

"A Need for New Checks and Balances: Review of Tim Wu's *The Curse of Bigness: Anti-Trust in the New Gilded Age*"

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When the founding fathers wrote the United States Constitution in 1787, they were primarily concerned with preventing the federal government from exerting too much power. However, they mitigated this concern by decentralizing the government's power and developing a system of checks and balances. In his 2018 book, *The Curse of Bigness: Anti-Trust in the New Gilded Age*, Columbia Law School Professor, Tim Wu argues that the founding fathers were not able to picture a world where they needed to protect the people from private concentrations of power. However, we see potentially harmful monopolies dominating our private sector today. Wu's convincing argument underscores the need for our legal system to rethink our interpretation of antitrust law, and quickly if we do not want private power getting out of control.

Wu points to the rise of tech monopolies in recent years, companies like Facebook, Amazon, and Google, rapidly buying up their competition, as the new Gilded Age. To explain the current approach to antitrust policy in the United States, Wu leads his reader through over 100 years of US history. The first large monopolies developed late in the 19th century with the formation of massive trusts. The most famous monopoly from the first gilded age was Standard Oil. Championed by John D. Rockefeller, Standard Oil first swallowed up its smaller competitors through cartels with other large oil companies, and then Rockefeller eventually consumed his larger competitors as well. In less than a decade, Standard Oil went from having 10 to 90 percent of the market share. Similarly, John Pierpont Morgan was merging hundreds of steel companies across the U.S. to create U.S. Steel.

These monopolies were able to flourish under President McKinley's laissez-faire economic policy. President Theodore Roosevelt who succeeded McKinley saw the political power of these growing monopolies, or trusts, as a threat to democracy. President Roosevelt played the role of "Trustbuster," first breaking up Morgan's railroad monopoly. Wu argues that this decision by Roosevelt was not only economic but also political. Wu explains that, "[Roosevelt] saw the antitrust laws as one antidote to the dangers of private economic power that might rival public power," as these laws could break up powerful trusts.

Later, in the decades following World War II, enforcement of antitrust laws hit their peak. There was lots of support for these laws politically, as Americans witnessed how monopolies in Germany and Japan intertwined with the government, contributing to the rise of fascist regimes, and people began to see antitrust law as essential to our democracy. However, by the mid-1960s the idea that monopolies were only bad if they impacted consumer welfare was introduced. In other words, monopolies were only bad if they raised prices for consumers; this is known as the Chicago school of thought. While this idea was considered absurd at first, within decades, the majority of the Supreme Court held this opinion on antitrust laws.

One of Wu's main critiques of this school of thought is that it does not account for the risks that come with monopolies attaining political and economic power. Even if monopolies are not raising prices for the consumer. Furthermore, Wu explains that competition drives innovation because when firms are competing they are always trying to put out a product that will make them the better choice for consumers. The Chicago school interpretation of antitrust law that monopolies are only bad if they disadvantage the consumer does not get at these broader issues with monopolies. Additionally, monopolies can be harmful to the economy, an idea captured by concept of economies of scale. In classical economic theory, as companies grow they become more efficient. However, if they get too big they become less efficient, and they begin to produce less output.

Wu explains that since President George W. Bush's administration, there has been no real trustbusting or breaking up of monopolies. At the end of President Clinton's administration, the justice department was successfully prosecuting Microsoft under antitrust laws, but this case was settled when President Bush assumed office without any breakup of Microsoft.

Wu explains that today there are monopolies in many industries. For instance, he cites that 75% of industries experienced increased concentration between 1997 and 2012. Wu specifically notes the in the telecom industry, the recent merging in the airline industry, major consolidation in the pharmaceutical industry, and the rise of big tech. Many of these monopolies maintain their power through influential lobbying groups, which when successful will reap them great and tangible rewards. Wu argues that it is groups like the middle class who are being hurt by these monopolies; however, the massive and diverse nature of groups like this makes it hard for them to organize lobbyist representation.

Perhaps the most tangible example of monopolies today is big tech. These corporations completely skirt the Chicago school of thought on antitrust because often they do not charge consumers to use their services, therefore they are not going to raise prices for consumers by crowding out or swallowing up competition. However, these companies possess immense power both economically and politically, but Wu argues that our antiquated way of interpreting antitrust doctrine is not adequate for regulating these firms.

For instance, Wu explains that Facebook, a social media platform, was able to acquire Instagram, a similar social media platform, in 2010, by arguing that these two platforms were not competitors. Wu argues that any teenager could have told the courts otherwise, but that this did not stop Facebook from purchasing its would-be competitor in the case of Instagram. Wu shows that it is not just Facebook gobbling up competition, but that Amazon and Google are doing the same.

So, what is to be done about the apparent rise of monopoly power in our country? Wu has a few solutions in mind. First, he wants mergers to be more carefully reviewed, arguing under the current system there are not broad or tough enough standards. Additionally, he would like to see a level of democratization and transparency introduced to the merger process. Unlike many issues of public concern, there is a technical and secretive nature to the merger process that prevents the average

American from knowing what is going on. Wu suggests that merger reviews, the quasi-judicial administrative processes that approve or deny mergers should be more available to the public.

In addition, Wu wants to see more big cases, like the famous breakups of trusts in the early 20th century and AT&T in the 1980s, in the present day. He argues that the U.S. should take a cue from Europe, which has undertaken more scrutiny towards big tech companies. Finally, Wu argues that we need to clarify the goals of antitrust regulation. These laws have both economic and political goals, which are not fully captured by the Chicago school of thought.

Wu's book is a brilliantly written and easy to follow history of antitrust law and a powerful call for more vigorous enforcement of antitrust laws. He breaks down an issue that is so complicated in a way that makes this topical information accessible to readers. The main takeaway from Wu's book, we need to get a handle on these trusts, consolidated powerhouses that our founding fathers didn't see coming. It is time for law makers to place checks and balances on private power, before this power gets out of control.