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Mergers and Acquisitions in the Age of Wall Street: An Assessment

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MERGERS AND ACQUISITIONS IN THE AGE OF WALL STREET: AN ASSESSMENT

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It is natural that following an exceptional event such as the merger boom of the 1980s, a period of assessment will follow. *Dangerous Pursuits*,[1] by Walter Adams and James W. Brock is representative of a trend critical of mergers which, like other tales of Wall Street mergers and acquisitions during the 1980s such as *The Predators' Ball*,[2] *Liar's Poker*,[3] and *Barbarians at the Gate*,[4] is aimed at popular audiences. In *Dangerous Pursuits*, Adams and Brock expand upon the theme touched upon in their earlier work, *The Bigness Complex*,[5] that mergers, acquisitions, takeovers, and buy-outs are a "game" that involve merely "an exchange of wealth instead of its creation, a trading of ownership titles instead of investment in the future."[6] In their new work the authors present a series of economic problems they associate with mergers, including the loss of markets to foreign competitors, persistent trade deficits, inadequate capital formation, lagging research and development, declining productivity, and debt-laden corporations.[7] For these ills, they offer several policy prescriptions that include the elimination of the interest deduction for debt, tougher financial regulations on deal making, a sales tax on securities transfers, increased enforcement of the antitrust laws, and the interdiction of unproductive mega-mergers.[8]

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1. W. ADAMS & J. BROCK, DANGEROUS PURSUITS: MERGERS AND ACQUISITIONS IN THE AGE OF WALL STREET (1989).

2. C. BRUCK, THE PREDATORS' BALL: THE JUNK-BOND RAIDERS AND THE MAN WHO STAKED THEM (1988).

3. M. LEWIS, LIAR'S POKER: RISING THROUGH THE WRECKAGE ON WALL STREET (1989).

4. B. BURROUGH & J. HELYAR, BARBARIANS AT THE GATE: THE FALL OF RJR-NABISCO (1990).

5. W. ADAMS & J. BROCK, THE BIGNESS COMPLEX: INDUSTRY, LABOR AND GOVERNMENT IN THE AMERICAN ECONOMY (1986).

6. W. ADAMS & J. BROCK, *supra* note 1, at 182; *see also* W. ADAMS & J. BROCK, *supra* note 5, at 372.

7. W. ADAMS & J. BROCK, *supra* note 1, at 176.

8. *Id.* at 82.

Dangerous Pursuits, however, does not offer a complete account of the current academic and public-policy debate on the causes and effects of the 1980s merger boom. While the authors present numerous tables and graphs and cite some empirical analyses for their conclusions, they do not seek to establish causal links between mergers and acquisitions and their alleged consequences. Furthermore, their selective use of outside research presents only one side of the current controversy. This essay seeks to critically assess the trend in law and economics critical of mergers in the 1980s represented by Adams and Brock.

I. ANTITRUST MERGER ENFORCEMENT

Adams and Brock focus their attack on the perceived lack of antitrust merger enforcement under the Reagan administration.[9] They argue that "the Reagan administration, by declining to enforce the antitrust laws, allowed the [merger and acquisition] game to proliferate and expand."[10] Adams and Brock contend that for eight years during the 1980s the Reagan administration "assiduously emasculated the nation's merger policy. They brazenly defied congressional intent and judicial precedent. They promulgated 'guidelines' in 1982, and again in 1984, that gutted merger policy, and that made challenges to even the biggest mergers more difficult and less likely."[11] As in their earlier work, this conclusion is bolstered by data on the number of premerger notifications submitted compared to the number of challenges to mergers made by the federal antitrust authorities. These data indicate that from 1981 to 1987 the Department of Justice received 10,723 premerger notifications, yet only 26 cases challenging mergers were actually filed.[12] Over the same period, the Federal Trade Commission received 9530 premerger notifications, yet filed only 17 administrative complaints challenging mergers.[13]

On their face these data appear to paint a picture of neglect and mismanagement, especially when compared to earlier periods. In a study of antitrust merger policy in the Reagan years, Thomas Krattenmaker and Robert Pitofsky note that from 1979 to 1980, government enforcement actions totalled 2.5% of the number of premerger notifications, while in the years 1982 to 1986 government actions totalled only 0.7% of the number

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9. *See id.* This was also the subject of a prior article by the authors. *See* Adams & Brock, *Reaganomics and the Transmogrification of Merger Policy,* 33 ANTITRUST BULL. 309 (1988).

10. W. ADAMS & J. BROCK, *supra* note 1, at 27.

11. *Id.* at 146.

12. *Id.* at 28.

13. *Id.*

of premerger notifications.[14] Krattenmaker and Pitofsky caution, however, that premerger notification and challenge figures "alone do not necessarily prove or imply that merger policy or enforcement during the present [Reagan] administration has been indifferent or misguided."[15] With the inception of the premerger notification system in the late 1970s, the antitrust authorities were able to screen mergers and request additional information from the merging parties prior to consummation. The Reagan administration's Department of Justice Antitrust Division, initially headed by William F. Baxter,[16] claimed to make use of the premerger notification system to introduce a "fix-it-first" policy toward mergers, under which the Department of Justice "advises merging parties of its enforcement intentions and discusses with them alternative ways to cure any anticompetitive impact of the merger" prior to its consummation.[17] Reagan policy supporters argue that many mergers were abandoned or restructured by the parties following an enforcement authority request for additional information, but before a court case or administrative complaint could be filed. For example, William Kolasky, Philip Proger, and Roy Englert have noted that while "Baxter was in office [1981 to 1983], the Department of Justice obtained premerger [consent] decrees in eight cases, and no preliminary injunction actions had to be litigated."[18]

Focusing only on the number of cases filed presents a misleading picture of enforcement and ignores "fix-it-first" situations. During the fiscal years 1988 to 1990, the Department of Justice received 7892 premerger notifications and filed actions against 22 transactions in district court.[19] However, another 15 transactions were restructured or abandoned prior to filing a complaint as a result of an announced challenge, and another 10

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14. Krattenmaker & Pitofsky, *Antitrust Merger Policy and the Reagan Administration*, 33 ANTITRUST BULL. 211, 213 (1988).

15. *Id.*

16. Assistant Attorney General William Baxter was chief of the Justice Department Antitrust Division from 1981 through 1983. During his tenure he presided over the negotiated settlement that led to the breakup of AT&T, dismissed the suit against IBM, and rewrote the Department's merger guidelines. *See* Lewis, *The Reagan Revolution in Antitrust*, N.Y.L.J., Sept. 21, 1989, §1, at 1, col. 1 (discussing the Reagan merger guidelines); Taylor, *Antitrust Post Left By Baxter*, N.Y. Times, Dec. 9, 1983, at D1, col. 6 (discussing the AT&T negotiations and the dismissal of the suit against IBM).

17. Kolasky, Proger & Englert, *Anticompetitive Mergers: Prevention and Cure*, in ANTITRUST AND REGULATION: ESSAYS IN MEMORY OF JOHN J. MCGOWAN 49, 59 (F. Fisher ed. 1985).

18. *Id.*

19. *Antitrust Division's Workload Data over Past 10 Fiscal Years*, 60 Antitrust & Trade Reg. Rep. (BNA) No. 1500, at 133, 135 (Jan. 24, 1991).

transactions were restructured or abandoned before a Department enforcement decision.[20]

Furthermore, because the 1982 and 1984 Department of Justice merger guidelines clarified prosecutorial policy, some mergers may never have been attempted because of the likelihood of a costly challenge. One striking anecdote of antitrust deterrence in the automobile industry is Lee Iacocca's claim that antitrust concerns were among the reasons that prevented Chrysler (which had acquired American Motors without an antitrust challenge) from attempting the takeover of General Motors, a transaction contemplated in 1987.[21] In short, the data Adams and Brock present on the number of *actual* challenges made by the Department of Justice and the Federal Trade Commission may fail to reflect the effectiveness of the deterrence function of antitrust enforcement during the Reagan administration.

Adams and Brock further contend that "[c]onsolidations fusing together competitors in the same industry or the same market were especially pronounced during the decade" and that these *horizontal* mergers "concentrate industry control into fewer hands and undermine competition by reducing the number of competitors . . . ."[22] They present a list of industries in which "anticompetitive industry consolidations"[23] occurred, including oil, food production, grocery retailing, department store retailing, video entertainment, airlines, home appliances, paper products, textiles, apparel, and steel.[24]

Except for the airlines, however, the authors present no empirical evidence that such consolidations undermined competition in any of these industries. But the airline industry, Adams and Brock contend, "poignantly demonstrate[s] the adverse economic consequences that result when anticompetitive mergers between rivals in the same field are allowed to proliferate without restraint."[25] They note that "[a]fter acquiring Ozark, for example, TWA cut 40 flights out of St. Louis, and raised fares by as much as 33 percent" and that "Northwest cut the number of departures from Minneapolis by nearly 15 percent following its acquisition of Republic."[26] It is unclear, however, whether these effects should be attributed to a lack of enforcement on the part of the antitrust authorities

20. *Id.*

21. *See* Holusha, *Buy G.M.? Iacocca Pondered It in '87*, N.Y. Times, June 1, 1988, at D1, col. 3.

22. W. ADAMS & J. BROCK, *supra* note 1, at 19.

23. *Id.* at 24.

24. *Id.* at 19-24.

25. *Id.* at 101.

26. *Id.* at 104-05.

during the Reagan administration, since the Department of Justice opposed both of these mergers.[27] Both transactions were ultimately approved by the Department of Transportation which, as part of the deregulation efforts of 1985, acquired the authority over mergers in the airline industry formerly held by the Civil Aeronautics Board.[28]

Even the anticompetitive effects of concentration itself which Adams and Brock take for granted cannot be uncritically assumed. Michael Salinger's empirical study found that increases in industry concentration can be associated with reductions in cost and price.[29] Indeed, Joseph Farrell and Carl Shapiro have gone a step further and have demonstrated theoretically that even if a horizontal merger increased market price, the result could be either an increase or a decrease in overall economic welfare.[30]

It may indeed be the case that subsequent study will show that merger enforcement under the Reagan administration was seriously flawed. But to draw this conclusion will require careful analysis as to whether the mergers permitted by the Reagan administration subsequently undermined competition. To date such an analysis has not been undertaken.

II. MERGERS AND ECONOMIC EFFICIENCY

Beyond antitrust enforcement, Adams and Brock acknowledge that "no matter how conscientiously or zealously they may be enforced, the antitrust laws cannot possibly cope with the speculative deal-mania sweeping the country."[31] As a remedy they advocate that the proponents of any merger, takeover, or buy-out beyond a given threshold size (they suggest $1 billion) be required

> to file a public impact statement to accompany the proposed deal. Such a statement would have to show that the deal will enhance production efficiency; that it will stimulate technological progress;

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27. *See* Greenberg, *Lower Air Fares for Consumers Not in the Cards*, L.A. Times, July 8, 1990, at L2, col. 1 (discussing Justice Department's opposition to these transactions).

28. This authority was subsequently transferred from the Department of Transportation to the Department of Justice in 1989.

29. *See* Salinger, *The Concentration-Margins Relationship Reconsidered*, in BROOKINGS PAPERS ON ECONOMIC ACTIVITY: MICROECONOMICS 287, 308-316 (M. Baily & C. Winston eds. 1990); *see also* Glick & Ehrbar, *Long-Run Equilibrium in the Empirical Study of Monopoly and Competition*, 28 ECON. INQUIRY 151 (1990) (empirical study of the equalization of long-run industrial rates of return).

30. *See* Farrell & Shapiro, *Horizontal Mergers: An Equilibrium Analysis*, 80 AM. ECON. REV. 107, 114-20 (1990).

31. W. ADAMS & J. BROCK, *supra* note 1, at 181.

> that it will promote international competitiveness; and that these goals cannot be achieved in the absence of the proposed deal. Unless this showing can be made, the deal would be banned.[32]

Given the authors' implied standards based upon their review of the empirical evidence on mergers and economic efficiency, it is unclear how the proponents of any merger could make such a showing. For example, Adams and Brock contend that "evidence generated from painstaking statistical analyses strongly suggest[s] that merger-mania *undermines* efficiency in production, that it *obstructs* technological advance, and that it *subverts* international competitiveness."[33]

To support this contention, Adams and Brock cite David Ravenscraft and F.M. Scherer's 1987 "monumental study" of the performance of nearly 6000 corporate mergers over the 1950-1977 period.[34] Ravenscraft and Scherer analyzed the performance of lines of business prior to, and following, the consummation of mergers.[35] Adams and Brock argue that Ravenscraft and Scherer's findings "are devastating for the mergers-promote-performance mythology: The average merger is followed by deteriorating profit performance; the 'profitability declines and efficiency losses result[ing] from mergers of the 1960s and early 1970s cast doubt on the wide-spread applicability of an efficiency theory of merger motives.'"[36] Adams and Brock conclude from this study that "there is *no* credible evidence" that mergers enhance research and development or technological innovation, or increase productivity.[37]

Conspicuously absent, however, are any references to empirical studies that find that mergers *do* promote economic efficiency. A case in point is Frank Lichtenberg and Donald Siegel's analysis of total factor productivity (a measure of the efficiency with which inputs are used in producing output) and changes in ownership of manufacturing plants.[38] Lichtenberg

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32. *Id.* at 181.

33. *Id.* at 84.

34. *Id.*; *see also* J. RAVENSCRAFT & F. SCHERER, MERGERS, SELL-OFFS, AND ECONOMIC EFFICIENCY 20-55 (1987) (study analyzing consequences of mergers with respect to the particular companies involved and the manufacturing sector generally).

35. *See* J. RAVENSCRAFT & F. SCHERER, *supra* note 34, at 18-19.

36. W. ADAMS & J. BROCK, *supra* note 1, at 84 (quoting J. RAVENSCRAFT & F. SCHERER, *supra* note 34, at 211-12).

37. *See id.* One wonders, had Ravenscraft and Scherer found profitability *increases* resulting from mergers, whether Adams and Brock would attribute this finding to anticompetitive effects of mergers rather than efficiency gains. It should also be noted, with respect to the reliability of this data, that accounting profits have been criticized as inadequate proxies of economic rates of return. *See* Fisher & McGowan, *On the Misuse of Accounting Rates of Return to Infer Monopoly Profits*, 73 AM. ECON. REV. 82 (1983).

38. *See* Lichtenberg & Siegel, *Productivity and Changes in Ownership of*

and Siegel contend that their research design offers two significant advantages over earlier studies of mergers and acquisitions. First, by focusing on plant-level data, they can examine the effects of certain transactions that have not been observed before.[39] "Because many ownership changes involve only parts of companies or even parts of divisions of companies, it is very difficult to assess the impact of such partial acquisitions and divestitures using financial data at the level of the company or even of a line of business,"[40] as Ravenscraft and Scherer did.[41] Second, they note that there is a consensus that the "best way to measure the efficiency of an enterprise (or of an economic system) is to measure its total factor productivity"[42] rather than its stock price[43] or profitability, the latter being one of the measures analyzed by Ravenscraft and Scherer.[44]

Lichtenberg and Siegel examined data for the years from 1972 to 1981 involving more than 18,000 manufacturing plants, 21% of which had changed ownership at least once during this period.[45] They then examined the differences in the levels of total factor productivity between sold and unsold plants. Lichtenberg and Siegel found, in their own words, "powerful evidence" supporting the hypothesis that changes in corporate ownership can lead to increased efficiency.[46] In particular, they asserted that plants that changed ownership "exhibit[ed] both lower initial levels of productivity and a deterioration in relative performance through the year in which these acquisitions occur[red]" but "after changing owners, their improvement in performance reduces and eventually (after seven years) almost eliminates the productivity gap that existed between them and the control group before takeover."[47] In a recent article, Lichtenberg and Siegel further suggest that they might have actually underestimated the

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Manufacturing Plants, in 3 BROOKINGS PAPERS ON ECONOMIC ACTIVITY 643 (M. Baily & C. Winston eds. 1987).

39. *See id.* at 644-45.

40. *Id.* at 645.

41. *See* J. RAVENSCRAFT & F. SCHERER, *supra* note 34, at 13.

42. Lichtenberg & Siegel, *supra* note 38, at 645.

43. For a review of analyses using stock prices, see Jensen & Ruback, *The Market for Corporate Control: The Scientific Evidence*, 11 J. FIN. ECON. 5 (1983); *see also* Jarrell, Brickley & Netter, *The Market for Corporate Control: The Empirical Evidence Since 1980*, 2 J. ECON. PERSP. 49 (1988) (empirical study using stock values to guage effects of mergers).

44. *See* J. RAVENSCRAFT & F. SCHERER, *supra* note 34, at 12-17.

45. Lichtenberg & Siegel, *supra* note 38, at 645.

46. *Id.* at 666.

47. *Id.*

productivity gains associated with ownership changes in their original analysis by about 75%.[48]

Adams and Brock also claim that "[t]he economic infirmities of mergers and acquisitions are graphically shown by their atrocious failure rate."[49] They note that Ravenscraft and Scherer found that the sell-off rate for acquisitions made in the 1960s and early 1970s were in the range of 19 to 47% and that "'the units acquired and later divested were on average in robust good health at the time of their acquisition, but became gravely ill thereafter.'"[50] But Lichtenberg and Siegel note that because of the difference in the years covered by their analysis (1972 to 1981) and Ravenscraft and Scherer's analysis (1950 to 1977), the results of the two analyses may be consistent. Lichtenberg and Siegel suggest that

> Ravenscraft and Scherer would argue that changes in ownership in the 1970s generally yielded improvements in efficiency because most of the transactions involved spin-offs of previously acquired and unrelated lines of business. According to this view a wave of unwarranted acquisitions in the 1960s led to disappointing performance and large numbers of sell-offs in the 1970s.[51]

This led Martin Neil Baily of the Brookings Institution to argue that

> [i]f this interpretation is correct, it suggests that not all changes in ownership are alike. Some may reflect an unproductive manipulation of assets. Some may improve efficiency. Any consideration of policies that will influence takeovers or sales of assets should evaluate which kind of ownership changes are being discouraged and which encouraged.[52]

Moreover, recent evidence on productivity in the 1980s may be inconsistent with Adams and Brock's claim that declining aggregate productivity results from the merger "game."[53] According to their hypothesis, one would expect to observe declining aggregate productivity during the last decade since, as the authors note, the "merger and

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48. Lichtenberg & Siegel, *The Effect of Ownership Changes on the Employment and Wages of Central Office and Other Personnel*, 33 J. L. & ECON. 383, 408 (1990).

49. W. ADAMS & J. BROCK, *supra* note 1, at 86.

50. *Id.* (quoting J. RAVENSCRAFT & F. SCHERER, *supra* note 34, at 166, 169).

51. Lichtenberg & Siegel, *supra* note 38, at 667.

52. Baily, *Summary of the Papers*, in 3 BROOKINGS PAPERS ON ECONOMIC ACTIVITY, *supra* note 38, at xiii, xviii.

53. *See* W. ADAMS & J. BROCK, *supra* note 1, at 120-23.

acquisition game exploded from 1565 deals in 1980, having a combined value of $33 billion, to 4323 deals valued at $204.4 billion in 1986."[54] A recent report by the Department of Commerce, however, belies their prediction.[55] During the 1980s, manufacturing productivity (output per hours worked) increased at an annual rate of 3.6%, "about as fast as the average of United States' trading partners" and "almost three times as fast as in the 1970's" when factory productivity "grew at only one-third the rate of the nation's biggest trading partners."[56] Between 1979 and 1989 industrial production rose by more than a third while the factory work force shrank, with 19 million manufacturing workers now versus 21 million in 1979.[57] This is not to say that the mergers and acquisitions of the 1980s caused these dramatic gains, but the evidence appears to be inconsistent with Adams and Brock's hypothesis.

Although Adams and Brock recommend stopping large mergers through the use of a required public impact statement, they state that

> [n]otwithstanding such a requirement, the country's largest corporations would still be permitted to grow to their heart's content, so long as they did through *internal* expansion—by constructing new plants, developing new products, and creating new jobs. In short, they would have an incentive to grow by building rather than buying, by creating new values rather than acquiring values created by others.[58]

They claim that their policy prescriptions are aimed at encouraging "creative capitalism—a game whose objective is real investment in real plants, real products, real innovation, and real state-of-the-art manufacturing techniques."[59] But Adams and Brock fail to demonstrate why internal growth should always be preferred to mergers or acquisitions. Given the authors' criticisms of America's largest corporations' ability to successfully invest their capital, one may be similarly skeptical of their ability to profitably invest internally.

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54. *Id.* at 11.

55. *See* De Leeuw, Mohr & Parker, *Gross Product By Industry, 1977-88: A Progress Report on Improving the Estimates,* 71 SURV. CURRENT BUS. 23 (1991) (report published by the Bureau of Economic Analysis of the U.S. Department of Commerce discussing the Bureau's estimates of gross product by industry). *See generally* Nasar, *American Revival in Manufacturing Seen in U.S. Report,* N.Y. Times, Feb. 5, 1991, at A1, col. 4 (discussing this report).

56. Nasar, *supra* note 55, at D8, col. 2, D8, col. 5.

57. *Id.* at D8, col. 2.

58. W. ADAMS & J. BROCK, *supra* note 1, at 182.

59. *Id.* at 177.

Adams and Brock's treatment of empirical evidence might lead the unschooled to conclude that a negative verdict is already in on the efficiency effects of mergers and acquisitions. The truth, as Scherer notes, "[may be] more prosaic. Some takeovers enhance economic efficiency, some degrade it, and the balance of effects, though not fully known, is most likely a close one."[60]

III. LESSONS IN HISTORY

In addition to their analysis of merger activity in the 1970s and 1980s, Adams and Brock also consider past great waves of merger activity in the United States. They suggest that a look backward is instructive, lest we fall victim to what they term The Santayana Curse: "Those who do not learn from history are condemned to repeat it."[61] Adams and Brock tell us that the mergers at the turn of the century and in the 1920s "failed to promote real economic performance,"[62] and contributed to the Great Depression.[63] This claim is highly controversial. If we consider technical progress (the fraction of technological change that is not explained by the variation of factor prices within a given production function) as a measure of efficiency, the record is a positive one for the early twentieth century. In fact, the greatest efficiency gains recorded in U.S. history occurred just after the first merger wave at the turn of the century and continued throughout the second wave in the 1920s.[64]

There is also evidence that technological innovation was exceptional following earlier merger booms. Although such innovation is generally difficult to measure, an important research project concerning technological innovation was initiated in the early 1920s at the National Bureau of Economic Research.[65] The study included not only on-site inspections and interviews, but attempted to develop a number of global measurements of technology for the years 1900-1929. The study concluded that although there was a continual process of innovation beginning in 1900, it

60. Scherer, *Corporate Takeovers: The Efficiency Arguments*, 2 J. ECON. PERSP. 69, 69 (1988).

61. W. ADAMS & J. BROCK, *supra* note 1, at 124 (emphasis omitted) (attributing quote to George Santayana, the Spanish-born educator, philosopher, and poet).

62. *Id.* at 139.

63. *Id.*

64. *See generally* Brenner & Glick, *The Regulation Approach: Theory and History*, NEW LEFT REV., July/Aug. 1991, at 45, 50-75 (discussing competitive regulation and economic growth in the late nineteenth and early twentieth centuries).

65. *See* H. JEROME, MECHANIZATION IN INDUSTRY (National Bureau of Economic Research Publication No. 27, 1934).

accelerated to a "somewhat unusual speed in the 'twenties."[66] Again, this is not to say that these dramatic gains were caused by mergers and acquisitions taking place at the time, but the evidence seems inconsistent with Adams and Brock's claims with respect to this period.

This still leaves the authors' claims about the Great Depression. They contend that "[w]hile the Great Depression was the product of a variety of forces, it is indisputable that the deal-mania of the twenties was central among them."[67] It would be difficult today to find any mainstream economic historian who attributes the Great Depression to earlier merger activity. During the Depression itself a number of early economists flirted with the idea that excessive monopoly power resulting from unregulated mergers disrupted market mechanisms and helped cause the crash.[68] Gardiner Means, for example, argued that rigid prices were responsible for the Depression.[69] According to Means, large decreases in output and employment occurred in the 1930s because flexible prices could no longer make the required adjustments to changes in demand.[70] Inflexible prices were supposed to result from rising monopoly power, which in turn was an outcome of the early merger boom. Such theories, however, have been discredited by later studies.[71] A basic problem with these early explanations was that the quality of public data available in the 1930s and 1940s on economic concentration was poor. More recent analyses by industrial economists find either constant or mild increases in concentration for the years 1900 to 1939. As Charles Cox has commented, "the belief that monopoly was widespread in the '30s and had increased significantly since 1900—which had been widely accepted as fact during the depression years, was shown to be wrong."[72] A further problem is that an increase in economic concentration does not necessarily imply noncompetitive market structures—a proposition which is often taken on faith.[73]

A second group of Keynesian and radical economists linked the Great Depression to greater monopoly power in the 1920s by arguing that the resulting maldistribution of wealth in favor of the great trusts led to

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66. *Id.* at 21.

67. W. ADAMS & J. BROCK, *supra* note 1, at 138.

68. *See, e.g.*, F. MILLS, ECONOMIC TENDENCIES IN THE UNITED STATES: ASPECTS OF THE PRE-WAR AND POST-WAR CHANGES 329-32 (1932).

69. *See* Means, *Price Inflexibility and Requirements of a Stabilizing Monetary Policy*, 30 J. AM. STATISTICAL A. 401, 405 (1935).

70. *See id.*

71. *See, e.g.*, Cox, *Monopoly Explanations of the Great Depression and Public Policies Toward Business*, in THE GREAT DEPRESSION REVISITED 174 (K. Brunner ed. 1981).

72. *Id.* at 181.

73. *See supra* notes 29-30 and accompanying text.

insufficient demand. Paul Baran and Paul Sweezy argued, for example, that the rise of monopolies in the 1920s led to a tendency for the social surplus to rise while, at the same time, insufficient outlets existed to realize the surplus product.[74] The combination of these two tendencies, they argued, led to stagnation.[75] Underconsumption theories of the Depression linked to rising monopoly power, however, are simply not supported by the evidence of the period, and as a result are no longer widely held.[76] For example, the 1920s were a period of historically high wages and low profits, not the reverse.[77] As one would expect, there is also no evidence of inadequate consumption during the period preceding the crash. Peter Temin writes, for example, that "[t]he ratio of consumption to national income was not falling in the 1920's. An underconsumption view of the 1920's therefore is untenable."[78] Indeed, the vast majority of scholarship on the causes of the Great Depression does not link the crash to the earlier waves of mergers, but instead focuses on other factors such as international trade and finance, credit markets, and profitability. Any association of the earlier waves of mergers with the Great Depression is simply not in line with this modern scholarship.

IV. CONCLUSION

The dramatic wave of merger activity in the 1980s has fostered a growing debate concerning appropriate public policy responses. In our view, public policy towards mergers and acquisitions should, as the Council of Economic Advisers stated in 1985, "depend on whether these transactions benefit the economy," a determination which "must be based on aggregate trends describing [their] consequences."[79] Adams and Brock contribute positively to the current debate by alerting us to many of the potential social costs of mergers and acquisitions. They do not, however, demonstrate that mergers and acquisitions have had any significant negative economic consequences for the American economy as a whole. The authors seem aware of this point, insofar as they typically do no more than show that some economic problem is often contiguous in time with accelerated merger activity, leaving the reader to draw his own conclusions

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74. *See* P. BARAN & P. SWEEZY, MONOPOLY CAPITAL: AN ESSAY ON THE AMERICAN ECONOMIC AND SOCIAL ORDER 240 (1966).

75. *Id.*

76. *See* P. TEMIN, DID MONETARY FORCES CAUSE THE GREAT DEPRESSION? 32 (1976).

77. *See* Dumenil, Glick & Rangel, *The Rate of Profit in the United States*, 11 CAMBRIDGE J. ECON. 331, 353-56 (1987).

78. P. TEMIN, *supra* note 76, at 32.

79. ANNUAL REPORT OF THE COUNCIL OF ECONOMIC ADVISORS, *reprinted in* ECONOMIC REPORT OF THE PRESIDENT 11, 196 (1985).

about causation. Yet this same method of analysis, as we point out, could also be used to demonstrate that the merger boom of the 1980s led to a lengthy recovery with relatively low inflation, and that the earlier merger wave of the early twentieth century had spectacular results.

Many current descriptions of the merger activity of the 1980s do not present a balanced account of what has come to be an arena of scholarly policy controversy. In our opinion, a more balanced presentation would strengthen Adams and Brock's position rather than weaken it.