

## Chicago-Kent College of Law

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From the Selected Works of David J. Gerber

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### Book Review, G.B. Doern & S. Wilks Eds., Comparative Competition Policy: National Institutions in a Global Market (1996)

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has the calamitous consequences already noted. If we respect all ideas, we respect none; in a deconstructed moral economy we may all stand equal—but at zero.

But a third possibility stands unnoticed. This saving alternative rests upon the familiar, if contested, proposition that personal goodness—for that matter, eternal salvation—does not depend upon getting the right answers, real as these be. Rather, it depends solely upon the free commitment to an honest and diligent quest for those answers. This is a vocation for which every minimally rational human is as prepared as any other. With whatever gifts God or nature has given us we can all *seek* the true and the good—and thus perfect ourselves, even when we mistakenly injure the common welfare.

Here is a conception of descriptive human equality on which a rights movements could take its stand. Making a personal effort to discern and distinguish good and evil behaviors is not only possible to all of us, but is imperative to justice in both public and private life. Indeed, it is diligent moral criticism by the editors themselves that animates and justifies this book. Plainly, in practice they disrespect bad ideas even while they respect those who believe them.

For a regime of rights it is sufficient that the truth is ever elusive and can flourish in peculiar places. Our grasp of its content is never final, and moral self-perfection is barely begun much less completed in this life. Thus, the only political regime that is fully practical and simultaneously respectful of the person consists in the fullest practical freedom of expression—a free and raucous market—uncorrupted by the debilitating notion that all beliefs are equal. We must constantly test all ideas in the fire of ideological conflict. It is everyone's duty to spot and expose nonsense. But don't burn its mistaken messenger; he may be morally superior to you.

The editors should look forward to a boisterous and happy future in which even a believing and practicing Westerner can in loving friendship criticize the cults, tribalisms and xenophobias that today claim moral equality with the eternal verities. If these new claims deserve my respect, come show me the reason over lunch. I'll pay.

COMPARATIVE COMPETITION POLICY: NATIONAL INSTITUTIONS IN A GLOBAL MARKET. Edited by G. Bruce Doern & Stephen Wilks. Oxford: Clarendon Press, 1996. Pp. 398.

*Reviewed by David J. Gerber\**

It is not surprising that scholarship relating to competition law, especially its comparative and international dimensions, has been

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dominated by scholars based in either law or economics. As obviously important as these two perspectives are, however, they are by themselves often too narrow to illuminate important aspects of the operation of competition law systems. Professors Bruce Doern and Stephen Wilks have tackled this deficit, bringing the perspectives and methodologies of political science to bear on global competition law issues. The volume of essays they have edited is a welcome and valuable step toward expanding the horizons of competition law and increasing our understanding of how competition law systems operate.

The volume contains papers from two conferences held in the mid-1990s. It includes six studies of particular antitrust systems (U.S., Canada, Japan, U.K., Germany, and European Union) together with essays on methodological and comparative issues, the internationalization of competition law and the interface between competition laws and trade policies. The contributors are, for the most part, British and Canadian political scientists, but the chapters on German, U.S. and Japanese antitrust law were written by scholars from the respective countries. Although the contents are by no means outdated, the perspectives employed in some chapters are colored by the specific concerns of that period. In particular, the authors could not treat recent developments such as the fate of global competition law ideas in the World Trade Organization and the impressive growth in the scope, intensity and frequency of international antitrust cooperation.

The theoretical chapters contributed by the editors are particularly valuable, because they consciously refract issues and problems of competition law through political science lenses, and it is these lenses that can provide fresh insights for lawyers and economists. The authors "take an approach which stresses the importance of institutions, including the way in which policy actors act in an institutional setting." (p.4) They thus stress the "institutionalist" variety of political science analysis and outline several levels of analysis that they claim are necessary for an adequate understanding of the operations of competition law systems. These are macro-politics (ideologies, political and business interests and other factors explaining system outputs); meso-politics (characteristics of institutions and overall decision processes); micro-politics (implementation, compliance and enforcement decisions); and internationalization factors. In the concluding chapter, the editors reflect on the analysis provided in the substantive chapters and provide useful starting points for comparative analysis.

Their discussions represent thoughtful attempts to structure discussion and focus future scholarly attention on the issues. They do not purport to engage in deep or sustained analysis of the problems involved, but suggest ways of approaching the issues involved. The general concerns themselves will not be new to anyone who has seriously studied competition law, but the systematic and careful formulation of the issues is helpful in organizing an intellectual approach

to the topic that can lead to more effective comparison and more useful analysis.

The chapters on specific systems have a degree of consistency in the sense that the authors are generally answering the same types of questions from perspectives that are at least identifiably related. According to the introduction, "Each chapter explores the historical context of competition policy, the basic legislation involved, the major institutions and their changing prestige and influence; the interplay of ideas, business power, and bureaucratic influence; and the basic nature of decision processes, institutional and legal cultures, and scope for discretion." (p.5)

Nevertheless, the chapters tend to vary considerably in the depth of their respective analyses. Some chapters provide little more than general information that is well-known to anyone familiar with competition law in the subject country, albeit usually combined with at least some valuable insights into competition law experience. Others are far more analytical. In particular, the chapter on the German system by Professor Roland Sturm struck me as highly insightful, although I do not share all the conclusions it presents.

The rather superficial treatment of most of these chapters is inevitable, given the broad range of topics that each author was asked to treat. It is also attributable to the authors' perceived need to provide significant amounts of basic information to political scientists who can be expected to know little about the actual operations of competition law systems. Nevertheless, it does mean that for competition law scholars who have looked across their own borders, the material is not likely to be particularly new.

Despite these limitations, the volume is an important contribution to expanding the scope and depth of analysis of competition law. Economic globalization necessarily relates individual competition law decisions in one legal system to the decisions of others in other systems, thus dramatically increasing both the need for effective cooperation among decisionmakers and the need to understand more fully the differences between systems and how they operate. Social science has many tools that can be of major importance in this area, and thus in my view we need many more cross-disciplinary efforts of the kind that Professors Doern and Wilks here provide. Competition law is too important in too many ways for it to be left to narrow legal or economic analysis.