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ABSTRACT

This theme issue examines three historical and current problems surrounding wealth and power. The first article looks at King Leopold of Belgium and his exploitation of the Congo. The second article explores John D. Rockefeller and the Standard Oil monopoly. The final article examines the antitrust case against the Microsoft Corporation. Each article includes questions for class discussion and writing, a further reading list, and classroom activities. (BT)

Wealth and Power

Bill of Rights in Action, v16 n2 Spr 2000

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BILL OF RIGHTS IN ACTION

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WORLD HISTORY

King Leopold's "Heart of Darkness"

In 1885, King Leopold II of Belgium gained a vast area in central Africa as his personal possession. His greed and the system of forced labor he imposed there prompted the first human rights movement of the 20th century.

Five years after most European nations and the United States had granted colonial status to King Leopold's "Congo Free State," a young merchant seaman traveled up the Congo River in a steamboat. Joseph Conrad was one of the first outsiders to witness and later write about the horrors committed by Leopold's regime in its greedy pursuit of Congo ivory and wild rubber.

King Leopold II of Belgium, pictured here in uniform, took the Congo as his personal possession. (Bettmann/Corbis)

In 1902, Conrad published his novel *The Heart of Darkness*. In this fictional story, a man much like himself travels up a river into a rain forest where he meets a European ivory trader named Kurtz. The methods Kurtz uses to force the native people to bring him the ivory elephant tusks are symbolized by his guns and a ring of poles around his house. On top of each pole is a human head.

Conrad attempted to show that the "heart of darkness" lay deep within the Europeans who exploited the land and people of the Congo. But the full story of the Congo Free State not only involves the evil acts committed there, but also the campaign to expose them to world public opinion.

Exploring the Congo

Ten years before Columbus reached America, the Portuguese entered the mouth of Africa's Congo, one of the great rivers of the world. At first, good relations developed between the Portuguese and the several million inhabitants of the Kingdom of the Congo. The Portuguese didn't want to conquer or colonize the Congo. They only hoped to trade and to introduce Christianity.

The Kingdom of the Congo was a strong unified state known for its advanced working of copper and iron. The Congo king welcomed Portuguese traders, artisans, and missionaries.

Slavery was a part of the Congo culture. Most slaves were war captives, criminals, or debtors who could eventually earn back

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Wealth and Power

This *Bill of Rights in Action* examines three historical and current issues surrounding wealth and power. The first article looks at King Leopold of Belgium and his deplorable exploitation of the Congo. The second article explores John D. Rockefeller and the Standard Oil monopoly. The final article examines the antitrust case against the Microsoft Corporation.

World History: King Leopold's "Heart of Darkness"

U.S. History: Rockefeller and the Standard Oil Monopoly

U.S. Government: United States v. Microsoft their freedom. But Congo clan chiefs and African Muslim slave traders from upriver were happy to sell their slaves to the Portuguese and other Europeans who transported them to America. This slave trading gradually depopulated and weakened the once-powerful Kingdom of the Congo.

In the mid-1800s, European maps marked central Africa as "unexplored." It remained one of the few areas of the vast continent not colonized by a European imperial power. But in 1871, journalist Henry M. Stanley electrified Europe when he found adventurer David Livingstone who had disappeared years earlier on an African expedition. Stanley then became determined to fully explore the interior of Africa.

Historians estimate that 8–10 million persons perished from the violence, forced labor, and starvation caused by Leopold's lust for power and profits.

Financed by New York and London newspapers, Stanley left the east coast of Africa in 1874 to lead a massive expedition. Battling native peoples and mutinies among his own men, he reached the headwaters of the Congo River. He then navigated down the Congo for a thousand miles before encountering a 200-mile stretch of rapids. He finally arrived at the Atlantic Ocean in 1877, having traveled 7,000 miles across Africa. He announced that the Congo "is and will be the grand highway of commerce to west central Africa."

Leopold II Gets His Colony

Leopold II, the king of the Belgians, enthusiastically followed press accounts of Stanley's travels. Leopold was frustrated that tiny Belgium possessed no colonies. As a constitutional monarch, he held little power at home. But he yearned to rule a rich colonial empire.

Leopold invited Stanley to Belgium and persuaded the now famous explorer to return to the Congo acting as the king's personal agent. Leopold instructed Stanley, under the guise of doing scientific explorations and combating slavery, to secretly establish monopoly control over the rich Congo ivory trade. To do this, Stanley had to get local clan chiefs to sign treaties turning over their lands and the labor of their people to Leopold.

Over the next five years, Stanley signed more than 450 treaties with Congo chiefs. Clearly, they had no idea what they were signing in exchange for the cloth, trinkets, alcohol, and other cheap goods Stanley gave them. After Leopold sent agents to lobby Congress, the United States became the first nation to recognize his claim to the Congo.

In 1884–85, a conference held in Berlin, Germany, decided the colonial status of central Africa. Suspicious of each other's ambitions in the region, the European powers and the United States agreed to grant Leopold possession of the Congo River basin. This encompassed nearly a million square miles, an area 80 times larger than Belgium. Of course, the people of the Congo took no part in the Berlin Conference and were unaware that their lives were about to tragically change.

"The Heart of Darkness"

On May 29, 1885, King Leopold's agents proclaimed him "sovereign" (supreme authority) of the "Congo Free State." In reality, it was neither free nor a state, but the personal possession of Leopold to do with as he pleased. The delegates to the Berlin Conference assumed that all nations would trade freely in Leopold's colony. "Sovereign" Leopold, however, had other ideas.

Leopold, who never visited the Congo, issued decrees from Belgium. He required the native people to trade only with his state agents or with his "concessions" (private companies that paid him 50 percent of their profits). The natives hunted elephants for their ivory tusks and gathered sap from wild rubber vines growing in the rain forest. This involved the hard labor of many men who were often away from their families for long periods.

Leopold and the concessions gave bonuses to their agents for paying native workers little for the ivory and rubber. When the Congo people finally refused to continue working under these conditions, Leopold had to develop a new system of labor. By 1890, Leopold's regime and the concessions were paying Congo chiefs to supply "volunteer" workers. The Congo Free State also purchased or forcibly took slaves from Muslim slave traders to work as laborers or soldiers.

In the early 1890s, Leopold's private African army, the Force Publique (Public Force), drove the powerful Muslim slave traders out of the Congo. While Leopold portrayed this as a great humanitarian act, his real purpose was to gain control of the upper Congo River and to acquire more workers.

Up to this point, Leopold's Congo enterprises had not made a profit. But his fortunes changed in the mid-1890s. A world rubber boom suddenly started, following the invention of the inflatable tire. Leopold and his licensed concessions now needed even more workers to go deeper into the forest in search of wild rubber.

Leopold decided to "tax" his Congo subjects by requiring local chiefs to supply men to collect rubber. Leopold's agents held the wives and children of these men as hostages until they returned with their quota of rubber.

The Congo people rebelled by ambushing army units, fleeing their villages to hide in the wilderness, and setting the rubber vine forests on fire. But Leopold's Force Publique crushed the rebellion. By 1905, the Force Publique had grown to a fearsome but poorly disciplined army of 16,000 African mercenary soldiers led by some 350 European officers. They burned villages, cut off the heads of uncooperative chiefs, and slaughtered the women and children of men refusing to collect rubber.

King Leopold's Congo Free State encompassed the Congo River Basin, nearly a million square miles in Central Africa. (Perry-Castaneda Library Map Collection, University of Texas at Austin)

Force Publique officers sent their soldiers into the forest to find and kill rebels hiding there. To prove they had succeeded, soldiers were ordered to cut off and bring back the right hand of every rebel they killed. Often, however, soldiers cut off the hands of living persons, even children, to satisfy the quota set by their officers. This terror campaign succeeded in getting workers back to collecting rubber. As a result, Leopold's profits soared.

"A Secret Society of Murderers"

Edmund Dene Morel was a young British shipping clerk. Periodically, his company sent him to the Belgian port of Antwerp to supervise the loading and unloading of ships. In the late 1890s, Morel made a horrifying discovery. He noticed that while the Congo Free State exported tons of raw rubber to Belgium, little was shipped back except guns and bullets. He guessed rightly that the many natives needed to collect the rubber were forced to do so at gunpoint. "I had stumbled upon a secret society of murderers with a king for a [partner]," he later wrote.

After reading reports written by missionaries about Congo atrocities, Morel quit his shipping job in 1901 and began a campaign to expose Leopold's Congo regime. Morel worked as a newspaper reporter, made speeches, and wrote books and pamphlets condemning the mistreatment of the Congo people. His relentless activity caused the British government to send diplomat Roger Casement to the Congo Free State to investigate conditions there. Casement uncovered widespread evidence of hostage-taking, floggings, mutilation, forced labor, and outright murder.

Following the publication of his report in 1904, Casement joined Morel in organizing the Congo

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Reform Association, which resulted in the first major human rights movement of the 20th century. To expose Leopold's bloody Congo enterprise, Morel used photographs and slide shows picturing children whose hands had been cut off. Morel also expanded his movement to the United States where he met with President Theodore Roosevelt and enlisted the support of Booker T. Washington and Mark Twain.

Leopold struck back with a massive propaganda effort, which included lobbying both the British Parliament and U.S. Congress. But Morel's pleas for human rights in the Congo turned public opinion against the Belgian king.

Under pressure from Britain and the United States, Leopold turned over ownership of the Congo Free State to the Belgian government in 1908. But he demanded and received a huge cash payment and other benefits from Belgium for "his great sacrifices made for the Congo." Again, the Congo people had no say in their fate.

The Belgian government eliminated the worst abuses against the native people of the Congo. But the land along with its rubber and mineral resources remained firmly under European control. Belgium did little to improve the well-being of the people or to involve them in administering the colony.

Rich in copper, diamonds, oil, uranium, and other minerals, the Congo became an independent nation in 1960. In 1965, however, army leader Joseph Mobutu seized power. Like Leopold, Mobutu used his dictatorial powers to funnel the wealth of the Congo into his own pockets. Although Mobutu was finally overthrown in 1997, the future of self-rule in today's Democratic Republic of the Congo still remains uncertain.

King Leopold's Congo Free State was an economic, environmental, cultural, and human disaster for the Congo people. Historians estimate that 8–10 million persons perished from the violence, forced labor, and starvation caused by Leopold's lust for power and profits. When he died in 1909 at age 74, much of the world despised him. American poet Vachel Lindsay wrote this epitaph:

> Listen to the yell of Leopold's ghost
>
> Burning in Hell for his hand-maimed host,
>
> Hear how the demons chuckle and yell
>
> Cutting his hands off, down in Hell.

For Discussion and Writing

1. Describe the system of labor put into place by Leopold to gather ivory and wild rubber. Was this a form of slavery?
2. How did Edmund Morel almost singlehandedly convince the world that something terrible was happening in King Leopold's Congo Free State?
3. What was "the heart of darkness"?

For Further Reading

Bauer, Ludwig. *Leopold the Unloved.* Boston: Little, Brown and Co., 1935.

Hochschild, Adam. *King Leopold's Ghost.* Boston: Houghton Mifflin, 1998.

A C T I V I T Y

Doing Business

The Congo Free State was an extreme example of one country exploiting another. Similar concerns arise today over the behavior of large corporations doing business in undeveloped countries. What standards should these corporations use for wages, worker safety, child labor, and environmental issues? Some argue that foreign corporations in undeveloped countries should use the same standards they employ elsewhere in the world. Anything less, they say, exploits workers and the environment. Others argue that corporations should honor the laws of their host country and do not need to bring other standards with them. Corporations, they say, offer much to poorer countries in terms of jobs, education, and economic development. They believe that putting restrictions on them would keep them away from these countries.

In this activity, students role play a U.S. congressional committee deciding whether to impose standards on American corporations doing business in undeveloped countries.

1. Divide students into small groups, each group role playing a congressional committee.
2. Each group should discuss and decide whether the United States should impose standards in each of the following areas: wages, worker safety, child labor, and the environment.
3. The groups should report their decisions and the reasons for them to the whole class.

Rockefeller and the Standard Oil Monopoly

Following the Civil War, few laws limited how businesses went about making money. In building the giant Standard Oil monopoly, John D. Rockefeller made up his own rules.

Born in 1837, John Davidson Rockefeller grew up in rural New York. His father was a peddler of doubtful medical cures, a bigamist, and possibly a horse thief. When he was around, however, "Devil Bill" (as the neighbors called him) carefully instructed John how to keep meticulous account of his money and to outwit any business competitor. John's mother, Eliza, had a far different influence on him. A deeply religious woman, she taught him to be charitable.

John D. Rockefeller, the richest man in the world, strolls with his son in 1915. (Bettmann/Corbis)

John lived in an age when owners of industries operated without much interference from government. Even the income tax did not exist. Rockefeller built an oil monopoly by ruthlessly eliminating most of his competitors. This made him the richest man in the world. But he spent his retirement years giving away most of his money. The unlikely match between "Devil Bill" and Eliza Rockefeller produced a son who would paradoxically become the most hated and admired man in America.

The Standard Oil Monopoly

Shortly before the Civil War, Rockefeller and a partner established a shipping company in Cleveland, Ohio. The company made much money during the war. In 1863, he and his partner invested in another business that refined crude oil from Pennsylvania into kerosene for illuminating lamps.

By 1870, Rockefeller and new partners were operating two oil refineries in Cleveland, then the major oil refining center of the country. The partners incorporated (under a charter issued by the state of Ohio) and called their business the Standard Oil Company.

To give Standard Oil an edge over its competitors, Rockefeller secretly arranged for discounted shipping rates from railroads. The railroads carried crude oil to Standard's refineries in Cleveland and kerosene to the big city markets. Many argued that as "common carriers" railroads should not discriminate in their shipping charges. But small businesses and farmers were often forced to pay higher rates than big shippers like Standard Oil.

The oil industry in the late 1800s often experienced sudden booms and busts, which led to wildly fluctuating prices and price wars among the refiners. More than anything else, Rockefeller wanted to control the unpredictable oil market to make his profits more dependable.

In 1871, Rockefeller helped form a secret alliance of railroads and refiners. They planned to control freight rates and oil prices by cooperating with one another. The deal collapsed when the railroads backed out. But before this happened, Rockefeller used the threat of this deal to intimidate more than 20 Cleveland refiners to sell out to Standard Oil at bargain prices. When the so-called "Cleveland Massacre" ended in March 1872, Standard controlled 25 percent of the U.S. oil industry.

Rockefeller saw Standard Oil's takeover of the Cleveland refiners as inevitable. He said it illustrated "the battle of the new idea of cooperation against competition." In his mind, large industrial combinations, more commonly known as monopolies, would replace individualism and competition in business.

Rockefeller planned to buy out as many other oil refineries as he could. To do this, he often used hard-

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ball tactics. In 1874, Standard started acquiring new oil pipeline networks. This enabled the company to cut off the flow of crude oil to refineries Rockefeller wanted to buy. When a rival company attempted to build a competing pipeline across Pennsylvania, Standard Oil bought up land along the way to block it. Rockefeller also resorted to outright bribery of Pennsylvania legislators. In the end, Rockefeller made a deal with the other company, which gave Standard Oil ownership of nearly all the oil pipelines in the nation.

This 19th-century cartoon portrays John D. Rockefeller as "king of the world." He holds a kerosene lamp in one hand and the world in the other. (Bettmann/Corbis)

By 1880, Standard Oil owned or controlled 90 percent of the U.S. oil refining business, making it the first great industrial monopoly in the world. But in achieving this position, Standard violated its Ohio charter, which prohibited the company from doing business outside the state. Rockefeller and his associates decided to move Standard Oil from Cleveland to New York City and to form a new type of business organization called a "trust."

Under the new arrangement (done in secret), nine men, including Rockefeller, held "in trust" stock in Standard Oil of Ohio and 40 other companies that it wholly or partly owned. The trustees directed the management of the entire enterprise and distributed dividends (profits) to all stockholders.

When the Standard Oil Trust was formed in 1882, it produced most of the world's lamp kerosene, owned 4,000 miles of pipelines, and employed 100,000 workers. Rockefeller often paid above-average wages to his employees, but he strongly opposed any attempt by them to join labor unions. Rockefeller himself owned one-third of Standard Oil's stock, worth about $20 million.

During the 1880s, Standard Oil divided the United States into 11 districts for selling kerosene and other oil products. To stimulate demand, the company sold or even gave away cheap lamps and stoves. It also created phony companies that appeared to compete with Standard Oil, their real owner. When independent companies tried to compete, Standard Oil quickly cut prices—sometimes below cost—to drive them out of business. Then Standard raised prices to recoup its losses.

Much of the trust's effort went into killing off competition. But Standard Oil while Rockefeller was in command also usually provided good quality products at fairly reasonable prices. Rockefeller often declared that the whole purpose of Standard Oil was to supply "the poor man's light."

The Antitrust Movement

By 1900, the Standard Oil Trust had expanded from its original base in the East to new oil regions further west. At the same time, a wave of anti-monopoly sentiment swept the United States. Farmer organizations, labor unions, muckraking journalists, and many politicians attacked such combinations as the sugar and tobacco trusts. But they especially targeted the "mother trust," Standard Oil.

By this time, nearly 30 states and the federal government had passed antitrust laws that attacked monopoly abuses. These laws usually rested on a set of legal and economic assumptions:

1. The common law, inherited from England, condemned the restraint of trade.
2. Monopolies tended to restrain trade by keeping prices high, suppressing product improvements, and making excessive profits.
3. Competition among many independent firms was necessary to assure fair prices, high- quality products, and reasonable profits.

Starting with Ohio in 1887, 10 states and the Oklahoma Territory filed 33 separate lawsuits against companies affiliated with the Standard Oil Trust. In most cases, Standard lost in court. But Standard's directors reorganized the trust shifted operations from state to state, and otherwise evaded court rulings to maintain their monopoly.

Since state lawsuits against Standard Oil were going nowhere, muckraking journalists pressed for federal action against the trust.

Starting in November 1902, Ida Tarbell wrote a series of 19 carefully researched articles in *McClure's Magazine*. She detailed how John D. Rockefeller ruthlessly forced his competitors to "sell or perish." She correctly identified railroad discounts, specifically outlawed by the Interstate Commerce Act of 1887, as key to creating Rockefeller's Standard Oil monopoly.

Called "Miss Tarbarrel" and "this poison woman" by Rockefeller, Tarbell helped push the federal government to investigate the Standard Oil Trust. While publicly attacking Standard Oil and other trusts, President Theodore Roosevelt did not favor breaking them up. He preferred only to stop their anti-competitive abuses.

On November 18, 1906, the U.S. attorney general under Roosevelt sued Standard Oil of New Jersey and its affiliated companies making up the trust. The suit was filed under the Sherman Antitrust Act of 1890. Under this federal law, "Every contract, or combination, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal."

Standard Oil v. United States

The Standard Oil trial took place in 1908 before a Missouri federal court. More than 400 witnesses testified. The government produced evidence that the Standard Oil Trust had secured illegal railroad discounts, blocked competitors from using oil pipelines, spied on other companies, and bribed elected officials. Moreover, the government showed that from 1895–1906 Standard's kerosene prices increased 46 percent, giving enormous profits to the monopoly.

Although Rockefeller was technically president of Standard Oil, he had retired from active management in 1895. But he remained the single largest stockholder. Rockefeller testified that Standard Oil achieved its position because its combination of cooperating companies was more efficient and produced a better product than its rivals. When cross-examined on how Standard Oil grew so dominant, the 71-year-old Rockefeller frequently stated that he could not remember.

Attorneys for Standard Oil contended that the large combination of companies making up the trust had developed naturally and actually saved the industry from destructive price wars. They also argued that since Standard Oil was a *manufacturing* business, it was exempt from the Sherman Act, which only addressed *interstate commerce.*

Both the trial judge and a unanimous federal appeals court agreed that Standard Oil was a monopoly violating the Sherman Antitrust Act. They also supported the government's recommendation that the trust should be dissolved into independent competing companies. Standard Oil then appealed to the U.S. Supreme Court.

From 1895–1906 Standard's kerosene prices increased 46 percent, giving enormous profits to the monopoly.

On May 15, 1911, the Supreme Court unanimously upheld the federal appeals court and ruled that the Standard Oil Trust was a monopoly that illegally restrained trade. All but one justice, however, went on to hold that only monopolies that restrained trade in "unreasonable" ways were illegal. Although it found that Standard Oil did, in fact, act unreasonably, the Supreme Court's use of the "rule of reason" made it more difficult for government to prosecute other monopolies [*Standard Oil of New Jersey v. United States*].

The Supreme Court justices concluded that to restore competition in the oil industry, the Standard Oil Trust would have to be broken into independent companies. But the government permitted Standard Oil stockholders to each receive fractional shares in all 34 companies that were formed. This meant that each of these companies had exactly the same stockholder owners. These companies were then supposed to compete with one another. In reality, the companies had little real

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incentive to do this and acted together in setting prices for a decade or more.

Following new petroleum discoveries in the United States and abroad, independent oil companies finally brought real competition to the industry. But the former Standard Oil companies, with modern names like Exxon, Mobil, Amoco, Chevron, ARCO, Conoco, and Sohio, continued to exercise significant influence on oil pricing.

When the Supreme Court broke up the Standard Oil Trust in 1911, electric lights were rapidly replacing kerosene lamps. But the gasoline-driven automobile was just beginning to appear. Gasoline, up to that time a useless byproduct of oil refining, made the companies formed from the trust wealthier than they had ever been. Rockefeller, owning a 25 percent share in each of the new companies, was worth $900 million in 1913 ($13 billion in today's dollars). This made him the richest man in the world.

In retirement, Rockefeller made a science of philanthropy. He and his son gave away most of the Rockefeller millions, mainly to medical research, public health, and educational institutions. Even so, he bitterly objected to the federal income tax when it began in 1913.

Economist Robert Heilbroner once described John D. Rockefeller as "an agent for better and worse in the immense industrial transformation of America." Outliving most of his business associates and critics, John D. Rockefeller died in 1937, a few weeks short of his 98th birthday.

For Discussion and Writing

1. Explain why John D. Rockefeller was "an agent for better and worse" in American history.
2. Do you agree with the Supreme Court's decision in 1911 that the Standard Oil Trust had violated the Sherman Antitrust Act? Why or why not?
3. In 1911, the Supreme Court ruled that only monopolies "unreasonably" restraining trade were illegal. Today, do you think that all monopolies should be illegal? Why or why not?

For Further Reading

Bringhurst, Bruce. *Antitrust and the Oil Monopoly: The Standard Oil Cases, 1890-1911.* Westport, Conn.: Greenwood Press, 1979.

Chernow, Ron. *Titan, The Life of John D. Rockefeller, Sr.* New York: Vintage Books, 1998.

A C T I V I T Y

Money, Money, Money

Many Americans seek great wealth. Some, like John D. Rockefeller, achieve it. After Rockefeller got his fortune, he spent the rest of his life giving his money away. In this activity, students will research other highly successful American business people and report back to the class on (1) how they made their fortune, (2) what they did with it, and (3) why. Each student should select a person to report on from the list below. For students using the Internet to research, CRF's research links **http://www.crf-usa.org/links/research1.html** is a good place to start.

Andrew Carnegie	Ray Kroc
Walt Disney	Estee Lauder
Henry Ford	Daniel K. Ludwig
James Gamble	John D. MacArthur
J. Paul Getty	Louis B. Mayer
Samuel Goldwyn	Andrew William Mellon
Amadeo Giannini	Charles Merrill
Hetty Green	J. Pierpont Morgan
William Randolf Hearst	Jay Pritzker
William R. Hewlett	David Sarnoff
Howard Hughes	Charles M. Schulz
H. L. Hunt	Cornelius Vanderbilt
Joseph P. Kennedy Sr.	Samuel M. Walton

United States v. Microsoft

In 1999, a federal judge found that Microsoft, the world's biggest software company, is a monopoly that has stifled competition. Microsoft now faces legal consequences as well as rapidly evolving technologies. Both may challenge its domination of the computer software industry.

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The Microsoft Corporation is the largest computer software company in the world. The chairman of this company is multi-billionaire Bill Gates, the wealthiest man in the world. Like Standard Oil at the turn of the 20th century and AT&T in the 1970s and '80s, Microsoft has currently become the target of antitrust lawsuits. The suits charge Microsoft with illegally monopolizing 90 percent of the computer software market with its Windows operating system. The courts still have to decide Microsoft's legal fate.

U S GOVERNMENT

The Battle of the Browsers

In 1975, Bill Gates dropped out of Harvard and joined with his friend, Paul Allen, to form a software company named Microsoft. The company took off when Gates and Allen improved some operating system software and licensed it to IBM.

After Apple developed the first point-and-click operating system for the Macintosh in 1984, Microsoft produced its own version, called Windows. Today, with Windows installed in about 90 percent of the world's computers, Microsoft stock is valued at more than $550 billion. Gates, 44, owns about 15 percent of Microsoft stock, making him the richest man in the world.

In the early 1990s, the U.S. government began to investigate Microsoft for using unfair practices in competing against other companies. One of these practices required computer makers who wanted to license Windows to pay a fee for every machine they manufactured, even those with other operating systems.

To avoid a costly lawsuit, Microsoft agreed to stop practices like this. A court order known as a consent decree formalized the agreement in 1995.

By the mid-1990s, the Internet had opened a new way to use computers for millions of people. To reach the Internet's graphical World Wide Web, users need a software application known as a "browser." The Netscape Company was the first to flood the browser market with its Navigator (later renamed Communicator). Belatedly, Gates recognized the Internet's potential and introduced Microsoft's own browser, called Explorer.

In 1995, Microsoft started to require computer manufacturers licensed to install Windows to include, or "bundle," Explorer at no extra charge to the consumer. If these companies refused to add Explorer to the Windows desktop, they would lose their license to install the popular operating system on their computers. Netscape complained that Microsoft was competing unfairly, first by giving Explorer away free and second by forcing the manufacturers to make it the default browser on their computers. Since more than

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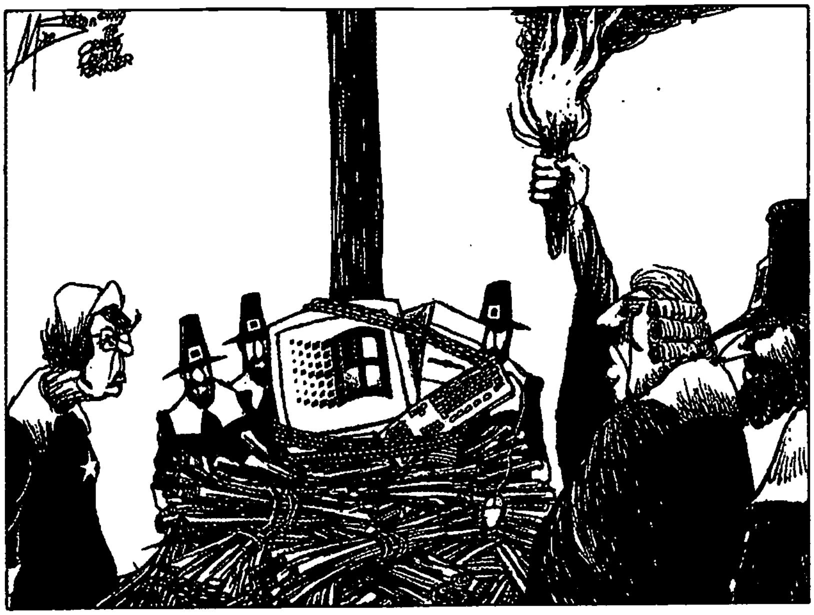

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85 percent of the computers sold at this time included Windows bundled with Explorer, sales of Netscape's Navigator plummeted.

Claiming that Microsoft had violated the 1995 consent decree, U.S. Attorney General Janet Reno obtained another court order late in 1997. It directed Microsoft to offer computer makers the choice of installing Windows with or without the Explorer web browser. This time, however, Gates balked and appealed the court order.

Meanwhile, the U.S. Justice Department considered additional legal action against the giant software company for antitrust law violations. By spring 1998, Microsoft dominated 90 percent of the operating system software market, while its Explorer browser was rapidly replacing Netscape's Navigator.

In May 1998, after fruitless attempts to settle with Microsoft out of court, the federal government, 20 states, and the District of Columbia sued the company under the Sherman Antitrust Act of 1890. The Sherman Act prohibits attempts by businesses to monopolize a market by unfairly eliminating competition. This was the same law the government used to go after AT&T 20 years ago and Rockefeller's Standard Oil almost a hundred years ago.

By spring 1998, Microsoft dominated 90 percent of the operating system software market, while its Explorer browser was rapidly replacing Netscape's Navigator.

Joel Klein, head of the Justice Department's Antitrust Division, declared, "What cannot be tolerated—and what the antitrust laws forbid—is the barrage of illegal, anti-competitive practices that Microsoft uses to destroy its rivals and to avoid competition." Gates rejected this view and explained that Microsoft's success came from its innovative, superior, and low-cost software that benefited the consumer.

United States v. Microsoft

In June 1998, Microsoft gained a partial victory when a federal judge overruled the earlier court order banning the company from bundling Explorer with Windows. Even so, the federal and state governments decided to go on with their antitrust lawsuits, alleging that Microsoft was illegally attempting to preserve its Windows monopoly. The trial began in October 1998 before a federal judge, Thomas Penfield Jackson.

The federal and state governments presented testimony and other evidence (including hundreds of Microsoft e-mail messages). They tried to prove that Microsoft had acted unfairly to suppress the development of competing browser technology that threatened its Windows monopoly. The government plaintiffs accused Microsoft of:

- giving Explorer away to drive Netscape out of the browser market.
- threatening to cancel the licensing of Windows to computer makers unless they agreed to install Explorer.
- pressuring computer chip-maker Intel not to develop its own competing browser.
- threatening to cancel new Macintosh versions of Microsoft Office software unless Apple installed Explorer in the Mac as its default browser.
- making it technically difficult for consumers with Windows computers to completely delete Explorer or change to another browser.
- attempting to make the Sun Microsystems Java programing language, which facilitates browser technology, dependent on Windows.

Throughout the trial, Microsoft maintained that its sole purpose in bundling Explorer with Windows was to make it easier, more convenient, and less costly for consumers to use a computer. After all, Microsoft attorneys reminded the court, the overriding intent of the Sherman Act is to protect consumers, not competing companies. When America Online, the nation's largest Internet service provider, bought Netscape during the trial, Microsoft offered this as proof that competition was still strong in the computer software industry.

On November 5, 1999, Judge Jackson issued "Findings of Fact" in the case. To the surprise of many, his 207-page list of findings sided almost totally with the government. He found that Microsoft was a "predatory monopoly," using unfair tactics against rival companies to crush competition. This ultimately denied consumers both choice and software that was never developed because of Microsoft's actions to preserve its monopoly.

At the beginning of the year 2000, the lawsuit against Microsoft was far from over. Judge Jackson still had to decide if the facts supported the government's contention that Microsoft violated the Sherman Antitrust Act. If so, as appears likely, the judge must then decide what "remedies" to impose on the world's biggest software maker to correct its illegal behavior. Barring a negotiated settlement out of court, Microsoft will probably appeal Judge Jackson's ruling all the way to the U.S. Supreme Court.

Evolving technology, which Microsoft does not monopolize, is rapidly transforming desktop computers into wireless, online, hand-held devices. Microsoft may have to pay a price for its past actions, while it tries to keep up with fast-moving changes in technology.

For Discussion and Writing

1. According to the government, why did Microsoft attempt to control the Internet browser market? What was Microsoft's position on this issue?
2. Judge Jackson found that Microsoft was a "predatory monopoly." What does this mean? What evidence did the judge accept to reach this finding?
3. Following the release of Judge Jackson's "Findings of Fact," Bill Gates asserted that "Microsoft's innovations and behavior were completely fair and brought tremendous benefit to millions of consumers." Do you agree or disagree with him? Why?
4. What are the editorial cartoons saying on pages 9 and 10? Do you agree? Explain.

For Further Reading

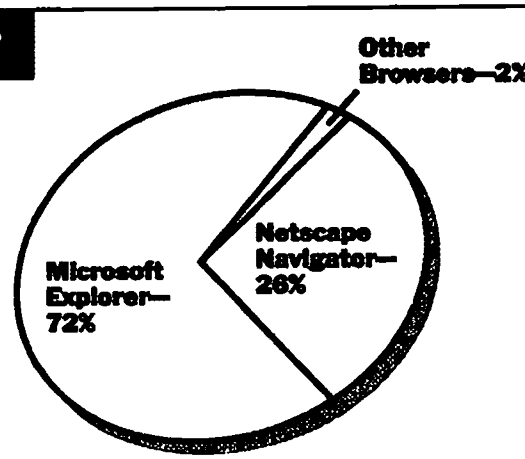
Gates, Bill. *The Road Ahead.* New York: Viking, 1995.

Jackson, Thomas Penfield. *United States of America v. Microsoft Corporation et al. Findings of Fact.* United States District Court for the District of Columbia. 5 Nov. 1999. Available http://usvms.gpo.gov

(Continued on next page)

Browser War Declared Over

WebSideStory, an internet trends analysis company, has declared the browser war over. In a study of over 30 million internet users concluded in August 1999, WebSideStory found that 72 percent of Internet users used Microsoft's Internet Explorer, compared to 26 percent using Netscape's Navigator, and 2 percent using other browsers. As recently as 1996, nine companies competed in a $200 million browser market. By 1999, the market was dominated by Microsoft and Netscape, who offered their browsers to consumers free of charge.



A C T I V I T Y

United States v. Microsoft: The Remedies

In antitrust cases, courts impose what are called "remedies" to correct illegal corporate behavior and to restore competition. This activity asks small groups to consider the following possible remedies if the courts decide that Microsoft violated the Sherman Antitrust Act. Each group may adopt one remedy, a combination of them, or one of its own. The groups should then each prepare reasons and arguments for its remedy to present to the rest of the class.

Possible Remedies

1. **Warn Microsoft not to engage in certain unfair competitive practices.** Under this remedy, the company would be able to continue business as usual. Microsoft would most likely interpret this remedy as an admission by the government that the company is really not a "predatory monopoly." Others who view Microsoft more negatively would probably view this remedy as a mere "slap on the wrist."
2. **Impose a huge fine.** Fines are often used to punish corporate misbehavior and to deter anti-competitive practices. But would such a remedy matter that much to this wealthy corporation?
3. **Require a long probation period with a detailed code of conduct supervised by a team of government attorneys and computer experts.** This would be a massive intrusion by the government into the realm of private free enterprise. Given the facts in this case, however, such an intrusion may be necessary to make sure Microsoft does not continue to use its monopoly power to eliminate competition.
4. **Force Microsoft to make its secret Windows software code available to other companies.** This would enable Microsoft's competitors to produce new and perhaps better Web browsers, word processors, and other programs that run with Windows. Microsoft would undoubtedly view this remedy as theft of its corporate property.
5. **Split Microsoft into two or more competing companies.** Each could develop its own version of Windows or each new company could focus on one element of the old company such as Windows, Explorer, or office software. Considered the "death penalty" of antitrust remedies, this option would destroy the Microsoft monopoly to restore competition in the software industry. But Gates continually points out that rapid changes in technology already make it impossible for any one company to control the software industry.

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PostScript

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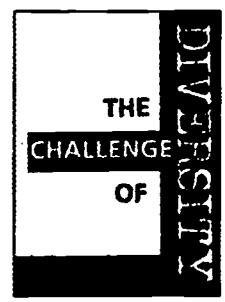

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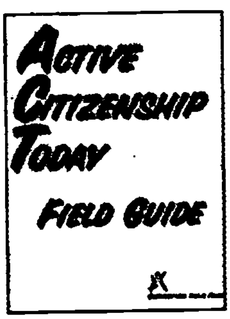

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ACT publications are produced and developed jointly by Constitutional Rights Foundation and Close Up Foundation.

Funding for this program was made possible through a generous grant from the DeWitt Wallace-Reader's Digest Fund.

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See Youth and Police training opportunity on next page.

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Constitutional Rights Foundation is a non-profit, non-partisan citizenship education organization with programs and publications on law, government, civic participation, and service learning. Since 1962, CRF has used education to address some of America's most serious youth-related problems: apathy, alienation, and lack of commitment to the values essential to our democratic way of life.

Through a variety of civic-education programs developed by CRF staff, young people prepare for effective citizenship and learn the vital role they can play in our society. Empowered with knowledge and skills, our youth can interact successfully with our political, legal, and economic systems. CRF is dedicated to assuring our country's future by investing in our youth today.

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