



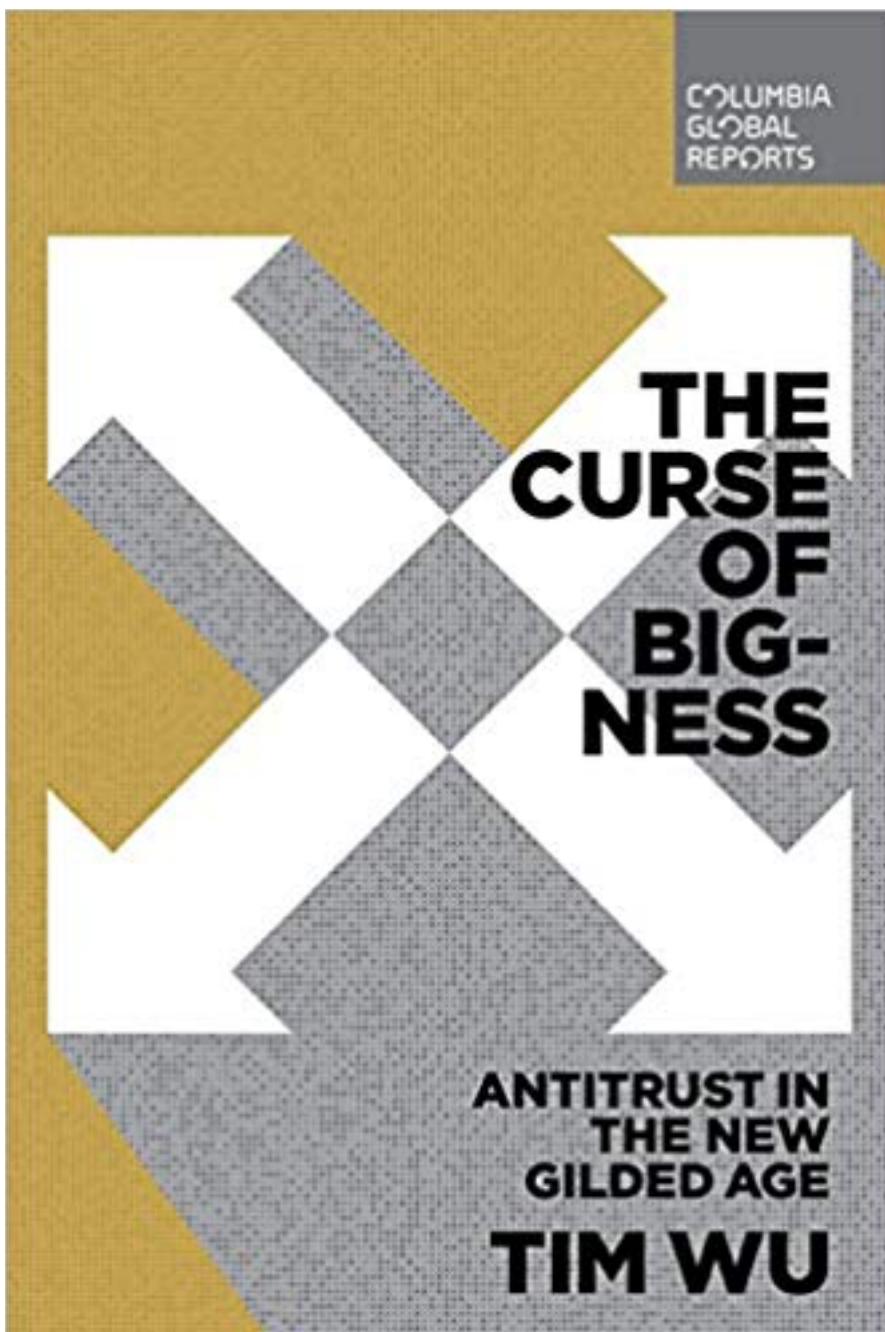
## #87: The Curse of Bigness

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### Overview

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"The main goal of this short volume is to see how the classic antidote to bigness—the antitrust and other antimonopoly laws—might be recovered and updated to face the challenges of our times."

I'm a huge fan of Tim Wu—The Master Switch and Attention Merchants are two of my favorite books—and The Curse of Bigness does not disappoint. It builds on ideas fleshed out in his earlier work and develops a case for the importance of modernizing antitrust for the modern age, and how to go about doing that.

While the prevailing thinking today is that the monopoly litmus test is the presence of elevated prices, corporations are able to negatively impact consumer welfare through a litany of others means, perhaps best summarized in this quote:

We like to speak of freedoms in the abstract, but for most people, a sense of autonomy is more influenced by private forces and economic structure than by government. For many if not most people, the conditions of work determine how much of life is lived—such basic matters as the length of hours worked, the threat of being fired, harassment or mistreatment by a boss, and for some jobs, questions as fundamental as personal safety or access to a bathroom. Beyond work, our daily lives are shaped profoundly by economic matters like rent, access to transportation or groceries, and health insurance, even more so than any abstract freedoms. That is why Brandeis saw real freedom as freedom from both public and private coercion." (pg. 41)

Wu draws significantly from the writings of Brandeis to build a case that the the "right to life" from the Constitution is not merely the right to exist, but the right to **live**. Today corporations run amok given the relatively bizarre blindspot of contemporary libertarianism: a bizarre tolerance of "mistreatment or abuse committed by so-called private actors." Given that much of the interpretation of antitrust laws is based on flawed and incorrectly applied frameworks (Bork, Chicago-school interpretations, etc.), we need to once again use the powers of government to limit the reach of today's monopoly giants.

## Book Notes

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### INTRODUCTION

- "The road to fascism and dictatorship is paved with failures of economic policy to serve the needs of the general public." (pg. 14)
- "The main goal of this short volume is to see how the classic antidote to bigness—the antitrust and other antimonopoly laws—might be recovered and updated to face the challenges of our times." (pg. 16)

- State of the industrialized world:
  1. Income inequality: The top 1% earn 23.8% of national income and control 38.6% of national wealth (pg. 20)
  2. Concentrated economies: industries dominated by fewer and larger companies

"With an economy that looks like a knock-off of the Gilded Age, is it any surprise that our politics have come to match it? The late nineteenth and early twentieth centuries were marked by brutal treatment of workers, the destruction of small- and medium-sized businesses, and broad economic suffering. That led to widespread popular anger and demands for something new and different. Strong leaders promised a return to greatness, bread for the workers, and a new order." (pg. 22)

- "Laws that would redistribute wealth are themselves blocked by the enhanced political power of concentrated industries." (pg. 23)

## THE MONOPOLIZATION MOVEMENT

- "The new monopolists of the Gilded Age preferred to believe that they were not merely profiteering, but **building a new and better society**. They were bravely constructing a new order that discarded old ways and replaced them with an enlightened future characterized by rule by the strong, by a new kind of industrial Übermensch who transcended humanity's limitations. The new monopolies were the natural successor to competition, just as man had evolved from ape." (pg. 26)
- "This was the Trust Movement's underlying philosophy and vision of what an economy should be: centralized, run by great men, free from any government interference, and to promote survival of the fittest, largely indifferent to the plight or demise of the weak, the poor, and the unfit." (pg. 28)

## THE RIGHT TO LIVE, AND NOT MERELY TO EXIST

- The "ideal" of democracy, should be "the development of the individual for his own and the common good." – Louis Brandeis
- "The true end of man, or that which is prescribed by the eternal or immutable dictates of reason...is the highest and most harmonious development of his powers to complete and consistent whole." – Wilhelm Von Humboldt (pg. 39)
- "The 'right to life' guaranteed by our Constitution [should be understood as] the right to live, and not merely to exist. In order to live men must have the opportunity of developing their faculties; and they must live under conditions in which faculties may develop naturally

and healthily." – Louis Brandeis (pg. 39)

- "What Brandeis noticed is something we often ignore. We like to speak of freedoms in the abstract, but for most people, a sense of autonomy is more influenced by private forces and economic structure than by government. For many if not most people, the conditions of work determine how much of life is lived—such basic matters as the length of hours worked, the threat of being fired, harassment or mistreatment by a boss, and for some jobs, questions as fundamental as personal safety or access to a bathroom. Beyond work, our daily lives are shaped profoundly by economic matters like rent, access to transportation or groceries, and health insurance, even more so than any abstract freedoms. That is why Brandeis saw real freedom as freedom from both public and private coercion." (pg. 41)
- A successful career from Brandeis's perspective...

"Developing a skill or craft, or building a good business, and practicing as best one could, while aspiring to live by high principles in both personal and business affairs."

- A blindspot of contemporary libertarianism: a bizarre tolerance of "mistreatment or abuse committed by so-called private actors." (pg. 41)
- "Every institution, public or private, runs the risks of taking on a life of its own, putting its own interests above those of the humans it was supposedly created to serve." (pg. 43)

## THE TRUSTBUSTER

- Roosevelt's thinking (and relevant today)...

"Ignoring economic misery and refusing to give the public what they wanted would drive a demand for more extreme solutions, like Marxist or anarchist revolution." (pg. 49)

- "A law like the Sherman Act, like the Constitution, is so broadly worded and unclear in its application that it does not take real meaning or shape without an enforcement tradition." (pg. 50)
- "The compatibility of extreme industrial concentration and democratic government is an uncertain proposition." (pg. 55)
- Mancur Olson on political influence...

"Olson's memorable conclusion is that the small and organized will dominate the large and disorganized." (pg. 56)

- Standard Oil was broken up into many modern day behemoths:

1. Exxon - Standard Oil of New Jersey
  2. Mobil - Standard Oil of New York
  3. Chevron - Standard Oil of California
- Monopoly breakups can spur further expansion of an industry (e.g Standard Oil or AT&T)– evidence of monopoly as an inefficient form (pg. 73)

## PEAK ANTITRUST AND THE CHICAGO SCHOOL

- Aaron Director of the University of Chicago Law School, pushed the idea of “consumer welfare” as “the measure of whether the economic prospects of the consumer were enhanced in a measurable way, which usually meant evidence of lower prices.” (pg. 85)
- Robert Bork was a student of Director; wrote *Legislative Intent and the Policy of the Sherman Act*, which became one of the most influential antitrust papers in history (pg. 88)
- “Bork’s radically narrow reading of the Sherman Act threw out the broader concerns that had long animated the Act and its enforcement. Most important was the idea that grounds much of this book: that **antitrust represented a democratic choice of economic structure and a check on the political and economic power of the monopolies.**” (pg. 89)
- “Bork’s legacy is an oversimplified economics that often rests on unfounded or disproven assumptions.” – Christopher Leslie (pg. 91)

“In truth, clad in the costume of economic rigor, Robert Bork’s attack on the antitrust was really *laissez-faire* reincarnated, without the Social Darwinist baggage, and with a slightly less overt worship of monopoly—but with much the same results. With narrow exceptions, mainly related to price-fixing, the government was once again barred from trying to influence economic structure, regardless of what Congress said or did. The belief that really mattered was that the market enjoyed its own sovereignty and was therefore necessarily immune from mere democratic politics. That meant that the antitrust law, which dared dictate what the economy should look like, needed be put into hibernation—perhaps forever.” (pg. 92)

## THE LAST OF THE BIG CASES

### CHICAGO TRIUMPHANT

- “The Harvard School grafted economic thinking onto existing antitrust doctrine in a way

that was both more moderate and more workable than Chicago, but accepting its main premises. Bit by bit, the Chicago critique reached deeper into antitrust law—zooming past the matter of vertical restraints and reaching the historic core of the law: the problem of monopoly. And here, breaking with its primary mandate, antitrust law underwent a truly radical change and suddenly became extraordinarily tolerant of the monopolist's conduct." (pg. 105)

- "The premise that elevated prices alone might attract new competitors is not irrational; yet, where the premise falls short is ignoring the fact that exclusionary tactics, the concern of the Sherman Act, might well keep out potential competitors while also allowing collection of higher profits." (pg. 106)
- "The Chicago School then asserted that that which did not exist in theory probably did not exist in practice...this premise has been at the core of Bork-Chicago antitrust for more than thirty years." (pg. 107)
- "Even if you took a strictly economic view of the antitrust laws, you didn't actually reach Bork's conclusions." (pg. 107)

## THE RISE OF THE TECH TRUSTS

- "The tech industry became essentially composed of just a few giant trusts: Google for search and related industries, Facebook for social media, Amazon for online commerce." (pg. 123)

## A NEO-BRANDEISIAN AGENDA

- "Courts should assess whether the targeted conduct is that which 'promotes competition or whether it is such as may suppress or even destroy competition'—the standard prescribed by Brandeis in his *Chicago Board of Trade* opinion issued in 1918." (pg. 136)
- "The struggle for democracy now and in the progressive era must be one centered on private power—in both its influence over, and union with, government." (pg. 139)