WALMART, A MODERN STANDARD OIL?

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Abstract

This thesis will explore the history of the two corporations that rose to dominate their respective markets, and include a brief background of the men who brought these companies to life. Throughout the companies’ existence, their goals had stark resemblances from controlling supply chains to commanding market power in their industries. The actions of the two corporations touched each and every person in America, directly or indirectly, due to their size and ability to out strategize their competitors.

The second portion of this paper will detail the ways in which Standard Oil and Walmart rose to monopoly power in their respective industries. These two companies developed the strategy of establishing a home-based monopoly to enable them to expand their dominance throughout the industry early on. However, the two corporations, while having the same goals, followed different paths in achieving those goals. In both situations, the outcomes were the same, market dominance. But, were the means to this end sufficiently different to cause one corporation to be indicted for a violation of the United States antitrust laws, while the other remained in compliance with the laws?

Next, this essay will discuss the Sherman Antitrust Act. This federal legislation was enacted to stop collusion between competitors and efforts by single corporations to monopolize industries. This section will explain the reasoning behind congressional actions used to justify passage of the Sherman Antitrust Act and the goals of the legislation.
The thesis will conclude with an analysis of the legality of the two corporations’ actions in regard to antitrust laws. Included will be a discussion of the case brought against Standard Oil in 1911 by the United States Department of Justice and heard by the Supreme Court. This will be followed by a discussion of whether a similar case could be successfully brought against Walmart.
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At the turn of the nineteenth century the Standard Oil Corporation, hereinafter referred to as Standard Oil, dominated the oil industry through relentless tactics. Today there is a mega-corporation in the retail industry that has been accused of using a similar aggressive strategy, Walmart Stores, Incorporated, hereinafter referred to as Walmart. Both companies used their persistent tactics in a persistent march toward their goals of stabilizing the oil industry, for Standard Oil, and consistently lowering prices, for Walmart. Standard Oil used steadfast pressure when it came to competition, buying out any company competing against it. It influenced legislatures to gain major benefits, such as the charter for the South Improvement Company from the Pennsylvania legislature\(^1\). Walmart is a modern corporation using a pricing strategy which seeks to outperform its competition, and reportedly spends considerable funds to influence politicians and to lobby the government on issues such as the passage of the Central American Free Trade Agreement (CAFTA)\(^2\). While both corporations operated in different time periods and competed in different industries, their business tactics are substantially similar in nature. So, is Walmart the modern Standard Oil?

Many consumers have entered Walmart, as the largest employer in the United States\(^3\) and largest worldwide retailer\(^4\), in search of either a job or a product at the lowest price. Walmart impacts everyone in the United States in one way or another, just as Standard Oil affected each American in the late 1800’s. This thesis will explore the


history of the two corporations which rose to dominate their respective markets, and include a brief background of the men who brought these companies to life. Throughout the companies’ existence, their goals had stark resemblances from controlling supply chains to commanding market power in their industries. The actions of the two corporations touched each and every person in America, directly or indirectly, due to their size and ability to out strategize their competitors.

The second portion of this paper will detail the ways in which Standard Oil and Walmart rose to monopoly or monopsony power in their respective industries. These two companies developed the strategy of establishing a home-based monopoly to enable them to expand their dominance throughout the industry early on. However, the two corporations, while having the same goals, followed different paths in achieving those goals. Standard Oil used its home-based monopoly to enable it to buy out competitors and control transportation. Walmart took a different route, undercutting the prices of competitors on both local and national levels, and acquiring major control over its supply chain and suppliers. In both situations, the outcomes were the same, market dominance. But, were the means to this end sufficiently different to cause one corporation to be indicted for a violation of the United States antitrust laws, while the other remained in compliance with the laws?

Finally, this essay will discuss the Sherman Antitrust Act. This federal legislation was enacted to stop collusion between competitors and efforts by single corporations to monopolize industries. This section will explain the reasoning behind congressional actions used to justify passage of the Sherman Antitrust Act and the goals of the
legislation. The application of the Sherman Antitrust Act will also be described for the time periods relevant to Standard Oil and Walmart.

The thesis will conclude with an analysis of the legality of the two corporations’ actions in regard to antitrust laws. Included will be a discussion of the case brought against Standard Oil in 1911 by the United States Department of Justice and heard by the Supreme Court, including the reasoning behind the decision. This will be followed by a discussion of whether a similar case could be successfully brought against Walmart. As previously stated, Standard Oil and Walmart had similar strategies and objectives for their companies, but used very different tactics to achieve them. To be resolved is whether the two corporations are completely different, or is Walmart the modern Standard Oil?
I. History Behind the Companies

a. Standard Oil

Standard Oil was established in 1869 during the Gilded Age and American Industrial Revolution. John D. Rockefeller, the founder, was trained in bookkeeping with a prudent temperament and frugal habits, which aided him in building a company that would dominate the oil industry for the next four decades. Rockefeller was one of the original captains of industry in the United States, all of whom came from a background of industry, business or profession. The early years of the oil industry in America had chronic problems with “conflicts between producers and distributors [and] the interdependence of oil and transport.” Rockefeller, with his prudent temperament and frugal habits, did not like the turbulence of the oil industry and entered it “determined to impose order on the chaos.” He termed 1869 and 1870 to be “the start of his campaign to replace competition with cooperation in the industry.” The goals of Standard Oil included entering the oil industry through production, refinement and distribution. Standard Oil grew with the rest of the industrial markets of the late 1800’s with great speed, and became a leader in the oil industry.

Standard Oil was founded on January 10, 1870, when the partnership of Rockefeller, Andrews, and Flagler was reorganized. Standard Oil of Ohio started out as a joint-stock

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firm with $1 million in capital, which would be the equivalent of $11 million today, according to *Titan: The Life of John D. Rockefeller*, written in the 1990’s. Even at its inception, Standard Oil was a “mini-empire” controlling 10 percent of American petroleum refining, barrel-making, warehouses, shipping facilities, and a fleet of tanker cars.\(^\text{10}\) The creation of Standard Oil of Ohio, with Rockefeller heading the operation, was a key factor in foreshadowing the progress of the company in the years to follow.

Rockefeller’s initial objective was to vertically integrate all of the processes of the oil industry, from drilling to distribution, into one corporation. Standard Oil’s first opportunity for vertical integration was on November 30, 1871 when Tom Scott proposed an alliance between the three most powerful railroads – the Pennsylvania, the New York Central, and the Erie – and a handful of refiners, notably Standard Oil. To implement this, Scott had obtained a special charter [from the Pennsylvania legislature] for a shell organization bearing the blandly misleading name of the South Improvement Company (SIC).\(^\text{11}\)

One of the significant benefits the shell organization offered was it allowed ownership of stock of companies not organized in the state of Pennsylvania.\(^\text{12}\) Another major benefit of SIC was the economies of scale created for both the refiners and the railroads. However, the SIC failed because of “vociferous” opposition from owners of independent companies

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in the area. Rockefeller did not devote much time to mourning the loss of such a useful alliance for Standard Oil’s growth, as this shell organization was only one of the ideas Rockefeller had for expansion.

While SIC was floundering, “Rockefeller had persuaded, cajoled, or intimidated 21 out of 26 independent refineries in Cleveland to sell out to him,” or be crushed by competition they would face from Standard Oil. Standard Oil was gaining its dominance in Cleveland through its ability to buy out its competition. The pressure felt by the companies in near proximity to Standard Oil would soon be encountered by others in far reaching parts of the United States. However, this particular strategy which Standard Oil continued to utilize would ultimately become its downfall under the antitrust regulations.

On January 1, 1872, Standard Oil’s executive committee rapidly increased the company’s capital from $1 million to $3.5 million in order to prepare for the upcoming events. In December of that year, Rockefeller met with producers and signed the ‘Treaty of Titusville.’ “Under this agreement, the refiners’ association pledged to buy oil from the producers’ association for five dollars a barrel, a price nearly twice the spot market rate, in exchange for tightly enforced production limits.” This agreement was highly beneficial for Standard Oil because it achieved the cooperation in the industry Rockefeller sought to implement. It was common for the industry to experience extreme

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fluctuations in the price of oil due to supply changes. The agreement would help stabilize market prices. However, due to the overproduction by the producers’ association as a reaction to finding new sources of oil, the ‘Treaty of Titusville’ was terminated by Rockefeller in early 1873.\(^{17}\) Rockefeller engaged in many attempts to encourage cooperation between different segments of the industry, many of which failed. However, those that worked gave Standard Oil the extra boost in economies of scale that it needed to become a dominant market power.

Despite a six-year depression, which began in 1873, Standard Oil fared well, “a fact Rockefeller attributed to its conservative financial policy and unparalleled access to bank credit and investor cash.”\(^{18}\) Rockefeller took advantage of the effects the depression had on the remaining independent refiners outside of Cleveland, where he already held a regional monopoly. Standard Oil was working toward integration to create a seamless monopoly of the oil and oil transportation industries. Rockefeller’s next step in achieving this outcome was to obtain control of the Oil Creek refineries, in an area just south of Titusville, which he began by buying out the Imperial Refining Company and its vast facility near Oil City in January of 1874.\(^{19}\) This initial entry by Standard Oil into regions beyond Cleveland was the beginning of its national quest for control of the industry.

In the fall of 1873, Rockefeller set his sights on the Pittsburgh refineries as his next target. By the start of 1874 Standard Oil had gained control of twenty-two Pittsburgh

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refineries and the leading Philadelphia refinery, leaving only one independent refiner in existence in the area by 1876. “In this way, he [Rockefeller] activated a self-sustaining movement as his new allies agreed to consolidate business in their localities and supervise the purchase of the remaining independent refineries.”

Standard Oil entered into local communities by buying out the independent refiners in the area; because of this, Standard Oil did not have a good reputation in many communities. As Standard Oil moved from region to region, the original owners maintained management of the refineries, as well as maintained identities separate from Standard Oil to the extent possible. This was an important part of Rockefeller’s plan because the refineries were better able to work within their communities if they were thought to be independent of Standard Oil.

Rockefeller swiftly took control of three major regions, New York, Titusville, and Parkersburg, in the same manner. “[E]stablish[ing] a critical foothold in New York, where he had already bought the Devoe Manufacturing Company, specialists in case oil, and the Long Island Company, operator of a large refinery… Rockefeller now took over Charles Pratt and Company.” In 1875 Standard Oil gained control of the second largest Titusville refiner, Porter, Moreland and Company. In May of that year “Rockefeller completed his grand design of controlling all the major refining centers when he covertly

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bought J.N. Camden and Company of Parkersburg, West Virginia, and rechristened it the Camden Consolidated Oil Company.”

The acquisition of Camden Consolidated Oil Company proved to be one of the best purchases that Standard Oil made. After the acquisition, Camden negotiated very competitive rates with the Baltimore and Ohio Railroad (B&O) under the assumption Camden was still independent of Standard Oil. “In exchange for shipping fifty thousand barrels of oil monthly, [Camden] would receive a ten-cent-a-barrel drawback on all refined oil sent via the B&O – whether shipped by Camden or by his competitors.” It was important for B&O Railroad to believe Camden was not controlled by Standard Oil, because its owner was opposed to the market power that Standard Oil possessed and did not want to work with the company. Rockefeller had made the deal of a lifetime, receiving a drawback for shipping Standard Oil’s own oil, by encouraging Camden to deceive B&O about his independence. By the end of 1877, Camden had “completed their conquest of the last independent refining center [in Baltimore].”

It was in 1882 the trust form of business was adopted by Rockefeller and Standard Oil. In this form, stockholders of a number of individual corporations exchanged their stock for “trust certificates” controlled by a central board of trustees. The trust allowed a group of companies to operate in concert for purposes of controlling output.

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and setting prices without technically violating the rules against cross-company ownership.  

Standard Oil and Rockefeller held considerable power over the operations of all of the companies under the control of the newly formed trust because “The Standard Oil Corporation [had] received the stock of Standard Oil of Ohio and 40 other companies – twenty-six of them partially, and fourteen fully owned – with the power to name their officers and directors.” The new trust was a $70 million enterprise which controlled 90 percent of American refineries and pipelines. Historically, this was a critical point in Rockefeller obtaining monopoly power in the market for oil.

In the 1890’s, Rockefeller worked on expanding his reach in the industry to California. The discovery of new oil fields in Los Angeles made him decide to wait until the insurgence of oil passed. Waiting allowed time for the wild swings in prices to calm down before Rockefeller entered the California market. In 1895, Standard Oil acquired Demetrius Schofield’s company for less than one million dollars, well under its actual value. Rockefeller immediately began organizing the Central Association of refiners. Organizing the association would give Rockefeller some control over the amount of oil being produced, and therefore over the price fluctuations. Standard Oil’s key strategy of buying out its competition was being used to its full advantage. Standard Oil continued to

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use this strategy until 1911 when the United States Department of Justice brought an antitrust law suit against Rockefeller and the company.

The sheer size and industry control of the newly formed trust, which today would be considered a holding company, was not recognized by the industry or the government until almost a decade after its creation. “At the time it seemed an imaginary entity, lacking any real legal existence.” This form of the trust was not fully understood, but the success of Standard Oil after the transition to the new form made it extremely popular to other corporations of the time period. “So many companies duplicated the pattern over the years that one can say, with pardonable exaggeration, that the 1882 trust agreement executed by Standard Oil led straight to the Sherman Antitrust Act eight years later.” The Sherman Antitrust Act would ultimately be the weapon that the U.S. Department would wield in their battle against Standard Oil in 1911.

**b. Walmart**

Walmart, founded by Sam Walton, entered into the retail market with a splash in Rogers, Arkansas in 1962. Sam Walton was the successful owner of about a dozen Ben Franklin five-and-dime stores in Arkansas before he opened the first Walmart store. The expanding economy of the 1960’s was one factor that enabled Walmart to grow in an over-populated market having an abundance of “mom and pop” stores offering the

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same types of products. Sam Walton’s objective with opening his own store was to “reduce margins and attract more customers” with quality products at the lowest prices possible in small towns. Walton intended to accomplish this through introducing his personal values into his company. “The bedrock values instilled by Sam Walton and his early lieutenants were all-American values: hard work, frugality, discipline, loyalty, a restless effort at constant self-improvement.” Walmart’s strategy, which differentiated it from almost all stores in the retail industry, was that it “did not accept slotting fees, display allowances or deal money.” It was an unusual practice at that time, as well as now, not to charge a manufacturer an extra fee to have its products displayed on a retailer’s shelf. It is a wonder this small town owner of a dozen five-and-dime stores was able to establish the largest retailer in the world so quickly, because such rapid growth required much innovation in the retail industry.

Walmart’s path historically followed in the footsteps of Standard Oil in a number of ways. After opening its doors in Rogers, Arkansas in 1962, Walmart incorporated in 1969. Walmart was capable of generating millions of dollars in capital through the sale of stock. Large amounts of capital enabled Walmart to build numerous stores, integrate multiple new information system technologies, and hire experts to make executive decisions. Walmart’s incorporation was very similar to Standard Oil’s adoption of the business form of the trust. The actions allowed the company to be considered

independent of its owners and allowed them to own stock of other companies. One of the major advances Walmart made in the 1970’s was to trade its stock on the New York Stock Exchange with other large corporations. 38 Walmart grew quickly in the thirty years after incorporating, resulting in high shareholder returns. If a shareholder bought “100 shares of Walmart stock the first year they were available, in 1970, and simply sat on the shares adding nothing, but also taking nothing by 2000 you would have 204,800 shares, worth roughly $11.25 million.” 39

Incorporation permitted Walmart to expand its stores to include many different departments, such as pharmacy, auto service, and grocery; in 1981, the pharmacy and auto services departments were added. The pharmacy department was incorporated to compete with the drug stores SuperX and Kroger, popular chains at the time. The pharmacy departments in Walmart stores employed pharmacists who could fill prescriptions, as well as provide other pharmaceutical services for customers. 40 Pharmacies remain successful within the Walmart business structure.

Walmart’s auto service departments were not as successful as the pharmacy departments. Auto service departments were introduced into Walmart’s business because Sears and JCPenny were offering similar auto services to customers. The service departments were difficult to implement because mechanics were used to being paid on commission, not hourly as Walmart paid, causing conflicts between mechanics and the

company. The cost to maintain the departments was also high. Today there are still auto
departments in Walmart stores; however, only basic services are offered, including tire
services, battery services, oil and lubrication services, and minor installation services.
While competition among other retailers drove Walmart to integrate different
departments into its company, the core competencies of Walmart ultimately determined
which departments flourished and which floundered.

The first Walmart Supercenter opened in Washington, Missouri in 1988, and
integrated a full super-market into the store. The Supercenter was hugely successful for
Walmart. The super-market business structure fit well into Walmart’s business model
because the department works much like general merchandising, Walmart’s main focus.
In 1990 there were 99 Walmart Supercenters, and by the end of 2000 there were 888
Walmart Supercenters in operation. The expansion of these supercenters aided in
Walmart’s growth so, “by the end of 1990, Walmart was bigger than Kmart. Two years
later Walmart passed Sears. By the end of 1994, Walmart was bigger than Sears and
Kmart combined.”

The 1990’s and the next millennium saw huge expansion by Walmart. In 1991
Walmart entered into a joint venture in Mexico with Cifra, a Mexican retailer.
Throughout the rest of the decade Walmart also bought out 122 Wollco stores as it
entered the Canadian market, and acquired ASDA to enter into the retailing market of the

United Kingdom. Walmart expanded into Japan in 2002 when it invested in the company Seiyu. In 2009, the company acquired a majority stake in D&S, S.A. to gain standing in the market in Chile. South Africa has experienced Walmart’s most recent expansion with the company’s acquisition of MassMart. Walmart continued this type of movement into other countries as well; by 2012 the company had over 10,000 store locations in 27 different countries.  

Technological innovations were a major contribution to the extreme growth Walmart experienced. In 1983, Walmart installed the first computerized point-of-sale systems in the industry into its stores. These systems greatly improved the speed of checking people out at the cash registers, building better customer satisfaction. Point-of-sale systems were also used by Walmart to create a database for research purposes. In 1987, Walmart installed the largest private satellite communication system in the United States. The satellite allowed Walmart stores and entities within the supply chain to communicate more efficiently with each other, and enabled the smooth transfer of information throughout the supply chain and distribution channel.

Retail Link was another major technological advancement implemented by Walmart to aid in the development of its supply chain management system. “Retail Link is a proprietary system that Walmart first made accessible to vendors in 1991. Retail Link contains a record of every sale of every individual item at every Walmart store, every hour of every day for the last two years.” This system allows suppliers to conduct their

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own research on how well their products are selling and the product demand cycles at each Walmart store worldwide. Sharing this information throughout the supply chain has enabled Walmart to create a chain envied by other companies, regardless of industry. Walmart suppliers also benefit through Retail Link because they are better able to plan their production schedules to meet the retail giant’s demand.

Walmart has done many things well and continues to innovate, yet there are many things Walmart outsiders do not and will not understand about the corporation’s massive growth due to “Walmart’s own forty-year history of absolute secrecy.” Practices evident to the public include “the rollback of something that costs 28 cents to 24 cents, the discounting of Sam Walton’s own wisdom by 30% [in his book], the reusable company-owned cardboard boxes, with their prices printed right on them, the lovely skylights in the service of lower operating costs - that is the DNA of Walmart in all its purity and simplicity and power.” Walmart has used its ability to integrate many services into its business structure, to streamline the supply chain, and reduce cost to become a multi-billion dollar a year corporation. While Walmart has dominated the low cost retail landscape, it has had some missteps along the way as well, for instance its auto departments. Yet, Walmart has learned from its mistakes and turned those lessons into a stronger company through major innovations in information technology and supply chain management techniques.


II. Reaching Monopoly Standing

a. Home-Based Monopolies

Standard Oil and Walmart both built up what is known as a “Home-Based Monopoly,” according to Barry Lynn in his book, Cornered. A monopoly generally, is a market in which there is only one supplier of a good. Standard Oil, for example, did not have a true monopoly, but was the only major supplier of oil putting the oil industry in a situation resembling a monopoly market. In a home-based monopoly, the goal “is to build up a defensible regional monopoly and to use that as a power base to enter other markets.” Through the regional monopoly, the company is able to use the stable income to expand into other areas of interest. Using this method of monopolization creates a sustainable advantage for the company against its competition. The company is able to use its substantial financial resources to lower prices, build efficiencies into its processes, and integrate its supply chains. This advantage is also used by the company in the long term to fuel expansion into other geographic areas and product lines, creating monopolies in those areas throughout the life of the company.

Walmart started its home-based monopoly in small towns in Arkansas, and expanded it to include countries all over the world. “Walmart’s expansion alone explains

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50 – 70% of the net exit of small discount retailers between 1988 and 1997.” Walmart’s “home-based monopoly” had its base in small towns throughout the United States. In contrast, Standard Oil started its home-based monopoly in the city of Cleveland, expanding it to include the entire oil industry of the United States. By 1909, Standard Oil controlled 21 of the 26 oil refineries in Cleveland. By building these home bases, the two corporations were able to gain control of their respective markets, as explained later in this section of the essay. Eventually Standard Oil’s actions created antitrust problems. Are Walmart’s actions sufficiently similar to Standard Oil’s to cause it a similar fate?

b. Standard Oil

Rockefeller was considered a robber baron in his time because of his cut-throat competition tactics and ruthless actions towards competitors. Robber baron American capitalists who acquired a fortune in the late nineteenth century by ruthless means, aimed for monopoly control of a market “to replace fierce industrial competition with sound commercial order.” The goals of Standard Oil reflected this view because Rockefeller wanted to reduce the chaos of the oil industry during the 1860’s by gaining control of the oil industry in order to stabilize prices. The robber barons of the American Industrial Revolution believed that “the essence of corporation management was the exact ordering of the three stages involved in manufacturing: extracting (of materials),

production, and distribution.” Rockefeller took this idea to heart through his strategy of vertical integration of the oil industry.

Determined, Rockefeller began his monopolistic tactics in Cleveland in the early 1870’s by gaining control of all but five of the independent refineries in the area. Standard Oil continued to take control of independent refineries in the same manner throughout the United States. Rockefeller was often able to buy out one or two independent refiners in an area, leaving management intact. The management of these no longer independent refineries was then made responsible for acquiring the remaining independent refineries in the area. In this way Standard Oil built “home-based monopolies” in multiple localities that were able to generate the cash needed to buy out competitors in new areas.

Standard Oil, with its already significant market share, leveraged its market power to obtain privileges first from the railroads and secondly through pipelines. In his book America in the Gilded Age, Cashman concluded that,

Rockefeller’s subsequent control of the oil industry was based on his command of crucial bottlenecks, firstly, of finite resources of the railroads (in terms of tracks and equipment), secondly, of pipelines… [Railroads] had become somewhat reliant on their bigger clients for regular custom… Rockefeller prevailed upon the railroads in the 1870’s to offer him rebates – lower fares – for oil shipped at bulk

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over long distances… Rockefeller’s leverage with the railroads was so great that he could insist on “drawbacks,” a system of fines whereby, if railroads moved oil for other companies they charged them more and paid a fraction of this amount to Standard Oil. 60

Along with the power he held over the railroad companies, Rockefeller also controlled over 4,000 miles of pipelines by 1882. 61 With so much power over transportation, it was no surprise that Standard Oil was able to become a monopoly power in the oil industry.

Another major stride Rockefeller took towards monopolization was to conspire with railroad owners using Standard Oil’s leverage. Agreements such as the South Improvement Company were implemented, if only in the short-term, to give Standard Oil strategic advantages with regard to transportation against competing refiners. 62 The most valuable deal struck on Standard Oil’s behalf was the negotiated by Camden with the B&O Railroad in 1875. This agreement was extremely beneficial because Standard Oil not only received drawbacks when B&O shipped other refiners’ oil, but also when B&O shipped its own. 63 The agreements gave the corporation control of a resource, i.e., transportation, which the industry needed to survive. Agreements such as the one with B&O Railroad helped propel Standard Oil towards monopoly standing.

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In 1882, Standard Oil made its largest move towards the complete monopolization of the oil industry when it reorganized into a trust with controlling stock of over 40 other companies.\textsuperscript{64} Through this business form, Standard Oil was able to dictate both the management of the companies it controlled and their actions. One of the strengths of the trust was that a number of the companies under the control of Standard Oil publically appeared to be independent of their parent company. Standard Oil was able to use these other corporations’ resources to propel its strategic goals. The newly formed trust gave Rockefeller the breadth of control to play puppeteer of the United States oil industry in this manner.

Although the steps taken by Rockefeller through Standard Oil seemed overly aggressive and were meant to crush its competition, Rockefeller’s overarching goal was to create stability in the American oil industry. Rockefeller said in describing the “foundation principle” of Standard Oil,

[The] theory of the originators… that the larger the volume the better the opportunities for the economies, and consequently the better the opportunities for giving the public a cheaper product without… the dreadful competition of the late ’60’s ruining the business.\textsuperscript{65}

He had intentions of stabilizing the oil industry and creating economies of scale through vertical integration and supply chain control. The goal of his efforts with Standard Oil was to manufacture a product at a lower cost to the public. “During his career,


Rockefeller cut the unit costs of refined oil almost in half, and he never deviated from [his] gospel of industrial efficiency.” 66

Standard Oil had a considerable market share when the United States Department of Justice brought the antitrust suit against it in 1911. Rockefeller’s monopoly in the oil industry had been growing since the company’s inception when it controlled 5% of the market 67 Standard Oil’s market share grew from 25% in 1872 to approximately 90% in 1882. 68 Monopoly standing in an industry is not cause for an antitrust claim in and of itself, but it is evidence of monopolization tactics. Controlling 90% of the market allowed Standard Oil to dominate the industry with nothing to stand in its way, other than the government.

c. Walmart

Walmart has come close to monopoly status with respect to both local and national competitors. Locally, this power is frequently evidenced in smaller communities, where the downtown areas are a hollow resemblance of their former states a few years after Walmart has entered into the local market. “In total, approximately four small competitors close within five years of Walmart’s entry” 69 into a local market. The remaining stores ultimately need to change the way they do business to keep their returning customers happy. Local businesses frequently shift from providing common

goods to a large demographic to targeting a smaller market with unique or specialized products. They turn to niche markets to justify higher prices than Walmart.

Steve Parker, former director of a Hy-Vee store in a competitive market with Walmart (Vermillion, South Dakota), stated in an interview that he had to match Walmart on 300 grocery items just to get customers through the doors of his store. The example he gave was of Kraft Macaroni and Cheese. Hy-Vee purchases this item from its supplier at $1.05, but must sell it for 99 cents to match Walmart. Items such as this one are called loss leaders. Using loss leaders is a common practice for grocery stores. However, once Walmart entered this local market, the number of loss leaders used by Hy-Vee increased to enable it to better compete with Walmart. Hy-Vee then makes up for the loss on these items through bigger markups on other grocery items. Walmart’s low prices drive some small competitors out of the market, and also create the need for remaining competitors to change their business strategies.

Small town retailers are not the only competitors that are affected by Walmart’s power. National retailers, such as Target, are trying to distinguish their stores from Walmart’s by creating the image of being a higher end discount store. Large national retailers avoid Walmart’s territories for the same reason that the small retailers are changing their pricing; there is simply no way to compete on the same level due to Walmart’s size. It seems as if Walmart may be more concerned with the proximity of another Walmart to a new location than the proximity of competitor because Walmart does not want to compete with itself.
The way competitors have “to compete with Walmart is to focus, even in the mass market, on things besides price: design, fashion, quality, cachet, the feel of the shopping experience… Competing on quality, on design, on cachet leaves a little more room for fun, and for profit.” Walmart’s closest competitor, Target, focuses on customer service and higher quality products in its stores for this reason. Small retailers in local markets also aim to meet the needs of niche markets in their local community by offering unique, high quality items Walmart does not provide. Yet, the focus on non-price factors has not enabled Walmart’s main competitors to achieve a similar market share.

It is evident when examining Walmart’s history the company has gained considerable market power through investments in other companies and supply chain management, much like Standard Oil did. The sheer size of Walmart is evidence of their market power, accounting for 2.5% of United States GDP in 2002 and 15% of United States imports of consumer goods from China in 2005, as well as its workforce of 1.4 million people that year. An outcome of this market power is revealed by Walmart de Mexico, which “pressures wholesalers and manufacturers into better prices.” The concern is “Walmart is able to threaten abandonment to suppliers unless it receives lower prices.”

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There is a stark resemblance between Standard Oil using market power to pressure the railroads into lower rates and Walmart causing their suppliers to do the same.

Walmart may not obtain “drawbacks” from its suppliers, as Standard Oil was able to from the railroads, but its Plus – One Policy offers similar benefits to Walmart.

Walmart dominates not only price but also the character of the product and the means of manufacture. Its Plus – One Policy specifies that its some 61,000 suppliers must guarantee either cost cuts or quality increases each succeeding year. Often Walmart forces modernization and efficiencies, and companies have reported being forced to relocate out of the country. 75

Walmart’s suppliers are disproportionately foreign and increasingly producing private – label goods. 76 These agreements to lower prices every year are not straight cash back obligations to Walmart from suppliers, but they essentially amount to the same thing regarding to the price Walmart receives when ordering the product from suppliers.

Products are advertised to create the perception they are the same product a customer would buy at a competitor are actually different when purchased at Walmart. Products being produced for Walmart by certain suppliers sometimes are not the same products being produced for other buyers. For example, Levi Strauss created a whole different product line with lower quality inputs. It can be inferred, when a customer sees a brand name, such as Levi Strauss, in Walmart they are expecting the quality Levi Strauss has

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come to be known for, and in reality they are buying a lower quality product with the image of high quality. Further, when suppliers are not able to innovate as quickly as Walmart requires, they end up cutting corners by using lesser quality inputs and outsourcing labor, as with Levi Strauss.  

The Snapper Mowers brand experienced the effect Walmart can have on items produced by manufacturers serving the retailer. A 2005 quote from Jim Wier, President of Snapper, sums up the effect that Walmart’s low prices can have on its suppliers when he said,

Do you have to change the quality of your product to accommodate Walmart? Of course. It happened. What they did was they continue to drive the price down. They wanted to do the same thing with our products that they do with everyone’s. They want more product at a lesser price. To achieve that, after a while, you do start taking some quality and features out. And we just weren’t willing to do that. 

One way manufacturers meet Walmart’s price decline requirements is to lower the quality of the product. It is necessary to note that as of January 2013, Snapper under new management now sells walking lawn mowers to Walmart.

Another way in which Walmart is getting “more product” for a lesser price is through in-store displays. Walmart is working to improve its in-store display creation by

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requesting its suppliers provide marketing materials for their products not generally required by other retailers. Walmart not only requires suppliers to cut costs and improve efficiencies, but it is now going even further:

Walmart aims to reap more marketing funds from suppliers, is demanding that all in-store marketing displays be customized for the chain and will require marketers to disclose the environmental impact of their products through a yet-undetermined standard and auditing system.\(^{80}\)

By requiring suppliers to create customized marketing displays for their stores, Walmart is cutting costs, enabling it to pass savings to consumers. This deal of cost cutting may seem great to customers, but suppliers are required to use more resources to meet the demands of their largest buyer. The pressure on suppliers to meet the requests of Walmart is a symptom of monopsony power. Monopsony power is the inverse of a monopoly; a company is the only buyer of a good instead of the only supplier. Monopsony like power over suppliers is the reason these suppliers allow the company to keep demanding more of them. Suppliers wishing to do business with Walmart may feel pressured to make additional value accommodations.\(^{81}\)

While suppliers must work hard to add value through these accommodations, they also reap some benefits. One example of this is Sara Lee, a company which worked with Walmart to save both of the companies money. Both parties modified their distribution centers to enable Walmart’s transportation system to become more efficient by filling


Walmart’s empty trucks with Sara Lee’s Hanes socks and underwear, eliminating the need for Sara Lee to operate its own delivery fleet. Sara Lee, for its part changed its shipping structure from using a six dozen case of socks and underwear to a three dozen case so Walmart would not have to divide the cases in its own distribution centers. “Imagine how much money that saved in Walmart’s distribution centers, at a very modest out-of-pocket cost to Sara Lee. And that cost was more than made up for in the increased sales in the stores as a result of a reduction in stock-outs.”

Sara Lee’s experience with Walmart is an example of how suppliers can benefit from their relationship with Walmart. Walmart and Standard Oil created for themselves regional monopolies through the home-based monopoly strategy. Efficiency in their supply chain control is what made it possible for the companies to be able to pass their savings onto their customers. The efficiencies created by these two companies have made their respective markets more efficient because they not only force efficiency onto their suppliers, but also onto their competitors. The corporations were able to lower their prices for their customers and as a result, gained large market shares.

The two corporations each had the goal of ensuring the efficient distribution of resources through vertical integration and supply chain control. “One thing Walmart proves is that at least for a while, nonmarket systems can be made reasonably efficient through the use of terror.” This is similar to the effect Standard Oil had on the

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American oil industry through the control the company used to vertically integrate the market using its ability to threaten the railroads. The oil industry was working “better” while the monopoly was in control because the prices remained stable, as opposed to the variable oil prices experienced when the market was highly competitive. The discount retail industry has not become quite as concentrated yet, but it is reasonable to infer a similar situation could arise. When an industry becomes highly concentrated the free market system is hindered. “The ultimate function of a well-regulated open-market system is not to ensure an “efficient” distribution of resources,”84 but to foster competition through a level playing field.

III. The Sherman Act and Application

a. The Sherman Act

Antitrust policies and American history could not be separated from each other without completely distorting both. United States’ antitrust policies have, and continue to, influence the decisions and cultural atmosphere of American society at large. In turn, the antitrust policies in this country would not have the substance, complexities, or amendments they have without the strong pressure exerted on them by changes in American culture throughout history. Antitrust laws are the essence of the corporation in America, politics, societal atmosphere, and economic decision making. The Sherman Act is an example of an antitrust policy influenced by the social and political atmosphere in the United States.

With respect to Standard Oil’s use of a trust, it has been previously stated, “so many companies duplicated the pattern over the years that one can say, with pardonable exaggeration, that the 1882 trust agreement executed by Standard Oil led straight to the Sherman Antitrust Act eight years later.” The Sherman Act was enacted as a reaction from society and the government to the way that Standard Oil was using the business form of a trust.

The Sherman Act addresses the legality of monopolies, monopolization, and cartel agreements. The Sherman Act specifically provides

1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. 2. Every person who shall monopolize, or attempt

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to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a felony.\textsuperscript{86}

The case the United States Department of Justice brought against Standard Oil alleged the trust was violating Section Two of the Sherman Act. The application of the Sherman Act to Walmart would also require Section Two to play a role as Walmart has not made any overt agreements with another party to monopolize their industry.

The Supreme Court has been working to define several terms included in the Act, due to their objective importance.

U.S. Supreme Court defines monopolization as involving the following 2 elements: (1) the possession of monopoly power in the relevant market and (2) the willful acquisition or maintenance of the power as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident.\textsuperscript{87}

The definition has been problematic because the court has been challenged to distinguish the legitimate growth of a large business from direct attempts to monopolize a market or industry. Another relevant term defined for the purpose of the Sherman Act is attempted monopolization. Attempted monopolization can be defined as “any action specifically intended to exclude competitors and garner monopoly power.”\textsuperscript{88} Both monopolization


through corrupt practices and agreements, and attempts to monopolize a market or industry are prohibited by the Sherman Act.  

When the Standard Oil case was heard by the Supreme Court in 1911, there was a major debate going on among the justices of the Court as to whether to adopt either the Rule of Reason or the Literalist interpretation of the Sherman Act. The Rule of Reason standard for judging such cases was based upon the morality of the way in which the corporation came to monopolize the industry. In contrast, the Literalist standard of interpreting the Sherman Act provided any and all attempts to monopolize an industry, no matter how, would be considered illegal. The outcome of a trial could be markedly different depending upon which standard of judgment the court applied.

The Sherman Act has been interpreted differently throughout its history by the Supreme Court. “American antitrust law today is decidedly rooted in economics.” This approach differs from the Rule of Reason standard as economics is an amoral evaluator of a case brought to the Supreme Court today. If a case were brought for a violation of the Sherman Act today, morals would not be considered. Instead there would be talk of relevant markets and market share. The Department of Justice has looked to the courts to define market power in terms of market share.

“The Third Circuit stated that "a share significantly larger than 55% has been required to establish prima facie market power" and held that a market share  

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between seventy-five percent and eighty percent of sales is "more than adequate to establish a prima facie case of power." ⁹¹

Thus, a case against Walmart today would be decided differently as compared to the one brought against Standard Oil because the standard of using economic reasoning was not used in 1911. While this law was applied to Standard Oil’s monopolization of the oil industry, Walmart’s situation of being a single entity attempting to monopolize its relevant market is not as clear. This raises the question which will be discussed in the remainder of this essay.

b. Application of the Sherman Act: Standard Oil

In 1911 Standard Oil was brought before the Supreme Court for monopolizing the oil industry, and ended up being a landmark case for decades after. The decision handed down in the case was based on the Rule of Reason interpretation of the second section of the Sherman Act. Standard Oil was held in violation of Section Two of the Sherman Act for monopolizing the oil industry. ⁹²

The Standard Oil trust raised concerns about whether or not this form of ownership was good for the market. The Court stated, “The mere method in which stocks are held is not prescribed by the Sherman Act; all methods are lawful if not used to restrict trade or gain an unlawful monopoly.” ⁹³ It was determined Standard Oil was restricting trade in the oil industry because the owners of Standard Oil owned so many of

Standard Oil’s “competitors.” Due to this fact the Supreme Court determined there was not true competition within the oil industry. In essence the Court held that owners could not compete with themselves, even if the owners are operating different companies.94

Thus the Court concluded that,

[Standard Oil] purchased and obtained interests through stock ownership and otherwise in, and entered into agreements with, various persons, firms, corporations, and limited partnerships engaged in purchasing, shipping, refining, and selling petroleum and its products among the various States for the purpose of fixing the price of crude and refined oil and the products thereof, limiting the production thereof, and controlling the transportation therein, and thereby restraining trade and commerce among the several States, and monopolizing the said commerce.95

Standard Oil was using the ability to control its supply chain to control the entire oil industry. Rockefeller had good intentions, but the restraint of trade and monopolization gave Standard Oil too much power in the ability to limit output and potentially raise the price of oil.

The outcome of the close, five to four vote, Supreme Court decision was to dissolve Standard Oil into many separate companies. One major resource of Standard Oil, the pipelines, was divided into eleven different parts to ensure there would be a free market which allowed competition to flourish.96 The decision of the Supreme Court was

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the first case of many to follow to show that the government would be involved in regulating competition in heavily concentrated markets. Many of the dominant oil companies today stemmed from Standard Oil, including Exxon Mobil. The Supreme Court decision effectively changed the landscape of the oil industry, as well as created a standard in antitrust still referenced today.

However decisive the decision against Standard Oil was, there were justices of the Supreme Court who disagreed with the majority opinion. The opinion of the four dissenters is summed up in this quote from Judge White,

> The principal that the ownership of property is embraced within the power of Congress to regulate commerce, whenever that body deems that a particular character of ownership... may restrain commerce is in conflict with the most elementary conceptions of rights of property. 97

The impact of this decision on the antitrust laws was a shift in focus from the economic consequences of monopolization, combinations, and mergers to a focus on the way in which those monopolies, combinations, and mergers came to be. Peritz sums up the position of the majority well, stating “Once again, competition versus property rhetoric, inspired by commitments to liberty and equality, would shape the policy arguments posed to resolve such questions.”98 The simple explanation of the Rule of Reason interpretation was if monopolies were formed by buying out competition it was immoral, and thus illegal, but if the monopolization came about by internal growth, it was perfectly moral and thus legal. The Standard Oil decision is impacting the oil industry even today.

c. Application of the Sherman Act to Walmart?

Section Two of the Sherman Act does not appear to be applicable to Walmart as a way to bring an antitrust suit against the company. The actions taken by Walmart are not similar enough to the monopolization tactics used by Standard Oil to apply this act in the same manner. Walmart and Standard Oil started their companies with the same goals of efficiency, control, and customer satisfaction. Standard Oil accomplished these goals through outright agreements, attempts, and admission of monopolizing the oil industry. Walmart, however, has worked to accomplish these goals through supply chain management and economies of scale. The two companies may have had the same goals in the beginning, but each used a different strategy to achieve these goals.

One hindrance to applying the Sherman Act to Walmart is the difficulty in defining a relevant market for the company. Walmart offers its customers a myriad of products and services at its stores, as well as through its website. While a possible relevant market would be general merchandise, using this definition would include many competitors that lack the retail dominance and product diversity of Walmart. Walmart would not be considered a monopoly if broken down into its pharmacy department, grocery department and auto department, but combined they create a force with which it is hard to compete. Therefore, it would be very challenging to define a product market for Walmart.

The industry classification Walmart best fits into as defined by the Census Bureau is the discount department store.

“This U.S. industry comprises establishments known as department stores that have central customer checkout areas, generally in the front of the store, and that
may have additional cash registers located in one or more individual departments.

Department stores in this industry sell a wide range of general merchandise.”

The Census Bureau has used the discount department industry to define an industry for Walmart that fits it as best as possible. This industry is highly concentrated with the four largest firms making up 96.9% of the market share. In this situation monopsony power can be exploited by retailers because there are a small number of buyers to which suppliers can sell to.

Another way courts can define relevant markets for antitrust cases is through geographic location. Defining a relevant market for Walmart geographically would not be possible either. As of 2006, the United States was already saturated with Walmart stores; “53% of the U.S. population lives within 5 miles of a Walmart; 90% of the U.S. population lives within 15 miles of a Walmart; 97% of the U.S. population lives within 25 miles of a Walmart.” Further, Walmart’s reach is not restricted to the United States as they are a global corporation. The Walmart’s prevalence in the United States and its geographic diversity makes it literally impossible to define a relevant geographic market for the corporation.

Walmart initially gained its enormous market share through business acumen, as opposed to direct use of the blunt force of its size to change its relationship with suppliers for competitive advantage. Walmart is a supply chain management genius. In the last 20

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to 30 years, it has innovated the way a distribution channel is organized and has dominated the art of inventory management. Walmart works with its suppliers to rid them of inefficiencies, which in turn allows suppliers to give Walmart a better price for its customers. This approach has enabled Walmart to effectively compete with their large national retail competitors, such as Target or Costco.

Walmart’s size allows it to achieve efficiencies and to out-perform its competitors, but this in no way is an attempt of monopolization. Walmart is able to buy from suppliers in large quantities enabling quantity discounts not available to its competitors. In this way, Walmart can buy some of its merchandise at a lower price than its competitors, and charge lower prices to customers. Further, this allows Walmart to pass on the price savings to its customers. In the grocery department alone, they offer products at approximately a 15% lower price than most competitors. This practice is not a predatory pricing strategy, even though it may cause local businesses to close their doors; Walmart’s prices are always low. Once competitors leave the market Walmart’s prices do not increase as it continues to use its efficiencies to benefit its customers.

Walmart operates under the motto of “Everyday Low Prices,” which shows its goal of keeping prices low for customers. A company with monopoly power in the sense of the Sherman Act has control of the market with regard to prices, supply, and to some extent competition. It would be difficult to argue that Walmart is exploiting its customers to gain extreme profits from its sales when it generally has the lowest offered price in the market. It would be nearly impossible to argue monopoly standing because of the issue of

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a relevant market, and arguing the use of monopoly power would be just as difficult because of Walmart’s motto and pricing strategy.

Consumers are not being harmed by Walmart’s low price strategy, but the same may not be able to be said for its suppliers, competitors, and possibly the economy as a whole. Walmart helps its suppliers by aiding them in streamlining their operations and requiring or encouraging efficiency. Yet, after the inefficiencies have been removed from the supplier’s operations, Walmart still requires price cuts each year. Prices can only be lowered further through efficient production if waste still exists. Once that point is reached, other means of lowering prices must be utilized, such as outsourcing or the use of different lower quality materials. The stress of the price reduction requirements puts suppliers in difficult situations. While suppliers are not forced to sell to Walmart, it would be imprudent for them to withdraw from doing business with Walmart because in most cases Walmart is their largest buyer.
IV. Conclusion

Walmart should not be evaluated by the Sherman Act. The three necessary criteria to violate the Sherman Act, i.e. a relevant market, attempted monopolization, and use of monopoly power, would be almost impossible to prove against Walmart. Defining a relevant market is nearly impossible either by a product market or by a geographic market due to the size and scope of Walmart’s reach. Walmart has not made any outright attempts at monopolizing its undefinable market through agreements or predatory pricing. The hardest criteria to meet with respect to Walmart and the Sherman Act would be its use of monopoly power against its customers because of its low cost leadership strategy. For these reasons the Sherman Act could not be appropriately applied to Walmart.

Walmart should not be evaluated using the Sherman Act, but that does not mean the control the company has over its supply chain is not limiting the suppliers’ independence from Walmart. The similarity between Standard Oil and Walmart comes down to this point: the two companies have revolutionized the way that business in their industry is done. The question to be evaluated in this thesis is: Is Walmart the modern Standard Oil? The answer to the question is yes. One can image a time when a law may be put into effect by Congress to reign in the control Walmart exerts over its suppliers in order to keep its prices as low as they have been. As with Standard Oil in the beginning, Walmart’s business model has not yet been recognized as harmful to participants in the economy. The reason Congress could enact a law with respect to Walmart’s way of doing business is because Walmart is essentially a monopsony.
Walmart has monopsony power because Walmart buys enormous quantities of products from their suppliers and is their largest buyer. By doing so Walmart has created a power imbalance with its suppliers similar to a monopsony. The power imbalance gives Walmart an advantage with suppliers and competitors. “So great is Walmart’s market share that its suppliers are frequently facing a de facto monopsonist situation.”

Suppliers of Walmart are dependent upon keeping Walmart’s business causing “several hundred of Walmart’s major suppliers [to] have permanent offices near Walmart’s headquarters in Bentonville, Arkansas, to facilitate the relationship.” As unique as the situation is, the ramifications of it are not the antitrust law’s vision of a free market place. A free market place consists of entities which are able to move about the market freely and easily. The point after which most of the inefficiencies have been removed from a supplier’s processes quality or cost management changes need to be met in order to lower prices per Walmart’s requests. Even if quality or profit changes are harming the supplier they are not able to move about the market freely, while also being weakened by the consistent lowering of its profits. Walmart makes up a significant portion of most of its suppliers’ sales which causes the difficulty in making the decision to drop Walmart as a buyer or to continue to sell at a lower profit margin.

Walmart has taken steps towards innovation aiding the company in its growth, but there comes a point when its competitive advantage lies solely in its size. As it has been said before, Walmart revolutionized the way supply chains are managed through its information systems, namely its Retail Link system that provides suppliers with

information about the demand for their product at each Walmart location. Walmart’s size has enabled the company to keep prices low for its customers through its influence on suppliers. The suppliers feel obligated to comply with the requests of Walmart because it is their biggest buyer, which gives Walmart massive channel power to influence members of its supply chain.

Exerting monopsony power over suppliers harms them in the same way monopoly power harms consumers. Walmart is able to exert great force over its suppliers, similar to that of a monopsony, in requiring subsequent price declines, even after the supplier has been ridded of its inefficiencies. Once the inefficiencies are gone, the supplier must make decisions that are not always good for the company’s long-term goals. These decisions, which may include outsourcing manufacturing or using lower quality materials for production, can cost the supplier its reputation for a quality product.

Monopsony power over suppliers creates problems for the economy similar to the way a monopoly situation creates problems. Due to its size, Walmart has created the perception consumers now have of the prices of products. Walmart presents a price to the customer, which it has achieved through its own actions, causing consumers to believe the price should be matched by all retailers. Customers expect lower prices from Walmart’s competitors, and the competitors cannot deliver those prices on every product as Walmart does.

Problems caused by Walmart’s power over suppliers outweigh the benefits Walmart brings to customers by restricting autonomy within the market. For the reasons mentioned previously, Walmart’s ongoing march towards lower prices is harming

suppliers by shrinking their profits and restricting a free market environment, as well as competitors by creating the perception that prices at Walmart are the true value of a product. Walmart has outgrown its original ideal of always having the lowest prices to benefit the customers through waste reduction and innovation.

Walmart is no longer the innovative company it once was, keeping its prices low through new efficiencies created by new systems and technology. Walmart was once a very innovative company using RFID, Universal Product Code bar codes, computer point-of-sale systems, and Retail Link to create a seemingly flawless supply chain. Walmart is still one of the best, if not the best, supply chain managers in the world, but it has not come up with radically new innovation within this supply chain since the 1990’s when Retail Link and Vendor Managed Inventory systems were implemented. It is evident by its original growth that Walmart is great at supply chain management, but has become stagnant with regard to innovation. This is caused by Walmart not having a close competitor to challenge them due to its size. Walmart is now a retail giant able to throw around its weight to squeeze an extra two cents out of a product’s price to ensure the lowest price in the market.

In the book *The Walmart Effect* Charles Fishman sums up the issue with Walmart perfectly when he stated,

Walmart is carefully disguised as something ordinary, familiar, even prosaic. The business model is built on the shopping cart. But, in fact, Walmart is a completely new kind of institution: modern, advanced, potent in ways we’ve never seen before. Yes, Walmart plays by the rules, but perhaps the most important part of

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the Walmart effect is that the rules are antiquated; they are from a different era that didn’t anticipate anything like Walmart. Walmart has outgrown the rules – but no one noticed.107

Standard Oil’s business strategy was something completely new to its time period, and it took society and the government decades to find a remedy for the power the company wielded over competitors. The same could be true for Walmart.

Walmart’s goal of controlling prices is great at face value, but causes problems in the environment of suppliers and retailers. Walmart is able to play puppeteer with its suppliers, from telling them what it will pay for their products to telling suppliers how to manufacture their products. As Standard Oil was able to exert excessive control over competitors’ resources, Walmart is able to exert excessive control over suppliers’ resources. There is not another company in the retail industry with this amount of control or power over suppliers. “Many of the people who know Walmart most intimately, who do business with the company every day, are terrified of Walmart,” said one CEO of a Walmart supplier. “If I talk at all, I am putting this whole company in extreme jeopardy.”108 Once an outcry from society is heard or suppliers collectively take a stand about the way that Walmart has treated them, Congress may be provoked into taking steps to correct the power imbalance between Walmart and its suppliers, forcing Walmart to change in order to avoid government action.

Is this type of competition the writers of the antitrust laws had in mind? The major objective of the body of antitrust law in the United States was to ensure all

competitors an equal chance at competition. The type of competition Walmart and Standard Oil imposed on their respective markets was generally through economies of scale. The reason Walmart is able to obtain the lowest prices for its goods is because of the power that it wields in the distribution channel. “When suppliers cave in to Walmart’s pressure, Walmart gains an additional competitive advantage because these suppliers are charging relatively higher prices to disadvantaged retailers for the same products.”

“Walmart estimates that it saves 5 - 15% across its supply chain.” Innovation is not present, as it once was, in the type of competition currently employed by Walmart. The writers of the antitrust laws would not accept it as a working free market because one major corporation has control over many parts of the market, not allowing them to move freely as they please. As an inhibitor of the free market, it is imaginable that Walmart’s business model could be reined in by the United States Congress, in a situation parallel to that of Standard Oil and the Sherman Act. For these reasons, Walmart is the modern Standard Oil.