EXECUTIVE SUMMARY

BALANCED ECONOMY PROJECT

AMERICAN ECONOMIC LIBERTIES PROJECT

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

Denise Hearn
Michelle Meagher

April 2022

ABOUT THE AUTHORS

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

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

EXECUTIVE SUMMARY

Firms championed by the stakeholder capitalism movement represent some of the largest and most powerful global companies today. Alphabet, Google's parent company, ranks #1 on JUST Capital's most "just companies" list, but Google has also been investigated and sued in recent years by anti-monopoly regulators at the Federal Trade Commission and Department of Justice. The company is also being sued by dozens of state attorneys general for abusing its dominant market position and causing harm to stakeholders. So why the disconnect between stakeholder capitalists and anti-monopolists?

Despite both movements simultaneously rising to prominence in recent years, the two communities and conversations rarely intersect. However, both ask fundamental questions about the nature and obligations of firms in society. Stakeholder capitalism generally focuses on what happens *inside* corporations, while anti-monopoly focuses on what happens *between* corporations, in markets and economies. These terrains overlap in important ways and, when seen this way, the potential congruency between the movements becomes clearer.

Stakeholder capitalism generally focuses on what happens inside corporations, while anti-monopoly focuses on what happens between corporations, in markets and economies. These terrains overlap in important ways and, when seen this way, the potential congruency between the movements becomes clearer.

But stakeholder capitalists, while assertive about the obligations of firms in many areas, have been utterly silent on the concentrations of economic and political power that firms like Google represent. This paper explores that silence.

We argue that the failure to integrate the problem of concentrated corporate power into the stakeholder capitalism agenda not only undermines its stated goals but creates a clear problem of political legitimacy for its proponents. Today's markets are highly concentrated, and it is within this economic structure that stakeholder capitalism makes its case for better corporate behavior.

Free-market competition is part of what made America great, but that competition is being eradicated by the growing influence of monopolies. Monopolies and oligopolies now govern an alarming number of industries — eyeglasses, funeral services, kidney dialysis, meatpacking and farming, hospital beds, supermarkets, restaurant chains, defense, healthcare, cheerleading, and many others. One study found that since 1990, over 75% of U.S. industries have concentrated.

Stakeholder capitalists rightly recognize that the underlying algorithm of capital markets, maximizing shareholder value, has led to perverse outcomes. But the specifics of how firms increase their market power — historic levels of mergers and acquisitions, horizontal expansion into an ever-increasing number of industries, gatekeeping tactics, one-sided contract terms, and other anti-competitive behavior — have received far less attention.

While large, dominant firms can provide benefits to consumers through economies of scale, network effects, and increased efficiencies, they can also cause significant harms to stakeholders through abuses of economic and political power. Only recently have stakeholder capitalists considered the actual political choices of dominant firms as relevant to their movement. Aggressive lobbying, for instance, as well as attempts to extract tax concessions, is commonplace among stakeholder capitalism exemplar firms.

Concentrated markets now have well-known consequences: higher prices for consumers, lower wages, less business dynamism and lower startup rates, less innovation, lower growth, rising inequality, the hollowing out of rural areas and regional inequality, fragile supply chains, environmental damage, political capture, risks to national security, and the subversion of democracy (among others).

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

Stakeholder capitalists rightly recognize that the underlying algorithm of capital markets, maximizing shareholder value, has led to perverse outcomes. But the specifics of how firms increase their market power — historic levels of mergers and acquisitions, horizontal expansion into an ever-increasing number of industries, gatekeeping tactics, one-sided contract terms, and other anti-competitive behavior — have received far less attention.

The inherent dissonance between the perpetual drive for scale and dominance, and the recurring market abuses of the largest corporations, is a conflict that stakeholder capitalism ignores. The power of the corporation, and managers’ mission to increase the scope of that power, is taken as a given.

As a result, despite the simultaneous ascendancy of ESG investing, concentration only accelerated through the pandemic. Global M&A topped $5.8 trillion in 2021, private equity deals exceeded $1 trillion, and there was an unprecedented number of deals: 58,000 globally and 14,400 in the U.S. KPMG says “2022 could be even bigger.”

Markets have concentrated following years of neglect from antitrust regulators charged with maintaining market competition and fair dealing. Regulators turned a blind eye to decades of merger waves under the false premise that market "efficiency" and low prices for consumers were the only aim of antitrust law. But originators of antitrust law saw its purpose as maintaining a balance of power across the economy to produce economic democracy. This hollowing out of antitrust enforcement's rich intellectual history and guiding principles can be traced back to Robert Bork at the Chicago School — the same school that birthed Milton Friedman's laissez faire approach to corporate governance. Both maximizing shareholder value and watered-down antitrust enforcement have a shared intellectual heritage.

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

Today, conservative critiques of stakeholder capitalism echo Milton Friedman's concerns about left-leaning "woke" CEOs picking pet projects and being swayed by the social influences of the day. This, in part, formed the basis of his maximizing shareholder value — he worried that pursuing changing stakeholder interests would make firms dangerous arbiters of political life. Conservatives today fail to appreciate that the zealous application of Friedman's doctrine led to a corporation elevated to such high political stature that it undermined the countervailing mechanisms of the state and the polity altogether. The corporation, and its backing and shaping by a small group of concentrated financiers, has become the largest influence in our political systems. Neoliberals ultimately ushered in the very outcome they sought to avoid.

Some will argue that working with dominant firms with large footprints is more effective at meeting stakeholder aims. If a giant moves — even a little bit — it can have an outsized effect on markets. There is truth in this line of reasoning, but it also does not match market realities. The trend of externalization of harm will only be reversed, as the stakeholder capitalists would like to see, when it is in the company's financial interests to do so. Ultimately, the same drivers that motivate firms to pursue monopoly also encourage the creation of negative externalities.

If stakeholder capitalism proponents do move toward answering key questions about concentrations of economic power, then both agendas would uphold similar values around stakeholders' right to self-determination, the democratic functioning of markets, and the problems of externalities. Markets and corporations are public creations and should be governed in the public interest. They both need referees, and stakeholder capitalists now recognize that shareholders are insufficient guardians of public creations.

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

Practically, this means:

1. Embracing anti-monopoly policy agendas, including President Biden's whole-of-government approach to competition as laid out in his July 2021 executive order;
2. Supporting the FTC and DOJ in investigating anticompetitive mergers and breaking up companies that are too dominant;
3. Supporting the FTC in its ongoing investigation of coercive contract terms that harm workers and small businesses, and denouncing one-sided contract terms that are regularly used to dominate and intimidate smaller competitors, suppliers, and workers;
4. Championing updated merger guidelines to help slow the vast consolidation afflicting markets today;
5. Supporting state attorneys general who are bringing antitrust cases against dominant firms;
6. Supporting New York state's "Twenty-First Century Anti-Trust Act" (Bill *S933A, New York, 2021-2022*), the most comprehensive update to state antitrust law in a century;
7. Supporting additional research on the role of mergers and acquisitions and their effects on the economy, in particular, serial acquisitions, rollups, and private equity add-ons, and the harms these strategies pose to stakeholder groups and fair markets; and
8. Bringing private antitrust suits against dominant firms that have demonstrated clear harms to stakeholders.

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

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

Read the full version of "Stakeholder Capitalism's Next Frontier: Pro- or Anti-monopoly?" here.