The real world, characters in the novels lost money by investing in insurance, bank, and shipping shares. The ethics of investment is another theme embedded in the novels of all four authors. For example, Riddell has the heroine of her novel Miss Gascoigne returning from the South of France after receiving news of an accident at the mine in which she was an investor, and Eliot, in Daniel Deronda, describes the inheritance and loss of a Jamaican fortune built on slavery. Henry argues that although the authors wrote poignantly about the wealth and income discrepancies they observed in daily life, and deplored greed and corruption, these women were reluctant to openly condemn the capitalism that allowed them to earn and to invest those earnings, giving them financial independence. For example, both Gaskell and Eliot held St. Katharine’s Docks securities; in order for the docks to be built, eleven thousand people were forcibly evicted and a famous church demolished.

This is a fascinating book, with new material, particularly on Riddell’s and Oliphant’s lives and novels and original critiques of their financial writings as well as those of Gaskell and Eliot. Henry shows that investment—for the authors themselves and for the women in their novels—could be a source of financial independence but also of financial obligations, due to financial losses incurred by family members. What comes out clearly is the sheer complexity and prevalence of finance in the Victorian period, not so obvious today, with salaries, pensions, and welfare payments cushioning the financial risks our predecessors endured.

Janette Rutterford is emeritus professor of financial management at the Open University Business School in the United Kingdom. She is coeditor of a number of books on the history of women and money, as well as author of three editions of the textbook An Introduction to Stock Exchange Investment. She is currently working on the history of investment management, by individual investors and by investment intermediaries such as mutual funds, as well as on the role of gender in financial advice.


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Reviewed by Eric Hilt

To the antimonopolists who supported the passage of the Sherman Antitrust Act in 1890, the first two decades of federal antitrust enforcement
were quite disappointing. Although the federal government won significant victories in suits against railroad cartels and major corporations such as Standard Oil, it also used the act to restrain labor unions and associations of small firms. The Supreme Court’s antitrust jurisprudence even seemed to favor large vertically integrated firms, in that it assessed whether the conduct of those enterprises violated the act by applying a test of reasonableness: the “rule of reason.” By contrast, a per se prohibition was applied to agreements among competitors, including trade associations of small manufacturers or retailers that sought to manage prices.

Laura Phillips Sawyer’s American Fair Trade: Proprietary Capitalism, Corporatism, and the “New Competition,” 1890–1940 chronicles the evolution of the fair trade movement, which arose in reaction to this experience. An assistant professor at Harvard Business School, Sawyer shows how the founders of the fair trade movement responded to the growing influence of large corporations, and to the antitrust doctrines that blocked the efforts of small firms to safeguard their interests, by seeking to reform American competition policy. Rejecting the Supreme Court’s insistence that only market forces should govern competition between firms, the fair trade movement sought to establish a regime of regulated competition in which markets would be partially managed by associations of small businesses acting in partnership with the government.

Much of the original impetus for this associational model of governance arose among specialty goods manufacturers, such as makers of watches or pharmaceuticals. In response to the proliferation of chain stores and other sources of competitive pressures in retailing, these firms utilized retail price maintenance contracts, which obligated retailers to adhere to a fixed price schedule in selling their products. Although the manufacturers argued that these contracts eliminated unfair trade practices and ensured that their products sold at a reasonable price, these contracts eliminated price competition between retailers, and in 1911 the Supreme Court held them to be in violation of the Sherman Act. One of the fair trade movement’s early goals was to reform antitrust law to make retail price maintenance contracts—which they rebranded as fair trade contracts—permissible. Through organizations such as the American Fair Trade League (AFTL) and the U.S. Chamber of Commerce, the movement sought to extend the relatively permissive rule of reason to the legal evaluation of the conduct of trade associations and to establish government agencies that would work with those associations in the administration of competition policy.

Although some of the movement’s proposals, such as the Stevens Price Maintenance bill of 1914, were not enacted, the fair trade
movement did have a lasting impact. The creation of the Federal Trade Commission (FTC) in 1914, which initially had the power to halt businesses engaging in practices it determined to be unfair, was due in part to the movement’s efforts. And trade associations in a range of industries flourished, and made progress toward their goal of reshaping antitrust policy when the Supreme Court held that information sharing among association members—including some price information—did not violate the Sherman Act.

In the 1920s, trade associations received significant support from the Commerce Department and the FTC, which held conferences to promote the standardization and improvement of trade practices in particular industries. These developments were supported by Secretary of Commerce Herbert Hoover, who had little interest in antimonopoly concerns and instead sought to use partnerships between the federal government and industry associations to promote business efficiency and macroeconomic stabilization. The fair trade movement’s rhetoric and methods were in a sense co-opted by Hoover and repurposed toward a new set of goals that were much friendlier toward big business.

Sawyer argues that some of the corporatist elements of Hoover’s response to the Great Depression as president, and some elements of Roosevelt’s first New Deal, were another legacy of the changes promoted by the fair trade movement. In response to the economic cataclysm of 1930–33, business leaders used organizations such as the U.S. Chamber of Commerce to lobby for the kind of public-private cooperation for economic stabilization that Hoover had pursued in the 1920s, but on a much wider scale. Prominent executives argued for the outright cartelization of whole industries in order to eliminate price-cutting and overproduction, which they perceived to be the underlying cause of the Depression. Although Hoover was never willing to go that far, Roosevelt’s 1933 National Industrial Recovery Act (NIRA) reflected these influences. The National Recovery Administration relied on industry associations to devise codes of fair competition, which were justified as efforts to prohibit unfair practices such as sales below cost when in fact they sanctioned anticompetitive behavior and entrenched incumbent businesses. The Supreme Court struck down NIRA in 1935, and the book ends with a synopsis of the legacies of fair trade in the years after that decision.

One of the strengths of this book is that it carefully analyzes not only this evolution of antitrust law, but also the business practices developed by firms and trade associations that came into conflict with the law. This is a fine work of legal history and business history, and it makes an important contribution to the literature on this formative period in the development of the American regulatory state.
But the antitrust history in this book also makes it quite timely. In response to the perception that antitrust enforcement has been too lax in recent decades, some scholars have argued that the consumer welfare standard, which has been the dominant paradigm of antitrust authorities for the past forty years, should be abandoned. (See, for example, Marshall Steinbaum and Matt Walsh, *The Effective Competition Standard: A New Standard for Antitrust* [2018]; and Tim Wu, “After Consumer Welfare, Now What? The ‘Protection of Competition’ Standard in Practice” [Columbia Public Law Research Paper No. 14-608, 2018].) Sawyer’s analysis makes it quite clear that the antimonopolists who supported the enactment of a federal antitrust statute, and the fair traders who sought to redeem the Sherman Act’s original promise, rejected the notion that antitrust should be focused exclusively on consumers. Instead, they sought to reshape American capitalism in a way that was fairer to small business and hoped to mitigate the pressures of market competition through cooperative action.

At the same time, this book provides clear examples of the perils of pursuing such an approach to antitrust. Efforts to restrain excessive competition or eliminate unfair pricing in practice sometimes became little more than a pretense for ratifying anticompetitive behavior. Some of the measures inspired by the fair trade movement in fact benefited big business at the expense of the small firms the movement sought to protect. An important lesson of that era is that measures motivated by antimonopoly concerns, if poorly designed, risk sanctioning monopoly.


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Reviewed by Michael Scott Van Wagenen

In 1848, Mexican diplomats signed the Treaty of Guadalupe Hidalgo, surrendering over 500,000 square miles of land to the United States.