

Anti-Monopoly and Regulated Industries Expanded Reading List¹

October 2020

Table of Contents

Contemporary Problems in Anti-Monopoly and Regulated Industries I: Framing the Problem	2
Contemporary Problems in Anti-Monopoly and Regulated Industries II: How We Got Here	7
The Progressive Tradition of Anti-Monopoly and Regulation	9
Unpacking the Anti-Monopoly Toolkit II: Regulated Industries, Public Utilities, and Public Options	10
Unpacking the Anti-Monopoly Toolkit II: Antitrust and Competition	11
Applications I: Health Care and Insurance	12
Applications II: Banking and Finance	14
Applications III: Labor, Anti-Monopoly, and Regulated Industries.....	17
Anti-Monopoly and Regulated Industries: Politics and Policy.....	19

¹ The Anti-Monopoly and Regulated Industries Summer Academy is a project of the Law and Political Economy Project (lpeproject.org). This expanded reading list was prepared in consultation with the Anti-Monopoly and Regulated Industries Summer Academy’s Faculty Planning Committee (Professors Amy Kapczynski, Sabeel Rahman, William Novak, Frank Pasquale, and Lina Khan), and with the assistance of research assistants Talia Stender and Sam Aber. Please contact Project Lead Jay Varellas (jvarellas@berkeley.edu) if you have any questions.

Contemporary Problems in Anti-Monopoly and Regulated Industries I: Framing the Problem

Professors K. Sabeel Rahman and Suresh Naidu

Key Readings

I. Monopoly Power and COVID-19

Nicholas Kulish, Sarah Kliff & Jessica Silver-Greenberg, *The U.S. Tried to Build a New Fleet of Ventilators. The Mission Failed.*, N.Y. TIMES (Mar. 29, 2020), <https://www.nytimes.com/2020/03/29/business/coronavirus-us-ventilator-shortage.html>

Matt Phillips, *Investors Bet Giant Companies Will Dominate After Crisis*, N.Y. TIMES (Apr. 28, 2020), <https://www.nytimes.com/2020/04/28/business/coronavirus-stocks.html>

Emily Flitter & Stacy Cowley, *Banks Gave Richest Clients ‘Concierge Treatment’ for Pandemic Aid*, N.Y. TIMES (Apr. 22, 2020), <https://www.nytimes.com/2020/04/22/business/sba-loans-ppp-coronavirus.html>

Renee Dudley, *The Amazon Lockdown: How an Unforgiving Algorithm Drives Suppliers to Favor the E-Commerce Giant Over Other Retailers*, PROPUBLICA (Apr. 26, 2020), <https://www.propublica.org/article/the-amazon-lockdown-how-an-unforgiving-algorithm-drives-suppliers-to-favor-the-e-commerce-giant-over-other-retailers>
Excerpt: Read the first nine paragraphs

Claire Kelloway, *Why Are Farmers Destroying Food While Grocery Stores Are Empty?*, WASH MONTHLY (Apr. 28, 2020), <https://washingtonmonthly.com/2020/04/28/why-are-farmers-destroying-food-while-grocery-stores-are-empty>

II. A Monopoly Power Overview

Monopoly by the Numbers, OPEN MARKETS INSTITUTE, <https://openmarketsinstitute.org/explainer/monopoly-by-the-numbers> (visited May 27, 2020)

America’s Concentration Crisis: An Open Markets Institute Report, OPEN MARKETS INSTITUTE, <https://concentrationcrisis.openmarketsinstitute.org> (June 2019)

Patrick Foulis, *Competition: Trust-Busting in the Twenty-First Century*, THE ECONOMIST (Nov. 15, 2018), <https://www.economist.com/special-report/2018/11/15/across-the-west-powerful-firms-are-becoming-even-more-powerful>
Excerpt: Sections titled “An Age of Giants” and “The Big Picture”

III. Introduction to Core Anti-Monopoly Themes

K. Sabeel Rahman, *The New Octopus*, LOGIC (Apr. 1, 2018), <https://logicmag.io/scale/the-new-octopus>

Tim Wu, *The Utah Statement: Reviving Antimonopoly Traditions for the Era of Big Tech*, OneZero (Nov. 18, 2019), <https://onezero.medium.com/the-utah-statement-reviving-antimonopoly-traditions-for-the-era-of-big-tech-e6be198012d7>

Additional Readings

LPE and the Antimonopoly Problem

Tim Wu, *THE CURSE OF BIGNESS: ANTITRUST IN THE NEW GILDED AGE* (2018)
Excerpt: Read the Introduction

THE ROOSEVELT INSTITUTE, *UNTAMED: HOW TO CHECK CORPORATE, FINANCIAL, & MONOPOLY POWER* (2016), <https://rooseveltinstitute.org/wp-content/uploads/2016/06/Untamed-Final-5.10.17.pdf>
Excerpt: Pages 7–9, 13–14, 18

Lina M. Khan, Note, *Amazon's Antitrust Paradox*, 126 YALE L. J. 710 (2017), https://www.yalelawjournal.org/pdf/e.710.Khan.805_zuvfyeh.pdf
Excerpt: Pages 746–55

Supplemental Academic Readings

Stacey Mitchell & Olivia LaVecchia, *Amazon's Stranglehold: How the Company's Tightening Grip Is Stifling Competition, Eroding Jobs, and Threatening Communities*, INST. FOR LOCAL SELF-RELIANCE (Nov. 2016), https://ilsr.org/wp-content/uploads/2020/04/ILSR_AmazonReport_final.pdf
Excerpt: Pages 10–32

José Azar, Ioana Marinescu & Marshall Steinbaum, *Labor Market Concentration*, SSRN (2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3088767
Excerpt: Pages 1–4

Einer Elhauge, *Horizontal Shareholding*, 129 HARV. L. REV. 1267 (2016), <https://harvardlawreview.org/wp-content/uploads/2016/03/1267-1317-Online.pdf>
Excerpt: Pages 1267–1269

THOMAS PHILLIPPON, *THE GREAT REVERSAL: HOW AMERICA GAVE UP ON FREE MARKETS* (2019).

Germán Gutiérrez and Thomas Philippon, *Declining Competition and Investment in the U.S.* (March 2017) (working paper), <https://www8.gsb.columbia.edu/facultyresearch/>

sites/faculty-research/files/finance/Macro%20Lunch/IK_Comp_v1.pdf

Eric A. Posner, Glen Weyl & Suresh Naidu, *Antitrust Remedies for Labor Market Power*, 132 HARV. L. REV. 536 (2018), <https://harvardlawreview.org/2018/12/antitrust-remedies-for-labor-market-power>

Suresh Naidu & Eric A. Posner, *Labor Market Power and the Limits of the Law* (working paper, Oct. 14, 2018), <http://tuvalu.santafe.edu/~snaidu/papers/limitsoflaw.pdf>

Thomas G. Wollmann, *Stealth Consolidation: Evidence from an Amendment to the Hart-Scott-Rodino Act*, 1 AMER. ECON. REV.: INSIGHTS 77 (2019), <https://pubs.aeaweb.org/doi/pdfplus/10.1257/aeri.20180137>

Zack Cooper, et al., *The Price Ain't Right? Hospital Prices and Health Spending on the Privately Insured*, 134(1) Q. J. Econ. 51-107 (2019), <https://doi.org/10.1093/qje/qjy020>

Jan De Loecker & Jan Eeckhout, *The Rise of Market Power and the Macroeconomic Implications*, (Nat'l Bureau of Econ. Rsch., Working Paper No. 23687), <https://www.nber.org/papers/w23687>

Germán Gutiérrez & Thomas Phillippon, *Declining Competition and Investment in the U.S.*, (Nat'l Bureau of Econ. Rsch., Working Paper No. 23583), <http://www.nber.org/papers/w23583>

José Azar et al., *Anticompetitive Effects of Common Ownership*, 73 J. FIN. 1513 (2018).

José Azar et al., *Labor Market Concentration*, SSRN (Dec. 10, 2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3088767

José Azar et al., *Antitrust and Labor Power*, ECONFIP (May 2019), <https://econfip.org/wp-content/uploads/2019/05/Antitrust-and-Labor-Market-Power.pdf>

Simcha Barkai, *Declining Labor and Capital Shares*, J. FIN. (forthcoming 2020), <https://onlinelibrary.wiley.com/doi/epdf/10.1111/jofi.12909>

John E. Kwoka, Jr., *Does Merger Control Work? A Retrospective on US Enforcement Actions & Merger Outcomes*, 78 ANTITRUST L. J. 619 (2013), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1954849

JOHN KWOKA, MERGERS, MERGER CONTROL, AND REMEDIES (2014)

Jan de Loecker et al., *The Rise of Market Power and the Macroeconomic Implications*, 135 Q. J. Econ. 561 (2020), <https://academic.oup.com/qje/article/135/2/561/5714769>

Chad Syverson, *Macroeconomics and Market Power: Context, Implications, and Open Questions*, 33J.ECON.PERSPECTIVES 23(2019),
<https://www.aeaweb.org/articles?id=10.1257/jep.33.3.23>

Shorter Readings on Market Power

Alan B. Krueger, *Reflections on Dwindling Bargaining Power and Monetary Policy*, KANSAS CITY FED. RESERVE (Aug. 24, 2018),
<https://www.kansascityfed.org/~media/files/publicat/sympos/2018/papersandhandouts/824180824kruegerremarks.pdf?la=en>

Alan B. Krueger, *Reflections on Dwindling Bargaining Power and Monetary Policy*, KANSAS CITY FEDERAL RESERVE (Aug. 24, 2018),
<https://www.kansascityfed.org/~media/files/publicat/sympos/2018/papersandhandouts/824180824kruegerremarks.pdf?la=en>

Interview with John Kwoka, “There is Convincing Evidence That Concentration Has Been Increasing,” PROMARKET BLOG (Mar. 19, 2017),
<https://promarket.org/2017/03/19/convincing-evidence-concentration-rising>

Asher Schechter, *The Cost of America's Oligopoly Problem*, PROMARKET (Sept. 16, 2019), <https://promarket.org/2019/09/16/the-cost-of-america-oligopoly-problem>

David Weil, *Why We Should Worry About Monopsony*, INST. FOR NEW ECON. THINKING (Sept. 2, 2018), <https://www.ineteconomics.org/perspectives/blog/why-we-should-worry-about-monopsony>

Miscellaneous Readings

Dylan Matthews & Byrd Pinkerton, *How a Resort Weekend for Judges Made Courts More Conservative*, VOX (Jun 1, 2019, 11:00am EDT), <https://www.vox.com/future-perfect/2019/6/1/18629859/judge-resort-weekend-naidu-manne-seminar-ginsburg>

Suresh Naidu & Marshall Steinbaum, *Who Owns the Skies?*, JACOBIN (Mar. 23, 2020), <https://www.jacobinmag.com/2017/03/trump-muslim-laptop-ban-airlines-monopoly-cartelization-competition>

Jesse Eisinger and Justin Elliott, *These Professors Make More Than a Thousand Bucks an Hour Peddling Mega-Mergers* (Nov. 16, 2016),
<https://www.propublica.org/article/these-professors-make-more-than-thousand-bucks-hour-peddling-mega-mergers>

Economics Basics

For basic introductory economics from a less neoclassical but still mainstream perspective, see www.core-econ.org. Unit 7 is on market power; Unit 6 is on short-side power in labor markets; and Unit 5 is on bargaining power.

Recent Papers Presenting Alternative Perspectives

David Autor, et al., *The Fall of the Labor Share and Rise of Superstar Firms*, (Nat'l Bureau of Econ. Rsch., Working Paper No. 23396),
<https://www.nber.org/papers/w23396.pdf>

- This paper says that increased markups may correspond with increased competition because the cost of inputs has decreased due to “technology”; it expressly assumes away monopsony power, not seriously engaging the possibility that markups are increasing because dominant firms are hiking prices (because they don’t face meaningful competition in product markets) or exploiting labor (because of their monopsony power).

Anna Stansbury & Lawrence H. Summers, *Declining Worker Power and Economic Performance*, (BPEA Conference Drafts, Mar. 19, 2020),
<https://www.brookings.edu/wp-content/uploads/2020/03/Stansbury-Summers-Conference-Draft.pdf>

- This paper seeks to create a distinction between “employer power” and “worker power.” It claims that current trends can be explained by the decline in worker power (due to the decline of unions, etc.) but not by an increase in employer power. The conclusion is that antitrust doesn’t have much of a role to play in rectifying power imbalances in labor markets. This paper is problematic both because (1) the distinction between worker power and employer power doesn’t really make much empirical sense, and (2) there are clear signs of increased employer power (e.g., the prevalence of non-compete clauses) that could be addressed through antitrust (even as antitrust should be one tool among many).

Contemporary Problems in Anti-Monopoly and Regulated Industries II: How We Got Here

Professor Amy Kapczynski

Key Readings

I. The Twentieth-Century Synthesis

Jedediah Britton-Purdy, David Singh Grewal, Amy Kapczynski, & K. Sabeel Rahman, *Building a Law and Political Economy Framework: Beyond the Twentieth Century Synthesis*, 129 YALE L. J. 1784 (2020), https://www.yalelawjournal.org/pdf/Britton-Purdyetal.Feature_iwo42jj4.pdf

Read: Entire article

II. Law and Neoliberalism

David Singh Grewal & Jedediah Purdy, *Introduction: Law and Neoliberalism*, 77 L. & CONTEMP. PROBS. 1 (2015), <https://scholarship.law.duke.edu/lcp/vol77/iss4/1>

Read: Pages 1-4

Additional Readings

I. A Primer on Neoliberalism

Neoliberalism: An LPE Reading List and Introduction (2020),
<https://lpeproject.org/syllabi/neoliberalism-an-lpe-reading-list-and-introduction>

II. Law and Economics as Neoliberalism in Law

STEVEN TELES, *THE RISE OF CONSERVATIVE LEGAL MOVEMENT* (2008).
Read: Chapters 4 and 6, especially pages 90–98, 109–116, 132–134, 181–182, 190–194, 200–206, 218

III. Precursors: Critiques from Legal Realism and Critical Legal Studies

Joseph W. Singer, *Legal Realism Now*, 76 CAL. L. REV. 465 (1988),
<https://lawcat.berkeley.edu/record/1113169>

Read: Pages 474-495

Duncan Kennedy, *The Stakes of Law, or Hale and Foucault!*, 15 LEG. STUD. FORUM 327 (1991),
<http://duncankennedy.net/documents/The%20Stakes%20of%20Law%20or%20Hale%20and%20Foucault%20-%20J%20Leg%20Stud.pdf>

Read: Pages 327–345

IV. Recent Critiques of Law & Economics

Frank Pasquale et al., *Eleven Things They Don't Tell You about Law & Economics: An Informal Introduction to Political Economy and Law*, 37 L. & INEQUALITY 97 (2019)

Frank Pasquale, *New Economic Analysis of Law: Beyond Technocracy and Market Design*, 5 CRITICAL ANALYSIS OF LAW 1 (Introduction to a special Issue on “New Economic Analysis of Law”) (2018)

Frank Pasquale, *Two Narratives of Platform Capitalism*, 35 YALE L. & POL'Y REV. 309 (2016)

Martha McCluskey, Frank Pasquale, and Jennifer Taub, *Law and Economics: Contemporary Approaches*, 35 YALE L. & POL'Y REV. 297 (2016)

The Progressive Tradition of Anti-Monopoly and Regulation

Professor William Novak

Key Readings

William Novak, *Institutional Economics and the Progressive Movement for the Social Control of American Business*, 93 BUS. HIST. REV. 665 (2019),
<https://www.cambridge.org/core/journals/business-history-review/article/institutional-economics-and-the-progressive-movement-for-the-social-control-of-american-business/C7E38F741EBCF9D4CE121F631AF95BF7>

K. Sabeel Rahman, *Challenging the New Curse of Bigness*, THE AM. PROSPECT (2016),
<https://prospect.org/economy/challenging-new-curse-bigness>

FREDERIC C. HOWE, WISCONSIN: AN EXPERIMENT IN DEMOCRACY 51-85 (1941)

ADOLF A. BERLE & GARDINER MEANS, THE MODERN CORPORATION AND PRIVATE PROPERTY 3-46, 112-16 (1932)

Lina Khan, *The New Brandeis Movement: America's Antimonopoly Debate*, 9 J. EUROPEAN COMPETITION L. & PRAC. 131 (2018),
<https://academic.oup.com/jeclap/article/9/3/131/4915966>

Additional Readings

Legal Realism: An LPE Reading List and Introduction,
<https://lpeproject.org/syllabi/legal-realism-an-lpe-reading-list-and-introduction>

The Progressive Tradition: An LPE Reading List and Introduction,
<https://lpeproject.org/wp-content/uploads/2020/10/Progressive-Tradition-Primer.pdf>

Unpacking the Anti-Monopoly Toolkit II: Regulated Industries, Public Utilities, and Public Options

Professors William Novak, K. Sabeel Rahman, and Lina Khan

Key Readings

William Novak, *Chapter 4: The Public Utility Idea and the Origins of Modern Business Regulation*, in *THE CORPORATION AND AMERICAN DEMOCRACY* 139 (N. R. Lamoreaux & W. J. Novak eds., Harvard University Press 2017), <http://williamjnovak.com/assets/final-page-proofs-of-public-utility-chapter.pdf>

Franklin D. Roosevelt, Campaign Address in Portland, Oregon on Public Utilities and Development of Hydro-Electric Power (Sep. 21, 1932), <https://www.presidency.ucsb.edu/documents/campaign-address-portland-oregon-public-utilities-and-development-hydro-electric-power>

K. Sabeel Rahman, *Infrastructural Regulation and the New Utilities*, 35 *YALE J. ON REG.* 911 (2018), <https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1529&context=yjreg>

Lina M. Khan, *The Separation of Platforms and Commerce*, 119 *COLUMBIA L. REV.* 973 (2019), <https://columbialawreview.org/wp-content/uploads/2019/05/Khan-THE-SEPARATION-OF-PLATFORMS-AND-COMMERCE-1.pdf>

Recommended Readings

Oren Bracha and Frank Pasquale, *Federal Search Commission? Access, Fairness, and Accountability in the Law of Search*, 93 *CORNELL L. REV.* 1149 (2008).

Frank Pasquale, *Internet Nondiscrimination Principles: Commercial Ethics for Carriers and Search Engines*, 2008 *U. CHI. LEG. F.* 263 (2008).

Unpacking the Anti-Monopoly Toolkit II: Antitrust and Competition

Professor Lina Khan

Key Readings

Franklin D. Roosevelt, *Message to Congress on Curbing Monopolies* (Apr. 29, 1938), <https://www.presidency.ucsb.edu/documents/message-congress-curbing-monopolies>

Robert Pitofsky, *Political Content of Antitrust*, 127 U. PA. L. REV. 1051-1075 (1979), https://scholarship.law.upenn.edu/penn_law_review/vol127/iss4/19

Louis B. Schwartz, *'Justice' and Other Non-Economic Goals of Antitrust*, 127 U. PA. L. REV. 1076-1081 (1979), https://scholarship.law.upenn.edu/penn_law_review/vol127/iss4/20/

Lina M. Khan, *The End of Antitrust History Revisited*, 133 HARV. L. REV. 1655-1682 (2020), <https://harvardlawreview.org/2020/03/the-end-of-antitrust-history-revisited/>

Christopher R. Leslie, *Antitrust Made (Too) Simple*, 79 ANTITRUST L. J. 917-940 (2014), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2589598

U.S. House Judiciary Committee, Subcommittee on Study on Monopoly Power, *The Antitrust Laws: A Basis for Economic Freedom* (1950), pp. iii-viii (attached)

Additional Readings

Sandeep Vaheesan, *The Profound Nonsense of Consumer Welfare Antitrust*, ANTITRUST BULLETIN (Sept. 2019), https://econ.utah.edu/antitrust-conference/session_material/The%20Profound%20Nonsense%20of%20Consumer%20Welfare%20Antitrust.pdf

Harry First & Spencer Weber Waller, *Antitrust's Democracy Deficit*, 81 FORD. L. REV. 2543 (2013), <https://ir.lawnet.fordham.edu/flr/vol81/iss5/13>

Frank Pasquale, *Privacy, Antitrust, and Power*, 20 GEO. MASON L. REV. 1009 (2013), https://digitalcommons.law.umaryland.edu/fac_pubs/1343/

Frank Pasquale, *When Antitrust Becomes Pro-Trust: The Digital Deformation of U.S. Competition Policy*, CPI ANTITRUST CHRONICLE (2017), https://digitalcommons.law.umaryland.edu/fac_pubs/1616/

Sanjukta Paul, *Reconsidering Judicial Supremacy in Antitrust* (draft 2020, available at SSRN), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3564452

Tim Wu, *Antitrust via Rulemaking: Competition Catalysts*, 16 COLO. TECH. L. J. 33 (2017), https://scholarship.law.columbia.edu/faculty_scholarship/2056

Applications I: Health Care and Insurance

Professor Frank Pasquale

Key Readings

Dayna Bowen Matthew et al., *Health, Housing, and Racial Justice: An Agenda for the Trump Administration*, 127 BROOKINGS INST. (Jan. 2017),
https://www.brookings.edu/wp-content/uploads/2017/01/ccf_20170116_racial_segregation_and_health_matthew_reeves_2.pdf

Read: 26-38

Alison K. Hoffman, *Healthcare's Market Bureaucracy*, 66 UCLA L. REV. 1926 (2019),
<https://www.uclalawreview.org/health-cares-market-bureaucracy>

Read: 1930-46; 1947–2002 (surveying the empirical evidence for the failings of various market-driven health policies)

Sandeep Vaheesan & Frank Pasquale, *The Politics of Professionalism: Reappraising Occupational Licensure and Competition Policy*, 14 ANN. REV. L. & SOC. SCI. 309 (2018), <https://www.annualreviews.org/doi/pdf/10.1146/annurev-lawsocsci-112116-014728>

Read: 309-14; 320-23

Frank Pasquale, *The Hidden Costs of Healthcare Cost-Cutting: Toward a Post-Neoliberal Health-Reform Agenda*, 79 LAW & CONTEMP. PROBS. 171 (2014),
<https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4712&context=lcp>

Read: Entire article(171–93)

Nicholas Bagley, *Medicine as a Public Calling*, 114 MICH. L. REV. 57 (2015),
<https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1225&context=mlr>

Read: 58-68; 79-99

Additional Readings

Valarie Blake, *Health Care Civil Rights Under Medicare for All*, HASTINGS LAW JOURNAL, Vol. 72 (forthcoming, 2021).

Valarie Blake, *Narrow Networks, the Very Sick, and the Patient Protection and Affordable Care Act*, MINNESOTA JOURNAL OF LAW, SCIENCE & TECHNOLOGY, Vol. 16, No. 1, 2015.

Dayna Bowen Matthew, *Structural Inequality: The Real COVID-19 Threat to America's Health and How Strengthening the Affordable Care Act Can Help*, 108 GEORGETOWN LAW JOURNAL, June 2020.

Sheila Foster, Yael Cannon, and M. Gregg Bloche, *Health Justice Is Racial Justice: A Legal Action Agenda For Health Disparities*, HEALTH AFFAIRS BLOG (2020), DOI: 10.1377/hblog20200701.242395

David M. Frankford, *Sick at Heart: A Fundamental Reason the United States Was Unprepared for the COVID-19 Emergency*, 72(5) Rutgers University Law Review (Sept. 2020, Forthcoming).

Christina S. Ho, *Health Reinsurance as a Human Right*, forthcoming in INSURANCE AND HUMAN RIGHTS, edited by Margarida Lima Rego and Birgit Kuschke.

Timothy Jost, HEALTH CARE AT RISK: A CRITIQUE OF THE CONSUMER-DRIVEN MOVEMENT (Duke U. Press, 2007).

Alison K. Hoffman, *The ACA's Choice Problem*, JOURNAL OF HEALTH POLITICS, POLICY AND LAW, Vol. 45 (2020).

Amy Kapczynski, *The Access to Knowledge Mobilization and the New Politics of Intellectual Property*, 117 YALE L.J. 804 (2007).

Frank Pasquale, *Access to Medicine in an Era of Fractal Inequality*, 19 ANNALS OF HEALTH LAW 269 (2010).

Frank Pasquale, *The Three Faces of Retainer Care*, 7 YALE J. HEALTH POL'Y, L., & ETHICS 39 (2007).

Anya Prince, *Political Economy, Stakeholder Voices, and Saliency: Lessons from International Policies Regulating Insurer Use of Genetic Information*, forthcoming in JOURNAL OF LAW AND THE BIOSCIENCES (2019).

Marc A. Rodwin, *Pharmaceutical Price and Spending Controls in France: Lessons for the United States*, forthcoming, INTERNATIONAL JOURNAL OF HEALTH SERVICES (2020).

Neel U. Sukhatme and M. Gregg Bloche, *Health Care Costs and the Arc of Innovation*, MINNESOTA L. REV. (2019).

Ruqaiijah Yearby, *Sick and Tired of Being Sick and Tired: Putting an End to Separate and Unequal Health Care in the United States 50 Years after the Civil Rights Act of 1964*, HEALTH MATRIX: JOURNAL OF LAW-MEDICINE, Vol. 25, 2015.

Applications II: Banking and Finance

Professors Mehrsa Baradaran, Morgan Ricks, and Saule Omarova

Key Readings

Mehrsa Baradaran, *Banking on Democracy*, 98 WASH. U. L. REV. __ (forthcoming 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3607461&download=yes

Mehrsa Baradaran, *Jim Crow Credit*, 9 U.C. IRVINE L. REV. 101 (2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3395876&download=yes

Saule T. Omarova, *The Merchants of Wall Street: Banking, Commerce, and Commodities*, 98 MINN. L. REV. 265 (2013), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2180647

This article lays out the concept of the separation of banking from commerce and shows how banking entities thwarted it in the area of physical commodities trading

Robert C. Hockett & Saule T. Omarova, *The Finance Franchise*, 102 CORNELL L. REV. 1143 (2017), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2820176

This is the article in which we offer a new master-narrative of what our financial system is really about; we challenge the reigning doctrine of “financial intermediation” and outline how finance is really a public-private “franchise” arrangement with the public at the center

Saule T. Omarova, *Why We Need A National Investment Authority* (2020), <http://ssrn.com/abstract=3566462>

This is a short issue brief on the NIA idea, with links to the original article and other sources with more details.

Saule T. Omarova, *The Quiet Metamorphosis: How Derivatives Changed the “Business of Banking,”* 63 MIAMI L. REV. 1041-1109 (2009), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1491767

This is a more narrowly targeted piece that examines how the OCC (the federal regulator of national banks) used its administrative tools to allow U.S. banks to trade and deal in derivatives, and how that hidden process effectively made derivatives markets grow to their present size and importance.

Morgan Ricks, *Money as Infrastructure*, 2018 COLUM. BUS. L. REV. 757 (2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3070270&download=yes

Excerpt: Read Parts I and III-V.

Additional Readings

Saule T. Omarova, *Technology v. Technocracy: Fintech as a Regulatory Challenge*, 6 J. FIN. REG. 1 (2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3545468

This article is about the need for a much more consciously normative approach to regulating fintech; it emphasizes the primacy of macro-structural solutions over micro-transactional ones.

Saule T. Omarova, *The “Too Big To Fail” Problem*, 103 MINN. L. REV. 2495 (2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3309305

This article takes a comprehensive look at what the TBTF phenomenon really is, and highlights the structural aspects of the problem that have not been fully addressed (or even acknowledged).

Frank Pasquale, *Law’s Acceleration of Finance: Redefining the Problem of High-Frequency Trading*, 36 CARDOZO L. REV. 2085 (2015).

This article reframes a “technical” problem of financial trading as a politico-economic one, drawing on Katharina Pistor’s legal theory of finance.

Frank Pasquale, *THE BLACK BOX SOCIETY: THE SECRET ALGORITHMS BEHIND MONEY AND INFORMATION* (2015).

This book’s fourth and fifth chapters examine the law’s role in augmenting the power and wealth of large financial firms, focusing on information asymmetries and trade secrecy.

Robert C. Hockett & Saule T. Omarova, *Public Actors in Private Markets: Toward a Developmental Finance State*, 93 WASH. U. L. REV. 103 (2015), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2572635

This article offers a “big picture” conceptual framework for understanding the roles of government/public instrumentalities in financial markets.

Alexander Hamilton, *Final Version of the Second Report on the Further Provision Necessary for Establishing Public Credit (Report on a National Bank)*, TREASURY DEPARTMENT (Dec. 14, 1790), <https://founders.archives.gov/documents/Hamilton/01-07-02-0229-0003>

Morgan Ricks, John Crawford & Lev Menand, *FedAccounts: Digital Dollars*, Vanderbilt Law Research Paper No. 18-33 (April 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3646511&download=yes

National Bank Act of 1864, https://www.google.com/books/edition/_/voEuAAAAYAAJ?hl=en&gbpv=0

Applications III: Labor, Anti-Monopoly, and Regulated Industries

Professors Kate Andrias and Sanjukta Paul

Key Readings

Brian Callaci, *Control Without Responsibility: The Legal Creation of Franchising*, 21 ENTERPRISE & SOC'Y (forthcoming), <https://www.cambridge.org/core/journals/enterprise-and-society/article/control-without-responsibility-the-legal-creation-of-franchising-19601980/0C5B894F5E216BC25D396D36B9FA45E6> (published version behind paywall), <https://equitablegrowth.org/working-papers/control-without-responsibility-the-legal-creation-of-franchising-1960-1980> (working paper version with no paywall)

Marshall Steinbaum, *Antitrust, the Gig Economy, and Labor Market Power*, 82 L. & CONTEMP. PROBS 45 (2019), <https://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=4918&context=lcp>

Sanjukta Paul, *Antitrust as Allocator of Coordination Rights*, 67 UCLA L. REV. 378 (2020)

Skip or skim Part III (“The Historical Contingency...”); skip or skim Sub-part IV.B (“Implications”). The final version of this article is attached with this assignment; please only use it for class purposes.

Brishen Rogers, *The Limits of Antitrust Enforcement*, BOSTON REV., Apr. 30, 2018, <http://bostonreview.net/class-inequality/brishen-rogers-limits-antitrust-enforcement>

Daniel Ernst, *The Labor Exemption, 1908-1914*, 74 IOWA L. REV. 1151 (1989), <https://heinonline.org/HOL/LandingPage?handle=hein.journals/ilr74&div=49>

Additional Readings

Robert Hale, *Coercion and Distribution in a Supposedly Non-Coercive State*, 38 POL. SCI. Q. 479 (1923), <https://www.jstor.org/stable/2142367>

William Forbath, *The Ambiguities of Free Labor, Labor and Law in the Gilded Age*, 1985 WISC. L. REV. 767 (1985), <https://heinonline.org/HOL/LandingPage?handle=hein.journals/wlr1985&div=41>

Nathan Wilmers, *Wage Stagnation and Buyer Power: How Buyer-Supplier Relations Affect U.S. Workers' Wages, 1978 to 2014*, 83 AM. SOCIOLOGICAL REV. 213 (2018), <https://journals.sagepub.com/doi/pdf/10.1177/0003122418762441>

Gabriel Winant, *No Going Back: The Power and Limits of the Anti-Monopolist Tradition*, THE NATION, Jan. 21, 2020, <https://www.thenation.com/article/culture/goliath-monopoly-and-democracy-matt-stoller-review>

Sanjukta Paul, *Fissuring and the Firm Exemption*, 82 L. & CONTEMP. PROBS 65 (2019), <https://lcp.law.duke.edu/article/fissuring-and-the-firm-exemption-paul-vol82-iss3>

Kate Andrias, *The New Labor Law*, 126 YALE L.J. 1 (2016), <https://www.yalelawjournal.org/article/the-new-labor-law>

Anti-Monopoly and Regulated Industries: Politics and Policy

Professor Zephyr Teachout and Dania Rajendra

Readings

David Streitfeld, *As Amazon Rises, So Does the Opposition*, N.Y. TIMES, Apr. 18, 2020, <https://www.nytimes.com/2020/04/18/technology/athena-mitchell-amazon.html>

ZEPHYR TEACHOUT, *BREAK 'EM UP: RECOVERING OUR FREEDOM FROM BIG AG, BIG TECH, AND BIG MONEY* (2020)

Cecilia Kang & David McCabe, *Lawmakers, United in Their Ire, Lash Out at Big Tech's Leaders*, N.Y. TIMES, July 29, 2020, <https://www.nytimes.com/2020/07/29/technology/big-tech-hearing-apple-amazon-facebook-google.html>

Lawmakers from Both Sides Take Aim at Tech Executives, N.Y. TIMES, July 29, 2020, <https://www.nytimes.com/live/2020/07/29/technology/tech-ceos-hearing-testimony>

Final Congressional Report on Competition in Digital Markets

Investigation of Competition in Digital Markets: Majority Staff Report and Recommendations of the Subcommittee on Antitrust, Commercial and Administrative Law of the House Committee on the Judiciary, (2d Session 2020), https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf