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Stakeholder Capitalism's Next Frontier: Pro- or Anti-monopoly?

Denise Hearn
Michelle Meagher

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REPORT

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ABOUT THE AUTHORS

DENISE HEARN is a Senior Fellow at the American Economic Liberties Project and co-leads the Access to Markets initiative. She is co-author of *The Myth of Capitalism: Monopolies and the Death of Competition*. She is Advisory Board Chair of The Predistribution Initiative — a multi-stakeholder project to improve investment structures and practices to address systemic risks like inequality and climate change.

MICHELLE MEAGHER is a competition lawyer, co-founder of the Balanced Economy Project, Senior Policy Fellow at the University College London Centre for Law, Economics and Society, and author of *Competition is Killing Us: How Big Business is Harming Our Society and Planet – and What To Do About It* (Penguin, 2020).

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1. INTRODUCTION

In November 2021, the U.S. Chamber of Commerce, financed in part by Google, announced in the *Wall Street Journal* a well-publicized "war" on the Federal Trade Commission, the key enforcer of fair dealing in markets. "It feels to the business community that the FTC has gone to war against us, and we have to go to war back," said U.S. Chamber of Commerce CEO and President Suzanne Clark.[1] This attack includes lobbying political leaders, filing records requests and lawsuits, and launching expensive PR and advertising campaigns. This activity isn't an isolated occurrence; Google gives millions of dollars to politicians to shape regulatory actions globally, as do most large firms.

At the same time, in its code of conduct, Google pledges itself to "the highest possible standards of ethical business conduct."[2] And it is, aside from one of the mostly highly valued firms in the world by share price, a key representative in the stakeholder capitalism movement. Alphabet, Google's parent company, is currently ranked America's most "just" company[3] according to the highly influential JUST Capital — a nonprofit "equipping the market with the data, tools, and insights to deliver on the promise of stakeholder capitalism and an economy that works for all Americans."[4]

It is something of a paradox that leading firms embraced by stakeholder capitalism proponents use lobbying muscle to subvert the ultimate stakeholder — the public — by distorting democracy. There is a deep tension here, between firms that seek to do good and firms that seek power, and whether those two attributes can be reconciled.

As anti-monopoly concerns continue rising to the forefront of national discourse, the stakeholder capitalism community faces a hard fork in the road: will its proponents continue to ignore and thus perpetuate concentrations of economic and political power?

Against the background of this tension, both the stakeholder capitalism and anti-monopoly movements have simultaneously risen to prominence in the United States in recent years. But despite both asking fundamental questions about the nature and obligations of firms in society, the conversations and communities of these two movements rarely intersect.

1 Ryan Tracy, "Business Group Challenges Lina Khan's Agenda at Federal Trade Commission," *Wall Street Journal*, November 19, 2021, https://www.wsj.com/articles/ftc-khan-us-chamber-11637288699.

2 Alphabet Investor Relations, Google Code of Conduct, September 25, 2020, https://abc.xyz/investor/other/google-code-of-conduct/.

3 2022 Overall Rankings, JUST Capital, https://justcapital.com/rankings/.

4 https://justcapital.com/

Stakeholder capitalism, popularized by the World Economic Forum and theoretically embraced by the Business Roundtable, seeks to create long-term value by attending to the interests of all corporate stakeholders rather than shareholders alone. The stakeholder capitalism movement, while assertive about the obligations of firms in many different areas, is utterly silent on the concentrations of economic power that firms like Google represent. This paper explores that silence, and what it means for the stakeholder capitalist community.

We argue that the failure to integrate the problem of concentrated corporate power (monopolization) into the stakeholder capitalism agenda not only undermines its stated goals but creates a clear problem of political legitimacy for its proponents. Today's markets are highly concentrated,[5] and it is within this economic structure that stakeholder capitalism makes its case for better corporate behavior, despite increasingly well-documented harms from consolidation.

Harms from consolidated markets include high consumer prices, low wages for workers, less business dynamism and startup rates, less innovation, lower growth, rising inequality, fragile supply chains, environmental harm, political capture, national security risks, and the subversion of the democratic process, among others. Stakeholder capitalism has largely ignored the intersection of market power and corporate economic and political abuses, instead focusing on resultant issues, like inequality and environmental degradation.

Ignoring a key structural cause of stakeholder concerns has engendered bitterness and diverging political rhetoric from the right and left, rather than an inclusive discourse on the nature of a corporation. Proponents of stakeholder capitalism have yet to answer a critical question: is it appropriate for firms to have as much power as they do? "Facebook is no longer just a company," said Senator John Kennedy in 2019. "It's so powerful it should be considered its own country. Its behavior lately has been getting into the foothills of creepy."[6]

This lack of clarity is a result of the internal schism at the heart of the stakeholder capitalism movement. Two primary camps now exist: 1) those who seek more democratic systems by sharing and decentralizing power through systemic reforms, and 2) those who use the stakeholder capitalism moniker as a shield to retain the private regulatory power that

We believe that the stakeholder capitalism movement would be stronger and have more internal moral consistency if its framework incorporated anti-monopoly principles.

5 Gustavo Grullon, Yelena Larkin, and Roni Michaely, "Are U.S. Industries Becoming More Concentrated?" *Review of Finance, Swiss Finance Institute*, October 25, 2018, https://ssrn.com/abstract=2612047; Michelle Meagher, "Fifty years of shareholder value have swollen monopoly power," *Financial Times*, September 13, 2020, https://www.ft.com/content/de8b9a1c-df69-44e5-b571-81f4651de050.

6 https://twitter.com/SenJohnKennedy/status/976105629935919104

dominant firms now exercise in many areas of the economy. As anti-monopoly concerns continue rising to the forefront of national discourse, the stakeholder capitalism community faces a hard fork in the road: will its proponents continue to ignore and thus perpetuate concentrations of economic and political power?

This paper suggests that they should not. Instead, to earn legitimacy, the stakeholder capitalism movement should embrace anti-monopoly principles, fair dealing, and a robust policy agenda to decentralize power across the economy. Practically, this means supporting government and regulatory action to reduce industry concentration and challenge corporate power through structuralist and "whole-of-government" policy agendas, as President Biden laid out in his July 2021 executive order.[7] It means agitating for legislative and regulatory reform along these lines as well as supporting ongoing antitrust enforcement at the state and federal level.

This political agenda will be attractive to those in the stakeholder capitalist movement who represent small and medium-sized businesses, consumers, and workers who suffer at the hands of monopolists, as well as broader national security interests, who have recognized in consolidation a threat to social stability and liberal global norms. It will also be attractive to those who say they would prefer to work through democratic means except that they fear that the state, captured by powerful corporate interests, will work too slowly.

This agenda, however, will be unattractive and threatening to those who value concentration as a lever to impose social, economic, or political values outside of democratic channels because they fear the choices made by popular sentiment. Some stakeholder capitalists will claim that large, global firms with market power are best positioned to solve large, global problems, which is another way of vesting national security questions in the hands of a small group of corporate actors.

The corporate form has always been oriented around the public good, and it is only the "Friedman Doctrine," or the post-1970 model of shareholder capitalism, that restructured our political understanding of the nature of corporations.[8] Since the financial crisis of 2008, the intellectual consensus behind this doctrine has frayed. Today, a broad intellectual and legal inquiry into the nature of firms and their role in the marketplace reflects a recognition that the Friedman framework has elevated levels of social instability.

7 The executive order recognizes that addressing concentration issues is not the sole purview of the Department of Justice Antitrust Division or the Federal Trade Commission. Many government agencies have a statutory obligation to address competition matters, and the EO states in Section 2, (g), "This order recognizes that a whole-of-government approach is necessary to address overconcentration, monopolization, and unfair competition in the American economy. Such an approach is supported by existing statutory mandates. Agencies can and should further the polices set forth in section 1 of this order by, among other things, adopting procompetitive regulations and approaches to procurement and spending, and by rescinding regulations that create unnecessary barriers to entry that stifle competition." White House, "Executive Order on Promoting Competition in the American Economy," July 9, 2021, https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/.

8 Milton Friedman, "A Friedman doctrine- The Social Responsibility Of Business Is to Increase Its Profits," *The New York Times*, September 13, 1970, https://www.nytimes.com/1970/09/13/archives/a-friedman-doctrine-the-social-responsibility-of-business-is-to.html.

We believe that the stakeholder capitalism movement would be stronger and have more internal moral consistency if its framework incorporated anti-monopoly principles. Perhaps the most critical stakeholder for every corporation is the public, as corporations are, after all, publicly chartered institutions. And markets themselves are public institutions, structured by a host of politically determined legal rules. Concentrated market power that undermines the public interest thwarts economic democracy.

And besides, the immense concentration of power in the hands of a firm like BlackRock — where stakeholder capitalism leader Larry Fink hangs his hat — will eventually invite regulation.[9] Engaging in good faith with the lingering, unaddressed question of concentrated corporate and financial power will help true stakeholder capitalists sharpen their goals and political approach.

If stakeholder capitalism embraces an anti-monopoly policy agenda, it can move beyond critiques that it is little more than corporate social washing and instead participate in a structuralist movement to democratize power and prosperity across the entire economy.[10]

2. THE "M" WORD

> *"This is my first time at Davos, and I find it quite a bewildering experience. … I hear people talking the language of participation and justice and equality and transparency, but then almost no one raises the real issue, tax avoidance. … I feel like I'm at a firefighters conference and no one's allowed to speak about water. This is not rocket science."*
>
> — RUTGER BREGMAN, A DUTCH HISTORIAN AT DAVOS IN 2019[11]

Bregman's incendiary comments received an aggressive reaction from Davos audience members, who were displeased with his use of the "T" word. Former Yahoo CEO Ken Goldman was clearly aggrieved: "This is a really one-sided panel. Frankly, what people really want is the dignity of a job. … Beyond taxes, which every one of you have talked about, the only thing you've talked about this whole panel, on inequality … what can we really do to help solve inequality, over time, beyond taxes?"

Nearly three years later, 136 countries — which represent more than 90% of global GDP — have agreed to a new global minimum corporate tax rate of 15%. Led by the OECD, the agreement is

9 Alastair Marsh, "Larry Fink Infuriates Republicans and Climate Activists Alike," Yahoo!, January 18, 2022, https://www.yahoo.com/now/larry-fink-infuriates-republicans-climate-151108165.html.

10 This paper does not deal with the underlying system incentives caused by the financial industry and fiduciary duty laws. The entire financial industry, in many ways, rewards and incentivizes monopolization and increased concentration of profits. We will deal with this problem in future writings. For starters, see https://thecounterbalance.substack.com/p/how-finance-drives-monopoly.

11 "Rutger Bregman tells Davos to talk about tax: 'This is not rocket science,'" *The Guardian*, https://www.youtube.com/watch?v=P8ijiLqfXP0.

intended to clamp down on tax havens and force companies to pay taxes wherever they have customers (not simply where they have headquarters). This is an example of global collaboration in response to the long-known problem of corporate tax evasion. It's not clear how stakeholder capitalism helped or hindered this advance, but the evolution reflects a changed model of the power relationship between firms and nation-states — a relationship Davos CEOs clearly didn't want disrupted.

At the time, Bregman's words were like a splash of cold water on a mostly self-congratulatory party about the role of the most powerful firms, and their leaders, in creating widespread prosperity and progress. Though business leaders are arguably more contrite today, we wonder if Davos organizers would have the courage to invite an anti-monopolist today, as they did with Bregman? If so, three years from now, we might imagine a similar global response to the "M" word: monopoly.

This paper aims to ignite a debate about the role of powerful firms in the economy — as Bregman did on tax — and to illuminate the question now facing stakeholder capitalism advocates: will they listen to those who repeatedly decry the direct harms of concentrated industries, or will they ignore the elephant in the room, which is squashing stakeholders?

3. TWO MOVEMENTS RISING

Klaus Schwab, who founded the World Economic Forum and popularized the term "stakeholder capitalism," has said, "We need a change of mindset, moving from short-term to long-term thinking, moving from shareholder capitalism to stakeholder responsibility. Environmental, social and good governance have to be a measured part of corporate and governmental accountability."

The concurrent systemic shifts toward ecological and global health crises, aging populations, inequality, risks from digitalization, and the financialization of the corporate economy mean that questions over the role of business in responding to species-level challenges have never been more urgent. Business leaders have often responded with enthusiasm: the era of the shareholder value corporation and maxi-

Aggressive lobbying, for instance, as well as attempts to extract tax concessions, is commonplace among stakeholder capitalism exemplar firms. A movement premised on ethical corporate behavior cannot credibly articulate its goals while ignoring how firms actually operate.

mizing financial returns at any cost — if annual reports and investor pitches are to be believed — appears to be over.[12] Of course, record profit margins by dominant firms and historically elevated financial asset valuations suggest that Klaus's arguments, and those of the stakeholder capitalist movement, are not rooted in reducing shareholder value's importance.

Nevertheless, the public statements from the top have been crystal clear: it is stakeholder capitalism, not shareholder capitalism, that rules the day from here on out. From the influential Business Roundtable to the chief executive of the world's largest asset manager, Larry Fink of BlackRock, leaders are singing from a single hymn sheet, one that sees profit and the protection of people and planet as inherently compatible.

In January 2021, 61 companies signed an agreement at Davos to report and disclose on stakeholder capitalism metrics, related to governance, planet, people, and prosperity.[13] The Business Roundtable statement on corporate purpose states, "Each of our stakeholders is essential. We commit to deliver value to all of them, for the future success of our companies, our communities and our country."[14]

Prior to the emergence of the term stakeholder capitalism, other efforts laid the groundwork: Corporate Social Responsibility (CSR), Michael Porter's "creating shared value," triple bottom line accounting, and others. These movements emphasized the natural compatibility of profits and corporate purpose — and touted business as the primary tool for social change.

"Conscious capitalism" became the moniker of this emerging movement. A best-selling book of the same name, written in 2014 by John Mackey (then co-CEO of Whole Foods), was featured on Oprah's *Super Soul Sunday* and became the de facto Bible of corporate leaders who wanted to use their positions of influence for good. A portion of the book's description reads, "From Southwest Airlines, UPS, and Tata to Costco, Panera, Google, the Container Store, and Amazon, today's organizations are creating value for all stakeholders — including customers, employees, suppliers, investors, society, and the environment."

Today, however, at least two of these companies — Amazon and Google — are under antitrust scrutiny for abusing their dominant market positions to the detriment of stakeholders. While conscious capitalism sought to rally corporations to various social and environmental causes, proponents failed to acknowledge or grapple with the pitfalls of concentrated corporate power and its abuses.

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12 Madeleine Hillyer, "Over 50 Companies Reporting on Stakeholder Capitalism Metrics as International Support Grows," World Economic Forum, September 21, 2021, https://www.weforum.org/press/2021/09/50-companies-reporting-on-stakeholder-capitalism-metrics-as-international-support-grows-333d623156.

13 "Measuring Stakeholder Capitalism: Towards Common Metrics and Consistent Reporting of Sustainable Value Creation," World Economic Forum, 2021, https://www.weforum.org/stakeholdercapitalism.

14 Business Roundtable, "Business Roundtable Redefines the Purpose of a Corporation to Promote 'An Economy That Serves All Americans,'" August 19, 2019, https://www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-promote-an-economy-that-serves-all-americans.

Moreover, stakeholder capitalism proponents have only recently (and in smaller corners of the movement) considered the actual political choices of dominant firms as relevant to their movement. Aggressive lobbying, for instance, as well as attempts to extract tax concessions, is commonplace among stakeholder capitalism exemplar firms. A movement premised on ethical corporate behavior cannot credibly articulate its goals while ignoring how firms actually operate.

In parallel to the emergence of the stakeholder capitalism agenda, a strong anti-monopoly movement has burst onto the scene in the U.S., following a concerted academic and popular effort to revive the original aim of antitrust laws: challenging corporate power.[15] This new movement — dubbed Neo-Brandeisianism after Louis Brandeis, a progressive U.S. Supreme Court Justice during the New Deal era — is now shaping federal government policy.

In July 2021, President Biden issued a comprehensive Executive Order on Promoting Competition in the American Economy, signaling a radical departure from previous administrations and their treatment of antitrust issues. The order seeks to eliminate anti-competitive conduct in numerous industries across the U.S. economy:

> *"A fair, open, and competitive marketplace has long been a cornerstone of the American economy, while excessive market concentration threatens basic economic liberties, democratic accountability, and the welfare of workers, farmers, small businesses, startups, and consumers. … Yet over the last several decades, as industries have consolidated, competition has weakened in too many markets, denying Americans the benefits of an open economy and widening racial, income, and wealth inequality. Federal Government inaction has contributed to these problems, with workers, farmers, small businesses, and consumers paying the price."*[16]

The order reflects the new prominence of antitrust and corporate concentration issues in the country's policy agenda. Competition policy was once the territory of academics, policy wonks, and corporate defense lawyers. But increasing recognition of historic levels of industry consolidation has put it at the top of Biden's agenda. And state and local elected officials, regulators, and enforcers are also acting. Antitrust has migrated from the fringes to the center of economic policymaking, business journalism, and popular consciousness.

Leading monopoly critic Lina Khan has been appointed chair of the Federal Trade Commission and is redefining the role of antitrust in maintaining undistorted markets. Tim Wu, whose book *The Curse of Bigness* detailed the threat of monopolies to democracy and liberty, crafted Biden's

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15 Lina Khan, "The New Brandeis Movement: America's Anti-monopoly Debate," *Journal of European Competition Law & Practice*, Volume 9, Issue 3, March 2018, pp. 131–132, https://doi.org/10.1093/jeclap/lpy020; Jay L. Levine and Carrie Garrison, "New Brandeisians keep their promise: New antitrust legislation reflects movement in role of antitrust laws," Antitrust Law Source, PorterWright, June 28, 2021, https://www.antitrustlawsource.com/2021/06/new-brandeisians-keep-their-promise-new-antitrust-legislation-reflects-movement-in-role-of-antitrust-laws/.

16 White House, "Executive Order on Promoting Competition in the American Economy," July 9, 2021, https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/.

July 2021 executive order and advises the administration on technology and competition policy on the National Economic Council.

Meanwhile, at least six antitrust-related bills are moving through Congress, and many state attorneys general are taking on Big Tech by bringing antitrust-related cases. In Europe and around the world, competition authorities are attempting to tackle corporate abuses, particularly in digital markets, although many regulators are still beholden to the corporation-friendly ideologies that the Neo-Brandeisians in the U.S. are working hard to overturn.

The anti-monopoly movement, at least rhetorically, aligns with the stakeholder capitalism agenda on issues of workers' rights and poverty, but differs in its analysis of the cause, pointing not only to profit maximization per se, but specifically to corporate abuses of power and a structural imbalance of power within the economy.

Anti-monopoly policy, when properly applied, uses antitrust law to challenge the abuse of concentrated private power — both corporate and financial. But anti-monopoly is more than antitrust enforcement, such as corporate breakups and stronger merger review. It is a way of viewing the world through the lens of power: who has it, how it is wielded, and whether it's exercised unfairly or to the systematic detriment of particular stakeholders.

Ignoring aggregated power — and its abuses — is stakeholder capitalism's major blind spot.

MAKING SENSE OF THE STAKEHOLDER CAPITALISM MOVEMENT

Stakeholder capitalism self-identifies as a movement that aims to de-emphasize (or outright undermine) shareholder primacy in favor of focusing on the many stakeholders a corporation has: customers, workers, suppliers, communities, and the environment.

The World Economic Forum describes it this way: "Stakeholder capitalism is a form of capitalism in which companies seek long-term value creation by taking into account the needs of all their stakeholders, and society at large."[17]

The stakeholder capitalism movement is now a wide tent, with many disparate groups who may identify under that common moniker. This paper takes the stakeholder capitalism community to include businesses, investors, legal and corporate scholars, and activists agitating under the banner of "responsible business." These groups

17 Klaus Schwab and Peter Vanham, "What is stakeholder capitalism?" World Economic Forum, January 22, 2021, https://www.weforum.org/agenda/2021/01/klaus-schwab-on-what-is-stakeholder-capitalism-history-relevance/.

include The Business Roundtable, Conscious Capitalism, Imperative 21, JUST Capital, B Corps, The Coalition for Inclusive Capitalism, and The Aspen Institute's Business and Society Program, among others.

Stakeholder capitalist groups have varying theories of change and tactics, but broadly we understand stakeholder capitalism as wanting to achieve social outcomes through the corporate sector (both with and without the state's support). The tools are those of private capital and corporate influence — and the primary mode of execution is culture change, financial incentives, and tweaks to corporate governance. All of this is implemented primarily through voluntary corporate initiatives, self-regulation, and market mechanisms. The focus has predominantly been on negative externalities and the internalization of harms into corporate decision-making.

The narrative is typically one of "win-win," recognizing that when the world is burning, it makes good business sense to put the fire out. Stakeholder capitalism proponents often claim that doing well (generating profits) and doing good (having social impact) are entirely compatible.

The win-win narrative has also lured investors into channeling funds toward "good" investments, and environmental, social, and governance (ESG) investments, particularly ETFs and mutual funds, saw record inflows in 2021 — more than $649 billion globally.[18] Investors who see themselves as "universal owners" (or owners of the entire market through mutual or index funds and diversified portfolios) increasingly collaborate to raise the ESG standards of portfolio companies — because, as the theory goes, it will be more profitable in the long term.

ESG can differ from stakeholder capitalism in that, by definition, it supports the use of shareholder power to create systems change. However, though stakeholder capitalists rhetorically de-emphasize shareholder primacy, proposed solutions often involve the use of shareholder engagement in pushing for reforms.

Additionally, stock market outperformance is sometimes used as a measure of stakeholder capitalism's success. Imperative 21, a prominent organization in the movement, claims: "STAKEHOLDER CAPITALISM IS WORKING: According to JUST Capital, companies that lead in meeting the needs of all their stakeholders — not just their shareholders — have outperformed the laggards by almost 30% over the past four

18 Ross Kerber and Simon Jessop, "Analysis: How 2021 became the year of ESG investing," *Reuters*, December 23, 2021, https://www.reuters.com/markets/us/how-2021-became-year-esg-investing-2021-12-23/.

years, and by double-digit margins throughout the pandemic."[19] Measuring a movement meant to deprioritize shareholder interests, by investor returns, is a circular reference.[20] In this way, shared narratives of win-winism blur and overlap in both the ESG and stakeholder capitalism communities.

One key gap is the relationship between stakeholder capitalism and more democratic forms of political change. Working to change firm behavior for broader social ends risks overriding popular concerns, as changes in corporate policy do not require endorsement by democratic institutions — or the citizens they represent.

To that end, some stakeholder capitalism proponents have agitated for system-level change through public policy, and this is increasingly the case. This has included, for example, creating alternative corporate forms such as the benefit corporation, greater non-financial reporting requirements, changes to directors' and investors' fiduciary duties, and lobbying for stricter environmental standards or increased minimum or living wage mandates.

Stakeholder capitalists have had incredible success in front-lining their agenda and injecting their narrative into the corporate mainstream. But what has this success garnered? Is this rhetoric mere "greenwashing" and paying lip service to stakeholder capitalist goals? Is there something deeper, but equally problematic, holding the movement back? Ultimately, any transformation of capitalism away from shareholder primacy is still incomplete.

4. STAKEHOLDER CAPITALISM'S BLIND SPOT: MONOPOLY POWER

Mark Benioff, CEO of Salesforce, is a vocal proponent for stakeholder capitalism. A regular Davos attendee, he has declared, "Capitalism as we have known it is dead. This obsession we have with maximizing profits for shareholders alone has led to incredible inequality and a planetary emergency."[21]

19 Accessed on March 15, 2022, https://www.imperative21.co/.

20 Denise Hearn, "The Strange Success Logic of Stakeholder Capitalism," *Responsible Investor*, August 25, 2020, https://www.responsible-investor.com/the-strange-success-logic-of-stakeholder-capitalism/.

21 Pippa Stevens, "Stakeholder Capitalism has reached a 'tipping point,' says Salesforce CEO Benioff," *CNBC*, January 21, 2020, https://www.cnbc.

But Benioff's role as stakeholder capitalism's poster child obscures his own business strategy: growing through acquisition and entrenching dominance by building insurmountable moats to thwart competitors. Tactics like these, intended to create dominance or monopolization, are articulated in "Porter's Five Forces," created by management influencer Michael Porter and taught in business schools the world over.[22] Weakening (or outright eliminating) these hostile forces — the threat of new entrants, supplier bargaining power, customer bargaining power, threat of substitutes, and rivalry among existing competitors — is the aim of many firms. Salesforce is no exception.

Salesforce is far and away the leader in global customer relationship management (CRM) software,[23] spending nearly 20% of all global CRM spending in 2020 — more than Oracle, SAP, Microsoft, and Adobe combined.[24] Its dominant position is, in part, the result of acquiring more than 60 companies over the last two decades. Benioff's recent multi-year mega-acquisition spree swallowed up Slack for $27.7 billion in 2020, Tableau for $15.3 billion in 2019, and MuleSoft for $6.5 billion in 2018.[25] Spending big on acquisitions has paid off handsomely. In Salesforce's November 2021 earnings report, Benioff gushes, "We delivered another phenomenal quarter, fueling strong revenue growth, margin and cash flow."

Benioff's role as stakeholder capitalism's poster child obscures his own business strategy: growing through acquisition and entrenching dominance by building insurmountable moats to thwart competitors.

But strong margins didn't reward key stakeholder groups — despite the stakeholder capitalist mantra of the natural compatibility between profits and people. Despite lofty claims, Salesforce laid off workers during the pandemic,[26] even while maintaining healthy corporate profits.[27] And its "strong" profits eluded public coffers. The *New York Times* article "C.E.O.s Were Our Heroes, at Least According to Them" puts it this way: "[In 2018, Salesforce] recorded revenues exceeding

com/2020/01/21/stakeholder-capitalism-has-reached-a-tipping-point-says-salesforce-ceo-benioff.html.

22 Michael Porter, "The Five Forces," Harvard Business School, https://www.isc.hbs.edu/strategy/business-strategy/Pages/the-five-forces.aspx.

23 "Salesforce is #1 in Global CRM Market Share," Salesforce, October 27, 2020, https://www.salesforce.com/news/stories/salesforce-is-1-in-global-crm-market-share/.

24 Rich Duprey, "Will Salesforce.com Be a Trillion-Dollar Stock by 2030?" The Motley Fool, January 24, 2022, https://www.fool.com/investing/2022/01/24/will-salesforcecom-be-a-trillion-dollar-stock-by-2/.

25 Ari Levy, "Salesforce acquires Slack for over $27 billion, marking cloud software vendor's largest deal ever," *CNBC*, December 1, 2020, https://www.cnbc.com/2020/12/01/salesforce-buys-slack-for-27point7-billion-in-cloud-companys-largest-deal.html.

26 Douglas MacMillan, Peter Whoriskey, and Jonathan O'Connell, "America's biggest companies are flourishing during the pandemic and putting thousands of people out of work," *The Washington Post*, December 16, 2020, https://www.washingtonpost.com/graphics/2020/business/50-biggest-companies-coronavirus-layoffs/.

27 Kellen Browning, "Salesforce Reports Big Jump in Profits," *The New York Times*, August 28, 2020, https://www.nytimes.com/live/2020/08/25/business/stock-market-today-coronavirus/salesforce-earnings.

$13 billion while paying the modest sum of zero in federal taxes. Salesforce deployed 14 tax subsidiaries scattered from Singapore to Switzerland, moving its money and assets around in a masterful display of accounting hocus-pocus that made its taxable income vanish. Salesforce repeated the trick in 2020, paying no federal taxes despite reporting $2.6 billion in profit."[28]

A business strategy of perpetual growth, horizontal expansion into an increasing number of industries, M&A sprees, layoffs, and tax avoidance is in tension with stakeholder capitalism principles. And the inherent dissonance between the perpetual drive for scale and dominance — and the recurring market abuses of the largest corporations — is a conflict that stakeholder capitalism ignores. The power of the corporation, and managers' mission to increase the scope of that power, is taken as a given.

A business strategy of perpetual growth, horizontal expansion into an increasing number of industries, M&A sprees, layoffs, and tax avoidance is in tension with stakeholder capitalism principles. And the inherent dissonance between the perpetual drive for scale and dominance — and the recurring market abuses of the largest corporations — is a conflict that stakeholder capitalism ignores. The power of the corporation, and managers' mission to increase the scope of that power, is taken as a given.

Some argue that the private sector has the financial resources and incentives to marshal moonshot bets on humanity's future. The largest corporations and financiers undoubtedly have the resources at their disposal to safeguard democracy, avert climate disaster, and eliminate inequality. But whether the power of corporations is compatible with these public interest objectives, and whether financial incentives are aligned enough to yield these outcomes, is up for debate.

JUST Capital's 2022 list of America's most "just" companies brings this debate into focus. The nonprofit, dedicated to stakeholder capitalism principles, was co-founded in 2013 by "a group of concerned people from the world of business, finance, and civil society," which included Paul Tudor Jones II, Deepak Chopra, and Arianna Huffington, among others. Each year, JUST Capital ranks companies according to public opinion polling on issues that "matter most to Americans." Their top 10 for 2022: Alphabet, Intel, Microsoft, Salesforce, Bank of America, PayPal, Apple, NVIDIA, Verizon, and Cisco.[29]

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28 Peter S. Goodman, "C.E.O.s Were Our Heroes, at Least According to Them," *The New York Times*, January 16, 2022, https://www.nytimes.com/2022/01/13/business/davos-man-marc-benioff-book.html; Also of note is how Benioff's personal wealth soared during the pandemic, as American billionaires saw their fortunes grow by 70% — adding $2.1 trillion — between March 2020 and mid-October 2021. See: "U.S. Billionaires Wealth Surged By 70%, or $2.1 Trillion, During Pandemic; They Are Now Worth A Combined $5 Trillion," Americans for Tax Reform, October 18, 2021, https://americansfortaxfairness.org/issue/u-s-billionaires-wealth-surged-70-2-1-trillion-pandemic-now-worth-combined-5-trillion/.

29 https://justcapital.com/rankings/

In 2018, using similar methodology, Goldman Sachs launched the JUST U.S. Large Cap Equity ETF (JUST), which tracks an index of Russell 1000 companies that "demonstrate just business behavior." According to JUST Capital's website, it was one of the most successful ESG ETF launches of all time and was awarded Best New ESG ETF by ETF.com. As of January 31, 2022, the index's top 10 holdings are: Apple, Microsoft, Amazon, Alphabet (Class A), Alphabet (Class C), NVIDIA, Procter & Gamble Company, JPMorgan Chase, Home Depot, and Visa. Meta and UnitedHealth Group have previously featured in the top 10.[30]

The Federal Trade Commission defines a monopolist as "a firm with significant and durable market power." For the purposes of this paper, we expand that definition: firms with significant and durable market power that exercise it to the detriment of stakeholder groups.

These lists, of course, contain some of the country's most powerful monopolists.

Many nuanced arguments address green- and social-washing with ESG products like these,[31] but very few address our primary concern of monopoly power. While these companies undoubtedly do some good things for their employees and for the environment, it is essential to critically evaluate how dominant companies use their power to shape markets in their favor.

The Federal Trade Commission defines a monopolist as "a firm with significant and durable market power."[32] For the purposes of this paper, we expand that definition: firms with significant and durable market power that exercise it to the detriment of stakeholder groups.

We don't have to look far for evidence that monopolies exist in nearly all corners of the U.S. economy. The harms of concentrated industries, and the market abuses of dominant firms, are increasingly well documented — and we will explore them in the following sections.[33]

Against the backdrop of ever-increasing concentrations of corporate and financial power, stakeholder capitalism should, then, not begin and end with voluntary or even mandatory changes to corporate governance. Rather, stakeholder capitalism must be understood as a paradigm that requires a structural view of where power resides. Monopolies distort markets. They exert a gravitational pull that

30 As of January 31, 2022. https://www.gsam.com/content/gsam/us/en/advisors/fund-center/etf-fund-finder/goldman-sachs-just-u-s--large-cap-equity-etf.html

31 Tariq Fancy, "The Secret Diary of a 'Sustainable Investor' — Part 1," Medium, August 20, 2021, https://medium.com/@sosofancy/the-secret-diary-of-a-sustainable-investor-part-1-70b6987fa139; Ken Pucker, "Overselling Sustainability Reporting," *HBR Magazine*, May–June 2021, https://hbr.org/2021/05/overselling-sustainability-reporting.

32 Federal Trade Commission, "Monopolization Defined," https://www.ftc.gov/tips-advice/competition-guidance/guide-antitrust-laws/single-firm-conduct/monopolization-defined.

33 Matt Stoller, *Goliath: The 100-Year War Between Monopoly Power and Democracy*, Simon & Schuster, October 2019; Tim Wu, *The Curse of Bigness: Antitrust in the New Gilded Age*, Columbia Global Reports, November 2018; Zephyr Teachout, *Break 'Em Up: Recovering Our Freedom from Big Ag, Big Tech, and Big Money*, Macmillan, July 2020; Jonathan Tepper and Denise Hearn, *The Myth of Capitalism: Monopolies and the Death of Competition,* Wiley, November 2018; Michelle Meagher, *Competition is Killing Us: How Big Business is Harming Our Society and Planet – and What To Do About It*, Penguin Business, September 2020.

> "We don't want just benevolent billionaires and nicer, softer, more-woke monopolies. We want an economic structure that allows for more mobility, and we don't have that."
>
> — MEHRSA BARADARAN

sucks money and resources toward them and warps the shape of the economy in their favor.

Take, for example, the historically large corporate pledges made to racial equity advancement following the murder of George Floyd and the rise of the Black Lives Matter movement. The 50 biggest corporations committed $4.95 billion to the cause,[34] but a *Washington Post* investigation revealed that over 90% of those commitments came in the form of loans or investments (mostly from Bank of America and JP Morgan Chase), which would likely profit the firms.[35] Very little of the nearly $5 billion went to criminal justice reform, one of the major rallying cries of the movement.

Mehrsa Baradaran, a law professor at the University of California at Irvine and financial inclusion expert, stated simply in response, "We don't want just benevolent billionaires and nicer, softer, more-woke monopolies. We want an economic structure that allows for more mobility, and we don't have that."

In many ways, the "win-win" approach of stakeholder capitalism maintains existing power structures, which tilt the playing field in favor of the largest corporations. Despite the goal of creating a more enlightened version of capitalism, stakeholder capitalism has thus far failed to address power structures that restrict, and sometimes actively oppose, progress toward global goals. Stakeholder capitalism advocates, therefore, must contend with the power of the largest corporations and financiers as they continue to concentrate markets, and the implications this has for their agenda.

5. CAPITALISM TODAY: CONCENTRATED MARKETS

Although big technology companies are often in the limelight for antitrust violations, industry concentration is at historic highs across industries as diverse as eyeglasses, funeral services, kidney dialysis, meatpacking and farming, hospital beds, supermarkets, restaurant chains, defense, healthcare, and even cheerleading, among many others. One study found that since 1990, over 75% of U.S. industries have concentrated.[36]

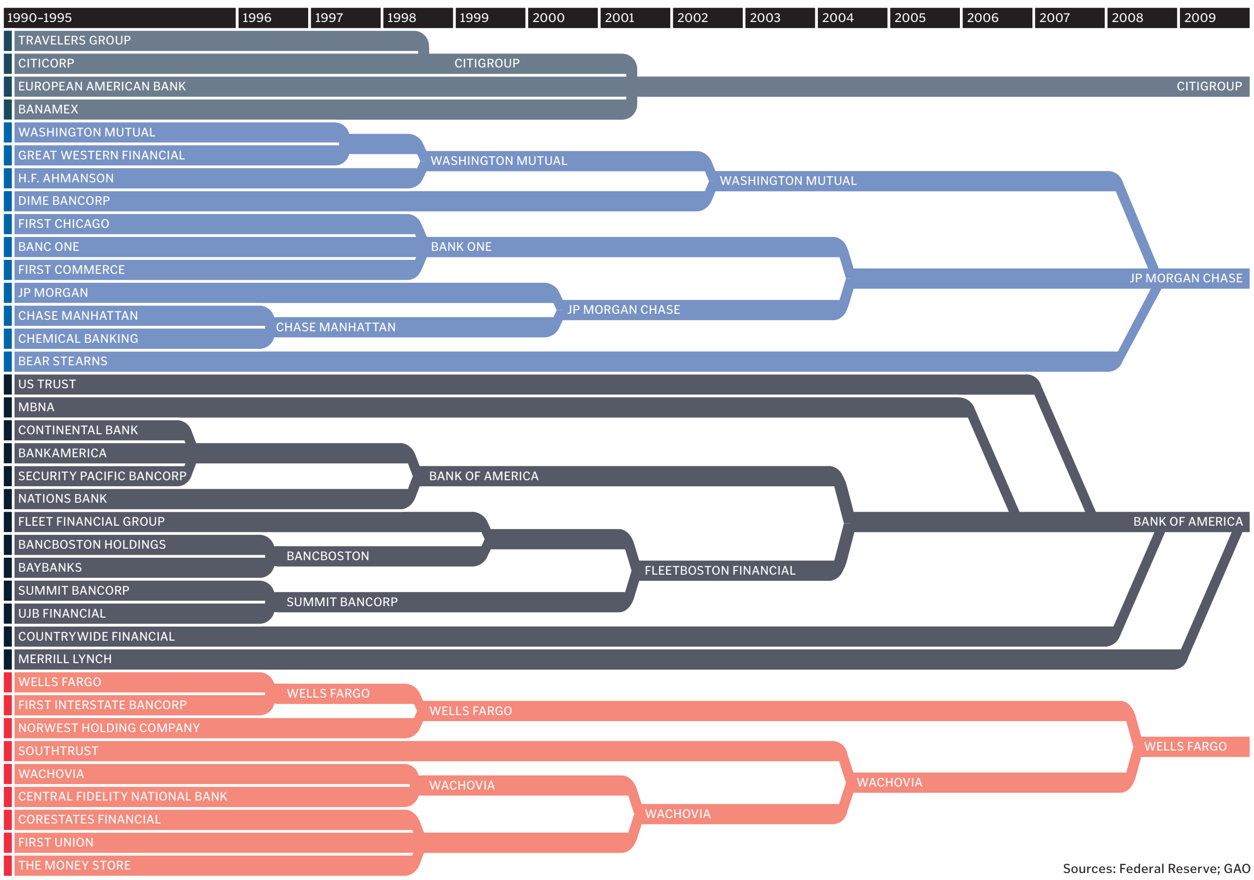
34 Tracy Jan, Jena McGregor, and Meghan Hoyer, "Corporate America's $50 billion promise," *The Washington Post*, August 23, 2021, https://www.washington-post.com/business/interactive/2021/george-floyd-corporate-america-racial-justice/.

35 Ibid.

36 Gustavo Grullon, Yelena Larkin, and Roni Michaely, "Are U.S. Industries Becoming More Concentrated?" *Review of Finance, Swiss Finance Institute*, October 25, 2018, https://ssrn.com/abstract=2612047.

Everywhere you look, market concentration lurks. Google has 92% share of internet search,[37] four players control more than 80% of the U.S. beef market,[38] and at least **83.3 million Americans can only access broadband through a single provider**.[39] Competitive cheerleading in the U.S. is controlled by monopolist Varsity Brands (owned by Bain Capital), dictating uniform prices and acting as a gatekeeper for national competitions.[40] Monopolies and oligopolies are everywhere.

The chart below tracks banking mergers from 1990 to 2009 and shows how, over the course of less than two decades, the industry consolidated to only four major players. Today, these four banks control over half of the nation's banking assets.[41] This picture could be repeated across many industries in the U.S., Europe, and Canada.



Sources: Federal Reserve; GAO

37 "Search Engine Market Share Worldwide: Sept 2020 - Sept 2021," StatCounter, accessed October 20, 2021, https://gs.statcounter.com/search-engine-market-share.

38 Sarah Mock, "Meat wars: why Biden wants to break up the powerful US beef industry," *The Guardian*, August 25, 2021, https://www.theguardian.com/environment/2021/aug/25/meat-wars-why-biden-wants-to-break-up-the-powerful-us-beef-industry.

39 Christopher Mitchell and Katie Kienbaum, "Report: Most Americans Have No Real Choice in Internet Providers," Institute for Local Self Reliance, August 12, 2020, https://ilsr.org/report-most-americans-have-no-real-choice-in-internet-providers/.

40 Matt Stoller, "This is Not a Democracy, It's a Cheerocracy: The Cheerleading Monopoly Varsity Brands," BIG, January 14, 2020, https://mattstoller.substack.com/p/this-is-not-a-democracy-its-a-cheerocracy.

41 Alicia Phaneuf, "Here is a list of the largest banks in the United States by assets in 2021," *Inside Intelligence*, July 27, 2021, https://www.insiderintelligence.com/insights/largest-banks-us-list/.

Regulators tasked with safeguarding competition have instead greenlighted record-breaking merger waves in recent decades. The Big Tech firms (Alphabet, Amazon, Meta, Apple, and Microsoft), as an example, have acquired more than 1,000 firms in the last 20 years, of which only a handful (3%) were reviewed by antitrust agencies.[42] And even when they were investigated, not a single merger was blocked.[43]

In tandem, concentration has only worsened through the Covid-19 pandemic, with mergers and acquisitions hitting all-time highs. Axios summarized it this way:

> "2021 isn't quite over yet, but it's already been a record-breaking year for mergers and acquisitions.
>
> *(Wait. That's just not quite right. Restart...)*
> 2021 isn't quite over yet, but it's already been a **record-shattering, eviscerating, gralloching** year for mergers and acquisitions."

Global M&A topped $5.8 trillion in 2021,[44] private equity deals exceeded $1 trillion, and there was an unprecedented number of deals: 58,000 globally and 14,400 in the U.S.[45]

Large firms can bring benefits to consumers by creating economies of scale and lowering the price of goods over time or by creating positive network effects. And global challenges, in many instances, require coordinated global action. But we should not confuse the benefits of scaled networks with condoning monopolization by dominant companies.

Today it is often the case that companies, rather than competing *in* markets by offering better products and services, often eliminate competition by exercising power *over* markets. As President Biden said prior to signing the executive order on competition, "Rather

Today it is often the case that companies, rather than competing *in* markets by offering better products and services, often eliminate competition by exercising power *over* markets.

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42 Nicholas Shaxson, "The European System of Monopoly...and how to fix it," The Counterbalance, interview with Tommaso Valletti, who served as Chief Competition Economist at the European Commission from 2016 until 2019, April 20, 2021, https://thecounterbalance.substack.com/p/the-european-system-of-monopoly.

43 Massimo Motta and Martin Peitz, "Big tech mergers," *Information Economics and Policy*, Volume 54, 2021, https://www.sciencedirect.com/science/article/abs/pii/S0167624520300111; Gerrit De Vynck and Cat Zakrzewski, "Tech giants quietly buy up dozens of companies a year. Regulators are finally noticing," *The Washington Post*, September 22, 2021, https://www.washingtonpost.com/technology/2021/09/20/secret-tech-acquisitions-ftc/. The only substantive challenge to a merger so far has been the single courageous order by the U.K.'s Competition and Markets Authority that Meta unwind its acquisition of Giphy. See Press Release, Competition and Markets Authority, "CMA directs Facebook to sell Giphy," November 20, 2021, https://www.gov.uk/government/news/cma-directs-facebook-to-sell-giphy.

44 Kaye Wiggins, Nikou Asgari, James Fontanella-Khan, and Arash Massoudi, "Dealmaking surges past $5.8tn to highest levels on record," *Financial Times*, December 30, 2021, https://www.ft.com/content/6dfdd78a-e229-4524-a400-144396524eb6.

45 Dan Primack, "Peak M&A," Axios Pro Rata, December 21, 2021, https://www.axios.com/newsletters/axios-pro-rata-40bd4e86-f3ad-450b-84d3-9092286fb792.html.

than competing for consumers, they are consuming their competitors. Rather than competing for workers, they're finding ways to gain the upper hand on labor."[46]

Some firms now control the fundamental infrastructure on which commerce takes place, acting as middlemen and market gatekeepers that restrict entrepreneurs and independent businesses from accessing markets on fair terms.[47] App developers must negotiate terms with the app-store duopoly of Apple and Google, which have a "vice-like grip" over some markets, as one U.K. regulator put it.[48] Independent pharmacists are forced into take-it-or-leave-it deals with giant group purchasing organizations, and the four largest GPOs together receive 90% of all hospital purchases across the country.[49]

In entertainment and music, artists must contend with streaming providers like Spotify and YouTube for online sales, Live Nation/Ticketmaster (which merged in 2019) for live venue bookings and ticket sales, and a few giant music labels for much of the rest. Dominant gatekeepers like these can prevent entrepreneurs from building successful businesses, as they actively suppress revenue opportunities or bargaining power in contract negotiations.

Monopolists use a variety of similar tactics to entrench their dominance, whether through vertical integration, preferencing their own products, or using coercive contract terms with workers and suppliers.[50] As the power of dominant firms grows, the countervailing power of other stakeholders lessens. And the harms of concentrated markets are stark for those stakeholders.

6. HARMS FROM THE MONOPOLIZATION OF MARKETS

The harms of monopolized markets are increasingly known, but they bear repeating briefly here. Concentration redistributes the economic pie in harmful ways while shrinking the pie overall through lower growth. It poses threats to national security and resilient supply chains. And

46 "Remarks by President Biden At Signing of An Executive Order Promoting Competition in the American Economy," July 9, 2021, https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/07/09/remarks-by-president-biden-at-signing-of-an-executive-order-promoting-competition-in-the-american-economy/.

47 Nidhi Hegde, Matt Stoller, and Denise Hearn, "The Other Red Tape: Market Concentration and the Rise of Private Gatekeepers," American Economic Liberties Project, June 2021, https://accesstomarkets.org/learn/the-other-red-tape-market-concentration-and-the-rise-of-private-gatekeepers/.

48 "Apple and Google duopoly limits competition and choice," Press Release, Competition and Markets Authority, U.K. Government, December 14, 2021, https://www.gov.uk/government/news/apple-and-google-duopoly-limits-competition-and-choice.

49 Caroline Kelly, Amanda Watts, and Cat Gloria, "US medical mask maker blasts government for failing to prepare for pandemic: 'I've been ignored for so long,'" CNN, May 14, 2020, https://www.cnn.com/2020/05/14/politics/bowen-mask-maker-ignored-bright-hearing/index.html; Zach Freed "Fighting Monopoly Power: Pharmacy," Institute for Local Self Reliance, https://ilsr.org/fighting-monopoly-power/pharmacy/.

50 "Glossary of Anticompetitive Conduct," Access to Markets (American Economic Liberties Project), 2021, https://accesstomarkets.org/learn/glossary-of-anticompetitive-conduct/.

ultimately, it can negatively impact stakeholders such as workers, consumers, entrepreneurs, and the public. The following harms overlap in critical ways with the problems that the stakeholder capitalism movement is trying to solve.

HIGHER PRICES

According to several studies, price markups (the amount a company charges above its production cost) have dramatically increased in recent years, particularly in concentrated markets like airlines, banking, and healthcare.[51] Markups are a proxy for market power because in perfectly competitive markets, firms would set prices equal to their marginal costs.[52] But as competition has withered, some firms have used their market power to raise consumer prices. One study showed that in 1980, average markups were about 20% above marginal cost — today, they are above 60%.[53]

The high inflation afflicting U.S. consumers is, in part, a result of the unmitigated pricing power of the largest firms. Despite CEO claims that the rising costs of inputs — like labor and raw materials — are to blame for inflation, companies posted the biggest profits margins in 70 years (since the 1950s) in the second half of 2021.[54] CEOs of firms like Disney, GSK, Kimberly-Clark, and PepsiCo have boasted to investors about their incredible pricing power on earnings calls.[55]

Procter & Gamble, for example, has "strengthened [their] position further during the crisis" as profit margins jumped by 177.5% from the end of 2019 to the end of 2021.[56] In part, this was achieved by instituting price increases across a vast array of products. In their 2021 Q4 earnings call the chief financial officer said, "We experienced the full impact of rising commodity and transportation costs this quarter, but healthy top-line growth and strong cost savings kept [earnings per share] growth nearly in line with the prior year. ... We expect pricing to be a larger

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51 José Azar, Martin Schmalz, and Isabel Tecu, "Anticompetitive Effects of Common Ownership," ***Journal of Finance*****, May 10, 2018, https://ssrn.com/abstract=2427345.**

52 While many new technological goods are apparently "free" or low-cost (like Amazon Prime shipping, Google products, or social media platforms), consumers pay hidden costs in the form of surveillance and data extraction.

53 Jan De Loecker, Jan Eeckhout, and Gabriel Unger, "The Rise of Market Power and the Macroeconomic Implications," ***The Quarterly Journal of Economics*****, Volume 135, Issue 2, May 2020, pp. 561–644, https://doi.org/10.1093/qje/qjz041. Interestingly, in their landmark study, Grullon et al. also found that the more concentrated the industry, the higher the return on assets, and that almost all increased returns came from "the firms' ability to extract higher profit margins." As firms gain market dominance, they often use their favorable market position for price leverage with consumers, suppliers, and workers.**

54 Matthew Boesler, Joe Deaux, and Katia Dmitrieva, "Fattest Profits Since 1950 Debunk Wage-Inflation Story of CEOs," ***Bloomberg*****, November 30, 2021, https://www.bloomberg.com/news/articles/2021-11-30/fattest-profits-since-1950-debunk-inflation-story-spun-by-ceos?sref=q0qR8k34.**

55 See: "The Walt Disney Company's (DIS) CEO Bob Chapek on Q1 2022 Results – Earnings Call Transcript," Seeking Alpha, February 9, 2022, https://seekingalpha.com/article/4485680-walt-disney-companys-dis-ceo-bob-chapek-on-q1-2022-results-earnings-call-transcript; "GlaxoSmithKline PLC (GSK) CEO Emma Walmsley on Q4 2021 Results - Earnings Call Transcript," Seeking Alpha, February 9, 2022, https://seekingalpha.com/article/4485611-glaxosmithkline-plc-gsk-ceo-emma-walmsley-on-q4-2021-results-earnings-call-transcript; "Full Year 2021 Results and 2022 Outlook Prepared Remarks," Kimberly Clark, January 26, 2022, https://investor.kimberly-clark.com/static-files/1297975a-1de1-4095-8d91-d7dc9413a88e; "PepsiCo, Inc. (PEP) CEO Ramon Laguarta on Q4 2021 Results - Earnings Call Transcript," Seeking Alpha, February 10, 2022, https://seekingalpha.com/article/4485846-pepsico-inc-pep-ceo-ramon-laguarta-on-q4-2021-results-earnings-call-transcript.

56 Megan Leonhardt, "Is inflation really this bad, or are greedy companies profiting off the pandemic?" ***Fortune*****, February 19, 2022, https://fortune.com/2022/02/19/inflation-profits-prices-companies-pandemic/.**

contributor to sales growth in coming quarters as more of our price increases become effective in the market. As this pricing reaches the store shelves, we'll be closely monitoring consumption trends. While it's still early in the pricing cycle, we haven't seen multiple changes in consumer behavior." [57]

When the largest firms raise prices on consumers to boost or maintain high profit margins, under the cover of an inflation narrative, unchallenged market power is a key culprit.

> **For decades, the labor share was two-thirds of GDP globally. Then, in 1980, the labor share began to decline, from 65-66% of GDP, to about 58-59% today (a decline of 7%). This may not sound like much, but overall, that is around $6 trillion less going to workers every year.**

LOWER WAGES

Workers have been some of the biggest losers in the new monopolized economy. Wages have stagnated since the 1970s, as the monopoly buying power (called monopsony) of employers created downward pressure on wages. [58] In recent years, economists have puzzled over the decline in the labor share — how much of GDP goes to workers vs. capital owners — which has been falling since its peak in 1970. For decades, the labor share was two-thirds of GDP globally. Then, in 1980, the labor share began to decline, from 65-66% of GDP, to about 58-59% today (a decline of 7%). This may not sound like much, but overall, that is around $6 trillion less going to workers every year. [59]

This is not because workers have become less productive. Productivity has steadily risen. Workers have continually been more productive but remain less compensated, as most gains in profits flowed to executives and shareholders. This, in turn, has contributed to higher inequality. And while economists recognize several causes of the decline in labor share — concentration, globalization, and technological change, for example — some see antitrust as the big solution.[60]

57 The Procter & Gamble Company (PG) Q1 2022 Earnings Call Transcript, Motley Fool Transcribers, October 19, 2021, https://www.fool.com/earnings/call-transcripts/2021/10/19/the-procter-gamble-company-pg-q1-2022-earnings-cal/; Procter & Gamble was also ranked a JUST Capital "Industry Leader" in 2019, 2020, and 2021 with an overall ranking of 59 out of 954 companies: https://justcapital.com/companies/the-procter-gamble-company.

58 Lawrence Mishel, Elise Gould, and Josh Bivenst, "Wage Stagnation in Nine Charts," Economic Policy Institute, January 6, 2015, https://www.epi.org/publication/charting-wage-stagnation/.

59 Nicholas Shaxson, "Europe's monopoly Problem...and the missing trillions," The Counterbalance, June 22, 2021, https://thecounterbalance.substack.com/p/europes-monopoly-problem.

60 Ibid.

LESS BUSINESS DYNAMISM AND LOWER STARTUP RATES

The U.S. is perceived as the land of entrepreneurialism, but as of 2017, the rate of new business formation had fallen by 50% since the 1970s.[61] In part, this is because small and medium-sized businesses are increasingly forced to negotiate access to markets through gatekeepers that set market terms and use unfair tactics to stifle competition.[62] Covid-19 has supercharged these dynamics as the largest firms solidify their dominance while Main Streets across the U.S. have suffered the fallout from the pandemic. Black communities have been the hardest hit, with Covid-19 wiping out nearly half of all Black-owned small businesses across the country.[63]

LESS INNOVATION

Innovation in many industries has been stifled as incumbent players crush or acquire competitors, failing to commercialize solutions outside their core business model. One study found an inverse relationship between concentration and total number of innovations, suggesting that monopoly power disincentivizes innovation.[64] Firms in concentrated industries spend less on productive investment as a percentage of earnings.[65] Killedbygoogle.com hosts a "Google Graveyard" of businesses and projects the company killed after acquiring them, determining that they were no longer useful to its bottom line.

A recent IMF report shows that competing firms are hurt when a market leader engages in more M&A, claiming "this evidence suggests that M&A can act as a drag on growth, especially when they involve dominant firms."[66]

61 "Dynamism in Retreat: Consequences for Regions, Markets, and Workers," Economic Innovation Group, February 2017, https://eig.org/dynamism. While it is true that Americans have started businesses at a fast pace during the pandemic, causing a rise in business formation statistics, some believe this is "entrepreneurship of necessity" rather than a structural resurgence of the right conditions necessary to foster sustained business dynamism across the country.

62 Nidhi Hegde, Matt Stoller, and Denise Hearn, "The Other Red Tape: Market Concentration and the Rise of Private Gatekeepers," American Economic Liberties Project, June 2021, https://accesstomarkets.org/learn/the-other-red-tape-market-concentration-and-the-rise-of-private-gatekeepers/.

63 Black-owned businesses in the U.S. have shut down at more than twice the rate of white businesses. "New York Fed Releases Brief on COVID-19's Effects on Black-Owned Businesses," New York Federal Reserve, August 4, 2020, https://www.newyorkfed.org/newsevents/news/regional_outreach/2020/20200804; Pedro Nicolaci da Costa, "The Covid-19 Crisis Has Wiped Out Nearly Half of Black Small Businesses," *Forbes*, August 10, 2020, https://www.forbes.com/sites/pedrodacosta/2020/08/10/the-covid-19-crisis-has-wiped-out-nearly-half-of-black-small-businesses/?sh=314cff774310.

64 Zoltan J. Acs and David B. Audretsch, "Innovation in Large and Small Firms: An Empirical Analysis," *The American Economic Review*, Vol. 78, No. 4, pp. 678–690, American Economic Association, September 1988, http://www.jstor.org/stable/1811167.

65 As corporations amassed cash following the Trump tax cuts of 2017, corporate managers reduced investment and instead spent most company cash on stock buybacks and dividend payments to shareholders (including themselves). According to Senator Elizabeth Warren, between 2007 and 2016, large firms used 93% of their corporate earnings to pay out shareholders instead of investing in R&D, employees, or capital expenditures. (Bill Lazonick: https://hbr.org/2020/01/why-stock-buybacks-are-dangerous-for-the-economy). R&D has also tended to allow for the corporate capture of innovation pathways, where technological progress for humanity becomes path dependent upon the commercialization strategies of incumbent firms.

66 Ufuk Akcigit, Wenjie Chen, Federico J. Diez, et al., "Rising Corporate Market Power: Emerging Policy Issues," International Monetary Fund, March 15, 2021, https://www.elibrary.imf.org/configurable/content/journals$002f006$002f2021$002f001$002f006.2021.issue-001-en.xml.

LOWER GROWTH

Economists have long puzzled over slow global growth in recent decades. 2021 was a welcome respite, as global economic growth expanded to its highest rate in more than four decades — 5.5%. This was largely due to "pent-up demand" from the pandemic as consumers pulled back on spending in 2020, as well as fiscal and monetary support from governments worldwide, which buoyed markets.

According to a recent study, global GDP is 9-10% lower (about $8 trillion less) than it would be if we had the competitiveness of 1980.

But low structural growth remains a problem, and industry concentration is a major contributor to stagnant and unproductive markets. According to a recent study, global GDP is 9-10% lower (about $8 trillion less) than it would be if we had the competitiveness of 1980.[67]

RISING INEQUALITY

Monopolists tend to restrict product output while increasing prices, which transfers wealth from consumers to monopolistic companies. This results in a transfer from relatively poor consumers to relatively wealthy shareholders.[68] A recent paper by Liberation in a Generation also links monopoly power to racial inequity: "Without drastic policy action it will take 228 years for average Black wealth and 84 years for average Latinx wealth to match the wealth that white households hold today. ... These disparities are driven by two reinforcing phenomena connected to the issue of corporate concentration: 1) the systematic withholding of wealth from people of color and 2) the gross concentration of wealth held by the corporate elite."[69]

REGIONAL INEQUALITY

There are regional aspects to inequality, as wealth from rural areas is redirected toward Wall Street, other global financial centers, and tax havens. But this was not always the case. Until the 1980s, incomes tended to converge across different U.S. regions.[70] However, as large corporations

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67 Nicholas Shaxson, "Europe's monopoly Problem...and the missing trillions," The Counterbalance, June 22, 2021, https://thecounterbalance.substack.com/p/europes-monopoly-problem; Interview with Jan Eeckhout, author of *The Profit Paradox: How Thriving Firms Threaten the Future of Work*, Princeton University Press, June 1, 2021, https://www.theprofitparadox.com/.

68 Shareholders know that investing in monopolies provides high returns and is a favored investment strategy by Warren Buffet and Peter Thiel. However, 50% of Americans do not own any stock at all and have been left out of these gains, further entrenching the asymmetry of stock benefits; see also: Lina Khan and Sandeep Vaheesan, "Market Power and Inequality: The Antitrust Counterrevolution and its Discontents," *Harvard Law & Policy Review*, April 22, 2016, https://ssrn.com/abstract=2769132.

69 Jeremie Greer and Solana Rice, "Anti-Monopoly Activism: Reclaiming Power through Racial Justice," Liberation in a Generation, March 2021, https://www.liberationinageneration.org/wp-content/uploads/2021/03/Anti-Monopoly-Activism_032021.pdf.

70 https://www.openmarketsinstitute.org/learn/regional-inequality-monopoly

moved into rural areas, communities were stripped of dollars that previously circulated locally. Walmart is the most well-known example, but its rural strategy was followed by large and consolidated banks, restaurant chains, grocery and dollar stores, and others.

FRAGILE SUPPLY CHAINS

Shortages are now common. Whether it is chlorine tablets,[71] semiconductor chips, books, or construction materials, we are living in the age of the Great Supply Chain Disruption.[72] Efficiency arguments were used to justify industry concentration nationally and globally, but we are now seeing the limitations of structuring systems with a goal of eliminating all slack. Concentrated markets are fragile and susceptible to exogenous shocks like pandemics, climate change-related natural disasters, and more nefarious behavior like cybersecurity attacks.

ENVIRONMENTAL DAMAGE

Although it has not been a focus for the anti-monopoly movement to date,[73] there are connections between the concentration of economic power and the climate crisis. Many of the key industries responsible for human-caused climate change, biodiversity loss, and ecological crisis are monopolized, from fossil fuels to Big Agriculture. A recent report, as an example, shows that only 20 firms worldwide create 55% of plastic waste, ExxonMobil being the largest producer of single-use plastic from fossil fuels.[74] Meanwhile, Big Tech has been critiqued for rising energy use in data processing and waste at e-commerce fulfillment centers.[75]

POLITICAL CAPTURE

Concentrated market power often translates into political power and influence. Lobbying is a core business strategy among larger firms: tech companies have continued to spend record

71 The summer of 2021 sparked a nationwide chlorine shortage due to a chlorine tablet monopoly. The manufacturer Bio Lab supplied most of the country with chlorine but burned down after a Louisiana hurricane. When the price of chlorine skyrocketed due to shortages, many public pools were forced to close their doors. See: Liz Farmer, "National Chlorine Shortage is Raising Costs, Forcing Season Closures for Money-Losing Public Pools," *Forbes*, July 29, 2021, https://www.forbes.com/sites/lizfarmer/2021/07/29/national-chlorine-shortage-is-raising-costs-forcing-season-closures-for-money-losing-public-pools/?sh=628f34693cb0.

72 Peter S. Goodman and Keith Bradsher, "The World Is Still Short of Everything. Get Used to It.," *The New York Times*, August 30, 2021, https://www.nytimes.com/2021/08/30/business/supply-chain-shortages.html.

73 See however *Competition is Killing Us* and https://academic.oup.com/antitrust/article/8/2/354/5819564?login=true.

74 Minderoo Foundation, "Plastic Waste Makers Index," https://www.minderoo.org/plastic-waste-makers-index/.

75 Richard Pallot, "Amazon destroying millions of items of unsold stock in one of its UK warehouses every year, ITV News investigation finds," ITV News, June 22, 2021, https://www.itv.com/news/2021-06-21/amazon-destroying-millions-of-items-of-unsold-stock-in-one-of-its-uk-warehouses-every-year-itv-news-investigation-finds.

amounts on lobbying,[76] especially as they face increased antitrust scrutiny, and oil firms have spent millions to block climate change policies over the years.[77]

Investors benefit from dominant firms exercising political power. One fund, the "Strategas Policy Opportunity Portfolio," selected companies that spent the most on lobbying over a period of 10 years and found that the index returned an average 14.4% annually versus 9.5% for the S&P 500.[78] ESG investors are only now beginning to take such concerns into consideration, but win-win narratives restrict more careful analysis of these and other dynamics.

RISKS TO NATIONAL SECURITY

Despite the narrative that fostering homegrown monopolies is good geopolitical strategy, concentrated markets and supply chains are a threat to national security. In February 2022, the Pentagon released a report stating that consolidation in the defense industry — following decades of unfettered mergers and acquisitions — has left them vulnerable and reliant on only a handful of suppliers.[79] A notable statistic: the number of U.S.-based prime contractors has declined from 51 in 1993 to five in 2000.

"Having only a single source or a small number of sources for a defense need can pose mission risk and, particularly in cases where the existing dominant supplier or suppliers are influenced by an adversary nation, pose significant national security risks. ... Promoting competition to the maximum extent possible is a top priority for the Department."[80]

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76 Ben Brody and Josyana Joshua, "Tech Spent Millions Lobbying Amid Antitrust Assault, CEO Hearing," *Bloomberg*, October 20, 2020, https://www.bloomberg.com/news/articles/2020-10-21/tech-spent-millions-lobbying-amid-antitrust-assault-ceo-hearing. https://corporateeurope.org/sites/default/files/2021-08/The%20lobby%20network%20-%20Big%20Tech%27s%20web%20of%20influence%20in%20the%20EU.pdf.

77 Sandra Laville, "Top oil firms spending millions lobbying to block climate change policies, says report," *The Guardian*, March 21, 2019, https://www.theguardian.com/business/2019/mar/22/top-oil-firms-spending-millions-lobbying-to-block-climate-change-policies-says-report.

78 Jeff Keane, "The 'Strategas Policy Opportunity Portfolio' Offers Investors A Stake in Companies Working Harder and Smarter in Washington," Wes Moss, June 6, 2018, https://www.wesmoss.com/news/the-strategas-policy-opportunity-portfolio-offers-investors-a-stake-in-companies-working-harder-and-smarter-in-washington/.

79 "State of Competition within the Defense Industrial Base, Office of the Under Secretary of Defense for Acquisition and Sustainment," Department of Defense, February 2022, https://media.defense.gov/2022/Feb/15/2002939087/-1/-1/1/STATE-OF-COMPETITION-WITHIN-THE-DEFENSE-INDUSTRIAL-BASE.PDF.

80 Entire defense industries are listed as having "insufficient capacity" due to lack of competition, which is of "concern." These industries include casting and forgings, missiles and munitions, energy storage and batteries, strategic and critical materials, and microelectronics.

The Department of Defense report echoes President Biden's remarks at the signing of the executive order on competition: "The United States faces new challenges to its economic standing in the world, including unfair competitive pressures from foreign monopolies and firms that are state-owned or state-sponsored, or whose market power is directly supported by foreign governments. ... This order reasserts as United States policy that the answer to the rising power of foreign monopolies and cartels is not the tolerance of domestic monopolization, but rather the promotion of competition and innovation by firms small and large, at home and worldwide."[81]

> **"Having only a single source or a small number of sources for a defense need can pose mission risk and, particularly in cases where the existing dominant supplier or suppliers are influenced by an adversary nation, pose significant national security risks. ... Promoting competition to the maximum extent possible is a top priority for the Department."**
>
> — THE PENTAGON

SUBVERSION OF DEMOCRACY

As many companies hastened to distance themselves from the platforms that facilitated the January 2021 Capitol Hill riots, the central conflict between monopolistic power, shareholder value, and democracy remains unacknowledged by the stakeholder capitalism agenda. A new report from the American Economic Liberties Project, "Democracy for Sale: Examining the Effects of Concentration on Lobbying in the United States," shows a demonstrable link between corporate concentration and lobbying spend.[82]

Once firms are large and dominant, they use lobbying to retain their bigness and shape the regulatory environment. The report states, "Not only is big business good at lobbying, but that bigger business leads to more lobbying. That means monopoly is a threat to representative democracy — and that protecting our democracy requires effective antitrust."[83]

81 "Executive Order on Promoting Competition in the American Economy," The White House, July 9, 2021, https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/.

82 Reed Showalter, "Democracy for Sale: Examining the Effects of Concentration on Lobbying in the United States," American Economic Liberties Project, August 25, 2021, https://www.economicliberties.us/our-work/democracy-for-sale/#.

83 Ibid.

7. HOW DID WE GET HERE?

ROBERT BORK REINTERPRETS ANTITRUST

When President Biden took the stage to announce his Executive Order on Promoting Competition in the American Economy, he stated:

> *"Forty years ago, we chose the wrong path, in my view, following the misguided philosophy of people like Robert Bork, and pulled back on enforcing laws to promote competition. We're now 40 years into the experiment of letting giant corporations accumulate more and more power. And where — what have we gotten from it? Less growth, weakened investment, fewer small businesses. Too many Americans who feel left behind. Too many people who are poorer than their parents. I believe the experiment failed. We have to get back to an economy that grows from the bottom up and the middle out."*

For those unfamiliar with the jurist Robert Bork, it may seem strange to lay the blame of 40 years of lax antitrust enforcement and wholesale corporate concentration at one man's feet. But Bork, who was an ally of shareholder capitalism proponent Milton Friedman, led an intellectual movement, beginning at the Chicago School in the 1970s, that would have a radical effect on the shape of markets.

To understand how Bork's influence became so great, it is useful to go back to the post-World War II period, roughly from 1945 to the early 1970s. This became known as the "Golden Age of Capitalism" as worldwide economic expansion and growth soared, high employment and wages caused the emergence of a consumerist middle class in the U.S., and small businesses proliferated.

The benefits of this economic heyday did not, of course, spread equally across the economy, and many people of color, particularly Black Americans and Indigenous people, were left out of significant wealth creation opportunities. The strength of unions did, however, help distribute the gains from this unprecedented economic expansion more widely among workers than is the case today.

Against this backdrop, beginning in the early 1960s, a group of public intellectuals led by Bork attacked the foundational principles of antitrust. Bork's philosophy was inscribed in his 1978 book *The Antitrust Paradox*, which effectively stated that governing authorities should stop worrying about questions of power and market structure, and instead focus on promoting economic efficiency and the interests of consumers, usually via lower prices.[84]

Bork and his colleagues argued that size and market power were often, even usually, *good* things, because they delivered "efficiencies" via economies of scale and scope. They also believed that mergers and acquisitions were beneficial because they disrupted cozy management practices, not least by hanging the constant threat of a hostile takeover over the heads of self-interested executives.

The heavy focus on lower consumer prices was easy to push during the "Great Inflation" era of the 1970s, during which the U.S. plunged into a recession. Bork's focus on low prices gained significant support from the consumer rights movement on the left, as many struggled to pay their bills. (It is easier to have people to focus on the price of groceries or cars than it is to campaign against the often more complex and time-delayed harms we have identified above.)

Similarly, today, Amazon is often praised for its "efficiency" and low consumer prices (and Google for its apparently "free" services) while harms to workers, privacy, small businesses, and Main Street have been sidelined. By narrowing antitrust down to prices, consumer welfare, and the internal efficiencies of individual firms, Bork and his adherents brushed away myriad other threats.

In lockstep, a few corporations began heavily financing think tanks, universities, lawyers, and politicians, which in turn influenced the courts while simultaneously spreading these ideas and practices, first in the United States, then further afield. This caused a remarkable reversal of the historical tradition of antitrust enforcement and interpretation — antitrust lawyers now turned a blind eye to corporate power and bigness itself. Most of the older U.S. antitrust laws stayed on the books, but as more and more judges fell under Chicago's sway, they interpreted the laws more permissively in favor of large corporations.

The Chicago School simultaneously influenced policy making. In the 1980s, President Reagan adopted a neoliberalist deregulatory agenda — a laissez faire free-market dogma, pushed again by academics at the Chicago School, such as Milton Friedman. They painted the government as the source of inefficient restraints on markets, which, if left to their own devices, would self-organize for the public good.

Monopolies were thought to rarely exist, and it was believed that if they did, they would have no ability to exploit their power, because the market would rigorously self-correct. As a result, the worst thing government could do was intervene.

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84 For three decades or more after 1940, wage gains for Black Americans were far higher than for whites. For a fuller exploration of the historical relationship between racial injustice and market concentration, see: Brian S. Feldman, "The Decline of Black Business," *Washington Monthly*, March/April/May 2017, https://washingtonmonthly.com/magazine/marchaprilmay-2017/the-decline-of-black-business/, and Matt Stoller, *Goliath*, especially pp. 184–191.

Here is Friedman in his 1962 book, *Capital and Freedom*:

> *"What the market does is to reduce greatly the range of issues that must be decided through political means, and thereby to minimize the extent to which government need participate directly in the game. … The great advantage of the market, on the other hand, is that it permits wide diversity. It is, in political terms, a system of proportional representation. … It is this feature of the market that we refer to when we say that the market provides economic freedom."*[85]

Stakeholder capitalism has generally focused on the remit of corporate law, emphasizing the conceptual legal rights (and obligations) of a corporation, the role of corporate owners and directors, the balance of power within firms, and the social and environmental impacts of corporate decision-making. But corporate law shares its legal genealogy with antitrust law. And both were heavily influenced by the Chicago School's laissez faire schools of thought, which we now classify broadly as neoliberalism.

It was a form of economics influenced by social Darwinism, which assumed that markets were natural entities that should be left alone for the strongest to compete and win. This ideology eschewed the idea that markets and "strong" market actors are, in fact, public creations upheld by politically determined rules. Instead, neoliberals entrenched the notion that corporations are separate from, as opposed to embedded within, society. In the vacuum of democratic market rulemaking, we let the largest corporate and financial arbiters write and enforce the rules for us.

In the four decades since Reagan, both progressive and conservative policymakers adopted the non-interference mentality. This had the effect of defanging the very regulatory agencies — the Federal Trade Commission and the Department of Justice — meant to safeguard market fairness. Reviewing and blocking mergers slowed to a trickle.

As the antitrust brakes came off, Wall Street rapidly moved in to originate, finance, and push mergers and acquisitions, favoring monopolists over their competitors, deliberately accelerating consolidation across the economy. "The idea that you increase the value of something because you had a monopoly consumed Wall Street," said Jack Blum, a prominent antitrust lawyer in the 1970s. "We fought the good fight to try to keep competition up there, but were overwhelmed by Wall Street pressure. … People forgot the notion that there should be competition."

Both political parties were equally negligent. Of the roughly 11,056 mergers that were large enough to be reported to the FTC and DOJ during President Obama's tenure (from 2009-2016),

85 "Milton Friedman: In His Own Words," *Wall Street Journal*, excerpt from *Capital and Freedom*, 1962, https://www.wsj.com/articles/SB116369649781325207.

regulators only blocked or challenged 3% of the total value of all merger deals.[86] Matt Stoller, speaking of the Democratic Party's movement away from its anti-monopoly history, beginning in the late 1970s, puts it this way: "The result today is a paradox. At the same time that the nation has achieved perhaps the most tolerant culture in U.S. history, the destruction of the anti-monopoly and anti-bank tradition in the Democratic Party has also cleared the way for the greatest concentration of economic power in a century." Stoller goes on to say that this, in part, is how "the Democratic Party helped to create today's shockingly disillusioned and sullen public."[87]

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TODAY'S CRITIQUES OF "WOKE CAPITALISM" ECHO MILTON FRIEDMAN

In Milton Friedman's now (in)famous 1970 *New York Times* piece,[89] which heralded an age of "shareholder-first" capitalism, he worried that a corporation that promoted stakeholder interests would be too powerful an arbiter of political life. Friedman thought it dangerous for executives and companies to pick pet projects or be swayed by the social influences of the day.

He claimed that if an executive prioritized a social aim that was detrimental to the bottom line, like protecting the environment or hiring lower skilled workers to reduce poverty, that "[the executive] is in effect imposing taxes [on shareholders], on the one hand, and deciding how the tax proceeds shall be spent, on the other." Instead, he proposed that corporations maximize value for shareholders, who could then privately choose how best to donate and spend their own money. This, he felt, was true democracy.

86 "The Courage to Learn: A Retrospective on Antitrust and Competition Policy During the Obama Administration and Framework for a New Structuralist Approach," American Economic Liberties Project, January 2021, https://www.economicliberties.us/our-work/courage-to-learn/#.

87 Matt Stoller, "How Democrats Killed Their Populist Soul," *The Atlantic*, October 24, 2016, https://www.theatlantic.com/politics/archive/2016/10/how-democrats-killed-their-populist-soul/504710/.

88 Michelle Meagher, "Corporate Law, Antitrust, and the History of Democratic Control of the Balance of Power," July 14, 2020, Nowag and Corradi (eds.), *The Intersections between Competition Law and Corporate Law and Finance* (Cambridge University Press, 2021), https://ssrn.com/abstract=3622266.

89 Milton Friedman, "A Friedman doctrine-The Social Responsibility of Business Is to Increase Its Profits."

Interestingly, today's critiques of stakeholder capitalism from the right echo Friedman's concerns — conservatives worry that leftist "wokeism" will sway corporations away from their fundamental mission and into the murky territory of politically charged social issues.[90] The Free Enterprise Project, a conservative shareholder activist group, self-described as the "nation's leading program for confronting liberal shareholder activism" has previously advised conservative investors on how to vote against "corporate wokeness."[91] These and similar arguments echo Friedman's concerns that corporations and executives would become all-too-powerful arbiters of political life.

However, what conservatives have failed to appreciate is that the zealous application of Friedman's doctrine, the single-minded focus on profits above all else, led to a corporation elevated to such high political stature that it undermined the countervailing mechanisms of the state and the polity altogether.

The corporation, and its backing and shaping by a small group of concentrated financiers, has become the largest influence in our political systems. In some ways, the push for corporate sustainability has been a tactic to forestall regulatory action and a way to further extend the corporation's power in provisioning public goods.[92] The self-regulation diversion tactic, coupled with the philosophical undermining of the role of the state in providing public services, has led to even *more* power concentrated in the hands of "woke" CEOs. As a result, neoliberals ultimately ushered in the very outcome they sought to avoid.

The only way to avoid further entrenchment of this corporate power is to take seriously the role of regulatory agencies in challenging it, and some voices on the right are increasingly doing just that.[93]

90 Andrew Edgecliffe-Johnson, "'Woke capitalists' provoke backlash from US conservatives," *Financial Times*, May 22, 2021, https://www.ft.com/content/42989bc5-fd8e-4915-a6c0-41a9e22351e7.

91 "About The Free Enterprise Project," National Center for Public Policy Research, https://nationalcenter.org/programs/free-enterprise-project/.

92 Joel Bakan, "The New Corporation: How 'Good' Corporations are Bad for Democracy," Harvard Law School Forum on Coroporate Governance, September 9, 2021, https://corpgov.law.harvard.edu/2021/09/09/the-new-corporation-how-good-corporations-are-bad-for-democracy/.

93 Kara Swisher, "Why Republican Ken Buck Believes in Antitrust and Doesn't Believe in the 'Big Lie,'" *Sway*, October 25, 2021, https://www.nytimes.com/2021/10/25/opinion/sway-kara-swisher-ken-buck.html; Jessica Maloney, "The Republican Party and the Revival of American Antitrust," *McGill Journal of Political Studies*, April 11, 2021, https://mjps.ssmu.ca/2021/04/11/the-republican-party-and-the-revival-of-american-antitrust/; Jonathan Tepper, "The Conservative Case for Antitrust," *The American Conservative*, January 28, 2019, https://www.theamericanconservative.com/articles/the-conservative-case-for-antitrust-jonathan-tepper/.

8. ARE MONOPOLISTS ALIGNED WITH STAKEHOLDER CAPITALISM?

Some argue that dominant firms can make outsized progress toward global goals and are uniquely positioned to do so.[94] This line of reasoning supposes that concentrated industries are easier to work with, because there are fewer entities to persuade in the push toward sustainability. Small decisions in the headquarters of dominant companies can move entire industries, and even societies.[95]

Dominant firms are also likely to have the excess profits to absorb any short-term costs of transition — so they have more capacity to meet stakeholder capitalist demands[96] — and their consumers cannot easily shift to less sustainable alternatives because there are few such options. Similarly, if share ownership is concentrated, investors can coordinate to pressure corporations to adopt climate or socially beneficial policies.[97] Such is the logic of much of ESG apologetics today.

One key problem with this line of argument is that it does not match reality. The trend of externalization of harm will only be reversed, as the stakeholder capitalists would like to see, when it is in the company's financial interests to do so. Ultimately, the same drivers that motivate firms to pursue monopoly also encourage the creation of negative externalities.[98]

When companies compete to maximize profits, they can choose to do so by increasing internal efficiency, reducing their input costs, or offering more innovative products. They can also, and more easily, attempt to monopolize markets and raise prices, squeeze workers' wages, and squeeze suppliers (alongside externalizing costs) — especially in an era of weak regulation. Not all paths to profit are compatible with the public good, and big firms, capable of investing vast resources toward social good, are also capable of inflicting substantial harms.

Even now, in the face of global environmental collapse, powerful firms such as Unilever[99] and Danone[100] argue that they cannot move toward sustainable practices, such as improving con-

94 Mark J. Roe, "Corporate Purpose and Corporate Competition," July 13, 2021, European Corporate Governance Institute - Law Working Paper No. 601/2021, https://ssrn.com/abstract=3817788.

95 Zephyr Teachout and Lina Khan, "Market Structure and Political Law: A Taxonomy of Power," 9, *Duke Journal of Constitutional Law & Public Policy,* pp. 37–74, 2014.

96 Mark J. Roe, "Corporate Purpose and Corporate Competition."

97 Ibid.

98 Michelle Meagher, "Fifty years of shareholder value have swollen monopoly power," *Financial Times*, September 13, 2020, https://www.ft.com/content/de8b9a1c-df69-44e5-b571-81f4651de050.

99 Unilever Submission to DG Comp, "Sustainability cooperations between competitors & Art. 101 TFEU," https://www.unilever.com/Images/unilever_submission_sustainability_competition_law_tcm244-551751_en.pdf.

100 Martyn Chu, Danone, "Competition Policy for a Sustainable Food Sector: An In-House Counsel Perspective," in *Concurrences: Competition Law, Climate Change & Environmental Sustainability*, 2021.

sumer goods packaging and increasing wages for workers, unless they are granted exemptions from antitrust laws to let them collude with rivals.[101] They are seeking permission to wield collective power so that they do not forgo profits when fixing the problems that they may have contributed to causing. But entrenchment of their dominant collective power is not a viable path toward sustainability or a more democratic economy.

Efforts to achieve stakeholder goals such as tackling climate change are channeled and often blocked by the structure of an economy, and by the power structures embedded in it. The more that this structure is monopolized, the more insurmountable those blockages will be.

Big, monopolistic firms may appear capable of forging our salvation — they certainly have ample financial means — and politically it may seem far more expedient. But the reality is that it will not work.

With stakeholder capitalists trying, ambitiously, to address existing breaches to both planetary and social boundaries,[102] challenging the system that created those breaches, and the distribution of power that enabled it, is essential. Big, monopolistic firms may appear capable of forging our salvation — they certainly have ample financial means — and politically it may seem far more expedient. But the reality is that it will not work.

Rather, it is likely to engender a backlash against anti-democratic tactics to answer social questions through corporate force. It forgoes the hard political work of realigning our economic system toward sustainability and justice. Instead, we need to hold big, monopolistic companies to account and maintain durable means of control over their power so that workers, communities, entrepreneurs, nations, and suppliers have some level of control. This is what it should mean to engage stakeholders in the redefinition of capitalism.[103]

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101 Michelle Meagher and Simon Roberts, "The Footprint of Competition: Power, Value Distribution and Exploitation in the Food Supply Chain," in *Concurrences: Competition Law, Climate Change & Environmental Sustainability*, 2021.

102 Kate Raworth, *Doughnut Economics: Seven Ways to Think Like a 21st-Century Economist*, Chelsea Green Publishing, March 22, 2017.

103 Auden Schendler, "The Complicity of Corporate Sustainability," *Stanford Social Innovation Review*, April 7, 2021, https://ssir.org/articles/entry/the_complicity_of_corporate_sustainability#.

9. MAKING STAKEHOLDER CAPITALISM AN ANTI-MONOPOLY MOVEMENT

Stakeholder capitalism and anti-monopoly operate in different terrains. Whereas stakeholder capitalism generally focuses on what happens *inside* corporations, anti-monopoly focuses on what happens *between* corporations, in markets and economies. But of course, these terrains overlap in important ways. For instance, one preferred anti-monopoly remedy — breaking up companies — uses an internal company disruption to advance a market-specific agenda of increased competition. When seen this way, the potential congruency between the movements becomes clearer.

Despite a lack of organizational connections between the two communities and movements, there are potential synergies. If the stakeholder capitalism proponents do move toward answering key questions about concentrations of economic power, then both agendas would uphold similar values around stakeholders' right to self-determination, the democratic functioning of markets, and the problems of externalities.

At its core, stakeholder capitalism is about achieving social outcomes through private means, which is an important element of systems change: we need all hands (and industries) on deck to meet our interlocking problems. But this leaves an important question, indeed a key question, unanswered. Do stakeholder capitalists advocate a privately planned economy controlled by democratically unaccountable and unelected monopolists? Or is their guiding vision a vibrant, participatory, democratic economy with sustainable resource use and economic opportunity? That is the question posed by the anti-monopolist vision.

The anti-monopoly movement shows us that markets must be guarded and governed by democratically determined rules, enforceable by the state, if they are to operate on fair, competitive, and balanced terms among stakeholders. Similarly, some strands of stakeholder capitalism acknowledge that corporations are given their license to operate by the state, and that the power within corporations must be distributed in a way that supports the public interest.

Markets and corporations are public creations and should be governed in the public interest. They both need referees, and stakeholder capitalists now recognize that shareholders are insufficient guardians of public creations.

Acknowledging corporate power would aid proponents of stakeholder capitalism, because it aligns with people's everyday experience of disempowerment in monopolized capitalism. Whether it is the inflated prices of consumer goods and services, supply chain shortages, the shrinking power of workers to negotiate better pay or working conditions, the difficulty an entrepreneur faces growing their business, or mega-firms suppressing climate change research for decades — all these issues can be explained, in large part, by dominant firms with too much power setting market rules, acting as gatekeepers, and misusing the privilege of incorporation.

But acknowledgement is not enough. Dealing with concentrated corporate power requires a willingness to use the tools of antitrust policy to address it. An important tool is corporate breakups. Breaking up dominant companies, an underutilized remedy by antitrust enforcers, may be a rare instance of an actual win-win scenario: breakups can be good for investors and simultaneously good for stakeholders, innovation, fair markets, and democracy.

Standard Oil is perhaps the most famous example. When broken up into 33 separate companies by the U.S. Supreme Court in 1911, it became worth more to investors in pieces than it was together. Rockefeller was on the golf course when he heard the news. "Buy Standard Oil" was his response, which proved an excellent stock tip. Today, some investors make similar arguments in favor of breaking up Facebook[104] and Alphabet.[105]

And both the stakeholder capitalism and anti-monopoly agendas seek to unlock innovation to address real market needs, rather than have the market subsidize and reward rentiers. When Standard Oil was broken up, a technology called thermal cracking (which vastly improved the process of turning oil into gasoline) was commercialized to enormous success.[106] It had been ignored, as it was not core to Standard Oil's business model, but ushered in an era of cheaper gas for consumers.

Similarly, when AT&T was broken up 1984, innovations like the answering machine finally reached consumers. Some argue that if Microsoft had not faced antitrust scrutiny in the 1990s, Google would never have had a chance to challenge Internet Explorer. There is no telling how many innovations have been lost to unchallenged monopolists.

Fairer markets, increased innovation, and better outcomes for stakeholders are aims of both movements. For these and other reasons, if stakeholder capitalism embraces an anti-monopoly agenda, it can form a coherent and persuasive platform for change.

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104 Luis Sanchez, "Why an Antitrust Break-Up Could Be Good for Facebook's Stock," *The Motley Fool*, January 12, 2021, https://www.fool.com/investing/2021/01/12/why-an-antitrust-break-up-could-be-good-for-facebo/.

105 Tim Mullaney, "There's a good financial case for an Alphabet breakup, and a trillion dollars at stake," *CNBC*, February 13, 2020, https://www.cnbc.com/2020/02/13/alphabet-sum-of-parts-analysis-suggests-more-valuable-if-broken-up.html.

106 Matt Stoller, "Break-ups and stock prices," BIG, June 19, 2019, https://mattstoller.substack.com/p/break-ups-and-stock-prices.

10. WHERE THE RUBBER MEETS THE ROAD: SUPPORTING ANTI-MONOPOLY POLICIES

> *"The rules of the game have to include everything a society does to ensure that the activities of corporations, individually and collectively, are consistent with its core objectives: promoting competition and innovation, protecting public health, protecting the environment, protecting employees from abuse, raising the tax revenue needed to meet democratically agreed objectives, and so on and so forth. The rules of the game are, in sum, everything a society does to organize itself through politics and law."*
>
> —MARTIN WOLF, *FINANCIAL TIMES*

As this paper has shown, stakeholder capitalism must embrace an anti-monopoly agenda to achieve its own objectives. This means that the stakeholder capitalism movement must publicly support ongoing anti-monopoly policy agendas.

SUPPORT GOVERNMENT AND COLLECTIVE ACTION

The public institutions responsible for circumscribing corporate abuses of power in the U.S. include: the Federal Trade Commission, the Antitrust Division of the Department of Justice, and several other federal agencies with existing statutory authority on competition-related matters. And following President Biden's executive order on competition, many agencies — including the Securities and Exchange Commission, the Department of Agriculture, Health and Human Services, Department of Defense, the Federal Communications Commission, the Department of Transportation, and many others — are required to report on, consider, and propose solutions to competition-related issues within their industries. Fifty-six "state" attorneys general (including the District of Columbia and five territories) can also bring antitrust cases against dominant firms.

Stakeholder capitalists can lend their weight to the anti-monopoly movement by publicly championing efforts at the federal and state level to tackle concentrated corporate power, the asymmetrical bargaining positions of stakeholders, and the direct harms of concentration to society and democracy. They can also collaborate with organizations that advance anti-monopoly policies.

Specifically, this means:

1. Champion President Biden's Executive Order on Promoting Competition in the American Economy,[107] which marks a significant turning point in the government's approach to monopolies and antitrust issues. For more than 40 years, policymakers on both sides of

107 https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/

the aisle turned a blind eye to consolidation within industries, but Biden's executive order signaled a desire (and concrete plan) to combat the rising power of dominant firms and barriers to fair markets across numerous industries, taking a "whole-of-government approach" to fixing consolidation.[108]

2. Publicly support the FTC and DOJ in investigating anticompetitive mergers and breaking up companies that are too dominant.
   a. Stakeholder capitalists should closely watch mergers in key industries and campaign against mega-mergers that will harm stakeholders and competitive markets.
   b. The FTC, under Lina Khan, is initiating an important revision process to decades of under-enforcement of the antitrust laws. This has, unsurprisingly, received significant pushback from corporate-friendly groups like the Chamber of Commerce.[109] Stakeholder capitalists should vocally support Lina Khan and her staff's efforts to ensure competitive and fair markets.

3. Support the FTC in its ongoing investigation of coercive contract terms that harm workers and small businesses. Denounce[110] contract terms that are regularly used to dominate and intimidate smaller competitors, suppliers, and workers. [111] These take-it-or-leave-it terms, sometimes known as contracts of adhesion, can include the following:
   - Nondisclosure agreements or nondisparagement clauses, which restrict consumers, workers, or smaller businesses from speaking publicly about negative experiences with a firm
   - Class action waiver clauses and mandatory arbitrational clauses in all instances (not solely in sexual harassment cases)
   - Liability disclaimers
   - Confessions of judgment, which subject the signing party to court authority while waiving their ability to defend themselves in court (often used against borrowers in loan agreements in the event of default)
   - Unilateral modification clauses/change-of-terms provisions
   - Exclusive supply or purchaser agreements (sometimes called sole source, sole supplier, or sole purchaser contracts, or requirements contracts)
   - Loyalty discounts and slotting fees that favor the largest players
   - No price competition clauses

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108 The order creates a new White House Competition Council, led by the Assistant to the President for Economic Policy (Tim Wu) and Director of the National Economic Council (Brian Deese), who will chair the Council. The Competition Council will also include the Secretary of the Treasury (Janet Yellen), the Secretary of Defense (Lloyd J. Austin III), the Attorney General (Merrick Garland), the Secretary of Agriculture (Thomas Vilsack), the Secretary of Commerce (Gina Raimondo), the Secretary of Labor (Martin Walsh), the Secretary of Health and Human Services (Xavier Becerra), the Secretary of Transportation (Pete Buttigieg), the Administrator of the Office of Information and Regulatory Affairs (Neomi Rao), the Chairman of the U.S. Securities and Exchange Commission (Gary Gensler), and other department heads as requested.

109 "U.S. Chamber of Commerce Stands Up to FTC Going Rogue," U.S. Chamber of Commerce, November 19, 2021, https://www.uschamber.com/regulations/u-s-chamber-of-commerce-stands-up-to-ftc-going-rogue.

110 And beyond denouncement, perhaps an assessment of the use of coercive contract terms wielded against suppliers, vendors, consumers, and other small and medium-sized businesses should form part of impact measurement schemas (for example, in the B Impact Assessment that B Corps are scored on). Additionally, when stakeholder capitalists seek ESG-related disclosures, specific contract terms like these should be considered in addition to board diversity, environmental disclosures, and other more frequently demanded information.

111 "Unfair or Coercive Business Contract Terms," American Economic Liberties Project via Access to Markets, https://accesstomarkets.org/the-latest/potentially-unfair-or-coercive-business-contract-terms/.

- Vertical price maintenance restrictions
- Perpetual claims on intellectual property, patents, creative property, or royalties
- Mandatory disclosure of competitive business information
- Noncompete clauses, which restrict workers and prevent smaller firms from accessing talent

4. Support the FTC and DOJ in their efforts to review and update the federal merger guidelines, and champion more transparency, scrutiny, and oversight of mergers and acquisitions in both public and private markets.
   a. Merger guidelines lay out the antitrust agencies' approach and policy toward mergers — how mergers should be assessed, investigated, and potentially blocked. The guidelines reflect the agencies' interpretation of the law and help businesses plan. Courts often cite the merger guidelines as persuasive authorities on what antitrust law says. The first merger guidelines were created in 1968, and they were fairly strict. But in 1982, under the Reagan administration, those guidelines were relaxed. The last substantive change to the guidelines was in 2010, and since then, market conditions have changed significantly. By creating new merger guidelines, the FTC and DOJ are building on their efforts[112] to restore the agencies' ability to combat one of the biggest avenues of corporate consolidation: mergers and acquisitions.

5. Support state attorneys general who are bringing antitrust cases, for example: Washington, D.C., against Amazon;[113] a coalition of 36 state AGs, led by Colorado and including Puerto Rico and Guam, against Google Search;[114] a coalition of nine states, led by Texas, against Google Ad Tech;[115] the state of Ohio against Google (in attempts to convert the company into a public utility);[116] and a 48-state co-sponsored case against Facebook.[117]

6. Support New York state's "Twenty-First Century Anti-Trust Act" (Bill *S933A, New York, 2021-2022)*,[118] the most comprehensive update to state antitrust law in a century, introduced by Senator Mike Gianaris. The bill shifts the focus away from the consumer welfare standard and toward an "abuse of dominance" interpretation of antitrust law, making it

112 "A New Era: A Stronger FTC to Defend Working Families and Honest Businesses," American Economic Liberties Project, December 22, 2021, https://www.economicliberties.us/our-work/a-new-era-a-stronger-ftc-to-defend-working-families-and-honest-businesses/#.

113 District of Columbia v. Amazon.com Inc, 2021 CA 001775 B | District of Columbia, Superior Court, https://oag.dc.gov/sites/default/files/2021-05/Amazon-Complaint-.pdf.

114 State of Colorado et al vs. Google LLC, 1:20-cv-03715 | District Of Columbia District Court, https://coag.gov/app/uploads/2020/12/Colorado-et-al.-v.-Google-PUBLIC-REDACTED-Complaint.pdf.

115 State of Texas, et al. v. Google LLC, Case 4:20-cv-00957-SDJ, https://www.texasattorneygeneral.gov/sites/default/files/images/admin/2020/Press/20201216_1%20Complaint%20(Redacted).pdf.

116 Ohio Common Pleas Court, "State of Ohio v. Google" (2021). *Historical and Topical Legal Documents*. 2469. https://digitalcommons.law.scu.edu/historical/2469/.

117 State of New York et al. v. Facebook, Inc., https://ag.ny.gov/sites/default/files/state_of_new_york_et_al._v._facebook_inc._-_filed_public_complaint_12.11.2020.pdf.

118 The New York State Senate, Senate Bill S933A, https://www.nysenate.gov/legislation/bills/2021/S933#:~:text=senate%20Bill%20S933A%202021-2022%20Legislative%20Session%20Relates%20to,the%20state%20anti-trust%20law%20download%20bill%20text%20pdf.

easier to bring cases and protect workers and small businesses from the anticompetitive tactics of dominant players. This landmark bill could set a precedent for other state antitrust legislation and bolster federal attempts to reassert the original aim of antitrust law and enforcement: challenging corporate abuses of dominance.[119]

7. Support additional research on the role of mergers and acquisitions and their effects on the economy, in particular, serial acquisitions, rollups, and private equity add-ons, and the harms these strategies pose to stakeholder groups and fair markets.
8. Bring private antitrust suits against dominant firms that have demonstrated clear harms to stakeholders.

11. CONCLUSION

> *"The first truth is that the liberty of a democracy is not safe if the people tolerate the growth of private power to a point where it becomes stronger than their democratic state itself. That, in its essence, is fascism — ownership of government by an individual, by a group, or by any other controlling private power. ... Among us today a concentration of private power without equal in history is growing."*
>
> —PRESIDENT FRANKLIN D. ROOSEVELT

Like democracy, "the economy" is simply the collective action of billions of humans, coming together to create, build, and trade. Democratizing the corporation by changing ownership and governance norms for a broader set of stakeholders and vigorously enforcing fair markets through antitrust law are essential and complementary components of building an economy that can work for all.

If the stakeholder capitalism movement is to address its internal inconsistency, proponents must reclaim and reassert the foundational tenets of a democratic economy: that corporations are fundamentally embedded within society, that the corporation is a public creation and should be publicly accountable, and that markets are public creations and structured by politically determined rules.

It is time for a collective movement to displace 40 years of the intellectual capture of our regulatory agencies and public opinion. As currently constituted, stakeholder capitalism has not yet

119 "SB 933: Protecting Workers and Small Businesses from Dominant Corporations," American Economic Liberties Project, June 3, 2021, https://www.economicliberties.us/our-work/sb-933-explainer/#.

broken from the consequences of Milton Friedman's vision of dominant private firms organizing social resources without public accountability.

If the stakeholder capitalism movement is to address its internal inconsistency, proponents must reclaim and reassert the foundational tenets of a democratic economy: that corporations are fundamentally embedded within society, that the corporation is a public creation and should be publicly accountable, and that markets are public creations and structured by politically determined rules. We the public, through our elected officials, must assert our demands on the largest and most powerful corporations today.

If stakeholder capitalism advocates commit to becoming anti-monopolists, in the U.S. and abroad, they can form a real movement for change and usher in a more democratic economy for all.

Balanced Economy Project

The Balanced Economy Project is a new anti-monopoly organization dedicated to tackling excessive concentrations of corporate power in countries outside the United States. We bring together experts on competition policy and activists challenging corporate power to create a hub of expertise, kickstarting a global anti-monopoly movement.

The American Economic Liberties Project is a new, independent organization fighting against concentrated corporate power to realize economic liberty for all, in support of a secure, inclusive democratic society.

economicliberties.us

@econliberties

info@economicliberties.us