



SCHOLARLY AGENDA

My research agenda consists of two strands. The first explores reform of the banking and finance sector, as well as the pitfalls of the Dodd-Frank Financial Reform Bill. I approach financial reform not from traditional banking and securities frameworks such as systemic risk and disclosure, but from other paradigms such as antitrust and legal ethics. The treatment of tying, monopolies, and cartels under antitrust law can help banking and securities scholars understand the post-financial crisis landscape. Since 2008, the finance sector has been beset with consolidations, as well as an interest-rate rigging scandal involving the London Interbank Offered Rate (LIBOR)—all of these are problems which implicate competition policy. A related topic that I intend to explore is the effect of heightened regulatory coordination on privileged and confidential information provided by financial entities.

The second line of research considers how law affects entrepreneurship and migration in transition economies. Research on immigrant merchants is well-established but has revolved around the sociology of middlemen minorities and push-pull theories of migration. I focus on the role of law in facilitating the influx of foreign merchants. My prior publications have examined Chinese merchants in the former Soviet Union and Eastern Bloc; my future work will expand to comparisons of merchant groups in multiethnic societies. I hope to explain several sets of contradictions—for example, why do merchants from robust economies go to relatively weaker economies? Why do some merchant-migrants thrive despite restrictive immigration, residency, and business regulations while others fail?

Financial Reform

I. Application of Antitrust Principles to Bank Lending and Sales Practices. My most recent article, *Death to Credit as Leverage: Using the Bank Anti-Tying Provision to Curb Financial Risk*, argues that the Bank Holding Company Act's anti-tying provision (the "Anti-Tying Provision") can be used to limit sales of risky financial products. The Anti-Tying Provision prohibits a bank from requiring borrowers to purchase additional products in order to obtain a loan. Although it has been eroded by a slew of exceptions, I argue that bolstering the provision can reduce borrowers' exposure to financial risk. By limiting the types of investment products that can be tied to loans, a firewall is installed between lending and investment activity. This mimics the approaches of the Glass-Steagall Act and the Volcker Rule in separating commercial banking from speculation and investment. My article also draws upon recent developments in general antitrust law on anticompetitive effects, consumer welfare, and the ultimate goals of antitrust law, which have yet to be incorporated into the scholarship on bank tying restrictions.

In a subsequent piece, I will explore procedural changes to the Anti-Tying Provision that would complement the above recommendations. Tying actions against banks are seldom brought because borrowers fear reprisals and because of the difficulty of gathering evidence. I plan to evaluate alternatives such as the adoption of a whistleblower regime, and the requirement of affidavits from loan officers that certify to the absence of tying.

II. The Creation of Systemically Significant Financial Intermediaries. Having illustrated the utility of a technical antitrust rule to financial reform, I intend to move to the broader notion of systemic risk. My next piece, *The Systemic Risk Paradox*, will look at how Dodd-Frank has created systemically significant securities and derivatives intermediaries that will eventually become too big to fail. Much has been written on banks which are too big to fail, and a few scholars have now remarked on the same trend with derivatives clearing organizations. My contribution would be to situate derivatives clearing organizations within a broader context of intermediaries such as custodians, securities lending agents, securities depositories, and broker-dealers which have been allowed to consolidate and pre-empt competition. I will evaluate the roles of banking and securities regulations, as well as UCC Article 8, in catalyzing this trend. I will argue that we might look to antitrust law's treatment of cartels for guidance, but ultimately the problems of industry custom and barriers to market entry require a more heavy-handed approach.

III. Heightened Regulatory Coordination and Its Effects on Privileged and Confidential Information. Finally, in the near future I will turn to the problems posed by heightened regulatory scrutiny and coordination. Dodd-Frank envisions greater oversight by regulators; yet because jurisdiction over financial institutions is divided among numerous agencies (such as the Federal Reserve, OCC, SEC, CFTC, FSOC, and CFPB), administrative coordination means that information passed to one regulator will likely be shared with others. This complicates the expectations with regard to privileged and confidential information. For example, will information given to the Consumer Financial Protection Bureau (CFPB) be used for prosecution by the Department of Justice? Agencies often assert that any information one regulator shares with another is privileged and confidential. I aim to explore this "regulatory privilege." I also will explore how developments in oversight and coordination square with whistleblower regimes under Dodd-Frank, which implicate different considerations for privileged and confidential information.

Entrepreneurship and Migration in Transition Economies

I. The Legal Dimensions of Chinese Migration into Transition Economies. My other area of research examines how law interacts with social, cultural, and political factors to affect the experiences of migrants—in particular, petty merchants—in unstable economies. My prior publications have focused on Chinese merchant-migrants in post-Communist societies. In *CHINESE MIGRANTS IN RUSSIA, CENTRAL ASIA AND EASTERN EUROPE* (Routledge 2011), on which I was a co-editor and contributor, I wrote three chapters framing Chinese migration as part of a greater trend of Chinese globalization. One chapter, *The Chinese under Serbian Laws*, analyzed the disparate enforcement of tax and business laws against Chinese merchants, as well as their recourse under Serbian anti-discrimination law. My other publications include *Can Chinese Migrants Bolster the Struggling Economies of Europe?*, forthcoming in the journal *EUROPEANA* (arguing that petty merchants can spur large-scale foreign direct investment), and *Get Your Canned Goods, Umbrellas, and Knock-off Pumas Here!*, in *FOREIGN POLICY* (arguing that Chinese migrants in former Yugoslavia supply goods where markets are too volatile for large multinational companies).

II. Comparative Analyses of Merchant-Migrants in Multiethnic Societies. While the above research has the potential for broad appeal, due to the general interest in Chinese globalization, I intend to turn more narrowly toward the legal dimensions of migration and entrepreneurship for my upcoming work. Specifically, I will do comparative analyses of merchant groups in multiethnic societies—for example, Chinese and Lebanese traders in Bulgaria—to see how the groups cope with corruption, discrimination, and nascent finance systems. Chinese merchants hail from a society with limited real property rights. In Bulgaria, the Chinese therefore do not fund business costs through bank loans secured by real property. By contrast, the Lebanese in Bulgaria are an older community which has lived through post-Communist reforms in private property rights and credit finance. I hope to address the following questions: How do the two merchant groups fund business operations? Do they rely on local banking systems? Do they resort to local courts to resolve disputes?

I would also like to compare the legal obstacles faced by Chinese merchants in Nigeria with those faced by Nigerian merchants in China. As with other countries in Sub-Saharan Africa, China has close trade relations with Nigeria. Alongside state-sanctioned bilateral trade, a shadow economy has burgeoned, with petty merchants from each country migrating to the other to set up small businesses. I am interested in how immigration, residency, and business laws render those activities illegal, as well as how the merchants respond to informality.