Conclusions

American antitrust policy abroad, despite its inconsistencies, developed within a broad economic and political context that gave it a certain coherence and that explains both its successes and failures. At the same time, the evolution of antitrust policy shaped this context, reinforcing certain tendencies and retarding others.

Washington's drive against international cartels coincided with the transformation of the United States from an inward-looking nation into the world's leading power. In the 1930s, most Americans sought to isolate themselves from troubles abroad. The Roosevelt administration's much-heralded "good neighbor" policy eschewed direct intervention in Latin America—long a staple of U.S. foreign policy—while the country prepared to grant independence to the Philippines, its chief possession in Asia. Washington had largely abandoned efforts to revive the international economy. Most important, Americans staunchly opposed involvement in the brewing war in Europe. The next twenty years saw an extraordinary change. By the 1950s, the United States was deeply involved in the affairs of Europe, East Asia, Latin America, and the Middle East, and it was maintaining huge military, diplomatic, and intelligence establishments to carry out its foreign policy. World War II and the Cold War explained the new state of affairs. The former taught Americans that events abroad could significantly affect them and even threaten the existence of the republic. The latter convinced them that the world remained a dangerous place in spite of the defeat of the Axis powers.

Cartel policy roughly mirrored these developments. In the 1930s, Americans showed little interest in how other countries managed their economic affairs. Although most disapproved of cartels at home (at least in principle), foreign cartels were not their problem. But the world war convinced many Americans that economic developments abroad could affect them. In particular, a substantial group that included many government officials saw the collapse of the world economy in the early 1930s, the Great Depression, as the key event propelling the Nazis to power in Germany and the militarists to office in Japan and, therefore, as the chief cause of the war. They blamed the Depression, in large part, on the industrial countries' ill-considered trade and monetary policies and advocated the reduction of trade barriers and the stabilization of currencies—liberalization—as the best way to avoid repeating these disasters. By the end of the war, Washington had formally embraced this program. As the United States assumed responsibility for the world economy, however, it encountered an uncomfortable contradiction. American law banned cartels, whereas most other countries allowed and even encouraged them. Still, a collision was not inevitable. In the midst of wars, both hot and cold, the subject might well have escaped notice. International cartels had proved adept at managing relations with American producers in the past, and left to their own devices they might well have continued to do so.

Thurman Arnold and his followers made the difference. With a few important exceptions, antitrust did not form a central part of the New Deal until the late 1930s. Even then interest did not guarantee action, as the history of the Temporary National Economic Committee demonstrated. But Arnold, after taking over the Antitrust Division of the Justice Department in 1938, expanded and energized it, giving the bureau a clear mission: to defend and encourage competition. Aggressive prosecutions forced business to pay attention. For perhaps the first time in U.S. history, the effort devoted to enforcing the antitrust laws matched the rhetorical and ideological importance attached to them. Despite some setbacks, these changes endured into the postwar era.

The outbreak of war in Europe in 1939 turned the attention of Arnold and his staff abroad. The crisis itself generated interest in foreign affairs, but self-interest played a part as well. The growing threat of war led the United States to mobilize, which created pressure for a relaxation of antitrust prosecutions. Suits distracted corporate executives from the vital task of filling military contracts, and just as important they irritated businessmen, whose cooperation Washington needed. In response to these pressures, Arnold latched onto international cartels, using them to relate the activities of his bureau to mobilization. He argued that cartels, which often had ties to German companies, restricted American output and that by attacking them, the Antitrust Division contributed to military readiness. The existence of these organizations also demonstrated that the business community was not entirely trustworthy, casting doubt on the government's rapprochement with industry, of which Arnold disapproved. Between 1940 and 1942, Thurman Arnold and his lieutenants relentlessly pursued international cartels, not only investigating and prosecuting them but also conducting a public-relations campaign against them. The result was a series of exposés that culminated in the spectacular allegations, aired in 1942, that an international cartel involving Standard Oil had blocked the development in the United States of desperately needed synthetic rubber. Although in this instance Arnold's charges were dubious, the case defined the cartel issue for the rest of the war, casting these organizations in a sinister light.

Despite this success, the drive against cartels stalled during the war. President Roosevelt sought the cooperation of business for mobilization, and in accordance with this policy he gave the military power to delay antitrust cases for the duration, which it did. When Arnold refused to go along with this policy, FDR removed him from office.

The setback proved temporary. Arnold's staff remained intact and devoted to the cause, and in 1944, President Roosevelt made it clear that antitrust prosecutions would resume with peace. The Antitrust Division prepared a brace of suits against international cartels that it would take up when the war ended. At the same time, the American government incorporated antitrust into its broad drive to liberalize world trade. Arnold's publicity campaign had made it impossible to ignore these organizations, and most officials, although not necessarily accepting Arnold's most lurid charges, agreed that cartels did indeed restrict commerce. In 1943, the State Department organized the Cartel Committee to examine the subject and make recommendations. This body drew members from other agencies both to avail itself of their expertise and to secure their support for its plans. Two of these transplants, Edward Mason of the OSS and Corwin Edwards of the Antitrust Division, dominated the committee, which recommended a hard line against cartels that State adopted as its own. Meanwhile, plans for the occupation of Germany and Japan entailed restrictions on cartels and on big business in general. The *Standard Oil* case had painted cartels as instruments of economic aggression, and Washington was determined to deprive the former Axis powers of such tools. More important, many Americans considered cartels and big business in both Germany and Japan as part of an authoritarian economic system that bred political dictatorship.

These initiatives yielded mixed results. The attempt to negotiated restrictions on cartels with other countries failed. The 1948 charter of the International Trade Organization contained such provisions, but Congress refused to ratify it, largely for reasons unrelated to cartels. The General Agreement on Trade and Tariffs, which subsequently became the vehicle for liberalization, did not address the subject. But the judicial offensive triumphed. By 1945, Roosevelt appointees inclined to apply the antitrust laws strictly dominated the bench. After the defeat of Germany and Japan, antitrust prosecutions resumed, and the Justice Department won a string of critical decisions against international cartels. The federal courts overturned earlier precedents that had allowed U.S. companies to participate in restrictive patent agreements, to negotiate agreements with foreign cartels through Webb-Pomerene companies, and to work with rivals abroad through jointly owned subsidiaries, thereby closing the chief "back doors" through which American firms had cooperated with foreign cartels. Even before 1940, the U.S. economy had been the world's largest, and the devastation of East Asia and Europe during the war magnified its supremacy. In most industries, it was extremely difficult to organize an effective international cartel without the participation of American firms. Moreover, the courts applied restrictions on international cartels to all foreign firms operating in the United States, no matter how small their presence, creating further problems for these organizations. Unable to negotiate with American firms and liable to prosecution if their members had any U.S. presence, most international cartels shut down.

In Germany and Japan, reformers scored important victories, even though they fell short of their most ambitious goals. Occupation authorities in both countries disbanded most cartels and broke up some of the largest companies. Yet the same reformers who led the drive against cartels also devised measures to liquidate Germany's and Japan's biggest firms en masse. Not only did they blame German and Japanese business for those countries' aggression but they were deeply suspicious of big business in general, and at least some hoped that radical deconcentration abroad might set precedents at home. These initiatives encountered sharp opposition not only from the Germans and Japanese, who feared that dismantling so many firms would permanently weaken their economies, but also from many Americans who recognized that this program went beyond anything ever done in the United States. Washington's decision in 1948 to concentrate occupation policy on reviving German and Japanese industry put an end to radical deconcentration.

By the 1950s, the American government was encouraging other countries to enact antitrust laws. Officials in the United States argued that such legislation promoted competition and, thereby, efficiency. This initiative enjoyed considerable success in Europe, in part because of Washington's pressure and in part because American prosperity encouraged other nations to emulate its practices. Yet success was not universal. In Japan, the government backed away from the antitrust measures imposed by the occupation. The petroleum industry recreated its prewar cartel with Washington's acquiescence.

A relatively small group of people initiated these reforms. Although the large majority of Americans agreed that cartels were bad (at least in principle), few demonstrated much interest in doing anything about them. The lack of interest reflected the number of issues competing for attention. The progress of World War II and, after 1945, deteriorating relations with the Soviet Union took precedence over cartels. On the domestic side, securing full employment and deciding the future of New Deal programs dominated the agenda. Moreover, antitrust was losing its ability to excite the body politic. It had always drawn its strength from hostility to big business, which was waning in the 1940s. The impressive performance of large companies during the war did much to rehabilitate their reputation. Even on the left, attention focused not so much on breaking up big firms as on strengthening "countervailing" forces like organized labor. As historian Richard Hofstadter wrote, after 1945, antitrust became "one of the faded passions of American reformers."[1] This is not to say that Americans became indifferent to the antitrust laws. Most considered them useful regulations, like the food safely statutes. Yet few based their political philosophy on antitrust.

Top officials intervened only sporadically in the cartel issue. President Roosevelt seems to have paid attention only in 1944, when the DuPont/ICI case required a decision and when he thought that attacking cartels might help his reelection campaign. President Truman's only major initiative set into motion the Ferguson Committee investigation, which led nowhere. Dean Acheson neglected the subject even when he was chairman of the Cartel Committee. The export of antitrust was chiefly the work of middlelevel officials operating on their own because responsibilities elsewhere occupied their superiors.

The anticartel program had a narrow bureaucratic base. Enthusiasm centered in the Antitrust Division of the Justice Department, which managed prosecutions, publicized the issue, and provided much of the staff for the decartelization agencies in occupied Germany and Japan. The career of the peripatetic Corwin Edwards demonstrates the reach of its personnel. He not only worked for the Antitrust Division for several years but also did much of the research for a Senate investigation of cartels, served with distinction on the State Department's Cartel Committee, and led the group that drafted Japan's deconcentration program. Outsiders did make contributions. Edward Mason of the OSS led the Cartel Committee effectively, and Senator Joseph O'Mahoney of Wyoming doggedly championed the cause in the upper house of Congress. Still, the number of government officials who devoted a major part of their time to the cartel issue probably numbered no more than a few hundred.

Politically, most of these men stood well to the left of center. They often drew political inspiration from Louis Brandeis and were on the whole deeply skeptical of big business. Large firms, many of them believed, were not only economically pernicious but a threat to political democracy. An unsigned memo, drafted in the Antitrust Division in 1942 and outlining a projected reorganization of business throughout the world, illuminates the scale of their ambitions: "Selling must largely be divorced from manufacture; manufacturing firms must become more narrowly specialized; needless industrial combination, whether vertical or horizontal, must be avoided; and the maximum permitted size in corporate units must approximate the minimum size required requisite to efficient, specialized production. Information about products (advertising) should be provided mainly by disinterested agencies, governmental and private."[2] Not everyone active against cartels would have embraced such a radical program, but many would have.

How did this relatively small group to the left of the political mainstream accomplish so much? First, they controlled the levers of power. The Antitrust Division of the Justice Department had the authority to file antitrust suits, which the judiciary, populated with Roosevelt appointees, was inclined to view sympathetically. Likewise, these people dominated the Cartel Committee and the deconcentration bureaus in occupied Germany and Japan. Moreover, the foes of cartels could count on public support, at least up to a point. Most Americans implicitly embraced the antitrust tradition—large companies were acceptable as long as they were efficient and stopped short of monopoly. Cartels fell outside this consensus, and even American businessmen who participated in them rarely defended the practice per se, arguing instead that some sort of exceptional circumstances justified their actions. Although antitrust was no longer a leading political issue, those enforcing it could still count on a substantial reservoir of public good will.

Yet the antitrust tradition could restrain as well as promote reform. Plans for the wholesale deconcentration of industry in Germany and Japan went well beyond anything ever done in the United States, falling outside the implicit compromise that had governed antitrust since the Progressive Era. These measures initially enjoyed some success because few Americans cared what happened to German and Japanese business. Reformers had the field to themselves. Once the Cold War had put these two countries back on the top of the nation's agenda, however, deconcentration foundered. Officials in Washington and, apparently, the public at large considered it too radical. Ultimately, preferences developed at home defined American antitrust policy abroad.

Why did so many other countries go along with the American campaign against cartels? The antitrust tradition was unique to the United States. Most other governments had tolerated and even encouraged cartels. Businessmen in other countries were accustomed to these organizations, and in industries like chemicals and electrical machinery, executives had never operated without them. Outside the United States, the immediate postwar years were very difficult, and hard times usually encouraged cooperation. Many wanted to rebuild cartels after the war. In early 1945, Baron Boel of Belgium's Solvay, a leading chemical firm, informed DuPont, "They [Solvay] still attach great importance to technical collaboration with ICI and, if possible, with DuPont. . . . and hope that it may be possible to work out an agreement which would make complete technical collaboration between the three parties possible."[3] DuPont did not follow up on this offer, presumably because the Justice Department was already suing to break its ties with ICI. European steel makers also wanted to rebuild their cartel after the war.[4] Pressure from Washington helped prevent a resurgence of cartels, but it was not decisive. After the war, no other country depended as heavily on the United States as Japan, but Tokyo abandoned many of the occupation's restrictions on cartels after regaining its sovereignty in 1953.

The American attack on cartels succeeded when it constituted part of a broader program of liberalization, and it failed where liberalization did not take hold. Japan lacked ready markets for its exports or guaranteed supplies of raw materials and so had little choice but to regulate trade strictly. In this context, antitrust made little sense. In contrast, antitrust became institutionalized in western Europe as governments moved to reduce trade restrictions and integrate their economies. Officials there promoted prosperity by expanding the size of markets, and by the 1950s, they had created what economists call a "virtuous cycle" in which freer trade spurred economic growth, which in turn allowed further liberalization. More broadly, after the war, all the industrial democracies reduced trade barriers and at least coordinated their currency policies, which led to a tremendous expansion of trade. Such an atmosphere is not congenial to cartels. As one historian noted, "A business approach based on competition and expansion was more suitable for a booming international economy than thinking in terms of caution, cooperation, and restriction."[5] Yet the retreat from cartels was not automatic. These organizations had deep roots in Europe, and prosperity and liberalization alone probably would not have eradicated them. Cartels formed during the last quarter of the nineteenth century, an economically turbulent period, did not vanish during the prosperous years of the early twentieth century. Speaking of Germany after World War II, the same historian has written, "The change . . . in favor of competition needed considerable time to be implemented. In fact, it occurred not before a new generation of managers took over."[6] Without American encouragement, it might not have happened at all.

Restrictions on cartels contributed to the "virtuous cycle" of growth and liberalization. Strong cartels changed the way business operated. Historian Alfred Chandler has gone so far as to argue that cartels constitute a key aspect of a distinct type of capitalism, which he calls "cooperative managerial capitalism."[7] Instead of competing to improve their position vis-à-vis competitors, firms cooperate to stabilize markets, setting prices and allocating sales and often coordinating the introduction of new products. Yet although stability has virtues, it exacts a price. Competition is the chief spur to innovation and efficiency, which are the keys to economic growth. Innovation is inherently disruptive—new products supersede old ones, and new plants render existing ones obsolete. It is no accident that economist Joseph Schumpeter described the activity of entrepreneurs as "creative destruction" or that John Maynard Keynes characterized the impulses behind investment as "animal spirits."

Cartels do not entirely eliminate competition. Even if these organizations set prices and allocate sales, the most efficient producers still earn higher profits. Likewise, cartels do not halt innovation—new products are still the best way to increase profits, and they can be valuable assets in negotiations with other firms. Factors other than the existence of cartels affect firms' behavior: the structure of markets, government policy, technology, and more. Despite its many cartel ties, DuPont compiled an impressive record of growth and innovation between the world wars. Although the German economy was in many ways the world's most cartelized before 1940, it was also the world's second largest and as technologically sophisticated as any.

Nevertheless, cartels do impede change. Simply because executives spend so much time on negotiations they have less time for the introduction of new products or the conquest of new markets. Strong cartels can distort investment. The German steel companies bought Ruhr coal mines not so much to improve efficiency or to earn a good return on capital but to gain a foothold in the coal cartel. Cartels deter innovations that might disrupt markets. Integrated steel plants had extraordinary economies of scale, limited as much by the size of the market as by technology. By fixing market share among members, steel cartels discouraged the construction of new, "best-practice" works that would, by their very size, reorder markets. During the 1920s and 1930s, everyone associated with the British steel industry agreed that it needed to construct larger, more cost-effective plants to compete internationally. Yet because industry and government refused to tolerate the disruption of markets entailed in opening such large works, the industry made limited progress. British steel makers had plenty of other problems: stagnant markets, weak management, and thin capital. But even firms able to overcome these obstacles, like the tube maker Stewarts & Lloyds, found that the fear of competition limited their ability to modernize and expand.[8] Jean Monnet had good reason to want the European Coal and Steel Community to dismantle cartels. Such considerations explain why relatively conservative figures like William Clayton and John McCloy embraced restrictions on cartels and why Lucius Clay took up the cause of reformers in this area even while blocking their plans for deconcentration.

In contrast, the petroleum companies retained their cartel largely because they operated in a distinctly illiberal atmosphere. They produced much of their oil in politically unstable, economically backward countries where they operated through concessions secured after difficult negotiations. Although the profits were large, they were not secure. A change in government could cost a firm its entire investment, as Anglo-Iranian discovered in 1951. The oil firms could ill afford the added risks of competition.

Antitrust policy forms part of a larger pattern. Although business always entails risks, these must be manageable. If the dangers of doing business become prohibitive, companies fail en masse, choking off investment and economic growth. During most of the interwar period, firms faced a catalogue of dangers: political instability, fluctuating currencies, and restrictive trade policies. In this atmosphere, many executives, government officials, and academics concluded that companies could not afford the added risks of competition and so embraced cartels. In the 1950s and 1960s, conditions were quite different, at least in North America and western Europe. Stable currencies, falling trade barriers, and a measure of political order gave companies the security they needed to compete. In this atmosphere, other governments willingly followed American recommendations for antitrust measures. Competition, particularly in the context of a buoyant economy, is one of the few forms of risk that actually improves economic performance, and so the retreat from cartels reinforced growth. The process was not automatic, however. Without American encouragement, countries with decades of experience with cartels probably would not have thought to restrict them. Yet at the same time, outside the context of liberalization, the most eloquent exhortations would have achieved little.

Since 1945, enthusiasm for antitrust has waxed and waned with that for liberalization. In Third World countries, support for free markets reached a nadir in the 1970s, as governments and intellectuals embraced "dependency theory," which held that the structure of international trade kept them economically subservient to the industrialized nations. They organized cartels—most notably the Organization of Petroleum Exporting Countries (OPEC)—to raise the prices for the commodities they exported to "just" levels. These efforts ultimately failed as high commodity prices choked off demand, leading to a collapse in the market for these products in the early 1980s. In the 1980s, Third World nations, beset by economic crisis, reversed themselves and began to liberalize their economies, reducing restrictions on trade and investment and trying to stabilize their currencies. These reforms often entailed enacting and enforcing strong antitrust laws.[9]

Roughly comparable events occurred in the industrial democracies. The economic crises of the 1970s initially led to an increase in government regulation. The Japanese government enforced a series of "rationalization" cartels on declining sectors like textiles and shipbuilding, the ECSC set prices for and allocated markets among European steel producers, and the U.S. government controlled the price and allocation of domestically produced oil. Since the 1980s, however, the developed nations have sought to increase competition by cutting regulation, privitizing government-owned firms, and further reducing trade barriers. As part of this shift, antitrust has received greater attention, particularly in the European Union.

Americans are too often ignorant of how and why their institutions work. Antitrust has improved the performance of the U.S. economy, largely by suppressing cartels. Yet it succeeded because a huge market, a stable government, and a strong currency made the risks of competition manageable. Thurman Arnold and many of his followers, who had little experience outside the United States, took these extraordinary conditions for granted, pursuing antitrust with little regard for anything else. The results could have been disastrous, particularly their plans to dismantle Germany's and Japan's large companies wholesale. The export of antitrust succeeded because people like Lucius Clay, John McCloy, Jean Monnet, and Ludwig Erhard modified it to fit within a broad framework of liberalization. Without Arnold, antitrust probably never would have traveled abroad, but without people like Clay, the attempt to export it probably would have failed.

The antitrust statutes rest on a paradox. They seek to preserve competition both to protect consumers and to provide incentive for innovation. To this end, the law regulates companies and punishes violations, at times severely. Yet the antitrust statutes can achieve their broader goals only in an atmosphere generally favorable to business. They will fail if economic or political instability crippled industry—the benefits of competition accrue only if firms can afford to compete. Reformers like Louis Brandeis and Thurman Arnold, who were deeply suspicious of big business, often accomplished less than more moderate figures such as Jean Monet and Lucius Clay, who grasped this reality. In the twenty-first century as in the twentieth, antitrust will advance or retreat with the growth and liberalization of national and international economies.