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An Anarchist Take on Antitrust Laws

Dangers and Possibilities

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Monopolies are pretty much universally bad. This is perhaps one of the most uncontroversial position amongst anarchists, who principally define themselves in opposition to the state, which Max Weber, in “Politics as Vocation,” defines as the monopoly on force and the approval of the use of force in a geographic area. Benjamin Tucker, the great U.S. individualist anarchist, defines four major monopolies as the great hindrances in the struggle for a free society: the land monopoly, the money monopoly, the patent monopoly, and the protectionist monopoly. And contemporary anarchist thinker Charles Johnson has expanded upon these to include the agribusiness monopoly, the infrastructure monopoly, the utility monopoly, regulatory protectionism, and the healthcare monopoly. And many non-anarchists have been and are deeply concerned with the dangers of monopolies. The “father of economics,” Adam Smith, in his famous treatise *The Wealth of Nations*, warns that “monopolists, by keeping the market constantly understocked, by never fully supplying the effectual

demand, sell their commodities much above the natural price, and raise their emoluments, whether they consist in wages or profit, greatly above their natural rate” and...

monopoly has so much increased the number of some particular tribes of [manufacturers] that, like an overgrown standing army, they have become formidable to the government, and upon many occasions intimidate the legislature. The member of parliament who supports every proposal for strengthening this monopoly, is sure to acquire not only the reputation of understanding trade, but great popularity and influence with an order of men whose numbers and wealth render them of great importance. If he opposes them, on the contrary, and still more if he has authority enough to be able to thwart them, neither the most acknowledged probity, nor the highest rank, nor the greatest publick services can protect him from the most infamous abuse and detraction, from personal insults, nor sometimes from real danger, arising from the insolent outrage of furious and disappointed monopolists.¹

These insights serve as the fountainhead for understandings of monopolies in economics and political economy to this day and demonstrate the dangerous impacts monopolists have globally. Consider the power that massive tech-based companies like Apple, Google, and Microsoft are garnering over the U.S. economy and government today. There is much, much, MUCH more to be said on the nature and effects of monopolies from numerous

¹ While neoclassical economics employs the narrative that British Adam Smith was the forerunner of economic thought, the fact is that Andalusian Muslim scholar and politician Ibn Khaldun outlined and elaborated upon the fundamentals of economics almost half a millennium before Smith. This is important information to note for the sake of the ongoing project of defying white supremacist historical narratives.

laws?’ is: sometimes but usually not (though we are certainly due our fair share of schadenfreude watching Google and Facebook squirm in the face of said legislation), or better put, ‘depending on the context and what other policies it could possibly be attached to.’ In conclusion—though it may seem vague—there is danger in monopolies of all kinds, from massive corporations to the state itself, and we, as anarchists, must be wary and contextual in our approach to their abolition.

The latter is a common process in parts in Latin America. For example, as the German communist group Wildcat accounts, as of 2003...

[i]n Argentina more than 150 factories are occupied, from workshops, to service companies, to factories and a four-star hotel. Most of them were bankrupt firms or had been about to go bankrupt when the occupations started. In all these companies major changes and developments took place . . . [and thus] ‘cooperatives’ are the current model in Argentina today, with which the state tries to contain the movement. The occupiers are supposed to give themselves a legal framework, to act according to the logic of economy and to recognize private property. Because at the end of the day they are supposed to buy the company from the owner once they managed to get it running. A lot of occupiers rely on this form of legalisation, because thereby at least they can avoid the pressure of eviction.

In essence, the combination of these processes would be the breaking apart of large industries and the placing of their infrastructure and assets into the hands of workers—sometimes collectively and sometimes individually. This might even ultimately take the appearance of Carson’s description, from *Studies in Mutualist Political Economy*, of a “joint free market Libertarian-Green project of nationalizing the hospitals [or other statist corporate entities] and then decentralizing them to mutualist ownership by the patients” (or workers or both). And though combining antitrust laws with homesteading confiscation may seem somewhat improbable under the current hegemony of American state-capitalism, all three processes have been formalized under governments with formal market systems. Therefore, I believe the answer to the question, ‘should anarchists support antitrust

perspectives (some of which will come up later in this piece), but this brief overview will serve as a jumping-off point to discuss antitrust laws—particularly in the United States—from an anarchist perspective.

Historically, one tool utilized to combat monopolies is antitrust law. As Courtland Culver writes in his article critical of antitrust laws, “Congress in 1890 [passed] the Sherman Antitrust Act, which effectively created a new branch of law called antitrust law. One of the primary facets of antitrust law is the government mandating that large corporations be broken up to enhance competition.” And there is much to be said, as touched upon earlier, about the necessity of combatting monopolies. Not only do these massive corporations have the power to raise prices artificially and strong-arm (or, more accurately, collaborate with) government, but as Barry Lynn and Kevin Carty of the Open Markets Institute write, the “rapid rise in monopolization has increased inequality in all sorts of ways.” And they give examples of the sort of abuses that emerge from monopolies, explaining how monopolies...

also have more power to exploit their workers because a monopolized economy brings less competition for the labor of the worker. In fact, one study from the University of Chicago found that individual wages today would be \$14,000 higher per year (yes, \$14,000!) if the economy had the same levels of competition as it had 30 years ago. It is no accident that Walmart — the nation’s biggest private employer — pays its workers less than a living wage, and crushes their unions when they try to organize. In many communities, workers have few places other than Walmart to sell their labor.

And furthermore, “[m]onopoly power is very often brought to bear against the least advantaged in an already unequal society. Monopolistic meatpackers and farm operators subject their

slaughterhouse workers, who are predominantly people of color, and their farm workers, who are predominantly immigrants, to exploitative labor conditions and stop them from forming unions to achieve better treatment. Monopoly, like the inequality it spurs, aggravates existing disparities.” They therefore speak very favorably of what they consider “the antimonopoly policies which had helped underwrite the democracy and broad-based prosperity established during the New Deal era.”²

Backing up these calls for antitrust law, Ralph Nader explains how “there is now a remarkably broad agreement among economists and lawyers specializing in antitrust studies that legal action must be taken to undo economic concentration” and...

[t]he last two Presidential Task Forces, representing liberal and conservative schools of thought, analyzed the problem for Presidents Johnson and Nixon. Both Task Forces repeatedly urged tougher enforcement to stop the monopoly of many industries by a few firms. The Johnson Task Force went so far as to urge legislation that would divide into more competitive firms any industry in which four or fewer companies held 70 percent or more of sales.

The problem of monopoly is therefore obvious, however, there are several problems that anarchists—despite their almost universal opposition to monopoly—must contend with. The most obvious is simply the question of whether it is consistent for anarchists

² We will put aside anarchist critical considerations of the New Deal in this piece, but excellent insights can be found in Andrew Cornell’s piece “Anarchists and the Rise of the Welfare State” (excerpted from his book *Unruly Equality: U.S. Anarchism in the Twentieth Century*), Nathan Goodman’s “The New Deal’s Legacy of Corporate Welfare,” Carson’s “Labor Struggle: A Free Market Model,” and “Chapter 6: The Rise of Monopoly Capitalism” (“Introduction” and “A. Liberal Corporatism, Regulatory Cartelization, and the Permanent Warfare State”) from his book *Studies in Mutualist Political Economy*.

secondary restrictions on the abuse of privilege it has previously conferred on state monopolies, so be it – although my first preference is to remove the primary grant of privilege.

In essence, though removing the means by which monopolies maintain their power—whether through intellectual property or the entire state itself—surely should be the long-term goal, it is a matter of context whether antitrust laws should be supported by anarchists. Perhaps then, we must look at the history, economics, and particular situation of any proposed antitrust action—in particular the aforementioned Hayekian contradictions (and ideological conflicts) within the state itself—and base our strategic consideration upon that.

Antitrust actions might be genuinely effective if used in tandem with more radical reallocations of ownership such as homesteading confiscation and the practice of factory occupation and recovery. The former was christened by Murray Rothbard during his time allied with the left in reference to the idea that those organizations (particularly productive entities) mostly or completely supported by the state should be largely broken apart and given to the workers themselves. As he writes of the 1952 and onward decommodification of Yugoslavia:

The nationalized plants in the “public” sector have all been transferred in virtual ownership to the specific workers who work in the particular plants, thus making them producers’ coops, and moving rapidly in the direction of individual shares of virtual ownership to the individual worker. What other practicable route toward destatization could there be? The principle in the Communist countries should be: land to the peasants and the factories to the workers, thereby getting the property out of the hands of the State and into private, homesteading hands.

outlawing low-cost forms of production. Once again, the monopolists find a friend in the regulatory state.

And without these corporate-favoring regulations and other state interventions, monopolies would be unable to stop the ability of challengers to “adapt and develop workarounds” and therefore would be unable to persist as monopolies. David S. D’Amato echoes this sentiment in arguing that the institution of new regulations is not only in danger of failing due to the Hayekian knowledge problem of economic planning, but that the allowance of voluntary interaction and natural competition free of state coercion is the ideal way to combat monopolies. I absolutely agree with this sentiment—though Rai Ling makes a compelling case that micro monopolies such as abusive households present situations where “lowering the cost of exit is not a catch-all solution.”

But despite these downsides to antitrust legislation, let us at least consider the possibility that *only* focusing on the removal of privileges may deprive anarchists of a potential tool in battling monopoly: the Hayekian and ideological contradictions *within* the state—mentioned earlier—that might allow for secondary attacks by the state upon its primarily allotted privileges. Carson—in a C4SS email exchange—offers this insight:

My approach to pretty much any question of state policy is to treat corporate/state power as a single nexus and view the proposal in a dialectical context with the aim of reducing the total burden of experienced coercion from the average person’s perspective. If antitrust achieves this, that’s great. If abolishing IP laws achieves it, that’s great. The goal is to reduce the levels of felt coerciveness for the system as a whole, including both its nominally “government” and “private” components. If that’s achieved by the state imposing

to support state intervention that might, in the long term, lead to a freer and more just society. This has been a longstanding debate within anarchism, and the argument over whether anarchists should participate in state politics for these reasons—often called ‘libertarian possibilism’—can be traced back as far as Pierre-Joseph Proudhon’s failed run for the French Constituent Assembly in 1848 and his subsequent successful run in the complementary elections. But such conversations continue in the work of modern anarchists such as Noam Chomsky, who argues that...

[i]n the long term, I think the centralized political power ought to be eliminated and dissolved and turned down ultimately to the local level, finally, with federalism and associations and so on. On the other hand, right now, I’d like to strengthen the federal government. The reason is, we live in this world, not some other world. And in this world there happen to be huge concentrations of private power that are as close to tyranny and as close to totalitarian as anything humans have devised.

Personally, I generally follow Kevin Carson’s prescription, from *Studies in Mutualist Political Economy*, not for “anarchist politicians” who will “run for office and exercise political power, like those who serve in the Catalanian Generalitat” but rather that anarchists’ “involvement in politics should take the form of pressure groups and lobbying, to subject the state to as much pressure as possible from the outside.”

However, putting aside these debates within anarchism about whether the state *should* be used for anti-monopolistic efforts, several fundamental issues emerge when discussing whether the state even *can* be used to combat monopolies. As mentioned before, according to the widely accepted definition by Weber, the state itself is a monopoly. But furthermore, the state has, throughout history,

generated other monopolies (as both the aforementioned Tucker and Johnson have discussed). Mike Holly outlines how eight major sectors in the United States, making up 92% of the GDP, are dominated by political-corporate interests. He demonstrates this in an extensive list worth reproducing in whole here:

- Banking (8%) is monopolized through the Federal Reserve central bank that regulates the banks and favors big over small banks, especially when controlling interest rates through the buying and selling of bonds from and to the big banks, respectively.
- Housing (15%) is monopolized through the Fannie/Freddie home mortgage duopoly and Federal Housing Administration that finance and promote larger homes and urban sprawl; while local politicians favor real estate developer cronies.
- Health care (18%) is monopolized through state licensure laws restricting the supply of doctors and other health professionals (according to Milton Friedman), certificate-of-need laws limiting the supply of hospitals, government and government-encouraged corporate buyer monopolies, and federal drug patent and other intellectual property laws.
- Agriculture (8%) is monopolized through subsidies favoring traditional crops and the monopolies selling inputs for and outputs from those crops, including seeds (e.g., GMO), corporate mono-culture farms and junk food processors. The subsidies discourage the development of alternative crops, diversified family farms and healthier foods. Subsidized crop exports traded by international conglomerates have been rendering agriculture uncompetitive in the developing world[.]
- Energy (12%) is monopolized through the U.S. government-encouraged OPEC oil cartel while U.S. electricity and natural

The direction of a regulatory agency can change from friendly to neutral or hostile, and vice versa, simply from the appointment of new commissioners whose beliefs differ from the old ones. Special interest groups must continually incur costs to make sure that the right people are appointed to a given agency, particularly when the tenure of a commissioner is short and not subject to permanent renewal, and these interest groups hold comparative advantages in political parties and presidential administrations.

On one level this might provide avenues to believe that perhaps, say, a democratic socialist appointee could utilize antitrust laws in a genuinely anti-corporate, antimonopolistic manner. But on the other, considering the moneyed and powerful interests involved, this seems far-fetched; the opposite is immensely more likely to be the outcome, or if the aforementioned demsoc does utilize antitrust effectively, there is no guarantee that the same law(s) will be used later for the opposite effect by a different appointee. All of these outlined abuses and potential abuses of governmental antitrust power in favor of corporate and anti-labor interests should be of deep concern to any anarchist.

At this point, it should also be mentioned that there is good reason to believe that in a future free society the present danger of monopoly will largely no longer exist. As demonstrated earlier, most monopolies are generated by the state, and consequently the abolition of the state will remove the ability to create them. As Carson argues,

One major effect of government regulation is to raise capitalization levels, entry costs, and overhead in ways that protect incumbent producers and secure monopoly rents to them. It's a lot cheaper to shut out lower-cost competition if you've got a big buddy

For another modern analysis, one can look to Robert A. Levy's "The Case Against Antitrust," wherein he outlines seven reasons why antitrust laws should be done away with. Some of these I find rather unconvincing, particularly his argument that "[a]nti-trust debases the idea of private property," which, as a left-libertarian opposed to the capitalist form of property, I am not overly concerned about. There are concerns I find relevant as a market anarchist, such as "[a]ntitrust remedies are designed by lawyers who typically do not understand how markets work" and "[a]ntitrust law is based on a static view of the market," though Levy's views of the market presumably revolve around elements like hierarchical corporations and capitalist growth. And there are a few points that seem especially relevant for all anarchists. For example: "[a]ntitrust law is wielded most often by favor-seeking businessmen and their allies in the political arena" and "[a]ntitrust will inevitably be used by unprincipled politicians as a political bludgeon to force conformity by 'uncooperative' companies." For the former, he shows how "[i]n the U.S. Department of Justice case against Microsoft . . . America's entrepreneurial enclave in Silicon Valley used its political influence to bring down its Washington state-based competitor."

And further danger is presented in the usage of antitrust legislation by anti-statists through Patrick Newman's considerations of the "Personnel is Policy" concept through the work of Kolko, pointing out that appointment in regulatory bodies is an incredibly important factor in their consequential actions—often cooperation with corporate interests. He argues that...

[r]egulatory capture does not follow a pre-determined path after the enactment of a regulatory law, even if the law itself does not change, because a change in the perspective of a given presidential administration or a new presidential administration can lead to a change in personnel and the outlook of the commission.

gas markets are controlled by territorial utility monopolies. The utility monopolies conduct rigged bidding of power supplies favoring cronies[.] The U.S. also creates energy monopolies by picking winners and losers among fuel types. Big Oil & Gas receives preferential exemptions from environmental regulations for fracking[.] The natural gas by-product of oil fracking is favored over otherwise lower-cost coal in base-load electricity markets and for backing up favored wind and solar energy. Wind and solar energy, and also ethanol vehicle fuel made from corn and cellulose, receive tailored mandates and subsidies that block the development of other potentially lower-cost energies including renewables[.]

- Transportation (10%) is monopolized through government regulations, including bailouts, favoring the Big Three automakers and airport favoritism for the four major airlines.
- Technology (8%) is monopolized through patent and copyright laws while regulated territorial franchises are awarded to local telephone, internet and cable monopolies[.]
- Government (13%) has created public monopolies through dominant federal, state and local funding, especially education.

Thus, there are distinct paradoxes in calling upon a monopoly—the state—which itself generates monopolies, to combat monopolies. However, this does not make such an effort impossible, as the state itself is often in contradiction with itself. Not only does a democracy (if the United States can even qualify as one) entail various conflicting ideologies and motivations existing all within the framework of the state, but Friedrich Hayek's insight that a centralized authority does not have the capacity to capture all the formal and informal information of an economy in order to coordinate it can also be applied to the state itself. This is what makes

such conspiracies as the Illuminati—a secretive group that apparently controls all world affairs—hard to believe despite their possible grains of truth (government officials, corporations, and the ultrarich certainly conspire toward their collective goals—as with the organization ALEC) because an entity of such size cannot have complete common interests and perfect flows of information, so various state institutions find themselves at odds with each other very often.³⁴ But despite the glimmer of hope in the contradictions within the state, there are issues with antitrust laws themselves.

Historically and presently, antitrust laws have not always been used to hurt concentrations of economic power, in fact sometimes they have done quite the opposite. New Left historian Gabriel

³ In reference to conspiracy theory thought, Carson writes in *Studies in Mutualist Political Economy* that it takes “as the primary motive force of history, personal cabals united around some esoteric or gratuitously evil ideology. Now, the concentration of political and economic power in the control of small, interlocking elites, is indeed likely to result in informal personal ties, and therefore to have as its side-effect sporadic conspiracies (Stinnett’s *Day of Deceit* theory of Pearl Harbor is a leading example). But such conspiracy is not necessary to the working of the system—it simply occurs as a secondary phenomenon, and occasionally speeds up or intensifies processes that happen for the most part automatically. Although the CFR is an excellent proxy for the foreign policy elite, and some informal networking and coordination of policy no doubt get done through it, it is essentially a secondary organization, whose membership are ex officio representatives of the major institutions regulating national life. The primary phenomenon is the institutional concentration of power that brings such people into contact with each other, in the first place, in their official capacities.”

⁴ This should not be mistaken for what Carson refers to, again in *Studies in Mutualist Political Economy* as “interest group liberalism:” The view that “although the state is the organized political means, it serves the exploitative interests of whatever collection of political factions happen to seize control of it at any given time. This picture of how the state works does not require any organic relation between the various interest groups controlling the state at any time, or between them and the state.” Although there are knowledge problems in any sizable organization, “[t]he state is not a neutral, free-standing force that is colonized fortuitously by random assortments of economic interests. It is by nature the instrument of the ruling class—or, as the Marxists say, its executive committee.”

Kolko contends, in his book *The Triumph of Conservatism*, that the Federal Trade Commission—established in 1914 as the body whose major purpose was the enforcement of antitrust laws—was not the product of a ‘progressive’ governmental effort but was in fact a business-led venture that helped further consolidate the corporate-government alliance. Furthermore, to continue looking historically, Nick Manley explains that up until 1914 with the Clayton Antitrust Act, “the courts interpreted labor unionism as a violation of antitrust law” (which is not even to mention Manley’s discussion of the other legal restraints around unionism post-1914 largely through Carson’s work). Furthermore, as Cory Doctorow accounts, “We’ve had forty years of antitrust forbearance that has created this great tendency towards monopoly; even in supply chains where important actors were skeptical of monopoly, they were kind of forced into it.” He shows the situation of how Big Pharma companies possess huge portfolios of drugs ‘protected’ by intellectual property for which they can almost completely control the prices. Hospitals in a region who require those drugs cannot band together and demand a lowering of prices because of antitrust laws. So instead, the hospitals merge with the pharmaceutical companies and begin raising prices for insurers, who in turn merge. But...

[t]here’s only one sector that can’t monopolize and that also can’t form a cartel, and that’s labor (or labor and patients, in this case). So you see doctors and nurses facing declining wages and worsening work conditions, and you see patients paying more to get worse care. And that’s because the unequal bargaining power that arises out of this monopoly forces monopoly until no monopoly can be forced (and then whoever can’t monopolize gets screwed).

Thus, in this type of scenario, antitrust laws actually cause a chain reaction of monopolization.