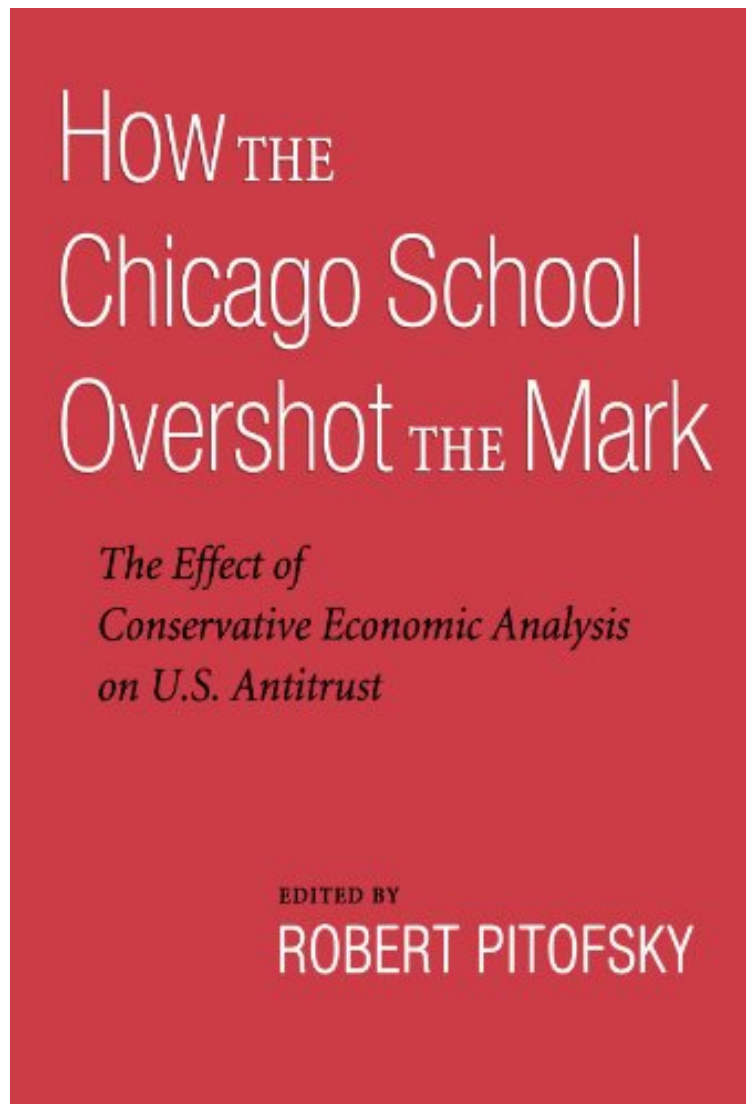


(Download pdf) How the Chicago School Overshot the Mark: The Effect of Conservative Economic Analysis on U.S. Antitrust

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From Robert Pitofsky

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From Robert Pitofsky : How the Chicago School Overshot the Mark: The Effect of Conservative Economic Analysis on U.S. Antitrust before purchasing it in order to gauge whether or not it would be worth my time, and all praised How the Chicago School Overshot the Mark: The Effect of Conservative Economic Analysis on U.S. Antitrust:

2 of 4 people found the following review helpful. Chicago revisited By Jorge Alberto Bogo It is an equilibrated and respectful review of the Chicago heritage, How the Chicago School Overshot the Mark: The Effect of Conservative Economic Analysis on U.S. Antitrust that tries to be objective in pointing out their exaggerations and their merits. Some of the papers were not new as well as some of the opinions. The one that impressed me most was Eleanor Fox's one. I would recommend its reading to beginners and also to seasoned practitioners.

How the Chicago School Overshot the Mark is about the rise and recent fall of American antitrust. It is a collection of 15 essays, almost all expressing a deep concern that conservative economic analysis is leading judges and enforcement officials toward an approach that will ultimately harm consumer welfare. For the past 40 years or so, U.S. antitrust has been dominated intellectually by an unusually conservative style of economic analysis. Its advocates, often referred to as "The Chicago School," argue that the free market (better than any unelected band of regulators) can do a better job of achieving efficiency and encouraging innovation than intrusive regulation. The cutting edge of Chicago School doctrine originated in academia and was popularized in books by brilliant and innovative law professors like Robert Bork and Richard Posner. Oddly, a response to that kind of conservative doctrine may be put together through collections of scores of articles but until now cannot be found in any one book. This collection of essays is designed in part to remedy that situation. The chapters in this book were written by academics, former law enforcers, private sector defense lawyers, Republicans and Democrats, representatives of the left, right and center. Virtually all agree that antitrust enforcement today is better as a result of conservative analysis, but virtually all also agree that there have been examples of extreme interpretations and misinterpretations of conservative economic theory that have led American antitrust in the wrong direction. The problem is not with conservative economic analysis but with those portions of that analysis that have "overshot the mark" producing an enforcement approach that is exceptionally generous to the private sector. If the scores of practices that traditionally have been regarded as anticompetitive are ignored, or not subjected to vigorous enforcement, prices will be higher, quality of products lower, and innovation diminished. In the end consumers will pay.

"Chairman Pitofsky's timely book teaches us important truths about antitrust. This book convincingly rebuts the Chicago School approach to economics and competition policy while reminding us that the antitrust laws, when effectively applied, are robust tools that enhance competition and benefit consumers. Chairman Pitofsky and the other distinguished contributors provide a badly needed counterpoint to the excesses of Chicago School economic theory that has led to an overly hands-off and lifeless approach to antitrust enforcement in recent years. This excellent volume should be studied by all those who care about competition policy."--Senator Herb Kohl

"Into the grand antitrust debate between Warren Court advocates, on the one hand, and the treatises and court opinions out of the Chicago School tradition, on the other, comes finally a voice of reasoned moderation--or rather a full-throated chorus of such voices. With a clear-eyed regard for the paramount importance of consumer welfare as the central governing principle of antitrust enforcement, this collection of essays deserves to be read carefully by practitioners, academics and politicians--but especially-- and exceedingly carefully--by federal judges all across the country, not least of all by the current justices of the U.S. Supreme Court."--John Shenefield, Former Assistant Attorney General for Antitrust

"When they asserted efficiency as the new benchmark of antitrust, the scholars of Chicago paved the way to very welcome developments. But efficiency is more and more treated as an ideology and therefore it leads to forgetting the facts and restoring presumptions. If avoiding false positives becomes the priority of antitrust, how many real negatives will receive undeserved immunity? The questions raised by this book are no less timely than those raised by those scholars forty years ago and deserve no less attention from practitioners, academics and judges all over the world. I am confident that some copies of it will also be available in the library of the U.S. Supreme Court."--Giuliano Amato, Former Prime Minister of Italy

"This collection of essays--by lawyers and economists, many of whom are former antitrust enforcement officials--will generously reward a close read by anyone who is interested in the current intellectual state of antitrust thinking. As largely a critique of recent legal decisions and of recent enforcement, these essays are likely to form the basis for new directions for antitrust in the coming decade."--Lawrence J. White, Professor of Economics, NYU Stern School of Business

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About the AuthorRobert Pitofsky has seen all sides of regulatory law enforcement and analysis: government enforcer and judge, private sector defense attorney, government consultant and for over 40 years law professor. He has taught antitrust and other aspects of regulatory law (communications, intellectual property) for about 40 years at New York University and Georgetown and as a Visiting Professor at Harvard and Columbia. He has been a law enforcer with three periods of service at the Federal Trade Commission (culminating in six years as Chairman) and served as defense counsel with several large New York and District of Columbia law firms.