6 The New Order in Practice: The Cases of Oil and Steel

In the early 1950s, as the western nations achieved a measure of prosperity and stability, cartel policy too achieved a certain equilibrium. On one hand, radical decartelization had failed in Germany and Japan, whereas on the other court decisions in the United States had struck serious blows against international cartels. Germany and the European Coal and Steel Community had adopted measures strictly limiting cartels. The result was a sort of implicit compromise in the international sphere roughly comparable to that which had existed in the United States since the Progressive Era. Although monopoly was suspect and cartels largely forbidden, big business was acceptable as long as competition persisted, even if it involved only a handful of firms. In practice, of course, some cartels did exist when the participants could cite special circumstances or command substantial political support. The histories of the oil industry and of the European Coal and Steel Community demonstrate both the limits and the possibilities of the new system.

Looking the Other Way: Petroleum

The petroleum industry was arguably the most important of the postwar era, supplying the industrial democracies with a vital commodity. The leading oil companies were among the largest firms on earth and had operations in almost every non-Communist country. Yet the conditions under which the industry operated differed greatly from place to place, and this inconsistency, coupled with the central role of petroleum in the world economy, led the United States and other governments to overlook practices that they would not have tolerated elsewhere.

Cartels had played an important role in the oil industry between the world wars. In the immediate aftermath of World War I, most experts had projected a petroleum shortage, and the leading firms had concentrated on finding new supplies. The situation had encouraged IG Farben to develop hydrogenation, which led to its accords with Standard Oil of New Jersey.[1] By the late 1920s, however, output was increasing throughout the world, most notably in Texas and Oklahoma, where drillers made huge new discoveries. The shortage became a glut, and in the United States the price of oil went from $1.88 a barrel in 1926 to $.65 in 1931.[2]

The oil companies did what firms in other industries confronting overcapacity were doing: they organized a cartel. In 1928 the heads of the three largest oil companies—Standard Oil of New Jersey, Royal Dutch/Shell, and Anglo-Iranian Oil (British Petroleum)—met in Scotland, where they negotiated an agreement. The document, known as the "As Is" accord, stated that the glut of petroleum required that "economies must be effected, waste must be eliminated, and expensive duplication of facilities curtailed." The central clause of the agreement, however, required "the acceptance by the units of their present volume of business and their proportion of any future increase in consumption," although in deference to American antitrust law it noted that this rule did not apply to "the domestic market in the U.S.A. and imports into the U.S."[3] As one critic later noted, "Oil is a major commodity in international trade, [and] could hardly be subject to such a far-reaching stabilization scheme without inevitably affecting the imports and exports of the United States."[4] Yet Washington's relatively permissive attitude toward international cartels in the 1920s and 1930s made this clause sufficient to protect the signatories from prosecution.

The "As Is" agreement was a statement of principles, the implementation of which proved more difficult than the signatories anticipated. They had hoped to stabilize prices by regulating output, but the growing flood of oil from Texas and Oklahoma proved impossible to control. In most countries with large petroleum reserves, the government retained the sub-soil rights and so could grant oil companies the ownership of petroleum under huge tracts of land, which allowed firms to control entire fields. In the United States, however, each property owner had rights to the mineral wealth under his or her land. Because large pools of oil usually extended under the property of many individuals, each of whom was free to pump as much as possible from the common pool, this system created chaos as everyone extracted petroleum as fast as possible before their neighbors did. In such circumstances, restricting output was nearly impossible for private companies, no matter how powerful. Standard of New Jersey did create a Webb-Pomerene company involving seventeen U.S. producers to coordinate sales abroad, but it never worked well. The members rarely agreed on a common policy, and even when they did, they accounted for only 45 percent of U.S. petroleum exports.[5] Yet the "right of capture," as the extraction system was called, did more than disrupt market-control schemes—it led to the premature exhaustion of oil fields. Drillers counted on underground pressure to bring petroleum to the surface; the greater the number of wells, the faster pressure dissipated. In the long, run a few wells, carefully spaced, would produce more oil than many drilled helter-skelter.

In the early 1930s, the major oil firms changed their tactics, turning to marketing agreements to regulate prices.[6] In each important market they devised accords including all the major sellers. A "Draft Memorandum of Principles," finalized in 1932, set forth general rules for agreements, fixing quotas in line with the "As Is" formula and creating a system of fines and rebates to enforce them. A central secretariat, headquartered in London, oversaw the negotiation and operation of these accords.[7] By this time, the "As Is" group had expanded to include such important firms as Gulf Oil, Texaco, and Standard Oil of New York (Socony or Mobile), in addition to the initial three.[8] When war broke out in 1939, marketing agreements covered most of the world outside the United States.

In some cases, companies developed provisions for even closer cooperation. Anglo-Iranian and Royal Dutch/Shell merged their marketing organizations in Britain as well as east of Suez.[9] When Standard Oil of California (Socal or Chevron) discovered oil in Bahrain in the Persian Gulf, members of the "As Is" group, fearful that the newly discovered crude would disrupt marketing arrangements in the Far East, besieged Socal with merger offers. In the end, Socal combined its Persian Gulf operations with Texaco's East Asian marketing organization, already part of the "As Is" framework. Socony and Standard of New Jersey also merged their East Asian operations. Although intended to limit competition, these mergers often had other objects as well. Both Shell and Texaco sold more oil east of Suez than they produced there, requiring them to bring in the balance from the outside. It made sense for them to cooperate with Anglo-Iranian and Socal, both of which pumped more oil in the region than they could easily sell.[10]

Cooperation among the large oil companies also extended to production in several important instances. The Iraq Petroleum Company, organized in 1928 after years of unspeakably complex negotiations between companies and governments, involved Standard of New Jersey, Royal Dutch/Shell, Anglo-Iranian, Socony, and Compagnie Françoise des Pétroles of France. The venture not only controlled production in Iraq but also bound its members to act in concert anywhere else in the old Ottoman Empire, an area defined to include the rich but heretofore undeveloped oil fields of Saudi Arabia. In Venezuela, Standard of New Jersey, Royal Dutch/Shell, and Gulf controlled almost all output. They had no overall agreement comparable to the Iraq Petroleum Company's, but they often cooperated, particularly where more than one had rights in the same oil field. United action, the history of Standard of New Jersey explained, made it "possible to apply the growing knowledge of the nature and mechanics of oil reservoirs and the new production engineering to reduce costs and ensuring more efficient production." These companies also jointly owned several pipelines.[11] Though arrangements like those in Iraq and Venezuela no doubt made it easier for the large companies to control the oil market, as long as the United States remained the chief source of crude, they had limited impact.

The success of the international oil cartel depended at least in part on the outcome of efforts in the United States to control output, work centered in the state of Texas. In 1931, when oil was fetching as little as $.02 a barrel at the wellhead in some fields, the Texas legislature authorized the state's Railroad Commission to regulate the output of oil fields in the state to conserve oil and stabilize prices, a practice dubbed "prorationing."[12] As was usually the case with cartels, execution proved more difficult than conception. The Railroad Commission had no control over output in other states, and producers in Texas tended to cheat, selling "hot" (over-quota) oil outside the state. Order came only after 1935, when Congress passed the Connally Act, banning the shipment across state lines of oil produced contrary to state regulations. At the same time, most of the producing states signed the Interstate Compact to Conserve Oil and Gas, which coordinated the activities of the Texas Railroad Commission with like bodies in other states. The arrangement was imperfect because California and Illinois refused to take part. Yet as the history of Standard of New Jersey noted, "In place of the wasteful, erratic, high-cost industry that had prevailed in the United States since the beginning of oil production in Pennsylvania, most oil states had achieved a more stable and efficient production which promised the ultimate recovery of a far larger percentage of the oil in each reservoir than had been possible in earlier times."[13] They had also stabilized oil prices in the vicinity of $1 a barrel.

Taken together, these measures restored order to world oil markets, relieving the gross oversupply of petroleum. Nevertheless, the power of the oil cartel remained far from absolute. Outsiders, usually but not always Americans with oil from the Southwest, regularly challenged the cartel throughout the world. For example, although Standard of New Jersey, Royal Dutch/Shell, and Anglo-Iranian managed to stabilize their relative position in the British market (the world's largest after the United States), their combined share of sales fluctuated. The situation was not critical—Standard had 29 percent of the market in 1931 and still held 27 percent in 1938.[14] Yet Britain was among the best-organized markets. Elsewhere challengers caused more trouble.

Modern armies run on petroleum, and World War II not only absorbed all excess capacity but taxed producers to the utmost. The leading companies, all based in Allied countries, rose to the challenge, but officials in Washington nevertheless worried about long-term trends. The United States was drawing down old reserves faster than it was finding new ones. Unless the trend changed, the United States would in the foreseeable future become an importer of oil. Harold Ickes, the secretary of the interior, sought to provide against this. A veteran of Progressive Era reform who had led Interior since 1933, Ickes combined overweening self-righteousness with fierce ambition and great administrative talent. Unlike many New Dealers, he effectively made the transition from peace to war, taking responsibility for the Petroleum Administration, where he worked closely with oil executives—just the sort of people he had spent much of the 1930s denouncing.

Ickes fixed his attention on the vast oil fields of the Middle East, hoping to secure them for the United States. He first suggested that the federal government itself acquire part of the petroleum concession held by Socal and Texaco in Saudi Arabia, which had immense untapped reserves. In this Ickes was following the example of the British government, which owned a majority stake in Anglo-Iranian. Opposition from the oil companies, however, forced him to abandon the plan. They did not want competition from Washington and feared that the investment might be the first step toward nationalization. Another plan for the federal government to finance a key

Middle East pipeline for Socal and Texaco in exchange for a guaranteed supply of oil failed as well, for the same reason. The secretary concluded from these exasperating defeats that cooperation with oil companies was necessary for his plans.

Another wartime experience convinced Ickes that cooperation would be easier with the large firms than with the smaller ones. During the war he had found himself arrayed with the big oil companies in political campaigns in California and Illinois to get both states to adopt prorationing and join the Interstate Compact to Conserve Oil and Gas. The efforts failed, largely because of the opposition of small oil producers who opposed regulation of their business and fought under the banner of "free enterprise." In a public letter Ickes denounced the "vicious and mendacious campaign instigated [in California], and in the main carried on, by certain unscrupulous oil companies that were perfectly satisfied with a situation that permitted them to drain through their own ill-begotten wells oil that did not belong to them." He blamed the defeat of prorationing schemes on "men as selfish and unscrupulous as have ever been found in the oil business, notwithstanding that they adorned themselves with the halo of 'small independent' producers."[15] The big international companies at least shared Ickes's goals, even if they often balked at his tactics.

Ickes also reached out to the British government. The United Kingdom considered the Middle East its sphere of influence and looked askance at U.S. plans to expand its presence there. London had blocked the development of a concession in Kuwait held by Gulf Oil (an American firm) until 1933, when Gulf agreed to take Anglo-Iranian as an equal partner in the venture, and throughout the war Whitehall competed with American diplomats for the favor of Ibn Saud, the king of Saudi Arabia. Britain's wartime dependence on U.S. aid made London somewhat responsive to American desires, but any grand scheme for Middle Eastern oil would have to take its concerns into account.[16]

In the summer of 1944, the United States and Britain negotiated a treaty to govern the future of the oil industry. The document declared, "The two governments agree that the development of petroleum resources for international trade should be expanded in an orderly manner." To this end, "The two governments hereby agree to establish an International Petroleum Commission. . . . To prepare long-term estimates of world demand for petroleum. . . . To suggest the manner in which, over the long term, this estimated demand may best be satisfied by production equitably distributed among the various producing countries . . . [and] to recommend to both governments broad policies for adoption by operating companies."[17] The delighted Ickes, who had played a leading role in the talks, wrote to President Roosevelt, "If it [the agreement] succeeds it will have pointed a new and better road in international economic relationships, and will have established a most valuable pattern."[18]

The two sides disagreed on the exact nature of the accord. Lord Beaverbrook, who had led the British delegation, described it as a "monster cartel." The Americans denied his assertion, claiming, "The Petroleum Agreement under discussion has been formulated on a basis altogether different from anything associated with the expression 'cartel.' . . . This was an intergovernmental commodity agreement predicated upon certain broad principles of orderly development and sound engineering practices."[19] American officials may have deceived themselves, but they convinced few others—"orderly development" and "commodity agreement" were well-worn euphemisms for cartels.

In the United States, the Petroleum Agreement created a political furor. Despite the attempts at camouflage, it obviously created an organization to allocate markets—in short an international cartel—something regularly denounced by leading officials including Ickes himself. Most of the backers of the oil accord came from the national security and mobilization establishments and simply did not understand how touchy the issue was.[20] A thoroughly political creature, Ickes should have known better, but he allowed his enthusiasm for the agreement and his sense of his own integrity to distract him from how the public might perceive the treaty.

Objections came from both right and left. The prospect of a state-sponsored cartel involving the leading oil companies horrified most reformers, whereas the intervention of the government in one of the country's largest industries appalled conservatives. One liberal journalist reported, "Informed Washington sources see [in] the International Oil Agreement, just concluded here, the first wedge of an attack designed to break down the Justice Department's power to attack international cartels through the Sherman Act." Noting that "the State Department did not clear the international agreement with the Department of Justice," he continued, "if such a cartel agreement receives Senate approval, the way might well be opened to the chemical, rubber, steel, tanning material and other industrial colossi to dominate markets, kite prices, cut down production and otherwise exercise extreme monopoly control as they did before the war."[21] Although *The Nation* reserved judgment and expressed hope that the agreement would encourage greater production at lower prices, it pointed out that the accord "can also be read as providing a government front for the Anglo-American [petroleum] cartel whose representatives took part in the discussions leading to its adoption."[22]

The oil industry itself provided the most formidable opposition. Howard Pew, one of the nation's leading independent oil men, said of the Petroleum Agreement, "This is a deliberate attempt to place the American petroleum industry under the bureaucratic control of the Federal Government. . . . The effectuation of its objectives can be achieved only through embroiling our domestic petroleum industry in a vicious cartel system." Pew repeated the sentiment common among businessmen: "Cartels under the aegis of government are *far more reprehensible* and *detrimental* to the public welfare than cartels entered into by individual companies," because the government had greater power to enforce its will than private entities. The oil man ended by asking, "What is the difference between an economic system where the government dominates an industry, such as is comprehended in this agreement, and the Nazi system of National Socialism against which we are fighting in a war in Germany?"[23] Pew undoubted reflected the views of most independent producers, who feared that the agreement would subordinate them either to the federal government, to the big oil companies, or to both.

The large international firms—Standard of New Jersey, Socony, Gulf, Texaco, and Socal—were more confident of their ability to bargain with governments on a basis of equality and so were less suspicious of the oil accord. Yet neither were they wildly enthusiastic. The agreement subjected them to a measure of regulation but, by way of compensation, created a government-sanctioned cartel that would reinforce what they had constructed under the "As Is" system. Still, the large firms were concerned that the accord did not explicitly exempt companies following the dictates of the International Petroleum Commission from the antitrust laws and feared that, unless it did, the Justice Department could indict them for executing its orders. This concern was not academic. In the late 1930s, the Justice Department had sued the industry for measures designed to stabilize prices, measures that oil men believed Ickes himself had endorsed.[24] Washington, however, hesitated to include such a provision in the accord because doing so would effectively concede that it did indeed create a cartel. The omission, however, led the primary international firms to remain neutral on the agreement. Yet even had the large companies intervened, they had less political influence in the United States than the far more numerous independent producers.

In January 1945, realizing that Senate approval was impossible, the administration withdrew the Petroleum Agreement from consideration. Despite attempts by Ickes in 1945 and 1946 to revive it, the accord was dead. Many factors accounted for its failure, but the most important was the fiercely independent attitude of southwestern oil men. Although willing to follow the dictates of the Texas Railroad Commission, over which they had substantial influence, they refused to accept outside control, and they had considerable political resources.

Yet American hostility to international cartels did not, in the end, affect the oil industry much. Changes in the business in the aftermath of World War II forced the petroleum cartel to reorganize itself, but Washington acquiesced to and even condoned these measures. It apparently accepted Ickes's belief that oil was too important to leave to the free market.

The end of the war found the oil industry in a strong position. The demand for petroleum was robust and seemed certain to grow. Oil supplies were plentiful, but the glut of the prewar era had disappeared. Output was under control. Production in Venezuela, Iran, Iraq, and Indonesia remained in the care of the major oil companies, whereas the Texas Railroad Commission and its sisters in other states regulated American output. The war had disrupted the "As Is" framework, but the machinery of cooperation continued to operate in many individual markets.

The only serious threat to the industry's prosperity came from the Arabian peninsula. There a joint venture between Anglo-Iranian and Gulf was developing substantial new oil fields in Kuwait while Texaco and Socal were opening up even larger sources of supply in Saudi Arabia. These operations would soon dump huge amounts of petroleum on world markets. The firms producing in Kuwait and Saudi Arabia had belonged to the "As Is" cartel, but if they wanted to dispose of their new crude they would have to challenge the existing division of markets.

By acting in concert, the leading oil companies neutralized this threat, absorbing Kuwaiti and Saudi output without disrupting world markets. Standard of New Jersey and Socony bought their way into the Saudi Arabian concession, known as the Arab-American Oil Company (Aramco), purchasing 30 percent and 10 percent of it, respectively.[25] The two companies then disposed of much of the Saudi crude through their extensive marketing organizations, at the same time using their authority within Aramco to make sure that it charged the same prices for oil as other producers.[26] Another device, long-term supply contracts, guaranteed that Kuwaiti crude did not upset petroleum markets. In 1946, Standard of New Jersey agreed to purchase 110,000 barrels of oil a day for the next twenty years from Anglo-Iranian's Kuwaiti operations; Royal Dutch/Shell signed a twenty-two year accord with Gulf for 150,000 barrels per day from Kuwait.[27] These contracts diverted much of the emirate's output into existing marketing channels. Socal, Texaco, Gulf, and Anglo-Iranian acquiesced to these arrangements because the cost of building their own marketing facilities and challenging Standard, Royal Dutch/Shell, and Socony would have been prohibitive. The development of the new oil fields in Arabia, an area with almost nothing in the way of modern infrastructure, had already absorbed a lot of capital and continued to demand heavy investment. Cooperation offered the most secure road to profit.

These arrangements resurrected the international oil cartel, albeit in a new guise. Instead of using its hold on marketing to regulate prices, as had been the case before 1939, the cartel now relied on its control of production. In 1952, the Federal Trade Commission estimated that just seven companies—the famous "seven sisters": Anglo-Iranian, Royal Dutch/Shell, Standard of New Jersey, Socony, Gulf, Texaco, and Socal—controlled 88 percent of the oil reserves outside the United States and the Soviet Union. As the FTC noted, "Each of these companies has pyramids of subsidiary and affiliated companies in which ownership is shared with one or more of the other large companies. Such a maze of joint ownership obviously provides opportunity, and even necessity, for joint action." These arrangements brought "the seven international oil companies, controlling practically all the Middle East oil resources, together in a mutual community of interests."[28] Texas remained a major source of petroleum, but production there was under the control of the Railroad Commission, which had as strong an interest in stable prices as the international companies. Besides, the United States increasingly consumed its oil at home. Moreover, production costs in the Middle East were lower than in the American Southwest, giving the seven sisters a great advantage over U.S.-based rivals in international markets.

From a legal point of view, these arrangements had a great advantage over the "As Is" system. Whereas the latter involved explicit market-sharing agreements, the new order operated more subtly. It provided for constant consultation. If Texaco wanted to take more oil out of Saudi Arabia, it needed the approval of its Aramco partners, which in turn had to consider the impact of such a decision on their operations in Iraq, Venezuela, and elsewhere, where they had other partners with which they had to consult. No major change could occur without the approval of all the seven sisters. Yet there was no central accord or secretariat, as had existed in the "As Is" system, to offer an easy target for antitrust prosecution.

Nevertheless, in 1952, the Justice Department decided to challenge the petroleum cartel. The Antitrust Division had learned of the "As Is" agreements during its 1942 investigation of the ties between Standard Oil and IG Farben, and as part of the consent agreement terminating those arrangements Standard had promised to leave the "As Is." After the war, the division had briefly considered prosecuting the major oil companies, but it abandoned the plan because the assistant attorney general, Graham Morrison, considered the evidence inconclusive and believed that, as a regulated industry, petroleum had a special status.[29] Instead, the initiative came from the Federal Trade Commission, which as part of its study of international cartels prepared an extensive report on the operations of the oil industry.[30] The document appeared in 1952, and although the government had initially classified it to keep it confidential, Congress soon forced the Truman administration to publish the report. The Justice Department promptly concluded that the FTC had provided ample grounds for an antitrust suit.[31] The links among the seven sisters obviously limited competition, and American courts had proved willing in the *Timken* and *ICI* cases to break up cooperative ventures abroad.[32] The Antitrust Division planned a criminal suit against all seven major international oil companies.

This prospect horrified the national security establishment. As a joint report by the State and Defense Departments noted, "American and British oil companies . . . play a vital role in supplying one of the free world's most essential commodities. The maintenance of, and avoiding harmful interference with, an activity so crucial to the well-being and security of the United States and the rest of the free world must be a major objective of United States government policy." The State and Defense Departments were particularly concerned by the Justice Department's desire to pursue the case in the criminal courts rather than the civil ones. This would, they believed, create an aura of guilt that "harms the prestige of the [oil] companies in other countries, and can very well lead to an adverse effect upon the interests of the United States."[33]

These concerns were not speculative. The British and Dutch governments were furious about the impending actions against their companies.

London, which owned 51 percent of Anglo-Iranian, sharply limited the information that the firm could provide U.S. courts; the Dutch banned Royal Dutch from providing any documents at all.[34] The chief threat, however, involved the oil-producing countries. Many were politically unstable, with populations that resented the power that the large oil companies wielded in their nations. Iranians had vented these passions in 1951, when a nationalist regime had seized the country's oil fields, heretofore the property of Anglo-Iranian.[35] The British firm had responded by removing its personnel from Iran, which crippled production, and by organizing a boycott against Iranian crude. The other major firms went along with the boycott; they had enough oil on hand to meet demand, did not want to encourage nationalization, and knew that Anglo-Iranian would to sue anyone who bought oil from Iran for receiving stolen property.[36] By 1952, Iran was in economic chaos, with its central industry, petroleum, at a standstill. The U.S. government was trying to mediate a solution to the crisis and sought to avoid exacerbating tensions or encouraging similar events elsewhere.

Such considerations did not sway the Justice Department. It argued: "The Supreme Court had repeatedly rejected proof of public benefit and business necessity as justification for cartel operations and has emphasized the primacy of economic freedom as the highest value for our economy. . . . Our concern for an adequate future supply of petroleum is a concern ultimately for the preservation of freedom for ourselves and the free world. Free private enterprise can be preserved only by safeguarding it from excess of power, governmental and private. . . . The world petroleum cartel is authoritarian, dominating power over a great and vital world industry, in private hands. National security considerations dictate that the most expeditious method be employed to uncover the cartel's acts and effects and put an end to them."[37]

President Truman knew what he had to do. Although no friend of the oil companies—he had chaired the 1942 hearings that had pilloried Standard of New Jersey for its ties with IG Farben—he had to consider the precarious international situation. The nation was at war in Korea, an oil dispute had thrown Iran into confusion, and the Cold War was even more tense than usual. The secretaries of state and defense, as well as the joint chiefs of staff, all vigorously opposed prosecuting the petroleum cartel.[38] Washington could not afford the risks involved in restructuring the world oil industry. In January 1953, just before leaving the White House, Truman ordered the Antitrust Division to suspend the criminal investigation of the seven sisters.

The Justice Department did file a civil suit against the five American members of the cartel in the spring of 1953. Yet within two years, the administration of President Dwight D. Eisenhower had effectively neutralized the prosecution. In 1953, the Central Intelligence Agency engineered a coup in Iran that returned the pro-American Shah to power. The new regime needed oil revenue to survive. The economy remained severely depressed and only the renewed flow of crude could revive it. Unfortunately, Anglo-Iranian remained wildly unpopular in Iran; no government intent on survival could make a deal with the British firm, even on the best of terms. Washington concluded that only a consortium of leading producers, with their extensive marketing networks, could move Iranian oil fast enough to restore economic and political stability while avoiding a political backlash.

The prospect did not excite the American firms. As one of Standard of New Jersey's executives said, "We had a concession [Aramco] that was able to supply all of these requirements [for oil], and we knew when we went into the [Iranian] consortium that as a business deal, a straight business deal, it was for the birds. . . . We had to spend money for capacity and reserves we already had. . . . The point was that we went in there . . . to save the situation, and it was in the interests of the United States and Britain at the time."[39] The Justice Department's suit against the leading American oil companies for participating in similar ventures elsewhere also discouraged them from joining the Iranian syndicate. To get the U.S. firms to agree, President Eisenhower ordered the Justice Department to drop those parts of its case dealing with production agreements in the Middle East.[40] The American companies subsequently joined the Iranian consortium, which quickly restored production and, for the time being, stabilized Iran.[41]

Eisenhower's decision effectively crippled the oil case, but the Justice Department kept it alive for fourteen years. Although the government forced several companies to sign consent decrees that prohibited market-sharing accords, as a Justice Department official put it, "The decrees provided expressly that the companies are not prohibited . . . from participating in joint production operations, joint refining operations, joint pipeline operations or joint storage operations in foreign nations."[42] Such agreements dismantled some of the cartel accords that had survived from the 1930s, but they did not affect production arrangements, which were the nexus of the cartel's power. In 1968, Justice finally bowed to reality and suspended the prosecution.

The international oil cartel worked well. A Socony official spoke the truth when he said in the 1970s, "The performance in the post World War II era by the international petroleum industry of its function of meeting the Free World's petroleum needs with abundant supplies at stable and moderate prices must be judged excellent by any reasonable standard."[43] It was the collapse of this regime in the late 1960s and early 1970s, the victim of exploding demand and militant governments in producing countries, that sparked the oil shocks and the energy crisis. Few lamented the passing of the oil cartel, but none of the mechanisms subsequently devised to govern the industry have worked as well.

The history of the oil industry after 1945 demonstrates the complexity of the cartel issue. The production arrangements among the seven sisters probably did violate the antitrust laws, at least as interpreted by the American courts in the 1940s and 1950s. Yet it is hard to blame the Truman and Eisenhower administrations for ignoring these violations. The joint concessions in the Middle East and elsewhere that upset the sensibilities of trustbusters reflected political realities. Those in Iraq, Kuwait, and Iran emerged from tortuous international negotiations, and all the concessions reflected careful attempts to balance the interests of companies and producing nations. The Justice Department had nothing with which to replace these arrangements. Most of the oil pumped in Venezuela, Iran, Iraq, Kuwait, and Saudi Arabia went not to the United States but to Europe and Japan. Washington had no moral right to reorganize this trade without reference to the desires of all these nations. In addition to political questions, the scale of the tasks confronting oil companies operating in Third World countries often justified cooperation. These nations usually had very little in the way of modern infrastructure. The seven sisters not only had to drill wells and build pipelines, expensive operations in and of themselves, but had to construct ports, roads, and towns and to train the workforce. Cooperation allowed companies to spread these huge costs among themselves, making manageable tasks that might daunt a single firm. Nor did the United States itself tolerate a free market in oil. The Texas Railroad Commission and bodies like it regulated U.S. output with the sanction of the federal government, and Washington could not in good conscience enforce abroad something it did not accept at home.

Harold Ickes's Anglo-American Petroleum Agreement might have offered a way around these issues. It could have provided a framework for useful cooperation among firms while providing for government oversight to prevent abuses. Yet the American government's vocal stance against cartels, coupled with the popular prejudice against these organizations and the general distrust between government and business, precluded this option. Without such an organization, Washington either had to acquiesce to whatever arrangements the companies made or had to tear these apart and hope that the pieces fell into an acceptable pattern. Considering the importance of the oil industry, it is no surprise that the American government chose the first option.

Antitrust Abroad: Coal and Steel

Whereas the history of the oil industry demonstrated the limits of antitrust abroad, that of the European Coal and Steel Community suggested the possibilities. Before the war, cartels led by European producers had dominated world trade in steel. After the war, the industry, the largest in the developed countries, abandoned cartels. The change owed chiefly to the activities of the European Coal and Steel Community, which enjoyed strong support from Washington. The leader of the ECSC, Jean Monnet, believed that cartels had retarded the growth of Europe's steel industry and that progress required their elimination.

In dismantling cartels, Monnet and the ECSC had a difficult task. As one U.S. official noted, "The men who are responsible for the administration of the steel companies in these six countries [the ECSC] still have a low order of enthusiasm for competition, and are privately doing what they can to maintain cartel practices."[44] By the early 1950s, European steel producers had organized a cartel governing exports to non-ECSC countries, although this agreement only set prices, eschewing the sort of complex marketing controls developed during the 1930s. According to U.S. officials, "The High Authority [of the ECSC] does not like the cartel and in its public announcements has not hidden its disapproval. However, it can . . . take steps against the agreement only when this becomes justified under provisions of the [ECSC] treaty," which did not cover exports.[45] Yet U.S. officials feared that "export controls, thus operated, necessarily establish a high degree of control over domestic prices, without there being any overt acts of agreement."[46]

Nor was the export cartel the only problem. Under the ECSC, many German steel firms regained control of coal mines that they had lost during the Allied reorganization. More worrisome, the German coal cartel still operated. As American officials noted, "The continued existence of a centralized sales organization for Ruhr coal [the DKLB] is wholly inconsistent with the objectives of both the deconcentration program . . . and the basic concept of the Schuman plan [the ECSC]."[47] Addressing these objections, the Germans abolished the DKLB in 1953, replacing it with six sales organizations. Nevertheless, a central agency, the Gemeinschaftsorganisation, or Georg for short, continued to coordinate the activities of the six marketers. The new organization seemed only a little less powerful than the DKLB, and most U.S. officials believed that it ran counter to the ECSC agreement.[48] Finally, the ECSC allowed many of the steel companies created by the Allies in Germany to merge, permitting the resurrection of such venerable firms as Krupp and Thyssen. Considering the eagerness of the High Authority to maximize the considerable economies of scale inherent in steel production, this outcome was implicit in the ECSC accord. Nevertheless, the High Authority did not allow Germany's huge United Steelworks (Vereinigte Stahlwerke) to reappear. Thyssen, the largest firm in Europe, controlled only about 10 percent of the ECSC market, far less than U.S. Steel did in America.[49] In this area, at least, limits did exist.

Despite concerns, Washington strongly supported the Coal and Steel Community. As one State Department memo noted, "The H[igh] A[uthority of the ECSC] is the only agency in Europe armed with effective anti-cartel legislation."[50] "It was not expected," another source explained, "that the establishment of the [E]CSC would quickly lead to the abolition of all such arrangements [cartels] in view of the complexity of the problem; the long history of such arrangements in Europe; the limits on the High Authority's powers for dealing with restrictive arrangements outside the community; the pioneering character in Europe of the High Authority's efforts; and the long and careful preparation required in undertaking antitrust action."[51]

The U.S. contribution mainly involved taking, as one memo noted, "every opportunity to encourage the High Authority to use its powers firmly and expeditiously to develop a competitive common market for coal and steel."[52] Americans nagged the leaders of the High Authority incessantly about cartels.[53] Washington also conditioned a $100 million loan to the ECSC to finance industrial modernization on the money being used "in a manner consistent with the operations of a common market free from national barriers and private obstruction to competition."[54]

By the mid-1950s, the ECSC had scored important victories. It had persuaded the German government to break Georg into three separate organizations—perhaps not an ideal solution, but one that at least upheld the principle of competition and the High Authority's power.[55] It had also forced several smaller cartel organizations to disband or substantially reorganize themselves.[56] On the whole, Washington "concluded that the Coal and Steel Community is exercising the maximum influence practicable against restrictive practices in the light of the circumstances and the difficulties which confront it."[57]

What differentiated the oil industry from coal and steel? In the United States, the rule of capture distorted oil drilling so thoroughly as to justify regulation, but the laws of Third World petroleum producers operated differently, allowing companies to control entire fields and so avoid the problems they encountered in the United States. The key difference seems to have lain in the political realm. The governments of western Europe were stable democracies committed to open trade. Political risk was minimal. In contrast, the governments of most Third World oil producers were unstable autocracies in which the petroleum companies had to worry constantly about the security of their investments. The profits were large, but as Anglo-Iranian discovered in 1951, they were not secure. Even with a cartel, the risks of operating were quite high.

American attitudes toward the ECSC reflected a new approach to the cartel issue. During the late 1940s and the 1950s, the United States sought to underwrite democracy abroad with prosperity. The program had many facets—economic aid, reduction of trade barriers, currency stabilization—one of which was the elimination of cartels. Most U.S. officials believed that these organizations imposed rigidities that limited efficiency and thereby depressed living standards, and they urged other nations to emulate U.S. antitrust laws and ban cartels. Washington even included restrictions on international cartels among the few conditions it attached to Marshall Plan aid.[58] Antitrust constituted an important part of what historian Charles Maier has dubbed "the gospel of productivity," which conditioned U.S. economic policy in Europe.[59]

Three factors encouraged other governments to heed Washington's advice. First, American aid gave the United States a lot of leverage. At the same time this aid, particularly the Marshall Plan, convinced most of America's good intentions. Faced with generous infusions of money, recipients concluded that Washington was genuinely concerned about their economic well-being and that recommendations to limit or ban cartels were not subtle ploys to improve the competitive position of U.S. firms but well-meant advice. Finally, the U.S. economy was at this time undoubtedly the world's strongest, which inclined other nations to imitate its practices.

American officials believed that prosperity would further weaken cartels. One noted, "The only long range solution [to the cartel problem] will be found in healthy conditions of free and expanding economies."[60] This would create a sort of virtuous cycle, with prosperity weakening cartels and the decline of cartels reinforcing prosperity. Up to a point, events actually developed in this way. As the European economy improved and exports increased, continental steel makers were able to import cheap American coal; inexpensive oil from the Middle East replaced coal for other uses. The Ruhr's place in the European economy sharply declined, and by the 1960s coal was a "sick" industry, dependent in many cases on government subsidies. Although bad for coal miners, access to cheap sources of energy was a major factor in Europe's postwar prosperity. Of course, the international oil cartel provided much of this inexpensive fuel, but its success owed to effective competition against coal producers.

The combination of U.S. encouragement and the dazzling example of American prosperity led government after government to restrict cartels. In a 1965 survey, Corwin Edwards noted that in the previous twenty years, Sweden, Argentina, Britain, Denmark, Austria, France, Ireland, Norway, South Africa, the Netherlands, Finland, New Zealand, Israel, Colombia, Belgium, Brazil, Spain, Switzerland, and Australia had enacted measures directed against cartels. For the most part, these did not ban cartels outright but attacked perceived abuses: price fixing, market allocation, and the like. Nevertheless, they significantly impaired cartel operations.[61] For instance, Britain enacted a measure in 1956 that, although not categorically banning cartels, did force most of them to disband.[62] Perhaps most important of all, the 1957 agreement creating the European Community extended the ECSC's restrictions on cartels in the coal and steel industries to all of western Europe's businesses. In the 1981 update of his 1958 study, *Antitrust and American Business Abroad*, Kingman Brewster wrote, "America no longer has a monopoly on antitrust. Virtually all developed countries and many developing ones now have competition laws of their own, and many of these laws are being enforced with increasing diligence and sophistication."[63]

Americans played supporting rather than leading roles in these events. Governments abroad adopted and implemented suggestions from Washington as they saw fit. Nevertheless, the U.S. contribution was critical. Its efforts to restrict international cartels helped raise the issue in the first place. Before 1940, cartels were deeply entrenched in almost every industrial country. Without American encouragement and example, officials abroad probably would not even have thought to restrict cartels, and business, left to its own devices, no doubt would have continued to rely on them.