



Episode 1,121: The Mundane Truth About the Sherman Antitrust Act

Guest: Patrick Newman

WOODS: Love your paper. We're linking to it at TomWoods.com/1120. Love it because, in addition to all the historical detail, it undermines a major part of the mythology surrounding the state, which is that when you see landmark legislation like the Sherman Antitrust Act, why, we're assured that this came about because our public servants got together, decided there was a problem, and came up with a solution that would benefit everyone. And this is so utterly at odds with reality. What you show in this paper is that, in this case – and extrapolating from your paper we might say and in many other others – the reality is far more prosaic and far less exalted and platonic than we get from our typical textbooks. So that to me is the glorious conclusion of your paper. Now, I'm sure you had more perhaps noble scholarly purposes with this, but that sure is what I take away from it.

NEWMAN: Well, thank you very much. Yes, I think this paper really shows – so it concentrates on the origins of the Sherman Antitrust Act passed in 1890, and it's seen as a classic public interest legislative bill, basically, that the people rose up and they clamored for this piece of legislation in order to clamp down on the entrenched interests, and more importantly, the well-intentioned, benevolent, wise leaders, our political leaders, they passed a bill for this reason.

And many people, or some scholars beginning in the 1980s, really, have challenged that. They looked at more special interest reasons. As opposed to the public interest, you might say a public choice critique of this. They've said that, in fact, you had smaller businesses pushing for the Sherman Antitrust Act or a federal act to hurt larger businesses, not to protect the consumer, but to protect themselves because those businesses were undercutting them. And you also have who've said that this was passed by big businesses as a smokescreen for the tariff. A new tariff bill, the McKinley tariff was coming out, and that had a tendency to lead to entrenched monopolies.

And this paper really adds to that, and it sort of builds on that further by saying, really, the main senator behind it, the main politician, John Sherman, who was instrumental at the beginning, it's what it was named after, he had a very snide personal reason against this, an animus to get revenge against his political rival, Russell Alger, whom he felt snubbed him at the 1888 Republican national convention. So he pushed for this bill just so he could really give a large, long speech on the Senate floor where he was attacking his rival. And in fact, he lied about him and he said he was involved in this Diamond Match Company when he really wasn't, and the goal was to hurt his future presidential aspirations. So, very interesting paper, and I think it really shows the true side of politicians.

WOODS: I'd like to actually say something about the origins of this paper, because I think they lie in the project you worked on for some time, which has now come to fruition: the book called *The Progressive Era* by Rothbard that you helped to put together of course long after his death. He had written an enormous amount that was published on the Progressive Era. He also had a great deal on the subject that had not been published before. You published it. Tell us first of all a little something about that project, and then what the relationship is between that and this paper.

NEWMAN: Of course. Yeah, that's a great question. So like many of our research, especially of my own, the inspiration usually lies in Murray Rothbard. So you read something that he wrote in *America's Great Depression* or *History of Money and Banking*, just something, or *Man, Economy, and State*, and it's usually a little nugget or it's a little analysis that he kind of went through a little bit before moving on to something else, and think, wow, that's a great topic and you want to research into it. Really, virtually everything I've written has some origin in what Murray Rothbard said, what he wrote about.

And so this was a project, I worked in the Rothbard archives in the Ludwig von Mises Institute and really worked on collecting his unpublished manuscript on the Progressive Era. He wrote this in the late 1970s, early 1980s. And *The Progressive Era* is a book that was published by the Mises Institute in the fall of 2017. It contains this unpublished manuscript, Rothbard chronicling basically everything in government activity from the Interstate Commerce Commission in the late 1880s to the Theodore Roosevelt presidency, as well as his later published essays.

And in one of the chapters, Chapter Seven on President Theodore Roosevelt, he's talking about Roosevelt as the trust buster. We all know him by this and everyone says he was a champion of the people, he attacked all the trusts. Rothbard really shows that, well, you kind of have a bias. He always favored the Morgan companies as opposed to, say, other companies led by such as John D. Rockefeller.

And he briefly goes into this story, the origins of the Sherman Antitrust Act. He mentioned this analysis regarding Sherman and Alger in his lecture series on the Progressive Era, which he gave at Brooklyn Polytech in the mid 1980s. And it was just a couple-page analysis and I said this is a really interesting topic; I want to explore it later. I wanted to explore it in more depth, so I was able to look at more primary sources, build off some of the sources Rothbard used, and really, like most of my projects and I'm sure like most other projects, it began with just a couple of pages Murray Rothbard wrote.

WOODS: And that's so true. There's so much in Rothbard where he'll have just some throwaway line or some little observation or a quick tidbit from history that you can spin into a paper. He has that collection of his memos that was published, again, after his death, that was called *Strictly Confidential*, his Volker Fund memos. And there's one of them where he's reviewing an American history textbook, and the review runs about 100 pages long. And just looking through that review, you can come up with dissertation topics galore. It's astonishing to me.

Anyway, so that was the origin then – first of all, let me make clear I'm definitely going to link to *The Progressive Era* book at TomWoods.com/1121. That was the origin of this paper. Now, I first came to realize that there was more to this story of the Sherman Act just by reading Tom DiLorenzo, who's one of the people you probably had in mind when you talked

about people who challenged the public interest version of the story behind the Sherman Antitrust Act.

And one of the points that DiLorenzo made was that this was not a case where the general public rose up and said we're being exploited by the terrible monopolists and we desperately need government relief. To the contrary, what in fact happened was that what you had basically were representatives who were representing firms that were on the losing side of economic competition, and of course they want to petition the government for relief.

And then your point about the tariff is very important, because the tariff was creating artificial monopoly-style conditions because it was restricting competition artificially, so if you got rid of the tariff, then the trusts that you were so concerned about would necessarily become less powerful because they'd face more stiff competition. But nobody wants to do that, so instead, they get to have their cake and eat it too. They can keep the high tariffs and therefore stay in good stead with big business, but on the other hand, they can pass this Sherman Antitrust Act and be able to tell the people: we're going after the trusts.

Now, the thing with this is that I wonder if you might say something about is that a lot of our people have said that when they passed the Sherman Antitrust Act, it really is very vague. The wording is very vague and open-ended, and it's hard to know how it was going to be applied, and it was applied in very different ways over the years. So the thought was: let's just pass something so we can tell the rubes we're going after big business. We'll leave it to the courts to figure out what the thing actually means. But then Robert Higgs, whom I respect very much, comes along and says no, that's not true. These are all common law concepts. Everybody knew perfectly well what the Sherman Antitrust Act meant, so this is not quite right. Do you have any opinion on any of that?

NEWMAN: Yeah. So, one, I think you touched on a great point. This is very much a political issue that the Republicans were the party of the high tariff. Back in the day in the late 19th century, that was their one major plank. They had many other planks, but there was always the high tariff. And it was noticed that, well, this high tariff would block out foreign competition and it would lead to a tendency to domestic monopolies. And many Democrats charged that a solution to this is just simply lowering the tariff, especially because we're actually running surpluses. And that would even lead to: we should lower the tariff, to basically we should lower our tax revenue. And the Republicans countered – some of them said we'll also have an antitrust law. John Sherman was also instrumental in getting the McKinley tariff, which was passed a couple of months after the Sherman Antitrust Act was passed in July of 1890, and *The New York Times* and other newspapers, they commented on this and they said: hmm, this is sort of an interesting coincidence.

So some people would say that, well, that is true, and then you also have this act was supported because it was at least seemingly vaguer; it wouldn't really be used that much. There has been evidence that shows that actually, after the Antitrust Act, looking at stock prices that, really, the Antitrust Act didn't adversely affect businesses, so they weren't really threatened by it.

I'm not an expert on the legal doctrine of the Sherman Antitrust Act, the analysis of that. I do know, though, that most businesses at least did not at the beginning consider it threatening. There is the old saying – and I know Robert Higgs is also a champion of this saying – it's that

policy is personnel. So if you have an act that is really handled by someone who is sympathetic to businesses, they're not going to use it to attack businesses.

And especially in the first ten years, it was used to attack unions. When it did go to the court, it didn't really cripple large businesses. It was really only until Theodore Roosevelt came around, I think the act was, whatever the intentions of some proponents, it sort of fell into innocuous – it wasn't really used that much. And Rothbard briefly mentions in this in *The Progressive Era*. He says that, well, it's no coincidence that it was passed right alongside this tariff and the tariff remains, but the Sherman Act, we never hear from it again really for the next ten years or so. So regardless of the act itself, I think it was handled in such a way that its initial lifespan, the first ten years or so, it wasn't really used that much.

WOODS: All right, tell us a little bit more, give us some more details then about the actual story about – now I'm drawing a blank on the guy's name. Who's the guy?

NEWMAN: Russell Alger.

WOODS: Thank you. Russell Alger. You'd think I'd have that in my notes and somehow I didn't. Lay that out a little bit more for us what the details were and whether at the time anybody may have given any indication they suspected that there might be something like this, something, let's say, less than statesman-like about the motivations behind the Sherman Antitrust Act.

NEWMAN: Of course. So John Sherman was a senator, and he was one of the most prominent senators in the late 19th century. And he was probably the most prominent, one of the most prominent politicians to have not only never been president but to have never been nominated for president by either major party. So he was a Republican, and his whole career he was really trying to gun for the presidency.

So multiple times he tried to run to get the Republican nomination. Back then there were no primaries, so it was all in sort of secret balloting at a convention, and he never won – which is kind of funny at least, that his brother, the charismatic William Tecumseh Sherman, the famous Civil War general, was repeatedly offered the nomination because he was a general and he'd basically be a sure win or at least very popular, and he always turned it down. So you have the politician John Sherman, sort of this deep resentment against his brother basically, who always had the opportunity to do what he wanted to do and he just kind of casually turns it down.

Anyway, in 1888, John Sherman is in his mid 60s, and this is really his last shot. Even if he were to be elected president, he'd be one of the oldest presidents, so he really is gunning for the 1888 nomination. He is the frontrunner. He is the leader. But what happens, though, is that he doesn't get the nomination, and some of his initial votes were basically siphoned off by Russell Alger, and he always accused Alger of bribing away his delegates. So Sherman bore this enormous budget against Alger. Everyone knew about it. It was very public; it was very nasty. Alger was an up-and-coming politician. He was a Michigan governor, and he wanted to run for president in the future, he wanted to become a senator, etc., so he drew the ire of this longstanding Republican veteran, and he knew something was up.

So shortly after that, Sherman starts to be interested in antitrust legislation. He sort of had a passing interest before. And especially after an 1889 court verdict was passed that showed Alger was tangentially involved in this Diamond Match Company – he loaned money to a company that was later bought out by the Diamond Match Company, and he and a partner tried to get the money back. And Sherman basically shortly after that, he reintroduced an antitrust bill.

And in March 1890 the following year when he was allowed to give this speech in the Senate, he goes on this long sort of list of all these dangerous companies that need to be brought down by his antitrust bill. And he briefly talks about Standard Oil, but he spends the most amount of time on this much more minor company that Russell Alger is involved. And he keeps repeating his name, emphasizing his name. He even changes the name of the court case to make Alger the primary partner, and he really tries to drill into the public's mind that Alger is this monopolist – even though he wasn't; he only had a tangential involvement – because if he did that, the public would say, *Oh, he's involved in this tyrannical monopoly. This man could never be president.*

And after Sherman gave his speech, many newspapers – and I was able to look at these directly online – they actually remarked about this, and they said, *Well, it's an unusual coincidence that John Sherman repeatedly brought up General Alger.* I actually have a quote from *The New York Times* on this. I think this is very interesting. So this is back when *The Times* was an informative newspaper.

And *The New York Times* says, "Of course it was with reluctance that Mr. Sherman directed the attention of the Senate and the country to General Alger's connection with this 'unlawful combination' and to the fact that the Supreme Court of General Alger's own state had denounced the organization so emphatically. The case, as he said, was 'quite a leading one.'" And then *The Times* concludes: "In 1892," which would be the next election cycle, "General Alger will scarcely look for support and comfort in those pages of the congressional record where this speech may be found." So it was very clear to some contemporaries that something was up and John Sherman's real motive was not passing good legislation, but evening the score against an enemy.

WOODS: All right, tell me more about the actual – yeah, I guess primaryish sources that you looked at. Newspaper reports from the time are pretty darn close. I'm curious about the commentary that you found.

NEWMAN: Of course. So I was able to look at many newspapers directly from the time, as well as a couple of court cases in the congressional record. And it's kind of nice, what works out is that many newspapers are now in online archives, so people can look up for ancestry reasons – so we all see those commercials. I myself have subscriptions to several of those. I do not use them for those purposes; I use them for the purposes of an economic historian, and now you can search through a massive array of newspapers and it will have everything linked, so you can look in an article if it has something about John Sherman and Russell Alger in March of 1890, or before or after, which is very convenient.

So I was able to look at a lot of this and really delve into this issue, because what's interesting is that normally this analysis has been briefly described before, such as Rothbard utilized earlier authors who sort of mentioned that Sherman wanted to punish Alger's company, that Alger was the main president or the owner of the company, etc. But looking at the primary

sources more, as well as the actual court case and reading the minority opinion, the dissenting opinion, actually Russell Alger was not the Diamond Match king, as he was commonly labeled. He was not the head of the company; he only had a very minor involvement. And it's relatively clear that Sherman knew this. He quoted selectively from the court case.

And several newspapers commented on this, as to why Sherman was doing his, he was being so skillful. Sherman's main motive seemed to have been not to necessarily punish the business, which would fit the record as to why the Diamond Match Company was never prosecuted under the Antitrust Act and also why the Antitrust Act was never really used initially after its creation, but rather to just sort of through ignorance and lying, to really imprint in the public's mind that Alger was linked with this company and that in future elections it would always be brought up as some sort of scandal.

So if you actually read newspapers in 1892 or even later in the late 1890s when Russell Alger was running for senator – so in 1892, he tried to run for president, and he failed. In the late 1890s he tried to run for senator, and newspapers brought this whole thing up. *Oh, he was the president of this company; how could he be supporting the public? It was such a malicious company, etc.* So the smear tactic really seemed to work. And when you think about it, only after using various computers that can sort through or search through large amounts of newspapers, only now do we kind of know the true story. So much for the public back then. You didn't have the Internet. You couldn't quickly locate court documents, etc., which it's very interesting that not only did Sherman attack his enemy, but he was pretty deceptive about it and he basically lied in a sense or heavily implied some sort of wrongdoing on Alger, even though he really did nothing wrong.

WOODS: So what's the overall significance of this in case it's not clear?

NEWMAN: Sure. So I think it's interesting to – one, I just love this story. I won't lie. Two, we traditionally as libertarians or free-market proponents, we hear about antitrust legislation to counter sort of the public interest view, we hear that, *Well, actually, it is used by businesses to cripple their competitors by punishing them for predatory pricing or undercutting or just being a monopoly, etc.* We've all read, we all love the traditional – we hear about Standard Oil, how it was actually an efficient company, etc.

And I think it's very important to note that actually the politician who's sort of famously associated with the bill, he was instrumental at the beginning and he kind of let the legislative process slide away from him because the damage was already done, and they named the bill after him just because of his political stature – he pushed for the bill, he was motivated for basically the same reason: to attack his enemies. Not a business enemy, but actually a political enemy. So it kind of links into it. It's very ironic, in a sense, that this antitrust legislation was, the motives that businesses usually use it for are also what the politicians used it for, and it really reinforces and strengthens the special interest view of antitrust legislation and that whole critique of it. So I think it's an interesting story and I think it reinforces our views on antitrust.

WOODS: Well, I'm really glad you did it. It's great detective work, and it enriches our historical understanding, and it's everything you could ask for in a paper. It really is helpful, new, and interesting material. So people should check it out at TomWoods.com/1121, and my thanks to Patrick Newman.

NEWMAN: Thanks a lot for having me on.