

Antipode

A Radical Journal of Geography

Brett Christophers, *The Great Leveler: Capitalism and Competition in the Court of Law*, Cambridge: Harvard University Press, 2016. ISBN: 9780674504912 (cloth); ISBN 9780674089020 (ebook)

Brett Christophers' analysis in this insightful historical work on the economic functions of law starts from a real and significant deficit in the Parisian regulation approach in critical political economy. This approach examines five structural forms crucial to stable accumulation, namely, the wage relation, money, competition, the state, and international regimes. Focusing on competition, Christophers argues that the regulation approach neglects the crucial roles of law, litigation and judicial decision-making in mediating and governing this structural form. Specifically, law is used to recalibrate the apparently antithetic tendencies to monopoly and competition that, he claims, co-exist in "capitalist regimes of profitability and growth" and to align them with the requirements of different regimes. After developing these theoretical arguments in part one, in part two Christophers explores law's "levelling" role in the USA and UK through case studies of anti-trust law and intellectual property rights for three periods. The rationale for this choice of cases is that anti-trust law aims to limit monopoly and intellectual property rights fashion and protect monopoly (p.4).

Both parts of the book are provocative but the conclusions of the wonderful case studies do not follow directly from the theoretical analysis. This is because the latter relies on a simple, albeit dialectical, juxtaposition of competition and monopoly that does not address the complexities of actually existing competition. A further problem, at least for Marxist scholars, is that the author does not engage with the successive analytical steps in *Capital* but claims that Marx was guilty of treating competition as the passive executor of a pre-given logic of productive capital and therefore underplayed the importance of competition, markets, exchange relations and market forces (p.105). For Marx, however, it is the differential between *production prices* and *market prices* that drives the competition treadmill. Accordingly, Marx integrated circulation, distribution, and exchange and, *a fortiori*, market

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relations and market forces into the heart of the analysis of competition as so many reflections of the inner nature and contradictions of the capital relation. In addition, for Marx, monopoly refers to the concentration or centralization of capital—which can be a means of competition, not its antithesis; conversely, Marx rarely discussed monopoly capital, cartels, or trusts, which are the target of anti-trust law and guide Christophers' reading of the law.

More generally, quibbles over reading Marx aside, the complexities of actually existing competition over the last 150 years make it hard to establish an objective economic or legal criterion for judging the “appropriate balance” between competition and monopoly. Views on when, where and how to recalibrate this are socially constructed and relative to competing economic, political, legal and social imaginaries. Christophers seems to concede this when he suggests that imbalances are revealed in and through crises and that the law (anti-trust, IP, or both) is then mobilized to *successfully* restore the balance in line with the revealed needs of capital in a given crisis conjuncture (p.21ff). At stake here, as Marx indicated in the *Grundrisse*, written in 1857-58, is the tension between (1) the interests of *particular capitals* in securing above average rates of profit at the expense of other capitals through anti-competitive forms of competition, such as cartels or monopolies, and (2) the interest of *capital in general* in securing the free play of market forces so that no particular capitals are disadvantaged. This tension is construed differently in the contrasting traditions of US anti-trust law and the Continental European tradition, which, despite the growing integration of the world market in the shadow of neoliberalism, still owes something to Ordoliberalism.

In developing his empirical analyses, Christophers focuses on competition *in market price formation and exchange relations* rather than the broader operation of the law of value. This reflects classical political economy and the neo-classical tradition as well as legal scholarship and practice. The result is to underplay the *limits* of competition law in regulating the balance between competition and monopoly, especially where monopolistic tendencies are grounded in the sphere of production rather than the process of market price formation

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and/or where they are rooted in extra-economic institutional conditions. For example, where competitiveness stems from superior capacities to reduce socially necessary labour and turnover times and the times of natural reproduction, it can generate super-profits for a time even when commodities are sold at or even below “normal” market prices. This is especially likely during periods when creative destruction is intense. Such transitions tend to disrupt competition law, which lags behind changes in products, processes, marketing, sourcing, and corporate organization. It is also harder to use law to regulate competition between political entities and places (for example, cities, regions, nations, triads) than between firms. Finally, competition and competitiveness also depend on extra-economic as well as economic conditions, capacities, and competencies.

Notwithstanding my critical theoretical reflections in this review, this is a tremendous and important scholarly work. The choice of three periods and two complementary kinds of competition (or monopoly) law is inspired and provides seriously insightful analysis of the contrasting dynamics of competition and monopoly at the level of the corporate form, market price formation, and abuse of market power. The analysis of intellectual property rights is especially valuable because it reflects new tendencies that have become more crucial to international competitiveness, especially for the USA and other advanced capitalist economies, and shows the limits of studies of globalization that neglect the crucial differences between economic spaces where knowledge-, design- and creativity-intensive clusters exist and those that are net importers of IP-intensive goods and services. This relation changes in time, of course (contrast the USA in the late 19th and late 20th centuries) and is a major site of international trade and legal disputes (as reflected in opposition to currently proposed trade and investment treaties). These important nuances are revealed in rich historical detail in the case studies and invite further work along these lines for Continental Europe, the shifting position of the East Asian emerging economies, the contrasting positions of Brazil, Russia, India, and China, and current trade negotiations. To conclude, radical geography would benefit strongly from combining a more rigorous analysis of the dynamics

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of competition grounded in the logic of differential accumulation and building on and extending the rich and nuanced case studies provided by Christophers in this elegant and insightful monograph.

Bob Jessop
Department of Sociology
Lancaster University
b.jessop@lancaster.ac.uk

August 2016