Antitrust in the Age of Trump

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Author Biography

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Issue Identification & Problem Definition

Calls for regulation of major tech giants are currently ringing out from both the left and right sides of the political spectrum, largely for different reasons (Soave 2020). The current DOJ antitrust suit against Google was undermined by murmurs of political motivation as former-Attorney General William Barr personally played a key role in pushing the investigation forward into a lawsuit. (Birnbaum 2020). Prior examples of this can be seen in the reportedly political motivation of the DOJ's unsuccessful attempt to block the 2017 merger of President Trump's nemesis CNN's parent company Time Warner and AT&T following President Trump's campaign trail promise to this effect (Putterman 2020). Despite being an independent regulatory commission under the oversight of the legislative branch, the FTC, like other regulatory agencies is subject to political pressure from the White House, legislative committees and interest groups (Cochran et al, 45-46). Political bias exerted through antitrust law is in no way specific to the last presidential administration. Multiple studies have shown a significantly higher statistical correlation between antitrust action taken against corporations that were competitors with firms headquartered in the districts of congressional committee members that oversaw the FTC (Shughart and McChesney 2010, 394).

Current calls for more activist antitrust action are also not limited to President Trump's populist supporters or one specific side of the political aisle. In December 2020, the FTC and 46 state attorneys general launched a lawsuit against Facebook for illegal monopolization, including revisiting the 2012 & 2014 acquisitions of Instagram and WhatsApp that went unchallenged by regulators at the time (FTC 2020 C). In mid-2020 the Democrat members of the House Judiciary antitrust subcommittee published a 449-page report on the anti-competitive actions of Amazon, Google, Facebook and Apple, ultimately calling for increased regulation and oversight of corporate power. Democrat Senator Amy Klobuchar, newly appointed chair of the Judiciary subcommittee on antitrust has recently unveiled a new bill that would broadly strengthen antitrust enforcement and shift the burden of proof for merger cases from the government onto the firms in question (Feiner 2021). This indicates that even with the transition to a Biden administration, President Trump's populist rhetoric against the tech behemoths will live on (Birnbaum and Lapowsky 2020).

Progressive-leaning Democrat Senator Elizabeth Warren while running for the presidential nomination in 2019-20 made "breaking up Amazon, Facebook, and Google" a campaign pledge, proposing to regulate them as "platform utilities" (Warren 2019). This type of ideologically driven policymaking is summed up perfectly by Economist Thomas Sowell's warning-

> What the new trustbusters, like the old, really want is the power to break up the alleged predator and restructure the industry according to their own theories, preferences or ideology. Restoring competition is the boilerplate. But behind it is the government's predatory power play. Grabs for power are infinitely more dangerous than grabs for market share—and more long-lasting when successful (Sowell 1999).

It has been said that "companies can make life harder for their competitors, but strangling the competition takes government" intervention in the market (Szoka, Henke and Starr 2013). Strangulation of competitors often occurs through regulator rulemaking that is a relatively small drain on the major players, but a much costlier burden for smaller competitors (Boaz 2015, 224). Government regulation in the United States grew exponentially between 1960 and 2017 as the federal regulatory code grew from 20,000 to 185,000 pages (Copeland 2018). According to Article I, Section 8 of the Constitution, Congress is tasked with regulating commerce between the states. However, most regulation takes place outside of the legislative branch, by administrative agencies who write, interpret and enforce their own rules, unaccountable to the democratic process (Copeland 2018).

Government regulations are often distorted in an attempt by corporations or industries to co-opt government coercion to enact policies that will improve one's own position and or harm a competitor's position in a way that would not occur through unhindered market competition (Boaz 2015, 224). Economist George Stigler posited his theory of "regulatory capture" to demonstrate the way businesses would shield themselves from competition by creating barriers to entry and maximize their own profits through the state's coercive power. He noted that every industry or occupation that has enough political power to utilize the state will seek to control entry. In addition, the regulatory policy will often be so fashioned as to retard the rate of growth of new firms (Stigler 1971, 5).

The potential antitrust issues surrounding Big Tech are further convoluted by clamoring for reform of Section 230 regulations. Both former-President Trump and President Biden have called for changes to this specific regulation that gives internet platforms such as Facebook and Twitter the ability to moderate, or not moderate user-provided content at will, and Google the freedom to favor certain content in search results or regulate user content on YouTube with effectively no liability (Newton 2020). These two issues tend to overlap in political rhetoric because the corporations involved are often the same. The left would see more regulation of what they deem "dangerous" content such as hate speech and revenge porn on platforms such as Facebook and Twitter (Soave 2020).

Beyond concerns regarding social media platforms, Democrat politicians have called for the breakup of conglomerates Amazon and Google for their anti-competitive practices (Brown 2020). Meanwhile politicians on the right, including President Trump, call for less moderation, or in their opinion - censorship, of conservative viewpoints in Google search results and platforms such as YouTube, Facebook and Twitter (Pearce 2020). These concerns came to the forefront during the 2020 elections as President Trump was censored multiple times by Twitter as were journalists reporting breaking news that showed Democrat candidate Joe Biden's family in a negative light (Spiering 2020). Twitter ultimately went to the extent of imposing a supposed lifetime ban on President Trump from its platform (Jamison 2021). In January of 2021, in a seemingly collusive maneuver, Parler, an up and coming "pro-free speech" competitor to Twitter was deplatformed by its webhost Amazon Web Services, and the Apple and Google app stores, an action that Parler claims was orchestrated with Twitter (Mazzone 2021, Jamison 2021). Parler has filed a lawsuit against Amazon but the outcome has not been decided as of this writing (Mazzone 2021).

The desire of Big Tech to shape potential regulation is readily evident with Facebook's recently released "white paper" describing how the company believes social media platforms should be regulated (Budryk 2020). Increased regulations tend to hamstring small or newer businesses disproportionately, while larger, more established businesses tend to have the resources to deal with associated regulatory costs as well as the political influence to shape regulation (Dugan 2017). With Facebook's essentially bottomless war chest, it is in a much better position to deal with costly regulation than current or future upstart competition in the social networking space. Amazon is also looking to shape national policy, lobbying in support of a federal $15 dollar per hour minimum wage, despite their own admission that the company already pays its own employees a minimum of $15 per hour (Carney 2021). One could assume that their lobbying is not altruism on behalf of low-income hourly wage-earners but rather aimed at hamstringing competitors. Amazon, Google, Apple and Facebook spent over $50 million on lobbying in 2017 and are expected to spend more each year as regulation talk continues and a "revolving door" between Washington and Big Tech gives these firms increasing influence on regulation (Yost 2018). Case in point, current nominee for Attorney General Merrick Garland has proffered Susan Davies, a former lawyer for Facebook to head up the DOJ antitrust division, in what at face value appears to be an obvious conflict of interest (Grim and Dayen 2021).

Regulation can be a net gain for established entities who can afford it as it creates barriers to entry for new competition and increases the cost of doing business (Carney 2006, 108). This pattern is evident in Europe following increased regulations of Big Tech by the European Union's General Data Protection Regulation in 2018, smaller competitors in the digital space have been increasingly squeezed out of the market due to increased costs of compliance (Markman 2019).

> Often the rule makers ask for advice and information from labor unions, consumer groups, environmental groups, and industry itself. Among industry the stakeholders … who have the most input are those who can hire the most effective and most connective lobbyists…As a result, the details of the regulation are often carefully crafted to benefit, or at least not hurt, big business. If something does not hurt you or hurts you a little while seriously hindering your competition, it is a boon, on balance (Carney 20106, 109).

Administrative regulation, which has been largely shifted from the legislative to the executive branch in the U.S., goes on largely unchecked by the judicial branch based on the concept of "Chevron Deference" (Copeland 2018). This stems from the precedent set by the *Chevron v. Natural Resources Defense Council* case that has led courts to defer to the enforcing administrative agency's interpretation of a given law, which in turn undermines separation of powers (Copeland 2018). Public policy is corrupted by policies that politicians and unelected officials pursue that are not in the best interests of the public (Rahn 2014). Studies have shown that federal regulation costs each American household an unofficial burden of about $15,000 per household and a national total of $1.9 trillion annually (CEI 2017).

This current backlash against Big Tech has led to many officials calling for antitrust action and increased regulation in the name of consumer protection (Yost 2018). These politicians have incentives that may not be congruent with consumers and are effectively seeking their own goals and interests while overlooking economic realities (Sowell 2009, 17). Economist Henry Hazlitt described the political posturing we are witnessing now, pointing out that economics is beset by fallacious thinking due to "the special pleading of selfish interests" and "the persistent tendency of men to see only the immediate effects of a given policy, or its effects only on a special group, and to neglect to inquire what the long-run effects of that policy will be not only on that special group, but on all groups" (Hazlitt 1979, 15-16).

U.S. antitrust laws are written and enforced to regulate monopolies, also referred to as trusts, in order to prevent unfair business practices in the marketplace (FTC 2020 B). Often antitrust law tends to be selectively enforced at the behest of cronies to punish competitors or political opponents or bring economic gain to constituents (Waller and Morse 2020). The overall effect of antitrust law in the U.S. has caused mixed consequences for competition and consumers (Friedman 1990, 53). Antitrust law through the past forty years had typically been pursued based on the consumer welfare standard (Kennedy 2018). However, thanks to the rise of the progressive left and populist right antitrust proceedings are now underway against several tech corporations on what appears to be the basis of their expansive market share or alleged political bias rather than to protect consumers' interest in a competitive market (O'Sullivan 2018).

Antitrust law and regulations of monopolies are effectively a form of cronyism or crony capitalism. The crony distortion of capitalism is a term describing an economic system wherein "the profitability of firms in a market economy is dependent on political connections" (Holcombe 2012, 1). The effects of cronyism are many and negative for consumers, aspiring entrepreneurs and less-connected businesses, while a select few interests benefit from the implementation of such policies (Roberts 2010). If Big Tech is to be targeted with ongoing antitrust investigations and lawsuits, the continuation of these business models will only be possible through accommodating the political sector (Yost 2018). Crony capitalism corrupts both business and government (Badhwar 2020). For example, a cozy relationship between Google and the Obama administration reportedly kept the tech giant out of the antitrust crosshairs for a time (Sasso 2015).

In capitalist, or "market" economies, cronyism occurs through the intermingling of business and government interests. Would-be monopolists often lean on policymakers to help maintain market domination (Hayek 2007, 93) The enactment of government policies to benefit specific interest groups is what economist Frederic Bastiat described as "legal plunder" at the expense of the citizenry (Mises Institute 2007). This form of corruption proceeds with little public outcry because the "benefits are concentrated while the costs are dispersed" (Paul 2006, 69, 72-73). The causal link between cronyism, corruption and reduced economic performance in the U.S. and around the world is well established (Roberts 2010).

Antitrust laws can easily be hijacked by cronyism and have been shown to have made the market *less* competitive through the years (Shughart & McChesney 2010, 399). Crony capitalism can be boiled down to government intervention in the economic sphere to benefit specific business entities (Holcombe 2012, 3). Government intervention in the market creates an environment where businesses attempt to maximize profit by pleasing government officials rather than consumers (De Rugy 2015). Crony rent seekers can "invest" in antitrust law, so to speak, by lobbying for the government to block mergers, prosecute price cutting or the unfair competition practices of rivals (Shughart & McChesney 2010, 398). Progressive or populist-driven sentiment for increased regulation to reign in Big Tech will most likely further distort the market, negatively affecting consumers as well as potential competitors (Yost 2018). Cronyism undermines the positive outcomes of free market principles. Often in the policy making process special interests hold sway over the broader public interest. Laws are often enacted based on the benefit to narrow groups at taxpayer and consumer expense and the detriment of the economy (Cato 2017, 543).

The negative outcomes of government policies that deny market realities have been documented throughout history, long predating the founding of the United States or the Federal Trade Commission (Rahn 2014). In the current issues concerning Big Tech, these mega corporations are supported by the millions of American consumers who voluntarily consume these products and services daily (Pearce 2020). The market reality in the tech sector is that products, services and corporations come and go from the marketplace at a rapid pace while DOJ or FTC action against alleged monopolies can take years, in which period the market will likely have already changed course (Epstein 2017).

This pattern was exemplified by the wholesale migration of users away from Microsoft Internet Explorer for newer web browser options while the DOJ pursued antitrust action against Microsoft (Guynn 2020). Microsoft no longer produces Internet Explorer, but the cycle continues as current king of the hill, Google, is now the subject of a DOJ lawsuit alleging illegally monopolizing internet search in "the most significant antitrust case" in the nearly twenty years since (Congressional Research 2020, Guynn 2020). Experts believe that antitrust enforcement in the tech space is too slow to keep up with the rapid and ongoing evolution of the tech sector (Epstein 2017).

Legislative History: Public Policies, Regulations, Current Laws, Stakeholders

The current stakeholders in the realm of U.S. antitrust law include the Department of Justice Antitrust Division, the Federal Trade Commission, business entities that find themselves in the spotlight of these two previously mentioned agencies as well as the American consumers who are affected both by antitrust violations and antitrust enforcement and regulation. Though they tend to specialize in certain sectors, the jurisdictions of the DOJ and FTC often overlap, and the agencies must check to ensure they are not duplicating their efforts (FTC 2020 B).

Early antitrust laws were intended to be a form of economic regulation, "a way of controlling concentrations of wealth and power in large private-sector economic enterprises" and to prevent private economic gain from damaging the public good (Cochran, et al, 2016, 45). In the 19^{th} century the term "trust" referred to "any sort of collusive or conspiratorial behavior that was seen to render competition unfair" (Kenton 2018). Antitrust regulators were meant to protect the public by "preserving competition and controlling natural monopolies" (Cochran, 45). This was not aimed as much at organically successful companies but more so at firms making deliberate attempts to corner the market, specifically large multi-state corporations that Congress could justify regulating based on the commerce clause in the name of maintaining a fair economic playing field (Kenton 2018).

There are three main antitrust laws in the United States code; the Sherman Anti-Trust Law of 1890, the Clayton Antitrust Act of 1914 and the Federal Trade Commission Act of 1914 (Justice Department 2020). These laws are intended to "prohibit business practices that unreasonably deprive consumers of the benefits of competition, resulting in higher prices for products and services" and are enforced by either the Department of Justice Antitrust division or the FTC depending on the alleged violation (Justice Department).

The Sherman Anti-Trust Act is a criminal felony law that "outlaws all contracts, combinations, and conspiracies that unreasonably restrain interstate and foreign trade" and any price fixing, bid rigging and customer allocation are indefensible "per se violations" (Justice Department 2020, FTC 2020 B). Congress passed the Sherman Anti-Trust Act in 1890 during the dawn of the Progressive Era in a time of great public anger at large corporations like Standard Oil and American Railway Union that both consumers and competitors viewed as unfairly dominating their markets (Kenton 2018). This was the start of a new interventionist approach by Congress to regulate business and markets (Kenton 2018). Most Sherman Act enforcement is civil, but clear or intentional violations often lead to criminal enforcement by the DOJ (FTC 2020 B).

The Clayton Antitrust Act is a non-criminal statute that “prohibits mergers or acquisitions that are likely to lessen competition” and allows for the government to challenge mergers that would theoretically raise prices for consumers (Justice Department 2020). Potential mergers are measured for excessive market concentration using the Herfindahl-Hirschman Index or HHI (Hayes 2020). The Clayton Act was passed at President Wilson’s behest to strengthen the Sherman Act and close loopholes that had allowed market concentrations and negatively impacted prices (Britannica 2020). The fear at the time was that economic control rested in the hands of a small group, creating high risk for financial panic and later amendments including the 1950 Merger Act were added to the Clayton Act to bolster enforcement and cover more types of mergers (Britannica). In 1976 the Clayton Act was amended again adding the requirement of advanced notification to the government of large mergers in the Hart-Scott-Rodino Antitrust Improvements Act (FTC 2020 B). The Clayton Act also enables private parties to litigate for violations of either Sherman or Clayton Acts, thus opening the possibility of rivals suing their competitors (FTC 2020 B).

The Federal Trade Commission Act created its namesake agency to guard against violations of alleged unfair competition in interstate commerce (Justice Department 2020). Congress gave the newly created FTC a vague directive to “regulate in the interest of ensuring competition and to prevent deceptive advertising by industry” (Cochran et al, 2016, 45). The FTC only pursues cases under the FTC Act but the Supreme Court has ruled that “all violations of the Sherman Act also violate the FTC Act” and the agency can bring cases against activities that also violate the Sherman Act (FTC 2020 B).

The United States government and laws are not consistently opposed to monopoly. According to the FTC,

> It is not illegal for a company to have a monopoly, to charge "high prices," or to try to achieve a monopoly position by what might be viewed by some as particularly aggressive methods. The law is violated only if the company tries to maintain or acquire a monopoly through unreasonable methods. For the courts, a key factor in determining what is unreasonable is whether the practice has a legitimate business justification (FTC 2020 A).

The U.S. federal, as well as state and local governments, create, operate, mandate and enable many monopolies even while it concurrently pursues regulation and enforcement of antitrust laws against other so-called monopolies as evidenced by the current spotlight on Big Tech (Anthony 2020). Commonly known monopolies include the U.S. Postal Service, utilities, public transit, taxi companies and cable and internet service providers. Sometimes the government is the “owner” of the monopoly and sometimes it is enabling a corporation’s monopoly on a market (Holly 2018). Many politicians and bureaucrats believe that utilities are “natural monopolies” due to the large amount of required infrastructure and justify artificially restricting competition (Summers 2019). Just a few of the notable examples of government antitrust actions in the tech sector include the 1969 IBM Case, the 1999 Microsoft Case, the 2009 Intel case, and the current DOJ case filed in 2020 against Google.

Alternative Policy Options & Evaluation

Some experts are calling for the creation of an entirely new federal agency specifically designed to regulate Big Tech in the name of public interest (Wheeler, et al 2020). The antitrust laws on the books were designed for more static markets and industries of the late 19th and early 20th century and cannot keep pace with the rapid shifts in the digital age (Wheeler, et al 2020). Specific ideas proffered include requiring the sharing of data between competitors or the regulation of Big Tech similar to utilities under the premise that these companies can "be the platform" but cannot also "use the platform" to sell their own products in competition with other entities; Amazon could not sell Amazon Basics products in its marketplace and Google would have to sell off its ad business (Chen 2020). Big Tech has been likened to a public utility because of their pervasive use by public and private spheres, "private powers who shape the fundamental terms of citizens' common life should be held accountable to the public good" (Simons and Ghosh 2020).

Though many of Big Tech's products are free, there are non-monetary trade-offs for consumers. Regulation of Big Tech would be to prevent non-financial losses to the public, such as monopolizing information and violations of personal data privacy (Hinchliffe 2020). However, these issues may not be best addressed through antitrust law, as forcing the divestiture of Instagram by Facebook, for example, in no way changes Facebook's data gathering or content moderation practices (Chen 2020).

One of the original principles guiding U.S. antitrust law has been prevention of market concentration. However, since 1998, tech giants Google, Amazon, Facebook and Apple have collectively bought 500 companies without a single merger being blocked by the FTC or DOJ (Birnbaum and Lapowsky 2020). This is notably allowed because current antitrust enforcement has not taken the view, for example, that Google the search engine company and YouTube the video platform are competitors, allowing for such vertical mergers (Chen 2020). Some antitrust experts believe these practices lessen competition and are in fact a violation of the Clayton Act's restrictions on market concentration through merger (Hinchliffe 2020). Whether the U.S. Government wins or loses its current or future cases against Google and other tech giants, history shows that the very action of antitrust litigation will likely change the course of these corporations and the products and services they offer (Birnbaum 2020).

Supporters of free-market principles frown upon business regulation in general and object that it is unclear exactly how taxpayer-funded DOJ & FTC lawsuits, trustbusting or increased regulation will benefit the consumers enjoying the network effects of Big Tech's products and services (Epstein 2020). The most common form of government corruption in the U.S. is the politicians' pursuit of pet projects to score political points at taxpayer expense, in this instance trustbusting or regulation of so-called monopolizers (Rahn 2014). Free-market advocates posit that consumers will not voluntarily purchase goods or services when it is no longer in their interest, and therefore true monopolies cannot exist without government intervention in the market and are the result of government action, not market forces (Paul 2016). Antitrust regulation raises transaction costs for firms, while the consumer rarely benefits, leading to question the purpose or necessity of antitrust law (McChesney 2020).

In 1848, over forty years before the signing of the Sherman Anti-Trust Act, John Stuart Mill noted the effects of government-ordained monopolies and their negative impact on the market, stating that "governments, however, are oftener chargeable with having attempted, too successfully, to make things dear, then with having aimed by wrong means at making them cheap. The usual instrument for producing artificial dearness is monopoly" (Mill 1985, 294-295). In the late 19th century, the idea of "spontaneous" monopolies, or monopolies that somehow emerged through market competition began to be proffered (Langlois 2019, 413). By the early 20th century, the concept of "natural monopolies" developed and became accepted, despite no historical evidence of there being anything "natural" about monopolies (DiLorenzo 2019).

Economists of the era were not supportive of the original antitrust laws (McChesney 2020). In the late 19th century when politicians' antitrust rhetoric was growing, it was understood by economists that true monopolies came about only by government intervention in the market (DiLorenzo 2019). F.A. Hayek described this reliance on government action, positing that monopoly power was typically "attained through collusive agreement and promoted by public policies" (Hayek 2007, 92-93). Hayek noted that in mercantilist 17th century England, conflict between kings and Parliament arose regarding grants of monopoly and it was ruled contrary to English common law by the courts (Hayek 2011, 247). Milton Friedman concurred that "a monopoly can seldom be established in a country without overt or covert government assistance" (Friedman 1990, 53).

Early progressive political crusaders railed against the supposed ability of large trusts to raise prices and exploit consumers. However, economists were less concerned and assumed any increase in price would be tempered by increased efficiency and lower costs (McChesney 2020). In the absence of government privilege, sellers are in submission to the market, the will of the consumer and should they no longer feel they are benefiting from a product or service, demand will dwindle, forcing prices down once again (Mises 2008, 354-355). Later, "trustbusters" such as Teddy Roosevelt conceded that large corporations may be the more efficient option (McChesney 2020). The empirical evidence shows much of these early antitrust efforts were unnecessary as the trusts in question were expanding output much faster than worldwide levels and subsequently their prices were also dropping at a greater rate than national levels, contrary to what economic theory claimed a monopoly would need to do to increase profits (McChesney 2020).

Economist George Stigler remarked that the main purpose of the antitrust laws was to prevent formation of monopolies, but that the Sherman Act had only a modest effect on concentration, while the 1950 Merger Act had a negative effect on merger by large companies. Most notably Stigler explained that the Sherman Act "reduced the availability of the most efficient methods of collusion and thereby reduced the amount and effects of collusion" (Stigler 1964). Later economists showed that correlations between concentration and profits were due more to superior efficiency than to anticompetitive behavior. This led to a new understanding that concentration alone does not equal monopoly and over time, fear of monopoly diminished as it became apparent that corporations rarely utilize predatory pricing schemes because these schemes rarely succeed in the marketplace (McChesney 2020). Vertical mergers of non-competitors can lead to greater efficiency and do not necessarily harm the consumer as is the case with the joining of a content and transmission company such as seen in the 2017 Time Warner & AOL merger (Epstein 2020).

Experts point out that antitrust law is reactionary making it difficult to enforce existing regulations due to lack of monitoring and is too slow to keep up with the dynamic nature of innovation/turmoil of the tech sector (Epstein 2020). Despite the current ire against Big Tech, Mises reminds us that for these large corporations in a capitalist system the ultimate boss is the consumer, and that such corporations, “produce almost exclusively to satisfy the wants of the masses” (Mises 1979, 3, 21). Many of the most successful tech companies such as Google, Facebook and Twitter offer their software or apps free of charge or in the case of Amazon a huge selection of products at low prices with fast shipping, undermining notions of consumer harm (Sigaud 2020).

The current antitrust laws are better at regulating static industries as existed in the 19^{th} century and antitrust actions take years to prosecute while in a three or four year cycle the tech industry will have already moved on (Epstein 2017). The rapid change in technology and consumer preferences can quickly circumvent market concentrations with unforeseen innovation and regulation does not function well in rapidly changing, innovative industries, as exemplified by the exodus of users from Myspace to Facebook, desktop Personal Computers to mobile devices and Microsoft’s licensed software model to Google’s free cloud software options (Swire 2017). The TikTok app’s rapid ascendency with young people shows that not even Facebook is guaranteed to hold its dominance in the near future (Sigaud 2020). Friedman pointed out that government intervention is not the best answer to monopolies, rather “the most effective anti-monopoly legislation you could have, is free trade” (EdChoice 2009).

Criteria for Success

A main criterion for success would be the end of the U.S. federal government passing and prosecuting laws outside of its otherwise simplistic duty of upholding the protection of life, liberty, and property. President Thomas Jefferson in his first inaugural address postulated that a prosperous society required “a wise and frugal government, which shall restrain men from injuring one another, shall leave them otherwise free to regulate their own pursuits of industry and improvement, and shall not take from the mouth of labor the bread it has earned. This is the sum of good government…” (Jefferson 1801). By focusing specifically on negative rights, as compared to passing legislation and regulations that give priority of any group over another, government intervention in the market and the cronyism that engenders will be greatly limited. A Jacksonian-era writer William Legett stated that governments should be focused solely on passing and upholding laws that were general, uniform and universal in their application, not granting privilege to specific industries or corporation (Paul 2008, 71). Just application of law would require treating “people in similar situations similarly,” while in a crony-influenced system, individuals, businesses or industries in similar situations are treated differently, which is unjust (Henderson 2012).

Secondly, limiting antitrust enforcement to violators of the “consumer harm standard” rather than pursuing cases based on ideology, political bias or lobbying pressure would be a massive improvement (Waller and Morse 2020, O’Sullivan 2018). If consumers are not being harmed by these large corporations, the market should decide when the next big tech innovation arrives (Bourne 2019). However, if a tech corporation is found to be violating consumer welfare in ways such as privacy violations for example, those specific activities should be adjudicated outside of antitrust law and regardless of a firm’s market share (Kennedy 2018).

A further criterion for success would be increased competition in the tech market driving innovation and economic growth. However, this would most likely occur in free a market with minimal government intervention as government attempts to regulate economic activity leads to the state effectively picking winners and losers which engenders the cycle of cronyism and ignores the “the invisible hand” of individuals’ self-interest as described by Adam Smith (Boaz 2015, 55). Thomas Sowell explains that “promoting competition as a process is the opposite of promoting the survival of existing competitors” (Sowell 1995). Cronyism in all its forms is incongruent with a fair playing field and incompatible with the “free market” (Ikeda 2014). Scripture asserts that government dealings should be just and fair. Justice requires protecting the weak from the rich and powerful, as illustrated by the Biblical prophets’ warnings of judgement for those using their position to acquire wealth through corrupt means as found in Isaiah 10:1-2 (Fischer 2020, 9).

> We affirm a Biblical, covenantal view of free trade and capitalism, where people can freely engage in economic activity, in accordance with their God-given gifts and talents, with limited government intervention. So long as people are operating with justice and integrity, and so long as they are in good faith bringing value to their customers and customers want to continue to purchase their goods or services, they should be permitted to do so. However, a Biblical view of covenant requires that we reject materialism and greed and remember to care for the poor and to protect the environment while doing business. This is in keeping with Genesis 1:28 (Fischer 2020, 9-10).

Cronyism is rooted in the wrongful comingling of government and business spheres. Scripture shows us that power should be shared between “spheres” of authority throughout society, in this case, delineating the spheres of government and business (Kuyper 1880). Sphere sovereignty articulates that the various spheres are accountable to one another but must not transgress the authority of other spheres (Kuyper 1880).

The effects of cronyism should be no surprise to Christians, as it stems from man’s sinful nature and proclivity for selfishness and greed, 1 Timothy 6:9-10 states plainly that “Those who want to get rich fall into temptation and a trap and into many foolish and harmful desires that plunge people into ruin and destruction. For the love of money is a root of all kinds of evil.” The necessity of a limited government is also clear. As President Andrew Jackson referencing Matthew 5:45 pointed out that government interventions in the economy should only be to protect a level playing field and nothing more saying, “There are no necessary evils in government. Its evils exist only in it abuses. If it would confine itself to equal protection, and, as heaven does its rains, shower its favors alike on the high and the low, the rich and the poor, it would be an unqualified blessing” (PragerU 2016).

In the terms of the “sin-crime distinction,” government should be involved in the market only for the purpose of upholding and preserving inalienable rights and rendering justice to violators of those rights (Boaz 2015, 241). The Biblical text shows us that a free market would be based on the spontaneous order of individual voluntary transactions and is not innately sinful. When the government and its agents or powerful corporations lobby for crony policies benefiting special interests at the expense of the public good, those in influential positions are perverting justice, which is a sin and a crime (Monsma 2008, 55 and Fischer 2020, 9). Isaiah 10:1-2 specifically warns against this, “woe to those who make unjust laws, to those who issue oppressive decrees, to deprive the poor of their rights and withhold justice from the oppressed of my people” while James 2:9 admonishes, “But if you show favoritism, you sin and are convicted by the law as lawbreakers” (New International Version).

Recommendations & Conclusions

Lawmakers must reject "one-stage thinking" that refuses to count the secondary economic costs to consumers and the economy of politically expedient policies implemented solely to show some form of political action against business interests such as Big Tech (Sowell 2009, 6-8). Antitrust litigation, if it should be pursued at all, needs to return to the consumer welfare standard (Kennedy 2018). At the very least politicians and bureaucrats must resist pursuing antitrust action that would cause net harm to consumers (Bakst and Beaumont-Smith 2020). Legislating or regulating Big Tech strictly because of their market reach does not align with the consumer welfare standard (Sigaud 2020). Though a distinct possibility, single-firm dominance of the tech market does not necessarily equate to harm for consumers (Bourne 2019). The current antitrust suit against Google specifically involves the required bundling of the Chrome browsers on phones and tablets using Google's Android operating system, however it has been shown that even when Google is not the default search engine users will often voluntarily switch to it (Guynn 2020).

Antitrust should not be the venue to attempt to reconcile social or political ills or violations (Manne 2018). Attempting to discipline Big Tech for unrelated issues such as speech or privacy concerns will merely undermine antitrust law (Bakst and Beaumont-Smith 2020). Allowing the market to regulate itself is not necessarily an anarcho-capitalist pipedream, specifically in the area of Big Tech where consumers can "vote with their feet" much faster than any antitrust action by the state can take effect. This has been shown repeatedly since the internet became mainstream; "Myspace was rendered obsolete by Facebook, Internet Explorer by Google Chrome, and AIM by… many apps with instant messaging facilities" (Bourne 2019). Absent of any government coercion, November 2020 saw large migrations of millions of users unhappy with the censorship and fact checking of conservative viewpoints on Facebook, Twitter and YouTube during the election season to alternative free speech-embracing platforms such as Parler, Rumble, MeWe and others (Isaac and Browning 2020).

There is little historic precedent to presume the accuracy of "economically deterministic predictions of enduring monopolies" (Bourne 2019). Politicians and government bureaucrats often feel compelled to "do something" regarding perceived ills in society and the economy (Sowell 2009, 12). This overlooks the free market's ability to self-regulate through consumer choice, new competition and changes in technology, while disregarding the historic reality of secondary, and often negative, outcomes caused by government intervention in the economy (Sowell 2009, 13). Left to itself, the market will continuously shift resources to entities that best fulfill the needs and wants of the consumer, the only decision maker who rightfully should decide which enterprises succeed and which fail (Mises 2009, 17).

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