

Herbert Hovenkamp

James G. Dinan University Professor
Univ. of Pennsylvania Law and Wharton Business
3501 Sansom St. Philadelphia PA 19104, Room S-150

(215)-573-6018 (O)
(319)-512-9579 (Cell)
hhovenka@law.upenn.edu
hhovenka@wharton.upenn.edu

PROFESSIONAL POSITIONS AND AFFILIATIONS

James G. Dinan University Professor, Penn Law and Wharton Business
Ben V. & Dorothy Willie Professor, Univ. of Iowa (until 2017)
Fellow, American Academy of Arts and Sciences
Fellow, American Council of Learned Societies
Professor (Zero Time), University College London, Faculty of Laws
Professor (distance learning), Ohio State Univ., Moritz College of Law (until 2017)
John Sherman Award, United States Dept. of Justice, Antitrust Division (see http://www.justice.gov/atr/public/press_releases/2008/235516.htm (2008))
Member, American Society for Legal History
Mark DeWolfe Howe Fellow, Harvard Law School (1980)
Harvard Fellow, Harvard Law School (1979-1980)

TEACHING

Antitrust, Torts, Law in American History, Innovation and Competition Policy, Introduction to Intellectual Property Law, the Constitution and Free Enterprise

PUBLICATIONS:

For working papers see my SSRN author's page at:
http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=23858

BOOKS

ANTITRUST LAW (New York: Kluwer/Aspen, with the late Phillip E. Areeda & the late Donald F. Turner) (21 volumes, 3d & 4th editions + annual supplement + end matter volume, 1978-2018) (vol. 2A with Roger D. Blair & Christine Piette Durrance).

THE OPENING OF AMERICAN LAW: NEOCLASSICAL LEGAL THOUGHT, 1870-1970 (New York and London: Oxford Univ. Press, 2015) (honorable mention, Scribes Award, ABA, 2015)

CREATION WITHOUT RESTRAINT: PROMOTING LIBERTY AND RIVALRY IN INNOVATION (New York and London: Oxford Univ. Press, 2012) (with Christina Bohannon)

FEDERAL ANTITRUST POLICY: THE LAW OF COMPETITION AND ITS PRACTICE (West Academic Hornbook Series, 5th ed., 2015) (1st ed., 1994; 2d ed. 1999; 3d ed. 2005; 4th edition, 2011)

PRINCIPLES OF ANTITRUST (West Academic, 2017)

THE MAKING OF COMPETITION POLICY: LEGAL AND ECONOMIC SOURCES (ed., with Dan Crane, New York and London: Oxford Univ. Press, 2013)

THE ANTITRUST ENTERPRISE: PRINCIPLE AND EXECUTION (Cambridge, Mass.: Harvard Univ. Press, 2006)

ENTERPRISE AND AMERICAN LAW: 1836-1937 (Cambridge, Mass.: Harvard Univ. Press, 1991) (winner, Littleton-Griswold Prize).

IP AND ANTITRUST: AN ANALYSIS OF ANTITRUST PRINCIPLES APPLIED TO INTELLECTUAL PROPERTY LAW (Kluwer/Aspen, with Mark D. Janis, Mark A. Lemley, Christopher Leslie, & Michael Carrier) (3d ed. 2017, supplemented annually).

INNOVATION AND COMPETITION POLICY: CASES AND MATERIALS (Open Source, 2d ed., 2013, approximately 700 pp.), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1937207

FUNDAMENTALS OF ANTITRUST LAW (Kluwer/Aspen, 2002, 2d ed. 2003, 3d ed. 2005; 4th ed. 2011) (2013-2018 Supp.)

ANTITRUST LAW, POLICY AND PROCEDURE (Lexis, 1st ed. 1984; 2d ed. 1989; 3d ed. 1994; 4th ed. 1999; 5th ed. 2003; 6th ed. 2009; 7th ed. 2014 (2016 Supp) (with E. Thomas Sullivan, Howard Shelanski, and Christopher Leslie); teachers' manual (8TH edition under contract)

ECONOMICS AND FEDERAL ANTITRUST LAW (West Pub. 1985)

AMERICAN PROPERTY LAW (West Casebook Series, with Sheldon F. Kurtz, 1st ed. 1987; 2d. ed. 1993; 3d ed. 1999; 4th ed. 2003; 5th ed. 2007, 6TH ed. 2012, with Carol Brown) (with teacher's manual).

THE LAW OF PROPERTY: AN INTRODUCTORY SURVEY (West Hornbook Series, 7th ed. 2014) (with Kurtz and Gallanis)

SCIENCE AND RELIGION IN AMERICA: 1800-1860 (Philadelphia: Univ. of Pennsylvania Press, 1978)

ARTICLES, BOOK CHAPTERS, AND ESSAYS

Horizontal Mergers, Market Structure, and Burdens of Proof (with Carl Shapiro), ___ Yale L.J. ___ (2018) (forthcoming), currently available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3046224.

Horizontal Shareholding and Antitrust Policy (with Fiona Scott Morton), ___ Yale L.J. ___ (2018), currently available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3046203.

Whatever Did Happen to the Antitrust Movement?, ___ Notre Dame L. Rev. ___ (2018), currently available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3097452

Anticompetitive Mergers in Labor Markets (with Ioana Marinescu), ___ Ind. L.J. ___ (2018), currently available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3124483

Prophylactic Merger Policy, ___ Hastings L.J. ___ (2018), currently available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3090650

Antitrust and the Design of Production, ___ Cornell L. Rev. ___ (2018) (forthcoming), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3013122

Reasonable Patent Exhaustion, ___ Yale J. Reg. ___ (2018) (forthcoming), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2995751

The Rule of Reason ___ Fla. L. Rev. _ (2018) (forthcoming), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2885916

Progressive Antitrust, 2018 Illinois L. Rev. 71 (2018), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2892336

Intellectual Property and Competition, in RESEARCH HANDBOOK ON THE ECONOMICS OF INTELLECTUAL PROPERTY (London: Edward Elgar. Peter Menell, David Schwartz & Ben Depoorter, eds) (2018) (forthcoming), currently available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2569129.

The NCAA and the Rule of Reason, 52 Rev. Indus. Org. 323 (Oct. 2017), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2810580.

The Progressives: Racism and Public Law, 59 Ariz. L. Rev. 947 (2017), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2812257

Antitrust Policy and Inequality of Wealth, Oct. CPI Antitrust Chronicle (Oct., 2017), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2998220

Appraising Merger Efficiencies, 24 George Mason L. Rev 703 (2017), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2664266.

Appraising the Progressive State, 102 Iowa L. Rev. 1063 (2017), also available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2728291.

Buying Monopoly: Antitrust Limits on Damages for Externally Acquired Patents (with Erik N. Hovenkamp), 25 Tex. Intel. Prop. L.J. 39 (2017), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2767098.

"Coase," ENCYCLOPEDIA OF LAW AND ECONOMICS (Heidelberg, Germany: Springer, Jurgen Backhaus, ed., 2016).

Roger Blair and the Goals of Antitrust, 61 Antitrust Bull. 382 (2016)

Re-Imagining Antitrust: the Revisionist Work of Richard S. Markovits (Essay Review), 94 Tex. L. Rev. 1221 (2016), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2675814.

Patent Exhaustion and Federalism: A Historical Note, 102 Va. L. Rev. Online 25 (2016), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2684817.

The Emergence of Classical Patent Law, 58 Ariz. L. Rev 263 (2016), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2625596

Antitrust Balancing, 12 NYU J. L. & Bus. 369 (2016), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2687453.

Antitrust and Information Technologies, 68 Fla. L. Rev. 419 (2016), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2444349.

Patent Pools and Related Technology Sharing, in Cambridge University Press Antitrust Intellectual Property and High Tech Handbook (Roger C. Blair and D. Daniel Sokol, eds., 2016) (with Erik N. Hovenkamp), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2645905.

Inventing the Classical Constitution, 101 Iowa L. Rev. 1 (2015), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2486612.

Brulotte's Web, 11 J. Comp. L. & Econ. 527 (2015), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2626758.

The *Actavis* Inference: Theory and Practice, 67 Rutgers L. Rev. 585 (2015) (with Aaron S. Edlin, C. Scott Hemphill and Carl Shapiro), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2560107.

Rediscovering Capture: Federalism, Antitrust, and the *North Carolina Dental* Case, CPI Antitrust Chronicle (April, 2015), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2570807.

"Tying Arrangements" (with Erik N. Hovenkamp), OXFORD HANDBOOK OF INTERNATIONAL ANTITRUST ECONOMICS (New York and London: Oxford Univ. Press, 2015)

Antitrust and the Patent System: A Reexamination, 76 OSU L.J. 467 (2015), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2486633.

Progressive Legal Thought, 72 Washington & Lee L. Rev. 653 (2015), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2512219.

The Rule of Reason and the Scope of the Patent, 52 San Diego L. Rev. 515 (2015), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2490677.

Fractured Markets and Legal Institutions, 100 Iowa L. Rev. 617 (2015), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2402449.

The Areeda-Turner Test for Exclusionary Pricing: A Critical Journal, 46 Rev. Indus. Org. 209 (2015).

Actavis and Error Costs, Antitrust Source 1 (Oct. 2014) (with Aaron S. Edlin, C. Scott Hemphill and Carl Shapiro), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2448530.

Consumer Welfare in Competition and Intellectual Property Law, 9 Competition Policy Int'l J. 53 (2014), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2329150

Anticompetitive Patent Settlements and the Supreme Court's *Actavis* Decision, 15 Minn. J. L., Sci. & Tech. 3 (2014), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2286255

Robert Bork and Vertical Integration: Leverage, Foreclosure, and Efficiency 79 Antitrust L.J. 983 (2014), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2272977

Interests Groups in the Teaching of Legal History, in TEACHING LEGAL HISTORY: COMPARATIVE PERSPECTIVES (Robert M. Jarvis, ed., London: Wildy, Simmonds & Hill) (2014), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2368246

Activating *Actavis*, 28 Antitrust 16 (2013) (with Aaron S. Edlin, C. Scott Hemphill, and Carl Shapiro), available at

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2317241

Institutional Advantage in Competition and Innovation Policy, 2013 Concurrences 27 (2013), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2307141

Implementing Antitrust's Welfare Goals, 81 Fordham L.Rev. 2471 (2013), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2154499

Competition in Information Technologies: Standards-Essential Patents, Non-Practicing Entities, and FRAND Bidding, INTERNATIONAL ANTITRUST LAW & POLICY 439 (2013), Competition Law Institute, Fordham Univ. School of Law), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2154203.

Markets in IP and Antitrust, 100 Geo. L.J. 2133 (2012), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2028314

Markets in Merger Analysis, 57 Antitrust Bull. 887 (2012), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1945964

Antitrust and Nonexcluding Ties, 8 Competition Policy International Journal (2012), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2143869 (2012)

Competition for Innovation, 2012 Col. Bus. L. Rev. 799 (2012 Handler Lecture), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2008953

Antitrust and the Movement of Technology, 19 GMU L.Rev. 1119 (2012), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1990559 (2012)

Antitrust and the Close Look: Transaction Cost Economics in Competition Policy, in THE GLOBAL LIMITS OF COMPETITION LAW 66 (Ioannis Lianos and D. Daniel Sokol, eds., Stanford, Ca.: Stanford Univ. Press, 2012), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1661993.

Antitrust and the Costs of Movement, 78 ABA Antitrust L.J. 67 (2012), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1679849.

Mergers with Dominant Firms: the *Lundbeck* Case, 2011 CPI Antitrust Chronicle 1 (Dec. 2011), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1968151

The Firm as Cartel Manager, 64 Vand. L.Rev. 813 (2011) (with Christopher Leslie), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1628175

Harm to Competition under the 2010 Horizontal Merger Guidelines, 39 Rev. Indus. Org. 3 (2011), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1702843

Concerted Refusals to License Intellectual Property Rights, 1 Harv.Bus.L.Rev.Bull. 21 (2011) (with Christina Bohannon), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1710531

Notice and Patent Remedies, 88 Texas L.Rev. Online 221 (2011), also available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1596789

IP and Antitrust: Reformation and Harm, 51 Boston Col.L.Rev. 905 (2010) (with Christina Bohannon), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1377382

Harvard, Chicago and Transaction Cost Economics in Antitrust Analysis, 55 Antitrust Bulletin 613 (2010), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1592476

The Legal Periphery of Dominant Firm Conduct, in COMPETITION LAW AND ECONOMICS: ADVANCES IN COMPETITION POLICY ENFORCEMENT IN THE EU AND NORTH AMERICA 238-263 (Abel M. Mateus & Teresa Moreira, eds., Cheltenham, UK 1910), also available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1014426

Coasean Markets, 31 European J.L. & Econ. 63 (2010), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1580059.

Post Sale Restraints and Competitive Harm, 66 NYU Ann.Surv.Am.L. 487 (2011), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1540527

The Obama Administration and §2 of the Sherman Act, 90 Boston Univ. L.Rev.1611 (2010), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1437688

Tying Arrangements and Antitrust Harm, 52 Ariz.L.Rev. 925 (2010) (with Erik N. Hovenkamp), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1443284

Coase, Institutionalism, and the Origins of Law and Economics, 86 Ind.L.J. 499 (2011), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1538279.

The FTC and the Sherman Act, 62 Fla.L.Rev. 871 (2010), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1531136.

American Needle: the Sherman Act, Conspiracy and Exclusion, CPI Antitrust Chronicle (Aug. 2010), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1625761

The FTC's Anticompetitive Pricing Case Against Intel, *CPI Antitrust Chronicle* (Feb. 28, 2010), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1546054

The Pleading Problem in Antitrust Cases and Beyond, 95 Iowa L.Rev. Bull. 55 (2010) (in press), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1508511

The Law of Vertical Integration and the Business Firm: 1880-1960, 95 Iowa L.Rev. 863 (2010), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1268328

United States Competition Policy in Crisis, 1890-1955, 94 Minn.L.Rev. 311 (2009), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1156927

Patents, Property, and Competition Policy, 34 J.Corp.L. 1243 (2009), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1338899

The Coase Theorem and Arthur Cecil Pigou, 51 Ariz. L.Rev. 633 (2009), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1275987.

Neoclassicism and the Separation of Ownership and Control, 4 Virginia J.L. & Bus. Rev. 374 (2009), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1315003

Complex Bundled Discounts and Antitrust Policy, 57 Buffalo L.Rev. 1227 (2009) (with Erik N. Hovenkamp), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1344536

The Viability of Antitrust Price Squeeze Claims, 51 Ariz.L.Rev. 273 (2009) (with Erik N. Hovenkamp), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1156974).

The Neal Report and the Crisis in Antitrust, 5 Competition Policy Int'l 217 (April 30, 2009), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1348707

The Intellectual Property-Antitrust Interface, in 3 ISSUES IN COMPETITION LAW AND POLICY 1979 (ABA Section of Antitrust Law 2008), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1287628

Schumpeterian Competition and Antitrust, 4 Competition Policy Int'l #2 (2008), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1275986

Exclusionary Bundled Discounts and the Antitrust Modernization Commission, 53 Antitrust Bull. 517 (2008) (with Erik N. Hovenkamp), available at

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1126723

Innovation and the Domain of Competition Policy, 60 Ala.L.Rev. 103 (2008), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1091488

The Legal Periphery of Dominant Firm Conduct, Lisbon Conference on Competition Law and Economics (Nov. 2007), available at

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1014426.

Restraints on Innovation, 29 Cardozo L.Rev. 247 (2007), available at

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1438117

Standards Ownership and Antitrust, 48 Boston College L.Rev. 87 (2007)

The Chicago and Harvard Schools and the Dominant Firm, in *Conservative Influences on Antitrust Policy* (Robert Pitofsky, ed., Oxford Univ. Press 2007) (also available at

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1014153).

Economic Experts in Antitrust Cases, in *Modern Scientific Evidence: the Law and Science of Expert Testimony* (D. Faigman, D. Kaye, M. Saks, J. Sanders, eds., West Group, 1999) (2d. ed. 2002; 3d ed. 2007)

Signposts of Anticompetitive Exclusion: Restraints on Innovation and Economies of Scale, 2006 International Antitrust Law & Policy 409 (2006 Competition Law Institute, Fordham Univ. School of Law), ch. 18.

Unilateral Refusals to License, 2006 Oxford J.Competition L. & Econ 1 (2006) (with Mark D. Janis and Mark A. Lemley)

Discounts and Exclusion, 2006 Utah L.Rev. 841 (2006)

Federalism and Antitrust Reform, 40 USF Law Review 627 (2006)

The Law of Exclusionary Pricing, 2 Competition Policy International 21 (2006)

Introduction: Antitrust Enterprise Conference, 31 J.Corp.L. 287 (2006)

Unilateral Refusals to License in the U.S. (With Mark D. Janis and Mark A. Lemley), in *Antitrust, Patents and Copyright: EU and US Perspectives* (Francois Leveque & Howard Shelanski, eds). Cheltenham, UK, 2005

Exclusion and the Sherman Act, 72 Univ. Chicago L.Rev. 147 (2005)

- Sensible Antitrust Rules for Pharmaceutical Competition*, 39 *USF L. Rev.* 11 (2004)
- United States Antitrust Policy in an Age of IP Expansion*, *International Antitrust Law & Policy* 225-241 (2004 Competition Law Institute, Fordham Univ. School of Law)
- Antitrust and the Regulatory Enterprise*, 2004 *Columbia Bus. L.Rev.* 335 (2004)
- Balancing Ease and Accuracy in Assessing Pharmaceutical Exclusion Payments*, 88 *Minn.L.Rev.* 712 (2004) (with Mark D. Janis & Mark A. Lemley)
- Antitrust Violations in Securities Markets*, 28 *J. Corp. L.* 607 (2003)
- The Rationalization of Antitrust (essay review of Richard A. Posner, *Antitrust Law* (2001), 116 *Harv. L. Rev.* 917 (2003))
- Anticompetitive Settlements of Intellectual Property Disputes*, 87 *Minn.L.Rev.* 1719 (2003) (with Mark D. Janis & Mark A. Lemley)
- Antitrust as Extraterritorial Regulatory Policy*, 48 *Antitrust Bull.* 629 (2003)
- The Reckoning of Post-Chicago Antitrust*, in *Post-Chicago Developments in Antitrust Law* (Edward Elgar, 2003)
- Bargaining in Coasian Markets: Servitudes and Alternative Land-Use Controls*, 27 *J.Corp.L.* 519 (2002)
- IP Ties and Microsoft's Rule of Reason*, 47 *Antitrust Bull.* 369 (2002)
- Post-Chicago Antitrust: A Review and Critique*, 2001 *Columbia Bus. L. Rev.* 257 (2001)
- Antitrust Policy after Chicago: Problems of Administrability and Management*" (European Institute, 2001)
- The Monopolization Offense*, 61 *Ohio St. L.J.* 1035 (2000)
- Knowledge About Welfare: Legal Realism and the Separation of Law and Economics*, 84 *Minn.* 805 (2000)
- The Robinson-Patman Act: Unfinished Business*, 68 *Antitrust L.J.* 125 (2000)
- Competitor Collaboration after California Dental*, 2000 *Univ. of Chicago Legal Forum* 149 (2000)

Antitrust Remedies for Intellectual Property Bottlenecks, in European Competition Law Annual 1998: Telecommunications Policy (C.D. Ehlermann & L. L. Laudati, eds. Oxford, 1999)
Private Property and the State, in The Fundamental Interrelationships Between Government and Property 109 (N. Mercuro & W.J. Samuels, eds. 1999)

Intellectual Property Rights and Antitrust Policy: Introduction, 24 J. Corp. L. 477 (1999)

The Takings Clause and Improvident Regulatory Bargains, 108 Yale L.J. 801 (1999)

United States Antitrust Law: Implementation of its Varied Goals, in European Competition Law Annual 1997: Objectives of Competition Policy 416 (C.D. Ehlermann & L. L. Laudati, eds. Oxford, 1998).

Judicial Restraint and Constitutional Federalism: the Lopez and Seminole Tribe Decisions, 96 Columbia L. Rev. 2213 (1996)

The Areeda-Turner Treatise in Antitrust Analysis, 41 Antitrust L. Rev. 815 (1996)

Law and Morals in Classical Legal Thought, 82 Iowa L. Rev. 1427 (1997) (Univ. of Chicago Working Paper in Legal History (1996).

Law and Economics in the United States: A Brief Historical Survey, 19 Cambridge J. Econ. 331 (1995)

Exclusive Joint Ventures and Antitrust Policy, 1995 Columbia Bus. L. Rev. 1 (1995)

The Mind and Heart of Progressive Legal Thought, 81 Iowa L. Rev. 149 (1995)

The Limits of Preference Based Legal Policy, 89 Nw. Univ. L. Rev. 4 (1994)

"Introduction," to John Chipman Gray, *The Nature and Sources of Law* (new ed., Ashgate, 1994)

The Marginalist Revolution in Legal Thought, 46 Vand. L. Rev. 305 (1993)

Market Power in Aftermarkets: Antitrust Policy and the Kodak Case, 40 UCLA L. Rev. 1447 (1993)

Antitrust Policy and the Social Cost of Monopoly, 78 Iowa L. Rev. 371 (1993)

Market Efficiency and the Domain of the Firm, 18 J. Corp. L. 173 (1993).

- Mergers and Buyers*, 77 Va. L. Rev. 1369 (1991)
- Rationality in Law & Economics*, 60 Geo. Wash. L. Rev. 293 (1992)
Legal Policy and the Endowment Effect, 20 J. Legal Studies 225 (June, 1991)
- Positivism in Law & Economics*, 78 Calif. L. Rev. 815 (1990)
- The First Great Law & Economics Movement*, 42 Stan. L. Rev. 993 (1990)
- The Indirect Purchaser Rule and Cost-Plus Sales*, 103 Harv. L. Rev. 1717 (1990)
- Legislation, Well-Being and Public Choice*, 57 Univ. Chicago L. Rev. 63 (1990)
- Marginal Utility and the Coase Theorem*, 75 Cornell L. Rev. 783 (1990)
- Arrow's Theorem: Ordinalism and Republican Government*, 75 Iowa L. Rev. 949 (1990)
- Antitrust Policy, Federalism, and the Theory of the Firm: an Historical Perspective*, 59 ABA Antitrust L. J. 75 (1990)
- Antitrust Analysis of Market Power, With Some Thoughts About Regulated Industries*, in *Market Dominance Industries*, book chapter, in *Telecommunications Deregulation: Market Power and Cost Allocation Issues* (J.R. Allison & D. L. Thomas, eds. New York: Quorum Books, 1990).
- The Measurement of Market Power: Policy and Science*, book chapter, in *The Law and Economics of Competition Policy* (F. Mathewson, M. Trebilcock, & M. Walker, eds.) (Vancouver: Fraser Institute, 1990).
- Antitrust's Protected Classes*, 88 Mich. L. Rev. 1 (1989), reprinted in 32 Corporate Practice Commentator 29 (1990)
- The Antitrust Movement and the Rise of Industrial Organization*, 68 Tex. L. Rev. 105 (1989)
- The Sherman Act and the Classical Theory of Competition*, 74 Iowa L. Rev. 1019-1065 (1989), abridged and reprinted in *The Political Economy of the Sherman Act: the First One Hundred Years* (New York: Oxford Univ. Press, 1991)
- The Political Economy of Substantive Due Process*, 40 Stanford L. Rev. 379-447 (1988)
- Regulatory Conflict in the Gilded Age: Federalism and the Railroad Problem*, 97 Yale L.J. 1017-72 (1988).

- Labor Conspiracies in American Law*, 66 Tex. L. Rev. 919-965 (1988).
- The Classical Corporation in American Legal Thought*, 76 Geo. L.J. 1593-1689 (1988).
Fact, Value and Theory in Antitrust Adjudication, 1987 Duke L.J. 897 - 914.
- Treble Damages Reform*, 33 Antitrust Bulletin 233-58 (1988).
- Derek Bok and the Merger of Law and Economics*, 21 J. L. Reform 515 (1988).
- Antitrust Policy, Restricted Distribution, and the Market for Exclusionary Rights*, 71 Minn.L.Rev. 1293 - 1318 (1987).
- Chicago and its Alternatives*, 1987 Duke L.J. 1014 - 29.
- Rhetoric and Skepticism in Antitrust Argument*, 84 Mich. L. Rev. 1721 - 1729 (1986).
- Treble Damages and Antitrust Deterrence: A Dialogue*, 18 Antitrust L. & Econ. Rev. 67 - 79 (1986) (with L. Schwartz).
- Antitrust Policy After Chicago*, 84 Mich.L.Rev. 213 - 284 (1985).
- Evolutionary Models in Jurisprudence*, 64 Tex. L. Rev. 645 - 685 (1985).
- Municipal Regulation and Federal Antitrust Policy*, 32 UCLA L. Rev. 719 - 783 (1985) (with John A. MacKerron III).
- Social Science and Segregation Before Brown*, 1985 Duke L.J. 624 -672.
- Technology, Politics and Regulated Monopoly: An American Historical Perspective*, 62 Tex.L.Rev. 1263 - 1312 (1984).
- Vertical Restrictions and Monopoly Power*, 64 Boston Univ. L. Rev. 521 - 561 (1984).
- Merger Actions for Damages*, 35 Hastings L.J. 937 - 973 (1984).
- Vertical Integration by the Newspaper Monopolist*, 69 Iowa L.Rev. 451 - 467 (1984).
- The Economics of Legal History*, 67 Minn. L. Rev. 645 - 697 (1983).
- Predatory Pricing and the Ninth Circuit*, 1983 Ariz. St. L.J. 443 - 482 (with Avarelle Silver-Westrick).
- Tying Arrangements and Class Actions*, 36 Vand.L.Rev. 213 - 262 (1983).

State Antitrust in the Federal Scheme, 58 Ind. L. J. 375 - 432 (1983).

Judicial Reconstruction of the Robinson-Patman Act: Predatory Differential Pricing, 17 U.C.Davis L. Rev. 309 - 339 (1983).

Market Power and Secondary-Line Differential Pricing, 71 Georgetown L.J. 1157 - 1177 (1983).

Distributive Justice and the Antitrust Laws, 51 Geo. Wash. L. Rev. 1 - 31 (1982), reprinted in 26 Corp. Practice Commentator 345 - 376 (1984).

Personal Jurisdiction and Venue in Private Antitrust Actions in the Federal Courts: A Policy Analysis, 67 Iowa L.Rev. 485 - 523 (1982).

Pragmatic Realism and Proximate Cause in America, 3 J. Leg. Hist. 3 - 30 (1982).

Sovereign Immunities Act Jurisdiction and Antitrust Policy, 15 U.C. Davis L. Rev. 839 - 872 (1982).

Federalism Revised, 34 Hastings L.J. 201 - 226 (1982).

Insanity and Criminal Responsibility in Progressive America, 57 N. Dak. L. Rev. 541 - 575 (1981).

Tying Arrangements in the Real Estate Market: Federal Antitrust and Local Land Development Policy, 33 Hastings L.J. 325 - 356 (1981).

Can a Foreign Sovereign Be an Antitrust Defendant? 32 Syracuse L. Rev. 879 - 911 (1981).

BOOK REVIEWS

Review of Susanna L. Blumenthal, *Law and the Modern Mind: Consciousness and Responsibility in American Legal Culture* (2016), *The American Historian* (2017) (forthcoming)

Review of Jacob S. Hacker and Paul Pierson, *American Amnesia: How the War on Government Led Us to Forget What Made America Prosper* (2016), *The New Rambler* (May 9, 2016).

Review of Thomas C. Leonard, *Illiberal Reformers: Race, Eugenics and American Economics in the Progressive Era* (Princeton Univ. Press 2016), *The New Rambler* (Feb. 10, 2016), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2739285.

Review of Robert E. Wright, *Corporation Nation* (2014), 102 *J.Am.Hist.* 953 (2014)

Review of David J. Teece, *Competing Through Innovation: Technological Strategies and Antitrust Policies* (2013), 5 *European Competition Law Review* (2014)

Review of David M. Rabban, *Law's History*, 100 *J. Am. Hist.* 538 (2013).

Review of Firat Cengiz, *Antitrust Federalism in the EU and the US* (2012), 38 *European L. Rev.* 419 (2013).

Review of Catherine L. Fisk, *Working Knowledge: Employee Innovation and the Rise of Corporate Intellectual Property, 1800-1930* (2009), 98 *J. Amer.Hist.* 213 (2011).

Review of Stuart Banner, *Who Owns the Sky? The Struggle to Control Airspace from the Wright Brothers On* (2008), 96 *J.Amer.Hist.* 104 (2009)

Review of *Handbook of Research in Trans-Atlantic Antitrust* (Philip Marsden, ed.), 33 *European L.Rev.* (2007)

Review of *The Evolution of European Competition Law: Whose Regulation, Which Competition?* (Hanns Ullrich, ed.), 32 *European L.Rev.* 773 (2006)

Review of Damien Gerardin, *Modernisation and Enlargement: Two Major Challenges for EC Competition law*, 30 *European L.Rev.* 910 (2005)

Review of Wouter P.J. Wils, *Principles of European Antitrust Enforcement* (2005), 30 *European L. Rev.* 593 (2005)

Review of Dale D. Murphy, *The Structure of Regulatory Competition: Corporations and Public Policies in a Global Economy* (2004), 29 *European L. Rev.* 730 (2004)

Review of Wyatt Wells, *Antitrust and the Formation of the Postwar World* (2002), 22 *Law & Hist. Rev.* 438 (2004)

Review of Christopher Harding and Julian Joshua, *Regulating Cartels in Europe: A Study of Legal Control of Corporate Delinquency*, 28 *European L. Rev.* 269 (2004)

Review of "Transcontinental Railroad" (PBS Film Series), 90 *J. Am.Hist.* 1126 (2003)

Review of Bruno Zanettin, *Cooperation Between Antitrust Agencies at the International Level*, 28 *European L.Rev.* 570 (2003)

Review of Jonathan W. Singer, *Broken Trusts: the Texas Attorney General and the Oil Industry*, 69 J. Southern Hist. 952 (2003)

Review of Barbara Young Welke, *Recasting American Liberty: Gender, Race, Law, and the Railroad Revolution, 1865-1920*, 89 J.Am.Hist. 1530 (2003)

Review of Edward A. Purcell, Jr., *Brandeis and the Progressive Constitution: Erie, the Judicial Power, and the Politics of the Federal Courts in Twentieth-Century America* (2000), 106 Am. Hist. Rev. 193 (2001)

Review of William G. Thomas, *Lawyering for the Railroad: Business, Law, and Power in the New South*, 74 Bus. Hist. Rev. 323 (2000)

Review of Victoria Woeste, *The Farmer's Benevolent Trust: Law and Agricultural Cooperation in Industrial America, 1865-1945*, 43 Am.J.Legal History 89 (1999)

Review of Barbara H. Fried, *The Progressive Assault on Laissez Faire: Robert Hale and the First Law and Economics Movement*, 104 Am.Hist.Rev. 1701 (1999)

Review of Anthony J. Sebok, *Legal Positivism in American Jurisprudence*, 86 J.Am.History 1837 (2000)

Review of Gregory Alexander, *Commodity and Propriety: Competing Visions of Property in American Legal Thought, 1776-1970*, 103 Am. Historical Rev. 1678 (Dec. 1998)

Review of Heath Pearson, *Origins of Law and Economics: the Economists' New Science of Law, 1830-1930* (1997), 17 L. & Hist. Rev. 201 (1998)

Review of Peter Karsten, *Heart Versus Head: Judge-Made Law in Nineteenth Century America* (1997) and M. H. Hoeflich, *Roman & Civil Law and the Development of Anglo-American Jurisprudence in the Nineteenth Century*, 85 J. Amer. Hist. 666 (1998)

Review of Paul Kens, *Justice Stephen Field: Shaping Liberty from the Gold Rush to the Gilded Age*, 10 J. Policy History 351 (1998)

The Organization of Capital Against Labor (reviewing D. Ernst, *Lawyers Against Labor*), 25 Rev. Amer. Hist. 294 (1997)

Review of Novak, *The People's Welfare* (1996), 71 Bus. Hist. Rev. 323 (1997)

Review of Ruldoph J. R. Peritz, *Competition Policy in America, 1888-1992*, 28 J. Interdisciplinary History 158 (1997)

Review of Ronen Shamir, *Managing Legal Uncertainty: Elite Lawyers in the New Deal*, 102 *Am. Hist. Rev.* 209 (1997)

"The Cultural Crises of the Fuller Court" (reviewing Owen Fiss, vol. 8, *Holmes Devise History of the Supreme Court*), 104 *Yale L.J.* 2309 (1995).

Review of Tinsley E. Yarbrough, *Judicial Enigma: the First Justice Harlan* (1995), 45 *J. Legal Educ.* 610 (1995)

Review of D. Armor, *Forced Justice: School Desegregation and the Law* (1995); and D. Douglas, *Reading, Writing, & Race: the Desegregation of the Charlotte Schools* (1996), 82 *J. Am. Hist.* 1643 (1996)

"Regulation History as Politics or Markets (reviewing *The Regulated Economy: A Historical Approach to Political Economy* (C. Goldin & G. Libecap, eds.), 12 *Yale J. Reg.* 549 (1995).

"The Non-Progressive Federal Income Tax" (Robert Stanley, *Dimensions of Law in the Service of Order: Origins of the Federal Income Tax, 1861-1913*), 23 *Reviews in American History* 256 (1995)

Review of Lester G. Lindley, *Contract, Economic Change, and the Search for Order in Industrializing America* (1993), 39 *Am. J. Legal. Hist.* 103 (1995).

Review of Tony Freyer, *Producers Versus Capitalists: Constitutional Conflict in Antebellum America*, 81 *J. Am. Hist.* 230 (1995)

Review of Berk, *Alternative Tracks: the Constitution of American Industrial Order, 1854-1917*, 14 *L. & Hist. Rev.* 193 (1995)

Review of Richard A. Epstein, *Bargaining With the State*, 100 *Am. Hist. Rev.* 956 (1995)

Review of Sellers, *The Market Revolution: Jacksonian America, 1815-1846*, 6 *J. Policy History* 272 (1994)

Review of Gillman, *The Constitution Besieged: the Rise and Demise of Lochner Era Police Powers Jurisprudence* (1993), 11 *Const. Commentary* 255 (1994)

"The Corporation's Split Personality" (reviewing Phillip I. Blumberg, *The Multinational Challenge to Corporation Law: the Search for a New Corporate Personality*), 92 *Mich. L. Rev.* 1792 (1994)

Review of Monroe, *The Wheeling Bridge Case: its Significance in American Law and Technology* (1992), 80 J. Amer. Hist. 1088 (1993)

Review of Tony Freyer, *Regulating Big Business: Antitrust in Great Britain and America: 1880-1990* (1992), 11 L. & Hist. Rev. 455 (1993)

Review of David P., Currie, *The Constitution in the Supreme Court: the Second Century, 1888-1986*, 90 Mich. L. Rev. 1384 (1992)

Review of Michael Conant, *The Constitution and the Economy: Objective Theory and Critical Commentary* (1991), 78 J. Amer. History 642 (Sep. 1992)

Review of Jennifer Nedelsky, *Private Property and the Limits of American Constitutionalism: the Madisonian Framework and Its Legacy*, 10 L. & History Rev. 178 (1992)

Review of Cass R. Sunstein, *After the Rights Revolution: Reconceiving the Regulatory State*; and Daniel A. Farber & Philip P. Frickey, *Law and Public Choice: A Critical Introduction*, 8 Const. Comm. 470 (1991)

Review of Ellen Frankel Paul and Howard Dickman, eds., *Liberty, Property, and the Future of Constitutional Development* (1990); Paul Kens, *Judicial Power and Reform Politics: the Anatomy of Lochner v. New York* (1990), 8 Const. Commentary 274 (1991)

Review of Bernard Schwartz, *The Ascent of Pragmatism: the Burger Court in Action* (1990), 8 Const. Commentary 512 (1991)

Review of R. Loss, ed., *Corwin on the Constitution. Volume Three: On Liberty Against Government* (1988); M. Kammen, *Spheres of Liberty: Changing Perceptions of Liberty in American Culture* (1989); E. Paul & H. Dickman, eds., *Liberty, Property, and Government: Constitutional Interpretation Before the New Deal* (1989), 7 Const. Commentary 410 (1990)

Review of William Lasser, *The Limits of Judicial Power: the Supreme Court in American Politics*, 7 Const. Commentary 123 (1990)

Review of S. Levinson, *Constitutional Faith*, 6 Const. Commentary 502 (1989)

Review of G. Wacker, *Augustus H. Strong and the Dilemma of Historical Consciousness* (1985), 91 Amer. Historical Review 482 (1986).

Review of G. Gawalt, Ed., *The New High Priests: Lawyers in Post-Civil War America* (1984), 71 J. Amer. History 884 - 85 (1985).

The Proud Pre-Eminence, 8 Hastings Const. L. Q. 429 - 448 (1981).

Review of T. Kovaleff, *Business and Government during the Eisenhower Administration* (1980), 33 *Hastings L.J.* 755 - 768 (1982).

The Public Mr. Choate, 9 *Reviews in Amer. History* 72 - 75 (1981).

Review of Presser & Zainaldin, *Law and American History*, 32 *Hastings L.J.* 553 - 560 (1980).

Review of Marcus, *Antitrust Law and Practice*, 38 *Business Lawyer* 1411 - 1414 (1981).

Review of Edwards, *Scientific and Philosophical Writings of Jonathan Edwards*, 72 *Isis* 321 (1981).

Review of Gill, *Possibility of Religious Knowledge*, 2 *Christian Scholar's Review* 349 - 352 (1973).

Review of Kintner, *A Treatise on the Antitrust Laws of the United States* (vols. I & II, 1980), 15 *U.C. Davis L.Rev.* 521 - 526 (1981).

OTHER MISCELLANEOUS PUBLICATIONS

"Antitrust," *Encyclopedia of the Supreme Court* (Macmillan/Thomson, 2008)

ABA Roundtable on Supreme Court's *Trinko* decision, 2004 *The Antitrust Source* 1 (July, 2004).

"Phillip Areeda," "John Sherman," in *Yale Biographical Dictionary of American Law* (New Haven: Yale University Press, 2004)

"Sherman Act," "Clayton Act," "Federal Trade Commission Act," in *Major Acts of Congress* (New York: Macmillan, 2004)

"Capitalism," in *Oxford Companion to the Supreme Court* (New York: Oxford Univ. Press, 1991; 2d ed. 2004)

"Business Associations," in *Oxford Encyclopedia of Legal History* (New York: Oxford Univ. Press, 2007)

ANTITRUST (West Black Letter Series, 1986; 2d ed. 1993; 3d ed. 1999; 4th ed., 2005; 5TH ed. 2011; 6th ed., 2016)

"Substantive Due Process" and "Economics and Law," *Oxford Companion to American Law* (James Ely of Vanderbilt, ed. 2001)

Review of Kaiser Steel v. Mullins, 1981 Preview of United States Supreme Court Cases
#2

Correspondence, on Public Choice, 57 Univ. Chicago L. Rev. 840 (1990)

Tribute to Lawrence Sullivan, 79 Calif. L. Rev. 1224 (1992)

PREVIOUS EMPLOYMENT HISTORY

1985-2017: Ben V. & Dorothy Willie Professor of Law, Univ. of Iowa College of Law
1980-1985: Associate Professor of Law, University of California, Hastings College of the Law
Spring 1986: Visiting Professor, Univ. of Michigan Law School
1979-80: Rockefeller Foundation Humanities Fellow, Harvard Law School, Cambridge, MA
1976-79: Lecturer, History and American Studies, University of Texas
1972-76: Assistant Instructor, English and American Studies, University of Texas

EDUCATION

J.D., 1978, University of Texas School of Law
Ph.D., 1976, American Civilization, University of Texas
M.A., 1971, American Literature, University of Texas
B.A., 1969, Calvin College, Grand Rapids, Michigan

Professional Activities and Awards

2015 Scribes Award (ABA, American Socy' Legal Writers), Honorable Mention, best legal books of 2015, *The Opening of American Law*
2015 Academic Excellence Award, *Global Competition Review* (antitrust scholar of the year, worldwide)
2012-2013 Member, ABA Transitional Task Force to Advise the President Elect on Antitrust and Consumer Protection Policy
2012- Member, Board of Advisors George Mason Univ. School of Law Global Antitrust Institute
2010- Advisory Board, Centre for Law, Economics, and Society, University College London (UCL)
2012- Board Member, The Source for Competitive Healthcare (UC Hastings Consortium on Law, Science and Health Policy)
2008- 2010 Membership Panel, American Academy of Arts and Sciences (Section III, Law)
2010- Editorial Board, *Competition Policy International*
2008- Advisory Board, *Journal of Competition Law and Economics*
2008-2012 Faculty Advisor, *Journal of Corporation Law*

- 2008- Faculty Advisor, Supervisor, *Iowa Medical Innovation Group* (IMIG, Law Component)
- 2007- Fellow, American Academy of Arts and Sciences
- 2005- *Referee*, Harvard University Press, Oxford University Press, Yale University Press, Aspen Publishers, MIT Press, Routledge, Edward Elgar Pub., *Journal of Legal Studies*, *Yale Law Journal*, *Harvard Law Review*, *Stanford Law Review*, *Iowa Law Review*
- 1993 University of Iowa Outstanding Teachers Award
- 1992 Littleton-Griswold Prize, American Historical Association (for *Enterprise and American Law: 1836-1937*)
- 1990 Univ. of Iowa Regents Award for Distinguished Faculty Scholars
- 1988 Univ. of Iowa Faculty Scholars Award
- 1988-91 Chair, Antitrust Section, AALS
- 1987-89 Faculty Advisor, *Journal of Corporation Law*
- 1984-88 Member, Executive Committee, Antitrust Section, AALS
- 1981-84 Faculty Advisor, *Hastings Law Journal*
- 1981-98 Board of Editors, *The Journal of Legal History*
- 1985 Roger J. Traynor Award for Scholarly Publications
- 1979 Choice Award, *Library Journal* (for *Science and Religion in America: 1800-1860*)

Endowed Lectures

- 2016 Dunwoody Lecture, Univ. of Florida, "Antitrust and Information Technologies"
- 2012 Milton Handler Lecture, "Competition for Innovation"
- 2010 Bayard Wickliffe Heath Memorial Lecture (Univ. of Florida), "The Federal Trade Commission and the Sherman Act"
- 2008 IP and Antitrust, NYU Law School
- 2008 "Patent Exhaustion and the *Quanta Computer Case*," Michigan State University School of Law
- 2008 Meador Lecture, Univ. of Alabama, "Innovation and the Domain of Competition Policy"
- 2007 Bauer Lecture, Cardozo Law School, "Restraints on Innovation"
- 2005 Kirkpatrick Lecture, Georgetown, "Do the Antitrust Laws Need Modernization?"
- 2003 Milton Handler Lecture, "Antitrust and the Regulatory Enterprise"
- 2000 Strong Lecture, Ohio State Univ.: "The Monopolization Offense"
- 1999 Lockhart Lecture, Univ. of Minnesota: "Knowledge About Welfare"
- 1988 Milton Handler Lecture, "Antitrust's Protected Classes"
- 1996 Fulton Lecture, Univ. of Chicago: "Law and Morals in Classical Legal Thought"
- 1995 Presidential Lecture, Univ. of Iowa: "The Mind and Heart of Progressive Legal Thought"

