

Antitrust in the 21st Century

Course Introduction



President Biden ✓ @POTUS · Jul 9



United States government official

Let me be clear: capitalism without competition isn't capitalism. It's exploitation.

10.7K

29.5K

139.6K



In modern America, the organizations we most directly depend on are private corporations. We predominantly live in private housing, travel by private automobiles, work in private firms, and seek healthcare from private hospitals. The products we buy are usually produced by private companies.

Private markets are not inherently good or bad. And decades of study in economics and other fields demonstrate the strengths and flaws of the market system. On the one hand, harnessing private initiative through market institutions has created the most prosperous societies on earth. But markets have also contributed to a host of social problems, from rising inequality to pollution. It is important to recognize that no market exists in a vacuum. Markets are structured and supported by state and social institutions in countless ways. For example, the government regulates weights and measures and bans fraud to ensure that market participants are able to trade safely. Meanwhile, the environmental laws help to solve collective action problems.

This course is about one especially potent body of law regulating markets: antitrust (or competition) law. It introduces students to antitrust law's role in shaping American capitalism, covering what a law student needs to know about antitrust doctrine as well as touching on economics, history, politics, and modern problems in the U.S. economy.

Antitrust in the “Second Gilded Age”

Western democracies are experiencing extreme and rising levels of inequality at both the corporate and household level, not seen in the U.S. since the first “Gilded Age” (roughly 1880–1920). Lessened competition is likely contributing to these trends. But other factors such as technological change, globalization, declining worker power, and new tax rules are probably important causes too, and are also consistent with the data.

Reading

Required Reading

[Jason Furman, *Beyond Antitrust: The Role of Competition Policy in Promoting Inclusive Growth*, Searle Center Conference on Antitrust Economics and Competition Policy \(September 16, 2016\)](#)

[Jonathan B. Baker, *Market power in the U.S. economy today*, Washington Center for Equitable Growth \(March 2017\)](#)

Steven Berry, Martin Gaynor, and Fiona Scott Morton, *Do Increasing Markups Matter? Lessons from Empirical Industrial Organization*, 33 *Journal of Economic Perspectives*—Number 3, Summer 2019, pp. 44–68

Recommended Reading

Robert C. Lieberman, “Why the Rich are Getting Richer—American Politics and the Second Gilded Age,” 90 *Foreign Aff.* 154 (2011).

Background Reading

Note: The background readings are for students interested in researching and writing further about the topics in this syllabus. Otherwise, students should focus on the required and recommended readings.

[“Benefits of Competition and Indicators of Market Power,” Council of Economic Advisers Issue Brief \(April 2016\)](#)

Philippon, T. (2019). *The Great Reversal: How America Gave Up on Free Markets*. Cambridge, MA: Harvard University Press.

Jacob Hacker and Paul Pierson. 2010. “Winner-Take All Politics: Public Policy, Political Organization, and the Precipitous Rise of Top Incomes in the United States,” *Politics and Society* 38(2): 152–204.

Anna Stansbury and Lawrence Summers, *The Declining Worker Power Hypothesis: An Explanation for the Recent Evolution of the American Economy*, NBER Working Paper 27193

Autor, David, Dorn, David, Katz, Lawrence F, Patterson, Christina, & Van Reenen, John. (2020). The Fall of the Labor Share and the Rise of Superstar Firms. *The Quarterly Journal of Economics*, 135(2), 645–709