

**From Bork to Rome and Back:**  
**Antitrust and the Threat to Our Republic**

Ayad Akhtar - Feb 15 2023

It's an honor to be here today to share some thoughts with you. I know I'm not the only person in this room who feels like the questions before us today, the skill-set and preoccupations assembled together, here, in this room, represent the most important bulwark against the continued erosion of our American democracy in the years ahead.

I was both surprised and delighted when Barry Lynn reached out to me after reading my 2020 novel *Homeland Elegies*. It's not common for a literary work to contain a lengthy excursus about anti-trust jurisprudence, but *Homeland Elegies* does. In addition lengthy anatomies of an international financial industry fixated on fixed income, and also on our country's healthcare system-for-profit with shareholders of publicly traded companies being conceived of as stakeholders of greater importance than patients themselves. My book was an attempt to explore the complex affliction that has transformed our nation, and which, now seems to threaten its very reason for being, philosophically speaking.

For little over more than a half-decade it's been clear something is amiss in our republic. But the recent political shocks we are all familiar with have their origin, I believe, in a half-century of neglect. As a famous Chinese proverb puts it: "In a house where the son kills the father, the causes do not lie between the morning and the evening of a single day." The narrator of my book, *Homeland Elegies*, is the son of Pakistani immigrants. His parents came to this country lured by the

promise of our nation's great mid-twentieth century prosperity and opportunity, and have a distinct feeling that they came to one country, and that over their time here, it became another. The narrator is on the search to understand this gap. Perhaps his immigrant parents never really understood America? Perhaps they underestimated the depth of American enamored with individual wealth, an American passion, perhaps, more fundamental than any real commitment to civic health? Or perhaps something had fundamentally changed about this country and its ideals between when they arrived, and as they came to the end of their lives in the New World fifty years later?

Late in the novel, the narrator encounters an only thinly fictionalized character named Mike Jacobs, a prominent Black agent in Hollywood. The year is 2015, and over dinner at Red Rooster in Harlem — where Bill Clinton had passed through earlier that day, hosted in the private room for lunch by a group of hedge fund owners — Mike lays out a nuanced anatomy of the national mood. Having grown up in Alabama, living now on both coasts, Mike sees the country's plight through both the urban and rural lenses, as well as understanding the enormous breach between those in the heartland and those on the coasts. But first he tells the narrator a story about his father, Jerry, a lawyer, who, early in his career, had clerked for Spottswood Robinson at the DC Circuit Court of Appeals when Robert Bork was on the bench there. What Mike's father would see from his front row seat was Bork's real legacy in action. Not as a failed supreme court justice, or as a cultural critic who sniffed decadence in Dixie music and detective novels, but as an anti-trust ideologue who believed that the only meaningful check on corporate power should be the competitive threat of other corporations, and that the consumer's benefit should be the only metric to gauge when or not the government had cause to intervene.

Over dinner Mike explained what his father had come to understand about America during his clerkship in such close proximity to Bork at the height of the Reagan years. Even back in the mid-80s, the city's political culture was still one of gentlemanly exchange; partisan arguments before the bench or on the Senate floor were put aside when it was time for martinis and oysters at Occidental or Old Ebbit Grill. It was at a similarly collegial evening in Georgetown that Bork found himself seated next to the young black lawyer he recognized from Justice Robinson's team. The two men launched into a lively conversation. Mike said that his father discovered in Bork that night someone far more personable than he'd expected given the man's haughty demeanor on the bench.

Bork introduced Jerry to someone at the White House; a pair of subsequent lunches led to a brief audience with the Gipper himself. Though it was never made explicit, Jerry gathered there was a need for black faces to support the administration's deregulatory initiatives. In particular, black businesses across the country were starting to organize against Reagan's new antitrust policies. It was an era of easy money; mergers and takeovers were all the rage. Large and ever-larger companies were swallowing up market share, putting smaller businesses to pasture, offering the promise of lower prices to compensate for the havoc wreaked on American Main Streets.

At an earlier time in the nation's history, the federal government would never have allowed the naked corporate grab then underway; in the late 60s, even a potential 8% market share was cause for the courts to block the merger of two grocery store chains in Los Angeles. The judges explicitly sided with those who stood to lose their jobs and their businesses — even if the grocery merger might mean lower prices for consumers. But Robert Bork was busy leading a vanguard that would eventually dismantle this sort of thinking. By 1977, he would publish

his thinking in *The Antitrust Paradox*, a book responsible for entirely reframing our ideas about corporate competition and the benefit to the consumer, a book described as the most cited work on its subject in American history.

In Bork's years before the DC Circuit—teaching at Yale Law School and working in the Justice Department under Nixon—he had educated and promoted a generation of disciples who shaped opinion from the bench, on the nation's business pages and in its boardrooms. Increasingly, the benefit to the consumer would become the dominant metric of the common good, and that benefit to the consumer would be defined by the “lowest price.” A company's scale no longer signified a potential abuse of power, only opportunity, for the bigger you were, the more power you had over your suppliers and employees; greater latitude to cut costs with impunity meant passing on savings to the consumer. The consolidation began in grocery stores and other retail, and would later expand to banks and insurers, railroads, trucking, airlines. (Decades later, of course, this process would culminate in the rise of companies of almost God-like proportion, merchants of human attention and data whose digital technologies and algorithms have come to command our very cognitive activity itself.)

Concussive scale, market share, shirked responsibility to communities and workers—all this has been permitted, no, encouraged, because of a so-called benefit to the consumer. But to hear Mike tell it, in the mid-80s, black intellectuals and businessmen were already wondering whether the nation could really thrive through buying alone. Is that all we were as Americans? Consumers? Certainly we were also laborers and owners and perhaps even citizens, as well. Was there really no need to protect these aspects of our social being, too? Did the nation's welfare truly amount to little more than saving money at the cash register?

If you were black in the 80s, Mike explained, you couldn't ignore what the new laws really meant. Black banks, black insurers were getting bought up by white-owned holding companies which were turning their backs on their new black customers; these growing conglomerates were not locally-owned, had no local stakes, no incentives to attend to the needs of communities they didn't live in, didn't understand — and frankly, didn't like. And connected to all this not-very-thinly-veiled commercial racism was something people like Justice Spottswood Robinson couldn't forget: That their Civil Rights battles had owed more to black-owned business than most would ever understand. Economic independence was essential to the battle for full rights; the money to sustain the struggle had to come from somewhere; most often, it came from local black businesses.

In the series of meetings that Mike's father took with members of various federal agencies and lobbying firms, he started to get a better picture of why they wanted him. Scarred by their defeats in the Civil Rights Era, convinced beyond any doubt of the transformative force of organized black protest, Reagan Republicans were taking no chances. Recruiting black lawyers to serve in the cause of deregulation had become a top priority, and Bork, according to Mike, had identified Mike's father as a candidate. Jerry Jacobs would be offered a job at the Federal Trade Commission in 1986, but by then, after having flirted with Reaganites for more than a year, he'd figured out what they were up to.

He would leave Washington and return to his hometown in Opelika, Alabama, where he would eventually be elected to the Alabama state legislature. But Mike would come to see his father's decision to leave the nation's capital and come home to Alabama as marred by sentimentality. It was all well and good to want

to do right by those you loved. But as Mike saw it, you better have a real idea of what that might actually entail. Though his father had seen what happening in America, Mike wasn't sure he'd understood just how little a person could do about it from a law office on Main Street, or even from the State House in Montgomery. The new political order was mercantile a root, shaped and paid for by cash from the coffers of bigger and bigger business — and what this political order was doing to black businesses it was actually doing to everyone. Chains and conglomerates weren't shuttering more black concerns than they were white ones. The mistake his father made, Mike started to understand, was to see all this solely through the lens of race. Locality itself was in decline, as dollars were drained from the American heartlands and allocated to points of prosperity along the urban coasts. In the South, it was in farming that you saw the worst of it. People — black, white, or brown — couldn't live off their land anymore. Corporate consolidation led to larger and larger tracts and the increasingly automated systems required to water and harvest them. Prices for produce dropped, yes — but so did the tax base. There'd never been more jobs that paid so little, most of which went to migrants who didn't object to making a pittance. Towns were poorer, which meant schools were poorer, too. Public education started to crumble. So did the roads and bridges. There were fewer landowners giving less money to an ever-dwindling number of churches and charities. Everywhere you went, people poured into big box stores to spend less on things they had less money to buy. The quarter-century slope of opportunity and morale in places like Opelika and Wichita and Grand Rapids and Scranton — and just about everywhere else across middle America — defined a descent from which, increasingly, there appeared to be little recourse. Suicide was on the rise, so were drugs, depression, anger.

And all this was *before* the financial crisis.

Mike saw a country where people were poorer, where they were lied to, where their lives felt meaner, where they had no idea how to change any of it. They'd taken the unprecedented step of putting a black intellectual into the highest office in the land, a man who promised change but offered little, whose admittedly-genuine concern was marred by his superciliousness, who gloried in his pop-culture celebrity while bemoaning a system whose political dysfunctions prevented him from leading. Obama's victory had turned out to be little more than symbolic, only hastening our nation's long collapse into corporate autocracy, and his failures had raised the stakes immeasurably. Most Americans couldn't cobble together a week's expenses in case of an emergency. The national mood was Hobbesian: poor, nasty, brutish, and nihilistic—the people had good reason to be scared and angry. They felt betrayed and they wanted to destroy something.

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It's a bleak picture, but it was convincing to me, disturbingly so, especially as I reconsidered it in the wake of Trump's election.

But it wasn't until I made another connection, this time to the late crumbling of the Roman Republic, that the antitrust piece really clicked in place. While it can be dangerous to draw too many parallels with other historic moments, it's surprising just how many parallels there with our political moment and the collapse of the Roman Republic. Certainly one of the most studied and commented upon periods in human history, the general consensus about the collapse of Rome's republican institutions locates its source in a concentration of power in the hands of the Roman aristocracy, power consolidated by means of (and for the

purpose of) wealth. As the political processes in Rome became increasingly subverted by the interests of those with more power because of their wealth, the political process itself became increasingly defined by the purpose of serving the wealth accumulation of those doing the subverting. It would take a little more than a full century for this erosion to lead to the crisis that produced Julius Caesar and a final resolution of these tensions in favor of autocracy in the figure of Augustus — autocracy as the solution because it proved to be the only meaningful check against the interests of a fully empowered aristocratic class.

In order to fully grasp the implication of the analogy I'm drawing, a substitution is required. Instead of seeing today's billionaires in place of the Roman aristocracy, substitute corporate concerns, or shareholder value. Recognize that the corporate order has arrogated so much power to itself in the last half-century, so fully reframed the terms of our politics, reshaped policy and legislation in *its* favor, and to legitimize this process, reshaped discourse about what constitutes the public good. Indeed, that shareholder rights could somehow be seen as having equal claims on our national life as our civic health, this is a measure of the transformation I am talking about. And it's in this regard that the shift in anti-trust thinking in the wake of Robert Bork is pivotal. Protecting the consumer's right to the "lowest price" as a first principle has operated as *the* legitimizing discourse of the take-over of the political process by big (and ever bigger) business. In other words, our political order — by which I don't just mean legislative — is increasingly defined by corporate thinking and interest. As in Rome, politics increasingly reflects our republican ideals less and less. Accepting the analogy with Rome can help us see that we might be moving into the very conflicts that will resolve our own political tensions, and perhaps in favor of the autocratic solution. It turns out Augustus was only able to succeed once he came to understand that aping the language of the republic and its outward forms was critical to the success of the dictatorship. In this insight, is another helpful hint, and I



translate: As the Roman autocracy had to pretend to be something other than it what it was to succeed, similarly our discussion about the benefits to the consumer, while appearing to minister to the needs of the demos, is actually a longterm play to consolidate power in favor of shareholders.

In closing, I'd like to take a moment to commend so many of you gathered here in the room, who are fighting a difficult and necessary fight. In my humble opinion, there is no more important fight, and I am not exaggerating when I say that I stand in awe of the perseverance without which what you do would just not happen. From the heart, I want to thank you for the extraordinary work you do, and dedication. I want again to thank Barry and Open Markets for the invitation to speak. It has been truly been an honor. Thank you.