**Course Title:** Big Tech, Big Battles (Tech 08W)

**Course Description:**
Once regarded as engines of benevolent innovation, or even as global emissaries of democracy, big tech companies have lost their reputational luster in recent years. Their rise coincided with a historic decline in government action against market concentration and abuse of dominance. But now the gloves are off. Since 2020, the U.S. Department of Justice and nearly every state have filed major lawsuits against big tech companies. Lawmakers on both sides of the congressional aisle have introduced new antitrust legislation, including bills targeting internet platforms. Moreover, the new chair of the Federal Trade Commission has vowed to upend decades of assumptions about the appropriate tools for—and even the purpose of—regulating competition.

Where did this whirlwind of activity come from? Are tech companies, once known for moving fast and breaking things, about to get broken up? Would that fate be radically unprecedented—or rooted in American tradition? Do a search engine and a public wharf have anything in common? What about a social network and a railroad? Is our democracy at stake? To explore such questions, we will examine historical scholarship, modern research, and legal briefs, and we will conclude by considering recent legislative action. Students will come away understanding the intellectual foundations of the movement driving these changes, as well as issues unique to internet platforms.

**Week 1: What Are the Current Stakes?**

**Topics**
- Introduction to current disputes
- Introduction to U.S. antitrust law

**Videos**
- Watch weekly overview video on Canvas
- Attend live lecture (or watch afterwards)

**Readings**
- Sherman Anti-Trust Act (1890)
  [https://www.ourdocuments.gov/doc.php?flash=false&doc=51&page=transcript](https://www.ourdocuments.gov/doc.php?flash=false&doc=51&page=transcript) (Just read Sections 1-3). Don’t worry if you find the statute difficult to understand; just try to form a first impression of what it might mean. We will learn more about this and similar statutes in later classes.
• Antitrust Modernization Commission: Report and Recommendations (April 2007),
  https://digital.library.unt.edu/ark:/67531/metadc1228317/m2/1/high_res_d/amc_final_report.pdf (bipartisan report to Congress)  (just read the first two and a half pages of the Introduction—stop before Repeal of the Robinson-Patman Act)
• Cases
  o Federal Trade Commission v. Facebook, Inc., First Amended Complaint (Sept. 8, 2021),
    https://storage.courtlistener.com/recap/gov.uscourts.dcd.224921/gov.uscourts.dcd.224921.82.0.pdf (Just read Section I: Nature of the Case, pages 1-6)
  o District of Columbia v. Amazon.com, Inc., Complaint (May 25, 2021)
    https://oag.dc.gov/sites/default/files/2021-05/Amazon-Complaint.pdf (Just read Introduction, pages 1-5)
  o U.S. v. Google LLC, Amended Complaint (Jan. 15, 2021)
  o Epic Games, Inc. v. Apple Inc., Complaint,

Optional Videos
• If you do not have a background in law, consider watching these videos:
  o Drafting an Answer to a Civil Complaint,  https://www.youtube.com/watch?v=vmdbKS6q65g
  o Federal Court Litigation Timeline by Attorney Steve,  https://www.youtube.com/watch?v=6oZWtCq8trE

Question Prompts for Discussion Posts
• What are your primary concerns (if any!) about Big Tech? Which company is most concerning to you? (Feel free to discuss any company—it does not have to be one of the companies named in the lawsuits from this week’s readings).
• Looking at the literal text of the original Sherman Act, what kind of business practices or structures do you think would be outlawed? (For now, put aside any prior knowledge you may have about case law or later legislation—this week is about first impressions).
• What do you think about the goals identified by the 2007 Antitrust Modernization Commission, such as fostering innovation and promoting consumer welfare? Do those goals seem relevant to your concerns about Big Tech—or are they beside the point?
• Choose one of the lawsuits covered in this week’s readings. What is your first impression about that lawsuit? What are you curious to learn more about?
Week 2: How Did We Get Here? (Part I)

Topics
- Early English and American Traditions of Business Regulation
  - State charters for corporations
  - Common law principles
  - Common carriage requirements
- Antitrust History (Part 1)
  - The Populist Era
  - The Trustbuster Era
  - The New Deal Era
  - Post-WWII

Videos
- Watch weekly overview video on Canvas
- Google, Facebook, Amazon and The Future of Antitrust Laws, CNBC (Aug. 16, 2019)
  https://youtu.be/lcghGCBROR0 (watch up to 7:08)
- Attend live lecture (or watch afterwards)

Podcast
- Antitrust 1: Standard Oil, Planet Money (Feb. 23, 2019),
  https://www.npr.org/sections/money/2019/02/15/695131832/antitrust-1-standard-oil (just listen to 10:23 – 19:03)

Readings
- David K. Millon, The First Antitrust Statute, 29 Washburn L. J. 141 (1990),
  https://scholarlycommons.law.wlu.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1175&context=wlulaw (Read entire article)
  https://ssrn.com/abstract=3564452 (discussing the original political coalition that drove the Sherman Act) (just read pages 198-203)
- Talia Stender, The Progressive Tradition: An LPE Reading List and Introduction,
- Sherman Anti-Trust Act (1890), introduction to the statute by U.S. National Archives and Records Administration
- Testimony of John D. Rockefeller, President of the Standard Oil Company, 1899,
  https://energyhistory.yale.edu/library-item/testimony-john-d-rockefeller-president-standard-oil-company-1899
• The Regulation of Competition Versus the Regulation of Monopoly by Louis D. Brandeis, An address to the Economic Club of New York on November 1, 1912, https://louisville.edu/law/library/special-collections/the-louis-d.-brandeis-collection/the-regulation-of-competition-versus-the-regulation-of-monopoly-by-louis-d.-brandeis (the "great leader" of a "new party" referenced in this speech is Theodore Roosevelt of the Progressive/Bull Moose Party; Brandeis served as an advisor to Woodrow Wilson, who won the 1912 Presidential election)

• Brief Summaries of Selected Laws:


Optional - References
• Modern version of antitrust laws: 15 U.S. Code Chapter 1 https://www.law.cornell.edu/uscode/text/15/chapter-1 (Sherman Act is Sections 1-7; and the Clayton Act as amended by the Robinson-Patman Act, the Celler–Kefauver Act, and Hart–Scott–Rodino Antitrust Improvements Act, is at Sections 12-27)
Optional - Selected Cases

- *Standard Oil Co. of New Jersey v. United States*, 221 U.S. 1 (1911),
  https://supreme.justia.com/cases/federal/us/221/1/ (breaking up Standard Oil and holding
  that business combinations are illegal only when engaged in “unreasonable” restraints of
  trade)
- *United States v. Aluminum Co. of Am.*, 148 F.2d 416, 428 (2d Cir. 1945) (*Alcoa*),
  https://law.justia.com/cases/federal/appellate-courts/F2/148/416/1503668/ (Judge
  Learned Hand rejects “rule of reason” approach)
- *Northern Pacific R. Co. v. United States*, 356 U.S. 1 (1958),
  https://supreme.justia.com/cases/federal/us/356/1/ (affirming judgment finding railroad's
  "preferential routing" agreements to be unlawful as unreasonable restraints of trade under
  §1 of the Sherman Act)
  https://supreme.justia.com/cases/federal/us/366/316/ (divestiture has “been called the
  most important of antitrust remedies. It is simple, relatively easy to administer, and
  sure.”)
  https://supreme.justia.com/cases/federal/us/370/294/ (affirming order of divestiture in
  merger on basis that it would have substantially lessened competition under §7 of
  Clayton Act).
  https://supreme.justia.com/cases/federal/us/384/563/ (“[t]he offense of monopoly under §2
  of the Sherman Act has two elements: (1) the possession of monopoly power in the
  relevant market and (2) the willful acquisition or maintenance of that power as
  distinguished from growth or development as a consequence of a superior product,
  business acumen, or historic accident.”)

Question Prompts for Discussion Posts

- What do you think about John D. Rockefeller’s views of the advantages and
  disadvantages of trusts?
- Do you think monopoly power is unavoidable in some (or even all) industries? If so,
  what are the typical characteristics of those industries?
- Do you agree with Louis Brandeis and Tim Wu that monopolies can delay or even
  suppress innovation?
- What do you think about the statements made by the co-sponsors of the Celler-Kefauver
  Act? (See Pitofsky article, pages 1062-1063).
- Is there anything else you found interesting in this week’s readings?
Week 3: How Did We Get Here? (Part II)

Topics
- The Chicago School & Robert Bork
- The Neo-Brandeisians

Videos
- Watch weekly overview video on Canvas
  https://www.youtube.com/watch?v=fW_08XmYx-A
- Google, Facebook, Amazon and The Future of Antitrust Laws, CNBC (Aug. 16, 2019)
  https://youtu.be/1cghGCBROR0 (watch from 7:09 to the end)
- Attend live lecture (or watch afterwards)
  - Guest Speaker: Hal Singer, Econ One
    Hal Singer is an expert in antitrust, consumer protection, and regulation. He has researched, published, and testified on competition-related issues in a wide variety of industries, including media, pharmaceuticals, sports, and finance. He has extensive experience providing expert economic and policy advice to regulatory agencies in the United States and Canada, as well as before congressional committees.
    Dr. Singer is also a Senior Fellow at the George Washington Institute of Public Policy and an Adjunct Professor at Georgetown University, McDonough School of Business, where he teaches advanced pricing to MBA candidates. In 2018, the American Antitrust Institute honored Dr. Singer with an antitrust enforcement award for his work in the Lidoderm antitrust litigation.

Readings
The Chicago School and its impact on enforcement
- Bork, Robert H. “Legislative Intent and the Policy of the Sherman Act.” The Journal of Law & Economics 9 (1966). http://www.jstor.org/stable/724991 (Note: this is free to read online, but requires creating an account on JSTOR) (just read pages 7-14)
- Antitrust Enforcement Data, Yale School of Management,
  https://som.yale.edu/centers/thurman-arnold-project-at-yale/antitrust-enforcement-data (just read “The state of antitrust enforcement in the United States” section, with charts).

The New Brandeis movement
• Lina M. Khan, Amazon's Antitrust Paradox, 126 Yale L.J. (2016), available at: https://digitalcommons.law.yale.edu/ylj/vol126/iss3/3 (read Introduction and Parts I and II, pages 712-746)

Optional - Selected Cases
• GTE Sylvania Inc. v. Cont’l T.V., Inc., 537 F.2d 980, 1000 (9th Cir. 1976) (en banc), aff’d, 433 U.S. 36 (1977), https://supreme.justia.com/cases/federal/us/433/36/ (overruling application of per se rule to location restrictions in Section 1 action and imposing rule of reason standard instead)
• Berkey Photo, Inc. v. Eastman Kodak Company, 603 F.2d 263 (2d Cir. 1979), https://law.justia.com/cases/federal/appellate-courts/F2/603/263/105215/ (identifying monopoly leveraging—the use of monopoly power to gain a competitive advantage in a second market—as an independent violation of the Sherman Act).
• Matsushita v. Zenith Radio Corp., 475 U.S. 574 (1986), https://supreme.justia.com/cases/federal/us/475/574/ (“there is a consensus among commentators that predatory pricing schemes are rarely tried, and even more rarely successful. See, e.g., Bork…”)
• Verizon Communications Inc. v. Law Offices of Curtis v. Trinko, LLP, 540 U.S. 398, 408 (2004), https://supreme.justia.com/cases/federal/us/540/02-682/ (endorsing expansive view of doctrine of implied antitrust immunity—essentially, an assumption that if Congress set up a regulatory scheme that addresses an activity that could be subject to antitrust law, Congress did not want antitrust to also apply, because regulation alone would be sufficient)
Question Prompts for Discussion Posts

• How much do you think the law should be influenced by economic schools of thought? How much should the law (or individual cases) be influenced by moral or political values—even if they are not easily quantifiable?
• Which views did you find most compelling in this week’s readings?
• What themes are you noticing across the history of antitrust and corporate regulation?

Week 4: (How) Are Internet Platforms Special?

Topics

• Overview of issues unique to internet platforms
• Potential regulatory approaches

Video

• Watch weekly overview video on Canvas
• What Google, Facebook And Apple Can Learn From Microsoft’s 1998 Antitrust Fight, CNBC, Sept. 6, 2019 https://www.youtube.com/watch?v=e33Go6gbL7s (start at 0:54)
• Attend live lecture (or watch afterwards)
  o Guest Speaker: Antoine Prince Albert III of Public Knowledge
  Antoine Prince Albert III is a Government Affairs Policy Counsel at Public Knowledge, Inc., a DC-based public interest group working to defend consumer rights in the emerging digital culture. At PK, Prince delivers high-impact advocacy strategies on issues like online platform governance and competition, Section 230, artificial intelligence and algorithms, music licensing, net neutrality, digital inclusion, and privacy. He is routinely consulted for critical insights on how technology functions within Black, Latino, and Indigenous communities in the United States, the Caribbean, and Africa.
  Prior to joining Public Knowledge, Prince worked at Georgetown’s Institute for Technology Law & Policy, The Leadership Conference for Civil and Human Rights, the Office of Senator Ron Wyden (D-OR), and Georgetown’s Center on Privacy and Technology. Before working in public interest technology, he served as an Officer of the United States Navy and a high school teacher at La Salle College High School. Prince earned his J.D. from Georgetown University Law Center as a Global Law Scholar. He is a proud summa cum laude, Phi Beta Kappa alumnus of Morehouse
College. He hails from Philadelphia, PA, and expands his knowledge of African Diasporic cultures and music for leisure.

Readings

Required readings

- K. Sabeel Rahman, The New Octopus, Logic (April 1, 2018), https://logicmag.io/scale/the-new-octopus/ (just read the later sections, starting from “Varieties of Corporate Power” to the end)
- Chris Hughes, It’s Time to Break Up Facebook, New York Times (May 9, 2019), https://www.nytimes.com/2019/05/09/opinion/sunday/chris-hughes-facebook-zuckerberg.html (Just read the sections starting at “Facebook’s dominance is not an accident of history” and stop at “Since the 1970s, courts have become increasingly hesitant…”)
Question Prompts for Discussion Posts

- What do you think about K. Sabeel Rahman’s categories of platform power (transmission power, gatekeeping power, and scoring power)? Are there other types of power you would add? What do you think about the proposed solutions?
- Which industry from the past do you think is most similar to the Big Tech company you are most concerned about?
- Did you learn anything new or surprising about the business models or practices of Big Tech companies?
- Whose argument did you find more persuasive about whether Facebook or other Big Tech companies should be “broken up”?
- What else did you find compelling in the readings?

Week 5: Where Are We Now, and What’s Ahead?

Learning Objectives
- Students will learn about any updates in major cases, and be able to identify key features of proposed legislation

Topics
- Updates and what’s next for Big Tech
- Proposed legislation

Question Prompts for Discussion Posts

- Look back at your first impressions from week 1. Have any of your responses changed since then?
- What do you think about the current cases against Big Tech companies?
- Which proposed bill do you think is most important—or most misguided?
- Which views do you find persuasive in the letters to Congress debating the impact of antitrust bills on national security?
- What other solutions do you think are needed to address your concerns about Big Tech?
- Besides the companies we’ve discussed, what tech companies do you think are on the path to market dominance in the next 5 years?
- What new markets for emerging technologies do you think policymakers or enforcers should keep an eye on?

Videos
- Watch weekly overview video on Canvas
- Current State on Antitrust and Implications for Companies: Bruce Hoffman, The Conference Board (March 3, 2022), https://www.youtube.com/watch?v=EjKgdqEoQNg
reaction to American Innovation and Choice Online Act; see Readings below for description of the bill).

• Attend live lecture (or watch afterwards)
  o Guest Speakers:
    ▪ Zach Biesanz, Senior Enforcement Counsel (Antitrust), Office of the Minnesota Attorney General
      Zach investigates antitrust violations and brings civil and criminal enforcement actions on behalf of the State of Minnesota. Zach has extensive experience bringing cases from the earliest stages of investigation to successful resolution. Zach has collaborated with both federal antitrust enforcement agencies and (almost) every state in investigations and litigation. Previously, Zach worked at the New York Attorney General's office, where he served on the trial team for New York v. Actavis, secured felony pleas from members of a waste cartel, and co-managed the massive multistate investigation that became New York v. Facebook.
    ▪ Matt Stoller, Director of Research, American Economic Liberties Project
      Matt Stoller is the Director of Research at the American Economic Liberties Project. He is the author of the Simon and Schuster book Goliath: The Hundred Year War Between Monopoly Power and Democracy, which Business Insider called “one of the year’s best books on how to rethink capitalism and improve the economy.” David Cicilline, Chairman of the House Antitrust Subcommittee, has called Stoller’s work “an inspiration.” Stoller is a former policy advisor to the Senate Budget Committee. He also worked for a member of the Financial Services Committee in the U.S. House of Representatives during the financial crisis. While a staffer, he wrote a provision of law mandating a third party audit of the Federal Reserve’s emergency lending activities. He also helped cut part of a $20 billion subsidy to large financial institutions. His 2012 law review article on the foreclosure crisis, The Housing Crash and the End of American Citizenship, predicted the rise of autocratic political forces, and his 2016 Atlantic article, How the Democrats Killed their Populist Soul, helped inspire the new anti-monopoly movement. His writing has appeared in the Washington Post, the New York Times, Fast Company, Foreign Policy, the Guardian, Vice, The American Conservative, and the Baffler. Stoller writes the monopoly-focused newsletter Big, which has tens of thousands of subscribers.

Readings
Required readings

• What’s Ahead for Big Tech?
  o Choose ONE company to read more about:
    ▪ Apple
    • Sara Morrison, How Much Control Should Apple Have Over Your iPhone? Vox (Dec. 8, 2021),
      https://www.vox.com/recode/22822916/big-tech-antitrust-monopoly-regulation
BIG TECH BIG BATTLES - COURSE DESCRIPTION AND SYLLABUS

- Amazon

- Facebook

- Microsoft
  - Sara Morrison, Microsoft avoided the latest round of Big Tech antitrust scrutiny. Then it bought a company for $69 billion. Vox (Jan. 27, 2022), https://www.vox.com/recode/22893117/microsoft-activision-antitrust-big-tech
  
  Note: Vox will also cover Google, but that piece has not been published yet. You will be able to find it here: https://www.vox.com/recode/22822916/big-tech-antitrust-monopoly-regulation

- Executive action

- Legislation
  - Two bills advanced from Committee
    - Adi Robertson, Everything you need to know about the bill that could blow up the app store, The Verge (Feb. 9, 2022), https://www.theverge.com/22914479/open-app-markets-act-legislation-senate-committee-markup-explained


- Debate over impact of Big Tech and antitrust on national security

- How will courts respond to new laws?
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- Crane, Daniel A. "Antitrust Antitextualism." Notre Dame L. Rev. 96, no. 3 (2021): 1205-1256. [https://repository.law.umich.edu/articles/2199](https://repository.law.umich.edu/articles/2199) (reviewing history of court responses to antitrust legislation and predicting future tensions). (just read Introduction on pages 1205 – 1209)

- Court decisions (so far) in Big Tech cases
    - *This is the court decision that the parties are currently appealing. Epic's appeal brief is included in the optional readings below. Apple's response brief is due later this month.*
  - FTC v. Meta: Order denying Facebook's motion to dismiss: [https://storage.courtlistener.com/recap/gov.uscourts.dcd.224921/gov.uscourts.dcd.224921.90.0_2.pdf](https://storage.courtlistener.com/recap/gov.uscourts.dcd.224921/gov.uscourts.dcd.224921.90.0_2.pdf) (just read pages 8-34)

**Optional - References**

- Proposed legislation

Stanford Continuing Studies
- Senate version = S.228 https://www.congress.gov/bill/117th-congress/senate-bill/228
  - House version: H.R. 5017
- New York State – 21st Century Antitrust Act https://www.nysenate.gov/legislation/bills/2021/s933/amendment/a (“Relates to actions or practices that establish or maintain a monopoly, monopsony or restraint of trade, and authorizes a class action lawsuit in the state anti-trust law”)