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Varieties of Economization in Competition Policy

A Comparative Analysis of German and American Antitrust Doctrines, 1960–2000

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About the authors

Timur Ergen is a senior researcher at the Max Planck Institute for the Study of Societies, Cologne.
Email: te@mpifg.de

Sebastian Kohl was a researcher at Uppsala University and the Institute for Housing and Urban Research in Uppsala from 2015 to 2017 and is currently a senior researcher at the Max Planck Institute for the Study of Societies as of October 2017.
Email: kohl@mpifg.de

Max-Planck-Institut für Gesellschaftsforschung
Max Planck Institute for the Study of Societies
Paulstr. 3 | 50676 Cologne | Germany

Tel. +49 221 2767-0
Fax +49 221 2767-555

www.mpifg.de
info@mpifg.de

Abstract

This paper explains the different trajectories of German and American competition policy and its permissiveness towards economic concentration in the last few decades. While the German political economy had moved to a stronger antitrust regime after 1945 and stuck to it even after the economic governance shifts of the 1980s, the traditional antitrust champion, the United States, has shed considerable parts of its basic governance toolkit against anticompetitive conduct since the 1960s. Drawing on theories of institutional change driven by bureaucratic and professional elites, the paper claims that different pathways of professional ideas in competition policy can account for the cross-country differences. In the 1960s and early 1970s, movements to strengthen competition policy in the direction of an active deconcentration of industry emerged in both countries. While German as well as American professionals reacted to the impending encroachment of societal concerns into antitrust with economized notions of the policies' goals, they did so in fundamentally different ways. Whereas US professionals proposed an effect-based approach in which consumer welfare and gains in efficiency may justify less competition, the more strongly law-based profession in Germany to a degree strengthened a form-based approach aiming at the preservation of competitive market structures. Such extrapolitical pathways of ideas, we argue, provide important guidelines for the implementation of competition policy by administrations and courts, whose decisions can have a far-reaching impact on industries and political economies as a whole.

Keywords: competition, law, economization, professions, ideas

Zusammenfassung

Der Artikel erklärt die unterschiedlichen Pfade des deutschen und amerikanischen Wettbewerbsrechts und dessen Einstellung zu wirtschaftlicher Konzentration in den letzten Jahrzehnten. Während die deutsche politische Ökonomie nach 1945 zu einem konservativeren Wettbewerbsregime überging und dies auch nach dem Wandel in den 1980er-Jahren aufrechterhielt, veränderten die USA, das klassische Land der Wettbewerbskontrolle, ihr Interventionsverhalten seit den 1960er-Jahren. Dieser Artikel argumentiert mit Bezug auf Theorien institutionellen Wandels durch bürokratische Eliten, dass die verschiedenartigen Wettbewerbsideen von Professionen die Länderunterschiede miterklären können. In den 1960er- und 1970er-Jahren entstanden in beiden Ländern Bewegungen, die das Ziel verfolgten, Wettbewerbspolitik zu erweitern. Wenngleich sowohl deutsche als auch amerikanische professionelle Gruppen auf das drohende Vordringen gesamtgesellschaftlicher Erwägungen mit ökonomisierten Auffassungen der Wettbewerbspolitik reagierten, taten sie das in unterschiedlicher Weise. Während amerikanische professionelle Gruppen einen effektbasierten Ansatz entwickelten, in dem Konsumentenwohlfahrts- und Effizienzgewinne Abstriche beim Wettbewerb erlauben, stärkten die eher juristisch geprägten Wettbewerbshüter in Deutschland einen marktformbasierten Ansatz. Wir behaupten, dass diese verschiedenen Ideen wichtige Leitlinien in der Implementierung des Wettbewerbsrechts für Verwaltungen und Gerichte vorgaben, deren Entscheidungen wiederum weitreichende Effekte für Wirtschaftssektoren und die politische Ökonomie insgesamt haben können.

Schlagwörter: Wettbewerb, Recht, Ökonomisierung, Professionen, Ideen

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Varieties of Economization in Competition Policy: A Comparative Analysis of German and American Antitrust Doctrines, 1960–2000

1 Introduction

When do concentrations of power in the economy become a problem for capitalism and democracy? When industrial capitalism matured during the late nineteenth century, intellectuals, social movements, and legislators intensely debated this basic political question. While some countries, like the United States, settled on a skeptical position towards corporate power and on regulation of anticompetitive conduct, others, like Germany, took a more permissive stance and appreciated the advantages of big corporations and cooperation between competitors. Since the 1960s, however, the cards in the antitrust debates have been reshuffled. While the German political economy incrementally developed a stronger antitrust regime in the control of concentration and anticompetitive conduct after 1945 – and stuck to it even through the 1980s and 1990s – the traditional antitrust champion, the United States, has moved toward a more lax position on corporate power since the 1970s.

This paper tries to explain why these two countries swapped their positions in competition policy. Drawing on public debates, secondary literature, and annual reports by competition authorities in the US and Germany, we claim that the different developments on the two sides of the Atlantic cannot be understood through basic economic differences, varieties of capitalism, or political differences alone. Rather, we argue that ideological orientations that gained the upper hand in the respective national regulatory and intellectual communities are an important additional factor in understanding the differences across countries and time. As we document, there were similarly inspired intellectual movements to push back against increasingly vocal progressive interpretations of competition policy in both countries since the late 1960s. Yet the intellectual moves by reformers in the US allowed for an incremental weakening of the regime over time, while the reaction in Germany locked the regime into a more robust path. Reacting to calls for a more effective US competition policy that would actively reduce concentration in American industry, institutional entrepreneurs in the US pushed for economization, a reorientation of the regime from broad societal considerations towards purely economic goals – "consumer welfare" above all. This *effect-based approach* to competition regulation, inspired by the Chicago school, allows for economic cooperation and concentration if it is in the interest of economic goals, notably overall efficiency and consumer welfare. German antitrust elites, by contrast, rejected early pro-

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gressive calls for a more instrumental competition policy by questioning in principle the practical, goal-directed application of the law as such – irrespective of whether these goals were economic or noneconomic in nature. Instead, their *form-based approach* to competition regulation, inspired by the Ordoliberal School, maintains that continuing state intervention in favor of a competitive pluralistic market structure is a safeguard against economic and political abuse as well as inefficiency.

The two countries under study are largely dissimilar in terms of the most frequent typologies in political economy, not least with regard to the trajectory of their competition policies. Starting in the late nineteenth century, when the concentration of industry became subject to debate and regulation, the United States' antitrust policy established a tradition of populist protest and public regulation against monopoly power. At the same time, significant factions of German intellectual and political discourse considered the cartelization of the economy to be a more efficient means of coordinating economic development and nurturing domestic industries against more advanced economies – a tradition that, with interruptions during the 1920s, persisted through the Third Reich. The power of big business and cartels was considered to be one of the factors behind German military aggressiveness and fascism, and the Allies transplanted American antitrust ideas and regulation after the war. These ideas fell on fertile ground among the Ordoliberal school, which rose to dominance in Germany during the postwar years and shaped such important economic institutions as the Bundesbank, the German Council of Economic Experts, and, most relevant here, the antitrust authorities. These views, entrenched in regulatory authorities and reproduced through the legal profession, remained an ideological bulwark against the diffusion of the "more economic" or effect-based approach to antitrust.

Our focus on ideational and professional changes intends to enrich a range of alternative explanations for institutional differences between the German and American political economies. It contributes to the comparative study of institutional inertia and change across countries by highlighting the important role that different professional ideas can play. It shows in the American case how the zeal of charismatic movements, such as the anti-monopolist Populists, can become disenchanted in bureaucratic bodies where original ideas can even be perverted. Finally, it contributes to the growing study of bureaucratic institutions (central banks, regulatory agencies, competition authorities in our case), whose *Eigenlogik*, at times beyond democratic control, can have important impacts on economic outcomes.

The paper is divided into three parts. We *first* situate our cases in the literature on institutional change through professional ideas and bureaucratic agencies. *Secondly*, we review changes in American antitrust since the 1960s. The reorientation of US antitrust, we argue, resulted from an intellectual opposition movement against activist tendencies in the 1960s that championed a narrowing of the objectives of competition policy and a strictly economic consequentialist reasoning in antitrust enforcement. Opposition against similar activist tendencies took a very different form in Germany. In a *third* step,

we show how the German opposition movement was led by legal rather than economic thinking, which questioned the legitimacy of effects-oriented reasoning in competition policy in general. The paradoxical effect of this movement was that even though the reaction against activist competition policy in Germany was intellectually more radical in the beginning, German antitrust enforcement became partly immune to the incremental economic appreciation of the beneficial effects of anticompetitive behavior that happened in the United States. *Finally*, we conclude by highlighting the relevance of the study of bureaucratic agencies as forgotten drivers of large-scale institutional change that can have an explanatory say beyond institutional varieties of capitalism.

2 Antitrust regimes and extrapolitical institutional change

Our paper draws on two strands of literature to understand the phenomenon of cross-country and over-time differences in antitrust enforcement practices: the political sociology of bureaucracies and research on the role of ideas in shaping institutional change. At the latest since Evans, Rueschemeyer, and Skocpol's (1985) call to bring the state back in, the field of Comparative Political Economy has paid attention to the structure of state institutions to explain country-specific political-economic pathways. The institutions covered range from parliaments, governments, and regulatory agencies to entire political systems. As pointed out by a number of recent disciplinary surveys, however, the comparative institutionalist literature has less frequently analyzed the intricacies of political-economic change generated *after* major laws have been implemented and major political battles have been settled (Hacker, Pierson, and Thelen 2015; Mahoney and Thelen 2010, 13–14; Patashnik and Zelizer 2013). In this implementation phase of policies and regulations, the semi-autonomous nature of bureaucracies and related professional communities becomes a major driver of large-scale institutional change.

Study of state bureaucracies

The role of bureaucracies in institutional change has often been described as one of incremental state-building. Almost as a rule, more encompassing regulations and state functions emerge with low levels of specification and practical enactment. Past research has traced how bureaucracies, in interaction with societal forces and professional discourse, translated vague regulatory missions into full-blown regulatory regimes – for example in Equal Opportunity regulation or in environmental policy (e.g., Dobbin 2009; Uekötter 2014). Before the 1980s, a similar view existed of the history of antitrust, especially in the United States. In his 1964 history of American competition policy, Richard Hofstadter, for example, diagnosed the end of competition policy as a contentious issue. Once, "the United States had an antitrust movement without antitrust pros-

ecutions," he reasoned, but "in our time there have been antitrust prosecutions without an antitrust movement" (Hofstadter [1964] 1996, 189). Historians, Hofstadter claimed in a Weberian line of reasoning,

> are missing one of the most delicious minor ironies of our reform history and one of the most revealing facets of our institutional life. In the very years when it lost compelling public interest the antitrust enterprise became a force of real consequence in influencing the behavior of business. (Hofstadter [1964] 1996, 189–90)

The mechanism leading to the "cold" institutionalization of antitrust enforcement was bureaucratization and de-politicization:

> [antitrust] reform is not the first reform in American history whose effectiveness depended less upon a broad movement of militant mass sentiment than upon the activities of a small group of influential and deeply concerned specialists. In ceasing to be largely an ideology and becoming largely a technique, antitrust has taken its place among a great many other elements of our society that have become differentiated, specialized, and bureaucratized.
> (Hofstadter [1964] 1996, 235)

Not despite, but *because* of its retreat from the sphere of contentious politics, antitrust in the 1960s seemed to be on a remarkably stable track:

> Liberals can support it because they retain their old suspicion of business behavior, and conservatives support it because they still believe in competition and they may hope to gain an additional point of leverage in the battle against inflation. No one seems prepared to suggest that the antitrust enterprise be cut back drastically, much less abandoned, and Congress has consistently supported its enlarged staff. … Even business itself accords to the principle of antitrust a certain grudging and irritated acceptance, and largely confines its resistance to the courts.
> (Hofstadter [1964] 1996, 234–35)

With the advantage of five decades of hindsight, our comparative perspective aims to question two of Hofstadter's more conceptual claims. Our *first* point is that the technical implementation of policies has a politics of its own – with possibly equally far-reaching institutional effects. American competition policy has been subject to a quite drastic change of character since the time of Hofstadter's analysis – largely in the absence of public conflict, ideological battles, or overt mobilization in the arenas of producer group and mass politics. Our *second* point is that the sharp divide between bureaucratized and politicized institutional realms is misleading. While Hofstadter was careful not to fall for an *end of history* depiction of bureaucratized antitrust, he advanced the common idea that ideological conflicts, clashes of interest, charisma, and social movement-like fads are largely confined to the sphere of the political system. Bureaucratized fields, by contrast, persist and grow through technocratic processes. As our comparative study shows, antitrust "as a technique" was no less shaped by value-laden, "non-rational" factors than antitrust as a political creed. *The difference is one of the type, rather than the intensity, of political challenge.*

As mentioned above, belittling the "implementation" of legal rules or social norms in favor of emphases on their emergence or change is a longstanding deficiency in the social sciences – especially in macro-sociology and political economy. Great legislative victories or defeats, battles of grand ideologies, and mass mobilization obviously strike observers as much more relevant for societal development than changes of administrative procedures or enforcement practices. There are, however, notable exceptions to the focus on legislative politics in the investigation of institutional change – especially in various more recent institutionalist literatures (for a useful overview of earlier studies, see Evans, Rueschemeyer, and Skocpol 1985).

Institutional change through bureaucracies

Two main types of argument as to why bureaucracies can be at the origin of processes of institutional change are especially relevant for the case of antitrust evolution. The *first* stresses the ambiguity of legal provisions and describes bureaucracies as the agents which bring certain interpretations into practice. The *second* builds on the idea that bureaucracies are the institutional "bridges" between professional ideas and the state, which enable policy change through ideational change without overt politicization.

The first perspective has been worked out in detail by Lauren Edelman. In a number of studies, she advanced a perspective called the *endogeneity of legal regulation*. In what might in part be an outgrowth of her research focus on a common law system and a comparatively weak state,[1] she demonstrates how diverse organizations influence the interpretation of legal rules by establishing dominant forms of compliance, by lobbying for favorable jurisdiction and enforcement practices, and by contributing to professional networks' activities (Edelman 1992; 1991). For the American context, policy analysis in the 1970s and 1980s stressed that governance evolves in issue-specific networks between specialized state agencies, parts of the legislature and government, courts, and dominant interest groups.[2] In a similar vein, Streeck and Thelen made the interpretative flexibility of rules a starting point to theorize institutional change in general: "the meaning of a rule is never self-evident and always subject to and in need of interpretation," they assert (Streeck and Thelen 2005, 14). Therefore, the "real meaning of an institution … is inevitably … subject to evolution driven, if by nothing else, by its necessarily imperfect enactment on the ground, in directions that are often unpredictable" (Streeck and Thelen 2005, 16).

The far-reaching susceptibility of antitrust regimes to processes of reinterpretation has often been pointed out (Fligstein 1990, 213; Gerber 1998). During the first years of its

1 For a comparative institutional specification of such a perspective, see Dobbin (2009).

2 Good early overviews of that literature can be found in Rourke ([1969] 1976); Sabatier and Mazmanian (1980).

existence, the American antitrust regime, for example, changed from being essentially a dead letter to being used to prosecute labor unions – and from there to the basis for the breaking up of Standard Oil. Whether caused by cynicism or by the genuine substantial puzzlement of legislators (Hofstadter [1964] 1996, 191–92, 198–200), early American antitrust statutes consisted of an odd mix of potentially very far-reaching prohibitions and vague specifications. In effect, it was up to administrators and the courts to translate general regulatory principles into enforcement practices. What is more, far-reaching ambiguity and ambivalence marked competition policy as a regulatory field. Depending on business context and theoretical sensemaking, one and the same business activity – for example, undercutting one's rival – can have radically different meanings for antitrust objectives. There exists a long history of different measures, methods, conventions, and theories to categorize competitive conduct with regard to antitrust principles. In addition, competition law, since its inception, has been plagued by ambivalence regarding the exact nature and interrelationships of its principles and goals. To give just one example, the Sherman Act was passed in a time of intense popular critique of "bigness" in economic life – especially with regard to the consequences of monopolies for the political arena – while at the same time the economics profession began to favorably reinterpret the causes and consequences of economic concentration in a "new economy" characterized by the giant corporation and oligopolistic competition.[3]

Over the last 130 years, competition policy was pursued for a number of – sometimes complementary, sometimes conflicting – goals, such as consumer sovereignty, consumer welfare, democracy, geographical decentralization, and national economic development. Again, it was regularly up to the enforcement layer of antitrust policy, and only occasionally to that of its design, to come up with specifications and trade-offs for competing objectives.

The second perspective on institutional change through bureaucracies builds on the fact that bureaucratic agencies work at the intersection of professional communities and the state, which strengthens the role of ideas in institutional change and persistence (Hall 1989). Bureaucratic agencies are staffed with professionally trained officials – in most developed countries predominantly lawyers, social scientists and engineers – who can become the institutional carriers of ideas in policy-making. This can happen both through ideological conversion and through personnel replacement and often takes place gradually. Hence, new ideas are often only realized when the existing staff of regulatory bodies makes an ideological shift – or, more likely, when it is replaced by a new generation of bureaucrats trained within a new ideational current. Both processes can give rise to country-specific pathways in policy and regulation as they are shaped by the structures of the respective agencies and communities. Comparing the diffusion of Keynesian ideas into US and UK economic policy-making since the Great Depression, Margaret Weir, for example, has shown how, contingent on the structure of the respective bureaucracies, demand management diffused slowly but in a resilient way into the

3 A good overview of that movement in economics can be found in Morgan (1992).

hierarchical official apparatus in the UK, while it gained quick support in the open and fragmented US administration without taking a longer-term hold (Weir 1989). With a similar theoretical outlook, Christopher Allen has claimed that ideational resilience at the German Bundesbank helped to undermine the diffusion of Keynesian ideas into Germany's economic policies (Allen 1989). Pierre Bourdieu analyzed the change from capital-heavy "stone-based" housing subsidies to individually tailored housing allowances in France in the 1970s as caused by the econometric ideas brought in by a new generation of technocrats (Bourdieu 2005). Similar processes of ideational infusion at the level of bureaucracies are at play when new state capacities are built up for the first time. Thus, the influence of interest groups like realtors in the creation of the New Deal housing administration, made up in large part by former realtors, was key to creating an industry-friendly housing policy and keeping the US from supporting public housing more systematically (Mason 2014). In France, by contrast, the inflow of former public works engineers from the *Pont-de-Chaussée* school into the newly formed ministry of housing led to the infamous state *Grands Ensembles* constructions (Thoenig 1973).

Similar descriptions of professional community-induced policy change have been published in the field of antitrust research. Particularly Eisner has worked out a comprehensive account of institutional change in American antitrust enforcement standards that advances the thesis that in antitrust "politics … lagged behind policy" (Eisner 1991, 233). He documents how the so-called Reagan Revolution in antitrust was "at most a coup" (Eisner 1991, 189): the administration merely reaffirmed changed enforcement practices in the antitrust agencies and at many courts which were caused by changed thinking about competition policy in the discipline of industrial economics. Similar assessments about the root causes of institutional change in American antitrust are advanced by legal scholars and industrial economists (e.g., Kovacic 1990; 2003; Pitofsky 2008). What distinguishes these accounts from the traditional view of the role of bureaucrats in institutional change cited above (Hofstadter, for example) is that state agents and professional communities do not just extend or implement policies in a path-dependent manner, but are themselves responsible for incremental, but quite drastic, changes of policy courses. Such accounts hardly fit a standard model of bureaucratic activity in which bureaucracies serve as agents taking care of the straightforward application of policies to practice. Our cross-country comparison serves to illustrate exactly that point. State agents and professional communities reacted to similar perceived challenges with fundamentally different intellectual currents, which led to diverging paths of incremental change in competition policy.

3 The administrative economization of American antitrust

It is generally difficult to estimate the effects antitrust policies have on the overall structure of industrial organization. Effective competition policies would, to a large degree, prevent actions in restraint of competition *before* the fact. This is why, in 1964, Hof-

stadter did not celebrate the number of cases brought up by the Justice Department or a specific change in concentration ratios or business organization, but the rather vague impression that today,

> anybody who knows anything about the conduct of American business knows that the managers of the large corporations do their business with one eye constantly cast over their shoulders at the Antitrust Division, and that the antitrust enterprise has gone far to make up for its inability to reverse business concentration by considerable successes in affecting business conduct. (Hofstadter [1964] 1996, 192–93)

It is equally difficult to quantify the effects of new doctrines on the activity of state agencies. Rising or falling case numbers, for example, say very little about the direction of enforcement practice, both because cases vary widely in their scope and depth and because the number of cases is contingent on agency activity *as well as* economic activity. These measurement problems are at the core of radically different views of how American antitrust enforcement has changed since the 1960s. What for some amounts to a government-sanctioned "corporate takeover of the market" (Crouch 2011, Ch. 3) or "a return to the period of neglect of the 1920s" (Pitofsky 2008, 5), others evaluate as a healthy dose of self-questioning and analytical sharpening (e.g., Kovacic 2003; Scherer 2008).

Strengthening antitrust

What in retrospect seems unquestionable is that the postwar antitrust bureaucracy showed a remarkable level of activism when it came to the decade-long quest to step up enforcement in the direction of early progressive readings of competition law. Without further qualifications, Hofstadter was able to claim that antitrust in his time was "essentially a political rather than an economic enterprise" (Hofstadter [1964] 1996, 200). Even though the history of government attempts to use the antitrust laws as a tool to lower the concentration of American industry after the fact is, with few exceptions, a history of costly failures and misses (Kovacic 1989), deconcentration for economic, political, and cultural reasons has been a centerpiece of the antitrust agenda since the late nineteenth century. In many high profile cases before the 1970s, this was officially recognized by American courts (Gifford and Kudrle 2015, 12–13). The "political content of antitrust" (Pitofsky 1979) pervaded large parts of post-New Deal enforcement and jurisdiction, often with a good amount of enthusiastic "overshooting":

> … tiny mergers that could not seriously be viewed as challenges to a competitive market were consistently blocked, abbreviated (so-called *per se*) rules were introduced to outlaw behavior that rarely produced anticompetitive or anticonsumer effects, and licensing practices were challenged, which were little more than efforts to engage in aggressive innovation. All of this was accompanied by an almost total disregard for business claims of efficiency. (Pitofsky 2008, 4)

The intellectual bases of much of this activist style of enforcement stemmed from what came to be called the Harvard School of industrial economics – a school of microeco-

nomic analysis with a longstanding interest in systematizing the structural preconditions of anticompetitive behavior.[4] In effect, many of the activist enforcement policies of the postwar decades were legitimized by the belief that the preservation of certain industry *structures* would render future anticompetitive behavior more unlikely. Both the profession's focus on structure and its pursuit of the deconcentration agenda in many ways culminated in the report of Lyndon Johnson's Task Force on Antitrust Policy, the so-called *Neal Report*. The experts suggested the passage of what they called the *Concentrated Industries Act*, a measure that would allow administrators to force firms in concentrated industries to divest structures to limit their market share to 12 percent (Neal 1968).[5]

The effect-based revolution

While the administrative movement against such activist tendencies came to formally dominate the field during the presidency of Ronald Reagan, conclusive evidence exists that the so-called Reagan Revolution in competition policy was merely part of an official acknowledgment of changes already firmly anchored among professionals, bureaucrats, and in the judiciary (Eisner 1991; Eisner and Meier 1990). The original doctrinal challenge carrying that movement is captured in Robert Bork's dissenting statement to the *Neal Report*. Bork, who in many ways led the intellectual assault on structure-focused activist antitrust, was a member of the Neal Commission and criticized the proposed deconcentration initiative on the basis of a then comparatively extreme faith in market processes that widely diffused into US antitrust thinking during the following decades. He stated:

> When firms grow to sizes that create concentration or when such a structure is created by merger and persists for many years, there is a very strong *prima facie* case that the firms' sizes are related to efficiency … If the leading firms in a concentrated industry are restricting their output in order to obtain prices above the competitive level, their efficiencies must be sufficiently superior to that of all actual and potential rivals to offset that behavior. Were this not so, rivals would be enabled to expand their market shares because of the abnormally high prices and would thus deconcentrate the industry. Market rivalry thus automatically weighs the respective influences of efficiency and output restriction and arrives at the firm sizes and industry structures that serve consumers best. (Bork 1969, 54)

There were both an analytical and a normative side to critiques like Bork's. Analytically, they challenged established views of what certain market structures and processes "actually meant" in economic terms. Many theoretical attacks revolved around the question of whether certain business activities formerly categorized as attempts to restrict

4 See Mason (1939) for an early programmatic piece. See Bain (1951) and Scherer (1970) for examples of that school's thought at its height. Hovenkamp (1989) gives a historical overview of the parallel development of industrial economics and antitrust enforcement.

5 An overview of the history and fate of the deconcentration movement is provided in Hovenkamp (2009).

competition – like extensive conglomerate mergers, price wars, or tie-ins, for example – could really be understood as directed against competition on the basis of neoclassical microeconomics. In rebutting theories of "predatory pricing" (firms' attempts to undercut rivals at a loss, in order to profit from increased market power after the rivals' exit), for example, conservative thinkers made reference to turn-of-the-century arguments about the disciplining role of "potential competition" and to the long-run rationality of businesses to discredit the view that aggressive underselling could be interpreted as an attempt to achieve market power at all. Posner outlines the argument as follows:

> Selling below cost in order to drive out a competitor is unprofitable even in the long run, except in the unlikely case in which the intended victim lacks equal access to capital to finance a price war. The predator loses money during the period of predation and, if he tries to recoup it later by raising his price, new entrants will be attracted, the price will be bid down to the competitive level, and the attempt at recoupment will fail. Most alleged instances of below-cost pricing must, therefore, be attributable to factors other than a desire to eliminate competition.
> (Posner 1979, 927)

Such analytical rebuttals of earlier thought about anticompetitive conduct appeared for almost every target of postwar antitrust enforcement during the 1970s and 1980s – notably for many kinds of vertical restraints, merger activity, network effects, vertical integration, and persistent high concentration.

The accompanying normative assault on antitrust enforcement practices targeted the question of the legitimate aims of competition policy. Conservative thinkers and practitioners of the 1960s and 1970s directly reacted to the multitude of values and political objectives in antitrust enforcement. For example, Bork states:

> That amalgam of muddled thinking, social mythology, and sentimental rhetoric known to its intimates as "the social purposes of antitrust," however sonorously it may ring upon ritual occasions for mock-Jeffersonian oratory, must be excluded from judicial and prosecutorial decisions about actual cases. (Bork 1970, 666)

In favor of antitrust as a political *common carrier* that reacted to a multitude of political objectives, efficiency in the service of consumer welfare came to be the dominant criterion to judge whether business activities fell into the purview of antitrust agencies. In practice this meant a decline of *per se* reasoning by the bureaucracy and by courts, a higher technical threshold for charging businesses with anticompetitive conduct, and the extension of thinking in terms of "welfare trade-offs" between the negative effects of concentration and anticompetitive conduct and the efficiency advantages of certain restraining activities and structures. Most important, perhaps, Chicago antitrust thinkers openly stated that their intellectual attacks had a political-economic objective to push back against what they perceived to be increasingly interventionist tendencies in the deconcentration movement. Posner states:

> A further aspect of the Chicago-Harvard difference on deconcentration arises from the difference between the deep distrust of government intervention that is associated with the Chicago

> School of Economics … and the (rapidly diminishing) complacency toward such intervention associated with traditional Harvard-M.I.T. economic thinking. Deconcentration is a more ambitious form of public control than is usually involved in antitrust enforcement, so one's attitudes toward the capabilities of regulatory-type governmental interventions naturally come into play. (Posner 1979, 948, fn. 67)

It is difficult to unbundle the historical causes of the spectacular success of efficiency criteria in American antitrust. In the last three decades it was, it seems, overdetermined. There certainly was executive sanctioning of the new doctrine by the Nixon, Carter, and Reagan administrations, as visible, for example, in Nixon's installation of his own task force on the state of antitrust headed by Chicago economist George Stigler; in the Carter administration's experimentation with supply-side economic revitalization policies; in several nominations, guidelines, and statements by the Reagan administration; and in the extension of intellectual property protection since the 1970s. In the academy, the more rigorous approach to industrial economics revived academic interest in thinking about competition, while the earlier, more empirical Harvard School of microeconomics was a relatively marginalized field. Within the rising Chicago School itself, there had also been a shift from a previous anti-monopoly stance to a much more permissive position towards concentration in business (Van Horn 2011). Furthermore, as is visible in the success of the law and economics movement, the legal profession in the United States was remarkably open to economic reasoning and an instrumentalist logic in enforcement. To give just one example of how much the thinking about monopoly in the American political economy changed with the prominence of welfare economics, Robert Crandall, a consultant to Microsoft during the failed government attempts to break up the corporation, after reviewing the welfare effects of structural remedies in American history, concluded that

> a number of empirical studies suggest that the total cost of monopoly is very small indeed. [One study, TE/SK] found that the social cost of monopoly is only 0.1% of gross national product … If monopoly is not much of a problem in the first place, it is understandable that section 2 cases are rare and section 2 remedies are not very effective. (Crandall 2001, 196–97; Section 2 of the Sherman Act covers attempts to monopolize a market)

The change in enforcement doctrines was not so much about a switch from unfocused, habitual, or form-based types of enforcement towards a more reasoned and goal-oriented approach, as Chicago School representatives often had it, but about the incremental replacement of the mission of the regime – with quite drastic consequences for the character of the institution of antimonopoly policy. To reiterate, measuring the precise impact of these changes on enforcement activity and industrial organization is inherently difficult. There is, however, piecemeal evidence that antitrust enforcement became more permissive since the 1960s – that it changed course from decades of activist expansion. It is uncontested among both proponents and critics of the Chicago revolution in antitrust thinking that the regulation of both horizontal and vertical mergers has been more lax since the early 1980s, when the William Baxter-led Antitrust Division codified many of the new efficiency-focused ideas in revised merger guidelines in reac-

tion to what it itself described as "changes in economic analysis and judicial precedent" (Department of Justice 1982, 135). To give another example of the entrepreneurial activities of the new generation of bureaucrats in disseminating the new ideational current in merger control, the Antitrust Division helped prepare legislative proposals for an overhaul of the Clayton Act regulating mergers in 1986, promising "to distinguish more clearly between procompetitive mergers and mergers that create a significant probability of increasing prices to consumers" (Department of Justice 1986, 112). In a number of annual reports, the 1980s' antitrust divisions pushed for legislative reform that would "modernize antitrust laws, ensuring that they serve their intended purpose of promoting consumer welfare and enhancing the ability of U.S. firms to compete in world-wide marketplaces." The prosecution of predatory competition has virtually been abandoned. In fact, the Antitrust Division of the Department of Justice (DOJ) went so far as to voluntarily file a Supreme Court amicus brief to push back against a lower court's decision that might have allowed competitors to challenge mergers based on the possibility that the post-merger firm would engage in predatory pricing, citing "the strong incentive of competitors to block procompetitive transactions …, the rarity of actual predation and the ease with which intense competition may be characterized as predation" (Department of Justice 1986, 113). Several high-profile cases against dominant firms were settled during the 1980s, notably those against IBM and AT&T. In many fields of enforcement, courts have denied the applicability of *per se* rules. And the "efficiency-defense" for anticompetitive conduct has been firmly established in both the bureaucracy and the judiciary.[6]

4 Impaired "modernization" in Germany

In the larger historical picture, the main puzzling fact about German competition policy might be its similarity to American antitrust in the postwar era rather than the remaining institutional differences which concern us here (see Djelic 2002). After all, until the 1950s, the German political economy was the prime example of an advanced political economy organized by doctrines revolving around sectoral organization, coordinated industrial upgrading, and horizontal agreements, rather than by American ideals of oligopolistic competition.[7]

A few decades after the end of the Second World War, however, the German and other European states had full-blown antitrust regimes in place, considerable parts of which were either directly transferred from or modeled after the American doctrinal and institutional system. In terms of codified legal rules, European and American antitrust regimes

6 Balanced overviews of these and other changes in enforcement practices can be found in Kovacic (1990; 2003).

7 For a good overview, see Ambrosius (1981).

are remarkably similar – in both content and structure. Still, there have always been significant remaining institutional differences. Even though the European Court of Justice, for example, has shown a strong tendency to extend its own reach and thereby "drive" rather than "interpret" the law (Scharpf 2016), the US and many European nations still have different legal regimes with respect to case law and the adversarial design of trials.

More specifically, in a number of respects, European enforcement for a long time seemed to be more lenient with regard to restraints on trade than that of the United States during its activist enforcement era. For a long time, European and German competition policy was seen to be an "incomplete" institutional transfer (good overviews can be found in Hesse 2016; Quack and Djelic 2005). Until recently, German and European competition law contained quite far-reaching explicit exceptions with respect to various economic sectors and various types of horizontal cooperation and vertical restraints. Merger control was only added to German antitrust in the 1970s. Private litigation is much less common in the European system. And Europeans displayed a general hesitance when it came to activist antitrust efforts and deconcentration in the private sector – notwithstanding the bureaucracy's later enthusiasm for using competition law to go against state interference in the economy and limited support for American decartelization initiatives in the immediate postwar era, which were organized by temporary special laws.

During the last two decades, institutional divergence in the opposite direction has occurred. European antitrust agencies still prosecute predatory competition, they go after numerous types of vertical restraints, they are still more open to *per se* reasoning and, for a long time at least, they stuck to more form-based stances in merger control (Gifford and Kudrle 2015). In the following section, we argue that more hesitant enforcement during the American activist era and more strict enforcement during the era of American leniency have a common and underappreciated cause: professional identities and doctrines in German legal thinking about competition and the role of the state that to a large degree solidified in reaction to an activist challenge similar to the one in the United States.[8]

The comparative literature as well as practitioners and reformers have rightly emphasized that the different trajectories of antitrust since the 1980s stem to a large degree from blockages to the "modernization" of antitrust thinking by European – and in particular German – elites at the level of enforcement. The reluctance of European antitrust bureaucracies to fully "update" their enforcement criteria to what Europeans,

8 While the Americanization of German antitrust – and antitrust more generally in Europe – remained incomplete, the transfer of German legal ideas and practices to the level of the emerging antitrust commission of the European Union has also been said to be incomplete (Buch-Hansen and Wigger 2011, 28). Though this transfer was originally also inspired by Ordoliberal thinking, some researchers claim that increasing international competition fueled a desire to enhance market power and promote Euro champions, causing the Ordoliberal character of European competition policy to become watered down (ibid.).

after a quip by Mario Monti, call the "more economic approach" has been explained by a lack of up-to-date technical-economic knowledge in the German legal profession (Schwalbe 2010). The German and European antitrust agencies, for example, have a strong non-economic legal tradition, and even though they have hired increasing numbers of economics professionals since the early 1970s, legal professionals still make up about half of their bureaucrats today (Buch-Hansen and Wigger 2011; Ortwein 1998).[9] Other explanations put forward in the literature are the fear of German liberal thought about societal agglomerations of power in light of the history of the Weimar Republic, hidden industrial policy agendas in Europe, political pressures by German unions and the small and medium-sized firm sector, a weaker belief in the self-regulating forces of markets in Europe, and a greater willingness by Europeans to protect direct competitors to dominant firms from competitive harm.

While all of these factors certainly contribute to institutional resilience, in our view they overshadow an important doctrinal factor: the deep-seated aversion of the German legal profession to subordinating competition policy to an instrumental economic logic that was solidified between the late 1960s and early 1980s.

Resisting activist antitrust

The resistance to a "more economic approach" is not the first case in which German Ordoliberal legal elites resisted economic definitions of the legitimate goals of competition policy and in which they had a hard time bringing a policy in line with liberal convictions that made deep state interventions into the economy the norm. Ordoliberalism, a loose network of intellectuals that emerged in the 1920s, is a typically German variety of liberal thought that came to dominate the postwar debates about the economic order (Hien and Joerges 2017). Ideologically situated between a rejection of state planning and the insight that competitive markets need sustaining state institutions, this school came to shape many postwar economic institutions in Germany and Europe. While Ordoliberal elites certainly were the driving domestic forces for the adoption of both the European and German antitrust regimes (Quack and Djelic 2005), they had difficulty coming up with a conception of the new law that was compatible with their political guiding principle of process-neutral "framework policies" from the very beginning. The enforcement of "perfect competition" – or the enforcement of behavior of powerful firms as if they were in "perfect competition" – would mean that the state had to push the economy into an arbitrary and artificial state of organization. At the latest during the 1960s, Ordoliberals converged on an ideal conception of the new law that limited it to "negative" state interventions, meaning that it was only to "prevent" but not to "pre-

9 Historically, state bureaucracies in Germany have been to a much greater extent staffed by members of the legal profession, often in permanent civil service, while the later state building in the US has led to more professional specialization in state employment (Rueschemeyer 1976).

scribe" economic activities in the service of the maintenance of market structures that would limit market power. The core purpose of such a system was not the creation of a specific form of competition, but something Ordoliberals early on called "competitive freedom." German cartel law was intended to protect the freedom to engage in competition and the freedom of sellers and buyers to choose among competing offers. Thus, the first annual report of the antitrust agency emphasized that "the law is not supposed to punish but to create order. It leaves every possible freedom to the entrepreneur, as long as he does not attempt to arbitrarily alter the economic conditions through distortions of and obstacles to competition. Thus, the law not only serves an economic, but a societal purpose" (Bundeskartellamt 1959, 11; our translation).

What sounded like an odd legalistic formalization of an institutional transfer led to heated debates about enforcement practices in the 1960s and 1970s that came to be known as the Hoppmann-Kantzenbach controversy. This intellectual battle was triggered by a series of publications in which Erhard Kantzenbach, a microeconomist whose ideas were closely related to the American Harvard School and who was later chairman of the German Monopoly Commission, tried to develop a system of desirable functions of economic competition as a guideline for antitrust enforcement (Kantzenbach 1967). In and of themselves, these functions were uncontentious – improving factor allocation, stimulating technological change, and enhancing the adaptability of the industrial system, for example. What triggered the fierce attack by Erich Hoppmann, the successor to Friedrich Hayek at the Ordoliberal bastion that is the University of Freiburg, were policy prescriptions formulated by Kantzenbach to allow certain "limited" restraints on trade in antitrust enforcement if they served his system of the desired effects of competition – temporary cartels and the stimulation of mergers, for example – and his openness towards a more active deconcentration agenda.

In a series of publications, Hoppmann violently attacked Kantzenbach's plea for a more instrumental approach to antitrust. First, Ordoliberals seemed to be concerned about the political-economic consequences of Kantzenbach's vision for antitrust. They feared a slippery slope which would turn competition policy into another tool of state intervention and planning. After all, the late 1960s and 1970s were the high time of experimentation in industrial policy in rich Western nations. Moves away from *per se* restrictions towards increasing consideration of individual cases could have further opened the regime up to the increasing influence of interest groups on cartel policy, undermining the central bank-like independent status of the cartel office. Second, Hoppmann fundamentally doubted the claim that there were conflicts between Kantzenbach's functions of competition and a formalistically enforced "freedom to compete" which could be known to bureaucrats before the competitive process unfolded. Most distinctively, perhaps, Hoppmann took up the early Ordoliberal notion of "competitive freedom" and emphasized that it should have a certain *non-teleological* character – he writes that it

> is about competition as an end in itself, as certain forms of economic freedom are manifested in it. Freedom of competition means: freedom of initiative, freedom to advance into new technical, organizational, and economic territories, to create new goods, new processes, new markets, freedom of economic progress. On the other side of the market there is a corresponding freedom to choose among alternatives … Restraints of the freedom of competition are identical to the artificial creation of market power and vice versa. The norm of competition policy must be that kind of competition that results if the freedom of competition is secured against restraining business practices. (Hoppmann 1966, 19; our translation)

The doctrine of competitive freedom developed in two important strands of thought. On the one hand, the epistemological argument against instrumentalist antitrust enforcement became one of the main arguments for a rule-based and structure-oriented approach. If the results of competition were known in advance, an oft-cited 1969 quip by Friedrich Hayek went, capitalist societies would not have to rely on it to organize their economies in the first place:

> Competition is thus, like experimentation in science, first and foremost a discovery procedure. No theory can do justice to it which starts from the assumption that the facts to be discovered are already known. There is no predetermined range of known or "given" facts which will ever all be taken into account. All we can hope to secure is a procedure that is on the whole likely to bring about a situation where more of the potentially useful objective facts will be taken into account than would be done in any other procedure which we know. It is the circumstances which makes so irrelevant for the choice of a desirable policy all evaluation of the results of competition that starts from the assumption that all the relevant facts are known to some single mind. (Hayek [1979] 1998, 68)

From resisting activism to blocking economization

In such a view, early German deconcentration debates, proposed merger control (on which Hoppmann later revised his views), and Kantzenbach's instrumental vision for antitrust enforcement became just another hopeless exercise in central planning, in which state agents tried to come up with optimal firm sizes, proper market shares, and desirable rates of industrial adjustment. While radical arguments like Hayek's never came to dominate the German and European antitrust profession, they made generations of practitioners more hesitant when it came to more "rational," "modern," and "goal-oriented" enforcement standards.

On the other hand, the idea that competition policy protects competitive freedom "in itself" proved to be widely influential in legal thought. In part, the allergic reaction of legal scholars to welfare goals in antitrust was a symptom of a more general distrust of postwar legal thought with positivist, instrumental interpretations of the rule of law. In the hands of one of the most influential legal scholars in the German antitrust profession, Ernst-Joachim Mestmäcker, the "value-rational" protection of competitive freedom came to symbolize the autonomy of the law. In an attack on the law and economics movement, he made the following criticism:

> Cost-benefit analysis is end-neutral. It can be applied to any given purpose. Constitutions, statutes and precedents, however, are as a rule not end-neutral. The question then is how to accommodate the normative implications of economic analysis with diverse non-economic legal purposes. In law, the relation of ends to means is more than a pragmatic methodological operation … Wealth maximization is no substitute for the purpose of law in general.
> (Mestmäcker 2007, 13)

As a whole, the professional doctrines around competitive freedom, as refined in the 1970s' industrial policy debates, worked as a strong barrier to the transatlantic harmonization of antitrust enforcement. Since the early 2000s, the EU Commission's Directorate-General for Competition launched a campaign to bring EU member states' enforcement practices into line with modern American standards. Through a series of discussion papers, conferences, court decisions, restructuring moves, and guidelines worked out since the late 1990s, the Commission tried to institutionalize new, more welfare-focused tests of abusive behavior, the efficiency defense in merger control and abuse cases, and a focus on consumer welfare in the multi-level EU antitrust regime. While many of the proposed changes have affected antitrust practices across the EU in one way or another, almost all of them met with staunch resistance from a significant faction of legal intellectuals and antitrust practitioners and ended up in hybrid practical manifestations. Compared to the spectacularly far-reaching economization of US competition law since the 1960s, "modern" economic thinking in European antitrust enforcement has been markedly impaired by systems of ideas and doctrines.

These doctrines were not simply detached from the enforcing agencies, but are referred to in their commentary, mission statements, and advocacy output. Thus, the aforementioned Hayek is often cited in general commitments to competition as a method of discovery (e.g., Bundeskartellamt 1982, 6), and liberal legal professionals like Mestmäcker and Ulrich Immenga led influential antitrust commissions in the 1970s and 1980s. One of the main representatives of the legal doctrine of competitive freedom, Immenga, resigned as head of the German *Monopolkommission* in 1989 in a public battle about the merger of *Daimler* and *MBB* as part of the *Airbus* project, which was blocked by antitrust authorities but subsequently allowed by the German economics ministry on industrial policy grounds (for a richer account of the battle of German Ordoliberals against the "industrial policy relativization" of competition policy, see Monopolkommission 1992). In the process, Immenga declared that the passage of the merger would "give insights into conflicts between industrial policy and competition policy, especially if one understands competition not just as an economic phenomenon, but recognizes its function in society to safeguard freedom" (quoted in Ortwein 1998, 231; our translation).

A closer look at the annual reports of the German antitrust agency reveals that the discourse in favor of continuing form-oriented interventions promoting competition remained prominent in the 1980s, even though the general perception of increasing international competition made this a contested policy issue. When German corporations seemed to maintain international competitiveness in the 1980s, the antitrust agency even claimed credit, arguing that it enhanced companies' international competitiveness by cul-

tivating competition on the home market (Bundeskartellamt 1984, 4) – a striking difference from US reformers' catering to the 1980s' industrial policy debates in praise of more lenient enforcement standards (see, for example, Baxter 1985). Another frequent argument mentioned in administrators' self-descriptions is support of small and medium-sized enterprises for whom, unlike for big ones, certain forms of horizontal cooperation were traditionally permitted as a means to survive in competition with big corporations (Bundeskartellamt 1987). Along similar lines, the institutionalization of merger control in Germany and the establishment of an independent agency monitoring concentration in German industry, the Monopolkommission, were accompanied by pleas to simultaneously ease cooperation between small and medium-sized enterprises (Brandt 1969). The high inflation period of the 1970s raised the specter of less competition driving prices even further (Bundeskartellamt 1978, 6). Finally, in the pro-market atmosphere of the 1980s, the antitrust agency successfully sold its activity to safeguard the competitive process – not distributional results – as actually furthering a common cause.

By the end of the 1990s, the antitrust agency more frequently discussed the "more economic approach," which by then had been adopted more broadly in the US. These discussions were triggered by initiatives by the European Commission's DG for Competition under Mario Monti and successive European Court of Justice case law, which were favoring the American effects-based approach to competition law. Significant parts of the German antitrust profession reacted adversely to reform proposals. In a 2000 discussion paper, for example, a softening of basic enforcement principles in cases of horizontal cooperation between companies was basically rejected by the German antitrust agency (Bundeskartellamt 2000), a position shared by the German government in its commentary on the annual antitrust report:

> From the point of view of the federal government, the consideration of economic insights may not counteract the basic principles of competition policy. The core and agreed-upon goal of competition law, to work towards the long-term interests of consumers by structurally safeguarding dynamic competition, should not be called into question in the process of adapting to analytical methods in industrial economics. Hence, the "economization of competition law" should not lead to a replacement of the practice of antitrust enforcement in Germany that has been developed and proven for decades. (Bundeskartellamt 2001)

Similar resistance to change at the European level can be found in the process of merger guideline revision and in the German positioning against the immediate introduction of tests of market dominance that were common in the US and in Canada (Buch-Hansen and Wigger 2011, 112–13).

While changing doctrines in the American antitrust profession have certainly left their mark on German competition policy and agency practices, administrators over the years have reaffirmed their suspicion of "modern" enforcement practices. The "welfare standard," former cartel office president and trained economist Bernhard Heitzer still emphasized in a conciliatory speech to EU professionals in 2008, appeared to be "a perfect servant for *theoretical* analysis. But it is a very poor master for law enforcers" (Heitzer 2008, 9; emphasis in the original).

5 Conclusion

In the 1950s, Hofstadter observed a bureaucratic routinization of antitrust enforcement in postwar embedded liberalism. While his diagnosis that competition policy had been transformed from an issue relevant for mass mobilization and contentious politics into a professional enterprise turned out to be highly accurate, the amount of policy change through processes within that routinized system was beyond his grasp. All three regimes of antitrust enforcement described above – the activist and economized US regimes and the postwar German regime – did not just exist in states of rule-bound "implementation." They were driven by ideational fads and systems of professionally negotiated beliefs and values. In all cases, there was continuous feedback between economic processes, enforcement practices, evaluations of past action, and ideational changes.

A note on the comparative dimension of our study: as it should not be considered surprising per se that different national bureaucracies maintain indigenous practices over time, we want to highlight that the two national pathways we describe are, at their core, not stories of mere cultural persistence or institutional path dependence. It was the decade-long struggle on the level of enforcement to enact the antitrust laws – to act on the challenge to deal with concentrations of private economic power – that made the American regime vulnerable to a change in enforcement doctrines that would eventually counteract some of the core ideas of the laws themselves. In the German context, the ideas that impaired American-style economization since the 1990s emerged in conflicts about how to implement competition policy – they were to a certain degree endogenous to the regime and a contingent outcome of ideological battles between professionals. The goal of looking at two – historically intimately related – cases was to demonstrate that alternative politics on the enforcement level of competition policy led to alternative regime characteristics, not directly to highlight national characteristics as decisive factors in policy design. Our study suggests that rule enforcement practices are not time-invariant structures, but must be constantly upheld by the respective professional groups in order to retain a stable character.

We mentioned above that the cases in our comparative analysis differ in a number of respects. We want to discuss two alternative explanations for the transatlantic divergence of antitrust enforcement regimes: political-economic differences and the differences in legal regimes. First, one could be inclined to explain the different US–German orientation both now and then in terms of more underlying political-economic structures that typically characterize Germany and the United States. With regard to industrial specialization, the two countries are systematically dissimilar (Hall and Soskice 2001). Thus, one could argue that the German tendency to maintain a classical, structure-focused competition regime is simply a result of its specific variety of capitalism, or that the specific sectoral structure of the German economy – lacking, for instance, a clustering of big digital businesses – made it politically more affordable to be harsher on larger companies with monopolistic inclinations during the last two or three decades. The professional ideas outlined above, in such a view, would be reducible to the more fundamental political-economic structure.

While an exhaustive treatment of the relationship between political-economic structures and regimes of competition policy is beyond the scope of this paper, we maintain that our focus on ideational and professional changes is warranted by the fact that the differences between the German and American political economies commonly emphasized in the Comparative Political Economy literature suggest the very opposite differences in competition policy to the ones we document above. Hall and Soskice (2001) claim that the typical German firm relies much more heavily on horizontal coordination and cooperation than its American counterpart. Complementary institutions to horizontally networked production in competition policy would probably be more lenient and open to trade-offs between efficiency and market structure than institutions fitted to a regime based on coordination through market competition.[10] Moreover, business positions on antitrust reform are, to the best of our knowledge, often comparatively undirected and tied up in details. German businesses in the mid-2000s, for example, were split with regard to EU initiatives to move further away from *per se* rules on market structures towards an efficiency focus in competition policy (see DIHK 2006). On the one hand, they cited the legal uncertainties that go along with an effect-based relativization of antitrust statutes, criticized the spirit of using competition law as a tool for consumer protection, and voiced the fear that an increasing consideration of "consumer welfare" in competition policy might open the door to unchecked abuses of the power of concentrated buyers towards *Mittelstand* suppliers. On the other hand, they supported the European Commission in its moves to be more permissive with respect to bundling and tying practices and in its plea for more demanding tests of market dominance and demanded strong intellectual property right protection without consideration of its immediate effects on competition.

A second possible alternative explanation would see change in the US and resistance in Germany as consequences of the respective legal regimes. The general resistance of the German legal profession against the "more economic approach" is also an expression of its more general skepticism of "law and economics" – i.e., the application of economic doctrines to the analysis of law (Kirchner 1991). While in common law systems the economic approaches were rather seized by the judiciary in its struggle for a balance of power, the German judiciary has historically been much more confined to interpreting the laws as set by the legislature or to interpreting cases as defined by existing legal doctrines (Kirchner 1991). Emblematically, although the subject of law and economics is taught at universities in Germany, it is not a required part of German lawyers' training.

10 There is an older comparative literature on the political economies of Germany and the US that emphasizes differences in typical competitive strategies since the late 1970s. German firms were said to compete on quality, while American firms were said to be locked in on competition on price (Sabel et al. 1989; Streeck 1991). Such patterns would help to explain why American authorities might tend to support domestic businesses by becoming more lenient in antitrust enforcement, while German authorities were easily able to maintain their competition policies. Recent empirical research has shown, however, that the diagnosis of German quality production might only hold true for a brief historical period, as German exports have demonstrably become increasingly price-sensitive during the last decades (Baccaro and Pontusson 2016).

Furthermore, Continental European legal regimes are often characterized as inquisitorial, in contrast to Anglo-American adversarial regimes (Rueschemeyer 1976). While the former rely more heavily on justices and state officials as neutral participants in trials, the latter give more room to the contending parties to introduce evidence and structure trials. Modern economic antitrust thinking, with its emphasis on complex economic modelling and on questions of quantitative trade-offs, seems to be more fitting for an adversarial system in which there are extensive possibilities for the parties involved to present expert assessments of the given case. While both dimensions of institutional difference have undoubtedly contributed to the difficulties of recent antitrust thinking in Europe, we would caution against a monocausal institutional explanation of diverging antitrust pathways. Widespread belief in underlying systems of thought are not a necessary condition for the adoption of certain doctrinal elements, as Germany's immediate postwar history of antitrust documents. In addition, state agencies and courts around the world have tried to keep up with the increasing technical demands of modern antitrust prosecution, which shows that the skills necessary are in no way exclusive to contending parties. Even if future research should uncover more clear-cut causes of diverging pathways of antitrust regimes in business positions, political and institutional factors, or legal regime characteristics, we are confident that these would hint at the fact that institutional change in competition policy is overdetermined, rather than at a truly competing explanation.

Generalized statements about the antitrust effects on the concentration of markets are difficult to apply to proof through single cases. However, such examples as legal cases against Microsoft and Google in Europe or airline consolidation in the United States speak in favor of a legal system effect on political economies. Whatever the precise mechanism, our study seems to suggest that case law systems are more likely to undergo change than more rule-oriented civil law systems. This implies that the extent to which the implementation phase itself becomes an intermediary variable depends on the overall legal system: in statutory systems, the interpretation variable has fewer degrees of freedom.

Finally, our analysis points to important cross-country differences in regulatory bodies that are not directly and democratically elected, whose decisions can still have lasting impacts on consumer welfare and economic structure. The neglect of these technocratic agencies – general bureaucracies, central banks (Braun 2016), courts (Höpner 2011), consumer protection agencies (Prasad 2012), to name just a few – results from the idea that their role is restricted to implementation and following of the rules of a delegating principal. With parliamentary capacity being restricted by supranational powers, ideological stalemates, or global pressures, these agencies are becoming more powerful actors than was previously thought (Quinn 2010). Freed from overt political struggles, under day-to-day pressures to solve immediate problems, under loose democratic monitoring, and organized around homogeneous professional corps, these agencies can in part pursue their own agendas. Laws restricting them are often open to interpretation as a result of the political struggles in their making.

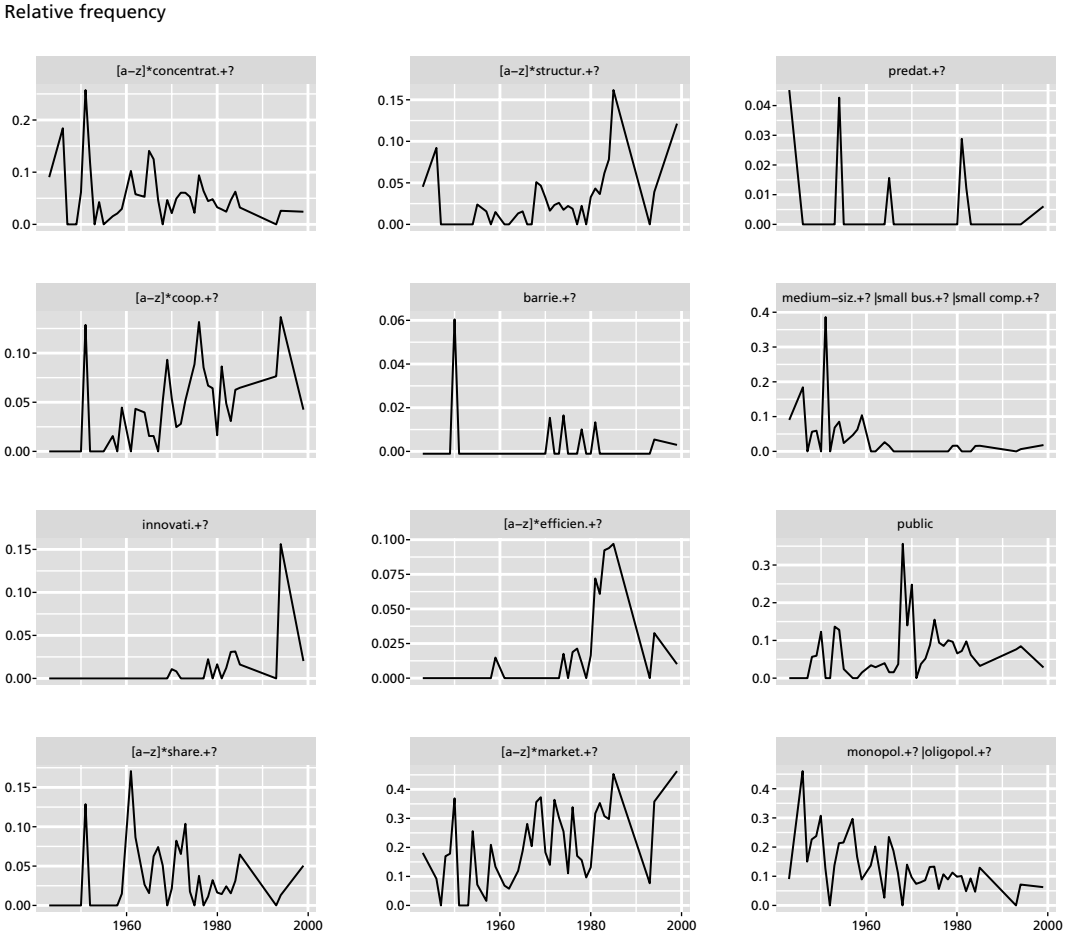
Appendix

To support our document-based account of antitrust idea development over time, we conducted a content analysis of writings by the antitrust authorities in the US, Germany, and the EU. All antitrust authorities produce annual activity reports to their supervisory bodies – i.e., the German or EU parliament and the government and Congress in the US. While the German and European reports are in the range of more than 100 pages, the reports of the US antitrust division extend to no more than ten pages. As regular and time-consistent as these texts are as a source for studying the authorities' activity, they are slightly less suited to revealing the underlying rationales of the authorities' course of action. As the decisions over these rationales are taken elsewhere, the reports are of a technical nature and are rather suited to tracing regulatory agendas and agency casework. When applying an inductively driven automated text analysis (topic model) to the corpus of annual reports, the resulting topics are therefore not competing views on competition, but rather about the industries and sectors affected by antitrust actions in the given years.

As an alternative approach, we constructed dictionaries for competition vocabularies indicative of the form- and effect-based approaches to competition. A frequent use of the term "efficient" and its variations is likely to pertain to the effect-based view on competition, for example, whereas a concern for "medium-sized" enterprises belongs to the repertoire of mid-century American or form-based reasoning. We chose around ten different terms in English and German which most consistently have a competition related meaning (e.g., "we need less concentration in industry"). While we cannot exclude the fact that terms sometimes appear in semantic contexts which are not competition-related (e.g., "we need to concentrate on new tasks"), we suppose that this distortion occurs similarly in all years. As the document material and languages are different, we only focus on over-time comparisons and do not compare frequencies across corpora.

Figure 1 thus shows the relative frequencies of central antitrust terms over time, extracted from the annual antitrust reports of the Attorney General from 1945 to 1999. The central notion of the Chicago revolution in antitrust doctrine, "efficiency," becomes much more common in the language of agency reporting starting in the 1970s. Similarly, "innovation" and "cooperation," terms signaling concerns for economic outcomes and important considerations for trade-off thinking in American antitrust, begin to take off in the late 1970s and early 1980s amidst the American industrial crises of the late Carter and early Reagan years (an excellent example of antitrust rethinking based on industrial policy concerns can be found in Teece and Jorde 1992). Concentration, by contrast, a crucial point of debate in the 1950s and 1960s – for example, in oft-repeated warnings about "shared monopoly" and "persistent high concentration" – becomes less common in reporting, as does the populist concern for small and medium-sized businesses. Stems of words like predation and predatory, ruinous, consolidated, market share, and barrier – possible terminological indicators of central conceptual pillars of more activist enforcement – declined in importance since the 1960s. A similar decline can be seen for the original populist concern to fight "monopolies" and "oligopolies."

Figure 1 Relative frequencies of key terms in US DOJ Antitrust Annual Reports

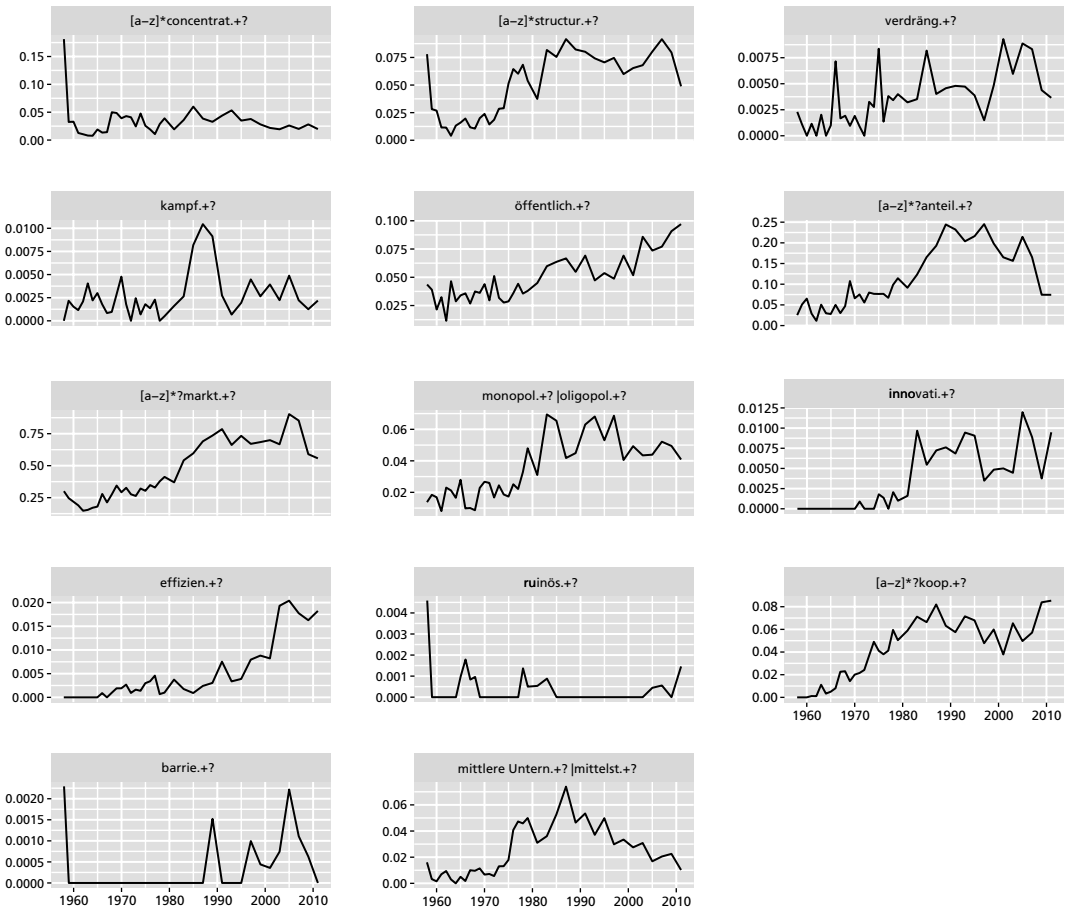


Source: Report of the Antitrust Division in the Annual Reports of the Attorney General of the United States, Department of Justice, Washington, D.C., 1945–1985, and Antitrust Division Reports, Department of Justice, Washington, D.C., 1994 and 1999.
Note: The reports contain an average of 1,523 words.

In the German case (see Figure 2), a look at the frequencies of central antitrust terms over time from the enforcement agency reveals a correspondingly different picture than that shown in the US antitrust reports.

Even though references to "concentration," a central concern of modernization discussions in antitrust in the 1960s, show a decline similar to the US case, references to "efficiency" lag until the early 2000s. In fact, the recent uptake in references to efficiency is in large part a symptom of antitrust administrators defending their doctrinal *Sonderweg* against "modern" American antitrust thought. Terms that were characteristic of American antitrust thought before the 1980s, like barrier *(Barriere)*, market share *(Marktanteil)*, and predatory competition *(Verdrängungswettbewerb)*, are still common in German reporting, as much as a concern about the structure of markets. The rise of "public" issues since the 1980s often refers to a spillover of competition concerns about the pri-

Figure 2 Relative frequencies of key terms in the annual (and later biennial) reports of the German Federal Cartel Office

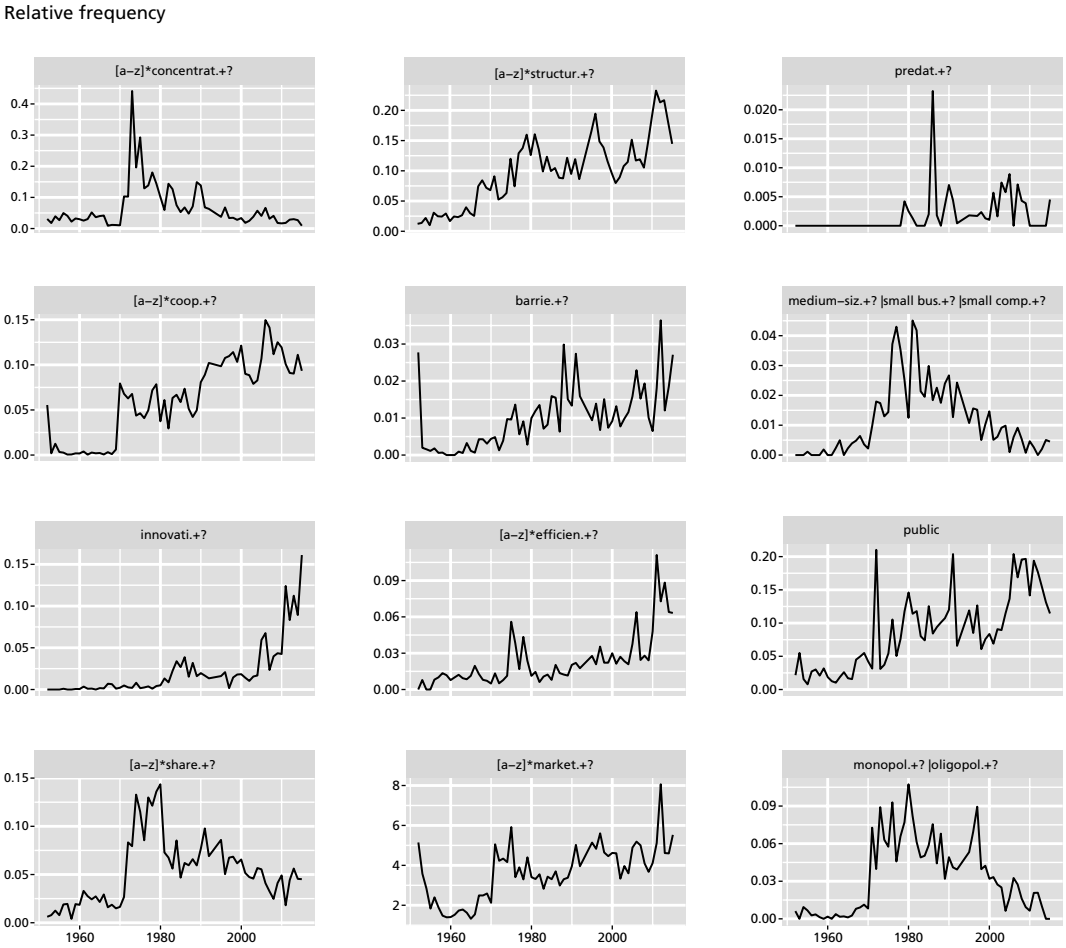


Source: Annual Reports of the German Bundeskartellamt (Tätigkeitsberichte), 1958–1978; Biennial Reports of the German Bundeskartellamt (Tätigkeitsberichte) 1979–2011.
Note: The reports contain an average of 140,971 words.

vate sector into the public sector (Scharpf 2016). Rising mentions of "monopolies" and "oligopolies" are directly opposed to the development in the US over time.

Finally, we turn to the reports issued by the European competition authority (Figure 3). We opted for the English-language version as it is continuously available since the earliest date of 1952. The European picture is not altogether clear-cut, but often tends to follow the development of the American vocabulary: the concern for concentration, with the exception of a peak in the 1960s, declines; there is a rise of "efficiency" and "innovation" talk from the late 1990s onwards and a decline in mentions of "medium-sized" companies in the discourse. Also, concerns about market "shares" and "monopolies" decrease over time. On the other hand, concerns about the market and its structures as well as barriers rise similarly to those in the German case above.

Figure 3 Relative frequencies of key terms in annual reports on European competition policy



Source: Annual reports on European competition policy, published in conjunction with the General Report on the Activities of the European Communities and the General Report on the Activities of the European Commission, 1952–2015.
Note: The reports contain an average of 133,779 words.

References

Allen, Christopher. 1989. "The Underdevelopment of Keynesianism in the Federal Republic of Germany." In *The Political Power of Economic Ideas: Keynesianism across Nations*, edited by Peter A. Hall, 263–90. Princeton: Princeton University Press.

Ambrosius, Gerold. 1981. "Die Entwicklung des Wettbewerbs als wirtschaftspolitisch relevante Norm und Ordnungsprinzip in Deutschland seit dem Ende des 19. Jahrhunderts." *Jahrbuch für Sozialwissenschaft* 32 (2): 154–201.

Baccaro, Lucio, and Jonas Pontusson. 2016. "Rethinking Comparative Political Economy: The Growth Model Perspective." *Politics and Society* 44 (2): 175–207.

Bain, Joe S. 1951. "Relation of Profit Rate to Industry Concentration: American Manufacturing, 1936–1940." *Quarterly Journal of Economics* 65 (3): 293–324.

Baxter, William F. 1985. "Antitrust Law and Technological Innovation." *Issues in Science and Technology* 1 (2): 80–91.

Bork, Robert H. 1969. "Separate Statement of Robert H. Bork." *Antitrust Law and Economics Review* 53: 53–56.

———. 1970. "Antitrust in Dubious Battle." *St. John's Law Review* 44 (5): 663–76.

Bourdieu, Pierre 2005. "Principles of an Economic Anthropology." In *The Handbook of Economic Sociology*, edited by Neil Smelser and Richard Swedberg, 75–89. Princeton: Princeton University Press.

Brandt, Willy. 1969. *Regierungserklärung von Bundeskanzler Willy Brandt vor dem Deutschen Bundestag in Bonn am 28. Oktober 1969*. Presse- und Informationsamt der Bundesregierung. Bonn.

Braun, Benjamin. 2016. "Speaking to the People? Money, Trust, and Central Bank Legitimacy in the Age of Quantitative Easing." *Review of International Political Economy* 23 (6): 1064–92.

Buch-Hansen, Hubert, and Angela Wigger. 2011. *The Politics of European Competition Regulation: A Critical Political Economy Perspective*. New York: Routledge.

Bundeskartellamt, various years. *Tätigkeitsberichte*. Bonn/Berlin: Deutscher Bundestag.

Crandall, Robert W. 2001. "The Failure of Structural Remedies in Sherman Act Monopolization Cases." *Oregon Law Review* 80 (1): 109–98.

Crouch, Colin. 2011. *The Strange Non-Death of Neoliberalism*. Cambridge: Polity.

Department of Justice, various years. *Annual Report of the Attorney General of the United States*. Washington, DC: GPO.

DIHK (Deutscher Industrie- und Handelskammertag). 2006. *Stellungnahme zum Thema: Diskussionspapier der Europäischen Kommission zur Anwendung der Wettbewerbsregeln des EG-Vertrages (Art. 82) auf Unternehmen, die ihre beherrschende Stellung am Markt missbrauchen*. Berlin, March 31.

Djelic, Marie-Laure. 2002. "Does Europe mean Americanization? The Case of Competition." *Competition and Change* 6 (3): 233−50.

Dobbin, Frank R. 2009. *Inventing Equal Opportunity*. Princeton: Princeton University Press.

Edelman, Lauren B. 1991. "Review of The Transformation of Corporate Control. By Neil Fligstein. Cambridge, MA: Harvard University Press, 1990." *American Journal of Sociology* 97 (2): 549–51.

———. 1992. "Legal Ambiguity and Symbolic Structures: Organizational Mediation of Civil Rights Law." *American Journal of Sociology* 97 (6): 1531–76.

Eisner, Marc Allen. 1991. *Antitrust and the Triumph of Economics: Institutions, Expertise, and Policy Change*. Chapel Hill, NC: The University of North Carolina Press.

Eisner, Marc Allen, and Kenneth J. Meier. 1990. "Presidential Control versus Bureaucratic Power: Explaining the Reagan Revolution in Antitrust." *American Journal of Political Science* 34 (1): 269–87.

Evans, Peter B., Dietrich Rueschemeyer, and Skocpol, Theda., eds. 1985. *Bringing the State Back In*. Cambridge: Cambridge University Press.

Fligstein, Neil. 1990. *The Transformation of Corporate Control*. Cambridge, MA: Harvard University Press.

Gerber, David J. 1998. *Law and Competition in Twentieth Century Europe: Protecting Prometheus*. Oxford: Oxford University Press.

Gifford, Daniel J., and Robert T. Kudrle. 2015. *The Atlantic Divide in Antitrust: An Examination of US and EU Competition Policy*. Chicago: University of Chicago Press.

Hacker, Jacob S., Paul Pierson, and Kathleen Thelen. 2015. "Drift and Conversion: The Hidden Faces of Institutional Change." In *Advances in Comparative-Historical Analysis*, edited by James Mahoney and Kathleen Thelen, 180–210. Cambridge: Cambridge University Press.

Hall, Peter, ed. 1989. *The Political Power of Economic Ideas: Keynesianism across Nations*. Princeton: Princeton University Press.

Hall, Peter A., and David Soskice. 2001. "An Introduction to Varieties of Capitalism." In *Varieties of Capitalism: The Institutional Foundations of Comparative Advantage*, edited by Peter A. Hall and David Soskice, 1–68. Oxford: Oxford University Press.

Hayek, Friedrich August von. (1979) 1998. *The Political Order of a Free People: Law, Legislation and Liberty, Vol. 3*. London: Routledge.

Heitzer, Bernhard. 2008. "Economic Assessment in Competition Enforcement: Developments in France and Germany." Conference paper. Annual Conference of CRA International "Economic Developments in European Competition Policy," Brussels, December 3.

Hesse, Jan-Otmar. 2016. "Abkehr vom Kartelldenken? Das Gesetz gegen Wettbewerbsbeschränkungen als ordnungspolitische und wirtschaftstheoretische Zäsur der Ära Adenauer." In *Der "Rheinische Kapitalismus" in der Ära Adenauer. Rhöndorfer Gespräche, Bd. 26*, edited by Hans Günter Hockerts and Günther Schulz, 29–50. Paderborn: Ferdinand Schöningh.

Hien, Josef, and Joerges, Christian, eds. 2017. *Ordoliberalism, Law and the Rule of Economics*. Oxford: Hart.

Hofstadter, Richard. (1964) 1996. "What Happened to the Antitrust Movement?". In *The Paranoid Style in American Politics and Other Essays*, 188–237. Cambridge, MA: Harvard University Press.

Höpner, Martin. 2011. "Der Europäische Gerichtshof als Motor der Integration: Eine akteursbezogene Erklärung." *Berliner Journal für Soziologie* 21 (2): 203–29.

Hoppmann, Erich. 1966. "Das Konzept der optimalen Wettbewerbsintensität: Rivalität oder Freiheit des Wettbewerbs: Zum Problem eines wettbewerbspolitisch adäquaten Ansatzes der Wettbewerbstheorie." *Jahrbücher für Nationalökonomie und Statistik* 179 (4): 286–323.

Hovenkamp, Herbert. 1989. "The Antitrust Movement and the Rise of Industrial Organization." *Texas Law Review* 68 (1): 105–67.

———. 2009. "The Neal Report and the Crisis in Antitrust." *University of Iowa Legal Studies Research Paper* No. 9, The University of Iowa, College of Law.

Kantzenbach, Erhard. 1967. "Das Konzept der optimalen Wettbewerbsintensität: Eine Erwiderung auf den gleichnamigen Besprechungsaufsatz von Erich Hoppmann." *Jahrbücher für Nationalökonomie und Statistik* 181 (3): 193–241.

Kirchner, Christian. 1991. "The Difficult Reception of Law and Economics in Germany." *International Review of Law and Economics* 11 (3): 277–92.

Kovacic, William E. 1989. "Failed Expectations: The Troubled Past and Uncertain Future of the Sherman Act as a Tool for Deconcentration." *Iowa Law Review* 74 (5): 1105–50.

———. 1990. "The Antitrust Paradox Revisited: Robert Bork and the Transformation of Modern Antitrust Policy." *Wayne Law Review* 36: 1413–71.

———. 2003. "The Modern Evolution of U.S. Competition Policy Enforcement Norms." *Antitrust Law Review* 71 (2): 377–478.

Mahoney, James, and Kathleen Thelen. 2010. *Explaining Institutional Change: Ambiguity, Agency and Power*. Cambridge: Cambridge University Press.

Mason, David L. 2014. *The American Savings and Loan Industry, 1831–1935. Volume 4. Serving the People: Women, Immigrants, African Americans and the Promotion of Home Ownership*. London: Pickering and Chatto.

Mestmäcker, Ernst-Joachim. 2007. *A Legal Theory without Law: Posner v. Hayek on Economic Analysis of Law*. Tübingen: Mohr Siebeck.

Monopolkommission. 1992. *Wettbewerbspolitik oder Industriepolitik, Hauptgutachten IX*. Baden-Baden: Nomos.

Morgan, Mary S. 1992. "Competing Notions of 'Competition' in Late Nineteenth Century American Economics." *Economic History Working Papers* 1/92, Department of Economic History, London School of Economics and Political Science.

Neal, Phil C., et al. 1968. "Report of the White House Task Force on Antitrust Policy." *Antitrust Law and Economics Review* 11: 11–52.

Ortwein, Edmund. 1998. *Das Bundeskartellamt: Eine Politische Ökonomie deutscher Wettbewerbspolitik*. Baden-Baden: Nomos.

Patashnik, Eric M., and Julian E. Zelizer. 2013. "The Struggle to Remake Politics: Liberal Reform and the Limits of Policy Feedback in the Contemporary American State." *Perspectives on Politics* 11 (4): 1071–87.

Pitofsky, Robert. 1979. "The Political Content of Antitrust." *University of Pennsylvania Law Review* 127 (4): 1051–75.

———. 2008. "Introduction: Setting the Stage." In *How the Chicago School Overshot the Mark: The Effect of Conservative Economic Analysis on U.S. Antitrust*, edited by Robert Pitofsky, 3–6. Oxford: Oxford University Press.

Posner, Richard A. 1979. "The Chicago School of Antitrust Analysis." *University of Pennsylvania Law Review* 127: 925–48.

Prasad, Monica. 2012. *The Land of Too Much: American Abundance and the Paradox of Poverty*. Cambridge, MA: Harvard University Press.

Quack, Sigrid, and Marie-Laure Djelic. 2005. "Adaptation, Recombination, and Reinforcement: The Story of Antitrust and Competition Law in Germany and Europe." In *Beyond Continuity: Institutional Change in Advanced Political Economies*, edited by Wolfgang Streeck and Kathleen Thelen, 255–81. Oxford: Oxford University Press.

Quinn, Sarah L. 2010. *Government Policy, Housing, and the Origins of Securitization, 1780–1968*. ProQuest: UMI Dissertation Publishing.

Rourke, Francis E. (1969) 1976. *Bureaucracy, Politics, and Public Policy*. Boston: Little, Brown.

Rueschemeyer, Dietrich. 1976. *Juristen in Deutschland und in den USA: Eine vergleichende Untersuchung von Anwaltschaft und Gesellschaft*. Stuttgart: Enke.

Sabatier, Paul, and Daniel Mazmanian. 1980. "The Implementation of Public Policy: A Framework of Analysis." *Policy Studies Journal* 8 (4): 538–60.

Sabel, Charles F., Gary Herrigel, Richard Deeg, and Richard Kazis. 1989. "Regional Prosperities Compared: Massachusetts and Baden-Württemberg in the 1980s." *Economy and Society* 18 (4): 374–404.

Scharpf, Fritz W. 2016. "De-Constitutionalization and Majority Rule: A Democratic Vision for Europe." *MPIfG Discussion Paper* 16/14, Max Planck Institute for the Study of Societies, Cologne.

Scherer, Frederic M. 1970. *Industrial Market Structure and Economic Performance*. Chicago: Rand McNally & Company.

———. 2008. "Conservative Economics and Antitrust: A Variety of Influences." In *How The Chicago School Overshot the Mark: The Effect of Conservative Economic Analysis on U.S. Antitrust*, edited by Robert Pitofsky, 30–39. Oxford: Oxford University Press.

Schwalbe, Ulrich. 2010. "Review of 'Effizienz oder Wettbewerbsfreiheit? Zur Frage nach den Aufgaben des Rechts gegen private Wettbewerbsbeschränkungen' by Adrian Künzler." *Zeitschrift für Wettbewerbsrecht* 8 (4): 455–64.

Streeck, Wolfgang. 1991. "On the Institutional Conditions of Diversified Quality Production." In *Beyond Keynesianism: The Socio-Economics of Production and Full Employment*, edited by Egon Matzner and Wolfgang Streeck, 21–61. Aldershot: Elgar.

Streeck, Wolfgang, and Kathleen Thelen. 2005. "Introduction: Institutional Change in Advanced Political Economies." In *Beyond Continuity: Institutional Change in Advanced Political Economies*, edited by Wolfgang Streeck and Kathleen Thelen, 1–39. Oxford: Oxford University Press.

Thoenig, Jean-Claude. 1973. *L'ère des technocrates: Le cas des Ponts et Chaussées*. Paris: Les éditions d'organisation.

Uekötter, Frank. 2014. *The Greenest Nation? A New History of German Environmentalism*. Cambridge, MA: MIT Press.

Van Horn, Robert. 2011. "Chicago's Shifting Attitude Toward Concentrations of Business Power (1934–1962)." *Seattle University Law Review* 34 (4): 1527–44.

Weir, Margaret. 1989. "Ideas and Politics: The Acceptance of Keynesianism in Britain and the United States." In *The Political Power of Economic Ideas: Keynesianism across Nations*, edited by Peter A. Hall, 53–86. Princeton: Princeton University Press.

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