Introduction

In the wake of World War II, the United States sought to impose its antitrust tradition on the rest of the world. Before the war, businesses operating across national borders had lived with a basic contradiction: the laws of most industrial countries tolerated and even encouraged cartels, whereas the statutes of the United States, the world's largest economy, banned them. Most cartels finessed the issue, making arrangements with U.S. companies that ventured abroad, agreements that exploited loopholes in the American antitrust statutes. Still, the potential for conflict always existed.

Antitrust, which Supreme Court Justice Abe Fortas once described as a "social religion," had a hallowed place in American economic and political life.[1] The antitrust laws were a reaction to the growth of big business in the late nineteenth century, a development that most Americans viewed ambiguously. They respected the efficiency of these organizations but feared their economic and political power. The antitrust laws, as they evolved in the early twentieth century, sought to preserve the advantages of big business while eliminating the abuses. They banned collusion among competing firms—cartels—and other "unfair" business tactics that large firms used to gouge consumers and destroy competitors. But these laws imposed no limits on the growth of companies that exploited economies of scale and scope to deliver products more efficiently than rivals.[2]

Business developed differently in other industrial countries. European firms often cooperated in cartels that set prices and allocated markets, and governments frequently supported these efforts. In time, many cartels reached across national borders. By setting minimum prices, they protected small firms against larger competitors, and by stabilizing markets, they kept the overall economy stable. More broadly, their supporters contended that cartels, by replacing "every man for himself" competition with cooperation for the common good, raised economic life to a higher moral plane.

Until World War II, Americans paid relatively little attention to foreign cartels. The conflict, however, focused attention on conditions abroad even as it catapulted the United States into a position of unprecedented power. A relatively small group associated with the Antitrust Division of the Justice Department took advantage of the country's new interest in foreign affairs and its enhanced position in the world to attack foreign cartels. This group had an almost mystical faith in the virtues of antitrust and often attributed Europe's political failures—the world wars, Nazism—to the continent's lack of such a tradition. Self-interest played a part as well. The war had marginalized antitrust enforcement, and the successful pursuit of antitrust abroad offered its advocates a way back to power in Washington.

The attack on cartels proceeded without reference to conditions abroad. American firms enjoyed a huge domestic market, a stable currency, and a political system conditioned by democracy and the rule of law. They could afford to compete, and by competing became more efficient. The situation in most other industrial countries was quite different. Domestic markets were small, currencies unstable, exports limited by a host of trade restrictions, and the political future uncertain. Firms, worried about survival, had good reason to cling together in cartels.

The successful export of antitrust depended on economic developments abroad. After 1945, the nations of western Europe integrated their markets, stabilized their currencies, and built or reinforced democratic governments. In this context, companies could afford the dangers of competition, and most European governments heeded urging from Washington and enacted antitrust statutes roughly comparable to American law. Yet in the absence of favorable conditions—for example in Japan—antitrust foundered.

The story of the export of antitrust still resonates. As a brief filed in the spring of 2000 in the Microsoft antitrust case noted, "International prohibitions against anti-competitive commercial activity have become so prevalent that they must be deemed to have risen to the level of the laws of nations."[3] Today antitrust law shapes the policy of almost every large company, no matter where headquartered. In the first half of 2000, authorities in Europe blocked the mergers of MCI/WorldCom and Sprint, American telecommunication firms; General Electric and Honeywell, U.S. aerospace companies; and aluminum producers Alcan of Canada, Pechiney of France, and Alusuisse of Switzerland. American software producer Microsoft found itself the object not only of an antitrust suit by the U.S. government but also of investigations for monopolistic practices by other countries. This was not the result of impersonal economic or political forces but a consequence of the efforts of a relatively small group of Americans working in the 1940s and early 1950s. Yet this group's success ultimately depended on general economic and political conditions, conditions that in the twenty-first century still dictate the possibilities and limits of antitrust.