Introduction

Over the past year, Uber’s controversial corporate culture and practices raised questions about the firm’s long-term vision and sustainability. Despite the turmoil, however, Uber remains one of the most highly valued and influential enterprises in the world. Perhaps more than any other company, Uber has come to stand-in for the excesses and promise of 21st century capitalism. Uber drivers are the paragon of the new “gig economy,” where work is increasingly precarious, insecure, and yet highly optimized for both firms and end users. But Uber is not just indicative of a new way of organizing work. It also epitomizes a new form of the firm itself, from its relationship to its investors and driver-“partner” employees to its political presence as an active lobbyist and a studious cultivator of a pro-consumer image.

In the past, mega firms such as General Motors or General Electric employed and provided benefits for large workforces across a range of skill and income levels. The model midcentury industrial firm embodied with the philosopher Elizabeth Anderson described as a “nexus of reciprocal relationships” between the firm and its internal and external stakeholders (2015: 185). This model supported large workforces on permanent
employment contracts and concentrated power in the hands of managers whose goal was stable long-term growth. It was underwritten by “patient” capital (in Europe often provided by banks, in the United States by passive and dispersed shareholders) that allowed for the cultivation of long-term relationships and stable gains for all of the company’s stakeholders, including labor.

Uber, however, represents a very different model for investment and for the firm itself. In contrast to the stability of their predecessors, today’s mega companies are nimble and supremely opportunistic. These firms have a very light footprint when it comes to employment, offering permanent jobs to a relatively small number of high-end managers and engineers, and relying on a fluid army of contingent workers for everything else. Indeed, one of the more remarked upon aspects of 21st century capitalism is that the firms with the highest valuations are employee-light in the extreme.¹

Nor is this model limited to the online world of new tech platforms. As especially Davis (2016) and Weil (2014) have pointed out, many of today’s largest and most dynamic companies do not conform to the previous patient capitalism model but instead look more like a nexus of short-term contacts. Davis (2013; 2016) writes of the “Nikefication” of production, as lead firms have responded to shareholder pressures to focus on “core competencies” by spinning off all but the highest value-added operations, in the case of Nike outsourcing virtually everything but the design functions. Weil (2014) similarly points to the trend toward what he calls the “fissured workplace,” as firms construct extensive networks of subcontracting and franchising that allow them to streamline operations and cut

¹ Airbnb, for example, has a valuation of over $30bn but employs under 3,000 workers.
costs, particularly labor costs, by avoiding the responsibilities once attached to the standard employment relationship. These firms are better defined as *networked firms*—firms that centralize control over a wider ecosystem of workers and subsidiaries through strategies like platformizing, outsourcing, and fissuring, and using this control over key linchpins of the sector to extract greater returns.

This article explores the changing nature of 21st century capitalism with an emphasis on illuminating the political and institutional conditions that support and sustain it. Most of the existing literature attributes the changing nature of the firm to developments in markets (especially capital markets) and technology (see, especially, Boix 2018). By contrast, we underscore the political forces that have driven the transformation of the 20th century consolidated firm into the networked firm. Moreover, by situating the United States in a comparative perspective, we highlight the distinctive ways in which US political-economic institutions have facilitated this transformation and exacerbated the inequalities with which it has been associated.

The analysis is organized into three parts. We begin in Part I by drawing on different strands of the existing literature to provide a sketch of the key trends—financialization and fissurization—and show how they have reshuffled power relations among firms, investors, labor, and consumers. We argue that these trends have promoted the emergence of a new alliance between firms and powerful investors behind a wholly new model of patient capital that is aimed not, as before, at steady growth and shared prosperity but instead at winner-take-all market strategies (see also Kenney and Zysman 2016). Crucially, the resulting new concentrations of corporate power are consolidated and rationalized under the banner of
serving consumer interests. In this way, consumers are enlisted – either explicitly or, more often, implicitly -- in a political alliance against labor.

In Part II we explain why the United States has emerged at the forefront of these developments. The American lead in pioneering the new corporate forms associated with the networked and platform economies is often attributed to the country’s superior capacity for technological innovation or large domestic market that allows mega firms to grow. Without denying the contributions of these factors, this paper offers a more political account that draws attention to three features of the American political economy that provide an especially congenial political-economic context in which networked firms based on these investor-consumer alliances have been able to flourish.

First, the organizational landscape in the US features an unusually weak labor movement, alongside business associations that are heavily oriented toward finance. Second, the US political economy is characterized by a legal institutional regime that, from labor law to antitrust law, has proven particularly vulnerable to efforts by firms to shed labor costs and enlist consumers as allies in the drive for market consolidation and concentration. Third, the fusion of investor and consumer interests driving the rise of the networked firm has been able to exploit the fragmented policy landscape in the US, marked by decentralization and overlapping jurisdictions on the one hand, and significant gaps and frictions among federal regulators on the other. Thus, while the transformations of the firm described in this paper are not unique to the US, we suggest that features of the American political economy have made it particularly vulnerable to an extreme manifestation of these transformations.
Finally, after theorizing these transformations and their drivers, in Part III we suggest some avenues for possible responses. In particular, we highlight the ways in which new approaches to regulatory institutional change and labor organizing will be essential to modernizing the restraints on corporate power in ways that can respond to the rise of the networked firm.

I. Network power: from financialization and fissurization to concentration and consolidation

The 20th century social contract rested on an ideal typical conception of the consolidated firm, in the mode of General Motors or Ford. These firms were vast entities that employed tens of thousands of mostly unionized workers. They provided extensive benefits such as healthcare and pensions, and featured internal career ladders that offered pathways for upward mobility within the firm. Furthermore, these corporate entities were visible, powerful, and well regulated in close relationships with the modern federal regulatory state. Indeed, in the US specifically, the New Deal era social contract essentially deputized these vertically-integrated firms to serve broader goals of achieving an inclusive economy, channeling investment in productive ways, and serving as conduits for safety net benefits (Lichtenstein 2017: 333-36). Meanwhile, important background regulations such as antitrust laws and financial regulations prevented these firms from growing too big, or from diverting too much of their economic wealth into private rents or returns. In this way, the consolidated firm became a key vehicle through which the United States “improvised” a robust social
contract even in the absence of a European style social democratic political economy (Gerstle 2015).

However, as especially Davis (2015) and Weil (2017) have emphasized, this ideal type no longer represents the dynamics of 21st century firms. Today’s economy is marked by a very different ideal typical image of the firm as a networked entity, comprised of a complex set of interrelationships between lead brand firms and downstream counterparts supplying labor, as well as upstream counterparts providing funds and investment. These authors point to two processes that have jointly transformed the nature of the firm in the 21st century – financialization and fissurization.

The first of these, financialization, is closely associated with the shareholder value “revolution” beginning in the 1980s. The 20th century firm had concentrated authority in the top executives, with ownership dispersed across a large number of passive shareholders (Davis 2015: 395). Indeed, the idea of shareholders ceding authority to publicly minded firm managers was a central part of the early twentieth century theory of the firm. As early as the 1930s, legal scholars noted that diffuse and decentralized ownership empowered managers to act on behalf of the shareholders who took responsibility for the long-term interests of the corporation.

However, by the late 20th century a new “shareholder value” model of the firm had overtaken the previous management-dominated ideal (Davis 2016, esp. ch. 5). Many scholars and corporate law practitioners saw the new emphasis on shareholder voice as a way to promote efficiency and accelerate growth by subjecting firms more directly to the disciplining power of shareholders and the threat of mergers, acquisitions, and hostile
takeovers by rival investors (See e.g. Hansmann and Kraakman 2001, Bainbridge 2006, Bebchuck 2005, Stout 2012). In practice, the assertion of shareholder power accelerated with the rise of institutional investors, particularly financial interests ranging from pension funds to private equity funds. These organized and moneyed investor groups exerted intense and coordinated pressure on managers, punishing public firms for engaging in longer-term investments at the expense of short term returns (see also Foroohar 2016: 133-7; Dobbin and Zorn 2005; Weil 46-8; Stout 2013).2

Davis emphasizes that the changing terms of corporate finance drove a radical dismantling of consolidated conglomerates as firms turned to strategies of what he calls “Nikefication,” the radical slimming down to only the highest value-added segments of the production chain. The paradoxical result, he argues, has been a stunning reversal: whereas the twentieth century firm was characterized by concentrated control over assets (large capital-intensive facilities) but dispersed ownership (across mostly passive shareholders), increasingly, aggressive outsourcing resulted in dispersed control over assets (production facilities) even as ownership became increasingly concentrated in a few powerful financial institutions. Such radically streamlined enterprises now require less in the way of capital, which has also allowed company founders to forgo IPOs and rely on dual class voting rights to maintain tight control of their companies (Davis 2015).3

---

2 This emphasis on institutional investor returns also owed much to policy changes such as a shift in the tax code in the 1990s that encouraged firms to tie executive compensation to stock performance through issuing of stock options, fueling large increases in CEO pay (Dobbin and Zorn 2005).

3 This is how Davis explains the dramatic decline of the publicly traded American corporation. The number of public companies has dropped by over 50% since 1997 (Davis 2016: 502). There has been a similar drop in Europe, albeit from much lower levels (The Economist, April 22, 2017; Ritter 2013). The public companies that remain are themselves splitting up or buying back shares, while fewer new companies are going public (Davis 2016: 503). Furthermore, dual-class voting rights, where investors have severely limited influence on
In this way, the shareholder revolution fueled the emergence of what David Weil (2014) has called "the fissured workplace." This term refers to the extensive use by a growing number of firms of outsourcing and subcontracting in an effort to minimize labor costs and maximize flexibility in responding to changes in the market. These strategies have been associated with the widespread decline of "standard" employment – i.e., full-time, open-ended contracts attached to a package of benefits. Firms facing relentless pressure to focus on "core competencies" and deliver returns to their investors dismantled the traditional corporation, a trend that began with the outsourcing of peripheral support functions such as janitorial and food services. However, especially in industries like retail, apparel manufacture, or restaurant work, companies also proceeded to outsource central elements of the production of their goods or services. Franchising arrangements are often motivated by similar goals since, like subcontracting, they allow firms to massively extend their reach without incurring the costs associated with having large numbers of workers on their own payrolls.

As Weil emphasizes, this radical dismantling of the large midcentury firm, while prompted by changes in capital markets and animated by the desire to shed labor costs, would not have been possible without the development of new technologies that lowered the costs of contracting and enabled detailed monitoring of partners according to strict standards set by the lead firm. In true Coasian form, as the transaction costs of monitoring partner firms and employees goes down, the incentive to contract out goes up. As Weil puts it,

owners and managers, are an increasingly common structure for investment in Silicon Valley, most notably in the case of Facebook and its IPO (Davis 2016: 506).
technological changes made it possible for lead firms to get the “best of both worlds,”
allowing them to slash labor costs and escape regulatory oversight while at the same time
exercising enormous power and control throughout their networks of outsourced, franchised,
or contracted-out labor, production, and manufacture (Weil 2016, esp. chs 5-7).

This fissuring of the workplace has dramatically shifted the corporate landscape. A
recent study revealed that five of the top twenty global employers in 2017 are now so-called
“workforce solution” companies that do not produce anything at all, but instead simply
supply outsourced labor to other companies on an on-demand basis (Weber 2017).
Widespread fissurization has thus broken up what had been robust internal labor markets
within large firms that allowed for upward mobility, with a range of different income levels
and jobs within the firm. Crucially, fissurization has also involved substituting full-time
employment (with benefits) for temporary or insecure forms of work, as lead firms are no
longer responsible for healthcare or pension costs of franchisees or outsourced or temp
labor.

Centralization and Consolidation of Network Power

Davis suggests that the power of the new “Nikefied” firm, while formidable, is also
ultimately fragile and fleeting. The break-up of large corporations into discrete parts and the
growing tendency to outsource rather than build productive capacity, he argues, fuels a new
instability, where even today’s most formidable firms (Amazon, Google) can be successfully
challenged by tomorrow’s new ‘pop up’ enterprises (Davis, 2015: 409-413).
Davis’s argument reflects a market-based perspective that emphasizes low start-up costs. Viewed through a more political lens, however, the networked firm also generates powerful stakeholders with every incentive to defend and extend the power they wield. We see three sources of durability: the patient investors who fund these new operations, the upstream and downstream operations that both reflect and anchor the power of these companies, and the consumers whose loyalty these enterprises cultivate. We touch on each of these in turn.

First, the modern financialized firm does not just represent a different way of financing firms, it also represents a significant shift in the kinds of shareholders that dominate corporate governance today. The types of institutional investors that stand behind the most powerful firms today are committed not, as before, to the pursuit of short-term profits, but rather to the longer term project of consolidating market domination. For example, Uber has famously been operating in the red for several years now and Amazon barely posts profits most quarters, yet investors appear completely unfazed.4 Why? Because the name of the game in today’s market, is not – as is was in the 1970s – to strive for stable, steady growth, but instead to capture whole markets and achieve monopoly power even if in the short- to medium-run that means absorbing losses year in and year out.5 As Langley and Leyshon emphasize with reference to platforms like Google and Facebook, scale is crucial

---

5 The new business model has inspired a search for new arrangements that can fit these longer time horizons, e.g., the idea of a Long-Term Stock Exchange (LTSE) currently spearheaded by the Silicon Valley entrepreneur Eric Ries. The core concept is to “create an exchange that is focused on the needs of companies with a long-term vision and investors who are similarly aligned” (NYT September 18, 2017 https://www.nytimes.com/2017/09/18/business/dealbook/ipo-chamath-palihapitiya.html?smprod=nytcore-ipad&smid=nytcore-ipad-share&_r=0)
“to [their] capacity to cultivate and capture value” and investors are key allies in the “battle for market supremacy” (2016: 22, 31; see also Kurz 2017).\footnote{Kurz notes that this is particularly true for the IT industry. His study shows an increase in monopoly wealth (defined as the component of stock values attributable to monopoly control as a share of total stock market value) has risen sharply since 1985. Nine of the 10 firms with the largest share of monopoly wealth are in IT related industries (Kurz 2017).}

Thus, the financial interests behind these companies are capable of—and regularly demonstrate—enormous patience relative to the relentless quarterly demands of the old shareholder value model. Crucially, however, this is not the kind of patience on which coordinated capitalism rested and that in Europe traditionally was exercised in the interests of firm stakeholders broadly defined (see e.g., Hall and Soskice 2001). Quite the contrary: these developments represent a concentration of control in the interest of owners and investors pursuing winner-take-all returns (see also Kenney and Zysman 2016).\footnote{Referring again to platform-based firms in the IT sector, Kurz (2017) notes: “many platforms by their nature prove to be winner-take-all markets in which only one or two companies survive, and the platform owner is able to appropriate a generous portion of the entire value created by all the users on the platform.”} As a result, competition in developed platform markets often winds up being highly oligopolistic, and characterized by very high barriers to entry (Söderqvist 2016; Rocher and Tirole 2003; Hagui and Wright 2015; “Business in America,” 2016).

In short, backed by powerful and patient investors, the networked firms of the 21st century have been able to consolidate and concentrate power in ways that signal durability not fragility. Once Amazon had established its dominance in the book industry, investors did not press for short-term profits, but instead underwrote the company’s drive to use its considerable first mover advantages to expand aggressively including into a range of related markets (e.g., logistics). As Kurz notes, “once an innovative firm establishes platform
dominance, size becomes an advantage… [and the] cost and economies-of-scale advantages are almost impossible for competitors to overcome.” Even if no single firm achieves monopoly control, still “a strong oligopoly might inhibit, or sharply constrain, further entrepreneurial efforts” (Kurz 2017; also Duhigg 2018). 8

The most successful networked firms also demonstrate enormous capacity to anticipate and absorb potential competitors, sometimes to extend their own capacities and sometimes just to quash a potential threat (Kurz 2017; Duhigg 2018). Furthermore, the rise of institutional investors has also helped create a pattern of “horizontal shareholding” where the same investors own major stakes in competing firms, such as rival airlines. The result is an empirical pattern of anticompetitive behavior as the investor interests use their concentrated power to manipulate the actions of formally and legally independent firms to maximize returns (see Elhauge 2016).

Second, the power of these firms is not just anchored in the investors behind them; it derives as well from all the interests connected to them and over whom they exercise “infrastructural power” (Rahman 2016). The idea that the networked firm might concentrate power is in some sense paradoxical. The very idea of a slimmed-down networked or platformized firm itself implies a smaller legal footprint. Moreover, a firm that contracts out for most of its downstream labor, and that interacts with shareholders and investors for its capital, might appear to be tightly constrained by these many contractual relationships. In practice, however, the dynamics of fissuring and financialization leverage the flexibility and

---

8 Moreover, for platforms that derive power from the information they gather on users, “their positions are enhanced by their ability to use their customers’ private information as a strategic asset…” (Kurz 2017).
apparent efficiency of the networked firm to create new concentrations of power that are simply more hidden—and as we will see below, more difficult to contest and regulate—than the powers exercised by the consolidated mega firms of the 20th century.

Thus for example, Silicon Valley platform firms like Amazon or Uber exercise enormous power both upstream and downstream: they are the primary interface for consumers accessing retail or taxi services, and this platform dominance in turn gives them tremendous power over producers, workers, and other partners who all depend on the platform for access to consumer dollars (Khan 2017; Rahman 2016). Some of these firms increasingly dominate whole supply-chains by securing control over the critical node in the flow of commerce: retailers cannot survive unless they work through Amazon; content creators cannot survive unless they flow through Google or Facebook (Khan 2017; Pasquale 2015).

Third, this concentration of power is rationalized and defended under the banner of serving consumer interests. For many of today’s most powerful networked firms, it is their ability to deliver lower prices and more seamless consumer experiences that generates market share and revenue, which in turn yields investor returns. Because many of these price and convenience advantages are won through the flexible arrangements described above, concentrated platform power in effect sanctifies the subordination and increasing precarity of producers and workers by delivering for the modern consumer. This emphasis on the consumer is a source of durability to the extent that it helps legitimize the networked firm as a business model; it often plays a central role in the rhetorical arguments these firms advance when pressuring regulators to give them more leeway.
The centrality of consumers in abetting and shoring up platform power in the market is critically important to the business model. Where firms can cultivate a powerful consumer-owner alliance against labor, the latter is reduced to an unwelcome “cost factor” to be minimized. Loyal (in some cases more or less captive) consumers are enlisted (albeit often passively and unwittingly) as vital political allies in battles with government officials at all levels. Uber pioneered and perfected the strategy of using its app to mobilize consumers and apply pressure on politicians through social media campaigns. The most famous example was the “De Blasio” app, named for the New York City mayor who proposed limiting the number of Ubers. The company responded by adding a tab to its app through which users could register their disapproval to the city government with the push of a button. As Collier, Dubal, and Carter emphasize, Uber channels the way in which the preferences of “the public” are presented through the aggressive use of social media, “solving” consumers’ collective action problems while also controlling the message they send to policy makers (2017: 3).

In short, the strategies of these companies represent a powerful fusion of the financial powers of their investors and the political clout of the user base they carefully cultivate. This combination of interests is rhetorically and politically powerful, allowing these firms to portray themselves as defending consumers against “stifling” regulation in the interest of efficiency, innovation, and consumer choice. The concentrated power of the networked firm is especially potent because these business and investor interests are adept

---

9 because of high switching costs,

10 The company is deploying the same strategy in London to put pressure on that city’s mayor as well (https://www.change.org/p/save-your-uber-in-london-sav eyouruber).
not just at reading the market but also at navigating the policy landscape and overcoming countervailing pressures from labor and other stakeholder constituencies.

II. Facilitating the rise of the networked firm: The US in Comparative Perspective

One of the core challenges posed by the rise of the networked firm is the fundamental mismatch between these new corporate forms and the regulatory apparatus inherited from the previous industrial era. A key aspect of the consolidated firm was their position in the social contract: these firms were well-regulated, unionized, large employers, who became de facto conduits for much of the American safety net including employment-based pension and healthcare benefits (see Lichtenstein 2017; Gerstle 2015). By contrast, the networked firm thrives on the gaps in the regulatory landscape, especially in the United States (Hacker, Pierson and Thelen 2015).

Today’s most dynamic and successful firms have exploited this mismatch by moving aggressively into legal gray zones -- pushing the bounds of existing rules and creating wholly new markets beyond the reach of current policies. Amazon, for example, was able to establish early dominance in the book industry and now in the broader retail sector in part by constructing its business before state, local, and federal officials had developed approaches to internet commerce. Some firms have pursued even more brazen and open strategies of defying the law altogether. Uber famously launched operations across the globe that flagrantly ignored existing transit and taxi regulations, daring cities to confront them (Thelen
Pollman and Barry (2017) coined the term “regulatory entrepreneurship” to characterize strategies in which firms engage in activities in which the relevant laws are “unclear, unfavorable, or even prohibit the activity outright” (2017: 384). As they point out, for regulatory entrepreneurs, challenging and ultimately changing the law is not just desirable, it is “a material part of [the] business plan” (2017: 385). These gray zones, crucially, arise not only because of new technologies not yet regulated by government agencies; they also arise through the strategic exploitation of the edges of labor, financial, and other economic regulations (see e.g. Weil).

The US is not uniquely open to such strategies, but we know that the power of organized interests is enhanced in contexts such as the US where political institutions are biased against regulatory updating and where business interests in particular – with their long time horizons, vast financial and legal resources, and extensive organizational reach – can outmaneuver their political counterparts (Hacker, Pierson, Thelen 2015). Here we argue that three features of the American political economy actively encourage the favored strategies of networked firms and amplify their effects. First, the US has an especially weak labor movement and one that confronts a heavily financialized and politically influential business lobby. Second, the prevailing legal regime actively facilitates the formation of a robust consumer-investor alliance against labor. Third, a fragmented policymaking landscape slows down governmental response and invites regulatory arbitrage and forum shopping by firms. This landscape makes it more difficult for countervailing interests

11 Amit Tzur’s study of the 40 largest cities in the US shows that all but three of them accommodated transportation network companies such as Uber either by changing unfavorable laws or failing to enforce those still on the books (Tzur 2017).
(including “the state”) to mount a coordinated response to limit the inequality-increasing, power-concentrating effects of the networked firm.

Organized interests

American employers are not the only ones in the rich democracies engaged in fissurization strategies. European employers too have moved aggressively to cut labor costs, slimming their workforces by outsourcing functions and employing temps and contract workers, ostensibly to cover periods of peak demand but in the meantime as a matter of course. At some level, the prodigious reliance of German auto manufacturers on temporary workers is no different from current practice among many US automakers.\(^{12}\) Moreover, and again as in the United States, contingent work is even more prevalent in the growing service sector than in manufacturing. Some of the most precarious forms of employment in Europe are similar to those found in the United States – e.g., “bogus” self-employment, mini-jobs, and so-called zero-hours contracts (in which employees are on-call for immediate deployment, and often formally entitled to decline work but *de facto* under pressure to accept). And finally, what is also certainly true in both the US and abroad is that atypical, contingent workers are overall less likely to be organized in the unions.

Despite the obvious parallels, however, features of the organized interest landscape in the US actively invite and support fissurization and heighten precarity among contingent workers. First, while *union membership* is in decline everywhere, the situation of US unions

---

\(^{12}\) Temps make up 10% of the total workforce at the Mercedes Benz factory in Wörth, and close to 30% at another facility. This is not so different from Nissan in Canton, Mississippi, which also relies heavily on contract workers who earn lower wages than regular employees do (Thelen 2014: 51).
is particularly tenuous. Union density in the US was already lower than all other rich democracies save France, and has declined further as a result of the deliberate dismantling of organized labor’s rights over the past several years. The most recent figures put organization rates in the US at around 10% -- and just 6% for the private sector.13 Moreover, the gap between Europe and the US is even greater if we focus on collective bargaining coverage – i.e., the share of workers who are covered by union contracts. In the US, collective bargaining coverage rates are almost identical to union density rates because unions only enjoy the right to represent workers in workplaces where they secure majority support for such representation. This is very different from most of Europe (including France), where state policy or employer organization (or both) promote and extend collective labor representation.14 Thus, in Europe, collective bargaining coverage typically exceeds – sometimes far exceeds—union density rates. While just 10 percent of full time workers in the US (including public sector) are covered by union contracts, coverage rates in most of Western Europe typically lie somewhere between 50 and 95%.15

Second, the character of organized business interests is also important to the success of the networked firm. While the New Deal faced stiff opposition from business interests in

13 https://www.bls.gov/news.release/union2.nr0.htm
14 The way in which the rules governing collective representation bolster unions and/or collective representation varies cross nationally, but some of the relevant measures include: (a) the so-called Ghent system in which unemployment insurance is administered by unions (and eligibility for benefits is tied to union membership), (b) extension clauses through which governments extend the terms of agreements negotiated in the unionized sector to nonunion firms and workers as well, (c) statutory requirements for collective labor representation (e.g., works councils), and (d) collective bargaining laws that encourage multi-employer bargaining in a variety of ways.
15 The coverage rate in Switzerland is just below 50%. Japan, the UK, and Canada have coverage rates below 50% but in all cases still above the level in the US. The most comprehensive database is Jelle Visser’s (http://www.uva-aias.net/en/ictwss).
the early twentieth century, for much of the mid-century, the political posture of big business was one of accommodation, operating within the New Deal political economy (Mitzruchi 2013). However, trade organizations such as the Business Roundtable, which originally was a bipartisan network dominated by large manufacturing firms, came to be dominated by new interests over the 1980s, and pivoted to focus on deregulation and, increasingly, on narrow interests such as executive pay (Hacker and Pierson 2016: 202-210). Meanwhile, the Chamber of Commerce underwent an intense radicalization. Representing as it once did a highly diverse mix of small, medium, and large enterprises, the Chamber historically had sought to avoid taking controversial political stances. Since 1997, however, the Chamber has evolved under Thomas Donahue into an intensely partisan organization dominated by big business (Hacker and Pierson 2016: 210-220).

Equally if not more important, however, is the content of the business community’s political advocacy, which came increasingly to reflect the interests of finance. Greta Krippner (2011) has documented the growing importance of financial activities in the American political economy since the 1980s.16 Firms outside the financial sector also often shifted their internal profit-making strategies to emphasize the kinds of business practices that had given rise to the networked firm. Thus, even classic mid-century concentrated firms like Ford, General Motors, General Electric and Sears turned to financial products as an increasingly important source of profit (Krippner 2011, Foroohar 2016). This change in

---

16 Financial interests are also themselves organized into the Financial Services Roundtable, which includes the country’s largest financial services companies.
economic model also altered the culture of business leaders, as they increasingly came from MBA programs with an explicit finance-oriented view of business (Id).

These trends have advanced much further in the US than in other rich democracies. By most measures, the level of financialization is higher in the US than in most European countries, except for the Netherlands and, by some measures, the UK (Engelen et al., 2010). While Europe has not been immune to the shareholder value revolution, most CMEs continue to exhibit a stronger continued commitment to industry. Despite declining employment in manufacturing, industrial interests generally remain extremely influential in the political economy, in some cases (e.g., Germany) bordering on hegemonic. Stronger traditions of family ownership in some of Europe’s CMEs (alongside strong social partnership and unions) have also kept many companies more committed than their American counterparts to the traditional long-term time horizons characteristic of the mid-century firm.

In the US, meanwhile, economic concentration and merger activity increased over the late twentieth and early twenty-first century, including in the “offline” sectors outside of Silicon Valley (Economist 2016; Furman 2016). These trends underscore how business models as a whole largely shifted as employers came to see the best opportunities for returns as coming from strategies of platformization, monopolization, and financialization.

---

17 In the Netherlands, the collapse of manufacturing in the 1960s and 1970s brought a turn back to the country’s historic strengths in trade and finance (see Thelen forthcoming (b)).
18 Examples include the Swedish Wallenberg family and the vast German Mittelstand.
Permissive legal regime

Beyond these characteristics of the organized interest group landscape, central features of the American legal regime—in particular labor and antitrust laws—also make the US singularly fertile terrain for the networked firm to grow and thrive. The uncommonly restrictive effects of prevailing labor law in the US exacerbate fissurization and online-based employment models (Rogers 2016; Miller and Bernstein 2017), while the American system of “adversarial legalism” (Kagan 2001) allows for widespread violations of employment law.

As Kate Andrias argues, the core arrangements for organizing and representing workers that were established in the 1930s under the National Labor Relations Act (NLRA) are completely mismatched to current economic and firm structures (2016: 28). Unlike in Europe, the NLRA forces unions to organize each individual workplace one at a time (2016: 25, 28). However, as we have seen, this model bears almost no resemblance to the 21st century firm, with its sprawling networks of subcontractors and franchises and few direct employees. Moreover, US labor law makes it impossible to organize some categories of workers altogether. This applies especially to some of the most vulnerable groups—domestic (e.g., care) workers and agricultural laborers—that were expressly excluded from collective bargaining arrangements under the NLRA.19 The same thing goes for independent contractors, a category that is increasingly deployed not just by platform companies like Uber but also offline services like FedEx, in order to escape the costs

---

19 As a result of a union campaign, however, home health care workers in some jurisdictions are now treated as state employees (Andrias 2016: 42).
associated with direct employment. Independent contractors in the US are not just barred from engaging in union bargaining under existing labor law, current antitrust law treats collective action by these groups as a form of collusion.

Weak societal defenses create ample openings for aggressive, highly-resourced firms to engage in the types of regulatory entrepreneurship that Pollman and Barry describe, including outright violations of collective bargaining and employment law. Union organizers seeking relief from unfair labor practices in the context of organizing drives can expect the process to drag on for almost two years while the company continues operations as usual. Moreover, employment law relies on individual workers who experience harm to bring lawsuits against their companies (and in the case of cases concerning unfair dismissal, while unemployed or looking for work). Given the vast difference in the resources – financial and legal – between firms and individuals, this translates into weak enforcement, long lags, and often trivial penalties. It thus comes as no surprise that “enforcement of employment law is lax and violations are rampant, particularly in the fissured workplace” (Andrias 2017: 39).

American antitrust law also supports the strategies of the new networked firm. In theory, antitrust law exists to prevent concentrations of market power of the sort that, say, Amazon has secured over the larger retail landscape. Yet at the same time that the

---

20 The new tax law in the US provides incentives for employees to agree to reclassification as independent contractors.
21 This has given rise to the perverse situation in which Uber – which exercises near monopoly control of local transportation sectors in many municipalities -- is untouched by antitrust rules, while its drivers are currently fighting a legal challenge brought by the Seattle Chamber of Commerce for anti-competitive behavior.
22 The average length of time between the filing of an unfair labor practices charge and an NLRB order is around 500 days (Andrias 2016: 26).
shareholder revolution was making possible the rise of financial and investor interests in altering the culture and practices of the modern firm, a similar revolution was underway in antitrust law theory and practice. A growing number of scholars came to view the antitrust regime primarily through the lens of consumer welfare, arguing that so long as prices remained steady or even lower, concentrations of market control—especially through vertical rather than horizontal integration of firms—were efficient and “reasonable” under US antitrust law.

The movement had its center of gravity in the Chicago School and began in the late 1960s as part of a broader push back against what was seen as excessive government intervention in the area of antitrust. Robert Bork, who would go on to become Solicitor General under Ronald Reagan, launched an initial salvo in his dissent to the findings of the Johnson administration’s Task Force on Antitrust Doctrine. In this dissent, Bork argued that firm size and concentrated industry structures are often reflections of efficiency gains and thus serve consumer interests (Ergen and Kohl 2017: 9). Over the next decade, Bork’s views worked their way into the courts and antitrust bureaucracy before they were explicitly embraced in the new merger guidelines issued by the Reagan administration in 1982 (Khan 2017: 721). Since that time, consumer welfare represents the primary metric on which American antitrust enforcement depends (Khan 2017; see also Ergen and Kohl 2017).

Europe has so far declined to embrace the US’s consequentialist approach to antitrust, and continues instead to view market concentration per se as a threat to competition and efficiency. Coordinated market economies such as Germany, as a result, have essentially switched positions with the US on this issue. Historically, Germany had
taken a more permissive stance, actively countenancing cooperation between competitors as
an efficient way to nurture industry. The country’s cartels were dismantled after WWII, and
Germany modeled its own competition laws and institutions on the American system. Since
that time, however, the country has not taken the same turn as in the US toward an
increasingly consumerist approach, in part because the bureaucracy is more insulated from
political influence but also because the “law and economics” movement that flourished in
the American legal profession did not wield the same influence in Europe. The German
Cartel Office (Bundeskartellamt) thus continues to stress competition and to argue against
the “more economic approach” with the argument that it would be a mistake for this
approach to replace “the practice of antitrust enforcement in Germany that has been
developed and proven for decades” (Bundeskartellamt statement from 2001, quoted in Ergen

The EU, which has a more overtly deregulatory bias, has generally been more open
to the US approach. The Commission’s Directorate-General for Competition in fact
specifically advocated moving in this direction. However, these initiatives have typically
been watered down in the face of fierce resistance from legal intellectuals and antitrust
professionals (Ergen and Kohl 2017: 17). The current Danish Commissioner for
Competition, Margrethe Vestager, has established a strong reputation for aggressive
enforcement, and the case against Google is a reminder of the difference.

In short and again to a much greater extent than other rich democracies, antitrust law
in the US explicitly supports and entrenches the pervasive ideology of consumerism in the
US. Business interests have seized on these developments and grown increasingly
sophisticated at weaponizing consumers by invoking consumer interests and in some cases mobilizing their user base to legitimize many of the problematic business practices described above. Companies such as Amazon and Uber are vocal about their benefits for consumers in the form of better service and, at least for Amazon, lower prices. The appeal to consumers not only helps insulate these firms against potential antitrust enforcement (Khan 2017); it also creates a broader sense of social legitimacy, and even active political support for these companies against government regulation (Pollman and Barry 2017).

**Fragmented regulatory infrastructure**

A third feature of the American political economy that facilitates the rise of the networked firm is the highly fragmented nature of the US policymaking landscape. Both vertical fragmentation (decentralization) and horizontal gaps in regulatory jurisdictions complicate the task of regulating the networked firm.

Today’s mega-companies possess strategic capacity that dwarfs that of the fragmented US state, creating a power mismatch. Federalism figures especially prominently here, because jurisdictional fragmentation and cross-state competition for jobs allows firms to regime shop in the comfort of their own domestic market. Federalism allows firms to secure concessions from unions by provoking a deregulatory race to the bottom, and the corrosive impact of right-to-work legislation in the south on union organizing throughout the country is already well documented. Cross-state competition also gives firms leverage to extract concessions from state governments, as exemplified in the intense competition over
Tesla’s battery production facility and the frenzy Amazon set off when it announced plans to open a second headquarters.23

The American Legislative Exchange Council (ALEC) – an organization of business interests and conservative activists – has been able to exercise enormous influence in this regulatory space by developing model legislation to enact desired reforms at the state level that then diffuse (see especially Hertel-Fernandez 2016). These dynamics are magnified at the municipal level. Municipalities are even more resource-constrained than states are, and even more prone to a vicious race-to-the-bottom competition for scarce business investment (Peterson 1981). Furthermore, municipalities are also more constrained in their legal authority to regulate (see e.g. Frug and Barron). This creates a fertile landscape for networked firms to play cities off one another, to engage in forum-shopping and regulatory arbitrage, and in some cases to bully cities into accepting their presence and business models.

While European political economies are not immune to such strategies, they tend to be less congenial to them. EU rules seek to reduce jurisdictional competition, for example by prohibiting selective state aid to companies in an effort to gain advantage. There are exceptions but these must typically be approved by the Commission. Even in Europe’s federal systems, higher levels of coordination across states mean that such strategies do not succeed as well. In many ways, German federalism gives states more power than most other federal systems in Europe. However, there institutional arrangements such as financial

23 A similar competition for the new Toyota Mazda plant is already in full swing (https://www.wsj.com/articles/eleven-states-jockey-to-land-toyota-mazda-production-facility-1502226460).
equalization (that redistributes financial resources across states) and direct representation of state governments at the national level mitigate the impact of jurisdictional competition.

Beyond formal political institutions, the presence in CMEs of overarching national business or industry associations provides further safeguards against the negative impact of fragmentation. Disruptive market entrants with winner-take-all ambitions in some cases encounter stronger headwinds in Europe not just from unions but also from organized business interests. The case of Uber, for example, reveals that organized business is sometimes useful in warding off would-be monopolies. In the US, Uber was able to provoke competition across jurisdictions, playing on policy makers’ fears of appearing hostile to technology, prompting politicians across the political spectrum to rush to accommodate the company. By contrast, in Germany, national associations representing local taxi operators mounted a quick, coordinated response that interfered with Uber’s ability to recruit drivers and build up sufficient supply to drive prices down. In this context, the service failed to generate the cycle of increased supply (of drivers) and increased demand (by users) that in the United States had allowed the company to establish a powerful presence even under conditions of legal uncertainty.

The vertical fragmentation of authority in the American political economy is also mirrored at the horizontal level within the national government itself. While the US has many different regulatory agencies, there is often a gap between the jurisdictions, energies, and attentions of these actors. The networked firm can exploit these gaps. Thus, weak (and in some cases, openly permissive) securities regulation enforcement by financial regulators enabled the shift to the investor-primacy model as described above. The laxness of financial
regulators for much of the 1990s and early 2000s has been well documented and played a role in the financialization of the modern economy (Johnson and Kwak 2011). These financial regulators also rarely consider the downstream labor effects, which are primarily the concern of the Department of Labor. Until the Obama Administration, the DOL itself had largely failed to keep up with these transformations (Weil).

Some of this regulatory failure arises from regulatory capture as business interests have proven adept at influencing regulators, whether through direct political lobbying, or through more subtle forms of “cultural capture.” Agency personnel often share a common cultural and social background with business leaders, leading them to lean more favorably towards business interests (Kwak 2013). Moreover, even where regulators operate in good faith, their sheer lack of independent research and analytical capacity makes them dependent on industry for data, information, and basic tutoring in the complexities of modern financial and legal business arrangements. The resulting dependence creates more room for business to shape regulations to favor their interests (Awrey 2012; Weber 2012; Wagner 2010; Baxter 2011).

In sum, these features of the American political economy make it difficult to meet the challenges posed by new forms of corporate organization and power. Individually, any of these features would be problematic from the perspective of regulating these firms. But in combination, they are particularly debilitating. As we have seen, for many of today’s mega companies, the famous Facebook motto, “move fast and break things” means aggressively exploiting legal gray areas and in some cases flagrantly breaking the law as a matter of course. Backed by deep-pocketed investors, firms can often outlast their opponents – for
example, tying up labor advocates in protracted and expensive court battles – using this time to entrench themselves in the market, and then mobilize and weaponize their user base to pressure politicians to sanction their actions after the fact (Collier and Dubal 2017). By the time regulators and judges have caught up, these companies are often able to present themselves as too important, too popular, and too big to be undone (Pollman and Barry, 2017).

III. Countervailing power, regulation, and restraint on the networked firm

The rise of the networked firm thus owes much to the political power and influence of business and financial interests, evoking the support of consumerist ideals, and exploiting the weaknesses of the American political landscape. This diagnosis suggests that, from a political economy perspective, the task of responding to the inequalities and instabilities created by the shift to the networked model of the firm requires addressing the institutional and political features that create this disparity in power and influence in the first place. In the era of the 20th century consolidated firm, organized labor could be limited to bargaining with a particular employer, and regulators could divide jurisdictions based on the formal boundaries and types of businesses. But in the era of the networked firm, these approaches fall far short, since the legal boundaries of the firm now only represent a small fraction of the larger ecosystem of each networked firm.

The analysis in Part I of the nature of the networked firm and Part II of the political landscape enabling its rise together suggest three areas of focus for mounting a political response. First, regulatory actors themselves must develop approaches to policymaking and
enforcement that are tailored to the networked firm model. As noted in Part II, one of the ways in which the networked firm has secured greater returns at the expense of labor and other stakeholders is by exploiting ambiguities in the law, such as that surrounding worker classification. Other key elements of the networked firm’s strategy involve leveraging legal distinctions between corporate structures and securities regulations to facilitate the diffusion of ownership among investors, and shifting to outsourcing and contracted-out business models.

These strategies can be counteracted by more dynamic, and functional approaches to regulation. Thus, David Weil and other labor policy experts have advocated a shift to “strategic enforcement” that seeks to impose responsibility for labor violations not on the formal outsourced employer, who has very little power in the networked model of production, but rather on the lead brands themselves that are the central nodes of these business models. Similarly, financial regulators in the too-big-to-fail context have worked to develop policies that can be tailored to the changing nature of financial concentration, cutting across traditional fragmentations of financial regulatory jurisdictions and centralizing policymaking over states and cities. Similar developments could help mitigate the fragmented regulatory landscape.

Second, countervailing power, especially labor’s, will also have to evolve to operate across multiple domains, in a similarly networked mode. Indeed, one of the most important ways to roll back some of the problematic trends we have identified is to create new forms of 21st-century worker power, capable of advocating for workers in opposition to the modern business and finance lobbies. Achieving such expanded worker power, however,
will require much more than simply closing the loophole of employee misclassification by updating definitions of "employee" and "independent contractor." While this kind of legal update would certainly be useful, it would not address the underlying structural power disparity between employers and workers, particularly as employers would still retain the flexibility to define occupations strategically to exploit legal gaps and boundaries (Rogers 2016a; Zatz 2011).

Labor law scholars have noted that union organizing and collective bargaining under the National Labor Relations Act is weak partly because of the lack of adequate protections against employer resistance. There are, of course, proposals that might limit some of the abilities of employers to pressure workers, or make it easier for workers to form unions, for example through "card check" legislation. However, a deeper, more structural problem is that the NLRA was based on a traditional model of industrial work that is very distant from the norm in today’s fissured and service-oriented economy where workers are dispersed and more difficult to organize (Rogers 2016b; Sachs 2010; Estlund 2002). As Andrias puts it “the law is structured around an ideal – or imagined—labor market relationship that, for the most part, no longer exits (2016: 32-33). Thus, as several organizers and labor lawyers have suggested, given the transformations of the modern workplace a more radical reimagining of worker power is necessary.

In practice, the proliferation of new models of labor activism represent attempts to overcome the problems were have identified. Worker centers, for example, organize workers not around any particular employer or workplace, but rather as members of a shared minority group, or as residents of a local community, or employed across a broadly similar
industry, such as restaurant workers, domestic workers, or guest workers. Groups such as the National Domestic Workers Alliance, and campaigns like Justice for Janitors have been the forerunners of major worker mobilizations around the push for a $15 minimum wage that has gained success in recent years (see Rolf 2016).

More effective worker organizing building on these innovations, however, would require more far-reaching structural legal change. Eliminating the prohibition on secondary boycotts, for example, would make it easier for workers to form a wider range of representative organizations rather than being locked into a particular exclusive bargaining unit (Rogers 2016b). Furthermore, labor law would need to shift from a focus on workplace-based organizing that centers on the immediate demands of a particular group of workers toward more sector-based organizing that engages in a wider range of social demands that might extend well beyond wages and worker standards (Andrias 2016).

These efforts would create a more dynamic worker movement that is itself organized across different sectors and workplaces and thus can better pressure networked firms. Furthermore, many of these new organizing efforts are experimenting with ways to target their advocacy efforts on the key nodes that exert the most power in the networked firm. For example, as part of the larger Fight for 15 minimum wage campaign, restaurant workers directed their efforts at the key corporate owners and financial investors behind major restaurant chains, rather than the individual restaurants themselves. These initiatives underscore that, in an era of the networked firm, countervailing labor power will have to focus not just on questions of wages and benefits, but rather on efforts to rein in the key
concentrations of power that enable the networked firm to exercise such widespread influence on workers in the first place.

Third, responding to the power and influence of the networked firm requires shifting the coalitional and political economic dynamics that have given rise to these new forms of corporate organization and power. As noted above, the confluence of investor interests on the one hand and consumerist interests and values on the other has proved to be a powerful political force helping legitimize and drive the rise of the networked firm. Left out of this coalition are the interests of producers and workers. But this is not the only way to organize coalitions in 21st century capitalism. We could imagine, for example consumer-producer coalitions that share a common distrust and fear of concentrated private power. Historically, this kind of coalition was a big part of the rise of the Progressive Era and New Deal political economic transformations such as antitrust law, labor law, and consumer protection regulations, which together helped produce the dynamics of 20th century capitalism noted earlier.

We could also imagine consumer-labor coalitions forming around an agenda centering on a range of issues from privacy to social dumping. This is the approach that is being taken for example by Sweden’s’ largest union, Unionen, which organizes white-collar workers at all skill levels throughout the private sector. Swedish unions have traditionally been very accepting of innovation and Unionen has taken a characteristically positive approach to new platform business models, while however insisting that their competitive
advantage not be achieved through social dumping.\textsuperscript{24} The union is focusing its efforts on pushing new platforms to sign existing collective agreements, but ultimately has even more ambitious goals. A further initiative, for example, aims to make it easy for these firms to comply with labor standards by offering to work with their programmers to embed the relevant algorithms into the company’s own software. Invoking Lawrence Lessig’s famous dictum that “code is law,” the idea is to render compliance automatic and to reduce regulatory transaction costs for platform firms (Söderqvist 2016; see also Kenney and Zysman 2016). \textsuperscript{25}

A complementary tack, more prominent in Denmark, has been to enlist consumers as allies in the effort to regulate these companies. This strategy seeks to capitalize on the power of these companies’ own user bases and to use the importance these firms assign to image as a source of leverage. For example, Denmark’s largest union, 3F, waged a very public campaign against Uber, charging the company with drawing on the country’s infrastructure (hospitals, roads, schools), while shirking taxes. Such behavior, union representatives emphasized, was “not consistent with Danish contributory ways” (interview March 2016). Invoking norms of solidarity and drawing attention to the consequences of social dumping and tax evasion, Danish unions appealed to the interests of the public not as

\textsuperscript{24} “Unionen’s view is that firms that utilise platforms to improve the way work is organised to deliver higher quality goods and services should be tolerated and even promoted. If platforms represent the future, Swedish firms should be early adapters. Platforms may have positive effects on employment and could create new types of services. However, a platform’s competitive advantage should not be achieved through social dumping” (Söderqvist ETUI, p. x)

\textsuperscript{25} “If playing by the rules is made easy for firms with platform based business models, then the often heard arguments lambasting of sclerotic systems of “the old economy” (including union backed regulations) will ring more hollow.”
consumers but as taxpayers with the argument that the country’s social model was viable only so long as everyone paid their fair share.

IV. Conclusion

There is an extensive literature on the political power of the modern corporation, and the influence it business interests exercise within the formal political process. There is also a long-standing concern about the decline of labor and the rise of corporate power in the modern economy. This paper adds to these discussions by highlighting how the very nature of the modern firm itself has changed in crucial ways over the past few decades and by illuminating the broader legal and organizational conditions that have facilitated this transformation. In place of the ideal type of the 20th century consolidated firm as a large employer, well-regulated by government, and in dialogue with organized labor, we have a different 21st century ideal type of the networked firm. In the networked firm, the lead firm or brand itself is slimmed down, having offloaded much of its labor force to outsourced, franchised, contracted-out partner firms that are legally distinct entities, and can provide labor much more cheaply. The networked firm is also marked by diffused-yet-concentrated ownership and influence among investors, particularly financial interests. This transformation of the firm is crucial to understanding the rise of inequality and insecurity in the modern economy.

This transformation is also crucial to understanding the relationship between political and economic inequality. This interrelationship has become a central point of interest for social science and public policy today. The rise of the networked firm represents a crucial
driver of the changing nature of work, inequality, and the eroding social contract. But this transformation, as we have argued, is not a product of natural or technological change; rather it is crucially tied to the political-economic landscape, particularly in the United States. The fragmented regulatory landscape, owing to decentralization and regulatory gaps, and the powerful coalition of investor and consumer interests against the decline of labor, have all combined to facilitate the rise of this networked firm.

If the networked firm itself arises in part through an interaction with the political institutional structure and the landscape of regulatory policy, this then introduces a further mechanism through which political and economic inequality interact. This diagnosis of the nature and origins of the networked firm, and its broader implications for inequality, suggests that responding to 21st century inequality will require more than just redistributive tax and wage policies; it will also require a change in political economic dynamics that can address the concentrations of power and shifts of influence represented in the networked firm.

**Bibliography**


Engelen, Ewald, Martijn Konings, Rodrigo Fernandez. 2010. “Geographies of Financialization in Disarray: The Dutch Case in Comparative Perspective.”


*Georgetown Law Journal* 84.

Hayden, Grant, and Bodie, Mathew, 2011, “The Uncorporation and the Unraveling of 

Jensen, Michael and Meckling, William, 1976, “Theory of the Firm: Managerial Behavior, 


Khan, Lina, “Amazon’s Antitrust Paradox,” Yale Law Journal (2017);


Kwak, James 2013. “Cultural Capture and the Financial Crisis,” in Dan Carpenter and David 
Moss, eds., *Preventing Regulatory Capture: Special Interest Influence and How to 

Langley and Leyshon. 2016.

Lichtenstein, Nelson, “Two Cheers for Vertical Integration: Corporate Governance in a 
World of Global Supply Chains,” in William Novak and Naomi Lamoreaux, eds., 
Miller, Michelle and Eric Bernstein, New Frontiers of Worker Power: Challenges and Opportunities in the Modern Economy. Roosevelt Institute, February 2017.


Thelen, Kathleen. Forthcoming. “Transitions to the Knowledge Economy in Germany, Sweden and the Netherlands.” *Comparative Politics.*


