is that firms tend to focus narrowly on expanding market share for technologies that have already been developed or exploring only those innovations that deliver the highest commercial payoffs. As the International Panel of Experts on Sustainable Food Systems notes, this tendency is likely to result in fewer innovations that will benefit smallholder farmers in the Global South (IPES Food, 2017, p. 28).

#### Food insecurity causes nuclear winter – existing tensions make it likely.

Cribb ’20 [Julian; 1/2/20; Fellow @ Australian Academy of Technological Sciences and Engineering; Former Director of National Awareness @ Australian Commonwealth Scientific and Industrial Research Organisation; “Hotspots for future ‘Food wars’ identified”; http://www.cambridgeblog.org/2020/01/hotspots-for-future-food-wars-identified/]

Rising tensions over scarcities of food, land and water combined with increasingly unstable climates threaten to unleash new wars and the mass flight of hundreds of millions of people by the mid-century.

‘Food or War’ identifies the nine regions globally most at risk of conflict over dwindling food resources, water especially.

“Media and political descriptions of modern wars often overlook the fact that a majority of modern conflicts are driven by scarcity of the resources need to produce food – and the fear, anger and hatred this generates between different political, religious or ethnic factions,”

“However, by securing the food supply through advanced methods such as regenerative farming, aquaculture and urban food production, we can ease the tensions that lead to war. Food is now our most powerful ‘weapon of peace’.”

I cite the case of South Asia, where a rapidly emerging scarcity of fresh water, combined with land losses and climate instability are exacerbating the risk of conflict between the nuclear-armed states of India and Pakistan.

“Even a small nuclear war, involving 100 or so weapons, could wreak havoc with food supplies worldwide. Scientific models show that the smoke and dust emitted would drive down world temperatures by 1-2 degrees causing harvest failures round the globe for 10-20 years. This could temporarily halve food availability worldwide right when humanity is attempting to double it.”

Emerging water scarcity on the North China Plain, the heartland of the country’s wheat production, could drive China to outsource far more of its food from overseas, especially from Africa, Asia and Australasia. In some cases, the need to feed China may thus conflict with the need to feed local people.

The Middle East and North African (MENA) region faces one of the world’s worst water crises, with its rich countries – where population is redoubling – also attempting to feed themselves by taking up farmland in Africa and elsewhere, adding to local instability. A major food, land and water crisis in North Africa, driven by hunger in the sub-Saharan region and foreign food exports, could have consequences for southern Europe and the stability of the entire European Community many times larger than the Syrian conflict, the book warns.

Many countries across Africa remain on a knife-edge over food, land and water security, compounded by climate impacts and desertification. This has already manifested in more than a dozen food-related conflicts in recent decades, Food or War documents.

Central Asia is another region where rising population is combining with dwindling water availability and land degradation to increase the risk of conflict.

#### Empirics and comprehensive datasets confirm food security prevents war.

Castellaw ’17 [John, National Security Lecturer @ University of Tennessee, Founder and CEO of Farmspace Systems LLC, Former President of the Crockett Policy Institute, Retired Lieutenant General in the United States Marine Corps, “Food Security Strategy Is Essential to Our National Security”, Agri-Pulse, 5-1, https://www.agri-pulse.com/articles/9203-opinion-food-security-strategy-is-essential-to-our-national-security]

The United States faces many threats to our National Security. These threats include continuing wars with extremist elements such as ISIS and potential wars with rogue state North Korea or regional nuclear power Iran. The heated economic and diplomatic competition with Russia and a surging China could spiral out of control. Concurrently, we face threats to our future security posed by growing civil strife, famine, and refugee and migration challenges which create incubators for extremist and anti-American government factions. Our response cannot be one dimensional but instead must be a nuanced and comprehensive National Security Strategy combining all elements of National Power including a Food Security Strategy.

An American Food Security Strategy is an imperative factor in reducing the multiple threats impacting our National wellbeing. Recent history has shown that reliable food supplies and stable prices produce more stable and secure countries. Conversely, food insecurity, particularly in poorer countries, can lead to instability, unrest, and violence.

Food insecurity drives mass migration around the world from the Middle East, to Africa, to Southeast Asia, destabilizing neighboring populations, generating conflicts, and threatening our own security by disrupting our economic, military, and diplomatic relationships. Food system shocks from extreme food-price volatility can be correlated with protests and riots. Food price related protests toppled governments in Haiti and Madagascar in 2007 and 2008. In 2010 and in 2011, food prices and grievances related to food policy were one of the major drivers of the Arab Spring uprisings. Repeatedly, history has taught us that a strong agricultural sector is an unquestionable requirement for inclusive and sustainable growth, broad-based development progress, and long-term stability.

The impact can be remarkable and far reaching. Rising income, in addition to reducing the opportunities for an upsurge in extremism, leads to changes in diet, producing demand for more diverse and nutritious foods provided, in many cases, from American farmers and ranchers. Emerging markets currently purchase 20 percent of U.S. agriculture exports and that figure is expected to grow as populations boom.

Moving early to ensure stability in strategically significant regions requires long term planning and a disciplined, thoughtful strategy. To combat current threats and work to prevent future ones, our national leadership must employ the entire spectrum of our power including diplomatic, economic, and cultural elements. The best means to prevent future chaos and the resulting instability is positive engagement addressing the causes of instability before it occurs.

This is not rocket science. We know where the instability is most likely to occur. The world population will grow by 2.5 billion people by 2050. Unfortunately, this massive population boom is projected to occur primarily in the most fragile and food insecure countries. This alarming math is not just about total numbers. Projections show that the greatest increase is in the age groups most vulnerable to extremism. There are currently 200 million people in Africa between the ages of 15 and 24, with that number expected to double in the next 30 years. Already, 60% of the unemployed in Africa are young people.

Too often these situations deteriorate into shooting wars requiring the deployment of our military forces. We should be continually mindful that the price we pay for committing military forces is measured in our most precious national resource, the blood of those who serve. For those who live in rural America, this has a disproportionate impact. Fully 40% of those who serve in our military come from the farms, ranches, and non-urban communities that make up only 16% of our population.

Actions taken now to increase agricultural sector jobs can provide economic opportunity and stability for those unemployed youths while helping to feed people. A recent report by the Chicago Council on Global Affairs identifies agriculture development as the core essential for providing greater food security, economic growth, and population well-being.

Our active support for food security, including agriculture development, has helped stabilize key regions over the past 60 years. A robust food security strategy, as a part of our overall security strategy, can mitigate the growth of terrorism, build important relationships, and support continued American economic and agricultural prosperity while materially contributing to our Nation’s and the world’s security.

**1AC – Pharma**

#### Contention three: Pharma

**Institutional investors have a stranglehold on the pharmaceutical industry – common ownership links prevents generic entry by generating the incentive and ability for investors to delay or block generics from entering the market of a brand.**

Banal-Estañol ’21 [Albert et al; Associate Professor @ Universitat Pompeu Fabra, PhD @ Universitat Autònoma de Barcelona; Melissa Newham; Postdoctoral Researcher @ Center of Economic Research, PhD in Economics @ KU Leuven; and Jo Seldeslachts; Research Associate in the Firms and Markets Department @ DIW Berlin; “Common Ownership in the US Pharmaceutical Industry: A Network Analysis,” *The Antitrust Bulletin*, 66(1), p. 68-99; AS]

Investors’ holdings in multiple firms give rise to what is known as “common ownership.” Common ownership is widespread in the U.S. pharmaceutical industry. In 2014, for instance, the largest investor in the three largest pharmaceutical companies (Johnson & Johnson, Merck & Co, and Pfizer) was the same (BlackRock). This is the rule, not the exception. These three pharmaceutical companies share other large institutional investors and are thus connected to each other, as well as to numerous other pharmaceutical companies, through the so-called common ownership links.

Common ownership links between pharmaceutical companies might have important implications for competition and innovation in this crucial industry. By bringing innovative treatments to the market, or by making treatments more widely accessible, the pharmaceutical industry makes an important contribution to global health and economic development. At the same time, the industry often generates controversies related to pricing and product development. A well-functioning pharmaceutical industry in general and the consequences of common ownership in particular are thus key concerns for policymaking and antitrust.

In this article, we study the common ownership links between firms that are active in U.S. pharmaceutical markets in the period 2004–2014 and discuss the implications of our findings for innovation incentives, entry, pricing, and collusion. There is both anecdotal and empirical evidence, reported further below, showing that large institutional investors weigh in on pharmaceutical companies’ strategic decision-making. Given that these investors are both influential and, as we will show, have ownership stakes in multiple firms within the same market, the common ownership links between pharmaceutical companies could have important implications for competition and innovation.

We make use of network analysis to describe the structure and characteristics of common ownership networks and calculate how central, or influential, actors are in the network.2 We make a distinction between “brand firms,” that have research and development (R&D) capabilities and launch new drugs on to the market, and “generic firms,” that produce bioequivalent replications of brandname drugs once these drugs come off patent. We study the evolution of common ownership networks between brand firms and generic firms separately, as well as the (bipartite) network of brand firms on the one hand and generic firms on the other. We make use of two common ownership measures, which determine links on the basis of individual or joint levels of ownership by common investors. An individual common ownership link between two companies occurs when there is at least one investor in both companies with an ownership stake of more than 5%. A joint common ownership link occurs when investors common to both firms collectively are the majority owners.

We find that, although brand companies are already fairly well connected at the start of our sample, they become almost fully connected through common ownership links at the end of the sample. This is true for both measures of common ownership, although we observe a less dramatic change when using the joint measure, in part because the network was already highly connected at the beginning of the sample. If large institutional investors do exert influence, as the anecdotal evidence below indicates, then this increasing connectivity may have a nonnegligible and increasing impact on innovation incentives. If institutional investors effectively assert their power in pharmaceutical companies, this increasingly dense network might further lead to a softening of competition between brand firms’ products. Furthermore, as the evolution of the network partly depends on the ownership measure used, the effects of common ownership might depend on whether common investors exert individual or joint influence.

Alongside higher levels of connectivity between brand firms, the average measure of centrality, which indicates how influential individual firms are within the common ownership network, has risen. Interestingly, at the beginning of the sample, the most central firms were not necessarily the largest (e.g., Biogen and Allergan). On the contrary, the most central firms toward the end of the sample are also the largest (e.g., Johnson & Johnson).

The network of brand companies remains, even at the end of the sample, relatively asymmetric. Indeed, some of the largest pharmaceutical companies, such as Sanofi, Novartis, and Roche, remain without any strong links in 2014. This is in part because of the presence of large noncommon investors in these companies. Although several brand companies, such as Johnson & Johnson and Pfizer, have a large and similar centrality value in 2014, several others have low values (or even zero). Thus, brand firm centrality has not only increased over time, as the common ownership network has become more connected, but it has also become more dispersed. The combination of a rise in centrality for the most connected companies and, at the same time, higher dispersion overall might result in these central players becoming even more powerful.

In comparison to the brand network, the generic firm network is much sparser and it becomes less connected over time. Further, as compared to brand companies, the size of the shareholdings of the top common investors in generic companies—although larger in 2004—is smaller in 2014. Consequently, the average level of centrality for generic firms is much lower than the average for brand firms at the end of the sample. While this is unlikely to have an impact on innovation—generic companies mainly imitate brand products—it indicates that competition between generics is less affected by common ownership.

Finally, the number of common ownership links between brand companies, on the one hand, and generic companies, on the other, has increased substantially over time. Most brand-generic pairs were not connected at the beginning of the sample, and even some of the largest brands, such as Pfizer, had zero connections with the generics. At the end of our sample, there are a number of strong connections between brands and generics. Most of the large brands, such as Johnson & Johnson and Pfizer, have a large number of links by 2014. Similarly, some of the generics, such as Impax and Perrigo, have a high number of connections with brand firms, despite having limited links between each other, and with other firms within the generic ownership network. The increased brand-generic connectivity seems to have led to a decrease in generic entry, as common investors have both an incentive and the ability to delay or block generics from entering the market of a brand.3

**Common ownership disincentivizes R&D and promotes killer acquisitions.**

Banal-Estañol ’21 [Albert et al; Associate Professor @ Universitat Pompeu Fabra, PhD @ Universitat Autònoma de Barcelona; Melissa Newham; Postdoctoral Researcher @ Center of Economic Research, PhD in Economics @ KU Leuven; and Jo Seldeslachts; Research Associate in the Firms and Markets Department @ DIW Berlin; “Common Ownership in the US Pharmaceutical Industry: A Network Analysis,” *The Antitrust Bulletin*, 66(1), p. 68-99; AS]

Common ownership may also reduce competition in innovation. For example, common ownership might negatively affect the number and/or the selection of R&D projects pursued. As drugs pass through clinical trials, firms may reoptimize their portfolio and decide which drugs to submit for FDA approval. Many development projects are terminated, not due to safety or efficacy concerns, but due to commercial considerations. Large pharmaceutical firms often invest in ten to fifteen distinct research programs that run simultaneously. In an effort to reduce competition, firms with common investors may jointly pursue a similar line of research or terminate competing projects. This is potentially to the detriment of consumers if it means that fewer drug variants are available.

Recent research indicates that one of the motives for pharmaceutical firms to engage in M&As is to neutralize potential competition. The idea is that an incumbent—that is, a company that has already launched a drug—has an incentive to acquire and terminate projects in the development process if these projects have “overlap” with its launched product (where overlap is defined as the same MoA within a therapeutic class). These acquisitions where the incumbent acquires a nascent or potential competitor in order to neutralize the competition have been termed “killer acquisitions.” Cunningham, Ederer, and Ma find that projects acquired by firms that have an overlapping drug are 23.4 % less likely to have continued development activity.36

The presence of common ownership between two firms with overlapping drugs may mitigate the need for a merger to achieve a similar effect. A recent paper that looks at common ownership links in pharmaceutical start-ups by venture capital (VC) companies, Li, Liu, and Taylor find precisely this effect.37 In particular, they examine how a start-up responds after seeing a competitor make progress on a related drug project. If the two start-ups share a common VC, the lagging start-up is less likely to advance its own project, which reduces competition between the start-ups. The authors find that these anticompetitive effects are mostly present for technologically similar projects, early-stage projects, and with VCs involved that have larger equity stakes and less-diversified portfolios. In sum, high common ownership among brand companies can have both positive and negative effects on innovation in the pharmaceutical sector. Current theoretical and empirical research highlights both sides. Research in this dimension is a promising avenue for future research, especially in terms of identifying whether and under which circumstances common ownership of firms with projects that have overlapping mechanisms of action and similar therapeutic classes leads to better or worse innovation outcomes.

**Enforcing antitrust law against horizontal shareholding encourages market entry in the industry.**

Xie ’21 [Jin; Assistant Professor @ Chinese University of Hong Kong; “Horizontal Shareholdings and Paragraph IV Generic Entry in the U.S. Pharmaceutical Industry,” *The Antitrust Bulletin*, 66(1), p. 100-112; AS]

I find the frequency with which the brand-name incumbent and generic would-be entrant enter into a settlement is positively correlated with top twenty generic shareholders’ economic interests in the brand plaintiff relative to their interests in the generic defendant. My findings suggest institutional horizontal shareholdings induce market incumbents to respond to the threat of entry by adopting preemptive actions that are more anticompetitive than would be the case for separate ownership. I verify the wide existence of the threat of entry in my data. For each branded drug at the tradenameformulation level, I find the average number of paragraph IV challengers is about 3.5; for each drug at the tradename level, the average number of paragraph IV challengers is about 3.9. In 30% of paragraph IV lawsuits, I find more than one generic firm challenges patents on the same day as the expiration of data exclusivity.

The findings of this article complement several recent studies that document anticompetitive effects of common ownership in scenarios in which competitors have already entered the market.16 The policy implication of these studies is that to achieve competitive conditions in concentrated markets with large horizontal shareholdings, the Department of Justice (DOJ) and the FTC should take the lead by adopting a public enforcement policy of the Clayton Act against horizontal shareholders.17 My findings, however, imply that enforcement of Section 1 of the Sherman Act, which prohibits conspiracies between competitors, should be more targeted at settlements between horizontal competitors held by an overlapping set of institutional investors. This section of the Sherman Act prohibits agreements between two or more individuals or independent entities that unreasonably restrain trade (15 U.S.C. § 1). The DOJ has authority to enforce both civil and criminal violations. Civil actions for damages may be brought by both private individuals and the state attorneys general on behalf of state residents.

Theoretical literature in industrial organization predicts firms controlled by common owners lack incentives to compete—the benefits to one firm of competing aggressively come at the expense of rivals that are part of the same investor’s portfolio.18 As Elhauge puts it, “There is every reason to think that the problem of horizontal shareholding is pervasive across our economy because institutional investors like BlackRock, Vanguard, Fidelity, and State Street now own around 80% of all stock in S&P 500 corporations.”19

#### Accessible pharmaceutical innovation solves disease and bioterror.

Marjanovic ’20 [Sonja; Director of Healthcare Innovation, Industry and Policy @ RAND Europe; and Carolina Feijao; PhD in Biochemistry @ University of Cambridge; “Pharmaceutical Innovation for Infectious Disease Management”; https://www.rand.org/pubs/perspectives/PEA407-1.html]

As key actors in the healthcare innovation landscape, pharmaceutical and life sciences companies have been called on to develop medicines, vaccines and diagnostics for pressing public health challenges. The COVID-19 crisis is one such challenge, but there are many others. For example, MERS, SARS, Ebola, Zika and avian and swine flu are also infectious diseases that represent public health threats. Infectious agents such as anthrax, smallpox and tularemia could present threats in a bioterrorism context. The general threat to public health that is posed by antimicrobial resistance is also well-recognised as an area in need of pharmaceutical innovation.

Innovating in response to these challenges does not always align well with pharmaceutical industry commercial models, shareholder expectations and competition within the industry. However, the expertise, networks and infrastructure that industry has within its reach, as well as public expectations and the moral imperative, make pharmaceutical companies and the wider life sciences sector an indispensable partner in the search for solutions that save lives.

This perspective argues for the need to establish more sustainable and scalable ways of incentivising pharmaceutical innovation in response to infectious disease threats to public health. It considers both past and current examples of efforts to mobilise pharmaceutical innovation in high commercial risk areas, including in the context of current efforts to respond to the COVID-19 pandemic.

In global pandemic crises like COVID-19, the urgency and scale of the crisis – as well as the spotlight placed on pharmaceutical companies – mean that contributing to the search for effective medicines, vaccines or diagnostics is essential for socially responsible companies in the sector. It is therefore unsurprising that we are seeing industry-wide efforts unfold at unprecedented scale and pace. Whereas there is always scope for more activity, industry is currently contributing in a variety of ways. Examples include pharmaceutical companies donating existing compounds to assess their utility in the fight against COVID19; screening existing compound libraries in-house or with partners to see if they can be repurposed; accelerating trials for potentially effective medicine or vaccine candidates; and in some cases rapidly accelerating in-house research and development to discover new treatments or vaccine agents and develop diagnostics tests. Pharmaceutical companies are collaborating with each other in some of these efforts and participating in global R&D partnerships (such as the Innovative Medicines Initiative effort to accelerate the development of potential therapies for COVID-19) and supporting national efforts to expand diagnosis and testing capacity and ensure affordable and ready access to potential solutions.

The primary purpose of such innovation is to benefit patients and wider population health. Although there are also reputational benefits from involvement that can be realised across the industry, there are likely to be relatively few companies that are ‘commercial’ winners. Those who might gain substantial revenues will be under pressure not to be seen as profiting from the pandemic. In the United Kingdom for example, GSK has stated that it does not expect to profit from its COVID-19 related activities and that any gains will be invested in supporting research and long-term pandemic preparedness, as well as in developing products that would be affordable in the world’s poorest countries. Similarly, in the United States AbbVie has waived intellectual property rights for an existing combination product that is being tested for therapeutic potential against COVID-19, which would support affordability and allow for a supply of generics. Johnson & Johnson has stated that its potential vaccine – which is expected to begin trials – will be available on a not-for-profit basis during the pandemic.

Pharma is mobilising substantial efforts to rise to the COVID-19 challenge at hand. However, we need to consider how pharmaceutical innovation for responding to emerging infectious diseases can best be enabled beyond the current crisis. Many public health threats (including those associated with other infectious diseases, bioterrorism agents and antimicrobial resistance) are urgently in need of pharmaceutical innovation, even if their impacts are not as visible to society as COVID-19 is in the immediate term. The pharmaceutical industry has responded to previous public health emergencies associated with infectious disease in recent times – for example those associated with Ebola and Zika outbreaks. However, it has done so to a lesser scale than for COVID-19 and with contributions from fewer companies. Similarly, levels of activity in response to the threat of antimicrobial resistance are still low. There are important policy questions as to whether – and how – industry could engage with such public health threats to an even greater extent under improved innovation conditions.

#### Disease causes extinction.

Such ’21 [Thomas; 2/9/2021; Writer @ Glasgow Guardian, “How to Wipe Out Humanity”; https://glasgowguardian.co.uk/2021/02/09/how-to-wipe-out-humanity/]

Not only is a virus the key to an unpredictable disease which may one day wipe out humanity, but the origins of said virus are key. My “research” concluded that the most efficient way of killing humanity is to have the disease spread in a semi-developed country such as China; it is far easier for viruses and other diseases to spread in less developed countries - but in order to successfully achieve global transmission, a host country must have the substantial international infrastructure to spread a pandemic worldwide. Using this strategy in my “research”, I was able to play a game of Plague Inc. wherein the spread and threat of Covid-19 seemed minimal by using China as a perfect starting point to wipe out humanity. The key, as it turns out, is the spreading of the virus - something that Covid-19 has proved can be done very easily in our modern globalised society. The journey from China to Italy spreading the plague across Europe took almost 40 years back in the middle ages: in 2020, it took a mere 40 days for widespread outbreaks to begin in Italy spreading across much of Europe.

My research into the historical spread of pandemics and my attempts to create my destroyer of humanity illustrates a significant disparity between what happens in the real world and the measures one may find in a simulator. Political realities and measures many may consider “draconian” or simply unrealistic heavily impact how a pandemic may spread and the eventual impact it will have on humanity. Using Plague Inc., I was able to effectively kill off humanity in around a year using a fast transmission of virus, which also became gradually more lethal. This is essential to ensure the near-universal transmission of the virus, and to penetrate measures such as increased border security and isolated regions once the knowledge of the pandemic spreads. Whilst it is unlikely that humanity will be wiped out any time soon, it became clear to me that instead of nuclear war, alien invasion or the looming threat of global warming; the real threat to humanity and the eventual destruction of our species may come from something as simple as bacteria. While we like to revel in our scientific advancements of the modern era and the ascension of humans as Earth’s alpha species, it becomes clear that, when we adapt, our environment and the threats it poses adapt with us. Plague Inc. showed a clear pathway to killing off humanity - though, luckily, the Covid-19 threat in the program was combated due to immense political pressure, restrictions and record-making vaccine paces. The real threat, however, remains clear: if humanity becomes increasingly lax with preventive and managerial measures, it is obvious what the future may hold for us.

#### It sparks global instability that goes nuclear.

Suzuki ’21 [Tatsujiro et al; Director and Professor @ Research Center for Nuclear Weapons Abolition, Nagasaki University, Former Vice Chairman @ Japan Atomic Energy Commission; “Pandemic Futures and Nuclear Weapon Risks: The Nagasaki 75th Anniversary Pandemic-Nuclear Nexus Scenarios Final Report”, *Journal for Peace and Nuclear Disarmament*, 4(1), p. 6-39]

The Challenge: Multiple Existential Threats

The relationship between pandemics and war is as long as human history. Past pandemics have set the scene for wars by weakening societies, undermining resilience, and exacerbating civil and inter-state conflict. Other disease outbreaks have erupted during wars, in part due to the appalling public health and battlefield conditions resulting from war, in turn sowing the seeds for new conflicts. In the post-Cold War era, pandemics have spread with unprecedented speed due to increased mobility created by globalization, especially between urbanized areas. Although there are positive signs that scientific advances and rapid innovation can help us manage pandemics, it is likely that deadly infectious viruses will be a challenge for years to come.

The COVID-19 is the most demonic pandemic threat in modern history. It has erupted at a juncture of other existential global threats, most importantly, accelerating climate change and resurgent nuclear threat-making. The most important issue, therefore, is how the coronavirus (and future pandemics) will increase or decrease the risks associated with these twin threats, climate change effects, and the next use of nuclear weapons in war.5

Today, the nine nuclear weapons arsenals not only can annihilate hundreds of cities, but also cause nuclear winter and mass starvation of a billion or more people, if not the entire human species. Concurrently, climate change is enveloping the planet with more frequent and intense storms, accelerating sea level rise, and advancing rapid ecological change, expressed in unprecedented forest fires across the world. Already stretched to a breaking point in many countries, the current pandemic may overcome resilience to the point of near or actual collapse of social, economic, and political order.

In this extraordinary moment, it is timely to reflect on the existence and possible uses of weapons of mass destruction under pandemic conditions – most importantly, nuclear weapons, but also chemical and biological weapons. Moments of extreme crisis and vulnerability can prompt aggressive and counterintuitive actions that in turn may destabilize already precariously balanced threat systems, underpinned by conventional and nuclear weapons, as well as the threat of weaponized chemical and biological technologies. Consequently, the risk of the use of weapons of mass destruction (WMD), especially nuclear weapons, increases at such times, possibly sharply.

The COVID-19 pandemic is clearly driving massive, rapid, and unpredictable changes that will redefine every aspect of the human condition, including WMD – just as the world wars of the first half of the 20th century led to a revolution in international affairs and entirely new ways of organizing societies, economies, and international relations, in part based on nuclear weapons and their threatened use. In a world reshaped by pandemics, nuclear weapons – as well as correlated non-nuclear WMD, nuclear alliances, “deterrence” doctrines, operational and declaratory policies, nuclear extended deterrence, organizational practices, and the existential risks posed by retaining these capabilities – are all up for redefinition.

A pandemic has potential to destabilize a nuclear-prone conflict by incapacitating the supreme nuclear commander or commanders who have to issue nuclear strike orders, creating uncertainty as to who is in charge, how to handle nuclear mistakes (such as errors, accidents, technological failures, and entanglement with conventional operations gone awry), and opening a brief opportunity for a first strike at a time when the COVID-infected state may not be able to retaliate efficiently – or at all – due to leadership confusion. In some nuclear-laden conflicts, a state might use a pandemic as a cover for political or military provocations in the belief that the adversary is distracted and partly disabled by the pandemic, increasing the risk of war in a nuclear-prone conflict. At the same time, a pandemic may lead nuclear armed states to increase the isolation and sanctions against a nuclear adversary, making it even harder to stop the spread of the disease, in turn creating a pandemic reservoir and transmission risk back to the nuclear armed state or its allies.

In principle, the common threat of the pandemic might induce nuclear-armed states to reduce the tension in a nuclear-prone conflict and thereby the risk of nuclear war. It may cause nuclear adversaries or their umbrella states to seek to resolve conflicts in a cooperative and collaborative manner by creating habits of communication, engagement, and mutual learning that come into play in the nuclear-military sphere. For example, militaries may cooperate to control pandemic transmission, including by working together against criminal-terrorist non-state actors that are trafficking people or by joining forces to ensure that a new pathogen is not developed as a bioweapon.

To date, however, the COVID-19 pandemic has increased the isolation of some nuclear-armed states and provided a textbook case of the failure of states to cooperate to overcome the pandemic. Borders have slammed shut, trade shut down, and budgets blown out, creating enormous pressure to focus on immediate domestic priorities. Foreign policies have become markedly more nationalistic. Dependence on nuclear weapons may increase as states seek to buttress a global re-spatialization6 of all dimensions of human interaction at all levels to manage pandemics. The effect of nuclear threats on leaders may make it less likely – or even impossible – to achieve the kind of concert at a global level needed to respond to and administer an effective vaccine, making it harder and even impossible to revert to pre-pandemic international relations. The result is that some states may proliferate their own nuclear weapons, further reinforcing the spiral of conflicts contained by nuclear threat, with cascading effects on the risk of nuclear war.

#### Bioterror causes extinction.

Walsh ’20 [Bryan; Future Correspondent @ Axios, Editor @ Science and Technology Publication OneZero, Former Senior and International Editor @ Time Magazine, BA @ Princeton University; *End Times: A Brief Guide to the End of the World*, Orion Publishing Group, Limited Edition, p. 204-206]

I’ve lived through disease outbreaks, and in the previous chapter I showed just how unprepared we are to face a widespread pandemic of flu or another new pathogen like SARS. But a deliberate outbreak caused by an engineered pathogen would be far worse. We would face the same agonizing decisions that must be made during a natural pandemic: whether to ban travel from affected regions, how to keep overburdened hospitals working as the rolls of the sick grew, how to accelerate the development and distribution of vaccines and drugs. To that dire list add the terror that would spread once it became clear that the death and disease in our midst was not the random work of nature, but a deliberate act of malice. We’re scared of disease outbreaks and we’re scared of terrorism—put them together and you have a formula for chaos.

As deadly and as disruptive as a conventional bioterror incident would be, an attack that employed existing pathogens could only spread so far, limited by the same laws of evolution that circumscribe natural disease outbreaks. But a virus engineered in a lab to break those laws could spread faster and kill quicker than anything that would emerge out of nature. It can be designed to evade medical countermeasures, frustrating doctors’ attempts to diagnose cases and treat patients. If health officials manage to stamp out the outbreak, it could be reintroduced into the public again and again. It could, with the right mix of genetic traits, even wipe us off the planet, making engineered viruses a genuine existential threat.

And such an attack may not even be that difficult to carry out. Thanks to advances in biotechnology that have rapidly reduced the skill level and funding needed to perform gene editing and engineering, what might have once required the work of an army of virologists employed by a nation-state could soon be done by a handful of talented and trained individuals. Or maybe just one.

When Melinda Gates was asked at the South by Southwest conference in 2018 to identify what she saw as the biggest threat facing the world over the next decade, she didn’t hesitate: “A bioterrorism event. Definitely.”2

She’s far from alone. In 2016, President Obama’s director of national intelligence James Clapper identified CRISPR as a “weapon of mass destruction,” a category usually reserved for known nightmares like nuclear bombs and chemical weapons. A 2018 report from the National Academies of Sciences concluded that biotechnology had rewritten what was possible in creating new weapons, while also increasing the range of people capable of carrying out such attacks.3 That’s a fatal combination, one that plausibly threatens the future of humanity like nothing else.

“The existential threat that would be most available for someone, if they felt like doing something, would be a bioweapon,” said Eric Klien, founder of the Lifeboat Foundation, a nonprofit dedicated to helping humanity survive existential risks. “It would not be hard for a small group of people, maybe even just two or three people, to kill a hundred million people using a bioweapon. There are probably a million people currently on the planet who would have the technical knowledge to pull this off. It’s actually surprising that it hasn’t happened yet.”

# 2AC

## Economy

### 2AC – AT: Biz Con

#### Recession coming now – robust historical evidence

Domash 3/15 – Alex Domash, MPA from the Harvard Kennedy School of Government, writing with Larry Summers, “History Suggests a High Chance of Recession over the Next 24 Months,” 3/15/22, https://medium.com/@alex.domash/history-suggests-a-high-chance-of-recession-over-the-next-24-months-78e38d468e05

As the Federal Reserve moves this week to raise interest rates by a quarter of a percentage point, there is much discussion over the likelihood that the central bank can achieve a soft landing in the economy. While engineering a soft landing is historically very rare, Fed Chair Jerome Powell told lawmakers in early March that he believes achieving a soft landing is “more likely than not.” The Fed’s latest forecast, as well as the consensus forecast from the Federal Reserve Bank of Philadelphia’s Survey of Professional Forecasters (SPF), supports this claim: in both forecasts, inflation recedes to below 3 percent and unemployment remains below 4 percent over the next year.

To examine the plausibility of these forecasts, we look at quarterly data going back to the 1950s and calculate the probability that the economy goes into a recession within the next 12 and 24 months, conditioning on alternative measures of inflation and unemployment. We find that, given the current inflation level of nearly 8 percent and unemployment below 4 percent, historical evidence suggests a very substantial likelihood of recession over the next year or two.

Table 1 shows the historical probability of a recession occurring within the next 12 and 24 months, conditional on contemporaneous measures of CPI inflation and the unemployment rate. The results indicate that lower unemployment and higher inflation significantly increase the probability of a recession over the next 12 and 24 months. Historically, when average quarterly inflation rises above 5 percent, the probability of a recession over the next two years is above 60 percent, and when the unemployment rate drops below 4 percent, the probability of a recession over the next two years approaches 70 percent.

Since 1955, there has never been a quarter with average inflation above 4 percent and unemployment below 5 percent that was not followed by a recession within the next two years.

The above results do not reflect our use of the CPI rather than alternative inflation measures, or the use of the unemployment rate rather than alternative labor market tightness measures. Measuring labor market tightness with the job vacancy rate, which we have advocated for in our prior work (Domash and Summers 2022), suggests an even higher probability of recession over the next 12 and 24 months. Similarly, using Core PCE inflation or wage inflation rather than the CPI also yields the same conclusions. These results are included in tables A.1 and A.2 in the Appendix.

Some may argue that the historical data presented in these tables overstate the probability of recession, since there has been a trend towards greater business cycle stability in recent decades. Motivated by this concern, and to make maximum use of available information, we use a probit model to predict the probability of a future recession based on current economic conditions and controlling for a time trend.

Table 2 presents the results from our probit models. The predicted probability of a recession over the next 12 months in Q1 2022 is highlighted in blue, and is very high across all our model specifications. In our baseline model, we use a four-quarter trailing average of inflation and a one-quarter lag of unemployment as our main explanatory variables. To allow for the possibility that recession probabilities have declined over time, we also have specifications that include a time trend (column 2) and a dummy for years after 1982 (column 3). We find that a trend towards greater business cycle stability does not appear in any significant way once one controls for economic conditions. Finally, we include a specification with a dummy for whether the economy is more than 6 quarters into an economic expansion (column 4), and with the time trend and expansion dummy (column 5).

Table 3 presents the same models, using instead the predicted probability of a recession over the next 8 quarters as the dependent variable. The results suggest a strikingly high probability of recession over the next two years, given current levels of inflation and unemployment. We also repeat the above analysis using a quadratic model, and find similar predicted probabilities of a recession over the next 4 and 8 quarters.

Table 4 below summarizes the predicted probabilities of a recession occurring over the next 12 and 24 months for each of the 5 model specifications. The results suggest a very high likelihood of recession in the coming years, and are robust across all our specifications. Moreover, the findings do not reflect our choice to use the CPI as the inflation measure or the unemployment rate as the slack measure. Using wage inflation, rather than the CPI, results in higher predictions of the probability of recession, and using Core PCE inflation results in similar predictions. Replacing the unemployment rate with the vacancy rate (which we believe to be a better slack indicator) also yields higher predicted probabilities of a recession over the next years.

Overall, the evidence we present in this note suggests that engineering a soft landing is a very difficult thing to do in a rapidly growing, inflation economy. Arguably the only time the Fed has been successful in achieving a soft landing occurred in 1994–1995 when the Fed doubled interest rates to 6 percent and was able to slow economic growth without triggering a recession.

But with inflation nearing 8 percent and unemployment below 4 percent, the Fed today is way behind the curve, and now has to play catch-up to try to tame price increases. The historical evidence indicates that when inflation is as high as it is today, and the unemployment rate is as low as it is today, the probability of a recession over the next one and two years is extraordinarily high. Moreover, none of these calculations account for the recent supply shocks associated with the war in Ukraine, which will only increase the probability of recession even further. We therefore believe that the likelihood that the Fed achieves a soft landing in the economy is low.

#### No spillover and turn – the stock market isn’t the economy. Gains reflect the overconfidence of the rich – that’s Schwarz and

Boushey ’20 [Heather; President of The Washington Center for Equitable Growth; https://www.washingtonpost.com/outlook/stock-market-unemployment-disconnect/2020/09/09/087374ca-f306-11ea-bc45-e5d48ab44b9f\_story.html]

The president and his supporters are ignoring what former Federal Reserve chair Janet Yellen forcefully explained recently: “The stock market isn’t the economy. The economy is production and jobs, and there are shortfalls in virtually every sector.” How have stocks remained so resilient in the face of such a severe shock? In part, it’s because of inequality. Stocks are overwhelmingly owned by the top 1 percent, which means speculation has been able to continue even as more people have lost their jobs than at any time since the Great Depression.

What’s more, measures such as the Dow and the S&P 500 reflect only the very largest U.S. companies, which can weather steep slumps in demand in a way that Main Street enterprises can’t — while the relief packages Congress passed this spring were better at shielding large companies from economic harm than smaller ones. Given how troubling the underlying economic data are, the immunity of the markets can’t continue (as this past week’s decline may suggest).

When we compare the stock market with jobs data, the numbers are sobering. Spring’s temporary job losses — caused at first by the shutdowns — are settling into a long-term pattern of economic malaise that could reduce low-income and middle-class families’ earnings for years to come. Although the unemployment rate has dropped from its height of 14.7 percent in April, the Sept. 4 jobs report from the Labor Department’s Bureau of Labor Statistics indicates that losses once thought to be temporary are becoming permanent.

If the stock market doesn’t reflect the health of our economy, what does it measure? Most directly, it indicates the financial health of the richest among us. Overall, about 55 percent of Americans own stocks, according to Gallup, but ownership is heavily skewed toward the wealthy. According to Federal Reserve data, the top 1 percent of U.S. households own 39 percent of equities and mutual fund shares, and the top 10 percent own 83 percent — which leaves workers in the bottom 90 percent owning just 17 percent.

#### Laundry list of antitrust actions now

Stoller 3/24 – Matt Stoller, Director of Research at the American Economic Liberties Project, “Judges Behaving Badly: Amazon Antitrust Suit Dismissed,” 3/24/22, https://mattstoller.substack.com/p/judges-behaving-badly-amazon-antitrust?s=r

There’s a lot more happening in the world of big tech and antitrust.

Judge Jeffrey White in Northern California ruled against Apple in a monopolization case, noting that the firm has to face discovery in an antitrust suit brought by wristband producer and software maker AliveCor. Not all judging is bad!

Final negotiations are taking place in Europe over the Digital Markets Act, which will regulate dominant tech platforms. I’m skeptical over how much the DMA will matter, since I haven’t seen any real will from Europeans to enforce competition laws.

The Department of Justice Antitrust Division asked Judge Amit Mehta for sanctions against Google for hiding documents from the court.

Microsoft is offering buy now, pay later option in its Edge browser. I find this very weird, and I’m wondering if anyone has thoughts on why Microsoft is working on this technology.

Washington state’s Department of Labor and Industries fined Amazon $60,000 for “knowingly putting workers at risk of injury at its fulfillment center in Kent,” as “workers are required to perform these tasks at such a fast pace that it increases the risk of injury.” Not a good precedent for Amazon.

Nancy Pelosi said she’d work with Republicans to pass the tech antitrust bills.

Supreme Court nominee Ketanji Brown Jackson gave some vague answers on antitrust law in response to questions from Senator Amy Klobuchar. Jackson doesn’t have much of a record on antitrust, so we’ll have to wait and find out what she thinks. Or maybe another Senator will ask her questions today on the topic, but I doubt it.

The FTC is looking closely at the Microsoft-Activision merger.

#### “Shocks” are inevitable and have no impact.

Bagrie ’18 [Cameron; 8/9/18; Managing Director @ Bagrie Economics; “Business Confidence Is a Hopeless Indicator. But That Doesn’t Mean the Economy Isn’t in Trouble”; https://thespinoff.co.nz/business/09-08-2018/business-confidence-is-bullshit-but-that-doesnt-mean-the-economy-isnt-in-trouble]

The good news is that business confidence is hopeless as an economic indicator. The correlation with economic growth is poor and I largely ignore business confidence readings. Changes in direction can provide some insightful information – whether things are picking up or slowing down, but not the levels.

Businesses tend to be more upbeat regarding general confidence about the economy under a blue flag as opposed to a red one. Business confidence averaged minus 18 between 2000 and 2007. The economy (measured by real gross domestic product) grew on average by more than 3.5% per year. Yep, confidence was negative, but growth was positive. So, we ignore business confidence as an economic indicator. This is nothing new. It’s surprising headline business confidence figures receive so much attention.

Commentators make the constant mistake of saying the ANZ survey is a business confidence survey. The same applies to the NZIER’s QSBO. They are surveys of business views across an array of key indicators including prospects for growth, hiring, whether firms are planning to invest and experiences with inflation / costs. These indicators matter. Business confidence is one question.

The so-called “soft” or “perception” indicators are the hard data of tomorrow. They are estimates and view based but you can’t ignore them. They are well correlated with growth.

In a perfect world we’d have timely “hard” official data and statistics. We don’t. Official data comes with a lag. So, we need to rely on sentiment-based indicators if we want timely readings on the economy and a guide as to the year ahead.

The likes of the ANZ survey are showing a sombre mood when it comes to indicators that matter. The ANZ survey asks key questions about activity, employment, investment and profitability. When these indicators head to zero, which they have done now, growth can do the same. Those indicators were weak in 2000 during the so-called winter of discontent – and growth slowed to 0.9% year on year.

Growth did rebound. But back then the economy was early in the economic expansion. The economy is late in the business cycle this time around. The economy has tended to go through a ten-year cycle, so businesses are naturally looking more nervously over their shoulders at present. The economy is going through substantial economic change too and businesses are wary. There is little argument over the need to change the economy. However, there are serious questions about the actual economic plan and what the new economy looks like. That is a key issue that needs addressed.

Some of the weakness in survey measures could be put down to the way survey questions are phrased. Firms are asked their view and given three options; will conditions improve, stay the same, or worsen. For a lot of firms’ things are damned good. It’s telling that finding skilled staff is the biggest problem firms are facing. Businesses are facing capacity constraints. So, zero readings may reflect a levelling out at a high base.

## Ag

## Pharma

## Off

### 2AC – AT: T-Core

### 2AC – AT: T-Exemptions

#### C/I – Expand in the “scope” of antitrust law refers to number of types of conductprohibited by antitrust law.

Keith N. Hylton, Professor of Law, Boston University, and Fei Deng, and Consultant, NERA Economic Consulting, ‘7, “ANTITRUST AROUND THE WORLD: AN EMPIRICAL ANALYSIS OF THE SCOPE OF COMPETITION LAWS AND THEIR EFFECTS” Antitrust Law Journal [Vol. 74 2007] https://www.jstor.org/stable/pdf/27897550.pdf?refreqid=excelsior%3A424f12ccaeba1aa8d4150377ebe7192d

We turn our attention now to dominance law – or, in the language of American antitrust specialists, monopolization law. The Dominance Score is an attempt to measure the number of types of conduct specified in a country's competition law as unlawful abuse of a dominant position. For those familiar with American law, the dominance measure is an attempt to measure the scope of laws equivalent to Section 2 of the Sherman Act. One can think of the Dominance Score as the size of the net specifically designed to capture dominant firms that engage in anticompetitive conduct.3

### 2AC – AT: Regulate CP

#### Expertise – lack of competition focus and bureaucratic culture permits anticompetitive conduct.

Weinstein ’19 [Samuel; Assistant Professor of Law @ Benjamin N. Cardozo School of Law, Former Counsel to the Assistant Attorney General @ U.S. Department of Justice's Antitrust Division; “Financial Regulation in the (Receding) Shadow of Antitrust,” *Temple Law Review*, 91(3), p. 447-512]

These concerns are well founded when it comes to the SEC and CFTC. First, neither agency prioritizes competition enforcement. The SEC's "primary [\*486] mission . . . is to protect investors and maintain the integrity of the securities markets." 286 It pursues this mission through an information-disclosure regime: "Only through the steady flow of timely, comprehensive and accurate information can people make sound investment decisions." 287 Competition is not mentioned in the SEC website's lengthy description of what the agency does. 288 In its oversight of "the key participants in the securities world, including securities exchanges, securities brokers and dealers, investment advisors, and mutual funds," the SEC states that it "is concerned primarily with promoting the disclosure of important market-related information, maintaining fair dealing, and protecting against fraud." 289 SEC Commissioner Robert J. Jackson has warned that the agency has "forgotten a crucial part of [its] mission: to pursue the kind of vigorous competition that American investors deserve." 290 For its part, the CFTC's mission statement mentions competition as one among many other priorities, including managing systemic risk and protecting consumers from "fraud, manipulation, and abusive practices." 291

Not only is competition enforcement a low or nonpriority for many sector regulators, but it also may clash with agencies' higher priorities. 292 Some agencies "view antitrust issues as distractions," including the Nuclear Regulatory Commission, which "severely curtailed its antitrust activities, finding such reviews 'not a sensible use of our limited resources needed to fulfill our primary mission.'" 293 The financial regulatory agencies have (correctly) asserted that competition concerns are but one factor they must balance against their other priorities. In the SEC's view, Congress, through the securities laws, "instructed the Commission to consider competition in all of its regulatory efforts, but it has [\*487] not made promoting competition the paramount consideration." 294 And, "while enhancing competition 'is a factor to be considered' by the Commission, it is up to the Commission to '"balance" those concerns against all others that are relevant under the statute.'" 295

In his seminal work on government bureaucracy, Professor James Q. Wilson described the way that bureaucratic cultures shape agency competencies. 296 These cultures dictate where resources are devoted, which employees advance, and how the agencies perform tasks that they do not view to be within their core mission (answer: poorly). 297 The evidence suggests that the financial services agencies lack cultures of competition enforcement. Indeed, their cultures strongly favor other values over competition in certain instances. Bureaucratic cultures are difficult to change, so it would be unreasonable to expect that the SEC and CFTC will prioritize or dramatically improve their competition enforcement capabilities in the near future. 298

Even when sector regulators prioritize protecting competition, many lack the expertise and institutional mechanisms to do so effectively. Regulatory agencies might not employ investigatory and adjudicatory procedures sufficient to root out anticompetitive conduct. 299 While courts must in many cases allow for exhaustive discovery, the same cannot be said for most agency proceedings. 300 As a result, even those sector regulators that value protecting competition may not have the institutional systems necessary to follow through effectively. 301

#### Deterrence – agency remedies lack harsh enough pentalties to force investor compliance – that’s Posner and

Weinstein ’19 [Samuel; Assistant Professor of Law @ Benjamin N. Cardozo School of Law, Former Counsel to the Assistant Attorney General @ U.S. Department of Justice's Antitrust Division; “Financial Regulation in the (Receding) Shadow of Antitrust,” *Temple Law Review*, 91(3), p. 447-512]

The relative weakness of remedies typically available to regulatory agencies compounds these problems. Most agencies do not have access to remedies as stringent as an antitrust court's power to assign treble damages under the Sherman Act or to permanently enjoin anticompetitive conduct. 302 The administrative record in Trinko showed that Verizon admitted it had violated its open-access commitments and voluntarily paid $ 3 million to the FCC and $ 10 [\*488] million to competitive local exchange carriers. 303 While the Trinko opinion relied on these sanctions in part for its conclusion that the FCC's regulatory regime had fulfilled the antitrust function, the FCC Chairman subsequently told Congress that the Commission's maximum fine authority was in many instances "insufficient to punish and deter violations" that incumbent local exchange carriers like Verizon had committed with the aim of "slow[ing] the development of local competition." 304 Among other measures, Chairman Powell recommended increasing the FCC's forfeiture authority against common carriers for single continuing violations of the Telecommunications Act from $ 1.2 million to "at least $ 10 million." 305

#### Regulatory capture – SEC has a revolving door with Wall Street.

Weinstein ’19 [Samuel; Assistant Professor of Law @ Benjamin N. Cardozo School of Law, Former Counsel to the Assistant Attorney General @ U.S. Department of Justice's Antitrust Division; “Financial Regulation in the (Receding) Shadow of Antitrust,” *Temple Law Review*, 91(3), p. 447-512]

Agency capture is another explanation for regulators' relative weakness as competition enforcers. 306 The literature on capture is well developed. 307 There is a general scholarly consensus that the political nature of top agency jobs and the revolving door between agencies and the industries they oversee make sector regulators much more susceptible to industry pressure than antitrust courts. 308 Studies have shown that capture may be a particular problem at the financial regulatory agencies. 309 There is a steady flow of lawyers between the SEC and CFTC, on the one hand, and Wall Street firms and the law firms and lobbyists [\*489] that represent them on the other, which appears to affect outcomes of agency proceedings in some cases. 310

Objective measures of the relative competition-enforcement abilities of the antitrust agencies versus the sector regulators tend to confirm the supposition that sector regulators generally cannot be relied on to fulfill the antitrust function in regulated markets. The expert staffs of the antitrust agencies are far larger and more experienced than the competition staffs, if any, at the sector regulators. In recent years, the Antitrust Division typically has had between 340 and 400 attorneys and approximately 50 economists dedicated to competition enforcement, 311 while the FTC's Bureau of Competition has had around 300 attorneys and support staff and approximately 50 antitrust economists. 312 Some regulatory agencies, like the FCC, Federal Deposit Insurance Corporation (FDIC), and the Federal Reserve, have dedicated competition staff with specific expertise. The FCC has a Wireline Competition Bureau, which includes a Competition Policy Division. 313 The FDIC, Federal Reserve, and the Office of the Comptroller of the Currency have staff dedicated to reviewing proposed bank mergers. Even at these agencies, however, the competition staff is smaller and more narrowly focused than the staffs of the Antitrust Division and FTC. 314 [\*490] The comparison with the SEC and CFTC is starker. Neither agency has a dedicated competition division or group. 315 And neither agency established such a body post-Credit Suisse, when it appeared the SEC and CFTC would have increased responsibility for competition matters, or in the wake of Dodd-Frank, which required the agencies to monitor and protect competition in the derivatives markets. This paucity of personnel resources is perhaps predictable given these agencies' bureaucratic cultures. 316

Considering this lack of experienced competition staff, it is unsurprising that the SEC and CFTC bring very few independent competition-related enforcement actions. 317 While these agencies have collaborated with the [\*491] Department of Justice and other enforcement agencies on significant competition investigations, there is little evidence that they would bring such cases on their own. 318 It seems clear that the financial services agencies are either unwilling or unable to "perform the antitrust function" as envisioned by the Supreme Court's case law balancing antitrust and regulation. This conclusion is troubling. It means that when courts apply Credit Suisse or Trinko to shift the responsibility for policing competition away from the expert antitrust agencies to regulatory bodies that are unprepared for the task, they are leaving some regulated markets, especially the financial markets, vulnerable to anticompetitive conduct.

### 2AC – AT: Regs CP

#### Changing incentive structures, rather than particular conduct is key – there is no single mechanism by which shareholders induce anticompetitive effects and the CP undermines efficiency-enhancing governance.

Elhauge ’21 [Einer; Professor of Law @ Harvard; “The Causal Mechanisms of Horizontal Shareholding,” *Ohio State Law Journal*, 82(2), p. 1-75; AS]

One could also imagine regulatory strategies in between categorical and selective punishment, such as presumptively condemning some mechanisms. But they raise the same basic tradeoff. Unless the presumption is strong, it will make enforcement against anticompetitive uses of mechanisms ineffectual; and if the presumption is strong, it will over-inclusively sweep in desirable uses of the mechanisms by which shareholders influence corporations. Indeed, Hemphill and Kahan themselves recognize that it would be undesirable if an enforcement strategy generally discouraged institutional investors from trying to influence corporations.149 But what they fail to recognize is that any effective effort to police mechanisms of influence will have precisely that effect. In contrast, banning horizontal shareholding that creates anticompetitive market structures will leave institutional investors free to exercise influence when it does not create anticompetitive effects, and will indeed encourage shareholders to exercise their influence to make firms more competitive and to concentrate their holdings in one firm per product market in a way that makes such influence stronger.150

In the end, the problem lies in the structural incentives created by horizontal shareholdings in concentrated markets, just as the problem with anticompetitive mergers and cross-shareholdings lies in the structural incentives they create. Behavioral remedies that try to target specific means or uses of horizontal shareholder influence are likely to be ineffective and hard to police. Indeed, they raise even greater enforcement difficulties than the behavioral remedies that antitrust agencies and scholars typically deem ineffective at policing anticompetitive mergers or cross-shareholdings.151 Because horizontal shareholding in concentrated markets is a structural problem, the only effective remedy is preventing or undoing that anticompetitive structure.

**2AC – AT: Prohibit Oligpolies CP**

#### Downstream enforcement undermines efficiency and can’t make existing oligopolies more competitive.

Posner ’17 [Eric et al; Kirkland & Ellis Distinguished Service Professor @ University of Chicago Law School; Fiona Scott Morton; Theodore Nierenberg Professor of Economics @ Yale School of Management; and E. Glen Weyl; Senior Researcher @ Microsoft Research, Visiting Senior Research Scholar @ Yale University Department of Economics and Law School; “A Proposal to Limit the Anticompetitive Power of Institutional Investors,” *Antitrust Law Journal*, 81(3), p. 669-728; AS]

B. FEWER MERGERS

Another solution we have heard proposed is to tighten merger review so that the potential effect of the merger on common ownership is taken into account. 13 2 While this proposal has significant merits in its own right, given the substantial evidence John Kwoka has recently assembled that merger enforcement is overall too lax, this proposal simply does not address the problem we consider, and tightening merger enforcement beyond the levels suggested by Kwoka to address common ownership would be a mistake.1 3 3 Many industries are already oligopolies, and tightening merger control going forward will do nothing to make existing oligopolies more competitive. Moreover, some industries form as oligopolies initially and do not go through a consolidation phase. For example, Facebook and Myspace competed and Myspace exited, but neither one merged with any significant competitor. Thus, the competition regulator had no chance to affect industry structure by blocking mergers that created the oligopoly.

Furthermore, merger control should only go so far because mergers can be efficient. If two firms combine complementary assets, or lower costs, or undertake some other efficient actions, that action can benefit consumers. It will be costly for efficiency in the economy to adopt a policy that disallows mergers because in the future a common mutual fund might invest in that industry. Engaging in merger control, likewise, that could block an otherwise procompetitive merger because an institutional investor owned shares in both parties would be detrimental to economic efficiency.

Most relevantly, merger control cannot address the concerns we have raised: that common ownership already leads to all the anticompetitive effects of a merger without the procompetitive economies of scale. Thus, a merger, starting from substantial common ownership, may often be desirable (unless the common ownership problem can be solved). Greater merger control without directly addressing common ownership would have little effect and potentially even be counter-productive. However, stronger merger control could complement our policy, reducing its reach and costs by limiting the number of oligopolies that need to be regulated. Vigorous merger enforcement is a useful complement to but no substitute for our proposal.

### 2AC – AT: FTC DA

#### Case turns the DA – restricting common ownership concentrates investor holdings. That fosters positive, disruptive innovations.

Borochin ’20 [Paul et al; Department of Finance @ University of Miami; Jie Yang; Board of Governors @ Federal Reserve System; and Rongrong Zhang; Professor of Finance @ Georgia Southern University; “Common Ownership Types and Their Effects on Innovation and Competition”; https://papers.ssrn.com/sol3/Papers.cfm?abstract\_id=3204767; AS]

We find that the type and investment objectives of the institutional owner matter for corporate innovation and in determining the dominant effect of common ownership on firm competitiveness. Higher common ownership by “dedicated”, or focused and long-horizon, financial institutions promotes innovation as measured by counts of patent grants. In addition, this type of common ownership promotes more impactful patenting as measured by citation counts. In contrast, we observe a reverse effect for common ownership by “transient”, or diversified and short-horizon, financial institutions. Furthermore, higher common ownership by “quasi-indexers”, or diversified and long-horizon institutions, has no significant impact on patenting volume, but results in less impactful patenting in terms of citations. The differential effects of common ownership by institutional type provide a potential resolution to the ongoing debate about its costs and benefits.

In addition to overall patent counts, we explore the impact of common ownership on the type of patenting. We categorize patents into two groups: exploratory and exploitative. Following Almeida, Hsu, Li, and Tseng (2019), we classify a patent as being the more novel but riskier “exploratory” type if a supermajority of the patents it cites are outside of the firm’s existing knowledge base and a patent as being the incremental and derivative but safer “exploitative” type if a supermajority of the patents it cites are within the firm’s existing knowledge base. When we examine the impact of common ownership on the type of patenting, we find that an exogenous increase to dedicated common ownership increases both the exploratory as well as exploitative types of patenting. In contrast, greater transient and quasi-indexing common ownership results in fewer exploratory patents and has insignificant impact on future exploitative patenting.

Next, we examine the role of industry competitiveness in modulating the effect of common ownership on innovation by looking across industries with high and low concentrations by market share. As discussed by Aghion, Bloom, Blundell, Griffith and Howitt (2005), variation in industry concentration, and therefore in competition, may have two competing effects on innovation: increased neck-and-neck competition may increase incentives to innovate to set the firm apart from its competitors, but may also discourage lagging firms from innovating to try to catch up. The authors find that incentives to escape competition through innovation dominate in low-competition industries, but the disincentive to try to catch up by innovating dominates in high-competition ones, resulting in an inverse-U relation between industry competitiveness and innovation. As such, the findings of Aghion, et al (2005) imply that industry competitiveness may have moderating effects on the relation between common institutional ownership and innovation.

We find that the relation between common ownership and innnovation does not change with industry concentration for the more active dedicated and transient institutional investors, with the former fostering (latter hindering) innovation output and impact. Interestingly, the dominant effect of common ownership by the argubly more passive quasiindexing investor depends on the competitiveness of the firm’s industry. Specifically, common ownership by quasi-indexers promotes innovation in concentrated industries, but hinders it in competitive industries, consistent with Aghion, et al (2005). That is, common ownership by quasi-indexers appears to follow the inverse U-shaped relation between innovation and competition, with the negative effects of quasi-indexer common ownership on innovation in low-concentration competitive industries being dampened by the positive effects in highconcentration uncompetitive ones.

Finally, we consider two channels through which common ownership can impact innovation: first, it can impact the valuation of investments in innovation made by commonly held firms. Second, it can help alleviate financial constraints within portfolio firms or enforce greater discipline in investment in innovation under constraint. Supporting the first channel, Hirshleifer, Hsu, and Li (2013, 2017) find that innovative firms, particularly those engaged in more original innovation, are more likely to be undervalued due to the difficulty of determining the value of a complex investment like innovation. If common ownership by institutional types can differentially alleviate or exacerbate the challenge in valuation of innovative activity, it offers a channel by which it can impact investment in innovation by commonly held firms. Supporting the second channel, access to financial resources is critical to firm innovation efforts (Schumpeter, 1942; Acharya and Xu, 2017). However, financial slack does not necessarily lead to more or impactful output of innovations (Jensen, 1993; Jaffe, 2000; Lanjouw and Schankerman, 2004; Almeida, Hsu, Li, and Tseng, 2019). As such, common ownership may help alleviate financial constraints or enforce fiscal discipline to promote more effective innovation.

To test whether these channels can plausibly drive the relation between common institutional ownership and innovative activity by portfolio firms, we estimate a two-stage model. In the first stage, we obtain fitted values of valuation error and financial constraints for the firm, estimated using common ownership measures. In the second stage, we use these fitted values to predict future innovation by the firm. This methodology ensures that a significant connection between common ownership and patenting reflects the two channels of valuation error and financial constraints. We find evidence that both valuation errors and financial constraints are statistically and economically significant channels through which dedicated common ownership in particular can impact innovation. Specifically, common ownership by dedicated institutions reduces undervaluation of innovation (Hirshleifer, Hsu, and Li, 2013; 2017) and by reducing information uncertainty (Borochin and Yang, 2017) promotes investment (Lambert, Leuz, and Verrecchia, 2011) such as innovation. In addition, common ownership by dedicated institutions also increases financial constraints, imposing discipline or efficient reallocation of financial resources to promote innovation.

#### Avalanche of rulemaking now

Conley 22 – Stephen Conley, Wiley Rein LLP attorney, “‘An Avalanche of Rulemakings’ – The FTC Gears Up for an Active 2022,” 1/19/22, https://www.jdsupra.com/legalnews/an-avalanche-of-rulemakings-the-ftc-1324181/

On December 10, 2021, the Federal Trade Commission (FTC) published its Annual Regulatory Plan for 2022 – the first under FTC Chair Lina Khan – noting that it “will consider developing both unfair-methods-of-competition rulemakings as well as rulemakings to define with specificity unfair or deceptive acts or practices.”[1] Among other rulemakings, the Annual Regulatory Plan notes that the FTC is considering a Trade Regulation Rule on Commercial Surveillance to stop “lax security practices,” limit “intrusive surveillance,” and ensure “that algorithmic decision-making does not result in unlawful discrimination.”[2]

The release of an expansive agenda comes just months after the agency streamlined its Rules of Practice under Section 18 of the FTC Act and created a new rulemaking group within the FTC’s Office of General Counsel, to expedite otherwise cumbersome rulemaking requirements under the Magnusson-Moss Act. While these procedural maneuvers will allow the FTC to increase the pace of the rulemaking process, many of these measures will likely require the support of three Democratic Commissioners, and the agency is currently in a 2-2 partisan deadlock pending the confirmation of nominee Alvaro Bedoya.

The FTC Cites ‘Changed Circumstances’ as a Catalyst for Rulemaking

The FTC’s Annual Regulatory Plan identifies “changed circumstances” in 2021 as the impetus for the agency to promulgate new competition and consumer protection rules. Specifically, the FTC identifies the U.S. Supreme Court’s decision in AMG Capital Mgmt., LLC v. FTC as a key turning point that has hampered the agency’s enforcement capabilities. As we discussed in greater detail here, that decision interpreted Section 13(b) of the FTC Act to not provide the FTC with the authority to seek restitution or disgorgement in federal court. The agency had historically relied on Section 13(b) to seek monetary penalties in a wide range of cases involving unfair or deceptive practices. However, if the FTC adopts a rule outlawing certain practices, it can still seek monetary penalties for violations of the rule under a separate part of the FTC Act.

Another key catalyst mentioned by the FTC in the Annual Regulatory agenda was a “case-by-case approach to promoting competition,” which has purportedly proven “insufficient.”[3] According to the FTC, this approach has resulted in “a hyper-concentrated economy whose harms to American workers, consumers, and small businesses demand new approaches.”[4]

FTC Plans to Initiate Consumer Protection and Competition Rulemakings

To address perceived market concentration across the economy, the FTC under Chair Khan plans to examine how to define “unfair methods of competition” under Section 5 of the FTC Act in an attempt to root out perceived anticompetitive practices. In addition to the proposed Trade Regulation Rule on Commercial Surveillance, the FTC is also actively seeking comment on the following:

A rule targeting business and government impersonation fraud – as discussed in another article in this issue, the FTC recently released an Advanced Notice of Proposed Rulemaking (ANPRM) targeting rising government and business impersonation fraud committed via telephone calls, text messages, and other forms of communication. Comments on the ANPRM are due February 22.

A rule requiring reporting of security incidents by covered financial institutions – as described in greater detail here, the FTC is seeking comment on a Supplemental Notice of Proposed Rulemaking (SNPRM) that would require covered financial institutions to report certain security incidents to the FTC within 30 days of the date of discovery. The rulemaking would further amend the FTC’s Safeguards Rule under the Gramm-Leach-Bliley Act. Comments on the SNPRM are due February 7.

A petition from Accountable Tech proposing that the FTC promulgate rules to prevent “surveillance advertising,” or the practice of displaying ads to individual consumers based on inferences about their interests, demographics, or other characteristics inferred from their activities over time. Comments on the Accountable Tech Petition are due January 26.

A petition from the Institute for Policy Integrity asking the FTC to regulate “drip pricing.” The petition describes “drip pricing” as “the practice of advertising only part of a product’s price upfront and revealing additional charges later as consumers go through the buying process.”

Importantly, the Annual Regulatory Plan also took note of President Biden’s Executive Order on Promoting Competition in the American Economy. As we discussed in greater detail here, the Executive Order encouraged the FTC to exercise its statutory authority to address a number of competition issues. In the Annual Regulatory Plan, the FTC stated that it will “explore the benefits and costs” of several of the Executive Order’s rulemaking proposals for the agency, including “surveillance, the right to repair, pay-for-delay pharmaceutical agreements, unfair competition in online marketplaces, occupational licensing, real-estate listing and brokerage, and industry-specific practices that substantially inhibit competition.”[5]

FTC Commissioner Christine Wilson dissented from the Annual Regulatory Plan, arguing that it “extends far beyond” the agency’s routine review of existing rules and that many of the existing rules “should be abolished in any event.”[6] She further characterized the Annual Regulatory Plan as ushering in “an avalanche of rulemakings” and rejected Chair Khan’s depiction of the economy as being “hyper-concentrated.”[7] Indeed, in a subsequent statement made at the agency’s December 16 Open Meeting, Commissioner Wilson referred to the FTC’s 2022 agenda as a “Rule-a-Palooza.”[8] Commissioner Wilson’s dissent signals likely uniform Republican Commissioner opposition to most of the agency’s planned rulemakings, leaving the body in a 2-2 Democrat-Republican split on many of the proposals. That said, proposals like the Safeguards Rule SNPRM have drawn some bipartisan support and may point to some additional rulemaking even without a fifth Commissioner.

#### Innovation low.

Kersten ’21 [Alexander; 4/14/21; Director of the Renewing American Innovation Project @ Center for Strategic and International Studies; Master of Arts in Law and Diplomacy from the Fletcher School of Law and Diplomacy @ Tufts University; “Why Renewing American Innovation? The “Endless Frontier Act” and Biden’s Bid for Maintaining U.S. Global Competitiveness”; https://www.csis.org/analysis/why-renewing-american-innovation-endless-frontier-act-and-bidens-bid-maintaining-us-global; AS]

Today, U.S. companies locked in close competition lack the incentives to maintain in-house capabilities for innovation, like they did in the mid-century era of AT&T’s Bell Labs, DuPont’s central R&D unit, Xerox PARC, and others. Heightened competition, shareholder pressures, and new incentives pushed firms to cut these in-house research units back in the 1980s. Since then, the share of applied research in total corporate R&D expenditures fell from 30 percent in 1985 to below 20 percent in 2015—all well below the peak of almost 40 percent in the 1950s. Of course, the Harvard Business Review in 2014 famously suggested that, despite being the source of great inventions throughout history, China today is a “land of rule-bound rote learners” where breakthroughs are rare. Because of this, some argue the Chinese are not great innovators and China’s state-backed system could itself breed complacency and come back to bite it in the near future. However, even by then, experts warn, the United States will have missed the train on many important technologies and will be struggling to catch up.

Despite Silicon Valley and the millennial generation’s supposed penchant for innovative disruption, U.S. total factor productivity has been slowing since the 1970s. Productivity today is the lowest in more than a century. Innovation, historically a clear driver of U.S. productivity, means the creation of ideas and inventions that are translated into practical value and improve the quality of people’s lives directly or via their ability to grow the economy. Whether measured in terms of triadic patents (patents filed in the United States, Europe, and Japan), most available measures of productivity, or even startup company creation, the United States’ trademark innovative spirit has been gradually dampening for decades. And if not for China’s meteoric rise this century, the United States might still be sleepwalking—optimistically but without a serious plan—instead of waking up to the need for a coherent national strategy.

U.S. Complacency, and How We Got There

Noted George Mason University economist Tyler Cowen and other experts have recognized a growing “complacency” in American life as the indicator of a societal shift from the United States’ early dynamism. From the turn of the twentieth century until roughly the moon landing of 1969, the breakneck pace of groundbreaking technologies that directly affected the quality of life and the structure of U.S. society was simply astounding. Yet, since the first moon landing in 1969, only the internet and its application to more and more parts of our lives can claim to have made any meaningful impact—meaning that physically the world of 1969 is much more like that of 2021 than 1969 was of the early twentieth century. This, of course, is not meant to discredit the great advances in medicine and human genomics made in the last few decades, for example, but to show how the rate of society-changing innovations has not maintained the pace that existed from the mid-nineteenth century until roughly 1969.

In the developed world, this slowdown has unfortunately contributed to wage stagnation, the shrinking of the middle class, and greater political polarization domestically. Coinciding with the waning days of the Soviet Union’s power in the 1980s, the U.S. innovation decline was masked at home. Further, the Soviets of that period no longer posed a technological threat to the United States. Japan on the other hand, posed a great technological threat in the 1980s but was and is a staunch U.S. ally, and not a security threat. Unchallenged abroad and riding the dual-edged optimism of the internet boom of the 1990s and the victory over communism, the United States missed the ways in which it was giving up the advantages that made it such a powerhouse in the mid-twentieth century.

Industry experts have also suggested that the United States put its position up for grabs when it began to outsource important production—which President Biden alluded to during the signing of a February 2021 executive order aimed at reducing supply chain bottlenecks. Starting in the 1970s and 1980s, the United States began to outsource production of semiconductors and displays mostly to Taiwan and South Korea, which today account for almost half of all semiconductor manufacturing capacity in the world. Further, adding in mainland China and Japan shows that a whopping three-quarters of all semiconductor manufacturing capacity comes from East Asia—a sharp departure from 1990, when the United States still provided about 50 percent of all global manufacturing capacity. Removing itself from the production process means the United States misses out on important chances for innovating as well as for developing a strong high-tech manufacturing workforce.

### 2AC – AT: Chevron DA

#### Chevron good – administrative state caps emerging threats.

Bazelon & Posner ’17 [Emily and Eric; 2017; Staff writer and Law Professor at the University of Chicago; New York Tunes, “The Government Gorsuch Wants to Undo,” https://www.nytimes.com/2017/04/01/sunday-review/the-government-gorsuch-wants-to-undo.html]

The 80 years of law that are at stake began with the New Deal. President Franklin D. Roosevelt believed that the Great Depression was caused in part by ruinous competition among companies. In 1933, Congress passed the National Industrial Recovery Act, which allowed the president to approve “fair competition” standards for different trades and industries. The next year, Roosevelt approved a code for the poultry industry, which, among other things, set a minimum wage and maximum hours for workers, and hygiene requirements for slaughterhouses. Such basic workplace protections and constraints on the free market are now taken for granted.

But in 1935, after a New York City slaughterhouse operator was convicted of violating the poultry code, the Supreme Court called into question the whole approach of the New Deal, by holding that the N.I.R.A. was an “unconstitutional delegation by Congress of a legislative power.” Only Congress can create rules like the poultry code, the justices said. Because Congress did not define “fair competition,” leaving the rule-making to the president, the N.I.R.A. violated the Constitution’s separation of powers.

The court’s ruling in Schechter Poultry Corp. v. the United States, along with another case decided the same year, are the only instances in which the Supreme Court has ever struck down a federal statute based on this rationale, known as the “nondelegation doctrine.” Schechter Poultry’s stand against executive-branch rule-making proved to be a legal dead end, and for good reason. As the court has recognized over and over, before and since 1935, Congress is a cumbersome body that moves slowly in the best of times, while the economy is an incredibly dynamic system. For the sake of business as well as labor, the updating of regulations can’t wait for Congress to give highly specific and detailed directions.

The New Deal filled the gap by giving policy-making authority to agencies, including the Securities and Exchange Commission, which protects investors, and the National Labor Relations Board, which oversees collective bargaining between unions and employers. Later came other agencies, including the Environmental Protection Agency, the Occupational Safety and Health Administration (which regulates workplace safety) and the Department of Homeland Security. Still other agencies regulate the broadcast spectrum, keep the national parks open, help farmers and assist Americans who are overseas. Administrative agencies coordinated the response to Sept. 11, kept the Ebola outbreak in check and were instrumental to ending the last financial crisis. They regulate the safety of food, drugs, airplanes and nuclear power plants. The administrative state isn’t optional in our complex society. It’s indispensable.

But if the regulatory power of this arm of government is necessary, it also poses a risk that federal agencies, with their large bureaucracies and potential ties to lobbyists, could abuse their power. Congress sought to address that concern in 1946, by passing the Administrative Procedure Act, which ensured a role for the judiciary in overseeing rule-making by agencies.

The system worked well enough for decades, but questions arose when Ronald Reagan came to power promising to deregulate. His E.P.A. sought to weaken a rule, issued by the Carter administration, which called for regulating “stationary sources” of air pollution — a broad wording that is open to interpretation. When President Reagan’s E.P.A. narrowed the definition of what counted as a “stationary source” to allow plants to emit more pollutants, an environmental group challenged the agency. The Supreme Court held in 1984 in Chevron v. Natural Resources Defense Council that the E.P.A. (and any agency) could determine the meaning of an ambiguous term in the law. The rule came to be known as Chevron deference: When Congress uses ambiguous language in a statute, courts must defer to an agency’s reasonable interpretation of what the words mean.

Chevron was not viewed as a left-leaning decision. The Supreme Court decided in favor of the Reagan administration, after all, voting 6 to 0 (three justices did not take part), and spanning the ideological spectrum. After the conservative icon Justice Antonin Scalia reached the Supreme Court, he declared himself a Chevron fan. “In the long run Chevron will endure,” Justice Scalia wrote in a 1989 article, “because it more accurately reflects the reality of government, and thus more adequately serves its needs.”

### 2AC – AT: Politics

#### Plan popular.

Lande & Vaheesan ’20 [Robert; Professor of Law @ University of Baltimore School of Law and Sandeep; Legal Director @ Open Markets Institute, JD @ Duke; “Preventing the Curse of Bigness Through Conglomerate Merger Legislation,” *Ariz. St. LJ* 52; AS]

B. Growing Political and Public Concern About Corporate Power

Public recognition of, and concern about, corporate political power is growing. An increasing number of politicians and public figures are focused on the political and social—as well as economic—power of large businesses. This concern is not limited to one portion of the political spectrum. A diverse set of voices and organizations are calling for tackling monopoly and oligopoly power in American society.

Prominent liberal and progressive voices have demanded action to curb the economic and political power of large corporations. Many Democrats have made strengthening anti-merger and anti-monopoly law a key pillar of their agenda.80 As mentioned in the introduction, Senator Amy Klobuchar introduced an anti-merger bill that would establish a presumption of illegality involving mergers that combined more than $5 billion in assets.81 This bill would target corporate size directly, although it features a large exemption for pure conglomerate mergers.82

Senator Bernie Sanders weighed in against the AT&T/Time Warner merger and identified the further agglomeration of power as a principal evil of the combination. 83 He stated this consolidation “represents a gross concentration of power that runs counter to the public good.”84 And in early October 2018, Sanders introduced a bill that would break up the largest financial institutions in the United States and establish a cap on size going forward.85 Senator Sanders also promised to combat the excesses of large firms in the agricultural sector, stating that they are devastating to the small farmer and are a direct cause of mass unemployment, lower wages, massive wealth inequality, and a host of social problems. 86 In his October 2019 Corporate Accountability and Democracy plan, presidential candidate Sanders condemned the present system in which “a small group of ultrawealthy CEOs are making the decisions that increasingly determine our economic, environmental and political future.”87

Senator Elizabeth Warren has offered extensive critiques of corporate power, citing undue political influence as one of the evils of corporate bigness.88 In a keynote address at a conference hosted by the Open Markets Institute in December 2017, Senator Warren warned that “[c]oncentrated market power also translates into concentrated political power—the kind of power that can capture our government. And that’s exactly what’s happening, as President Trump and the Republicans in Congress bow to the power and influence of these industrial giants and financial titans.”89 Warren promised that if elected president, she would break up Amazon, Facebook, and Google.90 She published a detailed plan to break up big tech companies, including the creation of a threshold of $25 billion in annual revenue, above which companies would be subject to restrictions and regulations including mandatory divestitures of certain portions of the company. 91 Facebook allegedly removed Warren’s political ads posted on Facebook that called for breaking up Facebook.92

Warren also called for breaking up some of the biggest farming corporations “so that they not only do not have that kind of economic power, so that they’re wiping out competition, so they’re taking all the profits for themselves . . . but also so that they don’t have that kind of political power.”93

These figures are not outliers but are representative of a growing antimonopoly philosophy among Democrats, liberals, and progressives. Others have echoed the concerns expressed by Senators Klobuchar, Sanders, and Warren. (Former) Representative (and current Minnesota Attorney General) Keith Ellison and sitting Representative Ro Khanna established an Antitrust Caucus and called for antitrust enforcers to look beyond just consumer welfare. 94 Alexandria Ocasio-Cortez, the Democratic representative for New York’s 14th Congressional district, has repeatedly voiced concerns about the political might of large financial institutions.95 Senator Cory Booker has lamented the “incredible concentration of economic and political power in this country” 96 and introduced a bill that would establish a moratorium on corporate mergers in agriculture. 97 Former Colorado governor and former presidential candidate John Hickenlooper has called for a major revival in antimonopoly enforcement.98

Indeed, many Democrats have criticized the political power of banks since at least the 2007–08 financial crisis. In early 2009, just six months after the collapse of Lehman Brothers and the start of the worst financial crisis in eighty years, Senator Richard Durbin famously observed that “the banks— hard to believe in a time when we’re facing a banking crisis that many of the banks created—are still the most powerful lobby on Capitol Hill. And they frankly own the place.”99

Among academics and commentators, Joseph Stiglitz and Paul Krugman have repeatedly sounded the alarm about the pervasive market power problem. Stiglitz has opined that “America has a monopoly problem—and it’s huge” and cited the political power of large corporations as subverting democracy. 100 Krugman has similarly recognized the corrosive political power of large corporations. 101 Former Secretary of Labor, Harvard professor, and political commentator Robert Reich applauded Elizabeth Warren’s announced intention to break up big tech and predicted that breaking them up would allow for more privacy, decentralization of information, and more innovation. 102 Barry Lynn, director of the Open Markets Institute think tank, has sounded the alarm that tech giants like Google and Facebook are a threat to core democratic institutions.103 Zephyr Teachout, a progressive law professor, promised that if elected Attorney General of New York she would explore breaking up Google and Facebook using New York state antitrust laws.104

Conservatives in the United States are generally supportive of, and deferential toward, big business interests. Conservative thinkers have indeed played a major role in weakening the antitrust laws and allowing consolidation and monopolization across the economy.105 In the name of “free markets,” conservative politicians and commentators typically favor policies that support large corporations and place few restrictions on them.106

Nonetheless, more and more conservative voices are starting to raise concerns about corporate power. At present, many of the attacks reflect anger at certain companies, more than corporate power in general. Much of the conservative criticism appears driven by the perceived politics of their executives and employees more than a distrust of large corporations and their power in general. For example, Google is viewed as supportive of the Democratic Party and some liberal causes and it has drawn significant criticism from the right. 107 Whatever the underlying motivation though, skepticism of large corporations, or at least a subset of them, is a growing strand of thought on the right.

At least on the surface, the Trump administration reflects this rising antimonopoly tendency among conservatives. President Trump has repeatedly attacked certain powerful corporations.108 He has criticized the power of Amazon and its founder and chief executive officer, Jeff Bezos. 109 He has also condemned vertical integration in telecommunications—specifically calling out the completed merger between Comcast and NBC Universal and the now-completed merger between AT&T and Time Warner—for threatening to “destroy democracy.”110 His former chief strategist and right-wing icon, Steve Bannon, called for public utility regulation of tech platforms like Facebook and Google.111 Former Attorney General Jeff Sessions called for remedying the perceived liberal bias of these same tech platforms.112

Others on the right have sounded similar fears about corporate power. Senator Ted Cruz, who has been a major recipient of campaign contributions from large corporations,113 has endorsed using the antitrust laws against the power of tech platforms. 114 Senator (and former Representative) Marsha Blackburn has criticized platforms like Google and YouTube for failing to practice viewpoint neutrality and called them out for apparent bias against individuals and organizations expressing conservative opinions. 115 Representative Jim Jordan (R-OH) expressed similar concerns and insinuated that stronger governmental measures should be applied to curb the power of giant social media companies.116 Senator Josh Hawley (R-MO) previously served as Missouri’s attorney general and, during his tenure, opened an antitrust investigation into Google.117

Some conservative media outlets have in recent years been vocal critics of corporate power. Breitbart, the hard-right news outlet formerly run by Steve Bannon, has championed antitrust enforcement against large corporations.118 The American Conservative, a nativist right outlet that supports economic populism, has become a consistent critic of corporate power and supporter of renewed antitrust enforcement.119 Tucker Carlson, a commentator on Fox News, has endorsed public checks on Facebook and Google.120

Conservative talk radio icon Rush Limbaugh described what he saw as a pernicious aspect to corporate ownership of media.121 He stated that large, non-media corporations or their CEOs, for example Jeff Bezos purchasing The Washington Post, acquire media to shape policy and thereby increase their power. 122 Even anti-government conspiracy theorist Alex Jones has called on the Trump administration to break up big technology companies because the supposedly left-leaning Silicon Valley titans are using their massive power to stifle conservative viewpoints.123

With rising awareness of, and opposition to, corporate power, an antimerger law that directly targeted corporate size could attract significant popular and political support. Senator Klobuchar’s bill has already introduced size-based limits on consolidation into the political debate.124 Many liberals and progressives appear ready to embrace this idea.125 On the right, support for such a possibility is much less certain.126 Yet, a growing tide of criticism from conservative figures suggests at least one faction on the right may be open to preventing corporate growth through extremely large mergers and acquisitions.127

#### Winners win

Paul Kane 21, Senior Congressional Correspondent and Columnist at the Washington Post, “Day-to-day, Biden’s Agenda Looks Rocky. But Congressional Democrats Say Things Are Far Rosier If You Take The Long View.”, Washington Post, 7/24/2021, https://www.washingtonpost.com/powerpost/biden-agenda-democrats-congress/2021/07/24/83b776be-ebc0-11eb-ba5d-55d3b5ffcaf1\_story.html

There is, so far at least, little fear that Democrats are spreading themselves too thin by eschewing the traditional practice of focusing on a handful of domestic policy issues in the first two years of an administration.

“Political momentum and political capital is like a muscle. The more you exercise it, the more of it you have. It is not like a finite resource that you can run out of if you spend too much of it. What happens is that if we do a lot of positive things, then we’ve got more political clout to do even more positive things,” Sen. Brian Schatz (D-Hawaii) said.

#### Even extreme warming won’t cause extinction

Dr. Toby Ord 20, Senior Research Fellow in Philosophy at Oxford University, DPhil in Philosophy from the University of Oxford, The Precipice: Existential Risk and the Future of Humanity, Hachette Books, Kindle Edition, p. 110-112

But the purpose of this chapter is finding and assessing threats that pose a direct existential risk to humanity. Even at such extreme levels of warming, it is difficult to see exactly how climate change could do so. Major effects of climate change include reduced agricultural yields, sea level rises, water scarcity, increased tropical diseases, ocean acidification and the collapse of the Gulf Stream. While extremely important when assessing the overall risks of climate change, none of these threaten extinction or irrevocable collapse.

Crops are very sensitive to reductions in temperature (due to frosts), but less sensitive to increases. By all appearances we would still have food to support civilization.85 Even if sea levels rose hundreds of meters (over centuries), most of the Earth’s land area would remain. Similarly, while some areas might conceivably become uninhabitable due to water scarcity, other areas will have increased rainfall. More areas may become susceptible to tropical diseases, but we need only look to the tropics to see civilization flourish despite this. The main effect of a collapse of the system of Atlantic Ocean currents that includes the Gulf Stream is a 2°C cooling of Europe—something that poses no permanent threat to global civilization.

From an existential risk perspective, a more serious concern is that the high temperatures (and the rapidity of their change) might cause a large loss of biodiversity and subsequent ecosystem collapse. While the pathway is not entirely clear, a large enough collapse of ecosystems across the globe could perhaps threaten human extinction. The idea that climate change could cause widespread extinctions has some good theoretical support.86 Yet the evidence is mixed. For when we look at many of the past cases of extremely high global temperatures or extremely rapid warming we don’t see a corresponding loss of biodiversity.87

[FOOTNOTE]

We don’t see such biodiversity loss in the 12°C warmer climate of the early Eocene, nor the rapid global change of the PETM, nor in rapid regional changes of climate. Willis et al. (2010) state: “We argue that although the underlying mechanisms responsible for these past changes in climate were very different (i.e. natural processes rather than anthropogenic), the rates and magnitude of climate change are similar to those predicted for the future and therefore potentially relevant to understanding future biotic response. What emerges from these past records is evidence for rapid community turnover, migrations, development of novel ecosystems and thresholds from one stable ecosystem state to another, but there is very little evidence for broad-scale extinctions due to a warming world.” There are similar conclusions in Botkin et al. (2007), Dawson et al. (2011), Hof et al. (2011) and Willis & MacDonald (2011). The best evidence of warming causing extinction may be from the end-Permian mass extinction, which may have been associated with large-scale warming (see note 91 to this chapter).

[END FOOTNOTE]

So the most important known effect of climate change from the perspective of direct existential risk is probably the most obvious: heat stress. We need an environment cooler than our body temperature to be able to rid ourselves of waste heat and stay alive. More precisely, we need to be able to lose heat by sweating, which depends on the humidity as well as the temperature.

A landmark paper by Steven Sherwood and Matthew Huber showed that with sufficient warming there would be parts of the world whose temperature and humidity combine to exceed the level where humans could survive without air conditioning.88 With 12°C of warming, a very large land area—where more than half of all people currently live and where much of our food is grown—would exceed this level at some point during a typical year. Sherwood and Huber suggest that such areas would be uninhabitable. This may not quite be true (particularly if air conditioning is possible during the hottest months), but their habitability is at least in question.

However, substantial regions would also remain below this threshold. Even with an extreme 20°C of warming there would be many coastal areas (and some elevated regions) that would have no days above the temperature/humidity threshold.89 So there would remain large areas in which humanity and civilization could continue. A world with 20°C of warming would be an unparalleled human and environmental tragedy, forcing mass migration and perhaps starvation too. This is reason enough to do our utmost to prevent anything like that from ever happening. However, our present task is identifying existential risks to humanity and it is hard to see how any realistic level of heat stress could pose such a risk. So the runaway and moist greenhouse effects remain the only known mechanisms through which climate change could directly cause our extinction or irrevocable collapse.

This doesn’t rule out unknown mechanisms. We are considering large changes to the Earth that may even be unprecedented in size or speed. It wouldn’t be astonishing if that directly led to our permanent ruin. The best argument against such unknown mechanisms is probably that the PETM did not lead to a mass extinction, despite temperatures rapidly rising about 5°C, to reach a level 14°C above pre-industrial temperatures.90 But this is tempered by the imprecision of paleoclimate data, the sparsity of the fossil record, the smaller size of mammals at the time (making them more heat-tolerant), and a reluctance to rely on a single example. Most importantly, anthropogenic warming could be over a hundred times faster than warming during the PETM, and rapid warming has been suggested as a contributing factor in the end-Permian mass extinction, in which 96 percent of species went extinct.91 In the end, we can say little more than that direct existential risk from climate change appears very small, but cannot yet be ruled out.

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### XT 2AC: W/M

#### Expansion of implied immunity reduces the scope of antitrust law.

Howard **SHELANSKI** Law @ Georgetown, Administrator of OIRA 2013-2017, Director of the Bureau of Economics at the Federal Trade Comission and former Chief Economist for the FCC ’**11** “THE CASE FOR REBALANCING ANTITRUST AND REGULATION” *Micighan Law Review* 109 (5) p. 705-706

f. Trinko's Broad Potential Effect on Antitrust in Regulated Industries In sum, the Court in Trinko went beyond the parameters of the question it set out to answer at the start of the opinion. The Court did not simply rule that pleading a violation of the 1996 act's regulatory duty to deal is insuffi cient to state a claim under section 2 of the Sherman Act. It accomplished that result, but as a lesser-included effect of a much broader ruling that limited refusal-to-deal liability under section 2 in a more restrictive man ner than precedent would suggest, introduced a cost-benefit rationale for effectively barring new monopolization claims under section 2 against regulated firms even if those claims are pleaded purely and specifically as antitrust rather than regulatory violations, and left open how directly and actively regulation must address the conduct that is the basis for such an antitrust claim before the Court's rule against novel antitrust claims should apply. While the Court's distinction between established and novel antitrust claims might appear to preserve the 1996 act's savings clause, it does so more as a formal than practical matter.

The net result of Trinko is a reduction of the scope of antitrust enforcement against regulated firms notwithstanding the presence of an express antitrust savings clause. Even if antitrust enforcement would not conflict with regulation, and even if regulation does not so alter the marketplace as to make antitrust inquiries moot or difficult to undertake, plaintiffs will face an uphill battle in pursuing regulated firms under the Sherman Act. Plaintiffs will bear the heavy burden of proving that their claims fall under clearly established grounds for antitrust liability, and courts will assess those claims through a presumption that in the presence of regulation antitrust will have benefits too small to justify its costs.

#### Implied immunity contracted the scope of the antitrust statutes.

Howard **SHELANSKI** Law @ Georgetown, Administrator of OIRA 2013-2017, Director of the Bureau of Economics at the Federal Trade Comission and former Chief Economist for the FCC ’**11** “THE CASE FOR REBALANCING ANTITRUST AND REGULATION” *Micighan Law Review* 109 (5) p. 708

b. Emphasis on the Costs of Erroneous Antitrust Enforcement The Credit Suisse analysis is important because it marks the first time in the line of implied-immunity cases that the Court has found regulation to imply immunity from legitimate and nonrepugnant antitrust claims. In so doing, the Court emphasized the potential effects of erroneous interpretations of fact by future courts and the costs of erroneous conflicts with the securities laws without mentioning the costs of errors on the other side: regulatory approval of, or failure to enforce against, conduct that the agency mistakenly places on the legitimate side of the line. Ultimately, the Court favored regulation for two reasons. First, antitrust enforcement could deter behavior the statute approves or encourages while the opposite effect of regulation on the goals of antitrust is unlikely or expressly dominated by Congress's specific statutory objectives.111 Second, injured parties still have a remedy from the SEC even if barred from pursuing antitrust claims.112 Both reasons are open to question. The case itself involved concerted conduct at the heart of what the antitrust laws prohibit, and the SEC had in fact failed to reach a resolution or remedy for precisely the kind of conduct the plaintiffs were alleging. By its logic and likely practical effect, Credit Suisse contracted the scope of antitrust enforcement and expanded the scope of implied immunity in industries regulated by statutes that fail expressly to save the operation of antitrust law.

#### Implied immunity is granted in the financial sector.

Weinstein ’19 [Samuel; Assistant Professor of Law @ Benjamin N. Cardozo School of Law, Former Counsel to the Assistant Attorney General @ U.S. Department of Justice's Antitrust Division; “Financial Regulation in the (Receding) Shadow of Antitrust,” *Temple Law Review*, 91(3), p. 447-512; AS]

In cases involving financial services, however, and especially in the securities-law context, courts have relied on Credit Suisse to find antitrust immunity under certain circumstances. In Electronic Trading Group, LLC v. Banc of America Securities, LLC, 129 the Second Circuit determined that the securities laws precluded application of the antitrust laws in a case involving alleged price fixing of borrowing fees for short sales of certain securities. 130 The court found that all four Credit Suisse factors were satisfied in this case: short selling is "within the heartland of the securities business," 131 the SEC had the authority to supervise the relevant activities, it was actively regulating those activities, and "antitrust liability would create actual and potential conflicts with the securities regime." 132 The SEC permitted prime brokers who set the borrowing fees to communicate with one another about the availability and price of securities, a practice which antitrust liability might chill. 133 This was the actual conflict. 134 The potential conflict was linked to the chance that the SEC might decide to directly regulate the borrowing fees. 135

The district court in Mayor and City Council of Baltimore v. Citigroup, Inc. 136 reached a similar conclusion in a case involving an alleged conspiracy by broker-dealers of auction rate securities (ARS) to stop supporting the auction market. Before the 2008 financial crisis, these broker-dealers often would buy ARS from their own accounts to ensure that auctions did not fail due to insufficient demand. 137 In early 2008, almost all these broker-dealers decided to stop this practice, with the result that on February 13, 2008, 87% of all ARS auctions failed, harming their issuers. 138 The defendants raised an implied immunity defense to the plaintiffs' Sherman Act section 1 claim. 139 The court applied the Credit Suisse factors to determine if the defendants were insulated from the antitrust allegations. 140 It found that the ARS market falls in the "[h]eartland of [s]ecurities [r]egulation"; that the SEC had "[c]lear and adequate authority" to regulate that market; and that the agency had "actively exercised" that authority, including by investigating the alleged practices the plaintiffs challenged. 141 Indeed, the SEC was involved in an ongoing investigation of the February 2008 collapse of the ARS market, which resulted in significant settlements requiring broker-dealers to buy ARS from clients at par value. 142 In analyzing the final Credit Suisse factor (conflict between the securities and antitrust laws), the court found the same "fine line-drawing" requirement in this case that the Supreme Court found in Credit Suisse. 143 This was because the SEC permitted or even promoted certain forms of interaction among the broker-dealers, including allowing ARS issuers to engage multiple broker-dealers to "jointly underwrite ARS offerings and jointly manage ARS auctions." 144 The court credited the defendants' argument that, given the agency's permissive attitude toward certain joint activities, "it is reasonable to expect that the SEC may permit further collective action or joint bidding by broker-dealers to restore liquidity to the ARS market." 145 It would be "unreasonable to expect" ARS broker-dealers to distinguish joint communications that would be permissible under the securities laws from those that would be unlawful under the antitrust laws. 146 Putting ARS broker-dealers in that position, the court found, would disincentivize them from engaging in joint conduct the securities laws would permit or encourage. 147 "Therefore, the required fine line-drawing is best left to the 'securities-related expertise' of the SEC . . . ." 148

One district court to date has relied on Credit Suisse to find implied antitrust immunity in a financial market governed by the Commodity Exchange Act, rather than the securities laws. U.S. Futures Exchange v. Board of Trade of the City of Chicago 149 involved CFTC approval of certain rules the Chicago Board of Trade (CBOT) proposed regarding transfer of its treasury futures business between two clearinghouses. 150 The plaintiffs in that case, who backed a competing treasury futures exchange, alleged that CBOT's rules violated the antitrust laws by depriving the competing exchange of liquidity. 151 The defendants argued that their conduct enjoyed implied antitrust immunity because the CFTC had formally approved the rules in question. 152 The court found that while the implied immunity doctrine arose in the SEC context, depending on the facts, it also could apply in cases implicating the Commodity Exchange Act. 153 Applying Credit Suisse to the facts before it, the court determined that implied antitrust immunity was appropriate. 154 It found that the CFTC had regulatory authority to supervise the defendants' suspect conduct, that it exercised that regulatory authority, that there was a risk of conflicting guidance because the "CFTC expressly approved defendants' rules as consistent with the CEA, notwithstanding possible anticompetitive effects," and that the conflict affected practices that "lie at the heart" of the CFTC's regulatory responsibilities. 155 In reaching this decision, the court relied heavily on the CFTC's express approval of the defendants' accused conduct. 156

#### Asset management companies are financial entities regulated by the SEC.

Investopedia ’18 [Investopedia Team; 11/20/18; “How Are Asset Management Firms Regulated?”; https://www.investopedia.com/ask/answers/041615/how-are-asset-management-firms-regulated.asp; AS]

The asset management industry is largely governed by two bodies—the Securities and Exchange Commission (SEC) and the Financial Industry Regulatory Authority (FINRA). Although they are separate, there is an overlap between these and other agencies. In fact, the regulatory picture facing a particular firm can get rather complex. Keep reading to find out more about how these and other agencies regulate the asset management industry and keep them in check.

KEY TAKEAWAYS

Asset management firms provide their clients with advisory and financial planning services and investment strategies.

The SEC regulates investment advisors over $110 million in assets under management.

FINRA enforces SEC rules and regulations among members and is responsible for overseeing brokerage firms and individual brokers.

Other agencies that regulate asset managers include the Federal Reserve, the U.S. Treasury, and the FDIC.

What Is the Asset Management Industry?

The asset management industry is just one part of the broader financial services sector. It is made up of different investment firms that offer a wide variety of services such as advisory services and financial planning. They also provide their clients with investment strategies and options such as mutual funds, equities, fixed income, private investment funds, and exchange-traded funds (ETFs). These services and strategies are tailored by an asset manager—a financial professional employed by the firm.

Securities and Exchange Commission

The Securities and Exchange Commission (SEC) was established in 1934 by the Securities Exchange Act and is an independent government agency. It is mandated with protecting investors and ensuring fairness in securities markets. The SEC has broad regulatory powers relating to U.S. securities markets, including the oversight of exchanges and the enforcement of regulations.

Any firm that gives investment advice in securities is considered an investment advisor. This includes firms that manage client portfolios. The SEC regulates investment advisors over $110 million in assets under management (AUM). Advisors who manage assets below this level are required to register with their states, as well as any representatives of investment advisors.

Registration doesn't mean an advisor is endorsed by the SEC—instead, it means that the advisor agrees to adhere to the agency's rules.

The SEC asserts that registration is not an endorsement of any given investment manager or adviser. Instead, it just means that the firm has made certain disclosures and agrees to adhere to SEC rules. Firms regulated by the SEC are subject to unscheduled audits.

Financial Industry Regulatory Authority

The Financial Industry Regulatory Authority—commonly referred to as FINRA—is a self-regulating organization that operates under the scope of the SEC. It is charged with enforcing SEC rules and regulations among its members and has the responsibility of overseeing the activities of brokerage firms and individual brokers. Anyone who sells securities to the public as a stockbroker or as a representative of a broker-dealer is almost certainly regulated by FINRA.

## Prohibit Oligopoly CP

### XT – AT: Downstream Enforcement CP

#### Downstream enforcement blocks efficiency gains – policing common ownership is key.

Posner ’17 [Eric et al; Kirkland & Ellis Distinguished Service Professor @ University of Chicago Law School; Fiona Scott Morton; Theodore Nierenberg Professor of Economics @ Yale School of Management; and E. Glen Weyl; Senior Researcher @ Microsoft Research, Visiting Senior Research Scholar @ Yale University Department of Economics and Law School; “A Proposal to Limit the Anticompetitive Power of Institutional Investors,” *Antitrust Law Journal*, 81(3), p. 669-728; AS]

The principle behind our proposal is that it is easier to rearrange financial holdings than it is to change the organization of real assets. The efficiency of the U.S. economy is not advanced if the rise of institutional investors blocks the ability of manufacturers of, washing machines, for example, to combine to achieve economies of scale. There is no realistic alternative to achieving those real gains other than a combination of real assets. By contrast, rearranging the financial claims on those assets into different institutional investors costs very little and may have significant ancillary corporate governance benefits. Under our proposal, when market shares change due to a merger, institutional investors will automatically adjust their holdings in response and thereby minimize anticompetitive effects. Under our approach the agencies can conduct merger reviews as they normally do, by weighing efficiencies and competition between product market competitors, without regard to which mutual funds might be holding what share of which merging party. 1 2 7

#### Downstream enforcement cannot retroactively prevent horizontal shareholding.

**Elhauge ’20** [Einer; Professor of Law @ Harvard; “How Horizontal Shareholding Harms Our Economy - And Why Antitrust Law Can Fix It,” *Harvard Business Law Review*, 10(2), p. 207-286; AS]

To be sure, considering horizontal shareholding only when assessing mergers or cross-shareholdings is clearly just a second-best solution. Such an approach would do nothing to undo all the anticompetitive horizontal shareholding we already have. Nor would it prevent new horizontal stock acquisitions that create anticompetitive effects in already concentrated markets. And in at least some markets, such an approach would result in a combination of high horizontal shareholding with low market concentration even when it would be more efficient to avoid anticompetitive effects with the opposite combination of lower horizontal shareholding and higher market concentration. Thus, it would be far more preferable to directly tackle horizontal shareholding, given that the law clearly does directly ban horizontal stock acquisitions when they have anticompetitive effects and that in such cases any anticompetitive horizontal shareholdings can be undone under current law without losing any meaningful diversification benefits.3 60 But horizontal shareholding does lower the concentration levels that traditional merger analysis should tolerate, and the less the law does to directly tackle horizontal shareholding, the more it lowers those tolerable concentration levels.

1. **Too late for downstream enforcement – we must police ownership, not the portfolio firms.**

Posner ’21 [Eric; Kirkland & Ellis Distinguished Service Professor @ University of Chicago Law School; “Policy Implications of the Common Ownership Debate,” *The Antitrust Bulletin*, 66(1), p. 140-149; AS]

Stricter Antitrust Enforcement of Portfolio Firms. Theory and evidence say that common ownership’s effect on the competition of underlying portfolio firms is in part a function of the competitiveness of the markets in which those firms operate.26 If you hold constant the degree of common ownership of the airline industry, and add more airlines, ticket prices should decline. This suggests that an alternative or (more likely) supplemental policy instrument for addressing common ownership is greater antitrust enforcement (or regulation) of the underlying markets. A simple approach would be to lower the HHI thresholds in the Horizontal Merger Guidelines, so that fewer mergers occur and industries remain more competitive. Courts and antitrust agencies could also pay greater attention to efforts by common owners to orchestrate cooperative arrangements among competing portfolio firms. Where common owners call meetings between such firms, offer general directions to them, and so on,27 the existence of a common owner with large stakes in the competing firms could be a “plus factor” for purposes of section 1 analysis where collusion can be inferred in the absence of a documented agreement.

This approach recognizes that the existing Merger Guidelines disregard a negative externality from mergers—that the incremental concentration of the market caused by a merger will increase the attractiveness of stakes in the firms in the industry for common owners, giving them an incentive to acquire stakes or increase their stakes, and then use their power to further limit competition between the merged firm and its remaining competitors. Or, to put the point differently: we should be willing to give up some scale economies in order to reduce the risk that competition will be excessively reduced in the future through the instrument of common ownership. Merger review currently recognizes that partial acquisitions (i.e., where one firm obtains a minority stake in its competitors) can reduce competition;28 this logic extends straightforwardly to cases where a third-party investor has partial stakes in the two competing firms.

The problem here is that U.S. product markets are already highly concentrated; it may be too late for an aggressive merger policy to make much of a different, at least in the short to medium term. And if economies of scale in the product market favor large firms, then a more aggressive merger policy may on net cause harm.

## Economy

### XT 2AC 4: Investment Profit Gap

Finishing Philippon

Let us put our theory to work. Figure 4.3 shows q and the investment rate. Tobin’s q has been rescaled to fit on the same graph. You can see that, as predicted by the fundamental law of investment, the two series are highly correlated: they move up and down together. But you can also see that after 2000, the investment rate seems to be lower than what one would predict based on q. In fact, if we cumulate the residual difference between the investment rate and q, we find that, by 2015, the capital stock is about 10 percent lower than it should be.\*

This fact is interesting for us because this is exactly what the decreasing competition hypothesis would predict. The reason is intuitive. When q is above 1 in an industry, it means that there are rents left on the table. If the industry is competitive, these rents should be competed away: either incumbents would expand (as in our example), or new firms would enter. Over time, the capital stock would increase, and q would decrease toward 1. On the other hand, if the industry is not competitive, then investment would not increase as much, and q would remain above 1. If you believe that domestic competition has declined in the US economy, then you would expect a growing gap between q and investment, exactly as in Figure 4.3. Figure 4.3 supports the hypothesis that the US has experienced decreasing domestic competition.

We see a growing residual between Tobin’s q and net investment in the aggregate, but we can go a lot further. As we have discussed in previous chapters, concentration has increased more in some industries than in others. If the decreasing competition hypothesis is correct, then we would expect the investment-q residual to come from concentrating industries.

Figure 4.4 shows that this is exactly what we observe. We split industries into two groups based on the evolution of their HHIs. One group includes the ten industries where HHIs have increased the most; the other group the ten industries where HHIs have increased the least (as it turns out, HHIs are roughly constant in that group). We then es-timate a fundamental law of investment for both groups of industries, and we compute the residuals. Figure 4.4 plots the cumulative resid-uals. You can see that the gap is essentially zero for nonconcentrating industries and more than 20 percent for the concentrating ones. On average, this is consistent with a 10 percent aggregate cumulative gap as ar- gued earlier. The key point is that the aggregate gap comes entirely from concentrating industries.

Figure 4.4 is inconsistent with the basic version of the Rise of Super- star Firms hypothesis. The historical evidence suggests that successful firms and industries maintain high levels of investment. If concentration was a sign of efficiency, then, we would expect to see more investment in concentrating industries. Figure 4.4 shows that we observe exactly the opposite across industries.

In my work with Germán Gutiérrez, we also uncover a negative relation between concentration and investment across firms. We find that industry leaders’ shares of investment and capital have decreased while their profit margins have increased. This is the opposite of what a hypothesis of superstar firms would predict. Under such a hypothesis, as leaders become more efficient, they should draw in more resources. Efficient firms typically expand by hiring more capital and more labor. In recent years, however, they have done the opposite. This is exactly what a decreasing competition hypothesis would predict. It is incon- sistent with a hypothesis of superstar firms unless their investment and productivity are both badly mismeasured. Let us consider this possibility.

#### Weak investment harms productivity growth in concentrated industries.

Philippon ’19 [Thomas; Max L. Heine Professor of Finance @ Stern School of Business NYU; *The Great Reversal*, p. 79]

The pattern of investment and productivity growth is inconsistent with the hypothesis of rising superstar firms, which holds efficiency gains to be the root cause of increasing concentration. If concentration were reflective of increasing efficiency, then we should see more productivity growth in places where concentration increases. We saw some of it during the 1990s, but the opposite happened during the 2000s. The evolution of productivity is consistent with the investment choices that firms make. Industry leaders’ shares of investment and capital have decreased, and their profit margins have increased. Given that leaders in concentrating industries do not feel the urge to invest and choose to increase their pay-outs to shareholders, it is hardly surprising that productivity growth is lackluster.

#### Higher profits aren’t being used for investment and innovation – economy-wide and international comparative data proves.

Philippon ’20 [Thomas et al; Max L. Heine Professor of Finance @ Stern School of Business NYU; Additional Authors: Germán Gutiérrez Matias Covarrubias “From Good to Bad Concentration? US Industries over the Past 30 Years” NBER Marcoeconomics Annual 34 p. 1-5]

We analyze the evolution of concentration in US industries over the past 40 years. Figure 1 summarizes the four stylized facts that motivate our work. Concentration and profits have increased, while the labor share and investment have decreased (fig. 1a–1d, respectively).1 This is true across most US industries as shown by Autor et al. (2017a; labor shares), Gutiérrez and Philippon (2016; investment and profits), and Grullon, Larkin, and Michaely (2019; concentration and profits). Although these stylized facts are well established, we are still far from consensus on what is causing them and what they tell us about the health of the US economy. The most prominent explanations can be organized in two groups:

• Good concentration: The observed trends may be explained by good sources of concentration, such as increases in the elasticity of substitution (henceforth j) or technological change leading to increasing returns to scale and intangible capital deepening (henceforth g). Autor et al. (2017a, 180) argue for j, noting that concentration reflects “a winner take most feature” explained by the fact that consumers have become more sensitive to price and quality due to greater product market competi- tion. Haskel and Westlake (2017) argue for g, emphasizing how scal- ability and synergies of intangible capital can lead to increasing returns to scale. Under j and g, concentration is good news: more productive firms expand yet competition remains stable or increases.

• Bad concentration: Alternatively, the trends may reflect bad sources of concentration, which we summarize as rising barriers to competition (henceforth k).2 Furman (2015, 12), for example, shows that “the dis- tribution of returns to capital has grown increasingly skewed and the high returns increasingly persistent” and argues that it “potentially re- flects the rising influence of economic rents and barriers to competition.”3

According to k, concentration is bad news: it increases economic rents and decreases innovation.

The goal of this paper is to differentiate between these explanations at the aggregate and industry level. Before discussing our approach and re- sults, however, it is important to clarify three points. First, these hypoth- eses are not mutually exclusive. Leaders can become more efficient and more entrenched at the same time—which can explain their growth but also the rise of barriers to entry (Crouzet and Eberly 2018). Indeed, a com- bination of these explanations is often heard in the discussion of internet giants Google, Amazon, Facebook, or Apple.

Second, intangibles can play a role in all theories. They may increase the elasticity of substitution (e.g., through online price comparison), in- crease returns to scale (e.g., organizational capital), and also create bar- riers to entry (e.g., through patents and/or the compilation of Big Data).

Third, these specific patterns are unique to the US. Figure 2a shows that profits margins have increased in the US, but they have remained stable or decreased in Europe, Japan, and South Korea. Figure 2b shows that concentration has increased in the US but it has remained roughly stable in Europe and Asia.4 Last, figure 2c shows that the labor share has declined in the US, but it has remained stable in Europe since 2000.5 Assuming that all advanced economies use similar technologies, the unique- ness of US trends suggests that technology alone cannot explain the trends.

Approach. We begin by using a sequence of simple models to clarify the theories of good and bad concentration. We derive a broad set of predictions regarding the joint evolution of competition, concentration, productivity, prices, and investment under each theory. We then evaluate these predictions empirically, first at the aggregate level, then at the industry level. Although some of these predictions have been studied by the literature, we contribute new facts/results for each of them. We also clarify several measurement issues and, perhaps more important, we show how the combination of all the facts helps us differentiate good and bad concentration.

Aggregate results. Table 1 summarizes our aggregate results. It contrasts the theoretical prediction of theories of good and bad concentration against the observed evolution of each measure.6 Predictions in the right column are consistent with the data after 2000. Predictions in the middle column are not.

According to theories of good concentration, the growth of large firms is an efficient response to technological change. Under j, competition in- creases as consumers become more price elastic. More productive firms expand to capture a larger share of the market, while less productive firms either shrink or exit. Economic activity reallocates toward more productive firms, increasing industry-level productivity and decreasing prices. Under g, technological change leads to increasing returns to scale. Large firms again respond by expanding, which increases concentration and productivity while decreasing prices. The productivity gap between small and large firms grows.

If the economy experiences good concentration, we should observe: (i) concentration driven in part by exit; (ii) concentration associated with higher productivity and lower prices; and (iii) stable or increasing investment rates relative to Tobin’s Q—particularly for leaders. If the in- crease is driven by j, we should also find higher volatility of market shares as demand responds more strongly to cost shocks. If the increase is driven by g, however, the prediction could flip: volatility of market shares could fall as leaders’ comparative advantages become (potentially) more persistent (e.g., Aghion et al. 2019).

We already know that j and g are important for certain industries during certain periods. For instance, they describe well the evolution of the retail industry from 1990 to 2005 (Basu et al. 2003; Blanchard 2003). The rise of superstores and e-commerce led to more price competition, higher concentration, higher productivity, and the exit of inefficient retailers (Hortacsu and Syverson 2015). The question is whether these theories explain the evolution of the economy as a whole over the past 30 years. We test these predictions in the data and find some support for them during the 1990s. During this period, concentration is correlated with ris- ing productivity, falling prices, and high investment, particularly in in- tangibles. Since 2000, however, these predictions are rejected by the data. The correlation between concentration and productivity growth has become negative, while the correlation between concentration and price growth has become positive; exit rates have remained stable; investment relative to Q has fallen; and market shares have become more persistent. Estimates of returns to scale based on the methodology of Basu, Fernald, and Kimball (2006) have remained stable, as have other estimates in the recent literature (Ho and Ruzic 2018; Diez, Fan, and Villegas-Sanchez 2019). All these predictions are consistent with the k theory.

Barriers to competition therefore emerge as the most relevant explanation over the past 15 years. It correctly predicts the evolution of prof- its, entry, exit, turnover, prices, productivity, and investment in most industries.

### XT 2AC: Diversification v Investment

#### Losses in diversification are negligible.

Posner ’17 [Eric et al; Kirkland & Ellis Distinguished Service Professor @ University of Chicago Law School; Fiona Scott Morton; Theodore Nierenberg Professor of Economics @ Yale School of Management; and E. Glen Weyl; Senior Researcher @ Microsoft Research, Visiting Senior Research Scholar @ Yale University Department of Economics and Law School; “A Proposal to Limit the Anticompetitive Power of Institutional Investors,” *Antitrust Law Journal*, 81(3), p. 669-728; AS]

E. SOCIAL WELFARE

We have so far made our argument in a way that is compatible with standard legal analysis, showing that our policy would identify presumptively anticompetitive behavior and then demonstrating that the costs of our policy-to diversification, for example-are not great enough to rebut the presumption. Here, we take a somewhat different approach deriving from welfare economics. We show that under plausible assumptions, our policy would generate large gains in social welfare and its benefits under any plausible assumptions would be an order of magnitude or two greater than its costs.

The analysis that follows is extremely rough and uses many specific assumptions for highly uncertain numbers. However, we try to choose standard parameter values and err on the side of conservatism. Our conclusion is that benefits dwarf costs by so many orders of magnitude that it is implausible that any reasonable adjustment to parameter values would change our conclusion. We focus on the principal benefits and costs of our proposal: the benefits to competition and the costs to diversification.

Suppose instituting our policy reduces the MHHJ of the industries that it affects from on average 4000 to 2500. This assumption is reasonable as Azar, Schmalz, and their co-authors find that the aggregate MHHIA in banking and airlines is 1000-2000 and starts at 3500-5000 in local markets. The analysis in Part I.C. suggests our policy would eliminate 90 percent of this harm. We then assume that the industries are characterized by a linear demand and constant marginal cost. These are conservative assumptions as they lead to quite low rates of pass-through of costs (and thus market power) into prices relative to those typically found in empirical studies. Along with Michal Fabinger, one of us showed that the pass-through rate is the leading determinant of the degree to which market power leads to transfers from consumers to producers and deadweight loss.' We further assume that the industry has a constant (in prices, not across scenarios) "conduct parameter" (fraction of the marginal consumer surplus translated into industry mark-ups) equal to HHI/10,000, as would be the case in a symmetric Cournot model.11 9 We treat the profit of the industry prior to the policy as a benchmark for the return on capital in that industry and measure all effects relative to this benchmark. This will allow us to compare the effects on the competition side to effects on diversification.

In this case, when MHHI is 4000, profits are 41 percent of maximum potential surplus, consumer surplus is 51 percent, and deadweight loss makes up the remaining 8 percent. When MHHI falls to 2500, deadweight loss falls by 4 percent of surplus while profits fall by about 9 percent of potential surplus and thus consumer surplus rises by about 13 percent of potential surplus. The change in industry structure transfers about 22 percent of profits to consumers from firms and generates about 10 percent of additional pure social gain from reduced deadweight loss, all as a percent of pre-intervention profits. While there is a wide-ranging debate about how to properly weigh consumer and firm surplus, one middle-of-the-road proposal was made by Nathaniel Hendren, who suggested (based on estimated marginal deadweight loss of taxation) valuing profits at 77 percent of consumer surplus. 120 Under this metric the social welfare gain from this change is 20 percent of ex ante firm profits. 1 2 1

On the cost side, we calculated the diversification losses associated with what we consider to be an extreme scenario: that it directly causes the loss of 1 percent of the potential diversification gains. Using the numbers of Michael Brandt et al., who update Campbell et al.'s analysis, this would imply an increase in the standard deviation of portfolio returns to 0.1525 from the annual standard deviation of roughly 0.15 that Campbell et al. estimate exists in an optimally diversified market portfolio. 122

How costly is such added risk? If investors have constant relative risk aversion, as is typically assumed, the cost of relative fluctuations in their wealth in units of percent increase in the expected wealth level is roughly half of the variance of their wealth multiplied by their risk-aversion coefficient. The most commonly used and widely supported risk-aversion coefficient is unity. This corresponds to investors having utility that is a logarithmic function of their wealth, as found in numerous studies. 1 23 This implies that the loss of diversification would be worth approximately 0.04 percent of asset holdings in terms of consumer utility. Note that average stock returns themselves are not affected by the policy. The only cost to consumers is slightly less diversification within any one large mutual fund. A consumer that chose to hold two mutual funds managed by different corporations would experience an even smaller reduction in diversification. A consumer invested in a very small mutual fund (note that these funds comprise about 30-40 percent of stock market holdings) would experience zero reduction in diversification. Furthermore, many investors are, in practice, already imperfectly diversified. Thus 0.04 percent is likely larger than the actual reduction in diversification that would occur in practice.

#### The plan increases inter-industry diversification.

Posner ’17 [Eric et al; Kirkland & Ellis Distinguished Service Professor @ University of Chicago Law School; Fiona Scott Morton; Theodore Nierenberg Professor of Economics @ Yale School of Management; and E. Glen Weyl; Senior Researcher @ Microsoft Research, Visiting Senior Research Scholar @ Yale University Department of Economics and Law School; “A Proposal to Limit the Anticompetitive Power of Institutional Investors,” *Antitrust Law Journal*, 81(3), p. 669-728; AS]

B. DIVERSIFICATION EFFECTS

The major objection to our strategy is that it could limit the diversification available to investors. For example, investors will not be quite as well diversified with only one airline firm in their portfolio instead of four. There are two reasons that this cost is much smaller than the gains from our proposal.

First, if our policy did limit diversification within an industry, the size of this effect would be limited. A long literature in finance has considered how many stocks a portfolio must have to achieve effective diversification. While calculations vary depending on methodology, one highly respected study is by John Campbell et al.101 The authors break major common stocks into 49 industries; industries in this definition are very broad indeed: all financial services, for example, is a single industry. They find that a randomly chosen portfolio of any 49 stocks-one from each industry-would achieve more than 90 percent of the available diversification (reduction in the standard deviation of a portfolio) in the market. In reality, our proposal would allow much greater diversification than this because industries would be defined more narrowly, yielding hundreds rather than dozens; institutions would be allowed to own multiple firms per industry provided they complied with the policy; an important component of variance in individual stock returns is accounted for by an industry component, so diversifying across industries is substantially better than diversifying within industries (or randomly, both within and across industries); our proposal only affects holdings in concentrated oligopoly industries, not all industries; sufficiently small or purely passive institutions could fully diversify;

and our proposal would not restrict diversification into firms that primarily sell in foreign countries, a form of diversification that is greatly under-exploited at present. 102

These last two points are worth emphasizing. Most U.S. institutional stock holdings are held by many small funds. These funds-holding less than 1 percent of any company-would be unaffected by our policy. We expect most U.S. funds would fall into the safe harbor and make no changes to their investment strategy. Likewise, funds that invest in companies that primarily compete in other geographic markets are likely to be unaffected by our policy. Furthermore, under standard constant relative risk aversion preferences, the value of reducing the standard deviation of returns is greatest when this standard deviation is largest, so that these last units of diversification must have the lowest economic value in any case. Overall, we therefore believe our proposal would preserve roughly 99 percent of the gains from diversification for typical investors, even if investors chose to hold only the funds offered by a single institution. We discuss the maximum magnitude of the welfare gain from diversification below.

### XT 2AC 3: Stocks Irrelevant

#### The stock market isn’t the economy – high stock valuation reflects the incomes of the richest, NOT overall output.

Zuckerman ’19 [Sam; 7/26/19; and Martin Lettau; Professor of Finance @ Cal Berkeley; “How the stock market is fueling the wealth gap: Q&A with Prof. Martin Lettau”; https://newsroom.haas.berkeley.edu/how-the-stock-market-is-fueling-the-wealth-gap-qa-with-prof-martin-lettau/]

New research by finance Prof. Martin Lettau has found that economic growth accounted for less than a quarter of the stock market’s rise over the past 30 years—compared with 92% of the increase in the prior three decades.

The biggest driver of the recent bull market? A dramatic shift in wealth from workers to investors, accounting for 54% of the market’s increase since 1989.

That’s the conclusion of Lettau’s new paper, “How the Wealth Was Won,” co-written with Daniel Greenwald of MIT and Sydney Ludvigson of New York University. They show that most of the stock market gains of the past three decades have come from shareholders getting a bigger and bigger piece of the economic pie.

Lettau’s research points to a potentially critical driver of the growing wealth inequality plaguing the U.S.: At a time of slowing economic growth, those at the top of the wealth distribution are reaping most of the rewards, while the share of income received by the rest of households has declined.

The research explores hot-button issues that are not the standard fare for financial economists. We spoke with Lettau, an expert in investments and financial markets who holds the Kruttschnitt Family Chair in Financial Institutions, about how the stock market has seized the lion’s share of 30 years of economic growth, and whether this trend is sustainable.

You write about a widening chasm between the stock market and the broader economy. What specifically are you referring to?

U.S. stock values have grown faster than the economy over the past 29 years. After adjusting for inflation, the stock market value of corporations outside the financial sector has risen an average of 8.4 percent a year since 1989. At the same time, the value of the economic output of corporations has climbed just 2.5 percent annually. By contrast, from 1959 to 1988, economic output was expanding faster than stock values.

What did you find was behind this trend?

We considered the entire economic pie that was produced and the different actors in the economy. We found that, over the long run, the movement in stock values stemmed largely from shifts in wealth from labor to capital. Put plainly, the long-standing bull market of past 30 years comes largely from the capital sector getting more of the economic pie than the labor sector.

How big a factor has this shift been in pushing stock prices higher, compared with other factors?

We looked at the factors that standard financial theory considers to be drivers of stock prices, including fluctuations in short-term interest rates, changes in investor tolerance of risk, and economic growth. We did a statistical analysis to measure how much each of these factors contribute to stock market valuations. We found falling interest rates and greater investor appetite for risk have each contributed 11%. Economic growth explains just 23% of the stock price increase. Meanwhile, we estimate that the reallocation of the rewards of production to shareholders and away from labor has accounted for a full 54% of the gains in stock market value since 1989. That’s a sharp turnaround from 1952 to 1988, when other factors accounted for just 8% of the rise in stock prices, while economic growth accounted for 92% of the increase.