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Original Paper

A Historical Study of the Relationship between Economic Schools and Antitrust Law

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Abstracts

This paper delves into the evolution of antitrust thought, tracing its intellectual lineage through various schools of thought. Starting with the Harvard School in the early 20th century, the paper highlights its structuralist approach, which emphasized the role of market structure in fostering anti-competitive behaviors. The Harvard School's SCP (Structure-Conduct-Performance) paradigm influenced U.S. antitrust enforcement, leading to the breakup of large corporations. The paper then shifts focus to the Chicago School, which emerged in the mid-20th century advocating for a behavioral approach centered on economic efficiency. The Chicago School's opposition to extensive government intervention and its emphasis on market self-correction challenged the structuralist orthodoxy. The subsequent development of the Post-Chicago School introduced refinements, acknowledging the limitations of perfect competition and incorporating insights from game theory and transaction cost economics. Finally, the paper explores the emergence of the New Brandeisian School, which proposes a reevaluation of antitrust policy in the digital era, advocating for a broader focus on market structure and competitive processes while rejecting a return to the Harvard School's strict structuralism. This paper contributes to the ongoing discourse on antitrust theory and its application in contemporary markets.

Keywords

Antitrust Theory, Harvard School, Chicago School, Digital Economy

1. Introduction

Antitrust has always been closely related to mainstream economic theories of specific periods. Indeed, antitrust policymakers sometimes apply economics unreasonably, sometimes veer towards the fringes rather than the core of economic theory, and sometimes even overextend correct viewpoints. With the rise of neoclassicism in the 1870s and 1880s, analysis became more detailed, and economists

increasingly recognized that imperfections in the market could lead to various anti-competitive behaviors. Antitrust policy closely followed the development of economics at this stage. Economists continued to dedicate themselves to studying the relationship between market structure, market conduct, and market performance, ultimately contributing to the establishment of industrial organization theory as an independent discipline within economics. Various schools emerged around industrial organization theory at different historical stages.

2. Representative of Structuralism: The Harvard School

2.1 Background

In 1938, Professor Roger Myerson of Harvard University conducted preliminary empirical validation of market structure and market conduct in competitive processes, proposing that the risks of monopolistic behavior might correlate with market structures of a certain scale. Later, in 1959, Professor Joe S. Bain of Harvard University comprehensively and systematically elaborated on the formula of market structure, market conduct, and market performance (the SCP formula) in his book Theories of Industrial Organization. The emergence of this theoretical formula marked the definitive birth of the Harvard School.

Under the influence of the Harvard School, U.S. antitrust enforcement agencies applied the SCP formula to analyze markets, initiating “breakup” sanctions against many large enterprises based on theoretical applications. These actions received support from federal courts, with landmark cases including Alcoa, AT&T, and Brown Shoe. The federal courts’ stance was: “Efficiency cannot constitute a defense, and the efficiencies claimed to result from mergers can even be used to attack those mergers, on the grounds that smaller competitors would be placed at a disadvantage.” The attitude reflected in these cases demonstrates that the SCP formula targeted large, highly concentrated corporations. The Supreme Court’s continued focus on applying the SCP formula in subsequent merger cases further indicated that during this period, “structuralism” was established as the dominant substantive standard for merger regulation. This approach fully reflected the Harvard School’s distrust of large enterprises and industries with high concentration levels.

2.2 Main Views

The Harvard School originated from empiricist research on the concentration of U.S. manufacturing industries and their monopolistic impacts. The empirical nature of the Harvard School’s theoretical model is primarily reflected in its analysis of specific markets. Its key conclusions include:

1) In industries with highly concentrated sellers, corporate profit margins exceed those in markets with dispersed or low-concentration sellers.

2) Industries with extremely high entry barriers are more prone to exhibit higher excess profits and monopolistic output levels than other industries, and oligopolistic competition is more difficult to achieve than anticipated.

3) The Structure-Conduct-Performance (SCP) paradigm developed by the Harvard School establishes the following assumptions:

4) As market entry barriers increase, the gap between the optimal price and cost for leading firms widens.

5) Market concentration facilitates implicit or explicit collusion.

In short, Structure (S) occupies the central position in the SCP paradigm. The monopoly profits of firms in highly concentrated industries result from market power and monopolistic conduct, but identifying specific behaviors is challenging. Instead, the Harvard School argues that such conduct can be inferred from market structure. Regarding firms' pricing or product strategies, the Harvard School views predatory pricing (below-cost pricing) and discounting practices by potentially dominant firms as illegal monopolistic behaviors.

2.3 Summary

The Harvard School emerged during the transition from laissez-faire economics to a period of state intervention in markets. Due to this unique historical context, it advocates for government intervention in markets—particularly in market structure—to improve economic outcomes. Thus, the Harvard School is known as structuralism. Its core propositions can be summarized as follows:

1) Positive correlation between industry concentration and accounting return on investment: Identifying highly concentrated market structures is simpler.

2) High concentration typically leads to high entry barriers, which allow incumbent large firms to secure monopoly profits while deterring new competitors.

3) Oligopolistic interdependence: In oligopolistic markets, a few dominant firms rely on mutual dependence and may engage in "tacit collusion" to implement illegal monopolies.

4) Predatory pricing and discriminatory discounts by large firms are also forms of illegal monopolization.

The structuralist antitrust ideology of the Harvard School aligns with its liberalist beliefs. The U.S. liberal tradition and values have profoundly influenced antitrust schools and the enforcement of antitrust laws. The Harvard School's structuralism reflects the fundamental stance of modern liberalism, which emphasizes active economic regulation through the "visible hand" of government intervention.

3. Representative of Behaviorism: The Chicago School

3.1 Background

The "Chicago Tradition" embodied in the Chicago School constitutes a key element of the conservative ideological spectrum. The school exhibits dual characteristics in theoretical construction:

Systematic Advocacy for Deregulation: It emphasizes that market systems and voluntary transactions are the optimal paradigms for coordinating social activities. By establishing a market-centric theoretical framework, it highlights decentralization as the core advantage of market operations. It argues that resource allocation and social welfare can achieve equilibrium through spontaneous order, thereby

negating the necessity of administrative intervention and mitigating the risks of power monopolization.

Scientific Transformation of Economics: It employs quantitative methods to transform economic research into an empirical scientific system. In policy terms, it develops institutional schemes that systematically weaken administrative regulation and strengthen market functions.

These academic features deeply reflect conservative values, particularly its advocacy of neoconservative economic theory. With the rise of neoconservatism in the U.S., the school's ideas gradually infiltrated judicial practice starting in the mid-1970s. Its influence stems from dual drivers:

Updates in adjudicative philosophy prompted by changes in Supreme Court justices.

Institutional anxiety triggered by the decline in U.S. firms' international competitiveness (e.g., dual losses in market share), which amplified the practical emphasis on the efficiency-first principle.

The school's propositions—such as the market's self-correcting mechanism and its derivative concept of regulatory restraint—gained sustained institutional vitality.

3.2 Main Views

The core propositions of the Chicago School are summarized as follows:

1) Economic Efficiency Centralism: Economic efficiency is the sole objective of antitrust law, encompassing productive efficiency (output value/input cost) and allocative efficiency (Pareto optimality).

These two efficiencies are inversely related: Monopoly incentivizes R&D to enhance productive efficiency but causes prices to deviate from marginal costs, reducing allocative efficiency. Policies should pursue net efficiency maximization.

2) Inherent Market Competitiveness: Highly concentrated markets still exhibit non-price competition (e.g., service improvements, product innovation).

Product differentiation not only fails to weaken competition but increases collusion difficulty, undermining traditional oligopoly theory.

3) Market Self-Correction: Monopoly is temporary, as high profits attract new entrants to dismantle monopolistic positions.

Governments need only accelerate market adjustments, avoiding excessive interference in natural resource flows.

4) Critique of Entry Barriers: Natural entry barriers are largely illusory; real obstacles stem from government regulation.

Free markets require unrestricted entry and exit; government intervention hinders efficiency.

5) Reassessment of Economies of Scale: Economies of scale are ubiquitous, existing not only within firms' internal production but also in inter-firm transactional networks.

Most business behaviors' efficiency drivers are hard to quantify.

Vertical mergers (including tying and resale price maintenance) have efficiency legitimacy. Monopolists cannot extract excess profits through vertical leverage, as competitive upstream/downstream markets naturally constrain firm behavior.

Profit-maximizing firms dominate markets, and competition ensures efficiency prevails. Even non-profit-oriented firms cannot escape market pressures.

6) Cautionary Interventionism: Government intervention must meet strict criteria: proving intervention benefits outweigh market self-correction costs.

Error costs are asymmetric—false positives (misidentifying anticompetitive conduct) are more harmful than false negatives (overlooking misconduct).

The efficiency model is apolitical, prioritizing total social wealth maximization. Any conduct with net positive benefits (firm gains > consumer losses, or vice versa) is deemed legal, regardless of distributive justice.

3.3 Summary

The Chicago School constructs an analytical framework grounded in market self-healing, economic efficiency, and mathematical modeling. It emphasizes that antitrust policy should adhere to the "principle of minimal intervention", fundamentally challenging traditional structuralist antitrust approaches. Key critiques of the Harvard School include:

The unreliability of claims that monopolistic profits in highly concentrated industries exceed those in low-concentration sectors.

Effective competition does not require numerous market players; even oligopolistic markets can foster competition, and collusion among a few firms does not eliminate all competition.

Monopolies self-correct over time, with judicial intervention merely accelerating this process. Unlike the Harvard School's focus on market structure, the Chicago School prioritizes firm behavior analysis, earning it the label of behaviorism.

4. The Further Development of the Chicago School

4.1 Background

Although the Chicago School dominated antitrust policy in the 1980s, its perfect competition model revealed significant flaws in explaining complex market behaviors. The 1992 Eastman Kodak Co. v. Image Technical Services case marked a turning point. When the court analyzed Kodak's dominance in the aftermarket using information asymmetry and consumer lock-in effects, it exposed the dynamic competitive complexities overlooked by the Chicago School. Kodak's control over 90% of the repair market despite holding only 20% of the new product market shattered the traditional framework of single-market definition, forcing the judicial system to incorporate game theory and transaction cost theory to analyze cross-temporal market power dynamics. The Post-Chicago School emerged to revise certain tenets of the Chicago School, arguing that markets are imperfect and that certain monopolistic behaviors cannot be eliminated solely through market mechanisms.

4.2 Main Views

The theoretical breakthroughs of the Post-Chicago School are reflected in five core revisions and refinements:

1) Reintegration of Structural Parameters: The school advocates that antitrust reviews of anticompetitive conduct cannot abandon market structural parameters. The existence of market power serves as a prerequisite for strategic anticompetitive behavior. Employing structural elements as screening mechanisms significantly reduces enforcement agencies' information-processing costs and optimizes regulatory resource allocation. This limited revival of structuralism represents a technical correction to the Chicago School's purely behavioral analysis paradigm.

2) Consumer Surplus as the Normative Benchmark: While retaining economic efficiency as a core criterion, the Post-Chicago School posits consumer surplus—rather than total social welfare—as the primary value judgment standard. It also acknowledges that competition policy must integrate non-economic values, including innovation incentives, protection of small and medium-sized enterprises, and fairness in market opportunities.

3) Predatory Pricing as a Strategic Signal: Based on information asymmetry between incumbents and potential entrants, the school argues that predatory pricing can function as a market-deterrence signaling mechanism. The presence of sunk costs creates dynamic rigidity in entry barriers. Incumbent firms may establish substantive barriers through strategic actions like capacity expansion or patent fencing, transcending traditional cost-benefit analyses. This framework introduces strategic interaction models under conditions of incomplete information.

4) Sustainability of Cartels via Repeated Games: By constructing repeated game models, the school demonstrates that collusion can persist when cartel members establish credible punishment mechanisms for defection. In industries with strong network effects or low monitoring costs, cartels may sustain long-term viability. This directly challenges the Chicago School's classical assertion of the inherent fragility of cartels.

5) Heterogeneous Effects of Mergers in Differentiated Markets: Mergers among firms with differentiated products generate varied competitive outcomes. When merged entities' products increasingly diverge from existing market offerings, the likelihood of post-merger price hikes rises significantly, as competitors with low substitution elasticity cannot adjust prices synchronously. Conversely, mergers in homogeneous markets are more prone to induce coordinated pricing or oligopolistic equilibria. This granular predictive model addresses the mechanical limitations of traditional market concentration metrics.

5. The Impact of Economic Schools on Antitrust Law

The evolution of antitrust law has been profoundly shaped by competing economic theories, each offering distinct frameworks for analyzing market power, competitive harm, and regulatory intervention. From the structuralist doctrines of the Harvard School to the behaviorist revolution of the Chicago School and the nuanced corrections of the Post-Chicago School, economic paradigms have not only influenced legal standards but also redefined the very objectives of antitrust enforcement. This chapter examines how these schools of thought have molded antitrust jurisprudence, policy tools, and enforcement priorities across different eras, while highlighting their enduring tensions and convergences.

5.1 The Harvard School: Structuralism as Legal Doctrine

The Harvard School's Structure-Conduct-Performance (SCP) paradigm dominated antitrust policy from the 1940s to the 1970s, embedding structuralism into legal doctrine. Its influence manifested in three key dimensions:

1) Presumption of Harm from Concentration

Harvard scholars like Joe S. Bain empirically linked high market concentration to reduced competition, arguing that industries with few dominant firms inherently incentivized collusion and monopolistic exploitation. This presumption translated into aggressive legal standards: Per se Illegality of High Concentration: Courts treated mergers leading to elevated market shares (e.g., above 30%) as inherently suspect. Landmark cases such as United States v. Aluminum Co. of America (Alcoa) (1945) and Brown Shoe Co. v. United States (1962) institutionalized structural thresholds, with Justice Warren declaring in Brown Shoe that antitrust law must "strike down mergers that create a 'reasonable likelihood' of structural harm." Hostility to Efficiency Defenses: The Supreme Court in FTC v. Procter & Gamble Co. (1967) rejected efficiency gains as merger justifications, fearing they would entrench dominant firms and "further disadvantage smaller competitors."

2) Enforcement Tools and Remedies

Structuralism prioritized structural remedies: Divestiture Orders: Breakups of monopolies like AT&T (1982) aimed to fragment concentrated markets. Merger Guidelines (1968): The DOJ's guidelines established strict Herfindahl-Hirschman Index (HHI) thresholds, prohibiting mergers in highly concentrated markets absent extraordinary circumstances.

3) Political and Ideological Alignment

The Harvard School's skepticism of corporate power resonated with postwar liberalism, which viewed antitrust as a tool to democratize economic power. This alignment is evident in Congress's 1950 Celler-Kefauver Act, which expanded merger control to curb conglomerates' rising influence.

5.2 The Chicago School: Efficiency as Antitrust's North Star

The Chicago School's ascendancy in the 1980s marked a paradigm shift, refocusing antitrust on economic efficiency and consumer welfare. Its impact unfolded through:

1) Theoretical Foundations

Price Theory and Rational Actors: Scholars like Richard Posner and Robert Bork reconceptualized antitrust through neoclassical price theory, positing that firms always act to maximize profits and that markets self-correct through entry and innovation.

Single-Market Efficiency Goal: Bork's The Antitrust Paradox (1978) argued that antitrust's sole objective should be total welfare maximization, rejecting structuralist concerns about fairness or decentralization.

2) Legal and Policy Reforms

Rule of Reason Revival: Courts adopted Chicago-inspired analyses, requiring plaintiffs to prove actual harm to competition rather than relying on structural presumptions. Continental T.V., Inc. v. GTE Sylvania (1977) exemplified this shift by upholding non-price vertical restraints under a reasonableness test.

Merger Guidelines (1982/1984): The DOJ revised merger standards to prioritize efficiency gains, allowing mergers if they enhanced productive efficiency even at the cost of higher concentration.

3) Case Law Transformation

Predatory Pricing: In Matsushita Electric Industrial Co. v. Zenith Radio Corp. (1986), the Supreme Court required plaintiffs to demonstrate a predatory pricing scheme's plausibility using cost-based metrics, reflecting Chicago's skepticism of such claims.

Vertical Restraints: State Oil Co. v. Khan (1997) overturned per se illegality for maximum resale price maintenance, endorsing Chicago's view that vertical agreements often improve distribution efficiency.

4) Ideological Legacy

The Chicago School's deregulatory ethos aligned with Reagan-era neoliberalism, framing antitrust as a technocratic endeavor to optimize markets rather than control corporate size.

5.3 The Post-Chicago School: Bridling Market Realism

Emerging in the 1990s, the Post-Chicago School introduced game theory, behavioral economics, and dynamic analysis to address the Chicago School's oversimplifications. Its contributions include:

1) Strategic Behavior and Market Dynamics

Game-Theoretic Models: Scholars like Carl Shapiro and Jean Tirole demonstrated how firms in concentrated markets could sustain collusion through repeated interactions or leverage network effects to foreclose rivals.

Two-Sided Markets: The EU's Google Shopping (2017) decision applied Post-Chicago insights, recognizing that dominant platforms could distort competition by privileging their own services in multi-sided markets.

2) Refined Merger Analysis

Unilateral Effects Doctrine: Modern guidelines acknowledge that mergers in differentiated markets (e.g., pharmaceuticals) can enable price hikes even without coordination, as seen in FTC v. Lundbeck Inc. (2010).

Digital Ecosystem Concerns: Cases like FTC v. Meta/Within (2023) reflect Post-Chicago fears that tech giants' acquisitions of startups may stifle future innovation.

3) Behavioral Antitrust

Incorporating insights from Kahneman and Tversky, scholars argue that cognitive biases (e.g., overconfidence, herd behavior) enable anticompetitive strategies traditional models overlook. This has influenced investigations into algorithmic collusion and "dark patterns" in digital markets.

5.4 Conclusion

Economic theories have not merely influenced antitrust law—they have redefined its DNA. From structuralism's crusade against corporate giants to Chicago's efficiency revolution and Post-Chicago's recalibrations, each school reflects its era's economic anxieties and ideological currents. As markets evolve, antitrust law will continue to serve as a battleground for competing visions of competition, reminding us that economics is not just a lens for interpreting markets but a force that shapes them.

6. Future Possibilities: The New Brandeis School

For super platform enterprises, regulation akin to the governance of public utilities could be considered. The "New Brandeisism" advocates that antitrust laws should focus more on market structure and competitive processes, yet it opposes a full return to the Harvard School's "structure-conduct-performance (SCP)" paradigm. Through a systematic critique of U.S. competition policy, the New Brandeis School proposes reconstructing the value foundation and practical pathways of antitrust law. It emphasizes transcending the narrow consumer welfare standard in the digital economy era and returning to the original legislative intent of the Sherman Act: curbing excessive capital concentration and safeguarding economic democracy. The rise of the New Brandeis School coincides with the global attention to super internet platform governance in the EU, U.S., and China. For decades, the Chicago School—which opposed monopolistic conduct rather than monopolistic status—dominated antitrust theory. Applied to internet platforms, this meant tolerating platform scale while targeting monopolistic behaviors tied to that scale. The New Brandeis School rejects the Chicago School's framework, arguing that the current antitrust approach—linking competition to short-term "consumer welfare" defined by price effects—fails to address structural market power in the modern economy. Measuring competition solely through output and price overlooks the negative impacts of platform dominance. This theoretical shift abandons the Chicago School's "market supremacy" dogma, seeking to integrate structuralist traditions with dynamic competition theory and digital governance tools. It aims to uphold the Sherman Act's pluralistic values of decentralizing economic power and ensuring fair opportunity while adapting to evolving monopolistic dynamics in the digital age. However, whether the New Brandeis School will solidify as a distinct school of thought and gain mainstream acceptance in antitrust jurisprudence remains to be seen.

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