

What is Ideological Capture and How Do We Measure It?: Using Antitrust Reform to Understand Expert-Public Cleavages*

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May 31, 2024

Abstract

Scholarship on regulatory capture—when businesses lobby regulators to act contrary to the public interest—has thrived since the 1970s. Yet it ignores an important dimension of influence, what we call ideological capture. This occurs when experts design regulatory frameworks that marginalize important public values and produce favorable outcomes for business interests even in the absence of lobbying. We present a theoretical and empirical framework for understanding ideological capture, rooted in expert-public cleavages, and measure its presence in an important policy domain (antitrust review of business mergers) with an original survey of the public and of antitrust lawyers. Our results suggest that the main framework for evaluating anti-competitive conduct, the consumer welfare standard, marginalizes important public concerns, but is deeply popular among antitrust lawyers. With prior work showing the standard arose not from conventional processes, but from judicial and bureaucratic activism, we conclude that antitrust policy evidences ideological capture.

Word Count: 9,511

*The authors would like to thank participants of the American Politics Research Workshop at Harvard University and additional workshops held at the Center for Law and Economics at ETH-Zürich and at the Technical University of Munich. We especially want to acknowledge our discussants, Brian Highsmith and Filippo Lancieri, for their detailed and thoughtful critiques.

1 Introduction

Who has the power to influence American government and how that power is exercised are long-standing questions in the study of American political economy (Schattschneider 1960; Dahl 1974). When the target of special interest influence is the bureaucracy, these questions are generally approached through the study of regulatory capture, “the result or process by which regulation, in law or application, is consistently or repeatedly directed away from the public interest and toward the interests of the regulated industry, by the intent and action of the industry itself” (Carpenter and Moss 2014, 13).

Scholarship on regulatory capture has thrived since the early 1970s, but also displays certain biases. First, it tends to focus on specific business demands but pays less attention to how bureaucrats construct the legal frameworks that guide regulatory review, even though these frameworks largely determine subsequent outcomes.¹ Second, it tends to assume that specific firms or industries work to undermine the public interest but neglects the role that experts and professionals play, not in their role as business lobbyists, but as a source of ideas for developing and justifying new regulatory frameworks. Third, it often equates the public interest with some other concept, like the consumer interest or the Presidential interest, but seldom justifies those assumptions or seeks to empirically evaluate the public interest (section 2).

In this article, we advance a theory for understanding an important and heretofore neglected dimension of regulatory capture that emerges from these biases, what we refer to as *ideological capture*. We also provide an empirical framework for measuring it using survey evidence. The relevant cleavage for understanding ideological capture is not that between producer and consumer

¹To one official: “The standard we select will drive the results that we get” (Wilson 2019, 1).

nor that between principal and agent; it is instead that between public and expert. In American government, ideological capture arises when educated professionals circumvent more democratic processes for creating new regulatory frameworks (a procedural component) and codify new regulatory frameworks that consistently and repeatedly marginalize important public values (a substantive component). Ideological capture, in other words, is not simply about what language is *put into* any given framework; it is also about the public goals that are *left out* of the framework. Crucially, surveys allow us to measure support for policy frameworks, the values and goals that influence those preferences, how voters tradeoff between excluded values and included objectives, and the extent to which experts diverge from the public in terms of preferences and values.

We explore these contentions with historical and survey evidence in an important policy setting: the policing of mergers involving large companies under federal antitrust law. Specifically, we evaluate whether the consumer welfare standard (CWS), which has guided antitrust enforcement for more than 40 years (Wilson 2019), represents a form of ideological capture. As we explain in section 3, the idea that the antitrust laws should minimize consumer prices—the main objective under the CWS²—has always been controversial, and legal scholars have long argued that the CWS sidelines important public values, like the concern that companies, when they grow too large, might acquire more power to influence American government (Pitofsky 1979). As a result, antitrust is an ideal policy domain to test for the presence of ideological capture.

Our central hypothesis is that the CWS marginalizes important public values but has deep support among a class of professionals who do not share those values, which suggests the pres-

²As a leading antitrust scholar puts it, “under the consumer welfare...principle, as most people understand it today antitrust policy encourages markets to produce output as high as is consistent with sustainable competition, and prices that are accordingly as low” (Hovenkamp 2019, 66).

ence of ideological capture. To test this claim, we designed an original survey (including a novel conjoint experiment) to evaluate support for the CWS, identify the values and attitudes that influence antitrust policy preferences, and assess beliefs about the effects (both good and bad) that large mergers have on the American political economy. We then fielded the survey to a national non-probability sample of the public and to a convenience sample of antitrust lawyers so we can assess whether antitrust lawyers differ from the public in any of these dimensions (section 4).

The results support the view that the CWS represents a form of ideological capture. Prior work shows that the CWS became law not through traditional channels of policy reform, like passing new legislation, but through changes in the composition of the Supreme Court and the willingness of judges to embrace the jurisprudential ideology of the “law and economics movement.” We show, in section 5, that voters are skeptical that the CWS delivers its purported benefits and would prefer to replace it with a more subjective balancing test. When respondents weigh various merger risks in expressing their regulatory preferences, they place relatively little weight on price reductions—the explicit goal of the framework—but much more weight on layoffs, diminished product quality, lobbying risk, and structural economic risk, concerns that are either excluded or marginalized in the consumer welfare framework. Antitrust lawyers are also significantly different from the public when assessing the risks that large mergers pose to American society and government and in expressing support for the status quo. By one measure, being an antitrust lawyer has an effect on support for the CWS that is four times larger than the effect of changing partisan affiliation from Democrat to Republican.

Our study makes three major contributions. First, we contribute to a vast literature on regulatory capture by theorizing about ideological capture and proposing a set of tools that scholars can use to measure it. Second, we contribute to a growing literature on the role that lawyers and

judges play in the American political economy (see, e.g., Bonica and Sen 2021); we move beyond aggregate measures, like ideology scores, to show that lawyers are distinct from the public using finer-grained measures of attitudes, beliefs, and policy preferences.³ Finally, we answer empirical questions about antitrust preferences raised in current debates about antitrust reform (McCarty and Shahshahani 2023).⁴

2 What is Ideological Capture?

Regulatory capture has long been an object of scholarly inquiry (for reviews, see Bó 2006; McCraw 1975; Novak 2014). With notable exceptions, however, the literature displays certain dominant tendencies when it comes to specifying the nature of the regulatory process, the actors who seek to influence that process, and the public's interest in regulatory outcomes.

First, capture scholarship tends to take a *transactional view* of the regulatory process, one in which the industry objective is narrow and concrete like preventing expansion of the broadband spectrum to stop competitors from entering the market (Moss and Decker 2014) or obtaining a lease to drill for oil in deep water (Carrigan 2014). It is true that agencies are tasked with making decisions of this nature; it is also true that, when specific firms obtain concrete outcomes from government agencies, it can have massive effects on public welfare (Meier 2023). At the same time, most agencies also have the power to set the regulatory frameworks or guidelines by which business

³We extend a rich literature in political science exploring elite- and expert-public cleavages (Broockman, Ferenstein, and Malhotra 2019; Kertzer 2022; Jacobs and Page 2005; Mutz 2021) and empirical studies showing that professional training causes ideological divergence, even among elite actors like federal judges (Ash, Chen, and Naidu 2019; Carnes 2012; Zingales 2014).

⁴Recent studies of public opinion about antitrust policy include Brutger and Pond (2023a,b).

conduct is thereafter regulated, and the intensity of subsequent enforcement is often determined at this more preliminary stage. Agency rulemaking remains, however, an understudied component of regulatory capture (Carpenter et al. 2023; Yackee 2018).

The policy setting that we examine in depth in this article—the policing of mergers involving large companies under federal antitrust law—illustrates this bias. On the one hand, there is little evidence of which we are aware that businesses who wish to merge can (or do) directly influence the decisions of antitrust officials at the Department of Justice or the Federal Trade Commission. On the other hand, government challenges to large mergers collapsed in 1981 when the agencies, under new leadership, rewrote the guidelines for investigating mergers, and merger challenges have remained at historically low levels since then (Short 2022a).⁵ If business interests get what they want (merger approval) most of the time under the new guidelines, we would not expect to find pervasive evidence of intense lobbying or business influence. But we are left with the questions of who influenced the guidelines and whether those guidelines undermine the public interest in a way that can be conceived of as a form of capture.

Second, though a diverse array of elite actors might plausibly influence the bureaucracy, most work on regulatory capture starts from the assumption that *business interests* play the dominant role in undermining the public interest. In the popular definition above, for example, regulatory capture appears from the intentional acts of a “regulated industry” (Carpenter and Moss 2014, 13). This emphasis is entirely reasonable given the historical circumstances that led to the growth of the administrative state in the early twentieth century, as well as the mid-century concern that regulators might not be as immune to business influence as originally hoped (Novak 2014).

⁵Prior work, based on a rare analysis of internal agency documents, shows that the guidelines significantly influence agency behavior (Coate, Higgins, and McChesney 1990).

But in placing business or industry interests front and center, capture scholarship generally neglects or diminishes the role of other actors who have the power to undermine the public interest, including academics and highly educated professionals like lawyers and economists. These groups do not simply act as intermediaries for business interests in their role as lobbyists, though they do that too (Libgober and Carpenter 2023). They are also, in many cases, the primary source of ideas for developing and justifying new regulatory frameworks. In the case of antitrust merger review, for example, legal scholars largely agree that judges, lawyers, and economists associated with the law and economics movement—not business interests—played the key role in shifting antitrust policy towards the CWS. Though these elite actors may have produced a framework congenial to business interests, there is no evidence (of which we are aware) that they acted directly at the behest of business interests⁶ while there is abundant evidence that they were motivated by ideology (Khan 2018; Vaheesan 2019; Wu 2018).

Third, capture scholarship tends to rely on modeling assumptions or qualitative work to define the “public interest,” but tends to forego measuring public attitudes. In models based on microeconomic theory, the public interest is equated with the consumer interest, though little evidence suggests that public preferences are rooted in demands for lower prices on consumer products or other forms of economic self-interest (Miller and Ratner 1998; Mutz 2021; Sears and Funk 1990). In principal-agent models, the public interest is equated with the interest of Congress or the President even though industry can influence both. Similarly, in legal scholarship, the public interest is typically equated with Congressional intent as derived from close (but subjective) readings of legislative history and statutory text.

⁶An indirect connection may exist. See Teles (2008) on the conservative philanthropies that funded law and economics scholars, and corporate interest in the conservative legal movement.

Without an objective measure of public values and preferences, it is difficult to determine if regulations truly undermine the public interest, especially when those who wish to push policy in another direction try to influence officials across multiple branches of government. In our setting, for example, though abuse is extremely rare, the most egregious instance of abuse arose from *presidential* interference in agency practice for political gain.⁷ Moreover, to the extent that businesses who want to merge influence antitrust agency outcomes, they seem to do so indirectly, through Congress (Mehta, Srinivasan, and Zhao 2020). Methodological problems like these have led a leading scholar of the bureaucracy to assert that “empirical studies of capture must have some notion of the public interest in mind as a counterfactual” and must specify how the public interest will be identified (Carpenter 2014, 58).

Because of these biases, capture scholarship has been slow to recognize a potentially widespread form of regulatory capture, what we refer to as ideological capture. With ideological capture, the regulatory behavior of interest is the process of developing new rules and regulatory frameworks, not the subsequent act of approving or rejecting specific business demands under those frameworks. The main actors are those who have sufficient expertise to design new frameworks, and while these experts may have ties to organized business interests, they are more likely to be ideologically motivated individuals, including academics and professionals, who benefit from their perceived *lack* of industry ties.

We use the term ideology, here, to mean both a system of interdependent beliefs subject to some logical constraints and an elite constructed way of making sense of the world that the broader public seldom adopts (Converse 1964; Carmines and D’Amico 2015). We do not, how-

⁷The Watergate investigations revealed that President Nixon agreed to quash an existing merger investigation to extract campaign contributions (Short 2022a).

ever, confine our definition to ideologies that influence partisan identification or political candidate selection. Instead, our definition is broad enough to capture ideologies, like neoliberalism, that do not have an obvious partisan anchor among elites. The ideology at issue in our case is one that appeals to liberals and conservatives alike, as described below. It is an ideology that leverages microeconomic theory to equate “welfare” with prices and bracket consideration of outcomes that do not have “price-equivalents”; one which assumes that “bigness” or “dominance” in the market is a just reward for superior performance; and one that ties these and other ideas together into a jurisprudence that elevates the demands of *Homo economicus* over more prosaic public concerns (Bork 1978; Posner 1978).

With ideological capture, the public interest—the counterfactual state of regulation that would have obtained in the absence of expert influence (Carpenter and Moss 2014)—is in a regulatory process that broadly reflects public values, but it should not be equated with public preferences, per se. To be clear, we do not see ideological capture everywhere the public disapproves of a regulatory framework. The informational limits of voters are well known (see, e.g., Achen and Bartels 2016).⁸ We assume that experts know much about any given policy that the public does not, and that Congressional delegation of the regulatory power is rooted in the sound assumption that letting experts design the rules will generally improve social welfare.

But experts can use their power to direct regulation away from the public interest in two ways: (1) by circumventing more democratic processes for creating regulatory frameworks and (2) by designing frameworks that marginalize important public values and objectives. Ideological

⁸Prior work suggests experts also succumb to motivated reasoning (Beattie and Snider 2019). We do not assume, therefore, that professional training eliminates psychological biases exhibited in the un-trained public.

capture therefore arises from a combination of procedural and substantive deficiencies.⁹

Procedurally, ideological capture arises when the officials who establish new regulatory frameworks are relatively unconstrained by public opinion or elected officials, as is often the case with federal judges.¹⁰ Federal judges are known to harbor judicial ideologies (Segal and Spaeth 2002), are receptive to new ideological frameworks for deciding cases (Ash, Chen, and Naidu 2019), are nominated to the bench on the basis of ideological considerations (Bonica and Sen 2021, 13), and are not only unconstrained by public views but perceive their role, as members of the “counter-majoritarian branch,” as one that requires defying majority beliefs (see, e.g., Bonica and Sen 2021, 15-16). They also play a unique role in the regulatory process in the United States (Kagan 2009). To the extent ideological capture should reveal itself in any particular instance, we suspect it does so most commonly when federal judges have played a role in establishing the regulatory framework.

Substantively, ideological capture arises when experts instantiate regulatory frameworks that pursue a set of objectives considered important to experts, but marginalize other objectives that are important to the public. However, because experts will portray their demands as equivalent to the public interest (see, e.g., Trumbull 2012), we emphasize that this hypothesis should be empirically tested when possible. We contend that five kinds of survey evidence help establish that

⁹Ideological capture is distinct from cultural capture in that it does not arise from group identity or social interactions but from professional training, and the ideological content is explicitly stated not implicitly shared (Kwak 2014).

¹⁰Experts could dominate “notice and comment” in a way that marginalizes public values (Carpenter et al. 2023) but we suspect this arises only where no other actor voices a more public-oriented perspective (see, e.g., Yackee 2014).

a regulatory framework marginalizes important public values: (1) skepticism that the framework produces its stated objective; (2) disapproving the framework itself (especially across partisan groups); (3) supporting goals that are excluded from the framework; (4) weighing the excluded goals at levels comparable to or higher than the stated goals when considering tradeoffs; and (5) displaying different preferences, and underlying values, than experts.

In the next section, we review prior work suggesting that the CWS became the dominant antitrust framework because of judicial activism, in a process with relatively few mechanisms for weighing public values and demands.

3 Judicial Activism and the Consumer Welfare Debate

In the 1960s, a group of scholars developed compelling new arguments for applying the principles of microeconomic theory to the analysis and design of American law (Appelbaum 2019; Teles 2008). The law and economics movement, as it came to be known, influenced policy development in many areas but arguably had its most significant impact in the field of antitrust law (Kovacic 2007). One of the movement's main accomplishments, in this area, was to usher in a new framework for analyzing potentially anti-competitive conduct called the consumer welfare standard (Khan 2018). Under the CWS, federal officials consider whether the conduct at issue, like a merger between two large companies, will reduce output and raise prices and therefore hurt consumers (Hovenkamp 2019).

The process by which the CWS became the lodestar of antitrust analysis suggests the potential for ideological capture. It did not arise from new legislation to revise the main antitrust statutes, which Congress passed in 1890 and 1914 (the Sherman, Federal Trade Commission, and Clayton Acts). It arose instead when the Supreme Court decided, in 1979, that the nation's antitrust

laws were always meant to protect consumer welfare. For several years, ideological shifts in the Burger Court, not new insights or discoveries, had driven the Court’s reworking of antitrust policy, especially the Court’s willingness to embrace the teachings of the law and economics movement (Flynn 1977). And when it decided in 1979 that “Congress designed the Sherman Act as a ‘consumer welfare prescription,’” the Court cited not to precedent but to the revisionist historical work of a leading law and economics scholar, Robert Bork.¹¹

The bureaucracy revised its guidelines for evaluating proposed mergers in 1982 and 1984. Two developments made the bureaucracy especially receptive to the new approach. Institutional changes within the antitrust agencies, in 1972, led to the hiring of many more staff economists (Eisner and Meier 1990). Also, the Reagan administration appointed officials aligned with the law and economics movement to lead the two main antitrust enforcement agencies (Short 2022b). As a result, the agencies had both the bureaucratic capacity—in the form of economic expertise—and the ideological motivation to promote the CWS and the economic approach to antitrust analysis more generally.¹²

If the law and economics movement, and the coalition supporting the CWS, was politically conservative, it might suggest that the Court-driven shift in agency priorities was rooted not in a victory of experts over the public, but in the victory of one partisan faction over another. But a variety of evidence suggests that the public interest was not being filtered, however imperfectly, through normal channels of political contestation.

First, within the expert class, support for the CWS (and for antitrust deregulation, more

¹¹*Reiter v. Sonotone Corp.*, 442 U.S. 430, 443 (1979).

¹²As regulatory “guidance,” the merger guidelines were exempt from notice and comment procedures and were seldom scrutinized by courts (Pierce, Jr. 2022).

broadly) was largely bi-partisan in the 1970s and 1980s. Though many scholars in the law and economics movement were conservatives associated with the University of Chicago, prominent Harvard scholars, Phillip Areeda and David Turner, also played pivotal roles, as did their colleague, Stephen Breyer, after Democratic President Jimmy Carter appointed him to serve as a federal appellate judge in 1980 (Kovacic 2007). The idea of an economic standard that focused on consumer interests also resonated with liberal lawyers, like Ralph Nader, and other leaders in the consumer rights movement (Cohen 2003; Short 2022b; Stoller 2019). Economists who advised Democratic presidential candidates and served in Democratic administrations also joined in questioning the utility of antitrust enforcement in general: Alan Greenspan characterized antitrust laws as “utter nonsense” (Greenspan 1967); Lester Thurow called for their abolition (Thurow 1981; Lohr 1981).

Second, though the parties were engaged in intense battles to define the appropriate role of the state in a capitalist society, they did not specifically politicize, or present voters with concrete alternatives in, antitrust enforcement policy. Though the Reagan administration played the most significant role in resetting agency priorities, the 1980 Republican Party platform hardly mentions antitrust policy.¹³ When Democratic presidential candidates won in later elections, their Party platforms were also silent on antitrust policy.¹⁴ Support for the CWS also cannot be inferred from a general preference for limited intervention in the market, since many market-oriented voters (from both parties) will logically perceive strong antitrust enforcement as a predicate for creating the competitive conditions needed to unleash the power of the market, even if strong enforcement diminishes consumer welfare in some way.

¹³It does so only once, in the context of transportation infrastructure.

¹⁴We searched party platforms housed by the American Presidency Project, at <https://www.presidency.ucsb.edu/>. No platform from 1992 through 2012 mentions the word “antitrust.”

Third, and most importantly, a majority of the public supported doing more to enforce the nation’s antitrust laws in most years from 1980 through 2014 (Short 2022a) and, even in a setting where deregulatory ideas were politically popular, there is little evidence that the public wanted bureaucrats to refashion the antitrust laws into a consumer rights bill. While survey evidence on antitrust policy during the 1980s and 1990s is scant and has limitations, the weight of the evidence suggests that the public did not want antitrust policy to be preoccupied with consumer interests. We reviewed all the public opinion polls we could find, in the Roper iPoll database, on mergers or antitrust enforcement in this time frame. The results are summarized in Supporting Information (hereafter “SI”) A.9. The data shows that, in the mid-1980s, when antitrust officials were applying the CWS, less than 20 percent of the public believed that mergers helped consumers as a group or that mergers involving large companies result in lower prices. Those same surveys also display deep reservoirs of concern about layoffs, wage suppression, and increasing corporate influence over government arising from mergers, concerns that are not accounted for in the CWS framework.

In sum, though the parties articulated competing visions for the appropriate role of the state in the U.S. economy during this time frame, they did not present voters with concrete alternatives when it came to antitrust enforcement policy. We also cannot infer support for the CWS from broader public demands for deregulation or contemporaneous preferences for antitrust reform. The evidence suggests, instead, that the CWS became the new framework for implementing antitrust merger policy when ideologically-motivated experts convinced federal judges to unilaterally rewrite the nation’s antitrust laws. Given that the policy shift did not arise from more democratic processes for creating new regulatory frameworks—new legislation or normal rulemaking subject to notice and comment—we interpret the historical evidence as suggesting the kinds of procedural

deficiencies that are indicative of ideological capture.

4 Data and Methods

To determine whether the CWS marginalizes important public values, we measure public opinion about antitrust enforcement policy. Three major considerations motivated our research design.

First, though survey databases contain a good amount of polling about antitrust enforcement, the questions asked are generally quite coarse, out of date, and not targeted to specific research questions. They do not ask, for example, what is arguably the most important question here: whether respondents approve of the CWS (SI A.9).

Second, no prior study has investigated how voters evaluate tradeoffs when thinking about antitrust enforcement policy—especially when the competing concerns are left out of the regulatory framework altogether. Tradeoffs are central to our understanding of ideological capture, and to the ongoing antitrust reform debate.¹⁵ If voters value entrepreneurship more than they value consumer benefits when thinking about antitrust enforcement policy, for example, then the fact that CWS only considers consumer benefits but not the effect on small-business owners means the policy marginalizes important public values.

To investigate tradeoffs, we conduct a conjoint experiment, modeled on the fair trade literature (see, e.g., Dragusanu, Giovannucci, and Nunn 2014). Prior work shows that consumers significantly change their behavior when presented with new information about producers, like CEO-to-worker wage ratios (Dragusanu, Giovannucci, and Nunn 2014; Mohan et al. 2018; Park

¹⁵One scholar who defends the CWS has asserted, for example, that reformers have yet to test the “assumption that individuals in our society would be better off in a world characterized by higher prices but smaller firms” (Hovenkamp 2019).

2018). We use similar techniques to understand how respondents weigh competing concerns when expressing opinions about whether the government should challenge hypothetical mergers.¹⁶ We pre-tested our design in a series of three pilot studies conducted in February of 2021, November of 2021, and June of 2023 using convenience samples of survey volunteers.

Third, no prior study to our knowledge has explored whether the professionals who are involved in day-to-day implementation of antitrust enforcement policy are significantly different from the public in terms of their preferences or the underlying attitudes that motivate those preferences. But our theory of ideological capture is rooted in the potential for deep cleavages between the public and experts when it comes to evaluating policy objectives.

We deployed our survey to a non-probability sample of 2,094 adults through Bovitz/Forthright in January of 2024, with quotas to match national marginal distributions for Census region, age, ethnoracial identity, gender, education, and partisan identification.¹⁷ Because the final sample differed from national targets by more than 4 percentage points on some measures of education and partisan identification, and because we wanted to achieve balance based on income as well, we developed post-stratification weights using those three variables (DeBell and Krosnick 2009).¹⁸

We also recruited antitrust lawyers to take the same survey from November of 2023 to March of 2024 through two separate channels: using Facebook advertising credits and emailing

¹⁶For a similar design probing public support for foreign aid packages that vary along multiple attributes, see Doherty et al. (2020).

¹⁷We excluded those who did not consent to take the survey or agree to pay attention, those who failed a non-substantive attention check at the beginning of the survey, and those who sped through the survey (by completing it in less than one third of the median time).

¹⁸See the replication file for more details.

lawyers listed online as members of antitrust or merger practice groups at private law firms. This yielded 48 and 55 usable completes, respectively, according to the same criterion described above, for a total sample of 103 antitrust lawyers.

Our analysis focuses on three theoretical quantities of interest:

- **CWS Skepticism:** to what extent does the public believe that mergers deliver economic benefits or impose social and political costs?
- **Expert-Public Cleavages:** to what extent do antitrust lawyers and the public diverge when assessing merger costs and benefits?
- **Marginalized Values:** does the public place more weight on considerations that fall outside of the CWS, like layoffs, than on price savings?

To answer these questions, we test a series of registered hypotheses¹⁹ that map onto the broader areas of investigation. Table A.9 show the outcome of every registered test; Supporting Information section A.8 describes deviations from the pre-analysis plan. We note exploratory analyses as such, below. Bar plots show average support with 83 percent confidence intervals, equivalent to a two-tailed .05 *t*-test for a difference of means under some assumptions (Goldstein and Healy 1995; Radean 2023). Point plots show estimated coefficients from regression analysis with 95 percent confidence intervals.

We also conducted a number of tests to assess the sincerity and political salience of public beliefs. In the Supporting Information, we show that policy preferences are rooted in beliefs about

¹⁹An anonymized copy of our pre-analysis plan is available at https://osf.io/nyxha/?view_only=3f0f28e8c0fa4f7d96dff66b186dc46b

the power and influence that large corporations have in the American political economy, and not by exposure or self-interest (SI A.7). We also show that the increasing number of very large companies in the economy is an important problem to all partisan groups, and that antitrust policy positions influence candidate evaluations (SI A.4). These robustness checks provide additional confidence that, even in this complex policy domain, the attitudes we measured are sincerely held, rooted in widely shared values, and politically salient.²⁰

5 Analysis

5.1 Evaluating the benefits and risks of large mergers

Mergers approved under the CWS are supposed to deliver economic benefits, especially lower prices. But the most thorough empirical assessment of mergers to date indicates that mergers raise rather than lower prices, on average (Kwoka 2014), and the public may rightfully believe that these benefits seldom attain. We hypothesized that a majority of the public would disagree that mergers deliver various economic benefits (Hypothesis 1) and we asked whether respondents agree or disagree, on a five-point scale, that mergers: (1) make it easier for people to start new businesses (entrepreneurship), (2) increase the speed at which new technologies are developed (innovation), and (3-4) lead to higher quality or lower prices on consumer products and services.²¹

The results partially confirm the hypothesis, as shown in Figure 1. In contrast with our hypothesis, a large share of respondents agree (rather than disagree) that mergers increase innovation (46.9 percent) and the share of respondents who disagree that mergers improve product and service

²⁰For transparency, we also discuss the null results of an untested hypothesis in SI A.2.

²¹We re-code these items to a three-point scale, as described in the pre-analysis plan.

quality is comparable to the share who took no position.

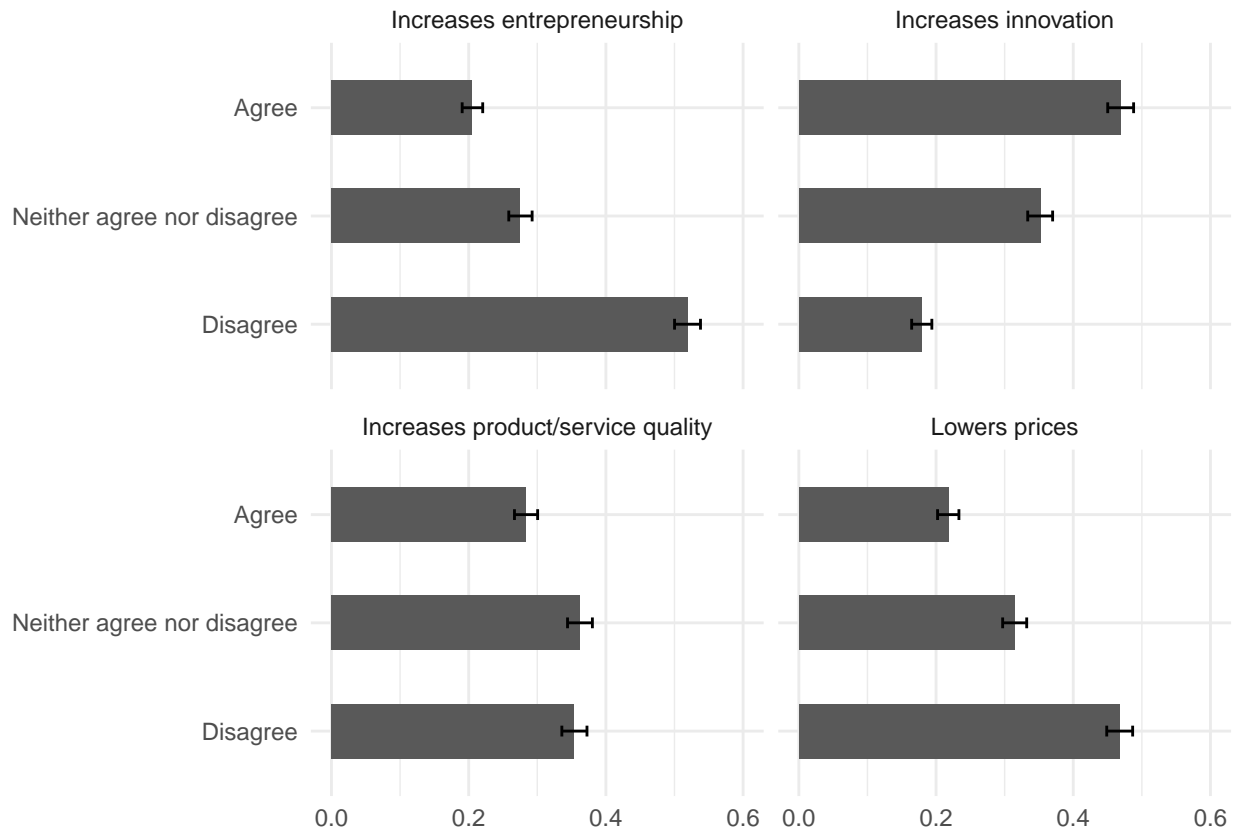


Figure 1: A plurality of the public disagrees that large mergers lower prices (their main purported benefit) or make it easier to start a new business, but agrees that large mergers increase innovation. Respondents were less certain about the effect of large mergers on product quality.

However, more than a majority (51.9 percent) disagree that mergers increase entrepreneurship, consistent with our hypothesis. Also, 46.8 percent disagree that mergers lower prices, not quite high enough to accept our hypothesis, but still more than double the share who agree that mergers lower prices (21.8 percent).

Overall, the public is optimistic about the effect of mergers on innovation, uncertain about the effect on product and service quality, but skeptical that mergers make it easier for people to start new businesses or lower prices. These attitudes are consistent with prior surveys showing the public is skeptical that mergers produce consumer benefits (SI A.9) and with empirical studies of

real-world merger effects (Kwoka 2014).

We also hypothesized that a majority of the public would agree that mergers produce undesirable social and political risks, even though these concerns are excluded from the CWS framework (Hypothesis 3). To test this hypothesis, we asked whether respondents agree or disagree, on a five-point scale, that mergers: (1) weaken the ties between companies and the local communities in which they operate, or create companies that (2) have too much power to infringe on individual liberties, like free speech or privacy, (3) are “too big to fail” and may have to be bailed out by the government, and (4) have too much influence in our nation’s politics.

The results support the hypothesis. As shown in Figure 2, voters agree, by large margins, that mergers exacerbate these risks. About 72.3 percent believe mergers create companies that have too much influence in our nation’s politics, a share that is significantly higher than for the other three risks ($p < 0.05$). And 65.6 percent believe that mergers create companies that are “too big to fail” and may have to be bailed out by the government.²² In this sense, the public’s dominant concerns do not focus on risks to individual liberties or local communities, but on risks to American democracy.

If, by virtue of their training or expertise, antitrust lawyers think about mergers through the ideological lens of the CWS, then they should differ from the public in assessing merger risks and benefits. Accordingly, we would expect antitrust lawyers to be much more sanguine about economic benefits and more skeptical about social and political risks. We therefore hypothesized that antitrust lawyers would be significantly more likely than the public to believe that mergers

²²The share that agrees with the other two claims is about 61 percent.

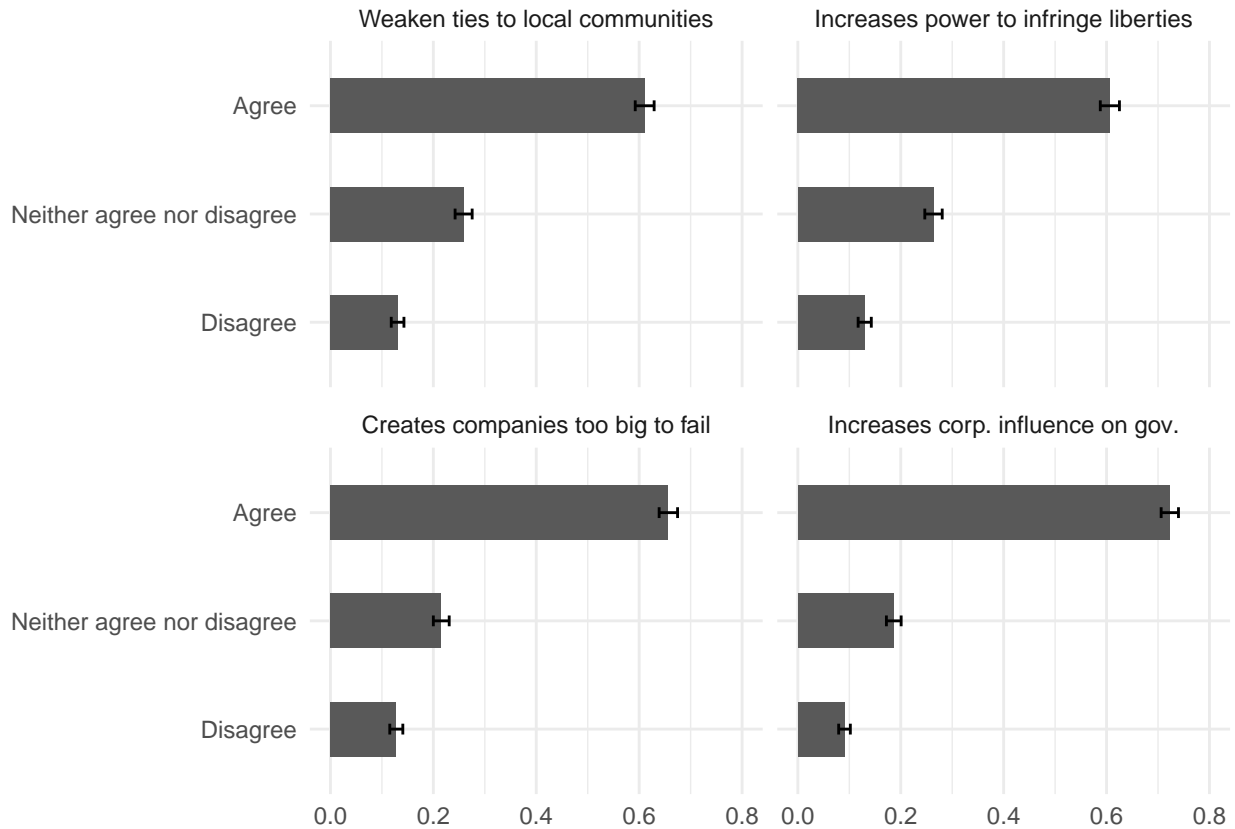


Figure 2: A majority of the public agrees that large mergers weaken the ties between companies and local communities, create companies that are too big to fail, have too much power to infringe on individual liberties, and have too much influence in politics.

involving large companies produce economic benefits (Hypothesis 2).²³

The results generally do not support this hypothesis. A simple comparison of group means suggests that antitrust lawyers may be more optimistic than the public: antitrust lawyers are more likely to agree that large mergers increase entrepreneurship (13.8 percentage points), improve product or service quality (12.8 percentage points), lower prices (9.7 percentage points), and increase innovation (6.8 percentage points). However, these differences are not significant after controlling for demographic and partisan differences in the composition of the samples. For this test, we regressed a binary variable indicating agreement that large mergers produce each economic benefit

²³We neglected to register a parallel hypothesis about social risks.

on demographics (age, gender, education, and ethnoracial identification) plus party identification and a dummy variable indicating that the respondent is an antitrust lawyer. The top panel of Figure 3 shows that the estimated coefficient for the antitrust lawyer variable in each regression is not significantly different from zero.

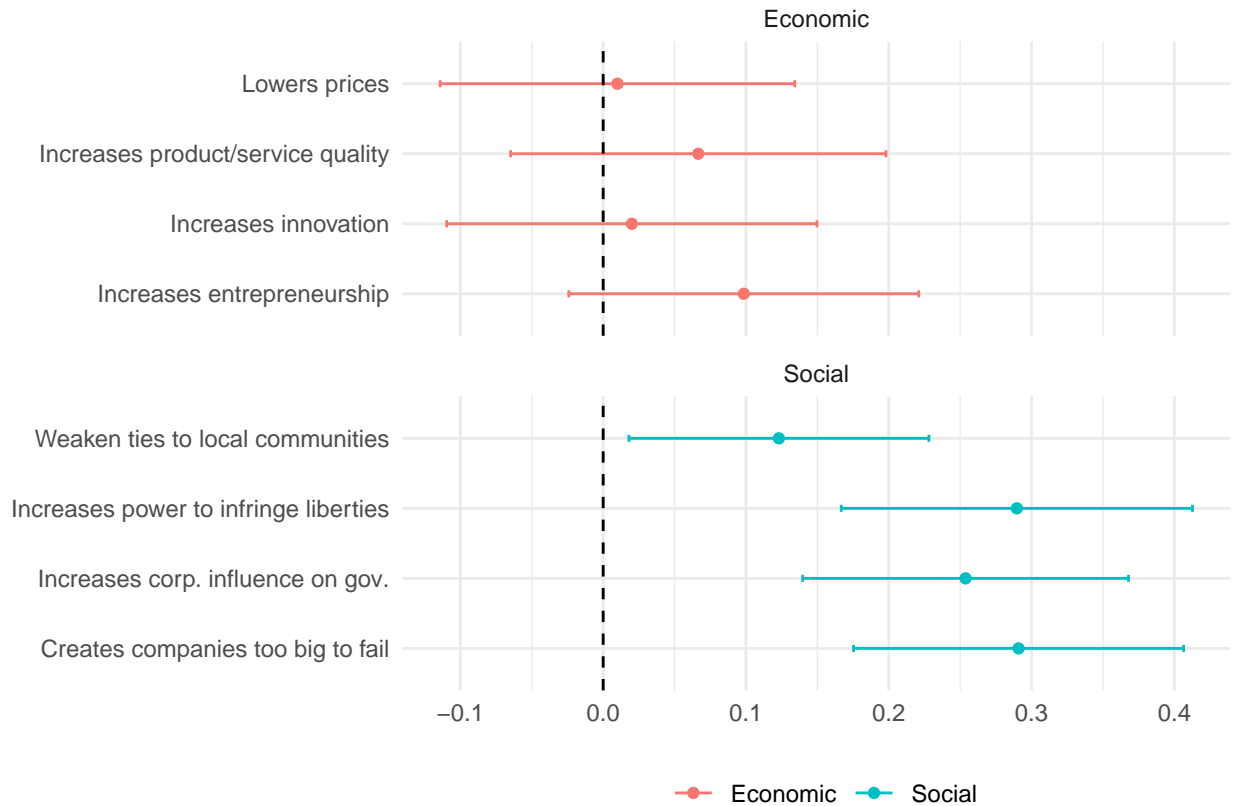


Figure 3: Antitrust lawyers are not significantly different from the public in assessing the economic benefits of large mergers, but are significantly different in assessing the social and political risks. Regression output in Table A.1.

Antitrust lawyers are, however, significantly less likely than the public to believe that large mergers produce social and political risks. The bottom panel of Figure 3 shows the results of running similar regressions where the outcome is a binary variable indicating disagreement that mergers produce certain risks. Compared to the public, antitrust lawyers are significantly more likely to disagree that large mergers create companies that have too much power to infringe on individual liberties (0.290, $p < 0.001$), are too big to fail (0.291, $p < 0.001$), and have too much

influence in politics (0.254, $p < 0.001$). Each of these differences is significant and substantively large.²⁴

In sum, antitrust lawyers are, on average, much more skeptical that mergers generate social and political risks, compared to the public. But antitrust lawyers are not significantly different from the public in terms of assessing the economic benefits of mergers. Only 31.5 percent of the antitrust lawyers in our sample, for example, agree that large mergers reduce prices and only 41.1 percent agree that large mergers improve the quality of products and services. Even the experts who work in this area do not believe (on average) that mergers generate the main benefits promised under the CWS, yet their support for the CWS remains surprisingly high, which we turn to next.

5.2 Expert-public cleavages in antitrust policy preferences

Even if the public is skeptical that mergers produce economic benefits and is concerned about other risks, other attitudes, like an aversion to government intervention, may prevent the public from supporting efforts to abandon the CWS. More generally, even if experts assess the various benefits and risks of mergers in ways that differ significantly from the public, these distinctions may not translate into tangible differences in policy preferences, which would undermine that claim that the CWS represents a form of ideological capture.

We hypothesized that, across partisan subgroups, a majority of respondents would support replacing the CWS with a standard that gives “equal weight to the impact on consumers, workers, small businesses, and local communities” (Hypothesis 4). We also hypothesized that a majority

²⁴Antitrust lawyers are also more likely to disagree that large mergers weaken the ties between companies and local communities (0.123, $p < 0.05$), though the difference is only marginally significant.

would indicate that the “government should challenge more mergers” (Hypotheses 5). This is a more conservative test, as it probes support for more intervention without connecting that shift to a change in enforcement standards (i.e. abandoning the CWS). But it has the benefit of reducing the risk of “cheap talk” and acquiescence bias, or the tendency to provide socially desirable answers to survey questions.

To test these hypotheses, we first indicated: “Existing law tells government officials to approve a merger if they believe it will produce economic benefits for consumers, like lower prices and better product quality. Government officials typically do not consider other effects, like the impact on job security or worker’s wages.” We then indicated: “Some people believe that this law ensures that mergers deliver consumer benefits like lower prices to everyone and is relatively easy to enforce. Others believe that this law is too narrow and that the government should give equal weight to the impact on consumers, workers, small businesses, and local communities, even if it makes the law more complex.”²⁵

Finally, we asked respondents which view came closer to their own beliefs, the alternative giving equal weight to a broader set of concerns, or the assertion that “the government should mainly consider the impact on consumers.” To make the connection between this policy change and government action more concrete,²⁶ we also asked whether the government should challenge more, fewer, or the same amount of mergers as it does currently.

The results mostly support our hypothesis. As shown in Figure 4, strong majorities of all partisan groups want the government to evaluate mergers with a standard that considers a wider

²⁵Stabilizing enforcement was a major motivation for embracing the CWS (see Flynn 1977).

²⁶Enabling the government to consider more factors should lead the government to challenge more mergers, but the public may not appreciate this connection.

range of effects on workers and local communities (80.6 percent of Democrats, 81.4 percent of Independents, and 74.8 percent of Republicans). A majority of Democrats and Independents (58.6 and 59.9 percent) also want the government to challenge more mergers; Republican support (47.7) for challenging more mergers, though not quite a majority, is also quite high.²⁷

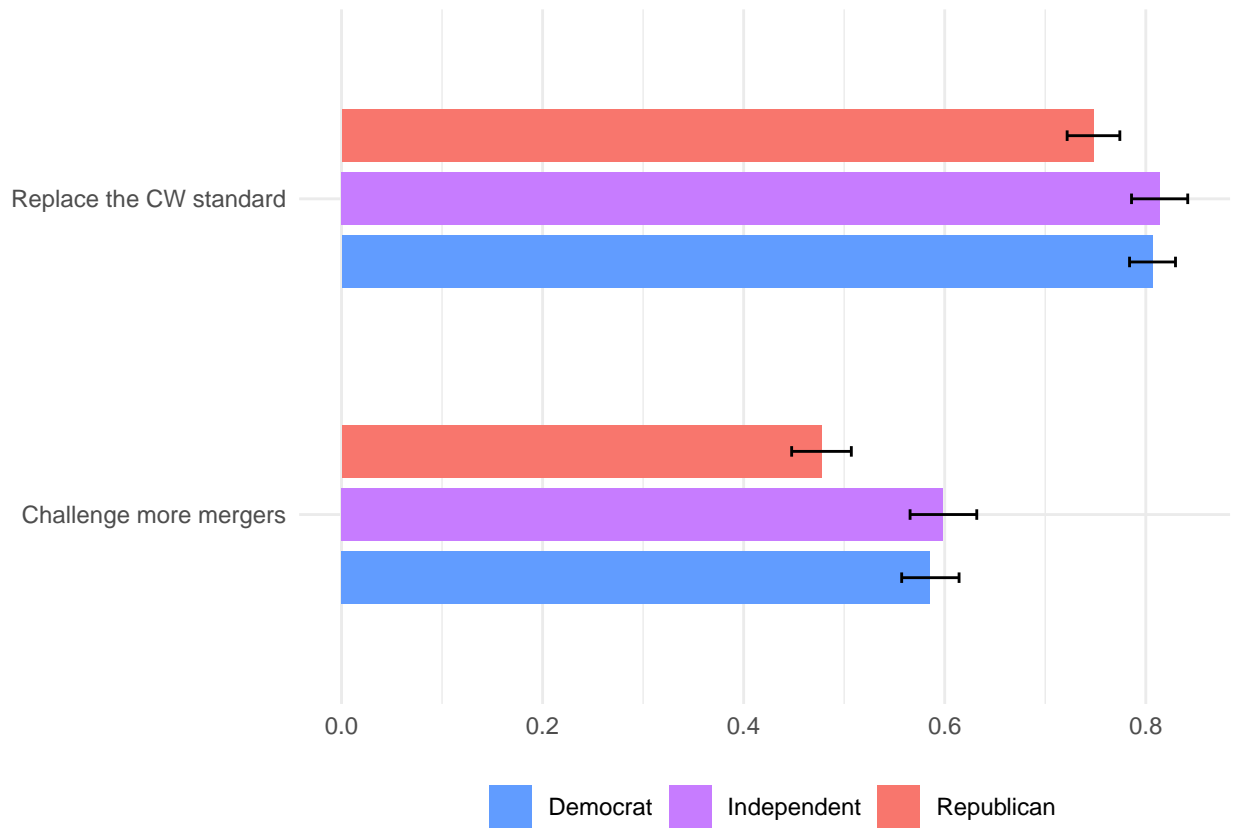


Figure 4: A majority of all major partisan groups in the public survey want the government to use a standard for evaluating mergers that gives equal weight to the impact on consumers, workers, small businesses, and local communities. A majority of Democrats and Independents also want the government to challenge more mergers.

We also hypothesized that being an antitrust lawyer will have a larger independent effect than partisanship on antitrust policy preferences. Figure 5 illustrates the main finding, which con-

²⁷In one pilot study, surprisingly high shares of Republicans (66.6 percent) and Democrats (63.8 percent) supported “breaking up companies that have too much market power,” a remedy that requires a more significant role for the government.

firmly supports this hypothesis. The top two bars (in orange) reproduce the average support for replacing the CWS among Democrats and Republicans in the public survey (from the top of Figure 4). The bottom two bars (in green) show the average support among the public and among antitrust lawyers in the combined survey. The partisan gap, of about 5.9 percentage points ($p < 0.05$), is significant but negligible in comparison to the dramatic gap between experts and the public (42.6 percentage points, $p < 0.05$). In this simple comparison, the effect of being an antitrust lawyer on policy preferences is, on average, seven times larger than the effect of changing partisanship from Democrat to Republican.

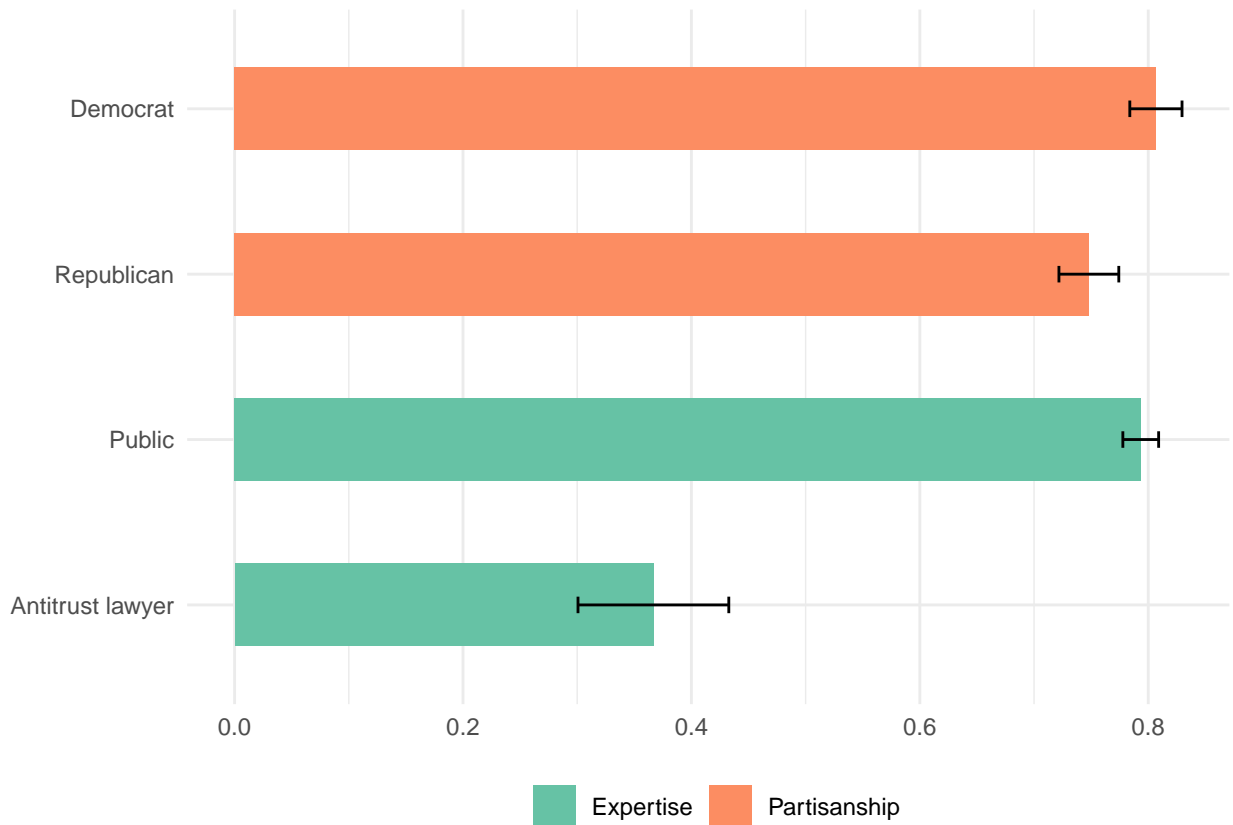


Figure 5: Average support for replacing the consumer welfare standard is comparable between Democrats and Republicans, but dramatically different between lawyers and the public.

To put this finding in perspective, consider the following. Support for replacing the CWS is quite high even among those in the public survey who characterize themselves as strong Repub-

licans (69.5 percent, $n = 265$), but is still about 12 percentage points lower than among those who characterize themselves as strong Democrats (81.5 percent, $n = 290$), using a conventional seven-point scale for measuring party identification. Average support for replacing the CWS among antitrust lawyers (36.7 percent, $n = 103$), in contrast, is more than 30 percentage points lower than among strong Republicans—even though our sample of antitrust lawyers skews heavily towards the political left: Democrats make up only 28.2 percent of the public sample, but make up 51.4 percent of the antitrust lawyer sample. Even in a sample dominated by Democrats, antitrust lawyers are dramatically more supportive of the status quo than the most conservative members of the public. These results are robust to controlling for differences arising from demographics in addition to partisan identification, as hypothesized (SI A.6).²⁸

Additionally, the difference between antitrust lawyers and the public is not confined to policy preferences, but extends to the value judgments that influence preferences and which are implicated in law and economics ideology. Antitrust lawyers are *not* significantly different from the public in believing that business regulation is necessary to protect the public interest. As a form of placebo test, this suggests that the policy cleavage documented in Figure 5 does not arise from different beliefs about the need for business regulation, in general—beliefs that are extraneous to (and arguably prior to) acceptance of “law and economics” ideology during one’s professional training. But antitrust lawyers are about 18 percentage points ($p < 0.01$) less likely to believe that large corporations have too much power and influence in the economy or that government is pretty much run by a few big interests, beliefs that are implicated in law and economics teaching.²⁹ Each

²⁸The results are also similar, though smaller in magnitude, when the dependent variable is support for challenging more mergers (SI A.6).

²⁹A core tenet of CWS proponents is that prior policy promoted special interest influence and the

of these beliefs significantly predicts public support for replacing the CWS (SI A.7).

5.3 Assessing tradeoffs revealed from hypothetical merger assessments

The closed-ended questions summarized above suggest that merger enforcement policy is dramatically out of step with public preferences but is strongly aligned with antitrust lawyer preferences. But the evidence about the public is susceptible to two related critiques. First, the public may say they care about social and political risks in response to survey questions, where there is little cost to expressing an opinion, but their actual behavior in the real world may indicate otherwise (a question of external validity and revealed preferences). Second, if large mergers do produce economic benefits like price savings in the real world, the public may not be willing to give up those benefits in order to achieve broader social and political objectives (a question of tradeoffs). If either were true, it would undermine the view that the CWS represents a form of ideological capture that marginalizes important public concerns.

To address these issues, we developed a novel conjoint experiment, as described in Section 4, where we presented each respondent with four hypothetical mergers, with randomly varying attributes, and then asked whether the government should challenge or allow the mergers, on a four point scale.³⁰ We hypothesized that, when evaluating these hypothetical mergers, respondents would place more weight (as measured by average marginal component effects) on layoffs and the economic approach minimizes that risk by keeping policy focused on broad groups, like consumers (Hovenkamp 2019, 66, 90).

³⁰Per the pre-analysis plan, we use a binary variable indicating whether the government should challenge the merger because doing so allows for easier interpretation: the coefficients represent the percentage point change in public demand for a government challenge, holding all else constant. The results are robust to using the four-point scale (Table A.4, column 2).

risk of lobbying and bailouts (factors that are excluded from the CWS) than on price savings (a central objective of the CWS).

The merger attributes and their levels are presented in Table 1. The baseline condition for each attribute is generally one of “no change.” We randomly varied the order of the attributes in each iteration as well as the attribute levels. Most changes in attributes were presented in qualitative terms (e.g. more or less, better or worse), but we included quantitative measures of price changes and layoffs, in percentage terms, and we allowed both measures to vary on the same scale (from a 5 percent increase to a 20 percent decrease) to avoid biasing the results. In the real world, however, workforce reductions are generally much larger in percentage terms than price changes. In one analysis involving 42 mergers and 119 products, prices only decreased in 38.6 percent of the cases and the savings were modest in scale (about 3 percent on average and 16 percent maximum) (Kwoka 2014, Table 6.4). In contrast, workforce reductions for mergers in the same industry are 30 percent, on average, according to Marks, Mirvis, and Ashkenas (2017).³¹

The data generally supports our hypothesis. Figure 6 shows that, while consumers are averse to price increases, they place relatively little weight on price savings. Though mergers approved under the CWS are supposed to deliver price reductions, they often do not,³² and so we allowed for the possibility that some mergers would increase prices by 5 percent. Holding all else equal, respondents are 11.1 percentage points *more* likely to ask that the government challenge

³¹We included attributes for firm size and industry to make the merger profiles more realistic, but did not register hypotheses about these attributes. The effects of these attributes were generally insignificant (SI A.3).

³²In the Kwoka (2014, Table 6.4) study, prices increased in 61.3 percent of cases, and by about 9 percent on average.

Table 1: Hypothetical merger attributes

Levels	Num obs.
Bailout risk	
No change in bailout risk*	3690
Less likely	3707
More likely	3578
Firm size	
1,000 workers*	3618
25,000 workers	3678
100,000 workers	3679
Industry	
Bank*	1825
Gas & oil	1794
Grocery store chain	1835
Hospital	1839
Pharmaceutical	1842
Telecom	1840
Layoffs	
No layoffs*	2285
20% decrease	2264
10% decrease	2215
5% decrease	2162
5% increase	2049
Political influence	
No change in lobbying*	3616
Less lobbying	3700
More lobbying	3659
Prices	
No price change*	2185
20% lower	2138
10% lower	2298
5% lower	2188
5% higher	2166
Quality	
No quality change*	3614
Worse	3665
Better	3696

Note:

This table shows each attribute included in the conjoint experiment, the levels of each attribute, and the number of observations for each level. Asterisks indicate the baseline (omitted) condition.

such a merger. Respondents are also 2.6 to 7.7 percentage points *less* likely to ask the government to challenge a merger that will lower prices by 5, 10, or 20 percent. However, these effect sizes are substantively small and only significantly different from zero in the case of 10 and 20 percent price reductions, extremely rare events according to existing evidence (Kwoka 2014).

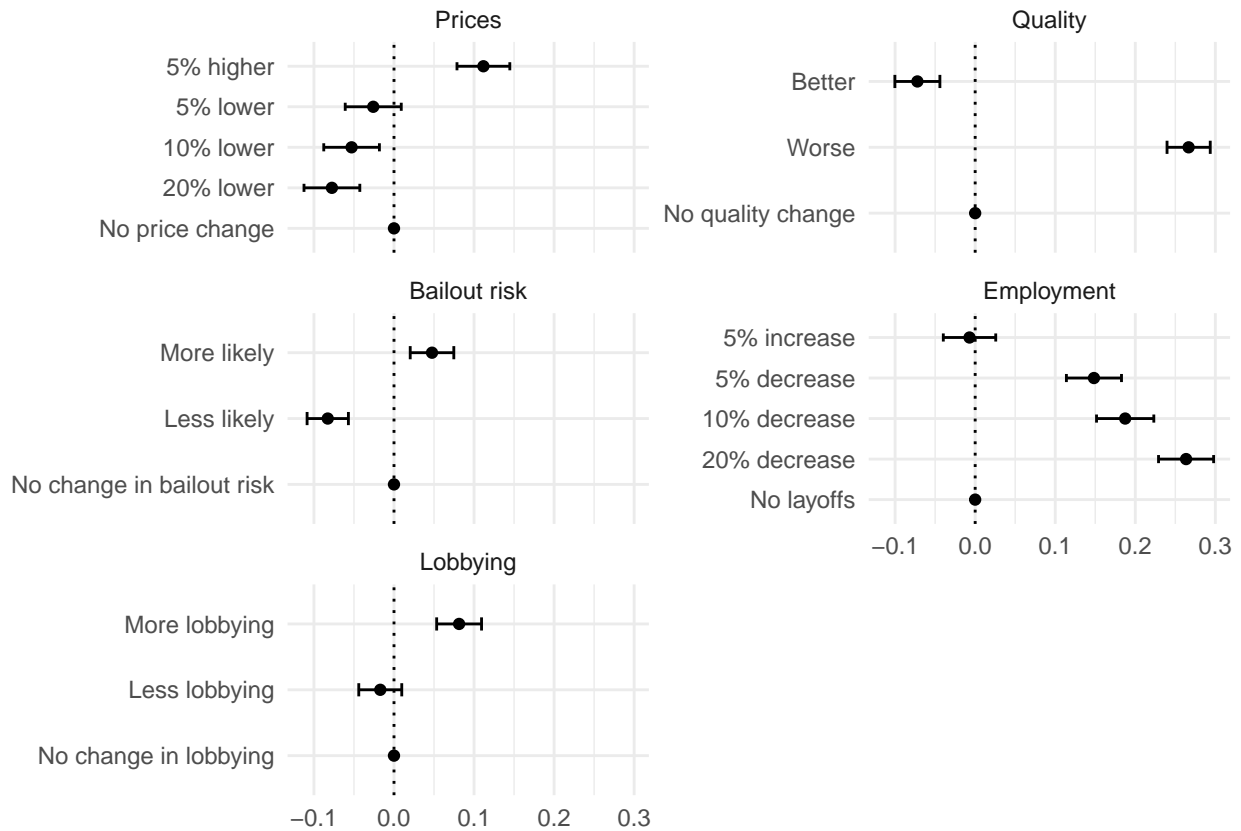


Figure 6: When evaluating whether a merger should be challenged, respondents weigh price reductions much lower than other risks, like layoffs. Points represent average marginal component effect of merger attributes relative to reference categories (points at zero) with standard errors clustered at the respondent level. Regression output in Table A.4, column 1.

When it comes to consumer benefits, respondents appear to be far more sensitive to changes in product quality than changes in prices, consistent with our hypothesis. Holding all else equal, respondents are 26.6 percentage points ($p < 0.001$) more likely to prefer a government challenge if the merger lowers product quality, and 7.2 percentage points ($p < 0.001$) less likely to prefer a challenge if the merger increases product quality.

The CWS allows antitrust officials to consider effects on product quality (in addition to prices) and so this finding could be interpreted to work against our core claim that the CWS marginalizes important public values: the public is highly averse to worsening product quality, and regulators can assess the risk to quality from within the CWS framework. At the same time, because the basis of agency decision-making is generally not available to the public, we do not know how often antitrust agencies actually assess risks to product quality in practice (despite the fact that they are allowed to do so in theory) (Kwoka 2014, 2-3). Antitrust officials and legal scholars have also argued for replacing the CWS with a standard that emphasizes product quality and other forms of non-price competition, which suggests that quality is not a core concern in day-to-day policy implementation (Averitt and Lande 2007). We therefore interpret this finding as consistent with our core assertion of ideological capture.

Additionally, social and political risks that are excluded from consideration also play important roles in the public calculus, especially the risk of layoffs. Consistent with our hypothesis, mergers that lead to more lobbying increase the demand for a challenge by 8.1 percentage points ($p < 0.001$). Mergers that lead to workforce reductions increase the demand for a challenge by 14.8 to 26.3 percentage points ($p < 0.001$), depending on the size of the workforce reduction.³³ And mergers that increase the risk that the company will need a bailout increase the demand for a challenge by 4.7 percentage points.

The results are also consistent with our hypothesis that the public will readily tradeoff price reductions to avoid social and political risks that are marginalized by the CWS. A 20 percent price

³³Contrary to our hypothesis (8b), the public displays some loss aversion with respect to employment: mergers that will lead to a 5 percent increase in employment do not reduce the demand for a challenge.

reduction reduces the demand for a challenge by 7.7 percentage points. An increase in lobbying, in contrast, increases the demand for a challenge by 8.1 percentage points; a 20 percent workforce reduction by 26.3 percentage points; a decline in product quality by 26.7 percentage points; and an increased risk of a bailout by 4.8 percentage points. Just about any of these risks alone (except for increased bailout risk) more than offsets the public demand for a price reduction as large as 20 percent, a rare event. In combination, they do so by large margins. In more realistic tests with single digit price savings, the tradeoffs are even more severe.

We also hypothesized that the magnitude of these revealed tradeoffs would not differ across partisan groups but would differ between antitrust lawyers and the public (Hypothesis 9). To test this hypothesis, we exclude Independents in the public survey and regress support for challenging a merger on party identification interacted with all merger attributes. In the combined survey, we run a similar regression but control for antitrust lawyer status interacted with all merger attributes.

The results generally support the hypothesis (Table A.5).³⁴ Republicans are about 10 percentage points less likely to support a challenge, holding all else equal, but the difference is not significant at conventional levels. Republicans also do not differ significantly from Democrats in the weights they assign to each merger attribute (there are no significant interactions). Antitrust lawyers, in contrast, are about 30 percentage points less likely to support a challenge, holding all else equal. They also differ significantly in how they weigh at least one merger attribute: they are an additional 14 percentage points less likely than the public to support a challenge if the merger will result in a 20 percent workforce reduction.

The results therefore suggest that the CWS marginalizes important public concerns about

³⁴Significantly different tradeoffs will be reflected in significant interaction terms. We do not report main effects and insignificant interactions, which are not relevant for this test.

the influence large businesses have in government, the structural risk that large companies create for taxpayers, and the social and economic impact that mergers have on workers who will lose their jobs. These factors strongly motivate the public to demand government challenges, but the CWS ignores those concerns. The CWS framework does not allow regulators to consider these potential effects even though some of them (especially the impact on labor) can be estimated and quantified.³⁵ And these factors are important in the sense that respondents are willing to tradeoff price savings to avoid these risks.

6 Conclusion

Scholars often invoke the term “ideological capture” but seldom define it or its relationship to the broader concept of regulatory capture (see, e.g. Chuang 2010). In this article, we provide a definition and specify a set of tools that scholars can use to identify whether, and to what extent, a regulatory framework evidences ideological capture. We validate our claims with a novel empirical study of American public opinion about antitrust enforcement policy. The results suggest that the main framework for evaluating anti-competitive conduct, the consumer welfare standard, marginalizes important public concerns. Together with prior work showing that the standard did not arise from conventional processes for legal reform, but from judicial and bureaucratic activism, and a new analysis of public opinion about antitrust policy from the 1980s and 1990s, the evidence suggests that contemporary antitrust policy evidences ideological capture.

Experts play an essential role in designing the regulatory frameworks that guide bureau-

³⁵Coate, Higgins, and McChesney (1990, 470 n.22) note, for example, that legislators have previously proposed revising the merger evaluation framework to require an “economic impact statement” that included estimates of job loss and local government revenue loss.

cratic decision-making. But with this privilege comes the potential for abuse. This potential emerges from two characteristics of American political institutions. First, it emerges from the unique role that the judiciary plays in setting regulatory standards in the United States. Judges (who are also lawyers) are ideologically motivated actors who are insulated from public demands and, as the ultimate arbiter of Congressional intent (and of Constitutional interpretation), they have the power to unilaterally specify legislative objectives and regulatory frameworks. Second, it emerges from the fact that regulators must simplify complex choices to ensure that the law is consistently and fairly implemented, and experts play an essential role in designing the frameworks that simplify regulatory decision-making. Experts can and do use that privilege to develop frameworks that emphasize some concerns while minimizing others. Ideological capture emanates, in our view, from these two sources of structural power.

Though we have focused on a somewhat technocratic issue to illustrate our main arguments, we suspect ideological capture is pervasive in American government. The law and economics movements (and neoliberal thought, more broadly) influenced policy in many domains from criminal sentencing to regulatory cost-benefit analysis, where regulators routinely estimate the dollar value of human life (Viscusi 2018). And there is reason to believe ideological capture exists in settings far beyond the law and economics movement. Prior work suggests, for example, that the law and economics movement arose as a counter-mobilization to a similar movement among liberal elites which leveraged the power of liberal judges, academics, and lawyers to stymie conservatives even when they won elections (Teles 2008). Teles (2008, 3) claims, for example, “that changes in the form of political competition over the past half-century, especially the increasing importance of ideas and professional power, have led to a decline in the power of elections to cause comprehensive change, especially in highly entrenched political domains.”

If that's true, then significant amounts of policy stasis may arise not from typical sources, like the complex distribution of power in American government, but from ideological retrenchment among those professionals who play an out-sized role in designing and enforcing laws and regulations. Whether we observe ideological capture in other domains and whether it has increased over time are therefore important empirical questions that scholars can explore in future work. The answers may change the way we think about power and influence in the American political economy and the ability of elections to advance the public interest.

A Supporting Information

A.1 Tables

Table A.1: Lawyers differ from the public in assessing social and political risks

	Entrepren.	Innovation	Prices	Quality	Infring lib.	Pol. influence	Weaken ties	Too big to fail
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Antitrust lawyer	0.098 (0.062)	0.020 (0.066)	0.010 (0.063)	0.067 (0.067)	0.290*** (0.063)	0.254*** (0.058)	0.123* (0.054)	0.291*** (0.059)
Party: Independent	-0.059* (0.025)	-0.040 (0.031)	-0.032 (0.025)	-0.101*** (0.028)	0.004 (0.021)	-0.013 (0.019)	-0.016 (0.020)	0.013 (0.020)
Party: Republican	0.025 (0.026)	0.058 (0.030)	0.064* (0.026)	0.001 (0.028)	0.030 (0.021)	0.010 (0.019)	0.051* (0.022)	0.047* (0.022)
Age: 40-59	-0.078** (0.025)	-0.056 (0.031)	-0.048 (0.027)	-0.025 (0.029)	0.031 (0.021)	0.034 (0.020)	0.053** (0.020)	0.020 (0.021)
Age: 60+	-0.127*** (0.027)	-0.128*** (0.035)	-0.143*** (0.027)	-0.113*** (0.030)	0.022 (0.025)	-0.003 (0.020)	0.066** (0.023)	0.035 (0.026)
Gender: Female	0.017 (0.021)	-0.001 (0.027)	-0.008 (0.022)	-0.037 (0.024)	-0.023 (0.018)	0.008 (0.016)	0.015 (0.018)	0.003 (0.018)
Gender: Other	-0.139** (0.044)	-0.167 (0.089)	-0.090 (0.060)	-0.124 (0.084)	-0.079* (0.038)	-0.084*** (0.018)	0.071 (0.082)	-0.064 (0.046)
Educ: Some college	-0.056* (0.024)	0.011 (0.033)	0.0004 (0.025)	-0.038 (0.028)	0.036 (0.022)	0.011 (0.020)	-0.010 (0.021)	-0.014 (0.021)
Educ: Bachelor's degree	-0.038 (0.028)	0.044 (0.036)	-0.004 (0.027)	0.014 (0.032)	0.031 (0.022)	0.008 (0.019)	0.031 (0.025)	0.024 (0.026)
Educ: Graduate degree	0.036 (0.043)	0.072 (0.050)	0.109* (0.045)	0.054 (0.048)	0.070 (0.040)	0.037 (0.034)	0.031 (0.036)	0.024 (0.036)
Race: Black	0.170*** (0.039)	0.059 (0.043)	0.107** (0.040)	0.169*** (0.040)	-0.002 (0.026)	-0.009 (0.021)	0.063* (0.026)	0.019 (0.027)
Race: Latinx	0.079* (0.033)	0.042 (0.038)	-0.045 (0.028)	0.072* (0.037)	-0.0001 (0.025)	0.010 (0.024)	0.099*** (0.030)	-0.001 (0.025)
Race: Asian	0.032 (0.059)	0.052 (0.074)	0.021 (0.074)	0.029 (0.075)	-0.017 (0.044)	-0.022 (0.032)	0.020 (0.038)	-0.017 (0.047)
Race: Multiple / Other	0.0002 (0.046)	0.025 (0.057)	-0.057 (0.038)	-0.029 (0.043)	-0.044 (0.032)	-0.030 (0.030)	0.019 (0.034)	-0.025 (0.032)
Constant	0.268*** (0.031)	0.491*** (0.039)	0.258*** (0.032)	0.357*** (0.035)	0.093*** (0.025)	0.073** (0.022)	0.047 (0.027)	0.089*** (0.026)
Observations	2,193	2,193	2,193	2,193	2,193	2,193	2,193	2,193
R ²	0.062	0.024	0.044	0.051	0.051	0.046	0.028	0.041
Adjusted R ²	0.056	0.017	0.038	0.045	0.045	0.039	0.022	0.035
Residual Std. Error	0.397	0.495	0.408	0.443	0.345	0.299	0.339	0.343

Note:

*p<0.05; **p<0.01; ***p<0.001

Table A.2: Public-expert cleavage dominates over partisan differences

	Support for replacing the CW standard (1)	Support for challenging more mergers (2)
Antitrust lawyer	-0.359*** (0.062)	-0.190** (0.068)
Party: Independent	-0.006 (0.025)	-0.007 (0.030)
Party: Republican	-0.088*** (0.025)	-0.131*** (0.030)
Race: Black	-0.084* (0.039)	-0.105* (0.030)

	(0.038)	(0.042)
Race: Latinx	-0.028 (0.035)	0.001 (0.039)
Race: Asian	-0.030 (0.062)	-0.052 (0.072)
Race: Multiple / Other	0.091** (0.031)	0.102 (0.053)
Gender: Female	0.099*** (0.022)	0.005 (0.026)
Gender: Other	0.104 (0.082)	0.230** (0.086)
Age: 40-59	0.020 (0.026)	0.033 (0.031)
Age: 60+	0.082** (0.028)	0.054 (0.034)
Educ: Some college	0.073** (0.025)	0.051 (0.032)
Educ: Bachelor's degree	0.027 (0.029)	0.043 (0.036)
Educ: Graduate degree	-0.033 (0.044)	0.052 (0.050)
Constant	0.732*** (0.032)	0.547*** (0.038)
Observations	2,193	2,193
R ²	0.088	0.031
Adjusted R ²	0.082	0.024
Residual Std. Error	0.401	0.491

Note:

*p<0.05; **p<0.01; ***p<0.001

Table A.3: Public-expert cleavage rooted in beliefs about business power

	Too much power in economy (1)	Gov. works for a few big interests (2)	Bus. regulation in public interest (3)
Antitrust lawyer	-0.177** (0.063)	-0.181** (0.056)	0.034 (0.056)
Party: Independent	0.010 (0.025)	0.102*** (0.022)	-0.228*** (0.029)
Party: Republican	-0.049 (0.026)	0.095*** (0.023)	-0.362*** (0.027)
Race: Black	-0.066 (0.036)	-0.039 (0.032)	-0.066 (0.040)
Race: Latinx	0.00003 (0.030)	-0.046 (0.027)	0.084* (0.037)
Race: Asian	-0.082 (0.065)	-0.0001 (0.039)	0.096 (0.067)
Race: Multiple / Other	0.051 (0.035)	0.027 (0.032)	-0.005 (0.059)
Gender: Female	-0.018 (0.022)	-0.006 (0.018)	0.072** (0.026)
Gender: Other	0.131** (0.043)	0.055 (0.033)	0.314*** (0.081)
Age: 40-59	0.031 (0.025)	-0.027 (0.020)	0.021 (0.030)
Age: 60+	0.025 (0.028)	-0.049* (0.024)	0.070* (0.033)
Educ: Some college	0.048 (0.024)	-0.027 (0.020)	0.059 (0.032)
Educ: Bachelor's degree	0.028 (0.028)	-0.073** (0.024)	0.110** (0.035)
Educ: Graduate degree	-0.023 (0.044)	-0.052 (0.033)	0.179*** (0.046)
Constant	0.794*** (0.031)	0.849*** (0.026)	0.606*** (0.037)

Observations	2,193	2,193	2,193
R ²	0.027	0.045	0.119
Adjusted R ²	0.021	0.039	0.114
Residual Std. Error	0.399	0.353	0.469

Note:

*p<0.05; **p<0.01; ***p<0.001

Table A.4: Public weighs risks like layoffs more heavily than price savings

	Challenge merger (binary) (1)	Challenge merger (four-point scale) (2)
Lobbying: less	-0.017 (0.014)	-0.013 (0.009)
Lobbying: more	0.081*** (0.014)	0.062*** (0.010)
Size: 25,000	0.023 (0.014)	0.011 (0.009)
Size: 100,000	0.028* (0.014)	0.022* (0.010)
Employment: 20% decrease	0.263*** (0.018)	0.206*** (0.012)
Employment: 10% decrease	0.187*** (0.018)	0.142*** (0.012)
Employment: 5% decrease	0.148*** (0.018)	0.099*** (0.012)
Employment: 5% increase	-0.007 (0.017)	-0.017 (0.012)
Prices: 20% lower	-0.078*** (0.018)	-0.054*** (0.012)
Prices: 10% lower	-0.053** (0.018)	-0.035** (0.012)
Prices: 5% lower	-0.026 (0.018)	-0.018 (0.012)
Prices: 5% higher	0.112*** (0.017)	0.093*** (0.011)
Industry: Gase & Oil	-0.017 (0.019)	-0.024 (0.013)
Industry: Grocery store chain	-0.055** (0.020)	-0.055*** (0.014)
Industry: Hospital	-0.027 (0.019)	-0.022 (0.013)
Industry: Pharmaceutical	0.003 (0.019)	-0.007 (0.014)
Industry: Telecom	-0.037 (0.019)	-0.028* (0.014)
Quality: worse	0.267*** (0.014)	0.201*** (0.010)
Quality: better	-0.072*** (0.014)	-0.051*** (0.010)
Bailout: less likely	-0.083*** (0.013)	-0.063*** (0.009)
Bailout: more likley	0.048*** (0.014)	0.036*** (0.009)
Constant	0.379*** (0.026)	0.423*** (0.018)
Observations	10,460	10,460
R ²	0.171	0.211
Adjusted R ²	0.170	0.209
Residual Std. Error	0.452	0.304

Note:

*p<0.05; **p<0.01; ***p<0.001

Table A.5: Partisan and lawyer effects and significant interactions

	Challenge merger (binary)	
	(1)	(2)
Party: Republican	-0.104 (0.054)	
Antitrust lawyer		-0.297** (0.092)
Antitrust lawyer x Size: 100,000 workers		0.153** (0.057)
Antitrust lawyer x Workforce: 20% layoffs		-0.136* (0.068)
Antitrust lawyer x Industry: Hospital		0.126* (0.063)
Antitrust lawyer x Industry: Telecom		0.299*** (0.085)
Constant	0.444*** (0.039)	0.379*** (0.026)
Observations	7,655	10,975
R ²	0.165	0.180
Adjusted R ²	0.161	0.177
Residual Std. Error	0.398	0.451

Note:

*p<0.05; **p<0.01; ***p<0.001
Main effects and insignificant interactions omitted

Table A.6: Antitrust policy positions influence candidate selection for Democrats

	Dependent variable:	
	Vote for candidate	
	(1) Dem. respondents	(2) Rep. respondents
Co-partisan: no	-0.224*** (0.037)	-0.202*** (0.036)
Cand. experience: 4 years	0.078 (0.057)	0.011 (0.054)
Cand. experience: 8 years	0.013 (0.054)	0.023 (0.054)
Cand. experience: 12 years	0.080 (0.052)	0.039 (0.059)
Boost fossil fuels: don't agree	-0.034 (0.040)	-0.093* (0.038)
Break up companies: don't agree	-0.106** (0.034)	-0.014 (0.036)
Raise min. wage: don't agree	-0.015 (0.038)	-0.021 (0.035)
Require photo ID: don't agree	-0.038 (0.039)	0.009 (0.042)
Constant	0.652*** (0.056)	0.628*** (0.056)
Observations	708	762
R ²	0.066	0.050
Adjusted R ²	0.055	0.040
Residual Std. Error	0.486	0.490

Note:

*p<0.05; **p<0.01; ***p<0.001

Table A.7: Beliefs about some merger effects predict policy preferences

Dependent variable:

	Support for replacing CWS (binary)							
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Disagree: Entrepreneurship	0.162*** (0.023)							
Disagree: Innovation		0.045 (0.028)						
Disagree: Prices			0.050* (0.022)					
Disagree: Quality				0.072** (0.022)				
Agree: Infringe lib.					-0.005 (0.023)			
Agree: pol. influence						0.062* (0.026)		
Agree: weaken ties							-0.003 (0.023)	
Agree: too big to fail								0.027 (0.024)
Party: Independent	-0.006 (0.025)	0.003 (0.026)	0.003 (0.026)	0.00002 (0.026)	0.004 (0.026)	0.0002 (0.026)	0.004 (0.026)	0.005 (0.026)
Party: Republican	-0.070** (0.025)	-0.071** (0.026)	-0.071** (0.026)	-0.072** (0.025)	-0.073** (0.026)	-0.073** (0.026)	-0.073** (0.026)	-0.071** (0.026)
Age: 40-59	0.030 (0.026)	0.034 (0.027)	0.031 (0.027)	0.034 (0.027)	0.035 (0.027)	0.037 (0.027)	0.035 (0.027)	0.036 (0.027)
Age: 60+	0.069* (0.028)	0.080** (0.029)	0.073* (0.029)	0.075** (0.029)	0.084** (0.029)	0.082** (0.029)	0.084** (0.029)	0.084** (0.029)
Gender: Female	0.108*** (0.021)	0.102*** (0.022)	0.100*** (0.022)	0.097*** (0.022)	0.099*** (0.022)	0.103*** (0.022)	0.099*** (0.022)	0.101*** (0.022)
Gender: Other	0.036 (0.083)	0.065 (0.080)	0.065 (0.078)	0.054 (0.078)	0.071 (0.080)	0.062 (0.077)	0.070 (0.080)	0.070 (0.079)
Educ: Some college	0.068* (0.026)	0.089*** (0.027)	0.089*** (0.027)	0.087** (0.027)	0.091*** (0.027)	0.088** (0.027)	0.091*** (0.027)	0.089*** (0.027)
Educ: Bachelor's degree	0.039 (0.033)	0.055 (0.034)	0.056 (0.034)	0.059 (0.034)	0.059 (0.035)	0.054 (0.035)	0.059 (0.034)	0.057 (0.034)
Educ: Graduate degree	-0.016 (0.046)	-0.003 (0.048)	0.004 (0.047)	0.007 (0.047)	-0.0001 (0.048)	-0.003 (0.048)	-0.0003 (0.048)	-0.003 (0.048)
Race: Black	-0.056 (0.037)	-0.084* (0.038)	-0.083* (0.038)	-0.073 (0.038)	-0.086* (0.038)	-0.081* (0.039)	-0.086* (0.039)	-0.084* (0.039)
Race: Latinx	-0.014 (0.036)	-0.027 (0.035)	-0.027 (0.036)	-0.024 (0.035)	-0.029 (0.036)	-0.026 (0.035)	-0.029 (0.036)	-0.028 (0.035)
Race: Asian	0.015 (0.062)	-0.010 (0.064)	-0.007 (0.064)	-0.006 (0.064)	-0.010 (0.064)	-0.007 (0.064)	-0.010 (0.064)	-0.009 (0.064)
Race: Multiple / Other	0.099** (0.032)	0.098** (0.032)	0.100** (0.032)	0.096** (0.031)	0.101** (0.032)	0.099** (0.031)	0.101** (0.032)	0.099** (0.031)
Income: 35-75k	-0.029 (0.024)	-0.024 (0.025)	-0.025 (0.025)	-0.028 (0.025)	-0.024 (0.025)	-0.029 (0.025)	-0.024 (0.025)	-0.026 (0.025)
Income: 75-150k	-0.076* (0.033)	-0.068* (0.033)	-0.071* (0.033)	-0.074* (0.033)	-0.069* (0.033)	-0.069* (0.034)	-0.069* (0.034)	-0.070* (0.033)
Income: 150k+	-0.066 (0.044)	-0.067 (0.046)	-0.065 (0.046)	-0.072 (0.046)	-0.067 (0.046)	-0.068 (0.046)	-0.066 (0.046)	-0.068 (0.046)
Income: Missing	0.076 (0.043)	0.094* (0.042)	0.093* (0.042)	0.089* (0.043)	0.094* (0.042)	0.090* (0.042)	0.094* (0.042)	0.093* (0.042)
Constant	0.668*** (0.036)	0.730*** (0.035)	0.718*** (0.036)	0.718*** (0.035)	0.740*** (0.037)	0.695*** (0.040)	0.739*** (0.038)	0.719*** (0.038)
Observations	2,090	2,090	2,090	2,090	2,090	2,090	2,090	2,090
R ²	0.090	0.054	0.056	0.059	0.052	0.056	0.052	0.053
Adjusted R ²	0.082	0.045	0.047	0.051	0.044	0.048	0.044	0.045
Residual Std. Error	0.388	0.396	0.395	0.394	0.396	0.395	0.396	0.396

Note:

*p<0.05; **p<0.01; ***p<0.001

Table A.8: Beliefs about business power strongly predict policy preferences

Dependent variable:

Support for replacing CWS (binary)

	(1)	(2)	(3)	(4)	(5)	(6)
Personal exposure	-0.032 (0.029)					
Tech. worker		-0.115* (0.045)				
Union member			-0.057 (0.047)			
Business has too much power				0.158*** (0.031)		
Gov. works for a few big interests					0.092** (0.032)	
Business reg. needed to protect public						0.148*** (0.023)
Party: Independent	0.004 (0.026)	-0.003 (0.028)	0.002 (0.026)	-0.003 (0.025)	-0.006 (0.026)	0.036 (0.025)
Party: Republican	-0.072** (0.026)	-0.076** (0.027)	-0.074** (0.026)	-0.069** (0.025)	-0.081** (0.026)	-0.023 (0.027)
Age: 40-59	0.039 (0.027)	0.047 (0.029)	0.034 (0.027)	0.029 (0.026)	0.037 (0.027)	0.031 (0.026)
Age: 60+	0.088** (0.030)	0.093** (0.031)	0.081** (0.029)	0.078** (0.028)	0.087** (0.029)	0.072* (0.028)
Gender: Female	0.098*** (0.022)	0.088*** (0.023)	0.097*** (0.022)	0.102*** (0.021)	0.099*** (0.022)	0.089*** (0.021)
Gender: Other	0.068 (0.080)	0.114 (0.065)	0.070 (0.080)	0.051 (0.078)	0.063 (0.080)	0.024 (0.075)
Educ: Some college	0.093*** (0.027)	0.080** (0.029)	0.090*** (0.027)	0.083** (0.027)	0.094*** (0.027)	0.079** (0.026)
Educ: Bachelor's degree	0.061 (0.034)	0.049 (0.036)	0.059 (0.034)	0.054 (0.034)	0.067 (0.034)	0.036 (0.033)
Educ: Graduate degree	0.004 (0.048)	-0.010 (0.048)	-0.001 (0.047)	0.001 (0.046)	0.005 (0.047)	-0.034 (0.046)
Race: Black	-0.085* (0.038)	-0.081* (0.040)	-0.084* (0.039)	-0.077* (0.036)	-0.082* (0.037)	-0.076* (0.038)
Race: Latinx	-0.029 (0.035)	-0.035 (0.039)	-0.028 (0.035)	-0.030 (0.035)	-0.024 (0.035)	-0.044 (0.034)
Race: Asian	-0.009 (0.064)	0.003 (0.069)	-0.013 (0.064)	0.001 (0.062)	-0.010 (0.064)	-0.025 (0.062)
Race: Multiple / Other	0.101** (0.032)	0.094** (0.036)	0.102** (0.032)	0.093** (0.031)	0.098** (0.032)	0.101** (0.033)
Income: 35-75k	-0.023 (0.025)	-0.014 (0.027)	-0.023 (0.025)	-0.035 (0.025)	-0.027 (0.025)	-0.030 (0.025)
Income: 75-150k	-0.067* (0.034)	-0.043 (0.035)	-0.063 (0.033)	-0.076* (0.034)	-0.075* (0.034)	-0.058 (0.033)
Income: 150k+	-0.065 (0.046)	-0.042 (0.046)	-0.059 (0.046)	-0.065 (0.043)	-0.068 (0.045)	-0.054 (0.044)
Income: Missing	0.096* (0.043)	0.116** (0.042)	0.092* (0.042)	0.071 (0.040)	0.085* (0.043)	0.110** (0.043)
Constant	0.738*** (0.035)	0.741*** (0.038)	0.742*** (0.034)	0.622*** (0.042)	0.662*** (0.044)	0.649*** (0.037)
Observations	2,090	1,868	2,090	2,090	2,090	2,090
R ²	0.053	0.058	0.054	0.075	0.058	0.081
Adjusted R ²	0.045	0.049	0.045	0.067	0.050	0.074
Residual Std. Error	0.396	0.396	0.396	0.391	0.395	0.390

Note:

*p<0.05; **p<0.01; ***p<0.001

Table A.9: Registered Hypotheses and Findings

Num.	Hypothesis	Finding	Figure or Table
1a	> 50% of the public disagree that mergers make it easier to start new businesses	Yes	Figure 1
1b	> 50% of the public disagree that mergers increase the speed new technology development	No	Figure 1
1c	> 50% of the public disagree that mergers lower prices	No, plurality	Figure 1
1d	> 50% of the public disagree that mergers lead to higher quality products and services	No, plurality	Figure 1

2	Antitrust lawyers more likely than public to believe mergers produce economic benefits	No, equally likely	Figure 3
3a	> 50% of the public agrees that mergers create companies with too much power to infringe on individual liberties, like free speech or privacy	Yes	Figure 2
3b	> 50% of the public agrees that mergers create companies with too much influence in politics	Yes	Figure 2
3c	> 50% of the public agrees that mergers weaken the ties between companies and local communities	Yes	Figure 2
3d	> 50% of the public agrees that mergers create companies that are “too big to fail” and may have to be bailed out by the government	Yes	Figure 2
4	> 50% of public and each partisan subgroup supports replacing CWS	Yes	Figure 4
5	> 50% of public and each partisan subgroup supports increasing antitrust enforcement	Yes	Figure 4
6a	Republicans support replacing CWS less than Democrats	Yes	Figure 5
6b	Antitrust lawyers support replacing CWS less than public	Yes	Figure 5
6c	Antitrust vs public gap exceeds partisan gap	Yes	Figure 5
7	Public beliefs about social/political risks of mergers more strongly predict antitrust preferences than beliefs about economic benefits	No	Table A.7
8a	Increases support for challenging merger: higher prices, lower product quality, increased bailout risk, decreased workforce, increased lobbying	Yes	Figure 6
8b	Decreases support for challenging merger: lower prices, improved product quality, decreased bailout risk, increased workforce, decreased lobbying	Partial (no for increased workforce and decreased lobbying)	Figure 6
8c	Absolute effect of price reductions smaller than effect of more layoffs, higher bailout risk, lower product quality, and more lobbying	Partial (no for bailout risk at 10-20 percent price reductions)	Figure 6
8d	Absolute effect of price increases smaller than effect of workforce increases, lower bailout risk, higher product quality, and less lobbying	No	Figure 6
9a	No AMCE difference across partisan subgroups	Yes	Table A.5
9b	AMCEs will differ across public and antitrust lawyers	Partial, yes in some cases	Table A.5
10a	No effect of personal exposure and self-interest on policy preferences	Partial (no for tech workers)	Table A.8
10b	Belief that corporations have right amount or too much influence positively associated with replacing CWS.	Yes	Table A.8
10c	Belief that government is for the benefit of all the people positively associated with replacing CWS.	Yes	Table A.8
10d	Beliefs about economic and political power of corporations more predictive than demographics and party identification	Yes for party ID; no for some demographics	Table A.8

Table A.10: Previous antitrust polling

Year	Question	% Agree	Question Key
1983	Mergers are beneficial	19	USROPER.83-3.R29G
1983/1985	Mergers increase layoffs	59-67	USORC.83FEB.R07B
1985	Mergers are beneficial	16	USROPER.85-4.R26G
1986	Mergers lower prices	12 (45 higher, 35 no change)	USROPER.86-03.R29
1990	Mergers are beneficial	25	USYANKCS.022690.R11E USPSRA.92JOBS.R06I
1992	Mergers are increase job loss	41-48	USPSRA.93JOBS.R06G
1997	Mergers keep wages down	61	USPSRA.97WORK.R02F USGALLUP.98AP17.R28
1998	Mergers are beneficial	31-32 (54 bad for consumers)	USGALLUP.98DC04.R12
1998	Mergers are beneficial	45 (38 bad)	USWIRTH.98JUNE.R3A
1998	Most important problem with business concentration	41 (too much power ove prices)	USCAMREP.88JAN.R137
1998	Most important problem with business concentration	20 (too much political influence)	USCAMREP.88JAN.R137
2000	Mergers are beneficial	35-41 (45-52 bad)	USGALLUP.00JAN25.R23
2000	Mergers lower prices	19 (49 prices worse)	USPSRNEW.011500.R21A
2000	Mergers improve products	31	USPSRNEW.011500.R21B
2000	Mergers improve complaint management	16	USPSRNEW.011500.R21C USGALLUP.00JAN25.R25;
2000	Mergers good for workers	28-31 (55-60 bad)	USGALLUP.00OCT25.R16
2000	Mergers improve employee care	17	USPSRNEW.011500.R21D
2000	Mergers are concerning	48 (very concerned; 27 somewhat)	USPSRNEW.011500.R25B

A.2 The public views mergers as helping some and hurting others

Mergers may have distributional consequences: they tend to benefit the white collar professionals who facilitate the transaction but hurt blue collar workers. We initially wondered whether beliefs about the relationship between mergers and inequality might also influence policy preferences.

Prior surveys explore public perceptions about the distributional consequences with standard help / hurt questions (SI A.9). In a 1990 survey, 80 percent said that mergers help “the lawyers and bankers who arrange the mergers or takeovers” and 62 percent said they hurt the “employees of the companies involved.” Beliefs about “top management” and stockholders were mixed (52 and 41 percent respectively agreeing that mergers help these groups).

In our third pilot study, we asked similar questions. Figure A.1 illustrates the results.³⁶ Beliefs that mergers help the “lawyers and bankers who negotiate the merger” were almost unanimous (96.7 percent). Respondents also perceived mergers as helping “top management (e.g. the CEO)” and “stockholders” (83.7 and 73.2 percent, respectively) and hurting “employees” (77 percent), by large margins. Perhaps because these beliefs were ubiquitous in our sample, they did not influence attitudes towards the CWS and we did not include these questions in the final survey. Whether elite-public cleavages in antitrust are linked to fairness concerns is a question for future research.

A.3 Industry and firm size do not influence merger evaluations

To make the merger profiles more realistic we included attributes for industry and firm size. We suspected that public demand for a government challenge would be highest for mergers involving

³⁶This convenience sample was balanced in terms of partisanship and we used post-stratification weights to approximate national marginal distributions on age, race, gender, and education.

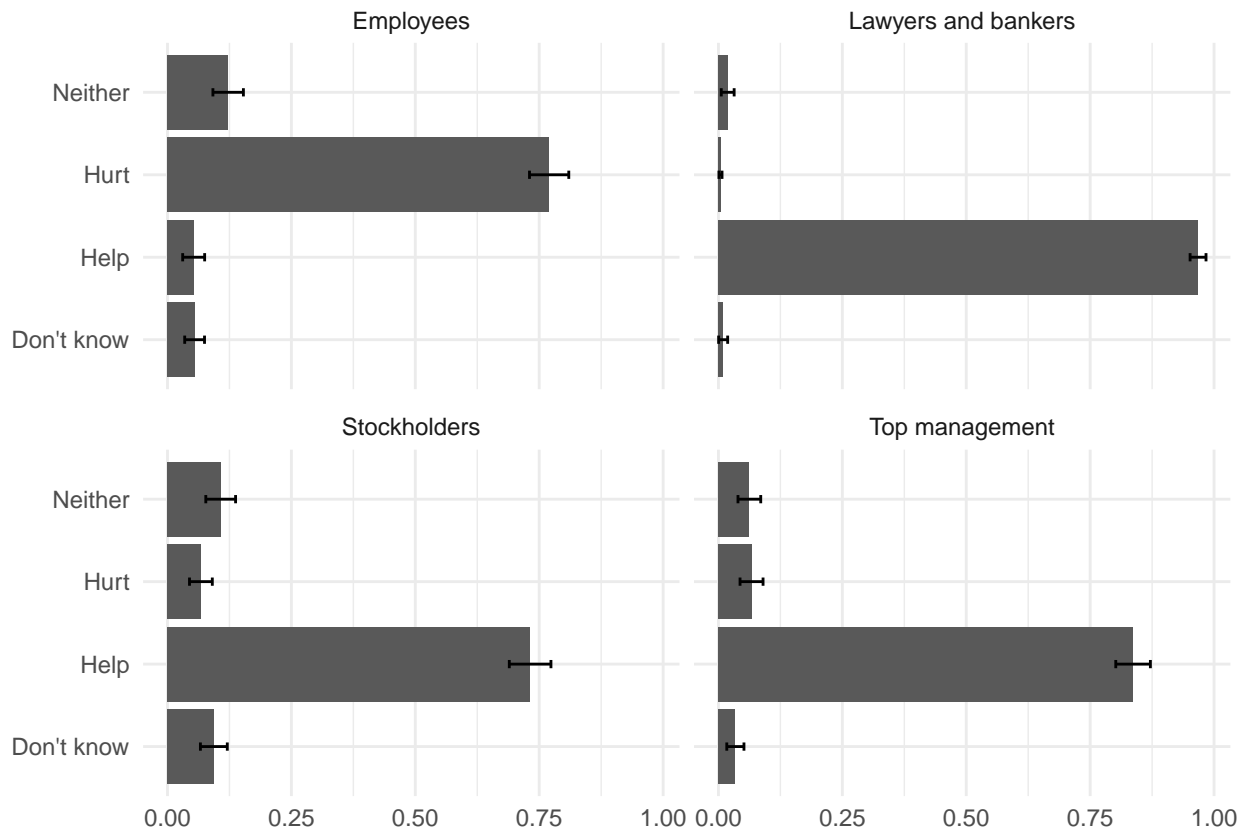


Figure A.1: In a convenience sample of the public, strong majorities believe mergers help top management, stockholders, and the lawyers and bankers who negotiate the deal but hurt workers.

financial companies (compared to other industries) and for larger companies (as measured by the number of workers). The data suggests, in contrast, that industry and firm size have substantively small effects on public evaluations (Table A.4). They do, however, have significant effects on lawyer merger evaluations, with lawyers being much more likely to support a challenge for firms with 100,000 workers and companies in the hospital or telecommunications industries (Table A.5.

A.4 Antitrust issues are important to the public

In our pilot surveys, we evaluated the importance of antitrust issues in two ways. Both suggest that antitrust enforcement is an important issue to American voters.

We first evaluated issue important through subjective assessment. In our first pilot survey,

we asked respondents if they would “say that the increasing number of very large companies in the economy is a very important problem, a somewhat important problem, or not an important problem at all.” In an (unweighted) convenience sample of 1,281 respondents who answered this question, 82 percent of Republicans ($n = 415$), 86 percent of Independents ($n = 501$), and 96 percent of Democrats ($n = 339$) said that this was a very or somewhat important problem.³⁷

Self-reported measures of issue importance have well known limitations (Hanretty, Lauderdale, and Vivyan 2020). As a result, we also attempted to assess issue importance with a choice-based measure. In our third pilot survey, we included a candidate choice experiment in which respondents were first asked whether they support or oppose five policies: (1) requiring a photo ID to vote, (2) boosting domestic production of fossil fuels, (3) breaking up companies that have too much market power, (4) expanding Medicare to cover all Americans, and (5) raising the federal minimum wage to 15 dollars per hour. Respondents were then asked to evaluate three pairs of hypothetical candidates running for election to the House of Representatives and indicate which they would vote for. The candidates randomly varied in terms of their positions on the same five policies and also in terms of their partisanship (Republican or Democrat) and their experience in office (0, 4, 8, or 12 years). We asked both blocks of questions (policy positions and candidate evaluations) at the start of the survey before respondents were primed to think about antitrust issues.

The results suggest that breaking up companies that have too much market power is about as important to Democrats as boosting fossil fuel production is to Republicans (Table A.6). The effects are smaller than for co-partisanship, but larger than the null effects observed for policies like

³⁷The remaining 132 respondents had a party affiliation of other or don't know.

increasing the minimum wage. The results are robust to including Independents with Democrats.³⁸

A.5 Some attitudes are associated with demand for replacing the CWS

We hypothesized that “[p]ublic beliefs about the social and political risks of mergers will more strongly predict antitrust policy preferences than beliefs about the economic benefits of mergers” (Hypothesis 7). To test this hypothesis, we regressed support for replacing the CWS on demographics (gender, age, income, ethnoracial identification, and education) and beliefs about merger effects, each in turn (for a similar test, see Bearce and Moya 2020). Beliefs about merger effects were coded as binary variables indicating disagreement that mergers create positive economic benefits or agreement that mergers have negative social costs. Table A.7 shows the results.

Contrary to our hypothesis, the only social risk that has a significant effect on support for replacing the CWS is concern that large mergers create companies that have too much influence in our nation’s politics. The magnitude of the effect (0.062, $p < 0.05$) is substantively small and comparable to the effect observed for beliefs that mergers lower prices (0.050, $p < 0.05$) and increase product quality (0.072, $p < 0.01$). Accordingly, we reject our hypothesis that the coefficients for economic benefits will not be significant while the coefficients for social risks will be significant. However, to the extent these beliefs influence support for the CWS, it is beliefs about the influence of mergers on entrepreneurship that dominates. Respondents who agree that large mergers increase entrepreneurship are 16.2 percent ($p < 0.001$) more likely to support the CWS.

³⁸We selected issues to benchmark the importance of antitrust policy, not to capture those issues that are most likely to influence real-world candidate evaluations today.

A.6 Expert-public cleavages are robust to controlling for demographics

We hypothesized that, when regressing support for replacing the CWS on demographics, party identification, and an antitrust lawyer indicator, the coefficients on party identification will be significant and negative (when Democrat is the omitted condition; Hypothesis 6a). The results partly confirm the hypothesis: the coefficient on both partisan variables is negative but is only significant for Republicans (Table A.2 column (1)). We further hypothesized that the coefficient on the lawyer variable will be significant and negative and larger in absolute terms than the coefficients on the partisan variables (Hypotheses 6b-6c). The results confirm the hypotheses: the coefficient on the lawyer variable (-0.359, $p < 0.001$) is more than four times larger the coefficient on the variable indicating Republican identification (-0.088, $p < 0.001$) (Table A.2 column (1)). We also performed exploratory tests where the dependent variable is a binary variable indicating support for challenging more mergers. The results are similar but smaller in magnitude: the coefficient on the lawyer variable (-0.190, $p < 0.01$) is significant and negative and larger than the coefficient on the variable indicating Republican identification (-0.131, $p < 0.001$) (Table A.2 column (2)).

A.7 Preferences are rooted in fundamental attitudes and are stable

We hypothesized that public beliefs about the economic and political power of large corporations will predict policy preferences, but personal exposure and self-interest will not. To test this contention, we regressed support for replacing the CWS on demographics (age, ethno-racial identification, gender, education, and income), party identification, and predictors measuring exposure to merger activity or self-interest as well as attitudes about the relationship between business and government. Each of these additional predictors entered the regression one at a time (demographics

and party identification were included in each model). Table A.8 shows the results.

The results support our hypothesis, with one exception. Having worked at a company that went through a merger is a direct measure of exposure ($n = 466$) but does not predict support for replacing the CWS. Merger related downsizing also has a substantial impact on blue-collar workers, but union membership ($n = 170$) does not predict support for replacing the CWS. Merger activity is also high among technology companies. In this dimension, self-interest does influence preferences: technology workers ($n = 207$) are 11.5 percentage points ($p < 0.01$) less likely to support replacing the CWS than non-technology workers, an effect that is larger in magnitude than Republican identification (-0.076 , $p < 0.001$) in the same model.

In contrast, compared to those who believe large corporations have about the right amount or not enough power and influence in today's economy, those who believe large corporations have too much power and influence are 15.8 percentage points ($p < 0.001$) more likely to support replacing the CWS. Compared to those who believe government is run for the benefit of all people, those who believe it is "pretty much run by a few big interests" are 9.2 percentage points ($p < 0.01$) more likely to support replacing the CWS. Compared to those who believe government regulation of business usually does more harm than good, those who believe it is necessary to protect the public interest are 14.8 percentage points ($p < 0.001$) more likely to support replacing the CWS.³⁹

In sum, with the exception of technology workers, who are outliers when it comes to regulating business (Broockman, Ferenstein, and Malhotra 2019), public preferences for replacing the CWS are not motivated by self-interest. Those who have gone through a merger or might lose their job should a merger take place are not meaningfully different from everyone else. Preferences for

³⁹In this regression, the effect of moving from Democrat to Republican identification is null, suggesting that conservative opposition to replacing the CWS is rooted in deregulatory preferences.

replacing the CWS arise instead from more fundamental beliefs about the power and influence that large corporations exercise in the American political economy.

Public preferences also appear to be stable. Because some of the questions we deployed in two of our pilot surveys were similar, and about half of the respondents took both surveys, we can compare how preferences changed between November 2021 and June of 2023 for a sub-sample of 524 respondents. The results are shown in Figure A.2. About 84 percent of respondents took the same position on whether the large corporations have too much power in the economy, and about 92 percent of respondents took the same position on whether government is pretty much run for the benefit of a few big interests. Similarly, about 82 percent of respondents took the same position on whether the consumer welfare standard should be replaced, and about 73 percent of respondents expressed the same preference for having the government challenge more mergers.

A.8 Hypothesis Testing

We did not ask about income in the lawyer surveys, so we differ from our pre-registered tests in this survey only in that we do not control for income when comparing lawyers to the public. Income, however, is a weak predictor of policy preferences (see Tables A.7 and A.8) and all results are robust to assuming that antitrust lawyers are in the highest income category (\$150,000 annually or higher).

The results of each test are in Table A.9.

A.9 Prior Polling

Before designing our survey, we reviewed existing survey evidence on mergers in the Roper iPoll database. These surveys suggest that the public is generally skeptical that mergers deliver con-

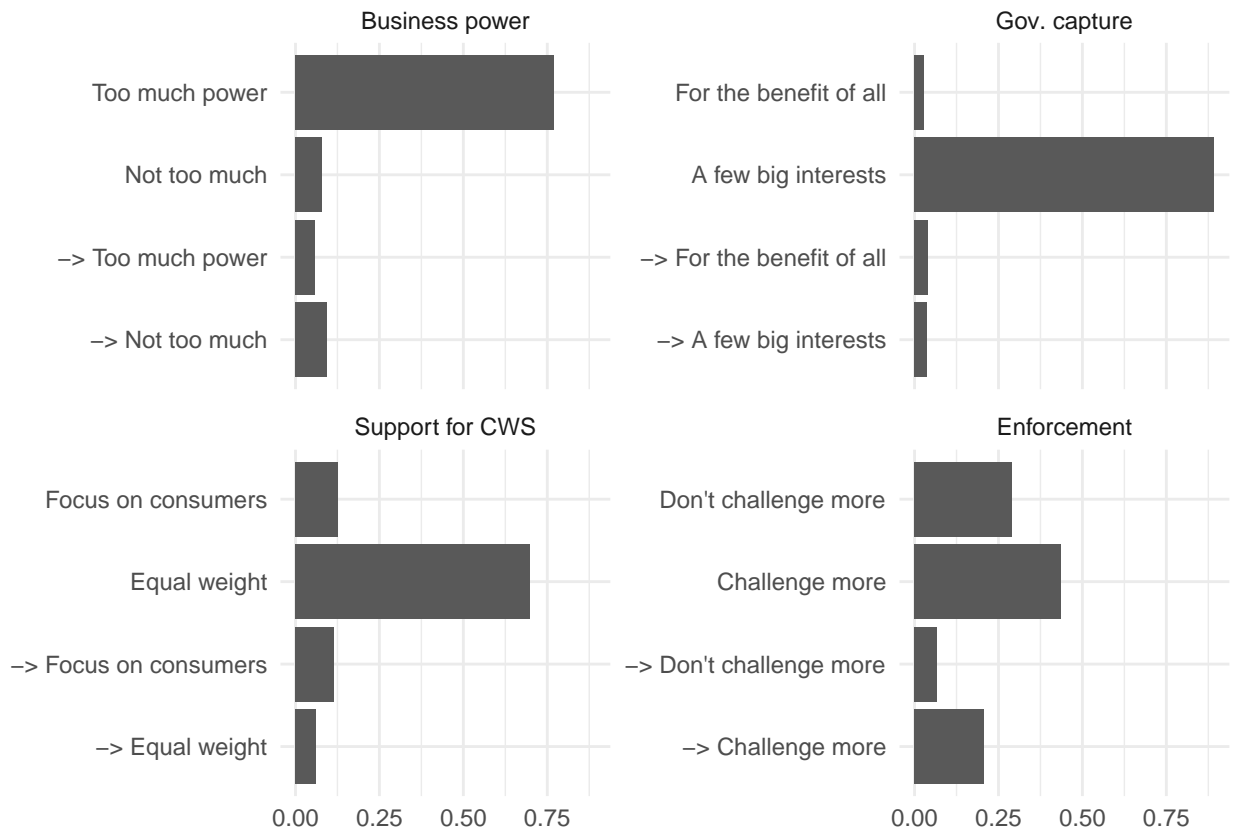


Figure A.2: High shares of respondents took the same position (top two bars in each panel) in November of 2021 and June of 2023 when asked about the influence of large corporations in the economy and in government and also about policy preferences. The bottom two bars in each panel show the share that switched to each position.

sumer benefits: in none of the surveys we found did a majority believe that mergers help consumers as a group or deliver lower prices. At the same time, many of these surveys are over twenty years old. They also ask only a few similarly worded questions about consumer benefits, with most asking about consumers as a group. None, to our knowledge, asked about support for the CWS. Nor have any measured how respondents weigh various tradeoffs when evaluating proposed mergers. In the survey we conducted, described in section 4, we attempted to address these and other shortcomings in prior surveys. Here, we summarize what we learned from prior surveys about the values that influence public preferences. All survey questions analyzed below are listed and described in Table A.10 along with unique identifiers to enable easy lookup within the database.

The most common question posed in prior surveys about the consumer benefits flowing from large mergers is some form of a “help/hurt” question about consumers. These questions introduce the idea of companies becoming larger through mergers and then ask respondents whether they believe these mergers will generally help or hurt consumers. This kind of question was asked on eight occasions between 1983 and 2000.

The results suggest that the public is generally skeptical that mergers benefit consumers. In 1983, only 19 percent believed that consumers who buy products of an acquired company benefit from mergers. In 1985, only 16 percent took that position. In 1990, only 25 percent responded that “mergers and takeovers” help American consumers. In two 1998 surveys, a majority (54 percent) believed that mergers between “two large companies” are bad for consumers. However, in a separate 1998 study, 45 percent believed mergers are generally a good thing for consumers, while only 38 percent believed they were generally a bad thing. In 2000, 35-41 percent believed that mergers between “two large companies” are good for consumers while 45-52 believed that such deals are bad for consumers.

A primary drawback of help/hurt questions is that such questions do not identify how consumers benefit, an important question given that, under the CWS, regulators generally approve those mergers that can reduce prices. Here, the evidence is limited but suggests that the public generally does not believe mergers produce lower prices. In 1986, a mere 12 percent believed that “large mergers result in lower prices,” while 41 percent believed they will result in higher prices and 35 percent believed they will have no effect. In a 2000 survey of New Hampshire adults only 19 percent believed that “companies getting bigger through mergers makes things better” when it comes to “the prices consumers have to pay for products and services” while 49 percent responded that mergers make things worse. Only 31 and 16 percent believed that mergers make things better

when it comes to “the choices of products and services available to consumers,” and the handling of consumer complaints, respectively.

Though regulators evaluate proposed mergers based on their potential effect on consumer prices, under the CWS, it is not clear that consumers take such a narrow view when determining whether mergers improve their welfare. For example, many of the same surveys that asked help/hurt questions about the impact of mergers on consumers asked the same question about the impact of mergers on workers. In one 2000 survey, only 28-31 percent believed that mergers between “two large companies” are good for the workers at the companies involved while 55-60 percent believed that the deals were bad for workers. Our pilot studies suggest that the public has only become more aware of these distributional consequences (see SI A.2).

These questions suggest the public believes mergers have economic effects beyond the impact on consumer prices. They do not reveal how respondents feel about these non-price outcomes and existing surveys provide only suggestive evidence at best. Nevertheless, the evidence suggests the public is concerned about the impact of mergers on individual workers and on aggregate levels of job creation. In two 1983 surveys, 59-67 percent believed that “mergers result in the layoffs of too many employees.” In 1997, 61 percent believed that “corporate mergers and downsizing” has “done more to keep wages down” rather than increase wages. In a 2000 survey of New Hampshire adults, 46 percent believed that mergers make things worse when it comes to “how well companies take care of their workers,” while only 17 percent believed that mergers make things better in this respect. And in two surveys from 1992 and 1993, 41-48 percent scaled “corporate mergers and restructuring” at a score of 4 (with 5 representing a cause of the “greatest importance”) to explain “the loss of jobs in this country.”

When it comes to other non-price outcomes, the evidence is too scant and unrepresentative

to draw inferences. In a 2000 survey of New Hampshire adults, 48 percent were “very concerned” and an additional 27 percent were “somewhat concerned” that “mergers will result in very large companies having too much influence over this country’s politics.” Unfortunately, we have not identified any prior questions probing the effect of mergers on product quality (as opposed to variety), on the risk of creating companies that are “too big to fail,” or on the ability of individuals to start new businesses, though scholars frequently raise these non-price concerns in their arguments (Averitt and Lande 2007; Khan 2018; Stucke 2012).

Though this evidence supports many of the contentions we make in the main paper about public beliefs, it also has significant limitations. Prior surveys have not asked about the relationship between mergers and non-price economic outcomes like product quality, innovation, or entrepreneurship, even though there are theoretical reasons to expect that these concerns are important in today’s setting. Prior questions also do not align well with research questions. No existing poll, for example, assesses support for the CWS. Prior work also has not used experimental techniques to infer how consumers weigh price and non-price concerns when opining on whether the government should challenge proposed mergers.⁴⁰ Prior work also has not surveyed specialists, like antitrust lawyers, or assessed elite-public cleavages in this context.

⁴⁰Only one question comes close. In 1998, when asked which of three problems “is the single most important problem . . . associated with the concentration of business ownership,” 41 percent answered that business owners “have too much control over prices and competition” while another 20 percent answered that business owners “have too much political power and influence.”

A.10 Professional Ethics and Best Practices

We used outside funding, in the form of \$10,000 in free advertising credits provided by Facebook, to recruit antitrust lawyers to take our survey. For the public survey, we used three small grants from our research institutions, totaling \$5,000. The remaining funds came from our own research budgets.

The authors do not have any conflicts of interest.

Our research engaged with human subjects and we obtained approval from our Institutional Review Board and complied with all relevant laws. Specifically, we asked for respondents' consent to taking the survey and we ended the survey for those who did not provide consent. We also excluded responses from minors. Bovitz/Forthright did not provide us with any personally identifiable information for the public survey. We used randomly generated identifiers (in Qualtrics) to identify members of the public or the antitrust lawyers who took our survey. We further preserve confidentiality here by reporting only aggregate statistics. We did not ask questions that posed more than a minimal risk of harm or discomfort. Participants in the public survey were compensated with cash rewards from Bovitz-Forthright that depend on the length and type of survey and the number of Forthright surveys taken.

We did not withhold any information from our survey respondents or deceive respondents in any way. During the course of administering the survey, we received two emails notifying us of potentially misleading information in the survey. We resolved those complaints in the following manner.

In response to our initial Facebook survey recruiting antitrust lawyers, one respondent (not a lawyer) suggested that our text describing the CWS was misleading. In that survey, we initially

stated: “Existing law tells government officials to approve a merger if they believe it will produce economic benefits for consumers, like lower prices and better product quality. Government officials do not consider other effects, like the impact on job security or worker’s wages.” The respondent argued that, because a 2021 Supreme Court case (not involving a merger) and a non-binding 2022 District Court case had addressed monopsony concerns under the CWS, it is misleading to say that government officials do not consider labor effects.

We believe the original text is not misleading. We began testing our survey in February of 2021, before these cases were decided. The precedential impact of these rulings is uncertain, especially since the Supreme Court case pertained to student athlete compensation and did not involve merger review. The intent of our survey is to assess attitudes about the general understanding of the CWS that has guided antitrust policy for the last 40 years, not the novel issues that may challenge that understanding in the last few years. Also, our definition of the CWS is based, almost verbatim, on the published writings of leading antitrust scholars and no practicing attorneys contacted us to suggest that the text was misleading. Nevertheless, in an abundance of caution, we changed the second sentence to: “Government officials typically do not consider other effects, like the impact on job security or worker’s wages.” The public and the lawyers recruited through email (not Facebook) saw this version.

We also included a substantive attention check in the survey. The introduction stated: “In today’s business world, it is fairly common for one company to merge with or acquire another company. We will refer to these deals as mergers. Government officials only regulate mergers involving large companies. This generally means the acquired company is worth \$101 million or more.” One attorney contacted us to let us know that this technically is not correct. Though the reporting thresholds for mergers are triggered at this level under Hart-Scott-Rodino, the govern-

ment technically has the power to challenge any merger, regardless of size, and does occasionally challenge mergers of lower value.

We were unaware of this nuance and believe this assertion to be correct. It was too late to change the survey text, but we only use the answer to this question to evaluate attentiveness (we do not, for example, screen respondents based on their answer to the subsequent question). We acknowledge that our survey did bias respondents towards thinking the government only challenges mergers above this threshold, though most government challenges fall into this category.

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