

Tim Wu & “The Curse of Bigness”

SEASON 2
episode five

Nicholas Lemann

Welcome to Underreported. I'm Nicholas Lemann, thank you for tuning in. We take it for granted the government should manage the economy for the benefit of ordinary citizens. But this wasn't what government did for the country's first century. When it began to involve itself in the economy, the first place it went was regulating the size and scope of big corporations, or trusts as they were then known. Antitrust law was a dominant element in American political debate in the early 20th century. Then, over time, it faded as a front-rank political issue.

Today, we welcome Tim Wu, the law professor and political activist who is one of the country's leading public intellectuals. His book is called *The Curse of Bigness: Antitrust in the New Gilded Age*, and was released in November 2018 from Columbia Global Reports. In it, Wu argues that the time has come to restore the primacy of antitrust. We need to understand bigness as a problem, and aggressive antitrust law is the solution. In the year since its release, this book has helped reframe the debate on the American economy. Tim, thank you for joining us today.

Tim Wu

Pleasure.

Nicholas Lemann

So let's start, as we new-agey people like to say, tell me about your journey that led you to antitrust. A lot of readers who've been following you for years think of you as a tech guy. In the time since we published the book, the tech antitrust-connection has become obvious. But it wasn't always. So what got you here?

Tim Wu

That's a great question. So I am a tech guy. I spent a lot of time in Silicon Valley in the late nineties, early 2000s. And I guess what got me to antitrust was the aftermath of tech consolidation and the feeling that, you know, this ideal that we'd had that we could re-engineer the economy to inspire entrepreneurs, and that it could be a kind of lifting force for lots of people.

This was, you know, the early ideals of the nineties, and Silicon Valley had been laid

waste by an old foe, namely bigness, or excess of scale. And that sort of a flourishing ecosystem had turned into just a few companies. That's part of it. A big part of it.

I also think I was individually inspired by Louis Brandeis and his vision of a flourishing life and what the economy could be, and those in some ways combined on this subject of antitrust. Which, you know, during the years we're talking about, had kind of retreated into a much more silent version of itself than it had been historically.

Nicholas Lemann

So let's go back and establish for those not familiar what antitrust is. So starting sort of at the beginning, what was the Sherman Act of 1890?

Tim Wu

So the easiest way to understand it is just as an anti-monopoly law. In the late 19th century, the American economy was transformed from an economy mostly comprised of small producers and small businesses into one dominated by a series of trust monopolies. You know, one per industry. There was a sugar trust, an oil trust – that was Standard Oil run by John Rockefeller – the railroads were monopolized.

So you had an entirely different economic structure emerging. And it produced an enormous backlash, a popular backlash among people who felt not only was this economically dangerous, but in some ways intentional or a betrayal of the ideas of the Constitution, which had always stood for the idea of controlling concentrated power.

So that is what the initial antitrust laws were. Very simply, a reaction to the monopolization of the US economy in the late 19th century.

Nicholas Lemann

So skipping ahead, and this is one thing that kind of is a strange thing to think about for us lay-people. Monopoly isn't actually illegal in US antitrust law, right? So how can that be, if the laws were passed to curb monopoly?

Tim Wu

That's a good question. It's been contested whether they meant monopoly itself to be illegal. The statute, the law itself says monopolization is a crime. And typically in the

criminal law, you punish conduct, not status. In fact, it's unconstitutional to punish people for, let's say, being a drug addict, as opposed to doing something.

Nicholas Lemann

Right.

Tim Wu

So that sort of technicality, it seems pretty clear that they were against monopoly and wanted to clear the world of monopoly. But in some technical way, the status of being a monopolist is not illegal.

Nicholas Lemann

Let's now go to Louis Brandeis and just tell us about him. Who was he and where was he in this debate about monopoly and antitrust?

Tim Wu

You know, Louis Brandeis, this famous figure, justice of the Supreme Court and a confidant of Woodrow Wilson. But he might not have been a prominent figure if in the forties he hadn't become radicalized by the intrusions of the trust movement. Particularly, J.P. Morgan's intrusions into his home territory of New England.

Nicholas Lemann

You mean in his forties, not the forties.

Tim Wu

Yes, in his forties. You know, he's the kind of guy...

Nicholas Lemann

Which was early 20th century.

Tim Wu

Yes. He's the kind of guy who became radicalized later in life. Maybe like Elizabeth Warren. He just saw what was happening around him and wanted to do something.

So he led the resistance to the monopolization of New England Railroad and

transformed it into a J.P. Morgan, to sort of a tributary of the J.P. Morgan empire.

And in that process, I think sort of discovered his voice as a very effective advocate for, you know, an older American tradition, a tradition that stressed equality, small producers, sort of freedom of doing business.

And even more deeply, this idea of a kind of citizenship centered in ownership of your own means of production. So he wasn't a Marxist. He was actually quite different than the anarchists or the Marxist who were also socialists, very popular at the time. But, you know, a different kind of flavor, and had a profound effect on American economic policy in the early 20th century.

Nicholas Lemann

So let's go to, you mentioned his relationship with Woodrow Wilson, and just a little more sort of sketching in the history. And I want to bring up one point that you made, too.

So we get taught, at least in sixth grade that Theodore Roosevelt was a trust buster. 1912, you have – maybe this election that we're just entering will be the second – but that was an election, where a presidential election where antitrust policy was a big, big presidential campaign issue. You had three candidates: Taft, Wilson, and Roosevelt, who was running in a third party. And in particular, Roosevelt and Wilson were arguing about antitrust in a way that kind of complicates this picture of Teddy Roosevelt as a trust buster.

So could you sketch that out? And remember, Brandeis is advising Wilson and writing speeches for him and so on, and got rewarded a few years later by being appointed to the Supreme Court by Wilson.

Tim Wu

Yeah. So Theodore Roosevelt is a really important figure in this history. And as you allude to, there's in some ways two Theodore Roosevelts. The earlier version was a robust enforcer of the antitrust laws. Actually, I give him credit as the first enforcer. And he founds the tradition of trust busting. He is courageously willing to challenge J.P. Morgan and Rockefeller, two of the most powerful men of his age, or any age, and ultimately breaks up Standard Oil and puts a stop to J.P. Morgan's campaigns.

But somewhere in the -- out of office in the late 1900s, the naughts, he starts to change his thinking. I feel that he had this internal contradiction. He always, in

some ways admired the majesty of the large corporation. He believed in an imperial vision of the US nation or state. He liked enormous navies, things like that. And he started to think, well, you know, the thing to do isn't to break up these trusts, but to put them under government supervision and control. So that was his idea. The New Nationalism is what he called it.

Nicholas Lemann

Yeah, we've been talking a little bit – you probably haven't seen it yet, but I have a book that deals with this just out. And in the book, I coin a phrase which may be funny or may not, "Clash of the Titans liberalism." And that really to me is Roosevelt. He likes big corporations and big government. And as long as they're both big in his latter phase of his life, he was happy.

Tim Wu

Yeah, I think that's right. It's kind of an early version of this countervailing powers idea. But Woodrow Wilson, advised by Brandeis, and Taft, for that matter, were both committed to the older idea of breaking power, de-concentration of the economy. And so they rejected Roosevelt's visions.

It was kind of a close call. It's interesting to ask what might have happened if Roosevelt had won and if he had Congress on his side. Some of what Roosevelt was doing looks a little bit like what Mussolini would do later in his nationalism of the Italian economy.

Nicholas Lemann

Corporatism, and...

Tim Wu

Kind of corporatism, where, you know, the powerful state and the most powerful corporations are allied for the greater glory of mankind. That obviously went in directions that weren't all positive. So we may have really – the 1912 election, maybe it was the most consequential of the 20th century. Or one of them.

Nicholas Lemann

And then, you know, you get later – this is a lot in my book and not so much in your book – wars over these issues inside the New Deal between the camp that wants to have, you know, is very dismissive of antitrust and in the camp that isn't. And anyway, that's a whole other story.

Tim Wu

Looks it's like I'm behind a bit. But I do have an academic supplement which covers that period.

Nicholas Lemann

Well, there's a famous story where it's not just a story, it's in the archives, where Brandeis sends a message through an aide, while a sitting Supreme Court justice, to Roosevelt – FDR, not TR – saying, “You don't get it about bigness, and I don't like your policies here, and I want you to change your policies.”

I don't know if Supreme Court justices still do that kind of thing. But he did. It's in the archive. And then Roosevelt, I don't know what he did, but this is before the National Industrial Recovery Act was struck down by the court with Brandeis voting no.

So the point is, it's not a liberal or conservative issue. It's a fight, in the sense within both camps it's a big versus small issue. There's one other thing I want to bring up before we get a little closer to the present.

Tim Wu

Can I mention one thing, is I don't think it's gone away in our time.

Nicholas Lemann

No, not at all.

Tim Wu

In fact, I think that among those who are interested in restructuring the American economy right now, the same issues are coming up. Do want to – let's take Facebook. Maybe you wanted to get there. You know, do you in some sense make Facebook an established social media company who does what government says? Or do you break them up and reduce their power?

Nicholas Lemann

Well, I'm not ready for it to go there yet in this podcast, because I want to make a couple of stops on the way. So stop number one. When you go back and read this stuff in the sort of early, glorious antitrust days, there's one thing that's really, really

striking, to me at least, and that is – and you alluded to it, sort of – it's all about producers. It's not about consumers. Nobody ever says the word consumer.

When Ida Tarbell is writing her book, you know, attacking Standard Oil, it's on behalf of the little oil companies in western Pennsylvania, one of which was run by her father. It's not, no one is arguing about the price of oil at the pump to the gasoline buyer

So where did this – why aren't they talking about consumers? And where did consumers sort of get into the picture in the way antitrust is conceived?

Tim Wu

That's a great question. I think, as you said, the motivating force behind the Sherman Act and its reinforcement in 1914 is the protection of small producers, farmers, and other traditional elements of the American economy.

To the extent consumers are mentioned, there is concern with price jacking by monopoly. So that's the mentioning, but it's not – the idea of consumers as a unit isn't even there at all. Right. And so when does it change?

Nicholas Lemann

I mean, just to interrupt for a sec, just as an example, it's striking today. So, as you know, there was a New Deal era law called the Robinson-Patman Act that was supposed to protect small retailers against chain stores.

And, you know, the whole argument is, it's ironic in the age of Walmart and Amazon, because the whole argument is essentially, it's not of primary importance what price is delivered to the consumer. It's important to have small retail units just as a good for the public. And you can't imagine people even arguing that today. It's amazingly different as a frame. But anyway, so that leads...

Tim Wu

I think there's a broader story there. One beyond the scope of even this book, or maybe your book has it. Which is the re-imagination of what is glorious in the American economy. And I think there, you know, if you asked in the 19th century, the glory belong to produced, it's people who create things with their hands and skilled artisans.

You know, in our 21st century, and for some time now, a major goal of American economy has been to imagine everyone as consumers, and the overriding priority is getting them stuff cheap. And, you know, there's a long, big story about the rise of consumer culture, the rise of advertising.

And then also the specific influence of microeconomics as driving American economic policy, you know, and which centers on the consumer. So microeconomics is centered on the idea that what you aim for in economic policy is basically getting stuff to people for cheap. There's more complicated ways of putting it.

Nicholas Lemann

In market function, and things like that.

Tim Wu

Right. But you enable functioning of markets aiming for perfectly competitive markets, which drive prices down to marginal costs, and eliminate deadweight loss.

Nicholas Lemann

And it's not okay to think in terms of economic institutions in a sense.

Tim Wu

Well, the problem with thinking about producers from this perspective, or favoring small producers over large, is that the small producers might charge higher prices. And if your axiomatic idea is that you're trying to achieve perfect market competition, sort of classical economic sense, then that priority or any interest in producers is inevitably going to deviate from that goal.

And you know, some of this – so the transformation is really in the fifties, sixties, and seventies. You can see the first reflection of it in Learned Hand, famous judges', Alcoa decision, where he says, you know the Sherman Act was written to protect the vision of smaller producers, even if that comes at some cost of efficiency. That's what he says.

So he's already realizing this efficiency, which is, you know, the neoclassical economic thrust, but he said, you know, they made that decision. Well in the sixties and seventies, a powerful movement, you know, rising out of the Chicago School of Economics, starts to suggest, no, no, no, everyone had it wrong all along. The

Sherman Act was originally actually intended to reduce prices for consumers.

Now, that argument is made in the face of a huge amount of evidence, but they ignore the evidence. Robert Bork is the key figure who writes the legal side of this. The economists don't care about the intent of the Sherman Act, but he does. And, you know, for some time, Bork is taken as radical fringe.

You know, this is not what anyone thought the Sherman Act had said, but he catches on. I can say a little bit more about why that happens. I think consumers are hot in the seventies.

It's also on the left. You know, you have this idea of consumer rights being big, and Ralph Nader being a celebrity, and the Ford Pinto. And hey, how about, you know, making corporations care a little bit about how they're treating us? So it all kind of dovetails together, left and right, into this kind of consumer welfare revolution.

Nicholas Lemann

Right. And as you say, Bork is the key framing figure and liberals didn't fight back that much. There's a fascinating book that you probably know by Justice Breyer, before he was a justice, about how he was Ted Kennedy's chief aide, you know, helping deregulate the airline industry for consumer benefit. And you get a real blast of how appealing this was to liberals at the time.

And, you know, Ted Kennedy made his famous speech torpedoing Bork's Supreme Court nomination, and he didn't mention Bork's chief intellectual contribution on antitrust. He mentioned a bunch of other stuff.

So let's stop there, pause, and then start part two, which will take us into the present. So we'll be right here, wherever you are listening to us, very soon. And Tim's book again is *The Curse of Bigness: Antitrust in the New Gilded Age*, and is available in bookstores everywhere now. You'll find links to this and all of our books, as well as our blog, events, and more at globalreports.columbia.edu. That's globalreports.columbia.edu. I'm Nick Lemann. Thanks for listening.