Antitrust and Global Capitalism, 1930–2004

The international spread of antitrust suggested the historical process shaping global capitalism. By the 1930s, Americans feared that big business exceeded the government’s capacity to impose accountability, engendering the most aggressive antitrust campaign in history. Meanwhile, big business had emerged to varying degrees in liberal Britain, Australia, and France; Nazi Germany; and militarist Japan. These same nations nonetheless expressly rejected American-style antitrust as unsuited to their cultures and institutions. After World War II, however, governments in these nations – as well as the European Community – adopted workable antitrust regimes. By the millennium antitrust was instrumental to the clash between state sovereignty and globalization. What ideological and institutional factors explain the global change from opposing to supporting antitrust? Addressing this question, this book throws new light on the struggle over liberal capitalism during the Great Depression and World War II, the postwar Allied occupations of Japan and Germany, the reaction against American big business hegemony during the cold war, and the clash over globalization and the WTO.

Tony A. Freyer is University Research Professor of History & Law at the University of Alabama. He is the author of many articles and books, including *Regulating Big Business: Antitrust in Great Britain and America, 1880–1990* (Cambridge University Press, 1992).
Cambridge Historical Studies in American Law and Society

SERIES EDITOR

Christopher Tomlins, American Bar Foundation

PREVIOUSLY PUBLISHED IN THE SERIES:

Davison Douglas, *Jim Crow Moves North: The Battle over Northern School Segregation*

Andrew Wender Cohen, *The Racketeer’s Progress: Chicago and the Struggle for the Modern American Economy, 1900–1940*

Michael Willrich, *City of Courts: Socializing Justice in Progressive Era Chicago*

Barbara Young Welke, *Recasting American Liberty: Gender, Race, Law, and the Railroad Revolution, 1865–1920*

Michael Vorenberg, *Final Freedom: The Civil War, The Abolition of Slavery, and the Thirteenth Amendment*

Robert J. Steinfeld, *Coercion, Contract, and Free Labor in the Nineteenth Century*

David M. Rabban, *Free Speech in Its Forgotten Years, 1870–1920*

Jenny Wahl, *The Bondsman’s Burden: An Economic Analysis of the Common Law of Southern Slavery*

Antitrust and Global Capitalism,
1930–2004

TONY A. FREYER

University of Alabama
CAMBRIDGE UNIVERSITY PRESS
Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, São Paulo

Cambridge University Press
32 Avenue of the Americas, New York, NY 10013-2473, USA

www.cambridge.org
Information on this title: www.cambridge.org/9780521817882

© Tony A. Freyer 2006

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2006

Printed in the United States of America

A catalog record for this publication is available from the British Library.

Library of Congress Cataloging in Publication Data

Freyer, Tony Allan.
Antitrust and global capitalism, 1930–2004 / By Tony A. Freyer.
p. cm. – (Cambridge historical studies in American law and society)
ISBN 0-521-81788-9
K3850.F74 2007
343’.07210904–dc22
2006006972

ISBN-10 0-521-81788-9 hardback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party Internet Web sites referred to in this publication, and does not guarantee that any content on such Web sites is, or will remain, accurate or appropriate.
To my father, Robert A. Freyer, and the memory of my father-in-law, Harold E. Faller
The thing that hath been, it is that which shall be; and that which is done is that which shall be done: and there is no new thing under the sun.

Ecclesiastes 1:9

One thing that is new is the prevalence of newness, the changing scale and scope of change itself, so that the world alters as we walk in it. . . . The techniques, among which and by which we live, multiply and ramify, so that the whole world is bound together by communication, blocked here and there by the immense synapses of political tyranny. What is new in the world is the massive character of the dissolution and corruption of authority, in belief, in ritual, and in temporal order. Yet this is the world we have come to live in. To assail the changes that have unmoored us from the past is futile, and in a deep sense I think wicked. We need to recognize the change, and learn what resources we have.

J. Robert Oppenheimer, from a speech at Columbia University, 1954
# Contents

*Acknowledgments*  
*Introduction*  
1. Reconstituting American Antitrust, 1937–1945  
2. Protectionism over Competition: Europe, Australia, and Japan, 1930–1945  
3. American Antitrust since 1945  
4. Japanese Antitrust since 1945  
5. Antitrust in Postwar European Social Welfare Capitalism  
6. Antitrust Resurgence and Social Welfare Capitalism in Postwar Australia  
*Conclusion*  
*Index*
Acknowledgments

I am grateful to the following for assistance and support: Mr. Charles S. Stark and Mr. Stuart M. Chemtob; Mr. Akinori Uesugi; Professor Hidekatsu Hirabayashi; Professor Shoji Ishii; Professor Mitsuo Matsushita; Ms. Toshi Morikawa; Mr. Tadaharu Wakabayashi; Professor T. Nogimura; Professor Scott P. O’Bryan; Professor John Braithwaite; Professor Allan Fels; Professor David Merrett; Professor Christine Parker; Professor David J. Gerber; Professor Leslie Hannah; Dr. Terry Gourvish; Professor Steven Tolliday; Dr. Anna Fornalczyk; Dr. Clifford A. Jones; Professor Eleanor M. Fox; Professor Frank K. Upham; Professor Chalmers Johnson; Professor Hans Baade; Mrs. Helene Kime Lewis; Mr. Stanley R. Lewis; Karen Ferguson; and Sidney H. Willner. Also, for many interviews I thank these and others cited in the notes.

Throughout the notes I cite the archives and libraries which provided the basic primary and secondary sources for this study. At these places the staffs were invaluable, but I should recognize in particular David Wigdor, David Warrington, and the International House of Japan Library. For essential continuing assistance at the University of Alabama School of Law Library I thank Penny Gibson, Creighton Miller, Paul M. Pruitt, David Durham, and Diana May. At the University’s Gorgas Library I also thank Janice M. Simpson and Dr. Marilyn B. Emplaincourt of the Japan Program.

The University of Alabama School of Law Dean, Kenneth C. Randall, has supported this work over many years. I am grateful to Christopher Tomlins and Frank Smith at Cambridge University Press for patience, and for the critique of two external readers. I am most indebted to Forrest and Ellen McDonald, without whom the work would never have been published.

The research could not have been accomplished without external funding from: Abe Fellowship, 1994–96 Japan Center for Global Partnership and Social Science Research Council; Senior Fulbright Award Australia (Summer 1993); Fulbright Distinguished Chair in American Studies, Warsaw University, Poland (2000); and Earhart Foundation Research Fellowship 2002–03. I am grateful for continuing support, too, from: The University of Alabama School of Law Foundation and the Edward Brett
xii

Acknowledgments

Randolph Fund, the History Department and College of Arts and Sciences, Sabbatical 2002–03, and the Office of Academic Affairs, University Research Professor which I hold. Of course, I am alone responsible for what follows.

Tony A. Freyer
Tuscaloosa
August 2005
Antitrust and Global Capitalism, 1930–2004