UNEQUAL OWNERSHIP

OFER ELDAR[*] & RORY VAN LOO[**]

ABSTRACT

Weak competition not only leads to lower efficiency, but also results in corporate profits flowing primarily to wealthy households that own a disproportionate share of public corporations. We demonstrate that this is a growing distributional problem due not only to familiar reasons in the literature, most notably shifts in market power, but also to changes in the socioeconomic makeup of ownership. Over the past twenty years, households in the bottom 90% of wealth have seen their share of stock ownership decline by half. That is, the ownership of corporations has become increasingly concentrated among the wealthy at a time when corporations are arguably extracting ever more surplus from consumers and workers.

This Article seeks to situate the distribution of ownership at the center of policies to address the impact of declining competition. The gist of our proposal is that policies that aim to reverse existing trends by broadening ownership of public corporations among middle- and low-income households may help mitigate the harmful consequences of market power. The general objective of such policies would be to bring the distribution of ownership closer toward more equal ownership of corporations by the public.

Policies to mitigate unequal ownership are desirable for two main reasons. First, expanding ownership would enable a broader array of stakeholders to benefit from the excess profits earned by firms in concentrated markets. Second, we demonstrate theoretically that if corporate stakeholders, particularly consumers and workers, own shares in public corporations, managers may offer more competitive prices and wages, to the extent that managers internalize the interests of their owners. Accordingly, policies that promote equal ownership of corporations can complement existing policies, such as antitrust and regulation, and offer potentially consequential advantages.

[*] UC Berkeley School of Law.

[**] Boston University School of Law. The authors are grateful to Einer Elhauge, Elisabeth de Fontenay, Stavros Gadinis, Jeffrey N. Gordon, Zohar Goshen, Michael Guttentag, Christopher S. Havasy, Henry B. Hansmann, Lynn LoPucki, Joshua Macey, Amelia Miazad, Elizabeth Pollman, Emily Strauss, Roberto Tallarita, and participants in the Organization of Social Impact Workshop, the Columbia Law School Law & Economics Workshop, the Northeastern Corporate Governance Workshop, and the American Law & Economics Association annual conference for invaluable feedback. Celene Chen, Jackson Barnett, and Julia Wang provided excellent research assistance.

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INTRODUCTION

Recent decades have seen a dramatic rise in corporate profits.[1] One of the leading hypotheses is that this trend is driven by rising market power. While this increase in corporate profits has greatly benefited investors, there is evidence that some of those gains have come at the expense of consumers and workers. Average price markups of consumer products have increased dramatically over time, arguably due in part to limited competition.[2] Workers' hourly wages have remained largely stagnant despite increasing productivity, because large profitable firms can wield enormous power in labor markets.[3] The literature has devoted considerable attention to how market power has increasingly harmed non-wealthy consumers and workers,[4] while benefiting wealthy households that own a disproportionate share of public corporations.[5]

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[1] Jan De Loecker, Jan Eeckhout & Gabriel Unger, *The Rise of Market Power and the Macroeconomic Implications*, 135 Q.J. ECON. 561, 562 (2020) (finding that markups have risen from 21% above marginal cost to 61% above cost in 2016).

[2] *See, e.g.*, *id.* at 567 (noting reallocation of economic activity toward large, high-markup firms contributed to the decline in labor share and that technological changes and reduced antitrust enforcement are key drivers of increased market concentration); Gustavo Grullon, Yelena Larkin & Roni Michaely, *Are US Industries Becoming More Concentrated?*, 23 REV. FIN. 697, 712 (2019) (contending market concentration may allow industry incumbents to earn higher profits by setting higher prices relative to production costs).

[3] JAN EECKHOUT, THE PROFIT PARADOX: HOW THRIVING FIRMS THREATEN THE FUTURE OF WORK 4-5, 8 (2021) (observing that dominant firms' rising market power allows them to suppress wages); ERIC A. POSNER, HOW ANTITRUST FAILED WORKERS 1 (2021). For a leading account of labor's struggles and workers' potential to use capital for power, see DAVID WEBBER, THE RISE OF THE WORKING-CLASS SHAREHOLDER: LABOR'S LAST BEST WEAPON 75 (2018).

[4] *See, e.g.*, Michael D. Guttentag, *Law and Surplus: Opportunities Missed*, 2019 UTAH L. REV. 607, 627-28 (focusing on consumers); Brishen Rogers, *Toward Third-Party Liability for Wage Theft*, 31 BERKELEY J. EMP. & LAB. L. 1, 5 (2010) (focusing on employees). There is also a growing push to move beyond the economic dimensions of market power that are the focus of this paper. *See, e.g.*, Lina M. Khan, *Amazon's Antitrust Paradox*, 126 YALE L.J. 710, 716-17 (2017); John M. Newman, *The Output-Welfare Fallacy: A Modern Antitrust Paradox*, 107 IOWA L. REV. 563, 619 (2022) (proposing for moving beyond consumer welfare measures of output as the goal of antitrust); Jedediah Britton-Purdy, David Singh Grewal, Amy Kapczynski & K. Sabeel Rahman, *Building a Law-and-Political-Economy Framework: Beyond the Twentieth-Century Synthesis*, 129 YALE L.J. 1784, 1784 (2020) ("We hope to help amplify and catalyze scholarship and pedagogy that place themes of power, equality, and democracy at the center of legal scholarship.").

[5] *See* Jonathan B. Baker & Steven C. Salop, *Antitrust, Competition Policy, and Inequality*, 104 GEO. L.J. ONLINE 1, 11-12 (2015), https://scholarship.law.georgetown.edu/cgi/viewcontent.cgi?params=/context/facpub/article/2474/&path_info=Baker_Salop_Antitrust_Competition_Policy_and_Inequality.pdf [https://perma.cc/NG8Z-GUUG]; Lina Khan & Sandeep Vaheesan, *Market Power and Inequality: The Antitrust Counterrevolution and Its Discontents*, 11 HARV. L. & POL'Y REV. 235, 241 (2017) (proposing antitrust reforms after

We argue that market power is a growing problem due to changes to the socioeconomic makeup of ownership.[6] As shown in Figure 1, while market power and income inequality rose steadily through recent decades,[7] another concerning trend has gone overlooked. Since 2000, the bottom 90% of households—those with incomes below $180,000—have seen their share of ownership of public corporations decline from around 22% to 11%.[8] Consequently, the people who bear most of the burden of rising prices and stagnant wages have, over time, also received a smaller share of the resulting profits.[9]

Despite this reality, the common narrative in both popular media and legal scholarship is that more Americans than ever own stocks.[10] Expanded ownership is true in the sense that a considerably higher percentage of households now own at least some small amount of stock, due in large part to holdings in retirement accounts.[11] This fact, however, glosses over the simultaneous trend of increasingly unequal ownership.

observing that skewed capital ownership means that "a large percentage of market power rents likely flow to a tiny sliver of the American population"). *But see* Daniel A. Crane, *Antitrust and Wealth Inequality*, 101 CORNELL L. REV. 1171, 1183-84 (2016) (questioning the relationship between antitrust and inequality, especially by pointing out that there is much we don't know).

6 The more familiar explanations are shifts in market power away from consumers and workers. *See infra* Part I.

7 De Loecker et al., *supra* note 1, at 563; EECKHOUT, *supra* note 3, at 8-9.

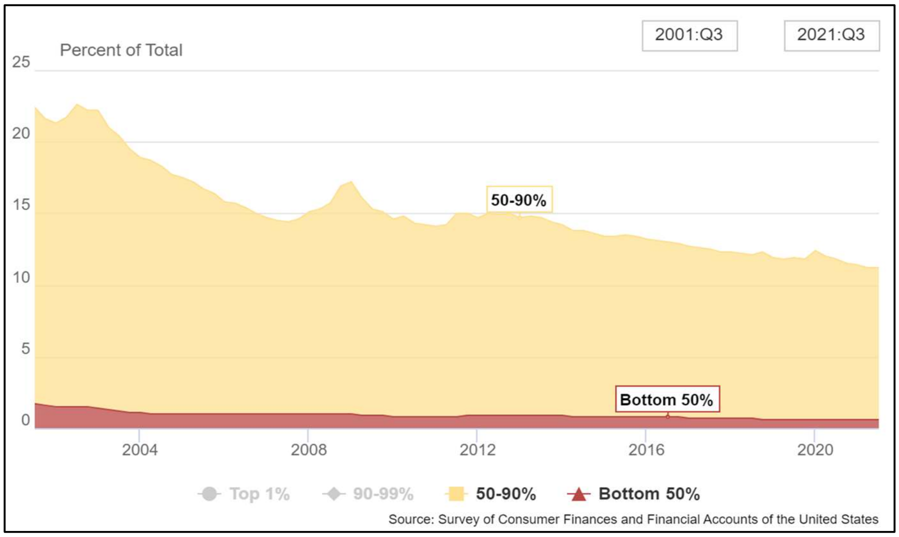
8 Based on the Survey of Consumer Finances data as of March, 2022. For an updated version, see *Distribution of Household Wealth in the U.S. Since 1989*, BD. OF GOVERNORS OF THE FED. RSRV. SYS., https://www.federalreserve.gov/releases/z1/dataviz/dfa/distribute/chart/ [https://perma.cc/C99Z-GR9B] (last updated Mar. 21, 2025).

9 We do not claim that these trends are necessarily related, but it is possible that they are. In particular, when wages are stagnant and prices go up, lower-income individuals likely have less money to save and invest in the stock market. It is also possible that, as we discuss below in Part II, when owners are wealthier, corporations are less likely to internalize the interests of consumers and workers because wealthier owners are less likely to be affected by higher prices and lower wages.

10 *See, e.g.*, Hannah Miao, *More American Households Own Stocks than Ever Before*, WALL ST. J., Dec. 19, 2023, at A1; Ciara Torres-Spelliscy, *Symposium Introduction*, 47 STETSON L. REV. 215, 221 (2018) (observing in passing that "stock ownership has expanded").

11 The increase is largely from indirect sources, such as stocks held in retirement accounts, but there was also a significant rise in direct stock ownership between 2019 and 2022. Miao, *supra* note 10, at A1 ("Most households own stocks through a retirement account, such as a 401(k), but more Americans in the past few years have invested in individual shares directly.").

Figure 1. The Share of the Bottom 90% in Corporate Equities and Mutual Funds.



We argue that reversing this trend and expanding the ownership of corporations to all households has the potential to mitigate the harmful consequences of excess market power on consumers and workers. Although we cannot systematically determine the optimal allocation of ownership, we use the term *equal ownership* to denote the general aspiration that a broader array of stakeholders—particularly consumers and workers—will have sizable and influential ownership in capital markets. While some have proposed expanding ownership for other reasons,[12] we theorize equal ownership across socioeconomic groups as a solution to corporations' excessive market power and their ability to extract rents from consumers and workers.[13]

The basic intuition for our theory has two components: First, if consumers, workers, and the public have a larger stake as owners, they will share in the economic gains made by corporations. Consequently, when corporations raise prices or decrease wages, consumers and workers would recover some of those losses through their ownership stake in the resulting increased profits. Equal ownership could thus allow more stakeholders to share in the rents of market power to the extent that they get a larger share of corporate profits. Second, to the extent that managers are accountable to owners (or at least assimilate their preferences), equal ownership could lessen the incentives for managers to

[12] For ideas about expanding ownership that do not explore the link to market power, see text accompanying notes 131-32.

[13] On legal scholars' more general inattention to issues related to surplus distribution, and the opportunities missed as a result, see Guttentag, *supra* note 4.

exploit their market power to extract rents from their stakeholders. Accordingly, corporations with a broader set of owners would plausibly charge fairer prices and pay higher wages.[14] If changing ownership composition can produce similar outcomes to more traditional policy options, such as antitrust and consumer law, the policy levers for reducing market power should include the promotion of higher levels of ownership by middle- and low-income households. Our insight suggests that, at least theoretically, equal ownership may be able to move markets toward outcomes that mimic those in a world of perfect competition. While it is widely recognized that markets realistically never reach perfect competition, it provides a normative benchmark for policymakers.[15] In the classic and highly stylized model of perfect competition, consumers and workers extract all the surplus from market transactions with commercial firms.[16] This idea of perfect competition is largely based on the presence of numerous competitors,[17] without considering the attributes of owners. We show that in well-known economic models, when the owners are also the consumers of the firm, the firm is likely to charge consumers the same price it would in a market with perfect competition (and the same applies to workers and wages).[18] If similar outcomes could be obtained by changing the composition of owners, the domain of economic policy should arguably be not only traditional mechanisms for moving markets toward perfect competition, such as antitrust and consumer protection, but also the promotion of equal ownership by a broader section of the public that includes middle- and low-income consumers and workers.

Although our main contribution is to expand the theoretical justification for broadening ownership, we also discuss specific policies to address unequal ownership. We consider a range of paths to expanding ownership, such as repurposing government bailouts of businesses during economic crises or a portion of Social Security.[19] The success of such policies should not be gauged

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[14] For an analysis of some related issues in the context of utilities, see Aneil Kovvali & Joshua C. Macey, *The Corporate Governance of Public Utilities*, 40 YALE J. ON REGUL. 569 (2023). For a forceful argument that human investors who are heavily dependent on long-term corporate performance have limited power to influence firms' strategy, see Leo E. Strine, Jr., *Who Bleeds When the Wolves Bite?: A Flesh-and-Blood Perspective on Hedge Fund Activism and Our Strange Corporate Governance System*, 126 YALE L.J. 1870 (2017).

[15] *See, e.g.*, ROBERT S. PINDYCK & DANIEL L. RUBINFELD, MICROECONOMICS 252 (5th ed. 2001) (acknowledging the gap between perfect competition and actual markets); JOSEPH A. SCHUMPETER, CAPITALISM, SOCIALISM, AND DEMOCRACY 91 (Routledge 2010) (1942) (concluding that perfect competition is impossible).

[16] *See* WILLIAM J. BAUMOL & ALAN S. BLINDER, ECONOMICS: PRINCIPLES & POLICY 199 (11th ed. 2011).

[17] Perfect competition has other features as well, such as informed decisions. *Id.*

[18] *See infra* Part II.

[19] For an interesting take on the relationship between bailouts and shareholders, see Yesha Yadav, *Too-Big-to-Fail Shareholders*, 103 MINN. L. REV. 587, 592 (2018). *See also* Yesha Yadav, *The Failed Regulation of U.S. Treasury Markets*, 121 COLUM. L. REV. 1173, 1176

by whether they achieve a perfectly equal distribution of ownership of public corporations. Rather, the more immediate goal is to reverse the shrinking share of public firms held by less wealthy individuals.

That broadening of ownership would be valuable for distributional reasons alone, but there is no guarantee that broader ownership by itself will produce changes in corporate decision-making on issues such as prices and wages. Thus, we discuss an array of institutional mechanisms to promote managerial responsiveness to the interests of a broader set of owners. One possibility is using information technologies that could vote directly on shareholders' behalf or communicate their preferences to fund managers.[20]

In this respect, our project is tangentially related to a burgeoning literature on common ownership that links corporate governance and market competition. The main concern in the common ownership literature is that firms owned by the same set of large institutional shareholders, such as BlackRock and Vanguard, are less likely to compete with one another and will thus charge higher prices to consumers[21] or pay lower wages to workers.[22] An underlying premise in those arguments is that managers internalize the interests of institutional shareholders and thus maximize the aggregate value of their owners' portfolios by failing to compete with other commonly owned firms.[23] There is a heated debate as to whether seemingly passive institutions can actually

(2021) ("Facing the possibility that this unshakable market could fail, the Federal Reserve . . . stepped in with over one trillion dollars of immediate stabilizing support.").

[20] In this sense our project is complementary to Oliver Hart & Luigi Zingales, *Companies Should Maximize Shareholder Welfare Not Market Value*, 2 J.L. FIN. & ACCT. 247 (2017). Hart and Zingales argue that corporations should maximize the pro-stakeholder preferences of shareholders, which may "deviate from short-run profit or value maximization." *Id.* at 250-51.

[21] *See* José Azar, Martin C. Schmalz & Isabel Tecu, *Anticompetitive Effects of Common Ownership*, 73 J. FIN. 1513, 1517-18 (2018) (showing evidence that common ownership of airlines is associated with higher ticket prices); Einer Elhauge, *Horizontal Shareholding*, 129 HARV. L. REV. 1267, 1272 (2016) (arguing common ownership is an effective driver of income equality). *But see* Patrick Dennis, Kristopher Gerardi & Carola Schenone, *Common Ownership Does Not Have Anticompetitive Effects in the Airline Industry*, 77 J. FIN. 2765, 2766-68 (2022) (questioning robustness of empirical findings that common ownership causes higher prices). To the extent that wealthier individuals hold stocks through institutions—a highly reasonable presumption—the potentially harmful effect of common ownership further exacerbates the distributional problem that is at the center of this Article.

[22] Zohar Goshen & Doron Levit, *Agents of Inequality: Common Ownership and the Decline of the American Worker*, 72 DUKE L.J. 1, 8-9 (2022).

[23] *See* Miguel Antón, Florian Ederer, Mireia Giné & Martin Schmalz, *Common Ownership, Competition, and Top Management Incentives*, 131 J. POL. ECON. 1294, 1297 (2023) (demonstrating that common ownership reduces incentives to compete through the mechanism of less performance-sensitive executive compensation).

affect managerial decision-making,[24] and we do not take a stance on this issue. For our purposes, the upshot of the common ownership literature is that it suggests it is plausible that managers do consider owners' interests in making decisions, even if the extent of that consideration is debatable. In any case, even if shareholders' preferences are not adequately accounted for, equal ownership would still offer policy appeal by providing a mechanism to distribute the rents of corporate profits to less affluent households.

It bears emphasis that common ownership and equal ownership are focused on institutionally distinct, but complementary, problems. They are complementary because both ultimately indicate policy reforms that would push markets toward more competitive prices and wages. However, even if the proposals in the common ownership literature are successful in preventing institutions like Vanguard from having concentrated ownership of competitors, they would not change the socioeconomic makeup of owners. Consequently, changes to common ownership would not remove investors' incentives to increase market power and use it to raise prices.[25] The same mostly wealthy households would still hold the same proportion of corporations in a world without common ownership, only through a more fragmented institutional landscape.[26] In contrast, equal ownership is not concerned with a more fragmented distribution of institutions that hold shares. Equal ownership aims instead to broaden the socioeconomic distribution of individuals (or households) who own corporations (directly or through institutions).

Policies to promote equal ownership have advantages and disadvantages compared to other proposals seeking to address corporations' market power. We explore the disadvantages of equal ownership in greater depth below, including the challenge of funding a large-scale distributional shift in ownership. But existing proposals to address market power face the daunting challenge of resisting corporate law's primary normative objective: inducing business organizations to maximize owners' profits. For instance, antitrust- and market regulation-based interventions require regulators or courts to overrule managerial business decisions. This tension helps explain why such proposals

[24] *See, e.g.*, C. Scott Hemphill & Marcel Kahan, *The Strategies of Anticompetitive Common Ownership*, 129 YALE L.J. 1392, 1447-50 (2020) (questioning causal link between passive common ownership and higher prices).

[25] A recent paper suggests that the harmful impact of industry concentration on consumer welfare is substantially larger than the impact of common ownership. *See* Florian Ederer & Bruno Pellegrino, *A Tale of Two Networks: Common Ownership and Product Market Rivalry* 2 (Nat'l Bureau of Econ. Rsch., Working Paper No. 30004, 2022), https://www.nber.org/system/files/working_papers/w30004/w30004.pdf [https://perma.cc/5TDK-M3CN].

[26] We note, however, that to the extent that addressing common ownership led to less anticompetitive conduct, it could lower economic inequality through this channel, thereby indirectly promoting a more balanced socioeconomic distribution of ownership. *See* Elhauge, *supra* note 21, at 1272.

face institutional challenges and uncertainty.[27] Relatedly, another line of proposals advocates changing the basic objective of corporations: Rather than maximizing shareholder profits, boards should maximize the benefits to all stakeholders, including consumers and workers.[28] These proposals push against the basic incentive structure of corporations, in which managers are primarily accountable to the owner-shareholders, either through elections (for boards) or through performance-based pay (for executives).[29]

We do not pass judgment on these other proposals' social value. Nor is it possible at this point to conclude that any one proposal is necessarily the best of all possible policy options. Such a difficult analysis would require nuanced institutional comparisons informed by experimentation with interventions, such as equal ownership, that have never been tried. But as a threshold observation, a key advantage of equal ownership is that it does not fight against the basic architecture of corporations, which is that managers have a duty to maximize shareholders' interests.[30] These interests are not necessarily confined to making larger profits: they could also include receiving fair treatment as consumers and workers,[31] or at least getting a larger share of corporate profits.

Finally, we emphasize that other mechanisms for addressing market power, such as antitrust and regulation, would still have a central place in a world of equal ownership. However, given the imperfections of standard policy responses to declining competition, equal ownership could serve as a complementary policy tool to existing approaches, and it offers potentially compelling advantages. Equal ownership is deeply rooted in the link between corporate ownership and competitive markets. The nature of ownership shapes how firms

[27] *See* Rory Van Loo, *In Defense of Breakups: Administering a "Radical" Remedy*, 105 CORNELL L. REV. 1955, 2007-09 (2020) (observing that both structural and behavioral remedies are costly and unpredictable); *infra* notes 36-38.

[28] *See* Margaret M. Blair & Lynn A. Stout, *A Team Production Theory of Corporate Law*, 85 VA. L. REV. 247, 253 (1999).

[29] As a result, corporate managers now mostly cater to stakeholders only when it promotes goodwill and increases revenues; alternatively, they engage in performative behavior with little material benefit to stakeholders. *See* Ofer Eldar, *Designing Business Forms to Pursue Social Goals*, 106 VA. L. REV. 937, 946-47 (2020) [hereinafter Eldar, *Designing Business Forms*]; Lucian A. Bebchuk & Roberto Tallarita, *The Illusory Promise of Stakeholder Governance*, 106 CORNELL L. REV. 91, 95-96 (2020). For a theory that aligns managers' for-profit incentives with firms' missions to further the welfare of their beneficiary-stakeholders, see Ofer Eldar, *The Organization of Social Enterprise* 1-6 (Eur. Corp. Governance Inst., Finance Working Paper No. 987/2024, 2024), https://ssrn.com/abstract=3217663; and Ofer Eldar, *The Role of Social Enterprise and Hybrid Organizations*, 2017 COLUM. BUS. L. REV. 92, 129-30.

[30] Others have recognized the importance of not fighting against this basic incentive structure for different proposals. *See, e.g.*, Dorothy S. Lund, *Corporate Finance for Social Good*, 121 COLUM. L. REV. 1617, 1618-21 (2021) (proposing corporate social responsibility bonds to provide corporations with financial incentive to take on public-interested projects).

[31] *See supra* note 20 and sources cited.

compete in product and labor markets. Even if equal ownership might fall short at eliminating market power, at a minimum it would move society away from the trend toward tapered ownership.

Our Article proceeds as follows. Part I provides the context for equal ownership by outlining the problem of rising market power and the shortcomings of existing policy proposals. Part II develops the theory of equal ownership as a response to rising market power. It shows how moving toward broader socioeconomic ownership of corporations has the potential not only to lessen the distributional harms of excess market power, but also to push firms toward behavior that mimics firms' behavior in a world of perfect competition. Part III discusses the practical aspects of equal ownership, briefly exploring ways to broaden ownership and to encourage stronger influence by ordinary owners on corporate decision-making. Part IV considers potential challenges to equal ownership and the responses to such challenges.

I. MARKET POWER AND POTENTIAL SOLUTIONS

There is increasing evidence that corporations have exploited their market power in ways that harm consumers and workers. The main responses to those concerns attempt to curb market power by reducing the size of corporations, regulating corporations' conduct, or changing the basic purpose of corporations to incorporate consumer and worker welfare. This Part summarizes that scholarship as background to our additional ownership-based approach.

A. *The Rise in Markups and Inequality*

When there is insufficient competition, corporations can use their market power to exploit consumers, workers, and suppliers. The most straightforward harms are higher prices for products, lower wages paid to workers, and lower prices paid to suppliers.[32] When there are only a few firms in an industry, a condition known as oligopoly, firms often have the power to raise prices for consumers and make fewer products.[33] Many U.S. industries, including banking, air travel, social media, pharmaceuticals, and healthcare, exhibit oligopolistic structures.[34] Similarly, if there are too few firms in a given location employing workers in a specific industry, a condition known as oligopsony, employers may

[32] Although price is the focus throughout this Article, harms can manifest in many other ways, such as through lower quality products and worsened worker safety. *See, e.g.*, Kathryn Spier & Rory Van Loo, *Foundations for Platform Liability*, 100 NOTRE DAME L. REV. (forthcoming 2025), https://ssrn.com/abstract=5015344 (showing how tech platforms take inadequate safety precautions due to market failures).

[33] *See* HAL R. VARIAN, INTERMEDIATE MICROECONOMICS: A MODERN APPROACH 497-521 (8th ed. 2010).

[34] *See, e.g.*, Thomas A. Piraino, Jr., *Regulating Oligopoly Conduct Under the Antitrust Laws*, 89 MINN. L. REV. 9, 11 (2004) (analyzing makeup of major industries and markets in the United States).

lower wages and employ fewer people.[35] Oligopolies and oligopsonies contrast with competitive markets, in which firms must reduce prices and increase wages to attract consumers and retain workers.

Antitrust-related channels are not the only means for anticompetitive markups. On the consumer side, for instance, anticompetitively high prices can result from confusing, manipulating, or deceiving consumers. The tactics used in this category are too numerous to list. They include shifting more of the price of a printer from the initial purchase to the replacement ink cartridges; hiding fees and price increases in the fine print of mortgage, credit card, and other contracts; and offering complex pricing packages, such as cell phone plans with various charges for data, minutes, and overage fees.[36] Each of these practices makes it more difficult and time-consuming to compare prices, which is problematic because price comparison is necessary for competitive markets to function well.[37] These and other practices have been shown to significantly raise the prices that consumers pay by exploiting either the costs of collecting information or the mind's limits in processing complex information.[38]

While the extent to which competition is declining is widely debated,[39] mounting evidence suggests that it is indeed declining. Since the 1990s, about 75% of U.S. industries have experienced an increase in concentration levels.[40] There is also evidence that markups—the difference between prices and marginal costs of production—have been steadily increasing: one study found that whereas the typical business sold its goods at 21% above costs in 1980, that

[35] *See* Ioana Marinescu & Eric A. Posner, *Why Has Antitrust Law Failed Workers?*, 105 CORNELL L. REV. 1343, 1354 (2020).

[36] *See* Xavier Gabaix & David Laibson, *Shrouded Attributes, Consumer Myopia, and Information Suppression in Competitive Markets*, 121 Q.J. ECON. 505, 506-07 (2006).

[37] *See, e.g.*, *id.* at 507-12 (describing consumer cost of identifying and avoiding hidden fees); Torsten J. Gerpott & Jan Berends, *Competitive Pricing on Online Markets: A Literature* Review, 21 J. REVENUE & PRICING MGMT. 596, 596 (2022) (explaining that improved means of price comparison result in lower prices and increased competition).

[38] *See, e.g.*, Rory Van Loo, *Broadening Consumer Law*: *Competition, Protection, and Distribution*, 95 NOTRE DAME L. REV. 211, 219-31 (2019) (summarizing the literature).

[39] *See, e.g.*, Mark J. Roe, *Corporate Purpose and Corporate Competition*, 99 WASH. U. L. REV. 223, 250-68 (2021) (reviewing evidence for and against declining competition, finding considerable evidence for both possibilities, and ultimately concluding that competition has declined in many contexts).

[40] *See* Grullon et al., *supra* note 2, at 698; *see also* Roe, *supra* note 39, at 250-51 (explaining that even highly competitive and innovative industries have experienced rising concentration and rising profits). *But see* Joshua D. Wright, Elyse Dorsey, Jonathan Klick & Jan M. Rybnicek, *Requiem for a Paradox: The Dubious Rise and Inevitable Fall of Hipster Antitrust*, 51 ARIZ. ST. L.J. 293, 314-24 (2019) (reviewing literature and concluding concerns about excess monopoly power are unfounded).

figure rose to 61% by 2016.[41] This suggests that firms have increased their ability to extract more from consumers.[42]

Likewise, there is evidence that workers are suffering from substantial concentration in labor markets. A recent study finds that more than 60% of geographic-occupational markets in the United States are concentrated and that market concentration is associated with lower wages.[43] The trends in the wage-productivity gap are particularly alarming. Before the 1980s, workers were paid more if they were more productive.[44] But in recent decades, wages have remained mostly stagnant even as workers have become much more productive.[45]

It is not surprising that in the same period, corporate profits and market values of large corporations have increased dramatically.[46] In other words, shareholders are making larger returns, and the evidence suggests that these benefits are at the expense of consumers and workers.[47] Accordingly, there is a deep concern that market concentration, weak competition, and consumer manipulation contribute to economic disparities across the economy.[48] Because both consumers and workers are made up of all socioeconomic groups, whereas owners are much more concentrated among the wealthy, anticompetitive prices and wages transfer resources from lower- to higher-income groups.[49]

Finally, it is important to emphasize that weak competition is not only inequitable, but also inefficient in the sense that it reduces aggregate welfare, or the total welfare of shareholders and society.[50] As we explain below, when firms

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[41] De Loecker et al., *supra* note 1, at 562. The precise magnitude is debated. Hendrik Döpper, Alexander MacKay, Nathan H. Miller & Joel Stiebale, *Rising Markups and the Role of Consumer Preferences* 1 (Nat'l Bureau of Econ. Rsch., Working Paper No. 32739, 2024), https://www.nber.org/system/files/working_papers/w32739/w32739.pdf ("[W]e estimate that average product-level markups increase by about 30 percent between 2006 and 2019.").

[42] *See* De Loecker et al., *supra* note 1, at 567.

[43] *See* José Azar, Ioana Marinescu & Marshall Steinbaum, *Labor Market Concentration*, 57 J. HUM. RES. S167, S168-69 (2022).

[44] Simcha Barkai, *Declining Labor and Capital Shares*, 75 J. FIN. 2421, 2459 (2020) (interpreting industry data and concluding increase in capital costs doesn't explain widening disparity between labor productivity and compensation).

[45] *Id.*

[46] *See* De Loecker et al., *supra* note 1, at 562.

[47] *See id.*

[48] *See, e.g.*, Van Loo, *supra* note 38, at 217 (reviewing the literature and concluding that there is reason to believe that behavioral pricing strategies and other forms of overcharge could contribute significantly to economic inequality).

[49] *See generally* Joshua S. Gans, Andrew Leigh, Martin C. Schmalz & Adam Triggs, Inequality and Market Concentration, *When Shareholding Is More Skewed than Consumption*, 35 OXFORD REV. ECON. POL'Y 550 (2019) (calculating U.S. distribution of consumption and stock ownership across individuals or households and concluding mark-ups increase inequality).

[50] BAUMOL & BLINDER, *supra* note 16, at 199.

have market power, they produce lower quantities and employ fewer people, resulting in lower aggregate welfare for the economy as a whole.

B. *Policy Proposals and Their Limits*

The responses to market power can roughly be put into three categories: (1) changing the structure of corporations, such as by breaking them up and thus reducing their market power over their stakeholders; (2) regulating corporations' behavior toward their stakeholders, such as by ensuring that consumer contracts and wages are fair; and (3) empowering corporate boards to take actions that primarily benefit stakeholders rather than shareholders. Each of these options can contribute to a comprehensive solution but also faces significant practical limits.

The two main structural proposals for reducing corporations' market power are blocking a higher percentage of mergers and more aggressively breaking up companies.[51] Critics of these proposals argue that they will wind up harming consumers and workers. Blocking mergers or breaking up companies might make businesses less efficient by removing economies of scale, which could lead to higher consumer prices.[52] Part of the problem is that it is difficult to accurately predict the magnitude of efficiency savings compared to the magnitude of the market power increase that will result from any structural intervention.[53] In any case, blocking mergers is insufficient by itself, because corporations can obtain monopoly status without any mergers or acquisitions. Yet even if regulators were to execute a breakup perfectly, they would require resources to design and oversee this process.[54] And it is often pointed out that after the breakup of an oligopoly, it is only a matter of time before the industry

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[51] *See* Khan & Vaheesan, *supra* note 5, at 291 (advocating for regulators and courts to restructure monopolists' operations through division into horizontal competitors or vertical separate entities); Michael L. Katz & Howard A. Shelanski, *Mergers and Innovation*, 74 ANTITRUST L.J. 1, 81 (2007) (advocating for regulators to block mergers when "blocking the merger will have the higher net benefit for consumer welfare"). Divestitures also include the forced sale of assets. *See* Comment, *Aspects of Divestiture as an Antitrust Remedy*, 32 FORDHAM L. REV. 135, 135 (1963).

[52] *See, e.g.*, Wright et al., *supra* note 40, at 300-02 (describing administrative difficulties, legal inconsistencies, and harms to consumers produced by mid-twentieth century "big-is-bad" approach to antitrust).

[53] *See, e.g.*, Frank H. Easterbrook, *The Limits of Antitrust*, 63 TEX. L. REV. 1, 2 (1984) ("Unless the court knows the 'right' balance between competition and cooperation in each market, it does not know in which direction to move.").

[54] *See* Howard A. Shelanski & J. Gregory Sidak, *Antitrust Divestiture in Network Industries*, 68 U. CHI. L. REV. 1, 32-34 (2001) (critiquing lack of "rigorous discussion of the monitoring and oversight costs" of breakups as an antitrust remedy).

returns to the same level of monopoly power.[55] Thus, while structural solutions can meaningfully improve competition,[56] they are insufficient by themselves.

The second approach is to regulate the corporation's behavior in ways that push it closer to competitive conduct. One leading behavioral remedy is to require the firm to allow competitors access.[57] For instance, Apple might be ordered to allow competitors to offer apps to Apple customers, even if those apps offer the same services, such as maps or music, that Apple does.

Another set of behavioral interventions lies in consumer law. Like the practices themselves, policy recommendations to address consumer law-related pricing strategies are diverse. Although scholars sometimes propose outright banning a practice, they more commonly recommend laws that introduce behavioral nudges and information disclosures, such as attempting to push consumers toward better choices or providing them (or their digital assistants) with the data they need to make better decisions.[58]

One of the most far-reaching ways to regulate corporate behavior is to limit prices and wages. In some geographies where cable companies have monopolies, for instance, local governments limit the prices for basic services.[59]

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55 *See* Herbert Hovenkamp & Fiona Scott Morton, *Framing the Chicago School of Antitrust Analysis*, 168 U. PA. L. REV. 1843, 1857 (2020) ("Today many economists would hesitate to break up oligopolistic firms if they had arrived at that market structure by competitive means because their high fixed costs very likely entail that restructuring would do more harm than good."); ROBERT BORK, THE ANTITRUST PARADOX 196 (1st ed. 1978) ("If the law dissolved a firm having a 100 percent monopoly into five approximately equal parts, the economic forces that had led to monopoly would still be operative and would lead in that direction again.").

56 *See* Van Loo, *supra* note 27.

57 *See* Herbert Hovenkamp, *Antitrust and Platform Monopoly*, 130 YALE L.J. 1952, 2032 (2021) ("While a breakup frequently increases costs or reduces quality by denying firms economies of scale or scope, interoperability or pooling can make a firm effectively larger, even while situating it in a more competitive environment."). At the extreme, however, behavioral oversight would require what amounts to utility-style regulation. *See* K. Sabeel Rahman, *The New Utilities: Private Power, Social Infrastructure, and the Revival of the Public Utility Concept*, 39 CARDOZO L. REV. 1621, 1625-27 (2018).

58 *See* Oren Bar-Gill & Rebecca Stone, *Pricing Misperceptions: Explaining Pricing Structure in the Cell Phone Service Market*, 9 J. EMPIRICAL LEGAL STUD. 430, 433-34 (2012) (proposing behavioral interventions and smart disclosures where carriers disclose statistical use pattern information to consumers); Talia B. Gillis, *Putting Disclosure to the Test: Toward Better Evidence-Based Policy*, 28 LOY. CONSUMER L. REV. 31, 32 (2015) (summarizing shortcomings of disclosure and the need for better data); Rory Van Loo, *Helping Buyers Beware: The Need for Supervision of Big Retail*, 163 U. PA. L. REV. 1311, 1386-89 (2015) (proposing mandated data disclosures targeting digital intermediaries).

59 *Regulation of Cable TV Rates*, FCC, https://www.fcc.gov/consumers/guides/regulation-cable-tv-rates [https://perma.cc/D6HA-F2PB] (last updated July 2, 2024) ("Your state-approved local franchising authority (LFA) – usually a city, county, or other governmental organization – may regulate the rate your provider can charge for 'basic' cable service, but

And minimum wage laws are sometimes justified as necessary to move wages toward the level they would be in more competitive labor markets.[60] In other words, rather than increasing competition, price and wage restrictions seek to mitigate the resulting harms.

Although at least some of these proposals have promise,[61] they also have limitations. A chief limit is the difficulty of designing and enforcing an intervention. It is difficult to know what level of wages or prices will not deter companies from hiring workers or from investing in consumer services and innovation.[62] Similarly, it is difficult to avoid managers finding new ways around regulation, even price regulation. For instance, cable companies responded to price regulation by creating complex contract structures with hidden fees and equipment charges. Such contracts technically met the base price restrictions but still allowed the cable company to charge functionally anticompetitive prices.[63] Yet another difficulty arises from the monopoly's ability to evolve and innovate. For example, access remedies require the government to police various day-to-day decisions inside the firm about which competitors can have what kind of access, while the monopoly continues to innovate and create subtle barriers to block the competitors who are supposed to have that access.[64]

only when your provider is not faced with effective competition from another cable service provider.").

[60] *See* TITO BOERI & JAN VAN OURS, THE ECONOMICS OF IMPERFECT LABOR MARKETS 40 (2d ed. 2014) ("When employers can unilaterally set wages, their profit-maximizing choice involves lower employment and wage levels than in a competitive labor market."); CHRISTOPHER J. FLINN, THE MINIMUM WAGE AND LABOR MARKET OUTCOMES 262 (2011) ("Thus minimum wages, besides clearly being a reallocative device, could also produce superior constrained efficient outcomes under certain conditions on the underlying primitive parameters characterizing the labor market.").

[61] For instance, there is some evidence that disclosures aimed at sophisticated third-party intermediaries have had a real-world impact on lowering prices paid. *See* Van Loo, *supra* note 38, at 248-51 (summarizing evidence that legal interventions based on behavioral economic insights have produced intended real-world price shifts).

[62] *Compare* Alessio J.G. Brown, Christian Merkl & Dennis J. Snower, *The Minimum Wage from a Two-Sided Perspective*, 124 ECON. LETTERS 389, 389 (2014) (asserting "high minimum wages destroy jobs"), *with* David Card & Alan B. Krueger, *Minimum Wages and Employment: A Case Study of the Fast-Food Industry in New Jersey and Pennsylvania*, 84 AM. ECON. REV. 772, 792 (1994) (finding that rise in New Jersey's minimum wage did not reduce employment at fast-food restaurants, but rather increased employment).

[63] *See* JONATHAN SCHWANTES, CONSUMER REPS., HOW CABLE COMPANIES USE HIDDEN FEES TO RAISE PRICES AND DISGUISE THE TRUE COST OF SERVICE 16-17 (2019), https://advocacy.consumerreports.org/wp-content/uploads/2019/10/CR-Cable-Bill-Report-2019.pdf.

[64] Spencer Weber Waller, *Access and Information Remedies in High-Tech Antitrust*, 8 J. COMPETITION L. & ECON. 575, 575 (2012) (arguing that complex access remedies require "sophisticated oversight and dispute resolution mechanisms that typically exceed the resources and strengths of the enforcement agencies").

In short, one of the main limitations of structural and behavioral interventions is that they require external actors who are less sophisticated and under-resourced, such as courts and government regulators, to make complex market decisions.[65] Moreover, managers have incentives to find ways around those interventions.

The last approach is rooted in reforming the management of corporations. The idea here is to change the purpose of corporations themselves by requiring corporate boards to maximize stakeholders' value rather than just shareholder profits.[66] The intuition behind this idea is that corporations that are single-mindedly focused on profits are more likely to exploit their stakeholders. Proponents reason that a stakeholder-oriented firm would act more fairly toward consumers and workers and thus, despite its market power, choose to charge lower prices and pay higher wages.[67]

The challenge with this idea, however, is that stakeholder models ultimately rely on managerial discretion. That is, managers have the discretion to make decisions based on whether they benefit stakeholders. Although they are supposed to balance the interests of both stakeholders and shareholders, managers are primarily answerable to shareholders. Shareholders have the power to appoint the board, and the board appoints the CEO and the leading executives of the corporation. These executives are paid mostly with stocks and options to ensure that they have strong incentives to maximize value for shareholders.

This incentive structure reflects the preferences of the shareholders of public corporations, the vast majority of whom are institutional investors,[68] which presumably want their investment portfolios to have the highest possible return.[69] In fact, their fiduciary duty is to act in the interests of their beneficial

[65] This limitation is true in the traditional regulatory framework, although a new consumer law framework more rooted in private actors playing regulatory roles can be seen at the state and sector level. Rory Van Loo, Consumer Agents (Mar. 31, 2025) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5199350.

[66] *See, e.g.*, Blair & Stout, *supra* note 28, at 253-55.

[67] To be sure, the stakeholder model is not specifically designed to address the problem of market power, and it extends to other social goals, such as protecting the environment. However, as consumers and workers are two key stakeholders, corporations that have monopoly or oligopoly power harm stakeholders. *See* Roe, *supra* note 39, at 237-39; Matteo Gatti & Chrystin Ondersma, *Stakeholder Syndrome: Does Stakeholderism Derail Effective Protections for Weaker Constituencies?*, 100 N.C. L. REV. 167, 170 (2021).

[68] *See* 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, 865 (2013) ("In 2011 . . . institutional investors owned over 70% of the outstanding stock of the thousand largest U.S. public corporations.").

[69] Note that institutions can pursue higher returns either by actively pressuring managers to compete against their competitors, or even passively by failing to pressure managers to compete against other firms in which the institutions have an ownership stake. *See supra* text accompanying notes 21-24 (discussing common ownership).

investors by maximizing the risk-adjusted returns of their portfolios.[70] While it is true that institutional investors have been increasingly more vocal about social issues, the evidence to date suggests that they are primarily focused on profit-maximization.[71]

Within this framework, it is unrealistic to rely on managers to set prices and wages in a way that compromises shareholder value to benefit stakeholders. Moreover, because managerial discretion is protected by the business judgment rule, managers may simply claim that their decisions are giving adequate consideration to the interests of stakeholders. In fact, that's what managers often do in order to boost their companies' reputations as being socially responsible.

Accordingly, none of the well-known legal mechanisms for addressing market power are likely to be sufficient, by themselves or even collectively, in eliminating anticompetitive profits. This partly explains why the goalpost of perfect competition that maximizes consumer and workers' welfare is elusive in practice. We do not suggest that existing mechanisms for addressing market power are entirely useless and should be cast aside. Rather, we argue for an additional policy channel that would complement existing approaches and could potentially be more consequential.

The main advantage of equal ownership is that unlike existing approaches, it does not seek to fundamentally alter the basic structure, conduct, and norms of corporations. Equal ownership does not require aggressive antitrust interventions to increase the relative bargaining power of stakeholders, institutionally challenging regulation of corporations' behavior toward stakeholders, resisting the profit incentive to set prices as high as possible, or jettisoning the shareholder primacy norm in favor of a stakeholder model. The idea is simply to allocate to stakeholders, particularly consumers and workers who belong to lower-income groups, a greater share of public corporations. Because equal ownership requires less private organizational change, it offers an institutionally more straightforward path for tackling the growing market power of corporations.

II. THE THEORY OF UNEQUAL OWNERSHIP AS A MARKET POWER PROBLEM

In this Part, we demonstrate how changes in ownership may respond to concerns about anticompetitive corporate behavior. After laying foundations from the theoretical literature on corporate ownership, we discuss the two main ways that equal ownership may influence market power. The first is that some of the surpluses from market power would flow to the consumers and workers as owners of the corporations. The second is that to the extent that corporate

[70] Max M. Schanzenbach & Robert H. Sitkoff, *Reconciling Fiduciary Duty and Social Conscience: The Law and Economics of ESG Investing by a Trustee*, 72 STAN. L. REV. 381, 384 (2020).

[71] Bebchuk & Tallarita, *supra* note 29, at 174 ("If corporate leaders elect to resist any stakeholder-protecting policies that would hurt profits, why should stakeholderists expect corporate leaders, acting on their own, to protect stakeholders at the expense of profits?").

managers may internalize owners' preferences, they will incorporate the interests of consumers and workers in making business decisions.

A. *Ownership by Stakeholders as a Response to Market Power*

The focus of our analysis is on the extent to which ownership by stakeholders may serve as a response to market power. The idea of broadening the ownership base of corporations and extending it to a wider section of the population has been proposed in various shapes and forms.[72] However, these proposals have overlooked the role of ownership in mitigating the costs of market concentration and exploitative contracting. The relationship between ownership and market power has been articulated in Henry Hansmann's seminal 1996 book, *The Ownership of Enterprise*. In this book, Hansmann lays out a theory of ownership that explains how consumers or workers might become owners as a means of avoiding exploitation by monopoly or monopsony firms.[73] Hansmann's basic idea was that the firm will internalize the interests of its owners.[74] Consequently, if those owners are also the firm's consumers or workers, the firm should have weaker incentives to exploit them.[75]

Hansmann reasons that when a firm has market power with respect to one or more affected groups, those groups have incentives to own the firm by forming a cooperative in order to avoid price exploitation.[76] By owning a firm that has market power, customers can avoid the costs of paying a monopoly price for the goods or services that they purchase from the firm.[77] At a minimum, the monetary fruits of any surpluses in transacting with the stakeholders will simply flow back to those stakeholders if they are the sole owners of the firm.

A simple example of a consumer-owned cooperative is a retailer-owned wholesale cooperative in the grocery business, an industry where a few wholesalers enjoy considerable market power, and large chains have their own wholesale distribution systems.[78] The retailers avoid exploitation by owning wholesalers that serve them.[79] Other examples include borrower-owned mutual banks that seek to avoid exorbitant interest rates[80] or farmer-owned cooperatives who buy produce from individual farmers at fair prices and sell it to retailers.[81]

[72] *See infra* note 132 and accompanying text.

[73] HENRY HANSMANN, THE OWNERSHIP OF ENTERPRISE 11-49 (1996).

[74] *Id.* at 20-21 ("When both the purchaser and the seller are under common ownership, the incentive for one party to exploit the other by taking advantage of market imperfections is reduced or eliminated.").

[75] *See id.*

[76] *See id.* at 24.

[77] *Id.* at 24-25. Ownership also helps customers avoid the costs of under-consuming the firm's goods or services due to excessively high prices. *Id.*

[78] *Id.* at 157-58.

[79] *Id.* at 158.

[80] *Id.* at 246-51.

[81] *Id.* at 120-45.

A significant policy limit to these insights is that these companies tend to be small or at least face substantial impediments to scaling.[82] While some have highlighted the benefits of cooperatives and suggested policies for further expanding their uses,[83] the main challenge for cooperatives is reaching scale.[84] Because ownership is restricted to a particular set of stakeholders, such as consumers or workers, it is often difficult for firms to attract equity capital from investors.[85] Thus, despite providing intellectual foundations for a path forward, these examples of stakeholder ownership are unlikely to provide a broader solution to corporations' contributions to economic inequality.

Our idea of equal ownership expands on Hansmann's insights, which focus only on well-identified groups of owners as a means of influencing managers' corporate decisions. Equal ownership is much broader, because it contemplates consumers and workers owning a diversified portfolio of public firms' stocks.[86] The firms that consumers buy from or workers work at will make up only a fraction of their portfolio—and only if they buy from and work in public firms. In contrast, in a mutual or worker coop, the ownership consists entirely of the firm's own consumers or workers.[87] Thus, Hansmann focuses on ownership structures that enable sharing the surpluses extracted directly from firms' stakeholder-owners. In contrast, our proposal focuses on ways to enable consumers and workers to share in public firms' profits as a form of insurance against corporations extracting supra-competitive profits earned generally across markets.

There are essentially two channels through which equal ownership can address market power and surplus. The first is the distributional channel, which

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[82] *Id.* at 165.

[83] *See, e.g.*, Peter Molk, *The Puzzling Lack of Cooperatives*, 88 TUL. L. REV. 899, 899 (2014) (suggesting that cooperatives should be "subsidized, through favorable tax treatment, grants, or regulatory intervention like ABA rules requiring law firms to be owned by lawyers"); Marc Schneiberg, *Toward an Organizationally Diverse American Capitalism? Cooperative, Mutual, and Local, State-Owned Enterprise*, 34 SEATTLE U. L. REV. 1409, 1410-12 (2011) (asserting that cooperatives are "durable and important elements of American corporate capitalism, rather than trivial remnants of a bygone era").

[84] *See* HANSMANN, *supra* note 73, at 165. Hansmann explains that the correct scale is difficult to achieve because if a cooperative maintains open ownership, "new members will keep joining until average cost is as high as the nearest competitor's price," but if there is closed membership, "the existing members have an incentive to operate at suboptimal scale, keeping membership and purchases down to the level that minimizes average cost, which is less than the level at which total welfare is maximized." *Id.*

[85] *See id.* at 75-77.

[86] With the rise of large private firms that tend to avoid or delay going public, some have argued for giving the public greater access to ownership of private firms. *See* Elizabeth Pollman, *Startup Governance*, 168 U. PA. L. REV. 155, 157-61 (2019). For simplicity, we confine our analysis to public firms because the increase in the return to capital remains mostly attributable to firms that ultimately go public.

[87] *See* HANSMANN, *supra* note 73, at 246-51.

means giving people a share of the rents that corporations extract from people. The second is the governance channel, which means (to the extent that managers are attentive to their owners' preferences, and that owners are regular people who prefer corporations to act fairly toward consumers and workers) making corporations less likely to exploit their market power through excessive prices or low wages. We discuss each of these channels in turn.

B. *The Distributional Effects of Unequal Ownership*

To better understand the distributional appeal of equal ownership, it is necessary to consider the market goalpost used by economists for decades: perfect competition.[88] To streamline the exposition, we focus our analysis on consumer markets, but equal ownership has similar implications for other markets, such as labor markets. In the context of consumer markets, perfect competition is a hypothetical market defined by characteristics such as a large number of sellers and consumers possessing adequate information to make informed decisions and ease of market entry for new competitors.[89] The socially desirable outcome from an antitrust perspective is to move from a state of oligopoly, in which each market is dominated by a few firms, toward perfect competition.

Under perfect competition, firms lack the market power to charge higher prices for products of the same quality, so they must set the price of the goods to their marginal costs, such that firms' profits are theoretically zero.[90] To state the obvious, when the price is lower, the distributional benefits to consumers are larger. More precisely, perfect competition enables consumers to capture the maximum possible value of what economists call "consumer surplus."[91] The consumer surplus is simply the difference between the maximum price that consumers are willing to pay for a product and the actual price paid for the product.[92] The basic intuition behind consumer surplus is that if consumers can buy more goods and services that they want at lower prices, they are better off. In an oligopolistic market, in which each market is dominated by a few firms, the consumers extract a smaller consumer surplus than they would in a world of perfect competition. The greater the market power of the firms is (i.e., when there are fewer firms), the smaller the consumer surplus. Thus, market power

[88] *See generally* George J. Stigler, *Perfect Competition, Historically Contemplated*, 65 J. POL. ECON. 1 (1957) (discussing historical prominence of perfect competition in economics).

[89] *See* WALTER NICHOLSON & CHRISTOPHER SNYDER, MICROECONOMIC THEORY: BASIC PRINCIPLES AND EXTENSIONS 449-50 (12th ed. 2017); PINDYCK & RUBINFELD, *supra* note 15, at 252-53.

[90] *See* Stigler, *supra* note 88, at 5. This assumes that the costs of production include compensating investors for their risk. The idea is that investors get the return of capital that compensates them for the risk-free return, inflation, depreciation, and a premium for the risk of the investment.

[91] *See* NICHOLSON & SNYDER, *supra* note 89, at 173.

[92] *See id.*

redistributes surplus from consumers to the firm: consumers pay more for products, and the firm earns greater profits at those consumers' expense.

Equal ownership essentially means that the consumers are also owners; thus, by definition, they get a share of the profits of the firm. It is widely accepted that perfect competition is not attainable and that corporations extract some surplus.[93] More equal ownership allows consumers to recoup a portion of that surplus by sharing as owners in the profits of the firm. Stated otherwise, equal ownership allows consumers and workers a share of the profits resulting from any anticompetitive profits and wages. Equal ownership thus mitigates the residual rents corporations extract from consumers and workers that are not addressed through regulation. Thus, equal ownership is different from leading proposals to address market-related inequality in that our proposal does not require fixing market failures to produce a distributional benefit.[94]

In Appendix A, we provide a simple model of an oligopoly using the influential Cournot model.[95] Cournot is a simplified model, like other leading economic models used in antitrust policy, and thus has limits because the real world is more complex and nuanced.[96] Nonetheless, the model is widely used to evaluate the effects of limited competition and antitrust policy and adjudication.[97] This simple model provides a numerical example of the impact of market power on consumer welfare.[98] It then shows that share ownership allows consumers to have a greater share of total welfare, which includes the joint welfare of both the firm (i.e., its profits) and the consumers.

The above analysis is very similar in the context of workers and suppliers of input. For example, in concentrated labor markets, firms may set lower wages that are below their marginal productivity.[99] The worker surplus is lower because fewer people are willing to work for such low salaries, and thus market power diverts wealth from workers to corporations.[100] And the same applies to

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[93] *See, e.g.*, Stigler, *supra* note 88, at 17.

[94] For examples of such proposals, see *supra* Section I.B (summarizing the work of Bar-Gill, Van Loo, and others proposing behavioral economics-informed interventions).

[95] 4 PHILLIP E. AREEDA & HERBERT HOVENKAMP, ANTITRUST LAW: AN ANALYSIS OF ANTITRUST PRINCIPLES AND THEIR APPLICATION 177 (4th ed. 2016).

[96] *See id.*

[97] *See id.* at 178; *see also* Castro v. Sanofi Pasteur, Inc., 134 F. Supp. 3d 820, 837-39 (D.N.J. 2015) (discussing widespread use of Cournot and Bertrand models in antitrust litigation).

[98] The basic assumption in the model is that there are a few firms that all produce one homogeneous product. All the firms have substantial market power in the sense that their decisions to produce the product affect the good's price. The firms compete by setting the quantities rather than price, and the product's price decreases when quantity is larger. All firms set the quantity they produce to maximize profits. They take the output of the other firms as given. The market price is set at a level such that the demand equals the total quantity produced by all firms. *See* 4 AREEDA & HOVENKAMP, *supra* note 95, at 178.

[99] *See* POSNER, *supra* note 3, at 17.

[100] *See id.* at 18.

suppliers who sell their products to a few large firms with market power and pay them below competitive prices for their products.[101] Likewise, equal ownership will allow workers and suppliers to share in the profits, which are partly the product of the profits made at their expense through anticompetitive conduct.

Thus, equal ownership fills part of the distributional gap inevitably left between perfect competition and real markets. As shown in Figure 1, households with incomes below $180,000 experienced a sharp decline in share of ownership of public corporations in the past twenty years. Reversing this trend may therefore mitigate the harmful consequences of market power.

This simple analysis ignores, however, what is typically seen as the key problem of anticompetitive conduct—it creates a deadweight loss. Deadweight loss is the difference in total wealth to both firms and their stakeholders between the perfectly competitive economy and a concentrated market.[102] In consumer markets, it reflects all lost surplus to consumers and firms that would have transacted for the lower competitive prices.[103] All that equal ownership does, based on our assumptions thus far, is redistribute profits to consumers and workers. It does not salvage the deadweight loss as compared to a perfectly competitive world. The reason for this is that the managers only seek to maximize profits but do not consider the interests of their owners who are consumers. In the next Section, we explain how equal ownership might improve total welfare by reducing the deadweight loss.

C. *The Governance Effects of Equal Ownership*

In the previous Section, we assumed that managers maximize firms' profits, irrespective of who their owners are. In this Section, we show how equal ownership could produce even better outcomes if managers internalized the interest of owners who are stakeholders, such as consumers and workers. The intuition behind equal ownership having market benefits beyond distribution begins with the observation that when the owners are also consumers, those owners would prefer that the firm treat them better as consumers. If managers internalized that preference, they would set prices lower than their market power allows, which is closer to competitive prices.

To understand the importance of that insight, we consider again an oligopolistic industry using the Cournot model we introduced in the previous Section. In this setup, the firms with market power choose the quantity of the products, which determines the price of the products. The model shows that when firms have market power, they produce fewer products and thus increase

[101] *See* C. Scott Hemphill & Nancy L. Rose, *Mergers that Harm Sellers*, 127 YALE L.J. 2078, 2079 (2018).

[102] *See, e.g.*, Christopher R. Leslie, *Antitrust Damages and Deadweight Loss*, 51 ANTITRUST BULL. 521, 521-26 (2006) (discussing negative effects of market concentration on consumer surplus).

[103] *See id.*

the prices. Within this framework, the typical approach is to assume that the firm and its owners are focused on maximizing profits.[104]

We vary the basic Cournot model so that all consumers have shares of ownership of all the firms in the economy.[105] In our model, we assume that when consumers have a share in the corporation, the corporation considers the interests both of investors who are and are not consumers of the firm's products.[106] For nonconsumer investors, such as investment funds, the model assumes that they care exclusively about profits.[107] The model's specific details are described in Appendix B, and here we describe the main results and intuition for them.

When we introduce this ownership twist into the basic Cournot model, it gives the result that managers decide to produce higher quantities than in the standard Cournot model. That decision to produce higher quantities drives the price of the product lower. This further results in greater consumer surplus and lower firm profits. These findings show that equal ownership can, in theory, bring about the kind of socially desirable outcomes as those sought by many calling for stronger antitrust enforcement.[108]

Importantly, using our Cournot-ownership model we obtain the result that total welfare, which includes the aggregate welfare of consumers and investors, increases when firms internalize the interests of the owners who are consumers. In fact, at the optimal point of share ownership, total welfare is exactly the same as in the case of perfect competition. The reason is that at lower prices, there is no deadweight loss resulting from consumers who would not buy the products at higher prices. The results of this analysis are shown graphically in Figure 2 for a Cournot model with two firms in the market (see Appendix B).[109] As shown in Figure 2, the optimal level of consumer ownership in the example we examine

[104] *See* 4 AREEDA & HOVENKAMP, *supra* note 95, at 176-77. The exception to this general assumption is the literature on common ownership, which assumes that firms are interested in maximizing the aggregate profits of the portfolios of their owners who own shares in other competing firms. *See* sources cited *supra* notes 21-24.

[105] Again, although we focus on consumers, the theoretical analysis applies with equal force to workers and producers.

[106] Thus, if the s represents the share of ownership held by consumers, the firm will give a weight equal to 1-s to the interests of profit-seeking investors, and a weight of s to consumers who want to maximize both profits and the consumer surplus. We further assume that the firm is still subject to the constraint that it must make nonnegative profits, and therefore the firm will not make decisions that cause it to essentially become bankrupt.

[107] This is of course an illustrative account, and we discuss its real-world complexities in Section III.A *infra*.

[108] *See infra* Appendix B.

[109] When s is 0, we see the baseline total welfare, consumer surplus, consumer welfare, and firms' profits under the Cournot model when the consumers have no ownership interests. As s increases, we see that firms' profits decrease and consumers' surpluses increase. The reason is that firms produce more quantity at a lower price. Consumer welfare increases as well and exceeds consumer surplus because it includes both consumer surplus and consumer investors' share of the firms' profits.

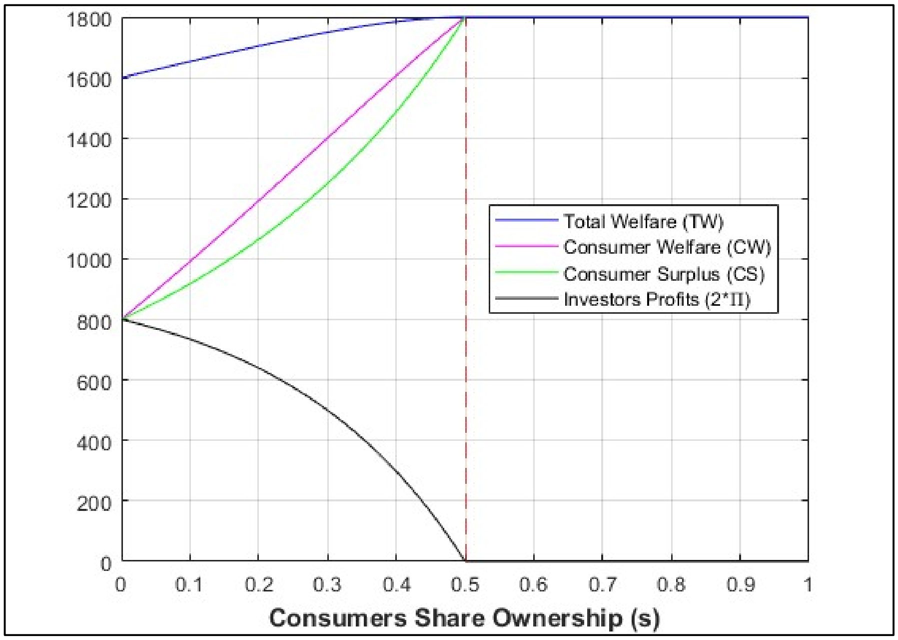
is where 50% of the firm is owned by consumers.[110] At this point, firms choose to produce the product at the competitive price, which is equal to the marginal cost of producing a product.[111] When ownership is increased above 50%, the welfare results remain at that same level. That leveling off reflects an assumption that the firm will not lower the price below the marginal costs of producing the product. In any case, the key takeaway is that total welfare and consumer welfare increase with consumer ownership up to the point at which the market outcomes are equivalent to perfect competition.[112]

[110] Of course, we do not suggest that 50% is exactly the optimal share ownership, and this figure is driven by the assumptions we make in Appendix B. The point is that there is some share ownership level above which the price of the product will be equivalent to the competitive price.

[111] At this point, firms' profits equal zero, but that still means owners receive a competitive return on their investment—the firm simply does not receive anything above that.

[112] We acknowledge that this is a stylized model, and the results are driven by assumptions. For example, we assume that the consumers who are owners care about consumer surplus just as much as they care about the firms' profits. But, naturally, the extent to which they care about that surplus depends on how much they consume. It is possible that the weight that consumers themselves would assign to consumer surplus is lower than assumed in the model, and therefore the firm itself would give a lower weight to sharing that surplus with consumers. Regardless, the firm would still move directionally toward charging more competitive prices, resulting in greater benefits for consumers. Thus, while the model, like the Cournot model itself, cannot offer absolute precision, the upshot of the analysis remains intact. For a discussion of the Cournot model's value, see, for example, 4 AREEDA & HOVENKAMP, *supra* note 95, at 176-79.

Figure 2. The Effect of Consumer Ownership on Welfare.



This basic analysis can be applied to other stakeholders, such as workers and suppliers, although it requires some elaboration. If we consider employment, in a market with few firms, the number of jobs would be smaller, and wages would be lower compared to those in a competitive market.[113] Equal ownership could mitigate this problem if managers internalize workers' preferences for higher wages.

The analysis here is slightly different than that in the case of consumers, because the managers here would maximize shareholder-workers' preferences rather than pure profits.[114] However, recall that with equal ownership, workers would have a share in a broad section of public corporations, including the company they work for, but mostly many other firms. In theory, these workers will prefer that only the firm they work for will increase wages and that all other firms will reduce wages. But such preferences would be counterproductive. The workers of each corporation on their own would have too little stake for managers to change the firm's wage policies. They would thus need the support of other worker-shareholders for managers to internalize a general preference for higher wages. Moreover, workers should have an interest in supporting

[113] *See* POSNER, *supra* note 3, at 18.

[114] As discussed above, this is consistent with Hart and Zingales, who argue that corporations should maximize the pro-stakeholder preferences of shareholders. *See* Hart & Zingales, *supra* note 20, at 19-20.

higher salaries at other firms because those higher salaries will increase the pressure on their own firm to raise salaries as well.[115] Relatedly, since it is common for workers to switch employers over the course of their careers, higher wages at other firms create more attractive exit opportunities.

Accordingly, workers—that is, people who make their living primarily from earned income—could prefer corporations they own to pay higher wages. And if managers internalize these preferences, equal ownership will result in higher wages. Moreover, if workers' ownership share is large enough, it could mimic the competitive wage and maximize total welfare.

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It is now possible to see how equal ownership could address the central limitations of the stakeholder model of the corporation. Existing stakeholder proposals seek to put pressure on managers to pay more attention to nonowner stakeholders without direct accountability to those stakeholders.[116] By making stakeholders owners, corporate managers become more directly accountable to these stakeholders' financial incentives. Thus, unlike many stakeholder approaches that run counter to owners' interests, equal ownership encourages managers to pay more attention to owners' interests.

Additionally, in comparison to other institutional responses to market power, such as breakups or regulation, equal ownership does not depend on government actors with relative limitations. Because firms know considerably more about their own operations and their customers, and generally have greater sophistication, managers are better positioned to efficiently design and implement the quality, quantity, and pricing for achieving perfect competition.

A key practical challenge for our theoretical claims is that it is unclear what size stake stakeholders would need to hold in order for managers to care about their interests. Currently, corporations are overwhelmingly owned by a small slice of the population.[117] Even if ownership were broader, it is not clear that the managers would advance the interests of shareholders other than profit, because the owners would still need to find a way to express their preferences to managers. However, the question of whether firms internalize the interests of their stakeholder-owners is not binary in the sense that the firm either internalizes those interests or does not. The more the firm internalizes the interests of stakeholder-owners, the more equal ownership would push oligopolies toward more competitive behavior. In the next Part, we delve into the institutional design of equal ownership, which seeks to address some of these practical challenges and increase the likelihood that the firms will act in a way that is consistent with consumers and workers' preferences.

[115] To be sure, we do not claim that all firms automatically adjust their wages to those of their competitors. In many cases, they prefer to compete by keeping wages low to increase profits. But at the very least, higher wages at other firms will increase pressure to raise wages in order to keep attracting talented workers.

[116] *See infra* notes 159-62 and accompanying text.

[117] *See supra* Section I.A.

III. INSTITUTIONAL MECHANISMS FOR EQUAL OWNERSHIP

This Article's main contributions are to identify the problem of increasingly unequal ownership and to develop the theory for equal ownership's economic benefits—the focus of the discussion so far. Like any major reform, reversing the trend toward ever more unequal ownership would be challenging both as a matter of politics and institutional design. But it would be a mistake to dismiss the concept altogether. Major world events, like another Great Depression or financial crisis, might open up the possibility of major reforms, as they have throughout history.[118] Moreover, incremental changes in ownership are clearly possible even without any omnibus legislation, as demonstrated by the major shifts in recent decades.[119]

This Part begins to build the roadmap toward equal ownership. It begins with the two main steps that would benefit from some foundational development. The first is expanding ownership so that more households beyond the wealthy own stocks. The second is ensuring that those owners influence corporate managers' decisions in ways that are consistent with sharing surplus. It closes by examining indirect paths to bringing about equal ownership, such as antitrust and consumer law, with the goal of considering how equal ownership policies might complement those more familiar interventions.

A. *Encouraging Broader Ownership*

This Section contributes to the literature a brief overview of possible paths to broadening ownership of corporations to all segments of society, including some novel ideas for doing so.[120] As shown above, the share ownership of the bottom 90% of households has declined dramatically in the past twenty years.[121] Broadening ownership thus means instituting policies that would expand ownership beyond the very wealthy segment of the population. In this Section, we are indifferent as to the form of ownership (i.e., retail or institutional) and focus on the various policy options for encouraging broader ownership. Rather than propose a particular policy, we see this array of options as a menu from which legislators can choose. The options are not mutually exclusive and thus may be pursued simultaneously.

Before discussing specific policies, we emphasize that not everyone needs to own substantial portions of the stock market to receive considerable benefits from expanded ownership. For instance, households between the 50th percentile

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[118] *See generally* POLICY SHOCK: RECALIBRATING RISK AND REGULATION AFTER OIL SPILLS, NUCLEAR ACCIDENTS, AND FINANCIAL CRISES (Edward J. Balleisen, Lori S. Bennear, Kimberly D. Krawiec & Jonathan B. Wiener eds., 2017) (summarizing how various crises have prompted major legislative and regulatory reforms).

[119] *See supra* Figure 1.

[120] For a prior proposal to expand ownership for different reasons, see LYNN STOUT, SERGIO GRAMITTO & TAMARA BELINFANTI, CITIZEN CAPITALISM: HOW A UNIVERSAL FUND CAN PROVIDE INFLUENCE AND INCOME TO ALL 49 (2019).

[121] *See supra* Section I.A.

of income and the 90th percentile of income—roughly the upper middle class and well-off but not rich—own about 11% of corporate stocks but account for roughly 66% of consumer spending.[122] Those households would overall prefer that corporations charge lower prices because their gains as consumers would exceed their losses as shareholders. It is not unreasonable to contemplate a world in which they own 22% of public corporations (as was the case twenty years ago[123]) or possibly a larger share (say 30%). Our analysis suggests that such shifts in ownership could influence the conduct of corporations to set more competitive prices and wages.[124]

We first consider who will actually pay for the stocks on behalf of individuals. The three main potential funders are wealthy donors, the government, and individuals themselves. Relying on donations by the wealthy may be attractive because this path does not depend on either government involvement or spending by individuals with tight budgets.[125] The government could encourage such donations by providing donors with tax deductions.[126] To ensure donors do not attempt to boost the stock price of firms they have a stake in, either beneficiaries themselves or an intermediary on the beneficiaries' behalf would make the actual choice of which stocks to buy.[127] However, large-scale philanthropy may never materialize, and therefore alternatives must be explored.

The most straightforward way to reach the necessary scale for a major shift in ownership would be for Congress to authorize a large-scale social program to purchase shares on behalf of low- and middle-income individuals. Although the political will for such expenditures may not materialize during normal times, it is worth noting that many avenues exist for expanding ownership without any additional governmental expenditures. Note that the discussion below does not address the possibility of influencing other groups' ownership. For instance, foreign official institutions, such as central banks, own approximately $2 trillion in U.S. corporate stocks.[128] Influencing those votes through legal rules or soft

[122] *See* BD. OF GOVERNORS OF THE FED. RSRV. SYS., *supra* note 8.

[123] *See* text accompanying *supra* note 8.

[124] *See supra* Part II.

[125] Most notably, Stout, Gramitto, and Belinfanti propose expanding ownership solely by this method. *See* STOUT ET AL., *supra* note 120, at 119-24.

[126] *See id.* For a comprehensive rebuttal of the argument that tax deductions benefit wealthy individuals and increase income inequality, see Daniel Hemel & Kyle Rozema, *Inequality and the Mortgage Interest Deduction*, 70 TAX L. REV. 667, 686-705 (2017); and Daniel Hemel, *The Death and Life of the State and Local Tax Deduction*, 72 TAX L. REV. 151, 156-68 (2019).

[127] Stout, Gramitto, and Belinfanti propose allocating donations to a "universal fund," a federally managed mutual fund acting on behalf of all registered citizen-shareholders. STOUT ET AL., *supra* note 120, at 49-50.

[128] *International Summary Statistics: Selected U.S. Liabilities to Foreign Official Institutions*, BD. OF GOVERNORS OF THE FED. RSRV. SYS., https://www.federalreserve.gov/data/intlsumm/usliabforinst20250228.htm [https://perma.cc/KMZ8-7B49] (last updated Feb. 28, 2025).

power is worth considering, though it would likely face legal and diplomatic obstacles.

In many macroeconomic contexts, the government regularly infuses money into capital markets to avoid economic collapse. During the 2008 financial crisis, for example, the U.S. Treasury injected hundreds of billions of dollars into corporations.[129] Then, again, in 2020, as stock markets plummeted upon news of the COVID-19 outbreak, the Federal Reserve pumped over a trillion dollars into capital markets.[130] The next time the federal government decides to direct massive amounts into corporations, it could in exchange require increased stock ownership for the bottom 90% of households.

It is also worth noting that many prominent politicians and scholars have proposed some version of a universal fund, in which the government gives everyone born in the United States some substantial monetary grant,[131] sometimes including stock ownership.[132] Although those proposals were not aimed at addressing excess market power, should they ever materialize, they could nonetheless become a mechanism for greater equality of ownership.

Other avenues exist without any government purchases or private donations. For upper middle-income individuals who have more ability to invest, tax incentives can encourage equal ownership. One way to design such incentives would be to lower the taxes on small-value trading. Currently, investors pay capital gains taxes when they sell a stock for profit after a short period. Those taxes discourage stock ownership by making it less financially lucrative to invest.[133] If taxes on small-value trades were lowered or eliminated, purchasing

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[129] *See* Robert K. Rasmussen & David A. Skeel, Jr., *Governmental Intervention in an Economic Crisis*, 19 U. PA. J. BUS. L. 7, 13-14 (2016).

[130] Lev Menand, *The Federal Reserve and the 2020 Economic and Financial Crisis*, 26 STAN. J.L. BUS. & FIN. 295, 297 (2021).

[131] *Cf.* BRUCE ACKERMAN & ANNE ALSTOTT, THE STAKEHOLDER SOCIETY 4 (1999) (proposing everyone receive substantial monetary grant upon reaching early adulthood).

[132] For ideas about expanding ownership that do not explore the link to market power, see MICHAEL SHERRADEN, ASSETS AND THE POOR: A NEW AMERICAN WELFARE POLICY 220-23 (1991); STOUT ET AL., *supra* note 120, at 119-24; Robert Hockett, *Whose Ownership? Which Society?*, 27 CARDOZO L. REV. 1, 3 (2005); Robert Hockett, *Toward a Global Shareholder Society*, 30 U. PA. J. INT'L L. 101, 108-09 (2008); and Jeffrey N. Gordon, *Employees, Pensions, and the New Economic Order*, 97 COLUM. L. REV. 1519, 1563 (1997). These proposals form part of a broader set of income and wealth expanding ideas offered by academics. *See, e.g.*, Miranda Perry Fleischer & Daniel Hemel, *Atlas Nods: The Libertarian Case for a Basic Income*, 2017 WIS. L. REV. 1189, 1199-200, 1252-66 (discussing current universal basic income ("UBI") experiments around the world and analyzing various design choices in UBI schemes).

[133] Zhonglan Dai, Edward Maydew, Douglas A. Shackelford & Harold H. Zhang, *Capital Gains Taxes and Asset Prices: Capitalization or Lock-in?*, 63 J. FIN. 709, 709 (2008) (concluding that 1997 reduction in capital gains tax rate decreased supply in equity markets, raising prices).

small amounts of stocks would become more affordable to individuals with limited resources.[134]

Wealthy interests have heavily lobbied for capital gains tax reductions, making tax incentives a potentially more politically feasible policy option. On the other hand, tax incentives would still require middle-income households to make investments from what is often a tight household budget. Moreover, such programs would do little to help low-income households that have limited ability to save.[135] It is thus worth considering whether there is a way to leverage existing sources of household wealth.

One of the largest sources of existing household wealth that might be repurposed is Social Security. Social Security wealth—defined as the total value of Social Security benefits owed to individuals—is estimated at $30 trillion to $45 trillion and accounts for a far larger percentage of the wealth of the bottom 90% of households than it does the wealthiest households.[136] There are various ways that such repurposing programs could be designed. A straightforward way to implement this would be for a government fund to directly invest a portion of Social Security on behalf of taxpayers.[137]

A challenge for this approach is that investing Social Security in stocks would involve some risk in the case of a market downturn. That risk can be mitigated by not putting all Social Security funds into stocks, and instead allowing for a diversified portfolio consistent with strong risk management. Also, the current program is not as free of risks as many assume, in that it depends on the federal government's willingness to repay current workers in the future when they retire.[138] Consequently, "Social Security faces a long-term crisis because it has already made substantial pension promises to current workers and retirees, and each year promises to make additional pension payments to most current workers."[139] Thus, it is possible that increased stock ownership could be part of reforms to Social Security that would be advisable for other reasons.

[134] This form of phaseout may be justified on the basis that ownership by lower-income individuals generates at the margin larger positive benefits than ownership by higher-income people. For a discussion of the justifications for phaseouts, see Daniel J. Hemel, *Phaseouts*, 77 TAX L. REV. 53, 75-76 (2023).

[135] Karen E. Dynan, Jonathan Skinner & Stephen P. Zeldes, *Do the Rich Save More?*, 112 J. POL. ECON. 397, 416 (2004).

[136] Indeed, once Social Security is taken into account, wealth inequality appears to have not grown to the alarming degree often assumed. *See* Sylvain Catherine, Max Miller & Natasha Sarin, *Social Security and Trends in Wealth Inequality*, J. FIN. (forthcoming 2025) (manuscript at 3), https://ssrn.com/abstract=3546668.

[137] There is an ongoing debate about whether Social Security taxes are used responsibly for the benefit of individual taxpayers. *See* Karen C. Burke & Grayson M.P. McCouch, *Perspectives on Social Security Reform*, 4 FLA. TAX REV. 417, 419-23 (1999).

[138] *Cf.* Howell E. Jackson, *Accounting for Social Security and Its Reform*, 41 HARV. J. ON LEGIS. 59, 79 (2004) (explaining the social security system).

[139] *Id.*

Nonetheless, the further intermingling of the social safety net with private stock markets has considerable drawbacks.

Another area in which the bottom 90% of households has substantial wealth is in bank deposits, valued at over $1.5 trillion dollars.[140] Thus, it is worth thinking about how these sources of wealth might be held in a way that would provide more of an ownership stake in corporations until that wealth is withdrawn. In terms of bank account savings, for the sake of illustration, consider that financial regulations currently limit what banks can do with deposits. In particular, banks cannot invest more than a fraction of customer deposits, such as about 10% depending on the bank, in stocks.[141] What deposits banks do put toward stocks yield profits for the bank, not for the deposit holders.[142] One way to increase the bottom 90% of households' ownership share would thus be to design a mechanism for some portion of those savings to be automatically converted to stock ownership as a default. Depositors could opt out if they did not want to participate. However, the savings could be essentially insured from stock market losses. Related government insurance is already provided to bank customers through the Federal Deposit Insurance Corporation ("FDIC") and to the biggest banks in the form of implied bank bailouts.[143] Many further details would of course need to be ironed out, such as constraints on banks' abilities to invest the funds and how the profits from such investments would be allocated.

One final point is that there are potentially many indirect ways to address unequal ownership by lessening economic disparities. One of the most straightforward paths is through a progressive income tax and redistribution to low- and middle-income households, for instance. If such a program were to significantly lessen inequality, presumably some amount of the additional

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[140] As of Q2 2022, the bottom 90% of households held over $1.52 trillion in checkable deposits and currency. *See Checkable Deposits and Currency Held by the 50th to 90th Wealth Percentiles*, FED. RSRV. BANK OF ST. LOUIS, https://fred.stlouisfed.org/series/WFRBLN40059 [https://fred.stlouisfed.org/series/WFRBLN40059] (last updated Sept. 23, 2022, 1:48 PM) (showing that as of Q2 of 2022, the 50th to 90th percentiles held approximately $1.25 trillion in checkable deposits and currency); *Checkable Deposits and Currency Held by the Bottom 50% (1st to 50th Wealth Percentiles)*, FED. RSRV. BANK OF ST. LOUIS, https://fred.stlouisfed.org/series/WFRBLB50086 [https://perma.cc/RW2X-BR26] (last updated Sept. 23, 2022, 1:48 PM) (showing that as of Q2 of 2022, the 1st to 50th percentiles held approximately $277 billion in checkable deposits and currency).

[141] *See* BERT LOUDIS, DANIEL NGUYEN & CARLO WIX, FED. DEPOSIT INS. CORP., REPORT NO. 2020-03, ANALYZING THE COMMUNITY BANK LEVERAGE RATIO 1 (2020), https://www.fdic.gov/analysis/cfr/staff-studies/2020-03.pdf [https://perma.cc/2CRK-H2GJ] (detailing various capital ratios, which require banks to have between 5-10.5% of capital to risk-weighted assets).

[142] In theory, higher bank profits on deposits could prompt higher interest rates paid to depositors.

[143] *See* Chrystin Ondersma, *Shadow Banking and Financial Distress: The Treatment of "Money-Claims" in Bankruptcy*, 2013 COLUM. BUS. L. REV. 79, 91.

wealth gained, particularly for middle- and upper-middle-income households, would go toward increased stock ownership.[144] Interestingly, equal ownership thus provides an additional reason for progressive redistribution: improved competition. If redistribution caused more equal ownership, which in turn pressured corporations to offer more competitive prices and wages, then social programs with distributional aims may paradoxically wind up improving markets.[145]

In summary, there are various avenues for expanding the ownership base of corporations. Again, the point here is not to argue that any particular mechanism is necessarily better than others, but rather to show that one or more feasible options could be designed.

B. *Encouraging Stronger Influence by Owners*

Equal ownership's potential to mitigate the harmful effects of concentrated markets depends in large part on the extent to which managers internalize owners' interests as consumers, workers, and suppliers. An obstacle to that internalization is the core problem that has animated corporate governance from the field's beginning: agency costs. In the traditional analysis, the problem is that managers may engage in wasteful projects or shirk their duties instead of maximizing profits on behalf of shareholders.[146] That problem imposes costs on shareholders in the form of lower profits.[147] In contrast, our concern is with the likelihood that managers make decisions that provide benefits to their stakeholder-owners beyond simple profit, including lower prices and higher wages.

To elaborate, a challenge facing equal ownership is that if the shareholding of average people were to increase, managers would simply neglect their interests.[148] As is well known, the costs of collective action for dispersed shareholders are high, resulting in managerial entrenchment and shirking.[149]

[144] *See* Dynan et al., *supra* note 135, at 416 (showing how savings and investments increase as income levels rise, including in middle-income areas).

[145] Of course, any additional inefficiencies from increased taxes would be offset by efficiencies gained through stronger competition. *See* Michael D. Guttentag, *Law, Taxes, Inequality, and Surplus*, 102 B.U. L. REV. 1329, 1331 (2022).

[146] *See* Michael C. Jensen & William H. Meckling, *Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure*, 3 J. FIN. ECON. 305, 308-09 (1976).

[147] *See* Bebchuk & Tallarita, *supra* note 29, at 95-96.

[148] Recent empirical evidence suggests that mutual funds do not vote in line with the ideological preferences of their beneficial owners. *See* Jonathon Zytnick, Do Mutual Funds Represent Individual Investors? 3 (Oct. 18, 2024) (unpublished manuscript), https://ssrn.com/abstract=3803690 [https://perma.cc/ENA6-W7WB].

[149] *See, e.g.*, Edward B. Rock, *The Logic and (Uncertain) Significance of Institutional Shareholder Activism*, 79 GEO. L.J. 445, 453 (1991) ("Corporate law presents two related problems: the divergence of interests between managers and shareholders (the agency problem); and the problems facing dispersed shareholders in minimizing agency costs (the collective action problem).").

Moreover, disaggregated individuals with less wealth may have insufficient expertise, information, and sophistication in monitoring managers. Shareholders' failure to monitor managers or managers' inattentiveness to shareholders could make the governance effects of equal ownership inconsequential.

In modern markets, most public stocks are held by institutional investors. In recent decades, institutional asset managers, like BlackRock and Vanguard, have gradually increased their ownership stakes, and they nowadays own about 72% of public stocks.[150] Thus, a natural way to broaden the ownership of public corporations is not by increasing retail ownership, but by increasing stakeholders' investment through mutual funds and pension funds.

The question then becomes to what extent such institutions would actively cause managers to make decisions about prices and employment that are conducive to the interests of some of their underlying investors. Due to their size and resources, institutional investors were supposed to solve shareholders' inability to act collectively and monitor managers.[151] However, asset management has created another layer of potential agency costs, which is the risk that these asset managers fail to serve the interests of their own investors.[152] There is a lively debate about the extent and nature of these agency costs, and most of it focuses on whether institutional investors are too passive or too active and whether their actions actually improve firm performance.[153] This debate centers on maximizing shareholder economic value as the main objective of institutional engagement.

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[150] ADRIANA DE LA CRUZ, ALEJANDRA MEDINA & YUNG TANG, OECD, OWNERS OF THE WORLD'S LISTED COMPANIES 20 (2019), https://kabstiftelse.se/wp-content/uploads/2021/11/Owners-of-the-Worlds-Listed-Companies-1.pdf [https://perma.cc/RYH2-685T] (reporting institutional investors hold 72% of listed equity in the United States).

[151] *See* Bernard S. Black, *Shareholder Passivity Reexamined*, 89 MICH. L. REV. 520, 523 (1990) ("Large institutions can combine forces, form trade groups to represent their collective interest, and one way or another act as monitors . . . .").

[152] *See* Gilson & Gordon, *supra* note 68, at 890 ("Investment managers thus have little private incentive to address proactively strategy and performance problems at portfolio companies and therefore do not develop the expertise to engage in that activity, even if such activity would benefit their beneficiaries."); Lucian A. Bebchuk, Alma Cohen & Scott Hirst, *The Agency Problems of Institutional Investors*, 31 J. ECON. PERSPS. 89, 90 (2017) (showing "that index funds have especially poor incentives to engage in stewardship activities that could improve governance and increase value").

[153] *See* Jill Fisch, Assaf Hamdani & Steven Davidoff Solomon, *The New Titans of Wall Street: A Theoretical Framework for Passive Investors*, 168 U. PA. L. REV. 17, 71 (2019) (highlighting "the structural advantages of passive investors with respect to certain types of engagement, particularly market-wide initiatives such as improving corporate governance"); Bebchuk et al., *supra* note 152, at 107 (noting "the agency problems of institutional investors prevent the full realization of the potential benefits of the increased concentration of shareholdings"); Jill E. Fisch, *Mutual Fund Stewardship and the Empty Voting Problem*, 16 BROOK. J. CORP. FIN. & COM. L. 71, 78-80 (2021).

Institutional investors, however, are increasingly aware that they are expected to ensure that their portfolio companies are run in a socially and environmentally responsible manner. Leo Strine, former Chief Justice of the Delaware Supreme Court, expressed the concern that asset managers' pressure on firms to pursue profits is too strong and may be detrimental to ordinary people.[154] Larry Fink, the CEO of BlackRock, has repeatedly stated that the purpose of corporations is to promote social welfare and not just maximize profits.[155] Moreover, because institutional shareholders make their income from fees based on the volume of assets they manage, they have started marketing their social responsibility actions to potential clients, who are arguably socially minded.[156] The amount of assets invested in environmental, social, and governance ("ESG") funds has grown dramatically in recent years and is expected to continue growing in the coming years.[157]

These developments suggest that if more stakeholders invest in the market through institutional investors, these institutions would face competitive pressures to promote causes that enhance consumer and worker welfare.[158] Institutional investors may make shareholder proposals that require firms to increase wages or reduce prices. Even without equal ownership, the number of shareholder proposals relating to environmental and social matters has been increasing, such that as of 2022 they form more than 80% of shareholder

[154] *See* Strine, *supra* note 14, at 1970 ("The current corporate governance system, however, gives the most voice and the most power to those whose perspectives and incentives are least aligned with that of ordinary American investors."). His concerns are seemingly driven in large part by activist hedge funds that arguably seek to increase short-term profits and cause companies to take excessive risks. *See id.* at 1886 (calling "oxymoronic" the part of the hedge fund industry that "seeks to make returns by influencing the corporation to change its capital structure or business plan" instead of actually hedging against risk).

[155] Larry Fink, *A Sense of Purpose*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Jan. 17, 2018), https://corpgov.law.harvard.edu/2018/01/17/a-sense-of-purpose/ [https://perma.cc/Y3YF-XZHZ] ("[A] company's ability to manage environmental, social, and governance matters demonstrates the leadership and good governance that is so essential to sustainable growth . . . .").

[156] Michal Barzuza, Quinn Curtis & David H. Webber, *Shareholder Value(s): Index Fund ESG Activism and the New Millennial Corporate Governance*, 93 S. CAL. L. REV. 1243, 1265-66 (2020) ("While funds' ESG efforts have been occasionally noted in the literature, we show that funds' marketing efforts and public pronouncements have been accompanied by aggressive, meaningful action." (footnote omitted)).

[157] *See* PRICEWATERHOUSECOOPERS, ASSET AND WEALTH MANAGEMENT REVOLUTION 2022: EXPONENTIAL EXPECTATIONS FOR ESG 4 (2022), https://www.pwc.com/gx/en/financial-services/assets/pdf/pwc-awm-revolution-2022.pdf (predicting asset managers globally to increase their ESG-related assets under management from $18.4 trillion in 2021 to $33.9 trillion by 2026).

[158] In fact, the available evidence suggests that at least so far as ESG funds are concerned, institutional investors' voting correlates with the voting preferences of their beneficial owners. *See* Zytnick, *supra* note 148, at 5.

proposals.[159] These include proposals urging corporations to reduce prices for consumers[160] and consider increasing wages for workers.[161]

Likewise, institutions may vote for directors who specifically seek to improve consumer and worker welfare, therefore withholding votes from those who do not.[162] Institutions may even use their advisory votes on executive compensation schemes to push for tying compensation to better treatment of consumers and workers.[163] Managers would still have incentives to maximize profits, but they would be encouraged to pursue greater profits without increasing prices or paying low wages.

To be sure, there is already a serious concern as to whether institutions' current focus on ESG is merely an exercise in greenwashing.[164] One key reason for questioning the impact of ESG investing is that it is often difficult to measure whether ESG standards, which are very general and broad, truly promote practices that are beneficial for society.[165] Moreover, many ESG practices are designed to increase risk-adjusted returns and are thus entirely consistent with

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[159] GIBSON DUNN, SHAREHOLDER PROPOSAL DEVELOPMENTS DURING THE 2022 PROXY SEASON 4-5 (2022), https://www.gibsondunn.com/wp-content/uploads/2022/07/shareholder-proposal-developments-during-the-2022-proxy-season.pdf [https://perma.cc/4R3W-3P7M].

[160] *See* Carly J. Goeman, *The Price Isn't Right: Shareholder Proposals as Opportunities for Institutional Investors to Restore Firm Value and Reduce Pharmaceutical Prices*, 2017 COLUM. BUS. L. REV. 748, 771-73 (describing shareholder proposals to urge pharmaceutical companies to reduce drug prices).

[161] Julie Wokaty, *Worker Justice Rises to the Top of Investors' Agenda at 2023 Annual Meetings*, INTERFAITH CTR. ON CORP. RESP. (Apr. 27, 2023), https://www.iccr.org/worker-justice-rises-top-investors-agenda-2023-annual-meetings [https://perma.cc/C49Z-NVKB] (describing shareholder proposals urging corporations to improve workers' rights and raise wages); *see also* J.T. Ho, Robert Bee & Hayden Goudy, Orrick, Herrington & Sutcliff LLP, *Pay Equity-Related Shareholder Proposals in 2023*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Sept. 5, 2023), https://corpgov.law.harvard.edu/2023/09/05/pay-equity-related-shareholder-proposals-in-2023/ [https://perma.cc/F4YF-A9CV] (showing shareholder support for pay-equity proposals is significant).

[162] This form of pressure on corporate boards was particularly instrumental in getting corporations to remove antitakeover devices, such as poison pills and staggered boards. *See* Dorothy S. Lund & Elizabeth Pollman, Essay, *The Corporate Governance Machine*, 121 COLUM. L. REV. 2563, 2620-24 (2021).

[163] This is consistent with the recent trend of companies tying compensation schemes to ESG metrics. *See* Shira Cohen, Igor Kadach, Gaizka Ormazabal & Stefan Reichelstein, *Executive Compensation Tied to ESG Performance: International Evidence*, 61 J. ACCT. RSCH. 805, 806 (2023).

[164] *See, e.g.*, Davidson Heath, Daniele Macciocchi, Roni Michaely & Matthew C. Ringgenberg, *Does Socially Responsible Investing Change Firm Behavior?*, 27 REV. FIN. 2057, 2059 (2023) (finding that socially responsible investment funds "do not improve the E&S behavior of their portfolio firms").

[165] Eldar, *Designing Business Forms*, *supra* note 29, at 940.

profit maximization.[166] But the present status of ESG may be partly driven by the fact that underlying investors in institutions are primarily wealthier individuals whose wealth is unlikely to be affected by product prices or wages.[167] In the world we are contemplating, a greater percentage of investors would be interested not just in profits, but also in maximizing consumer and worker surpluses.

In a world of more equal ownership, stronger accountability to owners is thus socially desirable.[168] This may seem counterintuitive, because the standard critique of expanding corporate governance to include a broader set of stakeholders' interests is that doing so might lower total economic welfare.[169] The basic reasoning underlying that concern is that the pursuit of profits by all corporations enhances competition, which in turn maximizes total welfare; thus, pushing managers to consider issues beyond profit could move markets away from the ideal of perfect competition.[170] But, in a world where firms have market power, our theory shows that if managers internalize owners' preferences as stakeholders, total welfare is actually higher. Giving stakeholders an ownership stake therefore bolsters the normative justification for stronger corporate governance and mitigates the concern that stronger governance would harm ordinary people.

Although we do not propose any particular mechanism for increasing the internalization of stakeholder interests, many options exist. The most straightforward way to make firms internalize owners' surplus interests would be to require expanded duties of institutional investors. In consumer finance, lenders are required to "know your customer," referring to the importance of checking income carefully and extending only loans that the customer can

[166] Lund & Pollman, *supra* note 162, at 2566 ("Today many companies pursue ESG goals, and many investors favor ESG funds, not for moral reasons or a prosocial willingness to sacrifice profits, but because ESG is thought to provide sustainable long-term value or higher risk-adjusted returns for shareholders.").

[167] *See* Steffen Andersen, Dmitry Chebotarev, Fatima Zahra Filali-Adib & Kasper Meisner Nielsen, *Rich and Responsible: Is ESG a Luxury Good?* 2-4 (Danmarks Nationalbank, Working Paper No. 202, 2024), https://www.nationalbanken.dk/media/bsabg4ec/rich-and-responsible-is-esg-a-luxury-good.pdf [https://perma.cc/3Q92-UE97].

[168] That point builds on Stout, Gramitto, and Belinfanti's aim of giving more citizens a say in how corporations are governed by expanding ownership. However, those commentators did not connect their proposal to the possibility that if a greater proportion of owners are the average consumer, worker, or supplier, they could potentially influence corporate managers to make decisions that essentially distribute surplus to such stakeholders outside of profits. *See* STOUT ET AL., *supra* note 120, at 113-18.

[169] *See, e.g.*, Henry Hansmann & Reinier Kraakman, Essay, *The End of History for Corporate Law*, 89 GEO. L.J. 439, 447-49 (2001).

[170] *See id.* at 441.

repay.[171] Institutional investors might similarly be required to "know your shareholder," or have a sense of where their shareholders' interests are, and to make some good faith efforts to vote accordingly.[172]

Information technologies could help lessen the costs of knowing shareholder preferences. Indeed, software applications might help translate institutional ownership into a more direct form of representative governance by sending notifications for the type of elections or issues that are coming up in director voting.[173] Interestingly, BlackRock pledged to give its clients greater say in its choices in shareholder votes[174] and even started providing a pass-through voting option to its institutional clients.[175] This suggests that institutions may be developing the mechanisms needed to give underlying investors the ability to express their preferences.

More specifically, it is worth considering whether institutional investors like BlackRock or banks that might invest customers' deposits in the stock market should be required to allow third parties to develop services, such as voting apps, that would communicate with and engage shareholders. The mandate might even require the institutional investor to allow those apps to vote on behalf of end shareholders. Thus, the institution would manage the investment but not the voting, at least for those who opt into the third-party apps. Importantly, these apps could be designed to allow time-pressed and unsophisticated equal ownership stockholders to delegate all voting to a third party that would be better

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[171] FIN. INDUS. REGUL. AUTH., REGULATORY NOTICE 11-02: KNOW YOUR CUSTOMER AND SUITABILITY 2 (2011), https://www.finra.org/sites/default/files/NoticeDocument/p122778.pdf [https://perma.cc/DB9E-HP79]. Those rules were loosely inspired by lighter stockbroker rules. *See* Kathleen C. Engel & Patricia A. McCoy, *A Tale of Three Markets: The Law and Economics of Predatory Lending*, 80 TEX. L. REV. 1255, 1337-58 (2002) (proposing reforms in consumer finance based on stockbroker rules).

[172] Jill Fisch and Jeff Schwartz argue for requiring managers of mutual funds and pension funds to seek input from their beneficiaries on their views on social and environmental issues and reflect those views in both their engagement efforts and their votes. *See* Jill Fisch & Jeff Schwartz, *Corporate Democracy and the Intermediary Voting Dilemma*, 102 TEX. L. REV. 1, 7-10 (2023).

[173] *See, e.g.*, Press Release, As You Sow, AS YOU VOTE — A New Proxy Voting Service from As You Sow (Mar. 17, 2021), https://www.asyousow.org/press-releases/2021/3/17/as-you-vote-a-new-proxy-voting-service-as-you-sow [https://perma.cc/RJ3E-ST5S] (reporting new proxy voting service that empowers individual investors to align their voting preferences with their values by providing guidance and tools for engagement in corporate elections).

[174] *See* Simon Jessop & Ross Kerber, *BlackRock to Give Clients More Say on Holding Companies to Account*, REUTERS (Oct. 7, 2021, 7:39 PM EDT), https://www.reuters.com/business/finance/blackrock-give-clients-more-say-holding-companies-account-2021-10-07.

[175] *See* Press Release, BlackRock, BlackRock Expands Voting Choice to Additional Clients (June 13, 2022), https://www.blackrock.com/corporate/newsroom/press-releases/article/corporate-one/press-releases/2022-blackrock-voting-choice [https://perma.cc/42BF-5NDK].

situated to determine, for example, what corporate policies would be more likely to share consumer and worker surplus with those owners.

Although the discussion has so far focused on institutional investing, internalization could also be strengthened by encouraging retail investors to play a more active role in governance.[176] The general perception of retail investors is that they are naïve, uninformed, and have limited ability to coordinate their positions or influence the composition of corporate boards.[177] However, recent research suggests that at least a subset of retail investors are actually highly involved in corporate voting. Specifically, there is evidence that they "punish the management of poorly performing firms, as proxied by low valuation, low profitability, and stock price performance."[178] Thus, if a greater percentage of shareholders would prefer managers that make decisions that are favorable to stakeholders, these shareholders might make an impact on corporate decision-making.

The GameStop episode also illustrates potential mechanisms for retail corporate influence. In early 2021, retail investors bought shares of the company, causing share prices to rise by over 1000% and squeezing sophisticated investors that shorted the stock.[179] These retail investors coordinated their purchases through social media outlets, seemingly overcoming collective action problems.[180] Although GameStop investors were motivated by personal affinity with the brand rather than the motivation we outline for equal ownership,[181] it shows that retail investors may be able to coordinate with one another when they believe it is in their interest to do so. Thus, retail investing may potentially reduce the power of institutions that focus primarily on profit and enable greater engagement by ordinary individuals in social issues.[182]

To tie the GameStop episode to more systemic corporate governance, it may be possible to leverage corporate governance digital intermediaries in a way similar to that discussed above for institutional investors. Retail shareholders might communicate their general preferences to some digital intermediary that casts proxy votes on behalf of a large number of shareholders. For example, their preferences could include maximizing their overall financial situation, including

[176] For example, through tax incentives. *See* text accompanying *supra* notes 126, 133.

[177] *See* Sue S. Guan, *Meme Investors and Retail Risk*, 63 B.C. L. REV. 2051, 2060 (2022).

[178] Alon Brav, Matthew Cain & Jonathon Zytnick, *Retail Shareholder Participation in the Proxy Process: Monitoring, Engagement, and Voting*, 144 J. FIN. ECON. 492, 493 (2022).

[179] Yun Li, *GameStop Mania Explained: How the Reddit Retail Trading Crowd Ran Over Wall Street Pros*, CNBC, https://www.cnbc.com/2021/01/27/gamestop-mania-explained-how-the-reddit-retail-trading-crowd-ran-over-wall-street-pros.html [https://perma.cc/8J72-GSHV] (last updated Jan. 28, 2021, 1:04 PM) ("Wall Street has been watching GameStop in awe as a band of Reddit-obsessed retail investors managed to push the stock up 1,500% in two weeks, squeezing out short-selling hedge funds.").

[180] *Id.*

[181] *See* Jill E. Fisch, *GameStop and the Reemergence of the Retail Investor*, 102 B.U. L. REV. 1799, 1808 (2022).

[182] *See id.* at 1805.

consumer prices and employee wages. The digital intermediary would then, for each director election, shareholder proposal, or other issue, vote according to the retail investor's communicated preferences.[183]

Overall, this discussion shows that there is a range of possible retail and institutional governance mechanisms for encouraging owners to better internalize the economic welfare interests of different types of shareholders. Implementing these mechanisms may bolster equal ownership by making managers more attentive to the interests of their owners whose wealth is sensitive to changes in consumer prices and market wages.

IV. POTENTIAL CHALLENGES TO EQUAL OWNERSHIP

Equal ownership is not without limits and risks. This Part surveys some potential issues that might arise. Because equal ownership is novel, can be built in many different ways, and would inevitably be implemented gradually, it would be necessary to continually study the impact of broader ownership closely and adjust accordingly. Thus, the discussion below begins to map some topics for future research.

A. *Limits on the Influence of Stakeholder-Owners*

Equal ownership will be constrained by two main factors: the distribution of ownership of public shares and the salience of the possible harm. First, the more evenly and widely distributed stock ownership is, the more likely equal ownership will be to push managers to pursue policies that reflect the interests of lower-income groups. There is a concern that even with significant public expenditures, shareholding would likely remain skewed toward high-income households that are less affected by product prices or wages.

Thus, to be highly consequential, the ownership stake of middle- and low-income individuals must be sufficiently high, so that either the distributional or governance effects of equal ownership will be meaningful. Policies to encourage broader ownership, such as tax incentives, must be substantial enough to ensure meaningful shifts in the distribution of ownership.

The second factor that could limit owners' influence is the salience to owner-stakeholders of the possible harms of consumer manipulation or market power.[184] Some consumer manipulation or monopoly pricing may remain imperceptible to most people. Indeed, even markets controlled by a few firms may appear to be competitive to the naked eye. For instance, the existence of multiple gas stations in the neighborhood does not mean that oil oligopolists are

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[183] The specific details would need to be worked out for such a proxy to work, such as the duties and required disclosures to the owners.

[184] An example of visible harm may be Amazon denying worker breaks. *See* Zahra Tayeb, *Amazon Hit with Lawsuit Over Claims that It Failed to Provide Employees with Required 30-Minute Lunch Breaks*, BUS. INSIDER (Mar. 28, 2021, 6:28 AM EDT), https://www.businessinsider.com/amazon-hit-with-lawsuit-over-claims-did-not-provide-lunch-breaks-2021-3.

not charging higher prices at those gas stations. Moreover, the magnitude of price manipulation, monopoly pricing, or monopsony wages may be less observable or seem less important than shifts in the value of individuals' stock portfolios.

However, this challenge is not unique to our proposal. Regulators struggle with this task on a regular basis.[185] We anticipate that shareholders will be aided by the work of consumer protection and competition authorities. Investigations by the Federal Trade Commission or the U.S. Department of Labor will inform shareholders about potentially exploitative practices.[186] In fact, such authorities face political challenges in bringing action to address anticompetitive behavior.[187] Shareholders, however, may be less constrained in their ability to pressure managers to reduce prices or increase wages because they will not have to follow a formal legislative or judicial process. For example, antitrust investigations could lead shareholders to bring proposals for fairer prices or vote for directors who are more attentive to stakeholders' interests. Thus, shareholder pressure can complement and reinforce the work of regulators.

B. *Costs of Collective Decision-Making*

Another challenge for equal ownership is that it might raise the costs of decision-making in corporations. A broad ownership base might create conflicts between providers of large amounts of capital and a sizable number of dispersed lower-income people with small investments who are vulnerable to higher consumer prices and lower wages.[188] For example, owners in the bottom 90% of

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[185] *See, e.g.*, Mark MacCarthy, *Google's Antitrust Troubles Demonstrate the Need for a Digital Regulator*, BROOKINGS (Sept. 30, 2024), https://www.brookings.edu/articles/googles-antitrust-troubles-demonstrate-the-need-for-a-digital-regulator/ [https://perma.cc/75Z4-B8BK] (detailing how legal gaps, slow enforcement, and complex market dynamics hinder antitrust actions against tech monopolies).

[186] In the context of securities litigation, shareholders regularly piggyback on regulatory actions when they bring a lawsuit against corporations. *See* Emily Strauss, *Is Everything Securities Fraud?*, 12 U.C. IRVINE L. REV. 1331, 1335 (2021).

[187] Cristiano Lima-Strong, *Lina Khan's FTC Went After Big Tech. Trump Could Dial That Back.*, WASH. POST (Nov. 12, 2024), https://www.washingtonpost.com/technology/2024/11/12/lina-khan-ftc-trump-antitrust-big-tech/.

[188] In general, managers have a duty to act in the best interests of the corporation, which is often viewed as a duty to maximize firm profits. For the classic statement of this duty, see *Dodge v. Ford Motor Co.*, 170 N.W. 668 (Mich. 1919), which notes that "[a] business corporation is organized and carried on primarily for the profit of the stockholders." *Id.* at 671, 684. However, it is well known that managers have discretion to consider a broad range of nonpecuniary factors in making decisions, and their decisions are protected by the business judgment rule. *See* Einer Elhauge, *Sacrificing Corporate Profits in the Public Interest*, 80 N.Y.U. L. REV. 733, 738 (2005). Thus, it is unlikely that courts will intervene in managers' decisions about prices or wages, especially if these are designed to further the interests of the owners themselves. In fact, two leading economists, Hart and Zingales, have recently argued

households would often prefer low prices and higher wages, while wealthier providers of capital would likely prefer managers to set higher prices and lower wages.[189] Equal ownership might thus turn corporations into a forum where different socioeconomic groups battle over different economic outcomes.

The costs of this conflicted decision-making might harm the efficiency of corporations. One of the most attractive features of for-profit firms is that their investors are all focused on firm value maximization.[190] If these conflicts are strong enough, they might even reach the boardroom with different board members siding with different factions of shareholders. Likewise, the costs of decisions could also rise if institutions expend more resources soliciting and synthesizing input from shareholders.[191]

This concern should not be overstated. Institutional investors themselves already face pressures to be more sensitive to societal interests.[192] Additionally, stakeholders as owners would presumably also be concerned about ensuring that corporations operate in a financially sound manner. Moreover, when setting prices and wages, managers can make compromises by setting them at a level that balances the owners' preferences.[193] This means, of course, that the final outcomes might not reflect the prices and wages in a perfectly competitive world, but as long as they are substantially closer to competitive levels, equal ownership will have a material impact on social welfare.

C. *Excess Demand for Public Stock*

Equal ownership would entail an inflow of money into capital markets. By injecting stock markets with a large infusion of investment dollars, equal ownership could distort capital markets.[194] The surge in demand for stocks would drive up prices and increase the risk of economic overheating and a stock

that managers should maximize shareholder welfare rather than shareholder profits. Hart & Zingales, *supra* note 20, at 248.

[189] There may also be conflicts between consumers and workers—for example, if managers consider whether to increase prices or cut costs by reducing wages.

[190] HANSMANN, *supra* note 73, at 62. Goshen and Squire, however, recently highlighted that investors may face conflicts when they disagree about strategies to manage the company, such as whether to pursue short- versus long-term projects. *See, e.g.*, Zohar Goshen & Richard Squire, *Principal Costs: A New Theory for Corporate Law and Governance*, 117 COLUM. L. REV. 767, 804-05 (2017).

[191] For Blackrock's recent statement that it will indeed solicit views from their beneficial owners, see *supra* note 175.

[192] *See supra* notes 155-57 and accompanying text.

[193] This is essentially what the managers are doing in the model we present in Section II.C and Appendix B.

[194] Yair Listokin, *Law and Macro: What Took So Long?*, 83 LAW & CONTEMP. PROBS. 141, 151 (2020) ("Quantitative easing brings (unrealized) risks of inflation and may create asset bubbles.").

market bubble.[195] Although the transition to equal ownership may bring some market turbulence, there are upsides to these dynamics as well.[196] Greater investment capital could spur economic growth.[197] Rising stock prices could also help make equal ownership more politically and economically attractive to those with great wealth—especially compared to the alternative possibilities for addressing inequality.

These risks of market distortions should be considered in deciding whether to pursue, and how to design, equal ownership policies. However, in some ways the risks and limits of equal ownership reflect those of capitalism. The idea of capitalism is based on the notion that corporations should be able to raise capital from a diffuse range of investors.[198] These investors naturally have different preferences and views, and they increasingly want corporations to consider them.[199] As discussed above, information technologies could significantly lessen the costs of collecting and synthesizing dispersed retail interests.[200] Thus, we believe this risk is unlikely to materially increase the inherent challenges of robust capital markets, and that capital markets will prove dynamic enough to adapt.

D. *Encouraging Noise Trading*

Broadening the ownership base of corporations may also introduce a great deal of noise to stock markets. The concern is that lower-income individuals may be uninformed and unsophisticated, and therefore will act primarily as noise traders. The efficiency of capital markets depends on the presence of informed traders that gather and analyze market- and firm-specific information.[201] Noise traders, on the other hand, are those that falsely believe they have a valuable

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[195] *See* Guillermo A. Calvo, Leonardo Leiderman & Carmen M. Reinhart, *The Capital Inflows Problem: Concepts and Issues*, 12 CONTEMP. ECON. POL'Y 54, 54, 65 (1994) (discussing how "large capital inflows" are associated with "stock market bubbles" and suggesting regulatory reforms to "insulate the banking system from the bubbles").

[196] Antony P. Mueller, *Financial Cycles, Business Activity, and the Stock Market*, 4 Q.J. AUSTRIAN ECON. 3, 5 (2001) (using Mises-Hayek model to conclude that "new liquidity, while inciting business activity, will make economic distortions more severe").

[197] *See* Lawrence Christiano, Cosmin L. Ilut, Roberto Motto & Massimo Rostagno, *Monetary Policy and Stock Market Booms* 2 (Nat'l Bureau of Econ. Rsch., Working Paper No. 16402, 2010) (finding that sixteen of eighteen historical U.S. stock market booms were associated with credit growth).

[198] *See* ADOLF A. BERLE, JR. & GARDINER C. MEANS, THE MODERN CORPORATION AND PRIVATE PROPERTY 47-48 (1933). *See generally* John C. Coffee Jr., *Dispersed Ownership: The Theories, the Evidence, and the Enduring Tension Between "Lumpers" and "Splitters," in* THE OXFORD HANDBOOK OF CAPITALISM 463 (Dennis C. Mueller ed. 2012).

[199] *See id.* at 119-25.

[200] *See supra* Section III.B.

[201] Zohar Goshen & Gideon Parchomovsky, *The Essential Role of Securities Regulation*, 55 DUKE L.J. 711, 715-16 (2006).

informational advantage or superior ability to trade stocks.[202] The more noise traders there are, the more likely it is that stocks will deviate from their fundamental value. Though noise traders can cancel each other out, when they act as a herd, they may bias stock prices for a prolonged time.[203] In the long run, such traders inevitably lose to more sophisticated traders when prices go back to their fundamental value.[204]

However, middle- and low-income individuals would not necessarily act as noise traders. As discussed above, the evidence suggests that retail traders, who are likely less affluent than other shareholders, are often well-informed and engaged in corporate voting.[205] In any event, there is scope for complementing our proposal with programs to improve financial literacy in order to encourage the new group of stock traders to engage in informed trading.[206] Finally, we do not require that the new class of equal ownership shareholders would hold stocks directly as retail investors. Rather they could hold it through sophisticated institutional investors that have a duty to take their viewpoints into account when voting their stocks.[207]

E. *Regulatory Laxity*

Equal ownership could create a convenient political environment to justify regulatory laxity in areas such as antitrust and labor law. Consumers and workers may incorrectly believe that they are overall benefitting from monopoly prices and low wages merely because they are shareholders. Thus, they may exert insufficient democratic pressure on authorities to effect policies, such as antitrust and consumer protection, that are important for total welfare and the distribution of wealth. But if the ownership share is too small, the profits that consumers and workers gain from equal ownership may be lower than the resulting harm from laxer regulation.[208]

While these political influences would be harmful if they materialized, it is only a speculative possibility. It is impossible to predict how equal ownership would affect the legislative and regulatory process, and our proposal will inevitably require a great deal of experimentation. As we emphasized above, equal ownership is not a substitute for existing regulation, but rather a

[202] *Id.* at 714-15.

[203] *Id.* at 729.

[204] *Id.*

[205] *See supra* text accompanying notes 176-82.

[206] Recent research shows a U-shaped correlation between financial literacy and stock market participation. *See* Jill E. Fisch & Jason S. Seligman, *Trust, Financial Literacy, and Financial Market Participation*, 21 J. PENSION ECON. & FIN. 634, 645 fig.2, 648 (2022).

[207] *See supra* text accompanying notes 150-75.

[208] If consumers have a fraction of the shares, only a fraction of every dollar in increased monopoly price paid by a low-income consumer will return to consumer-owners in ownership value.

complement to address persistent concerns such as rising mark-ups and stagnant wages.

CONCLUSION

We have identified an alarming trend in the distribution of corporate ownership. For years, ownership has trended toward wealthier households owning an ever-larger share of public corporations. This trend is particularly concerning when considering the gradual increase in industry concentration, corporate profits, and price markups. These trends indicate that low- and middle-income individuals are increasingly getting a lower share of the wealth created by corporations.

While policymakers and academics have been studying potential links between institutional ownership and market power, they have overlooked a related and potentially large-scale problem: the declining ownership stake of low- and middle-income households. The literature on how to address market power has missed the potential upsides of broadening ownership as a policy tool to combat market power. Likewise, the corporate governance literature has failed to fully theorize the potential impact that greater ownership by corporate stakeholders can have on firm decisions and strategy.

Expanding ownership would reduce the harms stemming from unequal ownership by giving back some of the value extracted to consumers and workers. To the extent that managers internalize owners' interests, more equal ownership could push firms' behavior toward that theorized in a perfectly competitive market. These insights indicate that the socioeconomic distribution of ownership should be an integral part of the considerable intellectual energy devoted to figuring out how to improve markets. At a minimum, policies should reverse the declining share of stakeholders in corporate ownership. Rather than focusing solely on antitrust and regulation, policymakers should also consider the potentially powerful contribution of equal ownership in mitigating the costs of market power.

APPENDIX

A. *The Distributional Effects of Equal Ownership*

Consider a simple Cournot oligopoly market in which there are two firms, each producing the same product. The demand function is a function of the quantity of the product, and we assume that $P(Q) = 100 - Q$, where $Q = q_1 + q_2$, and q_1 and q_2 are the quantities produced by firms 1 and 2, respectively. The cost function is $C(q) = 40q$. Each firm $i = \{1,2\}$ chooses the quantity produced to maximize the following function:

$Max_{q_i}\, \pi_i = P(Q)q_i - C(q_i) = (100 - Q)q_i - 40q_i$.

We refer to the results under the Cournot oligopoly using the superscript *co*, and the results under perfect competition with the superscript *pc*. The first order condition yields: $q_1^{co} = (60 - q_2^{co})/2$ and likewise $q_2^{co} = (60 - q_1^{co})/2$. Solving this system of equations, we obtain $q_1^{co} = q_2^{co} = 20$, and $p^{co} = 60$. The consumer surplus (CS) is the triangle below the demand function and above the price charged in equilibrium. Thus, $CS^{co} = \frac{(100-p^{co})Q}{2} = \frac{(q_1^{co}+q_2^{co})^2}{2}$, which equals 800. The total welfare (TW) gains in the economy equal the profits of the firms and the consumer surplus. Thus, $TW^{co} = \pi_1^{co} + \pi_2^{co} + CS^{co}$ equals 1,600 (because $\pi_1^{co} = \pi_2^{co} = 400$).

Contrast this with a world in which there is perfect competition. In such a world, the price equals marginal costs, and the profits of firms equal zero. Thus, $p^{pc} = 40$, and $Q^{pc} = 60$. In this case, the firm does not make any profits, and TW^{pc}=CS^{pc}=1,800. From a social welfare perspective, this is a better outcome. The deadweight loss of the Cournot oligopoly is the difference between total welfare under perfect competition (which is equal to the consumer surplus since firms' profits are zero) and the welfare under a Cournot model (the consumer surplus plus the firms' profits), which in this case equals $1{,}800 - 1{,}600 = 200$.

Suppose now that in equilibrium where the firms are choosing quantity, the consumers receive a share, $s = [0,1]$, of both firms' profits. Consumers' welfare may be higher if they get to share in firms' profits. The higher their share of the profits, the higher consumer welfare would be. In this case, s$(\pi_1^{co} + \pi_2^{co})$ is consumers' share of both firms' profits. Consumer welfare (CW) includes the consumer surplus plus their share of the profits of the two firms. Thus, $CW^{co} = CS^{co}$+s$(\pi_1^{co} + \pi_2^{co})$. For example, for $s = 1/2$, $CW = 1{,}200$. Thus, giving a share of the ownership to consumers naturally distributes some of the gains from shareholders to consumers.

We note that in this case, even if $s = 1$, the largest share the consumer can get in the company, they will still be worse off than in a world of perfect competition because their total welfare will be equal to 1,600. As we show below, this changes if the firms internalize the interests of consumers in choosing the quantity they produce.

B. *The Governance Effects of Equal Ownership*

We now assume that the firm is maximizing the interests of its owners as a whole, taking into account that some of its owners are also consumers. Therefore, the firm may increase quantity even if it has the effect of reducing the firm's profit because it knows that some of its owners will benefit as consumers from the price reduction and greater availability of products. The objective function of the firm is:

$Max_{q_i}\, \emptyset_i = (1-s)\pi_i + s(\pi_i + CS)$, subject to the constraint that $\pi_i \geq 0$. That is, the firm will not choose a quantity that renders it insolvent. Thus, $\emptyset_i = (1-s)[(100-Q)q_i - 40q_i] + s[(100-Q)q_i - 40q_i + Q^2/2] = (100 - q_1 - q_2)q_i - 40q_i + (s(q_1+q_2)^2)/2$. This yields the following first order condition: $q_1^{co} = \frac{(s-1)q_2^{co}+60}{2-s}$, and $q_2^{co} = \frac{(s-1)q_1^{co}+60}{2-s}$. Thus, the quantity is clearly increasing in *s*, and therefore the price is decreasing in *s*.

The simplest way to show the result is to examine the equilibrium quantity, price, and welfare analysis for different levels of s. As shown in Figure 2, the optimal result, from a social welfare perspective, occurs when $s = 1/2$ and firms' profits are equal to zero. In this case, the price is 40 and each firm produces 30 units of product. This is equivalent to a world with perfect competition, where price equals marginal costs. The total welfare here equals 1,800, exactly the same as in a world with perfect competition.

If we increase s above 1/2, the output and prices stay the same as in the case where $s = 1/2$ because the firm is subject to the constraint that it must make nonnegative profits. Because $p^{co} = 30$, $Q^{co} = 60$, and $\pi_i^{co} = 0$ for $1 \geq s \geq \frac{1}{2}$, then the consumer surplus, consumer welfare, and total welfare stay the same as in the case where $s = 1/2$. The following table summarizes these dynamics in tabular form for different values of s.

Table 1. The Effect of Consumer Ownership on Welfare.

	$s=0$	$s=1/4$	$s=1/2$	$s=1$
q_1^{co}=q_2^{co}	20	24	30	30
p^{co}=100-$q_1^{co} - q_2^{co}$	60	52	40	40
π_i^{co}=$p^{co}q_1^{co}$ −40*q_1^{co}	400	288	0	0
CS^{co} = ((100-p^{co})*($q_1^{co} + q_2^{co}$))/2	800	1,152	1,800	1,800
CW^{co} = CS^{co}+$s(\pi_1^{co} + \pi_2^{co})$	800	1,296	1,800	1,800
TW^{co} = CS^{co}+$\pi_1^{co} + \pi_2^{co}$	1,600	1,728	1,800	1,800