

## DANIEL A. CRANE

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### Short Profile

Dan Crane (JD, University of Chicago) is a law professor at the Benjamin N. Cardozo School of Law, Yeshiva University, where he teaches contracts, antitrust, and antitrust and intellectual property. His recent scholarship has focused primarily on antitrust and economic regulation, particularly the institutional structure of antitrust enforcement, predatory pricing, bundling, and the antitrust implications of various patent practices. His work has appeared in the *University of Chicago Law Review*, the *Texas Law Review*, the *California Law Review*, the *Michigan Law Review*, the *Cornell Law Review*, and the *Minnesota Law Review*, among other journals. He is the co-editor (with Eleanor Fox) of the *ANTITRUST STORIES* volume of Foundation Press's *LAW STORIES* series and has a book on the institutional structure of antitrust enforcement forthcoming with Oxford University Press. He has been invited twice to present papers at the Stanford Yale Junior Faculty Forum. During the 2007-08 academic year, he visited at NYU Law School. He will visit at the University of Chicago Law School for the winter 2009 quarter and then teach antitrust on a Fulbright Scholarship at the Universidade Católica Portuguesa in Lisbon, Portugal in the spring of 2009.

### Academic Appointments

**Benjamin N. Cardozo School of Law**, New York, NY July 2003-present  
Professor of Law  
*Courses taught:* Antitrust, Advanced Antitrust, Contracts, and Antitrust and Intellectual Property  
*Service:* Appointments Committee; Clerkship Committee; Faculty advisor to *Cardozo Law Review* and *Cardozo Public Law, Policy, and Ethics Journal*  
Best Teacher of the Year Award, June 2006  
Best First Year Teacher Award, June 2007

**New York University School of Law**, New York, NY August 2007-May 2008  
Visiting Professor of Law  
*Courses taught:* Antitrust & Intellectual Property; U.S. Contract Law & Policy

### Education

**University of Chicago Law School**, Chicago, IL, JD *with honors* 1996  
Member, *University of Chicago Law Review*  
**Wheaton College**, Wheaton, IL, BA, political science, *magna cum laude* 1991

## Articles and Essays

- Bargaining in the Shadow of Rate-Setting Courts*, forthcoming Antitrust L. J. (2008)
- Technocracy and Antitrust*, 86 Tex. L. Rev. 1159 (2008)
- Antitrust Antifederalism*, 96 Cal. L. Rev. 1 (2008)
- Antitrust Modesty*, 105 Mich. L. Rev. 1193 (2007), reviewing Herbert Hovenkamp, THE ANTITRUST ENTERPRISE: PRINCIPLE AND EXECUTION, Harvard University Press (2005)
- Rules Versus Standards in Antitrust Adjudication*, 64 Wash. & Lee. L. Rev. 49 (2007)
- Damages for Exclusionary Bundled Discounts*, Antitrust Bulletin 2006
- Mixed Bundling, Profit Sacrifice, and Consumer Welfare*, 54 Emory L. J. 423 (2006)
- A Theological Argument for Privatizing Marriage*, 27 Cardozo L. Rev. 1221 (2006) (symposium on privatizing marriage)
- The Perverse Effects of Predatory Pricing Law, Regulation* (Fall 2005)
- The Paradox of Predatory Pricing*, 91 Cornell L. Rev. 1 (2005)
- Multiproduct Discounting: A Myth of Non-Price Predation*, 72 U. Chi. L. Rev. 27 (2005) (Antitrust Symposium, by invitation)
- Lochnernian Antitrust*, 2005 NYU Journal of Law & Liberty Symposium on Centennial Anniversary of *Lochner v. New York* (by invitation)
- Harmful Output in the Antitrust Domain: Lessons from the Tobacco Industry*, 39 Ga. L. Rev. 321 (2005)
- Pick Your Shibboleths Wisely*, Christianity Today (Oct. 2004)
- Ease Over Accuracy in Assessing Patent Settlements: A Reply to Hovenkamp, Janis & Lemley*, 88 Minn. L. Rev. 698 (2004)
- Exit Payments in Settlement of Patent Infringement Lawsuits: Antitrust Rules and Economic Implications*, 54 Fla. L. Rev. 747 (2002)
- Is Circuit Split on PSLRA Intensifying?*, 222 N.Y.L.J. S3 (1999) (with Brad S. Karp)
- Faith, Reason, and Bare Animosity*, 21 Campbell L. Rev. 125 (1999)
- The Original Understanding of Article IV, Section 1 and Implications for the Defense of Marriage Act*, 6 Geo. Mason L. Rev. 307 (1999)
- Beyond RFRA: Free Exercise of Religion Comes of Age in the State Courts*, 10 St. Thomas L. Rev. 235 (1998)
- A Poor Relation? Regulatory Takings After Dolan v. City of Tigard*, 63 U. Chi. L. Rev. 199 (1996)
- From the Commerce Clause to Café Cubano: The Constitutionality of Helms-Burton*, Latin Am. L. & Bus. Rep., Oct. 31, 1996 (with Sergio Alvarez-Mena)

## Books

- THE INSTITUTIONAL STRUCTURE OF ANTITRUST ENFORCEMENT, forthcoming 2009, Oxford University Press
- ANTITRUST: THE ESSENTIALS, forthcoming Aspen Press

ANTITRUST GLOBAL READER, with Eleanor Fox, forthcoming West

ANTITRUST STORIES, co-editor (with Eleanor Fox) and author of chapter on *Socony-Vacuum* (Foundation Press 2007)

### **Book Chapters**

*Patent Pools, RAND Commitments, and the Problematics of Price Discrimination*, forthcoming 2008 in WORKING WITHIN THE BOUNDARIES OF INTELLECTUAL PROPERTY LAW (Rochelle Dreyfuss, Diane L. Zimmerman & Harry First, eds, Oxford University Press)

*The Structure of Antitrust Enforcement*, forthcoming 2008 in THE LAW AND ECONOMICS OF ANTITRUST (Keith Hylton, ed., Edward Elgar Publishing Ltd.)

*Private Enforcement Against International Cartels in Latin America: A U.S. Perspective*, forthcoming in collection of papers from São Paulo Latin America Competition Policy Conference (Hart)

ANTITRUST STORIES, co-editor (with Eleanor Fox) and author of chapter on *Socony-Vacuum* (Foundation Press 2007)

*Antitrust*, chapter in forthcoming ABA casebook on franchising law (Alexander Meiklejohn, ed.)

*Antitrust Regulation of Patent Settlements*, in ISSUES IN COMPETITION POLICY (Dale Collins, ed. ABA 2008)

*The Power of Naming*, forthcoming 2008 in FUNDAMENTALISM AND THE RULE OF LAW (Marci Hamilton, ed., Cambridge University Press)

*Antitrust Settlements*, in SETTLEMENT AGREEMENTS IN COMMERCIAL DISPUTES: NEGOTIATING, DRAFTING AND ENFORCEMENT, with Joseph J. Simons (Richard A. Rosen, ed., Aspen 2005; revised 2007)

### **Conference Presentations and Lectures**

Federal Trade Commission Hearings on Section 5 of the FTC Act, Washington, D.C., October 17, 2008, presented testimony on institutional ramifications of interpretation of Section 5 of FTC Act

Patent Law and Pharmaceuticals Symposium, Rutgers (Newark) Law School, September 23, 2008, panelist on regulation of pharmaceutical patent settlements

University of Michigan Law School, Ann Arbor, MI, September 16, 2008, presented *Optimizing Private Antitrust Enforcement* at faculty workshop

William & Mary Law School, Williamsburg, VA, September 8, 2008, presented *Optimizing Private Antitrust Enforcement* at faculty workshop

University of Virginia Law School, Charlottesville, VA, September 5, 2008, presented *Optimizing Private Antitrust Enforcement* at faculty workshop

NERA Santa Fe Antitrust Conference, Santa Fe, NM, July 3, 2008, panelist on antitrust treatment of bundled discounts

ABA Antitrust Section Conference on Antitrust Remedies for Dominant Firm Misconduct; June 4 and 5, 2008, University of Virginia School of Law, presenting paper on private administrative solutions to dominant firm misconduct

São Paulo Latin American Competition Policy Conference, April 2008, presented *Private Enforcement Against International Cartels in Latin America: A U.S. Perspective*,

ABA Antitrust Section Spring Meeting, AALS panel, March 2008 Washington, D.C., presented *The Story of United States v. Socony-Vacuum: Hot Oil and Antitrust in the Two New Deals*

Canadian Competition Policy Review Panel, Montreal, February 22, 2008, presented benchmarking report on competition advocacy practices in OCED countries

Association of American Law Schools, Antitrust Section, January 5, 2008, New York, presented *The Story of United States v. Socony-Vacuum: Hot Oil and Antitrust in the Two New Deals*

Conference on Empirical Legal Studies, commentator on *Cheap Sex and the Changing Economics of Broadcast Television*, Nov. 9-10, 2007 at NYU Law School

Vanderbilt Law School Faculty Workshop, Nov. 1, 2007, presented *Technocracy and Antitrust*

La Pietra Conference on the Expansion of Intellectual Property Rights, sponsored by NYU Law School in Florence, Italy, June 5-6, 2007, presented *Patent Pools, RAND Commitments, and the Problematics of Price Discrimination*

Stanford/Yale Junior Faculty Forum, Stanford Law School, May 2007, presented *Antitrust Antifederalism* (competitively selected)

ABA Antitrust Section Spring Meeting, AALS panel, April 19, 2007, Washington, D.C., presented *Ex Post Versus Ex Ante Perspectives on IP and Antitrust: A Case Study from Patent Settlements*

Loyola Antitrust Colloquium, Institute for Consumer Antitrust Studies, Chicago, IL, April 13, 2007, presented *Antitrust Antifederalism*

Department of Justice and Federal Trade Commission Joint Hearings on Loyalty Discounts and Bundled Rebates, November 29, 2006, Washington D.C. (invited presenter)

Fundamentalism and the Rule of Law, Benjamin N. Cardozo School of Law, March 2006, moderator and panelist

Symposium on Privatizing Marriage, Benjamin N. Cardozo School of Law, October 2005, presented A “*Judeo-Christian*” *Argument for Privatizing Marriage*

Stanford/Yale Junior Faculty Forum, Stanford Law School, May 2005, presented *The Paradox of Predatory Pricing* (competitively selected)

Antitrust Panel at Spring Meeting of the Commercial and Federal Litigation Section and Corporate Counsel Section of the New York State Bar Association, Saratoga Springs, May 2005, panelist

Private Property in the 21<sup>st</sup> Century; Panel on Taxes, Entitlements, and the Welfare State, NYU Law School, November 2004, presenter

NYU Journal of Law & Liberty’s Speaker Series, NYU Law School, October 2004, presented *Lochnerian Antitrust*

NYU Law Review’s Speaker Series, NYU Law School, February 2004, presented *Harmful Output in the Antitrust Domain: Lessons from the Tobacco Industry*

#### **Other Legal Employment**

**Paul, Weiss, Rifkind, Wharton & Garrison LLP, New York, NY**

Counsel, Litigation Department  
Associate, Litigation Department

March 2006-present  
July 1999-June 2003

**Morgan, Lewis & Bockius**, Miami, FL  
Associate, Litigation Department

September 1997-July 1999

**United States District Court for the Southern District of Florida, West Palm Beach, FL**  
Law Clerk, Chambers of the Hon. Kenneth L. Ryskamp

August 1996-August 1997

### **Professional Service and Other Activities**

Antitrust Law Journal, Assistant Editor, 2005-present

Global Competition Policy, Symposium Editor, 2008-present

Author of Law Professors' amicus curiae briefs in *Ross-Simmons v. Weyerhaeuser* (S. Ct. 2006); *Cascade v. PeaceHealth* (9<sup>th</sup> Cir. 2007)

Discussant with visiting delegations from foreign competition authorities studying U.S. competition policy. Meetings under auspices of U.S. State Department, International Visitors Leadership Program Bureau of Educational and Cultural Affairs. Meetings to date: China, Japan, and Serbia.

Strategic Partner to Bodhi Global, Indian legal outsourcing center; presented week-long seminar on U.S. law and litigation rules to Indian attorneys in Mumbai, India, December 2006