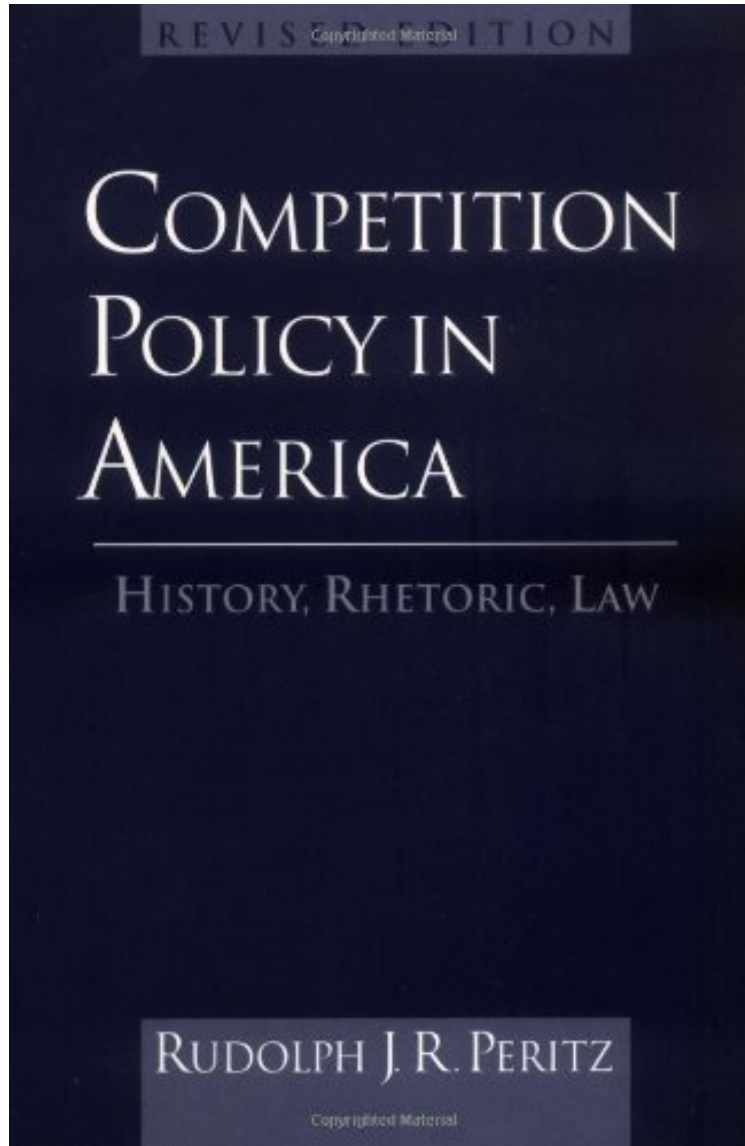


(Download pdf) Competition Policy in America: History, Rhetoric, Law

## Competition Policy in America: History, Rhetoric, Law

*Rudolph J. R. Peritz*

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**Rudolph J. R. Peritz : Competition Policy in America: History, Rhetoric, Law** before purchasing it in order to gage whether or not it would be worth my time, and all praised Competition Policy in America: History, Rhetoric, Law:

19 of 20 people found the following review helpful. Very Interesting; Maybe Too Ambitious; More Off Base ReviewsBy A CustomerI am a professor of antitrust law, and I read this book and liked it. I would recommend it primarily to lawyers and historians interested in serious reading about the history of the American polity's attitudes toward and relationship with industry and the relative level of industrial concentration. Bear in mind that Peritz is a

\_very\_ big-picture sort of guy, and a problem with the book is that he perhaps has taken on too ambitious a project. In the legal academy these days everybody seems to be trying very hard to show that they are discovering the deepest, most abstract theoretical explanations of legal phenomena, and the resulting problem is that sometimes they claim to have found explanations that just seem too neat and convenient to possibly be true. I felt this to some extent in reading Peritz's book; you may share my feeling that there is something a little too perfect in his claim to have discovered the opposing "property logic" and "equality logic" that are the fundamental forces governing all competition policy. Also, as noted in a previous review ("Best in its field"), the book is palpably left-leaning, though Peritz himself never seems openly to advocate a particular position. A separate issue is that, as some of the prior reviews demonstrate, this book is apparently not well suited for economists. They seem to look for particular things in legal histories (note that at least one of the reviewers mistakenly characterized this book as an "economic history") and, when they don't find them, they claim that the history is a failure. Two reviewers ("Disappointing Read" and "Inaccurate") have now argued that there is something wrong with Peritz's book because he fails to observe empirical data and theoretical research allegedly showing that the monopolists of the late 19th c.--the time when the U.S. adopted its first federal antitrust law--in fact promoted healthy markets because they "caused prices to fall and output to rise." The implicit argument that flows from this is a little mysterious--the reviewers seem to argue either that Peritz is wrong because antitrust is wrong (i.e., that the monopolists were good and therefore Congress should not have adopted antitrust), or that in fact the Congress of 1890 did not have the monopolists in mind when they enacted the Sherman Act because they recognized, as some conservative economists now argue, that the monopolists were socially beneficial. Neither argument follows at all; the criticism is off base at least for the following three reasons: 1. To the extent that the criticism faults Peritz for his failure to show that antitrust is in fact good policy--that is, for his failure to offer a substantive response to the alleged empirical proof of the social beneficence of the monopolists--it misunderstands Peritz's project. Again, he sets a very big-picture task for himself, but no part of it is a substantive defense of either the antitrust laws nor any particular vision of competition policy. He merely wants to examine the "history, rhetoric [and] law" that surrounds the idea of "competition" in U.S. history (note that both of the prior negative reviews assume that this book is about "antitrust history," but neither in the title nor in Peritz's statement of his purpose does he say that this is a book about "antitrust history"--rather, it is a history of "competition policy"). He \*never\* sets for himself the task of arguing that the monopolists were bad as a matter of economic substance nor that antitrust is good as a matter of substantive policy. 2. To the extent that the previous reviews quibble with Peritz's view of the historical origin of U.S. antitrust law, they are wrong. As was shown beyond serious doubt in a classic legislative history of antitrust (John D. Clark, "The Federal Trust Policy" (1936)), the Congress that passed the Sherman Act and the later Congress that passed the significant 1914 amendments to that Act utterly and apparently intentionally ignored the prevailing academic economists of their day. Therefore, though some academics at that time argued that markets are sufficiently self-regulating that even the Rockefellers and J.P. Morgans and so on should just be left alone, Congress didn't care. (And, moreover, that was \_not\_ a universally held economic view, nor is it today, by any stretch of the imagination.) So how is any purported empirical proof of the efficiency of the mega-monopolies relevant at all to a legislative history of antitrust? Congress didn't care about it. 3. But most importantly, the final reason that I think the previous reviews are off base is that they simply reflect a political bias that nowadays is very common amongst economists and conservative lawyers, and accordingly they reflect (though only implicitly) the basic ugliness of conservative microeconomics. Both reviews imply a basic tenet of all right-wing economics: that where markets are "self-regulating," according to the pinched and narrow definition that conservatives give that term--namely, when particular companies cause "prices to fall and output to rise"--they must be left alone. Believing in such a view depends on one's willingness to believe that the only social values that matter are endogenous to the simplistic model of perfect competition. But that requires several large empirical leaps of faith, because it requires one to believe that the simplistic model of competitive equilibrium that is the heart of neoclassical economics is in fact sufficiently similar to the real world that it is the answer to all policy questions. In fact, as was observed in a previous review ("Best In Its Field"), the simplistic model, however useful it may be in the classroom and in textbooks, ignores profound matters of policy and conscience that are not endogenous--that is, values that are not internalized by market participants and therefore can only be served by policy makers. Failure to understand this problem explains how men like Ricardo, for example, could look across the human wasteland of poverty, disease and suffering that was the British Industrial Revolution and say that, hey, it's okay, because markets are efficient and since the markets have produced this human tragedy, then it must be the best we can do. 6 of 23 people found the following review helpful. A disappointing read By Donald J. Boudreaux Professor Peritz reports lots of detailed facts about the legislative debates and courtroom proceedings surrounding America's antitrust regulations. Unfortunately, he far too uncritically accepts the mythical notion that antitrust legislation was enacted in response to increasing monopolization of the U.S. economy. Peritz ignores the large (and still growing) body of research showing that Standard Oil, the Chicago meatpackers, U.S. Steel, and other firms vilified in popular histories in fact promoted competitive markets -- these firms dramatically reduced prices, improved their operating and distribution efficiencies, and consistently increased the quality of the goods they offered to consumers. With his incorrect understanding of economic history, Peritz's explanations of the origins and

role of antitrust legislation and case law are, largely, unfounded. 1 of 11 people found the following review helpful.  
InaccurateBy Erin NaturaUnlike the previous reviewer, I agree with the review entitled "A Disappointing Read". As I read the history of antitrust in the US, I am struck by how aware the lawmakers of the late 19th-century were of the fact that the alleged monopolists (such as Standard Oil) caused prices to fall and output to rise. In this book, the author seems totally unaware of this fact. I found this book to be frustratingly bad, poorly argued and too often based upon myths about American economic history.

Americans have long appealed to images of free competition in calling for free enterprise, freedom of contract, free labor, free trade, and free speech. This imagery has retained its appeal in myriad aspects of public policy--for example, Senator Sherman's Anti-Trust Act of 1890, Justice Holmes's metaphorical marketplace of ideas, and President Reagan's rhetoric of deregulation. In *Competition Policy in America, 1888-1992*, Rudolph Peritz explores the durability of free competition imagery by tracing its influences on public policy. Looking at congressional debates and hearings, administrative agency activities, court opinions, arguments of counsel, and economic, legal, and political scholarship, he finds that free competition has actually evoked two different visions--freedom not only from oppressive government, but also from private economic power. He shows how the discourse of free competition has mediated between commitments to individual liberty and rough equality--themselves unstable over time. This rhetorical approach allows us to understand, for example, that the Reagan and Carter programs of deregulation, both inspired by the rhetoric of free competition, were driven by fundamentally different visions of political economy. Peritz's historical inquiry into competition policy as a series of government directives, inspired by two complex yet distinct and sometimes contradictory visions of free competition, provides an indispensable framework for understanding modern political economy-- whether political campaign finance reform, corporate takeover regulation, or current attitudes toward the New Deal Legacy. *Competition Policy in America* will be of great interest to lawyers, historians, economists, sociologists, and policy makers in both government and business.