

13. Competition law and capitalism

CHASE FOSTER

Competition law is a major site of business-government relations which has important consequences for the organization and operation of capitalist political economies. Cartel and restraint of trade rules define the boundaries between market competition and permissible collaboration, determining when firms and workers must maintain arm's-length relationships and when they can coordinate and pool resources. Abuse of dominance and monopoly laws regulate the exploitation of market power by restricting firms with significant market shares from erecting barriers to entry or engaging in exclusionary practices. Merger regulations provide the state with a critical tool to review, amend, or block business combinations, serving as a check on excessive economic concentration.

Despite its central role in shaping economic relations and property rights within capitalist economies, competition law has rarely been integrated into broader political economy theory. Most academic work on antitrust remains confined to law and industrial organization economics, where the focus is largely technical or normative. While historical accounts of capitalist development recognize competition law as an important institution in the development of industrial capitalism, its relationship to contemporary capitalist organization has only recently gained attention in comparative and international political economy.

A new generation of scholars has sought to bridge this theoretical and empirical gap by examining competition law as a site of political power that both structures the organization and operation of capitalist markets and is, in turn, shaped by the economic interests and political imperatives that are tied to the capitalist economy. Critical political economists have examined macro-historical regularities at the system-wide level and major shifts in the orientation of competition policy across key jurisdictions. The law and political economy subfield has developed meso-level frameworks to analyze how competition law structures economic power, particularly in capital-labor relations and interactions between different firms. Comparative political economists have built on these insights by investigating the 'Atlantic Divide in Antitrust'

and the connections between competition law and national varieties of capitalism. Meanwhile, international political economy (IPE) scholars have examined competition law's role in broader economic liberalization processes, highlighting its dual function in both 'market making' and 'market embedding' within global capitalism. Collectively, this growing body of work underscores competition law's 'constitutive' role in capitalist political economies, shaping not only industrial organization but also the quality of the relationships between different economic actors, including employers and employees, firms and workers, suppliers and distributors, and competing firms at the domestic, regional, and global levels.

Critical political economy perspectives

Some of the most pathbreaking recent work on competition law and capitalism comes from political economists working in the French Regulation School tradition. This approach examines how the institutional forms of capitalism change over time and how the state enables and manages these different forms through alternating 'modes of regulation' that respond to shifts in capitalism's systemic needs. In his influential book, Christophers (2016) argues that competition law helps address one of capitalism's most puzzling paradoxes: on the one hand, market competition is a central, indispensable feature of the capitalist mode of production; on the other hand, unrestricted competition has an eliminative logic that, if left unchecked, fosters monopoly. Analyzing competition law in the US and UK throughout the 20th century, he argues that state intervention fluctuates depending on capitalism's structural requirements. When market power becomes entrenched and competition stagnates, enforcement actions restore contestability by curbing monopolistic dominance. Conversely, when competition intensifies to the point of threatening firms' structural profitability, the law adapts to permit market consolidation and new barriers to entry, which restores profitability. Through these interventions, the state effectively balances capitalism's dual need for both market power and competition and, in doing so, maintains the conditions for capitalist profitability and growth.

Buch-Hansen and Wigger (2011) adopt a similar 'critical' political economy perspective

to explain the evolution of competition law in Europe. They argue that the ‘neoliberal’ transformation of European competition law in the 1980s and 1990s was driven by a coalition of transnational capitalists and European Union (EU) officials seeking to enhance the competitiveness of European business following the economic crises of the late 1970s and the new challenges posed by globalization and the decline of Fordist capitalism.

More recently, Peinert (2025) has identified similar long-term shifts between policies that emphasize price competition and those that strengthen domestic firms’ market power. Drawing on archival materials from key moments of policy change in the US and France, he argues that bureaucratic officials adjust competition enforcement in response to unintended economic consequences arising from either excessive market power or overly intense competition. These accounts suggest that competition policy serves a functionalist role in sustaining capitalist reproduction. However, they also underscore that policy evolution is neither automatic nor seamless; rather, it is shaped by shifting political coalitions and characterized by significant time lags and bureaucratic frictions.

Law and Political Economy perspectives

Scholars in the subfield of Law and Political Economy (LPE) have developed meso-level frameworks that offer fresh insights into how competition law shapes the organization of producer groups and the relationships between economic actors. Like the Regulation School, law and political economy scholars view competition law as a constitutive institution that structures the distribution of economic power within capitalist political economies. However, unlike Regulationists, they view the law as partially autonomous from capitalist interests, enabling states to use it to hold transnational capital accountable, level the playing field for weaker economic actors, or embed social values into market transactions. This perspective suggests competition law not only varies across political systems but also reflects a diverse set of public values that can advantage (or disadvantage) different modes of economic coordination, firm structures, and labor organization.

Within this broad stream of legal studies, Paul (2020) has provided one of the most

concrete theoretical frameworks for conceptualizing how competition law structures economic power. She distinguishes competition regimes not by legal stringency but by their allocation of coordination rights. As she puts it: “antitrust law’s core function is to allocate coordination rights to some economic actors and deny them to others” (382). Her key insight is that capitalism requires both coordination and competition, but that the structure of this balance—who gets to coordinate and who is forced to compete—is ultimately a *political* decision.

A particularly promising area of LPE research in this vein explores how competition law structures labor organization and worker rights (Paul, McCrystal, and McGaughey 2022). Scholars have shown how horizontal restrictions on worker coordination, particularly for those in non-standard employment, have weakened labor power in the United States (Steinbaum 2019). At the same time, a permissive approach to hierarchical coordination has enabled firms to impose non-compete agreements and pursue corporate fissurization strategies that allow owners to evade labor responsibilities (Callaci 2021). Meanwhile, rising corporate concentration has increased monopsony power in labor markets, leading to measurable negative effects on wages (Naidu, Posner, and Weyl 2018; Wilmers 2018). These studies make clear that competition law choices can have important implications not only for industrial organization but also the balance of power between employers and workers.

Competition law and comparative political economy

Although most LPE scholarship has focused on the US, conceptualizing competition law as a multi-dimensional regulatory framework opens new avenues for comparative analysis. Key questions include: How do the substantive and procedural rules of competition law vary across political systems? What explains these differences? What economic and political consequences do they produce at the national and regional levels?

One of the most studied comparative questions concerns the so-called ‘Atlantic divide’ in competition law. Since many aspects of European competition policy are now determined at the supranational level, scholars have examined the divergence between US

and EU competition law and enforcement. While the US once aggressively enforced anti-monopoly rules, enforcement collapsed in the 1970s. In contrast, the EU significantly expanded its enforcement program, prosecuting major abuse of dominance cases with substantial implications for key industries.

Scholars offer competing explanations for this divergence. Some emphasize the role of business interests (Philippon 2019) while others highlight the distinct professional ideas (Ergen and Kohl 2019) and ‘competition paradigms’ institutionalized into policy and jurisprudence (Foster 2022). Whatever the cause, evidence suggests that the EU’s proactive enforcement has contributed to lower consumer markups, reduced corporate concentration, and a more equitable distribution of income (Gutiérrez and Philippon 2018). Meanwhile, the US’s more permissive stance has facilitated the rise of multinational digital platforms, now among the world’s most valuable companies. While their dominance has arguably fostered long-term investment and technological innovation, driving outsized economic growth in the US, it has also granted a handful of corporations immense market power and control over critical infrastructures (Rahman and Thelen 2019). Beyond creating unprecedented wealth concentration, this dominance fundamentally challenges the state’s ability to hold private corporations accountable to the rule of law and democratic governance.

Another underexplored avenue in comparative capitalism research examines the relationship between competition law and capitalist diversity at the national level. Under the influential Varieties of Capitalism (VoC) framework, Liberal Market Economies (LMEs) rely on corporate hierarchies and arm’s-length competition between firms and workers to coordinate economic relations, whereas Coordinated Market Economies (CMEs) rely more on nonmarket institutions such as business associations and labor unions (Hall and Soskice 2001). Recent research explores how competition law reinforces—or disrupts—these distinct forms of economic coordination.

For instance, Guardiancich and Guidi (2016) found that competition agencies tend to be more independent in LMEs than in CMEs, where economic coordination between competing firms and strong labor unions are more common. This suggests that strictly enforced

competition rules align with LMEs, while more discretionary enforcement suits CMEs. From this vantage, several empirical studies have concluded that EU competition law has contributed to the convergence of European capitalism toward the arm’s-length markets and corporate hierarchies that predominate in LMEs (Billows, Kohl, and Tarissan 2021; Wigger and Nölke 2007).

These studies rightly push us to consider how competition law’s procedural and substantive rules shape the capacity of producer groups to strategically coordinate. However, in advancing this important theoretical and empirical agenda, these studies also conflate the form and the substance of antitrust laws. If we take the work of Paul and other LPE scholars seriously, then we should expect different kinds of competition rules to have different effects on economic coordination between producer groups.

Foster and Thelen (2025) have developed a comparative coordination rights framework that formalizes these expectations. Specifically, they argue that strict horizontal enforcement (targeting coordination by competing firms and workers) should weaken horizontal coordination, undermining the comparative advantages of CMEs. By contrast, strict hierarchical enforcement (targeting monopolies and exclusionary conduct) should curb private market power, helping to protect horizontal coordination mechanisms in the face of an array of pressures. This thesis is supported by empirical evidence demonstrating that countries with stricter cartel enforcement have lower degrees of corporatist coordination and union membership, while countries with stronger abuse of dominance rules have higher degrees of corporatism and trade union density (Foster and Kohl 2025). Although more research is needed to understand the underlying political mechanisms, these findings suggest that competition law is an important institutional determinant of capitalist organization.

International political economy perspectives

The political economy literature also raises broader questions about competition law’s role in international and transnational economic relations. As trade liberalization has expanded, so too has the global diffusion of competition policy and the intensification of

competition law enforcement. Yet, it remains unclear if this co-occurrence is because competition law is complementary to trade liberalization and broader marketization processes or whether it is acting as a substitute for protectionism in the context of increasingly globally integrated markets (Büthe 2015).

Some IPE scholars argue that competition law serves as an adjunct to neoliberal reform. In his pathbreaking book, Vogel (1996) observed that competition regulators often spearhead liberalization efforts, opening markets, privatizing state enterprises, and reshaping regulatory frameworks in ways that instill market competition in historically regulated sectors. Other scholars have highlighted how the establishment of international fora, such as the International Competition Network, has facilitated the diffusion of a neoliberal model of economic governance (Djelic and Kleiner 2006).

More recent research, however, suggests that competition law plays a more complex role within the international political economy. While few dispute its market-making and market-integrating functions, scholars increasingly emphasize how economic interests and geo-economic considerations shape both the adoption of competition laws and their enforcement in practice. In a close case study of American antitrust debates in the 1980s and 1990s, Arslan (2023) demonstrates that the US government's push for stricter horizontal cartel rules in Japan and other countries was largely driven by political demands from import-competing American manufacturers seeking protection from more efficient foreign producers. At the same time, while the US promoted laws restricting horizontal coordination abroad, it also pressured foreign jurisdictions to strengthen intellectual property laws, reinforcing the hierarchical coordination rights of large IPR firms (Sell 2003). As IP laws were strengthened around the world, American firms disproportionately benefited, capturing a larger share of global profits and solidifying their economic dominance.

If economic patriotism remains a factor in the dissemination of competition rules, there is also evidence that it shapes competition law enforcement, where regulators retain significant discretion. Transnational antitrust disputes have been among the earliest and most active areas where American regulatory power has been exerted on foreign jurisdictions and multinational firms through

extraterritorial enforcement. Recent studies suggest that such enforcement has encouraged the harmonization of regulatory rules toward the American regulatory model, benefiting both US companies and US geopolitical interests (Woll 2023).

Other large jurisdictions, such as the EU and China, also increasingly use antitrust enforcement as a tool of geo-economic strategy. In a book examining the geopolitical power of the EU, Bradford (2020) argues that the global enforcement of EU competition law has contributed to a 'Brussels effect' that exports European regulatory standards to global markets. Similarly, in one of the first comprehensive studies of Chinese antitrust policy, Zhang (2021) shows how Chinese regulators strategically deploy antitrust enforcement both to promote domestic firms abroad and to counteract US economic sanctions.

Even when enforcement focuses solely on domestic companies, there is little indication that competition law is applied with a singular goal of promoting market efficiency or arm's-length market relations. Nearly all competition regulators operate under mandates that include a mix of economic, developmental, and redistributive objectives. Most jurisdictions have explicitly rejected the Chicago competition paradigm, which advocates for strict prosecution of horizontal coordination while showing general leniency toward hierarchical coordination (Bradford, Chilton, and Lancieri 2020). Indeed, most competition regimes incorporate extensive exemptions for key strategic industries as well as social goals such as small business protection, development, environment, and redistribution in their mandates. They also have adopted strong hierarchical rules intended to limit economic concentration and exclusionary practices, even when such practices result in short-term consumer price reductions.

While more research is needed to understand how these laws are enforced in practice, existing evidence highlights competition law's role in embedding social values within global markets. By constraining economic concentration and curbing private power, while balancing international cooperation with national sovereignty, competition law helps ensure that global capitalism remains accountable to public authority (Allen and Scheve 2022). Although antitrust enforcement alone cannot solve the wide-ranging social and economic problems generated by

global capitalism, it remains a vital institutional tool for addressing governance gaps in an era where economic power is increasingly concentrated, yet political authority remains largely national.

Conclusion

The emerging literature on competition law and capitalism has been fruitful for both the study of competition law and the study of capitalism. Existing studies have developed tractable theories that illuminate the relationship between competition law and capitalism in general, as well as its role shaping institutional and economic variation across political jurisdictions. While the global diffusion of competition law has coincided with broader economic liberalization, it remains unclear whether this relationship is because antitrust enforcement complements liberalization, substitutes for protectionism, or provides a mix of both effects. The literature suggests that competition law is a flexible political instrument, capable of serving diverse policy objectives.

Yet, if current scholarship has raised important questions, the search for definitive answers has only just begun. In particular, there is a pressing need to explore the relationship between competition law and capitalist organization beyond the richest economies. While antitrust regulators in middle-income countries such as Turkey, South Africa, and Mexico have become increasingly active, scholars have only started to study how their policies shape economic structures and market coordination patterns (Arslan 2024). Even less research exists on the impact of competition law in lower-income countries across Africa, Latin America, and Asia (Büthe and Kigwiru 2020). Finally, further study is needed to examine competition law's dual role in both enabling and constraining the growth of digital platform companies, whose scale and business models challenge traditional frameworks for understanding the intersection of law and capitalism (Atal 2020).

References

- Allen, Michael O, and Kenneth Scheve. 2022. "Sustaining capitalism and democracy: Lessons from global competition policy." *International Studies Review* 24 (2): viac018.
- Arslan, Melike. 2023. "Legal diffusion as protectionism: The case of the US promotion of antitrust laws." *Review of International Political Economy* 30 (6): 2285–2308.
- Arslan, Melike. 2024. "Mexico's battle with monopolies: Reputation-based autonomy and self-undermining effects in antitrust enforcement." *Socio-Economic Review*: mwae036.
- Atal, Maha Rafi. 2020. "The Janus faces of silicon valley." *Review of International Political Economy* 28 (2): 336–350.
- Billows, Sebastian, Sebastian Kohl, and Fabien Tarissan. 2021. "Bureaucrats or ideologues? EU merger control as market-centred Integration." *JCMS: Journal of Common Market Studies* 59 (4): 762–781.
- Bradford, Anu. 2020. *The Brussels effect: How the European Union rules the world*. Oxford: Oxford University Press, USA.
- Bradford, Anu, Adam S Chilton, and Filippo Maria Lancieri. 2020. "The Chicago school's limited influence on international antitrust." *The University of Chicago Law Review* 87 (2): 297–330.
- Buch-Hansen, Hubert, and Angela Wigger. 2011. *The Politics of European Competition Regulation: A Critical Political Economy Perspective*. Vol. 32. New York: Routledge.
- Büthe, Tim. 2015. "The politics of market competition." *The Oxford Handbook of the Political Economy of International Trade*: 213–232.
- Büthe, Tim, and Vellah Kedogo Kigwiru. 2020. "The spread of competition law and policy in Africa: A research agenda." *African Journal of International Economic Law* 1: 41–83.
- Callaci, Brian. 2021. "What do Franchisees do? Vertical restraints as workplace fissuring and labor discipline devices." *Journal of Law and Political Economy* 1 (3): 397–444.
- Christophers, Brett. 2016. *The Great Leveler: Capitalism and Competition in the Court of Law*. Cambridge, MA: Harvard University Press.
- Djelic, Marie-Laure, and Thibaut Kleiner. 2006. "The international competition network: Moving towards transnational governance." In *Transnational Governance: Institutional Dynamics of Regulation*, edited by Marie-Laure Djelic

- and Kerstin Sahlin-Andersson, Cambridge University Press, 287–307.
- Ergen, Timur, and Sebastian Kohl. 2019. “Varieties of economization in competition policy: Institutional change in German and American antitrust, 1960–2000.” *Review of International Political Economy* 26 (2): 256–286.
- Foster, Chase. 2022. “Varieties of neoliberalism: Courts, competition paradigms and the Atlantic divide in anti-trust.” *Socio-Economic Review* 20 (4): 1653–1678.
- Foster, Chase, and Sebastian Kohl. 2025. *Competition law, varieties of capitalism and institutional complementarity: Convergence of law, divergence in practice*. Unpublished working paper.
- Foster, Chase, and Kathleen Thelen. 2025. “Coordination rights, competition law and varieties of capitalism.” *Comparative Political Studies* 58 (6): 1199–1237.
- Guardiancich, Igor, and Mattia Guidi. 2016. “Formal independence of regulatory agencies and varieties of capitalism: A case of institutional complementarity?” *Regulation & Governance* 10 (3): 211–229.
- Gutiérrez, Germán, and Thomas Philippon. 2018. *How EU Markets Became More Competitive than US Markets: A Study of Institutional Drift*. National Bureau of Economic Research.
- Hall, Peter A, and David Soskice. 2001. “An introduction to varieties of capitalism.” In *Varieties of Capitalism: The Institutional Foundations of Comparative Advantage*, edited by Peter A Hall and David Soskice. New York: Oxford University Press, 1–70.
- Naidu, Suresh, Eric A Posner, and Glen Weyl. 2018. “Antitrust remedies for labor market power.” *Harvard Law Review* 132 (2): 536–601.
- Paul, Sanjukta. 2020. “Antitrust as Allocator of Coordination Rights.” *UCLA Law Review* 67: 378–431.
- Paul, Sanjukta, Shae McCrystal, and Ewan McGaughey. 2022. *The Cambridge Handbook of Labor in Competition Law*. Cambridge: Cambridge University Press.
- Peinert, Erik. 2025. *Monopoly Politics: Competition and Learning in the Evolution of Policy Regimes*. New York: Oxford University Press.
- Philippon, Thomas. 2019. *The Great Reversal: How America Gave Up on Free Markets*. Cambridge, MA: Harvard University Press.
- Rahman, K. Sabeel, and Kathleen Thelen. 2019. “The rise of the platform business model and the transformation of twenty-first-century capitalism.” *Politics & Society* 47 (2): 177–204.
- Sell, Susan K. 2003. *Private Power, Public Law: The Globalization of Intellectual Property Rights*. Vol. 88. Cambridge: Cambridge University Press.
- Steinbaum, Marshall. 2019. “Antitrust, the gig economy, and labor market power.” *Law & Contemporary Problems* 82: 45–64.
- Vogel, Steven K. 1996. *Freer Markets, More Rules: Regulatory Reform in Advanced Industrial Countries*. Ithaca, NY: Cornell University Press.
- Wigger, Angela, and Andreas Nölke. 2007. “Enhanced roles of private actors in EU business regulation and the erosion of Rhenish capitalism: The case of antitrust enforcement.” *JCMS: Journal of Common Market Studies* 45 (2): 487–513.
- Wilmers, Nathan. 2018. “Wage stagnation and buyer power: How buyer-supplier relations affect US workers’ wages, 1978 to 2014.” *American Sociological Review* 83 (2): 213–242.
- Woll, Cornelia. 2023. *Corporate Crime and Punishment: The Politics of Negotiated Justice in Global Markets*. Princeton: Princeton University Press.
- Zhang, Angela. 2021. *Chinese Antitrust Exceptionalism: How the Rise of China Challenges Global Regulation*. Oxford: Oxford University Press.