Politics of Antitrust Enforcement

The Influence of Ideology and Party Control on Regulatory Behavior

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1. Introduction

With current levels of wealth inequality in the United States at an all-time high, the conversation about our so-called free market economy is no longer one confined to academia. A disillusioned American public perhaps rightfully believes that the government does not serve them, but only top-dollar interests. People are calling for economic justice (Dionne & Ornstein, 2017; Shapiro, 2018; Gandesha, 2018). Antitrust enforcers are tasked with ensuring a company does not get so large and powerful that it can prey on its consumers and workers. However, many politicians lambast government interference in markets. Are unregulated markets that tend towards monopoly really "free"? Moreover, who is looking out for the financial well-being of the average American?

In this thesis, I explore the relationship between federal antitrust enforcement and political influence--- specifically the partisanship and ideology of elected officials. I argue parties have different preferences regarding antitrust enforcement. I claim that Democrats, or those with more liberal ideology, favor more vigorous antitrust enforcement than Republicans, or those with more conservative ideology. With few caveats, my research findings support these hypotheses.

I conduct an observational panel study using publicly available data from the Department of Justice (DoJ), the Federal Trade Commission (FTC), and Richard Posner's (1970) antitrust data to measure levels of enforcement from 1891 to 2020. I use both DW-NOMINATE scores to measure ideology and a novel party control variable as explanatory variables. Employing Ordinary Least Squares (OLS) regressions, I find significant evidence showing a strong negative relationship between right-wing congressional ideology and DoJ antitrust activity from 1891 to 2020. Similarly, I find significant evidence of a positive correlation between Democratic party control and DoJ antitrust enforcement from 1891 to 2020. These findings may give future

researchers more insight into the drivers of federal antitrust enforcement (or lack thereof) over time.

1.1 Background

Trust-busting has long been justified as another way to balance concentrated power in the United States. It is seen as a protection of democracy, often likened to our system of checks and balances between the three branches of government (Waller, 2017).

Unregulated markets can lead to suboptimal outcomes for society at large. Antitrust law assumes that smaller firms and consumers risk unfair prices and barriers when markets are highly concentrated by large firms. Economists of all persuasions agree that when large firms corner markets, tending toward monopoly, they can: gouge prices, run competing firms out of business, and decrease innovation (Baker, 2003). Consumer surplus is only maximized when competitor firms in an industry are prevented from adopting practices that might restrict competition (Mueller, 1996). Monopolies and oligopolies also have monopsony power in the labor market; as there are decreasing "buyers" of labor, large firms can essentially set workers' wages as low as possible. Many studies show that antitrust law is overall beneficial to economic and social welfare (Baker, 2003). The consensus among scholars is further evidenced in a survey of 568 members of the American Economic Association in 2011 that found 87 percent of respondents broadly agreed with the statement "Antitrust laws should be enforced vigorously" (Fuller & Geide-Stevenson, 2014).

Multiple pieces of legislation identify unfair market practices used by powerful firms. The Sherman Antitrust Act of 1890 aims to prevent monopoly behavior such as collusion so that companies cannot inflate prices by limiting supply. The Clayton Antitrust Act of 1914 further

clarifies this by deeming price discrimination, mergers, acquisitions, exclusive dealings with consumers, and firm leadership overlap that restricts competition illegal. The Federal Trade Commission Act of 1914 established the Federal Trade Commission to regulate unfair trade practice. In 1976, the Hart-Scott-Rodino (HSR) Antitrust Improvements Act amends the Clayton Antitrust Act by adding that firms cannot complete certain mergers, acquisitions or transfers of securities or assets, including grants of executive compensation, until they have made a detailed filing with--- and received approval from--- the Department of Justice or Federal Trade Commission. In public antitrust cases, the plaintiff is either a state, the DoJ, or the FTC. Private antitrust cases also exist; however, publicly available data only exist on those brought by the DoJ and FTC. In this paper I will exclude discussion of private and state-brought antitrust cases.

How antitrust law should be interpreted and to what extent antitrust cases should be litigated, are based on opinions that have changed over time. Ideology of courts, legal scholars, and lawmakers seem to play a crucial role to this end. Since the very beginning of antitrust law in the United States, there were debates regarding the firm behaviors that should be classified as "anticompetitive" as opposed to those that "increased firm efficiency". It has become even harder to define anticompetitive behavior when the most prominent trusts of our day are multinational digital companies like Google and Facebook that commodify their consumers' personal data. The United States has these laws and institutions mandated with the task of addressing monopoly behavior, but they are not always necessarily carried out in their fullest intent.

1.2 Antitrust Responses to Market Concentration in Past and Present

Antitrust enforcement first became salient in the Progressive Era as a reaction to the Gilded Age, when corruption ran rampant. Then, it decreased preceding and during the Great Depression. It was revived in the postwar period by anti-big business sentiment. Enforcement then was decreased once more following the rise of the neoconservative movement informed by the Chicago School of economic thought. Today, we are seeing increasing calls by politicians and scholars to "break up big tech" and enforce antitrust law more vigorously (Committee on the Judiciary, 2020).

Theodore Roosevelt in the early 1900s gained fame as the "Trust Buster" president. With a heavy hand, he enforced the Sherman Antitrust Act by using the two regulatory agencies to prevent and break up the consolidation of large monopolies like Standard Oil and railroad companies, responding to power distribution concerns of the Gilded Age. After a period of reduced antitrust enforcement around the time of the Great Depression, the United States once again entered a period of "vigorous enforcement" (Mueller, 1996) in the postwar period between 1940 and 1970. Then, the neoconservative movement in the 1980s brought about the Reagan administration was marked by economic deregulation on all fronts, with antitrust being no exception.

Today, many believe we have entered a "New Gilded Age" (Lamoreaux, 2019; Keller & Kelly, 2015). U.S. industries have become more concentrated since the beginning of the 21st century. In recent decades we have seen that concentration levels have been systematically increasing in over three-fourths of U.S. industries (Grullon et. al., 2018). Airline, appliance, banking, beer, health insurance, hospital, fertilizer, telecommunications, and pharmaceutical industries all far surpass the Herfindahl-Hirschman Index (HHI) threshold that has been

standardly used as an indicator of "highly concentrated markets" according to the Horizontal Merger Guidelines of the DoJ and FTC (Abdela & Steinbaum, 2018). This means that very few companies are suppliers in a given industry. For example, only two companies supply nearly all the beer that Americans consume (Gokhale & Tremblay, 2012). Google accounts for 90% of all internet searches, currently a cause of great concern to lawmakers and bureaucrats (Unsal et. al., 2019; Committee on the Judiciary, 2020). Due to large-scale consolidation of publicly traded firms in the last twenty years, the U.S. has lost almost 50% of its publicly traded firms. The number of publicly traded firms today is lower than in the early 1970s, when the real Gross Domestic Product was a third of what it is now (Grullon et. al., 2018). Corporate profits have grown sharply as a share of GDP in the United States over the past twenty years (Shapiro, 2018). Many believe failure to address increasingly concentrated and deregulated markets in the past half century contributes to rising economic inequality (Keller & Kelly, 2015). Antitrust scholars in recent days are raising concerns about corporate campaign donors and the threat that monopoly power poses to the economy and our democracy (Lamoreaux, 2019).

Those economists who study and are concerned about high market concentration, though, are rarely the ones tasked with correcting it. Enforcement is left up to politicians and bureaucrats with their own interests and ideologies. In my thesis, I intend on identifying what has driven the variation in enforcement over time. This is crucial information to those who see a more equitable distribution of wealth (and thus, market power) fundamental to true, peaceful democracy.

1.3 Literature Review

Much of the literature on United States antitrust enforcement can be found in law journals and regard the interpretation of the laws themselves, offering specific case studies. Some of the

literature exists in economic journals, which identify and propose policy that could optimize antitrust enforcement from a market perspective. Much less of the work around antitrust discusses the variation of enforcement in aggregate over time. Quantitative research in the field for the last fifty years is lacking; in this paper, I attempt to fill that gap.

I identify four different approaches that academics have taken in the past to explain variation in antitrust enforcement: the legal approach, the economic approach, the bureaucratic approach, and the political approach. Then, I discuss what this paper contributes to the field.

1.3.1 Legal approach

Legal scholars claim the changing ideas and interpretation of the laws as the reason behind varying antitrust enforcement over time. The post-WWII period and the New Deal brought about a revival of anti–big business sentiment and antitrust officials abandoned the attempt to draw the line between what was and was not considered "anticompetitive", instead defining "bigness" of firms as the most crucial issue (Lamoreaux, 2019). Between 1940 and 1970 "Brandeisian" ideology, based on the writings and citations of Supreme Court Justice Louis Brandeis, prevailed in how antitrust law was interpreted. Justice Brandeis focused less on consumer welfare issues and instead considered the market conditions for small firms as the priority in antitrust (Elzinga & Webber, 2017). Many describe this period as being one of vigorous antitrust enforcement (Mueller, 1996), but fail to include how to empirically measure this supposed uptick in more "vigorous" aggregate enforcement, using few landmark cases as examples.

After the 1970s, a countervailing movement of thought called the Chicago School dominated how antitrust was enforced. Playing a key role in this shift was Robert Bork's *Antritrust Paradox*. Advocates of the Chicago School like Bork sought to shift the focus of

inquiry from whether large firms had market power to whether the market power they possessed had been detrimental to consumers (Lamoreaux, 2019). These ideas of Robert Bork and the Chicago School seem pervasive; the use of the phrase “consumer welfare” dramatically increased in the United States after Bork’s publication of his book in the mid 1960s (Orbach, 2017). Many argue that these ideas have prevailed as the primary interpretation- and thus, driver- of antitrust law for the last few decades (Orbach, 2017; Short, Working Paper).

The self-proclaimed Neo-Brandeisians of the 21st century such as Lina Khan (2018) worry less about the effect of monopoly on consumers, but rather about the exclusion of competitors from the market and the manipulation of the political system for economic ends. They call for an overhaul of the whole antitrust legal system and abandonment of the “consumer welfare standard” ((Lamoreaux, 2019; Short, Working Paper).

The work of legal scholars in this field tends to be qualitative and analyze dynamic ideas in American government institutions and academia. They often speak of larger trends that seem apparent in archival case study, but possibly difficult to show empirically.

1.3.2 Economic Approach

The body of literature using economic explanations for antitrust policy contains contradictory conclusions. Many studies have failed to produce proof to support claims that economic conditions are a determinant of antitrust enforcement, but multiple others do find economic variables to influence enforcement.

Robert Bork (1979) suggests that antitrust regulation operates to promote "consumer welfare" as a public interest. Others theorize that antitrust regulation operates to promote the self-interest of particular participants as private interest of competitor businesses (Stigler, 1971; Peltzman, 1976). Researchers who explore the relative validity of both paradigms---private and

public interest theories--- have had little success in demonstrating the importance of economic factors to antitrust enforcement (Wood & Anderson 1993).

It has been repeatedly demonstrated that public antitrust cases are not selected on the basis of their potential net benefits to society (Shughart, 1990). Long, Schramm, and Tollison (1973) also reported that regulators did not select their antitrust cases based on their potential to improve allocative efficiency, but found some economic variables such as industry sales to explain variation "to some degree" of DoJ antitrust cases across all industries. Peter Asch (1975), extending this study, finds that casebringing activity is neither completely "rational" nor "random" when considering industry variables. Siegfried (1975) concluded that greater excess profits and lower levels of welfare losses were associated with more cases, but changing market concentration generally had insignificant impacts on the actions of the Antitrust Division.

Posner (1970) found that enforcement was not influenced by the overall level of economic activity. Political scientist Lewis-Beck (1979) also investigated the effect of economic variables- the number of mergers, aggregate concentration, and the economic growth rate- on the pace of the Antitrust Division and found none to be of significance..

It is unclear whether market conditions determine levels of antitrust enforcement carried out by regulators, but it is perhaps still a factor to be controlled for.

1.3.3 Bureaucratic Approach

Some scholars have tried to explain varying antitrust by changing makeup or preferences of regulatory agencies themselves.

Some suggest that the agencies respond to external factors. Amacher et al. (1985) examined FTC enforcement of the Robinson- Patman Act and found that it was influenced by economic conditions, decreasing during business contractions and increasing during periods of

expansion. They suggested that this means "the FTC moves to cushion producer losses" during hard economic times, but transfers "wealth to consumers" during economic upswings. Lewis-Beck (1979) found that while small increases in the division's budget did not reduce anticompetitive behavior, a major increase in the division's budget might significantly stem merger activity because of a "threshold effect".

Those who use bureaucratic explanations say that regulation can best be understood by examining factors internal to the Antitrust Division. Eisner and Meier (1990) claimed the economist to attorney ratio in the Antitrust Division was the factor that drove enforcement. They concluded that it was not the product of Reagan administration appointees or other external influences. Rather, "it was little more than an extension of well-established trends which predated the elections of 1980," namely, a bureaucratically determined increase in the numbers and influence of Antitrust Division economists who were students of the conservative "Chicago School of Economics." In another instance, Weaver (1977) found that antitrust case selection was frequently influenced by the desire of Antitrust Division lawyers to gain litigation experience. They preferred collusive behavior cases that could be tried and won most quickly.

Though bureaucratic explanations account for some variation in regulation, it may be more useful to consider these regulatory actions within the larger context of the federal government.

1.3.4 Political Approach

The final approach, the one I take in this paper, is to examine how political institutions affect levels of antitrust enforcement.

Faith, Leavens and Tollison (1982) found that from 1961 to 1979, FTC dismissed antitrust cases of firms headquartered in the districts of the subcommittee members that oversee

the FTC at higher rates than firms headquartered in other legislators' districts. They made no claims about partisanship or ideology, only that Congress did seem to wield influence on FTC antitrust case selection.

Richard Posner (1970) found that the political party of the President has little bearing on the quality or quantity of the Justice Department's antitrust enforcement. Additionally, the FTC merger challenge rate under President George w. Bush was very similar to that under President Barack Obama (Grullon et. al., 2018). It is possible that the effect of the political party of the president alone may not be sufficient to see if partisanship truly does influence antitrust enforcement. For example, Stacy Jordan (1992) found that antitrust violations were significantly more likely to be found in tying arrangement and predation cases by judges appointed by Democratic presidents than by those appointed by a Republican.

To see the full effects of politics on levels of antitrust enforcement we must take a comprehensive look at the partisanship and ideologies of the full federal government- congress, courts, bureaucrats and the president. Wood and Anderson (1993) argue the interconnectedness of the three branches in what he calls "overhead democracy" can best explain variation in antitrust enforcement. They find evidence that the number of antitrust litigations depends partly on congressional committee and presidential appointee preferences. They also identify large shifts in investigative emphasis coincident with the first Carter and Reagan appointments- sharp changes in litigation emphasis independent of investigations, beginning in the first year of the Reagan administration. Wood and Anderson distinguish between *substance* and *level* of antitrust enforcement. They say the level of antitrust enforcement activity is primarily a function of executive-legislative macropolitics, while substance is more broadly influenced by courts and the President.

1.3.5 My Contributions to the Political Approach

I extend Wood and Anderson's research to modern antitrust enforcement, but I develop new arguments and use new data. Similar to them, I look at the effects of partisanship of federal government on antitrust. I also examine the effects of the president's and congress's political preferences on aggregate antitrust enforcement. Unlike them, I do not try to make the distinction between substance and level of enforcement in my study. The aggregate data I have collected from the enforcement agencies and Richard Posner' (1970) study are simply counts that treat all cases and actions homogeneously.

My work is distinguished theoretically from Wood and Anderson by my focus on unified versus divided government and also distinguished empirically by focusing on the conditional impact of ideology on antitrust. Unlike Wood and Anderson, I will use an original ordinal variable to measure antitrust enforcement against different types of divided government from Republican unified government to Democratic unified government. I also see if this variable, when interacted with the ideology of the President and congress, is significant in explaining variation in antitrust. Wood and Anderson recognize that political party alone is not not a good indicator of whether enforcement will be pursued. Because Wood and Anderson look at each presidential administration separately as controls for variation in the subsequent administration, they concede that the control variables used in his study vary significantly. My use of DW-NOMINATE scores provides for a continuous, comprehensive measure of political-economic ideology (regarding redistribution) and maps it on the proxies for enforcement level. I do not consider court appointments by presidents like Wood and Anderson do. I do, however, consider each president's and each Congress chambers' ideology separately

and partisanship jointly. I will test his claims of executive-legislative significance using more rigorous, empirical methods.

1.4 Chapter Outlines

In Chapter 2, I develop my theory. I explain why I believe that varying party control and ideology of elected officials affects antitrust enforcement differently. Literature and observation have shown that Republicans are generally opposed to government intervention in markets and support business interests, while Democrats are more supportive of policies that intervene in markets to increase social welfare. Previous research has also confirmed that ideology and partisanship of federal elected officials does influence bureaucratic decisions. It should follow that ideology and partisanship will affect levels of antitrust enforcement carried out by the Department of Justice and Federal Trade Commission. I conclude that during periods of Democratic control or liberal ideology in federal government, antitrust regulation should increase; in periods of Republican control or conservative ideology in federal government, antitrust regulation should decrease.

In Chapter 3, I articulate my research design and present the setup for my observational, panel study. For my dependent variable, the level of antitrust enforcement, I will use Richard Posner's (1970) data on FTC and DoJ cases from 1891 to 1968. I also use publicly available statistics about antitrust actions and Congressional budget data from 1970 to 2020 as measures of antitrust enforcement levels over time. My explanatory variable, political influence, will be separately measured in two ways: ideology and party control. To measure ideology, I use Poole and Roosenthal's DW-NOMINATE scores ranging from -1 (most liberal or leftist ideology) to 1 (most conservative or rightist ideology). Using NOMINATE data found on UCLA's Voteview

website, I calculate the median NOMINATE scores for each chamber of congress from the 52nd congress to the 116th congress (1891 to 2020), and use each president's NOMINATE score as well. I develop an original measure of divided government, that measures Democratic Party control relative to Republican control. I use Ordinary Least Squares (OLS) regressions to determine the relationships between antitrust enforcement measures with (1) ideology and (2) party control of government.

In Chapter 4, I present my results. In my data, Democratic party control of the federal government is significantly and positively related to antitrust enforcement of the Department of Justice. I find all measures of antitrust enforcement carried out by the Department of Justice to be significantly, negatively associated with House median NOMINATE scores from 1891 until 2020. This means that the more economically conservative the "middle voter" of the House of Representatives is, the less antitrust law is enforced in that two year congress. I find similar, though weaker, evidence of a relationship between Senate ideology and Department of Justice antitrust enforcement, in that more liberal economic ideology is related to higher enforcement while more conservative ideology is related to lower enforcement. Though the president's ideology seems to be insignificant in explaining actual outcomes of antitrust enforcement, I find weakly significant evidence suggesting that a more economically liberal president proposes a higher appropriations budget for the Department of Justice Antitrust Division. I do not find any relationship between ideology or party control and Federal Trade Commission antitrust actions. However, Hart-Scott-Rodino premerger notifications, which are jointly enforced by the FTC and DoJ, are significantly correlated with House Ideology in the way I predict as well.

In my concluding chapter, I summarize my findings and consider areas for future research. A strength of this study was using a quantitative analysis of antitrust enforcement

aggregated across all industries over a large range of time, 1891 to 2020. My conclusions are more robust than many other studies in the field as I used multiple different measures of enforcement and political preferences. A weakness in my study was due to a lack of available historical antitrust data, especially on FTC cases. Another weakness was caused by difficulty identifying an ideal way to measure "level" of antitrust enforcement; all my antitrust measures count large and small cases and outcomes homogeneously. Future research should find a holistic method to capture both the substance and level of antitrust regulation. The exact mechanisms congress uses to influence antitrust enforcement by the DoJ is also still unclear. Finally, researchers should consider looking into the actual economic efficacy of regulatory actions. It is an important study in the face of rising economic inequality in America.

2. Argument

I hypothesize that, if Democrats have more control over the federal government relative to Republicans, then antitrust enforcement increases. I also posit and test a parallel claim: the more liberal the ideology of elected officials in power, the more antitrust regulation takes place. The former hypothesis views antitrust regulation as a function of various forms of divided government, while the latter will test the effect of the ideologies of the President, House of Representatives, and Senate on antitrust. Existing research shows that varying forms of divided government *and* ideology of federal government have been determinants for variance in other regulatory issues. Due to constituent and donor pressures, personal ideologies, and wider party values, Democrats generally are more supportive of redistributive policies while Republicans prefer market deregulation. These party differences in Congress and the presidency manifest in the influence wielded by the two over federal agencies, by way of oversight and appointments.

Hence, partisanship in the federal government will likely affect levels of antitrust enforcement carried out by the Department of Justice and Federal Trade Commission in the ways I predict.

2.1 Partisanship and its Roots

Legislators respond to the will of their campaign contributors. Thomas Stratmann's (1991) models find that campaign contributions are an important determinant of explaining legislators' voting behavior. Schroedel's (1986) study also confirms this further stating that these contributions appear to have the greatest predictive power when there is low public visibility, such as in committee decisions.

Lawmakers also respond to the demands of their constituents to some extent. Regardless of political party, constituent pressure and preferences significantly influence the media content and statements legislators release (Graves et. al., 2016). Elected officials also generally policymake in the direction of their constituency's public opinion, in order to maintain reelection chances. They may, though, justify going against public will by claiming conflicting public interest (Manza & Cook, 2002).

Party discipline is arguably the most prevalent external force that politicians respond to when making policy. Party discipline is enforced by party leaders, normally through reward rather than punishment. Leaders consider which members' legislation is considered in committee as well as on the floor. They have an influential say in where campaign resources from political action committees (PACs) and party campaign committees, Demococratic Congressional Campaign Committee (DCCC) and National Republican Congressional Committee (NRCC), are used. Equally significant is the party leaders' ability to make committee appointments, especially their appointments to committee chairships or exclusive committees. (Pearson, 2015).

Democratic public officials respond to party leaders, constituents, and donors who favor redistributive policies. A 2012 American National Election Studies survey found 84% of Democrats to be supportive of social welfare policies (Webster & Abramowitz, 2017). This suggests that Democrats are amenable to policies that distribute wealth more equitably. Antitrust policy aims to do just that, by targeting price discriminating and overly domineering businesses. Economic liberals, mostly aligned with the Democratic Party (Poole and Rosenthal 2001), continued and continue to hold on to the redistributive ideals that brought about the New Deal even decades later (Miller & Norman, Schofield 2008). In 1988, the Democratic Party Platform explicitly called for the "reverse [of] the trend of financial concentration and deregulation" (Suárez & Kolodny, 2011). Another study found that for most of modern history, as Democrats had more strength in policymaking institutions, financial regulation was more likely and deregulation less likely (Keller & Kelly, 2015). Furthermore, Labor groups gave 40 times the number of donations to Democrats than to Republicans who were running competitive races in the 1989-1990 cycle and the 1995-1996 cycle (Brunell, 2005). Democrats' incentives thus align to the interests of their labor group donors, who benefit from a competitive labor market. Thus, I hypothesize that the more economic liberals or Democrats control the federal government, the more stringent antitrust enforcement will become.

Republican public officials respond to party leaders, constituents, and donors who want deregulation. Economic conservatives most consistently align with the Republican Party (Poole & Rosenthal, 2001). In the 1970s, right-wing think tanks funded by big businesses informed much of the supply-side economics eventually adopted by neoconservative leaders. Through radio, television, and socially conservative, evangelical movements, supply-side economics became mainstream and central to the modern Republican Party starting with the Reagan

administration (Sinclair, 2006). Then, in the 1989-90 election cycle, corporate groups gave five times as many donations to Republican candidates in competitive districts, and this trend held for the 1995-1996 cycle as well (Brunell, 2005). This suggests that Republicans will be less likely to favor policies such as antitrust regulation that may threaten potential profit of their donors. The most damning piece of evidence exemplifying this, albeit unique, is found in Congressional investigations into the Watergate scandal revealing that President Nixon had intervened in pending antitrust cases against one of the America's largest conglomerates at the time, International Telephone and Telegraph, in exchange for a $400,000 donation to the Republican National Convention (Short, Working Paper). Further, the 2012 American National Election Studies survey found 81% of Republicans in opposition to social welfare policies (Webster & Abramowitz, 2017), indicating the Party's distaste for redistribution, even in recent years. This literature supports my hypothesis that the more conservatives or Republicans control the federal government, the more supply-side economics they will implement and less restrictions on big business they will impose. In other words, we should see that Republicans enforce antitrust less than Democrats.

2.2 Ideology and Regulation

Both Congress and the President have means, many granted by the constitution, to influence regulatory agencies. Oversight power can make bureaucracies the agent of Congress (Hammond & Knott, 1996; Clinton et. al., 2014). Congress can exercise influence by increasing or decreasing the agency's budget, passing laws limiting agencies, requiring agencies to hold public hearings for new regulations, confirming appointments, or putting limits on the agency's

regulations (Hammond & Knott, 1996). The president's ideology also affects the happenings of regulatory agencies, since presidents can make appointments and issue executive orders.

We also know that the ideology of elected officials influences regulatory policymaking and outcomes. Whether or not an agency decides to pursue redistributive policy seem to be characteristic of representative democracy. In countries like the United States where there are single-representative constituencies, public opinion seems to determine the variance of regulatory policy more than in countries with proportional representation (Noll & Owen, 1983). There is substantial evidence to show that congressional ideology systemically informs FTC decisions (Weingast & Moran, 1983; Faith et. al., 1982). It has also been shown that for the Food and Drug Administration, when the relevant congressional committee is more liberal, the agency becomes more activist and will become less so as it becomes more conservative. The congressional dominance model is now a cornerstone of rational choice approaches in the study of bureaucracy (Chang et. al., 2001).

2.3 Divided Government and Regulation

Different forms of government control have differing effects on public policy. In general, unified government is more effective in policymaking than divided government; the latter is more likely to uphold the status quo because of gridlock. In fact, in the twentieth century, Congress on average passed four more significant pieces of legislation in a unified government than a divided one (Lowi et. al., 2017). This is extended to regulatory policy as well. A different study found that divided government influences policy indirectly, through the procedures that Congress designs to control the bureaucracy. Congress allows less discretionary power to an executive they do not trust, while allowing more authority to a president aligned with their views

(Epstein & O'Halloran, 1996). MacDonald and McGrath (2018), using data from the Unified Agenda of Federal Regulatory and Deregulatory Actions from 1997 to 2014, show that agencies finalize rules more quickly when there is unified government and that this pattern is accelerated further by statutory deadlines given by Congress.

Effects of divided government on policy are ambiguous. Lohmann and O'Halloran (1994) found that Congressional ideology prevails over the president's in the presence of divided government when making international trade policy. Other work looking at a variety of policy areas suggests that while executive discretion in policy making does in fact increase under unified government, bureaucratic discretion in independent agencies such as the FTC is more likely under divided government (Volden, 2002). Thus, I claim Democratic unified government will be more effective in regulating antitrust behavior than during periods of divided government or during Republican unified government.

2.4 Hypotheses

It is widely accepted that Democrats tend to favor a federal government with greater scope of market intervention to promote social welfare, while Republicans tend to favor a smaller scope of government and value deregulated markets to promote business interests. There is also literature suggesting that partisanship and ideology of elected officials affect bureaucratic regulation. Thus, I predict and test four claims:

H1) Economically conservative ideology of the U.S. House of Representatives is negatively associated with antitrust enforcement.

H2) Economically conservative ideology of the U.S. Senate is negatively associated with antitrust enforcement.

H3) Economically conservative ideology of the President is negatively associated with antitrust enforcement.

H4) Democratic party control over the federal government is positively related to antitrust enforcement.

3. Research Design

My research design is an observational, panel study. For my dependent variable, I will use publicly available statistics collected on antitrust cases and Congressional budget data as measures of antitrust enforcement levels from 1970 to 2020. I extend my analysis to some of Richard Posner's (1970) data on antitrust cases from 1891 to 1968 as well. For my explanatory variable, I will be looking at two measures of political influence. Though related, I distinguish between partisanship and ideology. DW-NOMINATE scores will be used to measure ideology and an ordinal variable I create represents different forms of party control over the federal government. Using simple Ordinary Least Squares (OLS) models with robust standard errors, I examine the significance of the coefficients on political influence to test my hypotheses.

3.1 Dependent Variables--- Antitrust Enforcement Levels

To quantify the level of antitrust enforcement, I use workload statistics from 1970 to 2020 found on the Department of Justice Antitrust Division website, under the Division Operations tab. These workload statistics are collected annually, measuring various aspects of antitrust cases in aggregate. Aspects of antitrust cases I examine are: total DoJ actions,

corporations charged, individuals charged, corporations fined, individuals fined, appropriation figures, Hart-Scott-Rodino Second Requests, and FTC actions. No other publicly available data as comprehensively represents the total antitrust enforcement that occurs across all industries in a year. I sum every two years of data to find congress-level figures.

3.1.1 Richard Posner's Data

On the Department of Justice Antitrust Division website, under division operations, workload statistics for the division is only available from 1970 to the present. When looking at this data per Congress (in two year intervals) my observation size is only 26. Currently, the Federal Trade Commission website only has data on merger and non merger antitrust actions from 1996 to the present, which gives me 13 Congress-level observations. To expand my observation size, I revisit Richard Posner's (1970) Statistical Study of Antitrust Enforcement in the Journal of Law and Economics.

Richard Posner's data on antitrust cases instituted by the Department of Justice extends back from 1890 and spans until 1969. He sources this data from the Commerce Clearing House, known more commonly as the "Bluebook". An example of a case included in these figures is the 1911 case *Standard Oil v. United States*, where J.D. Rockefeller's oil trust, the largest and richest monopoly of the time, was ordered to be dissolved. I sum the cases every two years from 1891 to 1968 to get Congress level data from the 52nd to the 90th US Congress, yielding 39 additional observations.

Richard Posner, in the same piece provides totals of all FTC Restraint-of Trade cases- excluding deceptive-practice cases and Robinson-Patman Act violations that do not allege predatory pricing- from the beginning of the FTC in 1915 until 1969. Like before, I sum every two years to get 27 Congress-level observations.

Though this expansion of observation size by including Richard Posner's data will improve the robustness of my conclusions, the caseloads and measurement do not seem to align well with data found on the Department of Justice Antitrust Division website. Posner's count of "Antitrust cases instituted" in 1969 was 43, while my measure of Department of Justice Actions (total "investigations initiated") was 429 in 1970. Thus, I will analyze Posner's data separately from the modern data.

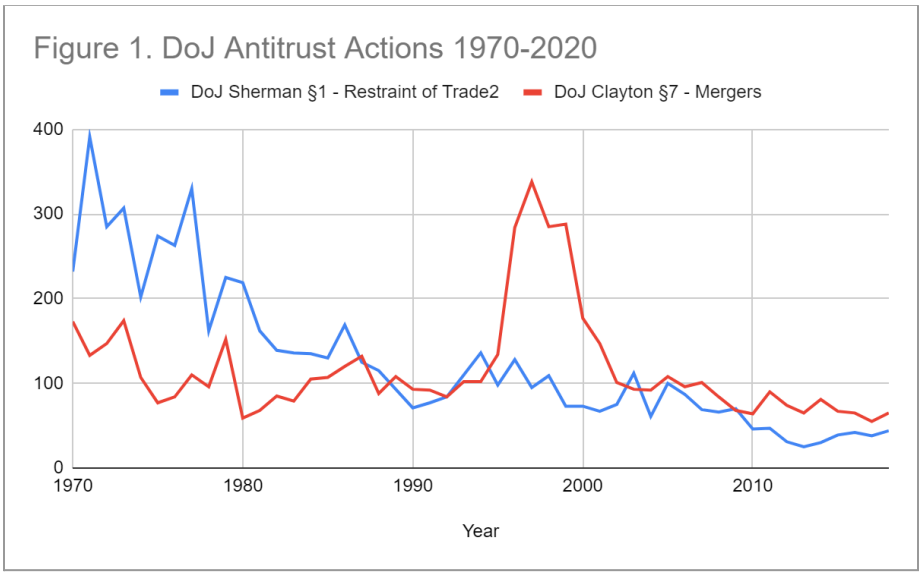
3.1.2 Recent Data from the Department of Justice

I find 1970-2020 workload statistics for the Department of Justice Antitrust Division the best measure for recent antitrust enforcement levels in aggregate. When looking at this data per Congress (at two year intervals) my observation size is 26.

3.1.2.1 Department of Justice Actions

I look at the number of antitrust investigations the Department of Justice brings forward for violations of different sections of the different antitrust laws. These investigations are categorized by primary type of conduct at the time of the investigation's initiation, meaning some cases violate multiple sections or are categorized as a different violation as the case progresses. Thus, to get the most comprehensive picture of total enforcement, I summed the three major types of Department of Justice antitrust investigations--- Sherman Antitrust Act Section 1 violations for monopoly behavior, Sherman Antitrust Act Section 2 violations of restraint of trade, and Clayton Antitrust Section 7 violations of mergers--- for each year from 1970 to 2020. The DoJ announced the investigation of Google, Facebook, Amazon, and Apple in 2019. These would be counted as 4 separate "investigations initiated" in the data. It is worth noting in Figure 1 that the different sections have been enforced at differing rates over time. The

actions have been decreasing over time, but with my data I cannot account for the substance of cases (i.e. if cases have been decreasing in number but increasing in magnitude over time). For the sake of brevity, I call this variable representing total antitrust investigations initiated by the Department of Justice, DoJ Actions. Like before, I summed every two years of actions so I could analyze it by Congress number instead of by year. Since I only had data from 1970-2019, for Congress number 91 (which encompasses 1969-70) I doubled the actions in 1970 as a proxy for the combined actions of those two years. I did the same for Congress 116, doubling the measures for the year 2019.

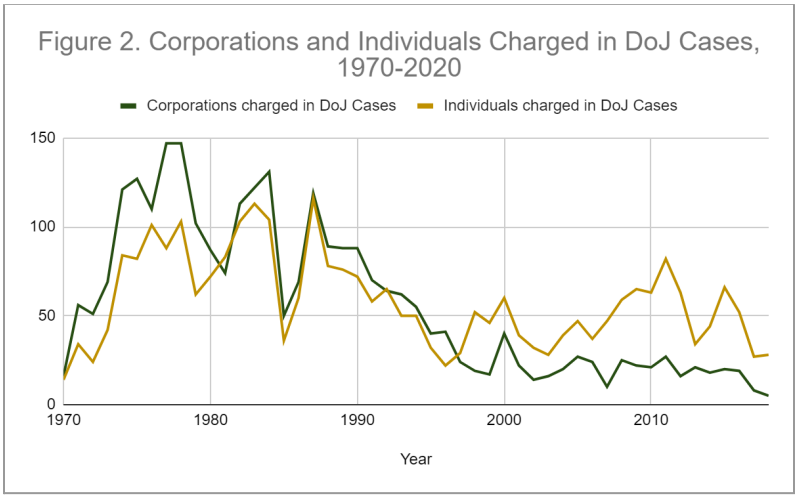


3.1.2.2 Outcomes of DoJ Antitrust Cases

From the same 1970 to 2019 workload statistics, I use four outcomes of Department of Justice antitrust cases--- number of corporations charged, corporations fined, individuals charged, and individuals fined--- to measure the dependent variable, enforcement levels, as well. For the figures from 1970 to 1989 the Department of Justice uses "indicted" interchangeably with "charged"; essentially, it counts the number of times the prosecution (the DoJ) produced sufficient evidence that an entity (corporation or individual) violated antitrust to proceed with a criminal trial. Microsoft Corp. was charged for monopoly behavior by the DoJ in 1998 and is

considered a “corporation charged” in this data. “Individuals fined” and “corporations fined” counts those that were fined in civil as well as criminal cases. For instance, JP Morgan and Chase Co. was fined $550 million dollars in 2017 for a violation of the Sherman Antitrust Act, and is counted in this data as a “corporation fined”. Though these data of antitrust case results may not capture all types of enforcement activity occurring in a year at the DoJ, criminal charges and fines are arguably more deterrent of monopoly behavior than investigations initiated and are perhaps equally, if not more, suited to measure antitrust enforcement levels.

Once again, I sum every two years of actions so I could analyze it by Congress number instead of by year. Since I only had data from 1970-2019, for Congress number 91 (which encompasses 1969-70) I doubled the actions in 1970 as a proxy for the combined actions of those two years. I did the same for Congress 116, doubling the measures for the year 2019. A preliminary glance at the trends of numbers of corporations and individuals charged in Figure 2 reveals that the Department of Justice has, in fact, charged entities at decreasing rates since the mid-1970s, consistent with claims of qualitative literature on the subject. As with DoJ Actions, neither existing literature nor these enforcement figures fully capture the content of antitrust cases. Given trends of market concentration, it is possible that the Department of Justice is bringing forward fewer, larger cases. I found no good way to control for



market concentration across all industries, so accounting for the size of an antitrust action is an area for future research.

3.1.2.3. DoJ and FTC Hart-Scott-Rondino Premerger Actions

From Annual Hart-Scott-Rodino (HSR) reports listed on the FTC website I collected combined FTC and DoJ data on Hart-Scott-Rodino premerger notifications and agency "Second Requests" for more information. The public data exists from 1981 to 2019, yielding 20 Congress-level observations. HSR "Second Requests" have been used previously to measure antitrust enforcement levels (Grullon et al 2018; Cote. et. al. 1990). Specifically, I look at the proportion of Second Requests that took place out of those that *could* have taken place against my measures of partisanship and ideology.

The primary purpose of the Hart-Scott-Rodino, is to allow the antitrust enforcement agencies (both the FTC and the DoJ) with the opportunity to review mergers and acquisitions before they occur. The premerger notification program, with its filing and waiting period requirements, gives the agencies both the time and the information necessary to conduct this antitrust review before the transaction occurs. If either reviewing agency determines during the waiting period that further inquiry is necessary, the reviewing agency issues a request for additional information and documentary material, called a Second Request. The Second Request extends the waiting period providing the reviewing agency with the opportunity to analyze the information and to take appropriate action before the transaction is consummated. For example, in 2015, Staples wanted to acquire Office Depot. They filed a premerger notification, upon which the FTC issued a Second Request to initiate further review and action (Annual Competition Reports).

In the appendices of each Annual HSR Report, there is data on total transactions, transactions where a Second Request *could have* occurred (as determined by the enforcing agencies themselves), and transactions where a Second Request *did* occur. I divide the figures for where a Second Request did occur by the figures for where Second Request *could have* occurred to obtain percentages that I use as another measure of enforcement levels. On average, across the two agencies from 1981 to 2019, 92.5% of the transactions that occurred could have been reviewed by an agency through a Second Request. However, surprisingly, on average only 3.6% of those that *could* receive a Second Request actually *do* receive one, with the highest proportion of review being 9.1% in the year 1982. That consistently over 90% of mergers or acquisitions that the reviewing agencies themselves find dubious, never go reviewed may speak to failures of antitrust enforcement in and of itself. This is an area for future investigation beyond the scope of my paper. I will only see if these proportions are related to partisanship or ideology of elected officials.

3.1.2.4. Antitrust Division Appropriation Figures

Also found under DoJ division operations, are appropriation figures for the DoJ Antitrust Division. They are the dollar amounts the government has allocated of its budget towards the Department of Justice Antitrust Division specifically. Even after deflating these numbers using Bureau of Economic Analysis data to obtain constant dollar figures, the budget seems only to be increasing over time. It is important to see the magnitude of these figures as part of a growing economy. To get a more accurate picture of variation, I divide the appropriation figures by constant dollar GDP per capita found in World Bank datasets to see what share of GDP per capita these figures represent.

Table 2. Summary Statistics for Share of GDP Represented by Appropriation Figures, 1970-2020

Variable	Obs	Mean	Std. Dev.	Min	Max
APPROP/GDP	26	1.20 e-05	1.92e-06	9.06e-06	1.67e-05

Table 2 provides summary statistics for this variable I create, "Approp/GDP". As expected, appropriation figures represent a very small fraction of total constant-dollar GDP per capita, on average .000012 of it; still, antitrust appropriation figures' share of GDP varies substantially over time and it is useful to investigate the determinants of this variation.

The government budget is an indirect way the ideology of the president, who proposes the budget, and of Congress, who passes the budget, may influence enforcement. Like Wood & Anderson (1993) I use appropriations figures for the Department of Justice Antitrust Division as a proxy for enforcement. However, the dollar value allocated by the federal government does not measure real outcomes or actions of the Department of Justice. It is thus best categorized as an intervening variable between politics and enforcement. I run regressions treating it as a dependent variable to test my four hypotheses. In Appendix 4, I show regressions treating it as an independent variable to get a preliminary picture of the causal path.

3.1.3. Recent Data from the Federal Trade Commission

From the Federal Trade Commission website in the "Competition Enforcement Database", I got data on total merger and nonmerger enforcement actions from 1996 to 2020. The 2001 case *FTC v. Heinz* is an example of an action counted. Summing every two years I have 13 Congress-level observations. Many authors in the past have studied FTC antitrust cases to measure enforcement (Posner, 1970; Faith et. al., 1982; Weingast & Moran, 1983).

3.2 Explanatory Variable--- Political Preferences

I use two different measures of political preference in my paper. To measure ideology I use DW-NOMINATE scores. To measure partisanship I create my own ordinal variable indicating different forms of divided government. Party control is important to examine because the party in power determines committee chairs and facilitates easier legislating when there is unified government. However, the party alone reveals little about the policy preferences of the politicians that compose them; thus I include measures of ideology as well. Though partisanship and ideology overlap greatly in modern history (Poole and Rosenthal 2001), they did not in earlier centuries, another reason for examining them both.

3.2.1 DW-NOMINATE Scores

First, to measure ideology, I look at the median NOMINATE scores of each chamber of Congress and each president starting from the 52st Congress to the 116th. I calculate medians for each Congress to represent the “middle voter” and to protect against bias from outliers.

UCLA’s Department of Political Science maintains a website, voteview, where every congressional roll-call vote in American history is used to calculate a legislator’s ideology in NOMINATE scores. DW-NOMINATE (Dynamic Weighted Three-step Estimation) is a procedure developed by Keith T. Poole and Howard Rosenthal in the 1980s. It is a "scaling procedure". It represents legislators' ideological positions on two different dimensions from a scale of -1 to 1, with -1 being the most ideologically liberal or “left” and 1 being the most ideologically conservative or “right”. The first dimension measures partisanship on economic and redistributive topics, which is most relevant to my topic. These scores have been used as a measure of ideology in hundreds of studies. It has been used to create a method for computing political preferences of users on Twitter based on following behavior (Golbeck & Hansen, 2014).

DW NOMINATE scores have also been used to show that representatives from working-class occupations exhibit more liberal economic preferences than other legislators, especially those from profit-oriented professions (Carnes, 2012). The scores have also been used to see the relationship between ideology and party switching (Heller & Merson, 2009).

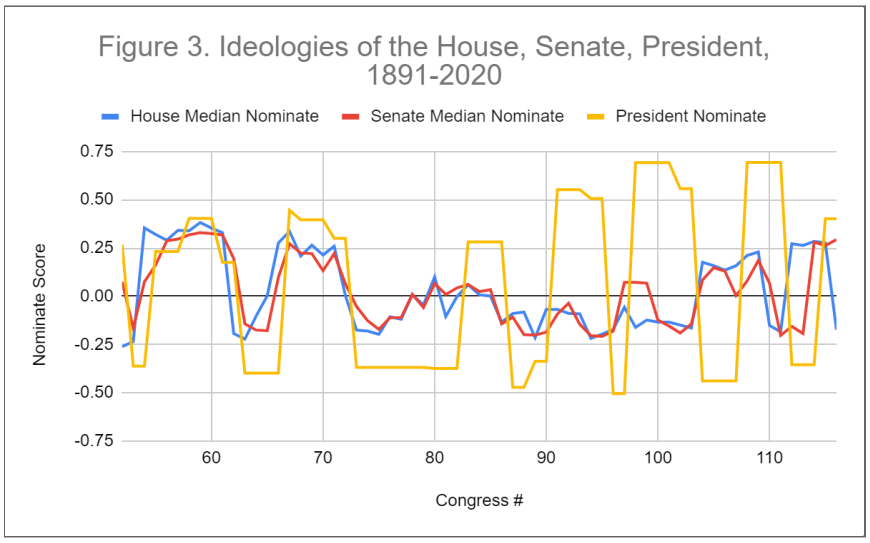


Figure 3 shows the variance in ideological composition of the House of Representatives and Senate for the years of interest. Due to the obvious collinearity, I do not include the House NOMINATE, Senate NOMINATE, or President NOMINATE in the same models so as to not obscure the coefficients on the regressors.

3.2.2 Party Control

My original measure of partisanship codes unified-divided government by party. This novel ordinal variable represents different levels of divided government and party control, with higher values indicating more control of government for the Democratic Party.

Table 1. Democratic Control Ordered Variable

Ordered Indicator	Type of Divided Government
0	Republican Unified Government
1	Both Chambers of Congress Republican, Democrat president
2	One (either) Congress Chamber Democrat, other chamber Republican, Republican president

3	One (either) Congress Chamber Republican, other chamber Democrat, Democrat president
4	Both Chambers of Congress Democrat, Republican president
5	Democratic Unified Government

I created this variable described in Table 1 to measure how much "control" Democrats have over the federal government relative to Republicans. See Appendix i. for a frequency distribution on occurrence of each type of government from 1891 to 2020.

3.3 Control Variable--- Gross Domestic Product per Capita Growth

Because previous literature is unclear whether or not market conditions are a determinant of antitrust activity, I include constant dollar GDP per capita growth rate found on World Bank datasets as a control variable in my analyses. I lag it by one congress (one observation; n+1), because theoretically GDP growth in the previous period would be correlated with the composition of the federal government (voters react to market conditions) in the current period and would determine the market conditions of the current period as well. This data was not available before 1961, so I exclude the use of any control when analyzing Posner's data.

3.4 Empirical Model

I analyze the effects of party control and ideology on multiple measures of antitrust enforcement using Ordinary Least Squares regression models with robust standard errors, to account for heteroskedasticity in the residuals.

My most inclusive model is specified by the following equation:

$$Y= \alpha +\beta_1 X_1+ \beta_2 X_2 + u$$

Where Y is levels of antitrust enforcement measured in : DoJ actions, FTC actions, individuals charged, individuals fined, corporations charged, corporations fined and proportions of HSR

Second Requests, and appropriation figures. X_1 refers to political influence measured in ideology--- DW-NOMINATE scores of the House (H1) Senate (H2) and president (H3)--- and party control using my ordered variable (H4). X_2 is lagged GDP per capita growth rate to control for market condition. The random error term is given by u. The slope intercepts are denoted by α. Note that all units are measured in two year periods, per Congress.

4. Results

I find that all measures of antitrust enforcement carried out by the Department of Justice are negatively associated with House median NOMINATE scores from 1891 until 2020. In other words, the more economically conservative the "middle voter" of the House of Representatives gets, the less antitrust law is enforced by the DoJ in that two year congress. I find similar, though weaker, significance with the relationship of Senate ideology and Department of Justice antitrust enforcement, in that conservative economic ideology is related to lower enforcement while liberal economic ideology is related to higher enforcement. I do not find any relationship between ideology or partisanship and Federal Trade Commission antitrust actions. However, Hart-Scott-Rondino premerger notifications, which are jointly enforced by the FTC and DoJ, are significantly correlated with House Ideology in the way I predict as well.

Though the President's ideology is not significantly related to any enforcement outcomes after 1970 (of both the DoJ and the FTC), it is weakly negatively related to appropriation share of GDP, meaning a more conservative President may prefer a smaller Antitrust Division budget. The ideology of the President is the only one that is significantly related to the budget. I find that Appropriation share of GDP is significant in explaining some of the variation in enforcement outcomes, even when controlling for the variation explained by congressional ideology.

4.1 Revisiting Posner

Using Richard Posner's data, regressing NOMINATE scores against his figures for Department of Justice antitrust cases instituted, I find all my measures of ideology and partisanship to be significant in explaining variation in antitrust cases.

Table 3. Impact of Ideology and Democratic Control on DoJ Antitrust Cases, 1891-1968

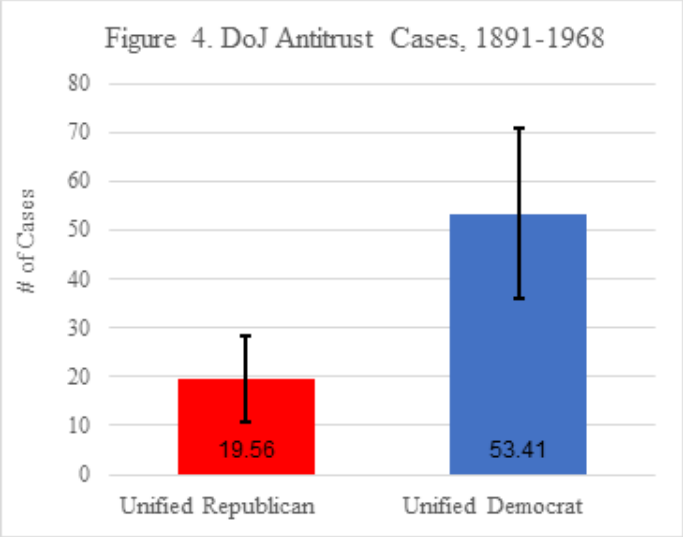
	(1) **DOJ ANTITRUST CASES**	(2) **DOJ ANTITRUST CASES**	(3) **DOJ ANTITRUST CASES**	(4) **DOJ ANTITRUST CASES**
HOUSE NOMINATE	-66.30*** (-2.95)			
SENATE NOMINATE		-89.01*** (-3.6)		
PRES. NOMINATE			-30.31** (-2.14)	
DEM CONTROL (ORDINAL)				7.416**** (3.74)
Y INTERCEPT	41.90**** (7.26)	42.6**** (7.64)	38.18**** (7.53)	19.05**** (4.33)
R-SQUARED	0.1765	0.2212	0.1026	0.2533
N	39	39	37	39

Note: * p<0.10 ** p<0.05 *** p<0.01 **** p<0.001
t-statistics using robust standard errors in parentheses

As depicted in the regression outputs of Table 3, the ideologies of the president and both chambers of Congress are all significantly related to the number of antitrust cases instituted by the Department of Justice. The inverse relationships with ideology, that is--- the coefficients with negative signs, support my hypotheses H1, H2, and H3; negative NOMINATE scores indicate liberal ideology, while positive ones represent conservative ideology. It can be interpreted as the

following: during the years 1891 to 1968, a .1 increase of the ideology of the median Senator (meaning as the Senate ideology shifts slightly to the right overall) is associated with an average decrease of 8.9 (C.I -13.9 to -3.9) antitrust cases instituted by the Department of Justice. About 22% of the variation in numbers of antitrust cases instituted can be explained by the variation in median Senate ideology.

The coefficient on my ordered variable is the most significant of all, at an alpha= .001 level, supporting my fourth hypothesis H4. Democratic control over the executive and legislature is very significantly positively related to antitrust cases instituted by the Justice Department from 1891 to 1968. Though the coefficients on the regressors are very telling, to further sharpen my conclusion that party control does have significantly differential effects on enforcement, Figure 4 shows the difference of means of antitrust cases instituted under a unified Republican Congress (categorized as 0 and 1 in my ordered variable) versus a unified Democratic Congress (categorized as 4 and 5 in my ordered variable), with error bars of the 95% confidence interval. Note that these are averages of when both chambers of Congress are the same, regardless of president's party. Between 1891 and 1968, over the two year term, a Congress with both chambers controlled by Democrats saw on average 33.44 more antitrust cases brought by the DoJ than a Congress controlled by Republicans. As the error bars do not overlap, the difference in means is significant at an alpha=.05.



These results diverge slightly from my findings after 1970. The coefficient on Senate ideology seems a bit more effective (has a higher t-statistic) than that of the House ideology in explaining variation in caseload from 1891 to 1968. From 1970 to 2020 it is House ideology that is more significant in explaining variation in different types of enforcement measures. In addition, it is only during these years, 1891 to 1968, that the president's ideology is significant, likely due to the fact that president's ideology correlates highly with congressional ideology during that period (see Figure 3); during the modern era, (1970 to 2020) president's ideology correlates much less with that of congressional chambers.

I do not find any significant relationship between Federal Trade Commission Restraint-of-Trade Cases and political influence from 1915 to 1968. This is consistent with my FTC results from 1996 to 2020 as well. The regression outputs measuring this is in Appendix Table 1A.

In sum, there is much evidence to suggest that elected officials do wield some political influence over antitrust enforcement conducted by the Department of Justice, with Democrats or liberals seeming to prefer more enforcement than Republicans or conservatives.

4.2 Political Preferences and Modern Day DoJ Antitrust Enforcement

Using OLS regressions, I find significant relationships between Congressional ideology and every measure of antitrust enforcement carried out by the Department of Justice. Moreover, these relationships confirm my hypotheses (H1 and H2) that a conservative-leaning Congress prefers less enforcement antitrust than a liberal-leaning one. House median NOMINATE scores best predict enforcement. Senate median NOMINATE are less significant (lower t-statistics of the regressor) but still are so. Party control is significant in some measures, supporting H4. Unlike the years and cases the Posner studied, President NOMINATE scores do not predict

enforcement well. My most simple and significant results are bivariate regressions of House NOMINATE on the various enforcement measures as seen in Table 4, corresponding with the scatter plots in Appendix 2A.

Table 4. Impact of House Ideology on Antitrust Enforcement, 1970-2020

	DOJ ACTIONS	CORPORATIONS CHARGED	CORPORATIONS FINED	INDIVIDUALS CHARGED	INDIVIDUALS FINED	% HSR 2ND REQUEST
HOUSE NOMINATE	-413.3* (-1.90)	-287.2**** (-4.54)	-236.1**** (-4.64)	-118.1** (-2.49)	-139.0*** (-3.21)	-0.0226* (-2.04)
Y INTERCEPT	502.3**** (11.20)	106.0**** (8.39)	94.07**** (9.34)	111.3**** (11.79)	84.61**** (9.02)	0.0372**** (10.70)
R-SQUARED	0.1031	0.4044	0.4191	0.1734	0.2257	0.0887
N	26	26	26	26	26	20

Note: * p<0.10 ** p<0.05 *** p<0.01 **** p<0.001
t-statistics using robust standard errors in parentheses

Many powerful conclusions can be made from this table. One interpretation: a shift in median House ideology from -0.5 to 0.5 (a very liberal House becomes very conservative) corresponds to 2.2% less Hart-Scott-Rodino Second Requests (merger reviews) granted of those that could be pursued. A shift in median House ideology from 0.5 to -0.5 (a very conservative House becomes very liberal) is associated with an average of 413.3 additional total investigations initiated by the Department of Justice (DoJ actions) in two years. Between 1970 and 2020 over 40% of the variation in House ideology can explain the variation in actions taken against corporations, significant at an alpha = .0001 level; this significance and explanatory power is remarkable considering an observation size of 26. These statistically significant coefficients provide strong evidence in support of my first hypothesis (H1).

I run regressions of every measure of political influence against every measure of antitrust enforcement, controlling for market conditions by including lagged GDP per capita growth rate. Regression outputs for three measures of enforcement: corporations fined, individuals charged, and antitrust division appropriation share of GDP are found in Tables 5, 6, and 7, respectively. The outputs for other measures are found in Appendix 3A to 3D.

Table 5. Impact of Ideology and Party Control on Corporations Fined, 1970-2020

	(1) CORPORATIONS FINED	(2) CORPORATIONS FINED	(3) CORPORATIONS FINED	(4) CORPORATIONS FINED
HOUSE NOMINATE	-232.6**** (-4.29)			
SENATE NOMINATE		-222.5*** (-3.74)		
PRES. NOMINATE			23.39 (0.86)	
DEM CONTROL (ORDINAL)				21.36*** (3.68)
GDP/CAPITA GROWTH (LAGGED)	3.961 (0.56)	9.558 (0.96)	7.924 (0.88)	7.949 (0.85)
Y INTERCEPT	86.97**** (4.57)	75.43*** (2.92)	75.10*** (3.37)	21.58 (0.79)
R-SQUARED	0.4259	0.3222	0.0553	0.3098
N	26	26	26	26

Note: * p<0.10 ** p<0.05 *** p<0.01 **** p<0.001
t-statistics using robust standard errors in parentheses

Even when controlling for market conditions, increasingly conservative House ideology remains extremely significant (at an alpha =.001 level) in predicting decreasing numbers of corporations fined by the Department of Justice for antitrust violations. Table 5 tells us a shift in median House ideology from -0.5 to 0.5 (a very liberal House becomes very conservative) is associated with an average of 232.6 less corporations fined by the DoJ for antitrust violation during that two year Congress. Senate ideology and Democratic government control are also very significant at alpha=.01, providing further evidence for H2 and H3. The coefficient on the president's ideology

is the opposite direction of my hypothesis and insignificant, failing to provide evidence in support of H4, but not proof against it either.

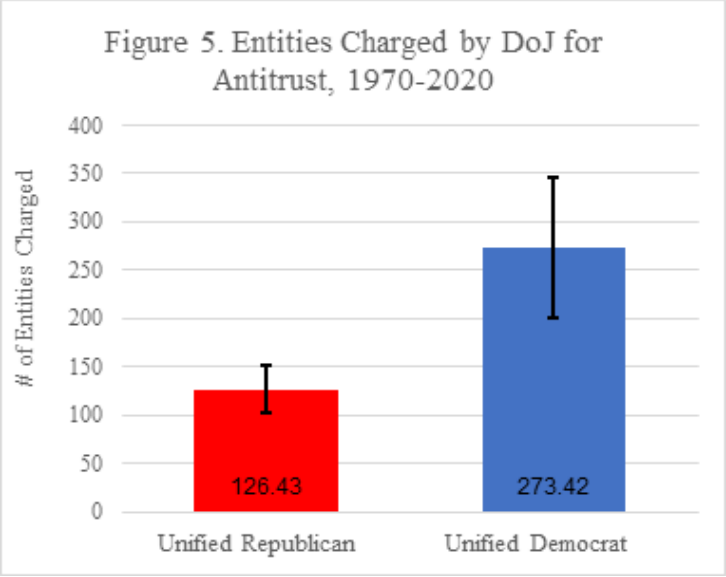
Table 6. Impact of Ideology and Party Control Individuals Charged, 1970-2020

	(1) INDIVIDUALS CHARGED	(2) INDIVIDUALS CHARGED	(3) INDIVIDUALS CHARGED	(4) INDIVIDUALS CHARGED
HOUSE NOMINATE	-126.3**			
	(-2.76)			
SENATE NOMINATE		-127.9**		
		(-2.51)		
PRES. NOMINATE			8.696	
			(0.47)	
DEM CONTROL (ORDINAL)				11.32**
				(2.41)
GDP/CAPITA GROWTH (LAGGED)	-9.218	-6.113	-7.138	-7.058
	(-1.48)	(-0.85)	(-1.06)	(-1.01)
Y INTERCEPT	127.9****	121.4****	122.5****	93.13****
	(7.72)	(6.37)	(7.12)	(4.12)
R-SQUARED	0.2341	0.201	0.0455	0.1709
N	26	26	26	26

Note: * p<0.10 ** p<0.05 *** p<0.01 **** p<0.001
t-statistics using robust standard errors in parentheses

The number of people indicted with antitrust charges in a two year Congress is also significantly negatively related to conservative House and Senate ideology, more proof of the validity of H1 and H2. A change in median Senate ideology from 0.5 to -0.5 (a very conservative Senate becomes very liberal) is associated with an average of 127.9 additional individuals charged in criminal court by the Department of Justice. Democratic control is again significantly, positively associated with numbers of individuals charged. Here too the President's ideology is insignificant. Regression outputs for other measures of antitrust are similar and found in Appendix 3A-3D.

To further highlight the evidence for H4, the significance of the Democratic Control ordered variable in DoJ indictments, Figure 5 shows the difference of means of all DoJ indictments (individuals and corporations) under a unified Republican Congress (categorized as 0 and 1 in my ordered variable) versus a unified Democratic Congress (categorized as 4 and 5 in my ordered variable), with error bars of the 95% confidence interval. Note that these are averages of when both chambers of Congress are the same, regardless of president's party. On average, a Congress with a Republican majority in both chambers is associated with about 147 fewer antitrust indictments brought by the DoJ than a Congress with Democratic majority in both chambers. As the error bars do not overlap, this difference in means is significant at an alpha=.05.



4.3 Political Preferences and DoJ Antitrust Division Appropriation Figures

Though the President's ideology does not explain many of the outcomes of antitrust enforcement carried out by the DoJ, it is the only branch where I find weak significance in explaining appropriation figures, with a more liberal president seeming to prefer higher appropriations for the DoJ Antitrust Division (as a share of GDP). This is seen in Table 7.

Table 7. Impact of Ideology and Party Control on Appropriation Share of GDP, 1970-2020

	(1) APPROP/GDP	(2) APPROP/GDP	(3) APPROP/GDP	(4) APPROP/GDP
HOUSE NOMINATE	-1.06e-06			
	(-0.55)			
SENATE NOMINATE		-2.20e-06		
		(-0.93)		
PRESIDENT NOMINATE			-1.49e-06*	
			(-1.97)	
DEM CONTROL (ORDINAL)				8.68e-08
				(0.36)
Y INTERCEPT	1.20e-05****	1.20e-05****	1.23e-05****	1.17e-05****
	(31.63)	(32.20)	(29.00)	(17.86)
R-SQUARED	0.0103	0.0357	0.1484	0.0058
N	26	26	26	26

Note: * p<0.10 ** p<0.05 *** p<0.01 **** p<0.001
t-statistics using robust standard errors in parentheses

That the House and Senate ideologies are significantly related to enforcement outcomes but not to the Appropriations figures, indicates Congress likely uses other mechanisms than the budget to influence antitrust enforcement actions, such as hearings and oversight.

Preliminary results in Appendix 4 show appropriation share of GDP is positively and weakly significantly (at alpha= 0.1) related to all enforcement measures. It seems that congressional ideology and appropriation figures are both separately and jointly significant in explaining variation in antitrust. To show that the variation of the president's ideology is significantly related to antitrust enforcement through their budget proposal, future research will need to conduct a Two-Stage Least Squares (TSLS) regression, instrumenting appropriation figures and possibly controlling for congressional influence.

4.4 Political Preferences and Modern Day FTC Antitrust Enforcement

Consistent with results found using Richard Posner's FTC antitrust enforcement data spanning 1915 to 1968, I find no meaningful or statistically significant relationship between measures of political influence--- ideology and party control--- and the amount of antitrust enforcement actions carried out by the FTC from 1996 to 2020. See Appendix 3E for regression outputs of political influence on FTC actions from 1996 to 2020.

4.5 Summary of Results

Table 8. Impact of Ideology and Party Control on Antitrust Enforcement Summarized

Antitrust Enforcement Measure	**H1 (House Ideology)**	**H2 (Senate Ideology)**	**H3 (President Ideology)**	**H4 (Dem. Control)**
DoJ Cases, 1891-1968	XXX	XXX	XXX	XXXX
FTC Cases, 1915-1968				
DoJ Actions, 1970-2020	X			
DoJ Corporations Charged, 1970-2020	XXXX	XXX		XXX
DoJ Corporations Fined, 1970-2020	XXX	XXX		XXX
DoJ Individuals Charged, 1970-2020	XX	XX		XX
DoJ Individuals Fined, 1970-2020	XXXX			
DoJ Antitrust Div. Appropriations, 1970-2020			X	
% HSR 2nd Request, 1981-2020	XX			
FTC Cases, 1996-2020				

Note: X $p<0.10$ XX $p<0.05$ XXX $p<0.01$ XXXX $p<0.001$

This table summarizes the significance of the coefficients on the political influence regressors on antitrust measures, when controlling for market conditions where possible. There is much evidence in support of H1, H2, and H4. Though not all measures provide significant

evidence in support of each hypothesis, it should be noted that I found no significant evidence *against* any hypothesis. There were no antitrust measures where the relationship was opposite of the one I predicted. Conservative ideology was never significantly positively correlated to any measure and Democratic control was never significantly negatively correlated with any measure. There is little evidence in past literature suggesting that economic conditions affect antitrust activity, and I find my market condition control variable, GDP per capita growth rate, insignificant in all regressions. Including this market condition control takes away slightly from the significance of some measures; for example, the Democratic party control (H4) is in fact weakly significant (at alpha=.1) in explaining the number of individuals fined in a bivariate regression when not controlling for market condition.

Given that I found no relationship between measures of political influence and FTC antitrust cases, I should like to qualify my hypotheses. There is only evidence to support that conservative congressional ideology (H1 and H2) is negatively related to the antitrust enforcement carried out by the Department of Justice and HSR Second Requests which are enforced by both FTC and DoJ. Similarly, qualifying H4, Democratic party control is only positively related to the antitrust enforcement of the Department of Justice. Finally, there is insufficient evidence after 1970 to support the claim that president's ideology has bearing on any antitrust enforcement (H3), though a more liberal president may prefer a larger budget for the DoJ antitrust division.

4. Discussion and Concluding Remarks

In this paper I find very significant evidence in data spanning over a century to support my claim that that antitrust enforcement conducted by the Department of Justice decreases the more economically conservative the U.S. Congress gets. Similarly and conversely, I find that the

more Democrats control the federal government, the more Department of Justice antitrust activity occurs. I show that though the ideology of the president seems to have no bearing on enforcement outcomes (at least from 1970 to 2020), a more liberal president may prefer a larger government budget for the Antitrust Division; a larger budget, in turn, is related to higher levels of enforcement. Congressional ideology also does not explain variation in antitrust enforcement carried out by the Federal Trade Commission from 1915 to 1968 and 1996 to 2020. Congressional ideology does, however, significantly explain variation in the rates that the FTC and DoJ jointly enforce the Hart-Scott-Rondino Act from 1981 to 2020, in that a more liberal Congress is associated with higher proportions of merger reviews than a conservative one.

It should be noted that these results somewhat contradict Richard Posner's own (1970) findings. By only looking at the party of the president, he concluded that partisanship has no bearing on the level of enforcement carried out by the Department of Justice. The significance of the coefficient on the president's ideology regressed against his own DoJ antitrust case numbers may indicate otherwise. Moreover, he failed to include any analysis of congressional partisanship when making his broad statement about partisanship having no effect. He also claimed the FTC was "significantly impaired in its task of promoting the public interest by the commission's dependence on Congress". Faith et. al. (1982) too claimed Congress had a say in which FTC antitrust cases were dismissed. While Congress may influence the actions of the FTC, I find no evidence to suggest that the influence is in a certain partisan or ideological direction.

This is one of the only studies in the last fifty years to attempt to empirically study the politics of public antitrust enforcement in aggregate across all industries. It is a novel study examining congressional and presidential ideology measured in DW-NOMINATE scores as a

determinant of antitrust enforcement. Data in this field is sparse and incomprehensive, giving rise to many weaknesses of my research and areas of potential future research.

Future research should determine if a president's ideology significantly affects Department of Justice antitrust actions through the budget proposal. Researchers may also be interested in why the FTC's enforcement actions are unrelated to congressional partisanship and ideology, but the DoJ's enforcement actions are related. The DoJ seems to take cues from Congress in terms of caseload, but what is the process of the DoJ in reviewing congressional hearings and recommendations? Because congressional ideology seems to have no bearing on DoJ Antitrust Division appropriations, it is important to identify the exact mechanisms Congress uses to influence enforcement. Researchers may be interested in what share of DoJ antitrust activity is directly or indirectly recommended by Congress.

The FTC says on their website that the two agencies "consult" with each other regarding antitrust enforcement so as to not duplicate efforts and each specialize in certain industries. What is the nature of these consultations and how does it affect their relative caseloads? It is also unclear what the bureacrats of these agencies prioritize in selecting antitrust cases. Clearly, the DoJ and FTC believe that a lot more mergers under the Hart-Scott-Rodino Act should be reviewed than those that actually do get reviewed. Do they choose the largest ones or the ones easiest to litigate as Weaver (1977) suggests?

Economists may desire to research if downward time trends in many measures of enforcement (i.e. entities charged, investigations initiated) are inversely related to case size. In other words, are the agencies enforcing antitrust laws less vigorously than in earlier years or just selecting cases that represent a larger part of the market? The actual economic efficacy of antitrust enforcement in solving growing issues of market concentration is very important to

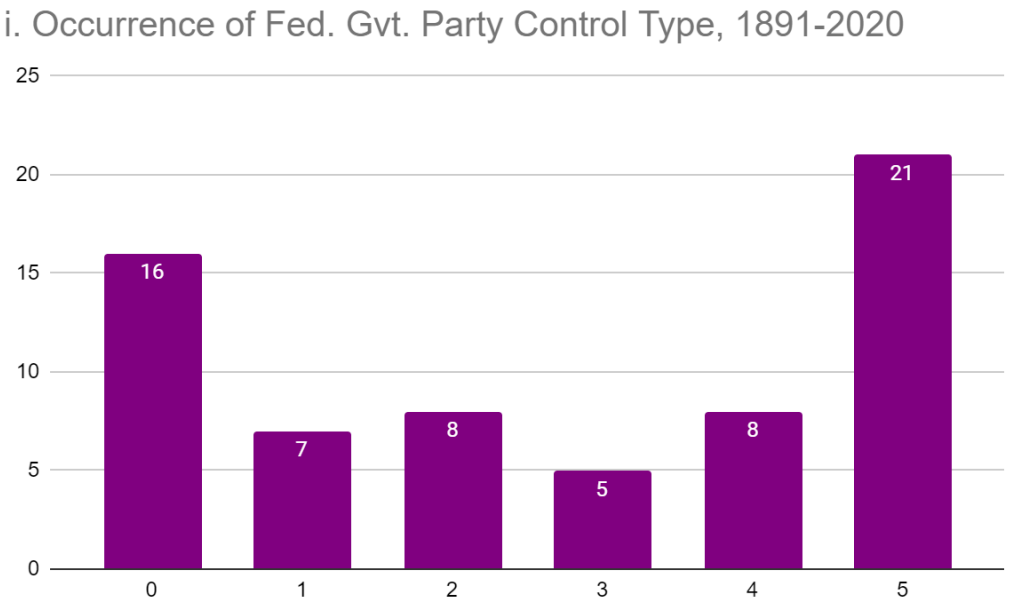
study. While I did not study the role of private antitrust cases and antitrust cases brought by state attorneys, their political determinants and efficacy should be studied as well. Most relevant, is antitrust efficacious in mitigating monopolistic behavior of multinational companies and regulating digital companies?

The final unanswered question is why Republicans or conservatives in Congress may prefer less antitrust enforcement than their Democratic or liberal counterparts. It is likely, and supported in literature, that Republicans more often represent the interests of these large corporations that stand to lose most from antitrust action. It is crucial to study the extent to which corporate lobbying in Washington influences antitrust activity. Though scholars agree the returns and rewards to antitrust enforcement are, for the most part, ubiquitous, preferences of enforcement seem to fall along these clear partisan and ideological lines. Former U.S. Secretary of Labor and current UC Berkeley professor, Robert Reich, writes,

> "We're now in a new gilded age of wealth and power similar to the first gilded age when the nation's antitrust laws were enacted… Conservatives rhapsodize about the 'free market' and condemn government intrusion. Yet the market is rigged. And unless the government unrigs it through bold antitrust action to restore competition, the upward distributions hidden inside the 'free market' will become even larger." (2015)

Currently, the Democratic unified 117th Congress and President are taking on antitrust cases against some of the largest monopolies in human history--- Google, Amazon, Apple, and Facebook. The outcomes of these cases will have profound implications for the future of economic justice and democracy itself.

Appendix

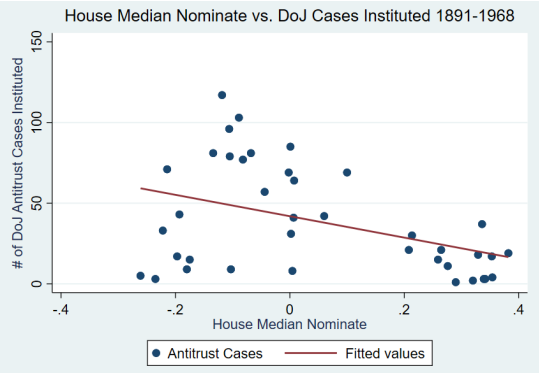


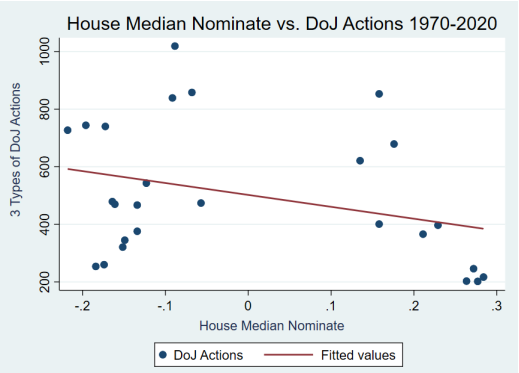
1A. Impact of Ideology and Democratic Control on FTC Restraint-of-Trade Cases, 1915-1968

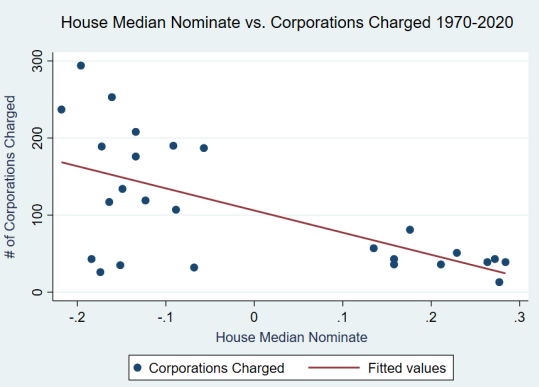
	(1) **FTC CASES**	(2) **FTC CASES**	(3) **FTC CASES**	(4) **FTC CASES**
HOUSE NOMINATE	58.43 (1.26)			
SENATE NOMINATE		28.90 (0.69)		
PRES. NOMINATE			4.470 (0.25)	
DEM CONTROL (ORDINAL)				-2.496638 (-0.81)
Y INTERCEPT	38.96**** (6.96)	39.58**** (6.41)	41.59**** (6.50)	47.36**** (3.36)
R-SQUARED	0.0931	0.0188	0.0025	0.0311
N	27	27	25	27

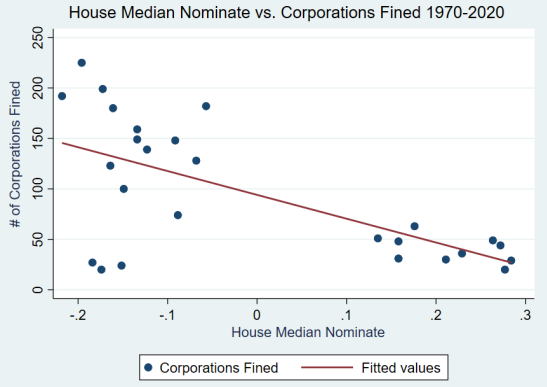
Note: * p<0.10 ** p<0.05 *** p<0.01 **** p<0.001
t-statistics using robust standard errors in parentheses

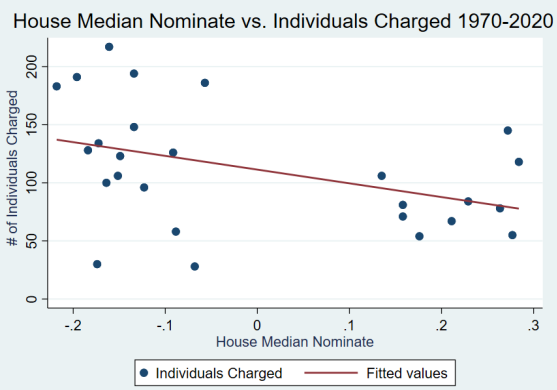
2A. House Ideology and Antitrust Enforcement

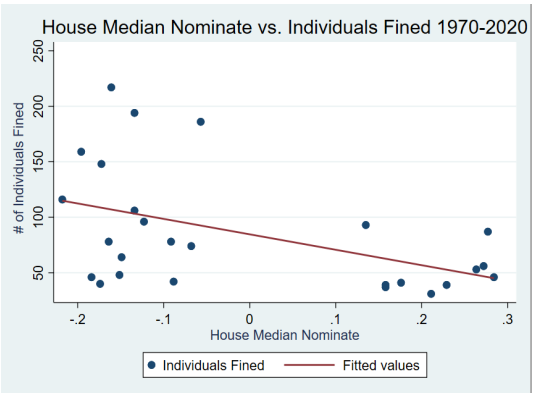


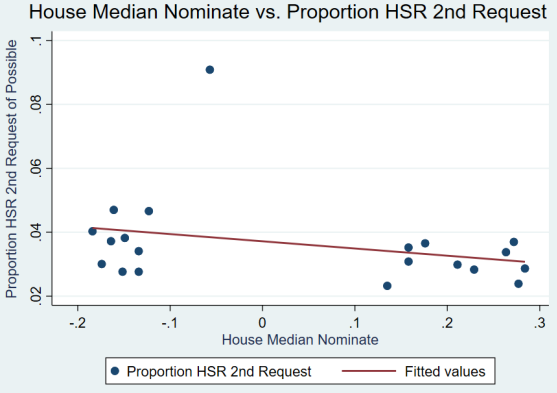


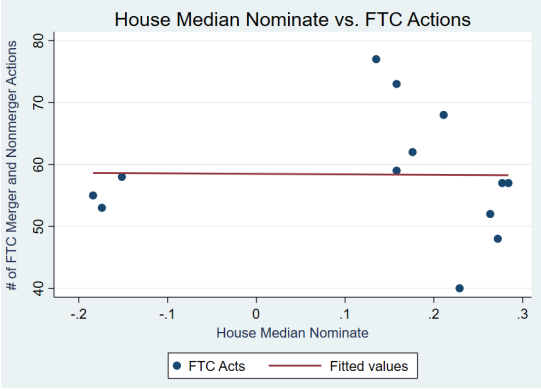




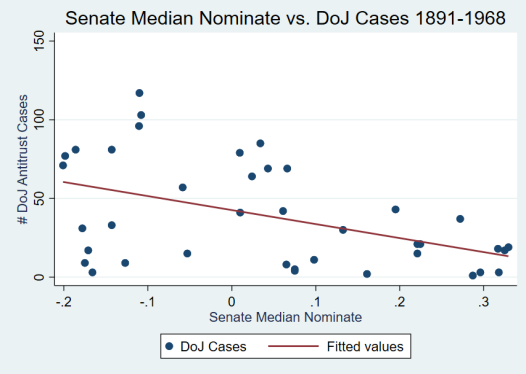


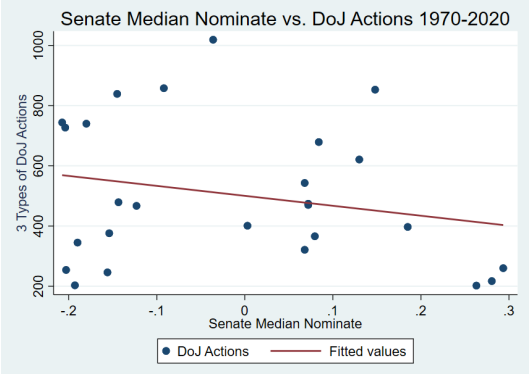


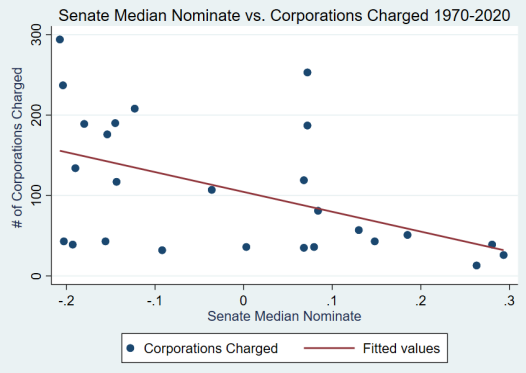


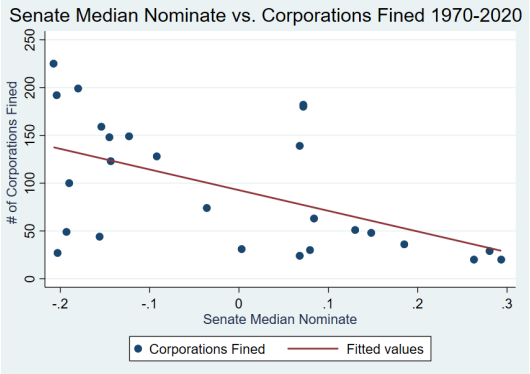


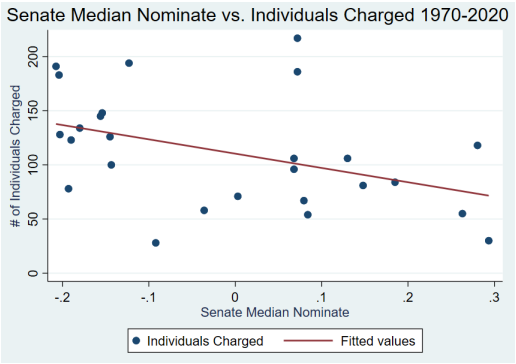
2B. Senate Ideology and Antitrust Enforcement

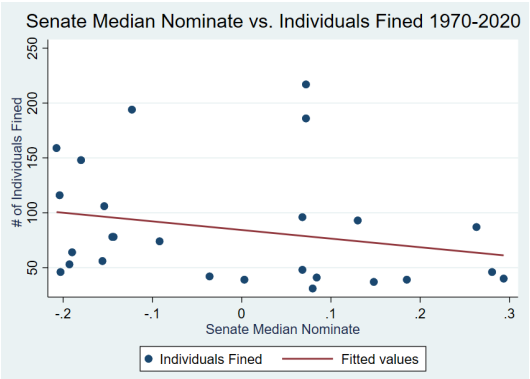


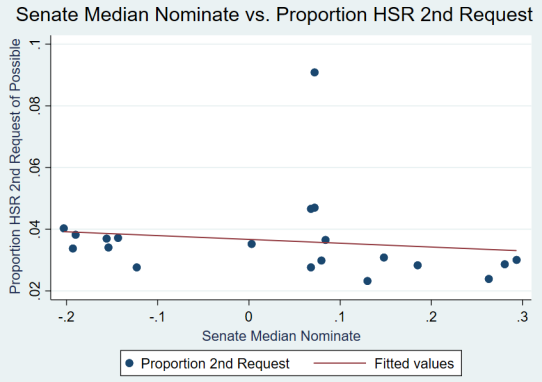


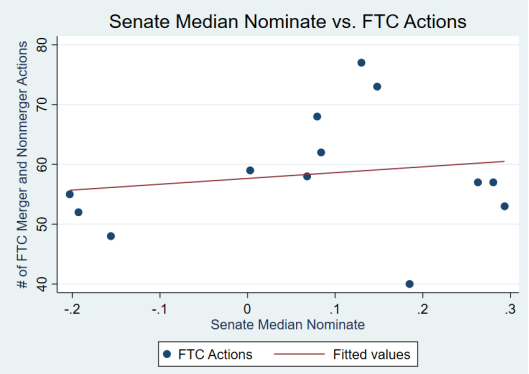












3A. Impact of Ideology and Democratic Control on DoJ Actions, 1970-2020

	(1) DOJ ACTIONS	(2) DOJ ACTIONS	(3) DOJ ACTIONS	(4) DOJ ACTIONS
HOUSE NOMINATE	-380.3* (-1.76)			
SENATE NOMINATE		-361.4 (-1.46)		
PRES. NOMINATE			-0.687 (-0.01)	
DEM CONTROL (ORDINAL)				37.83 (1.56)
GDP/CAPITA GROWTH (LAGGED)	37.07 (1.40)	46.20 (1.66)	42.85 (1.59)	43.65 (1.67)
Y INTERCEPT	435.8**** (6.24)	417.0**** (5.42)	427.1**** (5.66)	320.7**** (3.88)
R-SQUARED	0.1509	0.1278	0.0648	0.1366
N	26	26	26	26

Note: * p<0.10 ** p<0.05 *** p<0.01 **** p<0.001
t-statistics using robust standard errors in parentheses

3B. Impact of Ideology and Democratic Control on Individuals Fined, 1970-2020

	(1) INDIVIDUALS FINED	(2) INDIVIDUALS FINED	(3) INDIVIDUALS FINED	(4) INDIVIDUALS FINED
HOUSE NOMINATE	-140.6** (-2.93)			
SENATE NOMINATE		-79.42 (-1.51)		
PRES. NOMINATE			9.920 (0.41)	
DEM CONTROL (ORDINAL)				8.674 (1.68)
GDP/CAPITA GROWTH (LAGGED)	-1.757 (-0.22)	1.118 (0.11)	0.563 (0.06)	0.566 (0.06)
Y INTERCEPT	87.76*** (4.21)	82.29** (3.30)	81.74** (3.57)	60.12* (1.95)
R-SQUARED	0.2278	0.059	0.0086	0.0731
N	26	26	26	26

Note: * p<0.10 ** p<0.05 *** p<0.01 **** p<0.001
t-statistics using robust standard errors in parentheses

3C. Impact of Ideology and Democratic Control on DoJ Actions, 1970-2020

	(1) CORPORATIONS CHARGED	(2) CORPORATIONS CHARGED	(3) CORPORATIONS CHARGED	(4) CORPORATIONS CHARGED
HOUSE NOMINATE	-289.2**** (-4.24)			
SENATE NOMINATE		-249.5*** (-3.11)		
PRES. NOMINATE			38.45 (1.27)	
DEM CONTROL (ORDINAL)				23.92*** (3.08)
GDP/CAPITA GROWTH (LAGGED)	-2.282 (-0.26)	4.428 (0.35)	2.814 (0.26)	2.623 (0.22)
Y INTERCEPT	110.1**** (4.70)	96.47*** (2.92)	92.74*** (3.48)	36.15 (1.02)
R-SQUARED	0.4059	0.2453	0.0551	0.2345
N	26	26	26	26

Note: * p<0.10 ** p<0.05 *** p<0.01 **** p<0.001
t-statistics using robust standard errors in parentheses

3D. Impact of Ideology and Democratic Control on Hart-Scott-Rodino 2nd Request Proportions, 1970-2020

	(1) PROPORTION HSR 2ND REQUEST	(2) PROPORTION HSR 2ND REQUEST	(3) PROPORTION HSR 2ND REQUEST	(4) PROPORTION HSR 2ND REQUEST
HOUSE NOMINATE	-0.0239** (-2.07)			
SENATE NOMINATE		-0.00742 (-0.59)		
PRES. NOMINATE			-0.00496 (-0.65)	
DEM CONTROL (ORDINAL)				0.000778 (0.67)
GDP/CAPITA GROWTH (LAGGED)	-0.00286 (-1.22)	-0.00246 (-0.89)	-0.00258 (-0.99)	-0.00252 (-0.94)
Y INTERCEPT	0.0420**** (6.71)	0.0407**** (6.22)	0.0417**** (5.63)	0.0388**** (4.58)
R-SQUARED	0.1711	0.0786	0.1049	0.0792
N	20	20	20	20

Note: * p<0.10 ** p<0.05 *** p<0.01 **** p<0.001
t-statistics using robust standard errors in parentheses

3E. Impact of Ideology and Democratic Control on FTC Restraint-of-Trade Cases, 1996-2020

	(1) FTC ACTS	(2) FTC ACTS	(3) FTC ACTS	(4) FTC ACTS
HOUSE NOMINATE	0.208 (0.02)			
SENATE NOMINATE		0.660 (0.06)		
PRES. NOMINATE			-5.412 (-0.88)	
DEM CONTROL (ORDINAL)				-0.839 (-0.47)
GDP/CAPITA GROWTH (LAG)	2.528 (1.09)	2.478 (0.96)	2.021 (0.80)	2.135 (0.95)
Y INTERCEPT	54.29*** (16.16)	54.34*** (14.64)	55.45*** (12.09)	56.43*** (8.65)
R-SQUARED	0.0933	0.0934	0.1713	0.1089
N	13	13	13	13

Note: * p<0.10 ** p<0.05 *** p<0.01 **** p<0.001
t-statistics using robust standard errors in parentheses

4.

To test the role of appropriation figures in enforcement outcomes, I use:

$$Y= \alpha +\beta_a X_a+ \beta_1 X_1 + u$$

Where Y is level of antitrust enforcement measured in : DoJ actions, individuals charged, individuals fined, corporations charged, corporations fined and proportions of HSR Second Requests. X_a is appropriation share of GDP per capita, "Approp/GDP". X_1 refers to political influence measured in ideology- DW-NOMINATE scores of the House, used as a control to determine the partial effects of appropriations.

A. Impact of Appropriation Share of GDP on Antitrust Enforcement Outcomes, 1970-2020

	DOJ ACTS	CORPS. CHARGED	CORPS. FINED	INDIVIDUALS CHARGED	INDIVIDUALS FINED	% HSR 2ND REQUEST
APPROP/GDP	35755120.0* (2.06)	16110668.8* (2.00)	13567056.1** (2.09)	10371666.0* (2.04)	10314029.0* (2.03)	5097.7* (1.77)
Y-INTERCEPT	75.34 (0.33)	-85.98 (-0.89)	-67.61 (-0.87)	-12.50 (-0.20)	-38.47 (-0.64)	-0.0234 (-0.73)
R-SQUARED	0.0839	0.1382	0.1503	0.1452	0.1349	0.3448
N	26	26	26	26	26	20

Note: * p<0.10 ** p<0.05 *** p<0.01 **** p<0.001
t-statistics using robust standard errors in parentheses

B. Joint Impact of Appropriation Share of GDP and House Ideology on Antitrust Enforcement Outcomes, 1970-2020

	DOJ ACTS	CORPS. CHARGED	CORPS. FINED	INDIVIDUALS CHARGED	INDIVIDUALS FINED	% HSR 2ND REQUEST
HOUSE NOMINATE	-379.3* (-1.87)	-273.0**** (-4.58)	-224.0**** (-4.62)	-108.3** (-2.25)	-129.4*** (-2.86)	-0.0280** (-2.39)
APPROP/GDP	32056722.8* (1.88)	13449018.6** (2.11)	11382592.3** (2.33)	9316032.7* (1.82)	9051810.0* (1.92)	5461.8* (2.05)
Y INTERCEPT	118.2 (0.53)	-55.16 (-0.70)	-42.31 (-0.69)	-0.278 (-0.00)	-23.85 (-0.41)	-0.0266 (-0.91)
R-SQUARED	0.1699	0.4997	0.5238	0.2893	0.3286	0.4794
N	26	26	26	26	26	20

Note: * p<0.10 ** p<0.05 *** p<0.01 **** p<0.001
t-statistics using robust standard errors in parentheses

Appropriation share of GDP is positively and weakly significantly (at alpha= 0.1) related to enforcement measures. It seems that House ideology and appropriation figures are both jointly significant in explaining variation in antitrust across many measures. When regressed without controlling for congressional ideology, appropriation figures are still significant.

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