



TRUSTBUSTERS

Aaron Director and the Origins of the Chicago School of Antitrust Part III—The Antitrust Project: Laying the Foundations for Chicago School Antitrust

BY WILLIAM KOLASKY

AS WE SAW IN PART II OF THIS SERIES ON AARON DIRECTOR and the *Origins of the Chicago School*, Friedrich Hayek was instrumental in persuading President Robert Hutchins to have the University of Chicago bring Aaron Director back to the University in 1946 to direct the Volker-funded Free Market Study.¹ Four years later, Director returned that favor by helping persuade President Hopkins to offer Hayek a position as a full-time tenured professor in an interdisciplinary graduate program called the Committee on Social Thought.² Hayek, who was in the midst of an acrimonious divorce that had left him estranged from his colleagues at the London School of Economics, quickly accepted.³

When the Free Market Study ended in 1951, Hayek helped persuade the Volker fund to support a second five-year research project at the University of Chicago under Aaron Director's direction, which

they called the Antitrust Project.⁴ Director asked Edward Levi, who had just become the law school's new dean, to act as "second in command" for this new project.⁵

Due in large part to the later work of Robert Bork and Richard Posner, the Antitrust Project has assumed an almost mythic place in the history of the Chicago School of antitrust not unlike the Camelot aura surrounding the presidency of John F. Kennedy, or perhaps even the Camelot legend of King Arthur and his Round Table itself. Chicago School adherents have written a host of articles about the project and Aaron Director's central role in changing the basic framework of antitrust analysis.⁶

Critics of the Chicago School naturally take a less favorable view of the project, due in part to the role of the Volker Institute and several large corporations in funding it. One of these critics, Robert Van Horn, refers to it as a "pro-trust project."⁷ Another critic, Matt Stoller, entitled his article *Aaron Director and the Triumph of Nihilism*. In it, he describes the Antitrust Project as part of "a brilliant and intellectually dishonest political movement to attack the ability of democratic institutions to touch economic questions."⁸

As with King Arthur's Round Table, much of what we know today about the Antitrust Project comes not from reading the studies conducted by Director and Levi's research associates, but instead from the later writings of Robert Bork, Richard Posner, and later generations of adherents to the Chicago School. Looking back at the origins of the Chicago School, therefore, can sometimes resemble looking through a glass darkly with our knowledge of later events distorting our vision of what really happened.

In this article, we will introduce Edward Levi and the four research associates that he and Director recruited to work on their Antitrust Project. We will then describe what Director and Levi saw as the purposes of the project. In the next installment of this series, we will review the studies their four research associates did as part of the project. We will then look at how Director and Levi themselves described the results of their study and the areas in which they believed further research was needed, as well as how their project was initially received.

Edward Levi and the "Little Band of Mixed Cats"

The photograph at the head of this article shows Levi and Director seated at a table with some of the team they assembled to work with them on the project: William Letwin, Robert Bork, Ward Bowman, and John Jewkes.⁹ Jewkes, who is standing behind Director to the right, was a visiting professor from Merton College at Oxford, where he had earned a reputation as "one of the leading classical economists in the world,"¹⁰ and was another of the members of the Mont Pelerin Society.¹¹ Jewkes was only at Chicago for one year, 1953 to 1954, during which he was working on a study on the sources of invention, which he published in 1958.¹² The other three men in the photograph (Letwin, Bork, and Bowman) were research associates Levi and Director recruited for the project. A fourth research associate, John McGee, is absent from this photo, as are two research associates, David Sillerman and David Sawers, both of whom worked with Jewkes on his study of inventions.¹³

Edward Levi. Without Edward Levi's support, there might not have been an Antitrust Project and it almost certainly would not have attracted such a talented team. Robert Bork describes Levi as

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“without question the most brilliant classroom teacher I have ever seen,” adding that “[i]t was his capacity to dazzle, to entrance, to see more rapidly than anyone else the ramifications of ideas that attracted many of us to antitrust.”¹⁴

Levi was also instrumental in securing additional funding for the project from several large corporations, including Standard Oil of Indiana (better known as Amoco), International Harvester, and Sears Roebuck.¹⁵ In addition, Levi played an active role in developing the project’s research agenda and in co-authoring an article with Director at the end of the project setting an agenda for further research.¹⁶

Levi’s Chicago roots ran deep. He was the grandson of one of the University of Chicago’s first faculty members, Rabbi Emil Hirsch, and the son-in-law of a member of its board of trustees. Levi received his entire education from grade school through law school at schools affiliated with the University before earning a post-graduate degree from Yale Law School as a Sterling Fellow.¹⁷ Levi then returned to Chicago to join the faculty of the law school in 1936.¹⁸

During World War II, Levi took a leave of absence to become a special assistant to the Attorney General of the United States, where he served from 1940 to 1945. There, he worked in the Antitrust Division under Thurman Arnold, Tom Clark, and Wendell Berge, first as head of the Consent Decree Section and then as first assistant to the head of the Division from 1943 and 1945.¹⁹ In 1944, Levi served as Chairman of an Interdepartmental Committee on Monopolies and Cartels, which recommended a program of vigorous enforcement against large multinational cartels that was instrumental in dismantling a number of cartels involving leading American, British, and German companies.²⁰

Levi returned to Chicago in 1945, where he resumed teaching courses in antitrust and elements, with students praising him “for his teaching ability, blending clarity, wit, innovation, and intellect.”²¹ Levi quickly became recognized as a distinguished “legal scholar, whose treatise *Introduction to Legal Reasoning* . . . remains a classic.”²²

Levi became dean of the law school in 1950. That same year, Levi also agreed to serve as general counsel to the Subcommittee on the Study of Monopoly Power of the House Committee on the Judiciary, chaired by Emmanuel Celler, a liberal Democrat from Brooklyn.²³ Levi returned to Chicago full-time in mid-1951, where he continued to teach and agreed to serve as a co-leader of the Antitrust Project while also serving as dean.²⁴

Levi brought to the project not only a deep understanding of the antitrust laws from having taught antitrust for more than a decade, but also extensive practical experience with their enforcement. Herbert Packer, who taught antitrust and criminal law at Stanford from 1959 to 1969, ranked Levi as one of the two “most brilliant scholars” of his generation, pairing him with Eugene V. Rostow at Yale.²⁵

The “Little Band of Mixed Cats.” Reminiscing about his work on the Antitrust Project two decades later, John McGee called the four research associates working on the project “a little band of mixed cats.”²⁶ As McGee recalled, they “were all thrown together in a relatively small group, housed together in cubicles on the main floor of the old law school.”²⁷ He then described how they interacted with Director. According to McGee,

You could go to him and talk to him about things. It turned out almost without exception that he proceeded to explain to you,

quickly, that what you had just said was dumb or in all events wrong and just why. So you’d leave that bunker and go out to the cubicles again and there would be much stirring, restorative stirring, among the junior members of this group to find out exactly what was said and what was to be done to repair your ego in the process. We drank a lot of coffee and some beer.²⁸

Looking back on his experience working on the Antitrust Project, Ward Bowman joined McGee in describing how being part of “the little group that worked with Director was the most stimulating period of my economic education.”²⁹

William Letwin. The handsome young man half-seated across the table from Levi and Director in the photo is William Letwin. Despite his dapper appearance, Letwin’s family background was similar to that of Director. His parents were Ukrainian Jews, in his case from a small town near Kiev. After fighting in the Russian Revolution in 1917, they emigrated from the Ukraine to the United States to escape the ensuing civil war and anti-Semitic pogroms. Settling in Milwaukee, they started a grocery store, which they struggled to keep open during the Depression.³⁰

Letwin attended the University of Chicago under a plan to benefit the brightest students from poorer schools.³¹ He graduated in 1943, and then joined the Army, serving in the Pacific as an intelligence officer on the staff of General Douglas MacArthur. After the war, Letwin returned to Chicago as a graduate student, but transferred to the London School of Economics on a Fulbright scholarship. He received his Ph.D. from the Committee on Social Thought at Chicago in 1951, and then worked as a post-doctoral fellow in the Economics Department from 1951 to 1952.³² The next year, he became a research associate in the law school working on the Antitrust Project.³³

Robert Bork. Standing at the end of the table to Letwin’s left is Robert H. Bork, before he grew his distinctive, but somewhat scruffy, beard.³⁴ Bork’s later career is familiar to most antitrust lawyers, but it may be worth taking a quick look at his early background.

Bork was born in Pittsburgh in 1927, where his father was a purchasing agent for a steel company and his mother an English teacher. He attended the Hotchkiss School, an exclusive private school in Connecticut, and later recalled that he spent most of his early years “reading books and arguing with people.”³⁵ After serving in the Marine Corps during World War II, Bork went west to the University of Chicago for both college and law school.³⁶ Despite his more privileged background, Bork—like Director—reportedly harbored socialist views when he first came to Chicago, but left an ardent libertarian.³⁷

Bork joined the Antitrust Project in 1953, after having just graduated from the law school, as the only lawyer other than Levi working on the project. Bork left after just one year to become an associate at Kirkland & Ellis.

Ward Bowman. Standing behind Levi to the right is Ward S. Bowman, Jr., the most senior research associate working on the project. Bowman was born in 1911. He received his B.A. from the University of Washington in 1933, and earned an M.A. in economics there a year or two later, but, like Director never completed a Ph.D.³⁸ During World War II, Bowman worked in Washington at the Antitrust Division, which is probably where he first met Edward Levi.³⁹

After Levi returned to Chicago, he hired Bowman to work as a research assistant at the law school.⁴⁰ In 1950, Bowman worked

with Levi on the staff of the House Judiciary Committee's Subcommittee on the Study of Monopoly Power. As part of the subcommittee's investigation of the steel industry, Bowman conducted a study of U.S. Steel's market share and financial performance, about which he testified at the subcommittee's hearings.⁴¹ When asked by the subcommittee what conclusions he drew from that data, Bowman testified that the high level of concentration and the large profits of the major steelmakers suggested that they had a measure of monopoly power but that he could not determine whether that could be explained by their greater efficiency or by some other less benign cause. He argued, however, that if a company had a large enough share of a market to give it monopoly power, the burden should be on that company to prove that its size was due to efficiency in order not to be guilty of monopolization.⁴²

John McGee. Missing from the photograph is John S. McGee. We have even less information about his life prior to his arrival at Chicago in 1953, other than that he received his Ph.D. degree in economics from Vanderbilt shortly before coming to Chicago.⁴³ McGee later recalled that when he arrived at Chicago, he "was confident that there was ever so much monopoly—malevolent—and that it could do almost anything you could imagine."⁴⁴ McGee says that Director, "with an economy of words and exposure more quickly than anything I've ever seen before or since, changed my view of the world." Director convinced McGee that "[a]lmost everything I knew was right was wrong," and "transformed my life as a professional."⁴⁵

The Purpose of the Antitrust Project

In January 1952, shortly after returning to Chicago, Edward Levi delivered an address at a Chicago Bar Association conference on antitrust entitled *A Two Level Anti-Monopoly Law*.⁴⁶ In it, Levi posited that the antitrust laws on monopoly seemed to be developing on two levels. The first level was a "no-abuse" theory based on *Alcoa*, which seemed to suggest that a company with a sufficiently high market share could be found guilty of monopolization unless it was an "accident[al]" monopolist that had monopoly "thrust upon it" by natural market forces.⁴⁷ The second level was an "abuse theory" based on cases decided both before and after *Alcoa*, which seemed to require a finding of "conduct injurious to competitors" in order to find a monopolist guilty of monopolization.⁴⁸

Levi noted the tension between these two theories. The first theory viewed monopoly as bad because it assumed that a monopolist could raise prices simply by cutting its own output; the second theory suggested that a monopolist could be guilty of monopolization because it charged prices that were too low in order to injure its competitors. Levi warned that these two conflicting theories were causing uncertainty among large enterprises as to what conduct would get them in trouble under the antitrust laws.⁴⁹

At the end of his address, Levi suggested three reasons for this uncertainty. The first was that the antitrust laws "reflect[ed] conflicting purposes and doctrines." The second was that they were "not the mirror of one economic theory carefully carried into application." The third was that the antitrust laws were "limited . . . by our own lack of knowledge" about business practices.⁵⁰ Levi worried that, as a result, the antitrust laws were "developing to a vague system of laws restricting the activities of large enterprises," which would lead

to "greater regulation" instead of leaving the market free to regulate their conduct through competition.⁵¹

There is probably no better statement of the purposes of the Antitrust Project. With these concerns in mind, he and Director set out, with the help of their four research associates, to address the three problems Levi had identified.

The "Conflicting Purposes and Doctrines" of the Antitrust Laws.

In addressing this first problem, Levi and Director assigned Bill Letwin to study the legal foundations and early history of the antitrust laws. That assignment led ultimately to his publication of what remains one of the best studies of the early history of the U.S. antitrust laws, *Law and Economic Policy in America: The Evolution of the Sherman Antitrust Act*.⁵²

In his chapter on the legislative history of the Sherman Act, Letwin shows that "Congress passed the Sherman Act in response to real public feeling against the trusts."⁵³ He quotes William Howard Taft as describing the Act's passage as "a step taken by Congress to meet what the public had found to be a growing and intolerable evil."⁵⁴ He attributes the public antipathy toward trusts as arising from a widespread view that

trusts . . . threatened liberty because they corrupted civil servants and bribed legislators; they enjoyed privileges such as protection by tariffs; they drove out competitors by lowering prices, victimized consumers by raising prices, defrauded investors by watering stock, put laborers out of work by closing down plants, and somehow or other abused everyone.⁵⁵

Letwin emphasized that Congress did not intend the Sherman Act to outlaw all trusts or other combinations. Thus, he quotes John Sherman as saying that it was only "the unlawful combination, tested by rules of common law and human experience, that is aimed at by this bill, and not the lawful and useful combination."⁵⁶ The difficulty, as Letwin recognized, is drawing the line between the two. As Letwin explained,

In many industries the most efficient scale of firms is such that only one or very few firms will exist if the operation of the market is the only compelling force. But if only one or very few firms exist, competition is effectively ruled out in that industry, since each firm can influence the price of goods by altering the quantity it produces. Indeed, in such a situation of monopoly or oligopoly, each firm not only can but inevitably does exercise private economic power. On the other hand, its scale makes it a highly efficient producer.⁵⁷

As was true when Letwin wrote this chapter in the mid-1950s, this "unresolvable dilemma" is "as live now as it ever was, and will continue so long as people place a high value on both economic efficiency and competition."⁵⁸ We can see it reflected in the recent Department of Justice and Federal Trade Commission monopolization actions against Google and Facebook. We can also see it reflected in the ongoing debate over whether merger policy has become too lenient, allowing industries to become more concentrated than is healthy for our economy and our society.⁵⁹

Critics of the Chicago School lay the blame for this increased concentration on Robert Bork's controversial claim that Congress intended the Sherman Act to be a "consumer welfare prescription," by which he really meant "total welfare," which he equated with economic efficiency.⁶⁰ Bork's critics argue that this formulation tilts the

balance too strongly in favor efficiency over competition. It is significant, therefore, that Letwin did not suggest anywhere in his book on the early history of the U.S. antitrust laws that Congress' only purpose in passing the Sherman Act was to promote economic efficiency.⁶¹ If anything, Letwin recognized that Congress intended the Act to protect competition, not just to assure consumers low prices, but to serve other societal and political objectives as well.

The Lack of “One Economic Theory” To Guide Application of the Laws. Director sought to address Levi’s second concern by arguing that the best way to view allegedly anticompetitive business practices was “through the lens of price theory.”⁶² According to Richard Posner, Director began with “the assumption that businessmen are rational profit-maximizers.”⁶³ Director then proceeded “in accordance with the tenets of simple price theory, *i.e.*, that demand curves slope downward, that an increase in the price of a product will reduce the demand for its complement, that resources gravitate to the areas where they will earn the highest return, etc.”⁶⁴

Sam Peltzman, who teaches at Chicago, has described how Director used the Socratic Method in working with his research associates to teach them how to apply the basic tenets of price theory to whatever business practice they were studying. As Peltzman explained:

You needed to start with the most basic question: how can a particular business practice maximize the value of the practitioner? You then needed to explore rigorously all the implications of the answer to that question. Even if you could not figure out all the implications or answer all the questions, you probably would have eliminated the monopoly answer or relegated it to a special case. The residual ignorance would then lead you to a greater weight on an efficiency rationale even if you could not articulate one explicitly.⁶⁵

“At the end of the day,” Peltzman writes, “Director had a simple test that could (at least in principle) distinguish among efficiency and monopoly stories: does the practice lead to higher or lower output? This test was perhaps simple and incomplete, but it is far more coherent than what went before.”⁶⁶

The “Lack of Knowledge” About Business Practices. Director and Levi understood that price theory alone could take you only so far. You could use it to develop a hypothesis, but you then needed to test your hypothesis empirically. Director and Levi, therefore, decided to have their Antitrust Project test the hypotheses Director had developed using the tenets of price theory through empirical studies of five business practices that had been a frequent subject of antitrust litigation: vertical integration, price discrimination, resale price maintenance, predatory pricing, and tying. Their principal source material for these studies were the records in antitrust cases involving these business practices.⁶⁷

In the next and final article in this series, we will examine the articles written by Director and Levi’s four research associates reporting on the results of their studies. We will then look at what lessons Levi and Director believed should be drawn from these studies, and in what areas they thought further research was necessary. This will set the stage for showing how the Antitrust Project laid the intellectual foundation for the later Chicago reformation led by Robert Bork and Richard Posner, who became the two most effective advocates for the approach to the antitrust laws that Director and Levi had pioneered. ■

¹ See William Kolasky, *Aaron Director and the Origins of the Chicago School of Antitrust Part II—Aaron Director: The Socrates of Hyde Park*, ANTITRUST, Fall 2020, at 153.

² See Edmund W. Kitch, *The Fire of Truth: A Remembrance of Law and Economics at Chicago, 1932–1970*, 26 J.L. & ECON. 163, 187–88 (1983); see also SYLVIA NASSAR, GRAND PURSUIT: THE STORY OF ECONOMIC GENIUS 375, 408 (2011).

³ See NICHOLAS WAPSHOTT, KEYNES-HAYEK: THE CLASH THAT DEFINED MODERN ECONOMICS 214–17 (2011).

⁴ See Robert Van Horn, *Reinventing Monopoly and the Role of Corporations: The Roots of Chicago Law and Economics*, in PHILIP MIROWSKI & DIETER PIEHWE, THE ROAD FROM MONT PELERIN 205–06 (2009)

⁵ *Id.*

⁶ See, e.g., George L. Priest, *Bork’s Strategy and the Influence of the Chicago School on Modern Antitrust Law*, 57 J.L. & ECON. S1 (2014); Sam Peltzman, *Aaron Director’s Influence on Antitrust Policy*, 48 J.L. & ECON. 313, 315 (2014); Richard A. Posner, *The Chicago School of Antitrust Analysis*, 127 U. PA. L. REV. 925, 928 (1979).

⁷ Van Horn, *supra* note 4, at 221.

⁸ See Matt Stoller, *How Powerful Ideas Can Shape Society: Aaron Director and the Triumph of Nihilism* (Sept. 17, 2019), <https://promarket.org/2019/09/17/how-powerful-ideas-can-shape-society-aaron-director-and-the-triumph-of-nihilism/>.

⁹ This photograph is from the files of the University of Chicago Law School Record, which has given us permission to use it in this article.

¹⁰ Editors, *The Return of Professor Jewkes*, 2 U. CHI. L. SCHOOL RECORD, Summer 1952, at 10–11, <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1002&context=lawschoolrecord>.

¹¹ Van Horn, *supra* note 4, at 207.

¹² See JOHN JEWKES, DAVID SILLERMAN & RICHARD STILLERMAN, THE SOURCES OF INVENTION (2d ed. 1969).

¹³ See Kitch, *supra* note 2, at 201.

¹⁴ ROBERT BORK, THE ANTITRUST PARADOX: A POLICY AT WAR WITH ITSELF IX–X (1978).

¹⁵ See David Bernstein, *Did Corporations Fund the Rise of Law and Economics in the 1940s and 1950s?* (Jan. 23, 2020), <https://reason.com/volokh/2020/01/23/did-corporations-fund-the-rise-of-law-and-economics-in-the-1940s-and-1950s/>. The other companies that provided funding for the study were Swift and Co., International Mineral and Chemical Co., and Borg-Warner Co.

¹⁶ See Aaron Director & Edward Hirsch Levi, *Law and the Future: Trade Regulation*, 51 NW. U.L. REV. 281 (1956).

¹⁷ Bernard D. Meltzer, *In Memoriam: Edward H. Levi (1912–2000)*, 67 U. CHI. L. REV. 971, 971–72 (2000).

¹⁸ *Id.*

¹⁹ U.S. Dep’t of Justice, *Edward Hirsch Levi: Seventy-First Attorney General 1975–77*, <https://www.justice.gov/ag/bio/levi-edward-hirsch>.

²⁰ See *id.*; see also WYATT WELLS, ANTITRUST AND THE FORMATION OF THE POST-WAR WORLD 89–135 (2002).

²¹ *Special Report: Edward Hirsch Levi*, U. CHICAGO MAGAZINE, Apr. 2000, <https://magazine.uchicago.edu/0004/features/levi.html>; Meltzer, *supra* note 17, at 971.

²² *Id.*

²³ See JOHN PAUL STEVENS, THE MAKING OF A JUSTICE: REFLECTIONS ON MY FIRST 94 YEARS 73–74 (2019).

²⁴ Van Horn, *supra* note 4, at 205–06.

²⁵ See HERBERT L. PACKER, STATE OF RESEARCH IN ANTITRUST LAW 58 (1963).

²⁶ Kitch, *supra* note 2, at 201.

²⁷ *Id.* at 202.

²⁸ *Id.*

²⁹ *Id.* at 200.

³⁰ Professor William Letwin; *Prominent Economist Who Played a Key Role in Promulgating the Free-Market Economics of the Thatcher Era*, THE TIMES (LONDON), Mar. 7, 2013, at Features p. 57.

³¹ Professor William Letwin; *Economist and Historian Whose London ‘Salon’ Attracted Isaiah Berlin, Milton Friedman and Keith Joseph*, DAILY TELEGRAPH (LONDON), at Features; Obituaries p. 31.

³² *Supra* note 30.

³³ Kitch, *supra* note 2, at 201.

³⁴ For a light-hearted discussion of Bork’s beard, see *Explanation for the Beard*, N.Y. TIMES, Sept. 17, 1987, at P11.

³⁵ Ethan Bronner, *A Conservative Whose Supreme Court Bid Set the Senate Afire*, WASH. POST, Dec. 20, 2012, at A1.

³⁶ *Id.*

³⁷ See TIM WU, *THE CURSE OF BIGNESS: ANTITRUST IN THE NEW GILDED AGE 85–87* (2018).

³⁸ See Richard A. Epstein, *Bork’s Bowman: “Not Gone, but Forgotten,”* 79 ANTI-TRUST L.J. 903, 904 (2014).

³⁹ See Kitch, *supra* note 2, at 182.

⁴⁰ *Id.*

⁴¹ See *Study of Monopoly Power, Hearings Before the Subcommittee on Monopoly Power*, 81st Cong., 2d Sess. 711–41 (1950) (statement of Ward S. Bowman); *id.* at 725 & 732 (noting Levi’s participation on staff and questioning Bowman).

⁴² See *id.* at 725, 727, 732–33. Witnesses testifying on behalf of U.S. Steel sharply criticized Bowman’s testimony, as would be expected. See *id.* at 733–35. Bowman later expanded on his recommendations as to how the antitrust laws should deal with highly concentrated industries under the antitrust laws in Ward S. Bowman, Jr., *Toward Less Monopoly*, 101 U. PA. L. REV. 577 (1953).

⁴³ See Van Horn, *supra* note 4, at 221 & n.42.

⁴⁴ Kitch, *supra* note 2, at 206.

⁴⁵ *Id.* at 185–86.

⁴⁶ See Edward H. Levi, *A Two Level Anti-Monopoly Law*, 47 Nw. U. L. REV. 567 (1952).

⁴⁷ *Id.* at 567, 569.

⁴⁸ *Id.* at 567, 571.

⁴⁹ *Id.* at 567.

⁵⁰ *Id.* at 585–86.

⁵¹ *Id.* at 567, 586.

⁵² WILLIAM LETWIN, *LAW AND ECONOMIC POLICY IN AMERICA: THE EVOLUTION OF THE SHERMAN ANTITRUST ACT* (Univ. of Chicago Press, 1965).

⁵³ *Id.* at 54.

⁵⁴ *Id.* at 56.

⁵⁵ *Id.* at 70.

⁵⁶ *Id.* at 96–97.

⁵⁷ *Id.* at 10–11.

⁵⁸ *Id.* at 10.

⁵⁹ See WU, *supra* note 37, at 133–37.

⁶⁰ See Barak Y. Orbach, *The Antitrust Consumer Welfare Paradox*, 7 J. COMPETITION L. & ECON. 133, 138 & 138 n.21 (2011).

⁶¹ See LETWIN, *supra* note 52, at 53–99.

⁶² Posner, *supra* note 6, at 928.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ Peltzman, *supra* note 6, at 329.

⁶⁶ *Id.*

⁶⁷ See Kitch, *supra* note 2, at 203 (transcript of Milton Friedman emphasizing the role Director played in “calling the attention of the economic world to the existence of a mass of data and information and problems in the legal case literature”).