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Teaching Antitrust Online

Max Huffman

Indiana University Robert H. McKinney
School of Law

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I. INTRODUCTION

Antitrust is enjoying a renaissance in national economic policy and in the academy. When I began teaching a decade ago it was common to hear that antitrust was dead or at least unimportant. It was a mistake on the teaching job market to list antitrust as one's first-choice course to teach. When I joined my institution, the largest law school in the nation's 16th largest state, antitrust was not on the course list at all.

The academy took its cues from the courts and the federal enforcement agencies. The Rehnquist Supreme Court heard few antitrust cases and, famously, the defendant always won. After some exciting years in the 1990s, the 2000s saw significant retrenchment in federal enforcement everywhere but in the criminal arena. Competition law schemes existed overseas but outside of the western world were largely undeveloped and unused.

In 2015 the picture is very different. Vigorous enforcement by the Obama administration and the Federal Trade Commission, active and sophisticated state agency enforcement, eager participation by regulatory agencies such as the FCC, and a practiced class-action bar give much to study in U.S. antitrust. The Supreme Court has been more active in the field than at any time since the 1970s. Cross-border business puts the relevance of foreign and cross-border enforcement on a par with purely domestic antitrust. In addition to long-standing competition policy enforcement in Europe and the former British colonies there is now a record of enforcement to study in China, Latin America, Eastern Europe, and the Middle East.

The academy has followed suit. For one example, in my home state of Indiana, three of four accredited law schools offer antitrust on a regular rotation with six tenured faculty teaching the courses. There are specialty courses on the menu, including Antitrust and IP, Healthcare Antitrust, and Comparative and International Antitrust. This past spring semester, my institution had four antitrust courses on the schedule—one in the day program, one in our evening program, Health Care Antitrust, and Comparative and International Competition Law offered online. We also have two classes in Sports Law, which one might call “antitrust in the sports industry.”

II. THE CURRICULUM AS A RELEVANT MARKET

As an early exercise in each presentation of my antitrust class I point out to the students my status as a monopolist, “the one guy teaching antitrust in Indiana north of Bloomington and south of South Bend.” (The exercise worked marginally better before our curriculum deepened. I now have to go with “the one guy teaching at this day and time.”) The students quickly grasp that

¹ Professor of Law, Faculty Director of Online Education, and Director of the Corporate and Commercial Law Graduate Certificate Program, Indiana University Robert H. McKinney School of Law.

my status as a literal monopolist is not meaningful—it does not permit me, in the language of the exercise, to charge each student a jelly doughnut as admission to each class meeting. The discussion is a helpful reminder to me, as well, that my course competes against courses in other subjects—criminal procedure, bankruptcy, patent law, civil rights.

As competitors in a market for student registrations, antitrust professors suffer a disadvantage. During a stint on the admissions committee, I read innumerable applicant essays announcing interests in criminal law, civil rights, constitutional law, international law, even corporate law, as well as more abstract ideas such as “social justice.” No student stated an interest in competition policy or antitrust, or even in an abstract idea like “economic regulation” or “industrial policy.” Possible reasons for this are many:

1. outside of the few largest legal markets, firms tend not to have antitrust practice groups, so community role models may be few;
2. *LA Law* (or modern television serial counterparts, whatever they are) tend not to see antitrust law as a fruitful topic for a script;
3. even attention-grabbing antitrust-law news headlines go over many undergraduates’ heads; and
4. many bear a false, or at least overstated, impression that antitrust law is the province of the mathematically, financially, and economically trained, inaccessible to students lacking those backgrounds.

Whether for the same or different reasons, I also see a frustrating dearth of diverse students in my antitrust courses. In a recent semester, three of 22 students were women. It is rare that I have more than one student from a minority ethnic background in antitrust class. (This demographic description does not include the excellent foreign lawyer LLM students, frequently from China or the Middle East.)

Antitrust professors must innovate to compete. The list of “antitrust and” courses promises some success. Students with interests in an intellectual property career may, through their Antitrust and IP course, come to see antitrust as highly relevant to their future work—which of course it is.² Geographically broad student recruiting is another option: Overseas law schools, particularly those in China, are a promising source for students with interests, and remarkable sophistication, in U.S. economic and competition policies.

A third approach is to run a larger program, whether something field specific like the Institute for Consumer Antitrust Studies at Loyola-Chicago or one that is business-law oriented like the Corporate and Commercial Law Graduate Certificate and LLM Track at my own institution.³ My Corporate and Commercial Law programs bring students into my office for advice, which invariably includes “take antitrust before you graduate.” We can leverage outside

² Those same students may be intrigued to learn that the head of one of the Federal antitrust enforcement agencies is an intellectual property lawyer.

³ <http://mckinneylaw.iu.edu/courses/certificates.cfm#Corporate%20and%20Commercial%20Law%20Graduate%20Certificate>; <http://mckinneylaw.iu.edu/degrees/llm/program-tracks/corporate-commercial/index.html>.

resources: The ABA supports occasional “Why Antitrust” programs at law schools, funding a pizza lunch to entice student attendance.⁴

Antitrust professors should also take more dramatic steps to hawk our product. My single most successful innovation in recruiting students and teaching antitrust has been to move one class, and particular lessons from another, out of the classroom and online.

III. TEACHING ANTITRUST ONLINE

Online education is now in the mainstream. Schools use online teaching methods as early as elementary school and thousands of students across the country pursue their entire high school studies online.⁵ Undergraduate and graduate programs are offered online. At Indiana University, where I teach, there are nearly 50 undergraduate, graduate, and professional degrees offered entirely online.⁶ Some of those, such as the M.B.A. from the Kelley School of Business, are in programs that are natural feeders to courses in antitrust law.

The legal academy has been slow to catch on. In the late 19th century Christopher Columbus Langdell developed the “case method,” including the use of casebooks and Socratic dialog, from his perch as Dean of the Harvard Law School. That pedagogical approach has dominated in all U.S. law schools for at least as long as federal antitrust law has existed. Perhaps wedded to a Langdellian view of legal pedagogy, law schools’ primary accrediting agency, the American Bar Association, limits opportunities for online teaching in law schools. No student may take courses online in his or her first year and, in the absence of a waiver, the maximum number of credits students may take online in a JD program is 15.⁷

ABA-accredited online law schools are several years away—at least as regards the JD degree. ABA limits on online courses do not apply to other degree or certificate programs including graduate certificates, LL.M.s, and the new Masters of Jurisprudence (“MJ”) degree.⁸

IV. BENEFITS OF ONLINE CLASSES

Online courses in law school offer several benefits—some obvious, some less so, and some even counter-intuitive. Benefits include reduced cost, improved access, and practice readiness:

1. **Cost:** Presenting a quality online course is no less expensive than if the course is live, so tuition rates are not likely to be reduced,⁹ but ancillary expenses of law school, including commuting or housing, may be reduced or eliminated. Online classes also may leverage

⁴ See, e.g., http://www.uchastings.edu/news/articles/2015/02/International_Antitrust.php.

⁵ See, e.g., <http://www.connectionsacademy.com/>.

⁶ See [www. http://online.iu.edu/](http://online.iu.edu/).

⁷ See Standard 306, “Distance Education,” in *ABA Standards and Rules of Procedure for Approval of Law Schools* (2014-15), available at http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2014_2015_aba_standards_chapter3.authcheckdam.pdf.

⁸ A Masters of Jurisprudence degree is a masters degree for non-lawyers. See <http://mckinneylaw.iu.edu/admissions/mj/index.html>.

⁹ By “quality online course,” I am excluding the Massive Open Online Course, or MOOC, that has been tried and failed both in and out of law schools.

freely available online sources, reducing the casebook and supplement expenses that may approach 10 percent of a student's overall direct expenses.

2. **Improved Access:** Students in remote locales need not move to be geographically proximate to the school, and students with a need to spend a semester away—perhaps pursuing an externship—can remain enrolled in online classes.
3. **Practice Readiness:** Because facility with a variety of internet-based communication methods is essential in a modern law practice, online teaching promotes practice-ready graduates.

All of these benefits exist, though they may be muted, in classes that are partly online.

It is counter-intuitive, but experiment and experience are showing it to be true that carefully designed online courses can promise better learning outcomes than do live classes.¹⁰ One consistently reported conclusion is that learning effectiveness, as measured by student grades, is unaffected by the mode of instruction.¹¹ (Studies of teaching effectiveness that exist are conducted in non-law-school settings and extrapolation may be difficult.)

Both survey data and anecdotal experience suggest that with regard to one facet of the educational experience—student comfort in participation—online courses offer substantial benefits.¹² Of course, class participation is bread and butter for law school courses, in particular those, like antitrust, that draw upper-level students and are as much concerned about the analytical process as they are about content dissemination.

These benefits address some of the particularly troubling problems facing antitrust faculty in U.S. law schools. Student demand for online classes is high, particularly in the third year or in part-time programs when externships, study abroad programs, and employment opportunities increase the opportunity cost of showing up for live classes. Taking my Comparative and International Competition Law class online last spring increased my subscribership from eight students the last time I taught the course to 27, including a substantial population of female and minority students.

V. ANECDOTAL EXPERIENCE FROM TEACHING ANTITRUST ONLINE

Teaching online makes use of freely available resources a natural process, including sending students to ABA lunchtime brown sessions on cutting-edge and relevant topics,¹³ directing students to oral argument audio broadcasts, and assigning the latest Supreme Court slip opinions. Statutes are easily findable on subscription-based databases or for free with websites like Findlaw¹⁴ and the Cornell Legal Information Institute.¹⁵ In my international and comparative

¹⁰ See note 8.

¹¹ See, e.g., Anna Ya Ni, *Comparing the Effectiveness of Classroom and Online Learning: Teaching Research Methods*, 19 J. PUB. AFFAIRS ED. 199 (2013).

¹² *Id.* at 211 (reporting survey data and citing earlier studies reaching the same result).

¹³ ABA lunchtime brown-bags are free for academics and students. See, e.g., <http://shop.americanbar.org/ebus/ABAEventsCalendar/EventDetails.aspx?productId=197867272>.

¹⁴ <http://www.findlaw.com/>.

¹⁵ <https://www.law.cornell.edu/>.

course, materials available through the International Competition Network's¹⁶ and various jurisdictions' internet sites¹⁷ give both a broad and a deep exposure to the variety of laws and cases applying those laws from around the globe.

My own work teaching antitrust online has involved two classes. In Comparative and International Competition Law, I have taught entirely online and asynchronously—time shifted—using a variety of teaching techniques that the online platform facilitates. These include:

- assigned readings from internet-based sources,
- recorded mini-lectures,
- instructor-created text- and audio-commentary expanding on particular topics,
- low-value comprehension quizzes,
- writing assignments,
- discussion boards, and
- student-to-student engagement through both discussion boards and peer reviews of classmates' work.

I opened the course to students at my institution as well as those from three other schools, using a third-party vendor to market the course more broadly. About half of my 27 students joined class from the Netherlands (study abroad), North Carolina, Florida, Texas, and Arizona. While I see opportunities to refine the course before its next presentation, the level of student involvement and comprehension demonstrated by the substantial written product far exceeds what I saw when I last taught the class as a seminar.

My other class is the traditional Antitrust course. Last semester I presented the class in a live classroom setting, supplemented with online teaching techniques including out-of-class assignments, comprehension quizzes, discussions on class topics, and blog-like commentary including references to current events. A course including a combination of live and online techniques is sometimes called “blended” or “hybrid.” Out-of-class online interaction increased the breadth and depth of our coverage as well as my ability to monitor student progress through the class. I have been gratified to see an increased level of sophistication in class discussion and final exam answers; I attribute that in part to the range of learning methods that the students encountered.

Relying on a variety of sources instead of the self-contained casebook better approximates the real world environment in which students as lawyers will discover, learn, and apply the law. This process is not unique to antitrust, but the free resources available for antitrust study are in many cases more robust than in other fields of law. Teaching antitrust online can improve learning outcomes while decreasing entry barriers.

I have now demonstrated decreased cost, increased output, and higher quality—a result every antitrust lawyer can applaud!

¹⁶ <http://www.internationalcompetitionnetwork.org/>.

¹⁷ See, e.g., http://ec.europa.eu/competition/index_en.html.

VI. NEXT STEPS IN ONLINE TEACHING

There is room for a more ambitious project capitalizing on the benefits online teaching promises. We are unrolling a 15-credit graduate certificate in Corporate and Commercial Law that will be available entirely online. Students can take the certificate to achieve concentrated knowledge and experience in business law topics, including antitrust. We anticipate in short order making our MJ degree, with an emphasis in business law and again including opportunities for students to study antitrust, available entirely online.

Few U.S. law schools can offer antitrust-specific degree programs and few U.S. students are likely to find those attractive. When presented online, however, the geographic markets for both teachers and students become global, increasing possibilities for well-run programs. One school in Chicago has recently unveiled two online degrees—an LLM and an MJ—in Global Competition Law, presumably targeted at an audience including U.S. lawyers and students as well as those from overseas.¹⁸

Graduate certificates and degree programs not subject to ABA limits create opportunities for students without the opportunity cost of the traditional law school program. They should also be attractive to employers, whether traditional legal employers or firms with needs for expertised non-lawyers, as a means for employee training beyond that which can be provided in-house. There are minimal regulatory and practical impediments to a practicing lawyer's joining a law school class, or taking a graduate certificate, to bone up on a specialized area of law that complements a

Antitrust law was never dead, but the field is enjoying a renaissance, and U.S. law schools work hard to meet the bar's need for graduates prepared to move into antitrust and economic regulatory practices. Of the several innovations that help to attract a diverse and engaged student population, online teaching is proving to be one of the most successful.

¹⁸ <http://www.luc.edu/law/centers/antitrust/degreesandcertificates/>.