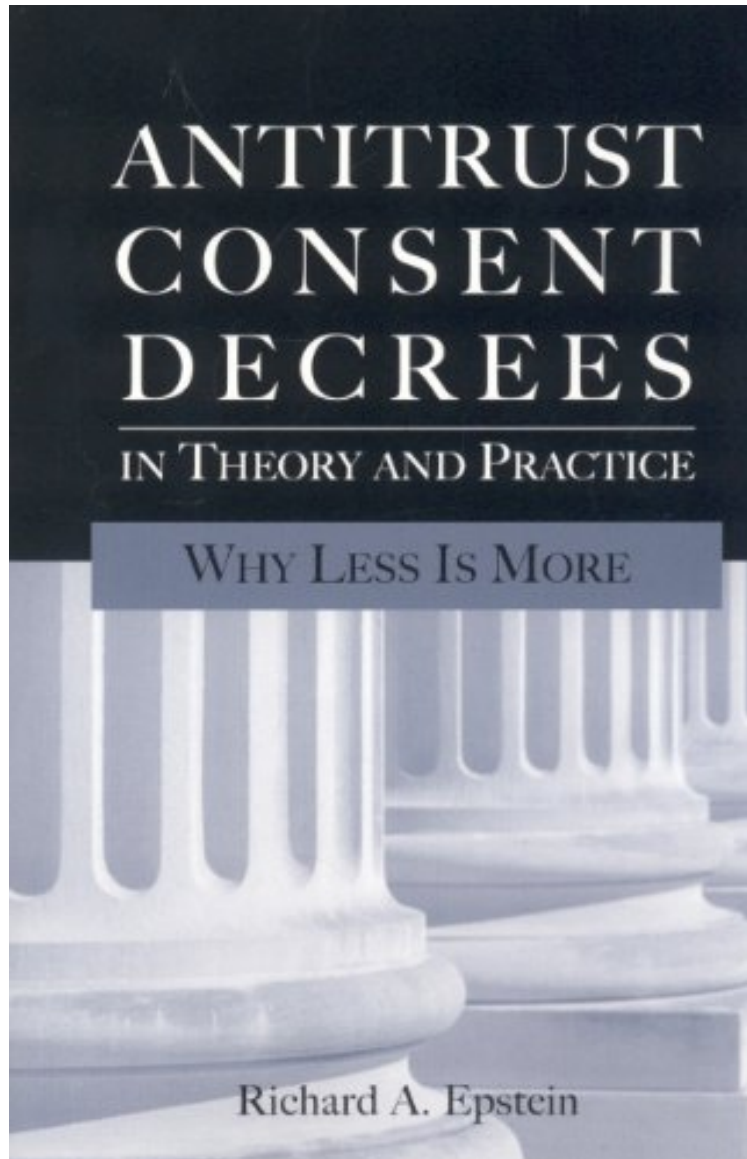


(Free pdf) Antitrust Consent Decrees in Theory and Practice: Why Less Is More

Antitrust Consent Decrees in Theory and Practice: Why Less Is More

Richard A. Epstein

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Richard A. Epstein : Antitrust Consent Decrees in Theory and Practice: Why Less Is More before purchasing it in order to gage whether or not it would be worth my time, and all praised Antitrust Consent Decrees in Theory and Practice: Why Less Is More:

1 of 1 people found the following review helpful. More for specialists than the general publicBy Craig MattesonThis is

really a book for specialists or those who have a particular interest in anti-trust consent decrees. The average person, not understanding the fine points or goals or methods or limits of the law will find themselves getting quite frustrated with some of the points Epstein is making. He has taken a look at several aspects of our law rather than pronouncing and the morality or the rightness or wrongness of the companies entering into these decrees. Epstein lays out the legal theories around consent decrees and how they arose from our quite fuzzy anti-trust laws. And it is hard for the anti-trust laws to not be cloudy because as soon as they are specifically defined, companies will find a way around those rules to accomplish a very similar end (rent seeking behavior through market dominance) just outside the grasp of the law. He presents short case studies from the past such as *U.S v Swift*, *ASCAP-BMI*, and *United Shoe Machinery*. These are all quite interesting and informative. Personally, I enjoyed reading these accounts. We are then given longer chapter length accounts on the breakup of the Bell System and the consent decrees basically imposed on Microsoft. Epstein demonstrates what he was wrong with the Bell breakup. While those companies created after the breakup are all but united again, I think it is hard to believe that the old ATT would have engaged or allowed all the innovation we have had since then. But then, ATT was a monopoly that was created and protected by legislation, and that is a huge problem, in my view. There was competition on the way, but fought every step of the way with ATT's massive firepower. Still, it is the process and method rather than the thing done that is Epstein's concern. The author thinks better of what has been done with Microsoft, even if he finds much of the challenges against the company questionable or even resolvable in a "fair" way. For example, on page 103 the author discusses OS/2 and the damage done to it by Microsoft. Essentially, he concludes that since the operating system wasn't going to be successful anyway, as demonstrated by its failure, it is hard to assign damages to Microsoft. This seems to me to be similar to an argument made by a thief who had stolen some crystal justifying himself by saying that since he believed the owner was going to drop and break the crystal anyway he really didn't steal anything of value. Still, Epstein is right in showing the difficulty of handling these things under tort law rather than as crimes. And if they were to be handled as crimes wouldn't that be too harsh in most cases? However, if companies know how hard it will be to do anything against them, all they need to do is calculate how much they can gain by every sharper business practice and subtract the likely costs of litigation with the government. If it is greater than zero, they should engage in the questionable (or more than questionable) business practices since there is no way to effectively deter them. (This is my conclusion, not Epstein's). I think Epstein does point out some valuable lessons learned about these decrees and they should be kept in mind in future cases.

For over one hundred years, the antitrust consent decree has been a major weapon in the federal enforcement of antitrust laws. In *Antitrust Consent Decrees in Theory and Practice*, Richard A. Epstein undertakes the first systematic study of their use and effectiveness from both a historical and analytical perspective. Epstein observes how differences in antitrust philosophy can shape the kinds of comprehensive settlements that the government will seek and the courts will grant. Epstein takes issue with aggressive antitrust enforcement strategies that seek to use government power to fundamentally alter industry structures or the business practices of regulated firms, in some instances leading to their breakup. To explain the perils of that approach, Epstein carefully examines the history of consent decree litigation, culminating in detailed studies of the ATT breakup and the government antitrust actions against Microsoft. Applying modern theories of antitrust analysis, Epstein's central thesis is that bold antitrust remedies that are not tightly tied to a defensible theory of wrongful conduct often prove counterproductive. Such measures typically force firms to adopt business practices and structural reorganizations that substantially impede their ability to compete effectively in the marketplace. The disparate fates of ATT and Microsoft are the result of a major and fruitful shift in thinking about the use and limits on the antitrust laws in a wide variety of industrial contexts. *Antitrust Consent Decrees in Theory and Practice* will be of interest to any reader who is concerned with the larger implications of the government regulation of law and business. Epstein brings nearly forty years of personal knowledge and experience to this matter. Written in a clear and nontechnical style, this book should prove an invaluable resource to any student of regulation and economic policy, as well as lawyers and policymakers concerned with antitrust litigation.

About the Author Richard A. Epstein is the James Parker Hall Distinguished Service Professor of Law at the University of Chicago Law School and the Peter and Kirsten Bedford Senior Fellow at the Hoover Institution.