claim. Because liability insurers have largely refused to provide coverage for emotional distress, except when linked to bodily injury, this kind of "liability has never expanded to nearly the extent that it might otherwise have been expected to" (p. 189).

Second, the close connection between liability and insurance means that liability insurers intermediate between victim and injurer, and also between tort litigants and legal institutions. Tort litigation is a repeat-player game, in which a nonparty, the liability insurer, plays the dominant role.

Third, tort liability and insurance have so affected each other that they now serve overlapping functions. In theory, tort law forms the substantive rules governing the rights and obligations of *particular* parties with regard to *particular* injuries, and it is insurance that spreads the costs of injuries. But because of liability insurance, tort law has become a risk-spreading enterprise. Similarly, deterrence is conventionally understood to lie within the domain of tort law, not that of insurance. But once liability insurers assume the costs of future liabilities, they have an incentive to prevent liabilities, or at least to reduce the cost, with the result that insurance may assume a deterrent role. "Over time, then, tort becomes insurance, and insurance becomes tort" (p. 105).

It is rare that even excellent description can change the common understanding of a field of law, particularly a field as doctrinally encrusted and theoretically adorned as torts. Abraham's *Liability Century* has this potential. Tort law is not just theoretically and conceptually related to insurance principles, as both legal realists and economists have explained. Rather, tort law as we know it is institutionally inextricable from liability insurance. They form a binary star.

Tom Baker is professor of law at the University of Pennsylvania School of Law. He recently published The Medical Malpractice Myth *(2005) and* Embracing Risk: The Changing Culture of Insurance and Responsibility *(2002) (with Jonathan Simon), and is currently writing about the relation between liability and insurance in securities litigation.*

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The Rise of Mutual Funds: An Insider's View. *By Matthew P. Fink.* New York: Oxford University Press, 2008. 308 pp. Bibliography, notes, index. Cloth, $34.95. ISBN: 978-0-195-33645-0.

Reviewed by Edwin J. Perkins

In writing about mutual funds, Mathew P. Fink tackles a subject that has not been adequately addressed by financial historians. Despite its

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limited scope, I learned a great deal from reading *The Rise of Mutual Funds.* While he broadly categorizes his book as a history, the author's focus on the activities of the trade association representing the industry and the evolution of federal government regulation of the sector is actually narrow. Written in prose that is not excessively technical, the text is accessible to business historians, irrespective of their specialties.

The book is also an exception to the standing rule that participants are typically unable to write objective histories of their own bailiwicks. Fink is the quintessential insider, having spent over three decades as a lobbyist in Washington for the mutual-fund industry. His years as an eyewitness gave him a privileged vantage point, since he was present at the formulation of many pertinent rules and regulations. He has chosen an unusual format: the book is simultaneously a narrative history of the mutual funds, a partial autobiography, and a critique of the regulatory process. The result of this eclectic approach is surprisingly satisfactory, as Fink manages to present information that will be useful to academic researchers, lawmakers, and government regulators.

Mutual funds have mushroomed over the last seventy-five years. Initially, the sector grew slowly and was almost derailed by the Great Depression. However, it survived, regained its footing, and literally exploded in the 1990s. By 2005, over one-third of U.S. households had investments in mutual funds of one type or another, making them, according to Fink, the largest form of investment. These financial instruments fall into two common categories: closed-end funds and open-ended funds. Closed-end types date back to the nineteenth century. Like stocks and bonds, these early funds traded on the securities exchanges. The more recent innovation, open-ended mutual funds, made their debut in the mid-1920s. These funds continually issued new shares, and, most critically, customers could, upon request, redeem their outstanding shares at the current net asset valuation. As a result, the shares of open-ended funds never rose to premium prices or fell to discount prices.

Initially, mutual-fund companies invested almost exclusively in common stocks. From the end of World War II through the 1960s, the market prices of equities rose at a steady pace, and the performance of mutual funds mirrored that upward trend. In the 1970s, however, the equity markets stalled, and mutual funds found themselves treading water. In the 1980s, the emergence of money-market mutual funds, which permitted small savers to pool their assets and earn the same high interest rates as wealthy households, gave a tremendous boost to the entire sector. In the ensuing decades, mutual-fund companies offered a wide range of funds with differing investment objectives. A second huge boost came with the enactment of legislation allowing individuals to invest in a wide range of retirement programs, including 401(k)s and individual retirement accounts (IRAs). Mutual funds were

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normally the first choice of investors seeking to bolster their retirement portfolios.

As a member of a lobbying firm, and eventually as president of the National Association of Investment Companies, Fink actively participated in the formulation of federal legislation involving mutual funds over most of the last thirty years. In detailing the highlights of many congressional battles linked to financial regulation, he carefully outlines the positions of the groups favoring or opposing various legislative initiatives. When offering his own views on an outcome, he switches to the first-person pronoun, thereby enabling the reader to distinguish historical narrative from personal opinion. In comparison with similar "tell-all" books by Washington insiders, Fink is less forthcoming about the identities of members of Congress who blocked various financial-reform movements.

Missing from this study are accounts of the activities of the mutual companies that offered their shares to the general public. We learn almost nothing about the internal operations or business strategies of important issuers, such as American Century and Vanguard, or about the thousands of competitive firms that operate within this expanding financial sphere. I am aware of only one book that is devoted exclusively to the leading firms in this field, namely, *Fidelity's World,* by Diana Henriques, published in 1995.

Finally, Fink must be commended for his focused, wide-ranging bibliography. While he may have begun this project as an amateur historian, he deserves recognition for his accomplishment in training himself as a scholar and for his serious effort to familiarize himself with the existing secondary literature. Through his efforts, he has produced an informative text on the expansion of the mutual-fund sector, particularly its regulatory environment.

Edwin J. Perkins is emeritus professor of history at the University of Southern California. He is the author of numerous articles and books on U.S. financial history.

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Who Owns the Sky? The Struggle to Control Airspace from the Wright Brothers On. *By Stuart Banner.* Cambridge: Harvard University Press, 2008. 353 pp. Illustrations, notes, index. Cloth, $29.95. ISBN: 978-0-674-03082-4.

Reviewed by Tom D. Crouch

Stuart Banner, a professor of law at the University of California, Los Angeles, has written a fascinating and useful case study of the relation

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