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# Trending@RWU Law: Professor Carl Bogus's Post: When Corporations Grow Too Powerful: Reviving an Old Debate

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## When Corporations Grow Too Powerful: Reviving an Old Debate

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The nation needs the kind of debate it had during the 1912 presidential election. Believe it or not, one of the principal campaign topics involved antitrust law. All four candidates – Woodrow Wilson, Theodore Roosevelt, Howard Taft, and Eugene Debs – spoke about antitrust on the campaign trail.

And the public listened with keen interest. There was then strong public sentiment that gigantic corporations, then called "trusts," were harming the nation.

The two leading candidates, Wilson and Roosevelt, offered different solutions. Wilson argued that giant corporations turned rugged individuals into serfs. "You know what happens when you are the servant of a corporation," he declared. "Your individuality is swallowed up in the individuality and purpose of a great corporation." He wanted to prevent enterprises from growing into behemoths by restraining mergers and acquisitions. The essence of Wilson's theme was that corporate bigness was bad for the nation, not merely for economic reasons, but for social and political reasons as well. It was not merely the cost of consumer goods about which Wilson was concerned; it was freedom. "The trusts are our masters now," he warned.

Teddy Roosevelt largely agreed with Wilson's diagnosis. Roosevelt condemned "dishonest men of swollen riches" and the politicians who did their bidding through "class favoritism." "We are warring against bossism, against privilege social and industrial," he declared. Yet Roosevelt disagreed with Wilson about the cure for the disease. Modern life made bigness inevitable, Roosevelt believed. Corporations had to be big to do big things. The solution was that big corporations needed to be regulated by strong government. Roosevelt ridiculed Wilson for naively wanting to return to a preindustrial age and for being afraid of power – corporate and governmental.

Wilson's retort was that it was Roosevelt who was naïve. Seeking to control giant corporations through regulation was doomed to fail. Big business was so large and powerful and had such a strong interest in resisting regulation, Wilson argued, that it would control government.

Wilson won the debate, in the short term at least. He was elected president, and two years later Congress enacted new antitrust laws. But since that time the wheel has turned. Today, virtually the entire antitrust fraternity – the regulatory agencies, lawyers, judges, and economists who specialize in the field – believes that the antitrust laws are not about corporate size and power but solely about consumer welfare. When two corporations want to merge, the only question is whether that will give them the ability to raise prices and reduce production. Nothing else matters.

My current project seeks to upset that consensus. Through a series of articles, which I plan to ultimately turn into a book, I shall argue that recent events – including the banking crisis of 2008 – have proved Wilson right: corporations can be too big for social and political reasons, as well as for economic reasons. Moreover, they are so powerful that government cannot effectively regulate them. We need to stop them from becoming so large through mergers and acquisitions; that should once again be a proper concern of antitrust law. I hope to stimulate the kind of widespread national debate about this subject that the nation had in 1912.