

ANTITRUST ECONOMICS ON TRIAL

ADAMS AND
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ANTITRUST
ECONOMICS ON
TRIAL

*A Dialogue on the
New Laissez-Faire*

WALTER ADAMS AND
JAMES W. BROCK

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FOR

Frank Hyneman Knight
(1885–1972)

IN MEMORIAM

INTRODUCTION

FOR SOME twenty-five years, a shrill cacophony of divergent opinion has marked the debate on U.S. antitrust policy. Theorists against empiricists. Apostles of the Chicago-based New Learning against defenders of the traditional structure/conduct/performance paradigm. "Laissez-faire" advocates against "interventionists." "Neoconservatives" against "neoliberals."

Aside from the arguments of those who believe that antitrust is a counterproductive anachronism and should be abolished altogether, the debate has centered on the proper role of antitrust in a free enterprise economy. Is the central purpose of antitrust to promote a decentralized decisionmaking mechanism, or is it simply to promote a maximum of "consumer welfare"? Does concentration of power in the hands of a single firm or a few firms matter, or can we rely on the market to erode monopoly and oligopoly power? How should economic power be measured in the relevant product market and geographic market? Is there a trade-off between market dominance and superior efficiency? If so, how can it be measured, and how should the divergence be resolved? In this context, what is an appropriate policy toward mergers generally, and toward horizontal, vertical, and conglomerate mergers specifically? What scientific and practical guidelines are at hand to formulate a rational and workable policy on mergers?

Aficionados of the theater of the absurd¹ would find the character of the debate intimately familiar. There is an absence of communication—a terrifying diversity of utterances, with the actors on stage listening only to snatches and fragments of the dialogue, and responding as if they had not listened at all. At times the dialogue consists of statements that are in and of themselves perfectly lucid and logically constructed but lacking in context and relevance. At other times, absurd ideas are proclaimed as if they were eternal truths. In this dialogue of the deaf, the actors are animated by the certitude and unshakable nature of their basic assumptions—one side relying on the wisdom of past experience, the other prepared to sweep away the beliefs that have been tested and found wanting, beliefs they consider illusions and self-deceptions.

Above all, there is a degradation of language—a recourse to verbal banality. In an age of mass communication, language has run riot. Words border on the meaningless and lack authentic content. Often, dialogue consists of little more than ossified clichés, empty formulas, and popular slogans—a vulgarization of ideology.

Why did we write this book? Why this choice of genre to address a professional audience? Primarily to put in perspective the polemical books and pre-

¹ See Martin Esslin, *The Theater of the Absurd* (New York: Anchor Books, 1961). For specimens of the genre, see plays by Samuel Becket, Arthur Adamov, Eugene Ionesco, and Vaclav Havel. For a pioneering venture by an economist as playwright, see Leonard Silk, *Veblen: A Play in Three Acts* (New York: A. M. Kelley Publishers, 1966).

tentiously “scientific” articles that have done little to resolve the public policy debate. Primarily to lay bare the states of mind and images that constitute the hidden assumptions in the debate—to provide an intersection between what is visible and what is under the surface, to expose the latent content that forms the essence of the controversy. Primarily to expose the disguised meaning of the words used by the protagonists in the debate. Our dialogue finds absurdity not in the depths of the irrational, but in what on the surface appears to be rational. It seeks to demonstrate that “a false vocabulary systematically places the debate on false ground and makes it practically impossible to analyze the concrete reality.”²

The setting is a *voir dire*³ in a U.S. district court hearing a merger case. An exponent of the New Laissez-Faire is being examined to determine whether he/she is qualified to provide testimony as an economic expert. The expert is not set up as a straw man uttering lines concocted by partisan playwrights. His/her words are amply documented and accurately reflect the worldview of the so-called New Learning (Chicago school), which is currently popular in the federal judiciary. Our purpose is not

² Milan Kundera, “Candide Had to Be Destroyed,” in Jan Vladislav, ed., *Vaclav Havel, or Living in Truth* (London: Faber and Faber, 1986), 261.

³ A *voir dire* (literally, “to speak the truth”) is a judicial proceeding in which a witness is examined to determine his or her qualifications and competence to testify as an expert. See *Black’s Law Dictionary*, 5th ed. (1979), 1412.

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to preach a sermon or to impart a message or to declare a winner. That is a task for the reader.

In Ionesco's *The Bald Soprano*, Mrs. Martin asks "What is the message?" The Fireman replies, "That is for you to find out."

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**ANTITRUST
ECONOMICS ON
TRIAL**

***A Dialogue on the
New Laissez-Faire***

*The dialogue takes place
in a courtroom.*

*The participants are
a judge, an attorney,
and an expert witness.*

DAY 1 – THE TRIAL BEGINS; THE WITNESS DEFINES PRICE THEORY

JUDGE: We shall now proceed with the voir dire requested by the Government.

ATTORNEY: Thank you, Your Honor. [*To the witness*] Please state for the record your current occupation and title.

EXPERT: I am currently professor of economics at the University of Chicago, a fellow at the Cato Institute, and a consultant to the Heritage Foundation.

ATTORNEY: The Cato Institute and the Heritage Foundation are self-styled libertarian think tanks?

EXPERT: They are research organizations inspired by the laissez-faire philosophy and dedicated to the preservation of free enterprise institutions.

ATTORNEY: What other professional experience have you had?

EXPERT: After receiving my doctorate from the University of Chicago, I served as an assistant professor of economics at the University of Rochester and an associate professor at UCLA. During my sabbatical year, I was chief economist in the Justice Department's antitrust division; at the time, Professor William Baxter of the Stanford Law School was assistant attorney general in charge of the division. In addition

I have served as an economic consultant to the governments of Chile and Poland.

ATTORNEY: I assume you have published widely in your field?

EXPERT: Yes. I have published numerous books and articles on such topics as game theory, Cournot duopoly, contestability, dynamic Nash equilibria, optimal two-part tariffs, opportunism and self-disbelieved behavior, as well as public choice models of antitrust and other forms of government intervention. My articles have appeared in the *Journal of Economic Theory*, the *Journal of Political Economy*, the *Journal of Law and Economics*, the *Journal of Business*, and the *University of Chicago Law Review*.

ATTORNEY: With the exception of the *Journal of Economic Theory*, would I be correct in assuming that the other journals you mentioned are all published by the University of Chicago?

EXPERT: That is correct.

ATTORNEY: Would you tell us, Professor, what you consider to be your special field of expertise.

The Testimony on the Scope of Price Theory

EXPERT: Price theory.

ATTORNEY: Could you define that, please?

EXPERT: It is the science explaining rational economic behavior and the operation of markets.

ATTORNEY: And what is its relevance to law?

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EXPERT: Its relevance is much broader.

ATTORNEY: What do you mean?

EXPERT: In recent years, economists have used price theory more boldly in an effort to explain behavior beyond the narrow confines of the business world, and many noneconomists have followed their example. We have developed economic theories to explain racial discrimination,⁴ human fertility,⁵ crime,⁶ marriage and the family,⁷ divorce,⁸ suicide,⁹ drug ad-

⁴ Gary S. Becker, *The Economics of Discrimination*, 2d ed. (Chicago: University of Chicago Press, 1971).

⁵ Gary S. Becker, "An Economic Analysis of Fertility," in National Bureau of Economic Research Conference, *Demographic and Economic Change in Developed Countries* (Princeton, N.J.: Princeton University Press, 1960); Willis, "A New Approach to the Economic Theory of Fertility," *Journal of Political Economy* 81 (1973).

⁶ See sources cited in notes 13–15.

⁷ Gary S. Becker, *A Treatise on the Family* (Cambridge: Harvard University Press, 1981); id., "A Theory of Marriage," Parts 1, 2 *Journal of Political Economy* 81, 82 (1973, 1974); T. W. Schultz, ed., *Economics of the Family: Marriage, Children, and Human Capital* (1975); G. S. Becker and H. G. Lewis, "On the Interaction between the Quantity and Quality of Children," *Journal of Political Economy* 81 (1973); D. DeTray, "Child Quality and the Demand for Children," *Journal of Political Economy* 81 (1973); A. Freiden, "The United States Marriage Market," *Journal of Political Economy* 82 (1974); R. T. Michael, "Education and the Derived Demand for Children," *Journal of Political Economy* 81 (1973).

⁸ Gary S. Becker, Elisabeth M. Landes, and Robert T. Michael, "An Economic Analysis of Marital Instability," *Journal of Political Economy* 85 (1977): 1141. Applying price theory, the authors demonstrate that "women who become pregnant accidentally while searching for a mate have an incentive to marry quickly, even if they have not completed their search, because of their desire to 'legitimate' their children, and because they become less valuable to other potential mates. Put differently, they are more likely to accept a mismatch because the cost to them of additional intensive and extensive search has increased. Therefore, accidental premarital conceptions should increase the probability of marital dissolution" (p. 1151).

⁹ Daniel S. Hamermesh and Neal M. Sos, "An Economic Theory of Suicide," *Journal of Political Economy* 82 (Jan./Feb. 1974).

diction,¹⁰ politics,¹¹ education,¹² etc.¹³ Indeed, economic theory is singularly useful in providing a unified framework for understanding *all* behavior involving scarce resources, both market and non-market, both monetary and nonmonetary.¹⁴

ATTORNEY: Could you give us some examples?

EXPERT: Take crime, for example. As Professor Gary Becker argued in a seminal article,¹⁵ criminals are

¹⁰ See Gary S. Becker, Michael Grossman, and Kevin M. Murphy, "Rational Addiction and the Effect of Price on Consumption," Working Paper no. 68, Center for the Study of the Economy and the State, University of Chicago (Feb. 1991).

¹¹ Gary S. Becker, "Competition and Democracy," *Journal of Law and Economics* 1 (1958): 105–9; Downs, "An Economic Theory of Political Action in a Democracy," *Journal of Political Economy* 67 (1957).

¹² Gary S. Becker, *Human Capital: A Theoretical and Empirical Analysis* (New York: Columbia University Press, 1964, 1975); Sam Peltzman, "The Effect of Government Subsidies-in-Kind on Private Expenditures: The Case of Higher Education," *Journal of Political Economy* 81 (1973); T. W. Schultz, "The Formation of Human Capital by Education," *Journal of Political Economy* 68 (1960).

¹³ For a somewhat strained application of price theory, see Jeff E. Biddle and Daniel S. Hamermesh, "Sleep and the Allocation of Time," National Bureau of Economic Research Working Paper no. 2988 (May 1989). For a delightfully amusing application of price theory to the solution of murder mysteries, see Marshall Jevons [William Breit and Kenneth Elzinga], *Murder at the Margin* (Sun Lakes, Ariz.: Thos. Horton & Daughters, 1978); and id., *The Fatal Equilibrium* (Cambridge: MIT Press, 1985).

¹⁴ Gary S. Becker, *The Economic Approach to Human Behavior* (Chicago: University of Chicago Press, 1976), 205.

¹⁵ Gary S. Becker, "Crime and Punishment: An Economic Approach," *Journal of Political Economy* 76 (1968): 169–217. See also Gary S. Becker and William Landes, eds., *Essays in the Economics of Crime and Punishment* (National Bureau of Economic Research, 1974); Simon Rottenberg, ed., *The Economics of Crime and Punishment* (Washington, D.C.: American Enterprise Institute, 1973); Isaac Ehrlich, "Participation in Illegitimate Activities: A Theoretical and Empirical Investigation," *Journal of Political Economy* 81 (1973); id., "Capital Punishment: A Case of Life or Death," *American Economic Review* (June 1975). For an empirical/econometric analysis, see Peter Schmidt and Ann D. Witte, *An Economic Analysis of Crime and Justice* (Orlando, Fla.: Academic Press, 1984).

about like anyone else. They rationally maximize their own self-interest (utility), subject to the constraints (prices, incomes) that they face in the marketplace and elsewhere. Thus the decision to become a criminal is in principle no different from the decision to become a bricklayer or a carpenter, or, indeed, an economist.¹⁶

ATTORNEY: It is all a very rational process?

EXPERT: That is correct. Price theory demonstrates that punishment will deter crime.

ATTORNEY: Could you explain?

EXPERT: The reason is perfectly simple: Demand curves slope downward. If you increase the cost of an article, less of it will be consumed. Similarly, if you increase the cost of committing a crime, fewer crimes will be committed. The elasticity of the demand curve, of course, has to be taken into consideration. If the elasticity is low, the quantitative effect of raising the cost of engaging in delinquency will be relatively small. If the elasticity is high, the effect will be great.¹⁷

ATTORNEY: Can you furnish some other examples?

¹⁶ Paul H. Rubin, "The Economics of Crime," *Atlantic Economic Review* 28 (1978): 38. Similarly, Professor (now Judge) Richard Posner views the criminal as "someone who has chosen to engage in criminal activity because the expected utility of such activity to him, net of expected costs, is greater than that of any legitimate alternative activity." Richard Posner, *Economic Analysis of Law* (Boston: Little, Brown & Co., 1973), 365.

¹⁷ Gordon Tullock, "Does Punishment Deter Crime?" *The Public Interest* (Summer 1974), reprinted in Ralph Andreano and John J. Siegfried, eds., *The Economics of Crime* (Cambridge, Mass.: Schenkman Publishing Co., 1980), 127-36, 129. See also Gordon Tullock, "An Economic Approach to Crime," *Social Science Quarterly* 50 (1969): 59-71.