THE ISSUE OF BIGNESS IN ANTITRUST ENFORCEMENT: WERE STRUCTURAL REMEDIES A SOLUTION?

Naomi R. Lamoreaux,
Yale University, the University of Michigan, and NBER

“Competition is not a state; it is a force, and it is a force that, left unchecked, will leave you earning zero profits.”

From Margaret Levenstein’s presidential address to the Business History Conference

Source: Margaret C. Levenstein, “Escape from Equilibrium: Thinking Historically about Firm Responses to Competition,” *Enterprise & Society* 13 (Dec. 2012), 711.

Firms can escape competition in two main ways:

- They can innovate.
- Or they can block it.

Sherman Antitrust Act of 1890

- SEC. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor . . . .
- SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor . . . .

The real problem was not good and bad trusts, but good and bad means of escaping competition.

- “Bad trusts” grew large by blocking competition (“bad means”).
- “Good trusts” grew large by innovating (“good means”), but (following Levenstein) that didn’t mean they wouldn’t try to preserve their advantages by blocking competition (“bad means”).

Clayton Antitrust Act (1914)

§ 2: That it shall be unlawful for any person engaged in commerce … either directly or indirectly to discriminate in Price between different purchasers of commodities … where the effect of such discrimination may be to substantially lessen competition or tend to create a monopoly in any line of commerce ….

§ 3: That it shall be unlawful for any person engaged in commerce … to fix a price charged therefore, or discount from, or rebate upon, such price, on the condition, agreement or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies or other commodities of a competitor or competitors of the lessor or seller, where the effect … may be to substantially lessen competition or tend to create a monopoly in any line of commerce.

§ 7: That no corporation engaged in commerce shall acquire, directly or indirectly, the whole or any part of the stock or other share capital of another corporation engaged also in commerce, where the effect of such acquisition may be to substantially lessen competition …, or to restrain such commerce in any section or community, or tend to create a monopoly of any line of commerce….

Federal Trade Commission Act (1914)

§ 5: That unfair methods of competition are hereby declared unlawful. … Whenever the commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition in commerce, … it shall issue a complaint stating its charges in their respect and containing a notice of a hearing …. If upon such hearing the commission shall be of the opinion that the method of competition in question is prohibited by this act, it shall make a report in writing … and shall issue … an order … to cease and desist from using such method of competition.

§ 6: That the commission shall also have power … to gather and compile information concerning, and to investigate from time to time the organization, business, conduct, practices, and management of any corporation engaged in commerce ….

Figure 1

Percentage of National and Manufacturing Income in Monopolized Industries, Selected Years, 1899–1980

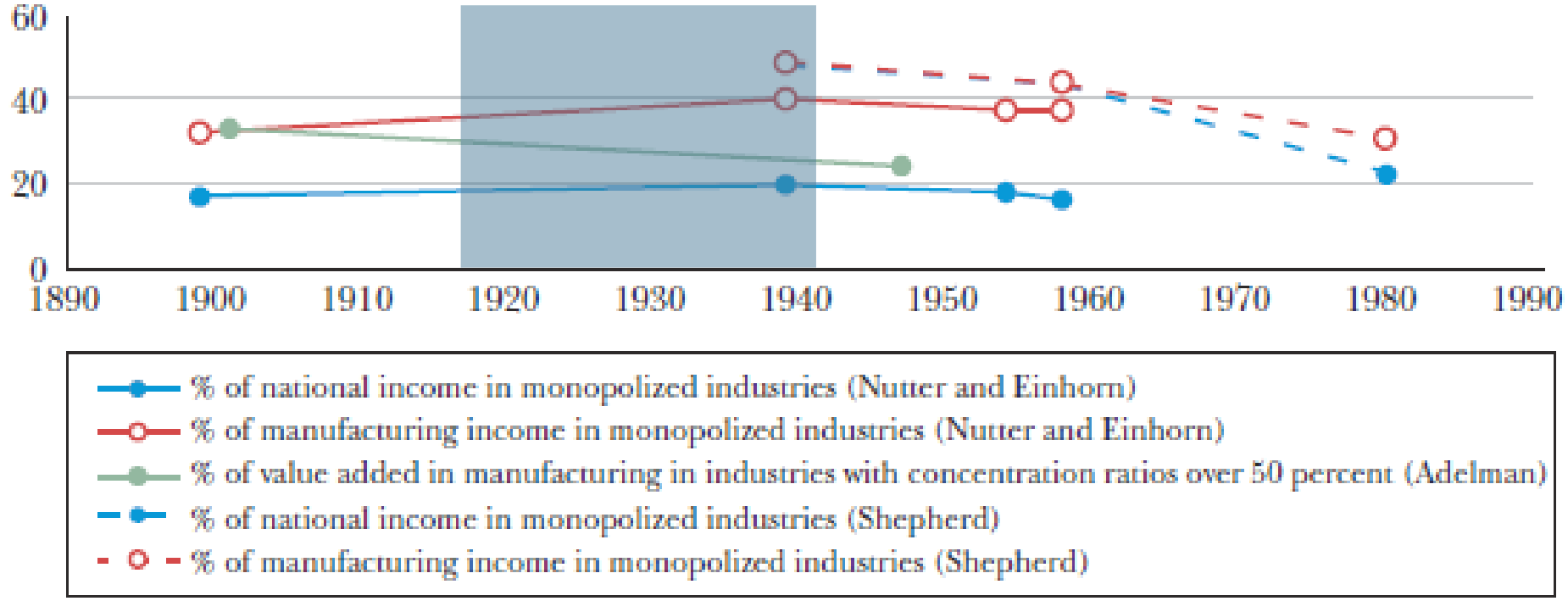


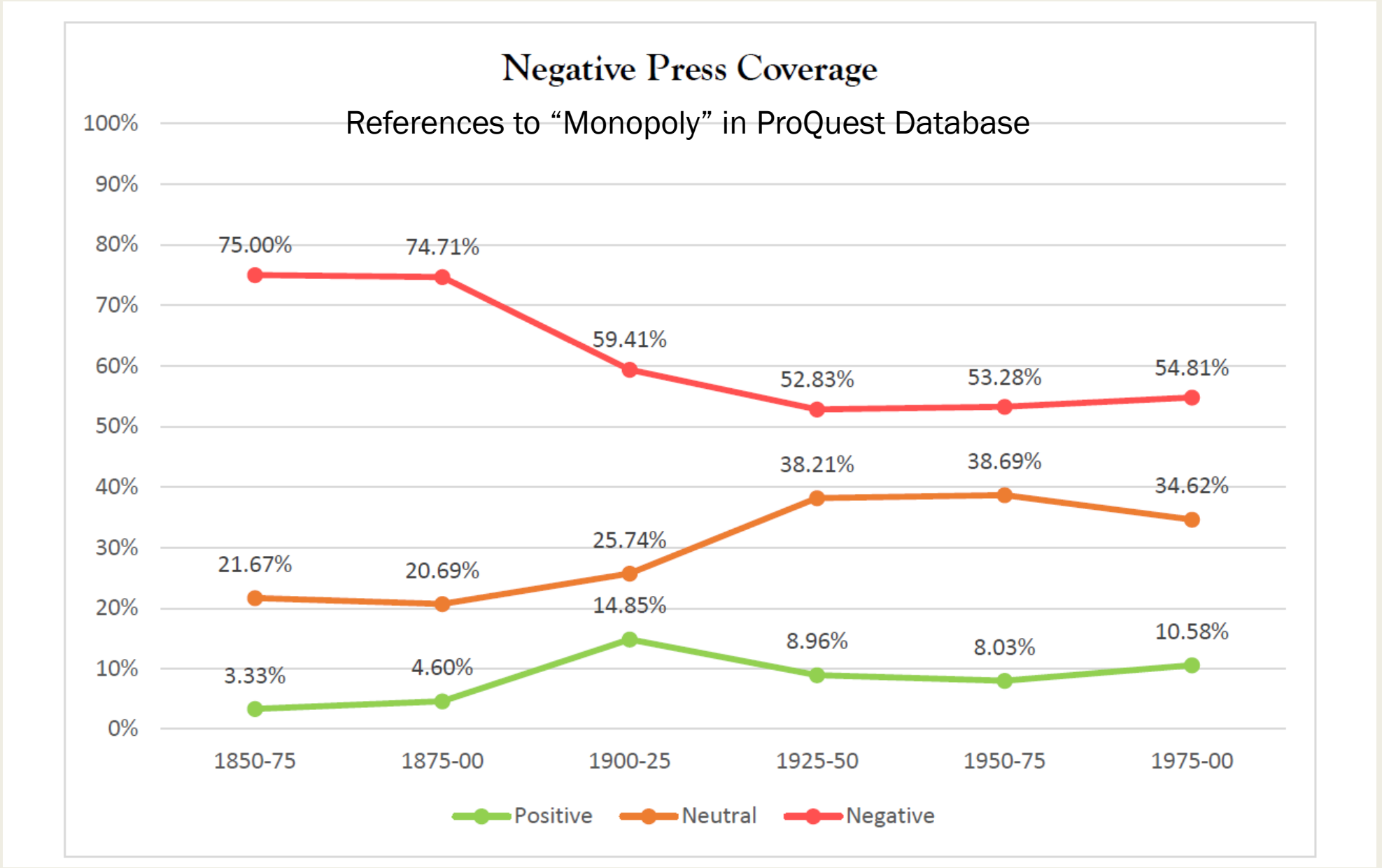
TABLE 4

DISTRIBUTION OF SURVIVORS ON "WEAK" TURNOVER CRITERION WHICH CONTINUE AS INDEPENDENT FIRMS (EDWARDS LIST)

	(1) Total No. of Firms in Series (col. 2 + 6)	(2) Total No. of Firms Which Continue as Independents (col. 3 + 4)	(3) Firms whose Assets Increased or Remained the Same in Real Value	(4) Firms Whose Assets Declined in Real Value	(5) Firms Whose Assets Declined in Current Dollars (subset of col. 4)	(6) Firms Which Disappeared by Merger or Liquidation	(7) col. 4/col. 2
1903-1917	100	84	27	57	17	16	68%
1919-1969	110	70	68	2	1	40	3%

Source: See text and footnote 3.

Source: Richard C. Edwards, "Stages in Corporate Stability and the Risks of Corporate Failure," *Journal of Economic History* 25 (June 1975): 439.



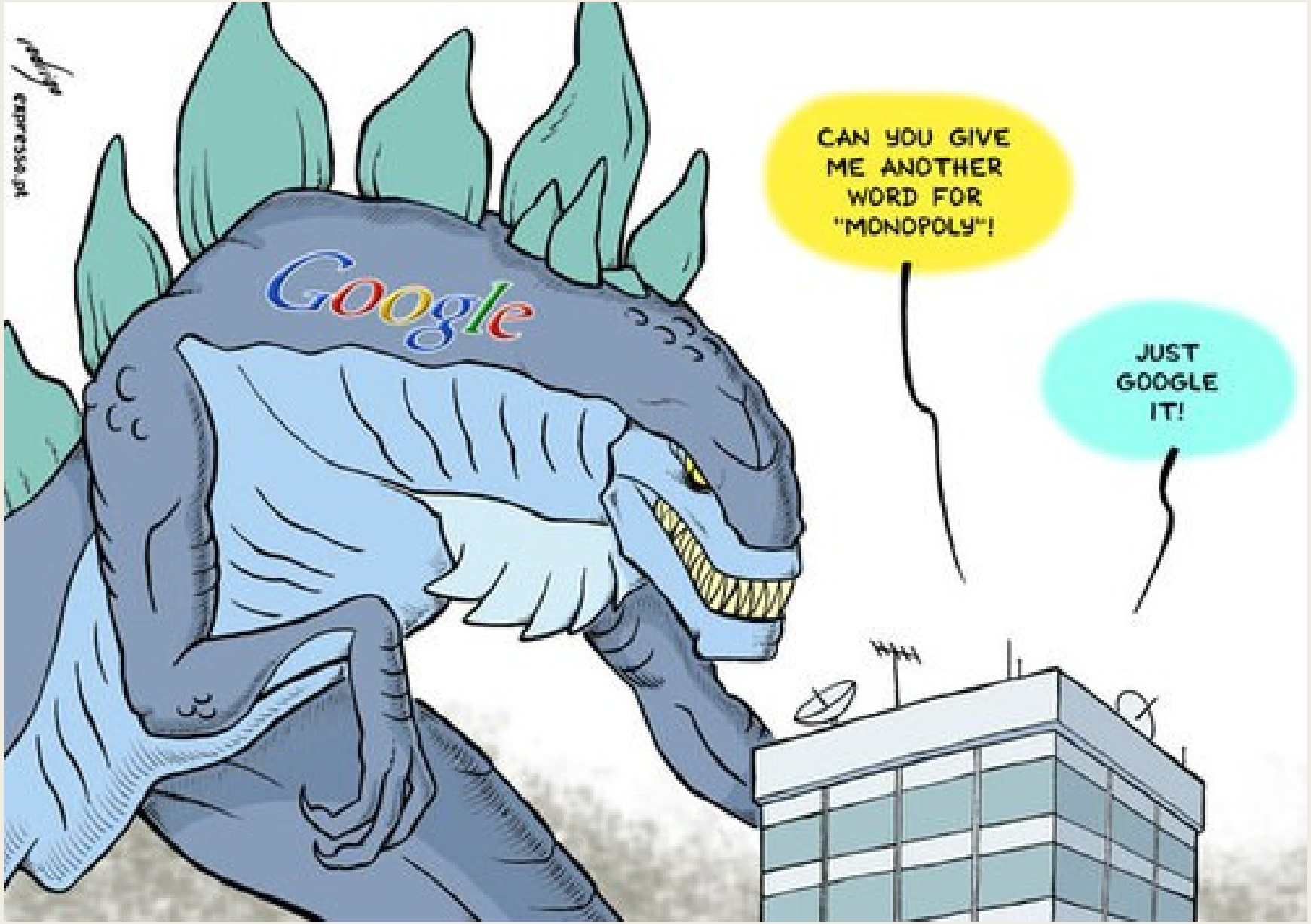
Source: Dirk Aurer and Nicolas Petit, “Antitrust Versus the Press: Two Systems of Belief about Monopoly,” unpublished paper (2018), 25.

From Justice Learned Hand's opinion in *United States v. Aluminum Co. of America*, 148 F2d 416 (1945) at 430-431.

True, it [ALCOA] stimulated demand and opened new uses for the metal, but not without making sure that it could supply what it had evoked. There is no dispute as to this; 'Alcoa' avows it as evidence of the skill, energy and initiative with which it has always conducted its business; as a reason why, having won its way by fair means, it should be commended, and not dismembered. **We need charge it with no moral derelictions after 1912; we may assume that all it claims for itself is true.** The only question is whether it falls within the exception established in favor of those who do not seek, but cannot avoid, the control of a market. It seems to us that that question scarcely survives its statement. **It was not inevitable that it should always anticipate increases in the demand for ingot and be prepared to supply them. Nothing compelled it to keep doubling and redoubling its capacity before others entered the field.** It insists that it never excluded competitors; but we can think of no more effective exclusion than progressively to embrace each new opportunity as it opened, and to face every newcomer with new capacity already geared into a great organization, having the advantage of experience, trade connections and the elite of personnel.

The case of the steel industry:

- Under the leadership of Judge Elbert H. Gary, the U.S. Steel Corp. learned to live within the antitrust laws
  - *Allow market share slip below 50 % in all major markets.*
  - *Control entry by buying up (or leasing) major iron ore reserves.*
  - *Keep existing competitors happy (and cooperative) by setting prices at a level that was profitable for them.*
- Strategy worked. Antitrust prosecution against U.S. Steel failed.
- Succeeded in maintaining tight oligopoly in the industry until the 1970s.
- Resulting lack of innovation had disastrous consequences for American industry.


Google
CAN YOU GIVE ME ANOTHER WORD FOR "MONOPOLY"!
JUST GOOGLE IT!