

## CURRICULUM VITAE

### **RICHARD S. MARKOVITS**

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### **Education:**

B.A., 1963, Cornell University, with distinction in all subjects and high honors in economics (ranked in top 1 percent)  
Ph.D. (economics), 1966, University of London (London School of Economics)  
LL.B., 1968, Yale University, summa cum laude (ranked 1 of 180)  
M.A., 1981, Oxford University

### **Teaching positions and fellowships:**

1962-63	Full T.A., Cornell University (Economics Department)
1966-68	Lecturer, Yale University (Economics Department)
Summer, 1967	Visiting Professor, Cornell University (Economics Dept.)
1969-76	Assistant and Associate Professor, Stanford University (Law)
1972	Visiting Professor, University of Konstanz, West Germany (Law Dept. and Economics Dept.)
1976 to present	Professor, University of Texas (Law)
1981-83	Co-Director, Centre for Socio-Legal Studies, Wolfson College, Oxford; Member, Faculty of Law, Oxford University; Governing Board Fellow, Wolfson College, Oxford University
1983-84	Lloyd M. Bentsen Prof. of Law, University of Texas School of Law
1984-89	Marrs McLean Prof. of Law, University of Texas School of Law
1985-86	Fellow, Center of Advanced Studies, Berlin (Wissenschaftskolleg zu Berlin)
1988-89	Guggenheim Fellow
1990-91	Visiting Professor, Department of Economics, Technische Universitat, Berlin
1990-99	Lloyd M. Bentsen, Jr. Centennial Professor of Law, University of Texas School of Law

1993-94	Visiting Professor, Faculty of Law and Economics, Hamburg University; Visiting Professor, Faculty of Law, Bremen University
1995-96	Visiting Professor, University of Santa Clara School of Law
1997	Visiting Professor, Faculty of Law, Humboldt University (Germany) (Fall Semester)
1999-2000	Visiting Professor, Brooklyn Law School (Fall, 1999) and Bacon-Kilkenny Chair of Law for Distinguished Visiting Professors, Fordham School of Law (Spring, 2000)
2000-	John B. Connally Chair in Law, University of Texas School of Law

**Other Professional Posts:**

Trustee, Law and Society Association  
Panel Member, Law and Social Science Division, National Science Foundation (U.S.)  
Panel Member, Economic Affairs Committee, Social Science Research Council (U.K.)

**Publications:**

- [1] Tie-ins, Reciprocity and the Leverage Theory (the Non-leverage Functions of Tying Agreements), 76 YALE L.J. 1397-1472 (1967)
- [2] Tie-ins, Leverage, and the American Antitrust Laws, 80 YALE L.J. 195-315 (1970)
- [3] Fixed Input (Investment) Competition and the Variability of Fixed Inputs (Investment): Their Nature, Determinants and Significance, 24 STAN. L. REV. 507-30 (1972)
- [4] "Oligopolistic Pricing" and "Oligopolistic Prices": Their Conventional and Operational Definition, 26 STAN. L. REV. 493-548 (1974)
- [5] Injurious Oligopolistic Pricing Sequences: Their Description, Interpretation and Legality Under the Sherman Act, 26 STAN. L. REV. 717-771 (1974)
- [6] Proving (Illegal) Oligopolistic Pricing: A Description of the Necessary Evidence and a Critique of the Received Wisdom About Its Character and Cost, 27 STAN. L. REV. 307-331 (1975)
- [7] Some Preliminary Notes on the American Antitrust Laws' Economic Tests of Legality, 27 STAN. L. REV. 841-858 (1975)
- [8] Potential Competition, Limit Price Theory, and the Legality of Horizontal and Conglomerate Mergers Under the American Antitrust Laws, 1975 WIS. L. REV. 658-695 (1975)

- [9] A Basic Structure for Micro-Economic Policy Analysis in Our Worse-Than-Second-Best World: A Proposal and Related Critique of the Chicago Approach to the Study of Law and Economics, 1975 WIS. L. REV. 950-1080 (1975)
- [10] The Causes and Policy Significance of Pareto Resource Misallocation: A Checklist for Micro-Economic Policy Analysis, 28 STAN. L. REV. 1-44 (1976)
- [11] The Allocative Efficiency and Overall Desirability of Oligopolistic Pricing Suits, 28 STAN. L. REV. 45-59 (1976)
- [12] Oligopolistic Pricing, the Sherman Act, and Economic Welfare: A Response to Professor Posner, 28 STAN. L. REV. 919-956 (1976)
- [13] The Distributive Impact, Allocative Efficiency, and Overall Desirability of Ideal Housing Codes: Some Theoretical Clarifications, 89 HARV. L. REV. 1815-1846 (1976)
- [14] Predicting the Competitive Impact of Horizontal Mergers in a Monopolistically Competitive World: A Non-Market-Oriented Proposal and Critique of the Market Definition-Market Share-Market Concentration Approach, 56 TEX. L. REV. 587-732 (1978)
- [15] Monopolistic Competition, Second Best, and *The Antitrust Paradox*: A Review Article, 77 MICH. L. REV. 567-640 (1979)
- [16] Tie-Ins and Reciprocity: A Functional, Legal (Competitive Impact), and Policy Analysis, 58 TEX. L. REV. 1363-1445 (1980)
- [17] Legal Analysis and the Economic Analysis of Allocative Efficiency, 8 HOFSTRA L. REV. 811-901 (1980)
- [18] Legal Analysis and the Economic Analysis of Allocative Efficiency: A Response to Professor Posner's Reply, 11 HOFSTRA L. REV. 667-689 (1983)
- [19] The Burger Court, Antitrust, and Economic Analysis, 180-197 in *THE BURGER COURT: THE COUNTER REVOLUTION THAT WASN'T*, ed. by Vincent Blasi (YALE UNIV. PRESS, 1983)
- [20] The Limits To Simplifying Antitrust: A Reply to Professor Easterbrook, 63 TEX. L. REV. 41-88 (1984)
- [21] Duncan's Do Nots: Cost-Benefit Analysis and the Determination of Legal Entitlements, 36 STAN. L. REV. 1169-1197 (1984)
- [22] The Functions, Allocative Efficiency and Legality of Tie-ins: A Comment, 28 J. LAW & ECONOMICS 387-404 (1985)
- [23] An Ideal Antitrust Law Regime, 64 TEX. L. REV. 251-352 (1985)

- [24] Monopolistic Competition and Second Best: Some New Conceptual Schemes, 181-200 in *FIRMS AND MARKETS*, ed. by Kenneth Tucker (Croom Helm, 1986)
- [25] Cost-Benefit Analysis and the Determination of Legal Entitlements: A Reply to Professor Carlson, 8 *CARDOZO L. REV.* 75-83 (1986)
- [26] Antitrust: Alternatives to Delegalization, in *JURIDIFICATION OF SOCIAL SPHERES* 333-369, ed. by G. Teubner (De Gruyter, 1986)
- [27] Public Policy Analysis From an Economic Political-Economic, and Ethical Perspective, in *WISSENSCHAFTSKOLLEG, JAHRBUCH 1985/86* 155-165 (Siedler Verlag, 1987)
- [28] International Competition, Market Definition, and the Appropriate Way to Analyze the Legality of Horizontal Mergers Under the Clayton Act: A Positive Analysis and Critique of Both the Traditional Market-Oriented Approach and the Justice Department's Horizontal Merger Guidelines, 64 *Chi.-Kent L. Rev.* 745-860 (1988)
- [29] Ayres on "Markovits and Markets: A Reply," 64 *CHI.-KENT L. REV.* 873-96 (1988)
- [30] Mergers, Markets, and Efficiencies: Some Comments on the Appropriate Way to Predict the Competitive Impact, Allocative Efficiency, and Overall Desirability of Mergers and Tender Offers in *TENDER OFFERS* 34-59, ed. by Marina Hertig (Centre d' Etudes Juridiques Europeennes, 1989)
- [31] The American Antitrust Laws on the Centennial of the Sherman Act: A Critique of the Statutes Themselves, Their Interpretation, and Their Operationalization, 38 *BUFFALO L. REV.* 673-776 (1990)
- [32] Second-Best Theory and the Standard Analysis of Monopoly Rent Seeking: A Generalizable Critique, a "Sociological" Account, and Some Illustrative Stories, 77 *IOWA L. REV.* 327-69 (1992)
- [33] The Case for "Business as Usual" in Law-and-Economics Land: A Critical Comment, 77 *IOWA L. REV.* 387-95 (1992)
- [34] A Constructive Critique of the Traditional Definition and Use of the Concept of "the Effect of a Choice on Allocative (Economic) Efficiency": What Is Right and Why the Kaldor-Hicks Test, the Coase Theorem, and Virtually All Law-and-Economics Welfare Arguments Are Wrong, 1993 *ILLINOIS L. REV.* 485-533 (1993)
- [35] Monopoly and the Allocative Inefficiency of First-Best-Allocatively-Efficient Tort Law: The Whys and Some Therefores, 46 *CASE W. RES. L. REV.* 313-448 (1996)
- [36] Second-Best Theory and Law & Economics: An Introduction, 73 *CHI.-KENT L. REV.* 3-10 (1998)
- [37] The Allocative Efficiency of Shifting from a "Negligence" System to a "Strict Liability" Regime in Our Highly-Pareto-Imperfect Economy: A Partial and Preliminary Third-Best-Allocative-Efficiency Analysis, 73 *CHI.-KENT L. REV.* 11-134 (1998)

- [38] Second-Best Theory and the Obligations of Academics: A Reply to Professor Donohue, 73 CHI.-KENT L. REV. 267-74 (1998)
- [39] MATTERS OF PRINCIPLE: LEGITIMATE LEGAL ARGUMENT AND CONSTITUTIONAL INTERPRETATION (NYU Press, 1998)
- [40] The Professional Assessment of Legal Academics: On the Shift from Evaluator Judgment to “Market Evaluations,” 48 J. LEG. ED. 417 (1998)
- [41] Legal Scholarship: The Course, 48 J. LEG. ED. 539 (1998)
- [42] Taking Legal Argument Seriously: An Introduction, 74 CHI.-KENT L. REV. 317-53 (1999)
- [43] Legitimate Legal Argument and Internally-Right Answers to Legal-Rights Questions, 74 CHI.-KENT L. REV. 415-97 (1999)
- [44] “You Can Not Be Serious!”: A Reply to Professors Balkin and Levinson, 74 CHI.-KENT L. REV. 559-614 (1999)
- [45] On the Relevance of Economic-Efficiency Conclusions, 29 FLA. ST. L. REV. 1-54 (2001)
- [46] Legitimate Legal Interpretation, Moral Principles, and Internally-Right Answers to Legal Rights Questions, in 5 GRAVEN IMAGES 232-250 (2002)
- [47] On the Economic Efficiency of Using Law to Increase Research and Development: A Critique of Various Tax, Antitrust, Intellectual Property, and Tort Law Rules and Policy Proposals, 39 HARV. J. ON LEG. 63-120 (2002)
- [48] On the Inevitable Arbitrariness of Market Definitions, 2002 ANTITRUST BULL. 571-601 (2002)
- [49] Precommitment Analysis and Societal Moral Identity, 81 TEX. L. REV. 1877-1927 (2003)
- [50] Learning from the Foreigners: A Response to Justice Scalia’s and Professor Levinson’s Professional Moral Parochialism, 39 TEX. INT. L.J. 367-79 (2004)
- [51] Why Kaplow and Shavell’s “Double-Distortion Argument” Articles Are Wrong, 13 GEO. MASON L. REV. 511-619 (2005)
- [52] On the Possibly-Predatory Character of Nonsystems-Rivalry Investments and Systems Rivalry: Definitional, Functional, and Legal Analyses, 2006 ANTITRUST BULL. 1-142 (2005)
- [53] Liberalism and Tort Law: On the Content of the Corrective-Justice-Securing Tort Law of a Liberal, Rights-Based Society, 2006 ILL. L. REV. 243-300 (2006)
- [54] On the Economic Inefficiency of a Liberal-Corrective-Justice-Securing Law of Torts, 2006 ILL. L. REV. 525-69 (2006)

- [55] TRUTH OR ECONOMICS: ON THE DEFINITION, PREDICTION, AND RELEVANCE OF ECONOMIC-EFFICIENCY CONCLUSIONS (YALE UNIV. PRESS, 2008)
- [56] The Limits to Simplifying the Application of U.S. Antitrust Law, 6 J. OF COMP. LAW AND ECON. 1-67 (2010)
- [57] How American Legal Academics' Beliefs About Economic-Efficiency Analysis, Moral Philosophy, and Valid Legal Argument Disserve Law & Society Empirical Research in LAW, SOCIETY, AND HISTORY: ESSAYS ON THEMES IN THE LEGAL HISTORY AND LEGAL SOCIOLOGY OF LAWRENCE M. FRIEDMAN 395-430, ed. by Robert Gordon and Morton Horwitz (Cambridge Univ. Press, 2011)
- [58] Background (Fixed-Cost) Avoidance-Choices, Foreground (Variable-Cost) Avoidance-Choices and the Economically Efficient Approach for Courts to Take to Accident Cases: A Marine-Salvage Example and Related Critique of Landes and Posner's Classic Study, 59 BUFFALO L. REV. 57-140 (2011)
- [59] Why One Should Never Define Markets or Use Market-Oriented Approaches to Analyze the Legality of Business Conduct Under U.S. Antitrust Law: My Arguments and a Critique of Professor Kaplow's, 57 ANTITRUST BULLETIN 747-885 (Winter 2012)
- [60] Why Antitrust-Legality Analysis Should Never Be Market-Oriented: Comments on the Commentators, 57 ANTITRUST BULL. 961-78 (Winter 2012)
- [61] ECONOMICS AND THE INTERPRETATION AND APPLICATION OF U.S. AND E.U. COMPETITION LAW: BASIC CONCEPTS AND ECONOMICS-BASED LEGAL ANALYSES OF OLIGOPOLISTIC AND PREDATORY CONDUCT (SPRINGER, 2014)
- [62] ECONOMICS AND THE INTERPRETATION AND APPLICATION OF U.S. AND E.U. ANTITRUST LAW: ECONOMICS-BASED LEGAL ANALYSES OF MERGERS, VERTICAL PRACTICES, AND JOINT VENTURES (Springer, 2014)
- [63] ECONOMICS AND THE INTERPRETATION AND APPLICATION OF U.S. AND E.U. ANTITRUST LAW: A Summary, 61 ANTITRUST BULL. 3-83 (2016)
- [64] Economics and Antitrust Law: A Comment on the Other Contributions to This Symposium, 2016 ANTITRUST BULL. 198-227 (2016)
- [65] The General Theory of Second Best and Economic-Efficiency Analysis: The Theory, Its Negative Corollaries, the Appropriate Response to It, and a Coda on the Economic Efficiency of Reducing Poverty and/or Income/Wealth Inequality, 49 AKRON L. REV. 437-469 (2016)
- [66] U.S. and E.U. Antitrust Law as Written: Their Differences, Common Features, and Relative and Absolute Moral Desirability, 62 ANTITRUST BULL. 514-90 (2017)
- [67] "Public Utility" Regulation: Some Economic and Moral Analyses, 35 YALE JOURNAL OF REGULATION 875-909 (2018)

- [68] WELFARE ECONOMICS AND SECOND-BEST THEORY: A THIRD-BEST-ECONOMICALLY-EFFICIENT DISTORTION-ANALYSIS PROTOCOL FOR ECONOMIC-EFFICIENCY PREDICTION (Economics Division of Springer, 2020)
- [69] Economics and the Legally Correct Interpretation and Application of Antitrust Law in HERBERT HOVENKAMP LIBER AMERICORUM: THE DEAN OF AMERICAN ANTITRUST LAW, 123-150, ed. By Nicolas Charbit and Sebastian Gachot (Institute of Competition Law, 2021)
- [70] WELFARE ECONOMICS AND ANTITRUST POLICY: (VOL. I) ECONOMIC, MORAL, AND LEGAL CONCEPTS AND OLIGOPOLISTIC AND PREDATORY CONDUCT (Economics Division of Springer 2021)
- [71] WELFARE ECONOMICS AND ANTITRUST POLICY: (VOL. II) HORIZONTAL AND CONGLOMERATE (M&A)S, SURROGATES FOR VERTICAL INTEGRATION, VERTICAL (M&A)S, JOINT VENTURES, INTERNAL GROWTH, AND COMPARISON OF U.S. AND E.U. ANTITRUST/COMPETITION LAW (Economics Division of Springer, 2022)

**Under Submission: Articles**

- [1] Tort-Related Risk Costs and the First-Best Economic Inefficiency of the Hand Formula for Negligence: How to Fix the Formula When It Can Be Fixed and Why It Sometimes Cannot Be Fixed
- [2] Free Markets: What, Why, When, Why Not, and What to Do About It
- [3] On the Economic Efficiency of Alternative IP Policies: Second-Best-Theory-Based Analyses
- [4] Second-Best Theory and the Analysis of the Impact of Choices on “Social Welfare” and on More Specific Objectives That the Legal System, Lawyers, and Legal Academics Value
- [5] 13 Sets of Observations/Recommendations That Are Pertinent to the Revision of the DOJ/FTC (M&A) Guidelines

**Forthcoming Book in Progress (Under Contract With the Economics Division of Springer)**

- [1] THEORETICAL AND APPLIED WELFARE ECONOMICS (Economics Division of Springer)