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Big Ink vs. Bigger Tech

Ramsi Woodcock — 30 December 2019

*[**TOTM**: The following is the fifth in a series of posts by TOTM guests and authors on the politicization of antitrust. The entire series of posts is available here.]*

This post is authored by Ramsi Woodcock, Assistant Professor, College of Law, and Assistant Professor, Department of Management at Gatton College of Business & Economics, University of Kentucky.

When in 2011 Paul Krugman attacked the press for bending over backwards to give equal billing to conservative experts on social security, even though the conservatives were plainly wrong, I celebrated. Social security isn't the biggest part of the government's budget, and calls to privatize it in order to save the country from bankruptcy were blatant fear mongering. Why should the press report those calls with a neutrality that could mislead readers into thinking the position reasonable?

Journalists' ethic of balanced reporting looked, at the time, like gross negligence at best, and deceit at worst. But lost in the pathos of the moment was the rationale behind that ethic, which is not so much to ensure that the truth gets into print as to prevent the press from making policy. For if journalists do not practice balance, then they ultimately decide the angle to take.

And journalists, like the rest of us, will choose their own.

The dark underbelly of the engaged journalism unleashed by progressives like Krugman has nowhere been more starkly exposed than in the unfolding assault of journalists, operating as a special interest, on Google, Facebook, and Amazon, three companies that writers believe have decimated their earnings over the past decade.

In story after story, journalists have manufactured an antitrust movement aimed at breaking up these companies, even though virtually no expert in antitrust law or economics, on either the right or the left, can find an antitrust case against them, and virtually no expert would place any of these three companies at the top of the genuinely long list of monopolies in America that are due for an antitrust reckoning.

Bitter ledes

Headlines alone tell the story. We have: "What Happens After Amazon's Domination Is Complete? Its Bookstore Offers Clues"; "Be Afraid, Jeff Bezos, Be Very Afraid"; "How Should Big Tech Be Reined In? Here Are 4 Prominent Ideas"; "The Case Against Google"; and "Powerful Coalition Pushes Back on Anti-Tech Fervor."

My favorite is: "It's Time to Break Up Facebook." Unlike the others, it belongs to an Op-Ed, so a bias is appropriate. Not appropriate, however, is the howler, contained in the article's body, that "a host of legal scholars like Lina Khan, Barry Lynn and Ganesh Sitaraman are plotting a way forward" toward breakup. Lina Khan has never held an academic appointment. Barry Lynn does not even have a law degree. And Ganesh Sitaraman's academic specialty is constitutional law, not antitrust. But editors let it through anyway.

As this unguarded moment shows, the press has treated these and other members of a small network of activists and legal scholars who operate on antitrust's fringes as representative of scholarly sentiment regarding antitrust action. The only real antitrust scholar among them is Tim Wu, who, when you look closely at his public statements, has actually gone no further than to call for Facebook to unwind its acquisitions of Instagram and WhatsApp.

In more sober moments, the press has acknowledged that the law does not support antitrust attacks on the tech giants. But instead of helping readers to understand why, the press instead presents this as a failure of the law. "To Take Down Big Tech," read one headline in The New York Times, "They First Need to Reinvent the Law." I have documented further instances of unbalanced reporting here.

This is not to say that we don't need more antitrust in America. Herbert Hovenkamp, who the New York Times once recognized as "the dean of American antitrust law," but has since downgraded to "an antitrust expert" after he came out against the breakup movement, has advocated stronger monopsony enforcement across labor markets. Einer Elhauge at Harvard is pushing to prevent index funds from inadvertently generating oligopolies in markets ranging from airlines to pharmacies. NYU economist Thomas Philippon has called for deconcentration of banking. Yale's Fiona Morton has pointed to rising markups across the economy as a sign of lax antitrust enforcement. Jonathan Baker has argued with great sophistication for more antitrust enforcement in general.

But no serious antitrust scholar has traced America's concentration problem to the tech giants.

Advertising monopolies old and new

So why does the press have an axe to grind with the tech giants? The answer lies in the creative destruction wrought by Amazon on the publishing industry, and Google and Facebook upon the newspaper industry.

Newspapers were probably the most durable monopolies of the 20th century, so lucrative that Warren Buffett famously picked them as his preferred example of businesses with "moats" around them. But that wasn't because readers were willing to pay top dollar for newspapers' reporting. Instead, that was because, incongruously for organizations dedicated to exposing propaganda of all forms on their front pages, newspapers have long striven to fill every other available inch of newsprint with that particular kind of corporate propaganda known as commercial advertising.

It was a lucrative arrangement. Newspapers exhibit powerful network effects, meaning that the more people read a paper the more advertisers want to advertise in it. As a result, many American cities came to have but one major newspaper monopolizing the local advertising market.

One such local paper, the Lorain Journal of Lorain, Ohio, sparked a case that has since become part of the standard antitrust curriculum in law schools. The paper tried to leverage its monopoly to destroy a local radio station that was competing for its advertising business. The Supreme Court affirmed liability for monopolization.

In the event, neither radio nor television ultimately undermined newspapers' advertising monopolies. But the internet is different. Radio, television, and newspaper advertising can coexist, because they can target only groups, and often not the same ones, minimizing competition between them. The internet, by contrast, reaches individuals, making it strictly superior to group-based advertising. The internet also lets at least some firms target virtually all individuals in the country, allowing those firms to compete with all comers.

You might think that newspapers, which quickly became an important web destination, were perfectly positioned to exploit the new functionality. But being a destination turned out to be a problem. Consumers reveal far more valuable information about themselves to web gateways, like search and social media, than to particular destinations, like newspaper websites. But consumer data is the key to targeted advertising.

That gave Google and Facebook a competitive advantage, and because these companies also enjoy network effects—search and social media get better the more people use them—they inherited the newspapers' old advertising monopolies.

That was a catastrophe for journalists, whose earnings and employment prospects plummeted. It was also a catastrophe for the public, because newspapers have a tradition of plowing their monopoly profits into investigative journalism that protects democracy, whereas Google and Facebook have instead invested their profits in new technologies like self-driving cars and cryptocurrencies.

The catastrophe of countervailing power

Amazon has found itself in journalists' crosshairs for disrupting another industry that feeds writers: publishing. Book distribution was Amazon's first big market, and Amazon won it, driving most brick and mortar booksellers to bankruptcy. Publishing, long dominated by a few big houses that used their power to extract high wholesale prices from booksellers, some of the profit from which they passed on to authors as royalties, now faced a distribution industry that was even more concentrated and powerful than was publishing. The Department of Justice stamped out a desperate attempt by publishers to cartelize in response, and profits, and author royalties, have continued to fall.

Journalists, of course, are writers, and the disruption of publishing, taken together with the disruption of news, have left journalists with the impression that they have nowhere to turn to escape the new economy.

The abuse of antitrust

Except antitrust.

Unschooled in the fine points of antitrust policy, it seems obvious to them that the Armageddon in newspapers and publishing is a problem of monopoly and that antitrust enforcers should do something about it.

Only it isn't and they shouldn't. The courts have gone to great lengths over the past 130 years to distinguish between doing harm to competition, which is prohibited by the antitrust laws, and doing harm to competitors, which is not.

Disrupting markets by introducing new technologies that make products better is no antitrust violation, even if doing so does drive legacy firms into bankruptcy, and throws their employees out of work and into the streets. Because disruption is really the only thing capitalism has going for it. Disruption is the mechanism by which market economies generate technological advances and improve living standards in the long run. The antitrust laws are not there to preserve old monopolies and oligopolies such as those long enjoyed by newspapers and publishers.

In fact, by tearing down barriers to market entry, the antitrust laws strive to do the opposite: to speed the destruction and replacement of legacy monopolies with new and more innovative ones.

That's why the entire antitrust establishment has stayed on the sidelines regarding the tech fight. It's hard to think of three companies that have more obviously risen to prominence over the past generation by disrupting markets using superior technologies than Amazon, Google, and Facebook. It may be possible to find an anticompetitive practice here or there—I certainly have—but no serious antitrust scholar thinks the heart of these firms' continued dominance lies other than in their technical savvy. The nuclear option of breaking up these firms just makes no sense.

Indeed, the disruption inflicted by these firms on newspapers and publishing is a measure of the extent to which these firms have improved book distribution and advertising, just as the vast disruption created by the industrial revolution was a symptom of the extraordinary technological advances of that period. Few people, and not even Karl Marx, thought that the solution to those disruptions lay with Ned Ludd. The solution to the disruption wrought by Google, Amazon, and Facebook today similarly does not lie in using the antitrust laws to smash the machines.

Governments eventually learned to address the disruption created by the original industrial revolution not by breaking up the big firms that brought that revolution about, but by using tax and transfer, and rate regulation, to ensure that the winners share their gains with the losers. However the press's campaign turns out, rate regulation, not antitrust, is ultimately the approach that government will take to Amazon, Google, and Facebook if these companies continue to grow in power. Because we don't have to decide between social justice and technological advance. We can have both. And voters will demand it.

The anti-progress wing of the progressive movement

Alas, smashing the machines is precisely what journalists and their supporters are demanding in calling for the breakup of Amazon, Google, and Facebook. Zephyr Teachout, for example, recently told an audience at Columbia Law School that she would ban targeted advertising except for newspapers. That would restore newspapers' old advertising monopolies, but also make targeted advertising less effective, for the same reason that Google and Facebook are the preferred choice of advertisers today. (Of course, making advertising more effective might not be a good thing. More on this below.)

This contempt for technological advance has been coupled with a broader anti-intellectualism, best captured by an extraordinary remark made by Barry Lynn, director of the pro-breakup Open Markets Institute, and sometime advocate for the Author's Guild. The Times quotes him saying that because the antitrust laws once contained a presumption against mergers to market shares in excess of 25%, all policymakers have to do to get antitrust right is "be able to count to four. We don't need economists to help us count to four."

But size really is not a good measure of monopoly power. Ask Nokia, which controlled more than half the market for cell phones in 2007, on the eve of Apple's introduction of the iPhone, but saw its share fall almost to zero by 2012. Or Walmart, the nation's largest retailer and a monopolist in many smaller retail markets, which nevertheless saw its stock fall after Amazon announced one-day shipping.

Journalists themselves acknowledge that size does not always translate into power when they wring their hands about the Amazon-driven financial troubles of large retailers like Macy's. Determining whether a market lacks competition really does require more than counting the number of big firms in the market.

I keep waiting for a devastating critique of arguments that Amazon operates in highly competitive markets to emerge from the big tech breakup movement. But that's impossible for a movement that rejects economics as a corporate plot. Indeed, even an economist as pro-antitrust as Thomas Philippon, who advocates a return to antitrust's mid-20^{th} century golden age of massive breakups of firms like Alcoa and AT&T, affirms in a new book that American retail is actually a bright spot in an otherwise concentrated economy.

But you won't find journalists highlighting that. The headline of a Times column promoting Philippon's book? "Big Business Is Overcharging you $5000 a Year." I tend to agree. But given all the anti-tech fervor in the press, Philippon's chapter on why the tech giants are probably not an antitrust problem ought to get a mention somewhere in the column. It doesn't.

John Maynard Keynes famously observed that "though no one will believe it—economics is a technical and difficult subject." So too antitrust. A failure to appreciate the field's technical difficulty is manifest also in Democratic presidential candidate Elizabeth Warren's antitrust proposals, which were heavily influenced by breakup advocates.

Warren has argued that no large firm should be able to compete on its own platforms, not seeming to realize that doing business means competing on your own platforms. To show up to work in the morning in your own office space is to compete on a platform, your office, from which you exclude competitors. The rule that large firms (defined by Warren as those with more than $25 billion in revenues) cannot compete on their own platforms would just make doing large amounts of business illegal, a result that Warren no doubt does not desire.

The power of the press

The press's campaign against Amazon, Google, and Facebook is working. Because while they may not be as well financed as Amazon, Google, or Facebook, writers can offer their friends something more valuable than money: publicity.

That appears to have induced a slew of politicians, including both Senator Warren on the left and Senator Josh Hawley on the right, to pander to breakup advocates. The House antitrust investigation into the tech giants, led by a congressman who is simultaneously championing legislation advocated by the News Media Alliance, a newspaper trade group, to give newspapers an exemption from the antitrust laws, may also have similar roots. So too the investigations announced by dozens of elected state attorneys general.

The investigations recently opened by the FTC and Department of Justice may signal no more than a desire not to look idle while so many others act. Which is why the press has the power to turn fiction into reality. Moreover, under the current Administration, the Department of Justice has already undertaken two suspiciously partisan antitrust investigations, and President Trump has made clear his hatred for the liberal bastions that are Amazon, Google and Facebook. The fact that the press has made antitrust action against the tech giants a progressive cause provides convenient cover for the President to take down some enemies.

The future of the news

Rate regulation of Amazon, Google, or Facebook is the likely long-term resolution of concerns about these firms' power. But that won't bring back newspapers, which henceforth will always play the loom to Google and Facebook's textile mills, at least in the advertising market.

Journalists and their defenders, like Teachout, have been pushing to restore newspapers' old monopolies by government fiat. No doubt that would make existing newspapers, and their staffs, very happy. But what is good for Big News is not necessarily good for journalism in the long run.

The silver lining to the disruption of newspapers' old advertising monopolies is that it has created an opportunity for newspapers to wean themselves off a funding source that has always made little sense for organizations dedicated to helping Americans make informed, independent decisions, free of the manipulation of others.

For advertising has always had a manipulative function, alongside its function of disseminating product information to consumers. And, as I have argued elsewhere, now that the vast amounts of product information available for free on the internet have made advertising obsolete as a source of product information, manipulation is now advertising's only real remaining function.

Manipulation causes consumers to buy products they don't really want, giving firms that advertise a competitive advantage that they don't deserve. That makes for an antitrust problem, this time with real consequences not just for competitors, but also for technological advance, as manipulative advertising drives dollars away from superior products toward advertised products, and away from investment in innovation and toward investment in consumer seduction.

The solution is to ban all advertising, targeted or not, rather than to give newspapers an advertising monopoly. And to give journalism the state subsidies that, like all public goods, from defense to highways, are journalism's genuine due. The BBC provides a model of how that can be done without fear of government influence.

Indeed, Teachout's proposed newspaper advertising monopoly is itself just a government subsidy, but a subsidy extracted through an advertising medium that harms consumers. Direct government subsidization achieves the same result, without the collateral consumer harm.

The press's brazen advocacy of antitrust action against the tech giants, without making clear how much the press itself has to gain from that action, and the utter absence of any expert support for this approach, represents an abdication by the press of its responsibility to create an informed citizenry that is every bit as profound as the press's lapses on social security a decade ago.

I'm glad we still have social security. But I'm also starting to miss balanced journalism.

1/3/2020: Editor's note – this post was edited for clarification and minor copy edits.

In Amazon, Antitrust & Competition, Apple, Banking, Constitutional Law, Corporate & Securities Law, Facebook, Financial Regulation, Google, Justice Department, Platforms, The Politicization of Antitrust, Truth on the Market Advertising, antitrust, bankruptcy, blog symposium, e-books, Instagram, New York Times, politics, Symposium

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