Corporate Purpose and Corporate Competition

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The large American corporation faces ever-rising pressure to pursue a purpose that's more than just for shareholder profit. This rising pressure interacts with sharp changes in industrial organization in a way that has not been comprehensively analyzed and is generally ignored.

Three changes are most relevant: the possibility of declining competition, the counter-possibility that what seems to be a competitive decline is really increasing winner-take-all competition, and the possibility that the ownership of the big firms has concentrated (even if the firms themselves have not) and thereby diluted competitive zeal. Consider competitive decline: In robustly competitive economies, firms cannot deviate much from profit maximization for expensive corporate purpose programs, unless expanded purpose bolsters profitability (by branding the firm positively for consumers or by better motivating employees, for example). In economies with slack competition, in contrast, monopolistic and oligopolistic firms can accommodate purpose pressure, sometimes even expensive purpose pressure, from the profits they garner above what a competitive firm requires. In simplistic form, purpose can pressure such firms to redirect their excess profit from shareholders to stakeholders—to customers, employees, or the public good—in ways that firms in strongly competitive industries cannot. By most accounts, competition has been declining in the United States. By some accounts, it has declined precipitously.

That decline suggests three possibilities: One—the central thesis of this Article—purpose pressure has greater potential to succeed if competition has declined; in competitive markets, the profit-oriented purpose-pressured firm has no choice but to refuse the purpose pressure (or to give it only lip service), while in monopolistically-organized industries, the purpose-pressured firm has more room to maneuver. Two, the normative bases undergirding shareholder primacy, although still strong, are less powerful in monopolistic markets. Three, declining corporate competition and rising corporate profits create a lush field for social conflict inside the firm and the polity for shareholders and stakeholders to seek a share of those profits. The result can infuse basic corporate governance with social conflict. This new, or expanded, field for conflict can contribute to and exacerbate our rising political and social instability. Expanding purpose pressure is one manifestation of this conflict.

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INTRODUCTION

The public corporation is today pressed more than ever to treat employees, customers, and the environment better, and to be a stronger corporate citizen overall. Says a major business publication: "A growing cohort—perhaps a majority—of citizens want corporations to be cuddlier, invest more at home, pay higher taxes and wages and employ more people."[1] For proof of this pressure, one need go no further than the 2019 corporate purpose statement from the Business Roundtable—the elite organization of CEOs of the 200 largest U.S. public firms. Those elite CEOs demoted shareholders from first to last on their list of whom the corporation serves.

The growing strength of purpose pressure is readily understood. Rising inequality and government gridlock makes many look elsewhere for action. The threat of climate catastrophe turns activists' attention to corporations to

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[1] *Businesses Can and Will Adapt to the Age of Populism*, THE ECONOMIST, Jan. 21, 2017 ("and are voting for politicians who say they will make all that happen.").

mitigate it. Stock buybacks are seen by the media and social activists as enriching shareholders while employees and the economy suffer. Internet-connected devices regularly report and display images of corporate misbehavior, the result, it's thought, of the large corporation being excessively enthralled with the primacy of shareholder profit and inadequately attuned to the public good.

This controversy on the proper goals for the corporation is thus far devoid of analysis, both in academe and the media, of how major shifts in industrial organization in the U.S. economy during recent decades affect the viability of purpose pressure and its normative character. These two literatures—industrial organization and proper purpose—sit side-by-side, unconnected. Concentration is rising and competition declining in one. The corporation must attend to some of society's ills, or at least stop contributing to them, in the other. But the two should not be left separate, as purpose and industrial concentration interact. Powerful private firms attract purpose pressure, and high profits raise its chance of success. So, our first question is: how readily in the abstract should we expect purpose pressure to succeed or fail as marketplace competition rises and falls? Our second question is concrete: *has* industrial organization shifted in a relevant way? And, finally, do the two—firms less competition and more purpose action—affect one another?

Purpose, if the firm takes it seriously, can be costly. In a competitive market with thin profit margins, a firm feeling pressure to, say, pay its employees noticeably more than their productivity warrants cannot prosper. It will be unable to raise capital well, its extra costs will chew away at profits, its sales will suffer, and it will shrink. At the limit it will disappear. Milton Friedman's famous assertion that the purpose of the corporation is, and in his view should be, to make profit for its shareholders fits tightly with a competitive market structure, such as that which the United States was widely thought to have had a half-century ago in the 1970s when Friedman rendered his famous and controversial analysis.

In contrast, a sharp downward shift in competitive zeal and competitive structure, resulting in more firms with more market power, means that purpose pressure, even if expensive, cuts into the monopolist's above-normal profits—its rents—not its thin competitive profit. Accommodating the pressure will not be as dire for the firm. It can pay and still prosper. Its monopoly profits will erode, but the firm itself need not lose access to new capital if its profits stay above the economy-wide expected return for capital. Thus reinterpreted, the new corporate purpose movement aims to reallocate supra-competitive profits of the large public firm.

Consider as well the way weak competition affects shareholder primacy's normative fitness with the following simple observation: The shareholder primacy command to the board and chief executive officer of a monopoly commands them to raise their price and produce less. The higher price produces monopoly profit and the monopolist typically cuts production so as to sell only to high-value (and therefore high-paying) users. The profit maximization command in an uncompetitive market does not implement the classic analysis of Adam Smith—that the butcher and baker will bring forth protein and bread not out of charitable sentiment but out of self-interest. In a monopoly market, the monopolist butcher and baker will produce less protein and bread than they could. Each will charge too much and produce too little, leaving too many potential consumers with neither meat nor bread. Hence, a widened purpose is plausibly more likely to be welfare-enhancing, and less likely to catastrophically damage the affected firms, in weakly competitive markets with many firms having noticeable market power.

The fit between corporate purpose and industrial structure is sound in theory and, we shall see in Parts II and III, corroborated by much, but not all, evidence.

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While competitive zeal's interaction with purpose pressure is the most basic connection here, there is disagreement in industrial organization thinking as to whether U.S. competition has sharply declined and, if it has, why. I examine the alternatives' interaction with purpose pressure as well. Understanding these channels and knowing which one is more important is vital for proper antitrust policy. But for the corporate project in this Article, *each* of these industrial organization alternatives sees rents rising considerably inside corporate America, but explains their source differently. As such, *each* of these understandings is that rents are more available, bigger, and more contestable.

Three channels are widely seen to have greatly altered industrial organization in the United States in recent decades: The first is a sharp competitive decline. The second, is not that competition has declined but that its nature has been much altered, with more winner-take-all competition, steeper scale economies, and more widespread network industries now yielding a single (or just a few) competitive winners in an industry. These winners enjoy high profits for the duration of their competitive victory. The third channel is that while competitive structure at the industry level remains satisfactory, share ownership has concentrated—with large institutional investors owning stock in all firms in an industry—and this ownership by a small group of institutional investors across an entire industry slakes much competitive zeal.

There is also a fourth relevant rents channel. Long-standing rents were once shared with labor decades ago, but in some analyses labor's capacity to obtain these rents has declined or disappeared. I examine this possible channel—which leads to a similar but more complex analysis and conclusion, with the newly reshaped rent distribution for labor inducing ESG/CSR contests for rents.

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The roadmap: In Part I, I contrast classical corporate purpose—shareholder primacy—with the wider purpose sought today. I then ask: in principle, is purpose pressure more likely to succeed in a competitive industry or in a non-competitive one?

In Part II, I explore the extent to which the evidence and the facts-on-the-ground match the concepts from Part I. I start by examining the evidence of decreasing competition. I then summarize the evidence that stakeholders do better in markets where competition is weak; and that more profitable firms share profits with stakeholders, do more CSR, and promote ESG more than less profitable firms.

In Part III, I examine alternative explanations for increasing industrial concentration and rising rents. These other explanations lie in increased economies of scale (which propels us to have larger firms), more network monopolies, and the dominance of superstar firms that emerge from winner-take-all contests of skill, foresight, and industry.

Each alternate avenue of industrial change *also* frees the benefiting firm from the intense ongoing competition that impedes firms from accommodating corporate purpose pressures. Skill, foresight, and industry monopolies are, in important analyses, the end-result of ferocious competition. But those end-result firms *also* no longer need to respond immediately and strongly to competitive pressures. There is good reason, and important data, indicating that this avenue is more substantial than a competitive decline. But for our purposes in this Article, we need not arbitrate the disagreement. Corporate purpose pressures to re-divide the "good" monopolist's profits are as compatible with the Article's core thesis as pressure to re-divide the "bad" monopolist's profits.

Then I show the consistency between the new horizontal shareholding analysis and the Article's thesis. In otherwise competitive industries, those seeking expanded but expensive purpose cannot readily succeed when they pressure a single firm. The purpose people must instead bring the pressure to bear on the entire industry. For the purpose pressure to succeed, it must become like a tax, paid by all. Or the purpose pressure must be managed by a cartel, either agreed to by the firms themselves (via an industry-wide statement of principles) or by an outside ringmaster, such as institutional investors that own part of every firm in the industry. Recent scholarship has shown conceptually how, and brought forth evidence that, this new horizontal shareholding across an industry can affect prices and competition. I look at how this shareholding structure can in parallel fashion facilitate firms' decisions to widen their purpose. This cartelization allows its member firms to escape the competitive forces that bar them from adopting wider purpose.

Each channel for industrial change—decreased competition or an altered nature of competition can better accommodate the new purpose pressure than classic multi-firm competition.

In Part IV, I extend the analysis. First, I note normative implications. Shareholder primacy is more likely to bake the biggest economic pie in highly competitive industries than in noncompetitive ones. Declining competitive zeal does not offset all the rationales for shareholder primacy but it weakens one of is key justifications.

Second, I consider the mechanisms how pro-ESG/CSR pressure can be greater for firms with rents than firms in highly competitive markets. Large firms attract political attention. Large firms with visible rents attract even more political attention. And firms with large rents have more reason to dodge political animosity because they want to retain those rents, which the polity could confiscate or reallocate. The firm that does more ESG and CSR can reduce political animosity. The firm can give up some rent if doing so sufficiently increases the probability it will retain the rest of the rent. But it's the rent that motivates and facilitates the action.[2]

Third, I inquire further into the ways ESG and CSR can affect the firm with market power. One way is that managerial agency costs—the classic debility of the large, diffusely-owned public firm for profit-oriented shareholders—worsen for stockholders of a firm with market power. Weak competition allows for more managerial independence from profit-oriented shareholders, such that the executives can more readily accede to employee and ESG/CSR pressure. Executives can do so when the pressure affects their own conscience or their own interest (to have a less stressful work life and a happier workforce, for example). Stated differently, if the other institutions of corporate governance were air-tight, they would keep executives loyal to shareholders even in firms with market power. But if competition is often necessary to constrain executives from straying—or if competition strengthens the other institutions of shareholder-oriented corporate governance—then an economy characterized by more firms with more market power will make it easier for ESG and CSR to be effective. A second ways comes from shareholders not being fully united. Some shareholders unremittingly pursue profit, and some nowadays say that they do not. It is natural that corporate analysts, such as myself, focus on corporate mechanisms; the background organization of industry, however, could be more powerful than the corporate tools.

Another and third important way ESG and CSR pressure becomes important is not recognized in the analytic literature, as far as I can tell. Many analysts indicate that in the end most ESG/CSR is just cheap talk; executives and boards will only do ESG and CSR if it is profitable. I agree that much purpose pressure in the end must be profitable to be widely implemented. But that determination is dynamic, not static. Effective purpose pressure changes the profit calculation of the firm, its executives, and its shareholders. I show how this process can work: by affecting the public's opinion of the firm, altering the morale and motivation of the employees, striking at executives'

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[2] This is not to say that the firm cannot pursue other, less wholesome actions to bolster the probability of retaining much of the rent. It could spend one-third of the rent on lobbying, for example, if doing so would sufficiently increase the probability of retaining the other-two thirds of the rents.

conscience, and changing the chance of congressional action that, in effect, would redistribute the corporate rents away from shareholders.

The fourth extension is to link purpose to rising contemporary political tension: if corporate profit becomes a distributional battlefield inside the corporation, that conflict would contribute to the increasing instability and tension in the polity. Corporate governance institutions—like board elections, capital structure, and shareholder activism—have long been means to tie executives and boards more tightly to shareholder-profit goals. Some thought tightening was needed for managerial accountability; some thought accountability was already too tight and managers needed more autonomy. But now the contest is shifting to include these social purpose values. Institutions that once were solely or primarily thought of as means to mitigate managerial slack are becoming suffused with social considerations.

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Ideas—like a more benign corporate purpose than raw shareholder primacy—may succeed because they are persuasive and fair. They can succeed when they fit the interests of those with votes and power. And—the thesis of this paper—they can succeed more easily when market structure makes them easier to implement. The new corporate purpose debate origins lie outside industrial organization—mostly in frustration with government responses to systemic problems and a sense that big problems are getting bigger—but it has more potential to affect and change the large public corporation today than it could have had decades ago. This difference in susceptibility is due to less competitive markets often with a winner-take-all quality, and shareholding structures that facilitate industry-wide purpose pressure. Alternatively, it reflects employees' losing much of their prior share of corporate rent to executives and shareholders, with purpose pressure the modern means for them to recover it. Industrial organization changes make more firms able to respond positively to stakeholder pressure without cutting into their competitive profits.

Rising social pressure on the corporation should be seen as not just a set of changing mores, but as a new struggle to divide up the large firm's supra-competitive profits. A rise in supra-competitive profits can fit with a rise of pressure on the firm to distribute those extra profits to more than just shareholders. The pressure both reflects and fosters the increasing polarization and instability of the polity.

I. Corporate Purpose as Extracting Monopoly Rent: the Concept

Corporate purpose pressures—the idea that corporate decisionmakers should consider not just shareholder profitability but also stakeholders and society more broadly[3]—are less effective and more likely to fail in highly competitive industries than in weakly competitive ones. Some of these new social pressures on the corporation seek that the corporation have a purpose beyond profits—say, to orient the pharmaceutical company to curing disease chiefly, and not primarily toward profit-making. And some pressures are oriented to stakeholders—say, to respect employees more than before, and to serve customers beyond what is profitable. For other analyses, purpose and stakeholder respect are not always identical.[4] But here we put them together, as both aim to orient the firm away from shareholder primacy.[5]

In principle, a firm in a highly competitive market that accedes to *expensive* new socially conscious corporate purpose pressures will eventually disappear. While realistic market constraints are rarely that severe—and corporate purpose pressures rarely so costly—such a firm in a competitive market will still be compromised. If the corporate purpose costs are large,[6] it must raise its price or cut its services. If it cannot do either because of competition, it will shrink. It will have trouble raising new capital. In contrast, firms with market power in weakly competitive markets do not face the same difficulty even when incorporating costly CSR and ESG measures into their operations.

A. Shareholder Primacy: The Classical Theory, from Milton Friedman Back to Adam Smith

Modern shareholder primacy—that the corporation should be organized for shareholders' profit and not for a wider social purpose beyond complying with the law, the regulatory framework, and prevailing social norms—traces back to the iconic 1970 *New York Times* magazine article by Milton Friedman, the conservative, Nobel-Prize-winning Chicago-school economist.[7] Friedman extolled the virtues of capitalism, competition, and

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[3] *See* Jill E. Fisch & Steven Davidoff Solomon, Should Corporations Have a Purpose? (ECGI Working Paper Series No. 510/2020, Apr. 2020), www.ssrn.com/abstract=3561164; COLIN MAYER, THE FUTURE OF THE CORPORATION AND THE ECONOMICS OF PURPOSE (2020).

[4] In some renditions, however, they are the same. The World Economic Forum says, for example, that "[t]he purpose of a company is to engage all its stakeholders in shared and sustained value creation." WORLD ECONOMIC FORUM, DAVOS MANIFESTO 2020.

[5] I similarly use CSR and ESG interchangeably, although they operate at differing levels of generality.

[6] These costs are the net costs. If customers like the branding implicit in a company with a good purpose reputation, and those customers pay for purpose's cost, or if employees are more motivated when working for a purpose-driven firm, then the costs are offset by benefits. If the benefits exceed the costs, then corporate purpose pressure has helped the firm, which was too unimaginative to see the opportunity. When I speak here of costs I mean the net costs that detract from the firm's bottom-line profitability.

[7] While Friedman is widely given credit for the concepts, or at least for their modern formulation, the shareholders-as-owners idea was widespread at the time. But Friedman was then, and is still, famous. *See* Brian R. Cheffins, Stop Blaming Milton Friedman! 6, 36 (Cambridge Legal Stud. Res. Paper Series, Paper. No. 9/20, 2020).

free markets,[8] with shareholder profitability as one means to foster them.[9] "[T]here is one and only one social responsibility of business—to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game . . . ."[10]

Four main rationales motivate shareholder primacy: (1) property; (2) clarity of purpose for management; (3) clarity for risk-bearing; and (4) social specialization.

The formalistic property idea is that the corporation belongs to its shareholders. Managers are obliged to work for their employers.[11] For business clarity and efficiency, say primacy advocates, directors and executives *should* think of themselves as employees of their company's owners, because doing so leads them to run their companies more effectively by pursuing a single overarching goal, undistracted.[12] And, besides, there is no obvious metric to trade off society's good against shareholders' profit.[13] Shareholders lose value first if the firm suffers, so their primacy leads to the firm being run better than otherwise.[14] As long as executives are paid from profits and elected by shareholders, their incentives will be to favor shareholders whatever the announced purpose of the corporation is.[15]

The last rationale is social specialization. Expansive purpose diverts directors and executives from running their firms well when they take on the political tasks of the legislature.[16] But the executive is not qualified to do so and she is not selected by a political process.[17] Friedman's deepest fear was

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8 MILTON FRIEDMAN, CAPITALISM AND FREEDOM 3–4, 12–16 (1962).

9 Milton Friedman, *The Social Responsibility of Business Is to Increase Profits*, N.Y. TIMES MAG., Sept. 13, 1970, at 32.

10 *Id*. at 126. Friedman was quoting from his *Capitalism and Freedom* book.

11 Friedman, *supra* note 9, at 33, 122. *Cf.* KENT GREENFIELD, CORPORATIONS ARE PEOPLE TOO (AND THEY SHOULD ACT LIKE IT) 186–87 (2018); Adolf A. Berle, Jr., *Corporate Powers as Corporate Trust*, 44 HARV. L. REV. 1049, 1049 (1931) ("[A]ll powers granted to a corporate [board] … are … exercisable only for the ratable benefit of all the shareholders as their interests appears."); ADOLF A. BERLE & GARDINER C. MEANS, THE MODERN CORPORATION AND PRIVATE PROPERTY 241 (2d ed. 1968, 1932) (conceptualizing the corporation private property, owned by its shareholders).

12 *See, e.g.,* Andrew Keay, *Shareholder Primacy in Corporate Law: Can it Survive – Should it Survive*, 7 EUR. COMPANY & FIN. L. REV. 369, 383 (2010).

13 *See* Jill E. Fisch, *Measuring Efficiency in Corporate Law: The Role of Shareholder Primacy*, 31 J. CORP. L. 637, 660 (2006); *see also* Michael C. Jensen, *Value Maximization, Shareholder Theory, and the Corporate Objective Function*, 14 J. APP. CORP. FIN. 8, 11 (2001); American Bar Ass'n Comm. on Corporate Laws, *Other Constituencies Statutes: Potential for Confusion*, 45 BUS. LAW. 2253, 2269 (1990) (requiring directors to consider non-shareholder interests would lead to poor corporate managerial decision-making overall).

14 FRANK H. EASTERBROOK & DANIEL R. FISCHEL, THE ECONOMIC STRUCTURE OF CORPORATE LAW 36–39 (1991).

15 Lucian A. Bebchuk & Roberto Tallarita, *The Illusory Promise of Stakeholder Governance*, 106 CORNELL L. REV. (forthcoming); Matteo Gatti & Chrystin Ondersma, Can a Broader Corporate Purpose Redress Inequality? The Stakeholder Approach Chimera (Mar. 4, 2020), www.ssrn.com/abstract=3547791; Keay, *supra* note 12, at 400 (shareholders elect directors). The counterview is that shareholders' control of boards and executives is in fact weak. Boards and executives, for example, have considerable influence over the corporate election and can devote corporate resources to promote themselves in the corporate election. More on this in Part IV.

16 Friedman, *supra* note 9, at 122.

17 *Id.*

that strong social responsibility would curb the market. "The doctrine of 'social responsibility' does not differ in philosophy from the most explicitly collectivist doctrine."[18]

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Modern shareholder primacy is a corporate-scaled version of Adam Smith's classic statement: "It is not from the benevolence of the butcher, the brewer, or the baker that we expect our dinner, but from their regard to their own interest."[19] The self-interested corporation run by self-interested shareholders in this vision produces the greatest good for society.

B. Modern Purpose: More than Just for Shareholders

Opposing thought holds that (1) the property argument is poor logic—the State defines what property is; (2) corporate social responsibility increases profits—corporations can do well by doing good; (3) ESG/CSR values are what shareholders want; and (4) the utilitarian greatest-good-for-the-greatest-number maxim should prevail.

The property argument is effectively circular, the expansive purposivists show. Because the State defines property, it can change property's parameters for the corporation—in the same way it regulates access to, emissions from, and usage of physical property.[20] If corporate structure today gives shareholders a prime place in the corporation,[21] corporate law could change if needed to make wide purpose work.[22] And besides, CSR is profitable say the critics,[23] bringing forward evidence linking more CSR to higher profit.[24]

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[18] *Id*. at 124. *See also* A. A. Berle Jr., *For Whom Corporate Managers are Trustees: A Note*, 45 HARV. L. REV. 1365, 1372 (1932).

[19] ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS 20 (P.F. Collier 1909) (1776).

[20] Greenfield, *supra* note 11, at 187–88; Simon Deakin, *The Corporation as Commons: Rethinking Property Rights, Governance and Sustainability in the Business Enterprise*, 37 QUEEN'S L. J. 339 (2011-2012); Fisch, *supra* note 13, at 649.

[21] Bebchuk & Tallarita, *supra* note 15.

[22] Primacy critics could reply that this would entail a revolutionary restructuring of the corporation that is not in the political cards and that, by giving too many possible directions to the corporation, would undermine its effectiveness. Both might agree that purpose and structure go hand-in-hand.

[23] The view made its first appearance in the classic law review debate on purpose: Merrick E. Dodd, Jr., *For Whom Are Managers Trustees?* 45 HARV. L. REV. 1145, 1147–56 (1932); Adolf A. Berle, *Corporate Powers as Powers in Trust*, 44 HARV. L. REV. 1049, 1049 (1932). *See generally* William W. Bratton & Michael L. Wachter, *Shareholder Primacy's Corporatist Origins: Adolf Berle and the Modern Corporation*, 34 J. CORP. L. 99 (2008).

[24] Virginia Harper Ho, *"Enlightened Shareholder Value": Corporate Governance Beyond the Shareholder-Stakeholder Divide*, 36 J. CORP. L. 59 (2010); Claudine M. Gartenberg, Andrew Prat & George Serafeim, *Corporate Purpose and Financial Performance*, 30 ORG. SCI. 1 (2018); Mozaffar Khan, George Serafeim & Aaron Yoon, , 91 ACC'TING REV. 1697 (2016); Marc Orlitzky, Frank L. Schmidt & Sara L. Rynes, *Corporate Sustainability: First Evidence on Materiality Corporate Social and Financial Performance: A Meta-Analysis*, 24 ORG. STUD. 3 (2003). But if these pro-social actions benefit shareholders, primacy advocates tellingly point out, there's no conflict between expanded purpose and shareholder primacy. Bebchuk & Tallarita, *supra* note 15, at 12

The third major modern purpose argument is that shareholders are not disembodied Wall Street moneymakers but people with pensions and savings who have concerns and lives that are benefited not just by their shareholder profits but by fresh air, a stable polity, and a wholesome society. Economists Oliver Hart and Luigi Zingales have advanced that view, as have legal scholars Einer Elhauge and Lynn Stout.[25]

The last objection to shareholder primacy is basic: it fails to maximize utilitarian social value. Primacy degrades the environment because the firm offloads environmental costs onto a public that must then live with polluted air, devastated parks, and degraded nature. Primacy is said to lead to financial crises,[26] mistreated employees,[27] and corporate disasters—from British Petroleum's Deepwater Horizon oil tragedy to United's dragging a doctor off their overbooked plane, to Boeing's slipshod introduction of the crashworthy Boeing 737 Max.[28]

The view that purpose should be broad is increasingly popular. The Business Roundtable's summer of 2019 famous statement of corporate purpose—demoting shareholders to fifth on the list—was explained by *Fortune*, the business publication, as fitting with and perhaps caused by public opinion: "as many Americans (64%) say that a company's 'primary purpose' should include 'making the world better' as say it should include 'making money for shareholders.'"[29]

("[E]nlightened shareholder value is not conceptually different from the 'old fashioned' shareholder value (i.e., shareholder primacy) view."). However, *see infra* Part IV on how persistent purpose pressure alters the calculus of profitability.

[25] Einer Elhauge, *Sacrificing Corporate Profits in the Public Interest*, 80 N.Y.U. L. REV. 733, 784 (2005); Oliver Hart & Luigi Zingales, *Companies Should Maximize Shareholder Welfare Not Market Value*, 2 J. L. FIN. & ACCT. 247, 248 (2017); LYNN A. STOUT, THE SHAREHOLDER VALUE MYTH 96–99 (2012). *Cf.* Michal Barzuza, Quinn Curtis & David Webber, *Shareholder Value(s): Index Fund Activism and the New Millennial Corporate Governance*, 93 SO. CAL. L. REV. 1243 (2020). A difficulty is the social visions could differ, or even clash. Iman Anabtawi, *Some Skepticism About Increasing Shareholder Power*, 53 U.C.L.A. L. REV. 561, 577–93 (2006).

This is not to say that all of the authors mentioned in the text reject shareholder primacy. As an example, *see* Elhauge, *supra* note 25, at 745. Rather it's that, because shareholders prefer not just profit, calculating their interests is subtle. In evaluating the normative implications of this Article's thesis, I do the same. *See infra* Part V.A.

[26] Roger C. Altman, *The Great Crash, 2008,* FOREIGN AFFAIRS, Jan./Feb. 2009; THE EMBEDDED FIRM: CORPORATE GOVERNANCE, LABOR, AND FINANCE CAPITALISM 477 (Cynthia A. Williams & Peer Zumbansen eds. 2011) ("shareholder primacy has . . . increase[d] . . . inequality, systemic fragility and financial risk").

[27] Steve Denning, *The Unanticipated Risks of Maximizing Shareholder Value*, FORBES, Oct. 14, 2014.

[28] Katie Allen, *Everyone Loses Out When Corporate Governance Falls by the Wayside*, THE GUARDIAN, Sept. 11, 2016; Peter Georgescu, *Boeing and Business Governance*, FORBES, Apr. 17, 2019 (attributing the Boeing 737 catastrophe to a profit-seeking, shareholder primacy culture); Stout, *supra* note 25, at 1–5 (concluding that the BP oil spill, frauds at Enron, HealthSouth, and WorldCom, and the 2008 financial crisis stemmed from shareholder primacy). An alternative view that I would advance is that organizations fail, with shareholder influence a secondary aspect of the failure. The Challenger spacecraft failure, the Chernobyl accident, and the escape of the Covid-19 virus from Wuhan are failures at least as substantial as Boeing's, BP's, and United's, but did not entail shareholder-induced distortions.

[29] Alan Murray, *America's CEOs Seek a New Purpose for the Corporation*, FORTUNE, Aug. 19, 2019. For the Business Roundtable's demotion of shareholders, see Business Roundtable Redefines the Purpose of a Corporation to Promote "An Economy That Serves All Americans," BUSINESS ROUNDTABLE (Aug. 19, 2019), https://www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-topromote-an-economy-that-serves-all-americans [https://perma.cc/VS3S-6Y8Y]. How much of the Roundtable's statement was

C. Competition Confines Corporate Purpose: The Concept

Those arguing for or against shareholder primacy have side-stepped an important consideration: the competitive landscape of the underlying companies and industries.

To explicate: Firms compete on costs, services, and quality. In highly competitive markets, firms make profits, but competition drives the profit level down to the minimum that capital providers insist on for providing the capital. The raw steel for a sale might cost $300 per ton and the labor to transform it might cost $150, and if capital costs are $50 for each sale, then the firm must charge $500 for each ton of processed steel.

If purpose pressure raises the costs of production by, say, $25, then the firm must obtain $525 for each unit of steel—but it cannot obtain $525 if its customers will switch to competitors charging only $500. Yet if it cannot obtain $525, the company will go out of business. Why? If it charges only the original $500, then it loses $25 with each sale. To stay in business, it must then pay only $275 for the raw steel, or only $125 for the needed labor, or pay its capital providers half of their expected $50. But if it offers $275 for the raw steel, then the steel provider will sell elsewhere for $300. If it offers only $125 for labor, the employees will work elsewhere. If it offers only $25 to capital-providers, not the $50 market rate, it will be unable to raise new capital.[30] The adjustment period may be slow—perhaps for as long as it takes current capital equipment to wear out—or fast, but on these numbers, the firm will inevitably go out of business.[31]

Bottom-line: if the ESG or CSR does not reward the firm—in either greater productivity, better branding, or otherwise—the firm will face pricing pressure or friction with its suppliers. In the short-run, some firms may be able to do major ESG that does not reward the firm back but doing so in the long-run will be difficult or impossible. Even if the corporate jurisdiction did not require shareholder primacy, hyper-competition would drive the firm toward that result.

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Consider next the monopoly or oligopoly before and after it faces major corporate purpose and ESG pressures of the kind in the prior paragraphs.

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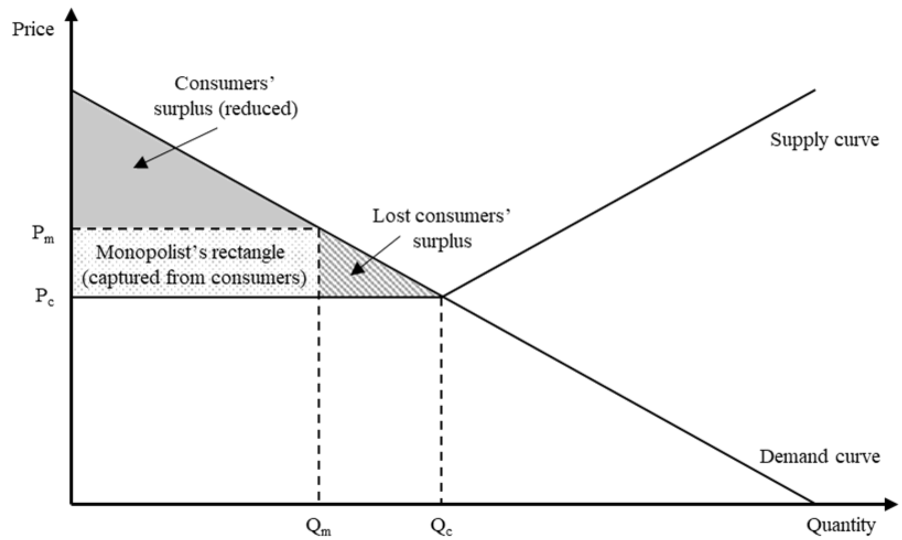
public relations and how much was a real reorientation of purpose could be debated. But even if only the former, it indicates that the popularity of public purpose thinking pressured the Roundtable to say something.

[30] The $50 for capital is capital's cost—the cost of renting capital for the factory from financial markets. The concept of capital having a cost is easy to visualize if the capital comes via a rental—i.e., via a loan. But it's embedded in all forms of capital, including the stock market. Financiers expect a return, or they will put their money elsewhere. Presumably prosocial capital providers might accept a lower return on capital.

[31] This is textbook basic, from Marshall to Samuelson. ALFRED MARSHALL, PRINCIPLES OF ECONOMICS: AN INTRODUCTORY VOLUME 325, 333–34, 364–65 (8th ed. 1920); GEORGE J. STIGLER, THE ORGANIZATION OF INDUSTRY 10 (1ST ED. 1968); PAUL SAMUELSON, FOUNDATIONS OF ECONOMIC ANALYSIS 61, 66 (1983).

The monopolist steel mill faces the same cost structure, but because it faces no competition, it charges $560 for each ton of steel. Capital costs are still $50 for each ton of steel, but because the firm faces no competition, it raises its price per ton to make $60 in extra, monopoly profit.

Figure 1. The Monopolist's Profit, Before Purpose Pressure Campaign



In the classic analysis, it gets the most profit by charging a higher price to customers who value steel highly by cutting production and not selling to customers who value steel less.[32] Figure 1 illustrates.[33]

The firm could not raise its price without limit, because at some price too many customers would stop buying. Every price increase loses it a few customers. In the classic analysis, the firm raises price until the extra profit from the higher price just offsets the profit lost from the next lost customer.

Now posit major and costly ESG pressure on the monopoly steelmaker. Yes, some costs might be mitigated or even recovered via enhanced employee productivity and motivation, or by superior branding with consumers. But posit that the costs are greater than the benefits by $25 per ton steel.

The contrast here is that the monopoly firm is not as hamstrung as the competitive firm. It can agree to major and costly ESG programs, with the costs coming out of its monopoly profits. Instead of $60 in monopoly profits,

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32 If it could discriminate and sell at a high price to high-valuing customers and sell at a profitable but lower price to lower-valuing customers, it would. But this is hard to do—lower-valuing customers, for example, might buy more steel and then resell it at a slight markup to the higher valuing steel user.

33 Figure 1 shows a supply curve much of which is atypically flat. The flat curve communicates the monopolist's pricing discretion straightforwardly. The monopolist could accommodate purpose pressure and would not be run out of business. In a competitive market, all producers price at the intersection of the supply and demand curves, and they cannot deviate from that price or cost. More typical supply curves slope upward throughout as shown in Appendix Figures 1 and 2. (And for explanatory completeness: the supply curve includes the minimum return that capital requires. The return to capital is a cost of the business.)

the firm's monopoly profits could sink to \$35. But the suppliers, employees, and capital providers could still be paid their full costs.

The firm in a hyper-competitive industry cannot absorb the costs of accommodating purpose pressure.[34] The monopolist can, and it does so by giving up some of the monopoly rectangle in Figure 1. Managers that nevertheless work unremittingly for shareholders—or corporate governance regimes that force them to do so—will still seek to keep every dollar for shareholder even in the firm with monopoly power. But one strong constraint requiring them to do so, namely product competition, will have gone missing.

Consider a simpler pressure possibility. A newly-founded vaccine research and manufacturing firm has no prior products but has perfected a vaccine that confers immunity to a serious disease. It is the only producer of the vaccine, which many people value highly. It chooses a price, P_m, to be most profitable. In choosing P_m, it balances the costs and benefits of the broad inputs to profits: revenue and cost, of course, but also branding, reputation, employee morale, and potential regulatory intervention if the price is too high. The price at P_m captures the monopoly profits in Figure 1. That price is above the price, P_c, that would be charged if there were competition. (And at a price below P_c, the firm could not produce the vaccine, so the final price cannot fall below P_c.[35])

Then a purpose campaign begins. The campaigners convince the relevant actors that vaccine manufacturers, although they cannot lose money, should serve society and not just shareholders.[36] The net result: the besieged firm, fearing damage to its image, to its employees' morale, or from the authorities, prices the vaccine lower. The successful campaign reduces the monopolist's excess profit (but not to zero) and increases the stakeholders' surplus (more patients get the vaccine more cheaply and more quickly).

The monopolistic vaccine maker can react to, and absorb the costs of, purpose pressure by spending some of the monopoly profit in a way that the competitive vaccine maker could not.[37]

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[34] An aside, for completeness: A micro-economist would indicate that the monopoly firm faced with rising costs would typically raise its price some and reduce its monopolist profit some. If the monopolist passed on all of the costs and raised prices heavily, it would lose sales. Those lost sales would deprive the monopolist of some remaining monopoly profit in that rectangle. So the monopolist that can calculate—most can only estimate—will build the ESG and CSR costs into its price until the extra dollar of passed-on costs destroys a remaining dollar of monopoly profit. This is pictured in Appendix Figure 2.

[35] Costs are here not just the costs of production, but the total costs of development. Most drugs fail, so a successful drug has to pay for the failures.

[36] Posit that the purpose campaign does not directly affect the profitability of an expanded purpose. That is, a purpose campaign could demoralize the scientists on whom the firm depends to develop the next vaccine, could raise the odds of price regulation, and could tarnish the company's brand and reputation. If it has those effects, the company may accede for profit-based reasons. *See infra* Part IV.B. But over and above those costs, in the text's hypothetical the purpose pressures change the firm's decisionmaking structure or corporate conscience, or both.

[37] This is not to justify monopoly. It's only that purpose pressure here mitigates the monopoly's negative impact. A competitive vaccine market would price at P_c, which is better than P_m. The point is the purpose pressure has limited impact on the firm pricing at P_c, but can have more of an effect on the firm pricing at P_m.

Theory and concept are clear: Hypercompetitive industries cannot do corporate purpose that does not pay for itself. They cannot lower their price and stay in business. Weakly competitive or monopolistic firms can.

Next, how much does this analysis correspond to recent reality?

II. Empirical Realities

In this Part II we assess whether abstractions from Part I have empirical foundations, by examining two questions. First, is there evidence for competition declining in the United States? And, second, do more profitable firms facing weak competition pay employees better or otherwise pay real resources for CSR/ESG?

Considerable evidence points to both, although not all agree. My aim here is not to establish these empirical foundations beyond doubt but to show that considerable evidence favors them. The link between rising purpose pressure and anti-corporate populism, on the one hand, and decreasing competition, on the other, is plausible and maybe probable, even if not proven. Weakened competition may not have caused increased purpose pressure, but pressure succeeds more often in a less competitive industry than in a competitive one.

A. Decreasing Competition: The Evidence

Considerable evidence indicates that industrial concentration has increased from what it once was.[38] While increased concentration does not mean decreased competition[39]—because three firms may compete as ferociously as six[40]—most analyses also see competition declining as

[38] Council of Economic Advisors, Benefits of Competition and Indicators of Market Power, Issue Brief, May 2016, https://obamawhitehouse.?archives.gov/?sites/?default/files/ page/files/20160502_competition_issue_brief_updated_cea.pdf; William A. Galston & Carla Hendrickson, A Policy at Peace with Itself: Antitrust Remedies for Our Concentrated, Uncompetitive Economy (Jan. 5, 2018), https://www.brookings.edu/research/a-policy-at-peace-with-itself-antitrust-remedies-for-our-concentrated-uncompetitive-economy/ (rising concentration); Gustavo Grullon, Yelena Larkin & Roni Michaely, *Are US Industries Becoming More Concentrated?* 23 REV. FIN. 697, 697 (2019) ("[s]ince the late 1990s, over 75% of US industries have experienced an increase in concentration levels"). A more optimistic assessment: Lawrence J. White & Jasper Yang, *What Has Been Happening to Aggregate Concentration in the U.S. Economy in the Twenty-First Century?* 38 CONTEMP. ECON. POL. 483, 483 (2020) ("aggregate concentration in the U.S. economy—as measured by employment, payroll, and profits—appears to have risen moderately but steadily since the mid-1990s.").

[39] Maureen K. Ohlhausen, *Does the U.S. Economy Lack Competition?* 1 CRITERION J. ON INNOVATION 47, 62 (2016); Carl Shapiro, *Protecting Competition in the American Economy: Merger Control, Tech Titans, Labor Markets,* 33 J. ECON. PERSP. 69, 76 (2019); White & Yang, supra note 38, at 484, Gregory J. Werden & Luke M. Froeb, *Don't Panic: A Guide to Claims of Increasing Concentration*, 33 ANTITRUST 74 (2018); David Wessel, *Is Lack of Competition Strangling the U.S. Economy?* HARV. BUS. REV., Mar.-Apr. 2018, at 106.

[40] *See* Werden & Froeb, *supra* note 38; White & Yang, *supra* note 38, at 484. On concentration not reducing competition: If 1000 firms merge down to 100, but the remaining firms compete across 10 markets instead of only

concentration increased.[41] Four tendencies point to decreasing competition in the American economy: the increasing concentration itself, rising corporate profits as a proportion of gross domestic product, increasing markups (or profit-to-cost ratios), and declining dynamism.[42]

In many industries, fewer firms compete today than did decades ago. The HHI index—long the gold standard for quantifying industrial concentration—has risen greatly across the economy.[43] Some blame the 1980s' relaxing of merger guidelines,[44] lax antitrust enforcement in general,[45] and unchallenged mergers and exclusionary practices[46] that have large firms regularly acquiring potential competitors[47] or using network strengths to "amplify and extend [the] magnitude, durability and scope [of their market power],"[48] particularly in digital and tech markets.[49] We have appreciably fewer firms in many markets. Markups of price over cost have been rising steeply, suggesting that firms are raising prices beyond what they would need

one—in the way of the old conglomerates—then competition could be just as it was before the merger, with 10 competing firms in each market. *Id*. But corporate governance trends indicate this not to be so on-the-ground. Broad conglomerates like General Electric have failed, others have broken up, and new ones are not arising. Firms have more than ever de-diversified. More than 50% were in multiple market segments in 1981. By 1997 less than 17% went beyond a single segment. Nilanjan Basu, *Trends in Corporate Diversification*, 24 FIN. MKT. PORTFOLIO MGMT. 87, 91 (tbl. 1) (2010). Accord, Monika Schommer, Ansgar Richter & Amit Karna, *Does the Diversification-Firm Performance Relationship Change Over Time? A Meta-Analytical Review*, 56 J. MGMT. STUD. 1 (2019).

[41] Council of Economic Advisors, *supra* note 38; AM. ANTITRUST INST., A NATIONAL COMPETITION POLICY: UNPACKING THE PROBLEM OF DECLINING COMPETITION AND SETTING PRIORITIES MOVING FORWARD (2016), https://www.antitrustinstitute.org/wp-content/uploads/2018/08/AAINatlCompPolicy-1.pdf.

[42] THOMAS PHILIPPON, THE GREAT REVERSAL: HOW AMERICA GAVE UP ON FREE MARKETS 9–10, 51–56 (2019); Shapiro, *supra* note 39.

[43] Council of Economic Advisors, *supra* note 38, at 4-5; Philippon, *supra* note 42, at 45–47, 51–52. The Herfindahl-Hirschman Index (HHI) is "a commonly accepted measure of economic concentration. [It] is calculated by squaring the market share of each firm competing in [a given] market and then summing the resulting numbers." Dep't of Justice, Herfindahl-Hirschman Index (July 31, 2018), www.justice.gov/atr/herfindahl-hirschman-index.

[44] Orley Ashenfelter, Daniel Hosken & Matthew Weinberg, *Did Robert Bork Understate the Competitive Impact of Mergers? Evidence from Consummated Mergers*, 57 J.L. & ECON. S67, S68-S69 (2014); Gilbert B. Becker, *The U.S. Horizontal Merger Guidelines After One Half Century: Three Steps Forward and One Step Back,* 63 ANTITRUST BULL. 137, 140–41 (2018).

[45] JOHN KWOKA, MERGERS, MERGER CONTROL, AND REMEDIES: A RETROSPECTIVE ANALYSIS OF U.S. POLICY 155 158 (2014) ("most studied mergers result in competitive harm, usually in the form of higher price. In a great many cases that harm is substantial"); Philippon, *supra* note 42, at 197, 203 (attributing much lax enforcement to campaign contributions and electoral influence).

[46] JONATHAN B. BAKER, THE ANTITRUST PARADIGM: RESTORING A COMPETITIVE ECONOMY 14–17 (2019).

[47] And actual competitors as well. Steven Berry, Martin Gaynor & Fiona Scott Morton, *Do Increasing Markups Matter? Lessons from Empirical Industrial Organization*, 33 J. ECON. PERSP. 44, 59–62 (2019); Colleen Cunningham, Florian Ederer & Song Ma, Killer Acquisitions (2018), www.ssrn.com/abstract=3241707 ("killer acquisitions" in the pharma industry eliminate a dominant firm's potential competitors by the dominant firm acquiring the potential competitor).

[48] Joseph E. Stiglitz, Towards a Broader View of Competition Policy 7–8 (Roosevelt Inst. Working Paper, June 2017), https://rooseveltinstitute.org/wp-content/uploads/2017/06/durbanbricscompetition_FinalClean.pdf. *See also* TIM WU, THE CURSE OF BIGNESS: ANTITRUST IN THE NEW GILDED AGE (2018).

[49] Baker, *supra* note 46, at 18–20; John M. Newman, *Antitrust in Digital Markets*, 72 VAND. L. REV. 1497 (2019); Lina M. Khan, *Amazon's Antitrust Paradox*, 126 YALE L. J. 710 (2017).

to charge in a competitive market.[50] Authorities such as Edmund Phelps, winner of the Nobel Prize in Economics, lament the declining business dynamism in the United States.[51] Says another authority: "[M]arket entry by smaller, entrepreneurial start-ups is on the decline. Entrepreneurs commercialize a disproportionate number of disruptive innovations that drive market entry . . . . [But t]he rate of firm entry in the U.S. is in an almost 40–year free fall."[52]

Moreover, profits as a portion of GDP are up steeply since the 1980s, by 50%—a rise that should have been eroded by now if competition were strong.[53] New entry could have pressed profits down, but it has not, because new entry and new firm formation are sharply down. As one analysis, from economist Carl Shapiro (otherwise skeptical as to competitive erosion) concludes:

> [Even if concentration trends are not definitive,] the evidence on corporate profits clearly shows that . . . profits have risen as a share of GDP. This . . . points to a rise in incumbency rents, i.e., excess profits earned by firms whose positions are protected by high barriers to entry. . . . [High profits are the mark of success, but] perhaps we should hold our applause [for American capitalism's winners] until we better understand why competitive forces have not (yet?) been more effective at eroding these profits. Profits necessary to induce risky investments are one thing; incumbency rents are quite another.[54]

These trends all suggest declining competition.

A more complex corporate finance fact points to competitive atrophy. Some industries' stock prices are high relative to the value of their assets,

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50 Jan De Loecker, Jan Eeckhout & Gabriel Unger, *The Rise of Market Power and the Macroeconomic Implications*, 135 Q. J. ECON. 561, 561 (2020) (markups rose "from 21% above marginal cost [in 1980] to 61% [in 2020]"); Philippon, *supra* note 42, at 54 (profits are a steeply rising share of GDP); Federico J. Díez, Daniel Leigh & Suchanan Tambunlertchai, Global Market Power and its Macroeconomic Implications 8 (IMF Working Paper No. WP/18/137, June 2018), www.imf.org/en/Publications/WP/Issues/2018/06/15/Global-Market-Power-and-its-Macroeconomic-Implications-45975; Shapiro, *supra* note 39, at 70–71; Robert E. Hall, Using Empirical Marginal Cost to Measure Market Power in the US Economy (NBER Working Paper No. 25251, Nov. 2018), www.nber.org/papers/w25251; Simcha Barkai, *Declining Labor and Capital Shares*, J. FIN. (forthcoming, 2020). Alternate explanations for rising markups are examined in Part III.

51 EDMUND PHELPS, MASS FLOURISHING: HOW GRASSROOTS INNOVATION CREATED JOBS, CHALLENGE, AND CHANGE 237, 240 (2013). *See also* Ian Hathaway & Robert E. Litan, What's Driving the Decline in the Firm Formation Rate? A Partial Explanation, (Econ. Stud. Brookings, Nov. 2014), www.brookings.edu/wp-content/uploads/2016/06/ driving_decline_firm_formation_rate_hathaway_litan.pdf; Uruk Akcigit & Sina T. Ates, What Happened to U.S. Business Dynamism? (NBER Working Paper No. 25756, 2019), www.nber.org/papers/w25756. *But cf.* Fatih Karahan, Benjamin Pugsley & Ayşegűl Şahin, *Demographic Origins of the Startup Deficit* (FED. RES. BANK N.Y. Staff Rep. No. 888, May 2019), www.newyorkfed.org/medialibrary/media/research/staff_reports/sr888.pdf (declining dynamism and decreasing startups due to demographics: aging, lower birth rate, lower immigration, near completion of female integration into the workforce).

52 Am. Antitrust Inst., *supra* note 41, at 6. *See also* Ryan A. Decker, John Haltiwanger, Ron S. Jarmin & Javier Miranda, *Declining Dynamism, Allocative Efficiency, and the Productivity Slowdown*, 107 AM. ECON. REV. 322 (2017).

53 Carl Shapiro, *Antitrust in a Time of Populism*, 61 INT'L J. INDUSTRIAL ORG. 714, 732 (2018).

54 *Id*. at 737.

indicating strong investment opportunities that should have led to more investing to rake in more profit.[55] Such industries traditionally obtained more funding from capital markets than firms with low stock prices relative to their asset values. But no more. Since the end of the twentieth century, cash has been flowing *out* from such high-stock-price-to-asset-value industries. The best explanation for why, according to researchers, is that these high-stock-price-to-asset-value industries refused to invest more in their operations *because* they had market power.[56] If they invested more and produced more, they would have had to lower their products' prices and the firms would have become less profitable.

Thus, the picture for recent decades: significant data and analyses from multiple perspectives see competition as having declined sharply. The view is not unanimous, but the evidence is substantial, and the view widespread.[57]

B. Firms with More Market Power Do More CSR and ESG: The Evidence

Highly profitable firms—often in weakly competitive markets—do better for their *stake*holders than those in highly competitive markets.

The classical evidence. Hannan and Mavinga showed decades ago that managers and employees at banks facing weak competition did better than those at banks facing stiff competition.[58] Later work confirmed this result with further data,[59] finding that wages in banking fell after deregulation opened banking up to more competition.[60]

Another instance: Union workers in the trucking industry obtained part of the monopoly rents accruing to the trucking firms' owners from the industry's weak competition.[61] Industrial concentration allowed the

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55 Dong Wook Lee, Hyun-Han Shin & René M. Stulz, Why Does Equity Capital Flow Out of High Tobin's q Industries? 1, 31 (Feb. 12, 2020), www.ssrn.com\abstract=3535841.

56 Id. More precisely, the high cash outflow, despite the companies' high value relative to existing assets, indicates that the firms had large rents.

57 The implications for this Article's thesis of the other explanations for the data are examined in Part III. Rents from other sources also lead to a similar analytic that such firms are congenial to corporate purpose pressure.

58 Timothy H. Hannan & Ferdinand Mavinga, *Expense Preference and Managerial Control*, 11 BELL J. ECON. 671, 676, 678–79 (tbls. 2 & 3) (1980) (employees paid better at banks with higher market share—and office expenditures higher as well).

59 Allen N. Berger & Timothy H. Hannan, *The Efficiency Cost of Market Power in the Banking Industry: A Test of the "Quiet Life" and Related Hypotheses*, 80 REV. ECON. &. STAT. 454, 455 (1998) (banks facing weak competition have more employees than banks facing strong competition because "market power (. . . [if] other disciplining mechanism[s fail]) may allow managers to pursue objectives other than firm profits . . . [such as] expansion of staff . . . beyond levels justified by profit maximization"); Marcello Estevão & Stacy Tevlin, *Do Firms Share Their Success with Workers? The Response of Wages to Product Market Conditions*, 70 ECONOMICA 597, 609 (2003) (the "variation in rents explains a substantial part of wage variation . . .").

60 Sandra E. Black & Philip E. Strahan, *The Division of Spoils: Rent-Sharing and Discrimination in a Regulated Industry*, 91 AM. ECON. REV. 814 (2001).

61 Nancy L. Rose, *Labor Rent Sharing and Regulation: Evidence from the Trucking Industry*, 95 J. POL. ECON. 1146, 1148, 1175 (1987).

monopolist-firm to pass union wage premiums on to consumers.[62] Other scholarship concludes that in many industries monopoly profits—which too often did not show up in the firms' bottom-lines—must be either mismeasured or captured by stakeholder inputs, like labor, when labor was more powerful and more unionized than it is now.[63]

International evidence is similar: In studying the relationship between market power and wages in the United Kingdom, Stephen Nickell and Daphne Nicolitsas conclude that: "falls in market power [i.e., greater competition] . . . lead to . . . lower pay rises . . . ."[64] Similar results are found for Canada, Denmark, France, Germany, Italy, Portugal, and Sweden.[65] Across developed nations, "anticompetitive regulations tend to raise wage premia in all industries."[66]

Executives at American firms in weakly competitive markets work less assiduously for shareholder value than at firms facing more severe product market competition,[67] as theory predicts.[68] Weak competition gives executives more leeway and more freedom from shareholders. Executives in monopolistic industries are less beholden to their shareholders than executives in competitive industries. That slack facilitates labor, particularly union labor, gaining at shareholders' expense. Unions in the United States were historically less effective "in establishments facing competitive market conditions [than] in establishments with . . . product market power as a result of facing limited competition."[69]

The academic literature is not undivided, however. Some research finds that product market conditions affect wage rates only modestly, or interprets the rent-sharing data as not dispositive.[70] Others look for an impact from a specific event—like ending a trade agreement, with competition declining after its termination, or cartelizing legislation—and find no wage impact.[71] Still others find for the United Kingdom that while "companies with higher

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62 Kim B. Clark, *Unionization and Firm Performance: The Impact on Profits, Growth and Productivity*, 74 AM. ECON. REV. 893, 898–900 (1984).

63 Michael A. Salinger, *Tobin's q, Unionization, and the Concentration-Profits Relationship*, 15 RAND J. ECON. 159, 166, 169 (1984).

64 Stephen Nickell & Daphne Nicolitsas, *Wages, Restrictive Practices and Productivity*, 4 LABOUR ECON. 201, 214 (1997).

65 *See* Brian Bell, Pawel Bukowski & Stephen Machin, Rent Sharing and Inclusive Growth 6–8 (LSE Int'l Inequalities Inst. Working Paper No. 29, 2019), http://eprints.lse.ac.uk/101868/ (gathering sources).

66 Sébastien Jean & Giuseppe Nicoletti, Product Market Regulation and Wage Premia in Europe and North America: An Empirical Investigation 6 (OECD Econ. Dep't Working Paper No. 318, 2002), www.doi.org/10.1787/016668388552.

67 Franklin R. Edwards, *Managerial Objectives in Regulated Industries: Expense-Preference Behavior in Banking*, 85 J. POL. ECON. 147, 148–49 (1977).

68 For a classic view, see GARY S. BECKER, THE ECONOMICS OF DISCRIMINATION 39–47 (2d ed. 1971).

69 Mark B. Stewart, *Union Wage Differentials, Product Market Influences and the Division of Rents*, 100 ECON. J. 1122, 1135 (1990).

70 David Card, Ana Rute Cardoso, Joerg Heining & Patrick Kline, *Firms and Labor Market Inequality: Evidence and Some Theory*, 36 J. LAB. ECON. S13, S21–S22 (2018).

71 George Symeonidis, *The Effect of Competition on Wages and Productivity: Evidence from the United Kingdom*, 90 REV. ECON. AND STAT. 134, 135 (2008).

market power share on average more of their rents than companies with low power," the strength of this effect varied over time.[72]

High profits and high market share correlate with more CSR and ESG: the evidence. Financially successful firms are more likely than financially-constrained firms to be ESG-friendly.[73] True, some ESG may cause higher profits by bolstering the corporate image and morale, and multiple proponents for ESG and CSR assert that more ESG and CSR raise shareholder profits.[74] But at least some, and maybe much, ESG arises *from* the slack that high profitability provides the firm and its managers.[75] Strong evidence suggests that raising ESG/CSR across-the-board from current levels is not profit-friendly. Equity prices reacted negatively to European Union mandates for more disclosure of public firms' ESG activity.[76]

Shareholder activists seeking a broad corporate purpose targeted more than 600 companies globally during the 2005–2014 decade to foster ESG measures. Tams Barko, Martijn Cremers, and Luc Renneboog found that these engagements were more likely to succeed in companies with a higher market share.[77] This evidence supports this Article's thesis: higher market share usually gives a firm more room to maneuver. Firms facing less competition do more CSR, with CSR declining "as we change industry structure from monopoly to oligopoly and eventually to perfect competition."[78] "[I]ncreasing competition in a product market . . . reduce[s] aggregate CSR."[79]

Other studies confirm the generality: Financially "less constrained firms spend more on . . . goodness."[80] More ESG and more social responsibility follow strong financial performance.[81] ESG engagements in

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72 Bell et al., *supra* note 65, at 4.

73 Punit Arora & Ravia Dharwadkar, *Corporate Governance and Corporate Social Responsibility (CSR): The Moderating Roles of Attainment Discrepancy and Organization Slack*, 19 CORP. GOVERNANCE: INT'L REV. 136 (2011); M.K. Chin, Donald C. Hambrick & Linda K. Treviño, *Political Ideologies of CEOs: The Influence of Executives' Values on Corporate Social Responsibility*, 58 ADMIN. SCI. Q. 197, 214–15 (2013).

74 Hao Liang & Luc Renneboog, Corporate Social Responsibility and Sustainable Finance: A Review of the Literature (European Corp. Gov. Inst. Working Paper, Sept. 2020), www.ssrn.com/abstract=3698631.

75 Sandra A. Waddock & Samuel B. Graves, *The Corporate Social Performance-Social Performance Link*, 18 STRATEGIC MGMT. J. 303 (1997); Orlitzky et al., *supra* note 24.

76 Jody Grewal, Edward J. Riedl & George Serafeim, *Market Reaction to Mandatory Nonfinancial Disclosure*, 65 MGMT. SCI. 3061 (2017).

77 Tams Barko, Martijn Cremers & Luc Renneboog, Activism on Corporate Social Responsibility 2, 3, 21–22 45 (tbl. 4) (2017), www.ssrn.com/abstract=2977219. Post engagement profits, however, increase.

78 Olga Hawn & Hyoung-Goo Kang, *The Effect of Market and Nonmarket Competition on Firm and Industry Corporate Social Responsibility*, *in* SUSTAINABILITY, STAKEHOLDER GOVERNANCE, AND CORPORATE SOCIAL RESPONSIBILITY 313, 327 (Sinziana Dorobantu, Ruth Aguilera, Jiao Luo & Frances Milliken eds., 2018).

79 *Id*. at 329.

80 Harrison Hong, Jeffrey D. Kubik & José A. Scheinkman, Financial Constraints on Corporate Goodness 2 (NBER Working Paper No. 18476, Feb. 2, 2012), www.ssrn.com/abstract=1734164: an unexpected rise in financial freedom from the internet bubble of the late 1990s decreased restraint and increased "goodness."

81 Jean B. McGuire, Alison Sundgren & Thomas Schneeweis, *Corporate Social Responsibility and Firm Financial Performance*, 31 ACAD. MGMT. J. 854, 869 (1988). Similar results in Waddock & Graves, *supra* note 75, at 311 ("better financial performance leads to improved" CSR). And firms anticipating stronger financial

the 1999–2009 decade were more likely for larger firms and firms having higher market share, in one study,[82] and more likely to succeed at firms with higher abnormal returns and better long-term stock returns, according to another."[83] The authors of a review of the early literature conclude that:

> A simple compilation of the findings suggests there is a positive association, and certainly very little evidence of a negative association, between a company's social performance and its financial performance.[84]

Another compilation concludes that "[t]he majority of studies show a positive relation between [CSR] and financial performance (63%); 15% . . . report a negative relationship, and 22% report a neutral or mixed [relation]."[85] A recent literature review concluded that 9/10 of the 2000 available empirical studies on the subject find strong financial results correlate with more CSR.[86]

These results fit tightly with the thesis that corporate purpose is, on the ground, often a contest to divide up the firm's extra profits, with weakly competitive firms more easily able to divide up pre-purpose profits than firms in highly competitive industries.

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However, the evidence is again not uniform. Two studies find that more competitive industries can have high corporate social responsibility scores, with one seeing "these results as evidence that CSR is strategically chosen"[87] and the other finding "a contagion effect in the industry: the higher the CSR engagement of the firm's competitors, the higher is its own engagement in CSR."[88] Another finds that nations with stronger competition laws do more CSR.[89] Similarly, sharp competition-increasing reductions in U.S. tariffs

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performance did more CSR. Thomas Lys, James P. Naughton & Clare Wang, *Signaling Through Corporate Accountability Reporting*, 60 J. ACCT. ECON. 56, 56 (2015).

[82] Elroy Dimson, Oguzhan Karaka & Xi Li, *Active Ownership*, 28 REV. FIN. STUD. 3225, 3244 (2015).

[83] Jiaying Wei, *Environmental, Social and Governance Proposals and Shareholder Activism*, 46 J. PORTFOLIO MGMT. 49, 49 (2020). And targeted firms had more market share than firms not targeted. *Id*. at 51, 56.

[84] Joshua D. Margolis & James P. Walsh, *Misery Loves Companies: Rethinking Social Initiatives by Business*, 48 ADMIN. SCI. Q. 268, 274–77 (2003).

[85] John Peloza, *The Challenge of Measuring Financial Impacts from Investments in Corporate Social Performance*, 35 J. MGMT. 1518, 1521 (2009). *See also* Elizabeth Pollman, *Corporate Social Responsibility, ESG, and Compliance*, *in* CAMBRIDGE HANDBOOK OF COMPLIANCE (Daniel Sokol & Benjamin van Rooij eds., forthcoming).

[86] Gunnar Friede, Timo Bush & Alexander Bassen, *ESG and Financial Performance: Aggregated Evidence from More than 2000 Empirical Studies*, 5 J. SUSTAINABLE FIN. & INVESTMENT 210 (2015).

[87] Daniel Fernández-Kranz & Juan Santaló, *When Necessity Becomes a Virtue: The Effect of Product Market Competition on Corporate Social Responsibility*, 19 J. ECON. MGMT. STRATEGY 453, 453 (2010).

[88] Hawn & Kang, *supra* note 78, at 321. *See also* Donald S. Siegel & Donald F. Vitaliano, *An Empirical Analysis of the Strategic Use of Corporate Social Responsibility*, 16 J. ECON. & MGMT. STRATEGY 773 (2007).

[89] Wenzhi Ding, Ross Levine, Chin Lin & Wensi Xie, Competition Laws, Norms and Corporate Social Responsibility (May 2020), www.ssrn.com/abstract=3605990. The study does not tell us whether competitive industries in the United States do more CSR than less competitive industries.

were said to lead domestic producers to "increa[se] their CSR . . . to . . . differentiate themselves from their foreign rivals."[90]

Purpose pressure runs in two causal chains: In some competitive industries, competition for purpose-driven consumers demands that the firms be purpose-driven. But, in weakly competitive industries, purpose pressure leads those firms to share their excess profits via purpose-oriented acts. In the first, the firm constructs a purpose that appeals to customers. In the second, the firm yields to stakeholder pressure. In the first, the firm seeks purpose, in the second the firm accommodates it. Both can be in play.

* * *

Overall, most of the academic literature on the subject supports the concept that employees do better at firms in low competition environments than in highly competitive environments.[91] The potential parallel for purpose pressures is clear. The firm's capacity and willingness to satisfy purpose pressures seem likely to parallel its capacity and willingness to accommodate employee pressure for better wages.

III. AND WHAT IF COMPETITION IS NOT DECREASING?

Declining competition is a widely-supported conclusion, but important economic analyses see rising concentration and rising profits as often resulting from *fiercer* competition that yields "skill, foresight, and industry" winners—built by innovative entrepreneurs with a better idea,[92] often due to technological innovation sheltered by patent protection.[93] Other monopolies arise from networks where costs decline greatly for a firm that services all consumers or where consumers get more value when they find other

[90] Caroline Flammer, *Does Product Market Competition Foster Corporate Social Responsibility? Evidence from Trade Liberalization*, 36 STRATEGIC MGMT. J. 1469, 1471 (2015). *See also* Marion Dupire & Bouchra M'Zali, *CSR Strategies in Response to Competitive Pressures*, 148 J. BUS. ETHICS 603 (2018); Maretno Harjoto, Indrarini Laksmana & Robert Lee, *Board Diversity and Corporate Social Responsibility*, 132 J. BUS. ETHICS 641 (2015) (higher board diversity is associated with stronger CSR in more competitive consumer product industries). *See also* Johan Graafland & Hugo Smid, *Competition and Institutional Drivers of Corporate Social Performance*, 163 DE ECONOMIST 303, 316–17 (2015) (concluding that "branding of their products" with "a good CS[R] reputation" is particularly critical in technological industries, to motivate their employees and customers).

[91] An expanded analysis would look at whether workers do better overall, because while those who are employed at the monopoly firm receive a wage bonus, total employment is lower than it would be otherwise.

[92] Susanto Basu, *Are Price-Cost Markups Rising in the United States? A Discussion of the Evidence*, 33 J. ECON. PERSP. 3, 3 (2019) ("industrial concentration can be interpreted as evidence either of increased market power or of greater competition, where more efficient firms are able to gain market share"); Shapiro, *supra* note 39, at 72, 79–80; Robert E. Hall, New Evidence on Market Power, Profit, Concentration, and the Role of Mega-Firms in the US Economy (NBER Working Paper No. 24575, 2018), www.nber.org/papers/w24574; John Van Reenen, Increasing Differences between Firms: Market Power and the Macro-Economy (working paper, Aug. 31, 2018), www.kansascityfed.org/~/media/files/publicat/sympos/2018/papersandhandouts/jh%20john%20van%20reenen%20version%2020.pdf.

[93] David Autor, David Dorn, Lawrence F. Katz, Christina Patterson & John Van Reenen, *The Fall of the Labor Share and the Rise of Superstar Firms*, 135 Q.J. ECON. 645, 703 (2020) ("technological dynamism, rather than simply anti-competitive forces, is an important driver"); Akcigit & Ates, *supra* note 51 (slowing of knowledge diffusion from leading to laggard firms has slowed dynamism).

consumers on the same network.[94] Facebook is an archetypal network monopoly.[95] Still others see much of the new concentration as resulting from old-fashioned economies of scale[96] with high fixed costs.[97] These analyses also see more concentration than ever before—after the winners prevail in the second interpretation, they too have more market power and higher rents. As a recent, extensive analysis summarizes: Multiple "authors . . . believe that concentration as well as rising markups and profits are 'good,' since they are a manifestation of efficiency and superior technology . . . . [Others] believe that rising concentration as well as increasing markups and profits are 'bad,' since they . . . manifest[] rising market power, . . . entry barriers, and, ultimately, . . . a less dynamic economic environment and declining productivity."[98]

Since declining competition is not the only explanation for rising concentration, the reader may think that this Article's thesis must rely on which explanation is correct. However, the thesis or a close cognate *also* holds for the major alternate explanations of increasing concentration. Only a persistence of traditional multi-firm competition contradicts the thesis.

A. The New Economies of Scale, the New Networks, and the New Skill, Foresight, and Industry

Consider rising economies of scale, extended networks, and the rising importance of winner-take-all skill, foresight, and industry success.

Scale economies. Steeply rising economies of scale are making firms bigger, thereby explaining increasing concentration, according to several analyses. The remaining firms still compete, but on a larger scale. The cost of today's upfront investment, in this interpretation, is a high proportion of the final value.

Rising markups have been taken to indicate declining competition.[99] But what look like high mark-ups (of selling price over costs) are really high mark-ups of the selling price over the *variable* costs (of raw materials and labor), in critics' view, and not high mark-ups over the full costs (because more costs today are embedded in the big initial investment in factories, patents, and organizational capital). Capital equipment and other fixed costs

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[94] Berry *et al.*, *supra* note 47, at 53–54, 56; James E. Bessen, Information Technology and Industry Concentration (June 2019), https://ssrn.com/abstract=3044730.

[95] Dina Srinivasan, *The Antitrust Case Against Facebook: A Monopolist's Journey Towards Pervasive Surveillance in Spite of Consumers' Preference for Privacy*, 16 BERKELEY BUS. L.J. 39, 90–92 (2019).

[96] Berry et al., *supra* note 47, at 45 ("higher fixed (or sunk) costs can lead to fewer firms in a market, which can result in softer competition, higher prices, and reduced consumer welfare."). The capacity of the firm to raise prices—even though derived from economies of scale—increases its ability to satisfy corporate purpose pressures. In a sense, the paper's thesis straddles both sides of the decreased competition debate. *See infra* Part III.

[97] *Id*. at 54 (information technology costs are rising and contribute greatly to the rise of fixed costs).

[98] Pauline Affeldt, Tomaso Duso, Klaus Gugler & Joanna Piechucka, Market Concentration in Europe: Evidence from Antitrust Markets (CESifo working papers, Jan. 2021), www.ssrn.com/abstract=3774674.

[99] *See supra* sources cited in note 50.

are greater than before, making markups of the selling price over variable costs rise, without that rise indicating decreased competition.[100] The markup must today cover costlier capital equipment.

Hence, increasingly higher economies of scale cause both more industrial concentration *and* higher mark-ups. If the lowest cost production is from a firm in a concentrated market with high economies of scale, then these firms *must* have high markups of price over variable costs to pay for their bigger investments in fixed costs to acquire that scale.[101] Competition, in this view, is implemented more now by scale and high markups.[102]

Networks. A second alternative explanation for increased concentration is that networks are now more important than ever.[103] Facebook, for example, gives more value to a customer if more people can be reached on Facebook. A bigger network is more valuable to users and advertisers than a small one, inducing greater market concentration.[104]

Skill, foresight, and industry. The third alternative is technological. Success, now more than ever, goes to firms that exhibit skill, foresight, and industry to compete with a better product, a better patent, or a better industrial secret that garners most of the market.[105] In too many industries, super-star firms emerge from winner-takes-all competition.[106]

* * *

These critiques of the decreasing competition thesis are not saying that old-style competition among multiple producers is increasing. The scale, network, and skill, foresight, and industry critiques are saying that the decreasing competition thesis is false because new competitive modes arose *that lead to highly concentrated winners*.[107] These new competitive modes are industrial structures more susceptible to purpose pressure than old-style competition, as we see next.

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[100] Basu, *supra* note 92, at 9; JONATHAN HASKEL & STIAN WESTLAKE, CAPITALISM WITHOUT CAPITAL: THE RISE OF THE INTANGIBLE ECONOMY 240 (2017). A response to Basu gathers data that, even after adjusting for Basu's criticisms, markups above marginal cost remain at historical highs. De Loecker et al., *supra* note 50, at 603.

[101] Berry, *supra* note 47, at 48.

[102] *Cf.* Chad Syverson, *Macroeconomics and Market Power: Context, Implications, and Open Questions*, 33 J. ECON. PERSP. 23, 27 (2019) ("reductions in trade, transport, or search costs . . . shift[] activity away from smaller, higher-cost producers and toward larger, lower-cost producers").

[103] Patrick Barwise & Leo Watkins, *The Evolution of Digital Dominance: How and Why We Got to GAFA*, *in* DOMINANCE: THE POWER OF GOOGLE, AMAZON, FACEBOOK, AND APPLE 21, 26 (Martin Moore & Damian Tambini eds., 2018).

[104] *See generally* Srinivasan, *supra* note 95, at 40–43.

[105] Bessen, *supra* note 94; James Traina, Is Aggregate Market Power Increasing? 16 (Stigler Ctr., Working Paper No. 17, Feb. 2018), https://pdfs.semanticscholar.org/8059/7e4e80edebd66d3eef57e28d324623ad9ee0.pdf.

[106] Autor et al., *supra* note 93.

[107] A substantively similar framework would have this development as indeed a decrease in competition but as one that increases welfare and is therefore to be favored.

B. Expanded Susceptibility to Purpose Due to Scale Economies, Networks, and Skill, Foresight, and Industry

Declining traditional competition, even via these three channels, makes purpose pressure more likely to succeed. What matters for this Article's thesis is that there are profits well above marginal cost, that stakeholders can contest how these profits are distributed, and that purpose pressure is one way for stakeholders to obtain a share of them.

Here too, the new industrial organization does not operate like old-style intense day-to-day competition. When the firm has invested much in industrial and organizational capital that cannot be readily redeployed, that increased investment can become contestable among the stakeholders. In its starkest form, once a firm invests in a fixed, unmovable asset, its counterparties can appropriate the value of that asset for themselves.

The steel example from before illustrates. The competitive cost per ton of steel was $500 per ton. That cost included payments to employees and for raw materials and $50 for capital costs—the per ton cost of building that huge multi-million-dollar furnace. If the steel mill has no customers other than one sharp-eyed user—perhaps there is a single transportation outlet to a single user—and if that sharp-eyed user can buy steel from elsewhere, that user could push the price down to $450 (in theory) because the steel mill has already sunk the capital costs of building the mill and cannot do anything else with the mill other than make steel.

This is a long-standing problem in industrial organization,[108] analyzed most famously by Oliver Williamson.[109] This hold-up potential—from the sharp-eyed user—militated toward vertical integration, with the steel user and the steel mill joining forces in a single firm because the mill owner did not trust the user to buy the steel at full price. Williamson's Nobel-Prize-winning idea was that this holdup problem explains why entities that could hold up one another in market transactions end up inside the same corporation.

The analogue here for purpose pressures starts with the observation that large firms today invest more than ever in fixed investments that cannot be redeployed.[110] In Williamson's classic formulation, this investment exposes the firm to holdups and exploitation by those with whom it had to deal.

Successful purpose pressures today are parallel in their capacity to extract value from the firm with dedicated capital. The enterprise's sunk

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[108] Victor P. Goldberg, *Regulation and Administered Contracts*, 7 BELL J. ECON. 426, 432–33 (1976).

[109] OLIVER E. WILLIAMSON, THE ECONOMIC INSTITUTIONS OF CAPITALISM: FIRMS, MARKETS, RELATIONAL CONTRACTING 103 (1985); OLIVER E. WILLIAMSON, MARKETS AND HIERARCHIES: ANALYSIS AND ANTITRUST IMPLICATIONS 26–30 (1975).

[110] *See* Basu, *supra* note 92.

investment can pay for better purpose (just as the monopoly profits in the weak competition scenario analyzed in Part I.C. can).[111]

Critics of the decreased competition view say that this scale economy trait is more widespread and deeper than ever. If so, the potential for corporate purpose extractions of that invested value is also more widespread than ever.

C. Cartelization as Monopolization in Competitively-Structured Industries: The New Horizontal Shareholding

Consider a competing firm that, after a pressure campaign, decides that more ESG/CSR is wise. But the added expense then becomes unviable because its competitors do not incur the same ESG/CSR costs. They are leaner and charge less for their goods. Their employees remain motivated and their brands intact.

For this socially conscious firm to survive in a competitive market, it needs its competitors to also incur the purpose costs. The firm could seek regulation requiring the ESG/CSR characteristic for all in the industry. It could suggest an industrywide ESG/CSR campaign to shareholder activists. Or it could look for industry-wide codes of conduct, applicable to all.[112]

A major academic foray in recent years sees horizontal shareholding by the new major institutional investors—which own a slice across the entire stock market—as anticompetitive. Each firm in an industry that would otherwise be competitive is owned by the same small group of common institutional owners, which leads the firms to compete less vigorously, according to the theory and, increasingly, the data.[113] Academic acceptance of the horizontal shareholding diminishment to competition is wide but highly contested.[114]

While this literature focuses on common ownership's anticompetitive effects, common ownership can also induce acceptance of purpose pressure.

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[111] This is true for pressures on the firm that has already sunk large value into its operations. But firms anticipating sinking such value will be wary and include in their expected cost the probable value that will need to pay for expanded purpose. They may decline to invest if the net cost of purpose pressure diminishes expected profit too much.

[112] On the recent proliferation of stewardship codes, see Dionysia Katelouzou & Mathias Siems, *The Global Diffusion of Stewardship Codes*, *in* GLOBAL SHAREHOLDER STEWARDSHIP (Dionysia Katelouzou & Dan W. Puchniak, eds., forthcoming).

[113] *See* José Azar, Martin C. Schmalz & Isabel Tecu, *Anticompetitive Effects of Common Ownership*, 73 J. FIN. 1513 (2018); Einer Elhauge, *Horizontal Shareholding*, 129 HARV. L. REV. 1267 (2016); Eric A. Posner, Fiona Scott Morton & E. Glen Weyl, *A Proposal to Limit the Anticompetitive Power of Institutional Investors*, 81 ANTITRUST L.J. 669 (2017). *See also* Madison Condon, *Externalities and the Common Owner*, 95 WASH. L. REV. 1 (2020); Nathan Shekita, Interventions by Common Owners (July 2020), www.ssrn.com/abstract=3658726; Yaron Nili, *Horizontal Directors*, 114 NW. U. L. REV. 1179 (2020).

[114] *E.g.*, Edward B. Rock & Daniel L. Rubinfeld, Does Common Ownership Explain Higher Oligopolistic Profits? (NYU L. & Econ. Res. Paper No. 20-18, 2020), www.ssrn.com/abstract=3627474; Lucian A. Bebchuk & Scott Hirst, The Misguided Attack on Common Ownership (Apr. 1, 2019), www.ssrn.com/abstract=3298983; Andrew Koch, Marios Panayides & Shawn Thomas, *Common Ownership and Competition in Product Markets*, 139 J. FIN. ECON. 109 (2021); C. Scott Hemphill & Marcel Kahan, *The Strategies of Anticompetitive Common Ownership*, 129 YALE L.J. 1392 (2020).

If the purpose pressure activists can press a code of conduct or a wider-than-shareholder perspective on the institutional investors owning a slice of each firm in the industry, the institutional investors can in turn pressure their portfolio firms in an industry to all implement the purpose pressure.[115]

In an intensely competitive environment, a single firm cannot spend much on purpose beyond what purpose generates in profits. Above, we showed how these constraints loosen in a monopoly. They also loosen if competition is reduced by arrangement among the competitors, or by a coordinating ringmaster. If the large institutional investors accept or push a code of conduct that expects all in an industry to be "purpose-positive," then purpose-driven cartelization will boost purpose. The institutional investors who own a slice of the industry become the antitrust-style ringmasters who push for purpose across the purpose-cartelized industry.

That is, the purpose advocates' strategy can be (1) do not directly pressure the firm, (2) pressure investors instead, and (3) induce compliant institutional investors to pressure an industry for a wider purpose. The effect is as if the industry cartelized, with the institutional investor as the ringmaster coordinating the cartelization. And this cartelization is no more than a collective form of the monopoly that can accommodate purpose pressures that a competitive firm cannot. Sure enough, evidence is now developing that industries with significant horizontal ownership do more CSR than other industries, with the biggest impact in industries that competitive otherwise.[116]

D. Disruptions in Long-Standing Division of the Monopoly Rectangle

A fourth industrial organization channel to purpose pressure could also be in in play. It's possible that some fraction of supracompetitive profits, represented by the monopolists' "rectangle," has not changed much over recent decades (even if the rectangle's size has grown). But, for this fraction, the division of the spoils has changed. Decades ago labor obtained a big share of that part of the rectangle, but its share then declined, with executives and shareholders capturing it.[117] In this interpretation, purpose pressure is, first, a means for employee-stakeholders to recover their portion of that rectangle

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[115] *Cf.* Thomas G. Krattenmaker & Steven C. Salop, *Anticompetitive Exclusion: Raising Rivals' Costs to Achieve Power over Price*, 96 YALE L.J. 209, 238–40 (1986). *See also* Christopher Flavelle, *Big Investors Want Reforms to Reduce Climate Risk*, N.Y. TIMES, July 22, 2020, at B3:

> "The climate crisis poses a systemic threat to financial markets . . . ," reads the letter, which was signed by more than three dozen pension plans, fund managers and other financial institutions that together manage almost $1 trillion in assets.

[116] Xin Dai & Yue Qiu, Common Ownership and Social Responsibility (working paper, Aug. 6, 2020), www.ssrn.com/abstract=3668483. How powerful this result is in practice (how much more CSR do they really do?), and whether this finding will be replicated, remain to be seen. *See generally* Jeffrey G. Gordon, Systematic Stewardship (SSRN working paper), www.ssrn.com/abstract=3782814.

[117] Or the rectangle was competed away in globalized competition.

and, second, a way other ESG/CSR pressures (say, for more environmental protection) can obtain part of that newly more available monopoly rectangle.

What would have caused this shift in the distribution of the rectangle. According to labor academics, the weakening of union power is one major cause.[118] Globalization is another.[119] Corporate governance changes may be another. It's plausible that what was once lax corporate governance in, say, the 1970s, has tightened up such that effective executives no long split that monopoly rectangle as generously with employees.

IV. EXTENSIONS AND IMPLICATIONS

A. Normative Implications

For the most part in this Article, I analyze viability, not normative desirability.

The relationship has normative implications, however. In a competitive industry, the utilitarian goal is plausibly best reached by competition and shareholder primacy. CSR and ESG relevance here would be in whether and when they make the organization work better, with nonprofitable CSR and ESG externalities and distribution best handled by better regulation. Income inequality, for example, is best addressed via tax transfers.[120] While stated starkly here, I think this view is generally correct—especially in competitive industries and competitive economies.

But when an industry is not competitive and especially when an entire economy's competitive vigor declines, these conclusions become less certain for those who, like myself, are otherwise shareholder primacists.[121] This ambiguity can be seen in a simple shareholder primacy command to a monopolist: The instruction to maximize shareholder profits instructs the

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[118] Anna Stansbury & Lawrence H. Summers, The Declining Worker Power Hypothesis: An Explanation for the Recent Evolution of the American Economy (NBER working paper 27193, Oct. 2020), www.nber.org/papers/w27193; [Paul C. Weiler, *Promises to Keep: Securing Workers' Rights to Self-Organization Under the NLRA*, 96 HARV. L. REV. 1769 (1983).]

[119] The globalization hypothesis fits poorly with competitive decline hypothesis that I led with in this paper. If globalized markets competed down the wage rate, then they presumably rendered markets more competitive overall, not less.

If corporate rents were gone, then this paper's core thesis is not in play. Only a combination, sequential effect could correspond to the paper's thesis. If globalization squeezed out labor rents in the 1970s and 1980s, and simultaneously weakened labor's legal authority, then it presumably *also* squeezed out firm rents at that time. If firms *thereafter* acquired new rents (either from weakened antitrust or more large-scale operations or more skill, foresight, and industry success), *but* labor never reacquired its former power, then this Article's general framework would be back in play. I leave it for others, presumably labor economists and labor law authorities, to evaluate this channel.

[120] LOUIS KAPLOW & STEVEN SHAVELL, FAIRNESS VERSUS WELFARE 33–34 (2002).

[121] Other financial areas are ripe for reassessment in markets where competition is low and rents are high. Thus, a traditional view of the corporate tax—that it's a tax on capital—is called into question if the American economy now is suffused with widespread rents due to decreased competition. Edward G. Fox & Zachary D. Liscow, *A Case for Higher Corporate Tax Rates*, 167 TAX NOTES 2021 (2020).

monopolist to *raise its price and cut production* because that's how monopolists make the most money for their shareholders. But this result is inconsistent with a *utilitarian* greatest-good instruction—the best justification for shareholder primacy in the first place—because shareholder primacy commands the monopolist to deny some consumers the firm's product and to charge others too much. Purpose pressure—to serve consumers and other stakeholders over shareholders, or just to expand production—is more likely to yield a utilitarian greater good in an uncompetitive industry than in a competitive one.[122]

So, since the pure case for primacy requires competition, even primacy advocates need to reexamine purpose norms when competition is weak. The utilitarian-best is to achieve the competitive condition (via, say, improved antitrust), use primacy to motivate production, and handle externalities by regulation and inequality by taxation. But this might not be achievable, because antitrust cannot do it or because the source of the weakened competition is, say, more skill, foresight, and industry monopoly. When not achievable, the analysis is subject to a longstanding qualification in economic theory: once one condition for welfare maximization is seriously breached, it becomes uncertain whether breaching another condition will help or hurt us in getting closer to the greatest-good-for-the-greatest-number.[123] This doubt weakens the certainty of the classical justifications for shareholder primacy.

Still, even with weakened competition, primacy justifications do not collapse, they just are called into question. For example, since a rule (primacy or non-primacy) is likely to be across-the-board, one would have to judge what would be lost in utilitarian output in the remaining workably competitive industries. And justifications for primacy even in weakly competitive industries—such as managerial accountability—would persist. Reducing primacy in weakly competitive markets might just mean that executives mostly capture the value of the slack for themselves, not that they distribute most of it to the more deserving.[124] All true. But the point for this Section is that when competition decreases, and when industrial organization otherwise becomes nonstandard, then shareholder primacy's value becomes less assured as leading to the biggest economic pie.[125]

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[122] In the abstract, the monopoly distortion would be better remedied without purpose pressure. Better antitrust policy would bolster competition, or targeted taxes would take a firm's supracompetitive profit.

[123] Richard G. Lipsey & Kelvin Lancaster, *The General Theory of the Second Best*, 24 REV. ECON. STUD. 11 (1957).

[124] And for firms with market power, shareholders facing managerial slack may prefer that managers not capture the value that's up-for-grabs. They may prefer that employees get it, or that the public gets a better environment. The shareholders may prefer this for profits—they may think managers already make more than their marginal productivity and employees' welfare and social welfare with redound to the shareholders' benefit. Or the shareholders=as-citizens, *see* Hart & Zingales, *supra* note 25; Elhauge, *supra* note 25, may prefer as citizens that employees or the public capture the value that's up-for-grabs.

[125] In Part III, I showed why the major rebuttals to competitive decline *also* call forth more purpose pressure and facilitate its success. Hence, either industrial organization channel could produce successful purpose pressure—the thesis in this Article. However, the *normative* implications would not be identical for the two. If it's economies-of-scale, networks, or skill, foresight, and industry that cause the increasing concentration, then these industrial

B. How Purpose Pushes Its Way into the Corporation: Agency Costs and How Purpose Becomes Profitable

Purpose pushes itself into the corporation via several means.

Congress can reallocate the rectangle: purpose as lobbying. Large firms attract political attention. Large firms with market power attract even more political attention. And firms with large rents have more reason to avoid political animosity so they can retain those rents, which the polity could confiscate and with which more ESG and CSR can help. In response to this threat, some firms align themselves with a public purpose, as a form of lobbying. These firms give up some rent if doing so sufficiently increases the probability they will retain the rest of the rent. But it's the rent that motivates and facilitates the action[126] because the ESG and CSR pressures can be precursors to, or call forth, political action. ESG and CSR pressures are weak in comparison to the power potential of the U.S. Congress, which can snap that monopoly rectangle away from the firm. Boards and executives have good reason to reduce the possibility of it doing so.[127]

Purpose as managerial agency cost. The second ESG/CSR avenue into the firm is managerial agency costs. The monopoly firm affords executives more slack than the competitive firm and that slack can make managers more responsive to purpose pressure. The pressure may affect the manager's conscience, convincing him or her of the activity's perniciousness. In a competitive market the manager's conscience-directed range of actions is circumscribed. But the manager of a firm with market power can more readily satisfy his or her heightened consciousness. Profits will be lost but the firm can continue to provide the capital owners with a competitive rate of return.

If corporate governance is tight, powerful, and shareholder-profit-focused—owing to shareholder activism, shareholder control of the board, managerial incentive compensation, or capital structure—then corporate governance will keep executives loyal to shareholders even in firms with

changes do not similarly justify further deviation from shareholder primacy. To get these efficient results, shareholder primacy boosts the firm and the economy toward efficient outcomes.

[126] This is not to say that the firm cannot pursue other, less wholesome actions to bolster the probability of retaining much of the rent. It could spend one-third of the rent on lobbying, for example, if doing so would sufficiently increase the probability of retaining the other-two thirds of the rents.

[127] A striking instance is in two nearly adjacent *New York Times* reports in a single day's business section, one reporting that Amazon raised its base wage to $15/hour, even in regions where it could pay less, and the other that the Biden administration was appointing an advisor hostile to "the great power of the tech platforms, especially . . . Amazon." *Compare* Cecilia Kang, *Leading Critic of Big Tech Will Join the White House*, N.Y. TIMES, Mar. 6, 2021 at B3, *with* Ben Casselman & Jim Tankersley, *$15 an Hour at Amazon Has a Ripple*, N.Y. TIMES, Mar. 6, 2021, at B1. *Cf.* Cecelia Kang, *Biden Expected to Name Critic of Tech Giants to an F.T.C. Job*, N.Y. TIMES, Mar. 10, 2021, at B6 ("Ms. Khan recently served as legal counsel for the House Judiciary's antitrust subcommittee [which] investigated the tech giants' monopoly power"); Brent Kendall & Ryan Tracy, *Congress Weighs Stricter Antitrust Laws*, WALL ST. J., Mar. 12, 2021, at A2 ("Both [political] parties have been galvanized by concerns about powerful tech firms including . . . Amazon . . . . Debate over those firms' power in the U.S. economy—and over swaths of American society—has elevated antitrust to a trendy Washington issue.").

market power.[128] But if these are loose and competition is a major constraints on executives wandering away from shareholder loyalty, then the rising number of firms with more market power will alter corporate governance and give more room for ESG and CSR to be effective.

Shareholder disunity: for and against purpose. A third way purpose can become prominent is from shareholder disunity. Today, some institutional shareholders promote the idea of expanding corporate purpose. Their stated preference can be seen as a cousin to traditional agency costs, with them being a shareholding segment no longer rigidly seeking pure profit maximization, while another segment does.[129] New slack in profit-seeking is thus not just between shareholders and managers, but between and among shareholders, some of whom want to pursue profit unremittingly, and some of whom do not.

Consider how this aspect interacts with, and weakens, the influence of profit-oriented shareholder hedge funds. Profit-oriented activists seek to orient firms' boards and managers toward shareholders. To succeed, these activists need the votes of institutional investors, like the index funds that now own about 20% of the stock market.[130] But index funds and pension funds are increasing sympathizing with CSR/ESG goals.[131] So, profit-seeking activists who seek to bolster target firms' profitability by making them forsake its new ESG and CSR,[132] will find it harder to find allies among the ESG/CSR sympathizing indexers and pension funds. The profit0-focused activists will find they cannot succeed.

This is a new quasi-"agency" cost: the emerging divergence of goals between shareholder groups as the pro-profit institutional investors and the ESG/CSR sympathizing institutional investors disagree.

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[128] A few words on capitalization of the rents: Expected rents will be priced in stock market transactions. If I own stock in a firm that will obtain rents of $60/year per share and the capitalization rate is 10%, then I will insist on an extra $600 above the competitive price when I sell the stock, and the buyer will pay it. But then that profit-oriented buying stockholder expects to receive the rent, will militate in corporate governance to keep it, and will be disappointed in managers that give it up. Still, the monopoly firm with capitalized rents is not as confined as the competitive one. The competitive firm that gives up profit for ESG will damage its access to capital markets because it can no longer readily promise capital-providers the competitive rate of return. The monopoly firm that takes on costly purpose, but pays for it out of the firm's monopoly profit, will still be able to access capital markets as long as it can credibly promise a competitive rate of return going forward, which it can.

[129] It remains to be seen whether the ultimate shareholders fully perceive that purpose, if given more than lip service, will affect their risk-return. Many may believe that heightened purpose can be achieved without cost to capital owners—i.e., without cost to themselves.

[130] Ronald J. Gilson & Jeffrey N. Gordon, *The Agency Costs of Agency Capitalism: Activist Investors and the Revaluation of Governance Rights*, 113 COLUM. L. REV. 863 (2013).

[131] Larry Fink's Annual Letter to CEOs: A Sense of Purpose (2018) (Fink is the CEO of BlackRock, one of the three largest stockholding institutional investors in the United States); others.

[132] Danone, for example, sought a wider purpose and attracted shareholder activists who disagreed. *Danone Rethinks the Idea of the Firm*, THE ECONOMIST, Apr. 11, 2018. But Danone's "unique model of a purpose-driven company" was challenged by shareholder activists, successfully. Lauren Hirsch, *A Boardroom Shake-Up at the Food Giant Danone Sets Off Shareholder Infighting*, N.Y. TIMES, Mar. 16, 2021 ("greater consideration of social and environmental issues in their business model," but shareholder activism in reaction led to management changes). *See also* articles cited *infra*, note 134

Purpose can turn nonprofitable actions profitable. Lastly, purpose pressure can *change* the firm's profitability calculation. The pressure can affect employee morale, consumer acceptance of the firm, and the like. Profit-oriented shareholders and executives accommodate the pressure because it eventually makes more ESG and CSR more profitable. Monopoly firms can adjust to the new profit profile easily; competitive firms must look over their shoulders to see what their competitors are doing.

An employee wage negotiation sequence illustrates. The profit-oriented board maximizes profit with a wage rate of $7.25 for its unskilled workforce. The profit-focused directors ignore calls to pay more. A union then organizes the workforce and strikes, and the firm settles the strike with wages going up to $15/hour. The firm adjusts. If its competitors pay a lower wage rate, however, then the firm may fail if its adjustments cannot make up for the added costs. But if the firm does not face stiff competition, it more readily adjusts its output and production configuration to accommodate the higher wage rate. If it still earns more than the competitive rate, it survives. Or consider the no-union possibility: pressure demoralizes the firm's employees (or its customers, suppliers or executives), so the firm adjusts the wage scale upward. In these (and other real-world) scenarios, purpose pressure changes the profit calculation.

C. Corporate Governance, Disrupted

If rising market power insulates large firms more than before from intense, immediate competition, then executives and boards have more discretion. But shareholder-profit-oriented activists will have more to defend for profit-focused shareholders, namely those monopoly profits. This will disrupt corporate governance and possibly poison it.

Many (like me) have seen shareholder activists' role as primarily to discipline executives who failed to run their companies well. But with this Article's industrial-organization analytic in mind, the executives could operate their companies optimally (by raising prices whileconstricting production, and efficiently operating the factories), but then distribute a chunk of that value to employees and other stakeholders. The executives might do so as an agency cost (of not being fully loyal to shareholders, by making their own work lives easier at shareholders' expense), or out of their sense of fairness.

Profit-focused shareholder activists will disagree. They have the incentive to buy stock in such firms in order to insist that a larger portion of the monopoly pie be allocated to shareholders and I would expect that this incentive will increasingly be part of the motivation for activism.[133] Evidence

[133] I focus in this section on shareholder activism as the force that seeks to pull executives and boards back. But other corporate governance institutions of shareholder value will also be in ply: the board election machinery (already compromised with executives have major influence over the election structure), executive incentive pay, capital structure. All of these will become fields for social dispute.

is emerging that this pressure sequence is already happening. Activists now interpret a firm's CSR actions as signalling that the firm is not guarding every dollar for shareholders. Firms with more powerful CSR signals have been targeted more often by activists in the past two decades.[134]

Some specifics here: Posit that the board allocates some or much of the monopoly rent bonus to employees and other stakeholders and does so without damaging operational efficiency. That is, production is the same as before, but some of the above-normal profits are reallocated to stakeholders, like employees. Even so, profit-oriented shareholder activists will *still* have reason to stop boards and executives from allocating some of that monopoly profit to stakeholders. They want all of the rent to go to shareholders. *Hence, we could see these activists improve shareholder profit without improving target firms' operations.* Stakeholders and social activists then fight back, seeking to weaken the shareholder-value activists because, if the latter are weakened, theywill be less able to reverse executive action favoring stakeholders.[135] Whether these pure-profit-oriented activists will succeed or not remains to be seen: if solely seeking to cutback ESG and CSR, they will face difficulties (i) in obtaining the index and pension funds' support, (ii) from public opinion backlash, (iii) from destroying corporate value once the ESG and CSR become norms that all are expected to respect, and (iv) in incurring lawmakers' ire.

In an *un*competitive market, activists will have *two* motivations to intervene—to discipline weak management *and* to keep the monopoly rectangle for shareholders. A *stake*holder-executive coalition could seek to shut down both the activists' operational and their distributional interventions. (This double motivation adds ambiguity for policymaking but does not require one to abandon the activists. If the larger impact is to discipline managers in competitive industries and to reduce wasteful managerial slack in noncompetitive ones, then, if the purpose benefits are modest, activism is a net benefit. Activism, however, will become harder to evaluate in weakly competitive industries.)

When activists seek to pull rents back from stakeholders, corporate conflict will rise. That corporate conflict over dividing the excess profit may spill over into exacerbated conflict in the political sphere.

D. Instability: Political, Corporate, and Otherwise

Thus far we have focused on how and why stakeholder pressure and anti-corporate populism can lead to social pressure groups capturing a slice

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[134] Mark R. DesJardine, Emilio Mari & Rodolphe Durance, *Why Activist Hedge Funds Target Socially Responsible Firms: The Reaction Costs of Signaling Corporate Social Responsibility*, ACAD. MGMT J. (forthcoming, 2020). [*Cf.* Steven J. Davis et al., The Economic Effects of Private Equity Buyouts (NBER working paper 26371, 2019), www.nber.org/papers/w26371 (private equity buyouts reduce the public firm's wage premium).]

[135] On activism reallocating returns from bondholders to stockholders *see* April Klein & Emmanuel Zur, *The Impact of Hedge Fund Activism on the Target Firm's Existing Bondholders*, 24 REV. FIN. STUD. 1735 (2011).

of the monopoly rectangle. But before we conclude, I add a pessimistic view on labor and the monopoly firm.

The classic view is that monopoly power and profit are controlled by the firms' owners, boards, or executives. Their firms' market power gives them the luxury of bestowing value on labor inputs (or of labor grabbing that value). Market power frees executives and boards from having to return every dollar of potential profit to owners; they have slack and can return a competitive profit to shareholders even without squeezing every dollar of supra-competitive profit from the firm's operations for shareholders.

In recent years, observers have lamented that labor's share of American national income has decreased, with new (but contested) scholarship blaming monopoly/monopsony power for the result.[136] This provides a new perspective on monopoly's impact on stakeholders: it's not just that the monopolist can share with the stakeholders the excess profits, but that the monopsonist/monopolist can do the opposite and *suppress* the stakeholders' share, lowering labor's portion of the firm's and the industry's revenues.[137]

Several economic changes could account for the shift—technology and globalization being most prominent.[138] One major study finds that while labor's share of the economy has declined across-the-board—it's "those industries where concentration has risen the most [that] exhibit the sharpest falls in the labor share."[139]

The fit with this Article's thesis is by now obvious. Consider how: New economic trends press down on the compensation of labor. In less competitive industries, labor can press back more successfully than in highly competitive industries, because the competing firms vie for workers by paying them well (or at least paying them a competitive wage). But, in the decline-in-labor-share version, labor is struggling to *recapture* what it once had and then lost to the monopsonist. The firm with monopoly/monopsony power pushed stakeholders' share below the appropriate competitive rate. Stakeholders fight back in the political and social sphere—with corporate purpose pressure one of the weapons—pushing purpose pressures on the firm, its board, and its executives to share the gains with stakeholders.[140]

Or as I stated above, a different formulation (and one that I find more convincing) is not that monopsony power has increased, but that labor's

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[136] *See* Autor *et al*. *supra* note 93; Gatti & Ondersma, *supra* note 15.

[137] Barkai, *supra* note 50.

[138] Loukas Karabarbounis & Brent Neiman, *The Global Decline of the Labor Share*, 129 Q. J. ECON. 61 (2014). Changing demographics can play an important role. Unions are less powerful today than before. *See* Bell et al., *supra* note 65.

[139] Autor et al., *supra* note 93, at 703. Autor et al. attribute labor's falling share largely to the rise of superstar firms that, due to network effects or a sharply declining cost curve, capture a great deal of the market. These are similar to, or an instance of, "skill, foresight, and industry" or scale economy monopolies, each of which I analyze for congruence with this paper's thesis in Part III.

[140] This dynamic can also be seen as stakeholders making broadened purpose profitable: if purpose is widely seen as legitimate and if customers will be less willing to pay a premium price to a bad-purpose firm, then stakeholders will have made broadened purpose profitable.

strength in obtaining a good-sized slice of already-existing oligopolistic industries' above-competitive profit has weakened.[141] Labor has been weakened either due to a decreased credibility of threats to unionize, as labor academics have analyzed, or a tightened corporate governance structure that has reduced organizational slack, or globalized competition in some industries, especially manufacturing.[142]

The new ideology of corporate purpose then becomes a twenty-first century means to divide the corporate pie. Broadly stated, union pressure and older norms led to supra-competitive profits being shared. Over time shareholders and executives got the upper hand in that sharing contest in the United States, reducing labor's share. And now new ways to contest the monopoly profit division arise, with the new corporate purpose pressures and ideology being central.[143]

* * *

The implications of the prior discussion should be made explicit: corporate governance institutions could well become politicized more than before.

Consider rising contemporary political tension: if corporate profit becomes a distributional battlefield inside the corporation, that conflict would contribute to the increasing instability and tension in the polity. Corporate governance institutions—like board elections, capital structure, and shareholder activism—have long been seen as means to tie executives and boards more tightly to shareholder goals. But now the contest is shifting to include these *social values* as part of the contest more often. Institutions that once were solely or primarily thought of as potential instruments to control managerial slack become suffused with social considerations.

CONCLUSION

Much of the corporate purpose controversy is over what the right thing is for the corporation to do, motivated by a sense that there's too much economic and social degradation against which all must do their share.

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141 *See supra* Part II.D.

142 Each of these three—weakened union power, empowered shareholders, and globalization—play out differently for the Article's main lines of analysis. Globalization, for example, fits badly with the framework here, as I indicated *supra* note 119. If globalization pressured above-market wages down to competitive levels, it probably also squeezed those firms' rents—eliminating the foundation for this paper's core thesis. But if globalization squeezed out labor rents in the 1970s and 1980s, and if then firms acquired *new* rents (either from weakened antitrust or more large-scale operations or more skill, foresight, and industry achievements) later, it would be in play. Or at least it would be if labor never reacquired its former power. The thesis of Autor et al., *supra* note 93, on superstar firms now showing the "sharpest falls in the labor share" broadly fits this sequential possibility.

143 *See supra* Part I.A.-B. *Cf.* Richard A. Posner, *The Social Costs of Monopoly and Regulation*, 83 J. POL. ECON. 807 (1975); Gordon Tullock, *The Welfare Costs of Tariffs, Monopolies, and Theft*, 6 WESTERN ECON. J. 224 (1967)

Unexamined are the economic and structural conditions that facilitate, or impede, widening social purpose.

Here I bring a new perspective to this analysis: purpose pressure cannot readily succeed unless the underlying industrial organization arrangements allow it. I show how four trends in industrial organization make wider purpose more possible than before. First, according to many, the strength of basic competition has eroded. A single firm in a highly competitive industry cannot easily sustain costly purpose; in competitive industries, purpose must by and large pay for itself in higher productivity, better branding, or other benefits. Less competitive industries have more discretion. Second, winner-take-all industries (as well as industries with steeper economies of scale and deeper network qualities) have a bigger wedge between costs and prices that give the firms more discretion than traditional competition. The competitive winner sits atop the industry for a time and, for as long as it does, it can accommodate purpose pressures. Third, shareholder concentration, with major institutional investors owning stock of each firm in an industry can cartelize an industry to more readily implement purpose pressure. Among industrial organization academics, the view is widespread that at least one of these three changes has been substantial—although much disagreement as to which one—and each tendency brings forth larger rents. Fourth, labor seems less capable of obtaining value in industries with supracompetitive profits. Purpose pressure is a means (1) for labor to recover some of those lost rents and (2) for other stakeholders (or executives and shareholders) to obtain value from the more-available-than-before monopoly rectangle.

The same purpose pressure, even if equally appealing morally and even if pressed equally strongly, could fail in a competitive industry but succeed in a monopolistically-organized one (or one that otherwise has large rents). Both theory and evidence support this proposition. The theory is clear—competitive firms cannot incur major purpose costs: the expanded purpose must make stakeholders more productive, make consumers more willing to buy, or save the firm from another, greater cost. The evidence, on balance, supports the proposition that, all else equal, firms in weakly competitive industries or industries that otherwise produce large rents have a larger financial purse and do better for their employees and for their stakeholders.

* * *

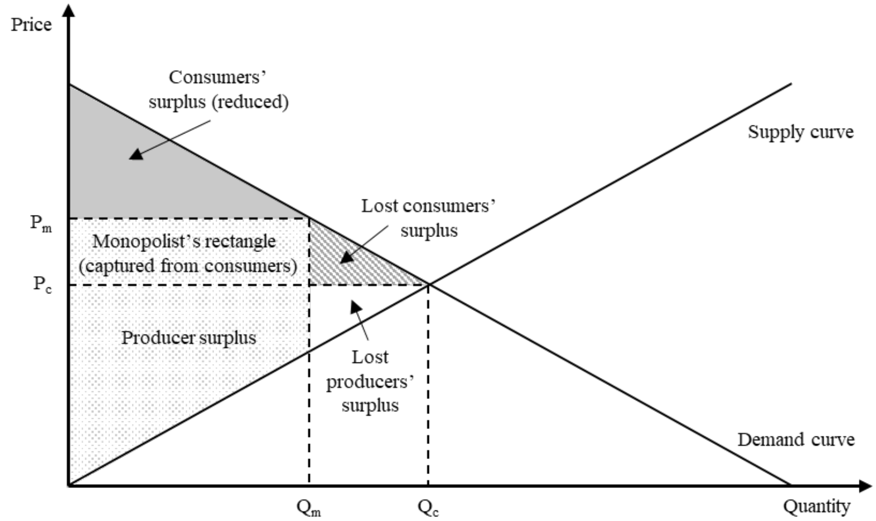
This competitive-decline analysis has potential normative implications. Shareholder primacy in oligopolistic or monopolistic industries is less valuable in implementing the utilitarian greatest-good than it is in competitive ones. An instruction to a monopolist to maximize shareholder profits tells it to reduce production (thereby making the society poorer and denying consumers the firm's product) and to raise prices (thereby making the stockholders and executives richer at consumers' expense). The same shareholder-oriented instruction in a competitive industry does not have the same negative effect.

True, the optimal effort could well be to increase competition and protect stakeholders with rules, widely-shared norms, and appropriate tax-based redistribution. Because the virtues of primacy are several, however, weak competition only reduces the strength of one of its utilitarian justifications but does not reduce the strength of the others. The interaction between industrial organization and purpose, given the observed trends in industrial organization, makes more complex the utilitarian case for primacy.

And, finally, the industrial changes coupled with the rising purpose pressure carry political risks for the affected firms. Growing monopoly profit rectangles lead to efforts to grab value from those monopolies—by shareholders and capital, by executives and employees, by the public and consumers. The growing but contestable pot of value in the corporation with market power will mean a perpetual, or at least a regular, contest to divide the corporate spoils. Increasing shareholder activism and increasing purpose pressure result from there being richer fields for gain. If we are lucky, this division-of-the-spoils just consumes some minor extra frictional resources. If we are unlucky, it burns value and contributes in a major way to the increasing polarization and instability of the polity.

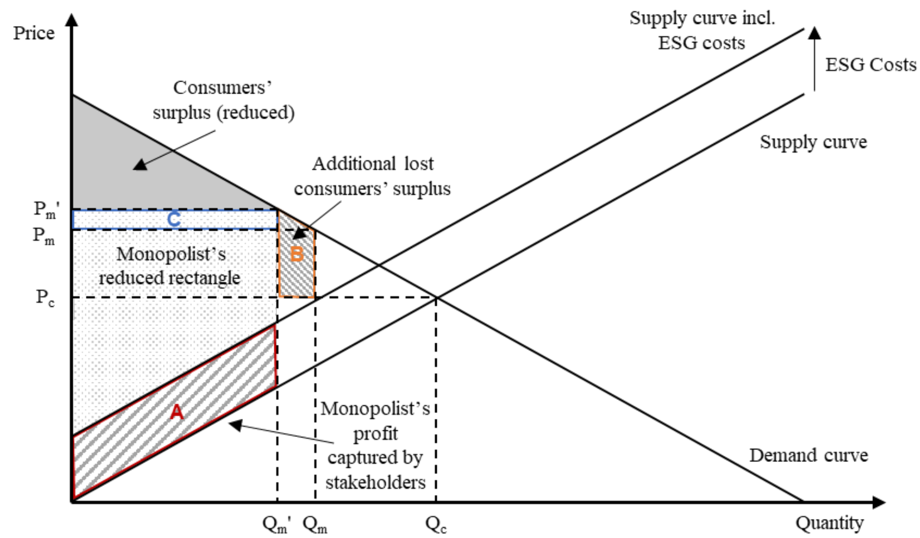
Appendix Figure 1.

The Monopolist's Profit, Before Purpose Pressure Becomes Major



Appendix Figure 2.

The Monopolist Accommodates Purpose by Sharing Profit and Raising Price



The ESG costs raise the amount expended by the monopoly firm in Appendix Figure 2. These, however, are distributional costs, creating a surplus for the ESG beneficiary (like the surplus that the monopolist gets via the rectangle). That is, the monopolist pays more but social expenses do not increase. To see this, think of the ESG beneficiaries as employees who once were paid $10/hour and after successful purpose pressure are paid $15/hour for the same effort. There's a *transfer* of $5/hour from the monopolist to the employees, but it does not cost the employees $5 more per hour to do the work—they do not need new skills or make more effort. (If a product originally costs $10 but became *more* expensive to produce, because more raw materials were needed and that necessitated a final price of $15, then the $5 rise would be an expenditure of real resources by the supplier.) Or think of the expenditure as an environmental one. Consumers get the same product, but this time with cleaner air and unpolluted streams. They benefit, without direct expenditure.