TRUSTBUSTERS

Aaron Director and the Origins of the Chicago School of Antitrust

Part II—Aaron Director: The Socrates of Hyde Park

BY WILLIAM KOLASKY

THE THREE MEN LOOKING AT YOU IN THIS PHOTOGRAPH are two Nobel Prize winners, Milton Friedman and George Stigler, and the lesser-known Aaron Director.* Of the three, Director, like Socrates, published almost nothing, failing even to complete his Ph.D. dissertation. Yet, through the writings of his disciples—especially Robert Bork and Richard Posner—he fundamentally reshaped antitrust policy worldwide in the 20th century. As George Stigler recalls in his memoirs, Director's approach was to ask probing questions, just as Socrates had:

> Aaron is a courteous and cultured gentleman with a sharp logical mind and a probing intelligence that thinks its way to the bottom—or at least, to an unfamiliar depth—of many questions. I gradually learned that when he began asking simple questions about some comfortable belief I had proposed or more likely simply repeated, the odds were high that I would end up with a different view of the matter.[1]

*Milton Friedman, George Stigler, and Aaron Director at the first meeting of the Mont Pelerin Society in 1947. Milton Friedman papers, Box 115, Folder 4, Hoover Institution Library & Archives.

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In this second part of our series on *Aaron Director and the Origins of the Chicago School of Antitrust*, we retrace the path that led to Director's return to Chicago after six years in the desert, most of which he spent as a statistician at various agencies in Washington, DC, during World War II. We will then examine his early work at Chicago, which set the stage for his brilliant rethinking of antitrust policy in the 1950s. Our story begins with one of his "comrades in arms," Friedrich Hayek.[2]

Aaron Director Returns to Hyde Park

During a book tour to promote his surprising best seller, *The Road to Serfdom*, Friedrich Hayek delivered a lecture at the Detroit Economic Club on April 23, 1945, warning about the threat of what he viewed as a drift toward socialism in both the United States and England. A day or two later, a businessman from Kansas City by the name of Harold Luhnow, who had heard his lecture, visited Hayek at the Quadrangle Club in Chicago where Hayek was staying.[3]

Luhnow was a "strident anti-New Deal conservative" who controlled a large charitable fund, the William Volker Fund, which he was seeking to use to fund conservative and libertarian causes.[4] Coming straight to the point, Luhnow said to Hayek, "Professor, I'm not going to take much of your time, but a book like The Road to Serfdom ought to be written for the United States. Can you do it?"[5] Hayek demurred: "I know nothing." Luhnow persisted: "Can it be done?" Hayek responded, "Well, I suppose, if you choose a suitable man, it can be done." Luhnow asked, "How much would it cost?" Hayek responded that while he was "not very familiar with American prices," he thought it could be done for about $10,000 a year for three years—the equivalent of $142,000 in current dollars. Luhnow closed by saying "The money is yours."[6]

Hayek claims that he did not take Luhnow's proposal seriously at first, but discussed it with one of Director's closest friends, Henry Simons, who Hayek writes, had also "become my great friend in Chicago."[7] On his return voyage to England, Hayek continued to demur, cabling Luhnow to "report back that I couldn't do anything about it." Luhnow persisted, cabling back: "Will you come back on your terms to do it?" Hayek responded that he might be willing to "look into it" if Luhnow could arrange for an American university to make him a visiting professor for a semester so he could return to the United States. Luhnow cabled back: "Which universities would you prefer?" Hayek replied, "Chicago," but mentioned Stanford as another possibility. Within three weeks, Hayek had invitations from both universities, allowing him to split the semester between the two schools.[8]

As soon as he learned that Luhnow had arranged for Hayek to spend time as a visiting professor at Chicago, Henry Simons began developing a plan for the project. In a short note to Hayek, Simons confessed that he had "what one might call ulterior purposes: . . . to get Aaron Director back here and into a kind of work for which he has, as you know, real enthusiasms and superlative talents."[9] Simons' plan envisioned the creation of a new "institute" at Chicago comprised of scholars from multiple disciplines, with Director as its head. He suggested that the new institute should focus on publishing "scholarly and semi-popular literature to promote liberal ideas" for addressing "major practical problems of economic policy," listing monopoly as one of the areas the institute might study.[10]

Several weeks later, Simons met with Director and several other friends, including Director's brother-in-law Milton Friedman. The attendees agreed with Simons' plan in principle, but all "registered disagreement" with his "more elaborate vision of a twenty-year project."[11] They tasked Director with drafting a proposal for a narrower study lasting only a few years. In his proposal, Director suggested calling it "the Free Market Study," and proposed that it focus on empirical investigations directed "to the central issue of maintaining competitive conditions," using an "investigation into the economies of scale and inevitability of monopoly" as an illustration.[12]

After completing this draft proposal, Director wrote to both Simons and Hayek, telling them that while he agreed with the objectives of such a project, he was inclined to remain in Washington rather than return to Chicago. In an effort to persuade Director to reconsider, Simons suggested that Director condition his return on the University agreeing to give him permanent tenure upon completion of the Free Market Study, which he did. In April and May 1946, Hayek returned to the United States to meet with the administration at the University of Chicago (including its president, Robert Hutchins) in an effort to persuade the University to agree to host the Free Market Study. At this meeting, he communicated an offer from the Volker Fund to pay Director's salary for the five-year term of the study they were proposing.[13]

Following what Hayek viewed as a successful meeting with Hutchins, Simons submitted a memorandum to the Chicago Law School faculty drafted by Friedman entitled *Outline of Organization for the Proposed "Free Market Study."*[14] The Law Faculty formally approved this proposal, including an offer to Director of permanent tenure. The University's central administration, however, rejected the proposal because it was unwilling to give Director automatic permanent tenure after the completion of the study.

Simons was so "disappointed and depressed" by the administration's unwillingness to agree to grant Director permanent tenure at the end of the study that he could not bring himself to tell Director the news, asking another colleague to do it for him.[15] That night, on June 19, Simons, who was only 47, died from an overdose of sleeping pills in what many believed may have been a suicide.[16] The headline on the front page of the *Chicago Herald* that day read "U. of C. Professor Killed by Goof Pills."[17]

Hayek sent Luhnow news of Simons' death a few days later, writing that,

> I have just had the sad news that Henry Simons has suddenly died in Chicago. He was so much the intellectual centre of the group I had in mind and the attraction which made Director willing to go to Chicago that I cannot yet see what the consequences of it will be.[18]

Director, equally stunned by news of Simons' death, wrote Hayek a few days later:

> By now you will have learned of the great tragedy which has befallen us. My own loss is great in any event. It is magnified by the regret that I allowed myself to be persuaded to go on with your project. This may have taken Henry Simons' thoughts away from other problems. But rejection of the project by the administration added but another to the many disappointments he received from the University.[19]

Within days, Wilber Katz, dean of the Law School, informed Director that there had been an unfortunate misunderstanding between himself and Hutchins.[20] Apparently, while Dean Katz and the rest of the law school faculty had thought the Administration would agree to grant Director permanent tenure upon completion of the study, Hutchins had come away from his meeting with Hayek believing that "a five year appointment" without a promise of tenure was something Director would consider.[21] Once Katz made it aware of the misunderstanding between Hayek and Hutchins, the administration agreed to reconsider the proposal, but only if Director would accept a five-year appointment with no guarantee of tenure.

Director was now feeling torn. He immediately wrote to Hayek, asking his advice. Hayek responded: "It would seem to me even more important than before that you should accept. It seems to me the only chance that the tradition which Henry Simons created will be kept alive and continued at Chicago—and to me this seems tremendously important."[22] Heeding Hayek's advice, Director agreed to accept the five-year post without promise of tenure—perhaps, in part, from a sense of guilt that his request for permanent tenure might have contributed to his close friend's premature death.

Edward Levi Invites Aaron Director to Co-Teach His Antitrust Course

In approving Director's appointment to lead the Free Market Study proposal, Dean Katz imposed one other requirement—that Director would have to teach one course in the law school.[23] His first year, Director taught a course on Economic Analysis and Public Policy that Simons had previously been teaching, in which he focused on price theory and its application to issues of public policy, such as minimum wages and rent control.[24]

Near the end of that first year, Edward Levi—a fellow professor who later became dean of the law school and eventually president of the University—invited Director to give a lecture on Marx in a course he taught on jurisprudence.[25] Director says that Levi "apparently . . . thought it was a very good lecture," because Levi suggested that Director teach the antitrust course with him, which Director agreed to do beginning the next academic year.[26]

The Levi-Director antitrust course would become one of the most celebrated law school courses of all time. Gerhard Casper, a president of Stanford University and former colleague at the University of Chicago Law School, credits Levi with being the first to have the idea of teaming with an economist to teach his course in antitrust law. "This was," according to Casper, "the beginning of the 'law and economics school' of thought for which Chicago would become famous."[27]

As one of their students later recalled, for four days a week Levi would teach antitrust law through "the traditional techniques of legal reasoning to relate the cases to each other and create a synthesis of the kind all lawyers . . . are familiar with to explain and rationalize the cases."[28] Then, on the fifth day, Director "would tell us that everything that Levi had told us the preceding four days was nonsense. He used economic analysis to show us that the legal analysis simply would not stand up."[29] Another former student, Robert Bork, described the effect this had as "what can only a called a religious conversion. It changed our entire view of the world."[30]

As we will see, this course and the research it stimulated changed not only how the students who took the course viewed the world, but also how Director and Levi themselves did. Before they began teaching together, Director and Levi shared a common belief in the need for strong antitrust enforcement to protect competition and prevent monopolies, as had Henry Simons. Over the next decade, that shared belief would shatter, due to the empirical work undertaken by the Free Market Study and its sequel, the Antitrust Project, and Director's rigorous economic analysis of the then-prevailing antitrust case law.

To appreciate how fundamental this shift was, we need to look at what Director viewed as the role of antitrust in maintaining a strong free market economy when he first began teaching the antitrust course with Edward Levi. To do so, we need to take a pilgrimage to Mont Pelerin in the Swiss Alps, along with Director and two other economists who later also became key members of the Chicago School of Economics—Milton Friedman and George Stigler.

A Pilgrimage to Mont Pelerin

In April 1947, near the end of his first year teaching at Chicago, Director traveled to the Swiss mountain village of Mont Pelerin, accompanied by Frank Knight and two of his other former students, Friedman and Stigler. Stigler, in his *Memoirs of an Unregulated Economist,* traces the beginning of the Chicago School to this experience. "There was," he claims, "no Chicago School of Economics when the Mount Pelerin Society first met at the end of World War II."[31]

Hayek had invited Director and his three companions to Mont Pelerin to attend a colloquium he had organized there with funding from the Volker Fund and a wealthy Swiss industrialist.[32] The conference lasted for ten days beginning on April 1 at the Hotel du Parc, a *Belle Epoque* style hotel overlooking Lake Geneva. The other invitees were a group of "loosely connected neoliberal intellectuals in Europe and the United States," mostly university professors (economists, historians, philosophers, and theologians) with a few journalists and businessmen.[33]

In his opening address, Hayek explained the reasons he had gathered this group of like-minded intellectuals together:

> The basic conviction which has guided me in my efforts is that, if the ideals which I believe unite us, and for which . . . there is still no better name than liberal, are to have any chance of revival, a great intellectual task must be performed. . . .
>
> The immediate purpose of this conference is . . . to provide an opportunity for a comparatively small group of those who in different parts of the world are striving for the same ideals, to get personally acquainted, to profit from one another's experience, and perhaps also to give mutual encouragement. . . . I rather hope that this experiment in collaboration will prove so successful that we shall want to continue it in one form or another.[34]

Over the next ten days, the participants met twice each day to discuss what Hayek viewed as the most serious issues facing them. The very first item of the agenda was entitled "'Free' Enterprise or Competitive Order," the discussion of which was led by Hayek himself, together with Director and a leading German economist, Walter Eucken. Other topics included "The Problems and Chances for European Federation," "Full Employment and Monetary Reform," and "Wage Policy and Trade Unions."[35]

In his opening statement on the first panel, Director began by warning that the "collectivist" claim that the greater efficiency of large-scale business enterprises made private monopolies inevitable was contributing to a trend toward greater government control of the economy and a suppression of individual freedom in both the United States and Europe.[36] He suggested, therefore, that the panel should focus on how to alter the legal framework in order to design a more effective "competitive order" and thereby reduce the need for government regulation—an argument similar to the one Woodrow Wilson and Louis Brandeis had made a generation earlier during the election of 1912.[37]

In discussing what changes might be necessary, Director offered qualified praise for the American antitrust laws, but argued that stronger enforcement would be necessary to address the substantial amount of monopoly power.[38] Director warned, however, that the antitrust laws might only be "mere stopgap measures," and that more radical corporate reform might be necessary.[39] "Excessive size," he suggested, "can be challenged through the prohibition of corporate ownership of other corporations, through the elimination of interlocking directorates, through a limitation of the scope of activity of corporations, through increased control of enterprise by property owners and perhaps through a direct limitation of the size of corporate enterprise."[40]

As Director's remarks reflect, Hayek and the like-minded intellectuals he invited to Mont Pelerin were seeking to chart a middle path between traditional laissez-faire liberalism and the collectivist trend they saw in both the United States and Europe. They feared that this collectivist course would lead to socialism—as it had begun to in England following the election of Clement Atlee as Prime Minister two years earlier—and ultimately to authoritarian governments.[41] At the end of the conference, the participants agreed to form a loose-knit organization, which they called the Mont Pelerin Society. The Society would have no physical institutional base, but would have its administrative functions shared by a president, secretary, and treasurer, each located in different countries.[42] The Society registered several months later as an Illinois corporation, with Hayek as its president and Director as its secretary and one of its three incorporators.[43]

In his history of the Mont Pelerin Society, one of its later presidents, R.M. Hartwell, compares it to Plato's Academy where "groups of people . . . congregated for some common educational purposes and . . . maintained some continuing institutional existence."[44] Many view its formation in 1947 as having been the birth of the neoliberal movement during the post-war period, which gained increasing sway worldwide over the next half century.[45] The Society ultimately had more than 500 members from 38 countries in the mid-1990s, although it has begun to lose some of its influence since the 2008 financial crisis began to bring into question neoliberalism's strong belief in free markets with limited governmental intervention.[46]

The Free Market Study

In their initial plans for the Free Market study, Henry Simons and Director both focused on private monopolies as one of the most serious economic policy issues the study should address. As

Simons had proclaimed in a highly influential pamphlet he wrote as a graduate student more than a decade earlier in 1934: "Thus, *the great enemy of democracy is monopoly, in all its forms*: gigantic corporations, trade associations and other agencies for price control, trade-unions—or, in general, organization and concentration of power within functional classes."[47] In it, Simons had called for an "outright dismantling of our gigantic corporations and persistent prosecution of producers who organize, by whatever methods, for price maintenance or output limitation."[48]

In a laudatory prefatory note to a collection of Simons' essays entitled *Economic Policy for a Free Society,* published posthumously in 1948, Director seemed to embrace Simons' concern over the threat posed by private monopolies. He wrote:

> There may once have been substantial merit in the notion that the free market system would steadily gain strength if only it were freed of widespread state interference. In 1934 it became evident that . . . the proliferation of monopoly power, and promiscuous political interference, which strengthened such power, threatened "disintegration and collapse" of the economic organization. And only the wisest measures by the state could restore and maintain a free market system.[49]

Despite his 1947 comments at Mont Pelerin and his 1948 praise for Simons' concerns over the threat posed by private monopolies, there is evidence that Director might already have begun developing some doubts as to how serious a threat monopoly posed. In the fall of 1946, Director convened the first meeting of the group that would coordinate the Free Market Study under his leadership. The members of this group included three economists, Theodore Schulz, who was chair of the Economics Department at Chicago, his old mentor Frank Knight, and Milton Friedman, who had just joined the faculty in the Economics Department. The group also included two law professors, Wilbur Katz and Edward Levi, and one professor of finance, Garfield Cox, all of whom taught at Chicago.

Director suggested at the first meeting of this group that there were "two alternative, competing explanations for the existence of concentrations of business power."[50] The first was that "the status quo level of concentration was politically objectionable because it perpetuated inequality and promoted inefficiency;" the second, that "the existing level of concentration was, in the main, competitive and resulted in the most efficacious use of resources."[51] Director proposed that they use the Volker Fund's money to commission two empirical studies: one on the growth of monopoly in the U.S. economy since enactment of the Sherman Act in 1890, and one on the extent to which any increase in concentration had been due to mergers. The results of those studies, one completed in 1951 and other in 1953, would lay the groundwork for Director's fundamental rethinking of the extent to which monopolies posed a threat to a free society.

The first of the two studies was by a graduate student in the Department of Economics at Chicago, G. Warren Nutter, as his Ph.D. dissertation, which he completed in 1949 and published in 1951.[52] His study, guided by Director and Friedman, used data from the Bureau of Census' Industrial Classification System for manufacturing establishments to compare the degrees of concentration in 1899 and 1937.[53] Nutter defined an industry as "monopolistic" if the concentration ratio was 50 percent or larger or if any census products of major value within that industry had concentration ratios of 75 percent or larger.[54] Using these criteria, Nutter found that in 1899, 17.4 percent of national income originated in monopolistic industries whereas in 1937, only 11 percent did.[55] He concluded that, "it would appear that the extent of monopoly had significantly decreased, relative both to the economy as a whole and the extent of competition."[56]

In a prefatory note to the Nutter study, Director noted "the widely held view that competition is not 'natural' and that a competitive system inevitably develops into a system of Monopoly."[57] This view, he suggested, reflected an exaggerated notion of the extent and especially of the growth of monopoly in this country, both of which he believed Nutter's study disproved.[58] He concluded that the study, "while showing that the [monopoly] problem is real, lends considerable weight to the position that it is manageable."[59]

The second major empirical investigation the Free Market Study funded was a study by J. Fred Weston on the role of mergers in the growth of large firms, which he published in 1953.[60] The study, suggested by Director and funded by the Volker Fund, examined a sample of 74 large firms over the period from 1900 to 1948.[61] The firms Weston selected were the leading firms in terms of relative size in large- and medium-sized industries with a 4-firm concentration ratio of 40 percent or higher and in small industries with a 4-firm ratio of 70 percent or higher.[62] Weston concluded that only about 25 percent of the growth of these 74 large firms over the period from 1900 to 1948 had been due to mergers.[63] He also concluded that mergers had not generally increased concentration in the industries he studied since the end of the first merger wave in 1904, but that in the majority of those industries, concentration had decreased despite some merger activity.[64] Based on these findings, Weston concluded that mergers were not as great a threat as Congress had thought when it had passed the Celler-Kefauver amendments to Section 7 in 1950 and that further legislation was not necessary.[65]

It is unclear how much of an impact these two empirical studies funded by the Free Market Study had. When they were published, both studies received only mixed reviews. Several reviewers criticized their methodologies and declared their findings "unconvincing" or even "misleading."[66] Another reviewer was more positive, suggesting that despite "the inherent weaknesses" in the data Nutter had used, his study served to shift the "burden of proof" to anyone who made "sweeping claims about a growth in monopoly over the past fifty years."[67] Perhaps influenced by these mixed reviews, Director himself spoke dismissively of the entire project during a roundtable discussion three decades later, saying that the Free Market Study "never amounted to very much."[68]

Director's retrospective judgment seems unduly harsh. A number of other studies undertaken around the same time as the Free Market Study largely confirmed the conclusions reached by Nutter and Weston. As Derek Bok shows in his 1960 article, *Section 7 of the Clayton Act and the Merging of Law and Economics*, Congress passed the 1950 Celler-Kefauver amendments to Section 7 in response to a widespread concern that the United States was in the midst of a merger wave that was increasing already high levels of concentration in many industries.[69] A 1948 FTC study analyzing that wave had warned that, "if nothing is done to check the growth in concentration, either the giant corporations will ultimately take over the country, or the Government will be impelled to step in and impose some form of direct regulation in the public interest."[70]

As Bok shows, however, even before passage of the Celler-Kefauver amendment, an article by two Harvard Business School professors had questioned that FTC study.[71] They showed that most of the large number of acquisitions from 1940 to 1947 were of small companies. Because of that, the effect of these mergers on concentration was very small (one percent or less). Moreover, since the largest firms had made relatively few acquisitions, the relative concentration of assets among the 1000 largest firms had actually diminished during this period.[72] After passage of the 1950 amendments, even the authors of the FTC study conceded that based on their own data, "recent mergers have not 'substantially' increased concentration in manufacturing as a whole."[73]

Bok reports that subsequent research and analysis "largely confirmed the conclusion that the postwar merger movement had rather harmless effects."[74] "Indeed," Bok adds, "very serious doubts have been raised as to whether concentration has increased at all since the formation of United States Steel at the turn of the century."[75]

Therefore, while the Nutter and Weston studies, alone, may not have been convincing enough to dispel the widespread belief that monopoly was a serious and growing problem in the United States, the cumulative effect of this research began to lay the groundwork for the profound shift in attitude toward antitrust enforcement that took place over the next three decades. It was on that foundation that Director and his colleagues at Chicago began to build in the 1950s.

1 George J. Stigler, Memoirs of an Unregulated Economist 158 (1985).

2 *See* William Kolasky, *Aaron Director and the Origins of the Chicago School, Part I––A Portrait of the Economist as a Young Man*, Antitrust, Summer 2020, at 85, 89 (quoting Director as using this term to describe Friedrich Hayek).

3 This account of the events leading to Aaron Director's return to the University of Chicago in 1946 is based in large part on Hayek's own account of these events in his 1994 memoirs, Friedrich A. Hayek, Hayek on Hayek 126–28 (Stephen Kesge & Leif Wenar eds., 1994).

4 *See* Robert Van Horn & Philip Mirowski, *The Rise of the Chicago School of Economics and the Birth of Neoliberalism*, *in* Philip Mirowski & Dieter Piehwe, The Road from Mont Pelerin 141 (2009).

5 See Hayek, *supra* note 3, at 126–27.

6 *Id.* at 127.

7 *Id.*

8 *Id.*

9 *See* Van Horn & Mirowski, *supra* note 4, at 145 (quoting Memorandum from Henry Simons to Friedrich Hayek, May 18, 1945, in Henry Simons' papers at the Regenstein Library, University of Chicago, box 8, file 9).

10 *See id.* at 145–46 (quoting from the first of two undated memoranda written in early June, 1945, in Henry Simons' papers at the Regenstein Library, University of Chicago, box 8, file 9).

11 *Id.* at 148.

12 *Id.* (quoting Memorandum from Aaron Director to Friedrich Hayek, July 12, 1945).

13 *Id.* at 145-46, 151–52.

14 *Id.*

15 *See* Robert Van Horn, *Henry Simons's Death*, 46 Hist. Pol. Econ. 525, 530 (2014).

16 *Id.* at 530–31 (quoting a letter from George Stigler to Allen Wallis on the date of Simons' death, saying that Milton Friedman had told him just a week earlier that "Henry had threatened, or mentioned, suicide.").

17 *See id.* at 527.

18 *See* Van Horn & Mirowski, *supra* note 4, at 153 (quoting letter from Friedrich Hayek to Harold Luhnow, June 25, 1946, box 58, William Volker Fund 1939–1948).

19 *Id.* (quoting letter from Aaron Director to Friedrich Hayek, June 31, 1946, box 58, William Volker Fund, 1939–1948); *see also* Van Horn, *supra* note 15, at 531 n.19.

20 *See id.* at 153.

21 *Id.*

22 *Id.* at 154.

23 *See* Edmund W. Kitch, *The Fire of Truth: A Remembrance of Law and Economics at Chicago*, *1932–1970*, 26 J.L. & Econ. 181–82 (1983).

24 *Id.* at 182–83.

25 *See* University of Chicago, Office of the President, *Edward H. Levi*, https://president.uchicago.edu/directory/edward-h-levi.

26 *See* Kitch, *supra* note 23, at 181.

27 *See* Neil A. Lewis, *Edward H. Levi, Attorney General Credited with Restoring Order After Watergate, Dies at 88*, N.Y. Times, Mar. 8, 2000, at Sec. C, p. 25.

28 *See* Kitch, *supra* note 23, at 183.

29 *Id.*

30 *Id*.

31 *See* Stigler, *supra* note 1, at 148. Stigler said two decades later, "I really didn't get to know him until the time of the first Mont Pelerin meeting, which was thirty-four years ago, and I've considered myself to be a pupil of his ever since." Kitch, *supra* note 23, at 185.

32 *See* Van Horn & Mirowski, *supra* note 4, at 157–63.

33 *Id.* at 15. For a complete list of attendees, see R.M. Hartwell, A History of the Mont Pelerin Society 45–46 (1995).

34 *See* F.A. Hayek, The Fortunes of Liberalism: Essays on Austrian Economics and the Ideal of Freedom 237–38, 246 (Peter Klein ed., 1992).

35 *See* Hartwell, *supra* note 33, at 47–49.

36 *See* Robert Van Horn, *Chicago's Shifting Attitude Toward Concentrations of Business Power* (1934–1962), 34 Seattle Univ. L. Rev. 1527, 1535–36 (citing Mont Pelerin Society, Records of the 1947 meeting (on file with Liberaal Archief, Ghent, Belgium)).

37 *See* William Kolasky, *The Election of 1912: A Pivotal Moment in Antitrust History*, Antitrust, Summer 2011, at 82.

38 Robert Van Horn & Matthias Klaes, *Intervening in Laissez-Faire Liberalism: Chicago's Shift on Patents*, *in* Building Chicago Economics: New Perspectives on the History of America's Most Powerful Economics Program 191–92 (Robert Van Horn, Philip Mirowski, & Thomas A. Stapleford eds., 2011).

39 *Id.* at 192.

40 *Id.*

41 Clement Atlee became Prime Minister in 1945, defeating Winston Churchill. He served until 1951. *See* UK Government, *Past Prime Ministers*, https://www.gov.uk/government/history/past-prime-ministers/clement-attlee. During his tenure as Prime Minister, Atlee "managed the creation of the National Health Service, part of the Welfare State that sought to provide 'cradle to the grave' care for British citizens." *Id.* In addition, under his government, "Many of Britain's largest industries—such as coal mining, electricity and the railways—were brought under state control, despite recurring currency crises and shortages of food and resources so severe that rationing had to be maintained long after the war." *Id.*

42 This structure became a model for later virtual networks, including the International Competition Network, which the United States formed in October 2001, in cooperation with competition authorities from 13 other jurisdictions,

and which has since grown to a network of 135 competition authorities worldwide. *See* German Cartel Office, *International Competition Network*, https://www.bundeskartellamt.de/EN/Internationalwork/InternationalCompetitionNetwork/internationalcompetitionnetwork_node.html.

[43] *See* Hartwell, *supra* note 33, at 45.

[44] *Id.* at xv.

[45] *See*, *e.g.*, Daniel Steadman Jones, Masters of the Universe: Hayek, Friedman, and the Birth of Neoliberal Politics (2012); David Harvey, A Brief History of Neoliberalism (2005). As an example of the Mont Pelerin Society's growing influence in the 1970s and 1980s, 22 of the 76 economic advisers on Ronald Reagan's 1980 campaign staff were members of the Society. *See* William H. Peterson & R.M. Harwell, *A History of the Mont Pelerin Society* (Foundation for Econ. Educ. July 1, 1996), https://fee.org/articles/a-history-of-the-mont-pelerin-society.

[46] *See* R.M. Hartwell, *supra* note 33, at 226–27.

[47] *See* Henry C. Simons, *A Positive Program for Laissez Faire* (1934), *reprinted in* Henry Simons, Economic Policy for a Free Society 40, 43 (University of Chicago Press 1948).

[48] *Id.* at 58. In his pamphlet, Simons also urged the "explicit and unqualified repudiation of the so-called 'rule of reason'" and the enactment of legislation "to prevent the acquisition of monopoly power regardless of how reasonably it might be exercised." *Id.* In addition, Simons proposed: "Horizontal combinations should be prohibited, and vertical combinations (integration) should be permitted only so far as clearly compatible with the maintenance of real competition." *Id.* at 59. These proposals, of course, sound more like the antitrust policies of the Warren Court than those that began to emerge a decade later from the Chicago School. *See* William Kolasky, *The Warren Court: A Distant Mirror? Part One—The Chief: Earl Warren*, Antitrust, Spring 2019, at 81.

[49] Aaron Director, *Preface, in* Simons, *supra* note 47, at vi.

[50] *See* Van Horn, *supra* note 38, at 1538.

[51] *Id.*

[52] *See* G. Warren Nutter, The Extent of Enterprise Monopoly in the United States, 1899–1939: A Quantitative Study of Some Aspects of Monopoly (University of Chicago Press 1951). Nutter was born in Topeka, Kansas, in 1923. He served in the U.S. Army infantry during World War II and then earned his Ph.D. from Chicago in 1949. After that, he taught economics, first at Yale University from 1950 to 1954, and then at the University of Virginia until his death in 1979. There, he was one of the founders, along with James Buchanan, of the public choice school, which applies economic principles to explain government decision making. *See* John H. Moore, *Gilbert Warren Nutter (10 March 1923–15 January 1979)*, American National Biography (extract), https://doi.org/10.1093/anb/9780198606697.article.1401017.

[53] *See* Nutter, *supra* note 52, at 49. Nutter used the intermediate category, "industry," as the relevant market for determining the degree of concentration. The narrower classification group was "product" and the broader group was "industry group."

[54] *Id.* at 44-45.

[55] *Id*. at 44.

[56] *Id.*

[57] *Id.* at v.

[58] *Id.* at vi.

[59] *Id.*

[60] *See* J. Fred Weston, The Role of Mergers in the Growth of Large Firms (1953). After his death, former colleagues described Fred Weston as "[o]ne of the great early leaders in the fields of finance and industrial economics." Weston earned a Ph.D. in financial economics from the University of Chicago in 1948. From 1947–1949, when he began working on this study, Weston was teaching at Chicago as an instructor and assistant professor. He then went to UCLA, where he became a full professor in 1956 and continued teaching through the end of this academic career. *See* Ivo Welch, *J. Fred Weston,* https://www.ivo-welch.info/about/weston.html.

[61] *See id.* at vii.

[62] *Id.* at 112–15.

[63] *Id.* at 30.

[64] *Id.* at 42.

[65] *Id.* at 103–05.

[66] *See* P. Lesley Cook, *The Role of Mergers in the Growth of Large Firms, By J. Fred Weston*, 64 Econ. J. 586 (1954); Stanley Lebergott, *Review: Has Monopoly Increased?*, 35 Rev. Econ. & Stat. 349 (1953); Alfred E. Kahn, *Book Review––The Role of Mergers in the Growth of Large Firms, By J. Fred Weston*, 63 J. Pol. Econ. 81 (1995).

[67] *See* M.A. Adelman, *The Extent of Enterprise Monopoly in the United States 1899–1939 by G. Warren Nutter*, 42 Am. Econ. Rev. 206 (1952).

[68] *See* Kitch, *supra* note 23, at 181.

[69] Derek Bok, *Section 7 of the Clayton Act and the Merging of Law and Economics*, 74 Harv. L. Rev. 226, 234–35 (1960). *See also* Brown Shoe v. United States, 370 U.S. 294, 315 (1962) ("The dominant theme pervading congressional consideration of the 1950 amendments was a fear of what was considered to be a rising tide of economic concentration in the American economy.").

[70] *Id.* at 231.

[71] *Id.* at 231–32 (citing John Lintner & J. Keith Butters, *Effect of Mergers on Industrial Concentration, 1940–47*, 32 Rev. Econ. & Statistics 30 (1950)).

[72] *Id.*

[73] *Id.* at 232.

[74] *Id.* at 232–33.

[75] *Id.* at 233 (citing M.A. Adelman, *The Measurement of Industrial Concentration*, 33 Rev. Econ. & Statistics 269, 292–93 (1951)).