Trophy Assets

By Aneil Kovvali*

Rich people like to own things that make them look cool. When the thing in question is a car, house, or boat, the implications are limited. But sometimes very rich people own assets that are more important. Within media, Elon Musk acquired Twitter, Jeff Bezos acquired the Washington Post, and Patrick Soon-Shiong acquired the Los Angeles Times. There has also been a craze for aerospace: Musk with Space X, Bezos with Blue Origin, Richard Branson with Virgin Galactic, and going back further, Howard Hughes with Hughes Aircraft Company. It is often difficult to understand the behavior in purely financial terms, as an optimal strategy for maximizing the net worth of the owner. Instead, there seems to be a healthy heaping of ego mixed in: the importance and prestige of the assets are meant to enhance the importance and prestige of the owner. These trophy assets are less sensitive than ordinary companies to market discipline but more sensitive to reputational considerations, changing the behavior of key sectors of the economy.

But despite the importance of the phenomenon, it has not been subjected to sustained analysis in the corporate governance literature. This Article addresses the gap. It begins by showing that trophy assets stretch ordinary corporate governance intuitions to their breaking point. The extreme phenomenon of trophy ownership can challenge and enrich active arguments about the purpose of the corporation, the role of corporate governance in constraining corporate actors, and the impact of ownership structures. The nonfinancial motivations at work reduce the importance of shareholder profits, sometimes allowing trophy firms to pursue valuable social goals. But they can also free trophy firms to engage in bizarre or destructive conduct if their owners only care about their social standing within unusual groups, perhaps suggesting the dangers of broadening corporate purpose without deep reforms to corporate structure. The Article analyzes a range of examples, including cases from industries including sports, real estate, and media. It then offers a framework for evaluating trophy ownership and identifies policy levers that can be used to capture some of the benefits while reducing some of the costs.

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INTRODUCTION

Everyone wants the admiration of their peers. Wealth offers extraordinary ways to satisfy that ambition. The most familiar examples are forms of "conspicuous consumption."[1] People with means buy luxury items like cars, clothes, houses, and gadgetry for reasons—and at prices—that have little to do with the usual practical purposes of those

1. *See* THORSTEN VEBLEN, THE THEORY OF THE LEISURE CLASS: AN ECONOMIC STUDY OF INSTITUTIONS 68 (1902) (defining conspicuous consumption as purchasing luxury items to signal social status); ROBERT H. FRANK, LUXURY FEVER 14 (1999).

items. Instead of focusing on the normal uses of these items, the buyer focuses on a set of separate motivations that center on esteem and reputation. A person does not buy an expensive wristwatch to tell the time, but rather to tell others how wealthy and stylish they are.[2]

At a higher level of wealth, the game seems to shift to conspicuous investment. Extremely wealthy people often buy productive assets like sports teams, farms, or newspapers for reasons that have little apparent connection to the usual purpose of maximizing financial returns.[3] While the financial performance of these enterprises retains some relevance, financial returns seem largely secondary to other goals that are centered on the buyer's esteem and reputation. This mode of ownership removes the usual impact of market forces and frees enterprises from their usual accountability to financial investors. But it also forces the enterprises to be responsive to a different set of forces and concerns: when someone buys a business with the goal of using it as a trophy, they probably will want to avoid tarnishing it.

Despite the broad societal consequences of this mode of ownership, it has scarcely been identified in the scholarly literature, let alone subjected to sustained scholarly attention,[4] perhaps because most corporate law scholars work within a shareholder value

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2. *Cf.* Jacob Gallagher, *Why Men Are Wearing Watches That Don't Tell Time*, WALL ST. J. (July 9, 2018), https://www.wsj.com/articles/why-men-are-wearing-watches-that-dont-tell-time-1531155881 (on file with the *Journal of Corporation Law*).

3. *See* Ronald J. Gilson, *Controlling Shareholders and Corporate Governance: Complicating the Comparative Taxonomy*, 119 HARV. L. REV. 1641, 1663–64 (2006) (identifying "nonpecuniary private benefits of control" as a possible driver of ownership patterns); James An, *Benefits of Corporate Control* (Nov. 2, 2024) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4924100 (describing variations in types of private benefits of control, including certain nonpecuniary benefits, and using those variations to analyze varying ownership patterns in different industry settings).

4. Gilson, *supra* note 3, at 1664–65 (discussing nonpecuniary benefits of control as an explanation for differing ownership patterns of corporate enterprises across countries and industries, while acknowledging that the issue had been underexplored in the existing literature and the piece itself). This Article discusses the phenomenon more broadly and addresses its societal implications.

There has been far greater attention on the related but separate phenomenon of dual class shares. *See, e.g.*, Zohar Goshen & Assaf Hamdani, *Corporate Control, Dual Class, and the Limits of Judicial Review*, 120 COLUM. L. REV. 941 (2020); Lucian A. Bebchuk & Kobi Kastiel, *The Perils of Small-Minority Controllers*, 107 GEO. L.J. 1453 (2019); Lucian A. Bebchuk & Kobi Kastiel, *The Untenable Case for Perpetual Dual-Class Stock*, 103 VA. L. REV. 585 (2017). A person who holds a high-powered class of shares may be insulated from the normal mechanisms of corporate governance. For example, Meta CEO Mark Zuckerberg holds a majority of the votes at the company even though he only owns 13% of the stock. Rachyl Jones, *Mark Zuckerberg's Voting Stake Renders Shareholders*, OBSERVER (June 1, 2023), https://observer.com/2023/06/mark-zuckerberg-2023-shareholder-meeting/ [https://perma.cc/69GR-T3PH]. As a result, he cannot be removed without his consent. But a holder of dual class shares may be motivated solely by the goal of maximizing financial returns as opposed to enhancing his personal prestige, meaning that he will not operate it as a trophy asset. This mechanism has neither the potential benefits nor harms of trophy ownership.

One strand of the literature on dual class shares and controllers has examined the social implications of individual control over corporations, which has echoes in the analysis here. *See* Emilie Aguirre, *The Social Benefits of Control*, 74 DUKE L.J. 681, 687–89 (2024) (dual class structure can be used to commit corporation to goals beyond profit maximization); *see also* Curtis J. Milhaupt, *The (Geo)Politics of Controlling Shareholders*, 25 THEORETICAL INQUIRIES L. 161 (2024) (placing social and political implications of corporate control in a global context); Gregory H. Shill, *The Social Costs (and Benefits) of Dual-Class Stock*, 75 ALA. L. REV. 221 (2023) (arguing that dual-class stocks permit wealthy individuals to wield outsized power and influence over society).

maximization framework that renders the problems and potential of trophy ownership invisible. This Article seeks to fill that gap by isolating the phenomenon and analyzing it using a framework drawn from broader corporate law and social concerns.

The resulting analysis contributes to the literature in four ways. *First*, it evaluates a broad set of examples and isolates a class of "trophy assets" that behave differently from firms reacting to simple consumption. The analysis identifies two elements of trophy ownership—nonfinancial motivation, combined with either externalities or a need for control to achieve goals—and shows how they combine to produce arrangements that are unlike simple luxury consumption or standard for profit corporate governance.

When a wealthy person buys a productive enterprise for reasons other than profit maximization, they can insulate the business from financial pressure and cause it to be responsive to other social pressures. This has distinctive consequences when the enterprise generates meaningful externalities that are correlated with the wealthy person's motive, or when it is not possible to write an enforceable contract that would cover the wealthy person's desired conduct. For example, media organizations can generate important externalities: quality journalism is essential for a healthy civic discourse and bad journalism can damage it. A wealthy person who wants to buy their preferred style of journalism in the way that they might buy a custom yacht would be unable to do so through a contract. It is not possible to specify in advance all the choices that would be implicated by coverage preferences, so the wealthy person can only meet their goal by buying control of the media organization and continuously exercising power over its journalists.[5]

These features distinguish trophy assets from examples of simple consumption. When a wealthy person engages in consumption by buying a luxury good—for example, a new custom yacht—they cause workers and capital to focus on satisfying the wealthy person's preferences instead of pursuing other productive projects. But this is a relatively simple time limited contract that has limited effects on third parties and does not create lasting power relationships. Trophy assets are a distinctive and more impactful phenomenon.

Second, the Article provides a way to analyze and evaluate trophy ownership. This is essential given the phenomenon's increasing importance. In the early aughts, commentators expressed anxiety that private citizens were conducting their own foreign policy by paying Russia for trips to space.[6] Now, three different billionaires have launched their own private space programs: Elon Musk with SpaceX, Jeff Bezos with Blue Origin, and Richard

A related literature on business culture, compliance, and ethics has also explored how non-monetary motivations may influence the behavior of actors like bankers and corporate officers and directors. *See, e.g.*, CLAIRE HILL & RICHARD PAINTER, BETTER BANKERS, BETTER BANKS: PROMOTING GOOD BUSINESS THROUGH CONTRACTUAL COMMITMENT 8 (2015); Lynn A. Stout, *On the Proper Motives of Corporate Directors (Or, Why You Don't Want to Invite* Homo Economicus *to Join Your Board)*, 28 DEL. J. CORP. L. 1 (2003). This Article considers the distinctive motivations and behaviors of the owners of major enterprises.

5. *Cf.* An, *supra* note 3, at 40–43 (highlighting that some benefits cannot be separated from control over an enterprise while others can).

6. Elizabeth Weil, *American Megamillionaire Gets Russki Space Heap! Sells Joy Rides to Fellow Tycoons! NASA Fumes!*, N.Y. TIMES MAG. (July 23, 2000), https://archive.nytimes.com/www.nytimes.com/library/magazine/home/20000723mag-millionaire.html [https://perma.cc/78A8-X42L] (explain that "this is a transition . . . from a world order based on governments to one based on wealth, from an old-school Soviet comrade to an anarchic supercitizen, a man who feels himself alienated from his family, his peers, his country, his planet; a man who, because of a certain facility for making money, has the power to effect relations on a geopolitical scale.").

Branson with Virgin Galactic.[7] Key media companies that inform public debates are in the hands of extremely wealthy people. Musk recently purchased Twitter (now known as X),[8] Bezos purchased the Washington Post,[9] Laurene Powell Jobs purchased the Atlantic,[10] Patrick Soon-Shiong purchased the Los Angeles Times,[11] and the Ellison family purchased Paramount and its CBS News brand.[12] These are important businesses, and it is important to understand how they are run and to what ends. In this way, the analysis plugs in to an emerging conversation about economic inequality and its consequences for the social and legal order.[13] Because so much of the nation's social and civic infrastructure is in private hands, its management is an important topic of study.

Third, the Article suggests policies that might be used to curb the negative effects of trophy assets.[14] Policymakers could stamp out trophy ownership by encouraging owners to focus on profitability or reducing owners' capacity to dictate outcomes at important enterprises. But a range of more innovative tools could be used to tame trophy assets by encouraging their owners to behave in socially beneficial ways. These approaches would

7. *See* Christian Davenport, *Elon Musk is Dominating the Space Race. Jeff Bezos is Trying to Fight Back.*, WASH. POST (Sept. 10, 2021), https://www.washingtonpost.com/technology/2021/09/10/musk-bezos-space-rivalry/ (on file with the *Journal of Corporation Law*) (describing competition between Musk's SpaceX and Bezos's Blue Origin); Eric Berger, *Richard Branson Won the Space Tourism Battle, But His Company Lost the War*, ARS TECHNICA (July 11, 2022), https://arstechnica.com/science/2022/07/a-year-after-sir-richards-historic-flight-were-still-waiting-for-an-encore [https://perma.cc/JW5S-LEKM] (discussing Branson's Virgin Galactic and its challenges in competing with SpaceX and Blue Origin). Virgin Galactic is the odd one out. Though founded and still dominated by Richard Branson, the company's stock is publicly traded, and the company does have other major investors.

8. Kate Conger & Lauren Hirsch, *Elon Musk Completes $44 Billion Deal to Own Twitter*, N.Y. TIMES (Oct. 27, 2022), https://www.nytimes.com/2022/10/27/technology/elon-musk-twitter-deal-complete.html [https://perma.cc/V9EP-SJFZ]; Lucian A. Bebchuk, Kobi Kastiel & Anna Toniolo, *How Twitter Pushed Stakeholders Under the Bus*, 28 STAN. J.L. BUS. & FIN. 307 (2023).

9. Paul Farhi, *Washington Post to Be Sold to Jeff Bezos, the Founder of Amazon*, WASH. POST (Aug. 5, 2013), https://www.washingtonpost.com/national/washington-post-to-be-sold-to-jeff-bezos/2013/08/05/ca537c9e-fe0c-11e2-9711-3708310f6f4d_story.html (on file with the *Journal of Corporation Law*).

10. Edmund Lee, *Laurene Powell Jobs Is Buying the Atlantic Magazine*, VOX (July 28, 2017), https://www.vox.com/2017/7/28/16055162/laurene-powell-jobs-acquired-atlantic-magazine-publisher-steve-widow-philanthropist-nonprofit (on file with the *Journal of Corporation Law*).

11. Daniel Lippman, Christopher Cadelago & Max Tani, *Tensions Rise Between the LA Times and Its Billionaire Owner*, POLITICO (Sept. 18, 2022), https://www.politico.com/news/2022/09/18/la-times-tension-patrick-soon-shiong-00056601 [https://perma.cc/V8AV-PSXE]; Meg James & Andrea Chang, *Patrick Soon-Shiong—Immigrant, Doctor, Billionaire, and Soon, Newspaper Owner—Starts a New Era at the L.A. Times*, L.A. TIMES (Apr. 14, 2018), https://www.latimes.com/business/la-fi-patrick-soon-shiong-profile-la-times-20180413-htmlstory.html (on file with the *Journal of Corporation Law*).

12. As of this writing, the Ellison-controlled Paramount Skydance is also a leading bidder for Warner Brothers Discovery, which owns CNN. A group of investors led by Oracle, a company co-founded and previously led by Larry Ellison and where he is Chief Technology Officer and executive chair, have also signed a deal to purchase a stake in TikTok's U.S. operations. *See* infra notes 168–72.

13. *See, e.g.*, GANESH SITARAMAN, THE CRISIS OF THE MIDDLE-CLASS CONSTITUTION (2017); THOMAS PIKETTY, CAPITAL IN THE TWENTY-FIRST CENTURY (2014). The dynamic also relates to criticisms of the current system of campaign finance, as financial success in one area of endeavor is translated into power in another area where that power has not been earned. *See* LAWRENCE LESSIG, REPUBLIC, LOST: HOW MONEY CORRUPTS CONGRESS—AND A PLAN TO STOP IT (2011).

14. *See infra* Part V.

allow policymakers to avoid the dangers of trophy assets while drawing on their distinctive strengths.

Finally, the discussion of trophy ownership provides an important vantage point for the corporate law debate between advocates of "shareholder primacy" who urge that corporations should be run exclusively for the benefit of shareholders and advocates of "stakeholder governance," who urge that corporations should be run for the benefit of all stakeholders, which would include workers, creditors, consumers, the environment, and surrounding communities.[15] A similar and important debate in securities and fiduciary law concerns the extent to which environmental, social, and governance (ESG) factors should be emphasized by investors, either as a way to maximize returns or as a way to use corporate power to address pressing environmental and social crises.[16] Trillions of dollars in capital have flowed into funds promising to pursue ESG objectives.[17]

Trophy ownership challenges the ideas behind shareholder primacy. The usual economic arguments for this position turn on a belief that shareholders have the right incentives to support the most economically efficient course of action, thus creating the greatest wealth for society.[18] Trophy ownership challenges these ideas, suggesting that important enterprises that are being run according to the preferences of their wealthy shareholder-owners may undertake economically inefficient projects with the goal of stoking shareholder egos. Giving a single wealthy shareholder anything they want may not maximize overall social wealth.

The trophy asset mode of ownership also presents both the strengths and weaknesses of stakeholder governance and ESG in an extreme form. A wealthy buyer who runs a trophy enterprise may be less inclined to slash investment or cheapen the product. They are also more likely to be motivated by reputational concerns that would push them to prioritize the interests of stakeholders like workers and the surrounding community. But these "princes of industry" are also freed to pursue eccentric preferences while ignoring the discipline that markets normally deliver.[19] And while they care about reputation, they may care only about their reputation within a particular echo chamber. Although this may seem different from the ways that ordinary shareholders pursue ESG goals—for example, by encouraging greener or more socially conscious corporate policies—there are parallels. In

15. *See, e.g.*, Aneil Kovvali, *Stakeholderism Silo Busting*, 90 U. CHI. L. REV. 203, 204–05 (2022); Lucian A. Bebchuk & Roberto Tallarita, *The Illusory Promise of Stakeholder Governance*, 106 CORNELL L. REV. 91, 91 (2020).

16. *See, e.g.*, Kovvali, *supra* note 15, at 252–54; *see also* Elizabeth Pollman, *The Making and Meaning of ESG*, 14 HARV. BUS. L. REV. 403 (2024); Max M. Schanzenbach & Robert H. Sitkoff, *Reconciling Fiduciary Duty and Social Conscience: The Law and Economics of ESG Investing by a Trustee*, 72 STAN. L. REV. 381 (2020).

17. *ESG Assets May Hit $53 Trillion by 2025, a Third of Global AUM*, BLOOMBERG PRO. SERVS. (Feb. 23, 2021), https://www.bloomberg.com/professional/blog/esg-assets-may-hit-53-trillion-by-2025-a-third-of-global-aum [https://perma.cc/QCP2-R7SJ].

18. FRANK H. EASTERBROOK & DANIEL R. FISCHEL, THE ECONOMIC STRUCTURE OF CORPORATE LAW 68 (1991) ("The shareholders receive most of the marginal gains and incur most of the marginal costs [of corporate conduct]. They therefore have the right incentives to exercise discretion.").

19. *See* ADOLF A. BERLE & GARDINER C. MEANS, THE MODERN CORPORATION & PRIVATE PROPERTY 3 (1932) (suggesting that managers had the power to make important economic decisions without a check from shareholders).

general, shareholders are whiter and wealthier than the general population,[20] and, unlike voters, shareholders can easily exit institutions that they lose patience with.[21] Even when they mean well and seek to address ESG issues, there is little guarantee that their priorities will align with those of the broader public, or that they will remain committed to those ideas over time. By understanding the exaggerated potential and pitfalls of trophy ownership, it may be possible to get a better handle on the broader phenomenon of ESG investing and stakeholderism.

Elon Musk's acquisition and management of Twitter offers a useful example. Twitter has been an important platform for speech, facilitating journalism and allowing activists to coordinate. When Musk began his takeover of Twitter, Twitter's board not only failed to resist but ultimately forced Musk to go through with the acquisition. Although an emerging scholarly consensus blames Twitter's board for failing to prevent the acquisition,[22] Twitter's leaders may well have believed that Musk would be an ideal steward of the company's mission, given his wealth, his stated commitment to defending free speech, and the extent to which he had staked his reputation on the company's success.[23]

The reality has been rather different. Freed from normal mechanisms of corporate accountability, Musk has been free to chart a destructive course for the company[24] that its users have struggled to escape.[25] While Musk has gutted Twitter's staff and wavered in important ways from the goal of facilitating free speech, his reputation amongst his fellow tech titans only seemed to grow, at least until a wave of particularly disturbing remarks from Musk forced a reevaluation of his judgment.[26] In the meantime, Musk's outside financial interests may incentivize him to suppress speech by dissidents in countries where he would like to do business.[27] And his entanglement with the federal government almost certainly contributed to his decision to use Twitter as a tool for building political might.[28] Ownership by a wealthy individual or family can help shield media companies from

20. *Cf.* Jill Fisch, *Promoting Corporate Diversity: The Uncertain Role of Institutional Investors*, 46 SEATTLE U. L. REV. 367, 392 (2023) ("Shareholders, after all, reflect only a portion of society. They are disproportionately old, rich, white, and male."); *see also* Lenore Palladino, *The Contribution of Shareholder Primacy to the Racial Wealth Gap*, 50 REV. BLACK POL. ECON. 167 (2022).

21. A shareholder who is dissatisfied with current management can do the "Wall Street Walk" and sell their shares, exiting their position in the company. *See* Anat R. Admati & Paul Pfleiderer, *The 'Wall Street Walk' and Shareholder Activism: Exit as a Form of Voice*, 22 REV. FIN. STUD. 2645, 2646 (2009).

22. *See, e.g.*, Caley Petrucci & Guhan Subramanian, *Stakeholder Amnesia in M&A Deals*, 50 J. CORP. L. 87 (2024); Bebchuk, Kastiel & Toniolo, *supra* note 8 (discussing the Twitter acquisition); Jeffrey N. Gordon, *The Twitter Board Bears Personal Responsibility for a Bad Outcome in the Twitter Sale*, CLS BLUE SKY BLOG (May 5, 2022), https://clsbluesky.law.columbia.edu/2022/05/05/the-twitter-board-bears-personal-responsibility-for-a-bad-outcome-in-the-twitter-sale/ [https://perma.cc/BTU8-75QZ].

23. *See infra* Part III.A.

24. *See infra* Part III.B.1.

25. *See infra* Part III.B.2.

26. *See infra* Part III.B.3

27. *See infra* Part III.C.

28. Eric Lipton, David A. Fahrenthold, Aaron Krolik & Kirsten Grind, *U.S. Agencies Fund, and Fight With, Elon Musk. A Trump Presidency Could Give Him Power Over Them.*, N.Y. TIMES (Oct. 21, 2024), https://www.nytimes.com/2024/10/20/us/politics/elon-musk-federal-agencies-contracts.html [https://perma.cc/2P7U-EFC5] (noting that Musk "has thrown his fortune and power behind . . . Donald J. Trump and, in return," has been granted "the power to regulate the regulators who hold sway over his companies").

government and market pressure that would compromise its social mission, but it is also an imperfect mechanism that can leave an important company exposed to other forces.

This Article proceeds as follows. Part I surveys the existing corporate governance literature, identifying ideas and phenomena that are relevant to trophy ownership to provide a framework for the remainder of the analysis. Part II shows that trophy ownership is a widespread phenomenon, identifying trophy assets in a broad range of industries. Part III considers Elon Musk's acquisition of Twitter as a potential example of trophy ownership, showing that it stretches existing corporate governance ideas beyond their breaking point. Part IV seeks to fit trophy assets into a new framework drawing on the corporate governance literature, showing how the examples of trophy ownership enrich and complicate ideas in the field. Part V sketches a policy toolkit that might be used by reformers seeking to build on the strengths of trophy ownership or check its dangers.

I. THE FRONTIERS OF THE STANDARD CORPORATE GOVERNANCE LITERATURE

This Part identifies areas of the corporate governance literature where trophy assets test current understandings. Section A discusses the ongoing debate between the shareholder primacy and stakeholder governance schools of thought and shows that central arguments are presented in an exaggerated form in the trophy asset context. Section B outlines current thinking on the way that corporate actors are disciplined by internal mechanisms, external markets, and the broader society, and suggests that the effects and effectiveness of these disciplinary tools are complicated by the introduction of non-financial goals. Section C turns to the impact of ownership structures on the behavior of firms.

A. Corporate Purpose

Corporate law scholars and practitioners have vigorously debated the purpose of the corporation for decades. The dominant "shareholder primacy" school suggests that corporate actors should focus exclusively on maximizing financial returns to shareholders.[29] The insurgent "stakeholder governance" movement suggests that corporate actors should consider a broader range of interests when making decisions, addressing the interests not only of shareholders, but of creditors, customers, employees, suppliers, and surrounding communities.[30] A related movement suggests that investors should consider environmental, social, and governance (ESG) factors when making decisions, either to detect risks and opportunities that do not show up in traditional financial metrics or to advance stakeholder interests.[31] The ongoing debate is the most prominent and consequential unsettled issue in corporate law today.

Trophy assets complicate both stories about corporate governance. Shareholder primacy theorists sometimes offer property-based arguments for their vision of the corporation. On this account, the corporation is the property of the shareholders and using

29. *See, e.g.*, Henry Hansmann & Reinier Kraakman, *The End of History for Corporate Law*, 89 GEO. L.J. 439, 440–41 (2001); Bebchuk & Tallarita, *supra* note 15, at 110 (discussing shareholder primacy school of thought).

30. *See, e.g.*, LYNN STOUT, THE SHAREHOLDER VALUE MYTH (1st ed. 2012); E. Merrick Dodd, Jr., *For Whom Are Corporate Managers Trustees?*, 45 HARV. L. REV. 1145 (1932) (discussing view that corporate managers have broader obligations).

31. *See, e.g.*, Pollman, *supra* note 16, at 408–23 (discussing the creation of the ESG movement).

corporate resources to advance any goal other than shareholder wealth maximization is a form of theft or expropriation. Urging that this was unacceptable, Milton Friedman famously argued that this course of action could set America on a slippery slope toward socialism.[32] Although this account is formally consistent with trophy ownership, trophy ownership does stretch the idea to its breaking point. While we might shrug when a billionaire paints their mansion a garish color, it is uncomfortable to treat a complex and socially-important enterprise as simple property subject to violation at the whims of a wealthy person who happens to own its stock.[33] The egregious deployment of extreme wealth—as showcased by efforts to buy and use trophy assets—might also do more to encourage extremist ideologies than modest efforts to consider stakeholder interests.[34]

Shareholder primacy theorists also sometimes offer welfare-based arguments for their position.[35] On this account, competitive markets and government regulations set prices that align shareholder profit maximization with social wealth maximization: desirable goods command high prices that encourage a profit-maximizing firm to produce them, and antisocial behavior draws regulatory fines that discourage a profit-maximizing firm from undertaking it.[36] But this theoretical model is difficult to square with the current environment of extreme wealth inequality and inadequate regulation.[37] The fact that a billionaire is willing to pay a large amount for an outcome—and that no one has emerged who is willing to pay more to prevent it—does not necessarily mean that it is a socially desirable outcome. Government policy also does not cause firms to internalize the full costs and benefits of their decisions, decoupling shareholder profits from social value.[38] Although these problems are present outside of trophy assets, trophy assets supercharge them. A wealthy person can buy an important firm and change its behavior in destructive ways without internalizing the full impact of the decision.

Shareholder primacy also narrows the focus of analysis. Though this approach has benefits,[39] it also has costs that become evident when trophy assets are considered. A shareholder primacy theorist looking for a problem might seek to identify potential abuse of

32. *See, e.g.*, MILTON FRIEDMAN, CAPITALISM AND FREEDOM 133–34 (2d ed. 1982) (arguing that "[f]ew trends could so thoroughly undermine the very foundations of our free society as the acceptance by corporate officials of a social responsibility other than to make as much money for their shareholders as possible . . . . If businessmen are civil servants rather than the employees of their stockholders then in a democracy they will, sooner or later, be chosen by the public techniques of election and appointment."); Milton Friedman, *A Friedman Doctrine—The Social Responsibility of Business Is to Increase Its Profits*, N.Y. TIMES (Sept. 13, 1970), https://www.nytimes.com/1970/09/13/archives/a-friedman-doctrine-the-social-responsibility-of-business-is-to.html [https://perma.cc/6XKC-CDUW]; William T. Allen, *Our Schizophrenic Conception of the Business Corporation*, 14 CARDOZO L. REV. 261, 264–65 (1992) (identifying the "property conception of the corporation").

33. *See* Allen, *supra* note 32, at 264–65 (identifying the social entity conception of the corporation).

34. *Cf.* Aneil Kovvali, *Stark Choices for Corporate Reform*, 123 COLUM. L. REV. 693, 698 n.12 (2023) (identifying prominent practitioners arguing that stakeholder governance could help prevent regulation and socialism).

35. EASTERBROOK & FISCHEL, *supra* note 18, at 37–39.

36. *Id.*

37. *See, e.g.*, Aneil Kovvali & Leo E. Strine, Jr., *The Win-Win That Wasn't: Managing to the Stock Market's Negative Effects on American Workers and Other Corporate Stakeholders*, 1 UNIV. CHI. BUS. L. REV. 307 (2022).

38. *Cf.* EASTERBROOK & FISCHEL, *supra* note 18, at 37–39.

39. *See, e.g.*, Jill E. Fisch, *Measuring Efficiency in Corporate Law: The Role of Shareholder Primacy*, 31 J. CORP. L. 637 (2006) (noting that shareholder primacy offers analytical clarity and supports the use of a well-developed conceptual toolkit).

minority shareholders or a decline in firm value as measured by share prices; other kinds of harm are simply invisible within a shareholder primacy framework.[40] These effects are sometimes present with trophy assets, but they represent only a small fraction of the implications of this mode of ownership.

Stakeholder governance theorists should also take note of trophy ownership. American corporate law currently only empowers shareholders: workers, customers, and the broader society have no power within the corporation.[41] If a corporation is allowed to pursue an environmental or social agenda, it will pursue the environmental or social agenda of its shareholders. But shareholders are not representative of the broader population: they are wealthier, older, whiter, and more male.[42] Stakeholderism thus has the potential to amplify shareholders' unrepresentative agenda. Trophy ownership presents this problem in an extreme form: instead of reflecting the views of a range of public shareholders, important enterprises being held as trophies only reflect the views of a single extremely wealthy individual.

Stakeholder governance theorists also often urge that managers should be insulated from concerns about financial performance.[43] Managers who fear that they will be replaced or sued if share prices stagnate will ruthlessly maximize shareholder profits. But insulation from share prices is not enough to ensure prosocial conduct.[44] Instead, reputational and other accountability structures are needed to encourage good behavior. Trophy owners again present an extreme form of the concern. Trophy owners are insulated from financial market pressure. But the behavior of many trophy owners suggests that they can only be counted on to advance valuable social goals if some outside force encourages them to care about those goals.

B. Discipline and Non-Financial Motives

Corporate and market mechanisms work to discipline managers and companies. *First*, mechanisms within corporations are designed to control managers and ensure that they pursue desirable goals. *Second*, external market participants constrain corporate behavior by imposing costs on companies that slack or engage in destructive behavior. *Third*, society as a whole advances its goals by disciplining corporate behavior. The traditional mechanisms for achieving this discipline rely on the financial motivations of the relevant actors, though scholarship has started to explore the impact of non-financial motivations.

40. *Id.*

41. Leo E. Strine, Jr., *The Dangers of Denial: The Need for a Clear-Eyed Understanding of the Power and Accountability Structure Established by the Delaware General Corporation Law*, 50 WAKE FOREST L. REV. 761, 766 (2015) ("In the corporate republic, no constituency other than stockholders is given any power.").

42. *See, e.g.*, Fisch, *supra* note 20, at 392 n.142; Palladino, *supra* note 20, at 167.

43. *Cf.* Aguirre, *supra* note 4, at 713 (noting that a dual class structure can support corporate pursuit of social goals by insulating leaders from pressure by profit-focused investors).

44. *See, e.g.*, Bebchuk & Tallarita, *supra* note 15, at 92 (finding that insulation from certain forms of accountability to shareholders in the takeover context does not necessarily cause managers to bargain for benefits to stakeholders).

1. Corporate Discipline

Corporate law and governance have traditionally focused on the principal-agent problem: shareholders commit resources to the corporation in the hope of advancing shareholders' interests, but the corporate resources are deployed by managers who seek to advance the managers' interests.[45] For example, managers driven by hubris or self-interest might use corporate resources to undertake self-aggrandizing projects or acquisitions even if they destroy economic value.[46] This problem is particularly challenging when a large and diffuse group of investors own small stakes in major enterprises.[47] Such investors will often lack the incentive to monitor managers and lack the means to work together to effect change.[48] As a result, scholars and practitioners have developed a variety of mechanisms to reduce agency costs by ensuring that managers advance the financial interests of shareholders.[49] One key mechanism is to starve the corporation of cash, thus forcing managers to convince financial markets of the merits of any new project to raise the necessary capital.[50] This serves as a check on managerial hubris and forces managers to take a disciplined approach. Stakeholderism and ESG can dampen these mechanisms by arming managers with excuses—poor financial performance is justified using claims about environmental or social performance—or causing policymakers to abandon the mechanisms entirely.[51]

At first glance, trophy ownership seems to cut through this problem. Trophy owners have a concentrated stake in their business and are free to remove any manager who is unfaithful to the owner's vision. At least when the owner holds all of the company's shares, this may make the pursuit of stakeholderism or ESG less problematic: managers cannot avoid accountability, and it is not as if they are using other people's money to advance a personal agenda.[52] But as Musk's early struggles at Twitter suggest,[53] there can be real limitations to this approach when the trophy owner is unable to articulate a clear and compelling vision for the enterprise.

Corporate law and governance must also wrestle with the challenge of aggregating the preferences of different shareholders. A result from social choice economics called Arrow's theorem demonstrates that it is not possible to combine the views of multiple

45. *See, e.g.*, Michael C. Jensen & William H. Meckling, *Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure*, 3 J. FIN. ECON. 305 (1976) (developing a theory that links agency costs, ownership structure, and the separation of ownership and control); ADAM SMITH, THE WEALTH OF NATIONS 311 (3d. ed. 1784) ("The directors of . . . companies, however, being the managers rather of other people's money than of their own, it cannot well be expected, that they should watch over it with the same anxious vigilance with which the partners in a private copartner frequently watch over their own.").

46. Bernard S. Black, *Bidder Overpayment in Takeovers*, 41 STAN. L. REV. 597, 625 (1989).

47. BERLE & MEANS, *supra* note 19, at 64–65.

48. *Id.*

49. *See, e.g.*, Ronald J. Gilson & Jeffrey N. Gordon, *The Agency Costs of Agency Capitalism: Activist Investors and the Revaluation of Governance Rights*, 113 COLUM. L. REV. 863 (2013) (explaining that shareholder activists with concentrated stakes in particular firms have the incentive and means to monitor and advocate for value-creating steps); Jensen & Meckling, *supra* note 45 (suggesting that debt can help discipline managers).

50. Shareholders can do this by advocating for high dividend payments and stock buybacks, and by encouraging the corporation to take on debt that will require high interest payments.

51. Bebchuk & Tallarita, *supra* note 15.

52. *Cf.* Shill, *supra* note 4, at 268–71 (suggesting that individuals who control large companies using dual class stock can use minority shareholders' financial resources to advance personal agendas).

53. *See infra* Part III.B.1.

individuals into a rational policy—changing irrelevant points such as the order in which questions are presented will affect the outcome of voting.[54] Because unstable or inconsistent policies would be economically destructive, Arrow's theorem provides a powerful argument for giving only shareholders power within corporations[55] and limiting corporate activities to financial matters where shareholders can be presumed to agree.[56]

Again, trophy ownership appears to offer a way out. One well-known way to deal with the difficulty of aggregating the preferences of multiple individuals is to ignore the preferences of all but one individual.[57] In the political context, this arrangement is called dictatorship, but in the economic context it is simply called ownership. But the reality has again proven complicated. Individuals can be irrational as well,[58] and extreme wealth can amplify such eccentricities.

2. Market Discipline

Market competition powerfully disciplines corporations. A firm operating in competitive markets that makes bad choices will see its profits reduced and will ultimately go out of business. Its choices also will not have any impact.[59] For example, a firm that refuses to deal with a potential customer will simply lose the business to a competitor. As a result, a firm in a competitive market has neither the incentive nor the power to make real and potentially destructive choices. These forces do not operate when a firm has a monopoly, or when many firms agree to the same course of action, but firms still have a reason to take price signals seriously as they seek to maximize profits.[60]

Trophy assets generally do not operate in competitive markets. Indeed, an enterprise becomes desirable as a trophy precisely because it is unique and powerful. And while market pressures might make a choice costly, profitability may not be a driving consideration for trophy owners. Herding by trophy owners with similar aesthetic, environmental, or social preferences can also mean that individually insignificant businesses are run in the same way, effectively cartelizing an industry.[61]

54. *See* Amartya Sen, *Arrow and the Impossibility Theorem*, *in* THE ARROW IMPOSSIBILITY THEOREM 29, 33–34 (Eric Maskin & Amartya Sen eds. 2014).

55. *E.g.*, HENRY HANSMANN, THE OWNERSHIP OF ENTERPRISE 44 (1996); Frank H. Easterbrook & Daniel R. Fischel, *Voting in Corporate Law*, 26 J.L. & ECON. 395, 405–06 (1983).

56. *See* Aneil Kovvali, *ESG and Securities Litigation: A* Basic *Contradiction*, 73 DUKE L.J. 1229, 1269–71 (2024).

57. GRANT M. HAYDEN & MATTHEW T. BODIE, RECONSTRUCTING THE CORPORATION: FROM SHAREHOLDER PRIMACY TO SHARED GOVERNANCE 112–13 (2020).

58. *See* Aneil Kovvali, *Who Are You Calling Irrational?*, 110 NW. U. L. REV. 707, 711–15 (2016).

59. *See* FRIEDMAN, *supra* note 32, at 120 ("The participant in a competitive market has no appreciable power to alter terms of exchange."); Adolf A. Berle, Jr., *Constitutional Limitations on Corporate Activity—Protections of Personal Rights from Invasion through Economic Power*, 100 U. PA. L. REV. 933, 946 (1952) ("The operations of the small shop, or of the small factory, did not attain a power-position capable of invading personality save in rare instances.").

60. For an argument that some collaboration can be socially beneficial, see Amelia Miazad, *Prosocial Antitrust*, 73 HASTINGS L.J. 1637 (2022).

61. *See id.* at 1643.

3. Social Discipline

According to the traditional account, profit maximization serves to align business decisions with the social good. Prices set in competitive markets should cause for-profit firms to make decisions that maximize social wealth.[62] If labor becomes scarce, wages go up, encouraging profit maximizing firms to become more efficient. If consumers want a product because it makes them happy, its price will go up, encouraging profit maximizing firms to produce more. The profit maximization goal thus disciplines firms to take the action that benefits society. If the firm creates externalities, the profit maximization goal again offers a solution: the government can impose financial penalties for bad behavior or offer financial subsidies for good behavior, recruiting the profit motive to drive optimal behavior.[63]

Much of the energy behind stakeholderism and ESG is driven by a belief that this story has failed. Markets are not perfectly competitive, so prices will not necessarily align profit focused firms with the broader goal of social wealth maximization.[64] Government regulation is widely perceived to have failed to keep pace with the harms caused by corporate behavior, including contributions to climate change and harms to workers.[65] This has caused many to agitate for corporate America to adopt different norms and objectives, either leveraging formal mechanisms or reputation and peer effects to drive better behavior.[66]

Trophy ownership intersects with each of these ideas. Trophy assets often do not operate in competitive markets, so prices alone cannot be expected to drive optimal behavior.[67] When regulations and subsidies fail to reflect negative and positive externalities, owners are free to steer their firms in a destructive direction without internalizing the full consequences. Norms and reputation can be particularly important to trophy owners since their core objective is to enhance their personal prestige. But there is no guarantee that the norms of the community that matters to the trophy owner will align with the norms of the broader society.[68]

62. The Fundamental Theorems of Welfare Economics formalize the idea that the "invisible hand" of the marketplace will lead profit-seeking firms and households to an equilibrium that maximizes social wealth. *See* ANDREU MAS-COLELL, MICHAEL D. WHINSTON & JERRY R. GREEN, MICROECONOMIC THEORY 549–50 (1995). A related concept suggests that within a competitive marketplace, shareholders will unanimously want managers to maximize firm value, as they can use the proceeds to buy goods that maximize their welfare. *Id.* at 152–54.

63. *See* EASTERBROOK & FISCHEL, *supra* note 18, at 37 ("Society thus takes advantage of the wealth-maximizing incentives built into the firm in order to alter its behavior at least cost.").

64. Kovvali & Strine, *supra* note 37, at 332.

65. Tim Wu, *The Goals of the Corporation and the Limits of the Law*, CLS BLUE SKY BLOG (Sept. 3, 2019), https://clsbluesky.law.columbia.edu/2019/09/03/the-goals-of-the-corporation-and-the-limits-of-the-law [https://perma.cc/RK8Z-HXKW].

66. Scholars have long been attentive to the role of moral suasion and reputation amongst peers in driving behavior, either for the benefit of shareholders or the broader society. *See, e.g.*, Stout, *supra* note 4, at 1; A.A. Berle, Jr., *The Developing Law of Corporate Concentration*, 19 U. CHI. L. REV. 639, 655–56 (1952) (explaining that "there is a large common denominator of habit and point of view among men who though they nominally, and perhaps actually, compete, nevertheless live in the same or similar backgrounds, deal with the same problems, are judged by the estimate of their colleagues in the industry, and thus tend to conform to common patterns of thought and behavior.").

67. *See supra* Part I.B.2.

68. Gilson, *supra* note 3, at 1672–73; *see also* HILL & PAINTER, *supra* note 4, at 110 ("Banking culture has provided all of these [internal and status-based] rewards for behavior that is in some cases harmful to particular banks, the banking industry, or even society as a whole.").

C. The Role of Ownership Structures

Recent scholarship has uncovered ways in which ownership patterns affect an enterprise's consideration of its environmental and social impact. As Professor Madison Condon has emphasized, shareholders who hold diversified portfolios should focus on systematic risks like climate change.[69] Diversified shareholders internalize the broad costs of the crisis, not just the profits of key polluters. Because index funds with diversified portfolios hold large positions at many major companies, this can be a vehicle for achieving improvements in environmental and social performance. Professors Dhammika Dharmapala and Vikramaditya Khanna have suggested that controllers who hold diversified portfolios could similarly be inspired to address broad problems.[70]

That said, diversified portfolios could also mute shareholder incentives to care about particular problems. For example, Professors Michal Barzuza, Quinn Curtis, and David H. Webber have pointed out that diversified shareholders should be essentially indifferent to whether a particular company or manager is "cancelled."[71] If the Chief Executive Officer of a company is caught making problematic statements regarding a racial controversy, it may end his career and damage the company's stock price.[72] But a shareholder can diversify away such risks by holding shares of competitors—a public relations disaster for Papa John's[73] or Adidas[74] may be a public relations opportunity for Domino's or Nike. This might mean that managers tend to be too cautious and too eager to avoid controversy. Given that cancellation can happen on the right as well as the left,[75] the effect can cause managers to avoid progressive stances as well as conservative ones.

Trophy owners can be subject to the same forces. An owner of a trophy asset may have outside interests that would affect their approach—Musk may own Twitter, but his stakes in Tesla and SpaceX represent a major portion of his net worth, and the value of those stakes is affected by his decisions in managing Twitter.[76] A broad and diversified

69. Madison Condon, *Externalities and the Common Owner*, 95 WASH. L. REV. 1, 5 (2020). Professor Condon's work has spawned a robust literature restating her insight or identifying some limitations. *See, e.g.*, Roberto Tallarita, *The Limits of Portfolio Primacy*, 76 VAND. L. REV. 511 (2023); John C. Coffee, Jr., *The Future of Disclosure: ESG, Common Ownership, and Systematic Risk*, 2021 COLUM. BUS. L. REV. 602.

70. Dhammika Dharmapala & Vikramaditya S. Khanna, *Controlling Externalities: Ownership Structure and Cross-Firm Externalities*, 23 J. CORP. L. STUD. 1, 7–8 (2023).

71. Michal Barzuza, Quinn Curtis & David H. Webber, *The Millennial Corporation: Strong Stakeholders, Weak Managers*, 28 STAN. J.L., BUS. & FIN. 255, 284–85 (2023).

72. *See* Stavros Gadinis & Amelia Miazad, *Corporate Law and Social Risk*, 73 VAND. L. REV. 1401, 1451–53 (2020).

73. Kovvali, *supra* note 34, at 739–40 n.203; Michal Barzuza, Quinn Curtis & David H. Webber, *Shareholder Value(s): Index Fund ESG Activism and the New Millennial Corporate Governance*, 93 S. CAL. L. REV. 1243, 1298–99 (2020).

74. Kovvali, *supra* note 34, at 739 n.202.

75. *See* Jennifer Maloney, *How Bud Light Blew It*, WALL ST. J. (May 21, 2023), https://www.wsj.com/articles/bud-light-boycott-sales-dylan-mulvaney-6c23bb86 (on file with the *Journal of Corporation Law*) (discussing how Bud Light's mild support for transgender rights contributed to a public relations disaster that seriously damaged sales).

76. Bezos's holdings in Amazon and Blue Origin also make him vulnerable to government pressure, which has the potential to affect decisions at his newspaper, the Washington Post. *See* Kara Swisher, *The Epic Battle Between Trump and Bezos Is On*, N.Y. TIMES (Feb. 18, 2020), https://www.nytimes.com/2020/02/18/opinion/trump-amazon-jedi.html [https://perma.cc/824V-X3QL] (discussing allegations that the Trump Administration punished Bezos for negative coverage at the Washington Post by denying Amazon a major defense contract).

outside portfolio may be salutary—a fact that may suggest that important assets are safer in the hands of old money families that have had time to diversify instead of nouveau-riche industrialists with concentrated and idiosyncratic interests. But trophy owners can also be reputationally invested in their highest-profile asset.

II. EXAMPLES OF TROPHY OWNERSHIP

The trophy mode of ownership is prevalent in many industries. This Part considers examples with the goal of isolating the phenomenon and surfacing some of the strengths and weaknesses of trophy ownership across domains. The Part seeks to work from relatively straightforward examples such as sports franchises up to complex and impactful domains such as media companies.

The examples suggest that trophy assets are distinctive when they meet two criteria. *First*, the owner must operate them with non-financial goals in mind and must have the wealth to persist. Absent this element, the asset would simply be a standard investment that would operate like any for-profit enterprise. *Second*, there must be some feature that causes the owner's non-financial goals to be relevant, such as the presence of externalities or qualities that make control relevant. Absent this element, the behavior would be akin to simple consumption. If a billionaire paints their palatial estate a garish color that reduces its financial value or commissions a celebrity chef to cook a decadent meal, the conduct might be unattractive, but it would not challenge deep intuitions in corporate law. The examples also illustrate that the implications of trophy ownership will depend on the interaction of these two features. Trophy ownership may be socially beneficial if the owner's non-financial reputational goals make them eager to generate positive externalities, or socially harmful if the owner's non-financial eccentricities cause them to use control in frivolous or destructive ways.

A. Sports Teams

Sports ownership is increasingly the province of the ultra-wealthy. Hedge fund billionaire Steven A. Cohen recently purchased the controlling stake in the New York Mets, and made a series of splashy and expensive moves in signing players.[77] Russian oligarch Roman Abramovich owned the Chelsea football club from 2003 to 2022, and took staggering losses for the first decade of ownership.[78] And the Walton-Penner Group, headed

77. Maury Brown, *'King' Steve Cohen Leads the Mets on an $806 Million Free-Agent Spending Splurge*, FORBES (Dec. 21, 2022), https://www.forbes.com/sites/maurybrown/2022/12/21/king-steve-cohen-the-8062m-free-agent-spending-splurge-on-the-mets/?sh=63ff764a633b (on file with the *Journal of Corporation Law*); Joe Pantorno, *Steve Cohen on Mets' Spending Spree: 'I Made a Commitment to the Fans'*, AMNY (Dec. 18, 2022), https://www.amny.com/sports/steve-cohen-commitment-mets-spending-spree [https://perma.cc/7T56-ND7B] ("'I made a commitment to the fans,' Cohen said. 'If it means I have to spend money to fulfill that commitment, so be it.'").

78. *Chelsea FC Record First Abramovich-era Profit*, BBC NEWS (Nov. 9, 2012), https://www.bbc.com/news/20270934 [https://perma.cc/WJ5W-SV9H]; *Chelsea FC Reports a Record £18m in Annual Profit*, BBC NEWS (Nov. 13, 2014), https://www.bbc.com/news/business-30045978 [https://perma.cc/5UWG-H4KA]. *See also* Tariq Panja & Rory Smith, *Is Chelsea Setting the Market, or Breaking It?*, N.Y. TIMES (Feb. 2, 2023), https://www.nytimes.com/2023/02/02/sports/soccer/chelsea-transfers.html [https://perma.cc/M8N6-RKRS] ("Under Abramovich, Chelsea had been losing a million dollars a week, losses covered only by regular capital injections from the Russian billionaire's personal fortune.").

by Walmart heir Rob Walton, recently purchased the Denver Broncos of the National Football League for $4.65 billion, more than double the previous record of $2.3 billion for an NFL team.[79] When Rob McElhenney, a successful television actor, producer, and writer, wanted to buy a relatively minor Welsh soccer team, he remarked that his fortune was not sufficient.[80] It was not enough to have "successful T.V. money"; he needed the "liquor baron money" of business partner Ryan Reynolds to make it happen.[81]

The phenomenon of billionaire ownership might seem like simple consumption. A noted sports team might be another flashy toy that delivers enjoyment even after the thrill of yacht-ownership, plane-ownership, and house-ownership has worn off. But several features suggest that many of these enterprises are best understood as trophy assets.[82] Sports teams have important externalities that can be better correlated with the non-financial goals of a wealthy owner than a profit motivation, and the range of decisions required to advance an owner's interests may be impossible to specify in a contract.

Strong sports teams can create externalities that are difficult for the enterprise to monetize. There are serious controversies about whether investments like sports stadiums create *economic* externalities for surrounding communities; local politicians often provide extensive subsidies for stadiums and it is at best unclear that the communities get a real return on the investment.[83] But teams playing at the highest level do create social externalities, as community members develop happy feelings and deeper connections with one another.[84] Such effects may be particularly important in reaching men who often struggle to develop deep emotional ties, either as fathers or as friends.[85] A team can undoubtedly recoup some

79. Jacob Camenker, *Who Is Buying the Broncos? Billionaire Walmart Heir, George Lucas' Wife Front Group Behind Record-Breaking NFL Sale*, SPORTING NEWS (Apr. 13, 2023), https://www.sportingnews.com/us/nfl/news/who-buying-broncos-billionaire-walmart-george-lucas-wife/qntligh6yw5jccygmnb3rwpl [https://perma.cc/HQ2W-67LL].

80. Sam Briger, *'Always Sunny' Creator Rob McElhenney on his Pandemic Purchase: A Welsh Soccer Team*, NPR (June 12, 2024), https://www.npr.org/2024/06/12/nx-s1-5003513/welcome-to-wrexham-soccer-football-robert-mcelhenney [https://perma.cc/J2CW-DVH6]; *see also* WELCOME TO WREXHAM (FX television broadcast, aired 2022).

81. WELCOME TO WREXHAM, *supra* note 80.

82. For a contrasting analysis suggesting that sports teams are increasingly lucrative, and thus more like traditional financial assets than trophy assets, see Iuri Struta, *Sports Ownership Shifts from Trophy Asset to Lucrative Investment*, S&P GLOBAL (Mar. 20, 2024), https://www.spglobal.com/market-intelligence/en/news-insights/research/sports-ownership-shifts-from-trophy-asset-to-lucrative-investment [https://perma.cc/5PQG-RQF6].

83. Andrew Zimbalist & Roger G. Noll, *Sports, Jobs & Taxes: Are New Stadiums Worth the Cost?*, BROOKINGS (June 1, 1997), https://www.brookings.edu/articles/sports-jobs-taxes-are-new-stadiums-worth-the-cost [https://perma.cc/2Z65-TAQX].

84. Marie Høstrup Andersen, Laila Ottesen & Lone Friis Thing, *The Social and Psychological Health Outcomes of Team Sports Participation in Adults: An Integrative Review of Research*, 47 SCANDINAVIAN J. PUB. HEALTH 832, 845–46 (2019); *see also* Hyunwoong Pyun, Jeeyoon Kim, Torsten Schlesinger & Luca Matto, *Positive Externalities from Professional Football Clubs in the Metropolitan Rhine-Ruhr, Germany: Trickle-Down Effects Associated with Promotion and Relegation*, SUSTAINABILITY 8638, 8640 (2020) (suggesting that successful sports teams drive increases in athletic activity in their communities).

85. *See, e.g.*, *Why Men Are Lonelier in America than Elsewhere*, THE ECONOMIST (Jan. 1, 2022), https://www.economist.com/united-states/2022/01/01/why-men-are-lonelier-in-america-than-elsewhere (on file with the *Journal of Corporation Law*); David Braucher, *The Pandemic of Male Loneliness*, PSYCH. TODAY (Feb. 24, 2021), https://www.psychologytoday.com/us/blog/life-smarts/202102/the-pandemic-male-loneliness [https://perma.cc/H7VQ-JC4L].

of the value of those feelings through tickets, merchandise, and marketing rights. But some leakage is inevitable; it is not possible to charge a person every time they fondly remember watching a game with their dad.

One answer to the problem is to vest ownership in the hands of people who feel these benefits.[86] Ideally, this might entail putting ownership in the hands of the community. The Green Bay Packers are a crude example, as members of the public can own shares in the team.[87] But because the public does not have real power over the team's decisions, the mechanism is more akin to selling merchandise.[88] British sports provides deeper examples, as some football clubs are owned by supporters' trusts with a real say in club decisions.[89] Supporters' trusts can solve financial problems as community members band together to save a football team that is uneconomical and nearing collapse.[90] But they can also face financial difficulties, as it can be difficult for a distressed community to pull capital together and the supporters' ownership stake can discourage other potential financiers.[91] Governance can also be difficult. A sports team may need clear and decisive leadership to set strategy or enter important transactions, and it may be difficult to achieve the necessary consensus within a large group of supporters.[92]

Ownership by exceedingly wealthy individuals who have a reputational commitment to fielding a strong team can solve these problems. A wealthy owner who purchases a sports team as a trophy may be willing to make investments that greatly exceed what the team's short-term financial performance would justify.[93] After all, it's more fun to own a winning team than a laughingstock. Their resources and motivation insulate them from accountability to financial markets, leaving them free to pursue the goal of athletic excellence.[94] Ownership by wealthy individuals also solves the resource and governance problems that can trouble ownership by fans.[95] As long as the wealthy owner is a true fan, or at least is genuinely committed to the local community, trophy ownership can be helpful.

86. *Cf.* An, *supra* note 3, at 24–25 (noting that "dispersed fan-owners" would "find significant rewards from winning").

87. *See* Kalyn Kahler, *Green Bay Packers Inc., Owners of Green Bay Packers*, SPORTS ILLUSTRATED (July 17, 2018), https://www.si.com/nfl/2018/07/17/green-bay-packers-shareholders-team-owners [https://perma.cc/3843-74N7].

88. Shareholders cannot trade shares or accumulate more than 200,000 shares, making it unrealistic for them to contest control over the company. *Id.*; Guy Ben-Ami, *The Green Bay Packers and the Importance of Reading the Offering Documents*, CARTER LEDYARD (Feb. 12, 2022), https://www.clm.com/the-green-bay-packers-and-the-importance-of-reading-the-offering-documents [https://perma.cc/V624-9JYL].

89. *About the Trust*, THE DONS TRUST, https://thedonstrust.org/about-us [https://perma.cc/8Y54-FG24].

90. Matthew Leeke, *Current Issues in Football* 11–12 (House of Commons Lib. Rsch. Paper 03/02, 2003), https://researchbriefings.files.parliament.uk/documents/RP03-02/RP03-02.pdf.

91. *See* Christina Philippou & Kieran Maguire, *Assessing the Financial Sustainability of Football*, 3 (Apr. 25, 2022), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1071503/Assessing_the_financial_sustainability_of_football__web_accessible_.pdf [https://perma.cc/6HLV-S5SY].

92. *Cf.* HANSMANN, *supra* note 55 (suggesting that many ownership patterns are driven by the difficulty of finding consensus).

93. *See, e.g.*, Pantorno *supra* note 77 (discussing Steve Cohen's spending on the Mets).

94. Bill Gerrard, *Sport, Economics and Finance*, *in* THE OXFORD HANDBOOK OF SPORT AND SOCIETY 316 (2022).

95. *See* Philippou & Maguire, *supra* note 91, at 21.

At the same time, trophy ownership can create problems. *First*, it can drive a form of groupthink.[96] If a wealthy team owner wants to be popular among a small group of fellow owners or participants in the sport, he is unlikely to challenge existing norms within the sport. For example, former financier John Henry was an early believer in statistical methods pioneered by Bill James and put them into practice successfully when running a fantasy baseball team.[97] But he did not put those techniques into practice when running the Florida Marlins.[98] As Michael Lewis explained:

> The problem Henry faced was social and political. For a man who had never played professional baseball to impose upon even a pathetic major league franchise an entirely new way of doing things meant alienating the baseball insiders he employed: the manager, the scouts, the players. In the end, he would have been ostracized by his own organization. And what was the point of being in baseball if you weren't in baseball.[99]

Henry would later apply the techniques as owner of the Boston Red Sox—after they had become more popular because of the Oakland Athletics deploying them successfully.[100]

Second, trophy ownership can shield inefficient behavior. Freed from any accountability to the financial markets, trophy owners can pursue actions that destroy, or at least avoid creating, substantial value. For years, Chicago Cubs president and majority owner Philip K. Wrigley refused to allow the team to play at night, apparently due to a personal belief that baseball was a daytime sport.[101] Although a minority shareholder challenged the practice as destroying corporate profits, the challenge was rejected in the classic corporate law case, *Shlensky v. Wrigley*,[102] leaving Wrigley free to pursue his idiosyncratic vision. Consequently, many Chicago fans who would have been happy to attend a game after their working day had their desires frustrated.

Third, trophy ownership can shield behavior that is morally abhorrent or shameful. For example, the Red Sox's 85-year World Series drought was often romanticized as being the result of a curse by Babe Ruth.[103] But a more realistic explanation is that the Red Sox organization spent decades unwilling to compete for Black or Hispanic talent. As Howard Bryant stated:

> [The Red Sox] refused to sign young, talented players that were available for much less than they were worth and in the process saw their on-field fortunes decline steadily. In 1946, the year before [Jackie] Robinson, the Red Sox were the best team in baseball . . . . The Red Sox, however, got old quickly, and

96. *See e.g.*, Charles P. Koerber & Christopher P. Neck, *Groupthink and Sports: An Application of Whyte's Model*, 15 INT'L J. CONTEMP. HOSP. MGMT. 20 (2003).

97. Ben McGrath, *The Professor of Baseball*, THE NEW YORKER (July 14, 2003), https://www.newyorker.com/magazine/2003/07/14/the-professor-of-baseball (on file with the *Journal of Corporation Law*); MICHAEL LEWIS, MONEYBALL: THE ART OF WINNING A UNFAIR GAME 91 (2003).

98. LEWIS, *supra* note 97.

99. *Id.*

100. *Id.* at 278.

101. Shlensky v. Wrigley, 237 N.E.2d 776, 778 (Ill. App. Ct. 1968).

102. *Id.* at 781.

103. *See* Anthony Castrovince, *The 'Curse of the Bambino,' Explained*, MAJOR LEAGUE BASEBALL (Dec. 25, 2024), https://www.mlb.com/news/curse-of-the-bambino [https://perma.cc/M77B-7SPV].

> . . .would not sign the cheaply priced, highly talented, and readily available black players that surely would have kept them competitive.[104]

These decisions were traceable to the Red Sox's owner, Tom Yawkey. Yawkey himself has been credibly accused of racism—Jackie Robinson once described him as "probably one of the most bigoted guys in baseball."[105] He also staffed the organization with friends with equally odious beliefs.[106] While other franchises changed their approach to race in response to commercial and social imperatives, Yawkey's Red Sox resisted and paid the price.

It is not difficult to identify modern examples. For example, Dan Snyder has long been under a cloud of controversy. Snyder resisted changing the name of the football team he owned—the Washington Redskins—despite its racist connotations, only acquiescing after years of sustained pressure.[107] And the organization was investigated by Congress for its toxic workplace culture.[108]

But modern practices also suggest that it is possible to create meaningful accountability structures even for billionaire sports owners. After Los Angeles Clippers owner Donald Sterling was recorded making racist comments, National Basketball Association Commissioner Adam Silver penalized him with a lifetime ban.[109] Sterling was forced to sell the team, not because the market had forced a change but because his fellow billionaire owners were poised to insist on it. Dan Snyder similarly agreed to sell the Washington football team after pressure from his fellow owners.[110]

B. Real Estate

Real estate decisions frequently blend investment with consumption. An ordinary person buying a home is likely to consider resale value as well as factors that would make living there pleasant. At higher levels of wealth, the tradeoffs and their consequences can be more intense. This dynamic can play out in different types of real estate, including commercial real estate and farmland.

104. HOWARD BRYANT, SHUT OUT: A STORY OF RACE AND BASEBALL IN BOSTON 42 (2003).

105. Glenn Stout, *Tryout and Fallout: Race, Jackie Robinson, and the Red Sox*, 6 MASS. HIST. REV. 11, 28 (2004) (quoting GLENN STOUT & RICHARD A. JOHNSON, RED SOX CENTURY 242 (2000)).

106. BRYANT, *supra* note 104, at 42–44.

107. *See* Emma Bowman, *For Many Native Americans, the Washington Commanders' New Name Offers Some Closure*, NPR (Feb. 6, 2022), https://www.npr.org/2022/02/06/1078571919/washington-commanders-name-change-native-americans [https://perma.cc/6NYP-JLTK] ("Snyder had ignored years of advocacy and litigation from Native American activists in pushing for the change, saying that his team's name was a 'badge of honor' that respected a long tradition.").

108. STAFF OF H.R. COMM. ON OVERSIGHT AND REFORM, 117TH CONG., CONDUCT DETRIMENTAL: HOW THE NFL AND THE WASHINGTON COMMANDERS COVERED UP DECADES OF SEXUAL MISCONDUCT (Comm. Print 2022).

109. Jeff Zillgitt, *Adam Silver Gives Donald Sterling Lifetime Ban From NBA*, USA TODAY (Apr. 29, 2014), https://www.usatoday.com/story/news/usanow/2014/04/29/donald-sterling-fine-penalty-racism-audio-commissioner-adam-silver-los-angeles-suspension/8460575 [https://perma.cc/B6WL-HQP2].

110. Ken Belson & Katherine Rosman, *Dan Snyder Agrees to Sell Washington Commanders for $6 Billion*, N.Y. TIMES (Apr. 13, 2023), https://www.nytimes.com/2023/04/13/sports/football/washington-commanders-sale-dan-snyder.html [https://perma.cc/5RPE-CX3H].

1. Agricultural Land

A major athletic team can easily cost hundreds of millions of dollars and is likely to be available to only a few tycoons. But merely wealthy people—for example, partners at major law firms as opposed to their clients—can purchase trophy pieces of agricultural property such as farms, vineyards, and ranches.

Like the other examples, the trophy mode of ownership has virtues in the case of agricultural land. A wealthy owner who is not relying on the land to generate financial returns is free to be a good steward.[111] Instead of using the land intensively—clearing it and making extensive use of irrigation, fertilizer, and pesticides—or selling it to developers who would use it for low density suburban construction, the owner can make conservation a priority. Insulation from market pressures frees the owners to pursue a socially valuable mission.

But the phenomenon could also have negative consequences. *First*, refusing to use the land intensively also means refusing to put the land to its most economically productive use. A single transaction may not be troubling because a reduction in the productivity of a single small farm is not likely to have broad significance. But a trend concentrated within a region could be more impactful. For example, the COVID-19 crisis accelerated a trend in which wealthy New Yorkers purchased Hudson Valley farms.[112] Many of the new owners had little understanding of or interest in the measures needed to run a productive agricultural enterprise. Instead, they rented the land out to farmers while imposing aesthetically-driven conditions that made farming difficult or uneconomical. As a result, some of the most fertile land in the country is being used more like an ornamental garden than a productive farm.

Insulation from market forces can also lead to environmentally destructive behavior. For example, it is increasingly difficult to turn a profit ranching in America. Even under ideal conditions such as high beef prices for consumers, ranchers are often unable to capture value for themselves.[113] Foreign competitors are also scaling up, with South America capturing an increasing share of beef production.[114] But many wealthy individuals and families seem eager to purchase ranches,[115] perhaps because they are eager for the cultural cachet attached to cowboys.[116] This has the effect of continuing uneconomical and

111. *Cf.* Jessica A. Shoemaker & James Fallows Tierney, *Trading Acres*, 135 YALE L.J. (forthcoming 2026), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5211842 (describing some of the harms of financialization of farms).

112. *See* Elizabeth G. Dunn, *How 'Fairy Tale' Farms Are Ruining Hudson Valley Agriculture*, N.Y. TIMES (June 9, 2022), https://www.nytimes.com/2022/06/09/nyregion/hudson-valley-farms.html (on file with the *Journal of Corporation Law*).

113. Instead, a small number of meatpackers have been able to capture a large portion of the profits. *See, e.g.*, Peter S. Goodman, *Record Beef Prices, but Ranchers Aren't Cashing In*, N.Y. TIMES (Dec. 27, 2021), https://www.nytimes.com/2021/12/27/business/beef-prices-cattle-ranchers.html (on file with the *Journal of Corporation Law*).

114. *See* FOOD & AGRIC. ORG., OECD-FAO AGRICULTURAL OUTLOOK 2025-2034 85 (2025) (showing increasing output in beef production from Brazil).

115. Goodman, *supra* note 113.

116. For example, the highly popular television series *Yellowstone* is focused on a family operating a 50,000 acre cattle ranch in Montana. The economic challenges of running a ranch, the glamor of being a cowboy, and the threat from coastal billionaires seeking to use Montana as a playground are consistent themes in the series. Somewhat ironically, the series' popularity has driven a trend of fans purchasing cowboy attire. *See, e.g.*, Ashley

environmentally-destructive businesses, while increasing economic pressures on other ranchers.

Second, the phenomenon changes the opportunities available to workers. Wealthy buyers can inflate the prices of farms. While young farmers might once have hoped to purchase their own farms, inflated prices could put that goal out of reach. If a farm is worth more to a wealthy buyer—who is treating the purchase as a form of luxury consumption as well as investment—than its financial fundamentals suggest, the young farmer may even struggle to *borrow* enough to put in a winning bid when farmland is put up for sale.[117] Instead, such farmers have to content themselves with working for others or renting from them.

Third, the phenomenon changes community norms and the political economy surrounding farms and other land. New owners have been more aggressive in policing property rights, sometimes in ways that interfere with the public's legal entitlements. For example, some public lands are effectively surrounded by private property.[118] The arrangement did not pose serious problems while the private property was owned by individuals with a permissive attitude toward people crossing their land. But new owners with restrictive attitudes have increasingly come into conflict with individuals who want access to public land. Similarly, navigable waterways such as rivers belong to the public.[119] But fishers and rafters on these rivers are increasingly coming into conflict with individuals who own the surrounding land. These ownership patterns have the potential to distort public policy more broadly. Policies that are intended to help an individual hold on to a small family farm often have the primary effect of channeling an enormous amount of wealth into a small number of hands.[120]

2. *Commercial Real Estate*

Numerous enterprises dominated by wealthy individuals have sought to purchase signature properties. These properties were thought to enhance the prestige of the enterprise, and the purchases were often intended to signal a new phase in the enterprise's development. For example, under the leadership of Fred Trump, the Trump Organization had

Hume, *'Yellowstone' Inspires Western Fashion Trend Among Fans Embracing 'Cowboy Couture'*, FOX BUS. (Jan. 16, 2023), https://www.foxbusiness.com/entertainment/yellowstone-tv-series-inspires-surburbanites-dress-like-cattle-ranchers-hit-series [https://perma.cc/N2WH-EBLC]; Anna Tingley, *'Yellowstone' Taps Into Fashion's Westerncore Obsession: Here's Everything You Need to Master the Western Style*, VARIETY (Nov. 17, 2022), https://finance.yahoo.com/news/yellowstone-taps-fashion-westerncore-obsession-194431786.html [https://perma.cc/93YS-SSTA].

117. To be sure, other trends may be conspiring to exclude young farmers from the market. For example, farmland may be worth more to large agricultural concerns that are able to tap scale benefits.

118. Ben Ryder Howe, *It's Public Land. But the Public Can't Reach It.*, N.Y. TIMES (Nov. 26, 2022), https://www.nytimes.com/2022/11/26/business/hunting-wyoming-elk-mountain-access.html (on file with the *Journal of Corporatio Law*).

119. Ben Ryder Howe, *Does This Fisherman Have the Right to Be in a Billionaire's Backyard?*, N.Y. TIMES (Sept. 1, 2022), https://www.nytimes.com/2022/09/01/business/colorado-rivers-fishing-lawsuit.html (on file with the *Journal of Corporation Law*).

120. JONATHAN R. MCFADDEN & ROBERT A. HOPPE, THE EVOLVING DISTRIBUTION OF PAYMENTS FROM COMMODITY, CONSERVATION, AND FEDERAL CROP INSURANCE PROGRAMS, U.S. DEP'T OF AGRIC. i (2017) ("[C]ommodity program payments and support through Federal crop insurance have also shifted to higher income households.").

focused primarily on the outer boroughs of New York City. Fred's son, Donald Trump, led the organization's expansion into Manhattan and eagerly looked for opportunities to signal his social and economic arrival. Trump purchased the Plaza Hotel in 1988, in a maneuver intended to capture some of the Plaza Hotel's prestige and glamour for himself.[121] Jared Kushner similarly led Kushner Properties' entry to Manhattan by leading the $1.8 billion purchase of 666 Fifth Avenue in 2007 after his father, Charles Kushner, was convicted of illegal campaign contributions, tax evasion, and witness-tampering.[122] And the Mitsubishi Group purchased the landmark Rockefeller Center at the height of enthusiasm about the Japanese economy.[123]

While significant within the industry, the broader consequences of trophy ownership within this space are likely limited. The most obvious impact of this dynamic is that signature properties may be overpriced. For example, Trump borrowed heavily to purchase the Plaza Hotel and did so at a price far more than what its earnings would justify.[124] Trump ultimately had to renegotiate the debt and put the property through a prepackaged bankruptcy.[125] Kushner[126] and Mitsubishi[127] ran into similar difficulties.

Although ego driven purchases and overpriced properties could distort behavioral incentives, various forces can help limit those distortions. *First*, real estate purchases are generally highly leveraged. This forces the owner to focus on maximizing financial returns to service the debt. Even a very wealthy owner would struggle to manage a trophy commercial real estate property in an eccentric and money-losing way. The properties must be operated in a way that generates necessary cashflows.

Second, there is a limited stock of trophy commercial real estate properties, and it is difficult to supply more. Even if the properties are overpriced, it may be difficult for that price signal to result in overbuilding: there is only one Rockefeller Center, and no one

121. *See* Robert J. Cole, *Plaza Hotel Is Sold to Donald Trump for $390 Million*, N.Y. TIMES (Mar. 27, 1988), https://www.nytimes.com/1988/03/27/nyregion/plaza-hotel-is-sold-to-donald-trump-for-390-million.html (on file with the *Journal of Corporation Law*).

122. Terry Pristin, *Financial Ground Has Shifted Under a Record Deal*, N.Y. TIMES (Nov. 7, 2007), https://www.nytimes.com/2007/11/07/realestate/commercial/07kushner.html (on file with the *Journal of Corporation Law*) ("The record price paid in January . . . was breathtaking, even by the standards of the heady Midtown Manhattan commercial real estate market. Making its first major foray into the Manhattan office market, . . . Kushner Companies . . . paid more than three times what the building fetched in 2000."); John Cassidy, *Jared Kushner's Conflicts of Interest Reach a Crisis Point*, NEW YORKER (Mar. 2, 2018), https://www.newyorker.com/news/our-columnists/jared-kushners-conflicts-of-interest-reach-a-crisis-point [https://perma.cc/6ETF-RUL2] ("In 2007, at Jared Kushner's urging, the company paid $1.8 billion for the building—at the time, the highest price ever paid for a New York office tower.").

123. Braven Smillie, *Another Japanese Acquisition Gone Bad: Rockefeller Center*, ASSOCIATED PRESS NEWS (May 12, 1995), https://web.archive.org/web/20210301165446/https://apnews.com/article/75ee1bcd6ba0905a29a02174e0b68844 [https://perma.cc/KGF6-2PNK].

124. David Segal, *What Donald Trump's Plaza Deal Reveals About His White House Bid*, N.Y. TIMES (Jan. 16, 2016), https://www.nytimes.com/2016/01/17/business/what-donald-trumps-plaza-deal-reveals-about-his-white-house-bid.html (on file with the *Journal of Corporation Law*).

125. *Id.*

126. Bess Levin, *Qatar Shocked, Shocked to Learn It Accidentally Bailed Out Jared Kushner*, VANITY FAIR (Feb. 12, 2019), https://www.vanityfair.com/news/2019/02/qatar-666-5th-ave-jared-kushner [https://perma.cc/6EES-LQ7U].

127. Smillie, *supra* note 123.

could reasonably believe that they are going to build a new one.[128] Admittedly, many developers may have sought to mimic the Plaza Hotel's grandeur, perhaps contributing to a luxury hotel bust during the COVID-19 crisis.[129] But broader consequences are again potentially limited by the ability to convert hotel properties to other uses.[130]

C. Technology

Many technologists have pursued projects that appear to have motivations other than delivering financial returns. Alphabet, the parent company of Google, has called such projects "moonshots," and housed a portfolio of them within a company called "X":

> [I]t's hard to articulate exactly what X is . . . . Its stated aim is to pursue what it calls "moonshots"—to try to solve humanity's great problems by inventing radical new technologies. To that end, besides the self-driving cars (now a standalone company, Waymo) and internet balloons (Loon), X has built delivery drones (Wing), . . . and technology to store electricity using molten salt (Malta). It has pursued, but ultimately abandoned, attempts to create carbon neutral fuel from seawater, and replace ocean freight with cargo blimps. It once earnestly debated laying a giant copper ring around the North Pole to generate electricity from the Earth's magnetic field.[131]

X has also delivered profitable successes: for example, its advances in deep learning have been incorporated into core Alphabet products like Google search.[132] But Alphabet's "Other Bets" category is consistently an enormous money loser—it lost $4.5 billion in 2020, $5.3 billion in 2021, $4.6 billion in 2022, and $4.1 billion in 2023.[133] And there are probably less expensive, more direct routes to the innovations that generate profits. It's easy to see why research into artificial intelligence would help a software company like Alphabet, and hard to see why research into internet balloons is necessary for those advances.

Alphabet's behavior is at the periphery of the trophy asset phenomenon. Alphabet is a for-profit company, and its founders derive their enormous wealth from its continued

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128. Although the recent Hudson Yards megaproject drew some comparisons to Rockefeller Center, the project made no attempt to mimic Rockefeller Center's centralized planning or architectural coherence. *See* Michael Kimmelman, *Hudson Yards Is Manhattan's Biggest, Newest, Slickest Gated Community. Is This the Neighborhood New York Deserves?*, N.Y. TIMES (Mar. 14, 2019), https://www.nytimes.com/interactive/2019/03/14/arts/design/hudson-yards-nyc.html (on file with the *Journal of Corporation Law*) (contrasting the Hudson Yards approach, which "derives from a conviction that high-end tenants demand distinct, name-brand buildings" by famous individual architects, while Rockefeller Center was based on a single coherent architectural vision).

129. Patrick Clark, *NYC Hotel Bust Means Even $1,000 Rooms Aren't Profitable*, BLOOMBERG (Dec. 17, 2020), https://www.bloomberg.com/news/articles/2020-12-17/holiday-season-darkens-for-nyc-hotels-with-shutdown-risk-looming?leadSource=uverify%20wall (on file with the *Journal of Corporation Law*).

130. *But see* Nicole Hong & Matthew Haag, *A Hotel Was Set to Become Affordable Housing. Then the Union Stepped In.*, N.Y. TIMES (Dec. 7, 2022), https://www.nytimes.com/2022/12/07/nyregion/new-york-hotel-workers-union.html (on file with the *Journal of Corporation Law*).

131. Oliver Franklin-Wallis, *Inside X, Google's Top-secret Moonshot Factory*, WIRED (Feb. 17, 2020), https://www.wired.co.uk/article/ten-years-of-google-x (on file with the *Journal of Corporation Law*).

132. *Id.*

133. Alphabet Inc., Annual Report (Form 10-K) (Feb.1, 2022); Alphabet, Inc. Annual Report (Form 10-K) (Jan. 3, 2024).

success. But although Alphabet is a for-profit company, its founders Sergey Brin and Larry Page control the firm through dual class stock. In effect, they can cause the company to undertake money losing bets without internalizing a proportionate share of the losses. This arrangement gives them enormous freedom to pursue a broad range of projects even if they are unlikely to generate financial returns.[134] A similar arrangement frees Mark Zuckerberg to pursue projects at Meta. And like Alphabet, Meta has dabbled in projects like internet balloons.[135]

More paradigmatic examples of trophy ownership within technology also exist. Billionaires have participated in a craze for private spaceflight. Elon Musk founded Space Exploration Technologies Corp. (SpaceX),[136] Jeff Bezos founded Blue Origin, LLC,[137] and Richard Branson founded Virgin Galactic.[138] Again, there is some potential for profitable successes. SpaceX and Blue Origin avidly compete for government contracts,[139] and Virgin Galactic aims to ferry tourists into space for profit.[140]

But it is difficult to accept that these enterprises are simply about making money. The founders do not talk about these companies in terms of financial returns. Bezos remarked that:

> I believe on the longest time frame—and really here I'm thinking of a time frame of a couple hundred years, so over many decades . . . that Blue Origin, the space company, is the most important work I'm doing . . . I'm pursuing this work because I believe if we don't, we will eventually end up with a civilization of stasis, which I find very demoralizing.[141]

Musk has similarly described his work at SpaceX in civilizational terms, remarking "[w]e don't want to be one of those single planet species, we want to be a multi-planet

134. For analyses of the potential resulting social benefits from dual class stock, see Aguirre, *supra* note 4; Dharmapala & Khanna, *supra* note 70.

135. Matt Reynolds, *Facebook and Google's Race to Connect the World is Heating Up*, WIRED (July 26, 2018), https://www.wired.co.uk/article/google-project-loon-balloon-facebook-aquila-internet-africa (on file with the *Journal of Corporation Law*).

136. *Profile, Elon Musk*, FORBES https://www.forbes.com/profile/elon-musk [https://perma.cc/KBR8-S2ET].

137. Morgan McFall-Johnsen, *All About Blue Origin: How Jeff Bezos Launched a Rocket Company That's Competing with SpaceX*, BUS. INSIDER (Apr. 12, 2025), https://www.businessinsider.com/blue-origin [https://perma.cc/3HEL-VX45].

138. *Richard Branson*, VIRGIN GALACTIC https://www.virgingalactic.com/richard-branson [https://perma.cc/38BX-5W4Z].

139. *See* Joey Roulette & Marisa Taylor, *SpaceX, ULA, Blue Origin Clinch $13.5 Billion-Dollar Pentagon Launch Contracts*, REUTERS (Apr. 4, 2025), https://www.reuters.com/business/aerospace-defense/spacex-ula-expected-clinch-multibillion-dollar-contract-key-pentagon-launch-2025-04-04 [https://perma.cc/FS5U-DEY6] (discussing how SpaceX and Blue Origin won U.S. Space Force contracts).

140. *See Virgin Galactic Spaceplane Takes Tourists on Flight*, REUTERS (June 8, 2024), https://www.reuters.com/technology/space/virgin-galactic-spaceplane-takes-tourists-flight-2024-06-08/ [https://perma.cc/Z74Z-VWS9] ("Virgin Galactic flew four tourists to the edge of space and back aboard its spaceplane.").

141. Kathryn Dill & Javier E. David, *Jeff Bezos Tells Axel Springer's CEO that 'Blue Origin is the Most Important Work I'm Doing'*, CNBC (Apr. 28, 2018), https://www.cnbc.com/2018/04/28/jeff-bezos-on-blue-origin-its-the-most-important-work-im-doing.html [https://perma.cc/SSC5-MFQR].

species."[142] Branson has suggested that the "overview effect" experienced by tourists on Virgin Galactic will inspire them to be better stewards of the planet.[143] But the best evidence is the willingness of Bezos and Branson to actually put their own lives on the line by participating in early space flights. If this was just about money, it is hard to believe that two of the wealthiest men in the world would strap themselves to experimental machines to be shot out of the atmosphere at colossal speeds. These billionaires seem to have concluded that spaceflight has externalities at a civilizational scale, and these externalities seem to be correlated with billionaires' personal non-financial objectives.

D. Media

Media companies offer many high-profile examples of trophy assets. Within newspapers and magazines alone, there was Bezos's acquisition of the Washington Post,[144] Soon-Shiong's acquisition of the L.A. Times,[145] John Henry's acquisition of the Boston Globe,[146] Laurene Powell Jobs's acquisition of The Atlantic,[147] and Bruce Wasserstein's acquisition of New York Magazine.[148] Within new media, Musk's acquisition of Twitter is a high profile example of a purchase apparently driven by ego and reputational goals as opposed to traditional business or financial objectives.

Family ownership of prominent media outlets has some similar characteristics. Before Bezos's purchase, the Washington Post was owned and managed by the Graham family.[149] The New York Times is controlled by the Ochs-Sulzberger family.[150] In the United Kingdom, the Daily Mail, Metro, and other papers are owned by companies controlled by the Harmsworth family, who hold an aristocratic title to go along with their vast economic holdings.[151] Again, this mode of ownership can activate ego and reputational motivations

142. Michael Sheetz, *Elon Musk Wants SpaceX to Reach Mars so Humanity is Not a 'Single-Planet Species'*, CNBC (Apr. 23, 2021), https://www.cnbc.com/2021/04/23/elon-musk-aiming-for-mars-so-humanity-is-not-a-single-planet-species.html [https://perma.cc/F6H6-DPJ3].

143. Mike Wall, *The View from Space Could Change the World, Virgin Galactic Says*, SPACE.COM (Feb. 10, 2019), https://www.space.com/43288-virgin-galactic-space-travel-overview-effect.html [https://perma.cc/ZC7A-ARVG].

144. Farhi, *supra* note 9; *see also* Ann M. Lipton, *Every Billionaire Is a Policy Failure,* 18 VA. L. & BUS. REV. 327, 432 (2024) (noting that Bezos asserted that he was buying the Washington Post to advance its essential role in protecting democracy but observing that Bezos also appears to be attentive to economic considerations).

145. James & Chang, *supra* note 11.

146. *John Henry, Publisher*, BOS. GLOBE MEDIA https://www.bostonglobemedia.com/people/john-henry [https://perma.cc/S6J2-Q3QE].

147. Lee, *supra* note 10.

148. Sydney Ember, *An Heir Who's Ready to Take the Reins at New York Magazine*, N.Y. TIMES (Apr. 26, 2016), https://www.nytimes.com/2016/04/27/business/media/pamela-wasserstein-new-york-magazine.html [https://perma.cc/8JZS-D9Y7].

149. *See Washington Post Company History*, WASH. POST, https://washingtonpost.com/company-history/ [https://perma.cc/4VF7-24WN] (discussing the history of ownership of The Washington Post).

150. *See* The N.Y. Times Co., Annual Report (Form 10-K) (Feb. 28, 2023) (describing ownership structure in which descendants of Adolph S. Ochs control the company through a trust); Sydney Ember, *A.G. Sulzberger, 37, to Take Over as New York Times Publisher*, N.Y. TIMES (Dec. 14, 2017), https://www.nytimes.com/2017/12/14/business/media/a-g-sulzberger-new-york-times-publisher.html [https://perma.cc/SNJ2-WCZF].

151. *See* Hanna Ziady, *British Media Baron Could Take the Daily Mail Private*, CNN BUS. (July 12, 2021), https://www.cnn.com/2021/07/12/media/daily-mail-private-rothermere-deal [https://perma.cc/293F-NNMH]

that go beyond the business and financial considerations that often drive commercial behavior. Entrenching family ownership can thus help protect a media outlet's journalistic credibility and its distinctive editorial viewpoint.[152]

Trophy ownership can be contrasted with increasingly prominent modes of purely financial ownership. Hedge fund Alden Global Capital LLC specializes in distressed investments; in recent years, it has made a practice out of purchasing newspapers across the country and sharply reducing the number of journalists and news offices in a bid to increase profitability.[153] The firm's portfolio includes the Chicago Tribune, New York Daily News, Denver Post, and San Jose Mercury News.[154] When Patrick Soon-Shiong sold the San Diego Union-Tribune to Alden, the company announced employee buyouts and suggested that layoffs would be coming if an inadequate number of employees left voluntarily.[155] But while the difference in approach is striking, it would be a mistake to assume that the two models are totally different. Alden's president has suggested that the firm's actions are helping to keep newspapers alive by ensuring their financial soundness.[156] And layoffs are an unfortunate fact of life in the media industry, including at trophy assets like the L.A. Times,[157] Washington Post[158] and Twitter.[159]

Some peculiar features of media might distinguish trophy ownership within the industry. *First*, the scope for trophy ownership may be more limited. There may be relatively few potential owners. While many children watch or participate in sports and dream of participating at a professional level, few dream of owning a newspaper. The nonpecuniary benefits of ownership may also be more local. It may be highly prestigious to own the paper of record in a major city like New York, Los Angeles, or the District of Columbia, but less prestigious to own in a relatively minor city. Only a local magnate would feel the full benefit from owning a local paper, but the supply of deep-pocketed individuals is relatively low outside of major commercial centers.

(explaining that the Rothermere family, an "aristocratic family" owns the Daily Mail and Metro). The dynasty began with Harold Sidney Harmsworth, 1st Viscount Rothermere.

152. *See* Shill, *supra* note 4, at 234 (noting that these considerations led media companies to be early adopters of dual class structures); Dorothy S. Lund, *Nonvoting Shares and Efficient Corporate Governance*, 71 STAN. L. REV. 687, 704 (2019) (observing that media companies were early adopters of dual class control structures). *But see* An, *supra* note 3, at 12 ("[T]he current concentration of media firm ownership in the United States is a relatively new phenomenon that only began in the 1980s.").

153. Lipton, *supra* note 144, at 415–16; Lukas I. Alpert & Cara Lombardo, *Meet the Hedge Fund Boss Who Just Bought Tribune's Newspapers*, WALL ST. J. (May 24, 2021), https://www.wsj.com/articles/meet-the-hedge-fund-boss-who-just-bought-tribunes-newspapers-11621890733 (on file with the *Journal of Corporation Law*).

154. Alpert & Lombardo, *supra* note 153.

155. Lori Weisberg, *The San Diego Union-Tribune Sold to Alden Global Capital*, SAN DIEGO UNION-TRIB. (July 10, 2023), https://www.sandiegouniontribune.com/business/story/2023-07-10/deal-announced [https://perma.cc/PV3A-EV4F].

156. *Id.*

157. *Id.*; Katie Robertson & Benjamin Mullin, *Los Angeles Times to Slash Newsroom by Over 20%*, N.Y. TIMES (Jan. 23, 2024), https://www.nytimes.com/2024/01/23/business/media/los-angeles-times-layoffs-newsroom.html (on file with the *Journal of Corporation Law*).

158. Benjamin Mullin & Katie Robertson, *Washington Post Lays Off 20 Journalists*, N.Y. TIMES (Jan. 24, 2023), https://www.nytimes.com/2023/01/24/business/media/washington-post-layoffs.html [https://perma.cc/N5RK-4H57].

159. Kate Conger, Ryan Mac & Mike Isaac, *Confusion and Frustration Reign as Elon Musk Cuts Half of Twitter's Staff*, N.Y. TIMES (Nov. 4, 2022), https://www.nytimes.com/2022/11/04/technology/elon-musk-twitter-layoffs.html [https://perma.cc/SW2P-P2MA].

Second, the norms and reputational forces that drive trophy owners may be particularly important in media. Regulation is difficult, both because of constitutional limitations and because of the opacity of editorial decisions.[160] At least in the United States, the First Amendment limits the government's ability to bar hate speech and misinformation.[161] And while the public can see the stories that get reported, they have little insight into the stories that never get pursued. Even where a publication makes a questionable choice, there may be few meaningful commercial consequences. Indeed, playing into a panic or feeding a frenzy may be a commercially sound strategy. Against this backdrop, it is critical that managers of publications internalize a set of journalistic norms and act on them without commercially motivated interference.

Finally, editorial decisions can have a broad range of consequences that go beyond the profitability of the publication. An important newspaper's coverage decisions can have broad social consequences, for good or ill. A decision to cover a story extensively can change the course of an election[162] or shape the lead up to a war.[163] Even on narrower issues, sustained coverage can shed a light on real problems.[164]

Where the owners of a journalistic enterprise have outside interests, this can create opportunities for the owners to divert value to themselves. For example, the Washington Post covers issues and people that are important to Bezos's other business interests.[165] Amazon spends tens of millions of dollars each year lobbying politicians; through the Washington Post, Bezos has the power to shape coverage of those politicians. Other wealthy owners of newspapers have consciously shaped coverage to advance outside agendas.[166] Recent media transactions suggest that the issue may be growing in importance. For example, the Ellison family acquired Paramount and its CBS News brand partly by

160. *Cf.* Aneil Kovvali, *Government Failure and Corporate Reform* (forthcoming) (on file with author) (norms and social goals would play an important role even under an ideal government in part because an ideal government would be unable to police speech).

161. Evelyn Douek, *Content Moderation as Systems Thinking*, 136 HARV. L. REV. 526, 531–32 (2022).

162. *See* Duncan J. Watts & David M. Rothschild, *Don't Blame the Election on Fake News. Blame It On the Media.*, COLUM. JOURNALISM REV. (Dec. 5, 2017), https://www.cjr.org/analysis/fake-news-media-election-trump.php [https://perma.cc/8APR-GZY7] (noting that the New York Times "has singular influence on public debates," and suggesting that their coverage of scandals and policy in the 2016 election was consequential).

163. *From the Editors; The Times and Iraq*, N.Y. TIMES (May 26, 2004), https://www.nytimes.com/2004/05/26/world/from-the-editors-the-times-and-iraq.html [https://perma.cc/JZ9H-UQJK].

164. For example, the New York Times has led sustained coverage of problems with purportedly nonprofit hospitals. *See e.g.*, Jessica Silver-Greenberg & Katie Thomas, *They Were Entitled to Free Care. Hospitals Hounded Them to Pay.*, N.Y. TIMES (Sept. 24, 2022), https://www.nytimes.com/2022/09/24/business/nonprofit-hospitals-poor-patients.html [https://perma.cc/LKV9-SJNV]; Katie Thomas & Jessica Silver-Greenberg, *How a Hospital Chain Used a Poor Neighborhood to Turn Huge Profits*, N.Y. TIMES (Sept. 27, 2022), https://www.nytimes.com/2022/09/24/health/bon-secours-mercy-health-profit-poor-neighborhood.html [https://perma.cc/TB75-54YW]; Ellen Gabler, *How a Company Makes Millions Off a Hospital Program Meant to Help the Poor*, N.Y. TIMES (Jan. 15, 2025), https://www.nytimes.com/2025/01/15/us/340b-apexus-drugs-middleman.html [https://perma.cc/Y9KJ-CU2F].

165. *See* Dan Froomkin, *The Washington Post Has a Bezos Problem*, COLUM. JOURNALISM REV. (Sept. 27, 2022), https://www.cjr.org/special_report/washington-post-jeff-bezos.php [https://perma.cc/3389-F6QN].

166. *See* Jack Shafer, *What Does Jeff Bezos Want?*, POLITICO (Apr. 18, 2018), https://www.politico.com/magazine/story/2018/04/18/jeff-bezos-amazon-washington-post-217994/ [https://perma.cc/Z9X4-UY6Z] (collecting examples of this phenomenon); MARTIN BARON, COLLISION OF POWER: TRUMP, BEZOS, AND THE WASHINGTON POST 29 (2023).

promising to reshape its coverage in ways favored by the Trump Administration.[167] Trump later suggested that he would favor an Ellison bid for Warner Brothers Discovery and its CNN brand, potentially giving them an advantage over other potential bidders.[168] Trump also seems poised to force social media company TikTok into a deal with the Ellisons,[169] giving them a valuable prize that had previously eluded them.[170] A major media asset can be a powerful political tool, and political influence can be used to create financial value.[171] The point thus blurs the edges of trophy ownership.

Bezos's experience with the Washington Post has other broad implications. Originally, the business was a clear example of a trophy asset. Bezos's decision to acquire the Post was motivated in large part by the desire to cultivate his reputation and to attach himself to a tradition of journalistic excellence.[172] The business generates enormous externalities, as reflected in the company's Bezos-era motto: "Democracy Dies in Darkness."[173] The paper's decision to publish the Pentagon Papers and its coverage of Watergate reshaped a critical period in American history, and it has continued to break important news under Bezos's ownership.[174] In addition, Bezos could not simply procure his desired conduct by contracting with the Post as an outsider. He could only reap reputational benefits

167. *In re* Applications for Consent to the Transfer of Control of Paramount Global, FCC ¶ 59 (July 24, 2025) (basing FCC approval of the transaction on "Skydance's commitment to ensuring that New Paramount's array of news and entertainment programming embodies a diversity of viewpoints across the political and ideological spectrum and that CBS's reporting is fair, unbiased, and fact-based"); Joe Flint, *FCC Approves Paramount's $8 Billion Merger With Skydance*, WALL ST. J. (July 24, 2025), https://www.wsj.com/business/media/paramount-skydance-merger-fcc-approval-310e318e (on file with the *Journal of Corporation Law*); Winston Cho, *When There's Smoke, Is There a Side Deal?*, HOLLYWOOD REP. (Aug. 22, 2025), https://www.hollywoodreporter.com/business/business-news/paramount-trump-side-deal-1236350919 [https://perma.cc/9NQN-D7ZE]. Paramount's leadership helped obtain approval for the bid by paying President Trump $16 million to settle litigation that had little legal merit. Benjamin Mullin, Michael M. Grynbaum, Lauren Hirsch & David Enrich, *Paramount to Pay Trump $16 Million to Settle '60 Minutes' Lawsuit*, N.Y. TIMES (July 2, 2025), https://www.nytimes.com/2025/07/02/business/media/paramount-trump-60-minutes-lawsuit.html [https://perma.cc/N63A-5845].

168. *See* Charles Gasparino, *Trump Admin Likes Paramount Skydance in Race to Buy Warner Bros. Discovery: 'Points to the Ellisons'*, N.Y. POST (Oct. 23, 2025), https://nypost.com/2025/10/23/media/trump-admin-favors-paramount-skydance-in-race-to-buy-warner-bros-discovery-sources/ [https://perma.cc/8CJ8-AMS5]; Charles Gasparino, *Paramount Skydance Boss Eyes Warner Bros. Discovery Purchase—And Trump Is in His Corner*, N.Y. POST (Oct. 22, 2025), https://nypost.com/2025/10/22/media/paramount-skydance-boss-has-trump-in-his-corner-as-he-seeks-to-buy-warner-bros-discovery [https://perma.cc/78ME-R3LV].

169. *See* Zeyi Yang, *Trump Executive Order Will Hand TikTok Over to US Investors*, WIRED (Sept. 25, 2025), https://www.wired.com/story/president-trump-signs-tiktok-deal/ (on file with the *Journal of Corporation Law*) ("Larry Ellison, Michael Dell, and Rupert Murdoch are among the 'four or five' American investors who will take over TikTok's US operations, according to Trump.").

170. *See* Aaron Tilley & Stu Woo, *Larry Ellison's TikTok Bid Puts Oracle Chairman Back in the Spotlight*, WALL ST. J. (Oct. 3, 2020), https://www.wsj.com/tech/larry-ellisons-tiktok-bid-puts-oracle-chairman-back-in-the-spotlight (on file with the *Journal of Corporation Law*) (describing Larry Ellison's interest in TikTok).

171. *See* An, *supra* note 3, at 54–60 (suggesting that concentration of control at media companies is a function of a regulatory environment that has made it easier to use control to extract benefits).

172. Shafer, *supra* note 166.

173. *See* Paul Farhi, *The Washington Post's New Slogan Turns Out to Be an Old Saying*, WASH. POST (Feb. 24, 2017), https://www.washingtonpost.com/lifestyle/style/the-washington-posts-new-slogan-turns-out-to-be-an-old-saying/2017/02/23/cb199cda-fa02-11e6-be05-1a3817ac21a5_story.html (on file with the *Journal of Corporation Law*).

174. *See* BARON, *supra* note 166.

through ownership, and the conduct that he sought could not be reduced to a formula that could be written into a contract. As he put it in a speech to employees at a company town-hall, some relevant issues could not be reduced to metrics:

> [You] really can't measure them, and you have to use gut feel and intuition. And there are things that are elevated above metrics that are principles that you care so much about that even if the metrics told you to do the opposite, you'd still do what your principles say to do.[175]

Bezos's ownership of the Post also highlights both the benefits and risks of trophy ownership. During the first Trump Administration, Bezos's ownership of the Washington Post was surprisingly benign. Bezos and his team did make changes aimed at enhancing profitability, including introducing a paywall for articles and creating features intended to quickly capture simple news events.[176] But the defining characteristic of his tenure during this period seems to have been respect for existing traditions, including editorial independence. Marty Baron, the last editor of the Washington Post while it was owned by the Graham family and the first editor of the Post under Bezos, has insisted that Bezos had no role in shaping coverage despite significant pressure from the Trump Administration.[177] Bezos seems to have understood the Post's traditional approach as part of its basic value and an important driver of its prestige, and that a sudden break designed to advance eccentric whims would damage his reputational goals.[178]

Bezos' management of the Post seems to have shifted. During the 2024 presidential election, Bezos intervened late in the process to prevent the paper from endorsing a candidate. Bezos insisted that the decision was principled, but the maneuver did not prevent many subscribers from exiting.[179] Bezos subsequently courted Trump's favor, perhaps because of Trump's ability to damage other parts of Bezos's empire like Amazon and Blue Origin, or perhaps because of a genuine political or ideological alignment.[180] Among other steps, Bezos revamped the opinions section, installing a new editor and declaring a new editorial point of view. In a statement shared on Twitter, Bezos wrote:

> We are going to be writing every day in support and defense of two pillars: personal liberties and free markets. We'll cover other topics too of course, but viewpoints opposing those pillars will be left to be published by others. There was a time when a newspaper, especially one that was a local monopoly, might have seen it as a service to bring to the reader's doorstep every morning a broad-

175. *Id.* at 61.

176. *Id.* at 59–60.

177. *Id.* at 11.

178. *Id.* at 93 (quoting Bezos as saying "The most important things about institutions, once they've been around for a while . . . cannot be imposed from the outside. They are already built in. If you try to change them, you're just squandering a resource. Instead, what you do is you try to figure out what they are, and kind of uncover them, and eventually learn to articulate them").

179. *See* David Folkenflik, *Over 200,000 Subscribers Flee 'Washington Post' After Bezos Blocks Harris Endorsement*, NPR (Oct. 29, 2024), https://www.npr.org/2024/10/28/nx-s1-5168416/washington-post-bezos-endorsement-president-cancellations-resignations [https://perma.cc/8YG9-PRYC].

180. *See* Maggie Haberman, *Billionaire Rivals Bezos and Musk Are Said to Have Dined With Trump at Mar-a-Lago*, N.Y. TIMES (Dec. 19, 2024), https://www.nytimes.com/2024/12/19/us/politics/trump-elon-musk-bezos-mar-a-lago.html [https://perma.cc/T4EX-ST5L]. As Bezos himself has acknowledged, "When it comes to the appearance of conflict, I am not an ideal owner of The Post." Folkenflik, *supra* note 179.

> based opinion section that sought to cover all views. Today the internet does that job . . . . I'm confident that free markets and personal liberties are right for America. I also believe these viewpoints are underserved in the current market of ideas and news opinion. I'm excited for us together to fill that void.[181]

Former Post editor Marty Baron publicly rebuked Bezos for these moves, stating that his narrowing of the opinion page "represents a real betrayal of the heritage of the Post and a betrayal of the very idea of free expression," and suggesting that Bezos's recent decisions had been driven by fear of reprisals.[182] Other disquieting anecdotes emerged. Pulitzer Prize-winning editorial cartoonist Ann Telnaes resigned from the Post, alleging that editors had killed a cartoon depicting Bezos and other business leaders paying homage to Trump.[183] The Washington Post soon began to bleed journalistic talent.[184] It also lost hundreds of thousands of subscribers,[185] suggesting that the strategy did not maximize the Post's profits.

III. TWITTER AS A TROPHY

This Part discusses Elon Musk's ownership of Twitter[186] and shows that it is a paradigmatic example of the trophy asset phenomenon. Part A briefly recounts the facts of Musk's acquisition of Twitter and discusses competing conceptions of Twitter's social mission. It suggests that although some commentators have interpreted the Twitter board's decision to sell as a betrayal of the company's social purpose, Twitter's leaders might have believed that trophy ownership by Musk would help the company fulfill its true mission. This highlights some of the promise of trophy ownership. Part B discusses Musk's tenure at Twitter and suggests that freeing the company from the discipline of accountability to shareholders may have had unfortunate consequences. Part C turns to the implications of Twitter's ownership structure and suggests that Musk's unusual portfolio might affect his decisions at Twitter.

A. Twitter's Purpose

In April 2022, Musk disclosed that he had been buying shares of Twitter.[187] After initially suggesting that he would take a seat on the Twitter board and drive improvements, Musk launched an offer to buy the company outright at $54.20 per share, proposing to

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181. Jeff Bezos (@JeffBezos), TWITTER (Feb. 26, 2025), https://x.com/JeffBezos/status/1894757287052362088?lang=en [https://perma.cc/534J-3STM].

182. Anna Betts, *Ex-Washington Post Editor Marty Baron Rebukes Bezos: 'Betrayal of Free Expression'*, THE GUARDIAN (Feb. 28, 2025), https://www.theguardian.com/us-news/2025/feb/28/marty-baron-jeff-bezos-washington-post (on file with the *Journal of Corporation Law*).

183. Jon Allsop, *The Exodus from the* Washington Post, COLUM. JOURNALISM REV. (Aug. 4, 2025), https://www.cjr.org/the_media_today/exodus-washington-post-wapo-storied-paper-dying-jeff-bezos-donald-trump.php [https://perma.cc/DM8U-AM5J].

184. *Id.*

185. Betts, *supra* note 182.

186. Musk has renamed the company "X." For simplicity, the discussion refers to the company as Twitter.

187. For brisk accounts of Musk's approach, the deal, and the ensuing litigation, see Ann M. Lipton & Eric Talley, Twitter v. Musk*: Reflections on the 'Trial of the Century' That Wasn't*, 40 DEL. LAW. 8 (2022); Lipton, *supra* note 144, at 340–352; Bebchuk, Kastiel & Toniolo, *supra* note 8, at 309–11.

remove the company from the public markets and take it private. Twitter's board accepted the offer and ultimately forced Musk to live up to the deal through litigation.[188]

An emerging consensus faults Twitter's board for failing to resist Musk's overture.[189] On this account, it was obvious from the beginning that Musk had a cavalier and unsophisticated view of content moderation, was unlikely to be a responsible steward for the important media platform, and was likely to fire many Twitter employees.[190] From the beginning of his approach, Musk was plainly set to conduct layoffs and allow a large amount of false, racist, sexist, and reactionary speech back onto the platform. When Twitter's board failed to resist Musk's $54.20 per share offer—a number that was itself an apparent joke[191]—it betrayed the company's important social responsibilities and revealed new grounds for skepticism of whether stakeholderism or ESG could work.

But the consensus misses key dynamics. Even on the somewhat shaky premise that Twitter's board was legally free to fight Musk,[192] it is not obvious that Twitter's leaders would have seen a contradiction between its social mission and accepting Musk's premium offer. Consider the following tweet by Jack Dorsey, the founder and former CEO of Twitter, who communicated with Musk extensively in the lead-up to the transaction:

> In principle, I don't believe anyone should own or run Twitter. It wants to be a public good at a protocol level, not a company. Solving for the problem of it being a company however, Elon is the singular solution I trust. I trust his mission to extend the light of consciousness.[193]

188. Lipton, *supra* note 144, at 353–56; Bebchuk, Kastiel & Toniolo, *supra* note 8, at 314.

189. Petrucci & Guhan Subramanian, *supra* note 22, at 103; Lucian A. Bebchuk, Kobi Kastiel & Anna Toniolo, *How Twitter Pushed its Stakeholders under the (Musk) Bus*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Nov. 14, 2022), https://corpgov.law.harvard.edu/2022/11/14/how-twitter-pushed-its-stakeholders-under-the-musk-bus/ [https://perma.cc/3GFF-BL7J] (noting that Twitter employees, "fondly called 'tweeps'" were "[p]ushed under the bus. . . . . Although Twitter has for long promised to care for its tweeps, Twitter's leaders did not attempt to look after, or even raise with Musk how the tweeps would be affected by the negotiated deal. Instead, Twitter's leaders chose to allocate the very large monetary surplus produced by the deal entirely to shareholders and the leaders themselves."); Gordon, supra note 23 (noting that "[t]he single motivating factor in its decision, apparently, was that the deal was a good one for Twitter shareholders, without apparent regard for how Musk might run the company and the consequence for the social media infrastructure that Twitter had created, much less the public welfare. In my opinion, the board's conduct was shockingly near-sighted, and the predictable adverse consequences will be the directors' personal responsibility.").

190. Gordon, *supra* note 23; Bebchuk, Kastiel & Toniolo, *supra* note 8, at 318.

191. Lipton & Talley, *supra* note 187, at 9 ("420 is a weed joke."). Musk had similarly once tweeted that he would take Tesla private at a price of $420 per share, apparently because the reference to marijuana would amuse his then-girlfriend. Lipton, *supra* note 144, at 338.

192. Unless the board had a thoughtful plan to generate superior shareholder value in the long run by resisting Musk, they could not have felt safe from potential legal liability. *Cf.* William Savitt & Aneil Kovvali, *On the Promise of Stakeholder Governance: A Response to Bebchuk & Tallarita*, 106 CORNELL L. REV. 1881, 1891 (2021). *But see* Petrucci & Subramanian, *supra* note 22, at 124 (suggesting that boards do have the flexibility to defend against takeovers that threaten corporate culture).

193. Jack Dorsey (@jack), TWITTER (Apr. 25, 2022), https://twitter.com/jack/status/1518772756069773313 [https://perma.cc/N4YZ-DCMQ]; *see also* Lipton, *supra* note 144, at 400 n.369 (describing Dorsey's stated "regret that he was unable to run Twitter to maximize its *social* utility once the company went public") (emphasis added).

Musk has offered some related insights:

> Unless it is stopped, the woke mind virus will destroy civilization and humanity will never reach[] Mars.[194]
>
> ***
>
> Social media in general, especially Twitter, were eroding civilization. If civilization collapses before Mars becomes self-sustaining, then nothing else matters.
>
> Human consciousness is gone.[195]

Viewing these ideas sympathetically, Twitter's former leaders agreed with Musk on the company's social mission: to share ideas freely with minimal policing. But when the company was owned by public shareholders, it was forced to engage in content moderation *as a concession to shareholders*. Advertisers did not want their commercials to appear next to hateful speech, so Twitter made the business decision to maximize advertising revenue for the benefit of shareholders by compromising its social mission and removing hateful speech.[196] By taking the company private, Musk would allow Twitter to pursue its true social mission without compromise, much like a major newspaper in the hands of a wealthy family.

Of course, it is also possible to view these ideas unsympathetically. While they might make sense within an echo chamber of Silicon Valley billionaires, these buzzy concepts seem entirely disconnected from normal human priorities and concerns. Unlike the statements of its founder and future owner, Twitter's corporate statements suggested a set of more normal priorities and concerns, such as fighting misinformation and promoting worker wellbeing.[197] And even if Musk's vision had appeared sound at the outset, subsequent events called it into question. After signing the deal to acquire Twitter, Musk made an abortive attempt to back out based on flimsy legal grounds,[198] suggesting that his claims

194. Elon Musk (@elonmusk), TWITTER (May 19, 2022), https://twitter.com/elonmusk/status/1527356085090545664 [https://perma.cc/53SR-GYWX].

195. Elon Musk (@elonmusk), TWITTER (Dec. 13, 2022), https://twitter.com/elonmusk/status/1602734819225571328 [https://perma.cc/DK4N-LWPF]. For a similar explanation from Musk, see @chancery_daily, TWITTER (Dec. 4, 2022), https://twitter.com/chancery_daily/status/1599539225992384513.

196. *See* Ricki Lee, *Here Today, Elon Tomorrow: Are Advertisers Abandoning X?* TECHINFORMED (Aug. 23, 2024), https://techinformed.com/why-advertisers-are-boycotting-x-elon-musk-impact-2024 [https://perma.cc/4PPQ-WTX9] (discussing advertisers abandoning Twitter due to their lack of content moderation); Katherine Tangalakis-Lippert & Hannah Getahun, *Jack Dorsey Apologizes for His Twitter-Moderation Choices, Saying He Did the 'Wrong Thing for the Internet and Society' Despite Calling His Decisions the 'Right Thing' at the Time,* BUS. INSIDER (Dec. 13, 2022), https://www.businessinsider.com/jack-dorsey-twitter-wrong-thing-for-the-internet-and-society-2022-12 [https://perma.cc/HSR9-NSV5] ("When he cofounded Twitter in 2006, Dorsey's approach to content moderation was seen as pro-free speech and the company 'had to be dragged' into content moderation.").

197. Petrucci & Subramanian, *supra* note 22, at 92–93. It is not clear that these commitments had a purpose other than increasing shareholder returns. Indeed, the shareholder activist firm Elliott Management had taken a position in Twitter in 2020 and did not demand that the firm abandon its commitments. *See* Svea Herbst-Bayliss, *Elliott Exited Twitter During Second Quarter Amid Takeover Frenzy, Filings Show*, REUTERS (Aug. 15, 2022), https://www.reuters.com/markets/deals/elliott-exited-twitter-during-second-quarter-amid-takeover-frenzy-filings-show-2022-08-16/ [https://perma.cc/8ECA-A2KV].

198. *See generally* Lipton & Talley, *supra* note 187 (discussing Musk's attempts to back out of taking over Twitter); *see also* Lipton, *supra* note 144, at 349–352 (same).

about an existential threat to humanity were somewhat insincere. And as discussed in the next section, Musk's management of the company has also been disappointing.

B. Twitter's Loss of Discipline

Twitter is now largely free of the constraints that would ordinarily force the company to focus on profit maximization. As a result, the usual mechanisms that discipline corporate actors, force the company to meet the needs of market participants, and align the business with the broader society operate differently.

1. Lack of Corporate Discipline and Excess of Hubris

Taken as a standalone investment, Musk's acquisition of Twitter has been financially disastrous. One fund that invested alongside Musk has written down the value of its stake by approximately two thirds.[199] The decline in valuation has paralleled a decline in the fundamentals of the business. Advertising revenue declined precipitously during Musk's tenure.[200] Musk himself appears to have realized a disaster was looming as the acquisition approached; he unsuccessfully attempted to back out of purchasing Twitter and only went through with the purchase after being sued.[201]

One explanation for this outcome is that Musk may have misunderstood Twitter when he first started buying shares. In Musk's mind, Twitter was engaged in content moderation because it had compromised its pursuit of profits to advance a "woke" agenda. As a result, Musk believed that he could save Twitter and rapidly boost profits by simply abandoning content moderation. But Twitter's leaders had compromised their true goal of freely disseminating speech to pursue shareholder profits. As a result, Musk could not quickly boost Twitter's profitability by taking a more "absolutist" approach to speech.

Ordinarily, a hubristic business plan would be constrained by the need to obtain capital. But Musk's personal wealth and reputation reduced the importance of that constraint. Musk personally financed a large portion of the transaction, reassuring other investors that they did not need to inquire too closely into Musk's claims about the company. And Musk's mystique, obtained through past successes at Tesla and SpaceX, seems to have smoothed the way. When asked why Endeavor had co-invested, its normally sharp dealmaker CEO Ari Emanuel responded, "[i]f you're going to bet on somebody, I would bet on that man.

199. Jaiveer Singh Shekhawat, *Fidelity Marks Down Value of Twitter Stake Again*, REUTERS (May 30, 2023), https://www.reuters.com/technology/fidelity-marks-down-value-twitter-stake-again-2023-05-30/ [https://perma.cc/WQC6-TJGM] (reporting fund values stake at $6.55 million as of end of April 2023); Niket Nishant, *Fidelity Marks Down Value of Twitter Stake by 56%*, REUTERS (Dec. 30, 2022), https://www.reuters.com/technology/fidelity-marks-down-value-twitter-stake-by-56-2022-12-30/ [https://perma.cc/XU4X-Z7WL] (reporting fund values stake at $19.66 as of end of October 2022); *see also* Jack Pitcher, *Cathie Wood's ARK Writes Down Twitter Stake by 47%*, WALL ST. J. (July 17, 2023), https://www.wsj.com/articles/cathie-woods-ark-writes-down-twitter-stake-by-47-407b83d4 (on file with the *Journal of Corporation Law*) (discussing Twitter's declining fund value).

200. Ryan Mac & Tiffany Hsu, *Twitter's U.S. Ad Sales Plunge 59% as Woes Continue*, N.Y. TIMES (June 5, 2023), https://www.nytimes.com/2023/06/05/technology/twitter-ad-sales-musk.html [https://perma.cc/5NVR-429R].

201. Lipton, *supra* note 144, at 352.

On anything he does."[202] Famed venture capitalist Marc Andreessen of Andreessen Horowitz reached out to Musk to offer $250 million in financing "with no additional work required,"[203] suggesting a lack of real diligence. And his partner Ben Horowitz announced a $400 million investment just two weeks later in a series of tweets paralleling Musk's line about the company:

> "While Twitter has great promise as a public square, it suffers from a myriad of difficult issues ranging from bots to abuse to censorship. Being a public company solely reliant on an advertising business model exacerbates all of these."[204]
>
> "Elon is the one person we know and perhaps the only person in the world who has the courage, brilliance, and skills to fix all of these and build the public square that we all hoped for and deserve."[205]
>
> "We are excited to be part of this mission."[206]

Jack Dorsey apparently approved of Horowitz's statement, responding, "[T]his is true. it needs cover for a while."[207] In effect, these mechanisms allowed Musk to translate his financial success in one set of endeavors (making electric vehicles and rockets) into power in another area (social media).

Of course, not all of Musk's co-investors were true believers. It is at least possible that some backers, including Saudi prince Alwaleed bin Talal al Saud and the Qatari Investment Authority, were seeking political influence and access to confidential Twitter data.[208] Other backers that are more focused on financial performance may prove even more influential in Twitter's eventual management. A group of banks loaned approximately $13 billion of the $44 billion price.[209] While it is not clear that the "discipline of debt" will control Musk, it does create a real need to generate income. The company must pay $1 billion in interest each year.[210]

2. *Lack of Market Discipline and Oligopolistic Environment*

Social media platforms like Twitter are relatively protected from competition. This can have important effects on Twitter. *First,* it is unclear that competition will discipline

202. Stephen J. Dubner, *Ari Emanuel Is Never Indifferent*, FREAKONOMICS (May 31, 2023), https://freakonomics.com/podcast/ari-emanuel-is-never-indifferent/ [https://perma.cc/BE68-CKGW].

203. Charlie Warzel, *Elon Musk's Texts Shatter the Myth of the Tech Genius*, THE ATLANTIC (Sept. 30, 2022), https://www.theatlantic.com/technology/archive/2022/09/elon-musk-texts-twitter-trial-jack-dorsey/671619/ (on file with the *Journal of Corporation Law*).

204. Ben Horowitz (@bhorowitz), TWITTER (May 5, 2022), https://x.com/bhorowitz/status/1522198627128553472 [https://perma.cc/Z94R-QXJQ].

205. Ben Horowitz (@bhorowitz), TWITTER (May 5, 2022), https://x.com/bhorowitz/status/1522198628244156416 [https://perma.cc/5SWB-QDXQ].

206. Ben Horowitz (@bhorowitz), TWITTER (May 5, 2022), https://x.com/bhorowitz/status/1522198629418627082 [https://perma.cc/43L9-43TP].

207. Jack Dorsey (@jack), TWITTER (May 5, 2022), https://twitter.com/jack/status/1522225373592891392 [https://perma.cc/5MCT-NX9D].

208. Hamza Shaban & Faiz Siddiqui, *Here's Who Helped Elon Musk Buy Twitter*, WASH. POST (Dec. 24, 2022), https://www.washingtonpost.com/technology/2022/12/24/elon-musk-twitter-funders/ [https://perma.cc/V2AW-GLHQ].

209. *Id.*

210. *Id.*

Musk's choices about the platform. By their nature, social media networks do not operate in a competitive environment. They are fundamentally "sticky": a user who has built up a valuable network of connections will be reluctant to abandon those connections by shifting to another platform.[211] As a result, users may be willing to tolerate significant reductions in the quality of the product before they take actions that discipline the company. This fact seems to have muted users' responses to the changes to the Twitter platform.[212] But there are some indications that Musk's activities have degraded the platform. A Pew Research study found that the 20% most active tweeters on the platform have posted less in the wake of Musk's acquisition.[213] Musk's intervention in the 2024 presidential election appears to have prompted another exodus of users.[214] Although it is too early to be sure, emerging competitors like Meta's Threads or Bluesky may pose a serious threat to Twitter.[215]

It is also unclear how the platform will evolve. The most active users on Twitter were left leaning—the Pew Research study found that 61% were Democrats and Democratic leaners.[216] Musk's efforts largely seem designed to recruit users on the right. Among other measures, Musk aggressively sought to woo Donald Trump back to the platform. Musk's steps included settling a lawsuit of questionable legal merit with a $10 million payment to Trump.[217] While his actions seem likely to alienate the core user base, they could also drive up interest and engagement with the platform. Given this uncertainty, Musk is unlikely to feel restrained by the potential for user reactions when he makes the choice.

Second, the relative lack of competition may mean that Musk's choices are consequential. Some studies have found an increase in hate speech and misinformation on

211. Rachel Lerman, *Who's Going, Who's Saying, Who (Could Be) Back on Elon Musk's Twitter*, WASH. POST (Nov. 3, 2022), https://www.washingtonpost.com/technology/2022/11/03/twitter-celebrities-leaving-elon-musk/ (on file with the *Journal of Corporation Law*) ("Boycotts of dominant social media platforms, including Facebook and Twitter, have been largely unsuccessful in the past because it's hard to replicate their reach and network . . . . The difficulty of porting contacts and content to other networks has been a source of antitrust concern around Big Tech power.").

212. *Id.*; Suhauna Hussain & Jon Healey, *Thinking of Quitting Twitter? Here's Everything You Should Know*, L.A. TIMES (Nov. 11, 2022), https://www.latimes.com/business/technology/story/2022-11-11/stay-with-elon-musk-twitter-or-leave-for-mastodon-otheralternatives (on file with the *Journal of Corporation Law*) ("Many Twitter users acknowledge that Twitter has no perfect substitute, and it may not make sense for you to jump ship if you've built a valuable community on the platform.").

213. Athena Chapekis & Aaron Smith, *How U.S. Adults on Twitter Use the Site in the Elon Musk Era*, PEW RSCH. CTR. (May 17, 2023), https://www.pewresearch.org/short-reads/2023/05/17/how-us-adults-on-twitter-use-the-site-in-the-elon-musk-era/ [https://perma.cc/8N2L-ZWFT].

214. Kat Tenbarge & Kevin Collier, *X Sees Largest User Exodus Since Elon Musk Takeover*, NBC NEWS (Nov. 13, 2024), https://www.nbcnews.com/tech/tech-news/x-sees-largest-user-exodus-musk-takeover-rcna179793 [https://perma.cc/MX8P-7EPW].

215. Abid Rahman, *#Xodus: Bluesky Hits 20M Users as People Continue to Flee X*, THE HOLLYWOOD REP. (Nov. 19, 2024), https://www.hollywoodreporter.com/business/digital/bluesky-20-million-users-twitter-exodus-elon-musk-1236065566/ [https://perma.cc/LEW9-E7KX]; Sarah E. Needleman, *The Rapid Rise of Threads Appears to Be Hurting Twitter*, WALL ST. J. (July 10, 2023), https://www.wsj.com/articles/the-rapid-rise-of-threads-appears-to-be-hurting-twitter-f557ba6e (on file with the *Journal of Corporation Law*). *But see* Mike Isaac, *Why the Early Success of Threads May Crash into Reality*, N.Y. TIMES (July 11, 2023), https://www.nytimes.com/2023/07/11/technology/threads-zuckerberg-meta-google-plus.html [https://perma.cc/K4QR-JZTL] (noting that Threads might fail, much like the Google+ social media product).

216. Chapekis & Smith, *supra* note 213.

217. Maggie Haberman & Kate Conger, *Elon Musk's X Settles Trump Lawsuit*, N.Y. TIMES (Feb. 12, 2025), https://www.nytimes.com/2025/02/12/technology/musk-x-settles-trump-lawsuit.html [https://perma.cc/A8ZH-FS63].

Twitter since Musk took over.[218] Part of the effect may simply be that hateful users were energized by Musk's takeover. It would be difficult to attribute the five-fold increase in racist epithets in the 12 hours after Musk took ownership to a specific policy.[219] But Musk's statements before the takeover and his actions after likely emboldened bad actors. After taking over, Musk fired 80% of Twitter's staff, including head of trust and safety Vijaya Gadde.[220] As a result, Twitter's ability to identify and police hateful content has been dramatically reduced.[221]

In a competitive environment, these choices might not be consequential. If one of many comparable social media platforms had not allowed this speech, it would simply appear on other competitor platforms and achieve similar reach. But Twitter has a unique capacity to amplify and encourage speech. The very importance that made it an appealing trophy makes it a dangerous tool in the wrong hands.

3. Lack of Social Discipline and Reputation Within Echo Chambers

Wealthy owners of trophy assets might be constrained by reputational and social pressures, even if financial pressures are not relevant. If an asset is being used *as a trophy*—that is, as a means of enhancing the prestige of the owner—the owner should be concerned about what other people think of their management. But this force will only drive owners toward socially desirable policies if the owners are concerned with their standing in a community of people who favor socially desirable policies. Musk's experience with Twitter offers some reasons for alarm. Without taking a position on which policies are correct, this Section seeks to demonstrate that Musk and the voices that appear important to him are part of an idiosyncratic milieu that could hardly be relied upon to replicate the preferences and interests of the broader public.

Musk seems eager for the approval of at least two communities. *First*, Musk appears to want the support of his vocal fans on the Twitter platform. Indeed, at one point Musk appears to have ordered changes to Twitter's algorithm to ensure that his tweets were highly visible to them.[222] Musk regularly engages with his most ardent fans on Twitter,

218. *See* Mike Wendling, *Twitter and Hate Speech: What's the Evidence?*, BBC (Apr. 12, 2023), https://www.bbc.com/news/world-us-canada-65246394 [https://perma.cc/Z84T-JPQX] (stating that hate speech has been growing on Twitter since Musk took over control).

219. Rashawn Ray & Joy Anyanwu, *Why Is Elon Musk's Twitter Takeover Increasing Hate Speech?*, BROOKINGS (Nov. 23, 2022), https://www.brookings.edu/articles/why-is-elon-musks-twitter-takeover-increasing-hate-speech/ [https://perma.cc/BV32-ECTZ] (noting that "[t]witter saw a nearly 500% increase in the use of the N-word in the 12-hour window immediately following the shift of ownership to Musk. Within the following week, tweets including the word 'Jew' had increased fivefold since the ownership transfer. Tweets with the most engagement were overly antisemitic. Likewise, there has also been an uptick in misogynistic and transphobic language.").

220. *Id.*; Michelle Toh & Juliana Liu, *Elon Musk Says He's Cut about 80% Twitter's Staff*, CNN BUS. (Apr. 12, 2023), https://www.cnn.com/2023/04/12/tech/elon-musk-bbc-interview-twitter-intl-hnk [https://perma.cc/9PS9-6GYX].

221. Ray & Anyanwu, *supra* note 219.

222. *See* Zoe Schiffer & Casey Newton, *Yes, Elon Musk Created a Special System for Showing You All His Tweets First*, THE VERGE (Feb. 14, 2023), https://www.theverge.com/2023/2/14/23600358/elon-musk-tweets-algorithm-changes-twitter [https://perma.cc/8MKH-N9KH].

including repeatedly liking or retweeting statements from an account that only quotes him.[223]

This collection of individuals is obviously unlikely to push back on Musk's decisions; indeed, many seem eager to rationalize or justify his strangest behaviors. They are also not experts on many of the complex decisions that are relevant to managing a company like Twitter. For example, when Musk agreed to censor dissident speech at the request of Türkiye's government, he offered the explanation that he had to agree in order to protect Turkish access to other speech.[224] Many of Musk's Twitter fans seemed to take his explanation at face value, presumably because they lacked the knowledge required to evaluate his claim—Twitter's former managers had been more willing to fight that type of government request.[225]

Second, Musk may care about his standing amongst fellow technology business leaders. But business leaders appear to have distinctive preferences and attitudes.[226] While the general public often takes a dim view of layoffs, many business leaders applauded Musk's decision to fire a large portion of Twitter's workforce. The verbal praise was effusive. For example, the CEO of Netflix, Reed Hastings, proclaimed that Musk was "the bravest, most creative person on the planet."[227] Even Musk's often-bitter rival Mark Zuckerberg shared,

> I do think that Elon led a push early on to make Twitter a lot leaner, and . . . a lot of the specific principles he pushed on . . . I think those were generally good changes. And I also think it was probably good for the industry that he made those changes, because my sense is that there were a lot of other people who thought that those were good changes, but who may have been a little shy about doing them.[228]

223. Max Chafkin, *Elon Musk Keeps Quoting Elon Musk About His Genius*, BLOOMBERG (Nov. 23, 2022), https://www.bloomberg.com/news/articles/2022-11-23/elon-musk-replies-to-his-own-quotes-on-twitter?leadSource=uverify%20wall (on file with the *Journal of Corporation Law*).

224. Jack McCordick, *Twitter's Elon Musk Defends Decision to Limit Tweets in Turkey During Tight Presidential Election*, VANITY FAIR (May 14, 2023), https://www.vanityfair.com/news/2023/05/twitter-musk-censors-turkey-election-erdogan?srsltid=AfmBOoohl4PfIOUaGg42zOPyzTxzCkVetQFuZV-KXzHvW8CVGxDgtmM6 (on file with the *Journal of Corporation Law*).

225. *Id.*

226. *Cf.* Anil Dash, *The Tech Tycoon Martyrdom Charade*, ANILDASH (Feb. 27, 2023), https://www.anildash.com/2023/02/27/tycoon-martyrdom-charade/ [https://perma.cc/R4AW-65ZU] ("It's impossible to overstate the degree to which many big tech CEOs and venture capitalists are being radicalized by living within their own cultural and social bubble.").

227. Lauren Hirsch, *Reed Hastings Calls Elon Musk the 'Most Brave and Creative Person on the Planet.'*, N.Y. TIMES (Nov. 30, 2022), https://www.nytimes.com/live/2022/11/30/business/dealbook-summit-conference#reed-hastings-calls-elon-musk-the-most-brave-and-creative-person-on-the-planet [https://perma.cc/L2EY-9VPL]; *See* Kevin Roose, *Elon Musk, Management Guru?*, N.Y. TIMES (Dec. 16, 2022), https://www.nytimes.com/2022/12/16/technology/elon-musk-management-style.html [https://perma.cc/Q49R-H8XC] (explaining that "[t]ech elites. . . . view [Musk] as the standard-bearer of an emergent worldview they hope catches on more broadly in Silicon Valley. The writer John Ganz has called this worldview 'bossism'—a belief that the people who build and run important tech companies have ceded too much power to the entitled, lazy, overly woke people who work for them and need to start clawing it back.").

228. Lex Fridman Podcast, *Mark Zuckerberg: Future of AI at Meta, Facebook, Instagram, and WhatsApp*, YOUTUBE, at 1:41:35–1:42:40 (June 8, 2023), https://www.youtube.com/watch?v=Ff4fRgnuFgQ [https://perma.cc/U3GK-HSNU].

But imitation is the sincerest form of flattery, and many technology companies seem to have followed Musk's lead in cutting jobs.[229] Business leaders only began to offer tepid criticism as Musk's tweets went in a darker direction: Disney suspended advertising on the platform after Musk endorsed an antisemitic conspiracy theory on Twitter, but Disney's CEO began his cautious defense of the policy by noting, "I have a lot of respect for Elon."[230]

There are good reasons to believe that Silicon Valley's leaders have a philosophical perspective that leads them to systematically reject widely shared views. For example, the layoffs seem to align with an emerging worldview that writer John Ganz has called "bossism."[231] According to this worldview, tech workers bolstered by a tight labor market had grown entitled and had forced managers to provide excessive perks and to kowtow to "woke" philosophies. Bosses needed to push back against this, reassert authority, and demand hard work. To the adherents of bossism, Musk's layoffs and his demands that remaining employees become "extremely hardcore"[232] were cause for celebration, not revulsion.

The technology industry has also valorized disruption, along with disrespect for existing norms and regulations.[233] Facebook's early motto "Move fast and break things"[234] became a credo for the industry. Uber grew rapidly by skirting, or even flagrantly violating, regulations intended to protect existing taxi drivers.[235] As Paul Krugman has suggested, this can be a recipe for a worldview that reflexively rejects stability and convention.[236] Musk seems to be a believer in the ethos, to the point of deploying an unfinished self-driving feature in Tesla vehicles despite the potential risks to people and property.[237] The experimentalist ethos seems to be relevant in Musk's management of Twitter, as he has cycled through different policies and product features.

229. Chip Cutter, *Elon Musk Urges More Companies to Shrink Like Twitter*, WALL ST. J. (May 24, 2023), https://www.wsj.com/articles/elon-musk-urges-more-companies-to-shrink-like-twitter-9e54708a (on file with the *Journal of Corporation Law*); Julie Bosman, *Tech Downsizes*, N.Y. TIMES (Jan. 25, 2023), https://www.nytimes.com/2023/01/25/briefing/tech-layoffs-economy.html [https://perma.cc/NRU2-9FQA].

230. *See* Daniel Kline, *Walt Disney CEO Iger Calls Out Elon Musk, Ron DeSantis*, THESTREET (Dec. 3, 2023), https://www.thestreet.com/travel/disneys-iger-takes-shots-at-woke-war-desantis-and-musk [https://perma.cc/4BCS-ES5T]; Andrew Ross Sorkin, *Bob Iger of Disney on Culture Wars and Streaming*, DEALBOOK SUMMIT (Nov. 30, 2023), https://www.nytimes.com/2023/11/30/podcasts/bob-iger-of-disney-on-culture-wars-and-streaming.html [https://perma.cc/7S3G-TSFE].

231. Roose, *supra* note 227.

232. Sarah E. Needleman & Alexa Corse, *Elon Musk Tells Twitter Staff to Work 'Long Hours at High Intensity' or Leave*, WALL ST. J. (Nov. 16, 2022), https://www.wsj.com/articles/elon-musk-gives-twitter-staff-an-ultimatum-work-long-hours-at-high-intensity-or-leave-11668608923 (on file with the *Journal of Corporation Law*).

233. Elizabeth Pollman, *Private Company Lies*, 109 GEO. L.J. 353, 383–84 (2020).

234. *Id.* at 383.

235. Elizabeth Pollman, *Corporate Disobedience*, 68 DUKE L.J. 709, 712–13 (2019).

236. Paul Krugman, *The Rich Are Crazier Than You and Me*, N.Y. TIMES (July 6, 2023), https://www.nytimes.com/2023/07/06/opinion/robert-kennedy-jr-silicon-valley.html [https://perma.cc/VF7T-S96H] ("Tech bros appear to be especially susceptible to brain-rotting contrarianism . . . . [I]n many cases they became wealthy by defying conventional wisdom, which predisposes them to believe that such defiance is justified across the board.").

237. Faiz Siddiqui, *How Elon Musk Knocked Tesla's 'Full Self-Driving' Off Course*, WASH. POST (Mar. 19, 2023), https://www.washingtonpost.com/technology/2023/03/19/elon-musk-tesla-driving (on file with the *Journal of Corporation Law*).

It seems clear that concern about his reputation is not guaranteed to drive Musk to comply with broadly shared ideas about the common good. And indeed, Musk's recent activities appear to have damaged his standing among the general public[238] without affecting his approach.

C. Implications of Twitter's New Ownership Structure

Musk currently enjoys uncontested control over Twitter and holds large stakes in other significant enterprises. These facts have implications for Twitter's direction. *First*, it suggests some of the limitations of using ownership structure to solve principal-agent problems. Musk's investment in Twitter represents a large percentage of his net worth, and has a clear impact on his reputational capital, making him extremely interested in the company's success. Musk is clearly an active, engaged owner who is focused on the guts of the business. Musk has spoken of spending 120 hours a week at work and has apparently spent nights sleeping at Twitter's headquarters.[239]

But even Musk cannot run a complex organization on his own. There are straightforward physical limitations on his energy, focus, and time, and indeed Musk appears to be in significant pain that he is addressing in part through self-medication.[240] Although Musk has purged the employee ranks of open opposition,[241] he does not appear to be able to oversee every decision. As he put it in response to a complaint about Twitter censoring Indian journalists, "First I've heard. It is not possible for me to fix every aspect of Twitter worldwide overnight, while still running Tesla and SpaceX, among other things."[242]

Second, it suggests that ownership by a single individual does not necessarily eliminate the difficulty of reconciling competing interests and preferences. Although he does

238. Whizy Kim & Nicole Narea, *Why in the World Are Elon and Zuck Planning to Punch Each Other?*, VOX (Aug. 14, 2023), https://www.vox.com/culture/2023/6/23/23771769/musk-zuckerberg-cage-match-fight-ufc-mma (on file with the *Journal of Corporation Law*) ("Musk's reputation has plunged in the last year—data from Morning Consult from late 2022 indicated that his net favorability had fallen by 13 points among US adults, and even Tesla's reputation has been dinged by his behavior.").

239. Caitlin O'Kane, *Elon Musk Says He Sleeps on a Couch at Twitter Headquarters and His Dog is CEO in New Wide-Ranging Interview*, CBS NEWS (Apr. 12, 2023), https://www.cbsnews.com/news/elon-musk-interview-twitter-headquarters-sleeps-on-couch-dog-is-ceo-floki-bbc-news [https://perma.cc/LD98-8ACN].

240. Tim Higgins, *When Does Elon Musk Sleep? Billionaire Speaks of Limits to Fixing Twitter and His Back Pain*, WALL ST. J. (Feb. 5, 2023), https://www.wsj.com/articles/when-does-elon-musk-sleep-billionaire-speaks-of-limits-to-fixing-twitter-and-his-back-pain-11675604800 (on file with the *Journal of Corporation Law*) ("For years, Mr. Musk has talked about struggles with sleep as well as back and neck pain, challenges that have drawn attention during other intense periods."); Kirsten Grind & Katherine Bindley, *Magic Mushrooms. LSD. Ketamine. The Drugs That Power Silicon Valley.*, WALL ST. J. (June 27, 2023), https://www.wsj.com/articles/silicon-valley-microdosing-ketamine-lsd-magic-mushrooms-d381e214 (on file with the *Journal of Corporation Law*) ("Elon Musk takes ketamine.").

241. *E.g.*, Zoe Schiffer & Casey Newton, *Elon Musk's Reach on Twitter is Dropping—He Just Fired a Top Engineer Over It*, THE VERGE (Feb. 9, 2023), https://www.theverge.com/2023/2/9/23593099/elon-musk-twitter-fires-engineer-declining-reach-ftc-concerns [https://perma.cc/7JWW-5F36] (reporting that Musk fired an engineer who reported that Musk's tweets were viewed less because the public had lost interest); Michell Clark, *Elon Musk Says He Fired Engineer Who Corrected Him on Twitter*, THE VERGE (Nov. 14, 2022), https://www.theverge.com/2022/11/14/23458247/elon-musk-fires-engineer-correcting-twitter [https://perma.cc/WCD7-YWGJ] (reporting that Musk fired an engineer who publicly disagreed with Musk's statement on a technical matter).

242. Elon Musk (@elonmusk), TWITTER (Jan. 25, 2023), https://x.com/elonmusk/status/1618319479662055426 [https://perma.cc/6T55-VRZQ].

not appear to face pressure from other shareholders, Musk must still find a way to balance opposing ideas and agendas. Musk has personally described himself as a "free speech absolutist,"[243] while also pledging that he would not allow Twitter to devolve into a "free-for-all hellscape."[244] It is genuinely difficult to strike a workable balance between those ideas, and to articulate it with sufficient precision that others can implement it.

Attempting to balance the conflicting concerns within one person's mind does not eliminate the problem. As noted above, it is not possible to consistently aggregate many individuals' preferences in a rational way, meaning that policies will be irrational and unstable.[245] But the same problem applies to the challenge of balancing competing internal preferences.[246] And indeed, Musk's efforts to balance competing concerns seem to have an irrational and unstable character. Early in Musk's tenure, policies on content moderation shifted frequently and without clear explanation.[247] An institutional process can help address the problem by airing competing viewpoints, building consensus around answers, promoting stability and adherence to precedent, and providing a sense of legitimacy.[248] But unified ownership alone does not appear to be a solution.

Third, Musk's outside financial interests may have a role in his management of the company. In addition to owning Twitter, Musk is also a major shareholder and officer of two other significant commercial enterprises: electric vehicle manufacturer Tesla and space launch company SpaceX. These outside interests have the potential to shape Musk's management of Twitter.

One dynamic would discipline Musk's management of Twitter by encouraging him to be attentive to his reputation among customers of Tesla and SpaceX. Because SpaceX has government customers, a long-term strategy that maximizes profits across several presidential administrations would require him to be relatively inoffensive to a broad range of people. Tesla's customers are more likely to be progressive, creating an incentive to cater to progressive positions. Musk instead appears to have courted conservative support across

243. Thomas Germain, *Elon Musk, King of Censorship: 10 Times the 'Free Speech Absolutist' Silenced Twitter Users*, GIZMODO (June 25, 2023), https://gizmodo.com/10-times-elon-musk-censored-twitter-users-1850570720 [https://perma.cc/9NRT-SDJ3] ("The billionaire refers to himself as a 'free speech absolutist,' and spent the last year making bold promises about undoing Twitter's perceived history of suppressing distasteful ideas.").

244. Elon Musk (@elonmusk), TWITTER (Oct. 27, 2022), https://twitter.com/elonmusk/status/1585619322239561728 [https://perma.cc/QN6A-SV2K].

245. Sen, *supra* note 54, at 33–34.

246. *See* Kovvali, *supra* note 58, at 713–14 (discussing the difficulty of aggregating multiple factors in a way that generates rational results).

247. Lipton, *supra* note 144, at 376–77; McCordick, *supra* note 23; Michael M. Grynbaum, *In Suspending Journalists on Twitter, Musk Flexes His Media Muscle*, N.Y. TIMES (Dec. 16, 2022), https://www.nytimes.com/2022/12/16/business/media/elon-musk-twitter-journalist-suspension.html [https://perma.cc/D7PJ-BXM9] ("Mr. Musk, despite his stated wish 'that even my worst critics remain on Twitter,' is flexing his ownership muscle in seemingly arbitrary ways, appearing to stamp out accounts that personally displease him"); Oliver Darcy, *Elon Musk Censors the Press*, CNN (Dec. 16, 2022), https://www.cnn.com/2022/12/16/tech/musk-censors-press/index.html [https://perma.cc/6UML-ZN5M] ("What the [banned] journalists all did have in common was their tenacity to report aggressively on the billionaire or criticize him in commentary—and to do so on Twitter.").

248. *See, e.g.*, Kate Klonick, *The Facebook Oversight Board: Creating an Independent Institution to Adjudicate Online Free Expression*, 129 YALE L.J. 2418 (2020); David Fontana & David Schleicher, *Private Supreme Courts*, 66 ARIZ. L. REV. 689 (2024).

several fronts, easing regulatory pressure and increasing government contracts in the short run,[249] but creating a risk for businesses over the long run.

Another dynamic would encourage Musk to cater to governments that might threaten his other businesses. There is some reason for concern that Musk is sensitive to this interest. Musk has been exploring business opportunities in Türkiye since at least 2017.[250] His decision to quickly accede to a censorship request by Türkiye's President Recep Erdogan's government was at least consistent with those business interests.[251]

IV. A Framework for Evaluating Trophy Ownership

This Part seeks to evaluate trophy ownership using a corporate governance framework. Section A explores how decisionmakers can be insulated from the influence of financial markets. Section B considers alternative motivations and sources of accountability that may drive decisionmakers. Section C turns to the externalities and context that may determine the impact of trophy ownership in particular contexts.

A. Insulation From Financial Markets

The core feature of trophy ownership is insulation from financial markets. If a business must deliver profits to investors, it cannot be operated as a trophy. The managers of the business would have to respond to commercial imperatives instead of simply enhancing the prestige or importance of its managers. Both the positive and negative consequences of trophy ownership would thus be avoided: managers would not be free to pursue a social mission and would not be able to pursue inefficient or distortive strategies.

Insulation is not a binary, but a continuum. At one end, if a wealthy person purchases an enterprise with the single objective of making money, there is little meaningful insulation from financial markets. For example, Bill Gates is one of the largest owners of farmland in the United States, but there is no indication that he approaches the farmland as anything other than a financial investment. Indeed, he has indicated that his family office chose the purchase and that he has no intention of using the land as part of a strategy to address climate change.[252] Such owners might not be pressured by the need for money or outside threats to their control, but the core dynamics of trophy ownership are absent. Toward the middle, a wealthy family that derived its riches from a business is likely to be in an intermediate position. The family likely would not be able to absorb sustained losses, but its members' reputation and sense of self are likely to be tied up in the enterprise. For example, members of the Ochs-Sulzberger dynasty are both reliant on the continued

249. Eric Lipton & Kirsten Grind, *Elon Musk's Business Empire Scores Benefits Under Trump Shake-Up*, N.Y. TIMES (Feb. 11, 2025), https://www.nytimes.com/2025/02/11/us/politics/elon-musk-companies-conflicts.html [https://perma.cc/E78J-BADT].

250. McCordick, *supra* note 224; Tuvan Gumrukcu, *Elon Musk Met with Erdogan to Discuss Tesla's and SpaceX's Cooperation with Turkish Firms*, BUS. INSIDER (Nov. 8, 2017), https://www.businessinsider.com/elon-musk-with-erdogan-to-discuss-tesla-spacex-cooperation-with-turkey-2017-11 [https://perma.cc/2HDW-SGU2].

251. McCordick, *supra* note 224.

252. *See* Tom Philpott, *Bill and Melinda Gates' Empire of Dirt*, MOTHER JONES (May 25, 2021), https://www.motherjones.com/food/2021/05/bill-melinda-gates-farmland-wealth-cascade-young-farmers-priced-out/ [https://perma.cc/6NL4-EMU6] ("Asked by a participant why he had bought so much farmland, Gates responded: 'My investment group chose to do this. It is not connected to climate.'").

financial success of the New York Times and deeply personally invested in its journalistic reputation.[253]

A person who publicly pursues an investment that is small relative to their overall wealth comes closer to the core of the trophy ownership model. But within this basic fact pattern there is room for variation. Even if the stake is a relatively small portion of a wealthy person's net worth, it may not be insulated from financial pressure if the wealthy person had relied on financing. For example, Elon Musk appears to have taken out substantial loans to finance his acquisition of Twitter, and has taken on co-investors.[254] The need to make payments on the debt and obligations to other investors means that Musk is subject to financial pressure, and is somewhat constrained in his ability to operate the business in a way that maximizes his prestige. By contrast, Jeff Bezos's acquisition of the Washington Post is likely not subject to the same constraints.

The corporate governance literature has contended with a similar set of dynamics, but with a different perspective and set of objectives. Even at for profit public corporations, managers enjoy substantial insulation from the need to deliver profits to shareholders. A disgruntled shareholder who believes that managers are failing to maximize profits will generally be unable to pursue a lawsuit successfully. Ordinary managerial decisions are shielded by the business judgment rule, which prohibits judicial second-guessing.[255] As commentators have noted, the business judgment rule has the practical effect of allowing managers to pursue their own prosocial agenda without fear of litigation.[256]

Managers do remain subject to the market for corporate control. If they fail to operate the business in a profit-maximizing way, they face the threat that someone will buy up a majority of the company's shares, remove them, and reverse their decisions.[257] But various mechanisms can insulate managers from these dynamics as well. Managers can use takeover defenses such as the poison pill to prevent an acquirer from buying up shares piecemeal in the marketplace; while the use of takeover defenses is subject to meaningful judicial review, they will generally be approved if they are deployed to protect against a threat to a long term corporate strategy intended to create value.[258] Corporations can also make takeovers more time-consuming and costly by adopting a staggered board structure.[259] With a staggered board, only one-third of the corporation's directors face shareholder elections in

253. *See supra* note 149 and accompanying text.

254. Berber Jin & Alexander Saeedy, *Elon Musk Explores Raising Up to $3 Billion to Help Pay Off Twitter Debt*, WALL ST. J. (Jan. 25, 2023), https://www.wsj.com/articles/elon-musk-explores-raising-up-to-3-billion-to-pay-off-twitter-debt-11674669412 (on file with the *Journal of Corporation Law*).

255. *E.g.*, Smith v. Van Gorkom, 488 A.2d 858, 872 (Del. 1985) ("The [business judgment] rule itself 'is a presumption that in making a business decision, the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.'").

256. Einer Elhauge, *Sacrificing Corporate Profits in the Public Interest*, 80 N.Y.U. L. REV. 733, 770–72 (2005); LYNN A. STOUT, THE SHAREHOLDER VALUE MYTH: HOW PUTTING SHAREHOLDERS FIRST HARMS INVESTORS, CORPORATIONS, AND THE PUBLIC (2012).

257. Zohar Goshen & Doron Levit, *Agents of Inequality: Common Ownership and the Decline of the American Worker*, 72 DUKE L.J. 1, 18 (2022); William T. Allen, *Our Schizophrenic Conception of the Business Corporation*, 14 CARDOZO L. REV. 261, 277 (1992); Henry G. Manne, *Mergers and the Market for Corporate Control*, 73 J. POL. ECON. 110, 113 (1965).

258. *See* Unocal Corp. v. Mesa Petroleum Co., 493 A.2d 946, 955–56 (Del. 1985); Moran v. Household Int'l, Inc., 500 A.2d 1346, 1350–51 (Del. 1985).

259. Yakov Amihud, Markus Schmid & Steven Davidoff Solomon, *Settling the Staggered Board Debate*, 166 U. PA. L. REV. 1475, 1480–82 (2018).

a given year. To obtain control, a potential acquirer must prevail in two annual elections instead of one. And corporations can make takeovers effectively impossible using dual class shares. Tech titans like Mark Zuckerberg have been granted high-powered shares that allow them to cast a majority of votes.[260] Such shares allow Zuckerberg to pursue an idiosyncratic long term strategy without having to win the approval of market participants.

The corporate governance literature normally analyzes these arrangements by asking whether they create value for shareholders. On the one hand, insulating managers can exacerbate a principal-agent problem in which the managers pursue their own agenda despite the cost to shareholders.[261] This might entail empire building through acquisitions that make managers more powerful (and justify larger pay packages), but that lack a sound business or financial rationale, or internal investments where expected returns do not justify the risks.[262] On the other hand, insulation frees managers to pursue risky but valuable bets. If managers were subject to second-guessing by inexpert judges, they would be more hesitant to pursue projects that might not pay off.[263] And if the stock market is myopic or incapable of valuing risky long-term projects, managers will be hesitant to pursue such projects unless they are assured that they will not face a takeover.[264]

A separate body of literature interrogates whether insulation is socially valuable even if it is not valuable for shareholders. For example, groups like workers may suffer immensely in the wake of a takeover. Workers may make valuable contributions to the success of the enterprise on the implicit understanding that their work will be rewarded with job stability, good working conditions, and a well-funded pension. A corporate takeover artist may have little patience for those implicit understandings and may happily reap short-term financial rewards by breaking them through layoffs, harsh working conditions, or raids on pension funds.[265] As these strategies become prevalent, workers are discouraged from making contributions in the first place.[266] Similarly, takeover artists may have little patience for communities of operation or the environment. Managers may be more concerned with obligations to workers, communities, and the environment, so insulating them from pressure from financial markets may improve corporate conduct. Much like claims about shareholder value, these ideas have proven highly controversial.[267]

There is no consensus in the literature on how these forces play out across the broad universe of corporations.[268] But three relatively uncontroversial insights from the literature seem useful in making sense of the trophy ownership phenomenon.

260. *See generally* Espinoza v. Zuckerberg, 124 A.3d 47 (Del. Ch. 2015) (discussing the fact that Zuckerberg controls a majority of votes but indicating that this does not eliminate required formalities).

261. Lucian Arye Bebchuk, *The Case for Increasing Shareholder Power*, 118 HARV. L. REV. 833, 850 (2005).

262. *Id.* at 850–51.

263. EASTERBROOK & FISCHEL, *supra* note 18.

264. *E.g.*, Zohar Goshen & Richard Squire, *Principal Costs: A New Theory for Corporate Law and Governance*, 117 COLUM. L. REV. 767, 789; Goshen & Levit, *supra* note 257, at 29–32.

265. *E.g.*, John C. Coffee, Jr., *The Uncertain Case for Takeover Reform: An Essay on Stockholders, Stakeholders and Bust-Ups*, 1988 WIS. L. REV. 435, 439–40.

266. Margaret M. Blair & Lynn A. Stout, *A Team Production Theory of Corporate Law*, 85 VA. L. REV. 247, 249–52 (1999).

267. *See, e.g.*, Bebchuk & Tallarita, *supra* note 15; Savitt & Kovvali, *supra* note 192.

268. *E.g.*, Amihud, Schmid & Solomon, *supra* note 259, at 1507–08 (reaching this conclusion in the context of staggered boards).

First, commentators and market participants are broadly skeptical of the idea of general managerial ability. Corporate chieftains once suggested that their success in one business line justified their acquisition of additional businesses because their managerial skills would be given greater scope and would be allowed to create value. The strategy both reflected and created insulation from financial markets: managers were more likely to get away with it if they were not subjected to serious scrutiny, and the resulting business empires were harder to discipline through tools like takeovers. But with some exceptions, commentators and market participants are now deeply skeptical of claims that managerial success in one business will readily translate into success in another unrelated business. Indeed, large conglomerates are increasingly breaking themselves up and creating smaller, more focused enterprises.[269] General Electric broke itself up into three companies focused on aviation, energy, and healthcare.[270] Kellogg has announced plans to break itself up into three companies focused on plant-based brands, global snacks, and North America.[271] Johnson & Johnson has announced plans to split its consumer products business from its pharmaceutical business.[272] And Toshiba has said that it will spin off its energy and infrastructure unit and its device and storage unit.[273]

The experience has some lessons for the trophy context. It is not clear that outsized success at a standard for-profit enterprise will necessarily lead to success at an enterprise purchased as a trophy. In some cases, this seems obvious. A senior partner at a major law firm may be extraordinarily good at advising clients, but there is little reason to believe that the gifts involved in that undertaking would make her extraordinarily good at running a vineyard. But other enterprises do not seem to have attracted the same type of scrutiny. Perhaps running a successful car company is not good preparation for running a social media firm, and perhaps building a successful online retail company is not good preparation for running a newspaper. These points suggest that insulation from financial market scrutiny will not always lead to value-creating results.

Second, there is a growing appreciation that one size does not fit all in governance. Although academic debates over insulation have been heated for decades, the most reasonable conclusion is that insulation may be useful in some enterprises and unhelpful at others.[274] For example, a dual class system may make sense in the early years of certain

269. *See* Rory Van Loo, *In Defense of Breakups: Administering a 'Radical' Remedy*, 105 CORNELL L. REV. 1955, 1959 (2020).

270. Rajesh Kumar Singh & Abhijith Ganapavaram, *GE Completes Three-Way Split, Breaking off from Its Storied Past*, REUTERS (Apr. 2, 2024), https://www.reuters.com/markets/us/ge-completes-three-way-split-breaking-off-its-storied-past-2024-04-02/ [https://perma.cc/P9UG-B4VP].

271. Annie Gasparro, *Kellogg Splitting into Three Companies as It Shifts Focus to Global Snacks*, WALL ST. J. (June 21, 2022), https://www.wsj.com/articles/kellogg-to-separate-into-three-businesses-11655810600 (on file with the *Journal of Corporation Law*).

272. Jonathan D. Rockoff & Peter Loftus, *Johnson & Johnson to Split Consumer from Pharmaceutical, Medical-Device Businesses, Creating Two Companies*, WALL ST. J. (Nov. 12, 2021), https://www.wsj.com/articles/johnson-johnson-plans-to-split-into-two-public-companies-11636715700 (on file with the *Journal of Corporation Law*).

273. Megumi Fujikawa & Peter Landers, *Toshiba, Like GE, Plans to Split Into Three Units*, WALL ST. J. (Nov. 12, 2021), https://www.wsj.com/articles/toshiba-like-ge-plans-to-split-into-three-parts-11636700609 (on file with the *Journal of Corporation Law*).

274. *E.g.*, Amihud, Schmid & Solomon, *supra* note 258; Goshen & Levit, *supra* note 257. Although there are several bases for this conclusion, one powerful argument centers on the fact that practitioners in law and finance are sophisticated and have the same training as academic commentators. As a result, the arrangements

enterprises when a visionary founder with unique insight needs clear control to focus on delivering value.[275] But the arrangement may make less sense over time as the enterprise matures and becomes less dependent on the founder's vision. Optimal arrangements might also vary across enterprises.[276] In general, if the business is based on short-term projects that the market can easily understand, insulation is likely to have little value. A diverse ecosystem, with different enterprises governed differently, might produce the best overall results.[277]

The insight suggests that trophy ownership is likely to have different consequences in different sectors and at different enterprises. The benefits of trophy ownership may outweigh the costs in areas like philanthropy or sports, but costs may outweigh benefits in real estate and media. More fundamentally, policymakers should at least consider the possibility that trophy ownership is not universally good or bad.

Third, recent scholarship has centered the question of what could or should replace accountability to financial markets. Simply insulating managers from shareholder pressure does not, in and of itself, create pressure to improve outcomes for workers, customers, surrounding communities, or the environment.[278] Without an alternative accountability structure, managers are likely to use any additional insulation from financial market accountability to advance their own interests as opposed to the interests of stakeholders. The same point carries over to trophy assets. Insulating a firm from the accountability imposed by financial and product markets is unlikely to lead to good outcomes unless alternative forms of accountability are present.

B. Alternative Forms of Accountability

At least in principle, leaders of public companies are held accountable to shareholders through legal, market, and moral mechanisms. A corporate leader who fails to advance shareholder interests could face a lawsuit for breach of fiduciary duty, could be voted out and replaced through a shareholder vote, and could have the company purchased out from under them in the market for corporate control.[279] These fundamental legal mechanisms

that they create are likely to reflect both academic findings and the unique characteristics of the enterprises that they work with.

275. *E.g.*, Martijn Cremers, Beni Lauterbach & Anete Pajuste, *The Life Cycle of Dual-Class Firm Valuation*, 13 REV. CORP. FIN. STUD. 459 (2024); Lucian A. Bebchuk & Kobi Kastiel, *The Untenable Case for Perpetual Dual-Class Stock*, 103 VA. L. REV. 585 (2017).

276. *E.g.*, Aneil Kovvali & Joshua C. Macey, *Private Profits and Public Business*, 103 TEX. L. REV. 711, 720 (2025) (suggesting the need for context-specific corporate governance*s* instead of a one-size-fits-all model); Aneil Kovvali & Joshua C. Macey, *The Corporate Governance of Public Utilities*, 40 YALE J. ON REG. 569 (2023) (suggesting that public utility companies should have different corporate governance arrangements from firms in competitive markets); Mark J. Roe, *Corporate Purpose and Corporate Competition*, 99 WASH. U. L. REV. 223 (2021) (suggesting that advocacy for stakeholders is more likely to be effective with firms that enjoy market power).

277. Amihud, Schmid & Solomon, *supra* note 259; Goshen & Levit, *supra* note 257.

278. Bebchuk & Tallarita, *supra* note 15; Leo E. Strine, Jr., *The Dangers of Denial: The Need for a Clear-Eyed Understanding of the Power and Accountability Structure Established by the Delaware General Corporation Law*, 50 WAKE FOREST L. REV. 761, 766 (2015) ("In the corporate republic, no constituency other than stockholders is given any power.").

279. *E.g.*, Dorothy S. Lund & Elizabeth Pollman, *The Corporate Governance Machine*, 121 COLUM. L. REV. 2563 (2021) (describing a set of interlocking mechanisms that force corporate directors and officers to focus on

support additional measures. Executive compensation is normally based on measures tied to returns to shareholders,[280] and leaders have internalized a powerful set of norms that leads them to pursue shareholder returns.[281] The interlocking elements of this "corporate governance machine" keep managers fixated on delivering financial value to shareholders and punish them if they fail.[282]

The dominant tradition in the corporate governance literature has supported these arrangements. Then-Professors Frank Easterbrook and Daniel Fischel argued that shareholder interests are aligned with the broader goal of maximizing social wealth creation: as the residual claimants on the firm, shareholders are thought to internalize the full benefits and costs of corporate action, and so will support corporate activities if and only if they generate social value.[283] Going back further, the scholarship of Adolf Berle suggested that the central problem of corporate law and governance was the separation of ownership from control. Diffuse and dispersed shareholders were not in a position to monitor or discipline corporate managers, thus allowing managers to exploit shareholders and advance their own interests. Berle connected the problem to broader democratic concerns, suggesting that managers had to be held accountable to the broad mass of shareholders or to the community to control their power. Absent such accountability, these "princes of industry" would steer the country in an inefficient and plutocratic direction.[284]

The trophy asset mode of ownership disrupts these traditional accountability mechanisms. Managers are perfectly accountable to the wealthy owner of a trophy asset. Unlike the dispersed shareholders of a traditional public corporation, a single wealthy owner can easily demand that managers prioritize the owner's interests—and can easily remove managers who fail. But wealthy owners are somewhat insulated from the financial market pressures that ordinarily demand reasonable, efficient behavior. Many wealthy owners have eccentric tastes and are prepared to lose large amounts of money on behavior that suits those tastes, whether it is the owner of the Cubs refusing to allow nighttime games out of a belief that baseball is a daytime sport, farm owners insisting that crops be aesthetically pleasing, technologists pursuing cool ideas from science fiction, or a newspaper owner pursuing prestige over financial returns.

Put differently, the owner of a trophy company can set corporate policy directly. As a result, the trophy mode of ownership eliminates the principal-agent problem that may cause managers of public corporations to set corporate policy in ways that do not advance shareholder interests. But the nature of that mode of ownership eliminates the standard accountability mechanisms that normally discipline corporate policy, and that are normally thought to steer corporations to behave in an economically efficient way.

shareholder value maximization); *see also* Bebchuk & Tallarita, *supra* note 15, at 139–55 (describing incentives for corporate leaders to focus on shareholders).

280. Lucian A. Bebchuk & Roberto Tallarita, *The Perils and Questionable Promise of ESG-Based Compensation*, 48 J. CORP. L. 37, 63–66 (2022) (describing pressures that encourage executive pay arrangements that incentivize managers to create shareholder value).

281. STOUT, *supra* note 29.

282. Lund & Pollman, *supra* note 279, at 2565.

283. EASTERBROOK & FISCHEL, *supra* note 18, at 3.

284. BERLE & MEANS, *supra* note 19, at 8–9, 22.

To evaluate trophy ownership, it is thus necessary to consider what alternative forms of accountability might shape the behavior of wealthy owners. Canvasing the examples above, four accountability mechanisms seem present.

First, wealthy owners may not be as insulated from financial market pressures as they seem. Even the wealthiest individuals have limited resources, particularly in comparison to large business enterprises. For example, Elon Musk was the world's wealthiest man when he purchased Twitter. But the purchase was largely financed with debt, which forced Musk to cause Twitter to generate cashflows that were adequate to service the debt. As Twitter encountered business difficulties—due in large part to Musk's own unpredictable maneuvers—Musk was forced to explore new financing options.[285] If resource constraints force wealthy owners to run firms in a profit-maximizing way, trophy ownership may not cause companies to behave all that differently from standard for-profit firms.

Second, wealthy owners may have outside business interests that constrain their behavior. For example, much of Elon Musk's wealth is derived from his stake in Tesla. Tesla has substantial exposure to China. While Musk has used the Twitter platform to comment widely on geopolitical matters,[286] he has been largely unwilling to offer statements that might provoke the Chinese government. It is not unreasonable to worry that Musk's management of Twitter is constrained by his financial interests in China. For a more prosaic example, some reporting has suggested that Jeff Bezos might be willing to sell the Washington Post to pursue ownership of the Washington Commanders football team.[287] Bezos's outside business interests thus have the potential to affect his stewardship of an important media outlet. As discussed below, such outside interests could be used to channel trophy ownership in a helpful direction.[288] But whether the effects are positive or negative, outside interests clearly shape the incentives of the owners of trophy assets.

Third, many trophy assets are constrained by rules or other accountability mechanisms. For example, major sports leagues reserve the power to discipline owners of individual teams. The capacity to pressure, punish, or even exclude misbehaving owners can act as a real check on misconduct. Donald Sterling sold the Los Angeles Clippers after NBA Commissioner Adam Silver banned Sterling from the sport for life and asked the other team owners to force Sterling to sell the team.[289] In an earlier era, Major League Baseball Commissioner Albert Benjamin Chandler threatened to suspend Philadelphia Phillies manager Ben Chapman for racist taunts against Jackie Robinson, and supported threats to suspend players who proposed to boycott games against Robinson.[290] Under the National Football League's Rooney Rule, teams that refuse to interview minority

285. Jin & Saeedy, *supra* note 254.

286. *See, e.g.*, Joseph Wilson, *Musk's Plan to End Russian War Infuriates Ukraine on Twitter*, ASSOCIATED PRESS NEWS (Oct. 4, 2022), https://apnews.com/article/russia-ukraine-zelenskyy-elon-musk-spacex-twitter-inc-5c13c550483f8fa5e25daa7ac71e0ed5 [https://perma.cc/6YUR-TYBS].

287. Josh Kosman, *Jeff Bezos May Sell Washington Post to Buy Commanders, Investors Say: Sources*, N.Y. POST (Jan. 23, 2023), https://nypost.com/2023/01/23/jeff-bezos-will-sell-washington-post-to-buy-commanders-investors [https://perma.cc/3AGN-S22N].

288. *See infra* Part V.B.1.

289. *See* Brian Todd & Steve Almasy, *Donald Sterling Agrees to Sale of Los Angeles Clippers*, CNN (June 4, 2014), https://www.cnn.com/2014/06/04/us/donald-sterling-nba/index.html [https://perma.cc/G7R6-3TYQ].

290. *Happy Chandler*, NAT'L BASEBALL HALL OF FAME, https://baseballhall.org/hall-of-famers/chandler-happy [https://perma.cc/PN9H-AJWS].

candidates for senior football operation roles can face monetary penalties.[291] Where they apply, such mechanisms constrain the owners of trophy assets.

Fourth, the nature of trophy ownership incorporates an accountability mechanism: people purchase trophy assets to acquire prestige within some relevant community. Although they are underappreciated within traditional corporate governance literature, norms and social understandings are a powerful force in shaping the direction of ordinary companies. Officers and directors are often driven by an intrinsic desire to do a good job—and to be perceived as doing a good job—as opposed to extrinsic incentives.[292] Because current norms encourage corporate officers and directors to deliver high returns to shareholders, they do so, even in circumstances where shirking would be undetectable. These effects are even more pronounced in the context of trophy ownership, where norms and intrinsic motivations are a central driver of behavior.

The effect of this mechanism depends on the norms and the community that drives action. This may depend on the relevant industry. Billionaire owners of newspapers may be chasing Pulitzers, while billionaire owners of aerospace firms chase records, thresholds,[293] or astronaut wings.[294] It may depend on indicators of cultural cachet. Amazon's spending on new entertainment content may not generate substantial shareholder profits,[295] but it did grant Jeff Bezos entry into the Hollywood elite.[296] And it may depend on idiosyncratic interests by the particular wealthy owner. Elon Musk seems particularly sensitive to his standing amongst "techbros" and conservative-leaning individuals; his tweeting and his management of Twitter has been attentive to their concerns and interests. Indeed, his first tweet as Twitter's new owner was to promise conservative user "@catturd2" that he

291. *See* Joseph Salvador, *Explaining the NFL's Rooney Rule Requirements*, SPORTS ILLUSTRATED (Jan. 19, 2023), https://www.si.com/nfl/2023/01/19/nfl-rooney-rule-requirements-hiring-coach-gm-executives [https://perma.cc/S5DV-YVZK] (discussing the changes the rule has gone through in recent history and what it looks like now).

292. *See* Stout, *supra* note 4, at 9–10; STOUT, *supra* note 30.

293. *Cf.* Michael J. Sheetz, *Billionaires Fight Over What Is Actual Outer Space as Branson Gets Set to Launch Before Bezos*, CNBC (July 9, 2021), https://www.cnbc.com/2021/07/09/where-space-begins-bezos-blue-origin-vs-bransons-virgin-galactic.html [https://perma.cc/S9MU-P8QJ] (describing competition in which Branson's company would launch first, but Bezos's company would reach a higher altitude that meets certain definitions of "space").

294. *Cf.* Joey Roulette, *Jeff Bezos Is Getting Astronaut Wings. But Soon, the F.A.A. Won't Award Them*, N.Y. TIMES (Dec. 10, 2021), https://www.nytimes.com/2021/12/10/science/astronaut-wings-faa-bezos-musk.html [https://perma.cc/URQ9-RCHM] (explaining that those who fly above 50 miles on an F.A.A.-licensed rocket will be considered a commercial astronaut).

295. For one analysis, see Jeremy Bowman, *Is Amazon Wasting Money on Prime Video?*, THE MOTLEY FOOL (Dec. 10, 2022), https://www.fool.com/investing/2022/12/10/is-amazon-wasting-money-on-prime-video/ [https://perma.cc/P7BT-QWNE] (discussing the economics behind Amazon Prime Video in comparison to peers such as Netflix or Disney).

296. Of course, it is not clear how welcome he is among the Hollywood elites. *See Oscars: Chris Rock Pokes Fun at Amazon's Jeff Bezos*, VARIETY (Feb. 9, 2020), https://variety.com/2020/film/awards/oscars-amazon-jeff-bezos-chris-rock-steve-martin-1203498422/ [https://perma.cc/SG2W-YT4A] (describing Jeff Bezos being made fun of at the 92nd Oscars).

would investigate allegations that the company's algorithm failed to promote catturd's tweets.[297] It is unclear whether these priorities align with social welfare.[298]

In some instances, a desire for prestige can lead to profit-maximizing behavior. At least to the extent that a wealthy owner is attentive to their ranking on Forbes' list of billionaires, they are likely to focus on generating profits. This motivation does seem real. Elon Musk once mocked Jeff Bezos for being the second wealthiest man in the world, while Musk stood at number one.[299] But it can also lead to profit-destroying behavior that would not be pursued by a typical firm. Wealthy owners of sports teams may spend at economically unjustifiable levels out of a desire to win championships.[300] To the extent that trophy ownership causes different behavior from ordinary ownership, it can reshape the impact that firms have on the broader world.

C. Externalities and Competitive Position

The impact of trophy ownership can also vary depending on the externalities that a business generates and the competitive context in which it operates. Corporate governance literature is increasingly attentive to both factors, with scholars recognizing that shareholder control is less justified in contexts where there are large externalities or competition is absent.

Externalities can shape the impact of different ownership and governance structures. For example, corporate law scholars led by Professor Madison Condon have been increasingly attentive to the potential for common ownership to reduce the destructive impact of social problems like climate change.[301] Investors increasingly own a broad range of diversified assets, meaning that they internalize the impact of problems like climate change and would support efforts by individual portfolio companies to reduce carbon emissions. Because Exxon's investors absorb many of the impacts of climate change, they have an incentive to encourage Exxon to reduce output even if climate change would have a relatively small impact on Exxon's own profits.[302] This effect may be particularly helpful in times when the political system appears unable to issue regulations capable of addressing externalities.

297. Matt Binder, *'Chief Twit' Elon Musk's First Act: Personal Customer Support For Right-Wing Trolls*, MASHABLE (Oct. 28, 2022), https://mashable.com/article/elon-musk-right-wing-twitter-cat-turd [https://perma.cc/Q7LH-YUGL].

298. An, *supra* note 3, at 32 (noting that it is uncertain that controllers' non-financial "ends are socially beneficial, given the subjectivity of what is good . . . . [O]ne person's robot utopia is another person's cyberpunk dystopia.").

299. Lucas Manfredi, *Musk Mocks Bezos With No. 2 Medal as Wealth Gap Grows*, FOX BUS. (Oct. 11, 2021), https://www.foxbusiness.com/business-leaders/musk-bezos-wealth-gap-grows [https://perma.cc/J6KM-UP6P].

300. *See supra* Part II.A.

301. Condon, *supra* note 69; *cf.* Dharmapala & Khanna, *supra* note 70 (noting that allowing corporate leaders to maintain control through dual class stock while diversifying their wealth could generate similar benefits). The fact that common owners internalize various impacts of a firm's decisions can also have pernicious consequences, as common owners would encourage firms to behave as if they are in an anticompetitive cartel. *See* Einer Elhauge, *Horizontal Shareholding*, 129 HARV. L. REV. 1267, 1274 (2016) ("[I]nterlocking shareholdings diminish each *individual* firm's incentives to cut prices or expand output by increasing the costs of taking away sales from rivals.").

302. *See* Condon, *supra* note 69, at 10–12.

Trophy ownership presents an extreme variation on this dynamic. Sports teams, technology companies, and media companies can have substantial positive externalities. A winning sports team cannot monetize all the positive feelings that it generates. One company is not likely to be able to capture the full effects of a breakthrough technological innovation. Similarly, media outlets cannot monetize the full benefits of their products.[303] An important work of journalism can have major social or political consequences that far exceed subscription or advertising revenue. On the other side of the ledger, important companies can also generate substantial negative externalities. Major media companies can be dangerous vectors for hatred and misinformation.[304] Less dramatically, media companies can present pablum or recycled content that achieves high levels of engagement instead of more challenging or deeply reported fare.

A wealthy owner who operates a company as a trophy can be sensitive to these effects in a way that a purely profit-focused owner would not. Even if the Washington Post cannot monetize the full social benefits of a deeply reported and important story, Jeff Bezos is free to benefit from the enhanced prestige. This effect may be particularly meaningful in contexts where government intervention is unlikely or impossible. For example, the First Amendment places real limits on the government's ability to police misinformation or hatred, or to force media outlets to provide balanced coverage of issues.[305] But even if the Washington Post could not be held liable for misbehavior, misbehavior would damage Bezos's reputation.

Competitive context can also change the impact of governance. A firm operating in a perfectly competitive market lacks power—any pricing or quantity decisions it makes will be disciplined or washed out by its competitors.[306] In a town with one newspaper, the newspaper's decision not to cover an interesting story can have a profound impact; in a town with many newspapers vigorously competing for readers, one newspaper's decision not to cover the story will not keep the story from being told. A firm operating in a competitive market also will not generate any economic surplus, meaning that there is no value for the firm to distribute to stakeholder groups.[307] This again can limit the relevance of firm decisions and governance. Empowering workers within a firm's ownership or governance structure accomplishes little if the firm has no surplus profits that it can distribute to workers.

Because of these dynamics, trophy ownership would have limited consequences at enterprises that operate in a highly competitive environment. A firm that is unable to influence outcomes will generally remain unable to influence outcomes even if it is owned by a wealthy individual who is focused on objectives other than pure profit maximization. But of course, many trophy assets are trophies because they are *important*: they occupy a unique position and do not have ready substitutes. Even where competition exists, the competition is limited. SpaceX is not the *only* private space company, but it is one of very few.

303. Philippe Aghion, John Van Reenen & Luigi Zingales, *Innovation and Institutional Ownership*, 103 AM. ECON. REV. 277, 302–03 (2013) (identifying "positive externality" from innovation and suggesting that institutional owners might help encourage corporate managers to pursue them).

304. Douek, *supra* note 161, at 531–32; *see also* CASS R. SUNSTEIN, #REPUBLIC: DIVIDED DEMOCRACY IN THE AGE OF SOCIAL MEDIA (2017).

305. Douek, *supra* note 161, at 531–32

306. *See* MAS-COLELL, WHINSTON & GREEN, *supra* note 62, at 314.

307. *See* Roe, *supra* note 276, at 226.

Other forces can magnify the impact of trophy ownership, even within a competitive market. If a wealthy individual is prepared to absorb economic losses at a trophy enterprise, the effect could be similar to predatory pricing:[308] by offering a superior product or charging lower prices, the trophy firm would damage firms that must remain financially viable. For example, if the owner of a sports team is prepared to take financial losses to attract players that will improve the team's odds of winning championships, other owners will either have to accept financial losses or losses on the field.[309] The long-term effect may be to change the structure of the industry, so that only trophy owners participate—and overall spending is significantly increased.

Trophy ownership of many enterprises within a competitive market can also have an impact, if trophy owners operate according to a shared set of norms or preferences. A wealthy individual who owns a farm and insists that it be run in an aesthetically pleasing manner is unlikely to have a meaningful effect. But if many wealthy individuals buy up farms in a single region, then operate the farms according to a shared set of aesthetic principles, the effect may be more meaningful. Similarly, shared norms can have the same impact as limited competition, though a single defector can make the norm unstable.[310]

V. POLICY RESPONSES TO TROPHY OWNERSHIP

Policymakers could seek to eliminate trophy ownership using a range of tools, from blunt instruments that deny wealthy individuals the means to acquire important companies to tailored mechanisms that force them to run businesses in an efficient way or make acquisitions more difficult. But a more powerful route might seek to capture more of the potential benefits of trophy ownership while limiting its dangers. This might entail revised governance, new regulations, or new disclosures.

A. Eliminating Trophy Ownership

Policymakers seeking to eliminate trophy ownership could use a variety of instruments designed to prevent the acquisition of important enterprises or to force owners to run the enterprises in a less idiosyncratic way.

1. Eliminate Extreme Wealth

The most obvious route to eliminating trophy ownership would be to eliminate the extreme wealth that makes it possible. Trophy ownership might be treated as just one symptom of the more fundamental disease of vast wealth inequality and subjected to the same

308. *See* Lina Khan, *Amazon's Antitrust Paradox*, 126 YALE L.J. 710, 760 (2017) (urging that below-cost predatory pricing schemes may destroy competitors and enhance economic dominance).

309. Largely for this reason, many sports leagues take steps to limit the pay offered by individual teams. For example, the National Football League applies a salary cap that limits total spending while Major League Baseball uses a competitive balance tax that discourages high spending.

310. For example, many figures in the British media establishment were reluctant to publish stories about the Profumo scandal. Rupert Murdoch's highly profitable decision to print revelations from Christine Keeler, the call girl at the heart of the scandal, had a profound effect on the development of the British tabloid media. *See Memoirs: The Perils of Christine*, TIME (Oct. 10, 1969), https://content.time.com/time/subscriber/article/0,33009,839062,00.html [https://perma.cc/QT5L-XGUG].

treatment. Calls for progressive taxation are already common, and examples of trophy assets might lend them additional weight.

But focusing on trophy ownership can advance the conversation. *First*, it suggests that sharply progressive taxation and wealth taxes might ease distortions instead of creating them. Tax theorists are largely focused on the concern that progressive taxes will reduce incentives to choose leisure instead of labor.[311] Examples of trophy ownership suggest that many billionaires are not simply focused on financial returns but are willing to work hard at various enterprises simply to enhance their personal prestige.

Taxation could also help cure a different set of distortions. Trophy assets demonstrate that wealth amplifies eccentricities that would otherwise be harmless in an individual and makes it possible for those eccentricities to destroy social wealth. Someone with a passion for stamp collecting is normally harmless; if that someone is a billionaire who can recruit talented individuals away from other work to support their hobby, the consequences are far more meaningful. The prevalence of trophy ownership and its presence in socially important industries suggest that the problem is real and significant.

Second, it offers a way to think about problems of conspicuous consumption. Roman Abramovich's $1.5 billion yacht, *Eclipse*, is not a productive enterprise.[312] But the people who built the ship, maintain it, and operate it are all capable of doing other things. Allowing Abramovich to pull those individuals away from other activities that would be more socially valuable is a form of distortion. Trophy ownership of a productive enterprise is potentially more distortive because the profits generated by the enterprise can subsidize and amplify the owner's eccentricities. Still, some of the problems that can make trophy ownership of a productive enterprise dangerous map over to the astonishing toys and luxuries of the rich.

2. Use Property Tax-Like Regimes to Force Economically Efficient Decisions

A high and steady tax on the *value* of an economic enterprise would help pressure owners to run the enterprise in a way that generates adequate income sufficient to pay the tax. For example, a property tax on farmland pressures owners to use the farmland in a way that generates cash flows that can be used to pay the tax. The effect would be similar to saddling a company with debt, thus forcing the owner to run the enterprise in a way that generates cash flows that can be used to pay interest expenses.[313] This feature of a property tax-like system would be more closely tailored to the problems of trophy ownership than an income tax. If a farmland owner chooses to make less income by focusing on personal

311. *See* David Gamage, *How Should Governments Promote Distributive Justice?: A Framework for Analyzing the Optimal Choice of Tax Instruments*, 68 TAX L. REV. 1, 4 (2014) ("Often called 'optimal tax theory,' the modern structure of public finance economics was largely engineered around models of labor-to-leisure distortions. In other words, scholars considered individuals reducing their work effort in response to taxation to be a central problem of tax policy."); *see also* James A. Mirrlees, *An Exploration in the Theory of Optimum Income Taxation*, 38 REV. ECON. STUD. 175 (1971).

312. Brett Berk, *The 5 Most Expensive Superyachts in the World*, ARCHITECTURAL DIG. (Nov. 23, 2022), https://www.architecturaldigest.com/gallery/most-expensive-superyachts-in-the-world (on file with the *Journal of Corporation Law*).

313. *See supra* Part I.B.1.

aesthetic preferences instead of economic value, an income tax effectively subsidizes the decision.[314]

Collecting a tax in the form of equity could be a particularly useful variation. While most related proposals suggest collecting cash in an amount pegged to the value of an enterprise,[315] the government might simply collect some percentage of the shares in significant enterprises. The government would then offer those shares to the market on a regular basis. The resulting system would systematically attack concentrations of economic power—forcibly taking large private companies public and breaking down controlling blocks of shares.

A related intervention might target inheritance. Many important businesses, particularly in media, are controlled by families. Policymakers might target the moment of succession from one generation to the next. A well-designed estate tax or the elimination of the stepped-up basis for capital gains might encourage families to sell off important assets to economically motivated buyers, instead of holding them and running them with the goal of maximizing prestige or power.

3. Eliminate Policy Support for Trophy Owners

A more straightforward intervention would be to eliminate government policy support for trophy owners. For example, the private space programs owned by Bezos and Musk depend on extensive government contracts for their survival. SpaceX and Blue Origin compete vigorously for shares of government spending on space travel. Given the wild and unpredictable behavior—and troubling conflicts of interest—of billionaires like Musk, it would not be unreasonable for the government to insist on a different ownership structure for major contractors.

The tax code and other policies can also provide support for trophy ownership. For example, federal, state, and local authorities encourage farming through the tax code and other programs, effectively subsidizing wealthy individuals who own farms as a side business.[316] An owner can also donate a conservation easement to a nonprofit and claim an income tax deduction, collecting direct financial benefits from a decision to lock in an

314. If the land could be used to generate \$100,000 of income but is instead used in an aesthetically preferable way that generates \$20,000 of income, the income tax will only target the \$20,000 and will allow the owner to capture aesthetic rents tax free. By contrast, a tax based on the value of the property will reflect the full \$100,000, at least on the assumptions that other market participants stand ready to buy the property at a price that reflects its full income-generating potential and that the tax is designed to capture that price.

315. *See e.g.*, Emmanuel Saez & Gabriel Zucman, *A Wealth Tax on Corporations' Stock*, 37 ECON. POL'Y 213 (2021). Other variations have been proposed, though most deliberately avoid the governance implications of the scheme proposed in the text. *See* Brian Galle, David Gamage & Darien Shanske, *Solving the Valuation Challenge: The ULTRA Method for Taxing Extreme Wealth*, 72 DUKE L.J. 1257, 1257 (2023) (proposing that "governments should take payments from the wealthy in the form of notional equity interests"); *see generally* ERIC A. POSNER & E. GLEN WEYL, RADICAL MARKETS: UPROOTING CAPITALISM AND DEMOCRACY FOR A JUST SOCIETY (2018) (proposing system of continuous auctions for all significant assets in the economy).

316. *See* Ashlea Ebeling, *Farm Like a Billionaire—Harvest Tax Breaks*, FORBES (June 6, 2012), https://www.forbes.com/sites/ashleaebeling/2012/06/06/farm-like-a-billionaire-harvest-tax-breaks/?sh=35ffc3fc5777 (on file with the *Journal of Corporation Law*).

uneconomical aesthetic preference.[317] Removing those preferences would again reduce support for trophy ownership.

4. Revise Governance at Important Enterprises

Trophy ownership works in the context of enterprises that empower a small group of shareholder-owners. The relationship between shareholder power and trophy ownership has two dimensions that might be targeted through policy. *First*, shareholder primacy may make it easier for a wealthy individual to acquire an important business. While some commentators have sometimes suggested that Twitter's leaders were legally free to resist Elon Musk's approach out of concern for Twitter's social mission and ethical obligations to its employees,[318] the case is at best unclear.[319] And even if corporate leaders are legally or functionally free to behave in this way, other accountability mechanisms strongly incentivize them to focus exclusively on shareholder returns.[320]

Altering corporate law and governance to allow companies to resist attempted acquisitions by wealthy individuals would help diminish the prospects for trophy ownership. A modest revision might focus on features of takeover law. For example, when a company is in "*Revlon* mode," its leaders are required to focus exclusively on extracting the highest possible deal price, and must ignore other social or ethical imperatives.[321] *Revlon* mode is more likely to be triggered when a company is set to be acquired or dominated by a wealthy individual than if it is set to be acquired by a public corporation.[322] Altering that doctrinal quirk so that boards are more empowered to consider stakeholder interests when faced with a bid from a wealthy individual might help alter the balance somewhat.

A deeper intervention would diffuse power across different corporate constituencies. If Twitter employees were empowered within the company even after Musk's takeover, their power would serve as a check on Musk's dictatorial tendencies. In effect, this type of change would institutionalize the informal understanding that Bezos developed in his early years at the Washington Post, which is that the reputation of the business is largely the product of traditions and practices carried forward by workers.[323] While it would not be

317. *See Conservation Easements*, IRS, https://www.irs.gov/charities-non-profits/conservation-easements [https://perma.cc/U2XZ-A38V].

318. *See e.g.*, Bebchuk, Kastiel & Toniolo, *supra* note 8; Gordon, *supra* note 189; Petrucci & Subramanian, *supra* note 22.

319. Savitt & Kovvali, *supra* note 192, at 1891.

320. Bebchuk & Tallarita, *supra* note 15; Lund & Pollman, *supra* note 279.

321. Revlon, Inc. v. MacAndrews & Forbes Holdings, 506 A.2d 173, 182 (1986) (explaining that "[a] board may have regard for various constituencies in discharging its responsibilities, provided there are rationally related benefits accruing to the stockholders. However, such concern for non-stockholder interests is inappropriate when an auction among active bidders is in progress, and the object no longer is to protect or maintain the corporate enterprise but to sell it to the highest bidder.").

322. *See* Paramount Comm'ns, Inc. v. QVC Network, Inc., 637 A.2d 34, 46 (Del. 1994). Not everything in Delaware law points in the same direction. For example, if a transaction is motivated by the possibility that a new controlling shareholder will be able to monitor the company's managers more closely, dissenting shareholders will not be able to capture a share of the value of the enhanced monitoring. *See* Verition Partners Master Fund Ltd. v. Aruba Networks, Inc., 210 A.3d 128, 141 (Del. 2019) (categorizing this type of monitoring as a form of synergy that dissenting shareholders cannot capture in an appraisal proceeding).

323. *See* BARON, *supra* note 166, at 93.

perfect,[324] a codetermination scheme in which workers would be entitled to seats on the board of the company would be a step in this direction.[325] Instead, workers were largely unable to resist layoffs or Musk's whims.[326] Similarly, empowering creditors within the corporate structure would limit Musk's power. More broadly, any transfer of power away from the shareholder-owners toward other stakeholders would limit the impact of shareholder-owners with idiosyncratic preferences. Importantly, this aspect of stakeholder governance would not end trophy ownership *per se*—people like Musk would be free to buy important assets and to derive prestige from that fact—but it would change the meaning and character of "ownership" so that trophy ownership would not directly drive corporate policy.

Second, policymakers might seek to ensure that large or otherwise significant enterprises are owned by a broad swathe of the investing public, as opposed to a small set of private owners.[327] Public companies are subject to disclosure mandates that make them more transparent, and media attention makes them more accountable. And while shareholder democracy is not perfect, it may be preferable to rule by a single and potentially eccentric individual.

B. Taming Trophy Ownership

Instead of seeking to eliminate trophy ownership, policymakers might seek to build on its potential strengths while limiting its dangers. Interventions with this goal would seek to rework existing accountability structures so that the owners of trophy assets are encouraged to make socially desirable decisions.

1. Encourage Appropriate Outside Financial Interests

One way to tame trophy ownership would be to encourage owners to have financial interests that align their incentives with the broader society. In a fascinating study, Professors Dhammika Dharmapala and Vikramaditya S. Khanna have suggested that externalities might be reduced if the controllers of major corporations held the bulk of their wealth

324. It would be a mistake to think that empowering employees uniformly leads to outcomes that are representative of the views of the broader public. WhatsApp had just 55 employees at the time it was acquired for $16 billion. David Gelles & Vindu Goel, *Facebook Enters $16 Billion Deal for WhatsApp*, N.Y. TIMES (Feb. 19, 2014), https://archive.nytimes.com/dealbook.nytimes.com/2014/02/19/facebook-to-buy-messaging-start-up/ [https://perma.cc/H7GE-WTSB]. There is little reason to believe that their views or material interests were aligned with those of the public. Workers at firms with market power may also have an incentive to maximize and use that market power at the broader public's expense. Mark J. Roe, *Rents and their Corporate Consequences*, 53 STAN. L. REV. 1463 (2001). Workers may not be attuned to the need to make changes at struggling enterprises. *See, e.g.*, BARON, *supra* note 166, at 72.

325. For a discussion of codetermination, and some of the difficulties of tailoring it to the American context, see Leo E. Strine, Jr., Aneil Kovvali & Oluwatomi O. Williams, *Lifting Labor's Voice: A Principled Path Toward Greater Worker Voice and Power Within American Corporate Governance*, 106 MINN. L. REV. 1325 (2022).

326. For one striking example, see Zoë Schiffer & Casey Newton, *Elon Musk Fires a Top Twitter Engineer over his Declining View Count*, PLATFORMER (Feb. 9, 2023), https://www.platformer.news/p/elon-musk-fires-a-top-twitter-engineer [https://perma.cc/43MF-P6EQ].

327. There are other reasons to ensure that large companies sell shares to the public, though the concern may have become exaggerated in recent years. *See* Alexander I. Platt, *Unicorniphobia*, 13 HARV. BUS. L. REV. 115 (2023) (critiquing concerns about large privately-held firms).

outside of the company.[328] If Mark Zuckerberg controlled Meta but derived most of his wealth from a diversified portfolio closely correlated with overall social wealth, Zuckerberg would have a strong incentive to run Meta in a way that maximized overall social wealth. Encouraging arrangements in which trophy asset owners also hold a diversified portfolio of other assets could help ensure that trophy assets are operated in a prosocial way.[329]

2. *Regulate Ownership and Install Accountability Structures*

Another approach would center on public or private regulation to screen potential owners or discipline them if they behave inappropriately. Ownership restrictions may not be as aberrant as they sound. The government regulates who can own various important assets. For example, foreign acquisitions of strategically significant enterprises are scrutinized by the Committee on Foreign Investment in the United States, which can veto transactions or impose mitigation requirements.[330] And under the Communications Act, the Federal Communications Commission determines whether an owner has the moral character required to operate a broadcast station.[331] Although it is geared toward investor protection instead of broader societal interests, the Securities and Exchange Commission limits ownership of certain kinds of assets to accredited investors.[332] Private actors can also impose limitations. For example, the NFL has extensive rules on ownership.[333]

Similar regulations could be used to discipline owners of trophy assets once they are in place. The government can revoke licenses or refuse to do business with owners who behave in aberrant or antisocial ways. And thoughtful organizations can provide for disciplinary processes that hold individual owners accountable: although the strength of the provisions vary across leagues, owners of professional sports teams can find themselves

328. *See* Dharmapala & Khanna, *supra* note 70.

329. As one example, dual-class share structures might be encouraged. Under this type of arrangement, the controller holds high-powered shares that allow them to cast a majority of votes while only holding a minority financial interest. *Id.*

330. *See, e.g.*, Kristen Eichensehr & Cathy Hwang, *National Security Creep in Corporate Transactions*, 123 COLUM. L. REV. 549 (2023) (discussing the expanding jurisdiction of the Committee on Foreign Investment in the United States).

331. *See In re* Policy Regarding Character Qualifications in Broadcast Licensing, FCC 90-195 (May 11, 1990), https://docs.fcc.gov/public/attachments/FCC-90-195A1.pdf (on file with the *Journal of Corporation Law*).

332. *See Accredited Investor*, SEC, https://www.sec.gov/education/capitalraising/building-blocks/accredited-investor [https://perma.cc/E5UD-E4TU] (providing criteria for accredited investors).

333. NFL rules generally prohibit teams from selling shares to the general investing public. Although a legal challenge to the requirement succeeded in the lower court, it was overturned on appeal. *See, e.g.*, Sullivan v. Nat'l Football League, 34 F.3d 1091 (1st Cir. 1994). NFL rules on the subject have raised serious issues about succession for various teams, though they can be flexible on the topic. Eben Novy-Williams & Kurt Badenhausen, *Passing Game: The NFL's Flexible Bylaws Keep Football a Family Affair*, SPORTICO (Sept. 13, 2022), https://www.sportico.com/business/finance/2022/nfl-succession-plans-chicago-bears-mccaskey-1234687987/ [https://perma.cc/8EV3-H6J3]. The NFL has recently liberalized its ownership rules to permit private equity to participate. *See* Lauren Hirsch, Sarah Kessler & Bernhard Warner, *Can the N.F.L.'s Rules for Team Ownership Survive Its Skyrocketing Valuations?*, N.Y. TIMES (Feb. 11, 2023), https://www.nytimes.com/2023/02/11/business/dealbook/nfl-teams-owners.html [https://perma.cc/2W7V-BNZ6]; *see also* Madilynne Lee & Jay L. Taylor, *Sports Franchise Ownership Structures and Legal Considerations in an Era of Exploding Team Values*, ANDERSON KILL (June 2, 2025), https://andersonkill.com/article/sports-franchise-ownership-structures-and-legal-considerations-in-an-era-of-exploding-team-values [https://perma.cc/Y2B8-HC7F].

pressured or removed if they commit a serious offense[334] or make uneconomical decisions that affect other owners.[335] Softer variations might include industry standards or norms.

Government policy could also promote accountability by bolstering countervailing forces in society. Robust media, labor unions, and civic organizations could help monitor enterprises and shift the public conversation in ways that hold trophy owners accountable for bad behavior.[336] A conscious effort to bolster these organizations might improve behavior.

3. Require Expanded Disclosures

Expanded disclosures could also help. Current disclosure mandates are largely targeted at public corporations and designed to protect investors. Widening the scope of disclosure mandates to cover a broader set of socially-important corporations and reworking them to protect a broader range of social stakeholders could help create a useful accountability structure.[337] Naming and shaming enterprises that emit disproportionate amounts of carbon or pay people inequitably would help pressure owners to do better. It could also help support an information infrastructure—journalists, analysts, and academics—who analyze issues, present findings to the public, and offer policy proposals to the public.

It may also help address a unique danger of trophy ownership: epistemic closure. Extremely wealthy individuals can live in a bubble in which they only have to hear from people who praise them. Some of the results can be disconcerting and strange. Elon Musk shows signs of being "very online," trafficking in bizarre conspiracy theories and engaging in obsequious exchanges with unusual supporters. For example, Musk has retweeted tweets by "Musk University," an account that only sends tweets that quote Elon Musk.[338] And Musk demanded that top twitter engineers explain why his account had become less popular, then fired an engineer who suggested that it was not a technical problem but an actual decline in Musk's popularity.[339] Sunshine and commentary could help burst the epistemic bubble and force trophy owners to consider a broader range of contrary views.

CONCLUSION

As wealthy individuals scoop up important enterprises, it is necessary to revisit the assumptions that drive business law and policy conversations. Wealthy owners motivated by prestige and reputation are not necessarily constrained by the commercial pressures or

334. *See* Todd & Almasy, *supra* note 289 (discussing termination of Donald Sterling's ownership of the Los Angeles Clippers after racist remarks).

335. For example, Steve Cohen's high rate of spending on the Mets baseball team seems to have prompted the owners to adopt a new tier of luxury tax intended to force him to spread the wealth. *See* Brown, *supra* note 76 ("[A]s part of the latest labor deal, reached earlier this year, a special new tier was added to the luxury-tax system that was designed specifically to try to blunt [Cohen's] spending habits.").

336. *See* Kate Andrias & Benjamin I. Sachs, *Constructing Countervailing Power: Law and Organizing in an Era of Political Inequality*, 130 YALE L.J. 546 (2021) (identifying public policy tools that could bolster organizations that would address political inequality).

337. *Cf.* Ann M. Lipton, *Not Everything Is About Investors: The Case for Mandatory Stakeholder Disclosure*, 37 YALE J. ON REG. 499 (2020) (suggesting that the government should require disclosures on matters that are important to stakeholders like workers, even if they are not important to investors).

338. Chafkin, *supra* note 223.

339. Schiffer & Newton, *supra* note 222.

policy instruments that normally discipline major enterprises. The result is a strange mix of opportunities and risks. Trophy ownership could steer companies toward more reputable, prosocial behavior, or it could free eccentric billionaires to pursue destructive policies to the detriment of all. By focusing closely on the phenomenon, it is possible to identify levers that can be used to eliminate or tame trophy ownership.