

Too Many Mergers? The Golden Parachute as a Driver of M&A Activity in the 21st Century

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Jeffrey N. Gordon

Columbia University, University of Oxford and
ECGI

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Abstract

This paper argues that the prevailing corporate governance regime in the United States has produced a level of mergers and acquisition activity that is greater than the social optimum. In the late 19th through the 20th century M&A activity was characterized by “waves” that reflected adaptations to changing external environment, whether the efficient production frontier, regulatory constraints, or capital market developments. Economically motivated parties saw the opportunities in changing the boundaries of the firm; successful first-movers spawned imitators, hence a wave, which eventually subsided, often alongside deteriorating capital market conditions. The 21st century is different. There is a persistently high level of M&A. Yes, there are fluctuations but not “waves.” This pattern can be explained at least in part by the introduction of an internal driver of M&A activity, the “golden parachute,” a super-bonus payoff to a target CEO. Golden parachutes were introduced as a corporate governance innovation in the 1980s to overcome managerial hostility to an unsolicited premium bid. Over time, especially as executive compensation radically shifted toward stock-based pay, golden parachutes have become increasingly lucrative. They now provide a CEO with a high-powered incentive to become a target CEO, compensating the CEO like a deal-hunting investment banker, and thus have changed the pattern of M&A activity. This results in efficiency losses at the firm level, produces social losses because of excessive layoffs, and because of the resultant “inequality with privity,” will exacerbate social resentments that may have political consequences.

Keywords: Mergers & Acquisitions; Golden Parachute; Executive Compensation, Layoffs

JEL Classifications: G34, J33, J63, K22, L21

Jeffrey N. Gordon
Richard Paul Richman Professor of Law
Columbia University
435 West 116th Street
New York, NY 10027, United States
phone: +1 212 854 2316
e-mail: jgordon@law.columbia.edu

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Jeffrey N. Gordon*

Columbia Law School, Univ. of Oxford, ECGI

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ABSTRACT

This paper argues that the prevailing corporate governance regime in the United States has produced a level of mergers and acquisition activity that is greater than the social optimum. In the late 19th through the 20th century M&A activity was characterized by “waves” that reflected adaptations to changing external environment, whether the efficient production frontier, regulatory constraints, or capital market developments. Economically motivated parties saw the opportunities in changing the boundaries of the firm; successful first-movers spawned imitators, hence a wave, which eventually subsided, often alongside deteriorating capital market conditions. The 21st century is different. There is a persistently high level of M&A. Yes, there are fluctuations but not “waves.” This pattern can be explained at least in part by the introduction of an internal driver of M&A activity, the “golden parachute,” a super-bonus payoff to a target CEO. Golden parachutes were introduced as a corporate governance innovation in the 1980s to overcome managerial hostility to an unsolicited premium bid. Over time, especially as executive compensation radically shifted toward stock-based pay, golden parachutes have become increasingly lucrative. They now provide a CEO with a high-powered incentive to become a target CEO, compensating the CEO like a deal-hunting investment banker, and thus have changed the pattern of M&A activity. This results in efficiency losses at the firm level, produces social losses because of excessive layoffs, and because of the resultant “inequality with privy,” will exacerbate social resentments that may have political consequences.

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Jeffrey N. Gordon, Columbia Law School

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Introduction

Mergers and acquisitions activity (“M&A”) is one of the pivotal features of the modern capitalist economy. Well executed M&A can exploit economies of scale and scope to transform linear growth at the firm level to exponential growth. M&A at the firm level accordingly raises the “growth frontier” of an economy of such firms. M&A also often entails investment in large amounts based on flawed assumptions about “synergies” and thus can destroy value.¹ M&A can serve as the vehicle through which a firm scoops up rivals and thus grabs a share of scale and scope economies beyond the competitive optimum.² And M&A provides a mechanism by which divestment occurs, shrinkage in the case of obsolescence or excess capacity, serving goals that are “contractionary” as well as “expansionary.”³

Because M&A enables firms to pursue scale and scope economies faster than would be possible with “organic” within-firm growth and also facilitates divestment more rapidly than otherwise, “adjustment costs,” meaning the obsoleting of employee skills (“human capital”), layoffs, and disruptions of previous supply and customer networks will occur more frequently and extensively throughout the economy. Even if M&A facilitates growth overall, the gains will be distributed differently than under previous arrangements and unevenly.

M&A undercuts the idea that a particular corporation ought to hold to its “purpose” (at least not without significant sacrifice of value). The canonical example is the Kraft takeover in 2009-10 of Cadbury, the UK confectionery. Cadbury’s “purpose” may have been the on-going production of sweets beloved in the UK, but its value to Kraft was in the global distribution network it had created in emerging markets that could be additionally purposed to the

¹ See, e.g., *How the AOL-Time Warner Merger Went So Wrong*, NY TIMES (Jan. 10, 2010) (10th anniversary); James B. Stewart, *Was This \$100 Billion Deal the Worst Merger Ever?* NY TIMES (Nov.28, 2022); Sara B. Moeller, Frederik P. Schlingemann, Rene M. Sultz, *Wealth Destruction on a Massive Scale? A Study of Acquiring-Firm Returns in the Recent Merger Wave*, 60 J. FIN. 757 (2005(1990s wave); Robert F. Bruner, *DEALS FROM HELL* (2005); McKinsey & Co., *A MCKINSEY PERSPECTIVE ON CREATING TRANSFORMATIONAL VALUE FROM MERGERS* (2010) (70 percent of mergers fail).

² See Colleen Cunningham, Florian Ederer & Song Ma, *Killer Acquisitions*, 129 J. POL. ECON. 649 (2021).

³ Gregor Andrade & Erik Stafford, *Investigating the Economic Role of Mergers*, 10 J. CORP. FIN 1 (2002)

distribution of Kraft's extensive array of snack food brands.⁴ M&A transformed Cadbury's "purpose."

The history of the corporation as an organizational form usually focuses on the permanence of its committed capital (including the transferability of ownership interests),⁵ the "partitioning" of the assets and liabilities of the corporation from those of its owners and officers,⁶ and the centralization of operational control over the corporation in a board of directors.⁷ These elements of organizational law got the corporation up and running as the dominant business form.⁸ One missing piece to this story has been the changes in organizational law that empowered corporations to engage in M&A, which in turn enabled the corporation rapidly to increase the scale and scope of its business to take advantage of changes in transportation, communication, and technology to pursue exponential growth. In the United States, these are changes to enabling statutes that permitted corporations to own stock in other corporations, to buy assets using own stock as consideration, and the establishment of "merger" and "consolidation" as the formal means to expand the size of the firm.^{9,10}

More directly put, corporate law and corporate governance has played a critical role in the M&A story in the United States and vice versa. Changes to corporate law at the turn of the 20th century facilitated the creation of national firms in the United States through M&A. The early state-level corporate chartering competition was focused on the facilitation of M&A, not

⁴ See, e.g., *Cadbury Snubs Kraft Offer*, FINANCIAL TIMES, Sept. 8, 2009 (Cadbury "has a global footprint that people will die for"); *Cadbury Attacks Kraft Strategy*, FINANCIAL TIMES, Sept. 14, 2009 (Cadbury has "unique" position in the global confectionary market due to its strength in developed and emerging markets"); *Kraft Food Succeeds in Offer for Cadbury PLC*, Mondelez PR Release, Feb. 2, 2020 (quoting Kraft CEO Irene Rosenfeld: "The combination of Kraft Foods and Cadbury creates a global powerhouse in snacks, confectionary and quick meals with annual revenues of approximately \$50 billion and sales in approximately 1260 countries"),

<https://ir.mondelezinternational.com/news-releases/news-release-details/kraft-foods-succeeds-offer-cadbury-plc>

Lara Spiteri-Cornish, *A Sweet Deal: Cadbury Leads Kraft into Emerging Markets*, in Dilip S. Mutum, Sanjit Kumar Roy & Eva Kipnis, eds., *MARKETING CASES FROM EMERGING MARKETS* (2014).

⁵ Giuseppe Dari-Mattiacci, Oscar Gelderblom, Joost Jonker & Enrico C. Perotti, *The Emergence of the Corporate Form*, 33 J. L., ECON. & ORG. 193 (2017); Margaret M. Blair, *Locking in Capital: What Corporation Law Achieved for Business Organizers in the Nineteenth Century*, 51 UCLA L. REV. 387 (2003); Andrew A. Schwartz, *The Perpetual Corporation*, 80 GEO. WASH. L. REV. 764 (2012).

⁶ Henry Hansmann & Reinier Kraakman, *The Essential Role of Organizational Law*, 110 YALE L. J. 387 (2000); Henry Hansmann & Richard Squire, *Law and the Rise of the Firm*, 119 HARV. L. REV. 1225 (2006).

⁷ Stephen M. Bainbridge, *Director Primacy: The Means and Ends of Corporate Governance*, 97 NW. L. REV. 547 (2002); Stephen M. Bainbridge, *Director Primacy and Shareholder Disempowerment*, 119 HARV. L. REV. 1735 (2006).

⁸ See generally John Armour *et al.*, *THE ANATOMY OF CORPORATE LAW: A COMPARATIVE AND FUNCTIONAL APPROACH* (3d ed. 2017).

⁹ The most prominent example, which set the model for other jurisdictions, was the revision of New Jersey corporate law over the 1880-1910 period, especially the general revision of 1896. See GENERAL CORPORATION ACT OF NEW JERSEY, James B. Dill, compiler and annotator (1910 edition); Edward Q. Keasbey, *New Jersey and the Great Corporations*, 13 HARV. L. REV. 198 (1899-1900). These statutory innovations are usually framed in terms of the chartering competition initiated by New Jersey to provide a legal safe haven for combinations in the late nineteenth century that had been jury-rigged under existing law as "trusts." See, e.g., Charles M. Yablon, *The Historical Race Competition for Corporate Charters and the Rise and Decline of New Jersey: 1880-1910*, 32 J. CORP. L. 323 (2007); Camden Hutchison, *Corporate Law Federalism in Historical Context: Comparing Canada and the United States*, 64 MCGILL L. J. 109 (2018). See generally Herbert Hovenkamp, *ENTERPRISE AND AMERICAN LAW, 1836-1937* (1991), at 241-267.

¹⁰ An important complement to the organizational law changes that permit expansion through mergers and acquisitions are those changes that facilitate exit and re-deployment of capital and capacities, such authorization of stock repurchases, demergers through spin-offs and split-offs, and exit through tender offers.

the fashioning of the optimum shareholder/management balance that figures centrally in current corporate governance debates.¹¹

As corporations took on national economic footprints, there was broad consensus that national enterprise required national regulation. The right regulatory match was not between the national corporation and any particular state, whose interests necessarily would be parochial, but between the national corporation and the *State*, thus a national charter. As Camden Hutchison shows, the first national chartering movement failed precisely because of disagreement over the scope of permitted M&A activity.¹² The absence of a national legislative consensus to constrain M&A through restrictive corporate governance (or to embrace it subject to a national regulatory regime) meant a default to the permissive state regimes of New Jersey and then Delaware.

The claim of this paper is that the prevailing corporate governance regime in the United States has produced a level of mergers and acquisition activity that is greater than the social optimum. In broad strokes, the argument is that the “waves” that characterized M&A activity in the late 19th through the 20th century reflected adaptations to the changing external environment, whether the efficient production frontier, the regulatory constraints, or capital market developments. Economically motivated parties saw the opportunities in changing the boundaries of the firm; successful first-movers spawned imitators, hence a wave, which eventually subsided, often alongside deteriorating capital market conditions. The 21st century is different. There is a persistently high level of M&A. Yes, there are fluctuations but not “waves.”¹³ This pattern, I argue, can be explained at least in part by the introduction of an internal driver of M&A activity, the “golden parachute,” a super-bonus payoff to a target CEO in an M&A transaction. Golden parachutes were introduced as a corporate governance innovation in the 1980s as a complement to the directors’ then-weak monitoring capacity over the CEO’s frequently negative response to an unsolicited premium bid. The governance goal was to provide an incentive that would make a CEO neutral or perhaps mildly favorable when confronted with such a bid. Golden parachutes have become increasingly lucrative over time, especially as compensation has shifted towards stock-based performance pay. Indeed, it might be more accurate to describe them as “platinum parachutes.” The function has changed: it now works to offer a high-powered M&A incentive to

¹¹ See Camden Hutchison, *Progressive Era Conceptions of the Corporation and the Failure of the Federal Chartering Movement*, 2017 COLUM. BUS. L. REV. 1018 (2017); Sarath Sanga, *The Origins of the Market for Corporate Law*, 24 AM. L. & ECON. REV. 369 (2022); Charles M. Yablon, *The Historical Race Competition for Corporate Charters and the Rise and Decline of New Jersey: 1880-1910*, 32 J. CORP. L. 323 (2007); Ofer Eldar & Gabriel V. Rauterberg, *Is Corporate Law Non-Partisan?*, 2023 U. WISC. L. REV. 177 (2023).

¹² See Camden Hutchison (2017), preceding note.

¹³ See text and accompanying notes *infra* at nn . The merger waves in the twentieth century were reactions to exogenous changes in the economic and regulatory landscape, followed by periods of very low merger activity. For example, in the first significant merger wave recorded in the United States (from approximately 1895 to 1904, driven by economic expansion, changes to corporate law, and structural changes in manufacturing industries), the total M&A consideration amount in the manufacturing and mining sectors rose to over 10 percent of United States’ GDP (See Ralph L. Nelson, *Merger Movements in American Industry, 1895–1956*, PRINCETON UNIV. PRESS (1959), supplemented by author [RA] calculations). But, after the “wave” ended in 1905, M&A consideration amount fell to approximately one percent of GDP, a level at which it essentially remained until the next merger wave, driven by changes in banking regulations, in the late 1920s (See Eugene Nelson White, *The Merger Movement in Banking, 1919–1933*, J. ECON. HISTORY (1985). But this pattern changed around the start of the twenty-first century. After a merger wave in the late-1990s, the amount of M&A consideration has never fallen below 5 percent of United States GDP (author [RA] calculations). This high “merger floor” is persistent even when accounting for cross-border deals, indicating that increased globalization alone cannot explain this trend.

become a target CEO. The golden/platinum parachute now compensates the target CEO somewhat like a deal-hunting investment banker and has changed the pattern of M&A activity. Put otherwise, fee-driven promoters have always been part of the M&A story. Target CEO incumbency has commonly been a friction. The contemporary golden/platinum parachute can convert the CEO into another promoter.

This institutional change has negative implications both from a shareholder and a social point of view. This new incentive structure for CEOs will distort how the firm is managed and the projects that the firm pursues. The CEO may guide the firm to pick projects that could generate complements (increase synergies) or substitutes (to invite killer acquisitions) through M&A rather than projects of highest long term expected value of an independent firm. It will also distort the pattern of CEO succession: why groom a successor when the absence of such a successor can be invoked as a reason to pursue an M&A transaction? From a broader perspective, since M&A transactions are commonly associated with layoffs, employees bear an additional level of risk for which compensation is unlikely. Moreover, such layoffs undermine social connectivity and peer-based reality testing associated with the workplace. At a time when “bowling alone” is an increasingly prominent feature of American life, excess M&A activity may further degrade social cohesion and, on the analogy of certain trade impacts, may generate socio-political effects that spill over into electoral politics.

To be clear: this claim does not reject the view that M&A activity in general facilitates adaptation at the firm level to a changing external environment and can be a powerful engine of economic performance. Rather, it captures a theme that has run through sober reflection on the implications of a high level of M&A over the past several decades.¹⁴ The reallocation of resources and control rights associated with M&A intensifies the adjustment costs of economic change. Growth or shrinkage can happen organically, which extends the time frame of adjustment, or through M&A, which can dramatically enhance the rate of change. The argument that I will develop is that golden/platinum parachutes add excess energy to this system. They provide asymmetric payoffs to target CEOs and impose systemic costs. This is an area ripe for regulatory action, but the present corporate governance structure also gives tools to shareholders to curb the excesses of the golden parachute regime.

There is a separate concern that this paper does not address: whether “excess” M&A raises independent antitrust concerns, perhaps from a belief that M&A inexorably promotes concentration which in turn will increase producer power and producer rents.¹⁵ In general I think antitrust analysis requires a market-specific focus. But someone who was concerned about overall concentration levels might contemplate law reform or bully pulpit use focusing on golden parachutes as an adjunct to antitrust policy. As noted below, golden parachute payoffs are generally increasing in the target company’s size and can vary by industry sector. These elements might add additional dimensions to antitrust policy consideration.

¹⁴ See, e.g., Jeffrey N. Gordon, *Corporations, Markets, and Courts*, 91 COLUM. L. REV. 1931, 1971-1982 (1991).

¹⁵ See Matias Covarrubias, German Gutierrez, Thomas Philippon, *From Good to Bad Concentration? US Industries Over the Past 30 Years*, 34(1) NBER MACROECONOMICS ANN.1 (2019) (Evidence that concentration becomes “bad” around 2000); Spence Y. Kwon, Yueran Ma & Kaspar Zimmermann, *100 Years of Rising Corporate Concentration*, 114(7) AM. ECON. REV. 2111 (2024).

This paper proceeds as follows: Part I describes the United States M&A waves of the late 19th and 20th century and compares these waves to the persistent high level of US M&A activity in the 21st century. The 19th-20th century waves can be linked to changes in the external economic environment, including regulatory constraints, that generated adaptation effectuated through M&A. The 21st century pattern is different. M&A is persistently high, even after a potential source of external change, inward-bound M&A from globalization, is subtracted.

Part II describes the rise of golden/platinum parachutes, a kind of special severance pay for C-suite executives (especially the CEO) first introduced in the 1980s and 1990s to overcome managerial resistance to unsolicited premium bids. Golden parachutes illustrate a characteristic feature of the “modern” corporate law period: that devices introduced to address the rise of hostile bids take on a separate life and become transformative. In this particular case, the increasing independence of directors and the growing institutionalization of stock ownership eliminated the corporate governance need for golden parachutes. But the parachutes survived as a “market” term of executive compensation. As CEO compensation escalated over the course of the 1990s and that compensation increasingly consisted of stock-based components, the CEOs parachute payoff from being “taken over” became increasingly lucrative. A target CEO could move from wealthy to rich. Part II presents fresh evidence on the extent of the riches. Over the eleven-year period 2011-22, for transactions over \$10 billion—large and consequential—the average parachute payout was approximately \$48 million. Smaller, but still consequential, transactions produced multi-million dollar parachute payouts as well. It seems obvious that these payouts would increase the CEO’s incentive to become a promoter of target-side M&A.¹⁶ We can’t both believe a general incentives-based theory of compensation and disbelieve that these powerful incentives will have their effect.¹⁷

Parts III and IV discuss the consequences from a shareholder perspective and social perspective of “excess” mergers because of the golden parachute. Part III identifies three major adverse effects from the shareholder perspective: the distortion of project choice, acceptance of immediate M&A rather than holding out for foreseeable future higher value realization, and a shortfall in CEO succession planning, which can lead to sub-optimal M&A and weaker performance after non-merger CEO turnover. A CEO who is preparing for a merger exit is likely to pick/avoid projects with objectives and time horizon consistent with that goal. A CEO looking for a merger will be reluctant to groom a successor because the failure of an obvious successor enhances the CEO’s optionality. Moreover, a motivated target CEO will be especially keen to sell the acquirer on a transaction, even if net value-reducing. The advent of high parachute payouts coincides with a shift in the average target CEO age over the 1989-2007 period. Early in the period, impending retirement is not a strong predictor of a transaction.¹⁸

¹⁶ It is well understood that “CEOs play a key role in their firm’s decisions leading up to a bid (e.g., the decision to seek out a buyer or to initiate merger talks)...” Dirk Jenter & Katharina Lewellen, *CEO Preferences and Acquisitions*, 70 J. FIN. 2813, 2813 (2015). For judicial recognition of the incentive effects of high-powered incentives on the CEO decision to pursue M&A, see *McRitchie v. Zuckerberg*, 315 A.3d 518, 554 n.97 (2024) (discussing cases, including the effects of option vesting) (Laster, VC).

¹⁷ See Matias Covarrubias, German Gutierrez, Thomas Philippon, *From Good to Bad Concentration? US Industries Over the Past 30 Years*, 34(1) NBER MACROECONOMICS ANN.1 (2019) (Evidence of a change in the nature of M&A around 2000; concentration-promoting acquisitions that reduce social welfare).

¹⁸ See John C. Coates IV & Reinier Kraakman, *The Link between Acquisitions and the Market for CEOs*, (Jan 2011), available at <https://ssrn.com/abstract=1760154>.

Later in the period, the likelihood of a becoming a target escalates as the CEO approaches 65.¹⁹ In a framing drawn from behavioral corporate finance,²⁰ rich parachutes have helped establish exit-through-merger as part of a “good” CEO career, as opposed to “left the company in capable next-generation hands.” Yes, shareholders approve the merger, but there is not a counterfactual alternative developmental path over which they have choice. Some start-ups in tech and pharma self-consciously are targeted towards M&A and compensation is structured accordingly²¹ but the golden parachutes that are virtually universal among significant public companies hardly seemed tailored for discrete strategic reasons. The issue is not that project choice is shaped by short-termism vs. long-termism but is distorted by this special kind of managerial agency cost.

The concern about the distortive effects are not merely conjectural, as two recently decided Delaware cases demonstrate.²² One case came to light only because of a parallel insider trading case;²³ the other because the transaction attracted an appraisal proceeding.²⁴ In Most “settling” cases – bad for shareholders -- will not catch the glare.

Part IV addresses the particular concern of excess M&A: the additional level of employee layoffs because of the on-average significant loss of human capital resulting in lower pay and diminished career prospects. The net employment effects of M&A are debated in the labor economics literature,²⁵ but many types of M&A, horizontal mergers, for example, or “take private” transactions initiated by private equity firms, commonly entail significant layoffs. Over the 2004-2019 period, outplacement consultants Challenger, Gray & Christmas, report annual M&A-linked layoffs that vary between 123,000 and 15,000.²⁶ An extensive economic literature documents the losses in future income by displaced workers.²⁷ Although M&A generally produces net social gains, what a welfare economist would call a Kaldor-Hicks improvement, the United States’ record in assuring that losing parties are made whole is generally inadequate²⁸ and certainly in these cases. Even if layoffs associated with M&A might be thought of as an inevitable consequence of a dynamic economy, and we would rapidly be worse off without that dynamism, there is no reason to build in high-powered managerial incentives that promote M&A, particularly where the benefits are so skewed in favor of the individual CEO. Such a structure is likely to produce socially costly distortion.

¹⁹ Dirk Jenter & Katharina Lewellen, *CEO Preferences and Acquisitions*, 70 J. FIN. 2813 (2015).

²⁰ Malcom Baker & Jeffrey Wurgler, *Behavioral Corporate Finance: A Current Survey*, 2 HANDBOOK OF THE ECON. OF FIN., George Constantinides, Milton Harris, & Rene Stulz, eds. (2012).

²¹ See Ronald J. Gilson, *Locating Innovation: The Endogeneity of Technology, Organizational Structure, and Financial Contracting*, 110 COLUM. L. REV. 885 (2010). See also Gad Weiss, *The Venture Corporation*, 2025 AM. BUSN L.J. 1,4 (2025) (exit alternatives for a successful start-up includes a “trade sale” to a strategic buyer).

²² See the discussion *infra* nn. --

²³ *Goldstein v. Denner*, 2022 WL 1671006 (Del. Ch. May 26, 2022).

²⁴ *In re Columbia Pipelines Grp. Merger Litig* 299 A.3d 393 (2023).

²⁵ See *infra* p. 6.

²⁶ Research Assistant compilation of Challenger, Gray & Christmas Inc. Annual Reports. The annual reports pick-up layoffs that are specifically associated with a merger, but companies often place M&A-related layoffs within a broader “restructuring” category; these would not be captured in the M&A-linked layoff figures. See also John N. Drobak, *RETHINKING MARKET REGULATION* 46-48 (2021) (critic of M&A bemoans lack of comprehensive database of M&A-related layoffs and cites many M&A-related mass layoffs cases identified in the media).

²⁷ See e.g., Kenneth A. Couch & Dana W. Placzek, *Earning Losses of Displaced Workers Revisited*, 100 AM. ECON. REV. 572 (2010).

²⁸ See Alex Raskolnikov, *Distributional Arguments, In Reverse*, 105 MINN. L. REV. 1583 (2021).

Moreover, the evidence is that golden parachutes are significantly larger in a “take private” transaction with a financial sponsor as an acquirer than with a “strategic” acquirer, \$7.5 million on average vs. \$5.5 million.²⁹ But those are precisely the kind of private equity-fueled transactions that are associated with significant layoffs and reduction in employment.³⁰ A simple theory of incentives would see golden parachutes as inclining CEOs to favor the transactions where significant gains come from employment downsizing.

The mixture of M&A, layoffs, and golden parachutes may have particular socio-political consequences. At a time when many social bonds are fraying, when many adults are “bowling alone,”³¹ the workplace is a place of common enterprise and attachment, and perhaps even the cultivation of civic virtue.³² The forced sociability and interaction of the workplace is a counterweight to the echo chamber of individual narrow-casting and (imperfectly) helps people steer clear of rabbit holes. Thus the disruption of an established workplace has costs beyond the economic.

But one element stands out: even if there is pain among those who are laid off when the firm is sold and layoffs occur, there is plainly one winner: the CEO with a golden parachute. The historian Robert Schneider claims that ours is an age in which “resentment” has returned again as a “political emotion.”³³ This mismatch of fates, layoffs on the one hand, a golden parachute on the other, could readily generate such feelings.

The literature on trade impact suggests that such resentment has political valence, including a shift of partisan voting behavior. An emerging literature connects economic shocks in which there are salient losers to shifts in political sentiment, in particular increases in polarization and especially with a tilt towards populism.³⁴ This literature has been motivated by the desire to understand the impact of expanded foreign trade, especially the “China shock”—the rapid influx of Chinese manufactured goods after China’s accession to the WTO in 2001.³⁵ This

²⁹ This is the conclusion of unreported regression results showing that whether the acquiror is a financial sponsor has a statistically significant relationship with the size of the golden parachute, when controlling for deal size. The regression results [RA calculated] showed that (when controlling for year, deal value, acquiror company being public/private, and target company sector), the financial sponsor acquirers are associated with a \$1.27 million higher golden parachute payment to the target CEO.

³⁰ Steven Davis, John Haltiwanger, Kyle Handley, Josh Lerner, Ron Jarmin & Javier Miranda, *Private Equity, Jobs, and Productivity*, 104 AM. ECON. REV. 3956 (2014); Davis *et al.*, *The (Heterogenous) Economic Effects of Private Equity Buyouts*, NBER WP No. 26371 (rev. April 2024).

³¹ Robert Putnam, *THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY* (2000).

³² See generally Cynthia Estlund, *WORKING TOGETHER: HOW WORKPLACE BONDS STRENGTHEN A DIVERSE DEMOCRACY* (2003); Michael Sandel, *What Liberals Get Wrong About Work*, *THE ATLANTIC* (Sept. 20, 2020). For a more pessimistic view about the possibilities of the current workplace 20 years later, see Cynthia Estlund, *Coming Apart: How Union Decline and Workplace Disintegration Imperil Democracy* in Angela B. Cornell & Mark Barenberg, eds., *THE CAMBRIDGE HANDBOOK OF LABOR AND DEMOCRACY* (2020).

³³ Robert A. Schneider, *THE RETURN OF RESENTMENT: THE RISE AND DECLINE AND RISE AGAIN OF A POLITICAL EMOTION* (2023) (esp. ch. 8 and the conclusion).

³⁴ Notable contributions are David Autor, David Dorn, Gordon Hanson & Kaveh Majlesi, *Importing Political Polarization? The Electoral Consequences of Rising Trade Exposure*, 110 AM. ECON. REV. 3139 (2020); Yotam Margalit, *Costly Jobs: Trade Related Layoff, Government Compensation, and Voting in U.S. Elections*, 105 AM. POL. SCI. REV. 166 (2011).

³⁵ See David Autor, David Dorn, Gordon Hanson & Kaveh Majlesi, *Political Polarization? The Electoral Consequences of Rising Trade Exposure*, NBER W.P. 22637 (Dec. 2017), at p. 41 et seq. For evidence that trade liberalization via NAFTA shifted partisan allegiances particularly for voters with conservative social views, see

fits with models that include behavioral primitives, like social-identity, in more conventional models of responses to economic shocks.³⁶

The outcomes mismatch of golden parachutes and layoffs may activate some of the same behavioral responses associated with other economic shocks in which the losers perceive that their losses are tied to others' gains. This is "inequality with privity," not the generalized inequality which thus far has not had much electoral effect, as demonstrated by the easy recharacterization of the estate tax as a "death tax," the long-standing slide of the labor share of economic rents,³⁷ and the secular shift in favor of shareholders.³⁸ Perhaps this muted response is because the purported villains, the shareholders, are diffuse and many employees seem themselves as beneficiaries through their retirement savings, whether or not that is the case. The case of golden/platinum parachutes is stark in an important set of cases: layoffs for thee, riches for me. The response to this inequality is energized by loss aversion of the adversely affected parties. Thus the role of golden/platinum parachutes in "too many mergers" is not just the distortion of investment decision making at the firm level or the pecuniary losses experienced by laid-off employees but the potential socio-political impact with systemic implications.

What is the recourse? Shareholders could decide to intervene in the fashioning of golden parachutes to avoid costs to shareholder welfare from distorted project choice, failures in CEO succession planning, and the greater propensity to enter into value-reducing M&A transactions. Shareholders could also decide that the socio-political effects create systemic risks to their portfolio by inviting a politics that would disrupt innovation and economic growth. The annual "say on pay" vote affords ample opportunity. Shareholder inaction will invite Congressional intervention and should.

Part I – From Merger Waves to Merger Persistence

A long-time staple of industrial organization analysis is that mergers occur in waves, "short periods of very intense merger activity ...Himalayan bursts where the number of M&A increase several-fold over a single period."³⁹ Whatever the historical basis for this claim, it is no longer true in the 21st Century. Figures 1, 2, and 3 show the rise, fall, and persistence of merger activity in the United States for 125 years, 1895-2019. Although "one continuous and consistently assembled time series on the number of aggregate mergers and acquisitions does not exist,"⁴⁰ we have used various standard sources for 1895-1966 and a single source (Mergerstat) for 1967-2019 to stitch together a time-line of M&A activity measured in economic terms for the

Jiwon Choi, Ilyana Kuziemko, Ebonya Washington & Gavin Wright, *Local Economic and Political Effects of Trade Deals: Evidence from NAFTA*, 114 AM. ECON. REV. 1540, 1559-72 (June 2024)

³⁶ See, e.g., Giampaolo Bonomi, Nicola Genaille & Guido Tabellini, *Identity, Beliefs, and Political Conflict*, 136 Q. J. ECON. 2371 (Nov 2021).

³⁷ Jeffrey N. Gordon, *Employees, Pensions, and the New Economic Order*, 97 COLUM. L. REV. 1519 (2007).

³⁸ Zohar Goshen & Doron Levit, *Agents of Inequality: Common Ownership and The Decline of the American Worker*, 72 DUKE L. J. 1 (2022).

³⁹ See R.J. Town, *Merger Waves and the Structure of Merger and Acquisition Time Series*, 7 J. APPLIED ECONOMETRICS S83, S83 (1992) (citing sources) (emphasis added).

⁴⁰ Id., at S86.

entire 1895-2019 period.⁴¹ To enable comparability over time, we normalize M&A activity in terms of the size of the US economy, proxied by GDP (Figure 1), the market capitalization of all publicly traded companies (Figure 2), and a composite stock index compiled by Robert J. Shiller (Figure 3). The pattern that emerges is striking: in the 20th century we see merger waves that peak and subside, “Himalayan bursts.” In the 21st century we see continuous merger activity that fluctuates from a persistently high base that in some prior periods would have been taken as evidence of a “wave.” In prior periods of economic disruption (stock market crashes and panics, recessions, the Great Depression), M&A activity went nearly to zero for an extended period. In the 21st century, even during the Global Financial Crisis of 2007-09 and the Covid crisis of 2000-21, M&A activity is, by historical standards, robust.

We have included Figure 4, which tracks M&A activity from a continuous data source, Mergerstat, over the 1980-2022 period. This Figure not only provides an inflation-adjusted level of the dollar value of M&A activity over the 1980-2022 period, but breaks it down in terms of the type of transaction that is generally lumped in “M&A.” Thus we are able to look at the level of transactions with public sellers separate from private sellers and divestitures.⁴²

In the 21st century, M&A activity is a persistent feature of the economic landscape. Measured in terms of GDP (Figure 1), the low point of M&A activity in the 21st century equals the high point of M&A activity over the long period 1895-1999 except for the initial M&A burst of the “Great Merger Wave” at the end of the 19th century and beginning of the 20th, a brief spike of M&A activity in the 1920s following liberalization of national bank mergers, and a peak in the 1990s driven by the internet-crazed Time-AOL combination.⁴³ Measured in terms of stock market capitalization (Figure 2), 21st century M&A activity seems to lose its “wave” characteristic; it persists over a two-decade period, an important on-going economic activity with fluctuations. Measured in terms of the composite stock index (Figure 3), the high point of 21st century M&A activity exceeds the high point of prior M&A activity except for the 1990s internet peak; its low point exceeds almost all preceding high points, and its persistent importance is manifest⁴⁴

⁴¹ See the Appendix on Data Sources for elaboration and citation. One general objection to this method is that definition of the “consideration” paid is often time varying and not always disclosed. That objection is less weighty after adoption of the federal securities laws in the 1930s. Moreover, the alternative measure that is sometimes used – the *number* of transactions -- insufficiently weighs the economic importance a transaction.

⁴² In the Appendix we provide a Table with unadjusted numbers for each category over the 1980-2022 period. This Table compiles data from several separate Mergerstat volumes over the period. Although Mergerstat reports total M&A activity beginning as of 1967, the classification series began only in 1980, when “bust-ups” became more common. The increase in private acquisitions beginning around 2013 presumably reflects the growth of private equity beginning in 2010. See Sebastian Segerstrom, *A Decade of Growth for U.S. Private Equity*, FACTSET INSIGHT (April 8, 2020), <https://insight.factset.com/a-decade-of-growth-for-u.s.-private-equity>.

⁴³ See *How the AOL-Time Warner Merger Went So Wrong*, NT TIMES, Jan 10, 2010. (AOL acquires Time Warner for \$165 billion; total deal value was \$350 billion, “the largest merger in American business history.”)

⁴⁴ Figures 1A, 2A, and 3A in the Appendix show qualitatively the same pattern when M&A activity is adjusted to subtract out acquisitions of US target by foreign acquirors. The lower (gray) line eliminates foreign acquirors from the measure of M&A activity.

The 20th century waves corresponded to significant changes in the environments in which companies operated.⁴⁵ The Great Merger Wave, running from approximately 1895-1904, was triggered by changes in transportation, telecommunications, and technology, and population growth and spread. This is not to deny the self-interested energy of the transaction promoters nor the speculative opportunities of newly developing stock markets. Nevertheless powerful economic logics were at work. A “second industrial revolution” enabled the possibility of wide geographic distribution of centrally produced manufactured goods and the follow-on mergers resulted in the first national industrial firms in the US.⁴⁶ This development was profound because it changed the nature of the US economy away from local enterprise towards national enterprise. The historiography seems divided into two camps about the sources of merger gains and thus the driving factors. One camp, famously associated with Naomi Lamoreaux,⁴⁷ sees this M&A activity as driven by the need to control what otherwise would be ruinous competition because of economic structure of industrial enterprise: high fixed costs, much lower marginal costs. The Sherman Act, passed in 1890, ruled out price-fixing agreements through cartels but pricing decisions internal to a single firm were not forbidden “contracts” or “conspiracies.” Indeed it was initially unclear whether the Sherman Act applied to mergers.⁴⁸

Another camp sees the transactions of the Great Merger Wave as efficiently pursuing economies of scale in light of the new opportunities opened up by the transportation network in particular⁴⁹ and the diffusion of the “general purpose technology” of electricity.⁵⁰ Alongside both camps is belief that M&A activity was driven by the promoters, fee-focused transaction intermediaries.⁵¹ My assumption would be that all such factors are at work. In any event, the Great Merger Wave came to an end with the economic instability associated with gyrating stock markets and recessionary pressures in the 1900s. Also playing a role was the 1904 Supreme

⁴⁵ The idea of merger “waves” is contested by some, see, e.g., M Gort, *An Economic Disturbance Theory of Mergers*, 83 QJE 624 (1969), but nevertheless seems well-established in the literature. See, e.g., D.L. Golbe & Larry J. White, *Catch a Wave: The Time Series Behavior of Mergers*, 75 REVIEW OF ECONOMICS AND STATISTICS 493 (1993). For a survey, see Marina Martynova & Luc Renneboog, *A Century of Corporate Takeovers: What Have We Learned and Where Do We Stand?* 32 J. Banking & Fin. 2148 (2008).

⁴⁶ See generally Jesse Markham., *Survey of the Evidence and Findings on Mergers* 156-157 in NBER, BUSINESS CONCENTRATION AND PUBLIC POLICY (1955) (integration of transportation networks with resulting reduction in transportation costs enabled utilization of scale economies).

⁴⁷ Naomi R. Lamoreaux, *THE GREAT MERGER MOVEMENT IN AMERICAN BUSINESS, 1895-1904* (1985); George Stiegler, *Monopoly and Oligopoly by Merger*, 40 AM. ECON. REV. PAPERS PROCEEDINGS 22 (1950).

⁴⁸ *U.S. v. E.C. Knight Co.*, 156 U.S. 1 (1895) (creating “interstate commerce” requirement for Sherman Act enforcement). See George Bittlingmayer, *Did Antitrust Policy Cause the Great Merger Wave?* 28 J. LAW & ECON. 77, 86- 92 (1985); see generally Marc Winerman, *The Origins of the FTC: Concentration, Cooperation, Control, and Competition*, 71 ANTITRUST J. 1, 6- (2003) (with citations to cases and secondary literature).

⁴⁹ See e.g., Markham, *supra* note --. (integration of transportation networks with resulting reduction in transportation costs enabled utilization of scale economies).

⁵⁰ Boyan Jovanovic & Peter L. Rousseau, *Mergers as Reallocation*, 94 REVIEW OF ECONOMICS AND STATISTICS 765 (2008).

⁵¹ See Malcom Salter & Wolf Weinhold, *MERGER TRENDS AND PROSPECTS FOR THE 1980’S* (1980) (“Many have noted that this merger wave accompanied a frenzied stock market and aggressive promotional activities by bankers and brokers. J. P. Morgan, for example, is estimated to have earned over \$60 million for his efforts in the consolidation of U.S. Steel”) *quoted in* Ronald J. Gilson & Bernard S. Black, *THE LAW AND FINANCE OF CORPORATE ACQUISITIONS* 14 (2d ed.1995).

Court decision in *Northern Securities Co. v. U.S.*⁵² which held that the Sherman Act did indeed apply to mergers, especially those that had monopolization as a driving force.

A second merger wave arose in the 1920s, a combination of two factors. The first is the consolidation of manufacturing concerns in what George Stigler has characterized as “merger for oligopoly,” the creation of industry groups of a limited number of players.⁵³ The prevailing antitrust focus made it easier to aim for market power rather than monopoly and to seek efficiencies through vertical rather than horizontal acquisitions.⁵⁴ An alternative account describes such mergers as efficiently expanding the boundaries of the firm in light of changes in the relative costs of transacting across markets (or through long-term contracts) versus within a single firm, in light of prevailing technologies of production.⁵⁵ A second M&A driver of the 1920s wave, one that particularly related to financial firms, was adoption of a legislative and regulatory pathway for the smooth merger of national banks.⁵⁶ To be sure, the speculative stock market activity of the 1920s fueled the wave, as it invariably does, and that came to an abrupt end in 1929.

The third wave, later known as the conglomerate wave, that began in the 1950s and crested in the 1960s, arose under the influence of a particular antitrust strategy but more importantly in pursuit of particular economic theories about value creation through financial structure and scope economies in professional management. The Celler-Kefauver Act of 1950 reached a broad range of M&A activity short of “dominance” and was used by aggressive antitrust enforcers to challenge vertical as well as horizontal transactions with considerable success in the courts.⁵⁷ Some argue that acquisitive CEOs therefore inclined to acquisitions of unrelated companies, creating conglomerates.⁵⁸ The motives of empire-building CEOs of course played a large role in the story⁵⁹ but there were particular economic logics as well: first, a finance-based argument that diversified firms are less risky than focused firms and therefore should trade at a higher price; second, an economy of scope argument that sophisticated headquarters management could oversee managerial performance at the subsidiary level and

⁵² 193 U.S. 197 (1904).

⁵³ See Stigler, *supra* note --

⁵⁴ Herbert Hovenkamp, *The Law of Vertical Integration and the Business Firm: 1880-1960*, 95 IOWA L. REV. 863, 879-880 (2010) (Original Clayton Act did not reach vertical transactions, especially if conducted through asset purchases); Carol Eis, *The 1919-1930 Merger Movement in American Industry*, 12 J. L. & Econ. 267, 285-89 (1969). Markham, *supra* note --, disputes the merger for oligopoly rationale, at 169-172. J. Rody Borg, Mary O. Borg, & John Leeth, *The Success of Mergers in the 1920s*, 7 J. IND. ORG. 117 (1989) (rollback of antitrust enforcement; improved scope economies facilitate the 1920s merger wave).

⁵⁵ See, e.g., Oliver Williamson, *MARKETS AND HIERARCHIES ANALYSIS AND ANTITRUST IMPLICATIONS* (1975); Ronald Coase, *The Nature of the Firm*, 4 ECONOMICA 386 (1937) .

⁵⁶ See Eugene Nelson White, *The Merger Movement in Banking, 1919-1933*, J. ECON. HISTORY (1985)

⁵⁷ William A. Kovacic & Carl Shapiro, *Antitrust Policy: A century of Economic and Legal Thinking*, 14(1) J. ECON. PERSP. 43, 51-52 (2000).

⁵⁸ This debate is surveyed in John G. Matsusaka, *Did Tough Antitrust Enforcement Cause the Diversification of American Corporations?* 31 J. FIN. QUANT. ANAL. 283 (1996), which disputes the hypothesis on the basis of the composition of M&A activity in the period (no bias in favor of small vs. large horizontal mergers) and similar diversification patterns in countries not subject to US antitrust law). For a contemporaneous evaluation of the impact of antitrust enforcement on conglomerate mergers, see Harlan M. Blake, *Conglomerate Mergers and the Antitrust Laws*, 38 COLUM. L. REV. 555 (1973) (weak antitrust efforts against conglomerate mergers).

⁵⁹ See Dennis C. Muller, *A Theory of Conglomerate Mergers*, 83 Q. J. ECON. 643 (1969) (analyzing debate).

allocate investment capital within the conglomerate better than external labor and capital markets.⁶⁰ The conglomerate wave peaked in 1967-69; the poster child was ITT, a manufacturer of telecommunications equipment that came to own a name-brand hotel chain, A rental car company, packaged food products manufacturer and an insurance company.⁶¹ The conglomerate organizational experiment was subsequently deemed a failure because the economic logics failed.⁶² Shareholders could build fully diversified portfolios that provided superior risk-reduction without the performance overhang of headquarters management. It turned out that oversight of many unrelated businesses commonly created negative synergies. External labor and capital markets were generally better than the internal markets of a sprawling conglomerate.

The fourth merger wave, the so-called “Deal Decade” of the 1980s,⁶³ was triggered by a coalescence of several factors: deregulation at the end of the 1970s in transportation (trucking, railroads, and airlines), wholesale natural gas, and telecommunications; dislocations from the oil price shocks of the 1970s; the success of foreign competitors that suggested “slack” in the management of many US companies, and, most notably, the negative synergies, including accounting manipulations,⁶⁴ of the preceding conglomerate wave that produced an unprecedented number of divestitures.⁶⁵ Another contributor was persistent capital market innovation that opened up new sources of debt finance for highly leveraged transactions.⁶⁶ The decade became known for “hostile bids” – nearly a quarter of large public companies received an unsolicited offer⁶⁷ -- even though most actual transactions were “friendly.”⁶⁸ This wave was a powerful one. Measured as a ratio of M&A consideration to total stock market capitalization, the 1980s wave was greater than preceding waves except for the Great Merger Wave. This wave ended as the ambition to do deals exceeded common sense, as reflected in the extravagant bidder overpayment for RJR Nabisco⁶⁹ and in the collapse of a proposed leveraged buyout of United

⁶⁰ See generally Ronald J. Gilson & Bernard Black, *supra* note --, at 310-57. Also see Jeffrey N. Gordon, *The Rise of Independent Directors in the United States, 1950-2005: Of Shareholder Value and Stock Market Prices*, 59 STANF. L. REV. 1465, 1513 & nn.183, 184 (2007).

⁶¹ See Claire A. Hill, Brian J.M. Quinn & Steven Davidoff Solomon, *Mergers and Acquisitions: A Cyclical and Legal Phenomenon*, in Steven Davidoff Solon & Claire A. Hill, eds., *RESEARCH HANDBOOK ON MERGERS AND ACQUISITIONS* 8-9 (2016)

⁶² Gilson and Black, *supra* note -- (citing and discussing literature). Andrei Schleifer & Robert W. Vishny, *The Takeover Wave of the 1980s*, 249 SCIENCE 745, 746 (Aug. 17, 1990)
Andrei Shleifer & Robert W. Vishny

⁶³ Margaret Blair, ed., *THE DEAL DECADE: WHAT TAKEOVERS AND LEVERAGED BUYOUTS MEAN FOR CORPORATE GOVERNANCE* (1993); Shleifer & Vishny, *supra* note --.

⁶⁴ See Peter Steiner, *MERGERS, MOTIVES, EFFECTS, POLICIES* 103-119 (1975) as quoted in Gilson & Black, *supra* note --, at 556-561.

⁶⁵ See Gordon, *supra* note -- at 1521-22; Gilson & Black, 2003-04 Supplement, 16, Fig. 1-5; Gregor Andrade, Mark Mitchell & Erik Stafford, *New Evidence and Perspectives on Mergers*, 15 J. ECON. PERSP. 103, 108 (Spring 2001).

⁶⁶ See Eric S. Rosengren, *The Case for Junk Bonds*, NEW ENGLAND ECON. REV. 40 (May/June 1990).

⁶⁷ Mark L. Mitchell & J. Harold Mulherin, *The Impact of Industry Shocks on Takeover and Restructuring Activity*, 41 J. FIN. ECON. 193, 199 (1996). Looking at a broader market definition, Andrade et al estimates that 14 of public firms received a hostile offer. Gregor Andrade, Mark Mitchell & Erik Stafford, *New Evidence and Perspectives on Mergers*, 15(2) J. ECON. PERSP. 103, 106 (2001).

⁶⁸ Of course often the difference between assessing a deal as “friendly” vs. “hostile” is just a matter of when the proposed transaction became public. G. William Schwert, *Hostility in Takeovers: In the Eyes of the Beholder?*, 55 J. FIN. ECON. 2599 (2000).

⁶⁹ See *In re RJR Nabisco, Inc. Shareholders Litigation*, 1989 WL 7036 (Del. Ch. Jan. 31, 1989); *Fund Books Loss on RJR: A Long Chapter Ends for Kohlberg Kravis*, NY TIMES (July 9, 2004).

Airlines, an airline whose exposure to the business cycle was the antithesis of a steady cash flow to cover repayment of interest and principal.⁷⁰ The wave came to a decided halt with the recession of 1990-91.

The fifth wave, starting roughly in 1993, was associated with the pursuit of scale in light of the rapid increase in the globalization of trade and finance, the invention and development of the internet, and a robust bull market that enabled an expansive use of equity as acquisition consideration.⁷¹ Globalization in the production and trade of manufactured goods (vs. commodities), deregulation, and technological innovation (and optimism) propelled “expansionary” acquisitions focused on growth.⁷² Transactions in the internet space were fueled by “irrational exuberance”⁷³ in stock market valuations as well as a strong belief in the economics of “first mover advantage” and “increasing returns to scale.” The bull market made stock an appealing acquisition currency.⁷⁴ The AOL-Time Warner acquisition announced in January 2000, the largest M&A deal in American business history, used AOL stock as consideration and was initially celebrated for its boldness.⁷⁵ The wave came to an end in 2000, in response to the bursting of the dot.com bubble that led to a significant stock market decline, a follow-on recession, and the shock of the attack on the World Trade Center.⁷⁶

What’s interesting, however, is that the fall off in the aftermath of the fifth wave was quite partial. The decline from 2000 to the 2002 trough was from \$1.7 trillion to \$550 billion (in constant 2005 dollars); the number of acquisitions fell from approximately 9000 to 7000. These are M&A activity levels that would have been signaling a “wave” in prior periods. M&A activity immediately rebounded to over \$1.1 trillion three years later. Even during the financial crisis period of 2007-09, M&A activity never dipped below the \$500 billion level and the announced transactions even at 2009 low point clocked in at approximately \$511 billion (in 2005 dollars). M&A momentum increased throughout the 2010s and remained high even during the

⁷⁰ *Group Fails to Finish UAL Deal*, NY TIMES, Oct 14, 1989; *Breakdown of a Buyout*, WASH. POST, Oct. 28, 1989

⁷¹ See Greg N. Gregoriou & Luc Renneborg, *Understanding Mergers and Acquisitions: Activity Since 1990*, in Greg N. Gregoriou & Luc Renneborg, *INTERNATIONAL MERGERS AND ACQUISITIONS ACTIVITY SINCE 1990* (2007) (Ch. 1); Bengt Holstrom & Steve Kaplan, *Corporate Governance and Mergers Activity in the US: Making Sense of the 80’s and the 90’s*, 15(2) J. ECON. PERSP. 121 (2001). .

⁷² Gregor Andrade & Erik Stafford, *Investigating the Economic Role of Mergers*, 10 J. CORP. FIN 1 (2002).

⁷³ Alan Greenspan, *The Challenge of Central Banking in a Democratic Society*, Federal Res. Board (Dec. 5, 1996). Greenspan’s efforts to use monetary policy to sustain financial stability led to the assumption of a “Greenspan put,” after which “market participants expected the Fed to support asset prices by lowering the policy rate whenever markets tanked, but not try to prick a bubble,” James A. Dorn, *Reflection on Greenspan’s “Irrational Exuberance Speech” after 25 Years*, CATO Institute, Dec. 27, 2021, available at <https://www.cato.org/blog/reflections-greenspan-irrational-exuberance-speech-after-25-years>.

⁷⁴ See Jarrard Harford, *What Drives Merger Waves?*, 77 J. FIN. ECON. 529 (2005) (importance of access to external finance as well as industry shocks in merger wave); Andrei Shleifer & Robert Vishny, *Stock Market Driven Acquisitions*, 70 J. FIN. ECON. 295 (2003). Indeed,

⁷⁵ AOL and Time Warner Link, SalomonSmithBarney Report, March 22, 2000 (“proposed merger ... should create the defining media and communications company of the Internet era ... and the world’s leading combination of content, distribution, Internet experience and broadband assets”), available at <https://transition.fcc.gov/transaction/aol-tw/exparte/aol7analystreports091300.pdf>. The value of the stock used as consideration was \$182 billion! In the same period, WorldCom announced an acquisition of Sprint valued at \$115 billion. That transaction ran afoul of antitrust enforcers and never closed.

⁷⁶ Marina Martynova & Luc Renneboog, *A Century of Corporate Takeovers: What Have We Learned and Where Do We Stand?* 32 J. BANKING & FIN. 2148 (2008).

Covid years of 2020-21, over 12,000 deals, over \$1 trillion (in constant 2005 dollars) in consideration. The persistence of a high level of M&A activity is the change from the prior pattern of “waves.”

Fig. 1

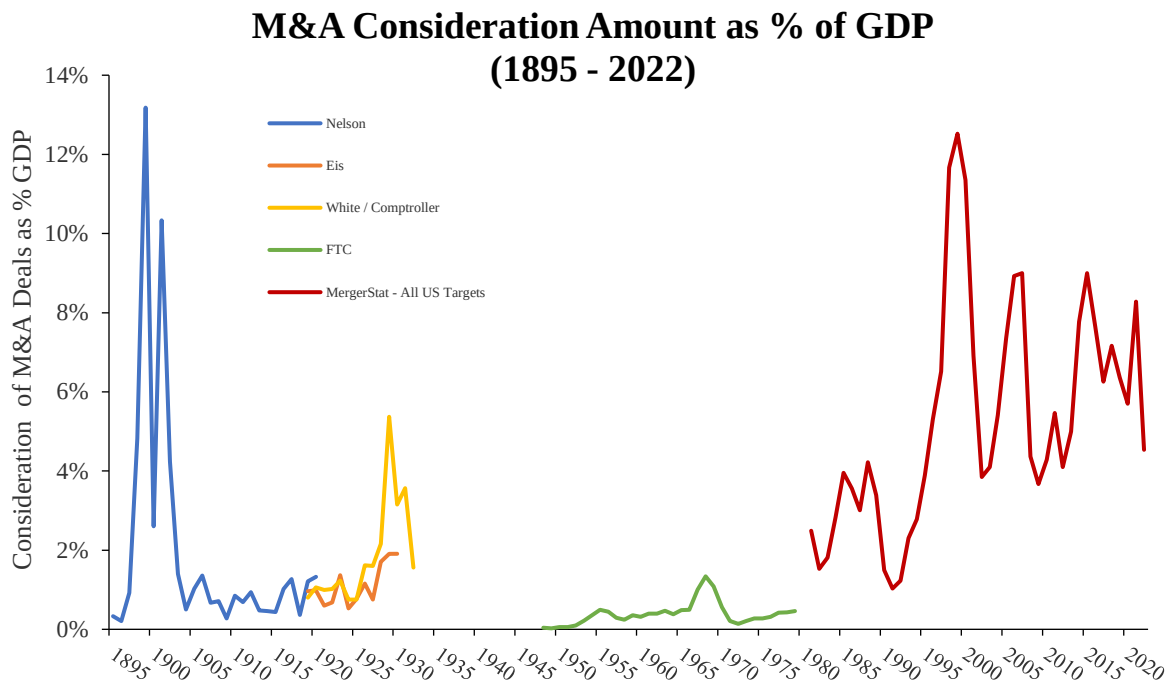


Fig. 2

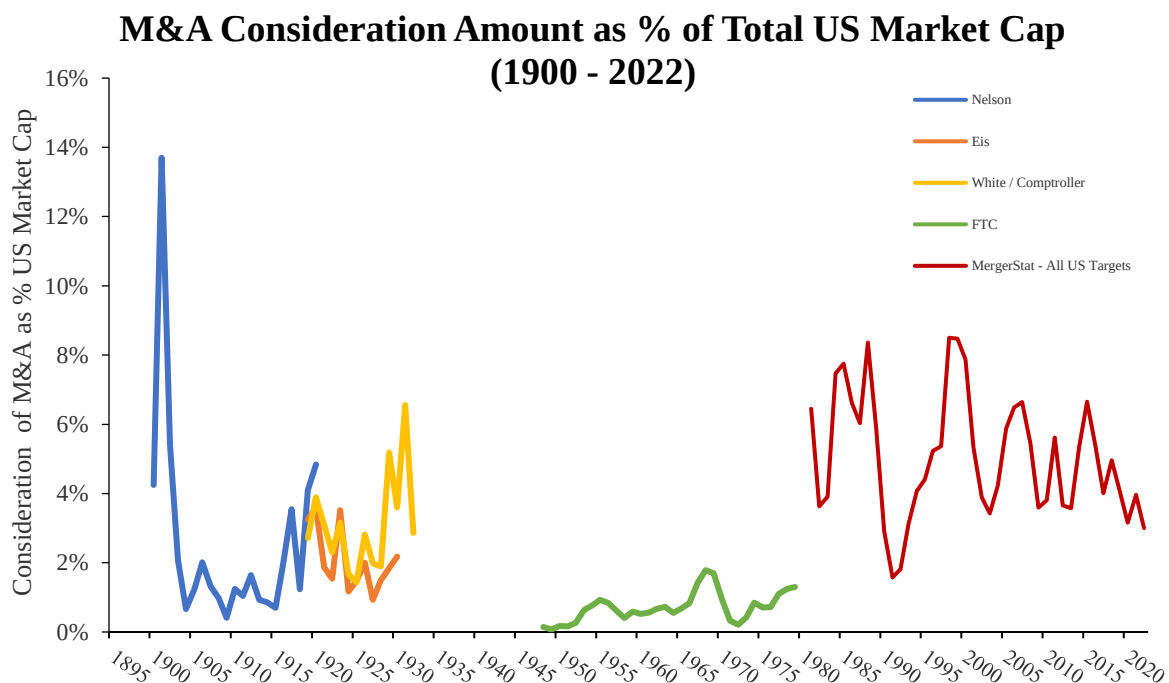


Fig. 3

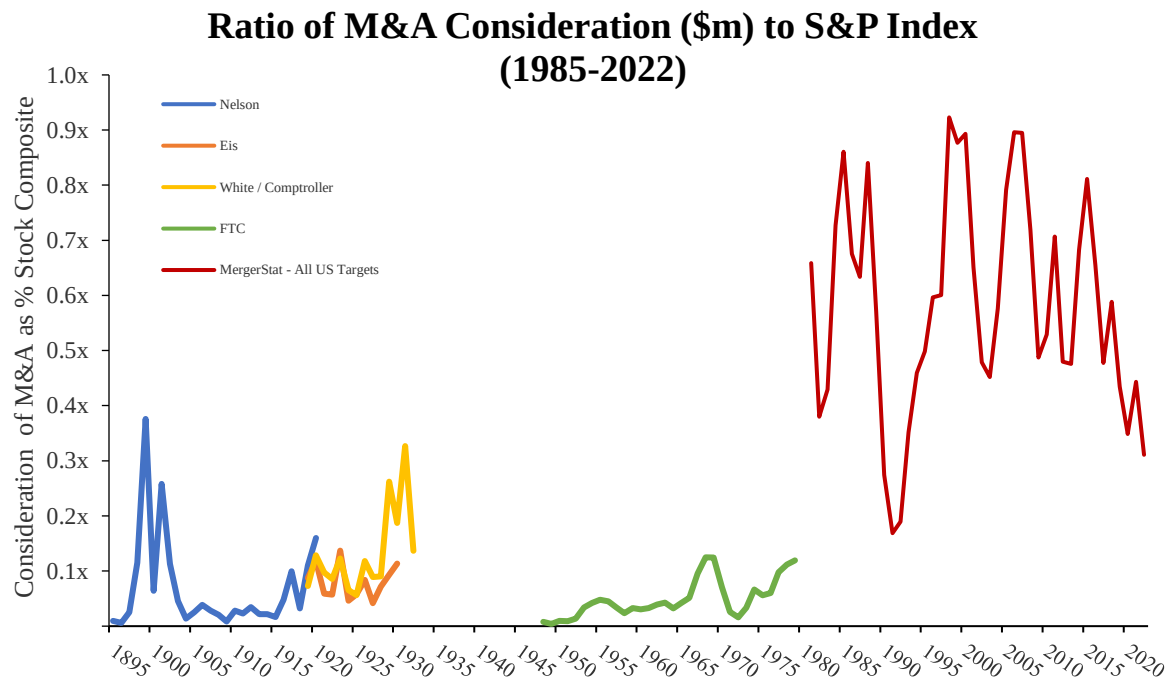
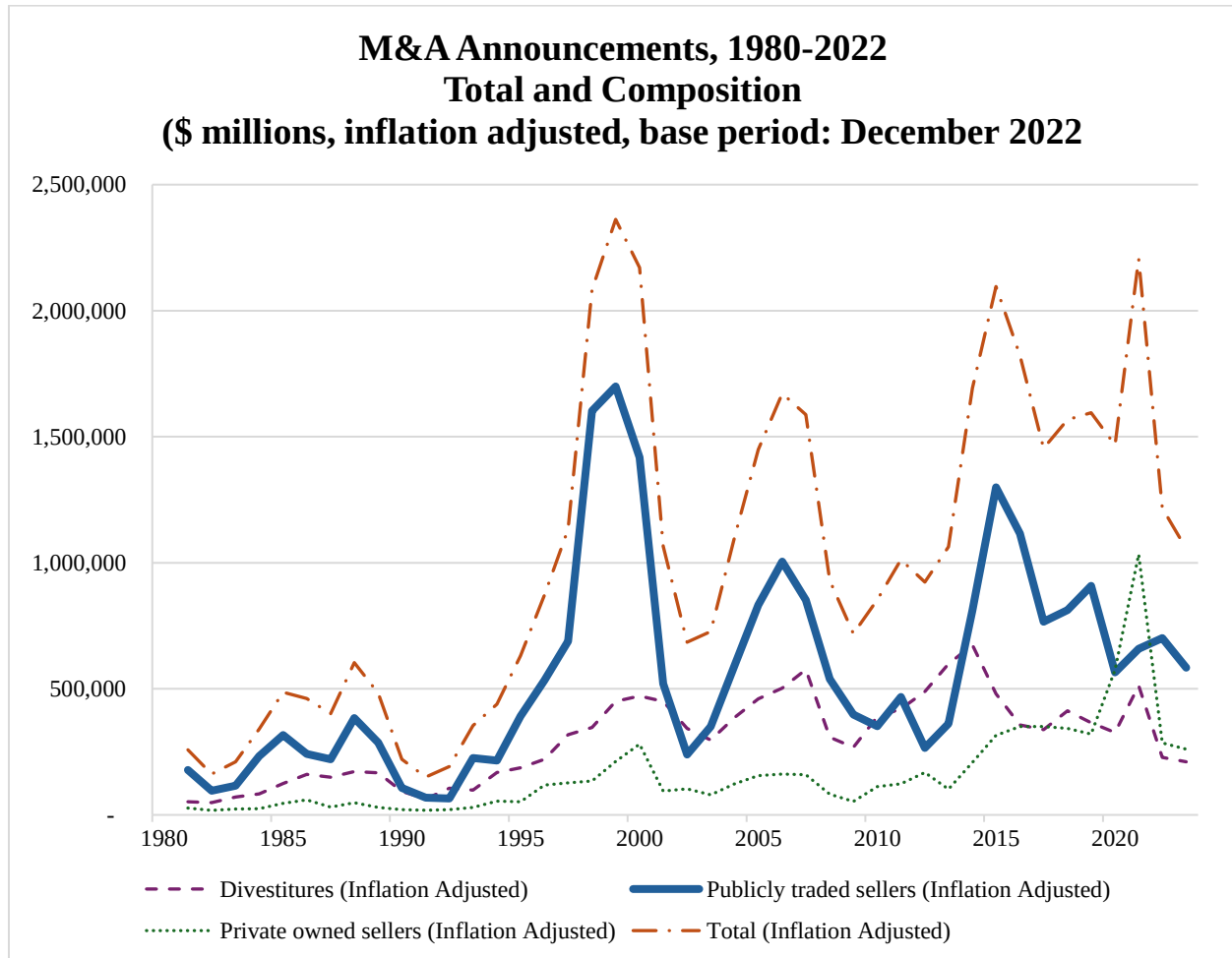


Fig. 4



Part II -- The Transformation of Golden Parachutes from Insurance to Incentive (And from Golden to Platinum)

A “golden parachute” is an element of CEO compensation that pays out if the CEO’s firm becomes subject to a “change in control” transaction after which the CEO is formally asked to leave or otherwise ends his/her employment with the ongoing entity (other than for cause).⁷⁷

⁷⁷ Early versions of the golden parachute were so-called “single trigger,” meaning that a sale triggered the payment even if the target CEO remained in place. Later versions are “double trigger,” requiring both the sale of the company *and* “termination without ‘cause’ or ‘resignation for good reason.’” Stephen W. Fackler & Michael Collin,

Golden parachutes came into increasing use in CEO compensation during the 1980s, as hostile takeovers became increasingly common.⁷⁸ The “parachutes” have been rationalized on two different grounds, familiar in the executive compensation literature. The first was an insurance rationale, a form of “efficient (or “optimal”) contracting”: CEOs make large firm-specific investments. If the firm is taken over, those investments are written down and it is likely that the CEOs next best job will be at much lower compensation. Although employees who are laid off in a merger may suffer similar losses (and don’t get such insurance), the market for CEOs is much tighter. The alternative to such insurance would be much higher compensation on an annual basis, a form of CEO self-insurance.⁷⁹

The second ground was a managerial agency cost rationale. At the time parachutes were inaugurated, CEOs had considerable power to resist an unsolicited bid. This stemmed from their relationship with the directors, most of whom (at the time) were selected by the CEO and the costly uncertainty (to the acquiror) associated with an uncooperative CEO.⁸⁰ Moreover, over the course of the 1980s, the Delaware courts validated many far-reaching target defensive measures, culminating in judicial approval of the poison pill and the “just say no” defense. Charitably, the parachute was an “incentive alignment” mechanism of the interests of the CEO and the shareholders. Less charitably, the pill could be styled as the shareholder buyback of the takeover resistance endowment granted to managers by the Delaware courts, which were concerned that a more rigorous approach might trigger an exodus from Delaware to a more protective jurisdiction.⁸¹

Rather remarkably, the golden parachute initially was categorized as a management “entrenchment” device, included in the well-known corporate governance “G-index” of Gompers-Ishii-Metrick (2003),⁸² and surviving a sophisticated lawyers’ cut in the “E-index” of

Golden Parachute Practice Pointers, HLS FORUM ON CORP. GOV. Aug. 2, 2013 (Gibson, Dunn & Crutcher law firm memo), available at <https://corpgov.law.harvard.edu/2013/08/02/golden-parachute-compensation-practice-pointers/>

⁷⁸ See, e.g., Craig E. Lefanowicz, John R. Robinson & Reed Smith, *Golden Parachutes and Managerial Incentives in Corporate Acquisitions: Evidence from the 1980s and 1990s*, 6 J. CORP. FIN. 215, 217 (2000) (“Although less than 20% of the managers of target firms had GPs in the early 1980s, almost 86% of the managers of target firms had GP contracts in 1995.”) Rather remarkably, until the 1980s CEOs of most major corporations served “at will.” Kenneth C. Johnsen, *Golden Parachutes and the Business Judgment Rule: Toward a Proper Standard of Review*, 94 Yale L. J. 909, n. 5 (1985) (citing sources). This institutional fact, a testament to the fact of an Imperial CEO, is a baseline for measuring the shock of the hostile deal era that followed.

⁷⁹ In the early 1980s a different rationale was current: that the golden parachutes were a kind of settling up for prior periods of under-compensation, a deferred compensation payment. This was a rationale explicitly rejected in the Conference Committee Report associated with the legislation that effectively capped golden parachute payments. See Conf Comm Report H.R. REP. No. 861, 98th Cong., 2d Sess. at 852, <https://www.finance.senate.gov/imo/media/doc/Conf-98-861.pdf>

Joint Tax Committee (1984) developed an efficiency based rationale against parachutes.

⁸⁰ See, e.g., Kenneth C. Johnsen, *Golden Parachutes and the Business Judgment Rule: Toward a Proper Standard of Review*, 94 Yale L. J. 909 (1985), writing as if the choice of whether to resist was the CEO’s, not the board.

⁸¹ See Wachtell, Lipton, Rosen & Katz Memo to Clients, “You Can’t Say No in Delaware No More,” (Dec. 17, 1988) (objecting to Chancery Court decisions that preferred shareholder choice over board choice in responding to a hostile bid and threatening to “leave... Delaware for a more hospitable state of incorporation”), quoted in Jeffrey N. Gordon, *Corporations, Markets, and Courts*, 91 COLUM. L. REV. 1931, 1959 (1991).

⁸² Paul A. Gompers, Joy L. Ishii & Andrew Metrick, *Corporate Governance and Equity Prices*, 118 Q. J. of Econ. 107 (2003)

Bebchuk-Cohen-Ferrell (2008).^{83, 84} An extensive empirical literature debated whether adoption of golden parachute increased or decreased the value of the firm.⁸⁵ The literature now seems to have resolved in favor of the view that the presence of a golden parachute increases the likelihood of a takeover in a way that is economically measurable and statistically significant.⁸⁶

Analysis of the impact of the golden parachute on M&A begins with the observation that the “golden parachute” of the 1980s is quite different in substance and rationale from the “golden parachute” of the 2000s.⁸⁷ The payoff of the original golden parachute was styled as a multiple of current salary (and expected bonus). The parachute contract also called for the acceleration of unvested stock options, but since stock options were then such a minor part of compensation,⁸⁸ the parachute payment was framed almost entirely in terms of prior cash compensation. After public reaction to some large parachute payments,⁸⁹ Congress placed a soft cap of “less than 3x” prior compensation, prescribing that excess payments would not be deductible to the corporation and would be subject to a 20 percent excise tax on the recipient executive. Though “excess”

⁸³ Lucian A. Bebchuk, Alma Cohen & Allen Ferrell, *What Matters in Corporate Governance?*, 22 Rev. Fin. Stud. 783 (2009).

⁸⁴ I think there was some mingling of “entrenchment,” which suggests augmentation of managerial power to resist a bid, and corporate governance “quality,” which could include “slack” that doesn’t impede a determined bidder.

⁸⁵ E.g., Damian J. Mogavero and Michael F. Toyne, *The Impact of Golden Parachutes on Fortune 500 Stock Returns: A Reexamination of the Evidence*, 34 Q. J. of Bus. & Econ. 30 (1995) find significantly negative abnormal returns associated with the announcement of parachute adoption. Lane Daley & Chandra Subramanian, *Free Cash Flows, Golden Parachutes, and the Discipline of Takeover Activity* (October 1995), available at <https://ssrn.com/abstract=7113> (1995); Harbir Singh & Farid Harianto, *Management-Board Relationships, Takeover Risk, and the Adoption of Golden Parachutes*, 32 ACAD. OF MGMT. J. 7 (1989), James Wade, Charles A. O’Reilly III & Ike Chandratat, *Golden Parachutes: CEOs and the Exercise of Social Influence*, 35 ADMIN. SCI. Q. 587. (1990) – entrenched managers adopt GPs to thwart takeovers. Early golden parachutes consisted principally of a salary multiple.

⁸⁶ See Jonathan M. Karpoff, Robert Schonlau & Eric Wehrly, *Which Takeover Provisions Deter Takeovers?*, 75 J. CORP. FIN. 102218 (2022), at Tables 4, 7 & 8. Many researchers find that takeover likelihood is positively related to the use of golden parachutes, including: Anup Agrawal & Charles R. Knoeber, *Managerial Compensation and the Threat of Takeover*, 47 J. FIN. ECON. 219 (1998), Judith C. Machlin, Hyuk Choe & James A. Miles, *The Effects of Golden Parachutes on Takeover Activity*, 36 J. L. ECON. 861 (1993), Tatyana Sokolyk, *The Effects of Antitakeover Provisions on Acquisition Targets*, 17 J. CORP. FIN. 612 (2011), M. Sinan Goktan & Robert Kieschick, *A Target’s Perspective on the Effects of ATPs in Takeovers After Recognizing Its Choice in the Process*, 18 J. CORP. FIN. 1088 (2012), Sattar Mansi, John K. Wald & Andrew Zhang, *Severance Agreements and the Cost of Debt*, 41 J. CORP. FIN. 426 (2016), Lucian A. Bebchuk, Alma Cohen & Charles C. Y. Wang, *Golden Parachutes and the Wealth of Shareholders*, 25 J. CORP. FIN. 140 (2014), and M. Sinan Goktan, Robert Kieschnick & Rabih Moussawi, *Corporate Governance and Firm Survival*, 53 FIN. REV. 209 (2018). This itself reflects the different function that golden parachutes have come to play, as discussed below.

⁸⁷ This is true of many devices fashioned as an anti-takeover devices. The poison pill, for example, adds the friction of needing to package a proxy contest threat alongside a cash tender offer, but in the absence of a classified board, see *Air Products/Air Gas*, will be insufficient to block a hostile bid. Instead, the poison pill now serves to give management control over the sale process in friendly transactions, preventing contending bidders from gun-jumping the company’s structured auction process with cash tender offers. Managements are trying to repurpose the poison pill to fend off shareholder activists, a context quite different from the “boot-strapping bust-ups” of the 1980s that spurred their creation. See Jeffrey N. Gordon, *The Rejected Threat of Corporate Vote Suppression: the Rise and Fall of the Anti-Activist Pill*, 2022 COLUM. BUS. L. REV. 206 (2022)

⁸⁸ Kevin J. Murphy, *Executive Compensation: Where We Are, and How We Got There*, 2 HANDBOOK OF THE ECON. FIN. 211, 278-82 (2013) [hereinafter “Murphy (2013)”]

⁸⁹ See Peer C. Fiss, Mark T. Kennedy & Gerald F. Davis, *How Golden Parachutes Unfolded: Diffusion and Variation of a Controversial Practice*, 23 ORG. SCI. 1077, 1079-1080 (2012); Kevin Murphy, *Executive Compensation: Where We Are, and How We Got There*, 2 HANDBOOK OF THE ECON. FIN. 211 (2013), Ch. 4, at 269 (Golden parachute for William Agee following the 1982 Bendix takeover fight).

payouts were legal, if more costly, the statutory provision became the conventional payout.⁹⁰ The early empirical literature on golden parachutes used a 2.9x payout as the benchmark (and largely ignored option exercises).⁹¹

Two important changes occurred over the 1990s that transformed the nature of golden parachutes. First, the composition of executive compensation became increasingly dominated by stock-based pay—stock options and restricted stock.⁹² Executives entered into multi-year contracts with a large option/restricted stock component that vested over time, with the vesting often performance-based. Such compensation was promoted as better aligning management's interests with the shareholders, both in the response to an unsolicited offer but more generally in the operation of the firm. This would ameliorate agency cost problems. The heavy use of stock options was also seen as competitively necessary to hold onto executives who otherwise would defect to the newly emerging “dotcom” companies, which were offering stupendous option grants since they were cash-poor.⁹³ Stock options also received favored regulatory treatment: As a tax matter, stock option-based compensation was regarded as “performance based” and thus not subject to the \$1 million deductibility limit on cash compensation set in 1993.⁹⁴ As an accounting matter, stock options could be issued without any charge to reported earnings until a rule change in 2006.⁹⁵

Second, paradoxically, golden parachutes became more entrenched over the 1990s despite the increasingly diminished capacity of managements to resist an unsolicited premium bid. The reduction in managerial prerogative resulted from corporate governance changes as well as the increasing reconcentration of share ownership in institutional investor hands. Directors became increasingly independent in fact.⁹⁶ In part this was spurred by doctrinal developments in Delaware law. Courts tied a target's entitlement to employ defensive tactics, including the “just say no” version of the poison pill, to approval by independent directors. “Independence” that had to withstand scrutiny militated for greater distance from the CEO and thus less amenable to reflexive CEO objections to a premium offer. Such independence-in-fact

⁹⁰ Some objected that the 3x cap now set a baseline which in many cases increased the payout that would otherwise have obtained (much like other excess compensation thresholds have set floors). *See, e.g.*, David I. Walker, *A Tax Response to the Executive Pay Problem*, 93 B.U. L. REV. 325, 332-34 (2013); Lucian A. Bebchuk & Jesse M. Fried, *Executive Compensation as an Agency Problem*, 17 J. ECON. PERSP. 71 (2003) Indeed, Kevin Murphy reports that adoption of the golden parachute tax provisions triggered proliferation of golden parachute agreements. In the 1984-1987 period, prevalence increased from “rare” to 41% of the 1000 largest corporations. *Id.* at 270. Of course, the hostile takeover market was booming in the period, so that might have driven adoptions.

⁹¹ *See* David Offenberg & Micah Officer, *The Totality of Change-in-Control Payments*, 29 J. CORP. FIN. 75 (2014) (existing literature “is almost exclusively focused on traditional golden parachutes paid to departing CEOs (cash awards, usually as a fixed multiple of the CEO's final salary and bonus), ignoring other potentially important forms of change-in-control payments.”).

⁹² Murphy (2013). Brian J. Hall & Jeffrey B. Liebman, *Are CEOs Really Paid Like Bureaucrats?*, 113 Q. J. ECON. 653, 655, 662, 679-680 (1998).

⁹³ Murphy (2013).

⁹⁴ *See* Kevin J. Murphy & Michael C. Jensen, *The Politics of Pay: The Unintended Consequences of Regulating Executive Compensation* (April 2018), USC Research Paper No. CLASS18-8, Available at <https://ssrn.com/abstract=3153147> (discussing impact of section 162(m) of the Internal Revenue Code.).

⁹⁵ *See* Financial Accounting Standards Board SFAS 123(R) (2006).

⁹⁶ Traced in more detail in Jeffrey Gordon, *The Rise of Independent Directors in the United States, 1950-2005: Of Shareholder Value and Stock Market Prices*, 59 STAN. L. REV. 1465(2007), 1520-23, 1531-33, 1539-40.

was also enhanced by the rise of institutional investor ownership of public companies.⁹⁷ Such investors held individual stocks as part of a diversified portfolio of equity securities. Firm-specific monitoring was not economically rational for these investors. So their focus turned to directors: independence and quality. Better director monitoring of management would directly serve shareholders' interest at low cost. Corporate governance information intermediaries—the proxy advisors like Institutional Shareholder Services—supplied a form of substituted monitoring of management and director performance.

The combination of ownership reconcentration and greater director independence-in-fact would make it much harder for the CEO to turn down an unsolicited premium bid. The shareholders were watching. The directors were watching and knew the shareholders were watching. In short, changes in the underlying corporate governance environment reduced managerial agency costs when it came to unsolicited offers. Hostile bids were not prominent in the 1990s, unlike the 1980s, in significant part because of a change in the underlying governance structure.⁹⁸ “Unsolicited bids” in the 1990s almost invariably became “friendly deals.”

The shift to stock-based pay both substantially ameliorated the concern that a target CEO would be undercompensated in a merger transaction and closely aligned management and shareholder interests in responding to an unsolicited offer. Moreover, enhanced monitoring by independent directors buttressed by observant institutional shareholders with clout dramatically reduced a CEO's capacity to thwart a premium bid. The incentive alignment and the enhanced monitoring should have substantially eliminated the risk that the CEO would (or could) thwart an unsolicited premium bid.

Yet golden parachutes persisted and, as demonstrated by evidence discussed below, became increasingly rich over the course of the 2000s and 2010s, “platinum.” “Persistence” (“survivals,” per Holmes⁹⁹) is not an uncommon feature, perhaps, of complex relationships. A term, like a parachute provision, becomes part of the “market” contract, so to eliminate it, even if it provides a gratuitous benefit, can be taken as a negative signal of enthusiasm as a board seeks to hire a new CEO. And to some extent the parachute became richer almost mechanically. Executive compensation, especially stock-based pay, ballooned over the period.¹⁰⁰ Since the parachute provided for the acceleration of unvested stock-based pay, as such grants increased, a change in control would quite commonly produce a large payout based on the immediate realization of stock-based claims.¹⁰¹

Moreover, the parachute payout was further inflated by another change over the period: an increase in the “pay slice” of the CEO (the CEO's share of the total compensation received by the top five senior executives).¹⁰² It was not only that management's compensation grew

⁹⁷ See Ronald Gilson & Jeffrey Gordon, *The Agency Costs of Agency Capitalism: Activist Investors and the Revaluation of Governance Rights*, 113 COLUM. L. REV. 863 (2013).

⁹⁸ See Gregor Andrade, Mark Mitchell & Erik Stafford, *New Evidence and Perspectives on Mergers*, 15 J. ECON. PERSP. 103, Table 1 (2001) (4 percent hostility in the 1990s versus 14 percent in the 1980s).

⁹⁹ Oliver Wendell Holmes, *Law In Science and Science in Law*, 12 Harv. L. Rev. 443, 452 (1899).

¹⁰⁰ Lawrence Mishel & Jori Kandra, *CEO Pay Has Skyrocketed 1,322% Since 1978*, ECON. POL'Y INST. (Aug. 10, 2021) at <https://www.epi.org/publication/ceo-pay-in-2020/>.

¹⁰¹ This is borne out in Table 1, *infra*, which shows as parachute payout increases, so does the fraction accounted for by the equity-based component.

¹⁰² See Lucian Bebchuk & Yaniv Grinstein, *The Growth in Executive Pay*, 21 OXFORD REV. OF ECON. POL'Y 283 (2005); Lucian Bebchuk, K.J. Martijn Cremers & Urs C. Peyer, *The CEO Pay Slice*, 103 J. FIN. ECON. 199 (2011).

substantially over the 1990s, but that the CEO obtained an increasing fraction. Since compensation over the 1990s increasingly consisted of stock-based pay, the growing CEO slice, in interaction with the acceleration of unvested stock-based grants, would also contribute almost mechanically to a large parachute payout.

The incentive structure of parachutes became more “high powered” as well over the 2000s and 2010s. A critical development was a 2006 accounting change that transformed stock option grants from plain vanilla “at the money” options (meaning: exercise price at the prevailing market price) to options with exercise grants that were “out of the money.”¹⁰³ This added an extra performance element to stock option value. But it also increased the risk that options would expire out of the money.¹⁰⁴ Pursuit/acceptance of a premium bid would resolve that risk in a high payout way.^{105 106}

Parachutes consciously became richer as well. The large payouts triggered the tax penalties of the 1984 golden parachute provisions. Yet firms absorbed the non-deductibility of the parachute payments. And in many cases parachute provisions were amended to provide recipients with additional compensation to cover the 20 percent excise tax on “excess” parachute payments, and yet additional compensation to cover the taxes owing on additional subsidy, a “gross-up.”¹⁰⁷ Moreover, as shown by Choi *et al.* (2020), high-end parachute payments came to set the norm for “quasi-chute” compensation upon a change in control.¹⁰⁸ Meaning: that in cases where a particular CEO’s originally contracted-for parachute payment would not achieve a deemed “market” level (perhaps because the transaction came late in the stock-based vesting period, leaving not so many stock-based claims to accelerate), the parachute agreement would be amended in this final period to produce a better outcome.

The general increase in CEO compensation, especially in stock-based pay, and the accelerated vesting provisions produced this result: a transaction that triggered a parachute would transform many a CEO from the merely wealthy to the quite rich.¹⁰⁹ Thus, it seems obvious that golden parachutes would come to have a different function. The original function was to induce an incumbent CEO to stand aside in favor of a premium unsolicited bid or perhaps to be a fair evaluator of the bid, debiased by the possibility of a parachute payment. By the 2000s, the

¹⁰³ See J. Carr Bettis, John Bizjak, Jeffrey Coles & Swaminathan Kalpathy, *Performance-vesting Provisions in Executive Compensation*, 66 J. ACCT. & ECON. 194, 196 (2018) (describing the effect of the adoption of FAS 123(R), which both required companies to expense options but which adopted a valuation formula that favored “out of the money” and other contingent strategies).

¹⁰⁴ Lawrence Mishel & Jori Kandra, *CEO Pay Has Skyrocketed 1,322% Since 1978*, ECON. POL’Y INST. (Aug. 10, 2021) at <https://www.epi.org/publication/ceo-pay-in-2020/>.

¹⁰⁵ Over the 2011-2022 period, for what might be called “platinum parachutes”—the top 20% of the parachutes—most of the value comes from the realization of equity (stock and options) as opposed to cash, a median equity-to-cash ratio of 3.3x as opposed to a median of 0.9x for the entire universe. See *infra* TAN --.

¹⁰⁶ For a thoughtful discussion of the incentive effects, including potential downside, of stock option vesting as reflected in Delaware cases, see *McRitchie v. Zuckerberg*, 315 A.3d 518, 554 n.97 (2024) (Laster, VC).

¹⁰⁷ IRC §4999 imposes the excise tax on an “excess” golden parachute payment. The availability of gross-ups are increasing in deal size, which is not surprising since the value of the appreciated accelerated stock in large deals will commonly exceed the 2.99x salary/bonus threshold. See Mark Siciliano, *Analyzing Change-in-Control Payments Since the Enactment of Say-on-Pay*, 50 COMP. & BENEFITS REV. 82, 87 (2018) (fig. 3).

¹⁰⁸ Albert H. Choi, Andrew C.W. Lund & Robert Schonlau, *Golden Parachutes and the Limits of Shareholder Voting*, 73 VAND. L. REV. 223 (2020)

¹⁰⁹ I demonstrate this below with data drawn from the 2010-2022 period, per disclosures now required by the Dodd-Frank Act Of 2010. See *infra* TAN --.

magnitude and structure of parachutes stood for something different in the CEO's attitude and role. High payoff golden parachutes engender not just the CEO's willingness to consider a merger proposal but also provide inducement to pursue merger prospects in which the CEO's firm is the target. Indeed, this is reflected in the empirical work on golden parachutes; the recent work shows that parachutes are positively associated with the likelihood of becoming a target.¹¹⁰ By contrast, the empirical work of the 1980s and early 1990s was focused on different questions: whether golden parachutes resolved or exacerbated managerial agency problems.¹¹¹ And, as noted previously, the governance index literature initially marked parachutes as an entrenchment device. More recent empirical work is to a different conclusion: that parachute adoption is a good thing for shareholders, apparently through the channel of making a premium takeover more likely.¹¹² The pivot in the empirical work is not because we have collectively become smarter in understanding how parachutes work; rather, the parachute of today is just different.

The extent of the difference is reflected in a recent article on golden parachutes, Choi *et al.* (2020),¹¹³ which, in the context of showing the lack of bite of a shareholder advisory vote on golden parachutes added in 2010 by post-financial crisis legislation, provides a detailed account of the increasing size and leverage of prospective parachute payments over the 2006-2016 period. The article also documents how high golden parachute payouts have become a kind of target CEO success fee in connection with a merger.

Choi *et al.* (2020) exploits two different data sources. The first is the compilation by Execucomp, of data on Russell 3000 firms that became available beginning in from newly required SEC compensation disclosure, "Compensation Disclosure and Analysis" (CD&A")¹¹⁴ Among the categories of required disclosure are the terms of golden parachute arrangements. The second source is detailed disclosure about realized golden parachute payments in connection with actual merger transactions. This requirement was added by post-financial crisis legislation, the Dodd Frank Act of 2010¹¹⁵ that required a target shareholder advisory vote on the golden parachute payments to be made in connection with a merger, so-called "Say on Golden Parachute ("SOGP").¹¹⁶ So Choi *et al.* uses data on "pro forma" parachute values over the 2006-2016 period and "realized" parachute values over the 2011-2016 period.

¹¹⁰ Eliezer M. Fich, Anh L. Tran & Ralph A. Walking, *On the Importance of Golden Parachutes*, 48 J. FIN. & QUANTITATIVE ANALYSIS 1717, 1718 (2013)

¹¹¹ See, e.g., Jocelyn Evans, Thomas H. Noe & John H. Thornton Jr., *Regulatory Distortion of Management Compensation: The Case of Golden Parachutes for Bank Managers*, 21 J. OF BANK. & FIN. 825 (1997); Lucian A. Bebchuk & Jesse M. Fried, *Executive Compensation as an Agency Problem*, 17 J. OF ECON. PERSP. 71 (2003).

¹¹² This is also reflected in a sea of change in shareholder proposals regarding golden parachutes. Once a favorite target of shareholder proposals calling for repeal, by 2009-10 such proposals had dramatically dwindled, only 11. See Karpoff *et al.* at Table 5.

¹¹³ Albert Choi, Andrew Lund & Robert Schonlau, *Golden Parachutes and the Limits of Shareholder Voting* 73 VAND. L. REV. 223 (2020).

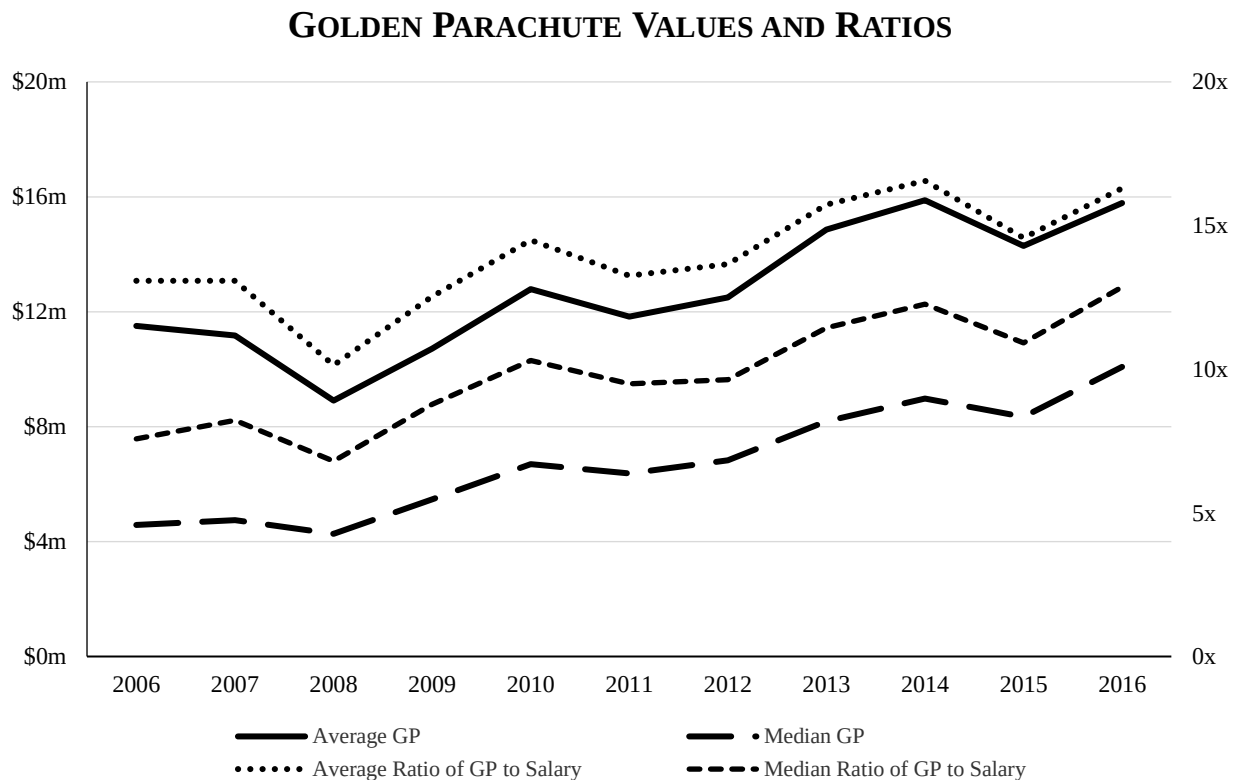
¹¹⁴ 17 C.F.R. § 229.402. See Jeffrey N. Gordon, *Executive Compensation: If There is a Problem, What's the Remedy? The Case for "Compensation Discussion and Analysis"*, 30 J. CORP. L. 675 (2005).

¹¹⁵ More formally, the Dodd-Frank Wall Street Reform and Consumer Protection Act., Pub. L. No. 111-203, 124 Stat. 1376 (2010) (codified as amended in scattered sections of 15 U.S.C. (2012)).

¹¹⁶ Id. §951. The implementing regulation is Shareholder Approval of Executive Compensation and Golden Parachute Compensation, 76 Fed. Reg. 6010, 6027 (Feb. 2, 2011) (codified at 17 C.F.R. § 229, 240, 249). The laws and regulations include (i) Section 951 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat.1376, 1899 (2010) (codified at 15 U.S.C. § 78n-l(b) (2012)) (amending the Securities Exchange Act of 1934 by adding new Section 14A), which requires U.S. public companies to conduct a non-binding

The steady increase in the pro forma value of parachutes over the ten-year period 2006-2016 is reflected in Figure 5 (based on data from Choi *et al.*). The average (mean) parachute value increases from \$12 million to \$18 million over the period. Also of significance is that the average multiple of parachute payment to salary increases from 14x to 18x (remembering that the initial triggering threshold for the adverse tax result was 3x).

Fig. 5



Adapted from Albert Choi, Andrew C.W. Lund, Robert Schonlau, *Golden Parachutes and the Limits of Shareholder Voting*, 73 VAND. L. REV. 224, 257. Table 1, Fig. 1 (2020)

The reported “pro forma” parachute value from the CD&A data understates a target CEOs expectation in two respects. First, for firms that became targets, Choi *et al.* uses the SGOP data to show that the *realized* parachute value was on average (mean) 16.9 percent higher than the earlier reported *pro forma* amount, probably reflecting the deal premium on the target stock in the stock-based pay package.¹¹⁷ Second, Choi *et al.* also discover that nearly half the firms that entered into merger agreements in the post-2011 period (after adoption of SOGP) are

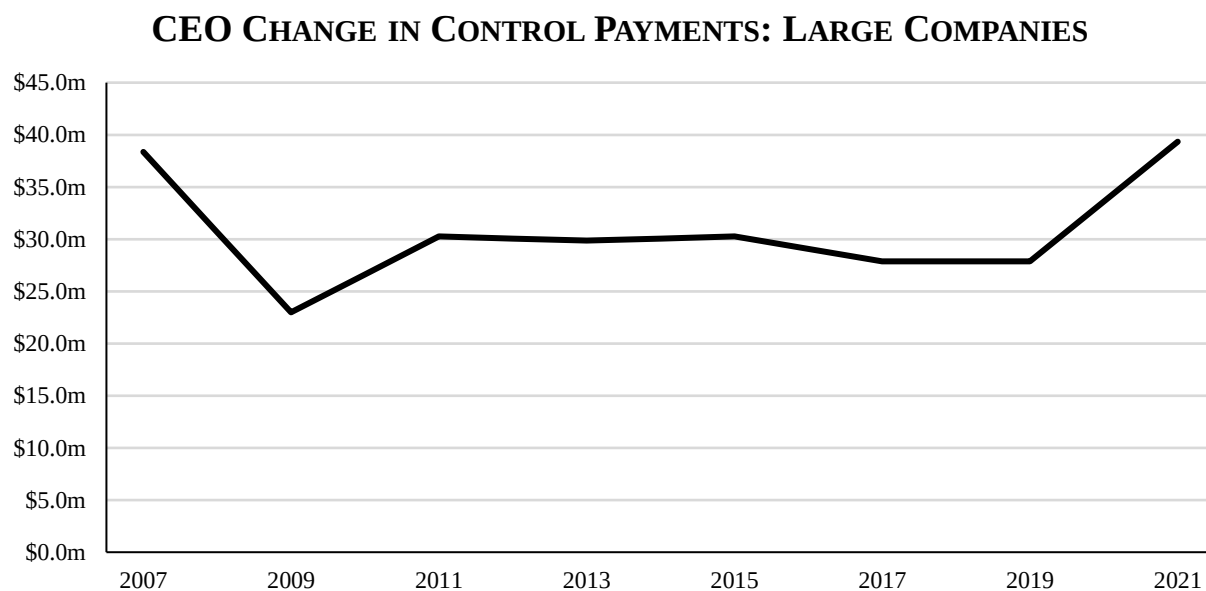
shareholder advisory vote on chute payouts in connection with mergers and other significant corporate transactions that are presented to the shareholders for approval, and (ii) Item 402(t) of Regulation S-K, 17 C.F.R. § 229.402(t) (2014), which requires disclosure of any agreement or understanding (written or unwritten) between the target or acquirer and named executive officers of each concerning any type of compensation (current, deferred, or contingent) based on or otherwise relating to the transaction.

¹¹⁷ Choi *et al.*, at 249.

firms with below average pro forma parachutes.¹¹⁸ The firms amended their parachutes to bring them up at least to the value of non-amending firms; indeed, for the median firm, exceeding that value by 8 percent.¹¹⁹ This suggests that there is such a strong market expectation of a target CEO's reward for a successful merger that, despite the absence of a contractual obligation, the target board enriches the CEO's parachute payout.¹²⁰

Compensation consultant Alvarez and Marsal has produced biannual studies of golden parachutes since the advent of the CD&A but limits the studies to the top twenty firms in ten different business sectors, 200 in all. The average pro forma parachute is much higher than for the broader set of firms covered in Choi *et al.*, more than twice as large. The parachute payment/salary ratio is approximately 11x, slightly lower than for the broader sample, but the absolute value of the parachute is considerably larger, as shown through a comparison of Figures 5 and 6. The Alvarez and Marsal data show that the size of the pro forma parachutes for the largest companies has remained high throughout the post-financial crisis/post-Dodd-Frank SOGP reform era, trending higher at the end, as the M&A market heated up.

Fig. 6



Data source: Alvarez & Marsal biannual surveys, 2007-2021, author [RA] calculations

¹¹⁸ *Id.* at 261 Table 8 (279 targets over the 2011-16 period; the 138 targets that amended their golden parachute (“GP”) had Benchmark Year -1 average GPs that were less than the equivalent year GP of the 141 targets that did not amend).

¹¹⁹ *Id.*

¹²⁰ Similar observations have been made by public reports of compensation professionals. For example, a recent Alvarez & Marsal study of healthcare industry mergers in the 2013-2017 period showed that 16 of 107 (15 percent) amended golden parachute agreements in the course of merger negotiations to add tax gross-ups, and they were more structured to be more costly than the unamended version. See Alvarez & Marsal, 2017/2018 Executive Change in Control Report at 5.

Choi *et al.* also present evidence that takeover likelihood is increasing with the size of the target CEOs golden parachute. For firms that became targets in the post-2011 period, the CEO pro forma parachute was significantly higher than the non-target.¹²¹ This is consistent with other recent empirical literature that finds a positive influence of parachutes on takeover probability.

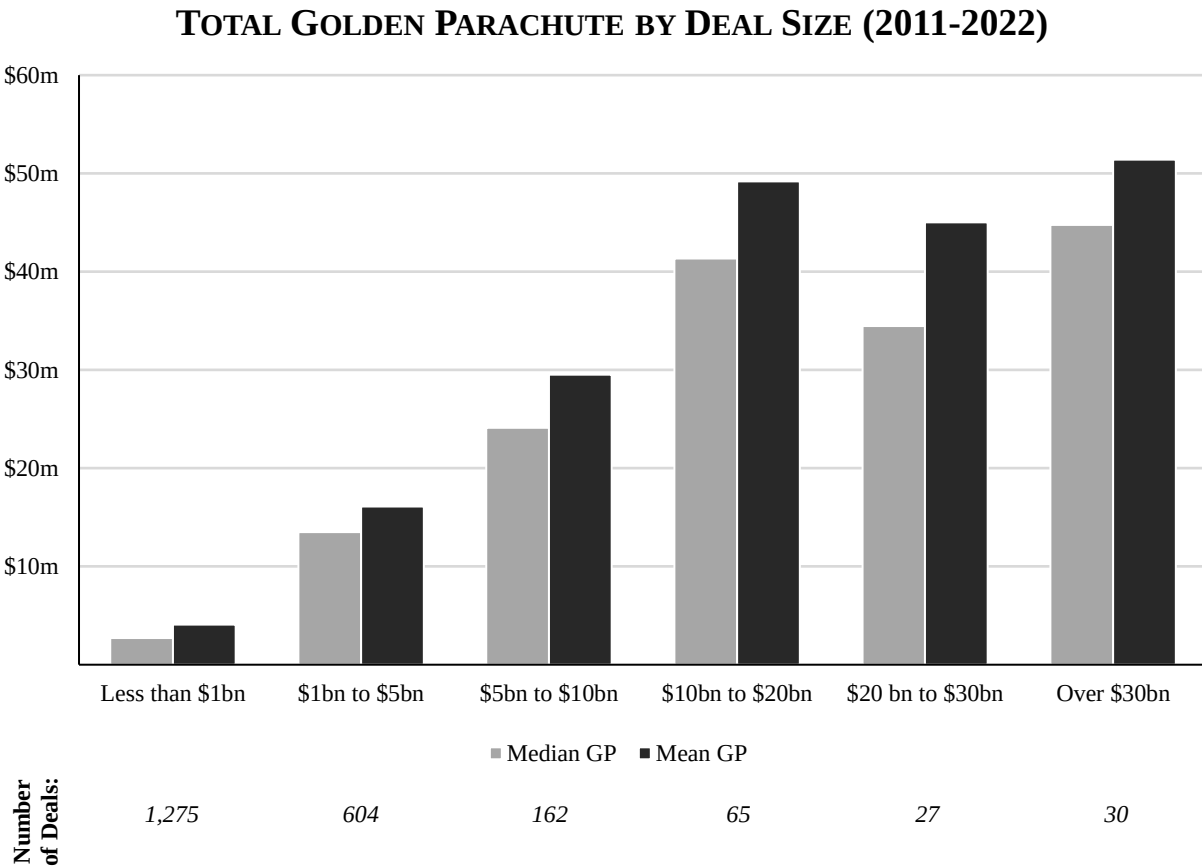
The transformation in the golden parachute from its modest origins in the 1980s is perhaps best demonstrated through a close examination of the composition of golden parachutes and tracking the very large differences in parachute payments conditional on the size of the M&A transaction. I obtained access to a database of public filings pursuant to the SOGP requirement of the Dodd-Frank Act.¹²² The database provides detailed information on realized golden parachutes over the 2011-2022 period, a total of 2163 transactions. Analysis of the data reveals some striking facts. (See the figure below, Golden Parachutes by Deal Size, Figure 7.) First, the size of parachute payments varies directly with the size of the transaction, ranging from \$4.1 million (mean) for transactions under \$1 billion to \$51.4 million (mean) for transactions of \$30 billion or greater. Second, although means are higher than medians, the gap is relatively narrow, meaning that the means generally characterize the group rather than being driven by a few outliers.

Transactions under \$1 billion (n = 1275) comprise 59 percent of all covered transactions in the period. For this group of transactions, golden parachutes were relatively modest, \$4.1 million (mean). As transactions crossed the \$1 billion threshold, the parachutes became meaningfully larger. For transactions \$1 billion to \$5 billion (n=604), average payouts were \$16.1 million (mean); for transactions \$5 billion to \$10 billion (n= 162), the average payouts nearly doubled, \$29.5 million (mean). Transactions \$10 billion and above (n=122) seemed to be in a special class, with average payouts of approximately \$48 million (mean).

¹²¹ Id. at 249. The target proforma was \$16.44 million (mean)/\$11.53 million (median); for the non-targets, \$12.67 million (mean); \$6.59 million (median).

¹²² The database is maintained by Mark Siciliano of the University of Alabama Culverhouse College of Business. See *supra* n. 57.

Fig.7



Source: Database maintained by Prof. Mark Siciliano, CEO Golden Parachutes actually paid, 2011-2022, and RA calculations

Another way to assess the incentive effects is to look at variation within the parachute payments directly. This is made vivid by the next table, which shows the distribution of parachute payments by decile. The top 10 percent (90th decile) of parachutes (meaning, for 217 transactions) had payouts in the \$29 million to \$289 million range. For these largest payouts, the parachute included gross-ups (meaning: extra compensation to cover the excise tax associated with “excess” parachute payments) in 25 percent of the transactions.¹²³ The next decile (80th-90th percentile) of parachutes, reflecting another 217 transactions, had payouts in the \$18 million to \$29 million range. The table underscores the economically material extent of parachute payments for a significant number of transactions. Our theory of incentives would be embarrassed by the claim that payouts of this magnitude had no effect on CEO behavior. Hall

¹²³ Notably, the average (and median) equity-to-cash ratio rises alongside the increase in golden parachute size. The golden parachute payments in the top 10 percent of the dataset, on average, are composed of over 80 percent equity.

and Liebman once wondered if CEOs were paid like bureaucrats.¹²⁴ Today's question is, aren't (many) CEOs paid like investment bankers (or better!) and what do we make of that.

Table 1

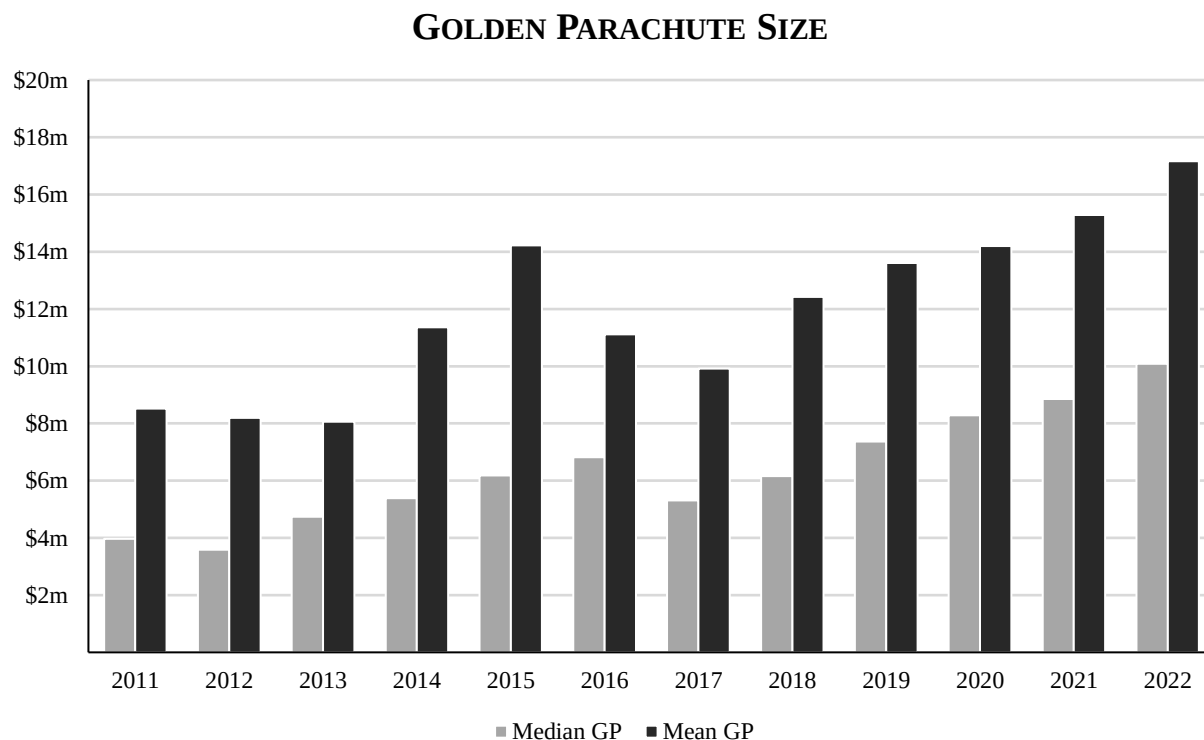
DECILE	GP VALUE RANGE	MEDIAN EQUITY-TO- CASH RATIO	AVERAGE EQUITY-TO- CASH RATIO	PERCENT RECEIVING GROSS-UP	MEDIAN GROSS-UP
Bottom 10%	\$0.0m to \$0.8m	0.0x	0.3x	0.9%	\$0.10m
10-20%	\$0.8m to \$1.5m	0.2x	0.4x	0.5%	\$0.01m
20-30%	\$1.5m to \$2.6m	0.5x	0.6x	3.2%	\$0.55m
30-40%	\$2.6m to \$4.1m	0.7x	0.8x	5.1%	\$0.71m
40-50%	\$4.1m to \$6.0m	1.2x	1.4x	8.3%	\$1.30m
50-60%	\$6.0m to \$8.6m	1.3x	1.3x	7.9%	\$1.31m
60-70%	\$8.6m to \$12.5m	1.7x	1.7x	12.4%	\$2.35m
70-80%	\$12.5m to \$18.0m	1.9x	2.0x	17.1%	\$3.44m
80-90%	\$18.0m to \$28.7m	2.7x	2.6x	10.6%	\$4.36m
Top 10%	\$28.7m to \$288.7m	4.6x	4.3x	25.0%	\$10.09m

Source: Database maintained by Prof. Mark Siciliano, CEO Golden Parachutes actually paid, 2011-2022, and RA calculations

¹²⁴ Brian J. Hall & Jeffrey B. Liebman, *Are CEOs Really Paid Like Bureaucrats?*, 113 Q. J. ECON. 653. (1998).

As Figure 8 illustrates, golden parachutes generally became larger over the post-2011 period, a steady increase especially beginning in 2017.¹²⁵ Particularly striking is the source of this general increase in parachute size: the smaller deals, under \$5 billion. As Figure 9 shows, the average (mean) of parachutes in such deals doubled over the period, from approximately \$6 million to approximately \$12 million. An increase in M&A deal size does not explain this growth; an unreported regression on this dataset shows that, even when controlling for deal size, the merger year has a statistically significant positive association with the size of the CEO's golden parachute. Thus throughout the post-Global Financial Crisis period, throughout the Covid era, golden parachutes were getting larger, especially for non-mega-deals.

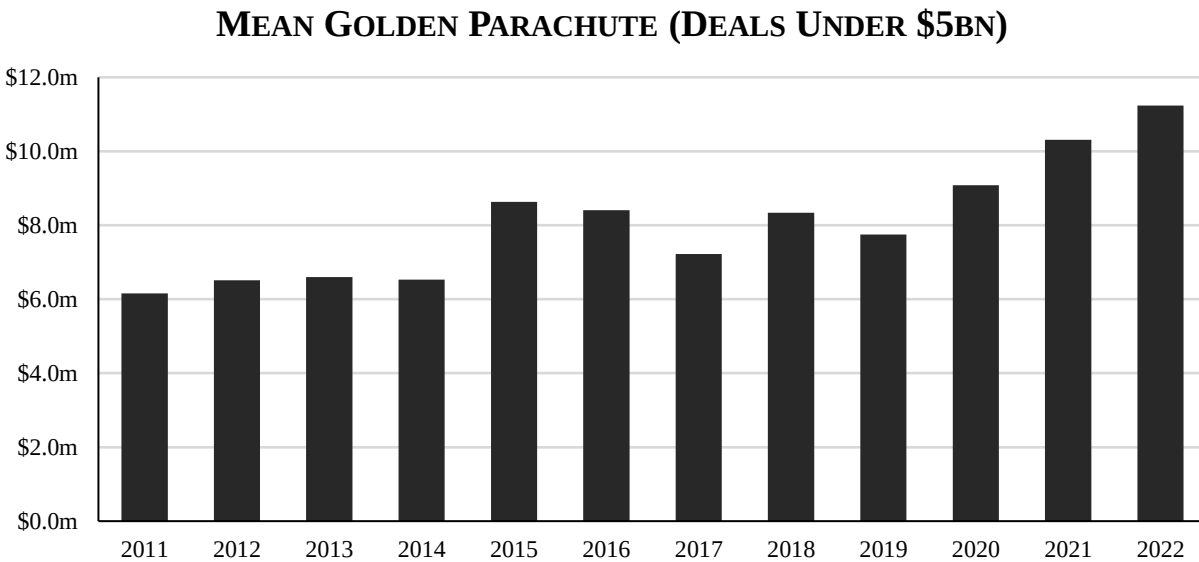
Fig. 8



Source: Database maintained by Prof. Mark Siciliano, CEO Golden Parachutes actually paid, 2011-2022, and RA calculations

¹²⁵ This “eyeball” analysis is confirmed by unreported regression results that confirm the importance of the “year” effect even when controls for deal size and industry sector are introduced.

Fig. 9



Source: Database maintained by Prof. Mark Siciliano, CEO Golden Parachutes actually paid, 2011-2022, and RA calculations

* * *

The argument thus far has been that the function of golden parachutes as an internal governance device has transformed itself over the forty years since its introduction. The importance of the innovation of accelerated option vesting in the CEO approach to M&A decision-making is well-understood by sophisticated courts that see many M&A transactions. “Option acceleration confers an additional benefit because the director receives consideration for unvested equity awards that might not vest in the fullness of time ... and also confers an additional benefit because the director receives consideration for the unvested options at closing rather than at some future date.”*** Option acceleration is thus broadly aligning, particularly for the purposes of creating an incentive to get the best price an acquirer will pay, but it can create misalignment regarding whether to approve a deal in the first place.”¹²⁶

The incentives now on offer have converted target-side CEOs from foot-draggers to promoters of M&A and this in turn helps explain the historically unprecedented persistence of a high-level of M&A in the post-2000 period. But why is this a concern? Target shareholders receive a substantial premium (generally 30 percent or more) and overwhelmingly vote in favor of the proposed transactions, well over 90 percent on average. Yes, the approval percentage for the golden parachute (SOGP) is sometimes less, in the 80s percent range, and the approving percentage may drop further, based on objection to particular provisions, like gross-ups,¹²⁷ but those are objections to CEO excess rather than to the transaction that the CEO has promoted.

¹²⁶ *McRitchie v. Zuckerberg*, 315 A.3d 518, 554 n.97 (2024) (Laster, VC).

¹²⁷ See Siciliano, id., at 88, Fig. 4 (showing differential SOGP approval rates).

We turn now to assess the harm to shareholders through the distortion of project choice and a fall-out in CEO efforts to prepare a successor. We also consider the harm to laid-off employees. More speculatively, we consider the outcomes mismatch between laid-off employees and the golden parachute-receiving CEO as generating a particular kind of socio-political harm that may even have electoral consequences.

Part III -- Transformed Golden Parachutes Are Costly to Shareholders

Assume that golden parachutes give CEOs incentives to seek out M&A transactions in which their firm becomes a target: Why is that undesirable from a shareholder perspective? The statutory structure of decision rights that requires a target shareholder vote almost invariably results in a premium for target shareholders. Legal limits on target management's ability to "lock up" a friendly deal provide at least a basic market check on the consideration offered.¹²⁸ Where the CEO is looking to exit with a golden parachute rather than to stay as part of the acquiror's senior management, the CEO wants the same thing as the shareholders: "more." Target shareholders must vote in favor of a merger, which gives them veto rights over a transaction they regard as undesirable. So how can they be harmed by an incentive device that generates a transaction for their consideration, that provides them with a put option on favorable terms?

The answer is that a CEO incentivized from the get-go to be on the lookout for an M&A exit will manage the firm differently and less optimally from a shareholder point of view. This manifests itself in three ways: pursuing projects more likely to result in near-term M&A; the willingness to settle for an immediate M&A offer over a higher realization likely in the future, and a fall-off in succession planning.

Project choice. In some industries, pharma and tech, for example, the optimal shareholder value path may entail pursuing projects that will have greatest value through complementarities from subsequent M&A.¹²⁹ It makes sense for an established firm in those industries to outsource important aspects of the innovation process and then to acquire successful innovators through M&A.¹³⁰ Sometimes the critical element is a lack of fit between a high risk/high reward compensation structure best-suited for certain kinds of R&D and the on-going compensation pattern within the established firm. Sometimes uncertainty over the technology path means it's best to have multiple players competing, the winner becoming an acquisition target of the established firm. There are many other cases in which a company can, as a first best strategy, take on projects that can foreseeably create synergy gains in a merger.¹³¹

¹²⁸ See, e.g., *Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.*, 506 A.2d 173 (1986); *Paramount Commc'n, Inc. v. QVC Network Inc.*, 637 A.2d 34 (1994); *Unitrin, Inc. v. Am. Gen. Corp.*, 651 A.2d 1361 (1995)

¹²⁹ This is consistent with an unreported regression that shows a statistically significant positive association between the size of a CEO's golden parachute and the target in the healthcare sector. In this sector for many firms the business plan is exit through M&A and it makes sense to incent the CEO accordingly.

¹³⁰ See generally Ronald J. Gilson, *Locating Innovation: The Endogeneity of Technology, Organizational Structure, and Financial Contracting*, 110 COLUM. L. REV. 885 (2010).

¹³¹ Recent antitrust literature has suggested that this strategic M&A exit planning may also serve anti-competitive effects; see, e.g., Colleen Cuninghame, Florian Ederer & Song Ma, *Killer Acquisitions*, 129 J. POL. ECON. 649 (2021).

But the success fee of a golden parachute, which pays off if and only if the firm becomes a target, can also negatively distort project choice. The CEO might avoid projects that have highest expected value for the own-firm, but which would be much harder to fit into the business model of another firm. Rather than a home run for shareholders, and a parachute that never pays off, the CEO may prefer a strategy that results in singles or doubles for the shareholders but a home run for the CEO because the parachute will pay off. The issue is not that project choice is shaped by short-termism vs. long-termism but is simply distorted in consequence of this special kind of managerial agency cost. The shareholder veto over the proposed transaction is no check over this agency cost. The inherent information asymmetry in project choice makes on-going monitoring difficult as well. If markets have trouble in valuing projects that are undertaken, the impounding of information about forsaken real options seems highly improbable.^{132,133}

Settling. Another distortion of the golden parachute M&A success fee is the incentive to accept an offer that generates an immediate parachute payment that satisfies from the CEO's perspective but, absent such dramatic personal wealth-creation, would have been rejected as falling short of realizable value in the future. A recent Delaware case involving the acquisition of a biotech company provides a useful illustration of this kind of settling. In *Goldstein v. Denner*,¹³⁴ a powerful director with a large short-term stock position in the company and a CEO with large golden parachute pushed the board to accept a takeover bid that was substantially below management's assessment of stand-alone value (\$150/share vs. \$105/share). The CEO drove a process that reduced projections that would support a fairness opinion at the \$105 valuation. With unvested option acceleration, the CEO's golden parachute paid out \$72 million, seven times his annual compensation. In these circumstances the CEO's utility function is likely to be different from the shareholders.' Diversified shareholders could well wait for full value; for the CEO, that much is enough. This problem will be particularly acute as the CEO approaches retirement age, since the present value of the parachute is likely to dwarf the present value of the foregone executive compensation even without hyperbolic discounting. In *Goldstein v. Denner* insider trading by a director brought the distortive effect of the golden parachute into the sunlight. Most "settling" cases – bad for shareholders -- will not catch the glare.

Another example is *In re Columbia Pipelines Grp. Merger Litig*¹³⁵ in which the CEO (and Chairman) alongside his CFO orchestrated a post-spinoff sale process of Columbia Pipeline exactly because they wanted to retire early "and both wanted to cash out through a merger that would trigger they change-in-control benefits."¹³⁶ "The change-in-control agreements gave [the parties] reasons to secure a deal when disinterested shareholders might prefer a standalone

¹³² See, e.g., Alex Triantis & Adam Borison, *Real Options: State of the Practice*, 14 J. APPLIED CORP. FIN. 8 (2001).

¹³³ Profs. Sepe and Whitehead have a different intuition about the effect of golden parachutes, which they see as encouraging managers to make "specific investment in innovation whose value may not be realized for some time—but which are essential to sustaining long term performance." Thus "granting chutes tends to increase the value of innovative firms." Simone M. Sepe and Charles K. Whitehead, *Rethinking Chutes: Incentives, Investment, and Innovation*, 95 B.U. L. REV. 2027 (2015). This seems an unlikely defense of golden parachutes in the contemporary setting, given 1) the general shift to stock-based pay particularly in innovation-focused firms, 2) the uniquely highly benefits to the CEO from golden parachutes vs. other key employees, and 3) the fact that golden parachutes are now almost invariably triggered in "friendly" deals rather than the rare hostile takeover.

¹³⁴ 2022 WL 1671006 (Del. Ch. May 26, 2022).

¹³⁵ 299 A.3d 393 (2023).

¹³⁶ Id. at 404.

option.”¹³⁷ The Court found that the golden parachute gave the officers such eagerness to take a deal on the table that they neglected to strategize and maneuver with other prospective bidders for a higher offers or even seriously to consider passing on the existing offer to wait for a favorable turn in the volatile natural gas market.

Fall-off in succession planning. Another distortion that arises from the golden parachute M&A success fee is a fall-off in succession planning. The golden parachute era is notable for evidence (and complaints) about the lack of attention by CEOs and boards in succession planning.¹³⁸ There are two adverse consequences: more M&A transactions that may not be optimal for shareholders and more inefficient successions without M&A.

(i) *Sub-optimal M&A.* One way that a CEO can sell an M&A transaction to the board is with a credible claim that there is no appropriate successor, so that the safest way of avoiding a precipitous decline in shareholder value is to become a target. After all, target directors will be generally worse off following a sale: they do not have golden parachutes and lose the stream of directors’ fees. Yet a CEO departure without a strong successor in place leaves directors in even a worse place, needing to find a new CEO while facing downside risk.^{139, 140} Shareholders too would have been better off with a strong succession plan, but given these circumstances, board and shareholder approval of the proposed transaction will be best. Because of the leadership gap, a merger is now optimal. Strong information asymmetries may make it difficult to show systematic distorted project choice or “settling” for immediate M&A, but there is observable evidence in favor of the parallel claim: that M&A timing has become increasingly tied to the CEO’s retirement over the same period that the enriched golden parachute, the platinum parachute, has taken hold.

Coates & Kraakman study the CEO turnover for CEOs over the 1992-2004 period, whether by firing, retirement, or exit through a deal.¹⁴¹ Their initial conjecture was that “CEOs verging on retirement are exceptionally likely to search out deals in order to liquidate their personal holdings or extract a cash premium.”¹⁴² But they find, to their surprise, a *lack* of evidence indicating that “CEOs approaching retirement make *more* use of deals than young

¹³⁷ *Id.* at 411.

¹³⁸ See Heidrick & Struggles and (Stanford) Rock Center for Corporate Governance, *2010 Survey on CEO Succession Planning* (2010) (Lack of attention by CEOs and Boards on succession planning); Eben Harrell, *Succession Planning: What the Research Says*, HARV. BUS. REV., Dec. 2016, pp 70-74 (summarizing studies showing shortfall in succession planning); Dragana Cvijanovic, Nickolay Gantchev, & Rachel Li, *CEO Succession Roulette*, 69 MGMT. SCI. 5794 (2023) (consistent with prior studies showing shortfall in CEO succession planning, brings survey evidence covering 3000 US public firms over 1994-2010 period to show that only 12.9 percent of CEO turnover events follow succession plans).

¹³⁹ Thanks to Ed Rock for the exchange that developed this point.

¹⁴⁰ Sophisticated observers report that in many cases directors’ incentives line up with the CEO. This is because of the grant of unvested option grants to directors that will similarly accelerate and make them immediate beneficiaries of target-side M&A. In general, director compensation over the 2000-2020 period has significantly increased in absolute amount and in the fraction that is equity related, most typically in restricted stock. Lily Fang & Sterling Huang, *The Governance of Director Compensation*, 155 J. FIN. ECON. 103813, Table 2 (2024).

¹⁴¹ See John C. Coates IV & Reinier Kraakman, *The Link between Acquisitions and the Market for CEOs*, (Jan 2011), available at <https://ssrn.com/abstract=1760154>. Because the way they have coded the data, the deals they count in their turnover statistics occurred predominantly in the 1990s. *Id.* at 11. Their focus is on “manager” CEOs vs “owner” CEOs, defined in terms of whether the CEO owns 1 percent or more of the company’s stock. See p. 15, Table 1.

¹⁴² *Id.* at p. 24.

CEOs [below median age of 56]. In fact, as mandatory retirement age approaches, the ratio of deals to retirements falls, suggesting that impending retirement is not a primary driver of deals.”¹⁴³

By contrast is evidence from Jenter & Lewellen that goes deeper into the post-2000 period and finds a pronounced effect upon the CEO’s impending retirement, an “age-65 effect” that is associated with a 32 percent increase in the chances of a becoming a target.¹⁴⁴ They point out that this effect is not uniform across this period: it disappeared in the merger wave of the late 1990s.¹⁴⁵ But this is precisely the point: in response to a real economic shock—the advent of the internet—we see a wave of M&A to rearrange organizations and achieve scale and strategic advantage. A special target CEO incentive like the golden parachute is not pre-eminent. It’s after the assimilation of the external shock that the CEO incentive has particular effect. The “wave” passes but the level of M&A activity persists.

(ii) *Inefficient succession without M&A.* The most serious downside of the contemporary golden parachute may be the disincentive it provides to the CEO to avoid succession planning that would reduce the likelihood of an M&A exit for the CEO. A recent empirical survey shows that firms without a succession plan suffer significantly greater shareholder welfare losses following CEO turnover than firms with a succession plan.¹⁴⁶ Succession plans minimize the negative effect of a forced CEO turnover and avoid the negative effect of a poor internal promotion. Widespread adoption of a succession plan is estimated to increase shareholder value by 3.1 percent.¹⁴⁷ To be sure, much of the resistance to succession planning must be because it is time-consuming for a board, but a CEO outfitted with a golden parachute has an independent incentive to encourage the board’s procrastination.

What is the point of a golden parachute for a retiring CEO? The “optimal contracting” view was that the golden parachute protected the CEO’s firm specific investment, a kind of insurance for an on-going compensation. But on the pattern revealed by Jenter & Lewellen, this insurance-based rationale has dissipated by the time of the transaction. The CEO could simply relinquish their job at retirement, which would mean preparing a successor. Alternatively, the CEO can sell the firm and collect on the insurance; surely this reduces the incentives for succession planning. The retiring CEO outfitted with a golden parachute is in the position of a home-owner occupying a well-insured house who, it turns out, cannot sell the house when they

¹⁴³ *Id.* at p. 29

¹⁴⁴ Dirk Jenter & Katharina Lewellen, *CEO Preferences and Acquisitions*, 70 J. FIN. 2813 (2015).

¹⁴⁵ 70 J. FIN. at 2829 (Panel A vs. Panel B). This is consistent with evidence that shows that a firm’s propensity to issue “poison bonds” – bonds that permit the holder to obtain redemption at par upon a control change transaction – declines as the CEO approaches retirement. Rex Wang Renjie & Shuo Xia, *Poison Bonds*, (Oct 2024), at 19, available at SSRN: <https://ssrn.com/abstract=4486434>.

¹⁴⁶ Francesco Celantano & Antonio Mello, *Why Firms Often Not Have a CEO Succession Plan* (Nov. 16, 2024) (CEO turnover without succession plans produces significant shareholder losses) (November 16, 2024). European Corporate Governance Institute – Finance Working Paper No. 1023/2024, available at SSRN: <https://ssrn.com/abstract=5033904> or <http://dx.doi.org/10.2139/ssrn.5033904>

¹⁴⁷ See *id.* at 42, Table 8 (col. 4) (based on a structural model of the costs (the board) and benefits (to the shareholders) of mandatory succession plan adoption). Cvijanovic et al, *supra* note --, also find significant shareholder benefits from succession planning measured through lower stock price volatility after announcement of a new CEO, a better CEO/firm “match,” as reflected in longer tenure for the incoming CEO, and greater willingness of a board to fire an under-performing CEO.

move to Florida on retirement. The only way to realize value on the house, then, is to burn it down and collect the insurance. This purple metaphor shows the distortive potential of the golden parachute: the CEO will pick projects and otherwise “dress up” the firm that are timed to the CEO’s intentional exit, will push for the firm to “settle” for a sure-fire immediate exit rather than a potential higher-valued transaction later, and will avoid a successor in the wings who will lobby for continuation.¹⁴⁸ This distortive dynamic is evidenced by a showing by Jenter & Lewellen that most of the retirement age effect dissipates in the case of firms with strong governance;¹⁴⁹ this shows the golden parachute’s effect in isolation.

The golden parachute changes the narrative of the CEO career. Old story: “after a successful tenure as CEO, they left the company in the well-prepared hands of a successor.” New story: “after a successful tenure as CEO, they arranged for a sale of the company at a great premium and received a well-deserved golden parachute.” This new conception is highly likely to affect project choice—which real options to exercise amidst an array of possible investment requirements and time horizons. One of the contributions of behavioral finance is to show how these considerations play into economic decision-making.¹⁵⁰ This is not to say that the retiring CEO is the only circumstance in which the golden parachute can influence M&A. Rather, it’s a straightforward example how this incentive can distort ex ante decision-making so that at the time of the proposed transaction, the merger looks great for shareholders.

The impact of golden parachutes on M&A is also suggested by the interaction between the sharp increase in private equity M&A activity in the post-Global Financial Crisis period and the notable increase in the golden parachute size for smaller transactions, under \$5 billion.¹⁵¹ Gompers, Kaplan & Mukharlyamov (2023) document a surge in private equity transactions in the post-2010 period that includes smaller size public companies.¹⁵² They show that in most cases, the incumbent CEO is customarily terminated. For a take-private of a public company, this invariably means the triggering of the CEOs golden parachute. Thus the increase in private equity driven take-private transactions probably played a role in the decade-long increase in golden parachutes for small- and mid-cap acquisitions. In deals \$5 billion or less, the median golden parachutes in financial sponsor deals were 48% higher than those with strategic acquirers (\$6.34 million versus \$4.29 million). An unreported regression shows that the impact of the financial sponsor variable on golden parachute size for deals in this size category, controlling for deal size and other factors, is statistically significant. ($p = .035$). The secular increase in golden parachute payments for small and mid-cap deals over the period, as shown by Figure 5, seems to reflect a conscious realignment of the CEO’s utility function. The increase in golden parachute payouts for such targets is evidence that this exit option has become a feature of the CEO’s operational planning.

¹⁴⁸ Jenter & Lewellen treat a “succession problem” as an independent motivator of becoming a target, 70 J. FIN. at 2841, but of course an adequate successor is frequently endogenous.

¹⁴⁹ Jenter & Lewellen create an index consisting of significant stockholdings by the CEO, directors, and blockholders; small boards, independent directors, and CEO/chair duality and show its impact. See 70 J. FIN. at 2830-2833.

¹⁵⁰ Malcom Baker & Jeffrey Wurgler, *Behavioral Corporate Finance: A Current Survey*, in 2 HANDBOOK OF THE ECON. FIN., George Constantinides, Milton Harris, & Rene Stulz, eds. (2012).

¹⁵¹ See Figure 5 in the GP section.

¹⁵² Paul A. Gompers, Steven A. Kaplan & Vladimir Mukharlyamov, *The Market for CEOs: Evidence from Private Equity*, NBER WP 30899, available at <http://www.nber.org/papers/w30899>. See especially Table I, Panel A. This is consistent with the fact that 88 percent of the take-private deals by financial sponsors in the Siciliano dataset were for a deal value of \$5 billion or less.

Obviously the incentives of a golden parachute don't invariably lead to M&A, but the potency can produce M&A persistence even after the "wave" of economic drivers passes. The cost to shareholders is distortion in project choice to make the firm a more appealing target, settling for immediate M&A, and a reduction in succession planning so that "merger" may be the optimal decision to fill a leadership gap. These all reduce the value of the firm from a shareholder point of view in ways that may be hard to measure. But designed to control a set of agency costs, the golden parachute now creates a new set of them.

There is a final shareholder concern, related to the fact that "golden" parachutes become increasingly "platinum" in deal size and the widespread concern that the largest deals present the greatest risk of value destruction from a diversified shareholder perspective.¹⁵³ Most of the causal focus has been on acquirer CEO incentives¹⁵⁴ in light of concerns about empire-building, hubris,¹⁵⁵ and over-confidence bias.¹⁵⁶ Target CEOs, however, have a vital facilitative role, especially in the largest transactions, in supporting the acquiring CEO's belief in the transaction's success. Their unique access to target-specific information gives them capacity to feed the acquirer CEO's "illusion of control,"¹⁵⁷ a critical element of over-confidence. This will be particularly important in the "big deal" because of the large uncertainties in a massive combination. Here is where the modern golden parachute, keyed to the vesting of performance-based options, gives target CEOs, especially if near-retirement, the incentive to push for a once-in-their lifetime exit opportunity irrespective of the value creation that a diversified shareholder would care about.

This too shows how the golden (and platinum) parachute has become a catalyzing feature that transcends the economic logic of M&A and is part of the institutional framework that has produced a persistently high level of M&A.

Part IV -- The Labor Effects of Excess M&A; the Special Effect of Golden Parachutes

The employment effects of M&A activity are extensively debated both as a positive and normative matter.¹⁵⁸ Certain stylized facts seem to emerge from the literature: Mergers of related businesses, typically "horizontal" in nature, commonly involve layoffs, since the elimination of duplicated functions and selection for the highest quality workers performing similar function are

¹⁵³ See, e.g., Sara B. Moeller, Frederik P. Schlingemann & Rene M. Stulz, *Wealth Destruction on a Massive Scale? A Study of Acquiring-Firm Returns in the Recent Merger Wave*, 60 J. FIN. 757 (2005) (acquirer losses in large firm mergers swamped general pattern of gains); Robert Bruner, *DEALS FROM HELL: M&A LESSONS THAT RISE ABOVE THE ASHES* (2005).

¹⁵⁴ See, e.g., David Hiller, Patrick McColgan & Athanasios Tsekeris, *Value Creation Around Merger Waves: The Role of Managerial Compensation*, 47 J. BUS. FIN. ACC. 132 (2020).

¹⁵⁵ Richard Roll, *The Hubris Hypothesis of Corporate Takeovers*, 59 J. BUS. 197 (1986); Mathew L.A. Hayward & Donald C. Hambrick, *Explaining the Premiums Paid for Large Acquisitions: Evidence of CEO Hubris*, 42 ADMIN. SCI. Q. 103 (1997).

¹⁵⁶ See Ulrike Malmendier & Geoffrey Tate, *Who Makes Acquisitions? CEO Overconfidence and the Market's Reaction*, 89 J. FIN. ECON. 20 (2008) (Over-confident CEOs are more likely to make acquisitions).

¹⁵⁷ Ellen J. Langer, *The Illusion of Control*, 32 J. PERSONALITY & SOC. PSYCH. 311 (1975).

¹⁵⁸ The previously cited compilation of Challenger, Gray & Christmas M&A-linked layoffs, see supra note 17, shows both the time-variability of disclosed layoffs but surely understates the phenomenon, if only because private acquirers have no interest in such disclosure. A critic of the M&A movement, including the associated layoffs, observes and objects to the absence of a "comprehensive database on merger-related mass layoffs" and then points to many media accounts of large layoffs. John N. Drobak, *RETHINKING MARKET REGULATION* 46-48 (2021).

important “synergies” that drive the transaction.¹⁵⁹ Acquirors frequently close acquired plants that are peripheral to its strategy.¹⁶⁰ “Take private” acquisitions by financial buyers like private equity firms are commonly associated with major employment reductions.¹⁶¹ These reductions often particularly affect employees who are performing routine or offshorable tasks.¹⁶² Many other transactions, particularly in high premium deals where the acquiror needs to show “cost savings” as part of the rationale, are associated with employee layoffs.¹⁶³ A recent (2021) paper by Chatt, Gustafson & Welker demonstrates the importance of layoff possibilities to M&A through an empirical strategy that shows that the addition of “firing frictions” through state-adopted employment protection reduces the number and dollar volume of M&A for the adopting state.¹⁶⁴ On the other hand since the point of much M&A is to increase the rate at which firms can exploit new growth opportunities, the net effect, over time, should be to increase employment at the merged enterprise and in general to add dynamism to a growing economy that overall increases the demand for labor.¹⁶⁵

Normatively such layoffs might be defended as part of a process of redeployment of under-utilized assets. Long run productivity growth -- the bedrock of economic advancement of a society -- generally depends upon the efficient use of scarce resources, including scarce labor inputs. Producing the same goods or services with fewer employees is part of that productivity story. The highest and best use of those laid-off employees’ capacity is not at the consolidating

¹⁵⁹ See K.C. O’Shaughnessy & David J. Flanagan, *Determinants of Layoff Announcements Following M&A: An Empirical Investigation*, 19 STAT. MGMT. J. 989 (1998); M.J. Conyon, S. Girma, S. Thomson & P.W. Wright, *The Impact of Mergers and Acquisitions on Company Employment in the United Kingdom*, 46 EUROPEAN ECON. REV. 31 (2002) (UK data); Kyeon Hun Lee, David C. Mauer & Emma Qianying Xu, *Human Capital Relatedness and Mergers and Acquisitions*, 129 J. FIN. ECON. 111 (2018) (importance of “human capital relatedness” in successful M&A through curating for best employees and ideas).

¹⁶⁰ Vojislav Maksimovic, Gordon Phillips, & N. R. Prabhala, *Post-Merger Restructuring and the Boundaries of the Firm*, 102 J. FIN. ECON. 317, 327-28, Table 3, (2011) (within three years acquirors sell or close 46% of the plants acquired through the M&A transaction; approximately 20% of the acquired plants are closed).

¹⁶¹ Steven J. Davis, John Haltiwanger, Kyle Handley, Ben Lipsius, Josh Lerner & Javier Miranda, *The (Heterogeneous) Economic Effects of Private Equity Buyouts* NBER W.P. 26371 (April 2024) (Assessing 6000 buyouts 1980-201, employment falls 12 percent in buyouts of publicly listed firms in two and five year periods over extended period; see Table 2).

¹⁶² Martin Olsson & Joacim Tag, *Private Equity, Layoffs, and Job Polarization* 35 J. LABOR. ECON. 697 (2017) (Swedish data).

¹⁶³ Hema A. Krishnan, Michael Hitt & Daewoo Park, *Acquisition Premiums, Subsequent Workforce Reductions and Post-Acquisition Performance*, 44 J. MANAGEMENT STUD. 711 (2007).

¹⁶⁴ Rober Chatt, Matthew Gustafson & Adam Welker, *Firing Frictions and the US Acquisitions Market*, 128 J. BANKING & FINANCE 106138 (2021). The empirical strategy focuses on those states that adopt (via judge-made law) a “good faith” requirement to the usual at-will employment standard. Using headquarters as the location of a firm, not state of incorporation, the authors show that M&A activity by number and dollar volume declines following such adoption. A previous paper showed a similar “firing frictions” effect for an international cross section, but not convincingly so for the United States. Olivier Dessaint, Andrey Golubpov, & Paolo Volpin, *Employment Protection and Takeovers*, 125 J. FIN. ECON. 369 (2017). See also John Foley, “Merger “synergies” can’t just be code for job cuts, BREAKINGVIEWS (blog), REUTERS, June 8, 2016., available at <http://blogs.reuters.com/breakingviews/2016/06/08/merger-synergies-cant-just-be-code-for-job-cuts/>.

¹⁶⁵ This is reflected in, for example, the additional finding of Steven Davis et al., *supra* note __, that relative employment rises 15% in “private to private” transactions. Sometimes the motive for M&A is to acquire a skilled labor force. See also Paige Ouimet & Rebecca Zarutskie, *Acquiring Labor*, 10 Q. J. FIN. 1 (2020).

firm, but at another establishment. The redundancy-driven layoff is just the first step in this productivity-enhancing story.¹⁶⁶

This straightforward normative claim is confounded by the reality of labor markets: this “market” hardly consists of frictionless planes. The employees laid off in the initial consolidation are unlikely to be the ones hired in the subsequent growth phase. Employees make firm-specific human capital investments; these will be zeroed out by a layoff. Employees also make geographic investments that result in prohibitive relocation costs to obtain equivalent employment. The stylized fact is that the “displacement” effect of job loss is roughly 25%--30% of the prior wage.¹⁶⁷ Transaction-related layoffs have been famously criticized as opportunistically abrogating implicit contracts, capturing rents in particular transactions and imposing externalities by degrading “trust.”¹⁶⁸ This undercuts the capacity of other firms to encourage firm-specific investment protected by implicit contracts. This general line has also been notably rebutted as confusing cause and effect; the layoffs occur precisely because the exogenous features, like advancing technology, have diminished the value of the firm-specific investments that underpin the implicit contracts. The layoffs are a realization event for the value loss that has been otherwise caused.¹⁶⁹

Layoffs are of course not unique to M&A. The current willingness (and diminished reputational cost) of profitable firms to lay off employees is part of a cultural transformation that is commonly traced to Jack Welch at GE in the 1980s.¹⁷⁰ Before then, layoffs (which excludes

¹⁶⁶ See, e.g., Kenneth J. McLaughlin, *General Productivity Growth in a Theory of Quits and Layoffs*, 106 J. LABOR ECON. 75 (1990), and *A Theory of Quits and Layoffs with Efficient Turnover*, 99 J. POL. ECON. 1 (1991); Donald S. Siegel & Kenneth L. Simons, *Assessing the Effects of Mergers and Acquisitions on Firm Performance, Plant Productivity, and Workers: New Evidence from Matched Employer-Employee Data*, 31 STRATEGIC MGMT. J. 903, 904 (2010) (creation of efficient matches between employees and firms). For evidence on the positive role of restructurings in productivity growth using UK data., see Azimjon Kuvandikov, *Corporate Governance Role of Mergers and Acquisitions: Does Post-Merger Workforce Rationalisation Improve Labour Productivity* (WP 2024), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4906976&dgcid=ejournal_html_email_corporate%3Agovernance%3Aacquisitions%2C%3Amergers%2C%3Acontests%3Afor%3Acontrol%2C%3Aactivism%3Aejournal_abstractlink

¹⁶⁷ Kenneth A. Couch & Dana A. Placzek, *Earnings Loss of Displaced Workers Revisited*, 100 AM. ECON. REV. 572 (2010) (finding initial income reductions of 30 percent and six years later, 15%); Louis S. Jacobson, Robert J. LaLonde & Daniel G. Sullivan, *Earnings Losses of Displaced Workers*, 83 AMERICAN ECON. REV. 685 (1993) (“high-tenure workers separating from distressed firm suffer long-term losses averaging 25 percent per year” and even workers who find new jobs in similar firms suffer large losses). Assessment of displacement losses is complicated by underlying labor market conditions. Losses are much greater if the economy is in recession than if not. See Steven J. Davis & Till M. von Wachter, *Recessions and the Cost of Job Loss*, NBER W.P. 17638 (2011). Displacement losses can vary based on worker characteristics. Nan L. Maxwell, *Labor Market Effects from Involuntary Job Losses in Layoffs, Plant Closings*, 48 AM. J. ECONOMICS & SOCIOLOGY 129 (1989). For a survey of factors that may contribute to earnings loss, see William J. Carrington & Bruce C. Fallick, *Why Do Earnings Fall with Job Displacement?* 56 Industrial Relations 688 (2017). A complicating factor throughout this empirical literature is the noisiness in identifying specific causes of job loss, e.g., “business cycle” factors vs. sector-specific factors, e.g., the introduction of new technology.

¹⁶⁸ Andrei Shleifer & Lawrence H. Summers, *Breach of Trust in Hostile Takeovers*, in Alan J. Auerbach, ed., *CORPORATE TAKEOVERS: CAUSES AND CONSEQUENCES* 33 (1988).

¹⁶⁹ Ronald J. Gilson & Bernard S. Black, *THE LAW AND FINANCE OF CORPORATE ACQUISITIONS* 620-22 (2d ed. 1995);

¹⁷⁰ See generally David Gelles, *THE MAN WHO BROKE CAPITALISM* (2022) (Subtitled: “How Jack Welch Guttled the Heartland and Crushed the Soul of Corporate America”); Rick Wartzman, *THE END OF LOYALTY: THE RISE AND FALL OF GOOD JOBS IN AMERICA* (2017). The changes are reflected in detailed empirical work, see, e.g., Johanne

the contracted for layoffs that would accommodate business-cycle related reduced demand in industries like automobiles¹⁷¹) were regarded as a negative signal of the firm's financial health because of a strong business norm against gratuitous dismissals.¹⁷² IBM, for example, famously avoided layoffs during the Great Depression.¹⁷³ This enhanced its ability to recruit high quality employees and its capacity to enter into long-term equipment leases and service contracts; both elements were part of its great success in the 1950s and 1960s. Welch and others who followed,¹⁷⁴ including the hostile takeover entrepreneurs of the 1980s,¹⁷⁵ transformed the layoff signal. Layoffs did not indicate a failing firm; to the contrary, a firm that was responding smartly to a changing external environment.¹⁷⁶ A reflection of the change in practice was the Census Bureau's 1984 initiation of a "Displaced Worker Survey" to supplement its Current Population Survey¹⁷⁷ and the 1988 enactment of the Work Adjustment and Retraining Notification Act, which required employers to provide a 60-day notice period before a "mass layoff."¹⁷⁸

Boisjoly, Greg J. Duncan & Timothy Smeeding, *The Shifting Incidence of Involuntary Job Losses from 1968 to 1992*, 37 INDUSTRIAL RELATIONS 207 (1998) (also discussing some of the methodological issues in quantifying the effect: Jennifer M. Gardner, *Worker Displacement: A Decade of Change*, U.S. Dept. of Labor, Bureau of Labor Statistics, April 1995 MONTHLY LABOR REVIEW 45 (1995). Henry S. Farber, *Job Loss and the Decline in Job Security in the United States*, CEPS W.P. 171 (June 2008) (long term employment has declined in the US but data problems cloud measurement of the channels). For a survey, see Kevin F. Hallock, *Job Loss and the Fraying of the Implicit Employment Contract*, 23 (4) J. ECON. PERSP. 69 (Fall 2009); Lori G. Kletzer, *Job Displacement*, 12 J. ECON., PERSP. 115 (1998). See also Deepak K. Datta, James P. Guthrie, Dynah Basuil & Alankrita Pandey, *Causes and Effects of Employee Downsizing: A Review and Synthesis*, 36 J. MANAGEMENT 281 (2010).

¹⁷¹ Even without formal contract, business-cycle layoffs and recalls entail only minimal displacement loss. See Shiugeru Fujita & Giuseppe Moscarini, *Recall and Unemployment*, 107 AM ECON. REV. 3875, 3883 (2017).

¹⁷² See William Lazonick, *The Demise of the Old Economy Business Model*, chapter 3 in SUSTAINABLE PROSPERITY IN THE NEW ECONOMY? (2009).

¹⁷³ See James W. Cortada, *IBM: THE RISE AND FALL AND REINVENTION OF A GLOBAL ICON* (2019) (Chapter on IBM and the Great Depression).

¹⁷⁴ Eg, "Chainsaw Al" Dunlap, also famously known for an accounting scandal at one of his turnaround "success" stories, Sunbeam Products. Compare Albert J. Dunlop, *MEAN BUSINESS: HOW I SAVE BAD COMPANIES AND MAKE GOOD COMPANIES GREAT* (1997) with John A. Byrne, *CHAINSAW: THE NOTORIOUS CAREER OF AL DUNLOP IN THE ERA OF PROFIT-AT-ANY-PRICE* (1999).

¹⁷⁵ E.g., Frank Lorenzo, the post-deregulation airline consolidator. For a critical view, See Aaron Bernstein, *GROUNDING: FRANK LORENZO AND THE DESTRUCTION OF EASTERN AIRLINES* (1990).

¹⁷⁶ This change is reflected in event studies of firms undergoing layoffs. In the 1980s and 1990s, layoffs were associated with economically and statistically significant stock price changes. By the 2000s, when expectations about layoffs had become thoroughly embedded, layoffs did not produce such an effect. See Kevin F. Hallock, *supra* note --, 84-86, Table 2. See also Victor B. Wayhan & Steve Werner, *The Impact of Workforce Reduction on Financial Performance: A longitudinal Perspective*, 26 J. MANAGEMENT 341 (2000) (showing positive effects); Sandra J. Sucher & Shalene Gupta, *Layoffs That Don't Break Your Company*, (May-June 2018) HARVARD BUS. REV. 122. (tracing growth of layoffs from the 1970s, 5% of Fortune 100 companies, to 2008-11, 65% of 2000 surveyed companies to today: a "default response to an uncertain future.")

¹⁷⁷ Lori G. Kletzer, *Job Displacement*, 12 J. ECON., PERSP. 115, 116 (1998).

¹⁷⁸ Pub. L. 100-379. See Congressional Research Service, *Worker Adjustment and Retraining Notification (WARN) Act: A Primer* (Updated January 2, 2013). A "mass layoff" is defined as either the layoff of 50 or more employees representing at least 33% of employment at the site or 500 or more employees at a single site. See also U.S. House of Representatives, Committee on Education and Labor, Legislative History of S. 2527, 100th Congress, Worker Adjustment and Retraining Notification Act, P.L. 100-379, 100th Cong., 2nd sess., serial no. 101-K (Washington, DC: GPO, 1990). There are also state level WARN Acts with stricter standards. For detailed discussion of the empirics of job loss in the period, see Henry S. Farber, John Haltiwanger & Katherine Abraham, *The Changing Face of Job Loss in the United States, 1981-1995*, 1997 BROOKINGS PAPERS ON ECONOMIC ACTIVITY: MICROECONOMICS 55 (1997); David Neumark, Daniel Polsky, & Daniel Hansen, *Has Job Stability Declined Yet? New Evidence from the 1990s*, 17 J. LABOR ECON. S29 (1999) (Effects on longer tenured employees).

Layoffs have particular social costs because they disrupt the formation and durability of what the social capital literature describes as “bridging” social capital, the sense of connection to people who are not like oneself.¹⁷⁹ The workplace enforces a certain kind of sociability and dedication to working together for the common good.¹⁸⁰ By contrast, layoffs embody a transactional relationship, which is understandable from the perspective of the business firm but is not a great lesson for a democratic spirit that transcends mere self-interest.

The argument here is not that M&A should be subject to a special screen just because such transactions are often associated with layoffs, much less in favor of lifetime employment. I have argued elsewhere that the “transition costs of capitalism” or “the adjustment costs of economic change” should be addressed through appropriate social insurance that involves a reworking of the human capital development partnership between the State and business enterprise.¹⁸¹ Rather: it’s that the high-powered incentives of golden parachutes promote *excess* M&A and that the social costs are of high concern.

In particular, golden (and especially platinum) parachutes magnify those costs because of the linked disparity of fortune between the laid-off employees and the CEO who walks away with a super-bonus. The worsening fortune of the laid-off employees is directly and causally related to the super-improved fortune of the golden parachute-receiving CEO. One might think of this linkage as “inequality with privity.”

The historian Robert Schneider tells us that ours is an age in which “resentment” has returned as a “political emotion.”¹⁸² The trade impact literature shows us that economic policies that in a highly visible way produce “losers” as well as “winners” have political effects, producing polarization in electoral outcomes and stirring a turn to populism as well.¹⁸³ This underscores the importance of economic shocks in which the losers perceive that their losses are tied to others’ gains. The leading work on the “China shock” -- the rapid influx of Chinese manufactured goods after China’s accession to the WTO in 2001 -- shows the distinctive effect of highly salient disparate outcomes on the socio-political dimension. It can reshape politics. The authors compare the China import competition shock with general deterioration in economic

¹⁷⁹ A recent Robert Putnam interview highlighted the difference between “bridging” and “bonding” social capital. See Lulu Garcia-Navarro, *Robert Putnam Knows Why You Are Lonely*, NY TIMES MAGAZINE, July 3, 2024. These terms have an extensive history in the social capital literature. See, e.g., Tristan Claridge, *What Is the Difference Between Bonding and Bridging Social Capital?* Institute for Social Capital (Jan 2, 2018) (literature review), available at <https://www.socialcapitalresearch.com/difference-bonding-bridging-social-capital/>

¹⁸⁰ Prof. Estlund puts this eloquently: “Over weeks, months, or years of working together, co-workers learn about each others’ lives and develop feelings of affection, empathy, sympathy and loyalty for each other. They often become friends. They also experience friction and conflict, even anger and resentment. But, with a paycheck and everything that is at stake in a job, they often find ways to work through or around conflicts and to get the job done in spite of personal differences.” Cynthia Estlund, *WORKING TOGETHER* 7 (2003).

¹⁸¹ Jeffrey N. Gordon, *Is Corporate Governance a First-Order Cause of the Current Malaise*, 6(s1) J. BRIT. ACAD, 405 (2018).

¹⁸² Robert A. Schneider, *THE RETURN OF RESENTMENT: THE RISE AND DECLINE AND RISE AGAIN OF A POLITICAL EMOTION* (2023) (esp. ch. 8 and the conclusion).

¹⁸³ Notable contributions are David Autor, David Dorn, Gordon Hanson & Kaveh Majlesi, *Importing Political Polarization? The Electoral Consequences of Rising Trade Exposure*, 110 AM. ECON. REV. 3139 (2020); Yotam Margalit, *Costly Jobs: Trade Related Layoff, Government Compensation, and Voting in U.S. Elections*, 105 AM. POL. SCI. REV. 166 (2011). For a recent claim that trade deals, conjoined with racial and social priors, can produce broad political realignment, see Jiwon Choi, Ilyana Kuziemoko, Ebonya Washington & Gavin Wright, *Local Economic and Political Effects of Trade Deals: Evidence from NAFTA*, 114 AM. ECON. REV. 1540 (2024).

conditions leading to layoffs and the 2006 housing-market collapse.¹⁸⁴ The highly salient trade shock was unique in its large and persistent effects on electoral outcomes and polarization.

I hardly claim to have offered an empirical case for such powerful effects associated with golden, especially platinum, parachutes, but in light of the structural similarity -- the linked disparity of outcome, the “inequality with privity” -- I also think that it’s foolish to think this will come without socio-political costs.

Conclusion

The argument in sum is this: A contractual solution to managerial agency costs at a time of weak corporate governance in the 1980s and 1990s has, without much awareness, mutated into a powerful incentive for target CEOs to seek out an M&A transaction. This has adverse consequences for shareholders in the distortion of project choice by firms, in the “settling” for sub-optimal transactions, in the falloff of succession planning, and the heightened risk of value-destructive transactions. What I call the “excess” level of M&A has social and political costs as well, because of the job loss associated with many M&A transactions. In particular, the radical disparity between the CEO’s golden parachute super-bonus and the displacement shock for laid-off employees is bound to stir resentment, not just as private emotion but also as political emotion. Shareholders could well decide that populist anger will disrupt the economic dynamism that increases share values across their portfolio.

Shareholders are not powerless to change this golden parachute story. Dodd-Frank requires a separate shareholder vote in merger transaction to approve the golden parachute in question. Although these Dodd-Frank votes reflect some shareholder objection to particular terms, target shareholders are highly unlikely to reject a golden parachute outright in the midst of approving a transaction that provides a substantial premium. A better course for shareholder intervention is via firm-specific golden parachute review in the course of the annual review of executive compensation, the so-called “say on pay” vote.” The incentive effects will vary depending on the option package, the CEO’s age, and the triggering conditions, among other features. If shareholders do not act, it is easy to imagine that Congress will turn its attention to this, as well it should.

¹⁸⁴ See David Autor, David Dorn, Gordon Hanson & Kaveh Majlesi, *Political Polarization? The Electoral Consequences of Rising Trade Exposure*, NBER W.P. 22637 (Dec. 2017), 41

Appendix on Sources on M&A “Waves”

There appears to be no consistent time series for number and value of US mergers and acquisitions over the period beginning with the first US merger wave in the 1890s. We stitched together a time series based on consideration amount drawn from several data sources and then scaled in terms of GDP and a composite stock market index compiled by Robert J. Shiller.

For M&A consideration:

Ralph Nelson, *MERGER MOVEMENTS IN AMERICAN INDUSTRY, 1895-1956* (1959) (manufacturing and mining sectors, 1895-1920, relying on weekly reports in the *Commercial and Financial Chronicle* checked against Moody’s Manual, Poor’s Manual, and government reports).

Carl Eis, *The 1919-1930 Merger Movement in American Industry*, 12 J. L. & ECON. 271 (1969) (extending Nelson’s 1895-1920 time series using similar data).

Eugene White, *The Merger Movement in Banking 1919-1933*, 45 J. ECON. HIST. 285 (1985) (Comptroller of Currency reports, state comptroller reports, using target bank asset values).

Federal Trade Commission, Bureau of Economics, *Report on Mergers* (1981) (manufacturing and mining)

MergerStat, published by FactSet, in 20 year time periods. So we accessed MergerStat 1987 (1967-87); 2001 (1988-2001); 2021 (2002-2019) and currently.

<https://www.bvresources.com/products/2022-factset-mergerstat-review>

We generally omit information on M&A *volume*, the number of deals, because our goal is to measure the economic impact of M&A, better measured in consideration or other valuation terms. Nelson presents volume data post 1920, relying on data collected by Willard L. Thorp, who records deal volume from the *Standard Daily Trade*. See, e.g., Willard L. Thorp, *Recent Economic Changes in the United States*, National Bureau of Economic Research, Vol. 1, 1929; Willard L. Thorp, *The Structure of Industry*, Temporary National Economic Committee, Monograph No. 27, 1941. Thorp’s volume series is picked up by the FTC using a similar methodology, Federal Trade Commission, *The Merger Movement: A Summary Report*, 1948; Federal Trade Commission, *Report on Corporate Acquisitions and Mergers*, 1955. And, more recently, Federal Trade Commission, *Current Trends in Merger Activity, 1971, 1972* (Table 2); Federal Trade Commission, *FTC Statistical Report on Mergers and Acquisitions*, 1979 (Table 10).

For GDP, after 1929 we relied on data tracked and published by the Federal Reserve. <https://fred.stlouisfed.org/tags/series?t=annual%3Bgdp>. For 1895-1929, we relied on John W. Kendrick, *Productivity Trends in the United States*, National Bureau of Economic Research, New York, 1961.

For U.S. stock market capitalization beginning in 1900, we used the data compiled in Dmitry Kuvshinov & Kaspar Zimmermann, *The Big-Bang: Stock Market Capitalization in the Long Run*, 145 J. Fin. Econ. 527 (2022), On-line Supplementary Data Sources, Table E. 17.

For the Composite Stock Index, we use the composite stock index that dates to 1871 as compiled by Robert J. Shiller, who uses S&P generated data beginning in 1927 and for prior years, an index created by Alfred Cowles. See <http://www.econ.yale.edu/~shiller/data.htm>

Fig. 1A

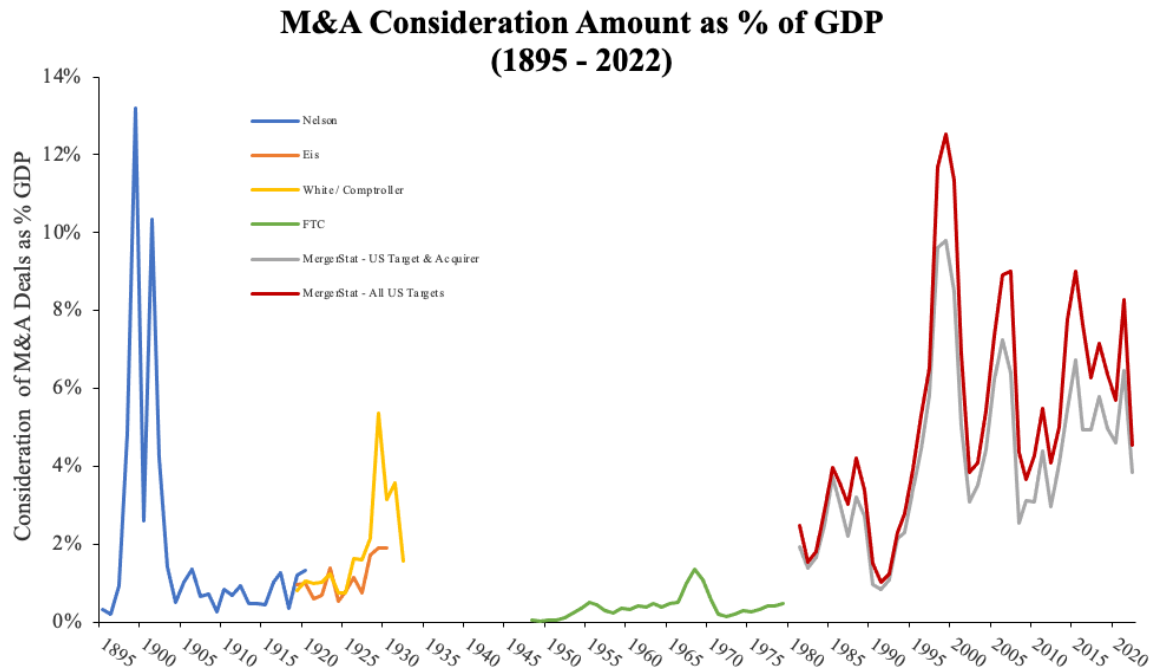


Fig. 2A

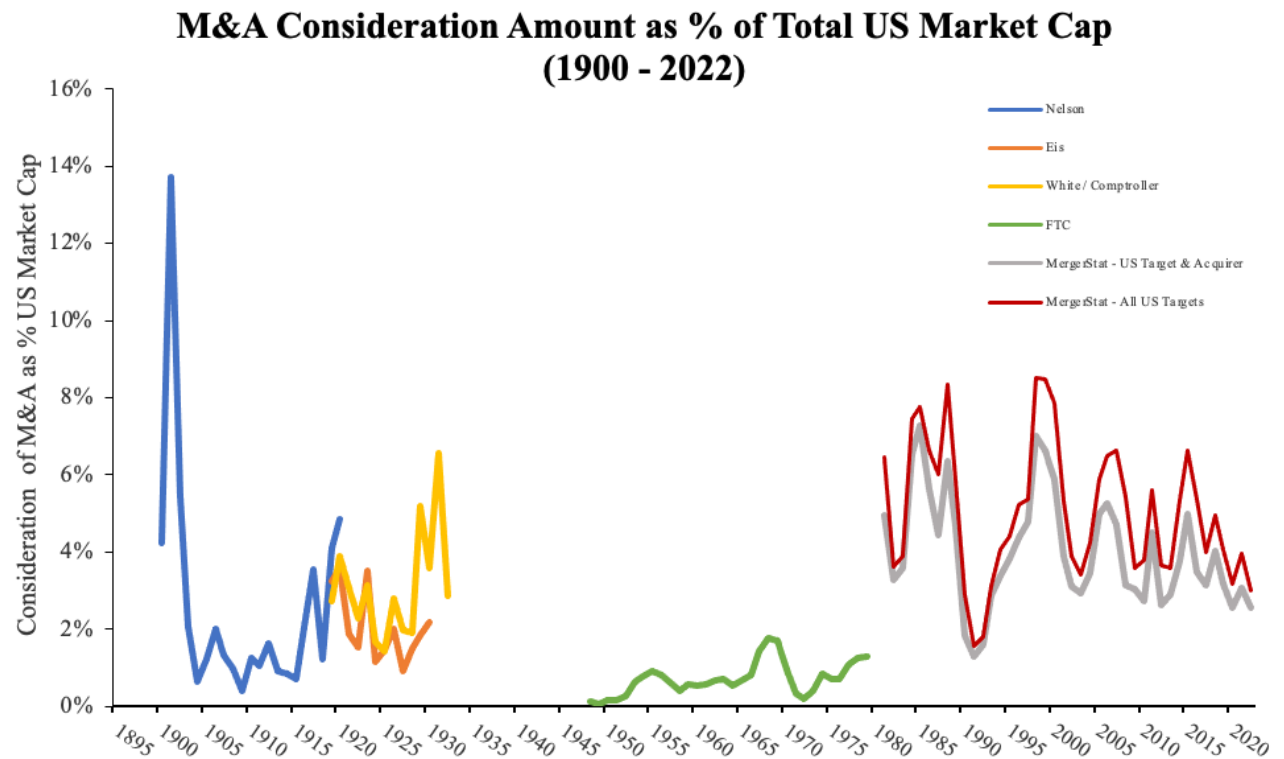
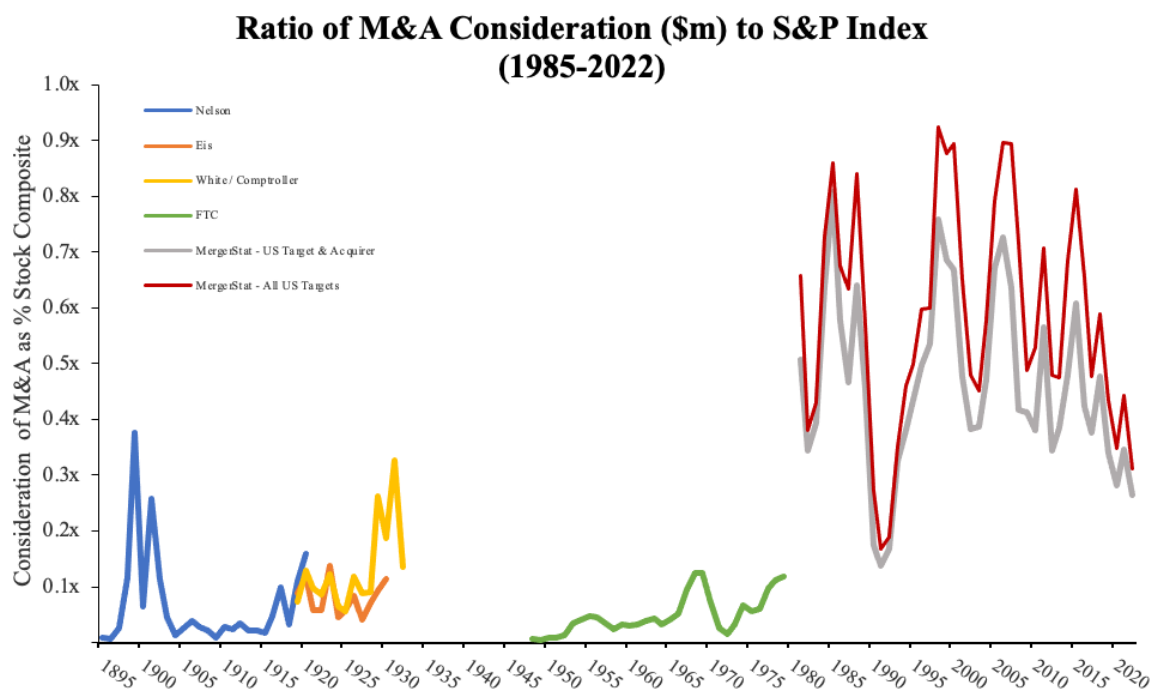
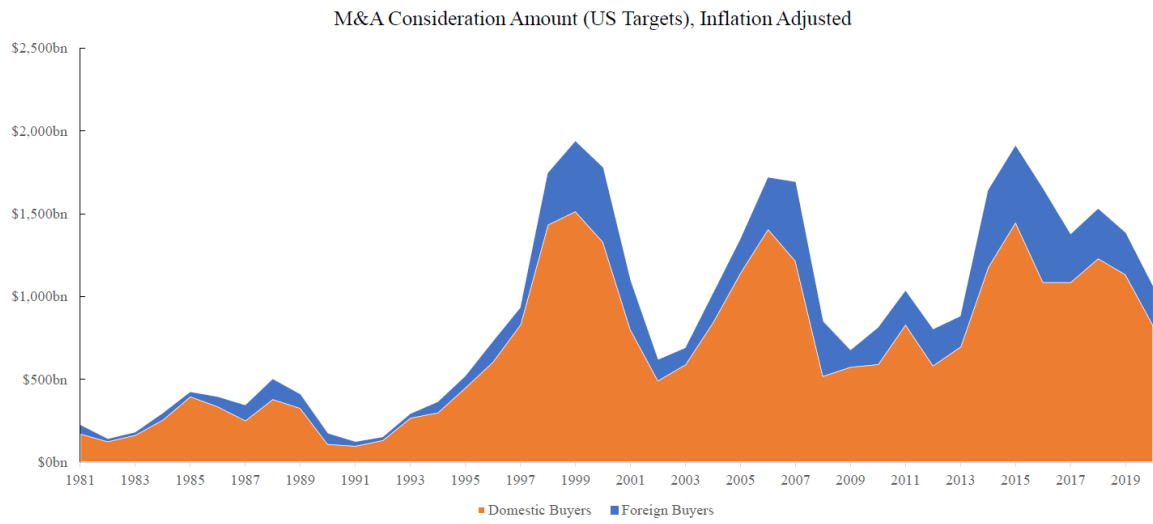


Fig. 3A



For all three figures, the brown line reflects the acquisition of US targets net of acquisitions by foreign buyers. The high level of M&A activity after 2020 persists even when foreign buyers are subtracted from the totals. To similar effect is Figure 4A below, showing acquisition consideration amount, adjusted for inflation.

Fig. 4A



Mergerstat – Historical Composition of Net M&A Announcements (Value)

Year	Publicly traded sellers (\$M)	Divestitures (\$M)	Private owned sellers (\$M)	Total (\$M)
1981	56,569.4	16,695.6	8,521.7	81,786.7
1982	31,501.8	16,050.3	5,916.9	53,469.0
1983	39,471.4	24,173.9	8,079.4	71,724.7
1984	82,731.0	29,379.0	8,734.8	120,844.8
1985	116,675.5	45,825.6	16,851.6	179,352.7
1986	89,866.2	59,926.9	22,025.4	171,818.5
1987	85,924.9	58,290.6	11,857.5	156,073.0
1988	156,112.9	69,614.9	19,405.0	245,132.8
1989	121,870.6	70,843.7	12,484.4	205,198.7
1990	48,214.9	42,179.8	9,343.8	99,738.5
1991	31,668.0	29,256.1	8,847.9	69,772.0
1992	31,171.5	50,400.0	10,257.2	91,828.7
1993	111,041.5	48,153.4	14,774.0	173,968.9
1994	109,101.3	84,892.1	27,430.3	221,423.7
1995	202,916.8	96,487.6	26,879.3	326,283.7
1996	285,185.0	117,629.7	63,199.8	466,014.5
1997	374,399.5	172,667.6	68,958.4	616,025.5
1998	884,713.7	191,460.7	74,010.5	1,150,184.9
1999	963,715.9	255,592.6	120,222.4	1,339,530.9
2000	831,388.3	276,548.1	164,804.7	1,272,741.1
2001	309,786.4	268,323.4	56,292.5	634,402.3
2002	145,589.4	209,001.2	63,203.3	417,793.9
2003	217,578.1	184,651.3	49,741.0	451,970.4
2004	380,867.7	248,036.8	78,897.4	707,801.9
2005	551,830.1	305,327.3	103,555.6	960,713.0
2006	683,350.4	342,246.3	110,491.2	1,136,087.9
2007	603,171.8	407,854.6	112,538.4	1,123,564.8
2008	382,206.4	218,254.3	57,955.2	658,415.9
2009	289,424.4	195,034.4	38,553.9	523,012.7
2010	259,717.4	287,459.5	83,039.0	630,215.9
2011	355,730.9	319,898.5	94,152.2	769,781.6
2012	205,412.9	378,190.5	130,492.9	714,096.3
2013	284,379.4	470,701.4	80,031.2	835,112.0
2014	641,341.4	533,343.5	164,944.0	1,339,628.9
2015	1,035,588.4	382,896.1	251,818.2	1,670,302.7
2016	907,768.5	289,753.2	285,444.5	1,482,966.2
2017	635,953.1	280,917.3	290,999.0	1,207,869.4
2018	687,921.5	349,172.0	290,317.9	1,327,411.4
2019	786,778.1	316,465.2	277,521.1	1,380,764.4
2020	495,911.8	286,719.3	504,885.4	1,287,516.5
2021	619,418.4	482,026.1	970,662.2	2,072,106.7
2022	701,588.0	228,776.3	286,198.2	1,216,562.5
2023	603,841.8	217,943.4	269,557.0	1,091,342.2

Mergerstat – Historical Composition of Net M&A Announcements (Volume)

Year	Publicly traded sellers	Divestitures	Private owned sellers	Total
1981	168	830	1,330	2,328
1982	180	875	1,222	2,277
1983	181	376	500	1,057
1984	204	401	445	1,050
1985	321	525	453	1,299
1986	352	543	548	1,443
1987	267	388	296	951
1988	436	445	251	1,132
1989	320	508	232	1,060
1990	175	409	243	827
1991	144	332	213	689
1992	178	393	314	885
1993	191	452	393	1,036
1994	291	469	514	1,274
1995	395	608	639	1,642
1996	454	887	1,142	2,483
1997	564	971	1,252	2,787
1998	590	944	1,289	2,823
1999	708	1,031	1,364	3,103
2000	636	1,178	1,647	3,461
2001	511	1,167	1,089	2,767
2002	366	1,267	1,030	2,663
2003	400	1,413	890	2,703
2004	315	1,413	1,181	2,909
2005	399	1,780	1,602	3,781
2006	433	1,495	1,424	3,352
2007	453	1,351	1,500	3,304
2008	275	879	881	2,035
2009	228	840	530	1,598
2010	302	1,099	933	2,334
2011	267	1,140	945	2,352
2012	294	1,106	970	2,370
2013	270	1,102	863	2,235
2014	311	1,332	1,318	2,961
2015	318	1,142	1,552	3,012
2016	302	1,044	1,371	2,717
2017	288	1,008	1,585	2,881
2018	287	868	1,420	2,575
2019	239	1,103	1,478	2,820
2020	157	1,032	1,339	2,528
2021	250	1,116	2,018	3,384
2022	217	897	1,129	2,243
2023	234	856	774	1,864

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