

ELEANOR M. FOX
Antitrust Ambassador to the World

Liber Amicorum

Foreword by Maria Coppola and David Lewis

Introduction by Ilene Knable Gotts

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Introduction

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It is my great honor to provide this introduction for Eleanor Fox's *Liber Amicorum*.

I met Eleanor for the first time in the Spring of 1984. As a graduating law student heading to the FTC to begin my antitrust career, I decided to attend the Antitrust Section's Spring Meeting. Scanning the large banquet room, I saw a sea of over 1,000 men in dark suits talking and engaged with each other—and seated in the front row, a sole woman reviewing the program materials. I worked my way over to that woman and saw an empty seat next to her. Not sure what to do, I shyly asked whether that seat was available; the woman looked up, immediately smiled, and said enthusiastically “Yes, I am Eleanor, nice to meet you.” Little did I know at the time, that as Humphrey Bogart said in *Casablanca*, this was “the beginning of a beautiful friendship.”

Fast forward three years. I decided to go to the Fordham Law conference in New York City, which at that time focused only on European Commission and US law. I, who up to that time had been a student and practitioner only of US competition law—with a focus on economics and the developing Chicago School principals—was intrigued by the discussions about a different approach to some of the basic principles of competition law and policy. And who on the panel opened my eyes to the possibilities that we, in the US, might not necessarily have it “all right,” or perhaps not right for all economies and circumstances: no one other than Eleanor Fox.

We stayed in touch after that conference, and I followed Eleanor's prolific writings, and her unfashionable call for the human aspects of competitive policy. By the late 1990s, Eleanor's reach had extended beyond the US, Europe, and the “developed” economies, to the developing world, including Africa.

Eleanor has been a trail blazer throughout her career. In doing so, she has been a mentor and role model for me, multiple generations of US lawyers, and, as evidenced by this *liber*, throughout the world.

Eleanor joined the New York law firm of Simpson Thacher & Bartlett as an associate in 1962—right after the birth of her first child (she ultimately had three

children while continuing to work at the firm). Her talents were immediately recognized by one of the finest antitrust litigators in the country at that time—Whitney North Seymour, Sr. — and under his tutelage she developed a love for antitrust law. Eleanor became the firm’s first female partner in 1970 and remained a partner at Simpson until 1976, when she embarked on her full-time academic career at NYU, while still remaining affiliated with Simpson in a counsel role.

Forty-five years later, Eleanor is the Walter J. Derenberg Professor of Trade Regulation at the NYU School of Law, where she continues to teach, both inside and outside the classroom, the next generation of competition lawyers.

When I was the International Officer of the ABA’s Antitrust Section (2013-2016), I affectionately referred to Eleanor as the “Competition Ambassador to the World.” If you went to the NYU website around that time, you would have seen the usual materials that you would expect for a Professor of Eleanor’s high stature—a bio with a long list of articles, prestigious positions, etc. But, if you searched the NYU website more broadly, you would find under “news” a story that really provides some insight into the fervor with which Eleanor has undertaken her role. The title of the article is “Eleanor Fox goes on global tour” and states with respect to Eleanor’s upcoming summer plans, “Don’t look for Eleanor Fox at the beach in coming weeks. Instead, Fox ... will be crisscrossing the globe.” The site then provides an interactive map, which, if you click on any of the pins, provides a summary of the competition authorities and topics she covered at each site during her summer break. Of course, Eleanor’s role as “Competition Ambassador to the World” has been much more pervasive than a single summer hiatus.

Eleanor has never seen antitrust as confined to narrow concerns and has constantly reminded us of the importance of the social and political concerns that have historically been part of the fabric of antitrust. Eleanor’s 1987 article on “The Battle for the Soul of Antitrust” epitomizes this philosophy. So, too, does her 1987 article co-written with Larry Sullivan, “Antitrust-Retrospective and Prospective: Where Are We Coming From? Where Are We Going?”, which notes that legacies of the antipower, prodiversity era remain as the historical preference for pluralism, freedom of trade, access to markets, and freedom of choice. In these and subsequent articles, Eleanor challenges us to see the basis for recognizing the human aspects of competition and industrial policy—the potential to create a regime that will best incentivize firms to be, using Eleanor’s words, “lively, creative, innovative, and responsive; to produce and invent what people want.”

These articles also reflect another part of Eleanor’s enduring character, her optimism. Eleanor identified herself as “an optimist” in her 1989 Fordham Law Review article “Being a Woman, Being a Lawyer and Being a Human Being.” As she further recognizes, part of being an optimist is recognizing that success can be slow to achieve.

Eleanor's successes in broadening the role of antitrust outside of the US have been well-recognized and noted but have been slow to gain broad acceptance here in the US. For much of the last four decades, her views were a departure from mainstream economic thinking. Eleanor's patience, however, may finally be paying off. Today's debate on US competition policy in the halls of Congress, Presidential campaigns, and among Neo-Brandeisian enforcers suggests that Eleanor's harkening back to the principles and objectives that formed the basis of our federal antitrust laws is not so much sentimental, but rather, as with a good vintage wine, may be just now coming into their peak time. In fact, her unabated focus on equality and fairness as part of the antitrust law mandate has been prescient and may more accurately reflect the reach of the antitrust laws in the emerging new world order than the narrower Chicago School approach, she began questioning decades ago.

In sum, Eleanor has made a difference with her optimism and compassion for all of us who have been fortunate enough to know her, to count her as a friend, and to have witnessed all that she has achieved in the United States and globally to make the world a better place.

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