REJECTING THE THEORY OF THE FIRM
WHY THE 'FREE-MARKET' ECONOMY IS A MYTH AND HOW TO REBUILD PUBLIC POWER

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EXECUTIVE SUMMARY

Companies today are not working the way that we think they do. To rewrite the laws that guide corporations today, we must change the way that people understand the role of the firm in our economy and the role of the public in redefining corporate behavior.

While private enterprise can be a critical piece of a thriving economy that does all of the things that free-marketers promise—invest in new equipment; develop, tinker with, and implement new technology; produce time- and life-saving products; train and promote workers—that process is neither inherent nor automatic. How profits are invested, and whether profits are generated by productive investments that grow the economy or by extraction and exploitation, is a question of who has power within the firm, among firms, and throughout the economy. Rules and institutions guided by public contestation and enforced through the public sector are essential for redefining *who* benefits in our economy.

For the last 40 years, policymakers have ignored this fact and operated as though firms and markets are power neutral, devoid of policy and politics. As a result, policies today promote private profit-seeking that too often takes the form of squeezing workers, arbitraging tax regimes and regulations, asset-stripping productive businesses, overcharging (and occasionally poisoning) consumers, pushing out competitors and the government, and, of course, influencing legislators. This is not only bad for average Americans, it is also economically unproductive.

We must deploy public power and reset the terms by which private enterprise operates. This requires a comprehensive restructuring of markets, including changes to tax policy, antitrust policy, corporate governance law, and international agreements. Ultimately, this shift will help build a more equitable and productive economy.

INTRODUCTION

The Trump administration and congressional Republicans argued that the answer to the American affordability crisis was to cut taxes for corporations. These cuts, they claimed, would boost wages and investment, growing the economy and improving people's lives. Almost no credible economist, however, was willing to stand by those claims. Even as the mainstream media initially reported on employee "bonuses" and pay increases, it was not long before news outlets began to cover the reality: that the benefits of the 2017 tax law accrued almost entirely to shareholders, that firms were still cutting jobs, and that rampant tax avoidance on the part of our largest firms continued.

Americans are now increasingly aware that corporations aren't working the way that they are supposed to. What's beginning to take root is a shared understanding that to tackle the current challenges in our economy, we must expand the conversation beyond how profits are distributed and also address the question of how profits are generated. It's crucial that we rewrite the laws that guide corporations today. To do so, we must change the way that people understand the role of the firm in our economy and the role of the public in regulating corporate behavior.

This paper argues that public firms are increasingly extractive and unproductive, that shareholders and managers are reducing investments in the things that grow the economy, and that workers, consumers, and the government are being scammed. All of this hurts shared prosperity. This toxic behavior derives from policy decisions that were and are informed by a specific (but largely misguided) view of how the economy broadly, and public corporations specifically, works.

In challenging how firms work, this paper describes one piece of the conventional "wisdom" that has guided economic policymaking for 40 years. Primarily, we are concerned with how policy choices have shaped the behavior of non-financial public corporations. However, I am not attempting to describe the vast amount of academic literature filed under "the theory of the firm."

Part 1 outlines the commonplace assumptions with which this paper takes issue: the flawed idea that profit-seeking firms, free from the restraints of regulation, grow the economy and create broadly shared prosperity. In this paper, we argue that private enterprise can be a critical piece of a thriving economy that does all of the things that free-marketers promise—invest in new equipment; develop, tinker with, and implement new technology; produce time- and life-saving products; train and promote workers. How a progressive vision differs from the conventional "wisdom" that has guided economic policy for decades is in the assumption that productive and prosperous activity comes from leaving firms largely alone to do what they choose. Rather, we believe that in order to enjoy an inclusive economy, our laws and institutions must promote productive and socially beneficial activities and ban the destructive and exploitative ones.

Only by deploying public power can we change the terms by which private enterprise operates. Public power—the rules and institutions set by policymakers, government regulators, and law enforcement agencies, and which are written and enacted to serve the collective good—can serve the interests of average Americans, workers, and small businesses. Reining in private profit-seeking—which too often takes the form of squeezing workers, arbitraging tax regimes and regulations, asset-stripping productive businesses, over-charging (and occasionally poisoning[1]) consumers, pushing out competitors and the government, and, of course, influencing legislators—would help build a more equitable and productive economy.

Part 2 describes policy changes, informed by the free-marketers' flawed wisdom, that have, over time, led to the extractive and rent-seeking corporate behavior that we see today. There is no question that technological change and globalization have changed the calculus for firms and abetted the transition. Rather than our elected officials rewriting regulatory policy to serve the 21st century, policymakers have deferred to free markets, allowing these forces to undermine shared prosperity.

Part 3 provides a brief overview of key statistical indicators that demonstrate that free-market ideology has empirically failed to deliver on its promises.

Part 4 explores specific policy changes that our nation needs to ensure that firms perform the role our economy and society requires: developing cutting-edge technology, deploying new products, benefiting consumers, creating business for suppliers, and creating good jobs for workers.

The policies outlined in Part 4 are largely designed to change pre-distribution, or the distribution of income before taxes and transfers redistribute that income. Until recently, the American left has largely disregarded the role of public power in pre-distribution, instead treating markets as natural. The policies promoted in Part 4 would significantly restructure the rules and incentives that guide corporate behavior and would therefore alter the pre-tax distribution of jobs, income, and wealth. While these policies are certainly not sufficient to address all of today's national challenges, they are essential for moving towards an inclusive economy. Additionally, public power must be deployed to not only shape markets but to also take goods and services out of the market entirely. As my colleague

1 See the opioid epidemic.

Mike Konczal has written, just as we need two blades for a pair of scissors to function, we need both the pre-distribution blade and re-distribution blade for public power to function (Abernathy, Konczal, and Milani 2016).

This paper consciously focuses on one blade. I argue that it is a policy choice to let the largest firms in the US *not* invest, innovate, pay employees well, or pay taxes. Therefore, we should encourage them to do so—and when they don't, we should sanction them. Now's the time to prove that the free-market economy is a myth and that progressives *can* offer a better alternative.

PART 1
Theory of the Firm vs. Reality

The mechanisms linking growth and profits to shared prosperity are clearly broken. Corporate profits are at record highs, the stock market has surged, and unemployment is below 5 percent. Meanwhile, capital investment remains low (Federal Reserve Bank of Chicago 2018), wages are stagnant, and 40 percent of Americans say they would not be able to meet a $400 emergency (Board of Governors of the Federal Reserve 2018). This "puzzle," which baffles both everyday Americans and economists alike, is perplexing only if we continue to accept that firms operate by the same misguided assumptions that have informed policymaking for the last 40 years—i.e., that sky-high corporate profits inevitably lead to more jobs, cheaper goods, higher wages, and lower prices.

Under the dominant free-market theory, profit-seeking leads to value creation—increases in productivity that allow the economy to produce more for less, resulting in lower prices, higher wages, or better products, all of which benefit society at large. When we imagine a productive firm that generates profits and grows the whole economy, we often visualize that firm being run by a specific kind of business leader: a CEO managing his[2] business with the goal of long-term success. He deals with a range of stakeholders—employees, suppliers, customers, lenders, shareholders—distributing corporate resources (e.g., paychecks, dividends, products) to each according to the fair market price. When the CEO thinks about allocating resources, he has several options. He could invest in the firm by expanding production, building more facilities, hiring more workers, purchasing more supplies, and serving more customers. He could improve goods and services or cut prices; raise wages and invest in employee training; purchase higher-grade supplies; or invest in new technologies. He could also invest entirely in advanced products and services through new research and development (R&D), ultimately pushing the frontier of U.S. growth and innovation.

[2] The pronoun choice is intentional here, as the CEO in this theory (and in our current society) is usually a male.

If you subscribe to this story—created and disseminated by anti-tax revolutionaries of the 1970s, and later told by the deregulation-focused New Democrats of the 1990s—then unleashing self-interested businesses and rich people from the constraints of government appears to be both productive and moral; business leaders should reallocate capital to its most productive uses and thereby create jobs, provide cheaper goods and services, and spur innovation; and private enterprise can break down the economic barriers that inhibit Americans of color and women from accessing and contributing to the economy.

Because this theory of the firm claims that gains at the top automatically grow the economy and create jobs by trickling down, efforts to regulate or tax the top—even for popular redistributive programs—are seen not only as an unfair confiscation of property, but, by eliminating the incentive for businesses to invest, as harmful to average Americans. Under this premise, government intervention is anti-growth and bad for the average worker.

For scholars of the dismal science, economists who subscribed to this story proved remarkably naive about the profitability of exploitative behavior. Faulty accounting and market manipulation? No problem. Investors with a stake in the firm will expose corruption and root it out. Huge firms that can gouge consumers? A start-up will out-compete that monopoly inefficiency. Poor wages and dangerous working conditions? Employees can quit and go get better jobs.

Empirical evidence tells a different story—one based in reality. The latest research supports a progressive understanding that the firm is an arena of power and negotiation. Though it turns a great profit in the process, unchecked private power undermines our economy and our democracy. Executives can allocate profits entirely to shareholders through dividends or stock buybacks. Because CEO pay often includes stock, and performance is often measured by share prices, allocating funds to shareholders often means allocating funds to their own pay packages. Paying shareholders can mean skipping out on longer-term investments. Rather than focusing on sustainable growth, managers might prioritize short-term profits and quarterly earnings reports, reducing long-term potential. In fact, they could start cutting the resources previously spent on capital investment or R&D to give themselves and their shareholders a larger payout. Managers could also start squeezing additional funds from workers, by foregoing wage increases, cutting benefits, or outsourcing jobs to low-wage contractors. They can squeeze profits from suppliers, by demanding more products and services in exchange for less money, and squeeze additional profits from consumers, by providing less for a higher price.

Though pressure from competitors should serve as a countervailing force to runaway private power (e.g., by pushing firms to invest in innovation and expansion), firms today can actively erect barriers to competition (e.g., by buying out small competitors before they get too big to threaten market share or by purchasing suppliers to secure special terms). Continued profits and shareholder payouts can come not from pushing the frontiers of productivity or innovation, but from securing these advantages. New opportunities for profit arise from complex tax-avoidance schemes or regulatory arbitrage. As such, profits come not from the growth-focused activities that actually do grow the economic pie, but rather from zero-sum tactics by which powerful firms or executives eat the whole pie and then burn down the kitchen.

America's largest corporations and richest individuals claim to operate according to the first theory, but they increasingly operate according to the reality described above. One surefire sign that we're living according to the second worldview is that while free-marketers argue that profits are fleeting—competed away in the long run—corporate profits have skyrocketed in the past three decades. Profits—as opposed to income paid out in wages or the expected return on investment capital paid out to investors—have increased by more than 12 percentage points over the last 30 years (Barkai 2016).

The difference between the two stories is a matter of the rules—our laws, institutions, and systems that shape and incentivize (or discourage) different kinds of behavior. Whether these laws are robust or weak, they are shaping decisions about who can profit and how.

The financial crisis—a spectacular demonstration of the disconnect between profit-seeking and productivity—and the recovery—which has produced record corporate profits and stock market highs, with few gains for the poor, working, and middle classes—called into question free-marketers' underlying assumptions. Many Americans now understand that gains at the top will not trickle down and that hard work is not justly rewarded—which is less of a revelation for Black and brown Americans, women, and especially women of color.

Perhaps it was his career in the profitable but unproductive New York real-estate sector that enabled Donald Trump to accurately diagnose the current American economy as an arena of struggle between weak and strong, as opposed to the efficient models of economists that excise power. Trump's rhetorical response was to tame the markets, single-handedly, as an all-powerful strongman who can win the fight. As progressives, we must make the case that deploying public power is more just, principled, and productive than expecting a strongman to save us.

PART 2
The Path to Today's "Free-Market" Economy

Beginning in the 1970s, free-marketers launched an almost evangelical campaign to unleash the profit-seekers to do what they do best: seek profit—ultimately, at the expense of our economy and society today. Accepting free-marketers' theory of the firm, policymakers promoted a reform agenda aimed at empowering capital owners in firms, over firms, and across the world. Specifically, policymakers and regulators rolled back a number of rules allowing business tactics that were once largely illegal. In many cases, this outcome is not because of changes in statute but rather changes in judicial interpretation and, sometimes, to enforcement and regulatory policy.

In the 21st century economy, access to global supply chains and markets, along with new tech-enabled business strategies, have certainly increased the advantage that some firms have over other players. But government and our society more broadly have always needed to contend with economic and political power dynamics and establish the rules and regulations that ensure a level playing field for all. American capitalism today has been shaped by key policy debates of the last four decades.

Cut Taxes above All Else

The free-marketers' alpha and omega in economic debates has been to cut taxes to spur investment. The idea was that individuals and businesses would always invest funds productively—in capital equipment, R&D, business expansion. Policymakers bought into this flawed orthodoxy, cutting tax rates on individual income, capital income, inheritance, and, most recently, corporate rates, promising that tax-cut recipients would create jobs and grow the economy with this additional capital.

As we know, the Congressional Research Service showed that there is no "conclusive evidence ... to substantiate a clear relationship between the 65-year reduction in top statutory tax rates and economic growth" (Hungerford 2012). Meanwhile, Piketty, Saez, and Stantcheva (2014) found that tax cuts increase pre-tax inequality, which suggests that lower top tax rates encourage CEOs and top managers to push for sky-high salaries.

These truths have been made evident with the 2017 Republican tax cut. A recent National Association for Business Economics (NABE) survey confirmed what progressive economists and journalists had been arguing: The Tax Cuts and Jobs Act (TCJA) "has not broadly impacted hiring and investment plans at panelists' firms" (Jagoda 2018).

Give Shareholders Corporate Decision-Making Power

Where investors once expected a modest annual return on capital, the corporate raiders of the 1980s succeeded in pushing the ideology that a firm's primary responsibility is to maximize shareholder value, including at the expense of other corporate stakeholders (Mason 2015a). Cuts to capital gains and top marginal income rates increased the incentive for managers and investors to divert as much corporate cash as possible up and out of the firm and into their own bank accounts. Other policy changes shifted incentives for shareholders and CEOs. In 1982, the Securities and Exchange Commission (SEC) loosened restrictions on share buybacks—which, as a tool deployed for market manipulation, were once regulated—making it easier for firms to buy back their own stock and inflate share prices (Palladino 2018b). By linking CEO pay to stock performance, investors managed to unite the previously different—if not divergent—corporate and financial interests.

Guided by free-marketers' theory of the firm, supporters of the TCJA and shareholder primacy argue that shareholders will allocate payouts to the most productive projects. Therefore, proponents allege that cuts in R&D, capital equipment, or labor in favor of payouts to shareholders will drive those shareholders to reinvest the proceeds in newer, better firms. This is the mechanism by which shareholder primacy is rationalized as serving the public interest in our overall economic well-being. However, there is no evidence that these freed up funds are being put toward more productive uses—quite the contrary. With exception of the fossil fuel industry, the decline in investment in the U.S. is consistent across industries and public firms, and the number of start-ups (private firms) has also declined (Mason 2015b). From 1999 to 2014, 94 percent of corporate profits went to shareholders (Lazonick 2014). Rather than providing capital to firms, shareholders have been a net drain on capital. In 2016 alone, firms bought back $580 billion more in shares than they issued (Palladino 2018a).

Gut Antitrust Regulation

Based on the assumption that inefficient monopolists would always be undercut by new and vibrant businesses, free-marketers crippled antitrust policy (Steinbaum, Bernstein, and Sturm 2018). Their theory assumed that firms could only gain or grow market share by being more efficient or productive than competitors. Under this assumption, the largest firms would, in fact, create the most value, and would-be plaintiffs were simply less-efficient competitors seeking a legal means to avert their "natural" loss of market share.

Where regulators working from the dictates of the Sherman Antitrust and Clayton acts had evaluated the market power of firms based on a range of factors—from regional concentration and access to critical services like broadband, to supply-chain diversity and innovation—today's standard for antitrust (the consumer welfare standard) only restrains conduct that directly raises consumer prices or reduces access to goods and services. This narrowing of scope ignored the myriad ways that firms can exert (and abuse) their market position to undercut rivals, squeeze suppliers, and pressure workers—all to the long-term detriment of shared growth and innovation (Steinbaum and Stucke 2018). Today's acceptance of vertical integration deals, which were previously highly regulated, provides one window into the decades-long shift in antitrust regulation. Digital platforms own the online marketplace and exert control over what buyers and sellers see, where the data go, and who gets to participate. While the network effects of new tech platforms do present new challenges for regulators, plenty of brick-and-mortar businesses are benefiting from the same lax enforcement. A few firms control the agriculture industry, for instance, increasingly tilting the playing field away from independent farms. Airlines, grocery stores, cable companies, and even funeral homes are all consolidated industries.

One result of declining antitrust enforcement is consolidation across industries, which, it turns out, is very good for shareholders. It's not great, however, for overall investment. The stock market's high valuation of oligopolies, along with the low investment rates of these uncompetitive firms, goes a long way toward explaining the disconnect between stock prices and wider economic growth (Gutiérrez and Phillipon 2017).

Further Weaken Protections for Historically Marginalized Communities

The free-market revolution gained steam in the wake of the civil rights movement, taking aim at a range of rule changes designed to correct for centuries of predation on Black Americans. According to free-marketers, public policies regarding hiring Black and brown Americans, protecting them against discrimination as consumers, businessowners, and employees, and providing public investment in communities of color were unnecessary and detrimental. Economist Gary Becker argued that free-market competition would solve for the legacy of slavery and Jim Crow. In a free market, he claimed, it was inefficient to discriminate, so any firm that discriminated by paying people of color too little, or refusing to sell to people of color, would soon be out-competed by a nondiscriminatory firm.

In reality, discrimination has proven to be very profitable—both before and after the civil rights movement. Prior to the housing crisis, mortgage lenders benefited from putting Black Americans into subprime loans at 2.4 times the rate than similarly situated white Americans (Badger 2013). Corporate consolidation has interacted with entrenched residential segregation to limit goods and services in communities where consumers are less able to pay monopoly prices. This has left neighborhoods of color with limited access to all kinds of goods and services, including basics like adequate grocery stores and high-speed internet (Ross 2018; Mabud and Seitz-Brown 2017). Meanwhile, free market competition for employees has not closed the wage gap, nor has competition policy as practiced today promoted the success of Black-owned businesses (Feldman 2017).

Export the Theory of the Firm Abroad

Like any missionary, the evangelical free-marketers exported their ideology abroad. New international rules promoted through bilateral and multilateral deals signed over the last several decades have served to further shift power to large firms and capital holders at the expense of workers, communities, and taxpayers. In recent decades, trade deals have been as much about protecting capital internationally as reducing barriers for trade in goods and services. Again, operating from the assumption that the profits of multinational firms or international investors would be shared broadly with American workers and consumers, policymakers built a web of institutions to protect international flows of capital, including direct investment, intellectual property, and cash flows.

Policymakers, for example, created a distinct set of judicial institutions to protect investors from democratic governments. The investor-state dispute settlement (ISDS) policy that triggered backlash against the Trans-Pacific Partnership (TPP) has been integral to trade agreements since the 1990s. In these private courts, investors can sue states that pass laws that might hurt their future profits (e.g., requiring cigarette companies to list the health effects of smoking on packaging). In effect, ISDS policy reduces the political risk that a foreign firm faces, thus incentivizing firms to relocate to countries with minimal legal protections but lower wages (Tucker 2018). Similarly, trade deals provide tools for firms to enforce intellectual property rights, which often means tracking and tracing the illegal production of knockoff goods—again reducing the risk for investors who want to pay lower wages in countries with less-developed legal systems.

Meanwhile, international agreements have failed to enforce tax collection, labor standards, environmental agreements, and more. As a result, for example, 40 percent of multinational profits today are shifted to tax havens each year (Tørsløv, Ludvig, and Zucman 2018), a fact that could be changed with aggressive international engagement. As they stand, existing rules not only allow, but in some cases also incentivize, the kind of wage theft, labor abuses, and tax arbitrage that undermine the previous social contract between the US and firms today.

PART 3
How the Rules Shape Businesses Today

A handful of distinct trends indicate that unconstrainted profit-seeking is not the welfare-enhancing elixir that free-marketers promised. The policies outlined above have failed American workers, consumers, communities, and our economy and society at large.

Forty years of channeling economic policy to promote the interests of capital has yielded record corporate profits, and executive compensation and shareholder payouts are rising to unprecedented levels. But a snapshot of current statistics shows that the benefits are not boosting overall economic performance, nor are they reaching everyday Americans.

- **Corporations are investing less in the kinds of things that grow the economy and create jobs**, including capital equipment, R&D, and workforce development. Since the 1980s, the trend line of business investment as a share of GDP has been declining (Furman 2016). Indeed, Roosevelt Fellow JW Mason (2015a) finds that, in the 1960s, an additional dollar of revenue or borrowing at a public firm was associated with roughly 40 cents of investment. Since the late 1980s, an additional dollar in cash is associated with just 10 cents of investment.

- **New business start-ups are declining, and new businesses are employing a smaller share of the population.** Between 1970 and 2011, the share of new businesses (i.e., those that are less than a year old) among firms dropped by half, and new firms have been forming at a lower rate and failing at a higher rate for the last 30 years (Konczal and Steinbaum 2016).

- **The rollback of regulatory tools used to combat structural economic barriers alongside the erosion of worker power have served to slow—and, in some cases, reverse—progress made toward providing Black Americans with the ability to fully participate in today's economy.** Free-market policies have reversed some of the successes of the '60s and '70s in reducing the enormous divide between the pay and wealth of white and Black Americans. The 2008 financial crisis was particularly brutal for Black Americans, who saw housing wealth evaporate. Today, the wealth gap between middle-income white Americans and middle-income Black Americans is higher than it was before the Great Recession (Kochhar and Cilluffo 2017.) While Black men in the Jim Crow south earned 40 percent less than white men for the same job in 1960, but twenty years later some progress had been made in reducing the gap to 25 percent less. (Card & Krueger 1992). Across the country, the wage gap has increased: Black men earned an average of 22.2 percent less than white men in 1979; by 2015, that gap had increased to 31 percent less, according to research from the Economic Policy Institute (Wilson and

Rodgers 2016). Additionally, Black college graduates entering the workforce are paid an average of 18 percent less than their similarly educated white counterparts.

- **Wages for all workers have been largely stagnant over the last 40 years.** Workers are increasingly taking home a smaller and smaller share of income across the economy. Today's historically low unemployment rate has not translated into large wage increases, which free-market theory would predict. Empirical evidence increasingly indicates what worker organizations have long known: The power of employers vis-à-vis employees is a key determinant of wages, and new research shows that powerful firms have monopolized wage-setting power. Researchers have found that at large corporations (with 10,000 or more employees), wages of the median employee fell by 7 percent between 1981 and 2013. Meanwhile, the top 90th percentile of employees saw wages rise 11 percent, with the CEO seeing an average increase of 137 percent (Song et al. 2018). Increases in consolidation are linked to clear declines in wages for employees. (Azar, Marinescu, and Steinbaum 2017).

  Firms have also deployed their power by outsourcing work thereby reducing their obligations to workers. The most profitable firms are turning more and more to subcontractors, in effect reducing the share of direct employees who can claim access to their spiking profits. A high-profit firm, Amazon for example, can keep profits relegated to a smaller number of highly paid employees by contracting key business functions, such as warehouse work or delivery, to less powerful firms. Amazon can bully warehouse firms into accepting tiny profit margins, and the warehouse managers can then squeeze warehouse workers to boost the bottom line. By outsourcing jobs, research (Song et al. 2018) finds that firms are increasingly divided into high-profit firms (with high-paid employees) and low-profit firms (with low-paid employees). This trend is consistent with the fissuring of the workplace, where low-paid subcontractors do work once done in-house, allowing the so-called "super firms" to not only reduce financial obligations for worker benefits and safety but also reduce the pay of these workers—even as they remain under the economic control of those super-firms, despite their legal employment status as a contractor.

Private power is undermining our economy, democracy, and society. Disciplined by activist investors and pay packages linked to stock performance, CEOs and managers have united corporate and financial interests to focus on getting funds out of the company, as opposed to growing business. Pursing short-term profits, managers are willing to cut longer-term, expendable, or risky investments, ultimately reducing R&D, trimming workforce investments in training or even safety, and skipping capital investment. Reduced regulation and enhanced globalization create new avenues for profit seeking—including tax avoidance and mergers and acquisitions, for example. Technology-fueled network effects and hollowed out antitrust enforcement allow today's platform giants to employ their power throughout the supply chain to squeeze consumers and suppliers and buy out or significantly undermine competitors. Firms then don't need to compete or invest and innovate to remain profitable. Limited corporate investment, along with declining small business startups, means that the traditional generators of job growth are sputtering.

Workers are increasingly seen as a cost that can be squeezed, as opposed to an investment that can help grow the firm. As firms have new incentives to reduce labor costs, workers have been further disempowered by low-pressure monetary and fiscal policy alongside long-standing attacks on unions. Workers are not only earning less, they have less job security because employers are increasingly distancing themselves from the legal obligations they used to have to their employees, ranging from basic worker protections, such as minimum wage to overtime laws. While platform workers like Uber and Lyft drivers are the focus of increased attention in the "new economy," these trends are affecting workers as wide ranging as truckers, careworkers, and food service workers. The lack of employer accountability to their employees has real consequences.

PART 4
Deploying Public Power to Reset the Terms of Our Economy

To lay a foundation for the kind of private enterprise that supports workers, small businesses, and broadly shared prosperity, we must deploy public power and restructure markets. Government—which is currently much maligned in the free-market theory of the firm—is always structuring the behavior of firms. The way we deploy this public power today is on behalf of large firms and capital, but we can instead deploy public power to serve public goals.

At its best, government is how we come together to decide what those goals are. Here, we focus mostly on economic goals, such as incentivizing productive investment, broader distribution of wealth, and long-term economic success.

The idea that we structure markets through policy and politics is nothing new. We used to allow people to enslave other people for profit and firms to employ young children for profit, and drug companies today still market opioids as nonaddictive for profit. As a country, we have made decisions that make clear that certain profit-seeking activities are off limits from just law and enforcement. We also made decisions that certain profit-seeking activities require oversight. Rather than letting commercial banks fail when market speculation ran amok, we created the Federal Deposit Insurance Corporation (FDIC). Rather than letting railroad barons gouge farmers, we regulated them. Rather than letting monopolies control our economy, we split them up. We, as a society, decided to curb these activities because we understood and were explicit in saying that, though they were good for the profit-seekers, they were bad for the economy.

The following policies are necessary to create the equitable and inclusive economy we need.

Raise Tax Rates to Reduce the Incentive for Managers and Shareholders to Hoard Firm Income

This effort can and should start with raising taxes on the richest Americans and largest corporations—not simply to raise revenue, but rather to discourage the kinds of extractive practices that animate so much of our economy today. No one should get rich by ripping off workers, consumers, suppliers, or the government.

Raising the top marginal tax rates above the current 37 percent and taxing dividends at the same rate as regular income would not simply reduce the payouts to investors and CEOs; this exercise in public power would reduce their incentive to push for higher and higher payouts. Without CEOs and investors eager to disgorge profits into their own pockets, managers would have more cash—and more incentive—to invest in new plants and equipment or worker salaries, benefits, and training.

Throughout the 1950s, top tax rates sat at 90 percent, but tax rates need not rise that high to begin rebalancing bargaining power between those at the top of the firm and other stakeholders. Given the very real encouragement to strip cash from corporations, Piketty, Saez, and Stencheva (2014) calculate the optimal top tax rate to be 83 percent.

Raising the corporate tax rate would rectify the most recent showing of failed tax policy. Recent research by Lidia Brun and Ignacio Gonzalez (2018) show that when profits come from monopoly rents, higher corporate tax rates are critical to reducing those rents and incentivizing productive enterprise.

Use a Broader Suite of Tax Policies to Blunt the Shareholder-Maximization Strategies that Reduce Long-Term Investment

We know that CEOs are incentivized to manage with short-term share price in mind. Raising marginal tax rates would reduce the take-home pay for CEOs, reducing the return on strategies that boost stock prices by pennies while increasing CEO pay by billions. Normalizing capital gains tax rates and qualified dividend tax rates with income tax rates could reduce pressure from shareholders looking for short-term trades and payouts (Konczal, Mason, and Page-Hoongrajok 2015).

Reform Corporate Governance

Banning stock buybacks would immediately curb the ability of CEOs to artificially inflate short-term share prices, reverting our rules to the robust structure of the pre-1980s that regulated buybacks as market manipulation. While banning buybacks would stymie one tactic deployed to maximize shareholder profits, broader reform is required to encourage productive corporate investment. Demanding worker representation on boards, for instance, can provide for a stakeholder model and better balance the short-term interests of capital (Holmberg 2017). More concretely, corporate charters should explicitly state that corporate status is a privilege granted by the state and must be deployed in the interest of all stakeholders—employees, executives, consumers, and shareholders (Palladino 2018).

Reinvigorate Antitrust Enforcement

One of the primary failures of current economic policy is that near-term price hikes are the only criteria used to evaluate conduct or define mergers as anticompetitive, where a more comprehensive approach to competition policy would acknowledge the full range of consolidation's effects—including its effects on the quality of products and the availability of services, the ability of potential competitors to enter the market, innovation, and the welfare of workers. Legislators should amend existing statute to explicitly state that antitrust policy be guided by an "effective competition standard" as opposed to the consumer welfare standard, namely:

> *"Agencies and courts shall use the preservation of competitive market structures that protect individuals, purchasers, consumers, and producers; preserve opportunities for competitors; promote individual autonomy and well-being; and disperse private power as the principal objective of the federal antitrust laws" (Steinbaum and Stucke 2018).*

A new standard for antitrust would produce more competition and innovation, and a stronger labor market. Further, under a new standard, regulators can—and should—better combat abuses of market power. Determining access to the 21st century economy should not be in the hands of private interests who prioritize profits above the public good. Just as the U.S. once regulated the railroads to ensure that farmers across the country had equal access to markets, regulators today must ensure that small businesses, rural populations, and communities of color have equal access to the marketplace.

Promote International Cooperation on Taxes and Labor Rights

Rebalancing power between stakeholders in domestic markets must be supported by rebalancing power internationally. This does not mean retreating from global markets, but rather reshaping them. The U.S. can pursue international agreement and enforcement on tax policy, labor rights, and environmental policy with the same fervor that once drove our pursuit of enforcement of capital protections. By equalizing these standards across nations, America will reduce the kind of race to the bottom that has animated corporate accounting and investing here and abroad.

Empower Countervailing Forces: Support Workers, Consumers, and Small Businesses

In addition to reducing the control over our economy that large corporations and the wealthy hold, we must also support everyday Americans to ensure that they have agency over their own economic decisions and opportunities. On their own, well-functioning markets are not the single answer to the ails of the American economy. This means deploying public power to rein in corporations *and* boost the voice and power of average Americans. We must enact new labor laws to, for example, renew bargaining in the existing fissured economy.

The Second Blade of the Scissors

Direct public provision through re-distribution can also affect pre-distribution. Public provision of goods and services can help rebalance the power of worker and consumers vis-à-vis private providers. By serving as a floor for competition—public options for health care, internet, banking, college—provide more for less, and force the private sector to abandon extractive tactics like rent seeking or price gouging (Darity and Hamilton forthcoming).

Public investment in collective infrastructure—R&D, capital equipment, new jobs—needed to tackle today's most pressing challenges is essential to creating a growing, innovative economy—whether the private sector is investing or not. In our current low-investment environment—alongside the fact that some goods and services are too intrinsically valuable or too prone to predation to leave to the profit motive—public investment becomes more critical.

Finally, public power can deliver on public values: the aspects of society that we care about beyond economics. While evidence suggests that we can grow the economy and raise wages by addressing crucial issues like the emerging threat of climate change or entrenched inequality, economic value should not be the driving determinant of our choices to do so. Through public power, we can demonstrate what we value as a society. It's through public power that we, together, can tackle our nation's economic and social challenges.

CONCLUSION

The essential argument, in support of these progressive policies, is that government can and must play an active role in rebalancing power in our economy—ultimately, so that the private sector, our economy, and every American can thrive. This moment is not the first time that our country has witnessed the massive consolidation of wealth and power into a small number of hands. From the first Gilded Age, Americans learned that the outcomes of economic and cultural transition were not inevitable and unstoppable outgrowths of history. We established roles for state and federal lawmakers and regulators to shape markets, demanded equal access to infrastructure, and curbed the worst excesses of the financial sector.

We can again implement a progressive policy agenda that tackles the root causes of inequality and lay the foundation for a prosperous 100 years and more. Here, we seek not to return to the past, but to learn from its successes and build an equitable and sustainable economic future for all.

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