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Whatever Did Happen to the Antitrust Movement?

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Abstract: Antitrust in the United States today is caught between its pursuit of technical rules designed to define and implement defensible economic goals, and increasing calls for a new antitrust “movement”. The “movement” antitrust tends to pursue such goals as combating industrial concentration, limiting the economic or political power of large firms, correcting the maldistribution of wealth, control of high profits, increasing wages, or protection of small business. It takes the consumer welfare standard as the scapegoat for the present unsatisfactory antitrust enforcement, and it is indifferent to or even disparages low consumer prices. The “technical” antitrust has its stated goal the protection of high output and low prices, and it relies on evidence and experts to develop an approach that tries to give effect to this goal, consistent with the substantial limitations of the institutions that make antitrust policy. The “technical” antitrust laws are formulated under the joint influence of Chicago School and Harvard School since 1970s and 1980s, with solid and deep intellectual basis. This approach is much more consistent with concerns about economic rationality, due process, administrability, and federalism. However, there are several areas where “technical” antitrust rules could be improved, mainly the rising market power throughout the economy due to relaxed antitrust enforcement, and antitrust’s historical failure to