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Ethnically Segmented Markets: Korean-Owned Black Hair Stores

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Ethnically Segmented Markets: Korean-Owned Black Hair Stores

FELIX B. CHANG*

Races often collide in segmented markets where buyers belong to one ethnic group while sellers belong to another. This Article examines one such market: the retail of wigs and hair extensions for African Americans, a multi-billion-dollar market controlled by Korean Americans. Although prior scholarship attributed the success of Korean American ventures to rotating communal credit, this Article argues that their dominance in ethnic beauty supplies stems from collusion and exclusion.

This Article is the first to synthesize the disparate treatment of ethnically segmented markets in law, sociology, and economics into a comprehensive framework. Its primary contribution is to forge the concept of ethnically segmented and misaligned (ESM) markets, where buyers and sellers are ethnically distinct from one another.

ESM markets challenge entrenched paradigms in antitrust. In the wigs and extensions market, the endurance of Korean American retailers confounds conventional notions of market power, which is measured at the firm level. This market suggests that numerous in-group incumbents can compete intensely with one another but collaborate to stymie out-group insurgents.

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INTRODUCTION

Segmented markets are the product of markets dividing to serve groups with similar supply or demand preferences.¹ In *ethnically* segmented markets, that division occurs due to ethnic or racial preferences. For instance, an all-white homeowners' association might exclude African Americans from a neighborhood to inflate home values, thereby segmenting its housing stock.² More innocuously, grocery stores in a diverse city might cater to the segmented food preferences of its ethnic residents.³

1. See MICHAEL E. PORTER, *COMPETITIVE STRATEGY: TECHNIQUES FOR ANALYZING INDUSTRIES AND COMPETITORS* 196–200 (1980).

2. See Daria Roithmayr, *Racial Cartels*, 16 MICH. J. RACE & L. 45 (2010). Similarly, labor markets might be segmented along the lines of occupation, geography, race, education, and immigration status. See Michael Reich, David M. Gordon & Richard C. Edwards, *Dual Labor Markets: A Theory of Labor Market Segmentation*, 63 AM. ECON. REV. 359 (1973); William T. Dickens & Kevin Lang, *Labor Market Segmentation Theory: Reconsidering the Evidence*, in *LABOR ECONOMICS: PROBLEMS IN ANALYZING LABOR MARKETS* (William Darity, Jr. ed., 1993).

3. See Ogenyi E. Omar, Alan Hirst & Charles Blankson, *Food Shopping Behavior Among Ethnic and Non-Ethnic Communities in Britain*, 10 J. FOOD PRODS. MKTG. 39 (2004). Some markets, such as ethnic foods, are more susceptible to consumer crossover than others, such as ethnic beauty products. With ethnic foods, debates of purity versus fusion replicate the

The most puzzling—and disconcerting—ethnically segmented markets, however, are ones where consumers hail from one ethnic or racial group while sellers hail from another. Such markets present a conundrum: why are buyers and sellers ethnically distinct?

The piecemeal literature on ethnically segmented markets does not provide a satisfactory answer. In economics, the debate has revolved around whether racial preferences are inefficient and, by extension, whether ethnically segmented markets should yield to market integration over time.⁴ Neither side convincingly explains why some ethnically segmented markets thrive as a misalignment of ethnically distinct buyers and sellers.⁵ After all, ethnically homogenous consumers should prefer to buy from co-ethnic producers.⁶

Legal scholars tend to examine ethnically segmented markets from the side of producers rather than consumers. Borrowing from antitrust theory, race and law scholars have framed the exclusion of peoples of color from housing and labor markets as a mechanism of racial cartels.⁷ In law and development circles, one camp of scholars has emphasized structural explanations for the dominance of ethnic groups in niche markets, typically against the backdrop of exclusion of all peoples of color from mainstream economies.⁸ By contrast, another camp has fixated on the institutions, relationships, and private ordering peculiar to ethnic communities.⁹ In

economic discourse on market segmentation and integration while upping the cultural ante. See, e.g., Roxana Hadadi, *Alison Roman, the Colonization of Spices, and the Exhausting Prevalence of Ethnic Erasure in Popular Food Culture*, PAJIBA (May 9, 2020), https://www.pajiba.com/celebrities_are_better_than_you/alison-roman-and-the-exhausting-prevalence-of-ethnic-erasure-in-popular-food-culture.php [<https://perma.cc/XJ27-2ZAY>].

4. See GARY S. BECKER, *THE ECONOMICS OF DISCRIMINATION* (2d ed. 1971).

5. See Amanda Lea Robinson, *Internal Borders: Ethnic-Based Market Segmentation in Malawi*, 87 *WORLD DEV.* 371 (2016).

6. In fact, silos of co-ethnic buyers and sellers mark societies that are characterized by high degrees of interethnic tension and economic fragmentation. See *id.*

7. See Roithmayr, *supra* note 2, at 51 (defining racial cartels as “groups in which members agree to artificially fix wages, property values, political power and other price-like analogues, by restricting supply, dividing up markets, or colluding to achieve other commercial conditions”).

8. See, e.g., Eleanor Marie Lawrence Brown, *The Blacks Who “Got Their Forty Acres”*: *A Theory of Black West Indian Migrant Asset Acquisition*, 89 *N.Y.U. L. REV.* 27 (2014) (examining structural factors giving entrepreneurs from the West Indies a leg up, in comparison with other Black Americans).

9. See, e.g., Lan Cao, *Looking at Communities and Markets*, 74 *NOTRE DAME L. REV.* 841 (1999) (examining rotating credit associations in immigrant communities); Amy L. Chua, *Markets, Democracy, and Ethnicity: Toward a New Paradigm for Law and Development*, 108 *YALE L.J.* 1 (1998) (correlating the success of some “market-dominant minorities” with their cultural dispositions); BARAK D. RICHMAN, *STATELESS COMMERCE: THE DIAMOND NETWORK AND THE PERSISTENCE OF RELATIONAL EXCHANGE* (2017) (linking the success of certain ethnicities in the diamond industry with intra-ethnic exchanges and relationships); Teemu Ruskola, *Conceptualizing Corporations and Kinship: Comparative Law and Development Theory in a Chinese Perspective*, 52 *STAN. L. REV.* 1599 (2000) (tracing the development of Chinese corporate law to traditions of family and kinship).

totality, however, legal scholars have not articulated a comprehensive theory of markets that are both ethnically segmented *and* ethnically misaligned.

Sociology presents the most exhaustive treatment of these markets, though it, too, falls short in explaining the persistence of ethnic misalignment. Here the seminal work revolved around middleman minorities—sojourners such as Chinese, Jewish, Indian, Korean, and Lebanese merchants who mediate between majority and other minority groups.¹⁰ Over time, this framework morphed into “ethnic entrepreneurs” to cover non-itinerant groups.¹¹ Nonetheless, it continued to miss the business tactics that enable in-group sellers to maintain dominance over out-group competitors.¹²

To unify the disparate approaches across law, economics, and sociology, this Article articulates a theory for the endurance of ethnically segmented markets where producers hail from one ethnicity while consumers hail from another—a concept this Article calls ethnically segmented and misaligned (ESM) markets. As its first step, the Article proffers a definition of ethnically segmented markets that encompasses all three disciplines. The Article’s central contribution is to bring clarity to this concept, which has spanned multiple fields with no coherent framework.

Focusing on the retail of wigs and hair extensions to African Americans, which is dominated by Korean American firms, this Article illuminates that most peculiar of segmented markets—where buyers and sellers are ethnically homogenous but misaligned. The size of the market for wigs and extensions is estimated at \$6 billion.¹³ It is delineated along racial lines, with African American women comprising the largest segment.¹⁴ Due to a confluence of societal pressures and

10. See HUBERT M. BLALOCK, *TOWARD A THEORY OF MINORITY-GROUP RELATIONS* (1967); Edna Bonacich, *A Theory of Middleman Minorities*, 38 *AM. SOCIO. REV.* 583 (1973); see also CHINESE MIGRANTS IN RUSSIA, CENTRAL ASIA AND EASTERN EUROPE (Felix Chang & Sunnie Rucker-Chang eds., 2012); *VOLUNTARY ORGANIZATIONS IN THE CHINESE DIASPORA* (Khun Eng Kuah-Pearce & Evelyn Hu-Dehart eds., 2006).

11. See IVAN LIGHT & EDNA BONACICH, *IMMIGRANT ENTREPRENEURS: KOREANS IN LOS ANGELES 1965–1982* 17 (1988); see also Zulema Valdez, *Beyond Ethnic Entrepreneurship: An Embedded Market Approach to Group Affiliation in American Enterprise*, 15 *RACE, GENDER & CLASS* 156 (2008).

12. *But see* IN-JIN YOON, *ON MY OWN: KOREAN BUSINESSES AND RACE RELATIONS IN AMERICA* (1997) [hereinafter YOON, *ON MY OWN*]; In-Jin Yoon, *The Growth of Korean Immigrant Entrepreneurship in Chicago*, 18 *ETHNIC & RACIAL STUD.* 315 (1995) [hereinafter Yoon, *Korean Immigrant Entrepreneurship*].

13. Susan Adams, *Long on Hair: The World’s First Venture-Backed Human-Hair-Extension Company Wants to Be the Airbnb of Salons*, *FORBES*, Sept. 27, 2019.

14. See *Black Impact: Consumer Categories Where African Americans Move Markets*, NIELSEN (Feb. 15, 2018), <https://www.nielsen.com/us/en/insights/article/2018/black-impact-consumer-categories-where-african-americans-move-markets/> [https://perma.cc/YA6D-ZQYL] (“African Americans have cornered the ethnic hair and beauty market, ringing up \$54 million of the \$63 million total industry spend in 2017.”). On opportunities for disruption in the African American segment, see Tamison O’Connor, *Building the Glossier of the Black Hair Market*, *BUS. OF FASHION* (Nov. 14, 2019), <https://www.businessoffashion.com/articles/beauty/freddie-harrel-radwan-hair-extensions-wigs> [https://perma.cc/AQB8-SESM].

beauty standards, African American women are steadfast consumers;¹⁵ hence, demand in the market is inelastic, which tends to confer market power to producers.¹⁶

This Article argues that Korean American sellers (the market's main producers) maintain dominance not through structural or cultural advantages, but by collusion and exclusion. In mainstream economies, these strategies are employed by so many dominant firms that they have become the staple of antitrust cases.¹⁷ In ESM markets, however, coordination and exclusion assume a sociological dimension, with anticompetitive effects reinforced by co-ethnic bonds.¹⁸ During the 1970s, a combination of economic forces, racial structures, and shifting beauty standards initially propelled Korean-owned firms to power.¹⁹ This Article focuses on how Korean American retailers leveraged and maintained that power in the face of challenges by African American competitors. In these markets, retailers managed to band together intra-ethnically and fend off competition interracially through tactics that can be conceptualized as antitrust offenses.

Antitrust is an apt springboard for analysis because African Americans often frame their relationship with Korean American retailers in anticompetitive terms. It is often asserted that Korean American firms exert a "monopoly" over, and have "monopolized," Black beauty supply stores.²⁰ Yet monopoly and monopolization have specific meanings that demand careful market power analysis.²¹ Working through the requisite steps infuses the literature on these buyer-seller interactions (and, accordingly, interethnic interactions) with rigor. Further, the interactions between African American buyers and Korean American sellers occur wholly outside the ambit of the state and therefore out of the purview of public law. That race relations often unfold as private transactions under private law is well

15. See *infra* Section II.A.

16. See *infra* Section III.A.1.

17. See, e.g., *Interstate Cir., Inc. v. United States*, 306 U.S. 208 (1939) (finding that the parallel insertion of price maintenance clause into exhibition contracts by film distributors led to inference of collusion); *Am. Column & Lumber Co. v. United States*, 257 U.S. 377 (1921) (holding that information exchange among hardwood manufacturers facilitated by trade association found to constitute price fixing); *United States v. Foley*, 598 F.2d 1323 (4th Cir. 1979) (holding that communication among otherwise competing realtors facilitated their conspiracy to raise commission rates).

18. This is not entirely straightforward. While Korean Americans can appeal to ethnic solidarity and utilize publications and associates to facilitate information exchange, intra-ethnic competition is intense. See LIGHT & BONACICH, *supra* note 11, at 193–93.

19. See Jason Petrulis, "A Country of Hair": A Global Story of South Korean Wigs, Korean American Entrepreneurs, African American Hairstyles, and Cold War Industrialization, 22 ENTER. & SOC'Y 368 (2021); Ku-Sup Chin, In-Jin Yoon & David Smith, *Immigrant Small Business and International Economic Linkage: A Case of the Korean Wig Business in Los Angeles, 1968-1977*, 30 INT'L MIGRATION REV. 485 (1996). This history has entered popular imagination as well. See NICOLA YOON, *THE SUN IS ALSO A STAR* (2016).

20. See Edward Tony Llonau, *How and Why Korean Owned Beauty Supply Stores Dominate in the Afro Community*, LIQUID GOLD BLOG (Sept. 8, 2013) <http://www.liquidgoldbonding.com/blog/?p=126> [https://perma.cc/VL2T-46Y8].

21. See HERBERT HOVENKAMP, *FEDERAL ANTITRUST POLICY: THE LAW OF COMPETITION AND ITS PRACTICE* 92 (4th ed. 2011).

understood.²² Arguably, where transactions between races can be characterized as buyer-seller transactions, as in ESM markets, laws governing commerce are more appropriate than antidiscrimination laws as a point of entry.

Insights about ethnically segmented markets can push the boundaries of antitrust as well. The endurance of Korean American firms suggests that collusive and exclusionary schemes may be more stable than antitrust theory holds. Further, measuring market power at the firm level may not always be appropriate. While the literature on cartels has centered on a small number of large producers,²³ coordination among a multitude of small firms in ESM markets is possible.²⁴ This coheres with the axiom from sociology that an ethnic group withdraws into itself, strengthening co-ethnic bonds, when threatened by exogenous forces.²⁵ This Article's second major contribution is therefore the discovery that in-group producers can coordinate against and exclude out-group competitors by utilizing ethnic bonds.

The remainder of the Article proceeds as follows: Section I synthesizes the treatment of ethnically segmented markets in law, economics, and sociology to provide an edifice for the concept. Section II introduces the market for wigs and hair extensions as a template for ESM markets. Section III works through the market power of Korean American retailers. In doing so, it considers how this market pushes the boundaries of antitrust doctrine. Finally, Section IV anticipates how the infusion of race and ethnicity upends several assumptions in antitrust.

Before this Article proceeds further, an explanation of terminology is in order. First, this Article refers to "ethnically" segmented markets rather than "racially" segmented markets even though the latter could suffice for the retail of wigs and hair extensions to African Americans. African Americans, of course, are a racialized group,²⁶ while Korean Americans are an ethnicity within the Asian American racial group.²⁷ Their misalignment in this market is both ethnic and racial. Nevertheless,

22. Debate over the scope of public law to cover private actions stretches as far back as the Reconstruction Amendments. See HEATHER COX RICHARDSON, *WEST FROM APPOMATTOX: THE RECONSTRUCTION OF AMERICA AFTER THE CIVIL WAR 204–05* (2007); George Rutherglen, *State Action, Private Action, and the Thirteenth Amendment*, 94 VA. L. REV. 1367, 1372 (2008). More recent discourse on the relevance of private law to interethnic relations includes, for example, Cao, *supra* note 9; RICHMAN, *supra* note 9.

23. The classic study is Reinhard Selten, *A Simple Model of Imperfect Competition, Where 4 Are Few and 6 Are Many*, 2 INT'L J. GAME THEORY 141 (1973). See also Margaret C. Levenstein & Valerie Y. Suslow, *What Determines Cartel Success?*, 44 J. ECON. LITERATURE 43 (2006); Andrew R. Dick, *When Are Cartels Stable Contracts?*, 39 J.L. & ECON. 241 (1996).

24. See *infra* Section II.B.

25. Beleaguered merchants are likely to withdraw into "distinctive cultural and organizational forms," thereby resisting integration. Jonathan H. Turner & Edna Bonacich, *Toward a Composite Theory of Middleman Minorities*, 7 ETHNICITY 144, 154 (1980).

26. See MICHAEL OMI & HOWARD WINANT, *RACIAL FORMATION IN THE UNITED STATES* 122 (3d ed., 2014). Recent scholarship, however, has come to view race as a power construct, rather than social construct. See, e.g., FELIX B. CHANG & SUNNIE T. RUCKER-CHANG, *ROMA RIGHTS AND CIVIL RIGHTS: A TRANSATLANTIC COMPARISON* 24 (2020); ACHILLE MBEMBE, *NECROPOLITICS* (2019).

27. For a thorough literature review of ethnicity, especially in the context of Asian Americans, see YEN LE ESPIRITU, *ASIAN AMERICAN PANETHNICITY: BRIDGING INSTITUTIONS AND IDENTITIES* 1–10 (1992).

the Article adopts “ethnic” for consistency with the sociological literature, which refers to *ethnic entrepreneurs*.²⁸ This also attains a greater degree of precision regarding the producers (i.e., Korean Americans), rather than subsuming them in a larger racial category (i.e., Asian Americans, whose diverse constituents exhibit differing rates of entrepreneurship). This specificity is consistent with the antitrust notion that markets must be defined as narrowly as possible to accurately capture market power.²⁹

I. DEFINING ETHNICALLY SEGMENTED MARKETS

Existing treatment of ethnically segmented markets is, for lack of a better word, *segmented* along disciplines. Law, economics, and sociology have all tackled ethnically segmented markets, but through their narrow disciplinary confines. This Section assembles a definition of ethnically segmented markets from the disparate but complementary scholarship, with a view toward illuminating the markets at the crux of this Article. Ultimately, this Section arrives at the following definition of ethnically segmented and misaligned markets: buyers are ethnically homogenous and exhibit similar demand preferences but are served by producers who are themselves ethnically homogenous but also ethnically distinct from buyers.

A. Contributions from Law

1. Market Division

Law’s primary contribution to ethnically segmented markets is the insight from antitrust that markets divide. They divide naturally, as a result of consumer preferences, and artificially, as a result of coordination to boost and maintain market power. These divisions form the basis for market segmentation along the demarcations of ethnicity. Other legal concepts, such as racial cartels and the interplay between markets and ethnicity, build upon this intuition of segmentation.

Every market can be broken down into a product market and a geographic market.³⁰ A product market might segment along price points, while a geographic market might splinter to reflect logistical challenges. For instance, the vast market for hotels is indisputably segmented along high-end and budget options, with a large and amorphous segment in the middle. In New York City, the Four Seasons and the Mark Hotel might be interchangeable with each other but not with budget motels.³¹

28. See *infra* Section II.B.

29. See HOVENKAMP, *supra* note 21, at 92 (“A relevant market is the smallest grouping of sales for which the elasticity of demand and supply are sufficiently low that a ‘hypothetical monopolist’ . . . could profitably reduce output and increase price . . .”).

30. *Id.*

31. Compare Bao Ong, *15 of the Most Expensive Hotel Suites in New York City*, ARCHITECTURAL DIGEST (Jan. 3, 2017), <https://www.architecturaldigest.com/gallery/most-expensive-hotel-suites-in-new-york-city> [<https://perma.cc/PUN5-4AM8>] (\$50,000/night for the most expensive suite at the Four Seasons and \$75,000/night at the Mark), *with* HOTELS.COM (search for two-star hotels in New York City) (last accessed July 31, 2021) (approximately \$100–150/night for a two-star hotel). The two extremes are not

New York City may not even comprise one geographic market. Arguably, high-end hotels in Staten Island are not interchangeable with high-end hotels in Midtown Manhattan.³²

With ethnically segmented markets, product markets are divided along ethnic lines. In a metropolis as large and diverse as Los Angeles, it would be foolhardy to define the grocery store market as all grocery stores in Los Angeles County. The product market is segmented along ethnic lines, tracking the tastes and preferences of the city's multitude of residents.³³ This holds for even smaller slivers of the county. Thus, all grocery stores in the Mid-Wilshire area of Los Angeles cannot be lumped into one product market; given the area's diversity, grocery stores catering mostly to Chicano patrons might not be interchangeable with stores catering mostly to Ethiopian or Korean patrons. Further, considering the snarl of Los Angeles traffic, geographic markets should be drawn more compactly than in other cities. Thus, even if Asian grocery stores comprise a single product market, we might aptly define Asian grocery stores in Monterey Park and West Covina as separate geographic markets, even though both are located in the San Gabriel Valley.³⁴ The ten miles that separate these two neighborhoods might be prohibitively far for a customer to drive to save, say, ten percent, on the cost of groceries.³⁵

2. Racial Cartelization and Exclusion

Notably, market segmentation—including ethnic segmentation—can arise from more heavy-handed forces than product preferences or ease of transportation. Producers, rather than consumers, might divide markets to maintain market power—i.e., their ability to increase profits by reducing output and charging supracompetitive prices.³⁶ Famously, a bar review course provider ceded the Georgia market to another provider in exchange for a covenant not to compete outside the state; thus, each monopolized a portion of the national market.³⁷ In heterogenous product markets,

interchangeable, meaning customers at either end are unlikely to cross over into the other segment. This is the hallmark of delineating a market, with boundaries drawn only around products that are not interchangeable or substitutable.

32. Business and luxury travelers to Midtown Manhattan may be inclined to stay close to the center of financial activity or tourist attractions.

33. As an illustration of the aptness of the “ethnic” segmentation label, saying that grocery stores in Los Angeles are segmented along racial lines might even be too imprecise. The many ethnicities racialized as Hispanic, for instance, may diverge in culinary preferences. See Vanessa Fonseca, *Nuevo Latino: Rebranding Latin American Cuisine*, 8 CONSUMPTION, MKTS. & CULTURE 95, 100–01 (2005).

34. On the demographic fluctuations of Monterey Park, see Keith Aoki, *Direct Democracy, Racial Group Agency, Local Government Law, and Residential Racial Segregation: Some Reflections on Radical and Plural Democracy*, 33 CAL. W.L. REV. 185 (1997).

35. For a discussion of the ten percent figure, see HOVENKAMP, *supra* note 21, at 95–96.

36. See *United States v. E.I. du Pont de Nemours & Co.*, 351 U.S. 377, 391 (1956); see also Thomas G. Krattenmaker, Robert H. Land & Steven C. Salop, *Monopoly Power and Market Power in Antitrust Law*, 76 GEO. L.J. 241 (1987).

37. *Palmer v. BRG of Georgia, Inc.*, 498 U.S. 46 (1990).

firms might specialize in specific products to minimize overlap and attain market power.³⁸

This nefarious strain of market segmentation informs what race and law scholars have coined as “racial cartels.”³⁹ Just as several producers with small market shares can band together to divide a market among themselves, all-white associations can cartelize a market to raise economic, social, and racial status.⁴⁰ Coordination foments power. More concretely, white unions went on strike to prevent employers from hiring Black and Chinese workers, thereby restricting the pool of available labor and boosting earning within that pool.⁴¹ White homeowners’ associations persuaded homeowners to adopt racially restrictive covenants that prevented home sales to African Americans, Asian Americans, and Latinos, thereby ensuring White ownership of homes and boosting home values.⁴² The Democratic Party purged Black members between the 1880s and the 1950s to lock up political power.⁴³ In each instance, Whites segmented the markets—for labor, for homes, and for political representation—along racial lines and inflated pricing and power through strategies of cartelization and exclusion.

From racial cartels, we discover that even small and discrete numbers can band together to concoct and execute exclusionary schemes. As we shall see, this pushes against the antitrust notion that cartels fare best when members are few and large and markets are concentrated.⁴⁴ We can also begin to understand how some markets remain ethnically misaligned: through the hard work of cultivating oligopolies and exclusion.

3. Interplay Between Ethnicities and Markets

Legal scholars have posited alternating theories for why certain markets are dominated by ethnically homogenous producers. One fixture among law and development scholars is Amy Chua, whose inquiries into “market-dominant ethnic

38. Kenneth M. Davidson, *The Competitive Significance of Segmented Markets*, 71 CALIF. L. REV. 445, 454 (1983).

39. See Roithmayr, *supra* note 2; see also Darrell A.H. Miller, *Racial Cartels and the Thirteenth Amendment Enforcement Power*, 100 KY. L.J. 23 (2011). Roithmayr relies on the work of Robert Cooter. See Robert Cooter, *Market Affirmative Action*, 31 SAN DIEGO L. REV. 133, 153–57 (1994).

40. See DARIA ROITHMAYR, *REPRODUCING RACISM: HOW EVERYDAY CHOICES LOCK IN WHITE ADVANTAGE* (2014).

41. See *id.* at 25–26; BETH LEW-WILLIAMS, *THE CHINESE MUST GO: VIOLENCE, EXCLUSION, AND THE MAKING OF THE ALIEN IN AMERICA* 40–43 (2018).

42. See Jacob S. Rugh & Douglas S. Massey, *Segregation in Post-Civil Rights America: Stalled Integration or End of the Segregated Century?*, 11 DU BOIS REV.: SOC. SCI. RSCH. ON RACE 205 (2014); NEIGHBORHOOD AND LIFE CHANCES: HOW PLACE MATTERS IN MODERN AMERICA (Harriet B. Newburger, Eugenie L. Birch & Susan M. Wachter eds., 2011); Roithmayr, *supra* note 2, at 52–53; see also *Shelley v. Kraemer*, 334 U.S. 1 (1948) (holding that racially restrictive covenants violate equal protection).

43. Roithmayr, *supra* note 2, at 65–70.

44. See Richard A. Posner, *A Statistical Study of Antitrust Enforcement*, 13 J.L. & ECON. 365 (1970); George A. Hay & Daniel Kelley, *An Empirical Survey of Price Fixing Conspiracies*, 17 J.L. & ECON. 13 (1974); HOVENKAMP, *supra* note 21, at 159.

minorities” began in the 1990s, soon after the Los Angeles riots and the fall of the Soviet Union.⁴⁵ Professor Chua noted the similarities binding these minorities worldwide, who tend to transact with “impoverished” and “disadvantaged” “indigenous” majorities.⁴⁶ She conjectured that economic and political liberalization fueled interethnic conflicts by strengthening the hand of the market-dominant minorities.⁴⁷ While some of Professor Chua’s subsequent writings provoked controversy,⁴⁸ her work in this area remains influential.

Other scholars have examined the traits and communal practices within certain ethnic groups that fuel high rates of entrepreneurship. Here studies of the *kye*, or rotating credit systems in the Korean community, are emblematic.⁴⁹ In rotating credit systems, members contribute money on a regular basis into a communal pot and take turns withdrawing from the pot.⁵⁰ For law scholars, rotating credit signifies a broader pattern of informal arrangements held together by trust, ethnic solidarity, and decentralized information exchange—features endogenous to, and built up within, ethnic communities.⁵¹ To be sure, these scholars are cognizant of structural factors. Lan Cao, for instance, devotes plenty of discussion to why certain groups (e.g., Koreans, Chinese, and Mexicans) can amass capital while others (e.g., African Americans) cannot.⁵² Hence, this literature might be characterized as bottom-up studies of the endogenous and sociocultural factors that contribute to ethnic entrepreneurship.⁵³

In a similar vein, Barak Richman has written on the control over the diamond industry exerted by ethnic groups who rely on private systems of contract

45. See Chua, *supra* note 9; AMY CHUA, *WORLD ON FIRE: HOW EXPORTING FREE MARKET DEMOCRACY BREEDS ETHNIC HATRED AND GLOBAL INSTABILITY* (2003) [hereinafter CHUA, *WORLD ON FIRE*].

46. CHUA, *WORLD ON FIRE*, *supra* note 45, at 6–7. Professor Chua’s work has limited applicability to ethnically segmented and misaligned markets. In the U.S., buyers and sellers in these markets tend to be minority groups themselves; the dynamics are different and altogether fluid.

47. *Id.* at 9. On the use of competition law as a corrective to the influence of market-dominant minorities, see Eleanor M. Fox, *Equality, Discrimination, and Competition Law: Lessons from and for South Africa and Indonesia*, 41 HARV. INT’L L.J. 579 (2000).

48. Professor Chua’s subsequent books include AMY CHUA & JED RUBENFELD, *THE TRIPLE PACKAGE: HOW THREE UNLIKELY TRAITS EXPLAIN THE RISE AND FALL OF CULTURAL GROUPS IN AMERICA* (2014), which would be criticized for suggesting that some minority groups are innately dominant and interethnic tension is inherent. See, e.g., Jennifer Lee & Min Zhou, *From Unassimilable to Exceptional: The Rise of Asian Americans and “Stereotype Promise,”* 16 NEW DIVERSITIES 7 (2014).

49. Other examples include the Chinese and Vietnamese “hui,” the Japanese “tanamoshi,” the Cambodian “thong thing,” the Mexican “cundina,” the Ethiopian “ekub,” and West Indian “esusu.” Cao, *supra* note 9, at 848.

50. These informal arrangements are often the primary source of funding for starting businesses. See *id.* at 879–81.

51. See *id.*; see also Lan Cao, *The Diaspora of Ethnic Economies: Beyond the Pale?*, 44 WM. & MARY L. REV. 1521 (2003).

52. See Cao, *supra* note 9, at 879.

53. *Id.* at 863.

enforcement.⁵⁴ Jewish merchants in New York, for instance, owe their success to intra-ethnic institutions that enforce executory contracts and enable payment for diamonds on credit.⁵⁵ Like the *kye*, these institutions function outside the auspices of any government, so Professor Richman calls them “stateless commerce.”⁵⁶

Ethnic trading networks are also *stateless* in the sense that they cross national boundaries. The diamond trade is a transnational business controlled at certain junctures by specific ethnic groups, particularly Jewish merchants—just as wigs and hair extensions for African Americans are manufactured, distributed, and sold in a transnational chain where Koreans and Korean Americans predominate. Where the wigs and hair extensions market departs from the case studies of Professors Cao and Richman, however, is in its ethnic misalignment between producers and consumers. For the diamond markets to resemble this ESM market, customers would have to be ethnically homogenous peoples of color who are ethnically distinct from the merchants. Moreover, diamonds would have to be indispensable to conform with mainstream aesthetic standards,⁵⁷ and co-ethnic sellers would have to be virtually nonexistent.⁵⁸ Thus, while the bottom-up endogenous scholarship directs our attention to the institutional factors of Korean success (and those institutions certainly exist), ethnic misalignment of the wigs and hair extensions market requires that we consider *two* groups: purchasers and consumers.

At the other end of law and development scholarship are academics who look exclusively at structural explanations for the success of specific ethnic groups.⁵⁹ Eleanor Brown, for example, positions her work on property rights as a complement to cultural approaches toward West Indian immigrants and their descendants, who exhibit much higher rates of entrepreneurship than other racialized Black Americans.⁶⁰ Professor Brown relates the success of Black West Indians to their early exposure to property and contract rights as landholders on the islands.⁶¹ Land sales financed the emigration of West Indians, who, upon arrival in the United States, took advantage of their experiences to acquire land and build wealth at substantially greater proportions than “native” African Americans.⁶² Interestingly, Caribbean families often became landlords to local African Americans.⁶³

54. See Barak D. Richman, *Contracts and Cartels: Reconciling Competition and Development Policy*, in COMPETITION LAW AND DEVELOPMENT 155 (D. Daniel Sokol et al. eds., 2013); Barak D. Richman, *How Community Institutions Create Economic Advantage: Jewish Diamond Merchants in New York*, 31 L. & SOC. INQUIRY 383 (2006) [hereinafter Richman, *Community Institutions*]; RICHMAN, *supra* note 9.

55. Richman, *Community Institutions*, *supra* note 54, at 389.

56. RICHMAN, *supra* note 9, at xi.

57. See *infra* notes 183–86 and accompanying discussion.

58. See *infra* note 200 and accompanying discussion.

59. Some scholars would place structural and cultural views in the same category, one emphasizing that certain institutions and cultural features determine behavior. At the other end is the agency or functionalist view, which emphasizes that individuals create institutions to serve their interests and needs. See AVNER GREIF, INSTITUTIONS AND THE PATH TO THE MODERN ECONOMY: LESSONS FROM MEDIEVAL TRADE 12–13 (2006).

60. See Brown, *supra* note 8.

61. *Id.* at 41–42.

62. *Id.* at 49.

63. *Id.* at 52 n.90.

The relationship between Korean Americans and African Americans in the wigs and hair extensions market is even more visibly different because it is interracial. Of course, no discussion of Korean American–African American relations is complete without mentioning that for all the relative difference in their stations, both are peoples of color excluded from participation in the mainstream economy. Therefore, their interactions have often been pushed to niches in urban landscapes where frictions are bound to arise.⁶⁴ Smoldering for decades, these frictions exploded into riots in Los Angeles in 1992, when Korean American businesses were vandalized after the acquittal of the White police officers who beat Rodney King and the Korean American storeowner who shot Latasha Harlins.⁶⁵ Law scholars with a structuralist bent were quick to underscore the similarities in systemic exclusion of both Asian Americans and African Americans, frequently with the blessing if not at the direction of the state.⁶⁶ Asian American legal scholars, who were gaining prominence in the academy, called for the emergence of critical Asian American scholarship in the tradition of critical race theory.⁶⁷ For all the shared legacy of discrimination and exclusion, however, when Korean American and African American interactions assume market dimensions, such as buyer-seller transactions, tensions can be exacerbated.⁶⁸

From the structuralists, this Article extrapolates the lesson that ethnically misaligned buyers and sellers are pushed into close quarters by racial and macroeconomic forces. Departing from this starting point, however, the Article also scrutinizes the efforts of Korean American sellers to maintain the dominance that systemic forces conveyed them. To explain the persistence of ethnic misalignment, especially in the face of challenges to sellers by out-group upstarts, the Article turns toward endogenous or bottom-up perspectives to examine mechanisms adopted by in-group sellers. While this approach might be out of fashion in legal circles, given the popularity of systemic analyses, it is consistent with more recent sociological work, which has emphasized the *agency* of ethnic entrepreneurs.⁶⁹

64. See Kwang Chung Kim & Shin Kim, *The Multiracial Nature of Los Angeles Unrest in 1992*, in *KOREANS IN THE HOOD: CONFLICT WITH AFRICAN AMERICANS* 17 (Kwang Chung Kim ed., 1999); Yoon, *Korean Immigrant Entrepreneurship*, *supra* note 12, at 328.

65. Kyeyoung Park, *Use and Abuse of Race and Culture: Black-Korean Tension in America*, in *KOREANS IN THE HOOD*, *supra* note 64, at 60; Melvin L. Oliver, James H. Johnson, Jr. & Walter C. Farrell, Jr., *Anatomy of a Rebellion: A Political-Economic Analysis*, in *READING RODNEY KING/READING URBAN UPRISING* 117 (Robert Gooding-Williams ed., 1993); see also Genaro Molina, *How the Killing of Latasha Harlins Changed South L.A.*, *L.A. TIMES*, Mar. 18, 2016.

66. See, e.g., Sumi K. Cho, *Korean Americans vs. African Americans: Conflict and Construction*, in *READING RODNEY KING*, *supra* note 65, at 196; Lisa C. Ikemoto, *Traces of the Master Narrative in the Story of African American/Korean American Conflict: How We Constructed "Los Angeles,"* 66 *S. CAL. L. REV.* 1581 (1993); Reginald Leamon Robinson, *"The Other Against Itself": Deconstructing the Violent Discourse Between Korean and African Americans*, 67 *S. CAL. L. REV.* 15 (1993).

67. See, e.g., Robert S. Chang, *Toward an Asian American Legal Scholarship: Critical Race Theory, Post-Structuralism, and Narrative Space*, 81 *CALIF. L. REV.* 1241 (1993).

68. Kim & Kim, *supra* note 64.

69. See *infra* Section I.B.

B. Contributions from Sociology

Sociology laid the foundation for ethnicity and entrepreneurship, providing basic definitions and theoretical frameworks.⁷⁰ To this day, much of the innovative scholarship on ethnic markets resides in sociology. In 1967, Hubert Blalock devised the term *middleman minority* to describe minority entrepreneurs who mediate between dominant and subordinate groups.⁷¹ This concept became indelibly associated with Edna Bonacich, who posited that middlemen minorities succeed because they are sojourners or economic migrants intent on saving aggressively.⁷² Together with Ivan Light, Professor Bonacich conducted a series of ethnographic studies on Korean Americans, finding that this community exhibits high rates of entrepreneurship relative to other ethnic groups.⁷³ Korean American firms compete by employing family members at low wages, thereby utilizing social networks to amass capital and control expenses.⁷⁴ Their businesses also gravitate toward certain sectors (e.g., retail) and neighborhoods (e.g., impoverished or lower middle class).⁷⁵

The middleman minority framework broadened into an *ethnic* or *immigrant* entrepreneur framework to encompass non-sojourning communities.⁷⁶ Subsequent studies on Korean American entrepreneurs added to Light and Bonacich's observations, confirming that low-margin retail businesses in low-income neighborhoods function as the entry-point for most Korean Americans, who, after having saved enough, trade up for ventures in more prestigious industries and higher-income neighborhoods.⁷⁷ These scholars also compiled a more sophisticated portrait of Korean American small businesses that relate their success back to two additional factors: (i) bilateral trade between the United States and Korea, which facilitated the import of manufactured goods from Korea and enabled Korean Americans to construct retail infrastructures for those goods; and (ii) a high degree of vertical integration of retail and import, which achieved efficiencies—but also fostered exclusion of out-group competitors.⁷⁸

70. On basic definitions of, and the link between, ethnicity and entrepreneurship, for example, see Howard E. Aldrich & Roger Waldinger, *Ethnicity and Entrepreneurship*, 16 ANN. REV. SOCIO. 111, 112 (1990) (defining "ethnic group" as membership in a group with a common origin and culture that is reinforced by social structures and "entrepreneurship" as combining resources in novel ways to create something of value).

71. HUBERT M. BLALOCK, TOWARD A THEORY OF MINORITY-GROUP RELATIONS 79 (1967).

72. See Bonacich, *supra* note 10, at 585.

73. See LIGHT & BONACICH, *supra* note 11.

74. *Id.* at 185–86; Yoon, *Korean Immigrant Entrepreneurship*, *supra* note 12, at 328–29.

75. LIGHT & BONACICH, *supra* note 11, at 179–84, 205–26.

76. See *id.* at 18. The sense of perpetual foreignness engendered by the immigrant framework would have been damaging to the very groups these sociologists studied. For a fuller discussion of the theories of ethnic economies, see IVAN LIGHT & STEVEN J. GOLD, ETHNIC ECONOMIES 5–23 (2000).

77. Jennifer Lee, *Retail Niche Domination Among African American, Jewish, and Korean Entrepreneurs: Competition, Coethnic Advantage and Disadvantage*, 42 AM. BEHAV. SCI. 1398, 1403–04 (1999).

78. *Id.* at 1410; see also NANCY ABELMANN & JOHN LIE, BLUE DREAMS: KOREAN AMERICANS AND THE LOS ANGELES RIOTS 136 (1995).

The paradigm shift to ethnic and immigrant entrepreneurs paved the way for ethnographies of other communities, often in fascinating contradistinction from co-racial groups. Scholars compared entrepreneurship rates and strategies of Cuban Americans to Mexican Americans, for instance, or Mexican Americans to African Americans.⁷⁹ By unpacking the intersections of ethnicity with race, class, and gender, they have been able to distinguish ethnic communities prone to entrepreneurship from racialized minorities who, due to structural conditions or the absence of class and ethnic resources, could not replicate the conditions necessary for widespread business formation.⁸⁰

Undertaking comparative analyses, sociologists ascertained that some ethnic groups thrived because they were able to integrate vertically and horizontally.⁸¹ Writing in 1982, Kenneth Wilson and Allen Martin theorized that ethnic communities utilizing in-group networks to organize in this way could replicate the advantages of dominant firms in the mainstream economy to squeeze out higher profits per unit of demand.⁸² As proof, they applied input-output econometric analyses to compare the production capacities of Cuban Americans and African Americans in Miami, finding that the former can source from in-group firms and retain capital within co-ethnic communities at far higher rates than the latter.⁸³ Vertical integration has been observed between Korean American retailers and suppliers as well.⁸⁴

For Korean and Korean American entrepreneurs in the United States, Cold War diplomacy and South Korean institutions played a pivotal role in their commercial success. South Korea provided a transnational connection to low-cost labor and manufacturing. Equally importantly, South Korean banks helped finance Korean American small businesses.⁸⁵ Entrepreneurs were also able to employ family

79. See ZULEMA VALDEZ, *THE NEW ENTREPRENEURS: HOW RACE, CLASS, AND GENDER SHAPE AMERICAN ENTERPRISE* 26 (2011).

80. For a concise literature review, see Valdez, *supra* note 11, at 158.

81. See Kenneth L. Wilson & W. Allen Martin, *Ethnic Enclaves: A Comparison of the Cuban and Black Economies in Miami*, 88 AM. J. SOCIO. 135 (1982).

82. *Id.* at 138.

83. *Id.* at 143–47.

84. See Yoon, *Korean Immigrant Entrepreneurship*, *supra* note 12, at 331:

The vertical integration between Korean retailers and suppliers is another strong feature of Korean immigrant businesses Korean retailers say that they receive some benefits or special services from Korean suppliers. For example, extended credit terms, lower prices and easy access to information are the main benefits gained from having Korean suppliers. Since Korean suppliers dominate general merchandise, clothing, footwear, and wig trades, Korean retailers can get early information about which items have recently arrived and which ones are “hot.”

85. See Tamara K. Nopper, *Revisiting “Black–Korean Conflict” and the “Myth of Special Assistance”*: *Korean Banks, US Government Agencies, and the Capitalization of Korean Immigrant Small Business in the United States*, 1 KALFOU: J. COMP. & RELATIONAL ETHNIC STUD. 59, 67 (2014).

members in their ventures, thereby suppressing labor costs through kinship and co-ethnic networks.⁸⁶

As we assemble the literature on ethnically segmented markets, it is important to be mindful of sociology. Sociology keeps legal scholars “honest” about ethnicity, so to speak, by helping us stay attuned to the dynamism of racial and ethnic formation.⁸⁷ Recognizing that race and ethnicity are constructs whose boundaries are fluid, we understand that the interethnic conflict in ESM markets is not inevitable. Indeed, the static representation of ethnicity—and therefore the inevitability of ethnic conflict—was one of the many criticisms of Professor Chua’s writings.⁸⁸ Generations pass and their descendants acculturate; whatever the values or inclinations of first-generation immigrant entrepreneurs, their children may feel differently about the communities where they do business.⁸⁹

In return, there is much that antitrust can teach sociologists as well. The literature on vertical integration in ethnic economies is now nearly half a century old.⁹⁰ Some of it treats horizontal coordination and vertical integration equivalently,⁹¹ as tantamount to a monopoly.⁹² These are fighting words in antitrust; there, the doctrine has developed frameworks for thinking through when monopolies ensue, what monopolization is, and when coordination and integration should be condemned.

C. Contributions from Economics

Economics is fundamental to our understanding of markets, and economic principles heavily influence antitrust. For our purposes, three lines of economic scholarship are informative. First, there has been a longstanding debate about the relevance of antidiscrimination laws from an economics perspective. Among the earliest, and certainly the loudest, volleys fired on this point came from the Chicago

86. LIGHT & BONACICH, *supra* note 11, at 176–77.

87. On the process of racial formation, see OMI & WINANT, *supra* note 26, at 109.

88. See Edmund Terrence Gomez, *Inter-ethnic Relations, Business and Identity: The Chinese in Britain and Malaysia*, in THE STATE, DEVELOPMENT AND IDENTITY IN MULTI-ETHNIC SOCIETIES: ETHNICITY, EQUITY AND THE NATION 31, 32 (Nicholas Tarling & Edmund Terrence Gomez eds., 2008) (“[Chua’s] perspective tends to homogenise ethnic communities and to essentialise their pattern of enterprise development.”); STEVEN B. MILES, CHINESE DIASPORAS: A SOCIAL HISTORY OF GLOBAL MIGRATION 256–57 (2020).

89. See Elaine H. Kim, *Home is Where the Han Is: A Korean American Perspective on the Los Angeles Uprising*, in READING RODNEY KING, *supra* note 65, at 215 [hereinafter Kim, *Home is Where the Han Is*]. Concomitantly, we also see that traumatic episodes, such as the LA riots, can accentuate ethnic solidarity. Rose M. Kim, *Violence and Trauma as Constitutive Elements in Korean American Racial Identity Formation: The 1992 L.A. Riots/Insurrection/Saigu*, 11 ETHNIC & RACIAL STUD. 1999, 2012–14 (2011) [hereinafter Kim, *Violence and Trauma*].

90. A similar strain is the “ethnic cartel” model. For a discussion, see RICHMAN, *supra* note 9, at 107–08.

91. See Wilson & Martin, *supra* note 81, at 137.

92. See LIGHT & GOLD, *supra* note 76, at 20–21 (“Korean business owners monopolized the wig business before federal prosecutors brought suit under the Sherman Anti-Trust Act. While they enjoyed their monopoly, Korean business owners excluded non-Koreans from the wig industry, and raised prices of wigs to consumers.”).

economist Gary Becker, who posited that racial discrimination is inefficient because it artificially steers transactions toward in-group members rather than permitting out-group but more efficient alternatives.⁹³ For instance, White employers with a “taste for discrimination” might hire only White workers even though Black workers might be more productive and demand lower wages.⁹⁴ Over time, as his theory goes, the markets would correct the distortions of discrimination, with nondiscriminators driving discriminators out of business.⁹⁵ In the above example, White employers would eventually gravitate toward Black workers, forcing a stabilization of wages between White and Black workers. With the markets’ self-correction, antidiscrimination laws were unnecessary.⁹⁶

Becker’s thesis came at the height of U.S. antidiscrimination laws and ushered in a conservative backlash rooted in shaky microeconomic theory. The thesis has been thoroughly qualified, if not utterly discredited,⁹⁷ though Professor Becker’s other writings have influenced scholarship of ethnic entrepreneurs.⁹⁸

For our purposes, and as our second line of scholarship to examine, the related discourse on the durability of market segmentation is more relevant. The lesson from the early microeconomics-infused lens on race is that segregation is inefficient.⁹⁹ As time takes its course, transactions should proceed toward the equilibrium of efficiency. This hypothesis applies to various settings, with the common theme that markets and communities should move toward integration. Thus, across vastly different industries, market segmentation is viewed as an aberration. Financial markets are inefficient where producers are siloed, fostering redundancy in market infrastructures.¹⁰⁰ Labor unions are interpreted as artificial in addition to unjust where peoples of color are excluded.¹⁰¹ And trade barriers, a form of geographic market segregation, are construed as artificial distortions of price, which should otherwise trend toward uniformity.¹⁰²

93. See BECKER, *supra* note 4.

94. *Id.* at 19–21.

95. *Id.* at 43–45; see also RICHARD A. POSNER, *ECONOMIC ANALYSIS OF LAW* § 21.1 (1972).

96. See BECKER, *supra* note 4, at 45.

97. See, e.g., Robert E. Suggs, *Poisoning the Well: Law & Economics and Racial Inequality*, 57 HASTINGS L.J. 255 (2005).

98. See, e.g., Richman, *Community Institutions*, *supra* note 54, at 387–88 (accounting for the possibility that Jewish institutions developed and internalized knowledge that allowed Jewish merchants to flourish in the diamond trade, in accordance with Becker’s theory of human capital suggests); Cao, *supra* note 9, at 865 n.84 (incorporating Becker’s work on norms into an understanding of community norms surrounding informal contracts).

99. Becker himself posited that tastes for discrimination might grow large enough to foster segregation and preempt intercommunal trade, to the detriment of each isolated community’s welfare. See BECKER, *supra* note 4, at 22–23.

100. See Mike Reece, *Competition or Consolidation?: The Outlook for Interoperability Among European CCPs*, THOUGHT (J.P. Morgan), May 1, 2012 (comparing the siloed nature of financial market infrastructures in Europe versus the U.S.).

101. Roithmayr, *supra* note 2, at 51.

102. See Robinson, *supra* note 5, at 372 (discussing the Law of One Price, which hypothesizes that each product should have one price globally and where disparities arise, they are due to trade frictions).

In diverse societies, then, the persistence of ethnically segmented markets might be attributed to unnatural forces such as interethnic suspicion. In Malawi, for example, the political scientist Amanda Lea Robinson has analyzed the spatial distribution of the country's numerous ethnic groups and concluded that ethnic market segmentation is partially the result of intra-ethnic trust.¹⁰³ To minimize the risks of informal commerce, farmers and traders opt to transact only with in-group counterparties.¹⁰⁴

Nonetheless, ethnic groups can come to so dominate an economic niche that consumers cannot turn to co-ethnic suppliers. For an explanation, and as our third line of scholarship to examine, some economists have turned to institutions peculiar to those ethnicities. New institutional economics ("NIE") defines institutions as "written and unwritten rules, norms and constraints that humans devise to reduce uncertainty and control their environment."¹⁰⁵ Broadly construed, institutions cover written rules and agreements governing private relations, constitutions and laws governing society, and unwritten codes of conduct.¹⁰⁶ In his seminal book on institutions, for instance, Avner Greif traces Western dominance to the development of institutions during the medieval era that fostered growth.¹⁰⁷ Most prominently, it was the rise of corporations such as guilds, fraternities, and professional organizations—institutions centered neither on state nor kin but on self-interest and self-governance—that propelled Europe's growth.¹⁰⁸

Given its emphasis on hard and soft law as institutions fundamental to economic success, NIE has provided the foundations for law scholars' studies of ethnic economies.¹⁰⁹ As we shall see, institutions spurred the ascension of Korean merchants in the African American wigs and hair extensions market. However, we will also move beyond intra-ethnic and communal factors to evaluate Korean American strategies for keeping competitors at bay. Because the market for the sale of wigs and hair extensions to African Americans is ethnically misaligned between consumers and producers, we must consider the part that producers played in maintaining their edge over out-group competitors—specifically, African American retailers, whom consumers would likely have preferred.

Altogether, prior writings from law, sociology, and economics point to the following quandary for ESM markets: given the dynamism of racial and ethnic formation as well as the transience and inefficiency of market segmentation, why are some ethnically segmented markets perpetually misaligned? Existing work (e.g., by NIE scholars) provides partial answers. But to fully explicate this quandary, the remainder of the Article focuses on one of the country's most iconic but misunderstood ESM markets.

103. *Id.*

104. *Id.* at 380.

105. Claud Menard & Mary M. Shirley, *Introduction*, in HANDBOOK OF NEW INSTITUTIONAL ECONOMICS 1, 1 (Claud Menard & Mary M. Shirley eds., 2008).

106. *Id.*

107. See AVNER GREIF, INSTITUTIONS AND THE PATH TO THE MODERN ECONOMY: LESSONS FROM MEDIEVAL TRADE (2006).

108. *Id.*; see also Avner Greif, *Family Structure, Institutions, and Growth: The Origins and Implications of Western Corporations*, 96 AEA PAPERS & PROC. 308, 309 (2006).

109. See, e.g., RICHMAN, *supra* note 9 at 91, 169.

II. THE MARKET FOR AFRICAN AMERICAN WIGS AND HAIR EXTENSIONS

Wigs and hair extensions manufactured for African American consumption comprise an ethnically segmented product market. African American hair is unique in texture and remarkably versatile, capable of being molded into different styles as an expression of personal style.¹¹⁰ Yet with this versatility comes fragility; excessive styling weakens the hair shaft so consumers often cannot use products designed for other hair types.¹¹¹ Products tailored to African American hair, therefore, are generally not substitutable by hair products for other ethnic groups.¹¹²

Unlike many other consumer products, however, wigs and hair extensions are sold in an ethnically misaligned market because retailers are predominantly firms owned by Korean Americans. In the United States, this is one of the most enduring markets where buyers and sellers are ethnically misaligned.

Equally enduring is the interethnic tension that typifies consumer-producer interactions.¹¹³ Understandably, the fact that Korean Americans dominate the sale of beauty products manufactured for African Americans has been the source of consumer ire for decades. Among other criticisms, African Americans routinely level generalizations that these markets are concentrated, and Koreans have monopolized them.¹¹⁴ Pervasive as these charges are, the stranger feature is that they have been repeated by scholars—often the scholars who built up the middleman minority

110. Ingrid E. Roseborough & Amy J. McMichael, *Hair Care Practices in African-American Patients*, 28 SEMINARS IN CUTANEOUS MED. & SURGERY 103, 103 (2009):

The unique properties of hair of African origin are conducive to the expression of personal style. The curved, elliptically-shaped hair shaft lends itself to mouldable styles that retain their form and texture. When heat or chemical agents are applied to African hair, the strands temporarily or permanently release their intrinsic coil properties and can be fashioned in innumerable ways. This immense diversity of options for hair care is not without drawbacks. African hair is innately fragile. The inappropriate use of styling aids may weaken the hair shaft and lead to breakage, scalp inflammation, and potentially permanent hair loss.

111. *Id.*

112. For example, African American hair generally requires more conditioning to prevent dryness. For wigs and hair extensions, styles with tighter curl pattern will generally be used more by African American consumers than White or Asian consumers.

113. By “producers,” this Article refers generally to retailers of wigs and hair extensions for African Americans.

114. See, e.g., Emma Spong, *Roots of Tension: Race, Hair, Competition and Black Beauty Stores*, MINN. PUB. RADIO NEWS, (Apr. 25, 2017, 9:00 AM) <https://www.mprnews.org/story/2017/04/25/black-beauty-shops-korean-suppliers-roots-of-tension-mn> [<https://perma.cc/EG7Y-DU7X>]; GOOD HAIR (HBO Films 2009); Aron Ranen, *Black Hair*, YOUTUBE (May 19, 2006), <https://www.youtube.com/watch?v=p96aaTSdrAE> [<https://perma.cc/J44M-QRAX>]; Llonneau, *supra* note 20; see also #BlackOwned HairCareChallenge, BLACK OWNED HAIR CARE CHALLENGE, <https://www.blackownedhaircarechallenge.com/> [<https://perma.cc/9C2Z-YXVP>] (last updated Oct. 22, 2021).

literature—without working through the prerequisites of monopoly and monopolization.¹¹⁵

This Section analyzes the retail of wigs and hair extensions to African American as a paradigm of ESM markets. It begins with the structural dynamics that propelled Korean American firms into the markets. Then it discusses the tactics that these firms utilize to sustain their control. Finally, with a view toward infusing the discourse with greater methodological rigor, this Section dissects the market power of Korean American retailers.

A. Structural Tailwinds

Today's Korean American hair retailers owe their start to macroeconomic changes at the domestic and international levels in the late 1960s. Half a century ago, when South Korea underwent its rapid economic development,¹¹⁶ wigs became one of the country's major exports.¹¹⁷ Hair collectors traveled the countryside of South Korea, offering cash to or even bartering with women and girls in exchange for their hair.¹¹⁸ Shorn hair was bundled and sold to wholesalers, who then resold it to wig factories. Wig manufacturing is labor-intensive: hair must be combed and sorted for length; if the hair is natural, it must also be disinfected, washed, curled, and dyed; finally, hair is then sewn onto a cloth netting.¹¹⁹ Yet wage imbalances allowed wigs to be made in South Korea, imported into the United States, and then sold at large markups.¹²⁰

By a twist of history, South Korean wig exports were greased by anti-Communist policy during the Cold War. In the early 1960s, at the height of a hairpiece craze in the United States, European supplies of hair ran low, so U.S. manufacturers began to source hair from China.¹²¹ In 1965, however, the U.S. Treasury Department suddenly banned the import of "Asiatic" hair, but hair was allowed through the embargo if it could be traced to a non-Communist source.¹²² This move boosted the South Korean wig industry while undercutting its Asian competitors.

Initially, South Korean wig imports were fueled by an explosion in consumer demand, which grew 50-fold from 1960 to 1969.¹²³ At that time, the market was

115. See, e.g., LIGHT & GOLD, *supra* note 76, at 20–21.

116. See GREGG BRAZINSKY, *NATION BUILDING IN SOUTH KOREA: KOREANS, AMERICANS, AND THE MAKING OF A DEMOCRACY* (2007).

117. LIGHT & BONACICH, *supra* note 11, at 266 ("Korea exported 70 percent of the world's human-hair wigs.").

118. Petrulius, *supra* note 19, at 8; see also *How Wigs Tell the Story of Modern South Korea*, *ECONOMIST* (July 27, 2017), <https://www.economist.com/asia/2017/07/27/how-wigs-tell-the-story-of-modern-south-korea> [<https://perma.cc/L4YW-B8FV>].

119. Loretta Hall, *Wig*, *HOW PRODUCTS ARE MADE*, <http://www.madehow.com/Volume-3/Wig.html> [<https://perma.cc/YP5E-DLBE>].

120. See LIGHT & BONACICH, *supra* note 11, at 27–37; Chin et al., *supra* note 19, at 494.

121. Petrulius, *supra* note 19, at 380.

122. *Id.* at 381–82.

123. See Leslie Gourse, *What a Change of Hair Can Do; Wigs and Switches, Falls and Beards – They're Being Sold to the Tune of \$500-Million a Year. A Growth Industry!*, *N.Y. TIMES*, Nov. 16, 1969.

expanding so quickly that U.S. firms set up subsidiaries and stepped up sourcing.¹²⁴ Hong Kong and South Korean businesses also rushed in. What distinguished the Korean-operated supply chain from its U.S. and Hong Kong counterparts, however, was its reliance on an extensive network of large manufacturers, small distributors, and a government-backed bank that stretched from South Korea to the United States.¹²⁵ State support was critical. Funded by the South Korean government, the Korean Exchange Bank established a branch in Los Angeles to lend to Korean American-owned firms, many of them situated in the wig industry.¹²⁶ The bank was even encouraging these firms to borrow, thereby swelling the number of wig trading companies in the early 1970s.¹²⁷

Korean-owned businesses in the United States built up a network of wig wholesalers and retailers, all relying on each other. Korean-language newspapers circulating in the United States advertised the enterprises of Korean immigrants, which helped connect immigrants; Korean importers also recruited Korean immigrants as distributors.¹²⁸ Newcomers to the wig business could navigate both financing and sourcing solely within the transnational Korean community. Hence, social networks linked the disparate players in the wig market.

The late 1960s and 1970s also coincided with shifting beauty standards. This was the era of full beards and long hair, reflecting an ethos of rebellion. For those consumers unable to naturally look the part, hairpieces provided a substitute—though a costly one. At the time, wigs were sourced from human hair, and Italian hair was considered top shelf, with “Oriental” hair a distant second.¹²⁹ Mixing animal hair was already in practice to concoct even cheaper alternatives.¹³⁰ However, it was the invention of Kanekalon by the Japanese conglomerate Kaneka in 1965 that proved disruptive.¹³¹

124. Chin et al., *supra* note 19, at 494.

125. *Id.* at 499–501.

126. *Id.* at 498.

127. *See id.* at 499.

128. Yoon, *Korean Immigrant Entrepreneurship*, *supra* note 12, at 322 (“Korean manufacturers sent their sales representatives to black areas to open retail stores. Korean wig-importers actively recruited Korean immigrants as retailers and peddlers in black areas to expand their businesses. They even supplied wigs to Korean retailers on credit, so that Korean immigrants could start their own wig businesses with very little initial capital.”).

129. A direct, if lengthy, quote from a chronicler of the time is illuminating on multiple levels:

[T]raditional pacesetters are the hairpieces from Europe, led by soft, shiny, olive-oil-nurtured Italian hair. It is far and away the most expensive, with falls starting as high as \$300 and full wigs going for as much as \$1,000 . . . Spanish hair has been under something of a cloud since the days when gypsies were accused of kidnapping long-haired children, and returning them shorn . . . Oriental hair is in general coarser than the European variety, and cheaper. A hairpiece of Oriental hair costs roughly a third of the price of a comparable European piece.

Course, *supra* note 123, at 67–69.

130. *See id.* at 69.

131. *See About Kaneka*, KANEKA, <https://www.kaneka.co.jp/en/corporate/chronicle/> [<https://perma.cc/L8NQ-77UP>] (click on “1960~”).

Possibly intended as a wool substitute,¹³² and modeled on Union Carbide's fibers for fake fur and doll hair,¹³³ Kanekalon was a synthetic thread that became an inexpensive substitute for human hair. Korean wig manufacturers acquired the exclusive right to use the thread and incorporated it into their products.¹³⁴ Along with the technical breakthrough of stretch wigs, or hair attached onto elastic caps,¹³⁵ Kanekalon helped South Korea transform from a source of human hair to a manufacturer of wigs.¹³⁶ By the mid-1970s, wigs had become South Korea's third largest export.¹³⁷ For consumers, Kanekalon provided a low-cost alternative to natural wigs, putting conformity to fashion trends within nearly universal reach.¹³⁸

For African American women, who comprise a very specific market segment, the mid-1970s marked a shift from the afros that had defined the Civil Rights era to longer, straighter hair.¹³⁹ This was reflected in the cultural icons of the day, including Diana Ross and Donna Summer.¹⁴⁰ Of course, hair is an individual's expression of identity, so we must not overgeneralize. We do know, however, that emerging sources of natural and synthetic hair from Asia brought down the prices of wigs, enabling more consumers to look the era's part. At a time when relaxers and straight hair were coming back into style, synthetic wigs allowed African American women to quickly change up hairstyles.¹⁴¹

Synthetic wigs therefore ushered in throwaway fashion for hair—a boon to Korean American wig retailers, who in the mid-1970s were suffering from the deflation of their products, an economic recession, weakening consumer demand, and intensifying intra-ethnic competition.¹⁴² Henceforth, these retailers would have to do volume business to make up for diminishing margins. Yet were it not for African American women, South Korean manufacturers and Korean American retailers would likely not have survived. In less than half a decade, consumption of wigs in the United States contracted by nearly forty percent, to a “core” constituent

132. Brooklyn White, *How Black Women Fueled Kanekalon Hair's Enduring Impact on Pop Culture*, StyleCaster (Jun. 4, 2020, 12:00 AM), <https://stylecaster.com/beauty/kanekalon-hair-history/> [<https://perma.cc/S9XH-49GT>].

133. Gourse, *supra* note 123, at 69.

134. YOON, *ON MY OWN*, *supra* note 12, at 111.

135. Gourse, *supra* note 123, at 69.

136. Chin et al., *supra* note 19, at 495.

137. *Id.* at 496.

138. See Gourse, *supra* note 123, at 69 (explaining that synthetic wigs cost \$25, as opposed to the \$300 price tag for wigs from natural hair).

139. Previously, the late 1960s and early 1970s was the “golden era of wigs.” Yoon, *Korean Immigrant Entrepreneurship*, *supra* note 12, at 323.

140. For annals of their hair evolution, see Nikki Brown, *Diana Ross' Unmatched Hair Journey Through the Years*, ESSENCE (Feb. 8, 2017), <https://www.essence.com/celebrity/diana-ross-hair-journey/> [<https://perma.cc/NM73-MAJ8>]; Nicole Marie Melton, *Hairstyle File: Donna Summer's Iconic Tresses*, ESSENCE (May 18, 2012), <https://www.essence.com/hair/hairstyle-file-donna-summers-tress-transformation/> [<https://perma.cc/TRX5-257K>].

141. See AYANA BYRD & LORI THARPS, *HAIR STORY: UNTANGLING THE ROOTS OF BLACK HAIR IN AMERICA* 70–71 (2001).

142. YOON, *ON MY OWN*, *supra* note 12, at 112–13.

of African Americans.¹⁴³ This group comprised a lucrative and dependable segment, and because of the inroads Korean Americans had already made into the market, they would not be displaced.

Other seismic but fortuitous trends allowed Korean American firms to consolidate control over the wigs and hair extensions markets. As Whites fled American cities, Korean American retailers set up convenience stores, liquor stores, and hair care businesses, taking advantage of cheap rents to open storefronts.¹⁴⁴ Brick-and-mortar establishments gave owners direct access to the consumers who would form their base, so that when styles shifted, firms could quickly adapt by switching to newer products. In this way, the early foray of Korean American retailers conveyed to this set of producers a first mover advantage, which made them difficult to unseat.¹⁴⁵ Their entry into the community also signified the demise of door-to-door retailing of the 1930s, the mainstay of black retailers who sold black-made beauty products directly to black consumers.¹⁴⁶ In their place stood the brick-and-mortar store, where Korean American retailers sold beauty supplies manufactured in Korea to black consumers.¹⁴⁷

Of all the structural tailwinds enjoyed by Korean American retailers, however, it is their comparative advantage over African American competitors that has kept them ahead. In many respects, a comparison of these two communities is a study in contrasts. Where one group of producers has access to capital, whether through rotating communal credit or state-backed import-export banks, the other is shut out of mortgages, let alone business credit.¹⁴⁸ Where one group enjoys the patronage of a sovereign government that during the 1960s was still a quasi-developing country but threw its entire weight behind its ethnic compatriots, the other group has faced the systematic exclusion, marginalization, and persecution by its own state, a world superpower. No study of this ethnically misaligned market would be complete without reference to the disparity in buyer and seller economic power, and no study of that economic power would be complete without mention of the headwinds African American businesses perpetually face.

Nonetheless, Korean American dominance cannot be entirely chalked up to structural or institutional advantages. The innovation and success of African American entrepreneurs such as Madam C.J. Walker, who pioneered hair straightening products and a direct retailing strategy, shows that African Americans

143. Petruilis, *supra* note 19, at 372.

144. *See* Sapong, *supra* note 114.

145. *See id.*

146. *See* BYRD & THARPS, *supra* note 141, at 32, 79.

147. *Id.* at 96.

148. Compare Yoon, *Korean Immigrant Entrepreneurship*, *supra* note 12, at 494, with RICHARD ROTHSTEIN, *THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA* 9–10 (2017). In fact, there is evidence that the U.S. Small Business Administration and Minority Business Development Agency played a significant role in promoting Korean American businesses. *See* Tamara K. Nopper, *Minority, Black and Non-Black People of Color: 'New' Color-Blind Racism and the US Small Business Administration's Approach to Minority Business Lending in the Post-Civil Rights Era*, 37 *CRIT. SOCIO.* 651 (2011); Nopper, *supra* note 85.

can break through.¹⁴⁹ Nor is Walker an anomaly; numerous other Black-owned hair care businesses have flourished despite the headwinds.¹⁵⁰ For Korean American retailers, then, we must also look at the role that this group played in fanning those headwinds.

B. The Agency of Retailers

Structural trends may convey to one set of producers an advantage over others, but the advantages are ephemeral. Structures shift, and advantages dissipate. This is especially the case when producers and consumers are both communities of color; the slight, relative advantages conveyed to each group fade quickly, and relations between ethnically distinct producers and consumers are ever fluid.¹⁵¹ In other words, the dominance of Korean American retailers could not have persisted through the decades without the tactics utilized by Korean American retailers themselves—i.e., without their agency.

For African American consumers in this ethnically misaligned market, the offenses of out-group producers are many. Consumers charge that Korean Americans have monopolized the ethnic beauty products market,¹⁵² shutting out African American retailers by stifling the flow from wholesalers.¹⁵³ And if African Americans have created new beauty products, Korean American retailers refuse to carry them.¹⁵⁴ African Americans have leveled so many charges at Korean American retailers that the Internet is replete with these claims and the producer–consumer relationship is clouded by a generalized, if amorphous, mistrust.¹⁵⁵

In truth, the relationship between African American consumers and Korean American suppliers had been poisoned for decades, for reasons beyond the inability of competitors to penetrate the hair markets.¹⁵⁶ African Americans had long complained of mistreatment by Korean-owned businesses and periodically organized

149. BYRD & THARPS, *supra* note 141, at 35–36, 78–81. Walker was the first Black self-made female millionaire. *Id.* at 183.

150. See *Black-Owned Brands*, BLACK OWNED HAIR CHALLENGE, <https://www.blackownedhaircarechallenge.com/hair-care-brands> [<https://perma.cc/56U7-4TZS>].

151. See *supra* note 81.

152. Lloncau, *supra* note 20 (“The Koreans control over 85% of all ethnic hair care products sold in Beauty Supply Stores without regard as to who is the manufacture.”).

153. *Why Do Koreans Own The Black Beauty Supply Business?*, MADAMENOIRE (Sept. 27, 2010), <https://madamenoire.com/104753/why-do-koreans-own-the-black-beauty-supply-business/> [<https://perma.cc/VC5S-ZNRG>] (“Today, there are over 9,000 Korean-owned beauty supply stores serving a billion dollar market for Black hair. Between manufacturing, distributing and selling these hair care products, Korean entrepreneurs appear to control all major components. . . . [T]here are only four central distributors serving beauty supply stores in the country and these Korean owned distributors discriminate against Black store owners in order to maintain their monopoly in the market.”).

154. See Ranen, *supra* note 114.

155. See *supra* notes 114, 152–55 and accompanying text.

156. See CLAIRE JEAN KIM, BITTER FRUIT: THE POLITICS OF BLACK-KOREAN CONFLICT IN NEW YORK CITY (2000); Heon Cheol Lee, *Conflict between Korean Merchants and Black Customers: A Structural Analysis*, in KOREANS IN THE HOOD, *supra* note 64, at 113.

boycotts against them.¹⁵⁷ In 1992, these old grievances exploded into protests that destroyed Korean businesses in Los Angeles after the acquittal of Latasha Harlins's killer and Rodney King's assailants.¹⁵⁸

Charges of exclusion find some support in the literature from sociology about ethnic entrepreneurship. Consistent with Wilson and Martin's finding that Cuban American entrepreneurs pool resources within their co-ethnic communities,¹⁵⁹ Korean American retailers deal almost exclusively with Korean and Korean American wholesalers.¹⁶⁰ Wholesalers are more likely to extend credit, offer installment payment plans, and sell at lower prices to co-ethnic retailers, which can be important to thinly capitalized startups.¹⁶¹ A degree of informality characterizes Korean American in-group commercial transactions; rather than checking a supplier's credit, wholesalers often transact through "handshake deals."¹⁶² These business customs are emblematic of what sociologists call "vertical integration," whereby materials are sourced from, spending restricted to, and wealth retained in co-ethnic communities.¹⁶³ Conceptually, the application of vertical integration to an entire ethnic group is slightly different than the approach of antitrust law, which tends to examine vertical integration at the firm or industry level. Nonetheless, ethnic cohesion characterizes Korean American ventures in a variety of industries, mostly concentrated in low-income communities of color, from apparel to ethnic beauty supplies.

While a vertically integrated wig and hair extensions market keeps wealth from flowing out of the Korean American community, it excludes participation by African American competitors. Given the market's evolution, very few African American suppliers of wigs and hair products exist,¹⁶⁴ and they have been unable to procure hair products from Korean American distributors.¹⁶⁵ African American manufacturers have also faced difficulty convincing Korean American retailers to carry their products.¹⁶⁶ This can be attributed partly to language barriers; for product catalogs and even industry magazines are frequently published only in Korean.¹⁶⁷ Yet Korean and Korean American wholesalers have banded together in the past to shut out competitors, going well beyond the passive exclusion of language.

In 1975, the Department of Justice brought suit against the Korean Hair Goods Association of America, Inc. (the "Association") for (i) conspiring to regulate the

157. See KIM, *supra* note 156, at 145–46.

158. See Park, *supra* note 65; Oliver et al., *supra* note 65.

159. See Wilson & Martin, *supra* note 81.

160. Lee, *supra* note 77, at 1406–07.

161. *Id.*

162. *Id.*

163. *Id.*; Wilson & Martin, *supra* note 81.

164. *But see Black-Owned Brands*, *supra* note 150.

165. *Why Do Koreans Own the Black Beauty Supply Business?*, *supra* note 153.

166. See Ranen, *supra* note 114, at frame 5:50 (discussing Kizure, a Black-owned manufacturer of curling irons and other styling tools, allegedly blacklisted from Korean American-owned shops).

167. See, e.g., BEAUTY TIMES: THE MAGAZINE FOR THE ETHNIC BEAUTY INDUSTRY, <http://www.beautytimes.com/> [<https://perma.cc/Z57Z-MX66>]; see also Ranen, *supra* note 114, at 2:57.

price and resale conditions of imported wigs and (ii) excluding wig importers and distributors from the resale market.¹⁶⁸ The Association was a New York organization whose members imported wigs and hair products from Korea for wholesale and retail in the U.S.¹⁶⁹ Noting that most wigs sold in the U.S. are made out of synthetic fibers and that the “vast majority” of synthetic wigs are manufactured in South Korea and imported to the United States,¹⁷⁰ the Department of Justice contended that the Association regulated the price and distribution of wigs by restricting its membership and working with an association of South Korean wig manufacturers and exporters (the KEA) to channel the distribution of wigs through the Association.¹⁷¹ Although DOJ brought suit under Section 1 of the Sherman Act,¹⁷² this was a scheme of using exclusion to facilitate price maintenance, as seen in classic Section 2 cases.¹⁷³ In the end, the consent decree enjoined the Association from (i) fixing wig prices, (ii) preventing the procurement of wigs for resale, informational exchanges designed to fix prices, (iii) communicating its membership to the KEA, and (iv) unreasonably restricting its membership.¹⁷⁴

The Association’s consent decree offered a lens into how the Korean American distribution chain for wigs and hair extensions was able to consolidate its hand in the U.S. market. However, it is tantalizingly short. It also stands as the only proceeding that delves into the workings of this market with any rigor. Ultimately, the Justice Department’s legal action shows that the charges of African American consumers and competitors are not mere speculation—that as far back as 1972, the Korean American distribution chain was attempting to fix prices and resale conditions for wigs and hair extensions.¹⁷⁵ To fill in the analytical gaps in the consent decree and infuse the charges of African American consumers and competitors with rigor, we must work through the requisite steps under antitrust law. Otherwise, the charges languish in imprecision. The next Section undertakes that work.

III. MARKET POWER OF KOREAN AMERICAN RETAILERS

This Section uses antitrust theory and doctrine on market power to more clearly frame the presence of Korean American retailers. To be condemned, many exclusionary and coordinating practices require a finding of market power as the very

168. See *United States v. Korean Hair Goods Ass’n of Am., Inc.*, 40 Fed. Reg. 57696 (Dep’t of Just. Dec. 11, 1975) (Notice of Proposed Consent Judgment).

169. *Id.* at 57698.

170. *Id.*

171. *Id.*

172. See *United States v. Korean Hair Goods Ass’n of Am., Inc.*, No. 75-3069, 1976 WL 1219 (S.D.N.Y. Feb. 24, 1975).

173. *E.g.*, *Nat’l Collegiate Athletic Ass’n v. Bd. of Regents of the Univ. of Okla.*, 468 U.S. 85 (1984); *JTC Petroleum Co. v. Piasa Motor Fuels, Inc.* 190 F.3d 775 (7th Cir. 1999).

174. *Korean Hair Goods Ass’n of Am., Inc.*, 1976 WL 1219.

175. *United States v. Korean Hair Goods Ass’n of Am., Inc.*, 40 Fed. Reg. at 57696–98 (Notice of Proposed Consent Judgment and Competitive Impact Statement).

first step.¹⁷⁶ Market power is easy to express conceptually—the power of a producer to raise prices above competitive levels—but often difficult to prove in practice.¹⁷⁷

Frequently, market power is gauged through the indirect steps of defining the relevant market and then measuring the defendants' market shares. While the market definition/market share paradigm has come under assault through the decades, it remains the most popular means of assessing market power.¹⁷⁸ More importantly for our purposes, this paradigm generates broader insights about the preferences and pressures of African Americans, which might be missed if we were to assess market power more directly—for instance, by going straight to anticompetitive effects.¹⁷⁹

This Section begins by discussing the application of the market definition/market share paradigm to the retail of wigs and hair extensions to African Americans. Then it moves onto other conceptualizations of market power.

A. Oblique Measures of Market Power

1. Market Definition

For wigs and hair extensions, market definition is not difficult, but the exercise can be enlightening.¹⁸⁰ Despite our preliminary focus on the products themselves (e.g., wigs), the complaints of monopoly and monopolization emanate from the retail market, where the interaction between consumers and producers happens to be most ethnically misaligned. In the retail of wigs and hair extensions to African Americans, which occurs mostly in brick-and-mortar stores, commerce is dominated by Korean American-owned shops.¹⁸¹ Consumer–producer frictions coincide with—and are therefore augmented by—interracial tensions.

The product market clearly encompasses brick and mortar stores, where African American women typically procure wigs and extensions. Stores provide convenient access to myriad products; consumers can easily compare prices, textures, and colors, especially for last-minute purchases prior to a trip to the salon. Demand, especially in the form of traditional storefronts, is inelastic—one of the two common features of a precisely defined market (the other feature being supply inelasticity).¹⁸²

176. HOVENKAMP, *supra* note 21, § 3.1.

177. At its core, market power gauges the difference between position of the accused firm and a competitive counterfactual. Daniel A. Crane, *Market Power Without Market Definition*, 90 NOTRE DAME L. REV. 31, 37 (2014).

178. See, e.g., Louis Kaplow, *Why (Ever) Define Markets?*, 124 HARV. L. REV. 437, 440 (2010). For an excellent summary of approaches to market definition, see Sean P. Sullivan, *Modular Market Definition*, 55 U.C. DAVIS L. REV. 1091 (2021).

179. This is especially the case for dynamic industries. See Howard A. Shelanski, *Information, Innovation, and Competition Policy for the Internet*, U. PA. L. REV. 1663, 1673–74 (2013).

180. Wigs and extensions are also lumped together in Ranen, *supra* note 114, at frame 0:24 (“Even though [African Americans] make up only 10% of the American population, they buy 70% of all wigs and extensions . . .”).

181. See Llonau, *supra* note 20; Sapong, *supra* note 114; *Why Do Koreans Own the Black Beauty Supply Business?*, *supra* note 153.

182. HOVENKAMP, *supra* note 21, at 93.

Demand for wigs and extensions is inelastic due to social preferences that are often infused into law. In the United States, long, straight hair is favored over other styles, a predisposition that reflects the markers of whiteness.¹⁸³ Because blackness is defined in opposition to whiteness,¹⁸⁴ the natural hair of African Americans, who are racialized as Black, has often been viewed as undesirable.¹⁸⁵ Thus, products from relaxers to hair extensions accommodate these preferences.¹⁸⁶ Of course, social preferences are fluid, and natural hair has been celebrated, if episodically.¹⁸⁷

The law has internalized these norms into its systems of incentives. In several jurisdictions, employers can fire or demote employees for how they wear their hair with no repercussions.¹⁸⁸ Hair discrimination cannot necessarily be couched as legally actionable discrimination under Title VII.¹⁸⁹ And the closer one gets to the textured appearance of natural hair, the more one hazards exclusion, termination, or demotion.¹⁹⁰ Even where legal protections exist, African Americans understand that natural or natural-looking hair can hinder professional advancement.¹⁹¹

183. See Angela Onwuachi-Willig, *Another Hair Piece: Exploring New Strands of Analysis under Title VII*, 98 GEO. L.J. 1079, 1093 (2010) (“[S]ociety’s normative ideal for women’s hair [is] straight hair, which hangs down as it grows longer—hair that is not naturally grown by black women.”).

184. See generally FLOYA ANTHIAS & NIRA YUVAL-DAVIS, RACIALIZED BOUNDARIES: RACE, NATION, GENDER, COLOUR, AND CLASS AND THE ANTI-RACIST STRUGGLE (1992); CAROL ANDERSON, WHITE RAGE: THE UNSPOKEN TRUTH OF OUR RACIAL DIVIDE (2016); IAN HANEY LOPEZ, WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE (10th ed. 2006).

185. Onwuachi-Willig, *supra* note 183, at 1107 (“In a society where straight, long, fine hair (compared to black hair) is viewed not only as the norm but as the ideal for women, tightly coiled black hair easily becomes categorized as unacceptable, unprofessional, deviant, and too political.”). See also Matt Donnelly, *Inside ‘America’s Got Talent’: Ousted Judges Had Complained of Toxic Culture*, VARIETY (Nov. 26, 2019, 3:38 PM), <https://variety.com/2019/tv/news/americas-got-talent-gabrielle-union-julianne-hough-toxic-culture-ousted-judges-1203417447/> [<https://perma.cc/9Z7D-3YWW>] (stating that actress Gabrielle Union was criticized by the producers of the show *America’s Got Talent* for hairstyles that were “too black”).

186. Roseborough & McMichael, *supra* note 110, at 105 (“[R]elaxer is a chemical compound applied at varying intervals to permanently break hydrogen disulfide bonds along the hair shaft and release the tight curl pattern.”).

187. See BYRD & THARPS, *supra* note 141, at 54–59 (Afros in the 1960s), 67–68 (Afros in Blaxploitation films of the 1970s), 169–70 (natural hair in the 1990s). For contemporary natural hair trends, see *Natural Hair Movement Drives Sales of Styling Products in US Black Haircare Market*, MINTEL (Dec. 17, 2015), <https://www.mintel.com/press-centre/beauty-and-personal-care/natural-hair-movement-drives-sales-of-styling-products-in-us-black-haircare-market> [<https://perma.cc/AA77-U9WW>].

188. See D. Wendy Greene, *Title VII: What’s Hair (And Other Race-Based Characteristics) Got To Do With It?*, 79 U. COLO. L. REV. 1355, 1370–75 (2008) (analyzing *Eatman v. United Parcel Service*, 194 F. Supp. 2d 256 (S.D.N.Y. 2002) and other cases).

189. *Id.*

190. In *Eatman*, African American UPS drivers were told to cover “unconventional hairstyles, which included ‘dreadlocks,’ ‘braids,’ ‘corn rolls,’ a ‘dew rag,’ and a ‘pony-tail.’” 194 F. Supp. 2d at 259.

191. See Donnelly, *supra* note 185.

Although we are defining our market as the retail of wigs and extensions, it is still illuminating to analyze the products sold. One theme that emerges from doing so is the socially embedded inelasticity of demand for items that produce straight hair. This inelasticity spills over to retail and puts consumers at the mercy of retailers.¹⁹² The second theme is that not all African American hair products are fungible. Even though many products have been invented to alter the length and texture of African American hair,¹⁹³ these products are not reasonably interchangeable because the associated processes are different: relaxers chemically alter the texture of hair coils, sometimes at the risk of chemical burns, while wigs and extensions are worn over hair to alter the apparent length and curl pattern. And interchangeability is the hallmark of market definition: all products that are reasonably interchangeable, or can substitute for one another, must factor into product market definition.¹⁹⁴

Even within wigs and extensions, we can further distinguish products on two additional fronts. First, there is a difference between products that replicate tighter curls versus products that mimic straight hair. Wigs and extensions might perform similar functions, and more textured hairpieces might not be good substitutes for straight hairpieces. Second, there is a difference between wigs and extensions made from human hair and those made from synthetic materials. The former is much higher quality and more expensive than the latter; and even within human hair, there are gradations.¹⁹⁵ For our purposes, we focus on human hair, which entails a different supply chain than synthetic hair. Again, we note that wigs and hair extensions are not the same as the venue in which they are sold—here, we focus primarily on the latter.

As for supply elasticity, assessment comes with complications as well. After displacing door-to-door salespeople, storefronts enjoyed a decades-long lock on the retail market. Offering immediate access to a variety and large quantities of products,

192. The consequences are not merely economic. African Americans have long complained of condescending treatment by Korean American shopkeepers, a complicated dynamic that is informed partially by the need for products sold and the lack of alternative venues. See KIM, *supra* note 156, at 1–5. Of course, counterexamples abound. See Julie Lee Merseth, *Race-ing Solidarity: Asian Americans and Support for Black Lives Matter*, 6 POLITICS, GROUPS, AND IDENTITIES 337, 349 (2018) (“[I]t is less obvious why Black Lives Matter support among Koreans stands out significantly, especially set against the historical backdrop of black–Korean conflict. . . . Because Korean communities comprise substantial numbers of first-generation immigrants as well as undocumented immigrants, it is possible that Korean support for Black Lives Matter follows in part from the movement’s visible and outspoken efforts to support immigrant rights, particularly for undocumented immigrants of color.”).

193. See Roseborough & McMichael, *supra* note 110, at 104–06; Onwuachi-Willig, *supra* note 183, at 1089.

194. See *United States v. E.I. du Pont de Nemours & Co.*, 351 U.S. 377, 394, 400, 404 (1956); *Brown Shoe Co. v. United States*, 370 U.S. 294, 325 (1962). This is the concept of cross-elasticity: where substitutes are many, cross-elasticity is high. Yet interchangeability and cross-elasticity are prone to error. See Kaplow, *supra* note 178, at 482–91 (explaining why elasticity should be emphasized over cross-elasticity).

195. For example, Remy hair, where cuticles are intact and going in the same direction, is considered to be higher end. See Ankush Gupta, *Human Hair “Waste” and Its Utilization: Gaps and Possibilities*, 2014 J. WASTE MGMT. 1, 3–4.

traditional stores seem to have even fended off challenges from newer outlets such as Internet sales and salon-driven sales.¹⁹⁶ Our market should be defined as *all retailers* to encompass these newer outlets; even so, with brick-and-mortar stores predominating, the daylight is slim between all retailers and physical stores.

Nonetheless, supplier elasticity is difficult to pin down because there is a glut of firms in any geographic market for consumers to choose from—those firms just happen to be mostly owned and operated by Korean Americans. In the retail of wigs and hair extensions to African Americans, competition is intense. It was intra-ethnic competition, after all, that helped drive the industry toward decline in the 1970s.¹⁹⁷ Yet despite the abundance of retailers, there are very few non-Korean alternatives. Can it be said, then, that this market is characterized by supplier inelasticity if we consider only the number of firms? Regardless of the answer to this narrow question, the picture emerges of a supply network that competes intensely within itself but cooperates to exclude competition from out-group insurgents.

To be sure, challengers have managed to break through. Instead of procuring wigs and extensions from Korean wholesalers, however, they rely on nontraditional sourcing. Mayvonn, a Black-owned retailer that started in 2012 and is funded by Serena Williams and venture capital powerhouse Andreessen Horowitz, sources hair from China and sells either directly to consumers or through salons.¹⁹⁸ Indique, co-founded in 2007 by African American and Indian American partners, sources from India, where hair is donated as part of religious ceremonies, and sells products through its proprietary salons.¹⁹⁹ The extent of consumer preference for these upstarts is difficult to quantify, these alternatives do not command a substantial share of the product market yet.²⁰⁰

As a harbinger of imminent troubles, U.S. Customs and Border Protection recently seized thirteen tons of shipments of human hair imports from China.²⁰¹ The hair was alleged to have been shorn from Uighur internees at concentration camps for Muslim minorities in Xinjiang, western China.²⁰² Muslim internment is one of

196. See *supra* notes 181–82 and accompanying text.

197. YOON, ON MY OWN, *supra* note 12, at 112–13.

198. Adams, *supra* note 13; *About Us*, MAYVENN, <https://shop.mayvonn.com/about-us> [<https://perma.cc/C2AT-KEJQ>].

199. See *Our Company*, INDIQUE HAIR EXTENSIONS, <https://www.indiquehair.com/pages/our-company> [<https://perma.cc/Q2VR-3CA7>].

200. Mayvonn has been valued at \$100 million, while the entire hair extensions market is valued at \$6 billion. See Adams, *supra* note 13. Its valuation does not necessarily reflect its current share of the market, only its potential. Of course, much more in-depth empirical work must be done to break out exactly how much of that \$6 billion figure pertains to African American consumers and what share Mayvonn and traditional retailers control of that sector.

201. *Withhold Release Orders and Findings*, U.S. CUSTOMS AND BORDER PROTECTION, <https://www.cbp.gov/trade/programs-administration/forced-labor/withhold-release-orders-and-findings> [<https://perma.cc/G9KN-XB3Q>] (search under “China” and entries 33 and 34 for “Hair Products”).

202. See Martha Mendoza, *AP Exclusive: Hair Weaves, from Chinese prison camps seized*, WA. POST (July 1, 2020), https://www.washingtonpost.com/national/religion/ap-exclusive-hair-weaves-from-chinese-prison-camps-seized/2020/07/01/11be0df2-bb9c-11ea-97c1-6cf116ffe26c_story.html [<https://perma.cc/L9LF-SC9Z>]; Shalway Evans, *That Hair You Just Bought Could Be from an Internment Camp in China*, ESSENCE (Dec. 6, 2020),

the worst ongoing violations of human rights in the world;²⁰³ any supply chain entangled, or even alleged to implicate, the labor or body parts of internees could stain an entire industry.²⁰⁴ At the very least, if Chinese hair continues to generate controversy, then it will prove to be an unstable source for insurgent retailers such as Mayvenn.

2. Market Share Calculation

With the above considerations in mind, let us define the market as the brick-and-mortar retail of wigs and extensions made from human hair for consumption by African Americans. From here, market share calculation can reveal with greater precision the extent of dominance by Korean American suppliers. By most accounts, Korean American businesses control approximately seventy to eighty-five percent of the “ethnic beauty products” market.²⁰⁵ Vastly more research must be done to measure the market share of Korean American businesses in the relevant markets. However, the anecdotal evidence from African American consumers is that purchasing wigs and hair extensions invariably requires navigating Korean-owned stores.²⁰⁶

Even if “saturation” of the relevant markets by Korean American businesses is assumed, market share analysis will almost certainly fail traditional measures of concentration because numerous small firms play in our ESM market. Customarily, market dominance is attributed to one very large producer (a monopoly) or a small number of fairly large producers (say, an oligopoly of four or five producers).²⁰⁷ Yet because producers are small and compete intensely, this feature belies our typical understanding of concentration.

Very few detailed studies have been conducted on the numbers of ethnic beauty stores (where wigs and extensions are sold) in a geographic market. One study by the sociologist Jennifer Lee, who relied on interviews with Korean proprietors,

<https://www.essence.com/beauty/beauty-news/customs-seizes-hair-suspected-from-chinese-prison/> [<https://perma.cc/5C2S-36XN>].

203. See Lindsay Maizland, *China’s Repression of Uighurs in Xinjiang*, COUNCIL ON FOREIGN RELATIONS (March 1, 2021, 7:00 AM), <https://www.cfr.org/background/chinas-repression-uighurs-xinjiang> [<https://perma.cc/B3S5-U8DQ>]; Marlise Simons, *Uighur Exiles Push for Court Case Accusing China of Genocide*, N.Y. TIMES (July 6, 2020), <https://www.nytimes.com/2020/07/06/world/asia/china-xinjiang-uighur-court.html> [<https://perma.cc/XLY2-B6PA>].

204. See Mendoza, *supra* note 202.

205. See, e.g., Sapong, *supra* note 114 (70%); Lee, *supra* note 77, at 1405 (80%); Lloneau, *supra* note 20 (85%). Cf. BYRD & THARPS, *supra* note 141, at 96 (pinning the distribution of ethnic hair care products at “primarily” “45 to 50 percent,” and “60 percent” Asian).

206. See, e.g., Ranen, *supra* note 114.

207. Of course, the power of numerous small producers can be augmented if they band together—say, through a trade association. In *American Column & Lumber Co. v. United States*, for example, the American Hardwood Manufacturers’ Association was comprised of approximately 400 members, with 365 of them engaged in the information exchange plan. 257 U.S. 377, 391 (1921). In *National Society of Professional Engineers v. United States*, the society’s worldwide membership was 69,000, and consulting engineers, who were at the heart of the no-bid rule, numbered 12,000. 435 U.S. 679, 682 (1978).

pegged the number of ethnic beauty supply stores in New York City at 300, with eighty percent of them “Korean owned.”²⁰⁸ Professor Lee’s interviews took place in three largely African American neighborhoods in New York: East Harlem, West Harlem, and Jamaica, Queens.²⁰⁹ While she does not specify the numbers of stores in each neighborhood, we can take Jamaica as an example and assume that (1) it comprises a relevant geographic market and (2) it has twenty such stores.²¹⁰ Further, if we assume that the intense competition among Korean American retailers yields a market where no single supplier runs away with market share, then our shares might look something like this:

Table 1. Hypothetical Market Shares in a Relevant Geographic Market

Firm	Market Share (%)	Firm	Market Share (%)
1	13	11	4
2	12	12	4
3	8	13	3
4	7	14	3
5	6	15	3
6	6	16	3
7	5	17	2
8	5	18	2
9	5	19	2
10	5	20	2

We can start with the k -firm concentration ratio, setting k at 4 to get the commonly utilized four-firm concentration ratio, or the sum of the market shares of the four largest firms in the market. Here the four-firm ratio would be forty.²¹¹ A more precise measure is the Herfindahl–Hirschman Index (HHI), or the sum of the squares of the

208. Lee, *supra* note 77.

209. *Id.*

210. The African American population in Queens is 141,387 (58.6% of 241,275 residents). *Jamaica/Hollis QN12 Demographics*, NYU FURMAN CENTER, <https://furmancenter.org/neighborhoods/view/jamaica-hollis>. This comprises approximately 7.5% of New York’s 1.992 million African Americans. *QuickFacts New York City, New York*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/newyorkcitynewyork> [<https://perma.cc/QH4H-E859>]. If we take Professor Lee’s figures to be accurate, 7.5% of 300 is 22.5 ethnic beauty stores for our geographic market. Indeed, a quick Google maps search of “ethnic beauty supply Jamaica Queens” returns 22 results.

211. See, e.g., William G. Shepherd, *Concentration Ratios*, in *NEW PALGRAVE DICTIONARY OF ECONOMICS* 563 (Eatwell et al. eds., 1st ed. 1987); U.S. DEP’T OF JUST., *MERGER GUIDELINES* (1968).

market shares of all firms. Under the above hypothetical, the HHI would be 682, which does not even cross the threshold of moderate concentration.²¹²

If all but three of the firms (assume, e.g., Firms 7–10) were owned by Korean Americans, then the Korean-owned firms would occupy eighty percent of the market, but concentration is typically not measured in this way.²¹³ Instead, concentration is assessed at the level of individual firms.

While the above illustration is purely conjecture, it incorporates an important insight from the literature on Korean American small businesses: they crowd into specific niches and compete intensely against one another.²¹⁴ The success of one enterprise prompts others to start a competing enterprise, often in close proximity to the first.²¹⁵

B. Retailer Diversity

Our defined market would likely not qualify as concentrated under the market definition/market share paradigm. However, there are other measures of market power whose application to antitrust may be more appropriate, if experimental. As a salient example, economists have proposed looking at the way ecologists measure biological diversity—by assessing the *richness* and *evenness* of a geographical habitat, where richness “is . . . the number of different kinds of organisms or species” and evenness “compares the similarity of the population size of each of the species . . .”²¹⁶ Applying these measures to the market for wigs and hair extensions, we would find that richness is negligible, and evenness skews toward a lopsided quantity of Korean American firms. This result is equivalent in ecology to a habitat dominated by one species.²¹⁷

Biologists and ecologists quantify richness and evenness through the Simpson’s Diversity Index, which expresses the probability “that two . . . organisms chosen at random and independently from the population will be found to belong to the same species.”²¹⁸ The Index shifts the analysis from the level of individual organisms to the level of species. Incidentally, HHI incorporates aspects of richness and evenness

212. U.S. DEP’T OF JUST. & FTC, HORIZONTAL MERGER GUIDELINES § 5.3 (2010). The HHI is the more commonly used index of concentration today, but both measures have their flaws. HHI captures the differences in firm size more accurately but errs on overestimating the importance of that difference, while the four-firm concentration ratio overlooks and undervalues firm size disparity. HOVENKAMP, *supra* note 21, § 12.4a2.

213. Note that Black Owned Hair Care Challenge only has one African American retailer listed for Queens. See *Listing of Black Owned Beauty Supply Stores*, FACEBOOK, https://18530fa3-d2e0-49d5-a67b-522187070841.filesusr.com/ugd/182cb9_81b90ee249eb43f288e60510c6938688.pdf [https://perma.cc/2JNH-WGWL].

214. See YOON, ON MY OWN, *supra* note 12, at 112–13.

215. *Id.*

216. Paolo M. Adajar, Ernst R. Berndt, & Rena M. Conti, *The Surprising Hybrid Pedigree of Measures of Diversity and Economic Concentration* 2, 11, (Nat’l Bureau of Econ. Rsch., Working Paper No. 26512, 2019), <http://www.nber.org/papers/w26512> [https://perma.cc/78FP-GM7W].

217. *Id.*

218. *Id.* at 12; see also Edward H. Simpson, *The Measurement of Diversity*, 163 NATURE 688 (1949).

as well; for instance, squaring firm market shares augments the effect of (and therefore accounts for) disparities in firm size. Still, the Simpson's Diversity Index gives us license to think of a market in terms of its producer diversity, providing the theoretical basis to look beyond individual firms and at the level of ethnic groups.

The Simpson's Diversity Index has not been adapted to antitrust contexts,²¹⁹ though diversity has featured prominently in some antitrust-adjacent areas of law. Telecommunications law, for instance, has grappled with viewpoint diversity in the midst of media consolidation,²²⁰ with the Federal Communications Commission once proposing a diversity index based on the HHI to identify media markets where cross-ownership limits should be retained.²²¹ Antitrust scholars have also suggested alternatives to the narrow focus on price and efficiency, upholding diversity in markets where rivals compete on nonprice differentiation.²²² In close cases such as ours, where traditional market power paradigms yield ambivalent results, diversity might call for antitrust intervention.

The wig and extensions market is an apt setting to test the viability of principles such as diversity and consumer choice. Retailers compete intensely, eroding margins and pushing prices toward convergence.²²³ The products themselves are fairly homogenous, varying only in texture, length, and curl pattern. What distinguishes retailers from one another, then, is convenience, selection, and, perhaps most importantly, the ethnic identities of each firm's managers and owners. These three factors—convenience, selection, and identity—are important to consumers and balance one another in nuanced ways. Yet only the ethnic identities of retailers are meaningful to market power. From that standpoint, the prevalence of Korean American-owned firms makes this market extremely concentrated, with this group wielding market power.

There are reservations, though, with this conceptualization of diversity, which pits Korean American retailers against African American competitors and consumers. Racial and ethnic formation is a dynamic, contested process,²²⁴ but this strain of market power analysis reduces Korean Americans to one homogenous block and African Americans to another, extrapolating the degree of diversity from their ratio. In reality, so many factors influence racial and ethnic formation that it is understood

219. *But see* Miriam Marcowitz-Bitton & Jacob Nussim, *Regulation of Book Markets*, 97 WASH. U. L. REV. 835, 895 n.425 (2020).

220. *See* Daniel E. Ho & Kevin M. Quinn, *Viewpoint Diversity and Media Consolidation: An Empirical Study*, 61 STAN. L. REV. 781 (2009).

221. *See* Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd. 13620, 13775 (2003). After legal challenges, the index was dropped. *See* Prometheus Radio Project v. FCC, 373 F.3d 372 (3d Cir. 2004).

222. *See* Neil W. Averitt & Robert H. Lande, *Using the "Consumer Choice" Approach to Antitrust Law*, 74 ANTITRUST L.J. 175 (2007). Relatedly, on the use of competition law to advance small and medium-sized businesses, particularly in countries where an ethnic minority controls commerce, *see* Fox, *supra* note 47.

223. YOON, ON MY OWN, *supra* note 12, at 112–13.

224. NADIA Y. KIM, IMPERIAL CITIZENS: KOREANS AND RACE FROM SEOUL TO LA xiv (2008).

to be ever fluid.²²⁵ Racial order is transient and should be historically situated.²²⁶ To the extent that race signifies “social conflicts and interests” embedded in human bodies,²²⁷ its meaning constantly shifts as those conflicts and interests reorient themselves.

Among Korean American shopkeepers, whom we presume to constitute a uniform block for the purpose of assessing market power, there are notable differences. Many did not stand with Soon Ja Du, who fatally shot Latasha Harlins in 1992.²²⁸ Then, as today, Korean Americans have worked with African Americans to build up their communities in pan-racial solidarity.²²⁹ More pointedly, Korean American retailers may be pursuing divergent sourcing strategies. The reentry of China as a global hair supplier,²³⁰ coupled with Internet platforms such as Alibaba, allows Korean American retailers to bypass co-ethnic wholesalers just as much as it allows African American competitors an alternative source of products.

The above factors complicate the picture of Korean American solidarity, either as an ethnic unit or as a production unit. Ultimately, then, any metric of market power that aggregates the multitudes of discrete retailers, even if to assess market diversity, does so at the expense of intra-ethnic nuance.

C. Anticompetitive Effects

Finally, to avoid the pitfalls of market diversity and market definition/market share, we can attempt to detect market power through direct evidence of anticompetitive effects.²³¹ Unfortunately, there is as much disagreement over what constitutes direct evidence as there is over market definition.²³²

One long-established form of direct evidence is exclusionary conduct; courts have inferred market power from the power to exclude competition.²³³ In our case, this requires looking to the upstream market of wig and extensions wholesale and

225. Omi and Winant break race into three critical factors: ethnicity, class, and nation. *See* OMI & WINANT, *supra* note 26, at 11–13.

226. *Id.* at 61.

227. *Id.* at 55.

228. KIM, *supra* note 224, at 181 (L.A. Korean community asserting Du was “mentally unbalanced”). The community also blamed mainstream American media for inflaming violence by relentlessly airing footage of the shooting, glossing over White mistreatment of both Korean Americans and African Americans. *Id.* at 73.

229. Of course, episodes such as Los Angeles 1992 can reinforce ethnic cohesion. Kim, *Home is Where the Han Is*, *supra* note 89.

230. I say “reentry” because in the 1960s, China was a significant supplier until the U.S. banned the import of Chinese hair products. Ranen, *supra* note 114.

231. *See* United States v. Microsoft Corp., 253 F.3d 34, 51 (D.C. Cir. 2001) (showing direct evidence of Microsoft’s monopoly power).

232. *See* Crane, *supra* note 177, at 45 (summarizing seven mechanisms of direct evidence from lower court decisions).

233. *See id.* at 45 n.82 (citing Heerwagen v. Clear Channel Commc’ns, 435 F.3d 219, 227 (2d Cir. 2006); Geneva Pharms. Tech. Corp. v. Barr Labs. Inc., 386 F.3d 485, 500 (2d Cir. 2004); PepsiCo., Inc. v. Coca-Cola Co., 315 F.3d 101, 107 (2d Cir. 2002); Conwood Co. v. U.S. Tobacco Co., 290 F.3d 768, 783 n.2 (6th Cir. 2002); Tops Mkts., Inc. v. Quality Mkts., Inc., 142 F.3d 90, 98 (2d Cir. 1998)).

distribution, which is a necessary input into the retail of these products.²³⁴ An exclusionary strategy might proceed as follows: a consortium of wig and extensions wholesalers and distributors, all Korean American firms, refuses to sell products to non-Koreans. The consortium might explicitly refuse to deal with any non-Korean retailers, or it might conspire with South Korean wig manufacturers to export only to the consortium, rather than selling directly to any retailer based in the U.S. This was the very strategy of the Korean Hair Goods Association of America, Inc. (the “Association”) when the DOJ brought suit in 1975. The Association collaborated with the association of South Korean wig manufacturers and exporters (KEA) to restrict the flow of wigs to its competitors in the U.S. by, among other strategies, mandating that import and distribution flow through the Association rather than directly to retailers.²³⁵ Because most wigs were manufactured in Korea at the time,²³⁶ this maneuver choked off the supply line for out-group competitors. KEA and the Association both enjoyed market power in their respective markets—the manufacture and export of wigs in South Korea and the import and distribution of wigs into the U.S.

To a large extent, claims of exclusion have not abated today. African American retailers routinely complain that Korean wholesalers refuse to deal with them, thereby shutting them out of hair products to resell.²³⁷ However, exclusion as an indicator of market power is difficult to square, both doctrinally and within the wig and extensions market specifically.

While some courts have endorsed the inference of market power from exclusionary conduct,²³⁸ this inference is beset by circularity because recovery for exclusion is permitted only if the alleged excluder possesses market power.²³⁹ One widely recognized exception to this circularity is where the excluders are able to raise their rivals’ costs.²⁴⁰ Examples abound of such exclusionary schemes—for example, the foreclosure or denial of access to a necessary input by incumbents signals their market power.²⁴¹ In the wig and extensions market, the clearest instance of this type

234. On input control in antitrust, see Ramsi A. Woodcock, *Inconsistency in Antitrust*, 68 U. MIAMI L. REV. 105 (2013).

235. See U.S. Dept. of Justice, *United States v. Korean Hair Goods Ass’n of Am., Inc.*, Notice of Proposed Consent Judgment and Competitive Impact Statement Thereon, 40 Fed. Reg. 57696, 57697 (Dec. 11, 1975).

236. *Id.* at 57698.

237. Ranen, *supra* note 114.

238. See, e.g., *Brooke Groupe Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209 (1993).

239. Crane, *supra* note 177, at 64–65.

240. See Thomas G. Krattenmaker & Steven C. Salop, *Anticompetitive Exclusion: Raising Rivals’ Costs to Achieve Power over Price*, 96 YALE L.J. 209 (1986).

241. This is the crux of the essential facilities claim, which is established if (1) a monopolist controls a facility that (2) a competitor is unable to practically or reasonably duplicate and (3) use of the facility is denied to the claimant, even though (4) it is feasible for the monopolist to provide access. *MCI Commc’ns Corp. v. Am. Tel. & Tel. Co.*, 708 F.2d 1081, 1132–33 (7th Cir. 1983). For its case law lineage, see *Verizon Commc’ns Inc. v. Law Offices of Curtis V. Trinko*, 540 U.S. 398, 415 (2004); *Aspen Skiing Co. v. Aspen Highlands Skiing Corp.*, 472 U.S. 585, 611 (1985); *Otter Tail Power Co. v. United States*, 410 U.S. 366, 382 (1973); *United States v. Terminal R.R. Ass’n of St. Louis*, 224 U.S. 383, 411–13 (1912). For examples, see,

of exclusion would be any concerted effort among Korean manufacturers, wholesalers, or distributors to deny African American retailers access to hair products. If that transpires, then the insurgents would have to find new sources of raw materials (e.g., hair from India) and possibly manufacture the hair products themselves.²⁴² Or insurgents would have to source manufactured products from someplace other than South Korea.²⁴³

Proving exclusionary conduct by Korean American importers, wholesalers, and distributors is not difficult. There appear to be only a few such firms (as opposed to nearly 10,000 retailers), which more easily facilitates coordination; collectively, these firms wield market power.²⁴⁴ It is an altogether different matter, however, to prove that this exclusion raises the costs of African American retailers. The rise of China as a source of wigs and extensions may be drastically cutting suppliers' costs. Relatedly, the fact that hair in India is donated means that raw material costs might be even lower if South Korea is bypassed. More work must be done to figure out the margins of sourcing from South Korea versus China and India. For now, the fact that some African American competitors are thriving—and two are outright thriving—amidst the exclusion undercuts any argument of Korean market power.

Exclusion is commonly a consequence of vertical integration. Wholesalers and resellers, or an upstream facility and a downstream monopolist, must be unified to some degree for them to foreclose markets or raise rivals' costs. To be sure, ethnic bonds go a long way toward fostering commercial cohesion,²⁴⁵ but the vertical integration of Korean wholesalers and Korean American retailers is not frictionless. Although outsiders cannot easily peer into these relations, we can glean some insights from the public record of litigation. The handful of cases implicating Korean American wig and extensions retailers reveals that manufacturers and wholesalers can be extremely demanding of retailers, pressing them to agree to quotas of regular shipments backed by personal guarantees.²⁴⁶ More generally, these cases show that ethnic beauty supplies is a rough-and-tumble industry, where business partners can turn on one another.²⁴⁷ Co-ethnic bonds must therefore not be presumed.

Of course, this may also be an industry where in-group incumbents compete intensely against one another but are willing to band together to stymie out-group insurgents. This is the model from other markets such as finance.²⁴⁸ Yet those

Felix B. Chang, *Financial Market Bottlenecks and the "Openness" Mandate*, 23 GEO. MASON. L. REV. 69 (2015). For theoretical support, see Patrick Rey & Jean Tirole, *A Primer on Foreclosure*, in 3 HANDBOOK OF INDUSTRIAL ORGANIZATION 2147, 2155 (Mark Armstrong & Robert H. Porter eds., 2007).

242. This appears to be the Indique model. See *Our Company*, *supra* note 199.

243. This appears to be the Mayvonn model. See Adams, *supra* note 13.

244. See Ranen, *supra* note 114.

245. Wilson & Martin, *supra* note 81, at 156.

246. *Daweeo Int'l (America) Corp. v. Chade Int'l, Inc.*, 1992 WL 175600 (N.D. Ill. July 21, 1992).

247. See *T3Micro, Inc. v. SGI Co., Ltd.*, No. CV 09-08783, 2010 WL 11597603 (C.D. Cal. July 28, 2010).

248. See Felix B. Chang, *Second-Generation Monopolization: Parallel Exclusion in Derivatives Markets*, 2016 COLUM. BUS. L. REV. 657, 661–64 (2016) (analyzing the derivatives markets).

markets are typically dominated by a small oligopoly of large producers. Here, we are dealing with a large and diverse world of small retailers.

Nonetheless, if Korean American firms are analyzed as a cohesive unit, then their staying power would push antitrust toward finding an offense and devising a remedy—either for express coordination or, more experimentally, parallel exclusion. If competitors or consumers can produce evidence of express coordination, then this market would show that collusive and exclusionary schemes may be more stable than antitrust theory holds.²⁴⁹ This determination may depend on the intuition from sociology that an ethnic group withdraws into itself, strengthening co-ethnic bonds, when threatened by exogenous forces.²⁵⁰ Here the external threats would be competition and interracial tensions. Alternatively, at the wholesale level, Korean American firms may well be determining independently (rather than working together) to deny out-group rivals access to a necessary input. Even still, antitrust doctrine around noncooperative oligopolies may regard this as a form of parallel exclusion that militates toward intervention.²⁵¹

Ultimately, market power is an attempt to express the delta, or difference, between the market at hand and a perfectly competitive counterfactual.²⁵² This bears out in the various mathematical expressions of market power.²⁵³ With the advent of China and India as suppliers of hair and wigs, as well as platforms to connect retailers and even consumers with non-Korean suppliers, that delta may be diminishing. More empirical work on price and marginal cost must be done, of course, but this market may be converging toward perfect competition more swiftly than ever before.

IV. UPENDING ANTITRUST ASSUMPTIONS

The market for wigs and hair extensions defies several entrenched notions in antitrust. Maddeningly, this ESM market overturns the assumptions of both noninterventionist and progressive flanks. This Section explores the theoretical and doctrinal complications that come with ESM markets, which inject race and ethnicity into antitrust paradigms. The Section begins with how antitrust would have to expand for African American competitors and consumers to bring suit against Korean American producers. Then it examines how the wig and extensions market

249. See, e.g., Selten, *supra* note 23; Levenstein & Suslow, *supra* note 23; Dick, *supra* note 23.

250. See Turner & Bonacich, *supra* note 25, at 154.

251. See C. Scott Hemphill & Tim Wu, *Parallel Exclusion*, 122 YALE L.J. 1182, 1237–38 (2013).

252. Crane, *supra* note 177, at 33 (“[M]arket power only makes sense as an expression, in relative terms, of the distance between the market as it is and a competitive counterfactual. . . . Since antitrust policy aims to reduce the delta between a plausible competitive counterfactual and the actual circumstances, market power should be understood as that delta—the infirmity that antitrust law could correct.”).

253. E.g., the Lerner index: $L = (P - MC)/P$, where P denotes price and MC marginal cost. Here the delta is between price and marginal cost. In other words, in a perfectly competitive world, price would equal marginal cost, so the excess of price over marginal cost reveals a firm’s market power. See Kaplow, *supra* note 178, at 445–46.

undermines progressive antitrust's conceptions of welfare. The Section concludes with additional avenues for future research.

A. Group Boycotts, Refusals to Deal, and Facilitating Practices

A finding that Korean American retailers collectively possess market power would not be dispositive in litigation. To prevail, African American challengers would have to couch their claims in conformity with antitrust doctrine, which presently does not offer many viable avenues. The cultural and linguistic bonds of ethnically homogenous retailers might well comprise a plus factor that suggests parallel conduct is likely to be the product of collusion or tacit agreement.²⁵⁴ Arguably, even in the absence of agreement, these bonds may constitute a new facilitating practice that induces coordination. Plus factors and facilitating practices require proper calibration of the burdens of proof in some of the thorniest antitrust settings.²⁵⁵ With ESM markets, where efficiencies abound and conduct is more equivocal, the calculus becomes that much more convoluted.

For competitors, the first potential claim is that the actions of Korean American wholesalers and retailers, from the refusal to carry African American-made products to the refusal to extend African American retailers credit, amount to a group boycott of—or a horizontal agreement to refuse to deal with—African American entrants. At its inception, courts had subjected group boycotts to per se illegality, the highest level of scrutiny in antitrust.²⁵⁶ Yet, as elsewhere in antitrust, condemnation of these schemes has softened in recent years, particularly where procompetitive justifications lurk.²⁵⁷ This swing has been so extreme that the presumption on group boycotts is now validity under a rule of reason approach, rather than illegality under a per se approach.²⁵⁸

As a vertical strategy, refusal to deal in facilitation of exclusion is accorded even greater deference. Refusal to deal is often brought as an essential facilities claim

254. For a taxonomy of plus factors, see William E. Kovacic, Robert C. Marshall, Leslie M. Marx & Halbert L. White, *Plus Factors and Agreement in Antitrust Law*, 110 MICH. L. REV. 393 (2011). For the genesis of the debate over whether parallel conduct should be condemned under antitrust laws, see Donald F. Turner, *The Definition of Agreement Under the Sherman Act: Conscious Parallelism and Refusals To Deal*, 75 HARV. L. REV. 655, 677–81 (1962); Richard A. Posner, *Oligopoly and the Antitrust Laws: A Suggested Approach*, 21 STAN. L. REV. 1562 (1969).

255. Burdens of proof are frequently the targets of calls for reform. See, e.g., Fiona Scott Morton, Pascal Bouvier, Ariel Ezrachi, Bruno Jullien, Roberta Katz, Gene Kimmelman, A. Douglas Melamed & Jamie Morgenstern, *Stigler Committee on Digital Platforms: Market Structure & Antitrust Subcommittee Report*, in STIGLER COMMITTEE ON DIGITAL PLATFORMS FINAL REPORT 23, 77–78, 100–01 (2019).

256. See, e.g., *E. States Retail Lumber Dealers' Ass'n v. United States*, 234 U.S. 600, 614 (1914); *Am. Med. Ass'n v. United States*, 317 U.S. 519 (1943); *Klors v. Broadway-Hale Stores, Inc.*, 359 U.S. 207, 212 (1959).

257. See, e.g., *NYMEX Corp. v. Discon, Inc.*, 525 U.S. 128, 134–35 (1998). For analysis on this doctrine's application to an ethnically segmented market similar to the one at hand, see Barak D. Richman, *The Antitrust of Reputation Mechanisms: Institutional Economics and Concerted Refusals to Deal*, 95 VA. L. REV. 325, 340–46 (2009).

258. HOVENKAMP, *supra* note 21, at 239.

against a defendant who controls a necessary input (typically, an infrastructure with network effects) into a market.²⁵⁹ Customarily, the defendant is a monopolist, or at least an oligopoly whose market power is indisputable.²⁶⁰ Yet even if African American challengers were to establish that Korean American retailers harbored market power, the essential facilities doctrine has been eviscerated as a theory of harm.²⁶¹ The high-water mark of the duty to deal doctrine has long passed,²⁶² and today's courts simply view a refusal to deal as the province of businesses.

Procompetitive efficiencies can also excuse information sharing, a strategy among competitors that can be challenged as a facilitation device for collusion and exclusion even in the absence of express agreement. Claimants might allege, for example, that the publication of product catalogs and trade journals in the Korean language operates to signal inventory pricing while shutting out non-Korean retailers. Cultural and linguistic homogeneity might well be a setting in which our conception of facilitating practices should expand to reflect greater likelihood of collusion. However, these bonds could lower transaction costs for retailers, resulting in savings for consumers. In their defense, then, incumbent retailers might point to the fact that South Korean manufacturers and exporters are the dominant suppliers; as such, U.S. distributors and retailers can communicate more easily with these suppliers in Korean.

The likelihood of success of these claims is difficult to quantify. On one hand, the wigs and extensions market is characterized by fungible products and inelastic demand,²⁶³ and these information exchanges might pertain to price²⁶⁴ or further a group boycott.²⁶⁵ On the other hand, however, information exchanges are more suspect in concentrated markets,²⁶⁶ and African American insurgents must be able to point to some sort of actual exchange of information, ideally within the incriminating areas.²⁶⁷ This claim seems to turn, again, on market power, which itself turns on the appropriateness of analysis at the firm versus ethnic group level.

Efficiencies do abound in the wig and extensions market. The degree of vertical integration among co-ethnic manufacturers, distributors, and retailers means that products can be moved quickly to any locality in the United States. Korean American retailers in African American communities can also spot new trends and transmit this

259. See *supra* note 241.

260. See, e.g., *Otter Tail Power Co. v. United States*, 410 U.S. 366, 381–82 (1973); *Verizon Commc'ns Inc. v. Law Offices of Curtis V. Trinko*, 540 U.S. 398, 415 (2004).

261. See *Trinko*, 540 U.S. at 411 (“We have never recognized [the essential facilities doctrine], and we find no need either to recognize it or to repudiate it here.”) (citations omitted).

262. See, e.g., *Aspen Skiing Co. v. Aspen Highlands Skiing Corp.*, 472 U.S. 585, 611 (1985); *Otter Tail*, 410 U.S. at 372.

263. See HOVENKAMP, *supra* note 21, at 236 (stating that information exchange is certain to be condemned if the market is concentrated, the price is fungible, and demand is inelastic).

264. See HOVENKAMP, *supra* note 21, at 237 (price information exchanges suspicious). See also *Am. Column & Lumber Co. v. United States*, 257 U.S. 377 (1921); *United States v. Am. Linseed Oil Co.*, 262 U.S. 371 (1923).

265. See *E. States Retail Lumber Dealers' Ass'n v. United States*, 234 U.S. 600 (1914).

266. HOVENKAMP, *supra* note 21, at 236.

267. For a similar discussion, see Richman, *supra* note 257, at 352–55.

information to South Korean manufacturers, who can respond rapidly. Simultaneously, the rough-and-tumble competition among retailers means that prices should converge toward competitive, rather than supracompetitive, levels.

The central question raised by this ESM market is therefore: Who is harmed by the actions of Korean American firms in this market—African American consumers or competitors? If prices are competitive, the answer would not be consumers. The same would be true if the quality of products were high or if the varieties were expansive. In such instances, the market would be functioning properly, and antitrust would not need to intervene.

Indeed, group boycotts, refusals to deal, and information exchanges are injurious only to competitors, with offsetting efficiencies for consumers. The very use of “ethnic misalignment” for this market suggests that it is competitors who are harmed because they are denied the chance to sell to co-ethnic consumers.²⁶⁸

To work through the implications, we might imagine a market in which an African American insurgent were to break through and eventually run away with market share—say, if Mayvonn or Indique were to displace the vast majority of Korean American retailers. In such a market, with a monopoly firmly in control, prices would trend toward supracompetitive levels. Which, then, would African American consumers prefer? The ethnically misaligned market where thousands of out-group producers compete against one another but shut out in-group competitors, or the ethnically aligned market dominated by one producer with clear market power?

The answer is unclear. While pertinent to the wig and extensions market, this question also underscores the ambivalence of the consumer welfare standard in antitrust; this market is characterized by intense intra-producer competition, yet consumers are unsatisfied by their choices.

As for the more basic questions of whether Korean American firms bear market power and whether antitrust would condemn their business practices, the results are indeterminate. In the face of such indeterminacy, it would seem unwise to concoct new theories on market power or facilitating practices. However, inaction means that antitrust doctrine will have come down in favor of one ethnic group. Such is the quandary at the heart of an ESM market where both producers and consumers are peoples of color. Err for producers, and antitrust will have endorsed a community of mostly immigrant entrepreneurs who have opted out of the mainstream U.S. economy because of racial barriers. Err for consumers, and antitrust will have upheld a racial group that has been denied participation in the sale of a product that is central to their identity.

B. Progressive Antitrust

Of all the assumptions that ESM markets invert, the most paradigm-shifting may be how these markets undermine the beliefs of progressive antitrust. Antitrust today has been reinvigorated by its progressive flank. Loosely called the “new Brandeis school,” a group of scholars and advocates have argued for stronger antitrust laws and enforcement as redress for society’s most pressing problems.²⁶⁹ These scholars

268. Thanks to Harry First for pointing this out.

269. See Maurice E. Stucke & Ariel Ezrachi, *The Rise, Fall, and Rebirth of the U.S.*

share a distrust of firms that have attained a certain size, or “bigness,” and a faith in antitrust to look after noneconomic goals.²⁷⁰ Properly enforced, antitrust can foster innovation²⁷¹ while countering inequality and the concentration of political power.²⁷²

The fundamental step to achieving these goals is overturning the Chicago school’s singular focus on consumer welfare.²⁷³ Arguably, this narrow, noninterventionist construction of antitrust has permitted tech platforms to erode competition, privacy, social equality, workers’ rights, and even truth—negative externalities that platform users do not immediately feel.²⁷⁴ Because tech platforms operate in zero-price markets, where users do not pay anything tangible for services, harms to consumers are exceedingly difficult to measure. These contentions rest on two core assumptions: (i) that, at a minimum, consumer welfare may very well be diminished in concentrated markets, even zero-price markets,²⁷⁵ and (ii) that, more ambitiously, antitrust *can* and *should* advance noneconomic goals such as the competitive process and democratic ideals.²⁷⁶

However, the injection of race and ethnicity confounds these assumptions. In ESM markets, consumers might prefer to buy from co-ethnic producers. For instance, in our example of wigs and hair extensions, African Americans may happily choose one large Black-owned retailer over disparate, numerous, and small Korean American firms—even if over time, that firm becomes a monopolist. (Such is the ambition, after all, of Mayvonn, whose backers envision it as a “platform” for

Antitrust Movement, HARV. BUS. REV. (Dec. 15, 2017), <https://hbr.org/2017/12/the-rise-fall-and-rebirth-of-the-u-s-antitrust-movement> [<https://perma.cc/6UT5-GA3F>]; Lina Khan & Sandeep Vaheesan, *Market Power and Inequality: The Antitrust Counterrevolution and Its Discontents*, 11 HARV. L. & POL’Y REV. 235 (2017).

270. *E.g.*, TIM WU, *THE CURSE OF BIGNESS: ANTITRUST IN THE NEW GILDED AGE* (2018); ZEPHYR TEACHOUT, *BREAK ‘EM UP: RECOVERING OUR FREEDOM FROM BIG AG, BIG TECH, AND BIG MONEY* (2020); Lina M. Khan, *Amazon’s Antitrust Paradox*, 126 YALE L.J. 710, 737 (2017).

271. *See* C. Scott Hemphill & Tim Wu, *Parallel Exclusion*, 122 YALE L.J. 1182, 1185 (2013).

272. *See* JOSEPH E. STIGLITZ, *THE PRICE OF INEQUALITY: HOW TODAY’S DIVIDED SOCIETY ENDANGERS OUR FUTURE* (2012); ROBERT B. REICH, *SAVING CAPITALISM: FOR THE MANY, NOT THE FEW* 29–47 (2015). *But see* Daniel A. Crane, *Antitrust and Wealth Inequality*, 101 CORNELL L. REV. 1171, 1173 (2016).

273. *See* Sandeep Vaheesan, *The Twilight of the Technocrats’ Monopoly on Antitrust?*, 127 YALE L.J. FORUM 980 (2018); Lina M. Khan, *The Separation of Platforms and Commerce*, 119 COLUM. L. REV. 973, 983 (2019).

274. *See* John M. Newman, *Antitrust in Zero-Price Markets: Foundations*, 164 U. PA. L. REV. 149 (2015); Sanjukta Paul, *Antitrust as Allocator of Coordination Rights*, 67 UCLA L. REV. 378 (2020); Hiba Hafiz, *Labor Antitrust’s Paradox*, 87 U. CHI. L. REV. 381 (2020); Erika M. Douglas, *Monopolization Remedies and Data Privacy*, 24 VA. J.L. & TECH. 1 (2020); Morton et al., *supra* note 255, at 23, 32–33 (2019).

275. Newman, *supra* note 274, at 201–03.

276. *See* Vaheesan, *supra* note 273. For further discussion, *see* John B. Kirkwood & Robert H. Lande, *The Fundamental Goal of Antitrust: Protecting Consumers, Not Increasing Efficiency*, 84 NOTRE DAME L. REV. 191 (2008); Barak Orbach, *How Antitrust Lost Its Goal*, 81 FORDHAM L. REV. 2253 (2013).

hair.)²⁷⁷ If an Amazon of ethnic beauty supplies does emerge, with all its pernicious social effects, what would consumers opt for—ethnic and racial solidarity or competition and small businesses?

And if ethnic or racial solidarity were a goal that antitrust recognizes, should we also be concerned with preferences and social cohesion on the producer side?²⁷⁸

More pointedly, how would progressive antitrust scholars weigh these considerations against one another? As new Brandeisians push for noneconomic goals, weighing harms against efficiencies becomes ever more complicated.²⁷⁹ With co-ethnic bonds in the picture, that task is downright Sisyphean. Here consumer preferences—and, relatedly, the consumer welfare standard—may yield the opposite result of a total welfare standard. A dominant hair platform may impair competition, privacy, the environment, and small businesses. However, even for reformers fixated on consumer welfare, the quantification and weighing of ethnic and racial pride in these markets is an impossible task.

A Black-owned monopoly of wigs and extensions might well be embraced by African American consumers despite its size. It would be specious to dismiss this sentiment as a “noneconomic” goal of *racial pride*. There is a long history of expropriation of African American innovations and property by other racialized groups, particularly Whites.²⁸⁰ After desegregation, when the artificial barriers between White and African American businesses were lifted, many Black-owned businesses crumbled. In their place stood large White-owned companies that sold to African Americans at a substantial markup.²⁸¹ Manufacturers of ethnic beauty supplies have followed the same trajectory.²⁸² This history imbues the choice to “buy Black” with profound significance, as more than simply “consumer preferences.”²⁸³

277. See Adams, *supra* note 13.

278. Flawed and criticized as it is, *Ohio v. American Express* invites considerations of tradeoffs between two sides of a multisided market. See 138 S.Ct. 2274 (2018); see also John B. Kirkwood, *Antitrust and Two-Sided Platforms: The Failure of American Express*, 41 CARDOZO L. REV. 1805 (2020).

279. See John B. Kirkwood, *Tech Giant Exclusion*, FLA. L. REV. (forthcoming 2021).

280. See Teresa Wiltz, *Black Inventors: Innovators Who Changed the Way We Live*, THE ROOT (Feb. 21, 2014), <https://www.theroot.com/black-inventors-innovators-who-changed-the-way-we-live-1790868453> [<https://perma.cc/6TYU-D8KR>]; REBECCA SKLOOT, *THE IMMORTAL LIFE OF HENRIETTA LACKS* (2010) (tracing the life of Henrietta Lacks, whose cells, taken without her knowledge, sparked several medical breakthroughs).

281. See, e.g., Mehra Baradaran, *Jim Crow Credit*, 9 UC IRVINE L. REV. 887 (2019) (banking).

282. E.g., Revlon, Sally Beauty, Strength of Nature, and L’Oréal. See *52 Black-Owned Beauty Supply Stores You Should Know*, OFFICIAL BLACK WALL STREET (Jan. 27, 2016), <https://blog.obws.com/black-owned-beauty-supply-stores/> [<https://perma.cc/ZH48-LZNP>]; BYRD & THARPS, *supra* note 141, at 96.

283. See *53 Black-Owned Hair Care Brands You Can Support*, OFFICIAL BLACK WALL STREET (Apr. 25, 2017), <https://blog.obws.com/black-owned-haircare-beauty-products/> [<https://perma.cc/85VM-Q9NK>] (“With Black women and men purchasing nine times more beauty and grooming products than any other ethnic group, yet owning less than 1% of that market share, it’s only right that we support the brothers and sisters who have stepped into the industry and created products for us, by us.”). For an intimate profile of the conflicted positionality of African American employees in a Korean-owned beauty supply shop, see

It must be mentioned that wigs and extensions take a sizeable toll on the environment and likely human rights.²⁸⁴ Hair is shipped from East Asia to wholesalers in the U.S. and then out to distributors and retailers. With the entry of small Internet-based retailers, these shipments are happening on demand rather than in bulk, incurring enormous carbon footprints for each bundle. Now that some of this hair is very likely sourced from Uighur concentration camps, the industry is implicated in egregious human rights abuses.²⁸⁵ This controversy is part of a familiar trope. Not for the first time, the brunt of environmental and human rights baggage will be borne by African Americans, the most visible consumers of wigs and extensions.²⁸⁶ And the industry's "greenwashing," too, will fall to African Americans.²⁸⁷

C. Future Research

The curious phenomenon of ESM markets will generate more quandaries for research. For instance, should the preferences and buying power of an ethnically homogenous consumer block be constrained by law, whether as monopsony or discrimination?²⁸⁸ Elsewhere, civil rights laws rein in the discernment of producers so that schools, hotels, and swimming pools cannot refuse service on the basis of race.²⁸⁹ Nor can employers (a classic monopsony) hire or fire on the basis of race.²⁹⁰ Relatedly, the common carrier doctrine forces innkeepers and other public accommodations to offer open, nondiscriminatory service—a paradigm that has evolved into some of antitrust's core concepts, like net neutrality.²⁹¹ Yet no comparable laws govern consumer buying power in ESM markets.

Michael Corkery, *A Korean Store Owner. A Black Employee. A Tense Neighborhood*, N.Y. TIMES (Oct. 15, 2020), <https://www.nytimes.com/2020/10/15/business/beauty-store-race-protests.html> [<https://perma.cc/64CL-A6SJ>].

284. See Gupta, *supra* note 195, at 2; Mendoza, *supra* note 202; Evans, *supra* note 202.

285. See Mendoza, *supra* note 202; Evans, *supra* note 202.

286. See Cong. Black Caucus Found., Inc., *African Americans and Climate Change: An Unequal Burden* 84–85 (2004), https://www.ebony.com/wp-content/uploads/2013/02/CBCF_REPORT_F.pdf [<https://perma.cc/58JG-RLL2>] (noting that African Americans are disproportionately harmed by regressive carbon and energy taxes or permits).

287. See Rebecca Wright, Ivan Watson & Isaac Yee, "*Black Gold*": *How Global Demand for Hair Products Is Linked to Forced Labor in Xinjiang*, CNN (Oct. 2020), <https://edition.cnn.com/interactive/2020/10/asia/black-gold-hair-products-forced-labor-xinjiang/> [<https://perma.cc/A7EP-5SRR>] (quoting Professor Tiffany Gill on the "sad" fact that "the accusations of forced labor are associated with products used primarily by the African American community, given the long, painful history and legacy of forced labor that was a part of American chattel slavery") (internal quotations omitted).

288. For this point, I am grateful to Ramsi Woodcock.

289. See, e.g., Civil Rights Act, 42 U.S.C. § 2000(a) et seq. (2006).

290. *Id.* § 2000(e).

291. See Tim Wu, *Network Neutrality, Broadband Discrimination*, 2 J. OF TELECOMM. & HIGH TECH. L. 141 (2005); Susan P. Crawford, *Transporting Communications*, 89 B.U. L. REV. 871, 878–80 (2009); see also Protecting and Promoting the Open Internet, 80 Fed. Reg. 19737 (Apr. 13, 2015), (promulgating net neutrality rules); Restoring Internet Freedom, 83 Fed. Reg. 21927 (June 11, 2018) (repealing net neutrality rules).

Further, if conduct in ESM markets do violate antitrust law, could the same result hold in markets where producers are drawn from one gender and consumers from another, if incumbents stifle entry by rivals of the consumers' gender?²⁹² Reasoning from race,²⁹³ perhaps social cohesion within the same gender is comparably important to racial and ethnic cohesion.

Finally, what remedies should antitrust pursue for anticompetitive conduct in ESM markets? What resources should we devote to overseeing remedies and reordering these markets? The question of proper remedies is no less important to ESM markets—but also no less byzantine.²⁹⁴

CONCLUSION

The stakes are high for getting ESM markets right. In the United States, interactions between peoples of color often unfold as commercial transactions in markets where groups are pushed into close quarters, hemmed in on all sides by structural racism and systemic exclusion. When, as in the wigs and extensions market, those markets are ethnically misaligned, intergroup tensions can be inflamed. Such tensions exploded in 1992 with racial unrest in Los Angeles, but it was not an anomaly. Korean American-owned wig stores were destroyed during protests in Ferguson, Missouri, in 2014 after prosecutors failed to indict Michael Brown's killer and also in Baltimore in 2015 after the funeral of Freddie Gray.²⁹⁵

As the very first step, a proper understanding of ESM markets is critical. This Article has synthesized the disparate literature on ethnically segmented markets to create the theoretical foundation for ESM markets. In using the wig and extensions market as an illustration, the Article reveals how ESM markets challenge traditional notions of market power and oligopoly stability. Hence, ESM markets and antitrust doctrine are mutually illuminating.

More empirical work must be completed before we can determine whether antitrust law conveys any recourse to African American retailers and consumers in the wig and extensions market. However, for the first time in decades, this market is changing quickly from new sourcing strategies that have bolstered the hand of African American competitors. The old guard of Korean American retailers is also aging out, and their children may eschew this hardscrabble business, with its intense competition, diminishing margins, and interracial tensions.²⁹⁶ Given the dynamic process of racial and ethnic formation, these children may not even feel the same fidelity toward co-ethnic bonds. Thus, by the time antitrust has devised a solution, this market may have outgrown the need for redress.

292. I thank Michal Gal for this insight.

293. SERENA MAYERI, *REASONING FROM RACE: FEMINISM, LAW, AND THE CIVIL RIGHTS REVOLUTION* (2014).

294. For a summary of thinking on antitrust remedies, see A. Douglas Melamed, *Afterward: The Purpose of Antitrust Remedies*, 76 *ANTITRUST L.J.* 359 (2009).

295. Petrusis, *supra* note 19, at 397.

296. For a stark example of the second generation transcending the station of the first, see Jay Caspian Kang, *The Many Lives of Steven Yeun*, *N.Y. TIMES MAG.* (Feb. 3, 2021), <https://www.nytimes.com/2021/02/03/magazine/steven-yeun.html> [<https://perma.cc/P58H-RKZN>] (parents of iconic actor Steven Yuen ran an ethnic beauty supply store in Detroit).