

Law & the Idea of the Market

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Introduction

This class is about the interaction between various ideas of the market, on the one hand, and law and legal/policy debate, on the other. Sometimes these “ideas of the market” are just that: a particular conception of the market, or even an impressionistic mental picture. Sometimes, they are highly developed formal theories (and critiques of formal theory). We are interested in both, though we begin in Part I with the conceptual foundations of the currently most influential theory of markets. We also consider some major objections, and a couple of alternative approaches, with an aim to identifying what is ultimately at stake—both for knowledge production and practical implications in the world—in these theoretical disputes. We then move to some core areas of law (contracts, property, antitrust, and labor regulation) and consider how ideas and theories of the market show up. Finally, we’ll take a last look at the market through two lenses that constitute both particular policy applications *and* sites where basic ideas have been generated: money and international trade.

I recognize that some of the topics in the course, especially Part I, will feel quite abstract. In fact, that is an aspect of some of the critiques. (As long ago as early nineteenth-century America, an influential person named Friedrich List called the theories of classical economics “castles in the air.”) However, these ideas have profoundly influenced our world, the law, and the way that government officials and perhaps even voters think about policy. The ultimate goal of this course is that by marinating in some of these abstractions, you will gain facility with how they—or ideas downstream of them—function in quite practical contexts that you may encounter in the future.

The class is intended for anyone interested in the topics: no prior knowledge is expected.

COURSE OVERVIEW & READING ASSIGNMENTS

PART I: ECONOMIC THEORIES OF THE MARKET

In this portion, we get to know major approaches to (or “theories of”) the market, discuss how they interact with each other, and consider major criticisms. The goal is less to reach a settled conclusion about criticisms, and rather to grapple with them in order to gain a deeper understanding of differing approaches.

Aug. 27: The theory of supply & demand

Read sections 21.1-21.3 of Dean, et al, *Principles of Economics*

(<https://openoregon.pressbooks.pub/socialprovisioning3/part/chapter-3-demand-and-supply/>)

- Logical structure of the “textbook” theory of supply & demand: key concepts, assumptions, and implications; as well as what it *doesn’t* say
- A brief history of the ideas that led here (by lecture)

Sep. 3: A few major objections to the core theory

Read Frederic Lee & Steve Keen, “The Incoherent Emperor,” pp. 174-92

- Does the Law of Demand hold—enough of the time?
- Does market demand track social welfare—enough of the time? (“the wealth critique”)
- The peculiarities of the standard cost curve

Sep. 10: Perfect and imperfect competition

Read sections 28.2—28.3 (read to just before Figure 2) of Dean, et al, *Principles of Economics* and J.M. Clark, “Workable Competition” (1940)

- Understanding perfect, monopolistic, and imperfect/oligopolistic competition as theories of markets, and how they interact with each other

Optional: P.W.S. Andrews, “Competition”

Sep. 17: The “governance” view of markets

Read Frederic Lee, “Markets and Demand for the Social Product” (from MICROECONOMIC THEORY: A HETERODOX APPROACH)

- Understand and evaluate a distinct approach to markets from the standard theory, which sees them as intrinsically managed by legal, social, and institutional mechanisms in key respects, including prices, investment decisions and outputs

Optional: Neil Fligstein & Ryan Calder, “Architecture of Markets”

Sep. 24: Variants of the standard theory—the “classical” price mechanism and markets as information processors

Read [Vernon Smith et al, “The Classical Theory of Supply and Demand”](#) and [F.A. Hayek, “The Use of Knowledge in Society”](#)

- Understand and evaluate theories of markets that differ from the “textbook” theory in key respects but are often associated with the broader/popular understanding of it

Oct. 1: Theories of the firm: or, what is the economic unit?

Read [Ronald Coase, “The Nature of the Firm” \(excerpt\)](#) and [John R. Commons, THE ECONOMICS OF COLLECTIVE ACTION \(excerpt\)](#)

- So far, we have largely assumed the “economic units” that exist within markets without addressing them directly: business firms, households, trade unions, and others. How does economic theory understand these units, if at all? Does it help us understand markets, and vice versa?

PART II: MARKETS IN THE LAW

In this section we aim to look closely at some examples of how ideas of the market appear in the law; to use what we’ve learned in Part I to evaluate them; and to see if these examples help us in our evaluation of the various theories of the market.

Oct. 8: Antitrust law & ideas of the market

Read: [Chicago Board of Trade \(1918\)](#); [Appalachian Coals \(1933\)](#); [Superior Court Trial Lawyers Ass’n \(1990\) \(excerpts\)](#)

- While ideas of the market show up in many areas of law, antitrust is the area of law that deals squarely with markets *qua* markets. What do these iconic antitrust decisions tell us about its understanding of markets? Is there a single theory of markets here? Do the decisions track the approaches we’ve considered?

Oct. 15: Contracts & ideas of the market

Read: [Federal Reserve Hackley-Wyatt memo re: meaning of term “open market” \(1937\)](#) [Patrick Atiyah, THE RISE AND FALL OF FREEDOM OF CONTRACT \(1977\) \(excerpt\)](#); [Brian Callaci, “The Legal Creation of Franchising” \(2020\)](#)

- Ideas of the market in legal determination of contract damages
- “Freedom of contract” in relation to various views of the market
- The economic function(s) of contract

Oct. 22: Property & ideas of the market

Read: [Munn v. Illinois \(excerpt\)](#); [Lochner v. New York \(excerpt\)](#); [Barbara Fried, THE PROGRESSIVE ASSAULT ON LAISSEZ-FAIRE \(excerpt\)](#); [J.S. Mill, PRINCIPLES OF](#)

POLITICAL ECONOMY (excerpt)

- Property as implying a right to realizing “market value”
- The competitive market as a limit on property rights
- Foundational questions about property and competition

Optional: Henry George, *PROGRESS AND POVERTY* (1879) (excerpt)

Oct. 29: Labor, labor regulation, & ideas of the market

Read: Sidney & Beatrice Webb, “Economic Characteristics of Trade Unionism” (excerpt) from *INDUSTRIAL DEMOCRACY* (1897); “The Case Against a Higher Minimum Wage,” (Senate Joint Econ. Cmte., 1996); Dube & Lindner, “City Limits: What Do Local-Area Minimum Wages Do?” (2021) (excerpt)

- Ideas of the market show up in labor law and regulation in various ways. We are going to focus here on one core issue: the economic effects of coordinating a minimum, prevailing, or “living” wage (whether through union collective bargaining or legislation, and whether by industry/sector or across the economy). How do the theoretical disputes we’ve considered show up in this debate? How do the empirical disputes connect to those underlying questions?

III. A FINAL LOOK AT THE MARKET

Nov. 5: Money & banking

Read: selection from Christine Desan, *MAKING MONEY: COIN, CURRENCY & THE COMING OF CAPITALISM* (2015); selection from John Maynard Keynes, *A GENERAL THEORY OF EMPLOYMENT, INTEREST, AND MONEY* (1936); add’l reading to be posted

- Money represents not just a specialized area of law and policy, but arguably is foundational to the functioning of markets as such. Considerations of money have also given rise to some important theoretical perspectives on markets. How do these perspectives intersect with others we have considered?

Nov. 12: International trade

Read: David Ricardo, “On foreign trade” (from *THE PRINCIPLES OF POLITICAL ECONOMY AND TAXATION*); add’l reading to be posted

- Like money and banking, international trade can be seen as a policy application, yet it is also the terrain on which foundational ideas of the market took form. Moreover, it is one place where the original “classical” ideas have largely been preserved in

contemporary theory.

Nov. 19 - *Reserved*