

ANTITRUST MYTHS: SPEAK TRUTH TO POWER

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I was born in the North End of Hartford, Connecticut, in late 1940. The North End is not the good end. The good end is the South End, or at least it was back then, with several exquisite Italian bakeries and paper cups of Galati-Ice sold on street corners. My closest well-off relatives lived in the South End.

I call them “well-off” because my uncle always drove a Cadillac and my cousin had a piano and a train set that covered the living room floor. But my parents, my sister, and I lived in the North End of Hartford, in a two bedroom third floor tenement apartment. When my sister and I brought the garbage down to the outdoor-shed every night, we would see the rats scrambling around rattling the garbage can covers. The neighborhood that we lived in was

poor Italian, poor Jewish, and poor Polish, with a sprinkling of blacks. Today, to go into the North End of Hartford, to Martin and Barber Street and to Keeny Park where I grew up, would require a flak jacket and a total absence of any common sense.

When I was 11 years old, my father had a serious fight with our landlord and we had to move out. We eventually moved out of the city to the country, where my dad was in the process of building a house. He was not a professional builder; his regular job was as a salesman for a plumbing supply company. But he went to the public library and took out books on building houses and decided that he could do it... and he did. I have photographs of my mother and me on the roof of our first house in the country, holding roofers in place and nailing shingles. Like most kids, I would rather have been playing baseball somewhere, but most weekends back then were for manual work so that we could all get the hell out of Hartford.

I grew up in the 1950's with a strong sense of optimism and romanticism about life. Sports and cool cars were important. Acting in school plays was important. Frank Sinatra singing on Capital Records was important. Ayn Rand was always important. Gene Kelly dancing with Leslie Caron in "An American in Paris" was very important; still is. That cultural "sense of life"—that really good things were possible with common sense and hard work—infused my *own* sense of life and helped shape my world-view and my goals.

In grammar school and in high school I was fortunate enough to have had two extraordinary teachers who encouraged me to write stories, to put words on paper. I admit that I did not need much encouragement; writing always came naturally to me. In almost 50 years of writing, I honestly can't ever recall having writer's block or being late with a promised writing assignment. I have, of course, worked hard at my writing over the years; it's almost second-nature now to write an op-ed piece for LewRockwell.com on, say, the insane policies of the Federal Reserve. But where that initial writing desire and proficiency came from is, frankly, a total mystery. I simply have no idea.

My serious interest in Austrian economics started in college and in graduate school where, outside the classroom, I first read Henry Hazlitt and Mises and Hayek and Schumpeter and especially

Murray Rothbard. I also read an antitrust essay written by someone named Alan Greenspan in Ayn Rand's "Capitalism: The Unknown Ideal." As an undergraduate at the University of Connecticut, I remember arguing with one of my economics professors, Dr. Paul Weiner, over the textbook he had assigned in my first antitrust course. The textbook was Clair Wilcox's infamous *Public Policies Toward Business* (Irwin Publishers) and Professor Weiner believed every word of it, and expected his students to do the same. The Wilcox text was certainly the conventional economic wisdom at the time. The orthodox antitrust mantra went something like this: "Pure competition was the ideal in terms of efficient resource allocation, big firms colluded or exercised monopoly power, and the government's antitrust laws were there to protect consumers... and they did protect them." End of any serious discussion.

When I raised objections to all of this, Professor Weiner dismissed Henry Hazlitt as a mere journalist and he dismissed Alan Greenspan as an Ayn Rand devotee without a Ph.D. And Murray Rothbard? Well, he had never even *heard* of Murray Rothbard! One episode with Professor Weiner sticks out in my mind sometime around the spring of 1960. Weiner would often dare some of his students to come back to his office and argue public policy questions with him. He had a blackboard in his office and once, in the heat of discussion with some of us, he allowed me to write something on it that I thought was quite profound at the time: I wrote: "*There is no competition in pure competition.*" When I finished writing Weiner just looked at me like I was from another planet and he shook his head. He didn't get it... and he told me to go study harder. That's pretty much the way it was in 1960.

Things were slightly better in grad school. Professor Bill Snaveley nurtured my budding interest in Austrian economics by assigning me a term paper on the so-called "calculation debate" between Mises, Hayek and the socialists. Shortly after I graduated, I would contribute an article on that intellectual debate (decisively won by the Austrians I might add) in a book that Bill published called *Theory of Economic Systems*. That article was my first professional contribution along purely Austrian lines.

My passion for antitrust theory and law was expanded enormously in grad school. I studied under Professor Joel Dirlam who was well-published in the antitrust area. Dirlam was a crusty,

old-school “progressive” and we could not have disagreed more on antitrust theory and public policy. Yet Professor Dirlam challenged me to prove him wrong by arguing with him in class. He also challenged me to go beyond textbooks and even journal articles and actually read the original court documents and testimony in antitrust cases to discover what really happened. Professor Dirlam, of course, would eventually cook his own goose with that suggestion because that’s when I first began to realize how distorted the orthodox understanding of antitrust history actually was. But even more importantly, I also discovered that Dirlam and most economists and law professors at the time had gotten most of their antitrust policy conclusions dead wrong because of fundamentally incorrect theories of competition and monopoly. But more on that later.

My first book *Myths of Antitrust: Economic Theory and Legal Cases*, was published by Arlington House in 1972. How did it come to be written? The answer is that when I first went to the University of Hartford to teach in 1967, I was asked to teach a senior-level course called “Government and Business.” The Wilcox text already discussed had been ordered by my department head before I arrived on campus, and the students and I both struggled with its poor reasoning and total absence of empirical information about alleged monopolistic behavior. It was at the end of my first year of teaching that I decided that I would eventually write a textbook consistent with some of the research that I was doing and with the lectures that I was giving. Little did I realize then how wildly inaccurate conventional antitrust theory and history really were; and little did I realize that writing a case book in this area would be a substantial undertaking requiring several years of research and writing. Besides, I had a new wife, no external funding, no research assistants and, needless to say, no word processor. I did have a portable Smith-Corona typewriter to pound away on... and so I began to pound away.

The *Myths* book was an attempt to do a major “revisionist” history of antitrust theory and policy. The State of Connecticut had an excellent law library in Hartford and so I buried myself in legal decisions and trial-record material for almost 4 years. My primary intention was to discover and report what actually happened in the classic antitrust cases from an *economic* perspective.

To my knowledge, no economist had as yet written a book-length criticism of antitrust enforcement. As an aside, Robert Bork's book, *The Antitrust Paradox* was published in 1978, six years after *Myths* appeared in print. That book was also highly critical of conventional antitrust theory and policy. But Bork, of course, was not an economist and certainly not an Austrian; he also thought antitrust policy could be reformed, not abolished. Bork was a lawyer by training and, indeed, the subject had been generally left to the lawyers and to the law professors who (mostly) were blissfully unaware that the *economic* evidence in the cases often contradicted their public interest legal analysis. Unlike the lawyers, however, I was interested primarily in two major issues: *one*, what economic theory of competition and monopoly was the government and the courts accepting as legitimate in these antitrust cases; and *two*, did the business firms accused of antitrust violations actually abuse consumers and, therefore, was antitrust a legitimate response to so-called free market monopolization?

I made an early decision to tell the story of the classic monopoly cases in the context of the actual historical development of the industry. How, for example, did the market structure in the petroleum and tobacco industries actually arise? Why did firms merge and were there so-called "barriers to entry" that unfairly kept profits up and new competitors out? Absent some historical discussion, the monopoly and price-fixing antitrust cases made little sense and the actual intent and effect of antitrust regulation remained obscure. Thus, examining (say) the classic antitrust decision against Standard Oil of New Jersey (1911) in the context of the history of the petroleum industry would give a unique understanding to my competition and monopoly analysis and sharply separate my book from any competitors. And after more than 40 years in print in various editions, I still think that the perspective that I adopted and the analysis that I attempted in that first book still holds up reasonably well.

Myths attempted to break several areas of new ground. It systematically attacked the dominant "structure/conduct/performance" paradigm that dominated industrial organization theory and public policy back in the 1960s. It presented an alternative quasi-Schumpeterian theory of open market competition to replace the orthodox, perfectly competitive equilibrium model. In addition, the

book exposed the soft underbelly of the “public interest” theory of antitrust by demonstrating that the firms indicted and convicted in the classic monopoly cases had actually been increasing outputs, lowering prices and innovating. Where available, I stuck the actual consumer prices and industry data right in the text.

And in its most radical chapter, the one on price-fixing, *Myths* argued that the effectiveness of business collusion was also an antitrust myth since high fixed costs and legally open markets always encouraged price cheating and secret discounts to customers. It even showed that the “electrical equipment conspiracy” of the early 1960’s, perhaps the most infamous price-fixing case in antitrust history, had not really worked. The companies cheated, broke their agreements, and prices were never “fixed.” Thus, *Myths* concluded that the entire body of antitrust policy—even including the price-fixing cases—was a complete public policy hoax and that absent any legitimate economic rationale, the entire legal framework hurt consumers and should be abolished.

Getting *Myths* published with that analysis and those conclusions proved difficult. My recollection is that at least 6 mainstream academic publishers rejected the book on the advice of reviewers. I remember that Norton Publishers actually sent me (at my request) several referee comments on my early chapters. Reading the comments was very, very depressing. Several of the reviewers claimed that I simply had no idea what the hell I was talking about and that my policy conclusions were, well, *outrageous*. Now, I will admit that to argue that the antitrust laws actually hurt competition and consumer welfare and that the only rational solution was to repeal the laws was far, *far* outside the mainstream in 1970. Yet, naïve as I was in the early days, I expected my theoretical arguments and case facts to be treated seriously. I was wrong; the mainstream academic publishers and their reviewers wanted no part of *Myths of Antitrust*. So eventually I sent the mostly completed manuscript to David Franke at Arlington House, and the book was completed and then published in 1972.

The immediate reaction to my book in the business and academic world was far less than I hoped, but about what I expected. Despite some important favorable reviews (especially one by economist Donald Dewey at Columbia), book sales were modest and the antitrust intellectual establishment did not come crumbling down

or even tremble noticeably. Indeed, most economists and law professors in the 1970s simply chose to ignore what I had written and called, instead, for more “vigorous” enforcement of antitrust law; indeed, back then there was even strong support for *new antitrust laws* to limit so-called industrial concentration. Which only goes to show that the academic investment in old intellectual capital can run very deep, indeed.

But, alas, there were at least two general exceptions to the academic indifference to what I had written. At Chicago and at UCLA in particular, various scholars (such as Yale Brozen and Jim Liebler) were reasonably sympathetic to my arguments and both published their own important criticisms of antitrust policy. However, the Chicago/UCLA crowd was always lukewarm to me and my arguments since I had attacked the “perfect competition equilibrium” model and had argued that even prosecuting price-fixing was a mistake. Besides, I had called for *repeal* of the antitrust laws and not reform which made me an extremist and a non-player in the academic/government merry-go-round. But a second group of supporters, the Austrians, led by Murray Rothbard, were very enthusiastic about my work and I was soon drawn into their intellectual world in a more systematic way. But that’s a story for another day.

By the early 1980s, the antitrust landscape had changed somewhat and I was encouraged enough to send a revised edition of *Myths* to John Wiley and Sons, a legitimate academic publisher in New York. Some weeks later, I still remember the phone call: I was in my office preparing for an evening class when an editor from Wiley named John Mahaney called. He said that he had my manuscript in front of him, was reading it, and wanted Wiley to publish it. At one point I said: “You know, it calls for the complete repeal of the antitrust laws.” He said, “yes” that’s what he understood, *but that John Wiley still wanted to publish it*. Bingo.

Eventually I went to New York and we settled on some revisions and a more academic but still provocative title: *Antitrust & Monopoly: Anatomy of a Policy Failure*. That book was published in 1982 and sold reasonably well with many positive reviews; it is still in print today with the Independent Institute in Oakland, Ca. and I still get small royalty checks. Interestingly, the guts of that book is still *Myths of Antitrust*, yet the antitrust world had changed

just enough in ten years to get *Antitrust & Monopoly* treated far more reasonably by reviewers this time around.

Actually, the only blatantly unfair review of *Antitrust & Monopoly* that I ever got came years later in 1991 from the “dean” of the old-school antitrust establishment, F. M. Scherer. Frederic Scherer was a Harvard trained economist, had been Chief Economist with the Federal Trade Commission, and was the author of the best-selling antitrust textbook *Industrial Organization and Public Policy*, which had instructed generations of antitrust economists and had been through umpteenth editions. Professor Scherer and I had actually met years before while we were giving opposing lectures on antitrust policy at Hillsdale College. Our luncheon discussion on antitrust, especially on price fixing, had not been pleasant, and Scherer’s shrill and inaccurate review of my book in the journal *Critical Review* in 1991 was payback, apparently, for having the audacity to challenge his entire antitrust world view.

The *Critical Review* editor, bless his heart, allowed me to write a detailed point-by-point rebuttal to Scherer’s hatchet-job attack on my book—a rebuttal which we cannot detail here—but which *must* be read by anyone seriously interested in the theory and practice of antitrust policy. I regard my rejoinder to Frederic Scherer as one of my finest and most persuasive pieces of professional writing. My guess is that Professor Scherer never let his own students read my point-by-point dismantling of their professor’s antitrust views.

What’s going on in the antitrust world today? All of the antitrust laws are still on the books; even the blatantly anti-consumer Robinson-Patman Act has not been repealed. The Antitrust Division of the Department of Justice still brings antitrust cases and the Federal Trade Commission has not gone out of business. And while neo-Austrian theories of competition and the market process are taken far more seriously now than 30 years ago, the structure/conduct/performance paradigm, though amended and modified, still dominates discussions of so-called “monopoly power” and is still legally relevant in tying, merger and all price-fixing cases. One has only to look back a few years at the *Microsoft* prosecutions or look forward at the current antitrust case against Apple Computer and several book publishers, to realize that the general antitrust myth and hoax still survives. The antitrust establishment—the lawyers, the bureaucrats, the academics and the corporations who

benefit from antitrust regulation—still hold the high ground in this struggle between economic liberty and governmental power.

I'm sometimes asked whether calling for the repeal of antitrust laws was a strategic mistake on my part. Didn't I hurt my career and even hurt the cause (for more rational antitrust policy) by taking such extreme theoretical and policy positions? It's certainly an important and fair question. Jim Liebeler, a now deceased UCLA law professor and an old friend, once told me that I had probably made two strategic mistakes. The first was that I had not graduated from Yale or Harvard University; he said that my arguments would have been taken far more seriously if I had. Jim was probably right about that. The second was that I had called for repeal and not reform of antitrust policy. Jim assured me that that sort of extremism just never goes over well in the legal and intellectual establishment. Again, Jim was probably right about that, too.

Yet in rebuttal to that line of argument, I wouldn't be at peace with myself or be presenting the Ludwig Von Mises Lecture here today in Auburn if I had gone only "half way" with my theoretical arguments or policy recommendations. The fact remains that all antitrust regulation is economically inefficient and morally wrong and all of it—the laws and the enforcement agencies—should be thrown out. I say this because it's right and because it's true and because it's always our obligation, regardless of the consequences, to *speak truth to power*. That's a tradition I'm told that has been followed quite rigorously here at the Mises Institute under Lew Rockwell.

Thank you all very much.