

Book Review: The Making of Competition Policy: Legal and Economic Sources by Daniel A. Crane and Herbert Hovenkamp

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*This book provides edited selections of primary source material in the intellectual history of competition policy from Adam Smith to the present day. Chapters include classical theories of competition, the U.S. founding era, classicism and neoclassicism, progressivism, the New Deal, structuralism, the Chicago School, and post-Chicago theories. For its detailed historical portraits and insightful bibliography, this book will take pride of place on **Carlos A. Arrébola**'s bookshelf.*



The Making of Competition Policy: Legal and Economic Sources. Daniel A. Crane and Herbert Hovenkamp. Oxford University Press. March 2013.

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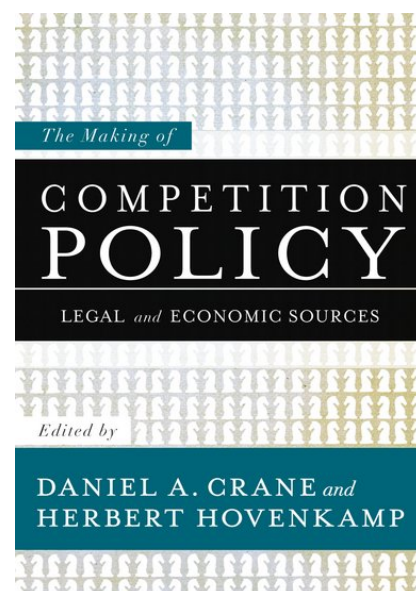


Have you ever wondered why the United States and the European Union have such a big obsession about large companies and the concentration of market power, and why Google and Microsoft are investigated by competition authorities? Well, the answer to this has been around for a while now, as *The Making of Competition Policy* shows us. This book is a compilation of works since the late 18th century until today that explain how competition policy has been forged. This careful selection of literature has been edited by two of the most renowned active scholars in antitrust law: [Daniel A. Crane](#) and [Herbert Hovenkamp](#).

Not only do they provide a bible of contributions that have shaped competition law, but Crane and Hovenkamp also introduce every chapter briefly to put those works into context for the reader. They explain the period, and how those writings came about, and it is for this reason that the book is valuable for both an expert and a more amateur audience with an interest in antitrust law. Moreover, the introductions themselves make a self-standing summary of the history of competition law. It is possible to read them and get the complete picture, without digging into the actual writings, which sometimes can be quite tedious to read due to the dense style in which some of them are written. Thus, *The Making of Competition Policy* constitutes a great reference book as well. It is a good place to start historical research in the field of competition law.

As for the contents of this edited volume, they could be grouped in three parts (although the editors do not explicitly make this partition). First, there are a great number of economic essays on what is known as classical and neoclassical economics. These constitute the *foundations* or underpinning behind competition policy and why competition started to matter. Second, competition policy became exactly that, a policy choice. Several chapters show how antitrust was very much in the US public sphere and in *political* campaigns. Finally, competition policy became an *academic* subject, and this is evidenced by the works of the Ordoliberalists (or the Freiburg school); the Harvard school; the Chicago school; the Transactions Cost Economics school; and the Post-Chicago school. It is impossible to make a thorough review of every one of the writings included in this book, but some key aspects of this selection can be commented on.

Foundations



In the Introduction the editors criticise the fact that students seem to accept that antitrust law appeared out of nowhere with the [Sherman Act](#) in 1890, without any precedent to guide them in its drafting. This is, as they point out, not true. The question is, however, when exactly does the story begin? Crane and Hovenkamp decide to start with the texts of Adam Smith, David Ricardo, and John Stuart Mill. Obviously, Adam Smith is an important milestone for competition policy. His sentence on price-fixing is quoted in many instances: “people of the same trade seldom meet together, even for merriment and diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices” (quoted on pages 7 and 15). Nevertheless, it is unfortunate, in my view, that the editors have not decided to start the story a bit earlier. There are absolutely fascinating legal precedents for the history of competition law, such as the case [Darcy v. Allein](#) in 1599, or the passing of the UK [Statute of Monopolies of 1624](#) (sometimes cited as of 1623). Although an account of some of this can be found in the passage by [Thomas Cooley](#) in Chapter 3, it could have made an interesting first chapter. In any case, it is understandable that the editors had to choose a place to start, as they explain right at the beginning (p. 2).

Another aspect to note about this first part is that, sometimes, the author describes issues over pages that today could be expressed in one sentence, using the current antitrust jargon. For instance, in Chapter 5, the extract by [Edward Chamberlin](#), when explaining the differentiation of products, seems to be dealing to a great extent with the problem of market definition without calling it so.

Political Antitrust

In chapters 2, 4 and 6, we can see a change from the arcane language used by the early economic literature. Competition policy made its way here into the public arena, and it even formed part of political speeches (see chapter 4). It is understandable then why the language is more approachable. It is curious to see in these chapters how competition policy developed with this popular eagerness, only to end up almost forgotten by the public, ironically when its preoccupations shifted towards securing consumer welfare, as Hovenkamp explains in the introduction to chapter 7 (p. 223).

Academic Antitrust

The last chapters tell us a more recent story, that of the agreements and disagreements (but mainly disagreements) of the different schools of economic thought, especially between the Harvard school (with the [Structure-Conduct-Performance paradigm](#)) and Chicago school (more conduct oriented, and less interventionist). The only but to this tale of academic antitrust is that the editors have not put together a chapter of conclusion, predicting where we are going next. Hence, there is really no conclusion for the book. Maybe this is because the conclusion of competition policy making is far from being written, and maybe making a prediction is complicated (see p. 447).

All things considered, I cannot do anything but acclaim this volume, and proudly keep it in my library, as a reference book that I think will be frequently used. Equally, I believe that it is a must-have collection of works for any person related to the study or practice of competition policy.

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