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## ANTITRUST PHILOSOPHY AND ITS IMPACT ON RURAL INDUSTRY

Logan Gary Johnson

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ANTITRUST PHILOSOPHY AND ITS IMPACT ON RURAL INDUSTRY

by

Logan G. Johnson

A Thesis Submitted in Partial Fulfillment  
Of the Requirements for the  
University Honors Program

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Department of Business Administration

The University of South Dakota

May 2022

The members of the Honors Thesis Committee appointed  
to examine the thesis of Logan G. Johnson  
find it satisfactory and recommend that it be accepted.

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## ABSTRACT

The United States is a nation steeped in values, and tradition. One of these values has always been the preservation of competition in the pursuit of liberty. The philosophical backing of America's founding can be traced back to a handful of European thinkers, most notably John Locke. The connection between Locke, America's founding, and continued struggles with antitrust enforcement are worthy of exploration. Though likely unintentional, rural communities have been left to deal with the impacts of weak antitrust enforcement in a number of key sectors. Chief of which is Agriculture. Consolidation is the new norm, with each stage of production becoming less and less competitive. This will no doubt have far-reaching economic effects, but the true damage is being done at a social level within these communities. It is more important now, than ever, to re-examine the founding principles of the United States and formulate a solution to predatory business practices no matter the size of their broader economic impact. In order to effectively enforce antitrust law it is imperative that a moral standard is introduced to traditional jurisprudence and a higher emphasis is placed on the social cost of business activities.

Keywords: Antitrust, Locke, Morality, Law, Economic

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## PREFACE

The purpose of this thesis was to build an academic foundation in the field of antitrust. It will serve as a springboard for future pieces and is by no means a final iteration, or the last attempt at finding a solution to the problem of weak antitrust enforcement. It is my hope that this piece will exhibit a passion for the subject matter, deep thinking into its implications, and exhibit a drive for further research.

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Thomas Geu

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Kurt Johnson

Jessica Johnson

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Emily Herbert

Jacob Lindenberg

Alex Arango

Kimberly Dow

DEDICATION

In Memory of Thane R. Johnson

## CHAPTER ONE

### America's Philosophical Foundation

The history of the United States legal system is built on the idea of objective enforcement- and for a good reason. Equal enforcement of the law is necessary to uphold its legitimacy and ensure widespread acceptance. However, this objective enforcement should not be confused with uniform enforcement standards. The subject of Antitrust enforcement begs the question- at what point do mathematics, objective enforcement, and plain-letter law interpretations fall short? That point appears to vest in the individual. Just as antitrust law enforcement is dependent on the relative good created by their market dominance- see President Theodore Roosevelt's comments on Carnegie Steel.<sup>1</sup> However, relative bad should also be considered. These regulations are meant to protect the individual- rural examples will likely never rise to overall market dominance, but they can meet the level of anti-competitive practices and undue hardship.<sup>2</sup>

The Sherman Act was written to deter corporations from consolidating and exerting their collective power to stifle competition, prevent market entry, and maintain a status-quo. Examples that quickly come to mind are the Robber Barons of the 19<sup>th</sup>

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<sup>1</sup> Famous for aggressive antitrust enforcement, President Roosevelt categorized Carnegie Steel as a "good monopoly." This title was earned by, in his view, the use of market dominance to achieve levels of efficiency unreachable by smaller firms. Manufacturing processes and bulk purchasing all benefitted the consumer.

<sup>2</sup> An inherent disadvantage to rural living is the lack of options for a given service. For example, it is not economically tenable to have several of a given shop in a small community. Scarcity is further compounded when so few sectors operate out of rural communities. Agriculture represents the largest, by far, and thus businesses connected to that industry should be looked at with heightened scrutiny.

century. Think John D. Rockefeller, Andrew Carnegie, Henry Ford, and J.P. Morgan. Business Titans had no problem bending, breaking, and ignoring the rules to get a leg-up in a ruthlessly underregulated United States. These examples are easy to grasp, they are egregious, and in many ways, their truly gigantic size made Antitrust a more digestible concept. A less obvious example of antitrust is smaller firms exerting pressure on their local communities.

This pressure represents the issue that the Sherman Antitrust Act was written to remedy. If the goal of this legislation is indeed to protect the American public from a business community maximizing profits at their expense, the reach of the legislation cannot be restricted to the titans of old.<sup>3</sup> The purpose of antitrust rides a fine line between the restriction of "free trade" and creating an equitable marketplace, ensuring fair competition while limiting predatory practices. John Locke, a godfather of American legal philosophy, makes several mentions of a social contract, often objects to inefficient accumulations of wealth, and emphatically believes in a society where the government cannot arbitrarily meddle in the private dealings of citizens.<sup>4</sup> Many historians contend that Locke would look upon antitrust laws with disdain. They are viewing them as a restriction of free business and an artificial cap on an individual's success.<sup>5</sup>

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<sup>3</sup> The classic examples of antitrust should not be seen as the only situations where the Act is applicable. Presumably, the Act intended to ensure that individuals would not fall victim to the exploitative practices of dominant economic actors. Dominance does not have to be on a global scale; local exploitation can be just as damaging if left unchecked.

<sup>4</sup> This line of thinking is famous within American Conservative circles. However, unfortunately, their idealization of John Locke only extends as far as his usefulness. Assuming Locke would disagree with any government intervention is unreasonable and unfounded in his works.

<sup>5</sup> Individuals are quick to write off government intervention as a negative blind them to the apparent reality that government must have a place in maintaining a level playing field. Without an outside actor assisting in enforcing guidelines, it is unreasonable to believe that firms would self-regulate. Moreover, it is unreasonable to assume that firms would not use this gap in enforcement to expand their reach beyond what would have been possible working on their own.

This seemingly unbreakable attachment to individual rights can blind someone to the reality of an anti-competitive industry, exacerbating an already concentrated corporate landscape. Rural communities are especially susceptible to monopolies through scarcity, especially in necessary industries like healthcare and agriculture.<sup>6</sup> These two industries, inextricably linked to all levels of government, provide deeper insight into how the moral objectives of the government need to interact with private enterprise. The antitrust implications of the above industries stretch far beyond financial advantages and stray much closer to true societal impact. This societal impact necessitates a new way of thinking- a type of thinking that incorporates a moral component in addition to traditional economic analysis of market concentration.<sup>7</sup>

Morality is baked into the United States legal system from top to bottom. Whether it be at the beginning- with John Locke and the Founding Fathers he inspired, or in modern-day Washington D.C.<sup>8</sup> The implication of any legislation is that socially frowned-upon behavior will be punished. A society has to decide which values are most important to them. In the United States, it was decided long ago that fair competition lies at the bedrock of industry and will inevitably result in increased value for the public. As

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<sup>6</sup> While most of this paper will focus on Agriculture, Healthcare is another unique industry that finds itself at the crossroads of necessary and scarce. The consumer has little choice when it comes to healthcare. There are few options in rural settings- and simply refusing to enter the market is not a viable option. Future research in the field would uncover many examples of local pressure rising to monopolistic pressure.

<sup>7</sup> Incorporating morality into antitrust enforcement could bridge the gap between true impact and enforceability. The Sherman Antitrust Act offers little detail about what constitutes an antitrust violation. This ambiguity could be advantageous for aggressive enforcement, but only if a new brand of thinking slips into the mainstream and propagates throughout the court system. Without broader spread adoption, there is little chance that cases involving smaller rural firms would ever rise to the level of an antitrust violation.

<sup>8</sup> It is the job of legislators to act as a moral bell-weather for the American people. With this in mind, individuals elected to represent their constituents must acknowledge that a problem exists and that there may be a federal solution. Every piece of legislation carries with it a moral imperative- it is not unreasonable to expect that elected officials would take the time to examine underserved communities and the economic disparities therein.

noted previously, many believe founding philosophers like John Locke would decry antitrust as an unnatural overreach. This claim, however, does not gel with the idea of a social contract for which he is so famous.

The theory of social contracts is a cornerstone of Locke's philosophy.<sup>9</sup> He contends that to establish a functional society- conflicts had to be resolved reasonably. In order to resolve these conflicts, a government is formed. This government is not meant to be an overreaching body regulating individuals but instead a failsafe that protects society from the individually selfish.<sup>10</sup> Ultimately, that same individual selfishness drives the anti-competitive and predatory behavior prevalent in antitrust instances. John Locke would support the idea of antitrust law and the philosophy behind it. Furthermore, it becomes a moral imperative of civil society.<sup>11</sup>

Skeptics claim that "today's monopoly is often tomorrow's bankrupt firm... Blockbuster never imagined Netflix would bring about its demise."<sup>12</sup> While this mindset makes some sense, humanity is lost within this line of reasoning. A firm may eventually be unseated and replaced with a more advanced counterpart, that much is true, but in the meantime, the public is left to pay the proverbial "check." The firm's monopolistic position allows it to engage in denounceable behavior with little check outside of complete market disruption.

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<sup>9</sup> <https://plato.stanford.edu/entries/locke-political/>

<sup>10</sup> A deeper analysis is available from Alex Tuckness at the *Stanford Encyclopedia of Philosophy*.

<sup>11</sup> A deeper analysis is available from Alex Tuckness at the *Stanford Encyclopedia of Philosophy*.

<sup>12</sup> <https://www.johnlocke.org/abolish-antitrust-laws/>

This economic inequity is compounded in a rural setting by a lack of access to competitive alternatives.<sup>13</sup> Not all markets are vulnerable to significant disruption. Agriculture, for example, has existed for centuries and has operated essentially the same. Sure, the tools we use have advanced, and buyers exist in every corner of the world, but the primary functions of the industry have remained consistent. As a result, the industry has fortified itself against any true disruptor.

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<sup>13</sup> While it is difficult to prove something's absence, it is reasonable to assume that rural communities do not benefit, like their urban counterparts, from an excess of options. It is not practical for a small community to contain several of any service- this lack of options and high barrier to entry for potential competitors is what propagates an unfavorable power dynamic for the consumer.

## CHAPTER TWO

### Modern-Day Examples

It is entirely reasonable to argue that Agriculture was once the prime example of perfect competition in the United States. The land was granted to settlers across the frontier, eliminating the most enormous "startup cost." Barriers to entry were low, and demand was high. Individuals set their prices and had innumerable options. Unlike Blockbuster and many firms like it, Agriculture exists in a quasi-private state heavily subsidized by the government and dominated by a few key players. This consolidation is natural, predictable, and almost encouraged. The family farm has quickly become an antiquated concept doomed to fail by the "mega farm." The social cost of this is tangible, measurable, and tragic. This social loss should be reason enough for the government to act and make efforts to rectify the situation.

To bridge the gap between economic analysis and social impact, measurements of regional economic elasticity may be a suitable solution. **If the local market is inelastic, meaning individuals cannot take business elsewhere, it should be scrutinized to a higher degree.** However, this heightened scrutiny should not be misconstrued as a punishment for success due to dominance and lack of consumer mobility. While market dominance and consumer mobility are economically measurable, their social impact is what

necessitates strong antitrust oversight.<sup>14</sup> A lack of government involvement would leave individuals at the mercy of firms with no profit incentive to help them.

Firms operate much like living organisms.<sup>15</sup> Firms have evolved to accomplish a single goal- maximize profits for shareholders. Antitrust law acts as a guiding force steering the natural urge of a firm to maximize profit at any expense. That instinct is not only inevitable but understandable. It is unreasonable to assume an organism would overcome its evolutionary purpose in the service of altruistic protection of societal values.<sup>16</sup> Regulation is the most effective way to ensure firms do not take advantage of consumers and leverage monopolistic control. Although in nature, this regulation is a natural predator, in business, the government needs to fill this role.

In business, the government is primarily seen by many as a problem- a body only meant to stifle innovation and prevent private entities from operating freely. While this interpretation is not entirely false, it fails to capture the nuance of the purpose behind this restriction. Although restriction to retain power is detrimental, restriction in pursuit of a level playing field is necessary to maintain a competitive environment. Beyond the temporary dominance of a monopolistic firm, it is essential to recognize the point of diminishing returns as a firm grows. In economics, just as in nature, a firm suffers from

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<sup>14</sup> This increased focus on social impact is not to say that economic impact should be ignored, only that the presence of social externalities necessitates that the government get involved and begin examining solutions. Unfortunately, the inverse seems to be more accurate in modern times. Legislators become concerned only when there is damage or potential damage to the economy.

<sup>15</sup> Thomas Horton explores this idea deeply in his piece, "Fairness and Antitrust Reconsidered: An Evolutionary Perspective."

<sup>16</sup> While there are isolated examples of firms bucking this trend and venturing into social progression, it is not their primary purpose, nor will it ever be. Simply put, a business is just groups of individuals working towards a common goal- a goal that is almost always maximizing profit. This narrow goal leaves little room for social niceties or considerations impacting the population

"giantism," a point where size inhibits the ability to adapt and shift with market conditions.

Ideally, this inefficiency would lead to a replacement from a nimbler substitute. However, in practice, it often leads to an already deeply rooted dominant force taking advantage of the consumer. As noted historically, a distinction can be drawn between the "good" and "bad" monopolies. Carnegie Steel was often viewed as a "good" monopoly.<sup>17</sup> Through their size and innovation, they could provide a better product at a lower price—helping consumers much more than hurting them. This increased value to the consumer, however, is not the norm. In most cases, the quality growth of the product suffers as a firm grows to the point of relative stagnation. A solution, in most cases, is breaking up the firm to re-ignite competition and rapid innovation in the space. But, to reiterate, without a profit incentive to change practices, it is unreasonable to expect the firm to do so on their own.

A modern example of monopolistic behavior tied to market consolidation is the Bayer-Monsanto merger in 2018. Reji Joseph analyzed the international ramifications related to this merger. More specifically, Reji examined how the nation of India responded to the merger compared to the United States. Joseph states, "Economists have been concerned about the patent monopoly, although the monopoly is for a limited period, on two issues—market competition and rent-seeking."<sup>18</sup> Joseph explains how the

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<sup>17</sup> President Roosevelt is famous for his categorization of Carnegie Steel as a "good" monopoly. This categorization explains why he seldom pursued them with the same aggression as he did the other robber barons of his time. In his view, the value provided by Carnegie Steel outweighed the cost of its massive size and outsized power.

<sup>18</sup> In the context of government-enforced monopolies, Joseph focuses on the temporary monopolies enshrined in Patent law, see Joseph 2.

abuse of patent monopoly can "distort the market mechanism."<sup>19</sup> This same market distortion opens the door for sustained dominance to the consumer's detriment.

In the case of economics, the government can operate as a failsafe. In other words, when natural forces within an industry fail to prevent unhealthy consolidation, government exists as a "big red button" to stave off any further damage.<sup>20</sup> The tools necessary to regulate dominance are held solely by government bodies. In place of a massive consumer exodus, it is impossible to impact a firm's actions, especially in markets or regions with low economic elasticity. Furthermore, it is the moral obligation of the government to protect its citizens from undue hardship at the hands of private actors. Once more, healthy competition is necessary to ensure continued prosperity.

The problem of antitrust enforcement is not a new one- Brian Buhr has done extensive research on what he describes as market analysis to determine the "adverse price effects of market power and the offsetting economic benefits – "Rule of Reason."<sup>21</sup> The Rule of Reason was first introduced during a 1911 Supreme Court opinion centered on antitrust- precisely determining the bounds of the Sherman Antitrust Act. However,

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<sup>19</sup> The Free market is a highly fragile system meant to self-regulate and ensure pure competition between corporations. Joseph argues that the aforementioned temporary monopolies distort this mechanism to favor those who enter a market first permanently. The intent of patent law was never to guarantee a standing competitive edge but instead to incentivize market entry. A clear distinction should be made between the two, and government should endeavor to facilitate the latter.

<sup>20</sup> The idea that government should act as final failsafe falls directly in line with the teachings of John Locke and the philosophical foundations of the United States. Individuals consent to restricting some freedoms to pursue a more ordered and safe society. Antitrust enforcement is just another example where individuals have to give up some freedom in order to preserve the liberty of others.

<sup>21</sup> The "Rule of Reason" is an intriguing concept about antitrust enforcement. The 1911 Supreme, as mentioned above Court case redefined how antitrust violations would be adjudicated. First, the court must determine whether or not an organization became large through unfair practices. If not, the court has no grounds to pursue legal action. See Buhr's discussion on page 38.

<sup>21</sup> Buhr argues that the "Rule of Reason" does not go far enough to deter corporations from achieving market dominance. He argues that dominant thinking runs contrary to the "Rule of Reason" and that the Supreme Court decision should not be the guiding principle regarding Sherman antitrust enforcement. See page 39.

Buhr argues that the Supreme Court penned an interpretation too narrow to be effective; this opinion was not "consistent with dominant legal or economic thinking."<sup>22</sup>

Furthermore, he believes that expanded scope of antitrust enforcement would provide the Justice Department with enough flexibility to prevent businesses from engaging in harmful practices. If employed in a competitive market, practices would not only be less effective but impossible to sustain.

Richard Epstein lays out a contrasting view. Instead, believing that the government should not be over-involved, it would do better to remain out of the fray. Furthermore, he believes that unilateral actions by a firm should largely be ignored by the government, stating:

Predation, exclusive dealing, and tie-ins – are not grounded in similar theories and are thus subject to three fundamental objections: their excessive reliance on "intent" evidence that is easily misconstrued; their inability to come up with a powerful explanation as to why practices that are regarded as efficient for ordinary firms are treated as illegal for dominant ones; and their inability to separate reliably pro- from anti-competitive practices.<sup>23</sup>

Non-interventional thinking is expected at the University of Chicago, the birthplace of the "Chicago School of Thought" regarding antitrust. Epstein argues that calculating a

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<sup>22</sup> Buhr argues that the "Rule of Reason" does not go far enough to deter corporations from achieving market dominance. He argues that dominant thinking runs contrary to the "Rule of Reason" and that the Supreme Court decision should not be the guiding principle regarding Sherman antitrust enforcement. See page 39.

<sup>23</sup> Epstein, who works at the University of Chicago, advocates for loose antitrust enforcement for several reasons- this quote outlines most of them in detail. Essentially, he believes it is not the court's job to police unilateral action. But instead to focus on actions taken between several parties. These actions include price-fixing, collusion, etc. See page 49 for full context.

social cost associated with unilateral practices is nearly impossible and thus unenforceable in a court of law. He states, "The increase in price not only produces a transfer of wealth from buyers to sellers. It also results in the loss of transactions."<sup>24</sup>

While this reasoning makes sense, it ignores the societal cost simply because it may be difficult to calculate. Anti-competitive practices should not be tolerated in any market, Agriculture least of which. Furthermore, if unilateral action is inherently written off as an incalculable cost of doing business, hyper-concentrated markets are mainly exempt from regulation. It seems counter-intuitive that the most dominant firms are somehow not worthy of attention, firms so powerful that their unilateral action can cause market aberrations.

Furthermore, with the subject of this paper being Agriculture, it seems appropriate to frame the issue at hand. The mildest symptom of market dominance may be increased costs at the supermarket or the clinic. The worst case is loss of life. With stakes this high, government involvement feels more obligatory than ever before. Warren Grimes addresses this idea by analyzing the shortcomings of antitrust enforcement. Grimes uses the example of meatpacking plants, stating that the plant's geographic location is potentially the most critical factor. Stating that "That meat processing plants may be relatively unconcentrated in national terms is irrelevant to a rancher who must find a buyer quickly and, because of substantial transportation costs, in a relatively limited geographic area."<sup>25</sup>

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<sup>24</sup> Epstein attempts to explain how the shift from fair to predatory pricing may not have as profound an impact as previously estimated. While predatory prices shift the balance of individual transactions toward the seller, it also scares away potential buyers. These shifts could account for each other. See page 52.

<sup>25</sup> This quote outlines how fragile the agriculture market is regarding regional monopolistic power. While a federal court may find that a single organization does not possess a "dominant" market share at a federal

This example is especially pertinent, striking at the heart of regional monopolistic forces. It is entirely reasonable to argue that ranchers have their pick of any number of meatpacking plants- just look at the numbers. However, none of them are economically feasible. The transportation costs alone would make the transaction unprofitable. Unfortunately, the individuals effected most negatively are the consumers. In an attempt to co-opt the success of smaller producers, industrial farms began using terms like "organic," "free-range," and "natural," even though they do not follow the same strict protocols.<sup>26</sup> Grimes states that "These practices border on deception." Leaving aside any consumer protection issue, industrial organic farming makes it more difficult for a farmer and processor desiring to use traditional husbandry practices."<sup>27</sup>

Beyond legal considerations, the ethical side of industrial farming is beyond reprehensible. A reasonable argument can be made that these plants are what have allowed explosive population growth without the risk of famine. In conjunction with innovation in the growing phases of both livestock and crops, these plants have outpaced population growth and have been necessary for maintaining the health of society at large. However, the human costs of these operations cannot be ignored. Workers across the United States are being hired below the poverty level to work in conditions only describable as reprehensible.<sup>28</sup> The only way firms can get away with this treatment of

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level, it could quickly be involved in the same unethical price gouging at a regional scale. Cost barriers prohibit sellers from going elsewhere. See page 74 from Grimes.

<sup>26</sup> These practices make it impossible to trust the word of genuine sellers; now, lower-quality goods are seen in the same light as the more expensive alternatives.

<sup>27</sup> These habits seem especially predatory, given that those other producers put in the time to carve out their niche. Another example of how consolidating market influence can ultimately push out the competition. Even if these producers wanted to compete, they could not operate at the same scale as industrial farmers.

<sup>28</sup> A problem rampant within agriculture- hardworking individuals are being exploited. In many cases, these workers are undocumented and without representation during wage negotiations.

workers is the hyper concentration in the industry. In a genuinely free market, the one espoused by John Locke, the individual would have a certain amount of say in their work environment.

In an *Argus Leader* article written by Makenzie Huber, Smithfield Meat Packing plant employees described a brutal scene. As a result, Smithfield offered employees a \$500 "Responsibility Bonus."<sup>29</sup> This "bonus" was offered during the onset of the COVID-19 pandemic in 2020 to encourage workers to report to work despite displaying symptoms. Management at Smithfield took advantage of their workforce's compromised bargaining position and exploited the lack of job options in their field. Furthermore, much of the workforce at Smithfield is made up of low-skilled immigrant workers. This demographical fact is no accident; another compounding factor allows the firm to take advantage of its workers.

Jerry Hagstrom from CongressDaily quotes former Attorney General Eric Holder, "The Obama administration is making a stronger commitment than any previous administration to enforce agriculture's antitrust laws."<sup>30</sup> After making these claims, the Obama Administration built a reputation for being incredibly hands-off regarding antitrust. This stance, of course, is not unique to them; it has unfortunately become the norm as opposed to the exception. Epstein promotes a different view of government economic intervention.

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<sup>29</sup> This situation almost seems dystopian—a corporation incentivizing employees to prioritize corporate needs above their health. See Huber's article for more detail.

<sup>30</sup> Antitrust is always a national issue and has become incredibly polarized. The Obama administration went on to be historically ineffective. It will be interesting to see if there is a return in strict enforcement as public sentiment rallies for market regulation.

In addition to his view that firms taking unilateral action should not be subject to government interference, he states, "it is permissible to think about the introduction of certain steps that will promote efficiency, even if it is known that the secondary effect will be to drive a competitor from the market or effectively reduce its market share."<sup>31</sup> In short, the government should not attempt to increase competition artificially but instead cull the economic herd. Removing inefficient players from the marketplace will allow the most dominant force to consolidate power and provide the most cost-effective product to consumers. This view is radical, destructive, and backward.

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<sup>31</sup> Epstein argues that the most beneficial route is to drive smaller, presumably less efficient, players, from the market. In this situation, the monopoly would not only be a byproduct but the intended product of antitrust enforcement. This seems entirely contradictory to the goal of the Sherman Antitrust Act. See pages 56-57 for a more detailed explanation.

## CHAPTER THREE

### The Search for A Solution

The assumption that market concentration equates to efficient outcomes is misleading and confounds two different principles. First, Thomas Horton writes extensively on the notion that markets and business can be viewed as living organisms. In his piece "Efficiencies and Antitrust Reconsidered: An Evolutionary Perspective," he explores those economic measurements of market conditions attempt to crystalize a specific point in time. When in reality, these entities are ever-changing.

Just like an ecosystem requires biodiversity, an economic market requires healthy competition. This argument seems especially poignant when examining Agriculture and the previously mentioned outsized effects on public health and society-at-large. Horton continues to explain, "...healthy ecosystems and, by analogy, economic systems thrive on unremitting and intense competition at all systemic levels."<sup>32</sup> Furthermore, systematic competition, adaptation, and innovation are essential for any healthy market.<sup>33</sup>

Similar to any other complex system, maintenance is required. Horton contends that the solution to antitrust in the United States is not writing new legislation but aggressively enforcing laws already on the books. Harkening back to previous comments

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<sup>32</sup> Comparing economic markets to a natural ecosystem seems fitting. However, just as market influences are nearly impossible to predict, so are unexpected natural occurrences. There is information that may hint at an upcoming event, but seldom are these events perfectly predictable. See page 169 in "Efficiencies and Antitrust."

<sup>33</sup> Without competition at each level, a system is doomed to fail. Regarding agriculture, diversity of production does not matter if there is only one regional buyer. As outlined earlier in this paper, regional anti-competitive practices can be damaging when cost barriers limit seller options.

on "giantism,"<sup>34</sup> Horton cautions against the conflation of size and efficiency. The wiser course would be to guard economic opportunity and aggressively punish firms who overstep their bounds and damper competition with other market players. Of course, no firm would have the necessary market control to make predatory advances in a perfect world. However, the purpose of a firm remains the same- to optimize profit at any cost. Unfortunately, though unsurprisingly, this purpose encourages firms to win, even at a social cost.

The connections between academic disciplines are essential to understand and even embrace. This interconnection is fundamental in developing a holistic solution to corporate exploitation and preserving competition. By Edward O. Wilson, *Consilience* attempts to explain how an ever-specialized academic community must learn to work together to solve complex problems. He contends that we have innumerable experts who speak different "languages." These languages are not simply linguistic but baked into the thinking therein. Wilson summarizes the conclusion of *Principia Ethica* (1903) by G.E. Moore. Wilson states, "Moral Reasoning in his view cannot dip into psychology and the social sciences to locate ethical principles because they yield only a causal picture and fail to illuminate the basis of moral justification."<sup>35</sup>

Wilson argues that this segmentation of disciplines serves not to raise them individually but instead cap their reach. Furthermore, this cap limits the amount of progress that can be made in a reasonable amount of time. Experts working together,

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<sup>34</sup> This example reminded me of "The Bigness Complex" by Walter Adams and James Brock. At some point, a corporation grows past the point of efficiency. The idea that parallels between the natural world and the American business environment are so readily observable strengthens the analogous relationship explained by Thomas Horton.

<sup>35</sup> See Wilson 272 for more insight.

sharing conclusions, and using their expertise to enhance one another must provide advantages to working on a singular narrow track. Wilson's conclusions are not only based on many years of research but also benefit from being incredibly intuitive.

It seems evident that research would benefit from the intermingling of disciplines. Collaboration between experts seems like a necessary and natural evolution of academia. Furthermore, individuals who can understand, compile, and present the findings of these experts will push research forward faster than any single researcher or research discipline ever could. Complex problems require a well-fitting solution. Antitrust enforcement is no doubt a complex problem to solve. As noted by Wilson, "Because the success of an ethical code depends on how it interprets the moral sentiments, those who frame it should know how the brain works, and how the mind develops."<sup>36</sup>

The psychological component of legislative development exists beyond the scope of this introductory piece. However, it is worth noting that to enforce any law effectively, there needs to be widespread acceptance of its usefulness and enforceability. The rule of law is a powerful thing, made even more potent by the fact that individuals are willing to respect the court's decision even if they disagree. Furthermore, they are willing to accept an adverse outcome, acknowledging that the individuals who make up the American justice system know best. This trust comes with unavoidable strings- a system must protect the individuals who endow it with its legitimacy. If individuals trust that the system exists to protect them, they will continue to respect outcomes even if they directly

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<sup>36</sup> See Wilson 262. Factoring in psychological interpretations and social preferences allow Wilson to expand beyond a single field and explain how effective policies must be drafted using a multi-faceted approach.

adversely affect them. Other nations have attempted to bridge this gap by incorporating a social element into their antitrust enforcement.

In a different piece by Thomas Horton, titled “Confucianism and Antitrust: China's Emerging Evolutionary Approach to Anti-Monopoly Law,” he examines Chinese antitrust enforcement, specifically the Anti-Monopoly Law (AML), which took effect in August of 2008. The AML puts a higher value on dominant firms' social, moral, and ethical consequences.<sup>37</sup> The higher emphasis on Corporate Social Responsibility (CSR) bodes well for the future of antitrust law. A transition away from raw economic analysis opens the door for sanctioning regional predatory actors and ensuring the customer is treated fairly, no matter their geographic location.

China is often criticized for its less than savory attempts at appropriating foreign Intellectual Property (IP) for internal use, though they intend to implement a moral-centric system for regulating business. Horton had this to say regarding the relevant section of the AML, Section III.B.

Section III.B. contends that China seeks to pursue the evolutionary objectives of promoting diversity, variety, and multiplicity in its approach to structural competition issues. Such an approach is designed to catalyze and promote the entrepreneurial spirit of its citizens and guard the economic contributions of its vast array of small and medium-sized business enterprises.<sup>38</sup>

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<sup>37</sup> This seems like the natural next step for American antitrust enforcement if more aggressive enforcement of current laws is impossible. See page 194 of "Confucianism and Antitrust" for more detail.

<sup>38</sup> On paper, legislation like this seems in line with American founding values. While Western philosophers typically take a much more rigid approach to market function, the Founding Fathers greatly emphasize entrepreneurship and liberty. Some of them had very choice words for monopolists; it does not seem

This legislation hints at a desire by China to shift towards a more free-market model. It is undeniable that the United States and China are two very different nations, rooted in different values and enriched by very different cultures. Even so, aspects of the AML could undoubtedly be helpful in the fight against anti-competitive practices. A heightened focus on the social impact of private activity is necessary to account for the increasing size and global reach of firms caused by rapidly evolving technology and the progressively global society. It is in the best interest of major global powers to draw a clear line in the sand concerning moral priorities. The drawing of this line has to start with the impact actions have on a given society.

In addition to written legislation, common law plays an integral role in antitrust enforcement. For example, Horton identified two Supreme Court cases dealing with predatory pricing, which present significant hurdles. These cases are *Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, and *Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*<sup>39</sup> With *Matsushita* and *Brooke* controlling judicial interpretation of current law, a legislative solution may be the next step in revamping the American antitrust system. Horton refutes the Chicago School assertion that Predatory Pricing cases are rarely tried, stating, "On the other hand, it seems equally plausible that either the Court's current standards are too demanding from an evidentiary standpoint, or are not economically sound or complete."<sup>40</sup>

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unreasonable to expect we might see something similar developed in western nations. Quote located on page 20 of "Confucianism and Antitrust."

<sup>39</sup> Cases like this show how the goalposts have shifted concerning antitrust enforcement. Even if not intentionally, the courts have granted corporations much more grace than initially intended by the legislature. See page 853 of "Fairness in Antitrust" for more insight.

<sup>40</sup> This point is similar to the one made by Buhr considering the "Rule of Reason." The evidentiary burden shifts further for consumer protection and closer to shielding corporate interests.

These pieces by Thomas Horton effectively outline the importance of a revised antitrust enforcement system focusing more on the social effects than economic measurements. These measurements inherently benefit the firm and provide little room for consumers to defend their position. Shifts in legislative priorities have effectively hamstrung the push for enhanced antitrust enforcement. The partisanship in America's political system makes it incredibly difficult to collaborate- even on apolitical issues. This lack of collaboration intensifies the already glaring gap within the Sherman Antitrust Act between intent and reality. Other nations have made necessary preparations to avoid American-level market concentration compared to the United States.

India has made several revisions to its antitrust Act, which was passed at the beginning of the 20<sup>th</sup> century. India contends that as technology has advanced, so must its legislative efforts to maintain competition. While it is not the firm's fault that they exist in an industry with high barriers to entry. For example, it would be entirely unfair to single out Ford simply because it is difficult to break into the Automobile industry. Furthermore, it is not unreasonable to assume that firms experience increased efficiency levels as they grow. Economies of scale are undeniable and should be embraced.<sup>41</sup> That being said, diseconomies of scale are also worth consideration.

As outlined in *The Bigness Complex* and further reinforced by Horton's findings in "Efficiencies and Antitrust Reconsidered: An Evolutionary Perspective," there comes the point where a firm no longer is operating efficiently, even if dominantly. Worse even, while economically measurable, the cost of this dominance is genuinely a social problem.

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<sup>41</sup> While this is true, we can observe examples of corporations growing too large to function quickly and effectively. Adaptability is essential when it comes to market survival. Eventually, size will become cumbersome. See Buhr page 34.

Individuals bear the brunt of this economic ineffectiveness, not the social scientists researching the abstract impact of dominant firms. Economists claiming that larger firms are inherently more efficient is an incomplete perspective steeped in piles of inferences ignoring the true impact of market dominance. Even through all of this, it is difficult to blame the firms; as mentioned previously, it is not their place to be concerned with the social impact of their decisions. That job lies squarely at government officials elected to protect the individual.

Lending credence to the idea that social impact should be factored into antitrust thinking, John Nichols of *The Progressive* wrote a piece detailing how a shift in public opinion can induce significant legislative efforts. He wrote, "Citizens have beaten the robber barons before; they have trampled down privilege and made the promise of liberty very nearly a reality."<sup>42</sup> Nichols touches on the inherent challenges associated with social change. These significant shifts in public opinion do not happen overnight. He stated, "the New Deal did not simply happen. It was not even a simple response to the Great Depression. It was the product of decades of increasingly focused campaigning by reformers and radicals...."<sup>43</sup>

With this in mind, it is hardly practical to rely on a social movement to solve a problem immediately impacting American citizens. This is particularly true with Agriculture, where the social cost is higher than almost any other economic sector.

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<sup>42</sup> Nichols endeavors to explain how shifts in societal opinion have solved anti-competitive problems in the past- see page 20 for more detail.

<sup>43</sup> In this quote lies the most significant problem in Nichols' strategy. In an economy where sectors are evolving rapidly, the average consumer cannot wait decades. Specifically, concerning Agriculture, months could mean the difference between abundance and famine.

Furthermore, it is a sector with far lower elasticity and fewer options than most. While unmeasurable, as Richard Epstein pointed out, these effects are no doubt significant.

Returning focus to the philosophy of antitrust enforcement, the solution to growing economic consolidation cannot be found in a single field of study. As Edward O. Wilson pointed out, our world is full of experts who can sparsely communicate. The barrier is not through language but nomenclature, divergent approaches to problem-solving, and even measuring success. To an economist, reaching equilibrium is the ultimate goal- this, however, cannot be the ultimate goal of antitrust enforcement. It has to stretch beyond abstract measurements and extend into the impact. It is not the firm's responsibility to account for social impact. That responsibility lies squarely at the feet of government actors.

This paradox, government being both the solution and part of the problem, leaves antitrust enforcement limbo. Until there is political will, sufficient public pressure, and a shift in general jurisprudence on the United States Supreme Court, it is unlikely that any real progress will be made. These regulations are meant to protect the individual- rural examples will likely never rise to the level of overall market dominance, but they can meet the level of anti-competitive practices and undue hardship. Should a private actor reach a level of local dominance resulting in the undue hardship and suffering of individuals, they should face the same type of government intervention regardless of their economic significance. In order to protect the consumer, antitrust laws need to be aggressively enforced, as they were in the past, and local monopolies should be treated the same as their larger national counterparts.

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