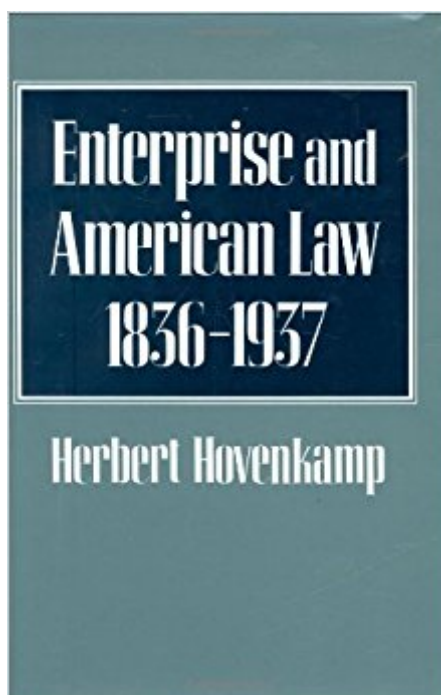


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# Enterprise And American Law, 1836-1937



## Synopsis

In this integration of law and economic ideas, Herbert Hovenkamp charts the evolution of the legal framework that regulated American business enterprise from the time of Andrew Jackson through the first New Deal. He reveals the interdependent relationship between economic theory and law that existed in these decades of headlong growth and examines how this relationship shaped both the modern business corporation and substantive due process. Classical economic theory--the cluster of ideas about free markets--became the guiding model for the structure and function of both private and public law. Hovenkamp explores the relationship of classical economic ideas to law in six broad areas related to enterprise in the nineteenth and early twentieth centuries. He traces the development of the early business corporation and maps the rise of regulated industry from the first charterbased utilities to the railroads. He argues that free market political economy provided the intellectual background for constitutional theory and helped define the limits of state and federal regulation of business behavior. The book also illustrates the unique American perspective on political economy reflected in the famous doctrine of substantive due process. Finally, Hovenkamp demonstrates the influence of economic theory on labor law and gives us a reexamination of the antitrust movement, the most explicit intersection of law and economics before the New Deal. Legal, economic, and intellectual historians and political scientists will welcome these trenchant insights on an influential period in American constitutional and corporate history.

## Book Information

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## Customer Reviews

What an exciting book! It is bold, it is intellectually daring, it is astonishingly original. It is also very

well written. I predict that it will become an important piece of intellectual-legal history and will frame the historical debate about many of the subjects covered for years to come... No one who knows legal history as well as Hovenkamp does has ever remotely attained a simultaneous level of sophistication about the history of economic theory. The juxtaposition of the two produces an incredibly integrated and powerful picture of the sources of legal ideas about the corporation, monopoly and the railroad problems and regulation. --Morton J. Horwitz (Harvard Law School) The text has strength both in its general and in its specific character. The general theme is important for the history of key elements of U.S. public policy toward the economy through a century of headlong growth and turbulence. The central concern of the text is to identify what are at least similarities and may be cause-effect interplay between what political economists wrote and what official policy makers did. In pursuing this general theme the text offers many illuminating or provocative insights. --Willard Hurst (University of Wisconsin Law School)

Herbert Hovenkamp is Ben V. and Dorothy Willie Professor of Law and History, University of Iowa College of Law.

It's in the rare category of legal history accessible to the non-specialist, although in general you are going to want to have looked at something like Lawrence Friedman's "History of American Law" for the basics if you have no exposure to American legal history beforehand. Like most clearly structured academic works, you will get a lot out of lingering on the introductory chapter and using its summaries to anchor how you look at the subsequent chapters. At a minimum, it's possible to get a sound grasp on slippery topics outside of legal wonkery, even if you just chase the highlights of the book. For instance, why it would be reasonable to regard early 19th century opposition to government intervention as "anti-big business" as opposed to the way you might think of it in the late 19th or early 20th, or why the limits to collective bargaining were well understood by the 1930s and guided evidence-based policy as a result, or why corporate personhood is not the novelty that recent headlines would have suggested (which of course doesn't mean that the boundaries around the concept haven't shifted considerably).

"Enterprise and American Law" is a set of loosely-connected essays on topics in 19th century American business legal history -- antitrust, corporate law, the labor injunction, due process and freedom of contract, etc. The focus is on doctrinal development and the influence of economic theories on the thinking of lawyers and judges. The narrative skimps on social context, jumps back

and forth in time, and will mean nothing to readers lacking a basic knowledge of business and constitutional law or of 19th century American history. That said, readers interested in this subject -- all 15 of them -- will enjoy the book, which is balanced, intelligent and clearly written.

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