

## **Antitrust Laws and the Bible**

### **By Craig R. Dumont**

It's not my goal in this article to comprehensively delineate and explain modern antitrust laws, because if I could do so I wouldn't be writing this article, but rather I would be sitting in the corporate boardroom of a huge company receiving a salary of multiple millions of dollars each year explaining it to CEO.'s, Senators and quite possibly the regulating agencies themselves!

The reason I say that is because no one really knows what antitrust laws say, what they allow or prohibit or how they shall be applied except by the "trustbusters" in the Justice Department, and they change their minds on a daily basis depending upon who contributes more to their particular source of patronage.

It's important that we do not discount theology when we give considerations to all these areas. One scholar and historian has noted an important fact considering nations, laws and culture: Religion, and Christianity specifically, very much matters. Speaking of the emptying of Christianity from the public square in the former USSR, Angelo Codevella has written:

Christianity is a vast complex of intellectual concepts that can be learned only through study, and of moral practices that can be adopted—if at all—only with the prompting and vigilant support of a community. The Soviet regime succeeded in reducing the circulation of religious ideas to almost nothing. Without them, rituals and sacraments lose much of their power over human souls and become mere adjuncts to nationalism and elements of opposition or, at best, nostalgia. In addition, because of near-universal ignorance of what Christianity is supposed to mean for political life, discussion among Russians on how to repair the damage of communism take place on the sterile soil of economics.<sup>1</sup>

Christianity is "a vast complex of intellectual concepts" which do shape the thoughts and lives of individuals, communities and nations. The draining or eliminating of those intellectual concepts combined with the ascension of others fundamentally changes the character of nations, so that the preceding statement could be made as it relates to what our current government, with the quiet nod of many church leaders, are attempting today. Our "near universal ignorance of what Christianity is supposed to mean for political life" means that all the debate over our antitrust laws are taking place on the sterile soil of what I would call humanistic economics.

Therefore what I will say here is that the fundamental philosophy driving today's antitrust laws are and will continue to be purely humanistic, and therefore unstable and counterproductive. The philosophy behind the laws is antibiblical to the core therefore Christians must work diligently to reconstruct our business laws upon a Biblical foundation. And do we have our work cut out for us!

There are at least three reasons this is so. First, antitrust law fines the alleged violator of the law and the government gets the money. It is only after a business has been found "guilty" and first

pays huge fines to the Federal Government and then the State governments (and then all the lawyers who jump on the bandwagon) that the so-called “victims” can be awarded restitution. Interestingly enough, in the case of Microsoft, the latest poster-child for the zealous anti-trust crowd, no one really believed that Microsoft customers had been hurt. Rather, because the company had been forced to give away products to fend off potential competitors almost every computer customer, whether they were Microsoft customers or not, clearly benefited from Microsoft’s marketing efforts.

This idea of the government collecting a fine is clearly against God’s word, which does not allow the state to benefit from administering justice. Administering justice is the entire purpose civil government agencies exist. Further, it’s why those agencies are to be funded equally by everyone. The principle or law is that “the rich shall not give more and the poor shall not give less.” In fact, by some estimates the only source of civil government revenue were to be derived from a “head tax” levied upon all males twenty years old and older.<sup>2</sup>

Second, what is taking place in the name of antitrust law is the judging of the intent of the heart and not based upon any provable transgression of law. Businesses and businessmen are now judged on what they might possibly do or what outcomes may potentially occur, and even what could be motivating a deal as opposed to what really does transpire in the concrete tangible world.

The Bible is very clear that only God can judge the motivations and intents of the heart while man is limited to judging only those things which actually occur and which are specifically articulated by God to be in the jurisdiction of government authority. Current antitrust law brushes God’s law aside and asserts the claim of man’s godhood by stating man can and should judge the hearts and minds of men.

As an example, Judge Jackson ruled against Microsoft not because the company had done anything that harmed customers or even that he could determine that they had illegally stymied competitors—And by illegally stymied I mean done anything other than threaten to withhold their own privately owned product to which they alone have rightful distribution rights. No one accused Microsoft of threatening murder or physical harm, or of lying or stealing! No, it was based strictly upon what the Justice Department stated could have been done if Microsoft so chose.

For instance, in a CNET News.Com report summarizing the trial, Joe Wilcox pointed out that Judge Jackson bought Justice’s line of reasoning ‘hook, line and sinker’ when Jackson wrote that:

‘Microsoft enjoys so much power in the market for Intel-compatible PC operating systems that *if it wished to exercise this power* solely in terms of price, *it could* charge a price for Windows substantially above that which could be charged in a competitive market,’ Jackson wrote.

‘Moreover, *it could do so* for a significant period of time without losing an unacceptable amount of business to competitors,’ he added. “In other words, Microsoft enjoys monopoly power in the relevant market.’<sup>3</sup> (Emphasis mine)

Microsoft didn’t, but might have. If it wished to, it could have. Everyone benefited, but they could have been injured. Everyone saved lots of money because the product was free, but Microsoft could have charged for their product! (A novel idea to many, I’m sure) Amazingly, just several months earlier Microsoft was being attacked in Congress for making too much money and operating on too high of a profit margin.

In Judge Jackson’s “Finding of facts” in the case, we find that he has done some basic research. Point 19 somehow supposedly sets us up to agree that Microsoft is sure to break all those antitrust laws:

Consumers could not turn from Intel-compatible PC operating systems to Intel-compatible server operating systems without incurring substantial costs, since the latter type of system is sold at a significantly higher price than the former. A consumer intent on acquiring a server operating system would also have to buy a computer of substantially greater power and price than an Intel-compatible PC, because server operating systems generally cannot function properly on PC hardware. The price of an Intel-compatible PC operating system accounts for only a very small percentage of the price of an Intel-compatible PC system. Thus, even a substantial increase in the price of an Intel-compatible PC operating system above the competitive level would result in only a trivial increase in the price of an Intel-compatible PC system. Very few consumers would purchase expensive servers in response to a trivial increase in the price of an Intel-compatible PC system. Furthermore, a consumer would not obtain a satisfactory substitute for an Intel-compatible PC operating system even if he purchased a server, since server operating systems lack the features — and support for the breadth of applications — that induce users to purchase Intel-compatible PC operating systems.<sup>4</sup>

So Microsoft is guilty of collaborating with Intel-compatible PC’s and “significantly” lowering consumer prices, compared to, oh, say, Sun Microsystems (who just by coincidence of course is one of the main instigators of this lawsuit). Further, the Windows operating system “accounts for only a very small percentage of the price of an Intel-compatible PC system” and the competing systems lack features and support that customers are looking for. Judge Jackson rules against Microsoft because they have a better product at a lower price. And this, the Justice Department proclaims, violates antitrust laws because in their heart they were evil, cruel monopolists. They were only benefiting customers so that they could take market share away from competitors.

If you remember, one of the key complaints in the antitrust case, the main one the prosecution centered in on as they attacked Microsoft in court was that the company had bundled their internet browser, giving it away free to their customers when they purchased the Windows operating system. Along with Netscape, a competitor in the browser market, Scott McNealy, the

CEO of Sun Microsystems, had consistently complained about Microsoft's aggressive marketing efforts. Sun was and is the manufacturer of most of the server systems that Microsoft was pressuring with its Windows NT server software. Ironically, Hewlett Packard has now aggressively entered the server market and McNealy has been forced to give away product just to maintain bragging rights. As Forbes Magazine recently pointed out:

The folks at Hewlett-Packard thought they landed the big one when Ebay, the Web auction house, indicated it would stop using servers from Sun Microsystems and switch to HP machines. The deal was all but signed when Ebay stunned HP in May with the announcement that it would stick with Sun.

Why the reversal? According to Valley scuttlebutt, Sun gave Ebay the deal of a lifetime: a five-year lease on its high-end servers free of charge, a deal that will save Ebay hundreds of millions of dollars in operating expenses. Sun even agreed to spend \$18 million advertising on Ebay's Web site.<sup>5</sup>

Five years of high-end servers free of charge! 18 million dollars of Sun advertising dollars spent on the Ebay site! What a sweetheart deal just to maintain a large and prestigious customer. Will Sun Microsystems now be sued in court for violation of antitrust law? It probably depends on whether they back the winner or loser in the next presidential election.

The third antibiblical basis of antitrust law is that it actively discriminates between "rich and poor," between "large and small," between perceived "haves and have nots." Once again, going to that great source of theological insight, the Wall Street Journal, we find the classic example of unjustly giving preference to the "poor" over the "rich." In this case it is tiny Palm, Inc. vs. mighty Microsoft.

While Microsoft has been vilified by the government and Judge Jackson for its hyper-competitive nature and allusions to marketing warfare and e-mails that talk of "destroying the enemy," Palm, Inc. is praised for its savvy and toughness! Palm, knowing that Microsoft was about to enter their market, created a new executive position (Chief Competitive Officer) and staffed an entire department with its mission being to "create palpable fear about Microsoft" and the first anti-Microsoft meeting was titled, "The Zen of Kicking Microsoft's Butt."<sup>6</sup> They even recruited about 20 people to join a special "Tiger Team" task force designed explicitly to "make the Pocket PC (the MS product) go down in history as a modern Edsel, the Ford Motor Co. car that flopped so famously in the 1950's"<sup>7</sup> The Tiger Team even sent a spy to a Microsoft meeting to get more info.

While we may think this an unimportant point, especially since Microsoft has the money to defend itself in court and Palm is still a questionable start-up, the Bible makes clear that equality before the law is vital for a society to prosper. And while in some places the warning is not to favor the rich, the Bible is equally explicit in its commands to not favor the poor just because they're poor.

- Exodus 23:3 is blunt and to the point on this issue: You shall not show partiality to a poor man in his dispute.
- Leviticus 19:15 commands that, You shall do no injustice in judgment. You shall not be partial to the poor, nor honor the person of the mighty. In righteousness you shall judge your neighbor.
- Deuteronomy 16:19-20 again reiterates that there is no respect towards the person before the law: You shall not pervert justice; you shall not show partiality, nor take a bribe, for a bribe blinds the eyes of the wise and twists the words of the righteous. You shall follow what is altogether is just, that you may live and inherit the land which the Lord your God is giving you.

While Microsoft (the rich man) would have been, and indeed was charged with violation of antitrust laws at least partially because of their use of such competitive language in company e-mails, apparently it's not a problem for Palm (the poor man) to engage in such rhetoric. But by establishing an antitrust double standard, our enforcement of the laws mock God's law of equal standing.

In his excellent book, *The Character of Nations: How Politics Makes and Breaks Prosperity, Family and Civility*, Angelo Codevilla, the author I quoted right at the beginning, provides an important historical and theological perspective that all Christians should pay heed to because our liberty depends upon it. Codevilla writes that the foundation and basis for a free society was established in Medieval Europe as the Christian faith took hold. He notes that for these Christian people,

Only God is sovereign. Every family, every village, every contract, and indeed every human being and every human institution depends on Him. Hence, every human association, like every human being, is endowed by its Creator with its own particular place and purpose in the divine order. It was as improper for anyone to interfere with its life as to snuff it out. Powerful Christianity made for weak rulers and strong societies. The notion that kings might issue rules on the conduct of farming or the raising of children, that they might require an annual universal act of financial confession, or that they might force people to fight in their armies would have been regarded as both ridiculous and impious.

Speaking of the outcome of past and current politics of redistribution (which is what current antitrust cases are all about), Codevilla writes:

It always involved the addictive pleasures of economic exploitation. Long before communism, whenever groups came to power to improve the character of the people by imposing purer lifestyles on them, they quickly came to enjoy the power inherent in their vast task to take, reward, punish, uplift, and humiliate. And none of the rulers wound up poorer than the ruled.

On regulation comes this insight:

To what extent shall our governments regulate? The necessary premise of the tens of thousands of pages of regulations that flow from modern governments each year is that government knows more about the right way to build widgets than do widget makers or that although widget makers might be knowledgeable, only the hand of government prevents them from using their expertise to exploit the public. But of course since government draws its expertise by involving business in the regulatory process, government inevitably rules all widget makers through its favorite widget makers.

Remember this quote, as we'll come back to it in just a moment. Now though, let's take a look at what happens to the character of our top corporate leaders under current antitrust law. In an article titled, *Microsoft's Behavior is Helping Cisco Learn How to Avoid Trouble*, published by the WSJ on June 1, 2000 we find this:

So how has Cisco avoided the antitrust problems that have brought Microsoft Corp. to the brink of a breakup? . . . Cisco's carefully choreographed conduct also deserves much of the credit. Where Microsoft seemed to ignore or bully antitrust regulators, Cisco has schmoozed them.

The article goes on to layout how Cisco early on set up a Washington, DC office to lobby regulators on their behalf and in fact Cisco's senior vice president for legal and government affairs flatly states that the majority of their success is due to their "belief that we were right to invest resources in Washington." Not resources in making a better product to compete even harder, but putting resources in Washington to pay off the regulators.

This has become so blatant that the Journal passes on this proudly admitted action:

Cisco executives seize on every opportunity to explain themselves to federal decision makers. Following an introduction, Mr. Chambers (Cisco CEO) chatted with Justice Department antitrust division chief Joel Klein at the White House correspondents' dinner earlier this year. At a university symposium last month at the Porta Valley, California estate of real-estate mogul Walter Shorenstein, Mr. Chambers and Treasury Secretary Lawrence Summers talked one-on-one almost continuously through a 90 minute dinner, hardly acknowledging the other diners at the table.

Now remember what Codevilla wrote about government regulations being written by favored businesses? "But of course since government draws its expertise by involving business in the regulatory process, government inevitably rules all widget makers through its favorite widget makers."

Guess what? The article on Cisco reveals this to be true.

. . . Cisco uses these opportunities [regular meetings with FTC and the Justice Dept] to 'educate' them about its business . . . and Charles Giancarlo, the Cisco vice president in

charge of sales to small businesses, have made presentations to regulators on Cisco's competitive landscape.

Mr. Scheinman says that regulators frequently consult Cisco executives on other mergers. For example, he says Cisco executives have talked with regulators about JDS Uniphase Corp's pending plan to acquire E-Teck Dynamics Inc., another maker of the fiber-optic components used by Cisco and others. Cisco even offered advice on Lucent's acquisition last year of Ascend Communications Inc.

How would you like to be in JDS Uniphase's or Lucent's position? Not only do they have to figure out how to please a power-hungry government official who craves and demands constant attention and treatment accorded to kings, but also you must act in subservience to Cisco lest you fall out of favor and they advise against you!

As further testament to this, we can look to see who had to sign off on the AT&T Cable purchases: Time Warner Cable! Time Warner had to approve the deal before it would be acceptable to the FCC! Incredible but inevitable. So while AT&T was trying to get their purchase approved by the FCC they had to appease Time Warner who has a vested interest in getting their content on AT&T's system.

This lawless tyranny is further exposed through what Harold Furchtgott-Roth, in a WSJ editorial, calls "The FCC Racket." Mr. Furchtgott-Roth is an FCC commissioner and he sees on a daily basis the tyrannical and manipulative situation that exists when laws are not clearly stated nor defined. He writes:

It's difficult to think of a large communications firm that hasn't at least discussed a merger over the past few years. In each case, companies, legislators and the media chant the mantra: This merger would require Federal Communications Commission approval.

This is simply false. Although the FCC has limited authority to review certain mergers under the Clayton Act, the agency has never invoked that authority during the recent spate of condition-laden FCC "merger approval" orders. Invoking the Clayton Act requires the commission to undertake the uncertainty and expense of winning a court case in order to block any deal. The Justice Department and the Federal Trade Commission are subject to these rigorous standards and the corresponding limitations imposed by antitrust precedent. But the FCC, extracting itself from that legal shackle, has created a merger approval "process" that is lawless, standardless and endless.<sup>8</sup>

What is the result of this "lawless, standardless and endless" situation? Do these antitrust reviews bring about a productive and fruitful business and competitive climate that everyone is thankful for and rejoices in? Hardly. Furchtgott-Roth writes:

[Their lawless acts are] virtually indefinable, but inordinately powerful: It brings companies to their knees begging for "voluntary" conditions that drive up their costs of

doing business. The process itself is both arbitrary and indecipherable. The commission has no consistent rules on handling of these license transfers, and it asserts this limitless authority without deadlines or accountability . . . What does the commission want? Don't expect it to be written down anywhere . . . Commission staffers engage in months of secret negotiations without a clear written record of what is being negotiated or why.<sup>9</sup>

This FCC commissioner pointedly notes that the reason for the ambiguity is simple: Power and money. Lots of power and even more money! In the absence of law, companies continue to make "voluntary contributions" in huge amounts just to cover themselves. Is \$1 billion dollars enough to ensure "corporate salvation?" Well, in the pending SBC/Ameritech merger perhaps not, so it looks as if \$2 billion will be the ransom price sacrificed.<sup>10</sup>

Who is being helped here? What is the function of current antitrust law? It is to empower unelected bureaucrats and grease the machine they serve with incredible amounts of money. It is also used by favored businesses to maintain real monopoly control of their markets!

The fact is that the only destructive monopolies are those granted by the government itself. For instance, the U.S. Post Office is a Federally protected monopoly that raises prices at will in First Class mail. The government keeps out competition by persecution and prosecuting companies such as Federal Express and their customers by invading their privacy, reading their mail and determining if a letter or package qualifies as sendable outside the USPS system. If the USPS determines that a letter or package should have been sent through them, both the shipping company and the shipper are hit with huge fines. In other words, the fox is watching the hen house and intimidating everyone in sight. The Bible would call this stealing, coveting and idolatry, for it makes the assumption that the state is the transcendent god, omnipotent in all areas.

The government operates an educational monopoly by subsidizing our failing government schools with money taken by force in the form of property taxes. I could go on and on describing governmental monopolies that are doing great harm to our nation, but suffice it to say that Christians should become familiar with the antitrust laws and their selective applications and pray that God would give us the grace required to not act with greed, covetousness and envy. We need to know God's law so that we can be teachers to the nations. God's law is relevant in every area of life and antitrust law is no exception. May God raise up gifted business leaders and successful attorneys who love His law and meditate upon it day and night. May He help them to overcome the lawless system that now punishes success and progress.

Notes:

1. Angelo Codevella, *The Character of Nations*.
2. See Rushdoony's and Powell's excellent book, *Tithing & Dominion*
3. Joe Wilcox, Staff Writer, CNET News.com, Judge Calls Microsoft a "Monopoly," Nov. 5, 1999



4. United States District Court For the District of Columbia, Judge Jackson's Finding of Facts, Civil Action No. 98-1232 (TPJ) (#19).
5. Daniel Lyons, "Silicon Smackdown!" Forbes, July 24, 2000.
6. Peter Landers, "Palm Puts Up Its Fists as Fight With Microsoft Begins," Wall Street Journal, August 8, 2000. Actually, I have great admiration for Palm's marketing tactics. They never whined or went to Washington for help, but rather invested in market research to determine what their customers wanted and how they could keep them from defecting to the competition. They are beating (at least for now) Microsoft by using Microsoft's own tactics: Creating better products at lower prices! Seems there might be something to this quality and value stuff.
8. Harold Furchtgott-Roth, "The FCC Racket," Wall Street Journal, November 5, 1999.
9. *ibid*
10. *ibid*.